384 N.C.—No. 3 Pages 569-680

CONTINUING LEGAL EDUCATION

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

SEPTEMBER 13, 2023

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 16 JUNE 2023

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concluded that Hurysh could waive the attorney-client privilege and disclose a recording that he secretly had made of a conference call between defendants and counsel before the falling out among defendants. Competent evidence supported the court's finding that the attorney's advice was given not as corporate counsel but as joint defense counsel for defendants pursuant to an express engagement letter (not the standard corporate engagement letter), which provided that, in the event of a disagreement among the defendants, the attorney-client privilege would not protect the information shared by any defendant with the law firm. Therefore, the trial court's determination that Hurysh held the attorney-client privilege and could waive it was well within the court's sound discretion. **Howard v. IOMAXIS, LLC, 576.**

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SCHEDULE FOR HEARING APPEALS DURING 2023

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

January 31
February 1, 2, 7, 8, 9
March 14, 15, 16
April 25, 26, 27
September 12, 13, 14, 19, 20, 21
October 31
November 1, 2, 7, 8, 9

CRYAN v. NAT'L COUNCIL OF YMCAs OF THE U.S.

[384 N.C. 569 (2023)]

JOSEPH CRYAN, SAMUEL CRYAN, KERRY HELTON, THOMAS HOLE, RICKEY HUFFMAN, JOSEPH PEREZ, JOSHUA SIZEMORE, DUSTIN SPRINKLE, AND MICHAEL TAYLOR

v.

NATIONAL COUNCIL OF YOUNG MEN'S CHRISTIAN ASSOCIATIONS OF THE UNITED STATES OF AMERICA, YOUNG MEN'S CHRISTIAN ASSOCIATION OF NORTHWEST NORTH CAROLINA D/B/A KERNERSVILLE FAMILY YMCA, AND MICHAEL TODD PEGRAM

No. 424A21

Filed 16 June 2023

1. Appeal and Error—writ of certiorari—two-factor test—merit of issue—extraordinary circumstances

The Court of Appeals acted within its sound discretion when it issued a writ of certiorari to review the trial court's interlocutory order concluding that defendants had asserted a facial challenge to the SAFE Child Act and transferring the issue to a three-judge panel. The Court of Appeals properly applied the two-factor test for determining whether to issue a writ of certiorari, determining first that defendant's argument had merit and second that extraordinary circumstances existed to justify issuance of the writ—specifically, that review would advance the interest of judicial economy, that the appeal raised a recurring issue concerning a relatively new statutory scheme, and that the issue involved the trial court's subject matter jurisdiction.

2. Appeal and Error—scope of Supreme Court's review—based on Court of Appeals dissent—issues specifically set out in dissent

Where plaintiffs filed a notice of appeal to the Supreme Court based on a dissent in the Court of Appeals (COA) and did not petition for discretionary review of any additional issues, the Supreme Court considered the merits of only the issue specifically set out and explained by the dissenting COA judge. The dissenting COA judge's single sentence vaguely and impliedly disagreeing with another of the majority's holdings—without providing any reasoning—was not sufficient to confer appellate jurisdiction to the Supreme Court over that issue.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 280 N.C. App. 309 (2021), allowing defendant's petition for writ of certiorari, and vacating and remanding

an order entered on 22 July 2020 by Judge Richard S. Gottlieb in Superior Court, Forsyth County. Heard in the Supreme Court on 25 April 2023.

Lanier Law Group, P.A., by Donald S. Higley II, Robert O. Jenkins, and Lisa Lanier, for plaintiffs-appellants.

Nelson Mullins Riley & Scarborough LLP, by Lorin J. Lapidus, G. Gray Wilson, Denise M. Gunter, and Martin M. Warf; and Bell, Davis & Pitt, P.A., by Kevin G. Williams, for defendant-appellee YMCA of Northwest North Carolina.

DIETZ, Justice.

This appeal from a divided Court of Appeals decision presents an opportunity to reaffirm two settled principles of appellate procedure.

The first principle concerns the writ of certiorari, an extraordinary writ used to aid an appellate court's jurisdiction. When contemplating whether to issue a writ of certiorari, our state's appellate courts must consider a two-factor test. That test examines (1) the likelihood that the case has merit or that error was committed below and (2) whether there are extraordinary circumstances that justify issuing the writ.

The second principle concerns appeals to this Court based on a dissent at the Court of Appeals. To confer appellate jurisdiction, a Court of Appeals dissent must specifically set out the basis for the dissent—meaning the reasoning for the disagreement with the majority. A dissent that does not contain any reasoning on an issue cannot confer jurisdiction over that issue.

Applying these principles here, we hold that the Court of Appeals was well within its sound discretion to issue a writ of certiorari in this case. We further hold that the issuance of the writ of certiorari was the only issue for which the dissent set out any reasoning. We therefore decline to address the remaining issues contained in the plaintiffs' new brief.

Facts and Procedural History

On 26 June 2019, Defendant Michael Todd Pegram pleaded guilty to multiple charges of felony sexual assault. Pegram committed these crimes while he was employed by Defendant Young Men's Christian Association of Northwest North Carolina d/b/a Kernersville Family YMCA (the YMCA).

After Pegram's criminal case concluded, a group of plaintiffs brought a tort suit against Pegram and other parties, including the YMCA.

Plaintiffs' claims depend on a law known as the SAFE Child Act. *See* An Act to Protect Children from Sexual Abuse and to Strengthen and Modernize Sexual Assault Laws, S.L. 2019-245, 2019 N.C. Sess. Laws 1231. Plaintiffs acknowledge that their sexual abuse allegations occurred decades ago and that their claims would be barred by statutes of limitations in effect before enactment of the SAFE Child Act. But they assert that the SAFE Child Act revived their claims many years after the existing statute of limitations otherwise would have expired.

The YMCA moved to dismiss plaintiffs' claims under Rule 12(b)(6) of the Rules of Civil Procedure on the ground that the SAFE Child Act's revival of the statute of limitations violated the North Carolina Constitution. Importantly, the YMCA argued that the SAFE Child Act was unconstitutional only as applied to defendants for whom the statute of limitations already had expired. The YMCA contends that there is another category of defendants impacted by the act—those with unexpired statutes of limitations—and that the act is permissible with respect to those defendants because extending an unexpired limitations period (as opposed to an expired one) is not unconstitutional.

Plaintiffs rejected this dichotomy and asserted that the YMCA's claim was a facial challenge to the SAFE Child Act. They moved to transfer the claim to a three-judge panel of superior court judges under N.C.G.S. § 1-267.1, which applies to "claims challenging the facial validity of an act of the General Assembly."

After a hearing, the trial court determined that the YMCA's motion asserted a facial challenge and entered an order transferring the issue to a three-judge panel.

The YMCA filed a timely notice of appeal to the Court of Appeals. Plaintiffs then moved to dismiss the appeal, asserting that it was impermissibly interlocutory. In response, the YMCA filed a petition for a writ of certiorari.

The Court of Appeals issued a divided decision. *Cryan v. Nat'l Council of YMCAs of the U.S.*, 280 N.C. App. 309 (2021). The court unanimously concluded that the YMCA had no right to appeal from the trial court's interlocutory order transferring the case to a three-judge panel. *Id.* at 315. But the majority chose to exercise its discretion to issue a writ of certiorari. *Id.* at 315–16. The majority then examined the merits of the parties' arguments and held that the YMCA had asserted an as-applied

challenge. *Id.* at 317–18. As a result, the majority vacated the transfer order and remanded the case to the trial court for further proceedings. *Id.* at 318.

The dissent argued that it was improper to issue a writ of certiorari and described in detail a series of reasons why issuing a writ in these circumstances undermines the intent of the General Assembly, improperly shifts trial court responsibilities to the appellate courts, and encourages procedural gamesmanship by the litigants. *Id.* at 319–21 (Carpenter, J., dissenting).

Plaintiffs timely filed a notice of appeal to this Court based on the dissent. Plaintiffs did not petition for discretionary review of any additional issues not addressed by the dissent.

Analysis

I. The writ of certiorari

[1] We begin by addressing the issue expressly set out in the Court of Appeals dissent: whether it was appropriate to issue a writ of certiorari to review the trial court's order.

The writ of certiorari is one of the "prerogative" writs that the Court of Appeals may issue in aid of its own jurisdiction. N.C.G.S. § 7A-32(c) (2021). It "is intended as an extraordinary remedial writ to correct errors of law." *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465 (2022) (cleaned up).

The procedure governing writs of certiorari is found in Rule 21 of the Rules of Appellate Procedure. But "Rule 21 does not prevent the Court of Appeals from issuing writs of certiorari or have any bearing upon the decision as to whether a writ of certiorari should be issued." *State v. Killette*, 381 N.C. 686, 691 (2022). Instead, the decision to issue a writ is governed solely by statute and by common law. *Id.*

Our precedent establishes a two-factor test to assess whether certiorari review by an appellate court is appropriate. First, a writ of certiorari should issue only if the petitioner can show "merit or that error was probably committed below." *State v. Ricks*, 378 N.C. 737, 741 (2021); *State v. Grundler*, 251 N.C. 177, 189 (1959). This step weighs the likelihood that there was some error of law in the case. *Button*, 380 N.C. at 465–66.

Second, a writ of certiorari should issue only if there are "extraordinary circumstances" to justify it. *Moore v. Moody*, 304 N.C. 719, 720

(1982). We require extraordinary circumstances because a writ of certiorari "is not intended as a substitute for a notice of appeal." *Ricks*, 378 N.C. at 741. If courts issued writs of certiorari solely on the showing of some error below, it would "render meaningless the rules governing the time and manner of noticing appeals." *Id.*

There is no fixed list of "extraordinary circumstances" that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or "wide-reaching issues of justice and liberty at stake." *Doe v. City of Charlotte*, 273 N.C. App. 10, 23 (2020).

Ultimately, the decision to issue a writ of certiorari rests in the sound discretion of the presiding court. *Ricks*, 378 N.C. at 740. Thus, when the Court of Appeals issues a writ of certiorari, we review solely for abuse of discretion, examining whether the decision was "manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." *State v. Locklear*, 331 N.C. 239, 248 (1992) (cleaned up); *see also Ricks*, 378 N.C. at 740.

Applying this framework here, the Court of Appeals' decision to issue a writ of certiorari was well within the court's sound discretion. With respect to the merit factor, the court examined the parties' arguments and determined that the YMCA's argument had merit. *Cryan v. Nat'l Council of YMCAs of the U.S.*, 280 N.C. App. 309, 318 (2021). With respect to the extraordinary circumstances factor, the court determined that certiorari review was appropriate in the interest of "judicial economy." *Id.* at 315–16. The court observed that the appeal raised a recurring issue concerning "a relatively new statutory scheme which has limited jurisprudence surrounding it." *Id.* at 316. The court also noted that the question on appeal involved the trial court's "subject-matter jurisdiction," which potentially deprives the trial court of any power to rule in the case. *Id.* at 314–15. Although the Court of Appeals did not expressly state the follow-on point, this outcome could lead to a considerable waste of judicial resources if a trial court works through a complicated, novel constitutional issue only for that work to later be declared a nullity.

In short, the Court of Appeals' reasoning readily satisfies the abuse of discretion standard. The court explained its reasoning, which tracked the two-factor test established in our case law. That reasoning was not manifestly arbitrary. Thus, our review goes no further and we affirm the Court of Appeals' issuance of the writ of certiorari.

II. The scope of review based on the dissent

[2] We now turn to whether there is anything else for us to address in this appeal. Our jurisdiction in this case is based solely on the dissent in the Court of Appeals. *See* N.C.G.S. § 7A-30(2) (2021). Rule 16(b) of the Rules of Appellate Procedure states that, when we have jurisdiction based solely on a dissent, our review "is limited to a consideration of those issues that are (1) specifically set out in the dissenting opinion as the basis for that dissent." N.C. R. App. P. 16(b).

Many years ago, this Court held that Rule 16(b) required dissenting judges to explain their reasoning in order to confer jurisdiction on this Court. *C.C. Walker Grading & Hauling, Inc. v. S.R.F. Mgmt. Corp.*, 311 N.C. 170, 176 (1984). In that case, the Court of Appeals opinion stated at its conclusion that "Chief Judge VAUGHN dissents." *C.C. Walker Grading & Hauling, Inc. v. S.R.F. Mgmt. Corp.*, 66 N.C. App. 170, 173 (1984). We held that this was insufficient to confer jurisdiction on this Court because when "the dissenter does not set out the issues upon which he bases his disagreement with the majority, the appellant has no issue properly before this Court." *C.C. Walker Grading & Hauling*, 311 N.C. at 176.

In their new brief to this Court, plaintiffs challenge two separate issues from the Court of Appeals opinion: first, the majority's decision to issue the writ of certiorari, and second, the majority's determination that the YMCA asserted an as-applied constitutional challenge (not a facial challenge) to the SAFE Child Act.

The dissenting judge set out in detail the reasons why he opposed the first of those two decisions by the majority. In several pages of thorough analysis, the dissent asserted that issuing a writ undermines the intent of the General Assembly, improperly shifts trial court responsibilities to the appellate courts, and encourages procedural gamesmanship by the litigants. *Cryan*, 280 N.C. App. at 319–21 (Carpenter, J., dissenting).

By contrast, the dissent did not expressly oppose the majority's second decision—the determination that the YMCA raised an as-applied challenge—or provide any explanation for why that decision was wrong. Plaintiffs point to a single sentence at the conclusion of the dissent, after several pages of reasoning on the certiorari issue, in which the dissent states the following: "Because I would determine jurisdiction to decide the constitutional issue is proper before the three-judge panel in Wake County, I would deny Defendant's petition for writ of certiorari." *Id.* at 321.

This single sentence is insufficient to confer jurisdiction over the issue of whether the YMCA's claim is a facial or an as-applied challenge. Plaintiffs contend that, because the dissent stated that jurisdiction "is proper before the three-judge panel," and because this statement could be true only if the YMCA's claim were a facial challenge, the dissent necessarily disagreed with the majority's determination that the YMCA's claim was an as-applied challenge.

But that is all inference. The dissent did not say that. If this sort of vague, implied disagreement with the majority's decision—one in which the dissenting judge provided no reasoning—could be sufficient to confer jurisdiction on this Court, so too would a judge in a single-issue appeal stating, "I dissent." As noted above, this Court has long rejected the notion that this sort of statement, without providing any reasoning, satisfies Rule 16(b)'s requirement to "specifically set out in the dissenting opinion" the "basis for that dissent." N.C. R. App. P. 16(b); *C.C. Walker Grading & Hauling*, 311 N.C. at 176. Consistent with Rule 16 and this Court's precedent, we hold that dissenting judges must set out their reasoning on an issue in the dissent in order for the dissent to confer appellate jurisdiction over that issue under N.C.G.S. § 7A-30(2). That did not occur here and, accordingly, we decline to address the second issue raised in plaintiffs' new brief.

Conclusion

We affirm the decision of the Court of Appeals.

AFFIRMED.

HOWARD v. IOMAXIS, LLC

[384 N.C. 576 (2023)]

KELLY C. HOWARD AND FIFTH THIRD BANK, AS CO-TRUSTEES OF THE RONALD E. HOWARD REVOCABLE TRUST DATED FEBRUARY 9, 2016, AS AMENDED AND RESTATED
v.
IOMAXIS, LLC, BRAD C. BOOR A/K/A BRAD C. BUHR, JOHN SPADE, JR., WILLIAM P. GRIFFIN, III, AND NICHOLAS HURYSH, JR.

No. 64A22

Filed 16 June 2023

Attorneys—attorney-client privilege—multiparty attorney-client relationship—joint representation of co-defendants—complex business case

In a complex business case, where defendants (a company and its individual members) were jointly represented by the same law firm—which also represented the company in "general corporate matters" under a standard corporate engagement letter—in a dispute with plaintiffs (the trust of the estate of the company's majority owner), when the relationship between the individual defendants deteriorated and one individual defendant (Hurysh) brought cross-claims against the others, the trial court properly concluded that Hurysh could waive the attorney-client privilege and disclose a recording that he secretly had made of a conference call between defendants and counsel before the falling out among defendants. Competent evidence supported the court's finding that the attorney's advice was given not as corporate counsel but as joint defense counsel for defendants pursuant to an express engagement letter (not the standard corporate engagement letter), which provided that, in the event of a disagreement among the defendants, the attorney-client privilege would not protect the information shared by any defendant with the law firm. Therefore, the trial court's determination that Hurysh held the attorney-client privilege and could waive it was well within the court's sound discretion.

Appeal pursuant to N.C.G.S. § 7A-27(a)(3) from an order on defendant IOMAXIS, LLC's motion for protective order entered on 22 November 2021 by Judge Michael L. Robinson, Special Superior Court Judge for Complex Business Cases, in Superior Court, Mecklenburg County, after the case was designated a mandatory complex business case by the Chief Justice pursuant to N.C.G.S. § 7A-45.4(b). Heard in the Supreme Court on 1 February 2023.

Johnston, Allison & Hord, P.A., by Patrick E. Kelly, Greg Ahlum, and David T. Lewis, for plaintiffs-appellees.

Allen, Chesson & Grimes PLLC, by Benjamin S. Chesson, David N. Allen, and Anna C. Majestro; and Nelson Mullins Riley & Scarborough LLP, by Travis A. Bustamante, for defendant-appellant IOMAXIS, LLC.

Miller Monroe & Plyler, PLLC, by Jason A. Miller, Paul T. Flick, John W. Holton, and Robert B. Rader III; and Robert F. Orr, for defendant-appellee Nicholas Hurysh, Jr.

DIETZ, Justice.

In July 2020, the defendants in this business court litigation all were jointly represented by the same law firm. Those defendants are a corporate entity—IOMAXIS, LLC—and the individual corporate members of IOMAXIS.

During a joint conference call with counsel, one of the defendants, Nicholas Hurysh, secretly recorded the conversation. After a falling out among the co-defendants, Hurysh sought to waive the attorney–client privilege and disclose the contents of the call.

IOMAXIS moved for a protective order, arguing that the call was to discuss corporate matters. IOMAXIS further argued that counsel on the call (who also was IOMAXIS's counsel for general corporate matters) was providing advice to the individual defendants solely in their roles as agents of the company.

The trial court rejected this argument and ruled that Hurysh held the privilege individually and could waive it. As explained below, we affirm. The trial court made a fact finding that counsel was not acting as corporate counsel but instead as joint defense counsel for all the defendants, including Hurysh, under a written joint defense agreement. That finding is supported by at least some competent evidence in the record and thus is binding on appeal.

Based on that finding, the trial court properly determined that Hurysh jointly held the attorney–client privilege with respect to the secretly recorded call and "therefore may opt to waive the privilege if he so desires."

Facts and Procedural History

This case concerns a corporate entity known as IOMAXIS, LLC. In 2017, the founder and majority owner of IOMAXIS passed away. A dispute later arose between the trust formed by his estate, whose trustees are the plaintiffs in this action, and the remaining members of IOMAXIS, who are defendants in this action.

During this time period, the law firm Holland & Knight, LLP represented IOMAXIS in connection with "general corporate matters" under a standard corporate engagement letter. This engagement letter was solely between Holland & Knight and IOMAXIS and did not involve representation of the individual members of IOMAXIS.

The CEO of IOMAXIS, Bob Burleson, signed this engagement letter on behalf of the company. Adam August, the Holland & Knight attorney who signed the engagement letter, was the primary attorney handling the corporate legal matters described in the engagement letter on behalf of Holland & Knight.

In June 2018, plaintiffs brought this action against IOMAXIS and the remaining members of the company. Plaintiffs' suit sought to resolve "whether IOMAXIS is a North Carolina or Texas limited liability company; whether there is a valid operating agreement; whether the Trust is entitled to distributions from IOMAXIS on the basis of Decedent Howard's interest therein; and whether the buy-sell provisions under the North Carolina operating agreement controlled at the time of Decedent Howard's death."

In July 2018, Holland & Knight executed a second engagement letter, this one covering the "dispute" with plaintiffs and the lawsuit "in state court in North Carolina." This second engagement letter stated that Holland & Knight would jointly represent IOMAXIS and its individual corporate members, all of whom were named defendants in this litigation. The letter emphasized that "there will be no way in this joint representation for you to pursue your individual interests through your common attorney." A different Holland & Knight attorney, Phillip Evans, signed this second engagement letter.

There is nothing in the second engagement letter, or anywhere else in the record, indicating that Holland & Knight created any separation within the firm between attorneys handling the corporate matters and attorneys handling the litigation matters.

The second engagement letter also addressed potential implications of the joint representation. The letter stated that "as a necessary

consequence of this joint representation, all information you share with [Holland & Knight] in this joint representation will be shared among each other." It continued, "[I]n the unlikely event of a disagreement among you, the attorney–client privilege will not protect the information you share with us."

On 22 July 2020, Adam August of Holland & Knight participated in a Zoom call with IOMAXIS CEO Bob Burleson and IOMAXIS members Brad Buhr, Trey Griffin, Nicholas Hurysh, and John Spade.

Several months after this call, the relationship among the remaining members of IOMAXIS deteriorated. Hurysh retained new counsel, sought to bring crossclaims against the other members of IOMAXIS, and ultimately revealed that he had recorded the July 22 conference call. Hurysh asserted that he held the attorney–client privilege with respect to the call and intended to waive it so that he could use the contents of the call in this litigation.

In response, IOMAXIS asserted that it held the exclusive attorney–client privilege over the July 22 call and that Hurysh had no authority to waive that privilege. The presiding business court judge referred this issue to another business court judge for resolution. After a hearing, the trial court entered an order finding that August's legal advice on the July 22 call was made under the second engagement letter, in which Holland & Knight jointly represented Hurysh, the other corporate members, and IOMAXIS. As a result, the court determined that Hurysh held the attorney–client privilege and could choose to waive it despite objection from IOMAXIS.

IOMAXIS timely appealed this interlocutory order. We have appellate jurisdiction over this matter because a trial court order compelling the disclosure of purportedly privileged communications affects a substantial right and is immediately appealable. *See In re Miller*, 357 N.C. 316, 343 (2003).

Analysis

The crux of this case is whether the trial court properly determined that Hurysh jointly held the attorney–client privilege over the July 22 call and whether the court used the proper legal test to make that determination.

For the attorney–client privilege to apply, "the relation of attorney and client must have existed at the time the particular communication was made." *Friday Invs., LLC v. Bally Total Fitness of the Mid-Atl., Inc.*, 370 N.C. 235, 238 (2017) (cleaned up).

Typically, an attorney–client relationship arises "between an attorney and a single client the attorney represents." *Id.* But this Court also has recognized "a multiparty attorney–client relationship in which an attorney represents two or more clients." *Id.* The rationale for this multiparty attorney–client relationship "is that individuals with a common interest in the litigation should be able to freely communicate with their attorney, and with each other, to more effectively defend or prosecute their claims." *Id.*

Once a court determines that an attorney–client relationship exists, the court applies a five-factor test to assess whether a particular communication is protected by the privilege. *Id.* at 240. That test examines whether:

> (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated and (5) the client has not waived the privilege.

Id.

"The trial court is best suited to determine, through a fact-sensitive inquiry, whether the attorney–client privilege applies to a specific communication." *Id.* (emphasis omitted). When conducting this fact-sensitive inquiry, the trial court is not *required* to make specific fact findings. *Id.* When the trial court does not make written fact findings, "it is presumed that the court on proper evidence found facts to support its judgment." *Id.* at 241. But when, as here, the trial court finds facts in its written order, a different standard of review applies, known as the "competent evidence" standard. Under this test, a trial court's findings of fact "will be upheld if supported by *any* competent evidence" in the record. *N.C. Farm Bureau Mut. Ins. Co. v. Stox*, 330 N.C. 697, 702 (1992) (emphasis added). "This is true even when evidence to the contrary is present." *Id.* Our role under the competent evidence standard is solely to assess if any competent evidence supports the trial court's finding; if so, that finding is "conclusive on appeal." *Hutchins v. Honeycutt*, 286 N.C. 314, 319 (1974). Once we determine which fact findings are supported by competent evidence, we then review whether the trial court's ruling, based on those findings, amounted to an abuse of the court's discretion. *Friday Invs.*, 370 N.C. at 241.

No party in this appeal disputes these principles of the attorney–client privilege. But IOMAXIS seeks review of what it describes as an "exceedingly narrow issue" that this Court has not yet addressed: Does our traditional five-factor test for attorney–client privilege apply to more complex attorney–client relationships in the corporate setting?

IOMAXIS argues that the trial court should not have used our state's traditional test and instead should have adopted a more sophisticated test that other courts apply when a corporate officer asserts a personal claim of attorney–client privilege over communications with the corporation's counsel. *See In re Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 805 F.2d 120, 123 (3d Cir. 1986). This test, which originated in the Third Circuit, is used by many other federal and state courts.

The *Bevill* test, as it is known, exists because a corporation "cannot speak directly to its lawyers." *United States v. Graf*, 610 F.3d 1148, 1156 (9th Cir. 2010). Instead, the corporation's attorney–client relationship is formed through communications between the attorney and the individual officers, directors, and employees of the company. *Id.* These same officers, directors, and employees occasionally seek personal legal advice from corporate counsel. When this occurs, courts have developed a test to determine whether a separate attorney–client relationship arose between the attorney and the individual officer, director, or employee. *Bevill*, 805 F.2d at 123. The *Bevill* test puts the burden on the individual to show that there was a separate attorney–client privilege beyond the existing relationship between the attorney and the corporation. *Id.*

Under the *Bevill* test, corporate officers asserting personal privilege claims must show (1) that they approached the corporate counsel for the purpose of seeking legal advice, (2) that when they approached counsel they made it clear that they were seeking legal advice in their individual rather than in their representative capacities, (3) that counsel saw fit to communicate with them in their individual capacities, knowing that a possible conflict could arise, (4) that their conversations with counsel were confidential, and (5) that the substance of their conversations with counsel did not concern matters within the company or the general affairs of the company. *Id.*

We see the benefit of endorsing the *Bevill* test for use when our courts must determine whether a corporate official can assert an individual attorney–client privilege over communications with corporate counsel. The *Bevill* test has been widely adopted by other state and federal courts. *See, e.g.*, *Graf*, 610 F.3d at 1157; *Ex parte Smith*, 942 So. 2d

356, 360 (Ala. 2006); *In re Grand Jury Subpoena*, 274 F.3d 563, 571–72 (1st Cir. 2001); *In re Grand Jury Subpoenas*, 144 F.3d 653, 659 (10th Cir. 1998); *Zielinski v. Clorox Co.*, 504 S.E.2d 683, 686 (Ga. 1998); *United States v. Int'l Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of Am., AFL-CIO*, 119 F.3d 210, 214–15 (2d Cir. 1997). In these other jurisdictions, the test has proved useful to guide expectations about the attorney–client privilege in the corporate context. This is important because, "if the purpose of the attorney–client privilege is to be served, the attorney and client must be able to predict with some degree of certainty whether particular discussions will be protected." *Upjohn Co. v. United States*, 449 U.S. 383, 393 (1981). By endorsing this test, we can provide clarity for corporate counsel concerning the appropriate steps to either create, or avoid creating, a separate attorney–client privilege when communicating with corporate officers or employees.

Having said that, every attorney–client privilege question is a "fact-intensive inquiry" that must be resolved on a case-by-case basis. *Friday Invs.*, 370 N.C. at 240. Here, the facts found by the trial court mean there was no need to apply the *Bevill* test, because the advice Holland & Knight provided was not given as corporate counsel but instead as joint defense counsel for the company and its individual members who were named parties in this litigation.

Specifically, the trial court found that Hurysh was represented by Holland & Knight in this litigation under the terms of an express engagement letter. That engagement letter stated that Holland & Knight jointly represented Hurysh, his fellow corporate members, and IOMAXIS and that "there will be no way in this joint representation for you to pursue your individual interests through your common attorney." The engagement letter further stated that "in the unlikely event of a disagreement among you, the attorney–client privilege will not protect the information you share with us."

After reviewing the entire July 22 call transcript in context, the trial court found that "the purpose of the July 22 Call was for August, an H&K attorney, to give the four members of IOMAXIS information for them to determine whether it was in their individual best interests to sign the proposed amended operating agreement, drafted by H&K attorneys for possible execution, particularly in light of the pending litigation." Based on this finding, the court further found that, during the July 22 call, the communications from August were "in his capacity as an attorney" with "a firm that Hurysh had hired to defend him in this litigation, providing legal advice about the potential impact of Hurysh's possible actions (signing an amendment to IOMAXIS' operating agreement) on his defense in this litigation."

Finally, the trial court acknowledged that August "very messily" stated at one point during the July 22 call that "our client is the company" and that the amended operating agreement "is in the best interest of the company." But the trial court found that this "disclaimer" did not change the fact that August went on to "give Hurysh advice that was in his best interest in defending himself in the lawsuit" and that August gave that personal legal advice to Hurysh "without limitation or qualification." Thus, the trial court found that August's communications on the July 22 call were subject to the litigation engagement letter creating a joint defense relationship among Hurysh, his fellow IOMAXIS members, and the company itself.

All of these fact findings are supported by at least some competent evidence in the record. We acknowledge that IOMAXIS points to other, competing evidence in the record which suggests that August was acting in his role as corporate counsel for IOMAXIS. The trial court rejected this competing evidence. Under the competent evidence standard, we must accept the trial court's findings despite this competing evidence. *Adams v. AVX Corp.*, 349 N.C. 676, 681 (1998).

Based on the court's findings, there was no need to apply the *Bevill* test—a test designed to assess a corporate officer's communications with corporate counsel. The trial court found that Holland & Knight was not acting as corporate counsel but instead as joint defense counsel for a number of clients including Hurysh. Based on that finding, the trial court properly determined that Hurysh jointly held the attorney–client privilege with respect to the July 22 call and that Hurysh "therefore may opt to waive the privilege if he so desires."

We emphasize that our holding today is fact specific and does not diminish the ability of corporate counsel to preserve the corporation's attorney–client privilege when communicating with corporate directors, officers, and employees. There are many steps that corporations and their counsel can take to avoid factual disputes over the scope of counsel's legal advice.

Most obviously, counsel can choose not to jointly represent both the corporation and the individual directors, officers, or employees as counsel did in this case through the litigation engagement letter. But even when counsel chooses to do so, there are ways to avoid the factual confusion that arose here. For example, an engagement letter can identify the particular attorneys within the firm who are handling a joint litigation defense and separately identify the corporate attorneys who are handling the general legal affairs of the company. The letter can then

inform the jointly represented parties that any legal advice from the corporate attorneys is solely for the company, not the individuals.

Similarly, a corporate attorney speaking to officers or employees of the company can offer a clear disclaimer of representation, emphasizing that counsel represents the corporation for purposes of the discussion; that the communications are covered by an attorney–client privilege held solely by the company; and that the participants must consult their own counsel if they seek personal legal advice about the subject matter.

None of this took place here, thus creating a factual dispute about the scope of Holland & Knight's representation on the July 22 call. The trial court resolved that factual dispute by making findings in favor of Hurysh. Those findings are supported by competent evidence, and the trial court's resulting determination that Hurysh held the attorney–client privilege was well within the trial court's sound discretion. We therefore affirm the trial court's order.

AFFIRMED.

IN THE MATTER OF J.M., N.M.

No. 200PA21

Filed 16 June 2023

1. Child Abuse, Dependency, and Neglect—permanency planning—removal of reunification from permanent plan—sufficiency of findings

In an abuse and neglect matter, in which two children were removed from the home due to unexplained life-threatening injuries that the younger child suffered when she was six weeks old, the trial court did not err in the dispositional phase by removing reunification with the parents from the permanent plan where the court had properly determined that further reunification efforts would be clearly unsuccessful and inconsistent with the children's health or safety. Although both parents had made significant progress on their family case plans, competent evidence supported the court's findings of fact—which were binding on appeal, since the parents did not appeal the adjudication order containing them—establishing that: the younger child's injuries resulted from abuse; the parents were the only caregivers who could have abused the child; and

neither parent accepted responsibility for the abuse, offered a plausible explanation for the child's injuries, or expressed any reservations about leaving the children alone with the other parent.

2. Child Abuse, Dependency, and Neglect—permanency planning—ceasing reunification efforts—constitutionally protected status as parents—issue not preserved for appellate review

In an abuse and neglect matter, in which two children were removed from the home due to unexplained life-threatening injuries that the younger child experienced when she was six weeks old, and where the trial court removed reunification with the parents from the permanent plan on grounds that the parents—who were found to be the only ones who could have caused their child's injuries—neither accepted blame for the abuse nor provided plausible explanations for the injuries, the Supreme Court reversed the Court of Appeals' decision holding that the trial court erred by preconditioning reunification on an admission of fault by the parents without first finding that the parents were unfit or had acted inconsistently with their constitutionally protected status as parents. Neither parent had raised the constitutional issue before the trial court, and therefore it had not been preserved for appellate review.

Justice MORGAN concurring in part and dissenting in part.

Justice EARLS dissenting.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 276 N.C. App. 291 (2021), reversing and remanding an order entered on 17 March 2020 by Judge Burford A. Cherry in District Court, Catawba County. Heard in the Supreme Court on 31 January 2023.

Lauren Vaughan for petitioner-appellant Catawba County Department of Social Services.

Michelle FormyDuval Lynch for appellant Guardian ad Litem.

David A. Perez for respondent-appellee mother.

Wendy C. Sotolongo, Parent Defender, by J. Lee Gilliam, Assistant Parent Defender, for respondent-appellee father.

ALLEN, Justice.

As a six-week-old infant, Nellie suffered physical abuse so severe that it left her near death and with brain bleeds, retinal hemorrhages too numerous to count in both of her eyes, and broken ribs.[1] Medical examination revealed that Nellie had suffered at least one of the broken ribs from a prior instance of abuse. Nellie's parents denied abusing Nellie but admitted that they were the only individuals with unsupervised access to her. The trial court removed Nellie and her one-year-old brother from the parents' custody. Although the parents subsequently participated in training and counseling programs as directed by the court, neither parent accepted responsibility for the harm to Nellie, offered a plausible explanation for her injuries, or expressed any reservations about leaving the children alone with the other parent. Unable to conclude that Nellie and her brother would be safe if returned to their parents, the trial court entered an order removing reunification with the parents from the permanent plan.

The Court of Appeals reversed the trial court, citing the parents' substantial compliance with their case plans and perceived deficiencies in the investigation conducted by the Catawba County Department of Social Services. *In re J.M.*, 276 N.C. App. 291, 856 S.E.2d 904 (2021). Because competent evidence supports the trial court's findings of fact and those findings sustain the trial court's conclusions of law, we reverse the Court of Appeals.

I. Background

Respondent-father and respondent-mother lived together in Newton, North Carolina with their two children: Jon, born 20 April 2017, and Nellie, born 3 July 2018. On the morning of 15 August 2018, six-week-old Nellie began crying. Respondent-father fed her and then changed her diaper. Both parents later reported that Nellie had screamed while being changed, though respondent-mother also claimed to have been in another room. Later that morning, Nellie suddenly fell silent. Respondent-father picked her up and noticed that she had gone completely limp. Nellie then gasped for air and began moving a little and arching her back before going limp again.

Respondents took Nellie to Catawba Valley Medical Center, where a CAT scan showed a subdural hematoma (brain bleed). Nellie was airlifted to Levine Children's Hospital in Charlotte, where she underwent

1. This opinion uses pseudonyms for juveniles to protect their identities.

an MRI, a skeletal survey, and examinations by Dr. James LeClair, a radiologist with a subspeciality in neuroradiology, and Dr. Patricia Morgan, a board-certified child abuse pediatrician.

