Legal Deserts and Former Client Conflicts:

A Case Study on How an Ethics Rule Was Amended

Public Law for the Public's Lawyers
October 29, 2026

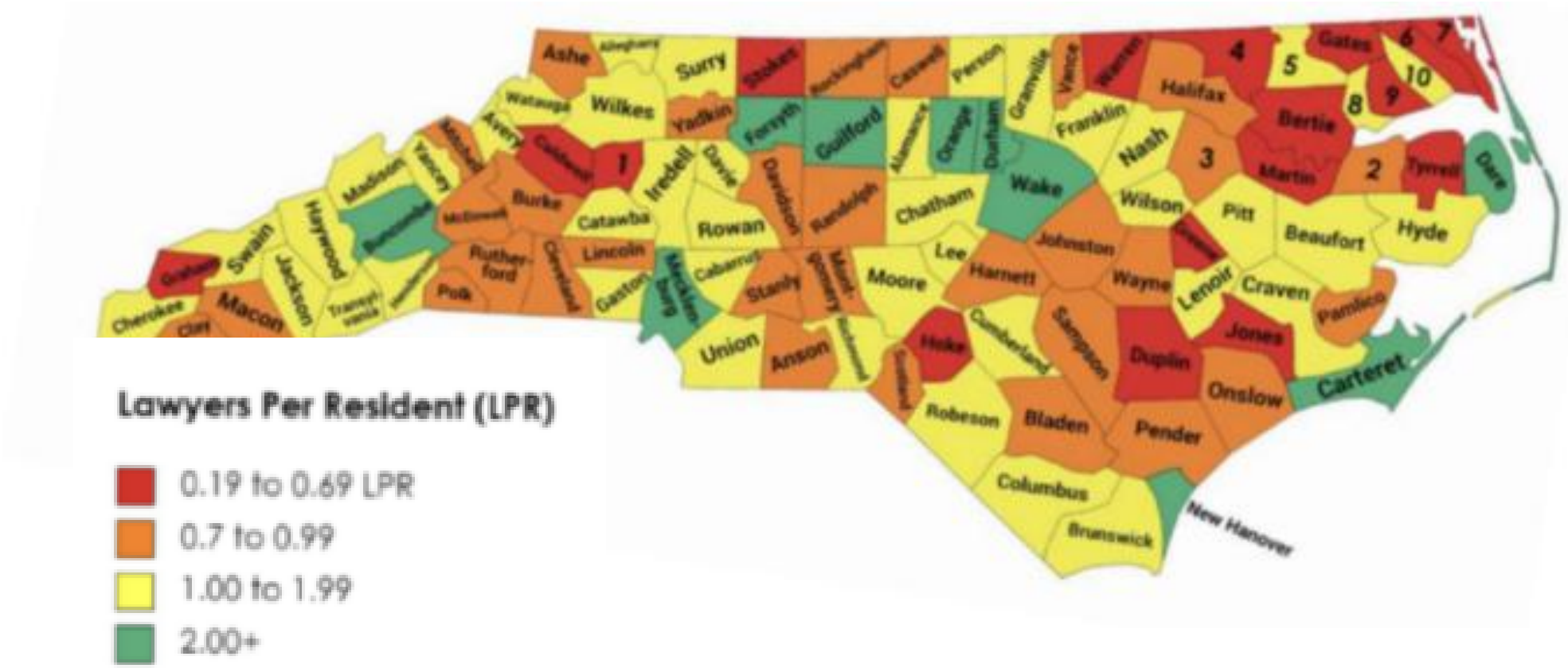
Daniel Spiegel, Assistant Professor of
Criminal Law, Procedure, and Evidence

UNC School of Government

Legal Deserts



Legal Desert Map



Legal Deserts

A Larger Conversation on Legal Deserts







IOLTA grant recipients

Legal Deserts

PROFESSIONALISM

Long-Term Recruiting for Legal Deserts (Oasis)



