

# Report of Subcommittee to Study Secure Leave Policy



North Carolina State Bar  
October 2021

## TABLE OF CONTENTS

<b>REPORT OF SUBCOMMITTEE TO STUDY SECURE LEAVE POLICY .....</b>	<b>1</b>
ESTABLISHMENT OF SUBCOMMITTEE .....	1
SCOPE OF WORK .....	1
ASSESSMENT SUMMARIES .....	2
RECOMMENDATIONS .....	5
<b>PROPOSED RULE AMENDMENTS .....</b>	<b>7</b>
RULE 26 .....	7
RULE 33.1 .....	10
26 NCAC 03 .0119 .....	12
<b>APPENDIX .....</b>	<b>14</b>

**NOTE: APPENDIX ITEMS ARE NOT INCLUDED IN THE PRINTED VERSION OF THE REPORT. ACCESS THE REPORT ONLINE AT [HTTPS://WWW.NCBAR.GOV/NEWS-PUBLICATIONS/REPORT-ON-SECURE-LEAVE-POLICY/](https://www.ncbar.gov/news-publications/report-on-secure-leave-policy/)**

Report of Subcommittee To  
Study Secure Leave Policy

October 4, 2021

Subcommittee Members:

Walter Brock  
Shelli H. Buckner  
Drew Erteschik  
Dionne Fortner  
Katherine Frye  
Mark Henriques  
Kevin Kiernan  
Bill Mills  
Mel Wright  
Gordon Brown, Chair

Counsel to Subcommittee:

Savannah Perry, Deputy Counsel  
Cameron Lee, Deputy Counsel

Establishment of Subcommittee. State Bar Vice-President and Issues Committee Chair Marcia Armstrong appointed a subcommittee on February 1, 2021 to study the operative secure leave policies available to North Carolina's practicing attorneys. The State Bar assigned Deputy Counsel Savannah Perry and Cameron Lee to assist the Subcommittee. The Subcommittee met seven times. (Minutes of its meetings are collected in Appendix, Item A).

Scope of Work. The Subcommittee established four<sup>1</sup> principal areas for assessment:

How well are the current secure leave rules working?

In what respects can the current secure leave rules be improved?

What adverse impacts do the current secure leave rules have on our state trial and appellate courts?

Can secure leave be designated through a central statewide clearing registry?

To make these assessments, the Subcommittee gathered input from a number of sources, including judges, judicial officials and AOC administrators. Deputy Counsel Lee surveyed secure

---

<sup>1</sup>Originally, there was another area of assessment: "Is there a rationale for extending secure leave to practitioners' administrative agencies?" This area was removed from the list when member Walter Brock discovered 26 NCAC 03.0119 and form published by the Office of Administrative Hearings for submission to obtain secure leave designation.

leave policies from a sampling of other jurisdictions (Appendix, Item B)<sup>2</sup> as well as each of North Carolina's judicial districts. (Appendix, Item C).

Significant input was sought and obtained from the practicing bar through a survey designed to elicit data probative of issues and concerns about the current rules. Deputy Counsel Perry took the lead on the survey with the Subcommittee's review and input. Once concurrence was reached on the content, the survey was sent to the State Bar Councilors and the North Carolina Advocates for Justice, the North Carolina Association of Defense Attorneys, the NC Association of Black Lawyers, the North Carolina Association of Women Attorneys and the North Carolina Bar Association. The NCBA was asked to disseminate the survey to attorneys in its trial practice oriented sections (Administrative Law, Antitrust & Complex Business Disputes, Appellate Practice, Construction Law, Criminal Justice, Family Law, Litigation and Zoning, Planning and Land Use) and its Young Lawyers Division. (The request for participation letters are collected in Appendix, Item D). Each of these affinity bars cooperated. The fourteen question survey was a success. There were 958 responses. The resulting data report is 80 pages long (compiled in Appendix, Item E) and is a cornucopia of information pertinent to secure leave policy considerations.