Dr. LeClair observed two areas of bleeding on Nellie's brain and an ischemic infarct (a brain injury caused by oxygen deprivation). The brain bleeds had occurred no more than two days before the MRI and had most likely resulted from serious physical trauma of the sort associated with an automobile accident or a fall from a significant height. An ophthalmologist observed "innumerable" severe multilayer retinal hemorrhages in both of Nellie's eyes. Nellie also had two rib fractures that were the product of blunt force trauma or squeezing. The callous formation on one of the broken ribs indicated that the fracture to that rib was several days old.

Neither Dr. LeClair nor Dr. Morgan saw anything in Nellie's medical history—which included a raised white blood cell count, high blood pressure, and opioid withdrawal—that could account for Nellie's injuries. Dr. Morgan regarded the injuries as strongly indicative of child abuse. Specifically, they were consistent with a shaking incident in which Nellie was squeezed tightly enough to break her ribs and shaken violently enough to rupture blood vessels in her brain and eyes. The age of one of the rib fractures implied that Nellie had also suffered a previous instance of abuse.

On 21 August 2018, the Catawba County Department of Social Services (Catawba DSS) filed a juvenile petition alleging that Nellie had been abused and that both she and Jon were neglected. The district court entered an order that same day granting Catawba DSS nonsecure custody of Nellie and Jon.

Following several hearings on the petition from May to July 2019, the court declared its adjudication and disposition on 26 August 2019 and filed its adjudication and disposition order on 22 October 2019. The court adjudicated Nellie abused and neglected and adjudicated Jon neglected. It described Nellie's injuries in detail, summarizing the testimony of Dr. LeClair and Dr. Morgan. Consistent with that testimony, the court found that "the constellation of injuries suffered by [Nellie] were the result of nonaccidental trauma, or child abuse." The court likewise found that Nellie's injuries "were not caused by another child or caretaker," basing that finding on respondents' admission to social workers and law enforcement officers that respondents were Nellie's only care providers and that "they were extremely vigilant and rarely allowed others to handle her." Although respondent-mother had two older daughters

(approximately ages nine and thirteen at the time of Nellie's hospitalization) by another father, respondents reported that they closely supervised all contact between the girls and Nellie. Respondent-mother did admit to noticing bruising on Nellie's back and under Nellie's arms about one week before Nellie's hospitalization and asking respondent-father to handle the infant more gently.

Turning to the dispositional phase, the court reviewed the results of respondents' psychological evaluations. The evaluation of respondent-mother revealed that she had experienced significant traumatic events in early childhood for which she needed therapy and that she had "expressed some blame" toward respondent-father for Nellie's injuries. The psychological evaluation of respondent-father did not yield valid outcomes "due to response patterns by [respondent-father] which were indicative of deception." Respondent-father "seemed to have no insight into the fact that he repeatedly finds himself in situations in which he is accused of violence and aggression."

The court further observed that respondent-mother had completed a life skills program and attended a substance abuse treatment program, in which she had progressed from daily sessions to weekly sessions and was on track to progress to biweekly sessions. Respondent-father was attending a mate abuser treatment program, had finished a comprehensive clinical assessment, and was undergoing therapy. Respondents were no longer living together, and both were employed.

In light of its findings of fact, the court concluded that "[r]eturn to the home or custody of either parent [would be] contrary to the best interests, safety and welfare of the [children]" and that "removal of the [children was] necessary." It granted custody of Nellie and Jon to Catawba DSS and directed Catawba DSS to arrange for foster care or other placement. The court ordered respondents to enter into and comply with case plans requiring psychological evaluations, random drug tests, and life skills programs. It also ordered respondents to maintain stable housing and employment and to refrain from using or possessing illegal drugs. The court allowed each respondent to visit Nellie and Jon for one hour each week.

On 4 November 2019, the court held a permanency planning hearing. In the permanency planning order entered after the hearing, the court remarked on respondents' case plan progress, finding that it was "likely or possible that the minor children [would] return to the home of a parent within six months." Significantly, however, the court cautioned that respondents' failure to explain Nellie's injuries constituted a barrier to

reunification. While concluding that returning Nellie and Jon to one or both respondents would be contrary to the children's health, safety, and welfare, the court increased respondents' supervised visitation to three hours per week. The permanency planning order made reunification the primary plan and adoption the secondary plan.

A second permanency planning hearing took place on 12 February 2020. Catawba DSS and the guardian ad litem submitted new reports to the court. The report by Catawba DSS recommended maintaining a primary plan of reunification with a secondary plan of adoption. The guardian ad litem's report recommended a primary plan of adoption with a secondary plan of reunification.

The court heard testimony from respondents and the children's foster mother. During her testimony, respondent-mother conceded that Nellie's injuries were "nonaccidental," but she denied knowing how they had happened. She insisted that, although respondent-father might have been a danger to Nellie and Jon at some point, he no longer posed any threat. When asked what her plan would be if reunited with her children, respondent-mother said that she wanted to share custody with respondent-father and that she would have no concerns about leaving Nellie and Jon alone with him. Respondent-father again denied knowing the cause of Nellie's injuries but opined that some of them had resulted from a bowel movement. The foster mother testified that respondents had demonstrated a good bond with the children, that Nellie and Jon had enjoyed their visits with respondents, and that she had never seen either respondent engage in any inappropriate behavior.

In the permanency planning order entered after the 12 February 2020 hearing, the court acknowledged the continued progress of respondents on their case plans. Respondent-mother had received counseling for substance abuse and domestic violence, attended a substance abuse treatment program, screened negative for drugs at each test, completed several life skills and parenting courses, and maintained employment and her own residence. Similarly, respondent-father had undergone a second psychological evaluation and additional therapy, participated in the mate abuser treatment program and domestic violence classes, and screened negative for drugs consistently after failing his first drug test.

Despite the progress on case plans and the foster mother's positive assessment, the trial court expressed concern that, "[w]ithout some acknowledgement by the parents of responsibility for the injuries, there can be no mitigation of the risk of harm to the children." According to the court, respondent-mother essentially took the position that, even "if

the father was a danger to the child at the time of the removal, he is not a danger now." The court also characterized as "disturbing" some of the statements made by respondent-father during his second psychological evaluation, especially the following: "To my knowledge, nothing malicious happened. Experts have conflicting information regarding dates and timelines of injuries. I've ruled out that [respondent-mother] had anything to do with it . . . . My daughter had medical issues before this."

Given the severity of Nellie's injuries and that neither respondent had "acknowledged responsibility for th[e] nonaccidental abusive injuries to [Nellie]," the court found "no evidence that either parent w[ould] protect their children over protecting one another, and therefore the risk to these children of abuse and neglect remain[ed] high." Under the circumstances, the court deemed it unlikely that Nellie and Jon would return home within six months. The court concluded that returning the children home would be contrary to their health, safety, and welfare and that efforts to reunify them with either respondent "would clearly be unsuccessful and inconsistent with the children's health and safety." The court modified the permanent plan, eliminating reunification from the plan and specifying a primary plan of adoption and guardianship and a secondary plan of custody with an approved family member. Nonetheless, unconvinced that adoption would prove to be in the children's best interest "due to the bond with their parents," the court determined that Catawba DSS should not initiate proceedings to terminate respondents' parental rights. The court maintained respondents' visitation and ordered a home study of the paternal grandmother for potential placement.

Respondents appealed the trial court's second permanency planning order. A unanimous panel of the Court of Appeals held that the findings of fact in the order were not supported by competent evidence and that the findings did not support the trial court's conclusion that reunification efforts would be contrary to the children's health, safety, and need for a permanent home. *In re J.M.*, 276 N.C. App. at 302–04, 856 S.E.2d at 912–13. The Court of Appeals likewise held that the trial court could not lawfully precondition reunification on an admission of fault by respondents without first finding that respondents had forfeited their constitutional rights to the custody, care, and control of their children. *Id.* at 308, 856 S.E.2d at 915.

Pursuant to Rule 31 of the North Carolina Rules of Appellate Procedure, Catawba DSS and the guardian ad litem filed a petition for rehearing with the Court of Appeals. The Court of Appeals denied the petition, whereupon Catawba DSS and the guardian ad litem filed a

petition for discretionary review with this Court under N.C.G.S. § 7A-31 (2021). We allowed the petition.

II. Standard of Review

Appellate review of a trial court's permanency planning order is restricted "to whether there is competent evidence in the record to support the findings [of fact] and whether the findings support the conclusions of law." *In re A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 825 (2021) (alteration in original) (quoting *In re H.A.J.*, 377 N.C. 43, 49, 855 S.E.2d 464, 469 (2021)). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *State v. Ashworth*, 248 N.C. App. 649, 651, 790 S.E.2d 173, 176 (2016) (quoting *State v. Chukwu*, 230 N.C. App. 553, 561, 749 S.E.2d 910, 916 (2013)). At a permanency planning hearing, competent evidence may consist of "any evidence, including hearsay evidence . . . or testimony or evidence from any person that is not a party, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C.G.S. § 7B-906.1(c) (2021).

"The trial court's findings of fact are conclusive on appeal if supported by any competent evidence." *In re A.P.W.*, 378 N.C. at 410, 861 S.E.2d at 825. Uncontested findings of fact are likewise binding on appeal. *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020). Moreover, "[t]he trial [court's] decisions as to the weight and credibility of the evidence, and the inferences drawn from the evidence[,] are not subject to appellate review." *Id.*

"The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion." *In re A.P.W.*, 378 N.C. at 410, 861 S.E.2d at 825–26. "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). "In the rare instances when a reviewing court finds an abuse of . . . discretion, the proper remedy is to vacate and remand for the trial court to exercise its discretion. The reviewing court should not substitute its own discretion for that of the trial court." *In re A.J.L.H.*, 384 N.C. 45, 48, 884 S.E.2d 687, 690 (2023).

III. Analysis

A. Removal of Reunification from the Permanent Plan

[1] The provisions in Chapter 7B (Juvenile Code) of our General Statutes "reflect[ ] the need both to respect parental rights and to protect

children from unfit, abusive, or neglectful parents." *In re R.T.W.*, 359 N.C. 539, 543, 614 S.E.2d 489, 492 (2005). The Juvenile Code divides abuse, neglect, and dependency proceedings into two main phases: adjudicatory and dispositional. During the adjudicatory phase, the burden of proof is on DSS to show by clear and convincing evidence that a juvenile qualifies as abused, neglected, or dependent as the Juvenile Code defines those terms. N.C.G.S. § 7B-805 (2021). If the court adjudicates the juvenile abused, neglected, or dependent, proceedings move to the dispositional phase, the purpose of which "is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction." N.C.G.S. § 7B-900 (2021).[2]

This case involves a challenge to rulings made in the dispositional phase. Respondents have not disputed the trial court's adjudications of abuse and neglect. During the dispositional phase, the court may select among or combine various alternatives for disposition: dismissal or continuance of the case; supervision of the juvenile in the juvenile's home by DSS or another individual, subject to conditions specified by the court; placement of the juvenile in the custody of a parent, relative, private agency, or some other suitable person; appointment of a guardian of the person for the juvenile; or placement of the juvenile in DSS's custody. N.C.G.S. § 7B-903(a) (2021).

There is no burden of proof at the dispositional phase. Rather, "[t]he essential requirement, at the dispositional hearing . . . , is that sufficient evidence be presented to the trial court so that it can determine what is in the best interest of the child." *In re Shue*, 311 N.C. 586, 597, 319 S.E.2d 567, 574 (1984); *see also* N.C.G.S. § 7B-100(5) (2021) (explaining that one purpose of the Juvenile Code is "[t]o provide standards . . . for ensuring that the best interests of the juvenile are of paramount consideration by the court and that when it is not in the juvenile's best interest to be returned home, the juvenile will be placed in a safe, permanent home within a reasonable amount of time"). Moreover, "[t]he court may consider any evidence, including hearsay evidence . . . , that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition." N.C.G.S. §§ 7B-901(a), 7B-906.1(c) (2021).

The first step in the dispositional phase is the initial disposition hearing, which the court must hold immediately following the adjudicatory hearing and complete within thirty days of finishing the adjudicatory hearing. N.C.G.S. § 7B-901(a) (2021). Depending on the trial

2. The objectives of the Juvenile Code are set out in N.C.G.S. § 7B-100.

court's custody decision at the initial disposition hearing, the case goes on either the review hearing track or the permanency planning track. When, as in this case, the court removes custody of the juvenile from a parent, guardian, or custodian at the initial disposition hearing, the statutory provisions regarding permanency planning apply. The court must conduct a permanency planning hearing within ninety days of the initial disposition hearing and, in general, follow-up permanency planning hearings at least every six months as long as it retains jurisdiction over the matter.[3] The permanent plan adopted by the court must contain a primary plan and a secondary plan. N.C.G.S. § 7B-906.2(b) (2021). The most common primary and secondary plans include reunification of the juvenile with his or her parent(s), adoption, guardianship with relatives or others, and custody to a relative or other suitable person.[4] N.C.G.S. § 7B-906.2(a) (2021).

The goal of the permanency planning process is to "return the child to their home or when that is not possible to a safe, permanent home within a reasonable period of time." Sara DePasquale, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* 7-10 (UNC School of Government 2022). Accordingly, reunification ordinarily must be the primary or secondary plan in a juvenile's permanent plan. N.C.G.S. § 7B-906.2(b). The court must make written findings at each permanency planning hearing regarding certain factors used to evaluate progress—or the lack thereof—toward reunification:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, [DSS], and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, [DSS], and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

N.C.G.S. § 7B-906.2(d) (2021).

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3. The court must hold the first permanency planning hearing within thirty days of the initial disposition when the initial disposition relieves DSS of making reasonable efforts to reunite the juvenile with his or her parent(s). N.C.G.S. § 7B-901(d) (2021).

4. The other options listed in N.C.G.S. § 7B-906.2(a) are Another Planned Permanent Living Arrangement for a juvenile who is sixteen or seventeen years old and reinstatement of parental rights pursuant to N.C.G.S. § 7B-1114.

The requirement to make reunification the primary or secondary plan is not absolute. The court need not pursue reunification during the permanency planning process if: (1) the court made written findings specified in N.C.G.S. § 7B-901(c) at the initial disposition hearing; (2) the court made written findings described in N.C.G.S. § 7B-906.1(d)(3) at a review hearing or an earlier permanency planning hearing; (3) the permanent plan has been achieved; or (4) "the court makes written findings that reunification efforts clearly would be unsuccessful or . . . inconsistent with the juvenile's health or safety." N.C.G.S. § 7B-906.2(b). The court's written findings do not have to track the statutory language verbatim, but they "must make clear that the trial court considered the evidence in light of whether reunification would be [clearly unsuccessful] or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re H.A.J.*, 377 N.C. at 49, 855 S.E.2d at 470.[5]

B. Inconsistency of Reunification Efforts with Juveniles' Health and Safety

The trial court eliminated reunification from the permanent plan for Nellie and Jon after concluding that returning them to the custody of their parents would be "contrary to the health, safety and welfare of the children" and that "[f]urther efforts to reunify the children with either parent would clearly be unsuccessful and inconsistent with the children's health and safety." The court based its conclusion on the failure of respondents to acknowledge responsibility for the extreme abuse that left Nellie fighting for her life at six weeks old. In the court's view, without some acknowledgement of responsibility, there was no reason to believe that "either parent [would] protect their children over protecting one another, and therefore the risk to these children of abuse and neglect remain[ed] high."

In reversing the trial court, the Court of Appeals held that the evidentiary record does not prove by clear and convincing evidence that reunification efforts would be futile.[6] The Court of Appeals noted that

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5. Although *In re H.A.J.* and other permanency planning cases cite to *In re L.M.T.*, 367 N.C. 165, 752 S.E.2d 453 (2013), that case interprets provisions in the Juvenile Code as they existed prior to amendments enacted in 2015. It should not be relied upon going forward.

6. In 2015 and 2016, the General Assembly amended the Juvenile Code to remove all references to "futile." In its place, the General Assembly adopted the language "clearly would be unsuccessful or inconsistent with the juvenile's health or safety." *Compare* N.C.G.S. §§ 7B-906.1 (2016), -507 (2015), *with* N.C.G.S. §§ 7B-906.1 (2015), -507 (2013). *See also* N.C.G.S. § 7B-906.2(b) (2015).

respondent-mother had "complied with and substantially completed her case plan; acknowledged what brought Jon and Nellie into DSS's care; and exhibited changed behaviors, including installing safeguards in the familial home and requiring [r]espondent-[f]ather to move out of the home." *In re J.M.*, 276 N.C. App. at 302, 856 S.E.2d at 912. Additionally, respondent-mother had "engaged in all services required of her in order to correct the conditions that led to the removal of the children." *Id.* With respect to respondent-father, the Court of Appeals observed that he had "participated in and completed services; . . . that [r]espondent-[m]other and the children's foster mother . . . did not have safety concerns about [him]; and . . . [that he] had completed all the weekly sessions in the Mate Abuser Treatment Program." *Id.* at 304, 856 S.E.2d at 913. The Court of Appeals also concluded that Catawba DSS had failed to make reasonable efforts towards reunification by not interviewing respondent-mother's two older children, both of whom "resided in the familial home with [r]espondents, Jon, and Nellie."[7] *Id.* at 307, 856 S.E.2d at 915.

In their briefs to this Court, Catawba DSS and the guardian ad litem argue that the Court of Appeals ignored pertinent precedents from this Court with comparable fact patterns. They further argue that the Court of Appeals should not have considered the alleged shortcomings in the investigation by Catawba DSS because respondents did not appeal the trial court's adjudication order.

Insisting that the Court of Appeals should be affirmed, respondents attempt to distinguish this case from the precedents cited by Catawba DSS and the guardian ad litem. They argue that the Court of Appeals did not engage in impermissible factfinding as to the Catawba DSS investigation. Respondent-mother contends that no competent evidence supports the trial court's conclusion that she would not protect the children, if necessary, from respondent-father. Respondent-father maintains that removing reunification from the permanent plan over his refusal to acknowledge guilt is fundamentally unfair and at odds with the children's best interest.

We hold that the Court of Appeals erred in reversing the trial court's decision to eliminate reunification from the permanent plan. As explained below, binding precedent required the Court of Appeals to affirm.

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7. In their petition for rehearing filed with the Court of Appeals, Catawba DSS and the guardian ad litem alleged that, in fact, Catawba DSS did interview respondent-mother's older daughters.

1. Sufficiency of Catawba DSS's Reunification Efforts

"Unless reunification efforts were previously ceased, at each permanency planning hearing the court shall make a finding about whether the reunification efforts of the county [DSS] were reasonable." N.C.G.S. § 7B-906.2(c) (2021). State law defines "reasonable efforts" towards reunification to demand

> [t]he diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

N.C.G.S. § 7B-101(18) (2021).

In concluding that further reunification efforts "would clearly be unsuccessful and inconsistent with the children's health and safety," the trial court partly relied on these key findings of fact that appear in its adjudication order:

> 24. Both parents reported to social workers and police that only they provided care to [Nellie], that they were extremely vigilant and rarely allowed others to handle her. The parents reported, and the court finds, that the parents supervised contact between Ms. Smith's older daughters and [Nellie] very closely, as well as contact between [Nellie] and [Jon]. The parents reported, and the court finds that [Jon] was never left alone with [Nellie]. Based on the parents' statements, the Court finds that the injuries to [Nellie] were not caused by another child or caretaker.
>
> . . . .
>
> 28. The Court specifically finds, after considering all of the evidence, that the constellation of injuries suffered by the minor child [Nellie] were the result of nonaccidental trauma, or child abuse.

Taken together, the above findings of fact establish that (1) Nellie's life-threatening injuries resulted from intentional conduct and (2) no one other than respondents could have inflicted the injuries. The trial court based its finding of intentional conduct on the testimony of the medical experts who treated Nellie. Respondents' own statements to social workers and law enforcement officers informed the finding that no other caregiver or child could have abused Nellie.

In holding that Catawba DSS did not make reasonable efforts to reunify respondents with Nellie and Jon, the Court of Appeals focused on the alleged failure of Catawba DSS to interview respondent-mother's two older children. The Court of Appeals speculated that the interviews might have provided an explanation for Nellie's injuries that would have exonerated respondents.

> DSS offers no reason why it failed to interview Respondent-Mother's older children. The trial court found, in the adjudication order, Jon and Nellie were under Respondents' exclusive custody and care based on the statements made by the Respondents to social workers and police regarding their care of Nellie. It is unreasonable to presume, however, that parents have eyes on their children at all times. Parents and children must sleep at some point, and presumably, parents must tend to other children or to household needs, allowing for children to be left without eyes-on supervision for some periods of time, no matter how short.

In re J.M., 276 N.C. App. at 306, 856 S.E.2d at 914.

Regardless of whether Catawba DSS interviewed respondent-mother's two older children, precedent required the Court of Appeals to treat the findings of fact in the adjudication order as binding on appeal. In *In re Wheeler*, the trial court's order adjudicating two children abused and neglected found that their father had sexually abused them. 87 N.C. App. 189, 191–93, 360 S.E.2d 458, 459–61 (1987). The father did not appeal the adjudication order, and when the county DSS filed a petition to terminate his parental rights, the trial court prohibited the parties from relitigating the sexual abuse issue. *Id.* at 192, 360 S.E.2d at 460. The Court of Appeals upheld the trial court's refusal to revisit the adjudication order's abuse finding: "[b]ecause no appeal was taken or other relief sought from the [adjudication] order, it remained a valid final order which was binding in the later proceeding on the facts regarding abuse and neglect

which were found to exist at the time it was entered." *Id.* at 194, 360 S.E.2d at 461; *see also In re N.G.*, 186 N.C. App. 1, 4, 650 S.E.2d 45, 48 (2007) (holding that the trial court's earlier findings of abuse barred the parents from denying responsibility for injuring their oldest child in a later proceeding), *aff'd*, 362 N.C. 229, 657 S.E.2d 355 (2008).

Here, respondents have appealed the trial court's permanency planning order that eliminated reunification from the permanent plan for Nellie and Jon. Like the father in *Wheeler*, they did not exercise their right to appeal or to seek other appropriate relief from the adjudication order. *See* N.C.G.S. § 7B-1001(a)(3) (2021) (allowing a direct appeal to the Court of Appeals from "[a]ny initial order of disposition and the adjudication order upon which it is based"). Although *Wheeler* is not binding on this Court, it remains controlling authority for the Court of Appeals. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). For this reason, the Court of Appeals should not have allowed respondents to transform their appeal from the permanency planning order into a collateral attack on findings of fact in the adjudication order.

The trial court's findings of fact in the adjudication order indicate that no one other than respondents could have inflicted Nellie's life-threatening injuries. The Court of Appeals was constrained by these findings during its review of the permanency planning order on appeal in this case. *See*, *e.g.*, *In re A.P.W.*, 378 N.C. 405, 410, 861 S.E.2d 819, 825 (2021) ("Uncontested findings [of fact] are binding on appeal."); *In re D.W.P.*, 373 N.C. 327, 330, 838 S.E.2d 396, 400 (2020) ("Unchallenged findings of fact made at the adjudicatory stage . . . are binding on appeal.").

2. Sufficiency of Permanency Planning Order's Findings of Fact and Conclusions of Law

Citing respondent-mother's compliance with her case plan, changed behaviors, and participation in mandated services, the Court of Appeals held that the trial court's "findings and conclusions of law that reunification efforts would be futile is unsupported by clear and convincing evidence." *In re J.M.*, 276 N.C. App. at 302, 856 S.E.2d at 912. Similar factors persuaded the Court of Appeals that, with respect to respondent-father, the trial court's second permanency planning order "does not make 'findings that embrace the requisite ultimate finding that reunification efforts clearly would be unsuccessful or . . . inconsistent with the juvenile's health or safety.' " *Id.* at 304, 856 S.E.2d at 913 (quoting *In re D.A.*, 258 N.C. App. 247, 254, 811 S.E.2d 729, 734 (2018)).

Due regard for our own precedent requires us to reverse the Court of Appeals. In *In re D.W.P.*, the Guilford County Department of Health and Human Services (GCDHHS) initiated juvenile proceedings after the mother's infant son received emergency medical treatment for a broken femur. 373 N.C. at 328, 838 S.E.2d at 399. The mother and her then-fiancé were the infant's only caregivers when the injury occurred. *Id.* at 328, 838 S.E.2d at 399. Medical examination revealed older clavicle, tibia, fibula, and rib fractures that were still in the process of healing. *Id.* The mother offered various explanations for the injuries, all of which shifted blame away from her and her fiancé. *Id.* She first blamed the family dog for the broken femur and suggested that the infant's biological father—not her fiancé—had inflicted the older injuries. *Id.* The mother later said that the infant's injuries "may have occurred because he 'slept funny.' " *Id.* at 329, 838 S.E.2d at 399. While she eventually admitted that her fiancé might have been alone with her son at some point on the night of the femur injury, the mother remained unwilling to implicate anyone other than the infant's biological father. *Id.* at 336, 838 S.E.2d at 404.

The trial court adjudicated the infant abused and neglected and adjudicated the mother's four-year-old daughter neglected.[8] *Id.* at 328, 838 S.E.2d at 399. Following a permanency planning hearing that resulted in an order to cease reunification efforts, GCDHHS filed a petition to terminate the mother's parental rights under Article 11 (Termination of Parental Rights) of the Juvenile Code. *Id.* at 329, 838 S.E.2d at 399. The trial court held a hearing on the petition and entered an order terminating the mother's parental rights. *Id.* The order found as fact that either the mother or her (by then former) fiancé had abused her son. *Id.* at 329, 838 S.E.2d at 400. Conceding that the mother had satisfied many of the permanent plan's requirements, the termination order emphasized her failure to offer an honest explanation for her son's injuries. *Id.* at 329, 838 S.E.2d at 399–400. Absent such an explanation, the court believed, GCDHHS could not formulate a plan "to ensure that injuries would not occur in the future." *Id.* at 329, 838 S.E.2d at 400.

On appeal, we rejected the mother's contention that the findings of fact in the termination order were unsupported by clear, cogent, and

8. The mother appealed the trial court's adjudication order. The Court of Appeals affirmed the adjudication of the son as abused and neglected but reversed the daughter's neglect adjudication, remanding the case "with instructions to the trial court to make appropriate findings of fact and conclusions of law to determine whether [the daughter was] a neglected juvenile." *In re D.P. and B.P.*, No. COA16-529, slip op. at 13 (N.C. Ct. App. Nov. 15, 2016) (unpublished). In subsequent proceedings, the mother stipulated that her daughter was neglected. *In re D.W.P.*, 373 N.C. at 329.

convincing evidence, the evidentiary standard at the adjudicatory phase of termination proceedings. *Id.* at 331–38, 838 S.E.2d at 401–05; *see also* N.C.G.S. § 7B-1109(f) (2021) ("The burden in [an adjudicatory hearing on termination] shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence."). In particular, we upheld the trial court's finding that the mother had not gained insight into the cause of her son's injuries.

> Respondent-mother has maintained that she does not know the cause of [her son's] injuries and has offered explanations that are not medically supported. She acknowledged that she would not rule out the possibility that [her fiancé] committed the injuries . . . but she also admits to resuming contact with him after the children were taken from the home. While we recognize that respondent-mother has taken the proper steps to attend parenting classes and therapy[ ] and has followed the majority of the court's recommendations to become a better parent, she has failed to acknowledge the harm that has resulted from her failure to identify what happened to [her son]. Without recognizing the cause of [her son's] injuries, respondent-mother cannot prevent them from reoccurring. Therefore, the trial court's finding that respondent-mother failed to gain insight and make reasonable progress regarding [her son's] injuries is supported by clear, cogent and convincing evidence.

In re D.W.P., 373 N.C. at 338, 838 S.E.2d at 404–05.

This Court went on to hold that the findings of fact supported the trial court's conclusion that grounds existed under N.C.G.S. § 7B-1111(a)(1) to terminate the mother's parental rights for neglect.

> While we recognize the progress respondent-mother has made in completing her parenting plan, including completing parenting classes, attending therapy, and regularly visiting with her children, we are troubled by her continued failure to acknowledge the likely cause of [her son's] injuries. . . .
>
> Here, the findings of fact show that respondent-mother has been unable to recognize and break patterns of abuse that put her children at risk. Despite

> respondent-mother's acknowledgement that [her fiancé] could have caused [her son's] injuries, she re-established a relationship with him that resulted in domestic violence [before finally marrying someone else]. Respondent-mother acknowledges her responsibility to keep [her son] safe, but she refuses to make a realistic attempt to understand how he was injured or to acknowledge how her relationships affect her children's wellbeing. These facts support the trial court's conclusion that the neglect is likely to reoccur if the children are returned to respondent-mother's care.

Id. at 339–40, 838 S.E.2d at 406.

The parallels between *In re D.W.P.* and this case are obvious and compelling. Each case involves the serious physical abuse of an infant at home and in the care of two adults. In each case, the trial court found that the two caregivers were the only persons who could have inflicted the abuse. Moreover, while the mother in each case suggested that she was elsewhere in the home when the abuse took place, she refused to blame her partner or to supply any other plausible explanation for the infant's injuries. The explanations that were offered in each case bordered on the absurd, with the mother in *In re D.W.P.* blaming the family dog or strange sleep positions for the harm to her child and respondent-father in the present case theorizing that a difficult bowel movement accounted for Nellie's injuries. In each case, the trial court found that parental inability or unwillingness to confront the cause of the abuse prevented the parent(s) from adequately mitigating the risk of further abuse or neglect.

To be sure, there are factual differences between *In re D.W.P.* and this case. Respondent-mother has done a better job of complying with her case plan and availing herself of services than the mother in *In re D.W.P.* Furthermore, there is no evidence in the record that respondent-mother has been a party to any post-removal incidents of domestic violence, unlike the mother in *In re D.W.P.*, whose homelife after her child's hospitalization was marred by such incidents.

Major distinctions between the two cases only strengthen the arguments for upholding the trial court, however. Whereas the mother in *In re D.W.P.* ultimately ended her relationship with the only other person who could have inflicted her son's injuries, respondent-mother made it clear during the second permanency planning hearing that she desires to share custody of Nellie and Jon with respondent-father and has no

reservations about leaving the children alone with him. If we assume for the sake of argument that respondent-mother did not injure Nellie, this means that she is willing to entrust her children unsupervised to the person who physically abused Nellie twice—the second time so badly that he nearly killed her—and who has thus far refused to accept any degree of responsibility for his actions. Of course, if we assume that respondent-mother abused Nellie, there is no reason to believe that respondent-father would protect the children from her. According to him, Nellie was not abused at all.

Additionally, *In re D.W.P.* concerned the termination of parental rights—a final order—not a permanency planning order, which can be modified at any time in response to new developments in a case. The permanency planning order on appeal here does not foreclose the possibility that one or both respondents might one day regain custody of Nellie and Jon. Indeed, the order expressly finds that termination of parental rights would not be in the children's best interest. It stands to reason that evidence sufficient to support the termination of parental rights is sufficient to sustain the less dramatic step of removing reunification from a permanent plan.

Just as the evidence in *In re D.W.P.* supported the findings of fact and conclusions of law in the trial court's termination order, the record evidence in this case provides ample basis for the trial court's determination that respondents' persistent unwillingness to acknowledge responsibility for Nellie's life-threatening injuries would render further efforts at reunification clearly unsuccessful and "inconsistent with the [juveniles'] health or safety." N.C.G.S. § 7B-906.2(b). The Court of Appeals should have followed *In re D.W.P.* and upheld the findings of fact and conclusions of law in the permanency planning order.[9]

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9. Our opinion should not be understood to hold that a parent's refusal to acknowledge responsibility for abuse will always sustain a conclusion that reunification efforts would clearly be unsuccessful or inconsistent with a child's health or safety. Rather, we simply hold that the facts of this case, which so closely resemble those of *D.W.P.*, support such a conclusion. In both cases, the evidence provided the trial court with grounds to believe that the parent(s) did not appreciate the seriousness of the abuse and would not be willing to take the steps necessary to keep the children safe.

Neither do we hold that the trial court was *required* by its findings of fact and conclusions of law to remove reunification from the permanent plan. Even when grounds exist to eliminate reunification from a permanent plan, the decision to eliminate or retain reunification lies within the trial court's sound discretion. *See In re A.P.W.*, 378 N.C. at 410, 861 S.E.2d at 825–26 ("The trial court's dispositional choices—including the decision to eliminate reunification from the permanent plan—are reviewed for abuse of discretion.").

C. Non-Preservation of Constitutional Claim

[2] The Court of Appeals held that "[t]he trial court's insistence for [r]espondents to admit blame as a . . . basis to cease reunification has no lawful basis without the threshold finding of unfitness or conduct inconsistent with their constitutionally protected status as a parent." *In re J.M.*, 276 N.C. App. at 308, 856 S.E.2d at 915. Because the trial court did not make any such findings regarding respondents' constitutional rights, the Court of Appeals reasoned that the trial court erred by removing reunification from the permanent plan. We disagree.

This Court has long recognized that "a parent enjoys a fundamental right 'to make decisions concerning the care, custody, and control' of his or her children under the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Adams v. Tessener*, 354 N.C. 57, 60, 550 S.E.2d 499, 501 (2001) (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). To that end, "absent a finding that parents (i) are unfit or (ii) have neglected the welfare of their children, the constitutionally-protected paramount rights of parents to custody, care, and control of their children must prevail." *Petersen v. Rogers*, 337 N.C. 397, 403–04, 445 S.E.2d 901, 905 (1994). Nonetheless, "the existence of a constitutional protection does not obviate the requirement that arguments rooted in the Constitution be preserved for appellate review." *In re J.N.*, 381 N.C. 131, 133, 871 S.E.2d 495, 497 (2022); *State v. Wiley*, 355 N.C. 592, 615, 565 S.E.2d 22, 39 (2002) ("It is well settled that an error, even one of constitutional magnitude, that [the party] does not bring to the trial court's attention is waived and will not be considered on appeal.").

In *In re J.N.*, "DSS sought to change the primary plan from reunification to guardianship with an approved caregiver." 381 N.C. at 132, 871 S.E.2d at 497. Although the father argued during the permanency planning hearing "that reunification should remain the primary plan[, he] did not argue or otherwise contend that the evidence failed to demonstrate he was an unfit parent or that his constitutionally-protected right to parent his children had been violated." *Id.* The trial court entered an order granting guardianship of the children to their grandparents. *Id.*

On appeal, the father argued "that the trial court erred in granting guardinship to the maternal grandparents without first finding that he was an unfit parent or he had acted inconsistently with his constitutional right to parent." *Id.* Affirming the trial court, this Court held that the issue had not been preserved for appellate review because the father had "failed to assert his constitutional argument in the trial court." *Id.* at 133, 871 S.E.2d at 498. In so ruling, we noted that the father "was on

notice that DSS and the guardian ad litem were recommending that the trial court change the primary permanent plan in th[e] case from reunification to guardianship." *Id.* at 133–34, 871 S.E.2d at 498. "Despite having [notice and] the opportunity to argue or otherwise assert that awarding guardianship to the maternal grandparents would be inappropriate on constitutional grounds, [the father] failed to do so." *Id.* at 134, 871 S.E.2d at 498.