Jimbo Perry
April 06, 2026



IDS holds ‘onboarding’ for historic public defender expansion



The Problem

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
A	Defend… Under 18 at Time of Offense: Life With or …out Parole					
B1	A *240 - 300* **192 - 240** *144 - 192*	A *276 - 345* **221 - 276** *166 - 221*	A *317 -397* **254 - 317** *190 - 254*	A *365 - 456* **292 - 365** *219 - 292*	A *Life Without Parole* **336 - 420** *252 - 336*	A *Life …hout Paro…* **386 - 48…** *290 - 386*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *180 - 225* **144 - 180** *108 - 144*	A *207 - 258* **165 - 207** *124 - 165*	A *238 - 297* **190 - 238** *143 - 190*	A *273 - 342* **219 - 273** *164 - 219*	A *314 - 393* **251 - 314** *189 - 2…*
C	A *73 - …* **58 - 73** *44 - 58*	A *83 - 104* **67 - 83** *50 - 6…*	A *96 - 120* **77 - 96** *58 - 77*	A *110 - 138* **88 - 110** *66 - 88*	A *127 - 159* **101 - 127** *… - 101*	A *… - 182* **117 - 146** *87 - 117*
D	A *64 - 80* **51 - 64** *38 - 51*	A *73 - 92* **59 - 73** *44 - 59*	A *84 - 105* **67 - 84** *51 - 67*	A *97 - 121* **78 - 97** *58 - 78*	A *111 - 139* **89 - 111** *67 - 89*	A *128 - 160* **103 - 128** *77 - 103*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *33 - 41* **26 - 33** *20 - 26*	A *38 - 48* **30 - 38** *23 - 30*	A *44 - 55* **35 - 44** *26 - 35*	A *50 - 63* **40 - 50** *30 - 40*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 23* **15 - 19** *11 - 15*	I/A *21 - 27* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *28 - 36* **23 - 28** *17 - 23*	A *33 - 41* **26 - 33** *20 - 26*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *14 - 18* **12 - 14** *9 - 12*	I/A *17 - 21* **13 - 17** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	A *22 - 27* **17 - 22** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 - 10** *6 - 8*

DISPOSITION

Aggravated Range

PRESUMPTIVE RANGE

Mitigated Range

A – Active Punishment **I** – Intermediate Punishment **C** – Community Punishment

Numbers shown are in months and represent the range of minimum sentences

When is there a Conflict involving a Former Client?



First Principles

- **Co-Defendants – "grave" potential for conflict**
  - But theoretically possible! (4 conditions under Rule 1.7(b))
  - Some conflicts are *non-consentable*
- **Concurrent Clients**
  - One is a witness in another's case
  - Greater potential for conflict than with former clients
  - Can't represent two clients at the same time where interests are directly adverse or representation is materially limited



First Principles

- **Successive Clients – Same or Substantially Similar Matter**
  - Significant risk of conflict
  - Yet possible, *even where:*
    - *the interests are materially adverse* and
    - *the lawyer acquired material information* from former client,
  - with informed written consent. Rule 1.9(b)



More Common:

Former Client Involved in Current Client's Case

- Concerns:
  - Loyalty
  - Use of Material Information
  - Comes to a head during cross-examination of former client
  - But can be an issue during pretrial phase, fact-gathering, or negotiation



Concern: Loyalty



Concern:
Material Information



Cross-Examination Using Prior Conviction

- Witness in current case was previously represented by public defender office.
- The prior representation resulted in a conviction.
- Unpublished Ethics Opinion- 98 Ethics Decision 9
- Concern of:
  - “Spillover” beyond bare fact of conviction into confidential territory
  - “Pulling Punches”



Pulling Punches



“Spillover” Problem



Material Information



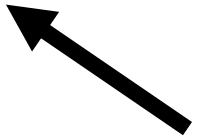
Former client represented in-house or not?