#### Assessment Summaries.

##### A. How well are the current secure leave rules working?

Based on Deputy Counsel Lee's survey of other jurisdictions, North Carolina's secure leave rules offer benefits and protections unavailable to attorneys in most other states. Those states which adopted leave policies tended to emphasize their purpose was to facilitate vacations. In this respect, they are akin to the North Carolina rules.

All three North Carolina rules became effective in 2000 and thus have been available for almost 21 years.<sup>3</sup> The question for the Subcommittee was: "Can the current rules can be optimized?" The Subcommittee answers this question "yes" based on multiple sources of input, not to least of which was the Deputy Counsel Perry's survey which identifies the following four areas for improvement:

- The cumbersomeness of the 90-day advance notice requirement (cited by 79% of the respondents).
- The Sunday to Saturday seven day minimum (cited by 57% of the respondents).
- The limitation of secure leave periods to a maximum of three day (cited by 54% of the respondents).

---

<sup>2</sup>Chosen for study were Virginia, South Carolina, Georgia, Florida, Texas, California, Oregon, Illinois and Massachusetts.

<sup>3</sup>Moreover, General Rule of Practice 26 and Appellate Rule 33.1 were extended to birth or adoption of children in 2019. The OAH counterpart rule has not been amended to conform to the 2019 amendments to Rules 26 and 33.1.



- The awkwardness of the submission procedure (cited by 45% of the respondents).
- B. In what respects can the current secure leave rules be improved?

The difficulties with the current rules identified by the survey as well as input from other sources and their own experiences guided the Subcommittee's rewrite of the rules. The reforms recommended by the Subcommittee include:

- Within a calendar year, an attorney may enjoy 20 days of secure leave for any purpose.<sup>4</sup>
- Secure leave may be taken in minimum blocks of two consecutive days provided the total designated and taken does not exceed 20 days in a single calendar year.
- Saturdays, Sundays and holidays observed by the courts of North Carolina are disregarded for counting purposes (creating the possibility of the four or five day weekends).
- A secure leave period that crosses from one calendar year to another will be counted only against the calendar year in which the day actually occurs.
- Where secure leave is for birth or adoption, it is specifically in addition to the secure leave allowance for any purpose, and secure leave for birth or adoption is taken in blocks of time consisting of complete calendar weeks.
- The designation submission period is reduced from 90 to 45 days before the secure leave period begins and before a proceeding in any of the attorney's cases is scheduled that otherwise conflicts.
- In the event an attorney's plans for secure leave change in whole or in part for any reason, the attorney may move the secure leave to a different period by serving written notice of a modified secure leave period at least 45 days before the modified secure leave period begins and before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the modified secure leave period.

---

<sup>4</sup>The Subcommittee discussed other potential purposes for secure leave such as health, child or parental care, bereavement leave and the like. However, the strong consensus of the members is the principal goal of the secure leave is vacation, well being and improved mental health. 83% of the survey respondents indicate secure leave improved this mental health/quality of life. There will be those who use secure leave for other things – elective surgery, reserve duty, childrens' weddings and the like, but all of this qualifies as "any purpose," and a preponderant portion will be a positive adjunct to mental health. For this reason, the Subcommittee left secure leave unrestricted as to purpose while recognizing any secure leave not otherwise qualifying under Rule 26 can be sought under paragraph (h): "Nothing in this rule limits the inherent power of the courts to allow an attorney to enjoy leave that has not been designated according to this rule."

- If the attorney serves written notice of cancellation or withdrawal, the number of days originally designated but not taken will not be counted against the attorney's annual allowance.
- Other grammatical and syntactical changes have been made to simplify the rules.

Attached are Rule 26, Appellate Rule 33.1 and 26 NCAC 03.0119 in both redlined and untracked formats. For purposes of these drafts, certain comments are footnoted. It is not the intent of the Subcommittee these comments survive these drafts. They are retained for this report only for purposes of edification.