Similarly, in this case, the guardian ad litem filed a report prior to the permanency planning hearing recommending that reunification be removed as the primary plan inasmuch as "the cause of [Nellie's] injuries remain[ed] unexplained." When the trial court announced at the hearing that it was contemplating eliminating reunification from the permanent plan, it gave the parties a thirty-minute recess to consider their responses. Notwithstanding the pre-hearing notice that reunification would be on the table and the 30-minute recess, respondents at no point during the permanency planning hearing argued that the proposed changes to the permanent plan would be improper on constitutional grounds. Consequently, they did not preserve the issue for appellate review. *Id.* ("Despite having the opportunity to argue or otherwise assert that awarding guardianship to the maternal grandparents would be inappropriate on constitutional grounds, respondent failed to do so. Therefore, respondent waived the argument for appellate review.").

IV. Conclusion

In this case, the trial court removed two young children from the custody of their parents after one or both parents inflicted life-threatening injuries on the youngest child, then just six weeks old. Faced with the gravity of the abuse and the persistent unwillingness of either parent to admit responsibility or to fault the other, the trial court determined that reunification with the parents would be inconsistent with the children's health and safety. The evidence in this case supports the trial court's findings of fact, and those findings support the conclusions of law in the permanency planning order. Furthermore, the constitutional issue addressed by the Court of Appeals was not preserved for appellate review. We therefore reverse the decision of the Court of Appeals.

REVERSED.

Justice MORGAN concurring in part and dissenting in part.

I join my esteemed colleagues in the majority to the extent that they conclude that the trial court did not err by eliminating reunification from the permanency plan for Nellie and Jon with regard to respondent-father and to the extent that they discuss the sufficiency of Catawba County DSS's reunification efforts and the non-preservation of respondent-father's constitutional argument. However, I disagree with the majority's conclusion that the trial court made sufficient findings to support its conclusion that efforts to reunify the two youngsters with respondent-*mother* would be unsuccessful or inconsistent with the children's health and safety. Specifically, the trial court's sole grounds for reaching this conclusion were that respondent-mother had failed either to take responsibility herself for injuring Nellie or to offer "any better explanation" for the manner in which Nellie's injuries had occurred. I would hold that respondent-mother's inability to provide a more specific explanation for how Nellie's injuries had occurred, under the facts and circumstances existent in this case, provided an insufficient basis for the trial court's conclusion that further reunification efforts would be clearly unsuccessful or inconsistent with the health and safety of both Nellie and Jon when respondent-mother otherwise took sufficiently reasonable steps to ensure the health and safety of the children including, but not limited to, separating residences from respondent-father. *See* N.C.G.S. § 7B-906.2(b) (2019). I would therefore affirm the Court of Appeals to the extent that the lower appellate court reversed the trial court's order on these grounds.

As the majority here readily acknowledges, the overarching goal of the permanency planning process is to "return the child to their home" or, only when such an outcome is not possible, to instead deliver the child "to a safe, permanent home within a reasonable period of time." Sara DePasquale, *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina* 7-10 (UNC School of Government 2022). Accordingly, the North Carolina General Statutes directs as follows:

> Reunification shall be a primary or secondary plan unless the court made findings under G.S. 7B-901(c) or G.S. 7B-906.1(d)(3), the permanent plan is or has been achieved in accordance with subsection (a1) of this section, or the court makes written findings that reunification efforts clearly would be unsuccessful or would be inconsistent with the juvenile's health or safety.

N.C.G.S. § 7B-906.2(b) (2019).[1] As such, the trial court must make findings of fact as to each of the following factors which tend to indicate the success or failure of reunification efforts at all permanency planning hearings:

> (1) Whether the parent is making adequate progress within a reasonable period of time under the plan.
>
> (2) Whether the parent is actively participating in or cooperating with the plan, the department, and the guardian ad litem for the juvenile.
>
> (3) Whether the parent remains available to the court, the department, and the guardian ad litem for the juvenile.
>
> (4) Whether the parent is acting in a manner inconsistent with the health or safety of the juvenile.

Id. § 7B-906.2(d) (2019). The trial court's findings "must make clear that the trial court considered the evidence in light of whether reunification would be [clearly unsuccessful] or would be inconsistent with the juvenile's health, safety, and need for a safe, permanent home within a reasonable period of time." *In re H.A.J.*, 377 N.C. 43, 49 (2021) (citation omitted).

In the present case, the trial court made the following findings of fact that tended to either support or contradict its conclusion that further reunification efforts between respondent-mother and the two children would be clearly unsuccessful or inconsistent with the juveniles' health and safety:

> 9. The Mother continues to attend substance abuse treatment at Addiction Recovery Medical Services (ARMS), where she had progressed from daily sessions, to weekly sessions, and will soon progress to biweekly sessions. The Mother has screened negative for all eighteen drug screens since her children entered foster care.

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1. The applicable statute was amended in 2021 to add the word "written" before the first occurrence of the word "findings," which did not appear in the 2019 version that was applied by the lower appellate court in its review of this case. This update has no impact on the majority's analysis of the pertinent legal issues.

10. The Mother has completed the Life Skills program and Triple P Parenting, an online course. She has provided two certificates of completion for Raising Confident, Competent Children and Raising Resilient Children, both in October 2019.

11. The Mother completed a Comprehensive Clinical Assessment at Family Net on October 7, 2019. She was recommended weekly outpatient therapy and has been compliant.

. . . .

14. The parents are living separate and apart from each other. The mother resides in the home that she . . . once shared with her children and their father. The Father has an independent residence.

. . . .

20. The purpose of the parents' case plans is to address the issue that brought these children before the Court and into foster care, i.e. the nona[c]cidental traumatic and life-threatening injuries to the minor child [Nellie] while in the care of her parents. As of this date, neither parent has offered any better explanation for these injuries than they offered at the adjudication of this matter or at any hearing since. Without some acknowledgement by the parents of responsibility for the injuries, there can be no mitigation of the risk of harm to the children.

21. *In her testimony today, the Mother has stated that she acknowledges that her child suffered nonaccidental injury; however, she does not know how. Her position is that, if the father was a danger to the child at the time of the removal, he is not a danger now.*

. . . .

23. The injuries to the minor child [Nellie] which brought these children before the Court included two subdural hematomas caused by abusive head trauma, equivalent to a motor vehicle accident

> or fall from a significant height. In addition, she sustained multiple retinal hemorrhages (described as too many to count), and a posterior rib fracture[ ] that occurred days prior to her brain bleeds. *Although the parents have participated and completed services, neither has acknowledged responsibility for these nonaccidental abusive injuries to [Nellie]. Without that acknowledgment, the Court has no evidence that either parent will protect their children over protecting one another, and therefore the risk to these children of abuse and neglect remains high.*

(Emphases added.) From these findings, the trial court drew its conclusion that "[f]urther efforts to reunify the children with either parent would clearly be unsuccessful and inconsistent with the children's health and safety[.]"

On review, the Court of Appeals held, *inter alia*, that this conclusion, as it applied to respondent-mother, was not consistent with the evidence presented because this evidence tended to suggest that respondent-mother had (1) substantially complied with and completed her case plan, (2) required respondent-father to move out of the home, (3) engaged with all required services, and (4) acknowledged the nonaccidental nature of Nellie's injuries. *In re J.M.*, 276 N.C. App. 291, 302 (2021). I agree with the lower appellate court's analysis of this issue and would affirm its decision on this basis. In my view, this is the appropriate result in light of the particular facts and circumstances of this case in which the trial court categorically found that reunification of the children with respondent-mother would be clearly unsuccessful or inconsistent with the health and safety of the juveniles when respondent-mother specifically refused to accept responsibility for the child Nellie's injuries, refused to affirmatively testify that respondent-father caused Nellie's injuries when respondent-mother represented that she did not know unequivocally that he did so, and declined to speculate as to the manner in which Nellie's injuries were caused. I find it especially relevant that the remainder of the trial court's findings indicated that respondent-mother had taken definitive measures to mitigate risks to Nellie and Jon such as separating residences from respondent-father, whom the trial court found to be most likely responsible for the abuse. In the compelling face of these facts and circumstances, the majority's embrace of the trial court's leap to conclude that respondent-mother

sought to protect respondent-father at the expense of the children's health and safety is unconvincing and unfortunate.

Further consternation arises regarding the majority's decision here upon its misguided determination that our decision in *In re D.W.P.*, 373 N.C. 327 (2020), requires us to reverse the outcome reached by the Court of Appeals. In *D.W.P.*, the respondent-mother not only failed to specify how her child David had received his suspected abusive injuries—including a femur fracture and multiple injuries to his ribs and tibia—but respondent-mother additionally provided multiple *false* explanations for the injuries, including representations that David's injuries had been caused by the family dog or by the child's biological father, with whom David had not been at or near the time of his last reported injury. *Id.* at 331–32. Respondent-mother also offered the rationale that the juvenile had simply "slept funny." *Id.* at 336. In addition to finding that respondent-mother had failed to gain sufficient insight into the cause of David's injuries to protect him from future harm, the trial court in *D.W.P.* also found that respondent-mother had (1) violated the conditions of her probation by failing to obtain a psychiatric evaluation; (2) resumed romantic contact with, and provided a key to her home to, her fiancé, who was the person most likely responsible for inflicting injuries to her child and who had committed multiple acts of domestic violence against respondent-mother following their reunification; (3) withheld information regarding her subsequent marriage to another man; (4) evaded social workers; (5) discontinued therapy; and (6) ultimately failed to make adequate progress with her case plan. *Id.* at 332–37.

It is apparent how *D.W.P.* might guide this Court's analysis with respect to respondent-father in the instant case who, like the respondent-mother in *D.W.P.*, repeatedly denied the nonaccidental character of Nellie's injuries here and provided medically implausible, and even absurd, explanations as to the cause of the injuries. However, reunification is statutorily defined as the placement of a juvenile in the home of *either* parent from whom the child was removed and therefore the appropriateness of reunification with respondent-mother—who no longer shares a residence with respondent-father—ought to be considered separately in this matter. *See* N.C.G.S. § 7B-101(18c) (2021). Indeed, the relevance of *D.W.P.* with regard to respondent-*mother* is swallowed by the case's distinctions. Despite the fact that the trial court here found that respondent-mother had substantially complied with and completed her case plan, that she had engaged in and benefited from recommended services, and that she had acknowledged that the juvenile

Nellie's injuries were nonaccidental in nature, the trial court determined that reunification efforts would be clearly unsuccessful or inconsistent with the health and safety of both Nellie and Jon on the sole basis that respondent-mother could not affirmatively testify as to who had injured Nellie or the manner in which Nellie's injuries had occurred despite the trial court's knowledge of (1) the available evidence tending to implicate respondent-father, and (2) respondent-mother's repeated statements that she "didn't see [Nellie] get hurt" and therefore could not "fairly speculate what happened." The majority likewise adopts the trial court's approach in diminishing the significance of respondent-mother's statements in her favor on one hand, yet choosing on the other hand to derive heightened significance from respondent-mother's unhelpful statements. For example, both the majority and the trial court noted that respondent-mother desired to share custody of the children with respondent-father and that she trusted that respondent-father no longer posed a threat to them as the result of extensive domestic violence counseling, while both conveniently ignored respondent-mother's additional explanatory testimony that she would abide by any court order prohibiting respondent-father's contact with them.

Unlike in *D.W.P.* or other cases cited by petitioners including *In re Y.Y.E.T.*, 205 N.C. App. 120, *disc. rev. denied*, 364 N.C. 434 (2010), and *In re A.W.*, 377 N.C. 238 (2021), respondent-mother in this case (1) acknowledged that the juvenile Nellie had suffered a nonaccidental injury, (2) removed respondent-father from the home and did not resume a romantic relationship with him, and (3) engaged with and benefited from services provided to her through her case plan. Consequently, the only evidence from which the trial court concluded that reunification would be clearly unsuccessful or inconsistent with the health and safety of Nellie and Jon was the fact that respondent-mother was not in position either to take personal responsibility for Nellie's injuries or to provide a specific explanation for how these injuries had been inflicted at the hands of respondent-father. As such, the majority's holding that the trial court's conclusion of law which eliminated reunification of the children with respondent-mother was supported by its findings, which were in turn supported by competent evidence, exceeds the parameters of our prior decisions by allowing the trial court here to foreclose reunification on the sole grounds that a parent may be unable to testify unequivocally as to facts about which the parent possessed no affirmative knowledge, even though the parent took definitive steps to substantially comply with the parent's prescribed case plan as well as to ensure the health and safety of the juveniles at issue.

For these reasons, I respectfully dissent in part.

Justice EARLS, dissenting.

At the heart of this case is the question of what law and justice require when an infant too young to identify her assailant is severely injured. No one suggests that the injuries inflicted on Nellie were anything other than non-accidental, repeated, and life-threatening. The real question is whose responsibility it is to determine the truth about who caused those injuries? Do our statutes and precedents permit a court to abdicate its fact-finding responsibility and punish both parents when the agency charged with protecting children fails to fully investigate the circumstances? More specifically, can a court eliminate the possibility that either parent will be reunified with their child under the child's permanency plan when both parents consistently maintain that they do not know who or what caused a child's injuries, the Department of Social Services (DSS) makes no effort to interview or report to the court regarding interviews of other potential witnesses, and both parents make substantial efforts to remedy the circumstances that are believed to have given rise to the child's injuries?

Based on the circumstances of this case, I would answer this question in the negative. I therefore dissent from the majority's decision affirming the trial court's elimination of reunification from the children's permanency plan. Though I would hold that the evidence was insufficient to support the trial court's conclusion as to both parents, I join in my dissenting colleague's analysis that the trial court made insufficient findings to support its decision denying respondent-mother the possibility of reunification with her children. I concur with the majority's conclusion that respondent-parents did not properly preserve their constitutional argument for appellate review.

The record in this case is replete with evidence supporting the progress respondent-parents have made since DSS became involved with the family and the efforts both parents have made to regain custody of their children. After DSS took custody of Nellie in August 2018, both of her parents entered into detailed case plans with DSS. As part of respondent-mother's case plan, she was required to undergo a full psychological evaluation, complete "any recommended services," submit to random drug screenings, abstain from any drug use, complete a domestic violence assessment and follow related recommendations, obtain and maintain employment for at least six months, and engage in other parenting skills lessons.

After agreeing to this case plan and before the adjudication hearing, respondent-mother began participating in daily individual and

group therapy sessions at an addiction treatment center,[1] completed a clinical assessment at the facility, and submitted to weekly drug testing. Throughout her participation with the DSS case plan, she remained in "compliance with all aspects" of the addiction program and passed all completed drug screenings, including hair follicle tests, despite having previously suffered from an opioid addiction.[2] She completed a psychological evaluation and attended domestic violence and life skills classes once a week for four months. She did not miss a single class. She engaged in parenting-skills lessons, and DSS recognized that she gained insight as a result. Less than two weeks after entering the case plan with DSS, respondent-mother found a job and "consistently sent pictures of her work schedule and check stubs" to a DSS social worker to prove her continued employment.

Though he had one setback with respect to his case plan, respondent-father also substantially complied with the plan's requirements and objectives. The first psychological evaluation he completed revealed that he was "not completely forthcoming" and "demonstrated signs of externalizing blame onto others." Even so, respondent-father engaged in parenting lessons "and prepared a well-thought out report" on one assignment, which, according to DSS, demonstrated that he gained knowledge as a result. Respondent-father later completed a second psychological evaluation, which revealed that "he answered in a reasonably forthright manner and did not attempt to present an unrealistic or inaccurate impression." DSS reported that he was "very appropriate during his visits with his children[,] and he display[ed] appropriate parenting techniques and knowledge. He is attentive to each child's needs and shows affection for each child." (Italics omitted.)

Like respondent-mother, respondent-father completed a clinical assessment at an addiction rehabilitation facility. He began attending individual and family therapy sessions multiple times a month, and only needed to reschedule a single session. His therapist reported that respondent-father was "thoughtful with ideas and seem[ed] to be genuine in his efforts to work through [identified] issues." Furthermore, during a hearing at DSS, his counselor stated that respondent-father was

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1. Respondent-mother attended the group and individual therapy sessions daily until she completed the first phase of treatment and advanced to weekly, bi-weekly, and ultimately monthly sessions.

2. Respondent-mother also reported to a social worker that "she did have an opioid problem in the past and that she . . . stopped hanging out with friends from her past who she knew were involved in that lifestyle[ ] because she was done with that and focusing on what she needs to do to get her children back."

"doing great, [which] is rare in his line of work in regards to attendance and engagement in therapy." Respondent-father passed all drug tests, including a hair follicle screen, with the exception of the first test he took on the same day that he entered into the case plan with DSS when he tested positive for marijuana use. Respondent-father completed a domestic violence tools assessment, attended domestic violence perpetrators classes, and maintained employment.

In addition to all of these efforts, respondent-parents ceased their romantic relationship and respondent-father moved into a different residence, as required by his case plan. In short, the parents did not merely "check [ ] the boxes," as the Guardian ad Litem suggests. To the contrary, they turned their entire lives around, doing everything in their power to regain custody of their children. But they have maintained that the one thing that is not in their power is the ability to determine the cause of Nellie's injuries. To the majority, this is all that matters.

Never mind that both parents have taken drastic steps to ensure that a similar incident does not happen again. For example, respondent-father explained that, after Nellie was hospitalized, respondent-mother "cut ties with [him] and wouldn't speak to [him]. She claimed if [he was] guilty . . . she didn't want [him] to be around." This means that even if respondent-mother or respondent-father is telling the truth—that they do not know how Nellie sustained her injuries—this parent can try anything and everything to regain custody of Nellie, but it will not be enough. There is nothing the parent can do to overcome his or her ignorance about the cause of Nellie's injuries unless the parent chooses to dishonestly blame the other.

This result risks perverse consequences. For example, consider that a child sustains injuries that a court determines could only have been caused by abuse. The parents were the child's sole care providers, and the court therefore determines that one of the parents must have caused the injuries. As here, both parents maintain that they do not know how their child was injured, but for purposes of this example, the mother is, in fact, responsible. If the mother eventually falsely accuses the father of causing the injuries, she at least has a chance of regaining custody over the child. But if the father truthfully maintains that he does not know how the child was injured, he will not have this opportunity. In this example, not only could the child be returned to the parent who caused the injuries, but an innocent parent who was unwilling to lie for his own benefit would suffer. This is not to say that a parent's refusal to accept fault or place blame for a child's injuries is irrelevant in determining whether it is appropriate to maintain reunification as part of a

child's permanency plan. For example, as the majority recognizes, in *In re D.W.P.*, 373 N.C. 327 (2020), this Court held that a mother's failure to acknowledge responsibility for her child's injury indicates a likelihood that injury will reoccur, despite the progress the mother made in her case plan.

In *In re D.W.P.*, the Court affirmed an order terminating a mother's parental rights after her child had been adjudged abused and neglected. 373 N.C. at 340. The mother's eleven-month-old son was treated for a broken femur and had numerous other fractures. *Id.* at 328. The mother and her fiancé were the child's only caretakers. *Id.* at 329. The trial court found that the mother failed to offer a medically feasible explanation for the injuries or to take responsibility for the role she and her fiancé had played in causing them, despite evidence that the injuries could only have been caused by the parents. *Id.* at 331. The trial court terminated the mother's parental rights, highlighting the mother's refusal to honestly report how her son's injuries occurred and the court's inability to create a plan to ensure that injuries would not occur in the future without knowing the cause of the injuries. *Id.* at 329.

In affirming the trial court's conclusion, this Court noted the troublesome nature of the mother's "continued failure to acknowledge the likely cause of [her son's] injuries," *id.* at 339, and her refusal "to make a realistic attempt to understand how [her son] was injured or to acknowledge how her relationships affect her children's wellbeing." *Id.* at 340. This Court added, "[w]ithout recognizing the cause of [the child's] injuries, respondent-mother cannot prevent them from reoccurring." *Id.* at 338. Based on this similarity, the majority concludes tha*t In re D.W.P.* controls here, requiring that the trial court's order on the children's permanency plan be affirmed. But this similarity is not the only factor that influenced this Court's decision in *In re D.W.P.*

Of note, the mother in *In re D.W.P.* discontinued therapy, failed to complete a psychiatric evaluation, entered an *Alford* plea regarding her child's injuries, at which point she offered a new theory for how her child was injured, and then violated the terms of her probation, resumed a relationship with the child's father who was potentially responsible for the child's injuries and in spite of the fact that there had been multiple incidents of domestic violence between the parents, and concealed her marriage to another man. *Id.* at 339. Indeed, this Court explained that the trial court relied on

> past abuse and neglect; failure to provide a credible explanation for [the child]'s injuries; respondent-mother's discontinuance of therapy; respondent-mother's

> failure to complete a psychiatric evaluation; respondent-mother's violation of the conditions of her probation; the home environment of domestic violence; respondent-mother's concealment of her marriage from GCDHHS; and respondent-mother's refusal to provide an explanation for or accept responsibility for [the child]'s injuries.

Id. Here, by contrast, neither parent was criminally charged; they did not have analogous case plan failures; and they did not resume a romantic relationship or live together after Nellie was injured. Furthermore, the mother in *In re D.W.P.* offered competing theories regarding how her child was injured raising concerns about her honesty, whereas the parents here have not engaged in such behavior. *See id.* at 334. Thus, unlike in *In re D.W.P.*, the trial court's conclusion was based almost entirely on respondent-parents' insistence that they do not know who or what caused Nellie's injuries.

In other words, in *In re D.W.P.*, *all* of the circumstances, including the mother's decision to "re-establish[ ] a relationship with" her boyfriend who she previously acknowledged could have been responsible for injuring her child, led this Court to conclude that the mother's inability "to recognize and break patterns of abuse that put her children at risk" prevented her from "mak[ing] a realistic attempt to understand how [her child] was injured or to acknowledge how her relationships affect her children's wellbeing." *Id.* at 340. The parents here have done just the opposite by both taking important remedial steps, such as attending relevant classes and terminating their relationship in recognition of the possibility that their continued co-habitation posed a risk to their children, and actually demonstrating growth as a result of these steps.

Contrary to the majority's conclusion that *In re D.W.P.* requires this Court to affirm the trial court's elimination of reunification from the permanency plan here, *In re D.W.P.* suggests that a holistic review of respondent-parents' subsequent conduct was required, rather than treating their lack of knowledge about the cause of Nellie's injuries as determinative. Specifically, the parents' relationship with their children, their compliance with their case plans, and their demonstrated behavioral growth as a result of engaging with their case plan requirements are all relevant considerations in assessing whether reunification is appropriately included in their children's permanency plans.

The trial court's failure to conduct this thorough analysis and its improper focus on a single fact in the record in contravention of *In re*

D.W.P. are demonstrated by its finding that "[w]ithout . . . acknowledgment" of the source of Nellie's injuries, there was "*no* evidence that either parent will protect their children over protecting one another." (Emphasis added.) As the discussion above demonstrates, however, the idea that there is a complete dearth of evidence supporting that respondent-parents will protect their children over each other is patently inaccurate. This finding can therefore only follow from the fact that respondent-parents have continued to maintain that they do not know who injured Nellie. In light of all of the evidence in the record, this singular fact is insufficient to support the trial court's factual finding, meaning the finding is not supported by competent evidence in the record. In holding to the contrary, the majority allows trial courts to abandon the holistic approach of *In re D.W.P.* and instead focus exclusively on one factor that may say very little about parents' ability to protect the well-being of their children or the children's best interests.

In addition to the requirement that the trial court's factual findings be supported by competent evidence, the trial court's findings of fact must also support its conclusions of law. *See*, *e.g.*, *In re H.A.J.*, 377 N.C. 43, 49, 52 (2021). Here, the trial court concluded that "[f]urther efforts to reunify the children with either parent would clearly be unsuccessful and inconsistent with the children's health and safety." This conclusion is in turn based on the finding that, without respondent-parents acknowledging the source of Nellie's injuries, there is "no evidence that either parent will protect their children over protecting one another, and therefore the risk to these children of abuse and neglect remains high." The trial court, unsatisfied that one of the parents had not blamed the other or personally accepted responsibility, determined that both parents were incapable of caring for Nellie. Based on the discussion above, this extreme conclusion is not supported by the trial court's findings of fact.

Nonetheless, the trial court could have made certain findings that would support this legal conclusion. Specifically, the trial court could have made specific findings regarding which parent was most likely responsible for Nellie's injuries and whether the other parent was telling the truth about not knowing how she was injured. It is possible that the trial court did not believe there was enough evidence in the record to support such findings, which highlights the reality that DSS's investigation into respondent-parents was insufficient.

Evidence that could have supported such factual findings that would have in turn supported the trial court's legal conclusion (or required a different one) includes interviews with or testimony from individuals

who know respondent-parents and were familiar with the dynamics in their home at the time Nellie was injured, such as respondent-mother's older children who likely had unique and intimate insight into respondent-parents' treatment of Nellie and her brother. As mentioned, this obvious source of evidence could have allowed the trial court to find as fact which parent was responsible for abusing Nellie. Furthermore, such evidence could shed additional light on whether the other parent was being truthful about not knowing the cause of Nellie's injuries. But because there was insufficient evidence in the record from which the trial court could make these specific factual findings, it effectively held both parents responsible, despite the possibility that this blame was misplaced as to one of them.

These untapped avenues of evidence demonstrate that more could have been done in this case to either support the trial court's legal conclusions or to require different conclusions that would have preserved reunification as a possibility for at least one of the parents. Without more specific findings with respect to respondent-parents' responsibility, however, the trial court's findings do not support its legal conclusion that "[f]urther efforts to reunify the children with either parent would clearly be unsuccessful and inconsistent with the children's health and safety." Accordingly, the trial court's decision to eliminate reunification from respondent-parents' permanency plans was an abuse of discretion.

Finally, it is important to recognize that the options available to the trial court here were not limited to the extremes of eliminating reunification entirely from the permanency plan or immediately returning custody of the children to the parents and terminating DSS involvement. Rather, the parents simply requested that reunification remain part of the permanency plan.[3] The trial court was free to fashion a plan that maintained the status quo and DSS's involvement with the family. This unobtrusive approach was warranted given the significant efforts that respondent-parents made to correct the circumstances that resulted in Nellie's injuries.

It is well established that "a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent

3. Similarly, prior to the February 2020 permanency planning hearing, the GAL recommended that "the court order a primary plan be one of adoption, with a secondary plan of reunification, while the cause of [Nellie's] injuries remains unexplained." DSS recommended a primary plan of reunification and a secondary plan of adoption. Thus, neither of the appealing parties sought elimination of reunification from the permanency plan as a whole.

a powerful countervailing interest, protection.' " *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981) (quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972)). By taking a myopic view of the considerations that are relevant in determining whether reunification is appropriate under the circumstances presented in this case, the majority ignores this powerful countervailing interest. Further, the majority implicitly holds that maintaining honesty may be treated as deception and parents' diligent engagement with their case plans may be meaningless if they are unable to prescribe the cause of a child's injuries or refuse to place improper blame on another individual. Because the Court's holding represents a woefully inadequate analysis of the circumstances that bear on the children's permanency plan, I respectfully dissent from the majority's conclusion that the trial court's elimination of reunification from the permanency plan was supported by competent evidence in the record.

IN THE MATTER OF J.U.

No. 263PA21

Filed 16 June 2023

Juveniles—delinquency petition—misdemeanor sexual battery—force—sufficiency of allegations

A juvenile delinquency petition was not fatally defective where it contained sufficient facts to support each essential element of misdemeanor sexual battery, in particular the element of force, which was clearly inferable from allegations that the juvenile willfully engaged in sexual conduct with a classmate by touching her vaginal area against her will for the purpose of sexual gratification.

Justice EARLS dissenting.

Justice MORGAN joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 from an unpublished decision of the Court of Appeals, No. COA20-812 (N.C. Ct. App. July 6, 2021) (unpublished), vacating in part an adjudication order entered on 12 February 2020 and vacating a disposition order entered on 16 July 2020 by Judge Rebecca Blackmore in District Court, Cumberland County. Heard in the Supreme Court on 26 April 2023.

IN RE J.U.

[384 N.C. 618 (2023)]

Joshua H. Stein, Attorney General, by Janelle E. Varley, Assistant Attorney General, for the State-appellant.

Glenn Gerding, Appellate Defender, by Heidi Reiner, Assistant Appellate Defender, for juvenile-appellee.

BERGER, Justice.

We address here the jurisdictional sufficiency of allegations in a juvenile delinquency petition. Just as "it is not the function of an indictment to bind the hands of the State with technical rules of pleading," *State v. Williams*, 368 N.C. 620, 623 (2016) (quoting *State v. Sturdivant*, 304 N.C. 293, 311 (1981)), the plain language of N.C.G.S. § 7B-1802 does not require the State in a juvenile petition to aver the elements of an offense with hyper-technical particularity to satisfy jurisdictional concerns. Because the juvenile petition sufficiently pled the offense of misdemeanor sexual battery and provided adequate notice to the juvenile, the pleading requirements of N.C.G.S. § 7B-1802 were satisfied. We reverse the decision of the Court of Appeals.

I. Background

A juvenile petition alleged that J.U. had committed misdemeanor sexual battery against B.A., a classmate.[1] J.U. and B.A. became friends when they were in seventh grade. In the fall of their eighth-grade year, J.U. snapped B.A.'s bra strap, prompting her to yell at him and draw the attention of their teacher. Thereafter, as part of the investigatory process, B.A. submitted an initial written statement which detailed the incident. Two other students submitted written statements, one of which described a separate incident in which J.U. had touched B.A. on her buttocks, breasts, and vaginal area. B.A. also submitted a second statement detailing inappropriate touching by J.U. B.A. testified that she did not report these actions to the school because she did not think anyone else witnessed the events and feared that she would not be believed.

On 6 November 2019, the State filed a juvenile petition, which the State later dismissed. On 9 January 2020, the State filed three additional juvenile petitions alleging that J.U. committed simple assault and sexual battery. One of the juvenile petitions alleging sexual battery was later dismissed by the trial court. The other sexual battery petition specifically alleged that "the juvenile did unlawfully, willfully engage in sexual

1. Initials are used to refer to juveniles pursuant to N.C. R. App. P. 42(b).

contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification." Prior to the adjudication hearing, J.U. waived the formal reading of the petitions and entered a plea of not guilty. J.U. did not object to the language of the sexual battery petition, nor did he move to dismiss due to a deficiency in the charging document.

On 12 February 2020, the Honorable Rebecca Blackmore of the District Court, Cumberland County, adjudicated J.U. delinquent for simple assault and sexual battery. The trial court entered a Level II disposition order, and J.U. was required to complete twelve months of probation and up to fourteen twenty-four-hour periods of secure custody in addition to fulfilling certain other requirements.

J.U. timely appealed to the Court of Appeals, arguing that: (1) the juvenile petition charging sexual battery was "fatally defective in failing to allege the necessary element of force"; (2) the State "failed to present sufficient evidence of all elements of sexual battery"; (3) his trial counsel committed per se ineffective assistance of counsel by "conceding guilt to simple assault" without the trial court conducting a colloquy with J.U. to determine "whether the concession was knowing and voluntary"; and (4) the disposition order lacked "findings of fact sufficient to support the punishment imposed." *In re J.U.*, No. COA20-812, slip op. at 1–2 (N.C. Ct. App. July 6, 2021).

In analyzing the charging language in the juvenile petition, the Court of Appeals determined that "[a]s with criminal indictments, a juvenile petition 'is subject to the same requirement that it aver every element of a criminal offense, with sufficient specificity that the accused is clearly apprised of the conduct for which he is being charged.' " *Id.* at 6 (quoting *In re S.R.S.*, 180 N.C. App. 151, 153 (2006)). Further, the Court of Appeals stated that the element of force in the sexual battery statute was defined as "force applied to the body," *id.* at 7 (quoting *State v. Scott*, 323 N.C. 350, 354 (1988)), and that element was "present if the defendant use[d] force sufficient to overcome any resistance the victim might make." *Id.* (quoting *State v. Brown*, 332 N.C. 262, 267 (1992)).[2]

The Court of Appeals relied on *State v. Raines*, 72 N.C. App. 300 (1985), to conclude that the allegation in the petition that J.U. touched

2. The Court of Appeals did not address the juvenile's arguments concerning sufficiency of the evidence or the contents of the trial court's disposition order; however, the case was remanded to the trial court for an evidentiary hearing on the ineffective assistance of counsel claim.

B.A.'s vaginal area against her will "does not, standing alone, disclose that he accomplished that act through an application of force to her body sufficient to overcome any resistance the victim might make." *In re J.U.*, slip op. at 7 (cleaned up). The Court of Appeals therefore vacated the lower court's adjudication order in part and disposition order in whole, holding that the juvenile petition charging J.U. with sexual battery "was fatally defective and failed to invoke the trial court's jurisdiction over the petition." *Id.* at 15.

On 4 May 2022, this Court allowed the State's petition for discretionary review under N.C.G.S. § 7A-31 to determine a single issue: whether the Court of Appeals erred in holding that the sexual battery petition was fatally defective and failed to invoke the trial court's jurisdiction.

II. Analysis

A. Pleading Standards

The district court division "has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent." N.C.G.S. § 7B-1601(a) (2021). Generally, a delinquent juvenile is an individual under the age of eighteen but over the age of ten who "commits a crime or infraction under State law or under an ordinance of local government." N.C.G.S. § 7B-1501(7) (2021).

A juvenile petition is the pleading in a juvenile delinquency proceeding. N.C.G.S. § 7B-1801 (2021). To properly allege that a juvenile is a delinquent juvenile, and thus under the court's jurisdiction, juvenile petitions must "contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation." N.C.G.S. § 7B-1802 (2021).

The General Assembly has instructed that the statutes related to juvenile delinquency are to be "interpreted and construed":

> (1) To protect the public from acts of delinquency.
>
> (2) To deter delinquency and crime, including patterns of repeat offending:
>
> a. By providing swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions; and
>
> b. By providing appropriate rehabilitative services to juveniles and their families.

> (3) To provide an effective system of intake services for the screening and evaluation of complaints and, in appropriate cases, where court intervention is not necessary to ensure public safety, to refer juveniles to community-based resources.
>
> (4) To provide uniform procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter.

N.C.G.S. § 7B-1500 (2021).

While juvenile delinquency proceedings are not "criminal prosecutions," *In re Burrus*, 275 N.C. 517, 529 (1969), the General Assembly utilized nearly identical language to describe the necessary content of juvenile petitions and criminal pleadings. *Compare* N.C.G.S. § 7B-1802, *with* N.C.G.S. § 15A-924(a)(5) (2021). Our appellate courts have long held that petitions alleging delinquent acts "serve[ ] essentially the same function as an indictment." *In re S.R.S.*, 180 N.C. App. at 153 (quoting *In re Griffin*, 162 N.C. App. 487, 493 (2004)). Despite obvious procedural differences in the issuance of a juvenile petition and a true bill of indictment, "juvenile petitions are generally held to the standards of a criminal indictment." *Id.* (quoting *In re B.D.W.*, 175 N.C. App. 760 (2006)).

Criminal pleadings, including indictments, are:

> [S]ufficient in form for all intents and purposes if [they] express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality of refinement, if in the bill of proceeding, sufficient matter appears to enable the court to proceed to judgment.

N.C.G.S. § 15-153 (2021).

It is well-established that "it would not favor justice to allow [a] defendant to escape merited punishment upon a minor matter of form." *Sturdivant*, 304 N.C. at 311. This Court has been consistent in retreating from the highly technical, archaic common law pleading requirements which promoted form over substance:

> "[I]t is not the function of an indictment to bind the hands of the State with technical rules of pleading," and . . . we are no longer bound by the "ancient strict pleading requirements of the common law." Instead, contemporary criminal pleading requirements have been "designed to remove from our law unnecessary technicalities which tend to obstruct justice."