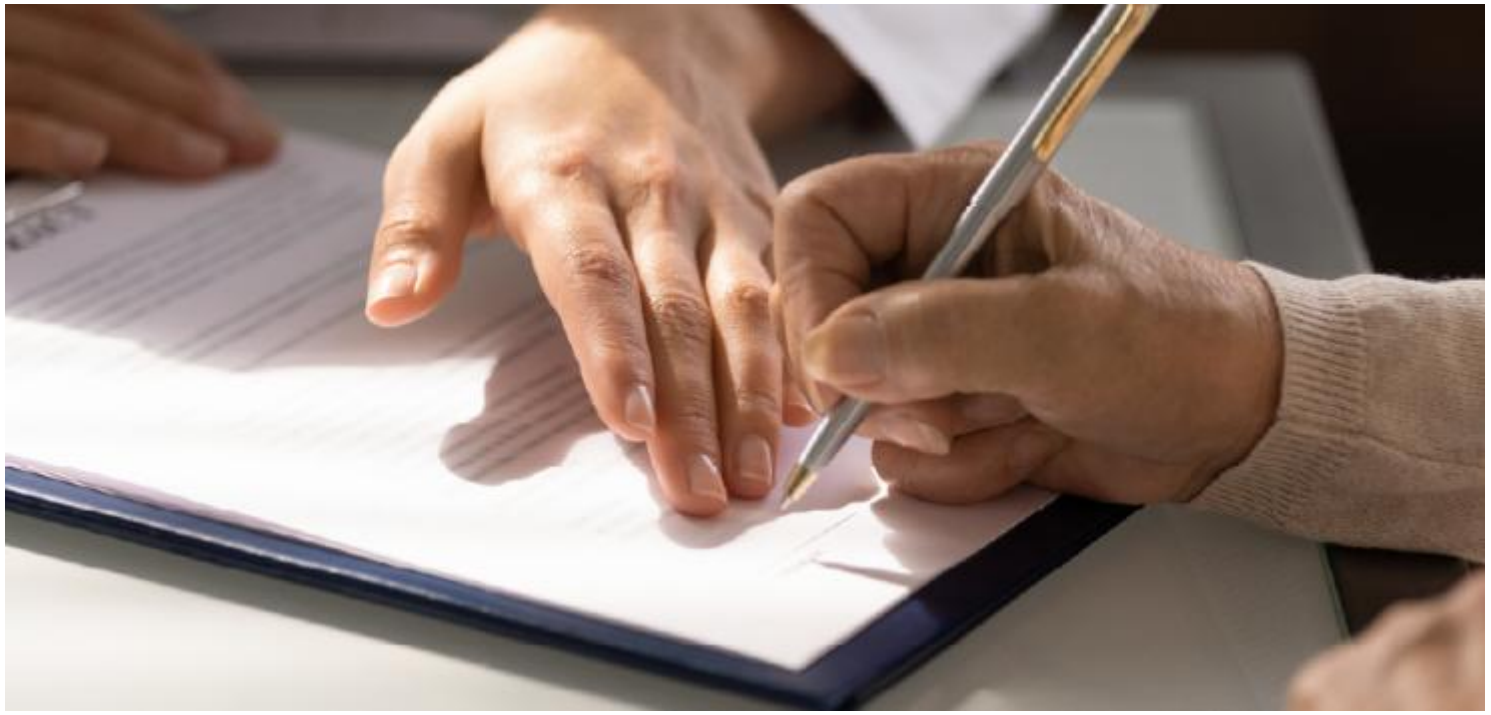








Informed Consent



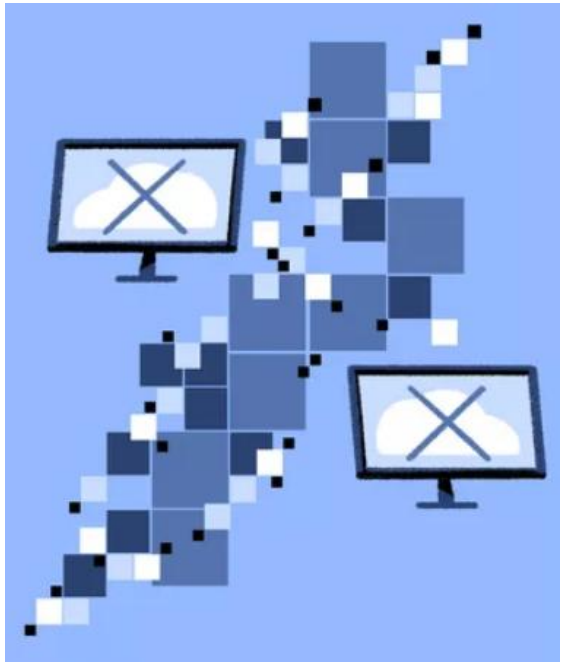
Screening and Notice



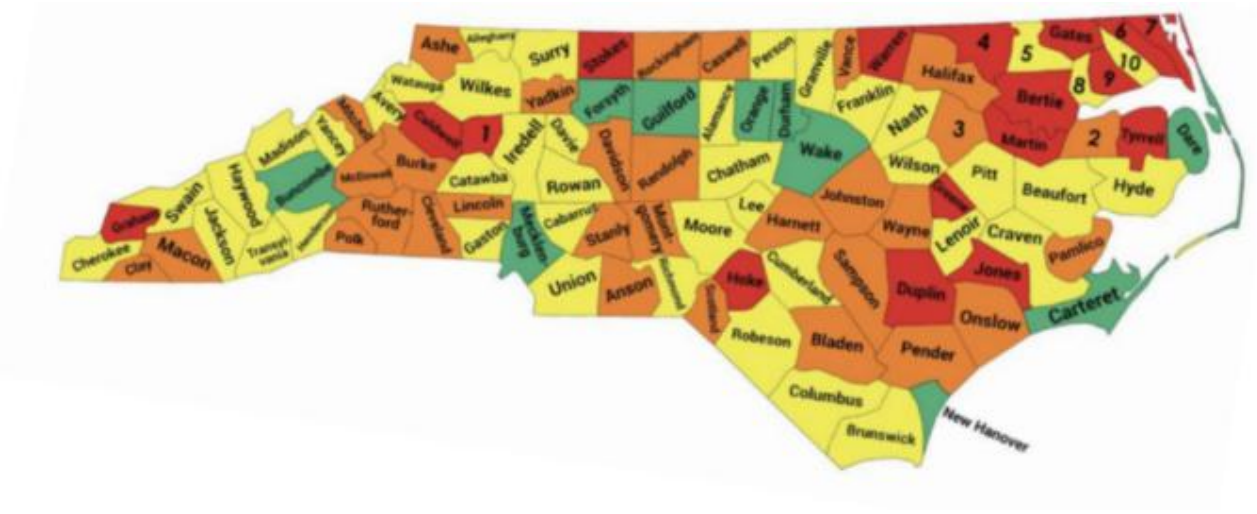


Ethical “Wall” or Screen





Variation in Local Practice as to When to "Farm Out"





The Problem

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
A	Defend… Under 18 at Time of Offense: Life With or …out Parole					
B1	A *240 - 300* **192 - 240** *144 - 192*	A *276 - 345* **221 - 276** *166 - 221*	A *317 -397* **254 - 317** *190 - 254*	A *365 - 456* **292 - 365** *219 - 292*	A *Life Without Parole* **336 - 420** *252 - 336*	A *Life …hout Paro…* **386 - 48…** *290 - 386*
B2	A *157 - 196* **125 - 157** *94 - 125*	A *180 - 225* **144 - 180** *108 - 144*	A *207 - 258* **165 - 207** *124 - 165*	A *238 - 297* **190 - 238** *143 - 190*	A *273 - 342* **219 - 273** *164 - 219*	A *314 - 393* **251 - 314** *189 - 2…*
C	A *73 - …* **58 - 73** *44 - 58*	A *83 - 104* **67 - 83** *50 - 6…*	A *96 - 120* **77 - 96** *58 - 77*	A *110 - 138* **88 - 110** *66 - 88*	A *127 - 159* **101 - 127** *… - 101*	A *… - 182* **117 - 146** *87 - 117*