C. What adverse impacts do the current secure leave rules have on our state trial in appellate courts?

Based upon feedback from judges and other judicial officials, including the Administrative Office of the Courts, the secure leave rules have not had an adverse impact. If anything, the effect has been administrative in nature with clerks trial court coordinators, trial court administrators, judicial secretaries and others tasked with receiving and compiling secure leave submissions. Deputy Counsel Lee's report on local rules affecting the implementation of Rule 26 of the Rules of General Practice (Appendix, Item C) chronicles variations from district to district. On a local level, courts appear to embrace secure leave rather than push it away. For example, in District 10 (Wake), the court is empowered to waive the 90-day notice period under extraordinary circumstances (Local Rule 16.0). The same is true for District 16B (Robeson), (Local Rule 32) and District 22A (Alexander, Iredell) (Local Rule 20). Some local districts have expanded Rule 26. District 20A (Montgomery, Stanley) allows its attorneys to designate time away from court for continuing legal education. (Local Rule 20). District 26 (Mecklenburg) has a provision designed to accommodate attorneys in their observance of religious holidays. (Local Rule 23). District 29B (Henderson, Polk, Transylvania) uniquely extends Rule 26 to *pro se* litigants. (Local Rule 1.4). District 29B also deals with the local administrative practice of assigning a tentative trial date as much as a year in advance (which otherwise makes it impossible to give a 90-day notice). District 29B's attorneys are advised to notify the trial court coordinator if a trial date conflicts with a *potential* leave period "so reasonable accommodations can be made." (Local Rule 1.4).

An initial and recurring concern for the Subcommittee is the potential for abuse of secure leave. That concern was original to the drafters of Rule 26 in that paragraph (d) requires the submitting attorney to include "a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding...". Prospective abuse was thoroughly considered, particularly should the number of eligible days be enlarged from 15 to 20 and the number of potential secure leave periods be enlarged from 3 to 10. Survey question 13 asked "Have you ever observed or reasonably suspected an attorney of abusing the secure leave rules?" 905 respondents answered that question. 89% responded "no." Of the 98 individual comments which followed and dealt with the potential incidents of "abuse" observed by the respondents, most would be resolved by making then reforms recommended by the Subcommittee. For example: reports of attorneys who make "Designation of less than a week at a time" (comment #8) or "The attorney would frequently say he was on 'secured leave' for just a day or two (kind of

like a long weekend).” (Comment #29). Based on research of the Office of Counsel, there is, as of this date, only one public Consent Order of Discipline involving abuse of secure leave. *The North Carolina State Bar v. Hoyl*, 18 DHC 6 (2019) (attorney’s designation of secure leave in action or proceeding in which he had entered an appearance conflicted with a known hearing, trial or other proceeding scheduled during the designated secure leave period). (Appendix, Item F). Other grievance matters may also have arisen involving non-public discipline, but those obviously are not available to the Subcommittee for purposes of its work. Suffice it to say there is no empirical evidence abuse is widespread or of such concern to the judiciary or other practitioners that its contingency should forestall the reforms recommended by the Subcommittee.

D. Can Secure Leave Be Designated Through a Central Statewide Clearing Registry?

45% of survey respondents were dissatisfied with the submission procedure, particularly those who litigate in multiple districts. As Deputy Counsel Lee’s district by district survey and the Appendix thereto demonstrate, for those who practice in multiple districts there are multiple forms to be used depending on whether the case is in district or superior, civil or criminal, juvenile, special or estate. The simple answer to the question is yes, “it is possible for secure leave to be designated through a central statewide clearing agency.” In fact, it has been happening for a long time pursuant to Appellate Rule 33.1. Subparagraph (c) of that rule provides:

**How to submit designation.** An attorney must submit his or her designation of a secure leave period using the electronic filing site of the appellate courts at <https://www.ncappellatecourts.org>.