Williams, 368 N.C. at 623 (first quoting *Sturdivant*, 304 N.C. at 311, then quoting *State v. Freeman*, 314 N.C. 432, 436 (1985)). "An indictment need not conform to any technical rules of pleading but instead must satisfy both . . . statutory strictures . . . and the constitutional purposes which indictments are designed to satisfy," i.e., notice sufficient to prepare a defense and to protect against double jeopardy. *State v. Oldroyd*, 380 N.C. 613, 617 (2022) (cleaned up).[3]

Initially, we observe that the plain language of "N.C.G.S. § 15A-924 does not require that an indictment contain any information beyond the specific facts that *support* the elements of the crime." *State v. Rambert*, 341 N.C. 173, 176 (1995) (emphasis added); *see also Sturdivant*, 304 N.C. at 309 (declaring that an indictment must set forth "a lucid prosecutive statement which factually particularizes the essential elements of the specified offense").

Moreover, the common law rule that defective indictments rob a court of jurisdiction is "an obsolete rule that detrimentally impacts the administration of justice in our State." *State v. Rankin*, 371 N.C. 885, 919 (2018) (Martin, C.J., dissenting). Persuasively noting that jurisdictional concerns were a "relic of the code pleading era," *id.* at 906, Chief Justice Martin's dissent in *Rankin* thoroughly recounted the history of criminal pleadings, ultimately concluding that because "our criminal law and procedure became 'hopelessly outdated,' " *id.* at 908, (quoting *Legislative Program and Report to the General Assembly of North Carolina by the Criminal Code Commission*, at i (1973)), by 1974, legislative reforms, including the adoption of N.C.G.S. § 15A-924, evolved from requiring elemental specificity to a more simplified requirement that indictments allege "facts supporting each essential element of the charged offense." *Id.* (citing N.C.G.S. § 15A-924(a)(5) (2017)).

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3. Here, J.U.'s counsel conceded that the petition at issue provided adequate notice. Thus, the only question remaining is whether the petition satisfied relevant statutory strictures. *See* Oral Argument at 44:24, In re J.U. (No. 263PA21) (Apr. 26, 2023), https://www.youtube.com/watch?v=HqMqqgKRxFI (last visited May 10, 2023).

Consistent with a proper understanding of indictment jurisprudence and the express language of N.C.G.S. § 7B-1802, a juvenile petition "does not have to state every element of the offense charged," so long as the elements are "clearly inferable from the facts, duly alleged." *State v. Jordan*, 75 N.C. App. 637, 639, *cert. denied*, 314 N.C. 544 (1985). Stated differently, magic words are not required; all that is required by N.C.G.S. § 7B-1802 and our precedent concerning criminal pleadings is that the charging document contain factual allegations supporting the elements of the crime charged.

"It is generally held that the language in a statutorily prescribed form of criminal pleading is sufficient if the act or omission is clearly set forth so that a person of common understanding may know what is intended." *State v. Coker*, 312 N.C. 432, 435 (1984). Indeed, "[t]he purpose of a juvenile petition is to clearly identify the crime being charged and should not be subjected to hyper[-]technical scrutiny with respect to form." *In re D.S.*, 197 N.C. App. 598, 601–02 (2009) (cleaned up), *rev'd in part on other grounds*, 364 N.C. 184 (2010). As with criminal pleadings, "[n]o provision of Chapter 7[B] mandates that flawed [petitions] have the effect of depriving the trial court of jurisdiction," *Rankin*, 371 N.C. at 911 (Martin, C.J., dissenting), and such a reading would be inconsistent with N.C.G.S. § 7B-1500.

B. Sufficiency of the Petition

The crime of sexual battery is committed when any person, "for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person . . . [b]y force and against the will of the other person." N.C.G.S. § 14-27.33(a) (2021). The petition here alleged that J.U. "unlawfully [and] willfully engage[d] in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification."

The Court of Appeals below relied on this Court's statement that the force element "is present if the defendant uses force sufficient to overcome any resistance the victim might make," *In re J.U.*, slip op. at 7 (quoting *Brown*, 332 N.C. at 267), to conclude that the allegation that J.U. "touched B[.A.] does not, standing alone, disclose that he accomplished that act through an application of force to her body sufficient to overcome any resistance the victim might make." *Id.* (cleaned up). In so doing, the Court of Appeals viewed the pleading requirements of N.C.G.S. § 7B-1802 through a hyper-technical lens not intended by the plain language of the statute and routinely cautioned against by this Court.

Although the term "by force" is not defined in the relevant statutory scheme, this Court has stated that " '[p]hysical force' means force applied to the body." *Scott*, 323 N.C. at 354. Further, the "requisite force may be established either by actual, physical force or by constructive force in the form of fear, fright, or coercion." *Brown*, 332 N.C. at 267 (quoting *State v. Etheridge*, 319 N.C. 34, 45 (1987)).

In *Brown*, the defendant "entered [a] hospital in which the victim was a patient[,] . . . pushed open the door of the victim's hospital room[,] . . . pulled back the bedclothes on the victim's bed, pulled up her gown, [and] pulled down her panties" before sexually assaulting her. *Id.* at 270. The Court of Appeals reversed the defendant's conviction for second-degree sexual offense after concluding that "no substantial evidence was introduced at trial to support a reasonable finding that the defendant . . . used force in the commission of the offense charged." *Id.* at 265.

Because this Court concluded that the evidence presented in *Brown* "tended to show the defendant used actual physical force surpassing that inherent in the sexual act he committed upon the victim," we reversed the decision of the Court of Appeals. *Id.* at 269. However, this Court left open the question of whether the "physical force which will establish the force element of a sexual offense may be shown simply through evidence of the force inherent in the sexual act at issue," and we "expressly defer[red] any decision on that question until we [we]re presented with a case which requires its resolution." *Id.*

Put simply, the question this Court declined to answer in *Brown* was whether "physical force" is present when an assailant engages in unlawful, nonconsensual sexual contact with a victim, or whether "physical force" requires some level of force beyond the unlawful, nonconsensual touching itself. Here, J.U. argues that the petition was fatally defective because it "did not allege physical force" and therefore, the trial court was deprived of jurisdiction.

However, just as "common sense dictates that one cannot unlawfully kidnap or unlawfully restrain another with his consent," *Sturdivant*, 304 N.C. at 310, one cannot engage in nonconsensual sexual contact with another person without the application of some "force," however slight. *See Scott*, 323 N.C. at 354; *Brown*, 332 N.C. at 267.

The petition here alleged that J.U. "engage[d] in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification." By alleging that J.U. touched B.A.'s vaginal area without her consent, the petition asserted a fact from which the element of force was, at the very least, "clearly inferable," *Jordan*,

75 N.C. App. at 639, such that "a person of common understanding may know what [wa]s intended." *Coker*, 312 N.C. at 435. Thus, the factual allegations in the juvenile petition supported each element of misdemeanor sexual battery. The petition, therefore, complied with statutory pleading standards, and no jurisdictional defect existed.

The Court of Appeals erred in requiring a rote repetition of the elements of the offense of misdemeanor sexual battery rather than analyzing the ultimate question of whether the element of force was clearly inferable from the facts alleged in the petition. We reverse the decision of the Court of Appeals and remand this matter to the Court of Appeals for determination of the issues not considered in its previous decision.

REVERSED AND REMANDED.

Justice EARLS dissenting.

It stands to reason that our laws must serve to protect people from unwanted touching, sexual assault, and unwanted sexual advances in general. This is especially true in the case of a minor victim, who through qualities inherent to childhood is rendered particularly vulnerable. In a perfect world, our laws would provide this protection through a victim-centered legal framework that emphasizes the victim's sexual autonomy over the perpetrator's intent. Under this framework, the focus would not be on whether the perpetrator used force or intended to hurt the victim. Rather, the focus would be on whether the actions taken by the perpetrator were welcome and whether in taking those actions the perpetrator violated the victim's freedom to choose not to consent to that action. However, this is not the choice our General Assembly has made.

In North Carolina, our legislature has determined that force is required to commit sexual battery. N.C.G.S. § 14-27.33(a) (2021).[1] Thus, any petition alleging sexual battery must provide facts supporting this element of the offense. N.C.G.S. § 7B-1802 (2021). While North Carolina is not alone in requiring force as an element of sexual battery, *see, e.g.*, Tenn. Code Ann. § 39-13-505 (West 2021); Ind. Code Ann. § 35-42-4-8 (West 2014), other states have determined that force is not necessary

1. To be clear, North Carolina's sexual battery statute requires the use of force unless the victim has "a mental disability[, is] mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless." N.C.G.S. § 14-27.33(a)(2).

to commit this offense, *see, e.g.*, Utah Code Ann. § 76-9-702.1 (West 2023); Miss. Code. Ann. § 97-3-95 (West, Westlaw through 2023 Regular Session effective through April 21, 2023); Kan. Stat. Ann. § 21-5505 (West 2021). Thus, if the General Assembly had wanted to, it could have written a statute similar to those in effect in Utah, Mississippi, and Kansas. However, "make no mistake: [the General Assembly] wrote the statute it meant to." *Sackett v. EPA*, No. 21-454, 2023 WL 3632751, at *29 (U.S. May 25, 2023) (Kagan, J., concurring in the judgment). Today the majority chooses to override that legislative choice. *Cf. West Virginia v. EPA*, 142 S. Ct. 2587, 2628 (2022) (Kagan, J., dissenting) (admonishing the majority for "overrid[ing]" Congress's legislative choice to grant the EPA the power to curb emission of greenhouse gases).

In 2015, the previous sexual battery statute, N.C.G.S. § 14-27.5(a), was recodified as N.C.G.S. § 14-27.33, which is the version of the statute in effect today. While changes were made to other areas of the statute, the requirement that sexual battery be "[b]y force and against the will of the other person" remained the same. *Compare* N.C.G.S. § 14-27.5(a) (2015), *with* N.C.G.S. § 14-27.33 (2021). Furthermore, our Court has long held that we are to "presume that [when enacting a statute] the Legislature [chooses] its words with due care." *C Invs. 2, LLC v. Auger*, 383 N.C. 1, 10 (2022) (citing *Sellers v. Friedrich Refrigerators, Inc.*, 283 N.C. 79, 85 (1973)). Yet by determining that J.U.'s petition was sufficient to plead sexual battery, despite failing to include facts supporting the necessary element of force, the majority's opinion "alters . . . the statute [the General Assembly] drafted." *See Sackett*, 2023 WL 3632751, at *29 (Kagan, J., concurring in the judgment). Accordingly, I disagree with the majority that J.U.'s petition was sufficient to plead misdemeanor sexual battery under North Carolina law. I agree with the Court of Appeals that J.U.'s adjudication and disposition must be vacated because the State's petition failed to allege all necessary elements of the offense. *See In re J.U.*, No. COA20-812, slip op. at 5 (N.C. Ct. App. July 6, 2021) (unpublished). Thus, I respectfully dissent.

It is well established that a delinquency proceeding is not a criminal prosecution. *In re Burrus*, 275 N.C. 517, 529 (1969). Unlike the North Carolina Criminal Procedure Act, our Juvenile Code specifically identifies the rehabilitation of juveniles as one of its primary purposes. N.C.G.S. § 7B-1500 (2021). Similarly, this Court's own precedent explains that "[i]n the Juvenile Code, the General Assembly enacted procedural protections for juvenile offenders with the aim that delinquent children might be rehabilitated and reformed and become useful, law-abiding citizens." *State v. Dellinger*, 343 N.C. 93, 96 (1996). Consistent with these

principles, "[t]he state has a *greater* duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution." *State v. Fincher*, 309 N.C. 1, 24 (1983) (Martin, J., concurring in result). Accordingly, our Court "shall" protect "[t]he right to written notice of the facts alleged in the petition" in order "to assure due process of law." N.C.G.S. § 7B-2405 (2021); *see also* N.C. Const. art. I, § 23 (identifying the rights of the accused, including "the right to be informed of the accusation").

In delinquency proceedings, notice must "set forth the alleged misconduct with particularity" and identify "the specific issues [the juvenile] must meet." *In re Gault*, 387 U.S. 1, 33–34 (1967). Accordingly, our state statute requires a delinquency petition to contain "a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation." N.C.G.S. § 7B-1802. Under subsection 14-27.33(a), sexual battery occurs, in pertinent part, when a person "for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person . . . [b]y force and against the will of the other person." N.C.G.S. § 14-27.33(a). Because force is an element of sexual battery, it must be pled alongside "facts supporting" J.U.'s use of force. *See* N.C.G.S. § 7B-1802. The element of force "may be established either by actual, physical force or by constructive force in the form of fear, fright, or coercion." *State v. Etheridge*, 319 N.C. 34, 45 (1987). Physical force refers to force that is applied to the body, *State v. Scott*, 323 N.C. 350, 354 (1988), and "is present if the defendant uses force sufficient to overcome any resistance the victim might make[,]" *State v. Brown*, 332 N.C. 262, 267 (1992). "Constructive force is demonstrated by proof of threats or other actions by the defendant which compel the victim's submission to sexual acts." *Etheridge*, 319 N.C. at 45.

Rather than plead the necessary element of force, J.U.'s petition only alleged that J.U. "unlawfully, willfully engage[d] in sexual contact with [B.A.] by touching [B.A.]'s vaginal area, against [B.A.'s] will for the purpose of sexual gratification." J.U.'s petition does not allege the use of physical or constructive force, nor does it allege that J.U. used "threats or other actions . . . which compel[led] [B.A.'s] submission to sexual acts." *Id.* Additionally, the allegation that J.U. "touch[ed] [B.A.]'s vaginal area" does not, standing alone, show that J.U. accomplished this act by any application of physical force or force to B.A.'s body "sufficient to overcome any resistance [B.A.] might make." *Brown*, 332 N.C. at 267.

In short, the indictment does not allege facts supporting the required element of force.

Furthermore, while the petition alleges that J.U. acted "against [B.A.'s] will," acting against the will of the victim and acting with force are not synonymous, and the law draws a distinction between both actions. *See State v. Jones*, 304 N.C. 323, 330 (1981) (stating the four elements of first degree sexual offense are: "(1) a sexual act, (2) against the will and without the consent of the victim, (3) using force sufficient to overcome any resistance of the victim, [and] (4) effected through the employment or display of a dangerous or deadly weapon."); *State v. Alston*, 310 N.C. 399, 407 (1984) ("[S]econd degree rape involves vaginal intercourse with the victim both by force and against the victim's will."). Moreover, a petition that only alleges the victim was "touch[ed]" is not sufficient to meet the necessary element of force as required under North Carolina's sexual battery statute. *See* N.C.G.S. § 14-27.33(a). Thus, because J.U.'s petition did not contain "a plain and concise statement . . . asserting facts supporting every element of a criminal offense and the juvenile's commission thereof," his delinquency petition was fatally defective. *See* N.C.G.S. § 7B-1802.

Additionally, while the majority argues that a juvenile petition " 'does not have to state every element of the offense charged' so long as the elements are 'clearly inferable from the facts, duly alleged,' " quoting *State v. Jordan*, 75 N.C. App. 637, 639 (1985), the statutory language of section 7B-1802 and subsection 15A-924(a)(5) are not consistent with this idea. *See* N.C.G.S. §§ 7B-1802, 15A-924(a)(5) (2021). While section 7B-1802 is concerned with the standards for juvenile petitions, subsection 15A-924(a)(5) provides the standard for a criminal indictment. Both statutes use similar language to state that a juvenile petition and criminal indictment require "[a] plain and concise factual statement" that "asserts facts supporting every element" of the offense and "the defendant's [or juvenile's] commission thereof." N.C.G.S. § 15A-924(a)(5); *see also* N.C.G.S. § 7B-1802. These two statutes, both serving similar functions, do not contain any limiting language stating that a failure to "assert[ ] facts supporting every element of a criminal offense," *see* N.C.G.S. § 7B-1802, "is not ground[s] for dismissal of the charges or for reversal of a conviction." *See* N.C.G.S. § 15A-924(a)(6).

In contrast, subsection 15A-924(a)(6) states that a pleading must contain

> [f]or each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law

> alleged therein to have been violated. *Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.*

N.C.G.S. § 15A-924(a)(6) (emphasis added). By including subsection (a)(6), the General Assembly has shown that it knows how to use such language when it intends to. The General Assembly's choice not to include similar language in section 7B-1802 or in subsection 15A-924(a)(5) shows a clear intent by the General Assembly not to excuse the failure to list facts supporting every element of an offense and instead shows that such a failure is grounds for dismissal of the allegations or reversal of an adjudication or a conviction.

It is not this Court's function to usurp the role of the legislature and change the expressed will of the General Assembly or the people of North Carolina. Indeed, this Court "may not rewrite [the General Assembly's] plain instructions because they go further than preferred." *See Sackett*, 2023 WL 3632751, at *30 (Kagan, J., concurring in the judgment). Here, those instructions mandate that "[a] petition in which delinquency is alleged shall contain a plain and concise statement . . . asserting facts supporting every element of a criminal offense." N.C.G.S. § 7B-1802. And because force is a necessary element of sexual battery, a delinquency petition alleging sexual battery must include "facts supporting" the use of force. *See id.*; N.C.G.S. § 14-27.33(a)(1).

While the majority characterizes the pleading requirements listed in section 7B-1802 as "highly technical[ ] [and] archaic[,]" those requirements are more properly characterized as constitutional procedural due process protections. Procedural due process is "a guarantee of fair procedure." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). While state action that deprives a person of " 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*." *Id.* As Justice Frankfurter previously noted, "[t]he history of American freedom is, in no small measure, the history of procedure." *Malinski v. New York*, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring).

In 1967, in *In re Gault*, 387 U.S. 1 (1967), the United States Supreme Court determined that constitutional due process protections applied to juvenile offenders. To ensure that our legal system is fair and just, "[d]ue process of law [acts as] the primary and indispensable foundation of individual freedom." *Id.* at 20. Furthermore, procedural due process serves to "define[ ] the rights of the individual" while also "delimit[ing] the powers which the state may exercise." *Id.* Notably, procedural due

process protections allow courts to pursue the truth by "enhanc[ing] the possibility that truth will emerge from the confrontation of opposing versions [of events] and conflicting data." *Id.* at 21. Thus, while the majority appears to reduce the pleading requirements under section 7B-1802 as only requiring that notice be sufficient "to prepare a defense and to protect . . . [against] double jeopardy," *State v. Oldroyd*, 380 N.C. 613, 618 (2022), due process protections are far broader and relate to all areas of procedural fairness, *see In re Gault*, 387 U.S. at 20.

The statutory framework in section 7B-1500 is consistent with these constitutional principles and requires juvenile delinquency statutes to be "interpreted and construed so as to implement" a set of "purposes and policies." N.C.G.S. § 7B-1500. Importantly, these statutes must be "interpreted and construed":

> (4) To provide uniform procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter.

Id. Although the majority cites section 7B-1500, its opinion glosses over the fourth prong of the statute. But there is no "get-out-of-text-free card[,]" *see West Virginia v. EPA*, 142 S. Ct. at 2641 (Kagan, J., dissenting), and the majority cannot choose to ignore the statutory text in either section 7B-1500 or section 7B-1802.

Because section 7B-1802 requires that a delinquency petition "contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense," N.C.G.S. § 7B-1802, and the petition filed against J.U. failed to include facts supporting the necessary element of force, the adjudication and disposition should be vacated. Until the North Carolina General Assembly changes the law, force is a necessary element of the offense of sexual battery and not merely a technicality that can be inferred from an act against the victim's will.

Justice MORGAN joins in this dissenting opinion.

ERIC MILLER
v.
LG CHEM, LTD., LG CHEM AMERICA, INC., FOGGY BOTTOM VAPES, LLC, CHAD & JACLYNN DABBS D/B/A SWEET TEA'S VAPE LOUNGE, DOE DEFENDANTS 1-10

No. 69A22

Filed 16 June 2023

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 281 N.C. App. 531 (2022), affirming an order entered on 20 April 2020 by Judge Michael J. O'Foghludha in Superior Court, Durham County. Heard in the Supreme Court on 25 April 2023.

Gupta Wessler PLLC, by Deepak Gupta, pro hac vice, and Robert D. Friedman, pro hac vice; and The Paynter Law Firm PLLC, by Sara Willingham, Stuart M. Paynter, Celeste H.G. Boyd, and David D. Larson Jr., for plaintiff-appellant.

Lewis Brisbois Bisgaard & Smith LLP, by Christopher J. Derrenbacher and Wendy S. Dowse, pro hac vice, for defendants-appellees LG Chem, Ltd. and LG Chem America, Inc.

Abrams & Abrams, P.A., by Noah Abrams; Miller Law Group, by W. Stacy Miller II; and Schwaba Law Firm, by Andrew J. Schwaba for North Carolina Advocates for Justice, amicus curiae.

PER CURIAM.

Plaintiff Eric Miller appealed from a divided decision of the Court of Appeals which affirmed the trial court's order dismissing plaintiff's claims against Defendants LG Chem, Ltd. and LG Chem America, Inc. for lack of personal jurisdiction.

The trial court entered that dismissal order without ruling on plaintiff's motions to compel. Those motions sought responses to multiple discovery requests concerning the LG defendants' contacts with North Carolina.

On this issue, the Court of Appeals majority held that plaintiff "did not allege facts to support assertion of jurisdiction over LG Chem or LG America" and, therefore, further "jurisdictional discovery was not warranted." *Miller v. LG Chem, Ltd.*, 281 N.C. App. 531, 540 (2022). The

dissent asserted that the court should "remand the matter to the trial court to consider whether further jurisdictional discovery is warranted" in light of *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021). *Miller*, 281 N.C. App. at 555 (Inman, J., dissenting).

The Supreme Court of the United States decided the *Ford* case after the trial court entered its order. The decision clarified the proper standard for the "relating to" prong of the specific personal jurisdiction analysis employed by the trial court in this case. *Ford*, 141 S. Ct. at 1026–28.

The decision to permit jurisdictional discovery is left to the sound discretion of the trial court. *Azure Dolphin, LLC v. Barton*, No. 16 CVS 7622, 2017 NCBC 88, ¶ 29 (N.C. Super. Ct. Oct. 2, 2017), *aff'd*, 371 N.C. 579 (2018). To engage in meaningful appellate review of this discretionary decision, we must be confident that the trial court applied the appropriate legal standard in the exercise of that discretion. *See, e.g.*, *State v. Campbell*, 369 N.C. 599, 604 (2017). Because the trial court did not provide any reasons for the implied denial of plaintiff's requests for further jurisdictional discovery, we cannot be certain that the court applied an analysis consistent with *Ford*. Moreover, it is possible that additional discovery would lead the trial court to make new or additional findings of fact that could bear on the court's jurisdictional analysis and our appellate review.

We therefore reverse the decision of the Court of Appeals and remand this matter to the Court of Appeals with instructions to vacate the trial court's order and remand to the trial court for reconsideration of the plaintiff's discovery motions in light of *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021) and this Court's recent precedent in *Schaeffer v. SingleCare Holdings, LLC*, 384 N.C. 102 (2023); *Toshiba Glob. Commerce Sols., Inc. v. Smart & Final Stores LLC*, 381 N.C. 692 (2022); and *Mucha v. Wagner*, 378 N.C. 167 (2021).

REVERSED AND REMANDED.

POTTS v. KEL, LLC

[384 N.C. 634 (2023)]

W. AVALON POTTS, DERIVATIVELY ON BEHALF OF STEEL TUBE, INC., PLAINTIFF
v.
KEL, LLC, AND RIVES & ASSOCIATES, LLC, DEFENDANTS; STEEL TUBE, INC., NOMINAL DEFENDANT; AND LEON L. RIVES, II, DEFENDANT/COUNTERCLAIMANT/THIRD-PARTY PLAINTIFF
v.
AVALON1, LLC, THIRD-PARTY DEFENDANT/COUNTERCLAIMANT

No. 165A22

Filed 16 June 2023

Appeal pursuant to N.C.G.S. § 7A-27(a)(2) from the trial court's order and opinion on defendants' Rule 59 motion for a new trial and Rule 50(b) motion for judgment notwithstanding the verdict entered on 5 November 2021 by Judge Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, in Superior Court, Iredell County, after the case was designated a mandatory complex business case by the Chief Justice pursuant to N.C.G.S. § 7A-45.4(b). Heard in the Supreme Court on 25 April 2023.

Moore & Van Allen, PLLC, by Mark A. Nebrig, John T. Floyd, and Benjamin E. Shook, for plaintiff-appellee W. Avalon Potts, derivatively on behalf of Steel Tube, Inc., and third-party defendant-appellee Avalon1, LLC.

Tuggle Duggins P.A., by Richard W. Andrews, Jeffrey S. Southerland, and Daniel D. Stratton, for defendant-appellants Rives & Associates, LLC, and Leon L. Rives II.

No brief filed for defendant-appellee KEL, LLC.

PER CURIAM.

For the reasons stated in the trial court's 5 November 2021 order and opinion, we affirm the denial of defendants' motion for a new trial and motion for judgment notwithstanding the verdict.

AFFIRMED.[1]

1. The order and opinion of the North Carolina Business Court, 2021 NCBC 72, is available at https://www.nccourts.gov/assets/documents/opinions/2021%20NCBC%2072.pdf.

SPROUSE v. MARY B. TURNER TRUCKING CO., LLC

[384 N.C. 635 (2023)]

DONNA SPLAWN SPROUSE, EMPLOYEE
v.
MARY B. TURNER TRUCKING COMPANY, LLC, EMPLOYER, AND
ACCIDENT FUND GENERAL INSURANCE COMPANY, CARRIER

No. 51A22

Filed 16 June 2023

Workers' Compensation—written notice of injury to employer—delayed treatment—causal relation of injury—sufficiency of evidence

The Industrial Commission properly entered an opinion and award in favor of plaintiff, who, as an employee of a trucking company along with her husband, sustained spinal injuries in a work-related tractor-trailer accident in which her husband was also injured. Competent evidence, including expert testimony from plaintiff's spinal neurosurgeon, supported the Commission's findings of fact, which in turn supported its conclusions of law that: plaintiff's injury was causally related to the accident despite having some pre-existing medical conditions; that, although plaintiff filed an immediate report of the accident itself and her husband's injury, she had a reasonable excuse for delaying written notice of her own injury for a year and a half and her employer was not prejudiced by the delay; and that plaintiff was temporarily totally disabled and unable to work as of a particular date for a specified number of months.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 281 N.C. App. 372 (2022), reversing and remanding an opinion and award by the North Carolina Industrial Commission filed on 10 September 2019. Heard in the Supreme Court on 14 March 2023.

Roberts Law Firm, P.A., by Scott W. Roberts and D. Brad Collins, for plaintiff-appellant.

Holder Padgett Littlejohn & Prickett, by Laura L. Carter, for defendant-appellees.

Lennon Camak & Bertics, PLLC, by Michael W. Bertics; and Jay Gervasi, P.A., by Jay A. Gervasi, Jr., for North Carolina Advocates for Justice, amicus curiae.

MORGAN, Justice.

This appeal concerns an opinion and award issued by the North Carolina Industrial Commission (the Commission) in favor of plaintiff following a tractor-trailer accident on 24 September 2016 in which both plaintiff and her husband, who were employees of the Mary B. Turner Trucking Company, sustained injury. Immediately after the accident, plaintiff provided notice to the employer and its insurance carrier of the accident itself and of her husband's injury, but did not report any injury to herself. On appeal, defendants challenge whether the record contained competent evidence from which the Commission could have reached its conclusions that plaintiff's own injury was causally related to the 24 September 2016 accident, that plaintiff had a reasonable excuse for not providing written notice of her own injury to defendants until 2018, that defendants were not prejudiced by plaintiff's delay in providing this written notice to them, and that plaintiff was totally disabled from 28 September 2017 until 21 April 2018 as a result of her injury. This Court recognizes that the Commission is the "sole judge of the credibility of the witnesses and weight to be given their testimony." *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 433–34 (1965), and that "[t]he appellate court does not retry the facts." *Morrison v. Burlington Indus.*, 304 N.C. 1, 6 (1981). Rather, the reviewing court "merely determines from the proceedings before the Commission whether sufficient competent evidence exists to support its findings of fact." *Id.* Just as in each of these cited cases, the Commission's findings of fact in the present matter were supported by competent evidence and its conclusions of law were supported by the findings of fact. As a result, the findings of fact of this specialized agency should have been accorded proper deference and the agency's decision should not have been disturbed by the lower appellate court. Consequently, we reverse the decision of the Court of Appeals and reinstate the opinion and award filed by the Commission on 10 September 2019.

I. Procedural and Factual Background

Plaintiff and her husband, John Sprouse, were both employed as long-haul tractor-trailer drivers by Mary B. Turner Trucking Company (defendant-employer) in September 2016. On 24 September 2016, plaintiff was operating a tractor-trailer for defendant-employer in a westerly direction on Interstate 40 in Tennessee when the front right tire of the vehicle exploded. Consequentially, the tractor-trailer jerked to the right and crashed into an embankment on the side of the thoroughfare. Although the cab of the vehicle remained upright, the trailer which

it was pulling was upended by the force of the incident. The collision thrusted plaintiff's head severely enough that her eyeglasses and headset were flung from her head. On the day of the wreck, plaintiff communicated with defendant-employer and verbally informed the company of the accident. Plaintiff's husband, who was also present in the vehicle at the time of the accident, sustained foot and shoulder injuries which were immediately reported to the Accident Fund General Insurance Company (defendant-carrier), and subsequently accepted by the insurer as compensable.

Although plaintiff was "really sore and stiff" in the immediate aftermath of the 24 September 2016 accident, she did not seek medical attention for herself right away because she was "more focused" on returning her husband to their home area in North Carolina since he did not want to be treated by a doctor in Tennessee. However, two days after the accident, plaintiff presented herself to her primary care provider Emily Gantt, ANP-C[1] at Shelby Medical Associates upon experiencing soreness and muscle spasms. Gantt diagnosed plaintiff with low back and neck pain arising from the 24 September 2016 tractor-trailer accident in which plaintiff had been involved. The nurse practitioner prescribed an anti-inflammatory medication and muscle relaxer for plaintiff. Plaintiff had a history of neck pain, headaches, and intermittent sciatica resulting from an earlier automobile accident for which she had received treatment, but never missed significant time from work, prior to September 2016. On 13 October 2016, plaintiff returned to ANP-C Gantt and indicated to the nurse practitioner that there had been some improvement in plaintiff's condition. Between 26 January 2017 and 18 May 2017, plaintiff made three additional visits to her primary care provider Gantt concerning issues unrelated to the two vehicular accidents in which plaintiff had been involved, and plaintiff did not relate to Gantt during any of these three additional visits that plaintiff was feeling any lingering neck or back pain. However, plaintiff's condition deteriorated to a point where she had begun dragging her right foot as a result of pain emanating from her neck through her shoulders and down her right leg into her right foot. Plaintiff testified before the Commission that she had assumed at the time that this pain was not related to the tractor-trailer accident but was associated with her history of sciatica.

In January 2017, both plaintiff and her husband returned to work for defendant-employer. However, by 28 September 2017, plaintiff had developed weakness in her arms and a tingling sensation in her fingertips. She

1. Adult Nurse Practitioner—Certified.

returned to see ANP-C Gantt on that date, reporting "a lot of pain in her cervical and lumbar spine." At this medical appointment, plaintiff was diagnosed with cervical pain and acute left lumbar radiculopathy, after which plaintiff was referred for an MRI[2] of her lumbar and cervical spine. Following her appointment with Gantt, plaintiff ceased working and filed for short-term and long-term disability. On 29 November 2017, plaintiff returned to the nurse practitioner Gantt and reported cervical pain and lumbar spine pain radiating into plaintiff's right buttock and down her right leg. An MRI conducted on 7 December 2017 showed that plaintiff had "moderate to severe spinal stenosis at L4-5, and mild to moderate spinal stenosis at L3-4." On 14 December 2017, after plaintiff reported that her leg had given way which had led her to fall twice since her previous visit to ANP-C Gantt, plaintiff's primary care provider referred plaintiff to Matthew J. McGirt, M.D., an expert in spinal neurosurgery who practiced at Carolina Neurosurgery & Spine Associates in Charlotte, North Carolina.

Plaintiff first presented herself to Dr. McGirt on 27 December 2017, reporting "a chief complaint of back, buttock, and radiating left leg pain." Dr. McGirt noted that plaintiff's physical examination was "very concerning for cervical myelopathy" and recommended an MRI of plaintiff's cervical spine, suspecting cervical stenosis. The spinal neurosurgeon also recommended an epidural steroid injection for plaintiff's back pain. Plaintiff's cervical MRI study, conducted on 8 January 2018, revealed "focal spinal cord signal abnormality," a "large central disc extrusion," and "moderate-to-severe bilateral neural foraminal stenosis" at the C5-C6 level. The diagnostic study also showed a "[l]arge left paracentral disc extrusion" and "mild right and severe left neural foraminal stenosis" at the C6-C7 level. The radiologist's interpretation stated that the "focal cord signal abnormality . . . suggest[ed] edema and/or myelomalcia." On 10 January 2018, when plaintiff returned to Dr. McGirt in order to discuss plaintiff's MRI results, the physician observed that plaintiff "definitely ha[d] myelopathy with weakness in her hands[,] numbness in her hands[,] dropping things[,] and significant gait abnormalities[,] all which progressed over the last year." Dr. McGirt recommended a two-level anterior cervical discectomy and fusion (ACDF) from C5 to C7, explaining that without this surgery, plaintiff's condition was likely to worsen due to the degree of severity to which plaintiff's spinal cord had been pinched.

On 8 February 2018, plaintiff, through counsel, filed a Form 18 Notice of Accident to Employer, indicating that she had been injured

2. A medical diagnostic technique known as magnetic resonance imaging.

as a result of her accident on 24 September 2016. On 12 February 2018, the spinal neurosurgeon McGirt performed an ACDF on plaintiff, during which he removed "two large herniated discs which had herniated back and compressed the spinal cord" and "then rebuilt that by putting in two cages and some screws and a plate to hold that together for the two-level fusion." On 20 February 2018, plaintiff submitted a post-surgical claim for her asserted work injury to defendant-carrier. Plaintiff provided a recorded statement and told the insurance claims adjuster, Donshe Usher of Third Coast Underwriters, that plaintiff did not report a workers' compensation injury immediately following the 24 September 2016 accident because "[she] didn't think [she] was hurt that bad" and had assumed that her claim would be "dropped" as a result of her medical history. Usher had also been the insurance claims adjuster for the insurance claim of plaintiff's husband which arose out of the 24 September 2016 accident and, when plaintiff mentioned her husband's claim during plaintiff's recorded statement, Usher stated that "if you're going to talk about your John I'm going to have to disconnect the call." The audio portion of the interview call between insurance claims adjuster Usher and plaintiff was soon disconnected, and Usher filed a Form 61 Denial of Workers' Compensation Claim on the same day.

On 17 April 2018, plaintiff returned to Dr. McGirt for a follow-up visit after Dr. McGirt's performance of plaintiff's ACDF surgical procedure. Plaintiff reported that she was "doing extremely well" at this time and was "very pleased with her early outcome." Plaintiff reported no neck pain and informed Dr. McGirt that she felt stronger. Dr. McGirt released plaintiff "to return to work without restrictions the next week." On 21 April 2018, approximately two months after her surgery, plaintiff returned to work with defendant-employer. Plaintiff was last treated at Carolina Neurosurgery & Spine Associates on 11 July 2018 for her final post-operative follow-up visit and was discharged to consult with a physiatrist for an evaluation of her "left lower extremity radiculopathy" and "left hand numbness."