D	A *64 - 80* **51 - 64** *38 - 51*	A *73 - 92* **59 - 73** *44 - 59*	A *84 - 105* **67 - 84** *51 - 67*	A *97 - 121* **78 - 97** *58 - 78*	A *111 - 139* **89 - 111** *67 - 89*	A *128 - 160* **103 - 128** *77 - 103*
E	I/A *25 - 31* **20 - 25** *15 - 20*	I/A *29 - 36* **23 - 29** *17 - 23*	A *33 - 41* **26 - 33** *20 - 26*	A *38 - 48* **30 - 38** *23 - 30*	A *44 - 55* **35 - 44** *26 - 35*	A *50 - 63* **40 - 50** *30 - 40*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 23* **15 - 19** *11 - 15*	I/A *21 - 27* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *28 - 36* **23 - 28** *17 - 23*	A *33 - 41* **26 - 33** *20 - 26*
G	I/A *13 - 16* **10 - 13** *8 - 10*	I/A *14 - 18* **12 - 14** *9 - 12*	I/A *17 - 21* **13 - 17** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	A *22 - 27* **17 - 22** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*
I	C *6 - 8* **4 - 6** *3 - 4*	C/I *6 - 8* **4 - 6** *3 - 4*	I *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *9 - 11* **7 - 9** *5 - 7*	I/A *10 - 12* **8 - 10** *6 - 8*