Obviously, the design, construction and maintenance of a secure leave designation portal serving courts and administrative agencies statewide is a much different undertaking from what is presently in use for the appellate courts. Nonetheless, Mel Wright and Walter Brock were deputized to pursue inquiries to the AOC and others concerning the feasibility of a statewide submission and clearing registry. Both reported the current system (Odyssey) being implemented by the AOC for statewide filing of cases and pleadings will also accommodate submissions of secure leave designations. A module within Odyssey would be developed to track “attorney availability on a statewide basis”. This linkage would be unprecedented and of immense value for planning and scheduling for the courts as well as to attorneys seeking time away from their toils. Walter Brock reported the rollout of the statewide filing system will take time and secure leave designation capability would not attain viability until the statewide system is operative. In short, there is time to design, construct and implement the module. From a second source, Mel Wright reported an inquiry floated to the district court judges came back favorably concerning a statewide filing capability. However, a significant number of the judges want the current system of district-by-district filing to be retained until full implementation of Odyssey is substantially completed. (See selected communications collected in Appendix, Item G).

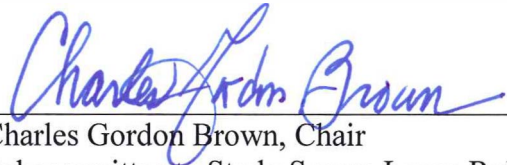
Recommendations.

The Subcommittee recommends to the Issues Committee that:

1. Rule 26 of the General Rules of Practice, Appellate Rule 33.1 and 26 NCAC 03.0119 be rewritten with the reforms as indicated on the attached redlined and untracked versions.

2. A new subcommittee be appointed to advocate for the design, construction and implementation of a unified, statewide filing system for secure leave designations, modifications and withdrawals. The Chief Business Officer of the AOC has indicated the process can be initiated by presentation of a formal request to the AOC from an appropriate agency. Given that agency may be the Supreme Court with respect to lawyers seeking secure leave in the State's trial and appellate courts and the Office of the Administrative Hearings for lawyers seeking secure leave in the State's administrative agencies, it is prudent to approach this topic over the course of the Issue Committee's 2021-2022 program year.

This 4<sup>th</sup> day of October, 2021.



---

Charles Gordon Brown, Chair  
Subcommittee to Study Secure Leave Rules

**Rule 26. Secure-Leave Periods for Attorneys**

- (a) **Definition; Entitlement.** A “secure-leave period” is a block of time ~~one complete calendar week that is~~ designated by an attorney during which the ~~superior courts<sup>1</sup> and the district courts~~ may not hold a proceeding in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.
- (b) **Allowance.**
- (1) Secure-Leave for any Purpose. Within a calendar year, an attorney may enjoy twenty days of ~~three different~~ secure-leave periods for any purpose. Secure-leave designated under this subsection may be taken in minimum blocks of two consecutive days provided the total number of days designated and taken do not exceed twenty days in a single calendar year. Saturdays, Sundays and holidays observed by the courts of North Carolina shall be disregarded for counting purposes.<sup>2</sup> A secure-leave period that crosses from one ~~spans across~~ calendar years into another counts against the attorney’s allowance for the first calendar year in which the day occurs.
- (2) Secure-Leave for Birth or Adoption. Within the twenty-four weeks after the birth or adoption of an attorney’s child, that attorney may enjoy twelve additional weeks of secure-leave periods for the purpose of caring for the child. Secure-leave periods designated under this subsection shall be taken in blocks of time consisting of complete calendar weeks. The secure-leave allowance in (b)(2) is in addition to the secure-leave allowance in (b)(1).
- (c) **Form of Designation.** An ~~A~~attorneys must designate his or her secure-leave periods in writing.
- (d) **Content of Designation.** An attorney’s designation of a secure-leave period must contain the following information:
- (1) the attorney’s name, address, e-mail, telephone number, and state bar number;
- (2) the date of the Sunday on which the secure-leave period is to begin and the date of the Saturday on which it is to end;

---

<sup>1</sup>Comment 1. “Courts” include the superior and district courts of North Carolina and their constituent operations: civil, criminal, juvenile, estates, special proceedings, domestic, etc.

<sup>2</sup>Comment 2. A designated day followed by a court holiday followed by a designated day shall be counted as two consecutive days. A designated Friday followed by a Saturday, Sunday and a designated Monday shall be counted as two consecutive days.