On 22 May 2019, Deputy Industrial Commissioner A.W. Bruce filed an opinion and award in favor of plaintiff after reviewing plaintiff's claim. Defendants appealed. After hearing the parties' arguments on 15 October 2019, the Full Commission entered an opinion and award affirming Deputy Commissioner Bruce's decision for plaintiff based on the record of the proceedings before Deputy Commissioner Bruce. The record included the deposition transcripts of both Dr. McGirt and the ANP-C Gantt, the Form 44 Application for Review, and the briefs and arguments of the parties. Among its findings of fact, the Industrial Commission included the following:

21. At his deposition, Dr. McGirt testified that the symptoms documented in Plaintiff's medical records prior to September 24, 2016, were different from the neurological dysfunction and loss of function (i.e. "weaknesses and numbness") for which he treated Plaintiff. Dr. McGirt further opined that it was more likely than not that the September 24, 2016 tractor trailer wreck caused the two levels of herniated discs in Plaintiff's spine and that the herniations necessitated the surgery he performed. Dr. McGirt also testified Plaintiff would have been unable to work from September 28, 2017, when Plaintiff began experiencing numbness and weakness. Dr. McGirt released Plaintiff to return to work without restrictions following her April 17, 2018 appointment.

22. According to Dr. McGirt, Plaintiff was "pretty tough because . . . she had some pretty darn significant weakness that she was not coming in and screaming nor did we have a long drawn out workers [sic] comp conversation nor a causation conversation." Dr. McGirt further testified that "she didn't realize that she had a spinal cord issue" and that such a delay in symptoms is not "out of the realm of what we typically see in spinal cord compression."

23. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff sustained an injury by accident arising out of and in the course of her employment with Defendant-Employer when she was injured in the wreck of September 24, 2016. The Full Commission further finds that Defendant-Employer had actual notice of Plaintiff's September 24, 2016 injury by accident on or about September 24, 2016, when Plaintiff reported the wreck to the Defendant-Employer, and that Plaintiff had a reasonable excuse for the delay in providing written notice of her accident to Defendant-Employer as she did not reasonably know of the nature or seriousness of her injury immediately following the accident. The Full Commission further finds that Defendants failed to show they were prejudiced by any delay in the notice of Plaintiff's accident.

> 24. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds the medical treatment Plaintiff received from Dr. McGirt was reasonable and necessary to effect a cure, give relief, and lessen the period of disability from the cervical spine injury Plaintiff sustained on September 24, 2016.
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> 25. Based upon the preponderance of the evidence in view of the entire record, the Full Commission finds that Plaintiff was unable to work from September 28, 2017 until April 21, 2018, the date she returned to work for Defendants.

From its findings of fact, the Commission made, *inter alia*, the following conclusions of law:

> 2. . . . [T]he greater weight of the credible evidence establishes that Plaintiff's cervical spine injury was caused by Plaintiff's September 24, 2016 work accident. N.C. Gen. Stat. § 97-2(6) (2019).
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> 4. . . . Plaintiff had a reasonable excuse for not providing written notice within 30 days because Plaintiff communicated with her employer on the date of the accident and because she did not reasonably know of the nature or seriousness of her injury immediately following the accident. . . .
>
> 5. . . . Defendants have failed to show prejudice resulting from the delay in receiving written notice because Defendant-Employer had actual, immediate notice of Plaintiff's accident on the day of the accident. The actual notice provided to Defendant-Employer allowed ample opportunity to investigate Plaintiff's condition following the violent truck accident and direct Plaintiff's medical care. Thus, Defendants were not prejudiced by the delay in receiving written notice. Because Plaintiff has shown a "reasonable excuse" for not providing written notice of her accident to Defendants within 30 days, and because the evidence of record fails to show Defendants were prejudiced by not receiving written notice within 30

> days, Plaintiff's claim is not barred pursuant to N.C. Gen. Stat. § 97-22 (2019).
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> 6. . . . Dr. McGirt opined that Plaintiff was unable to work from September 27, 2017 to April 20, 2018, which prevented her from working in her job as a long-haul tractor trailer driver or any other employment. Plaintiff was temporarily totally disabled from September 28, 2017 until April 21, 2018.

Based upon the abovementioned findings of fact and conclusions of law, along with the Commission's other findings and conclusions, and the parties' stipulations, the Commission approved plaintiff's claim and issued an award in her favor. Defendants filed a timely notice of appeal.

In an opinion filed on 18 January 2022, *Sprouse v. Turner Trucking Co.*, 281 N.C. App. 372 (2022), a divided panel of the Court of Appeals reversed and remanded the Commission's opinion and award on the grounds that: (1) the Commission's conclusion of law that plaintiff's condition was causally related to the 24 September 2016 accident was unsupported by the Commission's findings of fact; (2) plaintiff had failed to provide a reasonable excuse for failing to timely notify defendants of her injury and also failed to demonstrate that defendants were not prejudiced by plaintiff's delay in reporting her injury; and (3) undisputed facts showed that plaintiff was only disabled from 10 January 2018 to 21 April 2018. *Id.* at 381. In the dissenting judge's view, the majority misapplied the applicable standard of review and improperly reweighed the evidence in favor of defendants in order to reach its decision. *Id.* at 382 (Jackson, J., dissenting). Plaintiff filed a timely notice of appeal to this Court pursuant to North Carolina General Statute § 7A-30(2) on the basis of the dissent.

II. Analysis

The issues before this Court on appeal are whether, in determining plaintiff's claim, the Commission erred by concluding that: (1) plaintiff's condition was causally related to the 2016 accident; (2) plaintiff had a reasonable excuse for her delay in providing written notice to defendants of her injury which resulted from the 24 September 2016 accident and this delayed notice did not prejudice defendants; and (3) plaintiff was disabled from 28 September 2017 until 21 April 2018.

The North Carolina Industrial Commission is the fact-finding body under the Workers' Compensation Act. *See*, *e.g.*, *Brewer v. Powers Trucking Co.*, 256 N.C. 175, 182 (1962). As the finder of fact, the

Commission "is the sole judge of the credibility of the witnesses and the weight to be given their testimony." *Anderson*, 265 N.C. at 433–34. An appellate court "does not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains *any* evidence tending to support the finding." *Id.* at 434 (emphasis added); *see also* N.C.G.S. § 97-86 (2021) ("The award of the Industrial Commission . . . shall be conclusive and binding as to all questions of fact. . . ."). In this regard, the state appellate courts are limited when reviewing opinions and awards issued by the Commission to determinations of: (1) whether the Commission's findings of fact are supported by competent evidence, and (2) whether the Commission's conclusions of law are justified by its findings of fact. *See, e.g.*, *Clark v. Wal-Mart*, 360 N.C. 41, 43 (2005). Finally, "[t]he evidence tending to support plaintiff's claim is to be viewed in the light most favorable to plaintiff, and plaintiff is entitled to the benefit of every reasonable inference to be drawn from the evidence." *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 115 (2000) (quoting *Adams v. AVX Corp.*, 349 N.C. 676, 681 (1998)).

At each stage of its analysis in the present case, the Court of Appeals majority significantly departed from these well-established principles of appellate review by making its own credibility determinations, viewing the evidence in a light which was not most favorable to plaintiff, and usurping the Commission's role as factfinder in this workers' compensation matter. Conversely, in applying here the standards governing appellate review which this Court has routinely recognized and utilized, we determine that the Commission's findings of fact were supported by competent evidence and that these findings, in turn, justified the agency's conclusions of law. As an appellate court, our duty goes no further. *See, e.g.*, *Cunningham v. Goodyear Tire & Rubber Co.*, 381 N.C. 10, 16 (2022). As a result, we reverse the lower appellate court's determinations of error and fully reinstate the Commission's opinion and award.

a. Causal Relation

Under the Workers' Compensation Act, "an 'injury' is compensable when it is (1) by accident, (2) arising out of employment, and (3) in the course of employment." *Wilkes v. City of Greenville*, 369 N.C. 730, 737 (2017) (citing N.C.G.S. § 97-2(6) (2015)). The claimant in a workers' compensation case bears the burden of initially proving each element of compensability, including a causal relationship between her injury and a work-related incident. *Whitfield v. Lab'y Corp. of Am.*, 158 N.C. App. 341, 350 (2003). To establish sufficient causation when complicated medical questions are involved, expert testimony that meets "the

reasonable degree of medical certainty standard necessary to establish a causal link" must be presented. *Holley v. ACTS, Inc.*, 357 N.C. 228, 234 (2003). This evidence "must be such as to take the case out of the realm of conjecture and remote possibility." *Gilmore v. Hoke Cnty. Bd. of Educ.*, 222 N.C. 358, 365 (1942). Furthermore, "where the exact nature and probable genesis of a particular type of injury involves complicated medical questions far removed from the ordinary experience and knowledge of laymen, only an expert can give competent opinion evidence as to the cause of the injury." *Click v. Pilot Freight Carriers, Inc.*, 300 N.C. 164, 167 (1980). Nonetheless, because the Commission "is the sole judge of the credibility of the witnesses and the weight to be given to their testimony," it may "accept or reject the testimony of a witness solely on the basis of whether it believes the witness or not." *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593, 595 (1982).

In the instant case, the Commission concluded that plaintiff's injury—specifically, the compression of her spinal cord as the result of two large disc herniations—resulted from the 24 September 2016 accident on the basis of spinal neurosurgeon McGirt's testimony that it would "take a pretty good force" to produce such an injury and that this accident was the "most sizable injury" in plaintiff's recent history. Consequently, the medical doctor rendered his conclusion that it was "more likely than not that [the 24 September 2016 accident] caused and contributed to some degree to that cervical disease." Dr. McGirt also concluded, to a reasonable degree of medical certainty, that the 24 September 2016 accident was a proximate cause in plaintiff's development of the two herniated discs in her cervical spine and that the crash was one of the reasons, or a proximate cause, necessitating surgical intervention. In response to cross-examination by defense counsel, Dr. McGirt specifically testified that plaintiff's history of back, neck, and limb pain did not influence his expert opinion on the cause of plaintiff's injury at issue because "pain syndrome [is] very different than what [Dr. McGirt] was treating which was neurological dysfunction and loss of function." Finally, the spinal neurosurgeon testified that this type of spinal cord injury often takes one to two years to become symptomatic. Although ANP-C Gantt also testified in this workers' compensation case, Dr. McGirt was the only witness who was tendered as a medical expert in this matter.

Because the testimony of the spinal neurosurgeon McGirt was the only expert testimony presented regarding the areas which we identified in *Click* as "the exact nature and probable genesis" of plaintiff's injury which "involves complicated medical questions," then Dr. McGirt's testimony obviously constituted the only "competent opinion evidence as to

the cause of the injury." 300 N.C. at 167. This sole expert testimony, which included the only competent opinion evidence from an expert here, directly supported the Commission's Finding of Fact 23 that plaintiff's injury arose out of and in the course of her employment with defendant-employer as a result of the accident which occurred on 24 September 2016. In turn, this finding supported the Commission's conclusion of law that "the greater weight of the credible evidence establishes that Plaintiff's cervical spine injury was caused by Plaintiff's September 24, 2016 work accident." Because *some* competent evidence—indeed, the *only* competent opinion evidence provided at plaintiff's hearing on the issue of causation—supported the Commission's findings, the Court of Appeals was constrained to affirm the agency's determinations on this factual issue. *See Anderson*, 265 N.C. at 434.

Instead, the lower appellate court decided that uncontested facts presented to the Commission established that plaintiff's "chronic medical conditions" existed prior to the 24 September 2016 accident and that the Commission therefore erred by concluding that plaintiff's injury was causally related to her work accident. *Sprouse*, 281 N.C. App. at 379. The Court of Appeals reached this outcome primarily based on the documented history of plaintiff's intermittent sciatica addressed in her medical records to which both parties stipulated. *Id.* at 378–79. However, a claimant's medical history, even though it may contain relevant diagnoses that predate the claimant's work-related incident, is not dispositive of whether a particular injury—in this case, plaintiff's two herniated discs and the resulting compression to her spinal cord—may be causally related to a workplace accident. A claimant's pre-existing medical condition cannot properly be deemed to constitute a complete bar to a successful workers' compensation claim when a plaintiff provides evidence to support the Commission's conclusion that a work-related accident has caused a new injury that aggravated or accelerated the individual's pre-existing condition. *See Anderson v. Nw. Motor Co.*, 233 N.C. 372, 374 (1951); *Morrison*, 304 N.C. at 18.

The appellate courts may not abandon the Commission's factual determinations when such determinations are supported by any competent evidence. *Anderson v. Lincoln Constr. Co.*, 265 N.C. at 434; *see* N.C.G.S. § 97-86 (2021). Consistent with our pronouncement in *Brewer*, the lower appellate court was not at liberty here to reweigh the evidence in the record by placing primary emphasis on plaintiff's pre-existing intermittent sciatica or any other matters in her medical history where there was "any evidence tending to support the [agency's] finding." *Anderson*, 265 N.C. at 434. Here, spinal neurosurgeon McGirt, as the only

expert witness in this case, supplied testimony which constituted evidence tending to support the Commission's finding that plaintiff's injury was causally related to her 24 September 2016 accident. Therefore, the Commission's Finding of Fact 23 was appropriately entered and the Commission's determination of medical causation in favor of plaintiff was properly reached.

b. Timely Notice

Under section 97-22, an injured worker is required to give written notice of an accident to her employer within thirty days of the accident's occurrence or she may be barred from receiving compensation under the North Carolina Workers' Compensation Act. N.C.G.S. § 97-22 (2021). However, this statutory requirement may be waived if the Industrial Commission is satisfied that (1) the plaintiff had a reasonable excuse for not giving such notice, and (2) the employer was not prejudiced thereby. *Id.* A claimant is required to substantiate a reasonable excuse for her failure to comply with the statutory notice requirements. *Jones v. Lowe's Cos.*, 103 N.C. App. 73, 75 (1991). Furthermore, "[s]ection 97-22 gives the Industrial Commission the discretion to determine what is or is not a 'reasonable excuse.' " *Chavis v. TLC Home Health Care*, 172 N.C. App. 366, 377 (2005) (quoting N.C.G.S. § 97-22 ("[U]nless reasonable excuse is made to the satisfaction of the Industrial Commission . . ." (alterations in original) (emphasis omitted))), *app. dismissed*, 360 N.C. 288 (2006). The Court of Appeals has cogently defined "reasonable excuse" to "include a belief that one's employer is already cognizant of the accident" as well as to encompass situations "where the employee does not reasonably know of the nature, seriousness, or probable compensable character of his injury and delays notification only until he reasonably knows." *Jones*, 103 N.C. App. at 75 (extraneity omitted); *see also Lawton v. County of Durham*, 85 N.C. App. 589, 592–93 (1987).

In the present case, the Commission found both that (1) defendant-employer had actual notice of the 24 September 2016 accident because plaintiff verbally reported the wreck to defendant-employer on the date of the accident and (2) plaintiff had a reasonable excuse for the delay in providing written notice to defendant-employer because she did not reasonably know of the nature or seriousness of her injury immediately following the accident. As a result, the Commission concluded that plaintiff had a reasonable excuse for not providing written notice of the accident to defendant-employer within thirty days of the accident's occurrence because she had "communicated with her employer on the date of the accident and because she did not reasonably know of the nature or seriousness of her injury immediately following the

accident." It is noteworthy that the Commission's finding that plaintiff had communicated with defendant-employer on the date of the accident to inform the trucking company of the crash was not challenged on appeal and is therefore binding upon our appellate review. In addition, the Commission's finding that plaintiff lacked reasonable knowledge of the nature and seriousness of her resulting injury was supported by competent evidence because the spinal neurosurgeon McGirt testified that plaintiff "didn't realize that she had a spinal cord issue" at her previous appointments and because plaintiff told defendant-carrier that she did not believe that she "was hurt that bad" immediately following the accident. Because this finding by the Commission was supported by competent evidence, it is likewise binding upon our appellate review. These findings of fact adequately supported the Commission's conclusion of law that plaintiff had established reasonable excuse for her failure to provide timely written notice of the accident in accordance with N.C.G.S. § 97-22.

Even where a worker can show such reasonable excuse, nonetheless her claim will still be barred if her employer can show that it was prejudiced by the lack of written notice provided within the statutory time period. *Yingling v. Bank of Am.*, 225 N.C. App. 820, 832 (2013). While N.C.G.S. § 97-22 itself does not specify which party in a workers' compensation action bears the burden of proof in establishing whether a defendant-employer was prejudiced by a plaintiff claimant's failure to comply with this statutory written notice requirement, the Court of Appeals has heretofore plausibly opined that the defendant-employer bears the burden of showing prejudice once a claimant has satisfactorily provided a reasonable excuse for her failure to provide written notice of the accident in which she was injured to the defendant-employer within thirty days of the accident's occurrence. *See*, *e.g.*, *Yingling*, 225 N.C. App. at 832; *Chavis*, 172 N.C. App. at 378; *Lakey v. U.S. Airways*, *Inc.*, 155 N.C. App. 169, 172–73 (2002), *disc. rev. denied*, 357 N.C. 251 (2003); *Peagler v. Tyson Foods*, *Inc.*, 138 N.C. App. 593, 604 (2000).[3] Because the purpose of the statutory written notice requirement is two-fold—to allow the employer to "provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury" as well as to "facilitate[ ] the earliest possible investigation of the circumstances

3. This assignment of the burden of proof conforms to N.C.G.S. § 97-23, which expressly assigns the burden of proving prejudice to employer-defendants on the issue of inadequate or defective notice. N.C.G.S. § 97-23 (2021) ("No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby. . . ."); *see also Gregory v. W.A. Brown & Sons*, 363 N.C. 750, 757 (2010) (discussing section 97-23).

surrounding the injury"—an employer may show that it was prejudiced either by proving that the employer was denied the ability to direct a plaintiff's appropriate medical care or that the employer was unable to investigate the circumstances surrounding the plaintiff's injury. *Booker v. Duke Med. Ctr.*, 297 N.C. 458, 481 (1979).[4]

The Commission's conclusion in the instant case that defendant-employer was not prejudiced by plaintiff's failure to comply with the statutory written notice requirement is supported by the agency's findings which we deem to be consistent with our stated view in this area of law. The purposes of the notice requirement have been determined to be vindicated despite lack of timely written notice when a plaintiff received appropriate medical care and the defendant-employer "had immediate, actual knowledge of the accident and failed to further investigate the circumstances surrounding the accident at that time." *Yingling*, 225 N.C. App. at 834 (citation omitted); *see also Gregory v. W.A. Brown & Sons*, 363 N.C. 750, 759–62 (2010) (contemplating that "[f]indings of fact to the effect that [the] purposes of the notice requirement were vindicated despite the lack of timely written notice of an employee's accident could . . . support a legal conclusion that the employer was not prejudiced by the delay in written notice."). In keeping with our quoted observation in *Gregory* while approvingly referencing *Yingling*, we hold in the current case that the dual purposes of the notice requirement were vindicated despite the lack of timely written notice because: (1) plaintiff provided defendant-employer with actual notice of the 24 September 2016 accident on the same day that the accident occurred, (2) defendants failed to further investigate the circumstances surrounding the accident at the time, (3) plaintiff received proper and appropriate medical care for her injury which considerably improved her condition, and (4) defendants failed to show that they were otherwise prejudiced by any delay in receiving written notice of plaintiff's injury.

First, the Commission in this case found as fact that defendant-employer had received actual notice from plaintiff of the 24 September 2016 accident on the date of the wreck. This finding of fact was not challenged on appeal and is therefore binding on review. From its findings, the Commission concluded that defendants were not prejudiced by the lack of timely written notice because actual notice allowed ample

4. We disavow any indication by the Court of Appeals that an injured worker's failure to provide written notice to the defendant-employer for a period of at least 471 days is per se prejudicial and does not require the presentation of any additional evidence in order to show whether the defendant-employer was actually prejudiced by the failure to provide written notice within the thirty-day statutory time period.

opportunity for defendants to investigate plaintiff's condition following the accident and to direct plaintiff's medical treatment. Furthermore, defendants did not present any evidence which tended to suggest that they were unable to investigate the 24 September 2016 accident, the crash's attendant circumstances, or plaintiff's condition following the accident. Of course, given that defendants were able to sufficiently investigate the accident in order to satisfactorily conclude that the claim submitted by plaintiff's husband was compensable, then it is unassailable that a recognized purpose of the notice requirement—namely, that defendants be provided with a reasonable opportunity to investigate the circumstances of a work accident from which an employee's injury was alleged to have resulted—was vindicated in this case despite the lack of receipt of statutory written notice of plaintiff's injury.

Second, there was no evidence presented which tended to demonstrate that defendants were prejudiced due to lack of timely written notice of plaintiff's injury which resulted in defendants' inability to direct plaintiff's prompt and proper medical treatment. Defendants contend that the spinal neurosurgeon McGirt forced a course of treatment that may not have been required if plaintiff had received adequate medical treatment from the date of her injury. Although defendants claim that plaintiff's injury was either exacerbated by some delay in her medical treatment or that plaintiff was provided improper or inappropriate medical care which may have worsened her condition, thereby necessitating Dr. McGirt's surgical intervention at a later date, defendants did not offer any evidence to support these contentions. Defendants produced no expert testimony to support their assertions either that plaintiff's course of treatment would have been different, or that surgical intervention could have been avoided in the event that plaintiff had supplied written notice of her injury to them within the prescribed statutory time period. Similarly, defendants presented no expert testimony to support their assertion that Dr. McGirt's surgical intervention may not have been required at all to treat plaintiff's condition. These unsupported assertions pale in the face of the Commission's finding, grounded in competent evidence which was offered in the form of spinal neurosurgeon McGirt's own testimony, that "the medical treatment Plaintiff received from Dr. McGirt was reasonable and necessary to effect a cure, give relief, and lessen the period of disability from the cervical spine injury Plaintiff sustained on September 24, 2016."

Finally, even if defendants were able to demonstrate that they could have facilitated superior medical intervention which might have diagnosed, treated, or otherwise minimized plaintiff's injury in the event

that they had been provided timely written notice as established in N.C.G.S. § 97-22, we are not persuaded that defendants could demonstrate, under the particular facts of the present case, that any right to direct plaintiff's appropriate medical care was denied to them given the fact that defendants refused to accept plaintiff's claim as compensable upon the presentation of the claim. Generally speaking, employers do not have a right to direct medical care for denied claims. *Lauziere v. Stanley Martin Cmtys., LLC*, 271 N.C. App. 220, 224 (2020) ("[W]e have 'long held that the right to direct medical treatment is triggered only when the employer has accepted the claim as compensable.' " (quoting *Yingling*, 225 N.C. App. at 838)), *aff'd per curiam*, 376 N.C. 789 (2021); *see also Kanipe v. Lane Upholstery*, 141 N.C. App. 620, 624 (2000) ("[U]ntil the employer accepts the obligations of its duty, i.e., paying for medical treatment, it should not enjoy the benefits of its right, i.e., directing how that treatment is to be carried out."). Here, defendants denied plaintiff's claim on the grounds, *inter alia*, that her injury was not causally related to the 24 September 2016 accident. Defendants continue to challenge the issue of medical causation before this Court on appeal. Based on this stance, defendants would not have had any right to direct plaintiff's medical care after the 24 September 2016 accident, regardless of whether they had been provided statutory written notice of plaintiff's injury.[5] For these reasons, we hold that the Commission properly found that defendants failed to show any prejudice as the result of plaintiff's failure to provide written notice of her injury within the thirty-day statutory time period.

c. Date of Disability

Under the North Carolina Workers' Compensation Act, disability is defined as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." N.C.G.S. § 97-2(9) (2021). "In workers' compensation cases, a claimant ordinarily has the burden of proving both the existence of his disability and its degree." *Hilliard*, 305 N.C. at 595. In order

5. We do not presume to conclude that there is absolutely no factual scenario in which a defendant to a workers' compensation case may be able to offer evidence tending to demonstrate that a worker received entirely inappropriate or inadequate medical care which aggravated her damages in order to limit its own liability for a worker's injury despite the defendant's failure to accept the worker's injury as compensable in the first instance. We merely apply to this case the general principle that defendants lack the right to direct the course of medical treatment for injuries which they deny as non-compensable and therefore cannot, under such circumstances, prove prejudice on the sole grounds that they may have directed a different course of treatment.

to conclude that a plaintiff is or was disabled, the Industrial Commission must find:

> (1) that plaintiff was incapable after his injury of earning the same wages he had earned before his injury in the same employment, (2) that plaintiff was incapable after his injury of earning the same wages he had earned before his injury in any other employment, and (3) that this individual's incapacity to earn was caused by plaintiff's injury.

Id. (citation omitted). In the present case, the Court of Appeals held that the Commission had erred by concluding that plaintiff was temporarily totally disabled from 28 September 2017 to 21 April 2018 because it wasn't until 10 January 2018 that Dr. McGirt recommended that plaintiff stop work due to her condition. *Sprouse*, 281 N.C. App. at 381. Once again, the lower appellate court reached its conclusion on this issue by abandoning the applicable standard of review and making its own factual determinations instead of merely considering whether the Commission's findings of fact were supported by competent evidence and whether those findings, in turn, supported the Commission's conclusion of law that plaintiff's total disability began on 28 September 2017.

We affirm the Commission's sixth conclusion of law that plaintiff was temporarily totally disabled starting on 28 September 2017 because this conclusion was justified by Finding of Fact 21 that plaintiff would have been unable to work as of 28 September 2017 when she began to experience numbness and weakness in her extremities. Finding of Fact 21 was drawn from spinal neurosurgeon McGirt's testimony that plaintiff should not have been working upon the onset of these symptoms. Specifically, Dr. McGirt testified that plaintiff's disability began on 28 September 2017, when plaintiff noted significant pain in her cervical and lumbar spine which radiated into her neck and arms, created tingling in her fingers, and caused weakness in her arms. At this point, Dr. McGirt rendered his expert testimony that "she should not have been working" and that "[a]ny patient who has that degree of spinal cord compression should not be working." The spinal neurosurgeon further testified that "the standard of care in neurosurgery or orthopedic spine surgery is somebody with severe cervical stenosis from disc herniations should not be allowed to drive those cars or professionally go back to work until they're fixed." Lastly, Dr. McGirt was able to conclude to a reasonable degree of medical certainty that these herniations had occurred during the 24 September 2016 accident, although the onset of plaintiff's disabling symptoms manifested approximately one year later.

Although plaintiff was not formally diagnosed with cervical stenosis and removed from work by Dr. McGirt until 10 January 2018, it was the spinal neurosurgeon's expert opinion that plaintiff was unable to work at the onset of her symptoms in September 2017. This evidence was competent to support the Commission's finding of fact that plaintiff was unable to work beginning on 28 September 2017 which, in turn, justified its conclusion of law that plaintiff's temporary total disability also began on 28 September 2017.

III. Conclusion

Upon the application of the proper standard of review, we determine that the Industrial Commission did not err in its issuance of an opinion and award in favor of plaintiff in this matter. The agency's findings of fact were supported by ample competent evidence and, in turn, its conclusions of law were supported by the findings of fact. Accordingly, we reverse the decision of the Court of Appeals and direct that court to fully reinstate the Commission's opinion and award.

REVERSED.

STATE OF NORTH CAROLINA
v.
CONNOR ORION BRADLEY

No. 105A22

Filed 16 June 2023

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 282 N.C. App. 292 (2022), affirming the judgments entered on 29 July 2020 by Judge James M. Webb in Superior Court, Moore County. Heard in the Supreme Court on 25 April 2023.

Joshua H. Stein, Attorney General, by Robert C. Ennis, Assistant Attorney General, for the State-appellee.

Stephen G. Driggers for defendant-appellant.

PER CURIAM.

In accordance with the highly deferential standard of review which governs an appellate court's consideration of a trial court's probation revocation determination and the relaxed evidentiary parameters which exist in probation revocation hearings, we affirm the Court of Appeals opinion per curiam. In related fashion, we further note that the out-of-court statements of the witness Amber Nicole Gooch[1] provided additional competent evidence from which the trial court could have derived its findings of fact and subsequent conclusions of law. *See State v. Jones*, 382 N.C. 267, 272 (2022) (noting that the "[t]raditional rules of evidence do not apply in probation violation hearings, and the trial court is permitted to use 'substitutes for live testimony, including affidavits, depositions, [and] documentary evidence,' as well as hearsay evidence" (alteration in original) (quoting *Gagnon v. Scarpelli*, 411 U.S. 778, 783 n.5 (1973))); *see also State v. Murchison*, 367 N.C. 461, 464 (2014). We modify the Court of Appeals opinion only to the extent that the lower appellate court may have mistakenly misconstrued Gooch's statements as incompetent evidence upon which the trial court could not and did not rely in entering the trial court's findings. *See Bradley*, 282 N.C. App. at 303 n.3 (Hampson, J., dissenting).[2]

AFFIRMED AS MODIFIED.

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1. The Court of Appeals opinion refers to "Amanda Gooch" as a result of the use of that name by at least one witness who testified at defendant's probation revocation hearing. However, it appears to us that her name is, in fact, Amber Gooch.

2. We acknowledge our receipt of a Motion for Judicial Notice filed by defense counsel on 20 April 2023, asking this Court to take judicial notice of the judgments entered against Gooch by the Superior Court, Moore County, on 19 March 2021. This Court can, of course, consider any determination that has been reached within the state judicial system to the extent that it is relevant to this Court's proceedings. We have considered these judgments to the extent that we have determined that they are relevant.

STATE OF NORTH CAROLINA
v.
MONTEZ GIBBS

No. 402A21

Filed 16 June 2023

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 2021-NCCOA-607 (unpublished), reversing in part a judgment entered on 24 September 2019 by Judge Joshua W. Willey Jr. in Superior Court, New Hanover County. On 1 March 2023, the Supreme Court allowed the State's petition for writ of certiorari as to additional issues. Heard in the Supreme Court on 26 April 2023.

Joshua H. Stein, Attorney General, by Zachary K. Dunn, Assistant Attorney General, for the State-appellant.

Glenn Gerding, Appellate Defender, by Wyatt Orsbon, Assistant Appellate Defender, for defendant-appellee.

PER CURIAM.

Defendant Montez Gibbs was indicted on 14 January 2019 with one count each of trafficking opiates by possession, possession with intent to sell or distribute a Schedule II controlled substance, and possession of drug paraphernalia; and two misdemeanor counts of resisting, delaying, or obstructing a public officer. The charges arose out of an incident that occurred on 7 April 2018 when police officers observed Mr. Gibbs moving in between the buildings of the Hillcrest housing community in Wilmington, North Carolina, and ultimately found a white powdery substance in a backpack he was carrying. At the close of the evidence during the trial, the trial court dismissed one misdemeanor count of resisting, delaying, or obstructing a public officer. Mr. Gibbs was found guilty of the remaining charges. The trial court consolidated the convictions for sentencing and sentenced Mr. Gibbs to an active term of seventy to ninety-three months of imprisonment. He appealed to the Court of Appeals.

In a divided, unpublished opinion, the Court of Appeals reversed the conviction for trafficking by possession of an opiate on the grounds that the trial court abused its discretion in ruling that the State's expert was qualified to testify that fentanyl is an opiate. *State v. Gibbs*, 2021-NCCOA-607, ¶¶ 16–21. The State appealed based on the dissent

which would have held that it was not an abuse of discretion to allow the expert to testify that fentanyl is an opiate. *Id.* at ¶ 35 (Stroud, C.J., dissenting). The dissent also noted that the Court of Appeals recently held that "fentanyl 'does indeed qualify as an opiate' as a matter of statutory interpretation." *Id.* ¶ 42 (quoting *State v. Garrett*, 277 N.C. App. 493, 2021-NCCOA-214, ¶ 16). *Garrett* involved the version of the trafficking statute that was in place in 2016, which did not recognize opioids as a class of controlled substances and listed fentanyl as an opiate. *See* N.C.G.S. § 90-90(2) (2015). With the 2018 amendments in effect at the time of the relevant events at issue in this case, the statute was changed to recognize fentanyl as either an "opiate[ ] or opioid[ ]."[1] *See* N.C.G.S. § 90-90(2) (2019).

The Court of Appeals received supplemental briefing on the impact of *Garrett* on this case but did not decide whether fentanyl was an opiate as a matter of statutory interpretation under the version of the trafficking statute that was in place in 2018, N.C.G.S. § 90-95(h)(4) (2017). The trial court erred in concluding that whether fentanyl is an opiate is a question of fact. Instead, whether fentanyl was an opiate for purposes of the trafficking statute in 2018 is a question of law. Because it is a legal question of statutory interpretation, it was not necessary to have expert testimony to establish whether fentanyl is an opiate and it was not necessary to have what otherwise may have been appropriate discovery by the defense of the basis for the expert's opinion on that question.

We vacate the opinion of the Court of Appeals and remand to that court for consideration of whether fentanyl was an opiate as defined by the statutes in effect at the time of Mr. Gibbs's actions that are the basis for the conviction and sentence in this case.

VACATED AND REMANDED.

Justice BERGER did not participate in the consideration or decision of this case.

1. To be clear, N.C.G.S. § 90-95(h)(4), which prohibits the trafficking of opium and opiates, remained the same between 2016 and the date of Mr. Gibbs's offense.

STATE OF NORTH CAROLINA
v.
CORDERO DEON NEWBORN

No. 330PA21

Filed 16 June 2023

Indictment and Information—possession of a firearm by a felon—charged with other offenses—single indictment—sufficiency of notice

Defendant's indictment for possession of a firearm by a felon, which also charged defendant with two related offenses, was not fatally defective for violating N.C.G.S. § 14-415.1(c) (which requires a separate indictment for possession of a firearm by a felon) and did not deprive the trial court of jurisdiction over that offense because the facts alleged in the indictment were sufficient to put defendant on notice regarding the essential elements of each individual offense and to allow defendant to prepare a defense. The Supreme Court expressly overruled *State v. Wilkins*, 225 N.C. App. 492 (2013), which improperly elevated form over substance when interpreting the requirements of section 14-415.1(c).

Justice MORGAN dissenting.

Justice EARLS joins in this dissenting opinion.

On discretionary review pursuant to N.C.G.S. § 7A-31 of a unanimous decision of the Court of Appeals, 279 N.C. App. 42, 864 S.E.2d 752 (2021), vacating in part a judgment entered on 25 October 2019 by Judge Thomas H. Lock in Superior Court, Haywood County. Heard in the Supreme Court on 26 April 2023.

Joshua H. Stein, Attorney General, by Kristin J. Uicker, Assistant Attorney General, for the State-appellant.

Joseph P. Lattimore for defendant-appellee.

NEWBY, Chief Justice.

In this case we determine whether a single indictment charging defendant with possession of a firearm by a felon and two related

offenses in violation of N.C.G.S. § 14-415.1(c), which requires separate indictments, is fatally defective. The Court of Appeals vacated defendant's conviction for possession of a firearm by a felon because the State failed to obtain a separate indictment for that offense under the unambiguous, mandatory language of N.C.G.S. § 14-415.1(c). This Court's well-established precedent provides, however, that a violation of a mandatory separate indictment provision is not fatally defective. We follow our long-standing principle of substance over form when analyzing the sufficiency of an indictment. Because the indictment here alleged facts to support the essential elements of the crimes with which defendant was charged such that defendant had sufficient notice to prepare his defense, the indictment is valid. Accordingly, we reverse the decision of the Court of Appeals.