DISPOSITION

Aggravated Range

PRESUMPTIVE RANGE

Mitigated Range

A – Active Punishment **I** – Intermediate Punishment **C** – Community Punishment

Numbers shown are in months and represent the range of minimum sentences

An Ethics Committee Was Convened



History of Screening Practices

"The Expansion of Attorney Conflict Screening" by Douglas J. Brocker

(North Carolina State Bar Article- December 2003)

History of Screening

- Screening practices let
  - (1) lawyers change firms more easily and
  - (2) give clients more freedom to choose lawyers
- Before 2003, screening allowed only in **limited circumstances**
- Revision to Ethics Rules expanded screening practices.
- Allowed for screening off lawyer when a lawyer **moves between private firms** (not just from government to private practice, or to firm after being a judge/mediator) – this was a **big change**
- Conflict still "imputed" to new firm under Rule 1.10, but effective screening resolves the issue

History of Screening

- **BUT** until the 2026 change, if lawyer represented a former client while at the same firm (as opposed to while working for outside firm), **screening and notice** was NOT available as a “remedy”
- **Informed Consent was** required

Amendment to Rule 1.10

- Effective April 1, 2026:
- ...(g) **Disqualification pursuant to Rule 1.9 as prescribed by Paragraphs (a) and (b)** of this Rule when applied to members of a public defender's office **may be resolved by following the screening and notice requirements** as set out in Subparagraphs (c)(1) and (c)(2) of this Rule.

“Bonus” Amendment

- **Effective April 1, 2026:**
- (f) The disqualification prescribed by Paragraphs (a) and (b) of this Rule when applied to **members of the North Carolina Department of Justice** may be resolved by following the screening and notice requirements as set out in Subparagraphs (c)(1) and (c)(2) of this Rule.

“Bonus” Amendment

- Comment [12]: Lawyers working in a public defender's office provide clients with constitutionally guaranteed representation. **Similarly, lawyers working in the North Carolina Department of Justice** provide government entities, agencies, and individuals with statutorily guaranteed representation.

Former Clients: Conflict and Remedy

- Is there a conflict?

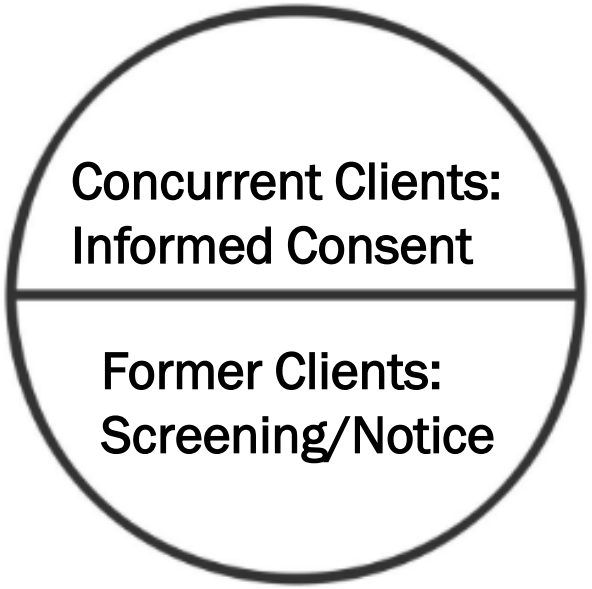


Answering the Questions



Former Clients: Conflict and Remedy

- What is the remedy?
- After amendment…



Screening and Notice: How to do it?

- Two issues to explore with new rule:
  - 1) Chief Public Defender or (?) at DOJ must decide if representation can ethically proceed using screening and notice to neutralize any potential issues.
  - 2) If head of office concludes that it is appropriate, what measures should be taken to effectively screen? See Rule 1.0 cmt. 9.
    - Written acknowledgment?
    - Reminders?
    - Limiting access to files? Paper? Electronic?

Loyalty







Thank you!

Daniel Spiegel, Assistant Professor, UNC SOG

919-966-4377

spiegel@sog.unc.edu