On 25 April 2018, while patrolling U.S. Highway 19, Sergeant Ryan Flowers of the Maggie Valley Police Department ran a Division of Motor Vehicles (DMV) record search of defendant's license plate. DMV records revealed that defendant's driver's license had been permanently revoked and that he had four pending counts of misdemeanor driving while license revoked–not impaired revocation. Sergeant Flowers stopped defendant's vehicle. While communicating with defendant and the passenger, Sergeant Flowers smelled marijuana emanating from defendant's vehicle. Sergeant Flowers asked defendant where the marijuana was located in the vehicle; defendant replied that there was none in the vehicle but admitted that he and the passenger had smoked marijuana "a little earlier." Sergeant Flowers also asked defendant if there were any firearms in the vehicle, and defendant responded no.

Based on the smell of marijuana and defendant's admission that he had recently smoked marijuana, Sergeant Flowers decided to search defendant's vehicle and called Sergeant Jeff Mackey for backup. During the search, Sergeant Mackey located a small firearm beneath the passenger seat and arrested the passenger for carrying a concealed weapon in violation of N.C.G.S. § 14-269(a). *See* N.C.G.S. § 14-269(a) (2021). Sergeant Flowers asked defendant if there were other firearms in the vehicle, and defendant stated there were not. The officers' further search of the vehicle, however, revealed a second firearm located between the center console and the driver's seat. Accordingly, Sergeant Flowers arrested defendant for misdemeanor carrying a concealed weapon in violation of N.C.G.S. § 14-269(a). A dispatcher later informed the officers that defendant was a convicted felon.

On 6 August 2018, in a single indictment, defendant was indicted for possession of a firearm by a felon, possession of a firearm with an

altered or removed serial number, and carrying a concealed weapon. Defendant did not challenge the indictment before the trial court. The jury found defendant guilty of all three offenses. Defendant appealed.

On appeal, the Court of Appeals vacated defendant's conviction for possession of a firearm by a felon because the State failed to obtain a separate indictment for that offense in violation of N.C.G.S. § 14-415.1(c). *State v. Newborn*, 279 N.C. App. 42, 47, 864 S.E.2d 752, 757 (2021); *see* N.C.G.S. § 14-415.1(c) (2021). In vacating defendant's conviction, the Court of Appeals relied on its previous decision in *State v. Wilkins*, 225 N.C. App. 492, 737 S.E.2d 791 (2013), in which it held that N.C.G.S. § 14-415.1(c) unambiguously "mandates that a charge of [p]ossession of a [f]irearm by a [f]elon be brought in a separate indictment from charges related to it." *Wilkins*, 225 N.C. App. at 497, 737 S.E.2d at 794. The State, however, urged the Court of Appeals to rely on this Court's decision in *State v. Brice*, 370 N.C. 244, 806 S.E.2d 32 (2017). In that case this Court held that a similar special indictment statute for habitual offender crimes was not jurisdictional in nature, and a failure to obtain a separate indictment did not deprive the trial court of jurisdiction. *Brice*, 370 N.C. at 253, 806 S.E.2d at 38. The Court of Appeals declined to follow *Brice*, reasoning that *Brice* involved a completely different special indictment statute, not the statute at issue in the present case. *Newborn*, 279 N.C. App. at 47, 864 S.E.2d at 757. Instead, the Court of Appeals applied its own precedent from *Wilkins* because that case dealt with the same statute. *Id.* Thus, the Court of Appeals held that "the State's failure to obtain a separate indictment for the offense of possession of a firearm by a felon, as mandated by N.C.G.S. § 14-415.1(c), rendered the indictment fatally defective and invalid as to that charge." *Id.*

The State petitioned this Court for discretionary review to determine whether the Court of Appeals erred by not following this Court's decision in *Brice*. We allowed the State's petition.

This Court reviews the sufficiency of an indictment de novo. *State v. White*, 372 N.C. 248, 250, 827 S.E.2d 80, 82 (2019). Defendant failed to challenge the facial validity of the indictment at the trial court. Defendant argues, however, that because the indictment violates the statutory mandate in N.C.G.S. § 14-415.1(c), it is fatally defective, and thus the trial court lacks subject matter jurisdiction over the offense. It is well-settled that a defendant can raise a claim that the trial court lacked subject matter jurisdiction at any time. *See State v. Campbell*, 368 N.C. 83, 86, 772 S.E.2d 440, 443 (2015). Therefore, we must determine whether the indictment charging defendant with possession of a firearm by a felon, plus two related offenses, is fatally defective under N.C.G.S. § 14-415.1(c), depriving the trial court of jurisdiction.

Section 14-415.1 prohibits felons from possessing or purchasing firearms. N.C.G.S. § 14-415.1(a) (2021). Subsection 14-415.1(c) requires that "[t]he indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section." N.C.G.S. § 14-415.1(c). In other words, when a defendant is charged with possession of a firearm by a felon *in addition to* a separate related offense, such as carrying a concealed weapon, N.C.G.S. § 14-415.1(c) requires that the State obtain a separate indictment for the possession of a firearm by a felon offense.

Generally, the purpose of an indictment is to put the defendant on notice of the crime being charged and to protect the defendant from double jeopardy. *State v. Sturdivant*, 304 N.C. 293, 311, 283 S.E.2d 719, 731 (1981). Therefore, to determine the facial validity of an indictment, "the traditional test" is whether the indictment alleges facts supporting the essential elements of the offense to be charged. *Brice*, 370 N.C. at 249–50, 806 S.E.2d at 36–37; *see also* N.C.G.S. § 15A-924(a)(5) (2021) (mandating that an indictment must include "[a] plain and concise factual statement in each count which . . . asserts facts supporting every element of a criminal offense . . . with sufficient precision clearly to apprise the defendant . . . of the conduct which is the subject of the accusation"). Accordingly, "a defendant can obtain sufficient notice of the exact nature of the charge that has been lodged against him or her through compliance with the traditional [pleading] requirements set out in N.C.G.S. § 15A-924(a)(5) without the necessity for compliance with the separate indictment provisions of N.C.G.S. § [14-415.1(c)]." *Id.* at 253, 806 S.E.2d at 38. Additionally, obtaining a separate indictment under N.C.G.S. § 14-415.1(c) "is not absolutely necessary to ensure the absence of prejudice to defendant." *Id.*

Moreover, it is well-established that a court should not quash an indictment due to a defect concerning a "mere informality" that does not "affect the merits of the case." *State v. Brady*, 237 N.C. 675, 679, 75 S.E.2d 791, 793 (1953). Indeed, this Court opined forty-five years ago in *State v. House*, 295 N.C. 189, 244 S.E.2d 654 (1978), that to quash an indictment because of an informality would "paramount mere form over substance," which this Court explicitly declined to do. *House*, 295 N.C. at 203, 244 S.E.2d at 662. This Court in *House* further explained the principle of substance over form, stating that "provisions which are a mere matter of form, or which are not material, do not affect any substantial right, and do not relate to the essence of the thing to be done . . . are considered to be directory." *Id.* at 203, 244 S.E.2d at 661–62 (quoting 73 Am. Jur. 2d *Statutes* § 19 (1974)). In other words, failure to comply with

statutory requirements regarding the form of an indictment rather than its substance is not prejudicial to a defendant. *See State v. Russell*, 282 N.C. 240, 248, 192 S.E.2d 294, 299 (1972).

This Court's decision in *Brice* held that failure to comply with a separate indictment provision is a mere informality that does not render an indictment fatally defective. *See Brice*, 370 N.C. at 252–53, 806 S.E.2d at 38. In that case, the defendant was indicted for habitual misdemeanor larceny. *Id.* at 244–45, 806 S.E.2d at 33. The defendant challenged the indictment's validity because the form of the indictment failed to comply with the statutory requirements under N.C.G.S. § 15A-928. *Id.* at 245, 806 S.E.2d at 33. Thus, the defendant argued that the indictment was fatally defective and that the trial court lacked jurisdiction over the habitual misdemeanor larceny offense. *Id.*

The statute at issue in *Brice*, N.C.G.S. § 15A-928, governs habitual offenders and prescribes the process by which a prosecutor should present a defendant's previous convictions. It specifically mandates that

> [a]n indictment or information for the offense must be accompanied by a special indictment or information, filed with the principal pleading, charging that the defendant was previously convicted of a specified offense. At the prosecutor's option, the special indictment or information may be incorporated in the principal indictment as a separate count.

N.C.G.S. § 15A-928(b) (2021). After examining the statute's purpose and language, this Court determined that noncompliance with the statute does not constitute a jurisdictional defect. *Brice*, 370 N.C. at 253, 806 S.E.2d at 38. Significantly, this Court explained that "[a]lthough the separate indictment provisions contained in N.C.G.S. § 15A-928 are couched in mandatory terms, that fact, standing alone, does not make them jurisdictional in nature." *Id.* In other words, "noncompliance with the relevant statutory provisions [does not] constitute[ ] a jurisdictional defect" such that the trial court does not have authority over the charge at issue. *Id.* at 252–53, 806 S.E.2d at 38. Therefore, this Court, relying on *House* and its principle of substance over form, held that the statutory requirements were not jurisdictional. *Id.* at 253, 806 S.E.2d at 38. Because the defect did not implicate jurisdictional concerns, nor did it affect the facial validity of the indictment, the defendant was required to raise the statutory indictment issue to the trial court. *Id.* Otherwise, review of that issue was waived. *Id.* Under *Brice*, indictments that fail to comply with mandatory separate indictment statutes are not fatally defective and thus do not deprive the trial court of jurisdiction.

Here, because the indictment includes the offense of possession of a firearm by a felon along with two related offenses, the indictment fails to comply with the mandatory separate indictment provision of N.C.G.S. § 14-415.1(c). Just as in *Brice*, however, that defect is a "mere informality" that does not "affect the merits of the case." *Brady*, 237 N.C. at 679, 75 S.E.2d at 793. Applying the principle of substance over form, it is clear that the indictment here gave defendant sufficient notice of the crimes with which he was being charged such that he was able to prepare his defense. Moreover, the State's failure to obtain a separate indictment for the possession of a firearm by a felon offense did not prejudice defendant because the indictment sufficiently alleged facts supporting the essential elements of the crimes with which defendant was charged. Therefore, we hold that although the statute here is "couched in mandatory terms," *Brice*, 370 N.C. at 253, 806 S.E.2d at 38, the statute's separate indictment requirement is not jurisdictional, and failure to comply with the requirement does not render the indictment fatally defective.

The Court of Appeals in the present case erroneously applied its precedent in *Wilkins*. Although the Court of Appeals in *Wilkins* dealt specifically with N.C.G.S. § 14-415.1(c), that case was wrongly decided in light of this Court's precedent adopting a substance-over-form approach. *See House*, 295 N.C. at 203, 244 S.E.2d at 661–62. Despite this Court's precedent recognizing that substance should prevail over form, as well as Court of Appeals decisions applying the same principle, the Court of Appeals reversed track in *Wilkins* and demanded strict compliance with the form of an indictment while overlooking its substance.[1] Accordingly, *Wilkins* is hereby specifically overruled.

This Court's decision in *Brice* correctly adhered to the principle of substance over form and reaffirmed this Court's long-standing practice of declining to quash an indictment over a defect that amounts to a mere informality. Therefore, *Brice* controls the outcome of this case. Because

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1. Notably, before *Wilkins*, the Court of Appeals held on three separate occasions that an indictment was not fatally defective for failing to comply with mandatory formalities under N.C.G.S. § 14-415.1(c). In each case, the Court of Appeals relied on this Court's decision in *House* to adhere to the principle of substance over form. *See State v. Boston*, 165 N.C. App. 214, 218, 598 S.E.2d 163, 166 (2004) ("[T]he provision of [N.C.G.S.] § 14-415.1(c) that requires the indictment to state the penalty for the prior offense is not material and does not affect a substantial right[, and] . . . hold[ing] otherwise would permit form to prevail over substance."); *State v. Inman*, 174 N.C. App. 567, 571, 621 S.E.2d 306, 309 (2005) (holding that the indictment was not fatally defective for failing to include the date of the defendant's previous conviction because "this omission is not material and does not affect a substantial right"); *State v. Taylor*, 203 N.C. App. 448, 454, 691 S.E.2d 755, 761 (2010) (holding that the indictment was not fatally defective for a discrepancy in the date of the defendant's prior felony offense).

the Court of Appeals in the present case declined to follow this Court's precedent established in *House* and reaffirmed in *Brice*, and instead relied on its erroneous decision in *Wilkins*, we reverse the decision of the Court of Appeals and instruct that court to reinstate the judgment of the trial court.

REVERSED.

Justice DIETZ did not participate in the consideration or decision of this case.

Justice MORGAN dissenting.

In dissenting from my learned colleagues in the majority, I would affirm the decision of the Court of Appeals which held that "[w]hen the charge of possession of a firearm by a felon is brought in an indictment containing other related offenses, the indictment for that charge is rendered fatally defective and invalid, thereby depriving a trial court of jurisdiction over it." *State v. Newborn*, 279 N.C. App. 42, 43 (2021). While the majority correctly identifies the issue in this case as "whether a single indictment charging defendant with possession of a firearm by a felon and two related offenses is fatally defective under N.C.G.S. § 14-415.1(c), depriving the trial court of jurisdiction over the offense," the reasoning of the majority is fatally defective itself through the majority's unconvincing departure from this Court's entrenched principles governing proper statutory interpretation and the majority's exacerbation of this flawed preface through its misunderstanding of the applicable appellate caselaw precedent. Due to this misguided analysis of the intersection between the relevant statutory law and the appropriate governing appellate caselaw, I respectfully dissent.

Subsection 14-415.1(a) of the General Statutes of North Carolina states, in pertinent part: "It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm . . . ." N.C.G.S. § 14-415.1(a) (2021). Pursuant to this statutory provision which establishes the offense, N.C.G.S. § 14-415.1(c) states, again in pertinent part: "The indictment charging the defendant under the terms of this section *shall be separate from any indictment charging him with other offenses* . . . ." *Id.* § 14-415.1(c) (emphasis added).

In this case, defendant was charged with the criminal offenses of possession of a firearm with an altered or removed serial number,

carrying a concealed weapon, and possession of a firearm by a felon. All three of defendant's charges were lodged in a sole indictment. The combination of defendant's charged offense of possession of a firearm by a felon with the other two charged offenses constituted an obvious lack of the State's compliance with the unequivocal mandate of N.C.G.S. § 14-415.1(c), which clearly requires that an indictment charging an individual—such as defendant here—with a violation of the statute "shall be separate from any indictment charging him with other offenses." *Id.*

"When the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts *must* give the statute its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein." *In re Banks*, 295 N.C. 236, 239 (1978) (emphasis added) (citing *State v. Camp*, 286 N.C. 148 (1974)). "It is well established that the word 'shall' is generally imperative or mandatory when used in our statutes." *Morningstar Marinas/Eaton Ferry, LLC v. Warren Cnty.*, 368 N.C. 360, 365 (2015) (extraneity omitted). In the instant case, it is evident that the indictment was defective in that it did not conform with the statute's clear and unambiguous language which must be given its plain and definite meaning. In my view, the Court of Appeals followed the requirement imposed upon the state's forums, as we opined in *In re Banks*, to construe N.C.G.S. § 14-415.1(c) literally without taking additional liberties with the statute's unmistakable terms. Therefore, I agree with the lower appellate court's determination to vacate defendant's conviction for the offense of possession of a firearm by a felon because the State's lack of compliance with the separate indictment requirement of N.C.G.S. § 14-415.1(c) rendered the charging instrument at issue here to be defective.

Despite the clear and unambiguous language of N.C.G.S. § 14-415.1(c) which requires a separate indictment for the offense of possession of a firearm by a felon, nonetheless the majority has sadly opted to forsake a rudimentary principle easily understood in legal circles; namely, with regard to statutory interpretation, to ascribe to words their plain and simple meaning. However, the majority chose to build upon this faulty foundation by not merely ignoring basic rules of statutory construction but also by trampling upon our stated principle in *In re Banks* that the courts "are without power to interpolate, or superimpose, provisions and limitations not contained" in statutes with operative words which have a plain and definite meaning. *In re Banks*, 295 N.C. at 239. Yet here, the majority has decided to grant itself a dispensation in order to depart from this cardinal principle as well, opting to create such authority for itself. And in doing so, the majority incredibly manages to execute a

third misfortune in the area of statutory interpretation by obfuscating the clear application of N.C.G.S. § 14-415.1(c) and the pointedly relevant case of *State v. Wilkins*, 225 N.C. App. 492 (2013), with the strained application of N.C.G.S. § 15A-928 and the tangentially relevant case of *State v. Brice*, 370 N.C. 244 (2017). The majority's awkward adaptation here of N.C.G.S. § 15A-928 and *Brice* to blunt the direct effect of N.C.G.S. § 14-415.1(c) and *Wilkins* signals a precarious uncertainty for the reliability of statutory interpretation, the sanctity of legal precedent, and the stability of the area of criminal law.

To illustrate the extent to which the majority is willing to contort itself with regard to my observation, it is worthy of note that the majority acutely relies upon the criminal *procedure* statute of N.C.G.S. § 15A-928 to offset the criminal *law* statute of N.C.G.S. § 14-415.1. As a criminal law statute, N.C.G.S. § 14-415.1 establishes the criminal offense of possession of a firearm by a felon and designates the manner in which the specific offense must be charged; as a criminal procedure statute, N.C.G.S. § 15A-928 does not establish *any* criminal offense and designates the manner in which, according to the statute's title, there is to be "[a]llegation and proof of previous convictions in superior court." N.C.G.S. § 15A-928, as a criminal procedure statute, has general application; N.C.G.S. § 14-415.1, as a criminal law statute establishing a criminal offense, has a specific application as to the identified crime. While the majority trumpets the applicability of N.C.G.S. § 15A-928 to the present case in a manner which reduces the appropriate direct impact of N.C.G.S. § 14-415.1, the majority exemplifies yet a *fourth* method of wrongful statutory interpretation. "One canon of construction is that when one statute deals with a particular subject matter in detail, and another statute deals with the same subject matter in general and comprehensive terms, the more specific statute will be construed as controlling." *Piedmont Publ'g Co. v. City of Winston-Salem*, 334 N.C. 595, 598 (1993). Because the majority elevates and expands the general criminal procedure statute of N.C.G.S. § 15A-928 above and beyond the applicability of the specific criminal law statute of N.C.G.S. § 14-415.1, which should totally govern the analysis and resulting outcome of this case, the majority has elected to abrogate another fundamental standard of prioritizing the operation of a specific statute over a general statute by instead relying here on the general criminal procedure statute of N.C.G.S. § 15A-928 and its subservient relevance when compared to N.C.G.S. § 14-415.1 and its prioritized relevance as the specific criminal law statute.

With these four glaring missteps by the majority which have shunned elementary statutory interpretation principles which are firmly ensconced in our legal jurisprudence, it reasonably follows that

the majority's heavy reliance on *Brice*, with the case's major focus on N.C.G.S. § 15A-928 which conveniently fits the majority's unsound approach to the present case, is misplaced. In like fashion, the majority stretches to cobble together various appellate caselaw principles regarding double jeopardy, sufficient notice, and "form over substance" references to indictment considerations in an exhausting exercise to strengthen its brittle decision. Meanwhile, the lower appellate court, in the opinion which it issued here, rendered a sound and comprehensible decision based upon its own precedent of *Wilkins*. Unlike *Brice* and its tangential relevance to the present case by virtue of its focus on the general criminal procedure statute, N.C.G.S. § 15A-928, *Wilkins* (1) addressed the same specific criminal law statute at issue here—N.C.G.S. § 14-415.1—which should have fully controlled the outcome of the instant case; (2) analyzed the same issue as the matter presented here concerning the combination of the charged criminal offense of possession of a firearm by a felon and another charged offense in one indictment; (3) examined the requirement regarding N.C.G.S. § 14-415.1 and proper statutory interpretation that "where the language of the statute is clear and unambiguous, there is no room for judicial construction"; (4) determined that "[d]efendant should not have been charged with both offenses in the same indictment"; and (5) ultimately concluded that the indictment charging defendant with possession of a firearm by a felon was fatally defective and thus invalid because the charge was not brought in a separate indictment. *Wilkins*, 225 N.C. App. at 496–97 (citation omitted).

While this Court is not bound by decisions of the Court of Appeals, I deem it to be much more fathomable to implement a solid outcome rendered by the lower appellate court which is based upon well-reasoned analysis spawned by well-established principles that are rooted in directly relevant law rather than to manufacture a shallow outcome which is based upon an ill-fitting analysis driven by unbridled approaches that are rooted in conveniently available opportunities.

I respectfully dissent.

Justice EARLS joins in this dissenting opinion.

IN RE C.H.

[384 N.C. 666 (2023)]

IN THE MATTER OF

C.H.

From N.C. Court of Appeals
22-476

From Durham
21SPC2564

No. 40P23

ORDER

This matter is before this Court on respondent's petition for discretionary review of a decision of the Court of Appeals affirming the trial court's order involuntarily committing respondent. In reaching this outcome, the Court of Appeals failed to consider this Court's opinion in *In re R.S.H.*, 383 N.C. 334, 881 S.E.2d 760 (2022). As such, this case is remanded to the Court of Appeals for reconsideration in light of this Court's decision in *In re R.S.H.*, consistent with this order. If the Court of Appeals determines that respondent preserved his confrontation right and that his confrontation right was violated, it should also consider whether respondent was prejudiced by the violation of his right to confrontation.

The portion of the Court of Appeals' decision reviewing the trial court's order finding that respondent's due process rights were not violated by the State's lack of participation in the hearing, consistent with this Court's decision in *In re J.R.*, 383 N.C. 273, 881 S.E.2d 522 (2022), remains undisturbed.

By order of the Court in Conference, this the 14th day of June 2023.

/s/ Allen, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2023.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

McKNIGHT v. WAKEFIELD MISSIONARY BAPTIST CHURCH, INC.

[384 N.C. 667 (2023)]

CHARLOTTE MCKNIGHT AND AUDREY FOSTER, IN THEIR OFFICIAL CAPACITY AS TRUSTEES FOR AND ON BEHALF OF WAKEFIELD MISSIONARY BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION, PLAINTIFFS

v.

WAKEFIELD MISSIONARY BAPTIST CHURCH, INC., BARBARA WILLIAMS, APRIL HIGH, ALTON HIGH, EKERE ETIM, ROSALIND ETIM, HOUSTON HINSON, NATALIE HARRIS, AND DARRYL HIGH, DEFENDANTS

WAKEFIELD MISSIONARY BAPTIST CHURCH, INC., COUNTERCLAIM PLAINTIFF

v.

CHARLOTTE MCKNIGHT, AUDREY FOSTER, LEROY JEFFREYS AND JULIUS MONTAGUE IN THEIR OFFICIAL CAPACITY AS TRUSTEES AND/OR OFFICERS FOR AND ON BEHALF OF WAKEFIELD MISSIONARY BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION, COUNTERCLAIM DEFENDANTS

From N.C. Business Court
21CVS8299

From Wake
21CVS8299

No. 290A22

ORDER

Defendants and counterclaim plaintiff's motion to dismiss appeal is allowed in part and denied in part as follows. Pursuant to N.C. R. App. P. 3(d), the motion is allowed as to all issues arising from the trial court's 18 February 2022 order of summary judgment. The motion is denied as to all issues arising from the trial court's 2 June 2022 permanent injunction and final judgment order and denied as to all issues arising from the trial court's 2 June 2022 order on motion for award of costs.

By order of the Court in Conference, this the 14th day of June 2023.

/s/ Allen, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2023.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

STATE v. SIMS

[384 N.C. 669 (2023)]

STATE OF NORTH CAROLINA	From N.C. Court of Appeals 17-45
v.	
ANTWAUN KYRAL SIMS	From Onslow 01CRS2993-95

No. 297PA18

ORDER

Defendant's motion for leave to file supplemental briefing based upon the trial court's 23 January 2022 order on his gender discrimination claim is granted. Defendant is allowed sixty days to file supplemental briefing on this claim, with the State to file its supplemental briefing within sixty days of defendant's filing. Additionally, defendant's request to further hold his resentencing appeal in abeyance is denied, and the portion of this Court's 17 October 2019 order holding his appeal in abeyance is rescinded.

By order of the Court in Conference, this the 14th day of June 2023.

/s/ Allen, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 16th day of June 2023.

s/Grant E. Buckner

Grant E. Buckner
Clerk of the Supreme Court

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

5P23	State v. Xavier Jamel Underwood	Def's PDR Under N.C.G.S. § 7A-31 (COA22-268)	Denied
10A23	Latoya Canteen and Pamela Phillips v. Charlotte Metro Credit Union	1. Plt's (Pamela Phillips) Notice of Appeal Based Upon a Dissent (COA22-59) 2. Plt's (Pamela Phillips) PDR as to Additional Issues 3. Plt's (Pamela Phillips) Motion to Admit Vess A. Miller Pro Hac Vice	1. --- 2. Denied 3. Allowed **Dietz, J., recused**
13P23-2	Dianne G. Nickles v. Tabitha Gwynn	1. Plt's Pro Se Motion for Extension of Time to File Response 2. Plt's Pro Se Motion for Relief from Dismissal Order	1. Dismissed as moot 2. Denied
14P23	MidFirst Bank v. Betty J. Brown and Michelle Anderson	Plt's PDR Under N.C.G.S. § 7A-31 (COA22-283)	Allowed
18P23	In the Matter of E.B.	Respondent's PDR Under N.C.G.S. § 7A-31 (COA21-694)	Denied
20P23	State v. Kenneth Lee Bailey	Def's PDR Under N.C.G.S. § 7A-31 (COA22-196)	Denied
21P23	State v. Quartez Travon Moore	1. Def's Pro Se Motion for PDR (COAP22-630) 2. Def's Pro Se Motion for Notice of Appeal of Right 3. Def's Pro Se Motion for Suspension of the Rules	1. Dismissed 2. Dismissed 3. Dismissed
27P23	State v. Kevin Flake Johnson	Def's PDR Under N.C.G.S. § 7A-31 (COA22-128)	Denied **Dietz, J., recused**
31PA19-2	Eve Gyger v. Quintin Clement	1. Plt's Notice of Appeal Based Upon a Constitutional Question (COA22-81) 2. Plt's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied **Dietz, J., recused**
35PA21	In the Matter of A.J.L.H., C.A.L.W., M.J.L.H.	Respondent-Parents' Petition for Rehearing	Denied **05/17/2023**
36P23	State v. Ausban Monroe, III	Def's PDR Under N.C.G.S. § 7A-31 (COA20-839)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

40P23	In the Matter of C.H.	Respondent's PDR Under N.C.G.S. § 7A-31 (COA22-476)	Special Order
41P23	State v. Michael Paul Nelson	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA22-332) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Dismissed 3. Allowed
43P23	State v. Glenn Spencer Boyette, Jr.	Def's PDR Under N.C.G.S. § 7A-31 (COA21-612)	Allowed
45P23	Smith v. Wisniewski	1. Plt's Pro Se Motion for Temporary Stay 2. Plt's Pro Se Petition for Writ of Supersedeas 3. Plt's Pro Se Notice of Appeal Based Upon a Constitutional Question 4. Plt's Pro Se PDR Under N.C.G.S. § 7A-31	1. Allowed **02/02/2023** Dissolved 2. Denied 3. Dismissed *ex mero motu* 4. Denied
46P23	State v. David Raeford Tripp, Jr.	1. Def's Motion for Temporary Stay 2. Def's Petition for Writ of Supersedeas 3. Def's Notice of Appeal Based Upon a Constitutional Question 4. Def's PDR Under N.C.G.S. § 7A-31 5. State's Motion to Dismiss Appeal	1. Allowed **02/02/2023** Dissolved 2. Dismissed as moot 3. --- 4. Denied 5. Allowed
49P23	State v. Damian R. Taylor	Def's PDR Under N.C.G.S. § 7A-31 (COA22-243)	Denied
50P23	State v. Charles David Hall	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA21-496) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed **Dietz, J., recused**
51P23	State v. Quency Andre McVay	Def's PDR Under N.C.G.S. § 7A-31 (COA22-241)	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

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52A23	Bradshaw, et al. v. Maiden, et al.	1. Def's (SS&C Technologies, Inc.) Motion to Admit Robert A. Atkins Pro Hac Vice 2. Def's (SS&C Technologies, Inc.) Motion to Admit Jeffrey J. Recher Pro Hac Vice	1. Allowed 2. Allowed **Dietz, J., recused**
60P23	State v. Timothy Ronald Cox, II	Def's PDR Under N.C.G.S. § 7A-31 (COA22-628)	Denied
73P23	State v. Tyrone Sequine Reynolds	1. Def's Pro Se Motion to Dismiss Allegations 2. Def's Pro Se Motion to Dismiss - Grounds Applicable to All Criminal Proceedings 3. Def's Pro Se Motion to Dismiss - Grounds Applicable to Indictments	1. Dismissed 2. Dismissed 3. Dismissed
75P23	In the Matter of L.L.J.	Respondent-Mother's PDR Under N.C.G.S. § 7A-31 (COA22-386)	Denied
76P23	State v. Daniel Jeremiah Minton	Def's PDR Under N.C.G.S. § 7A-31 (COA22-306)	Denied
77P23	State v. Daryl Spencer Scott	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA22-326) 2. Def's PDR Under N.C.G.S. § 7A-31 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
82P23	Paula Carol Denton v. Steven Louis Baumohl	1. Def's Pro Se Notice of Appeal Based Upon a Constitutional Question (COA22-500) 2. Def's Pro Se PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
84P15-6	State v. Curtis Louis Sangster	Def's Petition for Writ of Certiorari to Review Order of the COA	Dismissed as moot
93P23	State v. Jerry L. Sharpe	Def's Pro Se Motion for Default Judgment	Dismissed
94P23	State v. Kenyatta Lindsey	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion to Appoint Counsel	1. Denied **04/05/2023** 2. Dismissed as moot **04/05/2023**
96P23	State v. Keayone Lamont Murphy	Def's Pro Se Motion for Case Review	Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

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97P23	State v. Casey Adam Haney	Def's Pro Se Motion for Appeal	Dismissed
98P23	State v. Tiffany Adonnis Campbell	Def's Motion for Temporary Stay (COA22-634)	Allowed **04/11/2023**
99P23	Danielle Wheeler v. City of Charlotte, a North Carolina Municipal Corporation, and 300 Park Avenue Homeowners' Association, Inc.	Plt's PDR Under N.C.G.S. § 7A-31 (COA22-570)	Denied
102P13-7	State v. Charles Anthony Ball	1. Def's Pro Se Motion for PDR 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Dismissed **05/16/2023** 2. Allowed **05/16/2023**
102A20-3	Taylor, et al. v. Bank of America, N.A.	Plts' Motion to Admit Caitlyn Miller and Chelsie Warner Pro Hac Vice	Allowed **04/20/2023** **Berger, J., recused**
102P23	Demarcus Tyron Davis and Jamille Rasheen King v. Lavonte Reon Jackson	Plt's (Demarcus Tyron Davis) Pro Se Motion for Appeal	Dismissed
103P23	Darrick Lorenzo Fuller v. Teresa Jordan, Doug Newton, Warden, Foothills Correctional Institution	1. Def's Pro Se Motion for Notice of Appeal 2. Def's Pro Se Petition for Writ of Habeas Corpus	1. Dismissed **04/14/2023** 2. Denied **04/14/2023**
104P23	State v. Markus Odon McCormick	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **04/17/2023**
105A22	State v. Connor Orion Bradley	Def's Motion for Judicial Notice	Allowed
109P01-2	State v. William Dawson	Def's Pro Se Petition for Writ of Mandamus	Denied **04/05/2023** **Dietz, J., recused**
109P23	State v. Keylan Johnson	Def's Motion for Temporary Stay (COA22-363)	Allowed **04/26/2023**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

111P23	Becky Ann Chappell v. John Daniel Chappell	1. Def's Motion for Temporary Stay (COA22-607) 2. Def's Petition for Writ of Supersedeas 3. Def's PDR Under N.C.G.S. § 7A-31	1. Allowed **04/26/2023** Dissolved 2. Denied 3. Denied
113P23	State v. David Henderson	1. Def's Pro Se Petition for Writ of Habeas Corpus 2. Def's Pro Se Motion for Evidentiary Hearing 3. Def's Pro Se Motion for Assignment of Counsel 4. Def's Pro Se Motion for Subpoena *Duces Tecum*	1. Denied **04/27/2023** 2. Dismissed **04/27/2023** 3. Dismissed **04/27/2023** 4. Dismissed **04/27/2023**
116P23	State v. Angel Marie Sawyer	Def's PDR Under N.C.G.S. § 7A-31 (COA22-397)	Denied
119A23	State v. Jason William King	1. State's Motion for Temporary Stay (COA22-469) 2. State's Petition for Writ of Supersedeas 3. State's Notice of Appeal Based Upon a Dissent	1. Dismissed as moot **05/08/2023** 2. Allowed **05/08/2023** 3. ---
123P23	State v. Tevin Q. Williams	1. Def's Pro Se Motion for Racial Justice Act and False Claim Act Relief 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Dismissed 2. Allowed
124P23	State v. Jeffery Dean Tucker	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Catawba County 2. Def's Pro Se Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
125P23	State v. Amaechi Osmond Nwakuche	Def's Pro Se Motion for Notice of Appeal Re: Application for Writ of Habeas Corpus	Denied **05/25/2023**
131P16-27	State v. Somchai Noonsab	1. Def's Pro Se Motion for Complaint 2. Def's Pro Se Motion for Direct Attack on Quo Warranto Writ	1. Dismissed **05/01/2023** 2. Dismissed **05/01/2023**
132P23	State v. Karim Anthony Brown	Def's Pro Se Motion for Superseding Indictment	Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

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134P23	State v. Torrian Kane Faggart	1. Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA22-798) 2. Def's Pro Se Motion to Proceed *In Forma Pauperis*	1. Denied 2. Allowed
137P23	State v. Juan Manuel Castaneda-Rojas	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Guilford County 2. Def's Pro Se Motion to Appoint Counsel	1. Dismissed 2. Dismissed as moot
138A23	State v. Joshua David Reber	State's Motion for Temporary Stay (COA22-130)	Allowed **06/02/2023**
139P23	Robert Brewer, Employee v. Rent-A-Center, Employer, Travelers Insurance Co. (Sedgwick Claims Services, Third-Party Administrator), Carrier	Defs' Motion for Temporary Stay (COA22-296)	Allowed **06/08/2023**
142A23	In the Matter of K.C.	1. Petitioner's Motion for Temporary Stay (COA22-396) 2. Petitioner's Petition for Writ of Supersedeas 3. Petitioner's Notice of Appeal Based Upon a Dissent	1. Dismissed as moot **06/08/2023** 2. Allowed **06/08/2023** 3. ---

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

143P22	Bio-Medical Application of North Carolina, Inc. d/b/a BMA of South Greensboro and Fresenius Kidney Care West Johnston, Petitioner v. NC Department of Health and Human Services, Division of Health Service Regulation, Health Care Planning & Certificate of Need Section, Respondent and Total Renal Care of North Carolina, LLC, d/b/a Central Greensboro Dialysis and Clayton Dialysis, Respondent-Intervenor	1. Petitioner's PDR Under N.C.G.S. § 7A-31 (COA21-318) 2. North Carolina Specialty Hospital, LLC's Motion for Leave to File Amicus Brief Supporting PDR	1. Denied 2. Dismissed as moot
158P08-3	State v. Lenin Javier Flores-Matamoros	1. Def's Pro Se Motion to Stay Lower Court Orders 2. Def's Pro Se Motion for Emergency Application for Writ of Injunction 3. Def's Pro Se Petition for Writ of Mandamus	1. Denied **06/07/2023** 2. Dismissed **06/07/2023** 3. Denied **06/07/2023**
172PA22	In the Matter of S.R.	Respondent's Petition for Writ of Certiorari to Review Decision of the COA (COA21-633)	Dismissed as moot **05/01/2023**
173P21-3	State v. Aaron Lance Stephen	1. Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Wake County 2. Def's Pro Se Motion to Appoint Counsel 3. Def's Pro Se Motion to Procure Jury Trial Transcript 4. Def's Pro Se Motion for Hearing Seeking New Trial 5. Def's Pro Se Motion in the Alternative for Leave of Appeal	1. Dismissed 2. Dismissed 3. Dismissed 4. Dismissed 5. Dismissed
193A94-2	State v. Samuel Griffin	Def's Pro Se Motion for Petition for New Trial	Dismissed

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

200P07-11	State v. Kenneth E. Robinson	Def's Pro Se Petition for Writ of Certiorari to Review Order of Superior Court, Halifax County	Dismissed
202PA21	State v. Scott Warren Flow	Def's Motion to File Reply Brief	Dismissed as moot **05/02/2023**
230P22	State v. Jermaine Lydell Sanders	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA21-358) 2. Def's PDR Under N.C.G.S. § 7A-31 3. Mooresville's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
256P22	State v. William Moses Hooker	1. Def's PDR Under N.C.G.S. § 7A-31 (COAP22-119) 2. Def's Petition for Writ of Certiorari to Review Order of the COA 3. Def's Petition for Writ of Certiorari to Review Order of Superior Court, Cabarrus County	1. Dismissed 2. Denied 3. Denied
264A21	State v. Isaiah Scott Beck	State's Motion to Continue Oral Argument	Denied **06/14/2023**
273P22-2	Amy M. Black v. Andrew T. Black	1. Plt's Pro Se Motion for Notice of Appeal (COAP22-175) 2. Plt's Pro Se Motion for Notice of Appeal 3. Plt's Pro Se Motion for PDR 4. Plt's Pro Se Petition in the Alternative for Writ of Certiorari to Review Order of the COA 5. Plt's Pro Se Motion for Petition for Stay of Orders 6. Plt's Pro Se Motion to Proceed *In Forma Pauperis* 7. Plt's Pro Se Motion for Extension 8. Plt's Pro Se Motion for Consideration of Brief 9. Plt's Pro Se Motion for Proposed Record on Appeal 10. Plt's Pro Se Motion for Consolidation of Actions on Appeal	1. Dismissed 2. Dismissed 3. Dismissed 4. Denied 5. Dismissed 6. Allowed 7. Dismissed 8. Dismissed 9. Dismissed 10. Dismissed
274A22	In the Matter of R.A.F., R.G.F.	Respondent-Mother's Petition for Writ of Certiorari to Review Order of District Court, Henderson County	Dismissed as moot **04/28/2023**

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

277PA22	Gray v. Eastern Carolina Medical Services, PLLC, et al.	1. Defs' (Eastern Carolina Medical Services, PLLC and Mark Cervi, M.D.) Motion to Withdraw Appeal 2. Def's (Donna McLean, D.N.P., F.N.P.-B.C.) Motion to Withdraw Appeal 3. Def's (Garry Leonhardt, M.D.) Motion to Withdraw Appeal 4. Defs' (Carol Lee Keech/Oxendine, Charles Ray Faulkner, RN, Kimberly Jordan, RN, and Jacqueline Lymon, L.P.N.) Motion to Withdraw Appeal	1. Allowed **04/06/2023** 2. Allowed **05/17/2023** 3. Allowed **05/17/2023** 4. Allowed **05/17/2023**
281P06-13	Joseph E. Teague, Jr., P.E., C.M. v. N.C. Department of Transportation, J.E. Boyette, Secretary	1. Plt's Pro Se Motion to Rehear 2. Plt's Pro Se Motion to Rehear to Consider Additional Authority	1. Dismissed 2. Dismissed
290A22	McKnight, et al. v. Wakefield Missionary Baptist Church, Inc., et al.	Defs' and Counterclaim Plt's Motion to Dismiss Appeal	Special Order
297PA18	State v. Antwaun Sims	Def's Motion for Leave to File Supplemental Briefs	Special Order
315A22	State v. Kahleighia Rogers	1. Def's Notice of Appeal Based Upon a Dissent 2. Def's Conditional Petition for Writ of Certiorari to Review Order of the COA (COAP22-388) 3. State's Motion to Dismiss Appeal	1. --- 2. Denied 3. Allowed
323P11-3	State v. Ricky Dean Norman	Def's Pro Se Petition for Writ of Habeas Corpus	Denied **04/21/2023**
331P22	Michael Keith Sulier v. Tina Bastian Veneskey	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA21-506) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied
332PA14-3	State v. Gregory Aldon Perkins	Def's PDR Under N.C.G.S. § 7A-31 (COA20-572)	Denied
332P22	Michael Keith Sulier v. Tina Bastian Veneskey	1. Def's Notice of Appeal Based Upon a Constitutional Question (COA21-523) 2. Def's PDR Under N.C.G.S. § 7A-31	1. Dismissed *ex mero motu* 2. Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

333A22	Digital Realty Trust, Inc.; Digital Realty Trust, L.P.; and DLR, LLC v. Peter Sprygada	Plts' Motion to Dismiss Appeal	Denied
340P22	The North Carolina State Bar v. Patrick Michael Megaro, Attorney	Def's Pro Se PDR Under N.C.G.S. § 7A-31 (COA22-135)	Denied **Dietz, J., recused**
362P22	State v. Timothy Gerard Walker	Def's PDR Under N.C.G.S. § 7A-31 (COA22-260)	Denied **Dietz, J., recused**
363P22-2	State v. Jamaal Gittens	Def's Pro Se Motion to Reconsider	Dismissed **Dietz, J., recused**
370P04-20	State v. Anthony Leon Hoover	Def's Pro Se Motion for Mandamus Writ of Errors Waiver of Contractual Rights	Dismissed
370P22	State v. Priscilla Anne Modlin	Def's PDR Under N.C.G.S. § 7A-31 (COA22-132)	Denied **Dietz, J., recused**
380P22	A & M Real Estate Dev. Co. LLC v. G-Force Cheer, LLC	1. Def's PDR Under N.C.G.S. § 7A-31 (COA22-212) 2. Def's Petition in the Alternative for Writ of Certiorari to Review Decision of the COA	1. Dismissed 2. Denied
424A21	Cryan, et al. v. National Council of Young Men's Christian Associations of the United States of America, et al.	Def's (Kernersville Family YMCA) Motion to Dismiss Appeal	Denied

DISPOSITION OF PETITIONS FOR DISCRETIONARY REVIEW UNDER G.S. 7A-31

16 JUNE 2023

554P07-3	State v. Percy Allen Williams, Jr.	1. Def's Pro Se Motion for Order to Show Cause	1. Dismissed as moot **05/26/2023**
		2. Def's Pro Se Motion for Temporary Restraining Order/Injunctive Relief	2. Dismissed as moot **05/26/2023**
		3. Def's Pro Se Motion for Notice of Appeal	3. Dismissed *ex mero motu* **05/26/2023**
		4. Def's Pro Se Motion for Notice of Appeal	4. Dismissed *ex mero motu* 05/26/2023
		5. Def's Pro Se Motion for Notice of Appeal	5. Dismissed *ex mero motu* **05/26/2023**
		6. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	6. Denied **05/26/2023**
		7. Def's Pro Se Motion for Notice of Appeal (COAP23-231)	7. Dismissed *ex mero motu* **05/26/2023**
		8. Def's Pro Se Petition for Writ of Certiorari to Review Order of the COA	8. Denied **05/26/2023**
			Dietz, J., recused
580P05-28	In re David Lee Smith	1. Def's Pro Se Petition for Writ of Mandamus	1. Denied
		2. Def's Pro Se Petition for Writ of Mandamus	2. Denied
		3. Def's Pro Se Petition for Writ of Mandamus	3. Denied
		4. Def's Pro Se Petition for Writ of Mandamus En Banc	4. Denied
		5. Def's Pro Se Petition for Writ of Mandamus or Alternatively Demand or Remand for Calendar of Declaratory Default Hearing	5. Denied
		6. Def's Pro Se Petition for Writ of Mandamus	6. Denied
		7. Def's Pro Se Petition for Writ of Mandamus	7. Denied
584P99-6	State v. Harry James Fowler	Def's Pro Se Motion for Petition for Judicial Review	Dismissed

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachments:

ATTACHMENT 2-A: 27 N.C.A.C. 01D, Section .1500, Rule .1502, *Jurisdiction: Authority*

ATTACHMENT 2-B: 27 N.C.A.C. 01D, Section .1500, Rule .1503, *Operational Responsibility*

ATTACHMENT 2-C: 27 N.C.A.C. 01D, Section .1500, Rule .1504, *Size of Board*

ATTACHMENT 2-D: 27 N.C.A.C. 01D, Section .1500, Rule .1505, *Lay Participation*

ATTACHMENT 2-E: 27 N.C.A.C. 01D, Section .1500, Rule .1506, *Appointment of Members; When; Removal*

ATTACHMENT 2-F: 27 N.C.A.C. 01D, Section .1500, Rule .1507, *Term of Office*

ATTACHMENT 2-G: 27 N.C.A.C. 01D, Section .1500, Rule .1508, *Staggered Terms*

ATTACHMENT 2-H: 27 N.C.A.C. 01D, Section .1500, Rule .1509, *Succession*

ATTACHMENT 2-I: 27 N.C.A.C. 01D, Section .1500, Rule .1510, *Appointment of Chairperson*

ATTACHMENT 2-J: 27 N.C.A.C. 01D, Section .1500, Rule .1511, *Appointment of Vice-Chairperson*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of May, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/ Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1502 JURISDICTION: AUTHORITY

The Council of the North Carolina State Bar hereby establishes the Board of Continuing Legal Education (~~board~~Board) as a standing committee of the ~~council~~Council, which ~~board~~Board shall have authority to establish regulations governing a continuing legal education program ~~and a law practice assistance program~~ for ~~attorneys~~ lawyers licensed to practice law in this state.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court:
June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .0100 – PROCEDURES FOR RULING ON QUESTIONS OF LEGAL ETHICS

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1503 OPERATIONAL RESPONSIBILITY

The responsibility for operating the continuing legal education program ~~and the law practice assistance program~~ shall rest with the ~~board~~Board, subject to the statutes governing the practice of law, the authority of the ~~council~~Council, and the rules of governance of the ~~board~~Board.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1504 SIZE OF BOARD

The ~~board~~Board shall have nine members, all of whom must be ~~attorneys~~ lawyers in good standing and authorized to practice in the state of North Carolina.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1505 LAY PARTICIPATION

The ~~board~~Board shall have no members who are not licensed ~~attorneys~~ lawyers.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1506 APPOINTMENT OF MEMBERS; WHEN; REMOVAL

The members of the ~~board~~Board shall be appointed by the ~~council~~ Council. ~~The first members of the board shall be appointed as of the quarterly meeting of the council following the creation of the board. Thereafter, members shall be appointed annually as of the same quarterly meeting.~~ Vacancies occurring by reason of death, resignation, or removal shall be filled by appointment of the ~~council~~Council at the next quarterly meeting following the event giving rise to the vacancy, and the person so appointed shall serve for the balance of the vacated term. Any member of the ~~board~~Board may be removed at any time by an affirmative vote of a majority of the members of the ~~council~~Council in session at a regularly called meeting.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1507 TERM OF OFFICE

Each member who is appointed to the ~~board~~Board shall serve for a term of three years beginning as of the first day of the month following the date on which the appointment is made by the ~~council~~Council. ~~See, however, Rule .1508 of this Section.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1508 STAGGERED TERMS

~~It is intended that members~~Members of the ~~board~~Board shall be elected to staggered terms such that three members are appointed in each year. ~~Of the initial board, three members shall be elected to terms of one year, three members shall be elected to terms of two years, and three members shall be elected to terms of three years. Thereafter, three members shall be elected each year.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1509 SUCCESSION

Each member of the ~~board~~Board shall be entitled to serve for one full three year term and to succeed himself or herself for one additional three year term. Thereafter, no person may be reappointed without having been off the ~~board~~Board for at least three years.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1510 APPOINTMENT OF CHAIRPERSON

The chairperson of the ~~board~~Board shall be appointed from time to time as necessary by the ~~council~~Council. The term of such individual as chairperson shall be one year. The chairperson may be reappointed thereafter during his or her tenure on the ~~board~~Board. The chairperson shall preside at all meetings of the ~~board~~Board, shall prepare and present to the ~~council~~Council the annual report of the ~~board~~Board, and generally shall represent the ~~board~~Board in its dealings with the public.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1511 APPOINTMENT OF VICE-CHAIRPERSON

The vice-chairperson of the ~~board~~Board shall be appointed from time to time as necessary by the ~~council~~Council. The term of such individual as vice-chairperson shall be one year. The vice-chairperson may be reappointed thereafter during tenure on the ~~board~~Board. The vice-chairperson shall preside at and represent the ~~board~~Board in the absence of the chairperson and shall perform such other duties as may be assigned to him or her by the chairperson or by the ~~board~~Board.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachments:

ATTACHMENT 3-A: 27 N.C.A.C. 01D, Section .1500, Rule .1512, *Source of Funds*

ATTACHMENT 3-B: 27 N.C.A.C. 01D, Section .1500, Rule .1513, *Fiscal Responsibility*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1512 SOURCE OF FUNDS

(a) Funding for the program carried out by the ~~board~~Board shall come from ~~sponsor's fees and attendee's fees~~ an annual CLE attendance fee and program application fees as provided below, as well as from duly assessed penalties for noncompliance and from reinstatement fees.

(1) Annual CLE Attendance Fee – all members, except those who are exempt from these requirements under Rule .1517, shall pay an annual CLE fee in an amount set by the Board and approved by the Council. Such fee shall accompany the member's annual membership fee. Annual CLE fees are non-refundable. Any member who fails to pay the required Annual CLE fee by the last day of June of each year shall be subject to (i) a late fee in an amount determined by the Board and approved by the Council, and (ii) administrative suspension pursuant to Rule .0903 of this Subchapter. ~~Registered sponsors located in North Carolina (for programs offered in or outside North Carolina), registered sponsors not located in North Carolina (for programs offered in North Carolina), and all other sponsors located in or outside of North Carolina (for programs offered in North Carolina) shall, as a condition of conducting an approved program, agree to remit a list of North Carolina attendees and to pay a fee for each active member of the North Carolina State Bar who attends the program for CLE credit. The sponsor's fee shall be based on each credit hour of attendance, with a proportional fee for portions of a program lasting less than an hour. The fee shall be set by the board upon approval of the council. Any sponsor, including a registered sponsor, that conducts an approved program which is offered without charge to attendees shall not be required to remit the fee under this section. Attendees who wish to receive credit for attending such an approved program shall comply with paragraph (a)(2) of this rule.~~

(2) Program Application Fee – The sponsor of a CLE program shall pay a program application fee due when filing an application for program accreditation pursuant to Rule .1520(b). Program application fees are non-refundable. A member

submitting an application for a previously unaccredited program for individual credit shall pay a reduced fee. ~~The board shall fix a reasonably comparable fee to be paid by individual attorneys who attend for CLE credit approved continuing legal education programs for which the sponsor does not submit a fee under Rule .1512(a)(1) above. Such fee shall accompany the member's annual affidavit. The fee shall be set by the board upon approval of the council.~~

(3) Fee Review – The Board will review the level of fees at least annually and adjust the fees as necessary to maintain adequate finances for prudent operation of the Board in a nonprofit manner. The Council shall annually review the assessments for the Chief Justice's Commission on Professionalism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.

(4) Uniform Application and Financial Responsibility – Fees shall be applied uniformly without exceptions or other preferential treatment for a sponsor or member.

~~(b) Funding for a law practice assistance program shall be from user fees set by the board upon approval of the council and from such other funds as the council may provide.~~

~~(c) No Refunds for Exemptions and Record Adjustments.~~

~~(1) Exemption Claimed. If a credit hour of attendance is reported to the board, the fee for that credit hour is earned by the board regardless of an exemption subsequently claimed by the member pursuant to Rule .1517 of this subchapter. No paid fees will be refunded and the member shall pay the fee for any credit hour reported on the annual report form for which no fee has been paid at the time of submission of the member's annual report form.~~

~~(2) Adjustment of Reported Credit Hours. When a sponsor is required to pay the sponsor's fee, there will be no refund to the sponsor or to the member upon the member's subsequent adjustment, pursuant to Rule .1522(a) of this subchapter, to credit hours reported on the annual report form. When the member is required to pay the attendee's fee, the member shall pay the fee for any credit hour reported after any adjustment by the member to credit hours reported on the annual report form.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: September 22, 2016; April 5, 2018; September 25, 2019; June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1513 FISCAL RESPONSIBILITY

All funds of the ~~board~~Board shall be considered funds of the North Carolina State Bar and shall be administered and disbursed accordingly.

(a) Maintenance of Accounts: Audit. ~~-~~ The North Carolina State Bar shall maintain a separate account for funds of the ~~board~~Board such that such funds and expenditures therefrom can be readily identified. The accounts of the ~~board~~Board shall be audited on an annual basis in connection with the audits of the North Carolina State Bar.

(b) Investment Criteria. ~~-~~ The funds of the ~~board~~Board shall be handled, invested and reinvested in accordance with investment policies adopted by the ~~council~~Council for the handling of dues, rents, and other revenues received by the North Carolina State Bar in carrying out its official duties.

(c) Disbursement. ~~-~~ Disbursement of funds of the ~~board~~Board shall be made by or under the direction of the ~~secretary-treasurer~~Secretary of the North Carolina State Bar pursuant to authority of the ~~council~~Council. The members of the ~~board~~Board shall serve on a voluntary basis without compensation, but may be reimbursed for the reasonable expenses incurred in attending meetings of the ~~board~~Board or its committees.

(d) All revenues resulting from the CLE program~~, including fees received from attendees and sponsors, late filing penalties, late compliance fees, reinstatement fees, and interest on a reserve fund~~ shall be applied first to the expense of administration of the CLE program including an adequate reserve fund; provided, however, that a portion of each ~~sponsor or attendee fee,~~ annual CLE fee and program application fee, in an amount to be determined by the ~~council~~Council, shall be paid to the Chief Justice's Commission on Professionalism and to the North Carolina Equal Access to Justice Commission for administration of the activities of these commissions. Excess funds may be expended by the ~~council~~Council on lawyer competency programs approved by the ~~council~~Council.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: December 30, 1998; November 5, 2015; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachments:

ATTACHMENT 4-A: 27 N.C.A.C. 01D, Section .1500, Rule .1514, *Meetings*

ATTACHMENT 4-B: 27 N.C.A.C. 01D, Section .1500, Rule .1515, *Annual Report*

ATTACHMENT 4-C: 27 N.C.A.C. 01D, Section .1500, Rule .1516, *Powers, Duties, and Organization of the Board*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendments to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendments to the Rules and Regulations of the North Carolina State Bar were entered upon the minutes of the Supreme Court. The amendments shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1514 MEETINGS

The Board shall meet at least annually.~~annual meeting of the board shall be held in October of each year in connection with the annual meeting of the North Carolina State Bar.~~ The ~~board~~Board by resolution may set regular meeting dates and places. Special meetings of the ~~board~~Board may be called at any time upon notice given by the chairperson, the vice chairperson, or any two members of the ~~board~~Board. Notice of meeting shall be given at least two days prior to the meeting by mail, electronic mail, ~~telegram, facsimile transmission~~ or telephone. A quorum of the ~~board~~Board for conducting its official business shall be a majority of the members serving at a particular time.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1515 ANNUAL REPORT

The ~~board~~Board shall prepare at least annually a report of its activities and shall present the same to the ~~council~~Council ~~one month~~ prior to its annual meeting.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1516 POWERS, DUTIES, AND ORGANIZATION OF THE BOARD

(a) The ~~board~~Board shall have the following powers and duties:

(1) to exercise general supervisory authority over the administration of these rules;

(2) to adopt and amend regulations consistent with these rules with the approval of the ~~council~~Council;

(3) to establish an office or offices and to employ such persons as the ~~board~~Board deems necessary for the proper administration of these rules, and to delegate to them appropriate authority, subject to the review of the ~~council~~Council;

(4) to report annually on the activities and operations of the ~~board~~ Board to the ~~council~~Council and make any recommendations for changes in ~~the~~ fee amounts, rules, or methods of operation of the continuing legal education program; and

(5) to submit an annual budget to the ~~council~~Council for approval and to ensure that expenses of the ~~b~~Board do not exceed the annual budget approved by the ~~council;~~Council.

~~(6) to administer a law office assistance program for the benefit of lawyers who request or are required to obtain training in the area of law office management.~~

(b) The ~~board~~Board shall be organized as follows:

(1) Quorum. ~~Five members~~A majority of members serving shall constitute a quorum of the ~~board~~Board.

(2) ~~The~~ Executive Committee. ~~.~~ The Board may establish an executive committee. The executive committee of the ~~b~~Board shall be comprised of the chairperson, ~~a~~ the vice-chairperson, ~~elected by the members of the board,~~ and a member to be appointed by the chairperson. Its purpose is to conduct all necessary business of the ~~board~~Board that may arise between meetings of the full ~~board~~Board. In such matters it shall have complete authority to act for the ~~board~~Board.

(3) Other Committees. ~~–~~The chairperson may appoint committees as established by the ~~board~~Board for the purpose of considering and deciding matters submitted to them by the ~~board~~Board.

(c) Appeals. ~~–~~Except as otherwise provided, the ~~board~~Board is the final authority on all matters entrusted to it under ~~Section .1500 and Section .1600 of~~ this subchapter. Therefore, any decision by a committee of the ~~board~~Board pursuant to a delegation of authority may be appealed to the full ~~board~~Board and will be heard by the ~~board~~Board at its next scheduled meeting. A decision made by the staff pursuant to a delegation of authority may also be reviewed by the full ~~board~~Board but should first be appealed to any committee of the ~~board~~Board having jurisdiction on the subject involved. All appeals shall be in writing. The ~~board~~Board has the discretion to, but is not obligated to, grant a hearing in connection with any appeal regarding the accreditation of a program.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 2005; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 5: 27 N.C.A.C. 01D, Section .1500, Rule .1517, *Exemptions*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the

Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1517 EXEMPTIONS

(a) Notification of Board. To qualify for an exemption, ~~for a particular calendar year,~~ a member shall notify the ~~board~~Board of the exemption ~~in~~during the annual membership renewal process or in another manner as directed by the Board ~~report for that calendar year sent to the member pursuant to Rule .1522 of this subchapter.~~ All active members who are exempt are encouraged to attend and participate in legal education programs.

(b) Government Officials and Members of Armed Forces. The governor, the lieutenant governor, and all members of the council of state, members of the United States Senate, members of the United States House of Representatives, members of the North Carolina General Assembly, full-time principal chiefs and vice-chiefs of any Indian tribe officially recognized by the United States or North Carolina state governments, and members of the United States Armed Forces on full-time active duty are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity.

(c) Judiciary and Clerks. Members of the state judiciary who are required by virtue of their judicial offices to take ~~an average of (twelve) 12 or more hours of~~ continuing judicial or other legal education ~~annually~~ and all members of the federal judiciary are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such judicial capacities. Additionally, ~~A~~a full-time law clerk for a member of the federal or state judiciary is exempt from the requirements of these rules for any calendar year in which the clerk serves some portion thereof in such capacity, provided, however, that

(1) the exemption shall not exceed two consecutive calendar years; and, ~~further provided, that~~

(2) the clerkship begins within one year after the clerk graduates from law school or passes the bar examination for admission to the North Carolina State Bar whichever occurs later.

(d) Nonresidents. The Board may exempt an active member from the continuing legal education requirements if, for at least six consecutive months immediately prior to requesting an exemption, (i) the member

resides outside of North Carolina, (ii) the member does not practice law in North Carolina, and (iii) the member does not represent North Carolina clients on matters governed by North Carolina law. ~~Any active member residing outside of North Carolina who does not practice in North Carolina for at least six (6) consecutive months and does not represent North Carolina clients on matters governed by North Carolina law shall be exempt from the requirements of these rules.~~

(e) Law Teachers. An exemption from the requirements of these rules shall be given to any active member who does not practice in North Carolina or represent North Carolina clients on matters governed by North Carolina law and who is:

(1) A full-time teacher at the School of Government ~~(formerly the Institute of Government)~~ of the University of North Carolina;

(2) A full-time teacher at a law school in North Carolina that is accredited by the American Bar Association; or

(3) A full-time teacher of law-related courses at a graduate level professional school accredited by its respective professional accrediting agency.

(f) Special Circumstances Exemptions. The ~~board~~Board may exempt an active member from the continuing legal education requirements for a period of not more than one year at a time upon a finding by the ~~board~~Board of special circumstances unique to that member constituting undue hardship or other reasonable basis for exemption., ~~or for a longer period upon a finding of a permanent disability.~~

(g) Pro Hac Vice Admission. Nonresident ~~attorneys~~lawyers from other jurisdictions who are temporarily admitted to practice in a particular case or proceeding pursuant to the provisions of G.S. 84-4.1 shall not be subject to the requirements of these rules.

(h) Senior ~~Status~~ Exemption. The ~~board~~Board may exempt an active member from the continuing legal education requirements if

(1) the member is sixty-five years of age or older; and

(2) the member does not render legal advice to or represent a client unless ~~the member associates with~~under the supervision of another active member who assumes responsibility for the advice or representation.

(i) Bar Examiners. Members of the North Carolina Board of Law Examiners are exempt from the requirements of these rules for any calendar year in which they serve some portion thereof in such capacity.

~~CLE Record During Exemption Period. During a calendar year in which the records of the board indicate that an active member is exempt from the requirements of these rules, the board shall not maintain a record of such member's attendance at accredited continuing legal education programs. Upon the termination of the member's exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education program attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such programs will be required by the board.~~

~~(j) Permanent Disability. Attorneys who have a permanent disability that makes attendance at CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The board shall review and approve or disapprove such plans on an individual basis and without delay.~~

(~~k~~j) Application for Substitute Compliance and Exemptions. Other requests for substitute compliance, partial waivers, and/or other exemptions for hardship or extenuating circumstances may be granted by the ~~board~~Board on ~~a~~an annual ~~yearly~~ basis upon written application of the ~~attorney~~ member.

~~(l) Bar Examiners. Credit is earned through service as a bar examiner of the North Carolina Board of Law Examiners. The board will award 12 hours of CLE credit for the preparation and grading of a bar examination by a member of the North Carolina Board of Law Examiners.~~

(k) Effect of Annual Exemption on CLE Requirements. Exemptions are granted on an annual basis and must be claimed each year. An exempt member's new reporting period will begin on March 1 of the year for which an exemption is not granted. No credit from prior years may be carried forward following an exemption.

(l) Exemptions from Professionalism Requirement for New Members.

(1) Licensed in Another Jurisdiction. A newly admitted member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA program requirement and must notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board.

(2) Inactive Status. A newly admitted member who is transferred to inactive status in the year of admission to the North Carolina State Bar is exempt from the PNA program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA program in the reporting period that the member is subject to the requirements set forth in Rule .1518(b) unless the member qualifies for another exemption in this rule.

(3) Other Rule .1517 Exemptions. A newly admitted active member who qualifies for an exemption under Rules .1517(a) through (i) of this subchapter shall be exempt from the PNA program requirement during the period of the Rule .1517 exemption. The member shall notify the Board of the exemption during the annual membership renewal process or in another manner as directed by the Board. The member must complete the PNA program in the reporting period the member no longer qualifies for the Rule .1517 exemption.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 12, 1997; October 1, 2003; March 3, 2005; October 7, 2010; October 2, 2014; June 9, 2016; September 22, 2016; September 25, 2019; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 6: 27 N.C.A.C. 01D, Section .1500, Rule .1518, *Continuing Legal Education Requirements*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1518 CONTINUING LEGAL EDUCATION REQUIREMENTS

(a) Reporting period. Except as provided in Paragraphs (1) and (2) below, the reporting period for the continuing legal education requirements shall be two years, beginning March 1 through the last day of February:

(1) New admittees. The reporting period for newly admitted members shall begin on March 1 of the calendar year of admission.

(2) Reinstated members.

(A) A member who is transferred to and subsequently reinstated from inactive or suspended status before the end of the reporting period in effect at the time of the original transfer shall retain the member's original reporting period and these Rules shall be applied as though the transfer had not occurred.

(B) Except as provided in Subparagraph (A) above, the first reporting period for reinstated members shall be the same as if the member was newly admitted pursuant to Paragraph (1) above.

(~~a~~b) ~~Annual~~ Hours ~~Requirement~~requirement. Each active member subject to these rules shall complete ~~12~~24 hours of approved continuing legal education during each ~~calendar year beginning January 1, 1988~~ reporting period, as provided by these rules. ~~and the regulations adopted thereunder.~~

Of the ~~12~~24 hours:

(1) at least ~~2~~four hours shall be devoted to ~~the areas of professional responsibility or professionalism or any combination thereof~~ ethics as defined in Rule .1501(c)(8) of this Subchapter;

(2) at least one hour shall be devoted to technology training as defined in Rule .1501(c)(~~17~~19) of this subchapter. This credit must be completed in at least one-hour increments; and ~~further explained in Rule .1602(e) of this subchapter; and~~

(3) ~~effective January 1, 2002, at least once every three calendar years, each member shall complete an hour of continuing legal education~~ at least one hour shall be devoted to programs ~~instruction~~ on professional well-being ~~substance abuse and debilitating mental conditions~~ as defined in Rule .1501(c)(18) of this subchapter.~~1602 (a).~~ This credit must be completed in at least one-hour increments. ~~This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.~~

(~~b~~c) Carryover credit. Members may carry over up to 12 credit hours from one reporting period to the next reporting period. Carryover hours will count towards a member's total hours requirement but may not be used to satisfy the requirements listed in Paragraphs (b)(1)-(3) of this Rule. ~~carry over up to 12 credit hours earned in one calendar year to the next calendar year, which may include those hours required by paragraph (a)(1) above. Additionally, a newly admitted active member may include as credit hours which may be carried over to the next succeeding year any approved CLE hours earned after that member's graduation from law school.~~

(d) The Board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits from prior reporting years. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.

(~~c~~e) Professionalism Requirement for New Members. Except as provided in Rule .1517*(l)*, ~~paragraph (d)(1),~~ each newly admitted active member ~~admitted to~~ of the North Carolina State Bar ~~after January 1, 2011,~~ must complete ~~the~~ an approved ~~North Carolina State Bar~~ Professionalism for New Attorneys ~~P~~program (PNA ~~P~~program) as described in Rule .1525 ~~in~~during the member's first reporting period.~~year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter.~~ It is strongly recommended that newly admitted members complete the PNA program within their first year of admission. CLE credit for the PNA ~~P~~program shall be applied to the ~~annual~~ mandatory continuing legal education requirements set forth in ~~p~~Paragraph (~~a~~b) above.

(1) ~~Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional~~

responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish the required content on or before January 1 of each year. To be approved as a PNA Program, the program must be provided by a sponsor registered under Rule .1603 of this subchapter and a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the program. A registered sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no program that is not so designated shall satisfy the PNA Program requirement for new members.

(2) Timetable and Partial Credit. The PNA Program shall be presented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the board. The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the board.

(3) Online and Prerecorded Programs. The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken online (via the Internet) on demand. The program may also be taken as a prerecorded program provided the requirements of Rule .1604(d) of this subchapter are satisfied and at least one hour of each six-hour block consists of live programming.

(d) Exemptions from Professionalism Requirement for New Members.

(1) Licensed in Another Jurisdiction. A member who is licensed by a United States jurisdiction other than North Carolina for five or more years prior to admission to practice in North Carolina is exempt from the PNA Program requirement and must notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter.

~~(2) Inactive Status. A newly admitted member who is transferred to inactive status in the year of admission to the State Bar is exempt from the PNA Program requirement but, upon the entry of an order transferring the member back to active status, must complete the PNA Program in the year that the member is subject to the requirements set forth in paragraph (a) above unless the member qualifies for the exemption under paragraph (d)(1) of this rule.~~

~~(3) Exemptions Under Rule .1517. A newly admitted active member who qualifies for an exemption under Rule .1517 of this subchapter shall be exempt from the PNA Program requirement during the period of the Rule .1517 exemption. The member shall notify the board of the exemption in the first annual report sent to the member pursuant to Rule .1522 of this subchapter. The member must complete the PNA Program in the year the member no longer qualifies for the Rule .1517 exemption or the next calendar year unless the member qualifies for the exemption under paragraph (d)(1) of this rule.~~

~~(e) The board shall determine the process by which credit hours are allocated to lawyers' records to satisfy deficits. The allocation shall be applied uniformly to the records of all affected lawyers and may not be appealed by an affected lawyer.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 12, 1997; December 30, 1998; March 3, 1999; November 6, 2001; October 1, 2003; March 11, 2010; August 25, 2011; March 6, 2014; March 5, 2015; June 9, 2016; April 5, 2018; September 20, 2018; September 25, 2019; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 7: 27 N.C.A.C. 01D, Section .1500, Rule .1519,
Accreditation Standards

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1519 ACCREDITATION STANDARDS

The ~~board~~Board shall approve continuing legal education programs that meet the following standards and provisions.

(a) They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence and proficiency as a lawyer.

(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.

(c) Participation in an online or on-demand program must be verified as provided in Rule .1520(d).~~Credit may be given for continuing legal education programs where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape, satellite transmitted, and online programs.~~

(d) Continuing legal education materials are to be prepared, and programs conducted, by an individual or group qualified by practical or academic experience. Credit shall not be given for any continuing legal education program taught or presented by a disbarred lawyer except ~~a~~ programs on professional responsibility (~~including a program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer's professional responsibilities~~)and professional well-being programs taught by a disbarred lawyer whose disbarment date is at least ~~five years (~~60 months~~)~~ prior to the date of the program. The advertising for the program shall disclose the lawyer's disbarment.

(e) Live continuing legal education programs shall be conducted in a setting physically suitable to the educational nature of the program. ~~and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.~~

(f) Thorough, high quality, and carefully prepared ~~written~~ materials should be distributed to all attendees at or before the time the program is presented., unless ~~These may include written materials printed from a website or computer presentation. A written agenda or outline for a~~

~~program satisfies this requirement when written~~ materials are not suitable or readily available for a particular subject. ~~The absence of written materials for distribution should, however, be the exception and not the rule.~~

(g) A sponsor of an approved program must timely remit fees as required ~~in Rule .1606~~ and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be timely furnished to the ~~board~~Board in accordance with Rule .1520(g). ~~regulations. Participation in an online program must be verified as provided in Rule .1601(d).~~

(h) Except as provided in Rules .1523(d) ~~.1501 and.1602(h)~~ of this ~~subchapter~~Subchapter, in-house continuing legal education and self-study shall not be approved or accredited. ~~for the purpose of complying with Rule .1518 of this subchapter.~~

(i) Programs that cross academic lines, such as accounting-tax seminars, may be considered for approval by the ~~board~~Board. However, the ~~board~~Board must be satisfied that the content of the program would enhance legal skills or the ability to practice law.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 1, 2001; October 1, 2003; February 5, 2009; March 11, 2010; April 5, 2018; September 25, 2019; December 14, 2021; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 8: 27 N.C.A.C. 01D, Section .1500, Rule .1520, *Requirements for Program Approval*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/ Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1520 REQUIREMENTS FOR PROGRAM APPROVAL ~~REGISTRATION OF SPONSORS AND PROGRAM APPROVAL~~

(a) Approval. CLE programs may be approved upon the application of a sponsor or an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:

(1) The application shall be submitted in the manner directed by the Board.

(2) The application shall contain all information requested by the Board and include payment of any required application fees.

(3) The application shall be accompanied by a program outline or agenda that describes the content in detail, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.

(4) The application shall disclose the cost to attend the program, including any tiered costs,

(5) The application shall include a detailed calculation of the total CLE hours requested, including whether any hours satisfy one of the requirements listed in Rules .1518(b) and .1518(d) of this Subchapter, and Rule 1.15-2(s)(3) of the Rules of Professional Conduct.

(b) Program Application Deadlines and Fee Schedule.

(1) Program Application and Processing Fees. Program applications submitted by sponsors shall comply with the deadlines and Fee Schedule set by the Board and approved by the Council, including any additional processing fees for late or expedited applications.

(2) Free Programs. Sponsors offering programs without charge to all attendees, including non-members of any membership organization, shall pay a reduced application fee.

(3) Member Applications. Members may submit a program application for a previously unapproved program after the program is completed, accompanied by a reduced application fee.

(4) On-Demand CLE Programs. Approved on-demand programs are valid for three years. After the initial three-year term, programs may be renewed annually in a manner approved by the Board that includes a certification that the program content continues to meet the accreditation standards in Rule .1519 and the payment of a program renewal fee.

(5) Repeat Programs. Sponsors seeking approval for a repeat program that was previously approved by the Board within the same CLE year (March 1 through the end of February) shall pay a reduced application fee.

(c) Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this Subchapter. Sponsors and active members seeking credit for an approved program shall furnish, upon request of the Board, a copy of all materials presented and distributed at a CLE program. Any sponsor that expects to conduct a CLE program for which suitable materials will not be made available to all attendees may be required to show why materials are not suitable or readily available for such a program.

(d) Online and On-Demand CLE. The sponsor of an online or on-demand program must have an approved method for reliably and actively verifying attendance and reporting the number of credit hours earned by each participant. Applications for any online or on-demand program must include a description of the sponsor's attendance verification procedure.

(e) Notice of Application Decision. Sponsors shall not make any misrepresentations concerning the approval of a program for CLE credit by the Board. The Board will provide notice of its decision on CLE program approval requests pursuant to the schedule set by the Board and approved by the Council. A program will be deemed approved if the notice is not timely provided by the Board pursuant to the schedule. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the Board or if the Board timely notifies the sponsor that the matter has been delayed.

(f) Denial of Applications. Failure to provide the information required in the program application will result in denial of the program application. Applicants denied approval of a program may request reconsideration of such a decision by submitting a letter of appeal to the Board within 15 days of receipt of the notice of denial. The decision by the Board on an appeal is final.

(g) Attendance Records. Sponsors shall timely furnish to the Board a list of the names of all North Carolina attendees together with their North

Carolina State Bar membership numbers in the manner and timeframe prescribed by the Board.

(h) Late Attendance Reporting. Absent good cause shown, a sponsor's failure to timely furnish attendance reports pursuant to this rule will result in (i) a late reporting fee in an amount set by the Board and approved by the Council, and (ii) the denial of that sponsor's subsequent program applications until the attendance is reported and the late fee is paid.

~~(a) Registration of Sponsors. An organization desiring to be designated as a registered sponsor of programs may apply to the board for registered sponsor status. The board shall register a sponsor if it is satisfied that the sponsor's programs have met the accreditation standards set forth in Rule .1519 of this subchapter and the application requirements set forth in Rule .1603 of this subchapter.~~

~~(1) Duration of Status. Registered sponsor status shall be granted for a period of five years. At the end of the five-year period, the sponsor must apply to renew its registration pursuant to Rule .1603(b) of this subchapter.~~

~~(2) Accredited Sponsors. A sponsor that was previously designated by the board as an "accredited sponsor" shall, on the effective date of paragraph (a)(1) of this rule, be re-designated as a "registered sponsor." Each such registered sponsor shall subsequently be required to apply for renewal of registration according to a schedule to be adopted by the board. The schedule shall stagger the submission date for such applications over a three-year period after the effective date of this paragraph (a)(2).~~

~~(b) Program Approval for Registered Sponsors.~~

~~(1) Once an organization is approved as a registered sponsor, the continuing legal education programs sponsored by that organization are presumptively approved for credit; however, application must still be made to the board for approval of each program. At least 50 days prior to the presentation of a program, a registered sponsor shall file an application, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.~~

~~(2) The board shall evaluate a program presented by a registered sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the registered~~

~~sponsor that the program is not approved for credit. Such notice shall be sent by the board to the registered sponsor within 45 days after the receipt of the application. If notice is not sent to the registered sponsor within the 45-day period, the program shall be presumed to be approved. The registered sponsor may request reconsideration of an unfavorable accreditation decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.~~

~~(c) Sponsor Request for Program Approval.~~

~~(1) Any organization not designated as a registered sponsor that desires approval of a program shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.~~

~~(2) The board may at any time decline to accredit CLE programs offered by a sponsor that is not registered for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519, and Section .1600 of this subchapter.~~

~~(d) Member Request for Program Approval. An active member desiring approval of a program that has not otherwise been approved shall apply to the board. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: February 27, 2003; March 3, 2005; October 7, 2010; March 6, 2014; April 5, 2018; September 25, 2019; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 9: 27 N.C.A.C. 01D, Section .1500, Rule .1521, *Noncompliance*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/ Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1521~~3~~ NONCOMPLIANCE

(a) Failure to Comply with Rules May Result in Suspension. A member who ~~is required to file a report of CLE credits and does not do so or who~~ fails to meet the minimum requirements of these rules, including the payment of duly assessed penalties and ~~attendee~~ fees, may be suspended from the practice of law in ~~the state of~~ North Carolina.

(b) Late Compliance. Any member who fails to complete his or her required hours by the end of the member's reporting period (i) shall be assessed a late compliance fee in an amount set by the Board and approved by the Council, and (ii) shall complete any outstanding hours within 60 days following the end of the reporting period. Failure to comply will result in a suspension order pursuant to Paragraph (c) below.

(~~b~~c) ~~Notice of~~ Suspension Order for Failure to Comply. 60 days following the end of the reporting period, ~~The~~the ~~board~~Council shall ~~notify~~ issue an order suspending any member who ~~appears to have failed~~fails to meet the requirements of these rules within 45 days after the service of the order, ~~that the member will be suspended from the practice of law in this state,~~ unless (i) the member shows good cause in writing why the suspension should not take effect; ~~be made~~ or (ii) the member ~~shows in writing that he or she has complied with~~ meets the requirements within the 30 ~~-day~~days ~~period~~ after service of the ~~notice~~ order. The order shall be entered and served as set forth in Rule .0903(d) of this subchapter. Additionally, the member shall be assessed a non-compliance fee as described in Paragraph (d) below. Notice shall be served on the member by mailing a copy thereof by registered or certified mail or designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member according to the records of the North Carolina State Bar or such later address as may be known to the person attempting service. Service of the notice may also be accomplished by (i) personal service by a State Bar investigator or by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process, or (ii) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State bar acknowledging such service.

(d) Non-Compliance Fee. A member to whom a suspension order is issued pursuant to Paragraph (c) above shall be assessed a non-compliance fee in an amount set by the Board and approved by the Council; provided, however, upon a showing of good cause as determined by the Board as described in Paragraph (g)(2) below, the fee may be waived. The non-compliance fee is in addition to the late compliance fee described in Paragraph (b) above.

(~~c~~e) Effect of Non-compliance with Suspension Order. ~~Entry of Order of Suspension Upon Failure to Respond to Notice to Show Cause.~~ If a member fails to meet the requirements during the 45-day period after service of the suspension order under Paragraph (c) above, the member shall be suspended from the practice of law subject to the obligations of a disbarred or suspended member to wind down the member's law practice as set forth in Rule .0128 of Subchapter 1B. ~~written response attempting to show good cause is not postmarked or received by the board by the last day of the 30-day period after the member was served with the notice to show cause upon the recommendation of the board and the Administrative Committee, the council may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d) of this Subchapter.~~

~~(f) Suspended members must petition for reinstatement to active status.~~

(~~d~~f) Procedure Upon Submission of ~~a Timely Response to a Notice to Show Cause~~ Evidence of Good Cause.

(1) Consideration by the Board. If the member files a timely ~~written~~ response to the ~~notice,~~suspension order attempting to show good cause for why the suspension should not take effect, the suspension order shall be stayed and the ~~board~~ Board shall consider the matter at its next ~~regularly scheduled~~ meeting. ~~or may delegate consideration of the matter to a duly appointed committee of the board. If the matter is delegated to a committee of the board and the committee determines that good cause has not been shown, the member may file an appeal to the board. The appeal must be filed within 30 calendar days of the date of the letter notifying the member of the decision of the committee.~~ The ~~board~~Board shall review all evidence presented by the member to determine whether good cause has been shown. ~~or to determine whether the member has complied with the requirements of these rules within the 30-day period after service of the notice to show cause.~~

(2) Recommendation of the Board. The ~~board~~Board shall determine whether the member has shown good cause as to why

the member should not be suspended.- If the ~~board~~Board determines that good cause has not been shown, the member's suspension shall become effective 15 calendar days after the date of the letter notifying the member of the decision of the Board. The member may request a hearing by the Administrative Committee within the 15-day period after the date of the Board's decision letter. The member's suspension shall be stayed upon a timely request for a hearing. ~~or that the member has not shown compliance with these rules within the 30-day period after service of the notice to show cause, then the board shall refer the matter to the Administrative Committee that the member be suspended.~~

(3) ~~Consideration by and Recommendation of~~ Hearing Before the Administrative Committee. The Administrative Committee shall consider the matter at its next regularly scheduled meeting. The burden of proof shall be upon the member to show cause by clear, cogent, and convincing evidence why the member should not be suspended from the practice of law for ~~the apparent~~ failure to comply with the rules governing the continuing legal education program. ~~Except as set forth above, the procedure for such hearing shall be as set forth in Rule .0903(d)(1) and (2) of this Subchapter.~~

(4) Administrative Committee Decision. If the Administrative Committee determines that the member has not met the burden of proof, the member's suspension shall become effective immediately. The decision of the Administrative Committee is final. ~~Order of Suspension. Upon the recommendation of the Administrative Committee, the council may determine that the member has not complied with these rules and may enter an order suspending the member from the practice of law. The order shall be entered and served as set forth in Rule .0903(d)(3) of this Subchapter.~~

~~(e) Late Compliance Fee. Any member to whom a notice to show cause is issued pursuant to Paragraph (b) above shall pay a late compliance fee as set forth in Rule .1522(d) of this Subchapter; provided, however, upon a showing of good cause as determined by the board as described in Paragraph (d)(2) above, the fee may be waived.~~

(g) Reinstatement. Suspended members must petition for reinstatement to active status pursuant to Rule .0904(b)-(h) of this Subchapter.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: August 23, 2012; October 9, 2008; October 1, 2003; February 3, 2000; March 6, 1997; March 7, 1996; June 14, 2023;
Rule transferred from 27 N.C. Admin. Code 01D.1523 on June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 10: 27 N.C.A.C. 01D, Section .1500, Rule .1522, *Reserved*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/ Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

~~27 NCAC 01D .1524 REINSTATEMENT~~ 27 NCAC 01D .1522 RESERVED

~~(a) Reinstatement Within 30 Days of Service of Suspension Order~~
~~A member who is suspended for noncompliance with the rules governing the continuing legal education program may petition the secretary for an order of reinstatement of the member's license at any time up to 30 days after the service of the suspension order upon the member. The secretary shall enter an order reinstating the member to active status upon receipt of a timely written request and satisfactory showing by the member that the member cured the continuing legal education deficiency for which the member was suspended. Such member shall not be required to file a formal reinstatement petition or pay a $250 reinstatement fee.~~

~~(b) Procedure for Reinstatement More that 30 Days After Service of the Order of Suspension~~
~~Except as noted below, the procedure for reinstatement more than 30 days after service of the order of suspension shall be as set forth in Rule .0904(c) and (d) of this subchapter, and shall be administered by Administrative Committee.~~

~~(c) Reinstatement Petition~~
~~At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for noncompliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary. The secretary shall transmit a copy of the petition to each member of the board. The reinstatement petition shall contain the information and be in the form required by Rule .0904(c) of this subchapter. If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education programs that the member has attended and the number of credit hours obtained in order to cure any continuing legal education deficiency for which the member was suspended.~~

~~(d) Reinstatement Fee~~
~~In lieu of the $125.00 reinstatement fee required by Rule .0904(c)(4)(A), the petition shall be accompanied by a reinstatement fee payable to the board, in the amount of $250.00.~~

~~(e) Determination of Board; Transmission to Administrative Committee~~
~~Within 30 days of the filing of the petition for reinstatement with the secretary, the board shall determine whether the deficiency has been cured. The board's written determination and the reinstatement petition shall be transmitted to the secretary within five days of the determination by the board. The secretary shall transmit a copy of the petition and the board's recommendation to each member of the Administrative Committee.~~

~~(f) Consideration by Administrative Committee~~
~~The Administrative Committee shall consider the reinstatement petition, together with the board's determination, pursuant to the requirements of Rule .0902(c)-(f) of this subchapter.~~

~~(g) Hearing Upon Denial of Petition for Reinstatement~~
~~The procedure for hearing upon the denial by the Administrative Committee of a petition for reinstatement shall be as provided in Section .1000 of this subchapter.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 7, 1996; March 6, 1997; February 3, 2000; March 3, 2005; September 25, 2019; June 14, 2023;
Rule transferred from 27 N.C. Admin. Code 1D .1524 on June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 11: 27 N.C.A.C. 01D, Section .1500, Rule .1523, *Credit for Non-Traditional Programs and Activities*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .~~1602~~1523 ~~COURSE CONTENT REQUIREMENTS~~ CREDIT FOR NON-TRADITIONAL PROGRAMS AND ACTIVITIES

~~(a) Professional Responsibility Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions - Accredited professional responsibility programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such program or segment of a program.~~

(~~b~~a) Law School Courses. ~~-~~ Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved programs. Computation of CLE credit for such courses shall be as prescribed in Rule .1524~~.1605(a)~~ of this subchapter. ~~No more than 12 CLE hours in any year may be earned by such courses.~~ No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.

(b) Service to the Profession Training. A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's program trains volunteer lawyers in service to the profession.

(c) Teaching Law Courses.

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(e) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school.

(2) Graduate School Courses. A member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.

(3) Courses at Paralegal Schools or Programs. A member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.

(4) Other Law Courses. The Board, in its discretion, may give CLE credit to a member for teaching law courses at other schools or programs.

(5) Credit Hours. Credit for teaching described in this paragraph may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:

(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit.)

(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 – 60 minutes of teaching.

~~(c) Law Practice Management Programs - A CLE accredited program on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited program on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of~~

~~subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).~~

~~(d) Skills and Training Programs- A program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g. word processing); learning to use office equipment (except as permitted by paragraph (e) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.~~

~~(e) Technology Training Programs – A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer or improving law office management and must satisfy the requirements of paragraphs (c) and (d) of this rule as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool, process, or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training programs on Microsoft Office, Excel, Access, Word, Adobe, etc.; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or~~

~~merchandiser of an IT tool, process, or methodology unless the program is solely about using the IT tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT tool, process, or methodology.~~

~~(f) Activities That Shall Not Be Accredited CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:~~

- ~~(1) courses within the normal college curriculum such as English, history, social studies, and psychology;~~
- ~~(2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(c);~~
- ~~(3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from programs dealing with development of law office procedures and management designed to raise the level of service provided to clients).~~

~~(g) Service to the Profession Training - A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's program trains volunteer attorneys in service to the profession, and if such program or segment meets the requirements of Rule .1519(b)-(g) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such program or program segment.~~

(~~h~~d) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by ~~attorneys~~lawyers, except, in the discretion of the Board, as follows:

- (1) programs ~~exempted by the board under Rule .1501(c)(9) of this subchapter~~ to be conducted by public or quasi-public organizations or associations for the education of their employees or members; ~~and~~
- (2) programs to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law; or

(2~~3~~) live ethics programs ~~on professional responsibility, professionalism, or professional negligence/malpractice~~ presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

(~~i~~e) Bar Review/Refresher Course. Programs designed to review or refresh recent law school graduates or ~~attorneys~~ lawyers in preparation for any bar exam shall not be approved for CLE credit.

(f) CLE credit will not be given for (i) general and personal educational activities; (ii) courses designed primarily to sell services; or (iii) courses designed to generate greater revenue.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 6, 1997; March 5, 1998; March 3, 1999; March 1, 2001; June 7, 2001; March 3, 2005; March 2, 2006; March 8, 2007; October 9, 2008; March 6, 2014; June 9, 2016; September 20, 2018; September 25, 2019; June 14, 2023;
Rule transferred from 27 N.C. Admin. Code 01D .1602 on June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 12: 27 N.C.A.C. 01D, Section .1500, Rule .1524, *Computation of Credit*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .~~1605~~1524 COMPUTATION OF CREDIT

(a) Computation Formula - Credit ~~CLE and professional responsibility~~ hours shall be computed by the following formula:

Sum of the total minutes of actual instruction / 60 = Total Hours

For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.

(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:

(1) introductory remarks;

(2) breaks;

(3) business meetings;

(4) speeches in connection with banquets or other events which are primarily social in nature; and

(5) unstructured question and answer sessions at a ratio in excess of 15 minutes per CLE hour. ~~and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.~~

(c) Computation of Teaching Credit - ~~As a contribution to professionalism, credit~~Credit may be earned for teaching in an approved continuing legal education program or a continuing paralegal education program held in North Carolina and approved pursuant to ~~Section .0200 of Subchapter G of these rules. Programs accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of~~ these rules at a ratio of three hours of CLE credit ~~for~~ per each ~~thirty~~30 minutes of presentation. Repeat programs qualify for one-half of the credits available for the initial program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit, and the repeat program would qualify for 2.25 hours of credit.

~~(d) Teaching Law Courses~~

~~(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school. A member may also earn CLE credit by teaching a course or a class at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.~~

~~(2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.~~

~~(3) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.~~

~~(4) Credit Hours. Credit for teaching described in Rule .1605(d)(1) – (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:~~

~~(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).~~

~~(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 – 60 minutes of teaching.~~

~~(5) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;

Amendments Approved by the Supreme Court: March 3, 1999; October 1, 2003; November 16, 2006; August 23, 2012; September 25, 2019; June 14, 2023;

Rule transferred from 27 N.C. Admin. Code 01D .1605 on June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 13: 27 N.C.A.C. 01D, Section .1500, Rule .1525, *Professionalism Requirement for New Members (PNA)*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1525 ~~CONFIDENTIALITY~~PROFESSIONALISM REQUIREMENT FOR NEW MEMBERS (PNA)

(a) Content and Accreditation. The State Bar PNA program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish any changes to the required content on or before January 1 of each year. To be approved as a PNA program, the program must satisfy the annual content requirements, and a sponsor must submit a detailed description of the program to the Board for approval. A sponsor may not advertise a PNA program until approved by the Board. PNA programs shall be specially designated by the Board and no program that is not so designated shall satisfy the PNA program requirement for new members.

(b) Timetable and Partial Credit. The PNA program shall be presented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the Board. The Board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the Board.

(c) Online programs. The PNA program may be distributed over the internet by live streaming, but no part of the program may be taken on-demand unless specifically authorized by the Board.

(d) PNA Requirement. Except as provided in Rule .1517(l), each newly admitted active member of the North Carolina State Bar must complete the PNA program during the member's first reporting period. It is strongly recommended that newly admitted members complete the PNA program within their first year of admission.

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 1999; June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendment to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1500, *Rules Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachment:

ATTACHMENT 14: 27 N.C.A.C. 01D, Section .1500, Rule .1526, *Procedures to Effectuate Rule Changes*

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1500 – RULES GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1526 ~~EFFECTIVE DATE~~PROCEDURES TO EFFECTUATE RULE CHANGES

(a) ~~The effective date of these Rules shall be January 1, 1988.~~ Subject to approval by the Council, the Board may adopt administrative policies and procedures to effectuate the rule changes approved by the Supreme Court on June 14, 2023, in order to:

(1) create staggered initial reporting periods;

(2) provide for a smooth transition into the new rules beginning March 1, 2024; and

(3) maintain historically consistent funding for the Chief Justice's Commission on Professionalism and the Equal Access to Justice Commission.

(b) Carryover hours earned pursuant to the rules in effect at the time the hours are earned will carry over as total hours to the first reporting period under the amended rules. ~~Active members licensed prior to July 1 of any calendar year shall meet the continuing legal education requirements of these Rules for such year.~~

~~(c) Active members licensed after June 30 of any calendar year must meet the continuing legal education requirements of these Rules for the next calendar year.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: June 14, 2023.

AMENDMENT TO THE RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR:

REGULATIONS GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

The following amendments to the Rules and Regulations and the Certificate of Organization of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at its quarterly meeting on April 21, 2023.

BE IT RESOLVED by the Council of the North Carolina State Bar that the Rules and Regulations of the North Carolina State Bar as set forth in 27 N.C.A.C. 01D, Section .1600, *Regulations Governing the Administration of the Continuing Legal Education Program*, be amended as shown in the following attachments:

ATTACHMENT 15-A: 27 N.C.A.C. 01D, Section .1600, Rule .1601, Reserved

ATTACHMENT 15-B: 27 N.C.A.C. 01D, Section .1600, Rule .1602, Reserved

ATTACHMENT 15-C: 27 N.C.A.C. 01D, Section .1600, Rule .1603, Reserved

ATTACHMENT 15-D: 27 N.C.A.C. 01D, Section .1600, Rule .1604, Reserved

ATTACHMENT 15-E: 27 N.C.A.C. 01D, Section .1600, Rule .1605, Reserved

ATTACHMENT 15-F: 27 N.C.A.C. 01D, Section .1600, Rule .1606, Reserved

NORTH CAROLINA
WAKE COUNTY

I, Alice Neece Mine, Secretary-Treasurer of the North Carolina State Bar, do hereby certify that the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was duly adopted by the Council of the North Carolina State Bar at a regularly called meeting on April 21, 2023.

Given over my hand and the Seal of the North Carolina State Bar, this the 5th day of June, 2023.

s/Alice Neece Mine
Alice Neece Mine, Secretary

After examining the foregoing amendment to the Rules and Regulations of the North Carolina State Bar as adopted by the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 14th day of June, 2023.

s/Paul Newby
Paul Newby, Chief Justice

On this date, the foregoing amendment to the Rules and Regulations of the North Carolina State Bar was entered upon the minutes of the Supreme Court. The amendment shall be published in the forthcoming volume of the Advance Sheets as provided by the Act incorporating the North Carolina State Bar, and as otherwise directed by the Appellate Division Reporter.

This the 14th day of June, 2023.

s/Allen, J.
For the Court

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINISTRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1601 ~~GENERAL REQUIREMENTS FOR PROGRAM APPROVAL~~RESERVED

~~(a) Approval. CLE programs may be approved upon the written application of a sponsor, including a registered sponsor, or of an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:~~

~~(1) If advance approval is requested by a sponsor, the application and supporting documentation, including one substantially complete set of the written materials to be distributed at the program, shall be submitted at least 50 days prior to the date on which the program is scheduled. If advance approval is requested by an active member, the application need not include a complete set of written materials.~~

~~(2) In all other cases, the application and supporting documentation shall be submitted by the sponsor not later than 50 days after the date the program was presented or prior to the end of the calendar year in which the program was presented, whichever is earlier. Active members requesting credit must submit the application and supporting documentation within 50 days after the date the program was presented or, if the 50 days have elapsed, as soon as practicable after receiving notice from the board that the program accreditation request was not submitted by the sponsor.~~

~~(3) The application shall be submitted on a form furnished by the board.~~

~~(4) The application shall contain all information requested on the form.~~

~~(5) The application shall be accompanied by a program outline or brochure that describes the content, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered.~~

~~(6) The application shall include a detailed calculation of the total CLE hours and hours of professional responsibility.~~

~~(b) Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors, including registered sponsors, and active members seeking credit for an approved program shall furnish, upon request of the board, a copy of all materials presented and distributed at a CLE program. Written materials consisting merely of an outline without citation or explanatory notations generally will not be sufficient for approval. Any sponsor, including a registered sponsor, that expects to conduct a CLE program for which suitable written materials will not be made available to all attendees may obtain approval for that program only by application to the board at least 50 days in advance of the program showing why written materials are not suitable or readily available for such a program.~~

~~(c) Facilities. Sponsors must provide a facility conductive to learning with sufficient space for taking notes.~~

~~(d) Online CLE. The sponsor of an online program must have a reliable method for recording and verifying attendance. A participant may periodically log on and off of an online program provided the total time spent participating in the program is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the board within 30 days after a member completes his or her participation in the program.~~

~~(e) Records. Sponsors, including registered sponsors, shall within 30 days after the program is concluded~~

- ~~(1) furnish to the board a list of the names of all North Carolina attendees together with their North Carolina State Bar membership numbers; the list shall be in alphabetical order and in a format prescribed by the board;~~
- ~~(2) remit to the board the appropriate sponsor fee; and, if payment is not received by the board within 30 days after the program is concluded, interest at the legal rate shall be incurred; provided, however, the board may waive such interest upon a showing of good cause by a sponsor; and~~
- ~~(3) furnish to the board a complete set of all written materials distributed to attendees at the program.~~

~~(f) Announcement. Sponsors that have advanced approval for programs may include in their brochures or other program descriptions the information contained in the following illustration:~~

~~This program has been approved by the Board of Continuing Legal Education of the North Carolina State Bar for continuing legal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility.~~

~~(g) Notice. Sponsors not having advanced approval shall make no representation concerning the approval of the program for CLE credit by the board. The board will mail a notice of its decision on CLE program approval requests within 45 days of their receipt when the request for approval is submitted before the program and within 45 days when the request is submitted after the program. Approval thereof will be deemed if the notice is not timely mailed. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the board or if the board timely notifies the sponsor that the matter has been tabled and the reason therefor.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: October 1, 2003; March 3, 2005; March 6, 2008; October 7, 2010; April 5, 2018; September 25, 2019; June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINITRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1602 ~~COURSE CONTENT REQUIREMENTS~~ RESERVED

~~(a) Professional Responsibility Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions - Accredited professional responsibility programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such program or segment of a program.~~

~~(b) Law School Courses - Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved programs. Computation of CLE credit for such courses shall be as prescribed in Rule .1605(a) of this subchapter. No more than 12 CLE hours in any year may be earned by such courses. No credit is available for law school courses attended prior to becoming an active member of the North Carolina State Bar.~~

~~(c) Law Practice Management Programs - A CLE accredited program on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited program on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit:~~

employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Programs- A program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g. word processing); learning to use office equipment (except as permitted by paragraph (e) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Technology Training Programs – A technology training program must have the primary objective of enhancing a lawyer's proficiency as a lawyer or improving law office management and must satisfy the requirements of paragraphs (c) and (d) of this rule as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool, process, or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or

~~methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training programs on Microsoft Office, Excel, Access, Word, Adobe, etc.; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology unless the program is solely about using the IT tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT tool, process, or methodology.~~

~~(f) Activities That Shall Not Be Accredited CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:~~

- ~~(1) courses within the normal college curriculum such as English, history, social studies, and psychology;~~
- ~~(2) courses that deal with the individual lawyer's human development, such as stress reduction, quality of life, or substance abuse unless a course on substance abuse or mental health satisfies the requirements of Rule .1602(c);~~
- ~~(3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from programs dealing with development of law office procedures and management designed to raise the level of service provided to clients).~~

~~(g) Service to the Profession Training - A program or segment of a program presented by a bar organization may be granted up to three hours of credit if the bar organization's program trains volunteer attorneys in service to the profession, and if such program or segment meets the requirements of Rule .1519(b)-(g) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such program or program segment.~~

~~(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys, except as follows:~~

~~(1) programs exempted by the board under Rule .1501(c)(9) of this subchapter; and~~

~~(2) live programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.~~

~~(i) Bar Review/Refresher Course. Programs designed to review or refresh recent law school graduates or attorneys in preparation for any bar exam shall not be approved for CLE credit.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 6, 1997; March 5, 1998; March 3, 1999; March 1, 2001; June 7, 2001; March 3, 2005; March 2, 2006; March 8, 2007; October 9, 2008; March 6, 2014; June 9, 2016; September 20, 2018; September 25, 2019; June 14, 2023;
Rule transferred to 27 N.C. Admin. Code. 01D .1523 on June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINITRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1603 ~~REGISTERED SPONSORS~~RESERVED

~~(a) Application for Registered Sponsor Status. To be designated as a registered sponsor of programs under Rule .1520(a) of this subchapter, a sponsor must satisfy the following requirements:~~

~~(1) File a completed application for registered sponsor status on a form furnished by the board.~~

~~(2) During the three years prior to application, present at least five original programs that were approved for CLE credit by the board.~~

~~(3) During the three years prior to application, substantially comply with the requirements in Rule .1601(a) and (e) of this subchapter on application for program approval, remitting sponsor fees, and reporting attendance for every program approved for credit.~~

~~(b) Renewal of Registration. To retain registered sponsor status, a sponsor must apply for renewal every five years, as required by Rule .1520(a)(1), and must satisfy the requirements of paragraphs (a) of this rule. To facilitate staggered renewal applications, at the time that this rule becomes effective, any sponsor previously designated as an "accredited sponsor" shall be designated a registered sponsor and shall be assigned an initial renewal year which shall be not more than three years later.~~

~~(c) Revocation of Registered Sponsor Status. The board may at any time revoke the registration of a registered sponsor for failure to satisfy the requirements of Section .1500 and Section .1600 of this subchapter.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: April 5, 2018; September 25, 2019; June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINITRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1604 ~~**ACCREDITATION OF PRERECORDED SIMULTANEOUS BROADCAST, AND COMPUTER-BASED PROGRAMS**~~**RESERVED**

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 6, 1997; March 3, 2005; March 2, 2006; March 6, 2008; March 6, 2014; June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINITRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC 01D .1605 ~~COMPUTATION OF CREDIT~~RESERVED

~~(a) Computation Formula - CLE and professional responsibility hours shall be computed by the following formula:~~

~~Sum of the total minutes of actual instruction / 60 = Total Hours~~

~~For example, actual instruction totaling 195 minutes would equal 3.25 hours toward CLE.~~

~~(b) Actual Instruction - Only actual education shall be included in computing the total hours of actual instruction. The following shall not be included:~~

~~(1) introductory remarks;~~

~~(2) breaks;~~

~~(3) business meetings;~~

~~(4) speeches in connection with banquets or other events which are primarily social in nature;~~

~~(5) question and answer sessions at a ratio in excess of 15 minutes per CLE hour and programs less than 30 minutes in length provided, however, that the limitation on question and answer sessions shall not limit the length of time that may be devoted to participatory CLE.~~

~~(c) Teaching - As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education program or a continuing paralegal education program held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. Programs accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three hours of credit for each thirty minutes of presentation. Repeat programs qualify for one-half of the credits available for the initial program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.~~

~~(d) Teaching Law Courses~~

~~(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching a course or a class in a quarter or semester-long course at an ABA accredited law school. A member may also earn CLE credit by teaching a course or a class at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.~~

~~(2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.~~

~~(3) Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching a paralegal or substantive law course or a class in a quarter or semester-long course at an ABA approved paralegal school or program.~~

~~(4) Credit Hours. Credit for teaching described in Rule .1605(d)(1) – (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:~~

~~(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).~~

~~(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 – 60 minutes of teaching.~~

~~(5) Other Requirements. The member shall also complete the requirements set forth in Rule .1518(b) of this subchapter.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: March 3, 1999; October 1, 2003; November 16, 2006; August 23, 2012; September 25, 2019; June 14, 2023;
Rule transferred to 27 N.C. Admin. Code. 01D .1524 on June 14, 2023.

SUBCHAPTER 01D – RULES OF THE STANDING COMMITTEES OF THE NORTH CAROLINA STATE BAR

SECTION .1600 – REGULATIONS GOVERNING THE ADMINITRATION OF THE CONTINUING LEGAL EDUCATION PROGRAM

27 NCAC. 01D .1606 ~~FEES~~RESERVED

~~(a) Sponsor Fee - The sponsor fee, a charge paid directly by the sponsor, shall be paid by all sponsors of approved programs presented in North Carolina and by registered sponsors located in North Carolina for approved programs wherever presented, except that no sponsor fee is required where approved programs are offered without charge to attendees. In any other instance, payment of the fee by the sponsor is optional. The amount of the fee, per approved CLE hour per active member of the North Carolina State Bar in attendance, is $3.50. This amount shall be allocated as follows: $1.25 to the Board of Continuing Legal Education to administer the CLE program; $1.00 to the Chief Justice's Commission on Professionalism; $1.00 to the North Carolina Equal Access to Justice Commission; and $.25 to the State Bar to administer the funds distributed to the commissions. The fee is computed as shown in the following formula and example which assumes a 6-hour program attended by 100 North Carolina lawyers seeking CLE credit:~~

~~Fee: $3.50 x Total Approved CLE Hours (6) x Number of NC Attendees (100) = Total Sponsor Fee ($2,100)~~

~~(b) Attendee Fee - The attendee fee is paid by the North Carolina attorney who requests credit for a program for which no sponsor fee was paid. An attorney will be invoiced for any attendees fees owed following the submission of the attorney's annual report form pursuant to Rule .1522(a) of this subchapter. Payment shall be remitted within 30 (thirty) days of the date of the invoice. The amount of the fee, per approved CLE hour for which the attorney claims credit, is $3.50. This amount shall be allocated as follows: $1.25 to the Board of Continuing Legal Education to administer the CLE program; $1.00 to the Chief Justice's Commission on Professionalism; $1.00 to the North Carolina Equal Access to Justice Commission; and $0.25 to the State Bar to administer the funds distributed to the commissions. It is computed as shown in the following formula and example which assumes that the attorney attended a program approved for 3 hours of CLE credit:~~

~~Fee: $3.50 x Total Approved CLE hours (3.0) = Total Attendee Fee ($10.50)~~

~~(c) Fee Review - The board will review the level of the fee at least annually and adjust it as necessary to maintain adequate finances for prudent operation of the board in a nonprofit manner. The council shall annually review the assessments for the Chief Justice's Commission on Professionalism and the North Carolina Equal Access to Justice Commission and adjust them as necessary to maintain adequate finances for the operation of the commissions.~~

~~(d) Uniform Application and Financial Responsibility - The fee shall be applied uniformly without exceptions or other preferential treatment for a sponsor or attendee. The board shall make reasonable efforts to collect the sponsor fee from the sponsor of a CLE program when appropriate under Rule .1606(a) above. However, whenever a sponsor fee is not paid by the sponsor of a program, regardless of the reason, the lawyer requesting CLE credit for the program shall be financially responsible for the fee.~~

~~(e) Failure to Timely Pay Sponsor Fee - A sponsor's failure to pay sponsor fees within ninety (90) days following the completion of a program will result in the denial of that sponsor's subsequent program applications until fees are paid.~~

History Note: *Authority - Order of the North Carolina Supreme Court, October 7, 1987, 318 N.C. 711;*
Readopted Eff. December 8, 1994;
Amendments Approved by the Supreme Court: December 30, 1998; October 1, 2003; February 5, 2009; October 8, 2009; November 5, 2015; April 5, 2018; September 25, 2019; December 14, 2021; June 14, 2023.

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