- (3) the allowance that the secure-leave period will count against, with reference to either subsection (b)(1) or (b)(2) of this rule;
- (4) the dates of any previously designated secure-leave periods that count against that allowance;
- (5) a statement that the secure-leave period is not being designated for the purpose of interfering with the timely disposition of any proceeding;
- (6) a statement that the attorney has taken adequate measures to protect the interests of the attorney's clients during the secure-leave period; and
- (7) the attorney's signature and the date on which the attorney submits the designation.

(e) **Where to Submit Designation.**<sup>3</sup>

- (1) **In Criminal Actions.** ~~The a~~Attorneys must submit ~~his or her~~ designations of ~~a~~ secure-leave periods to the office of the district attorney for each prosecutorial district in which ~~the attorney's~~ criminal actions are pending.
- (2) **In Civil Actions.** ~~The A~~attorneys must submit ~~his or her~~ designations of a secure-leave periods to the office of the senior resident superior court judge for each superior court district and to the office of the chief district court judge for each district court district in which ~~the attorney's~~ civil actions are pending.
- (3) **In Special Proceedings and Estate Proceedings.** ~~The a~~Attorneys must submit ~~his or her~~ designations of a secure-leave periods to the office of the clerk of the superior court of ~~each the~~ county in which ~~the attorney's~~ special proceedings or estate proceedings are pending.
- (4) **In Juvenile Proceedings.** ~~The A~~attorneys must submit ~~his or her~~ designations of a secure-leave periods to the juvenile case calendaring clerk in the office of the clerk of the superior court of ~~each the~~ county in which ~~the attorney's~~ juvenile proceedings are pending.

(f) **When to Submit, Modify or Withdraw Designation.** An attorney must submit ~~a~~ ~~his or her~~ designation of a secure-leave period:

- (1) at least ~~forty-five ninety~~ days before the secure-leave period begins; and

---

<sup>3</sup>Comment 3. The Subcommittee is exploring the feasibility of a statewide electronic registry for secure-leave designation. If adopted, it would link with and serve the databases set forth below, among others.

- (2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

In the event an attorney's plans for secure-leave change in whole or in part for any reason, the attorney may move the secure-leave to a different period by serving written notice of

(1) a modified secure-leave period at least forty-five days before the modified secure-leave period begins, and

(2) before a proceeding in any of the attorney's cases is scheduled for a time that conflicts with the modified secure-leave period.

If the attorney serves written notice of cancellation or withdrawal, the number of days originally designated but not taken will not be counted against the attorney's annual allowance.

Any modification, cancellation or withdrawal of a previous secure leave designation shall state such action is not being taken for purposes of interfering with the timely disposition of any proceeding.

Child Birth/Adoption Exceptions. But because of the uncertainty of a child's birth or adoption date, the ~~superior court or district~~ court scheduling authority must make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

- (g) **Depositions.** A party may not notice a deposition for a time that conflicts with a secure-leave period that another party's attorney has designated according to this rule.
- (h) **Other Leave.** Nothing in this rule limits the inherent power of the ~~superior courts or the district~~ courts to allow an attorney to enjoy leave that has not been designated according to this rule.



**Rule 33.1. Secure-Leave Periods for Attorneys**

- (a) **Definition; Entitlement.** A “secure-leave period” is a block of time ~~one complete calendar week that is~~ designated by an attorney during which the ~~appellate~~ courts<sup>1</sup> will not hold oral argument in any case in which that attorney is an attorney of record. An attorney is entitled to enjoy a secure-leave period that has been designated according to this rule.
- (b) **Allowance.**
- (1) Secure-Leave for any Purpose. Within a calendar year, an attorney may enjoy twenty days of ~~three different~~ secure-leave periods for any purpose. Secure-leave designated under this subsection may be taken in minimum blocks of two consecutive days provided the total number of days designated and taken do not exceed twenty days in a single calendar year. Saturdays, Sundays and holidays observed by the courts of North Carolina shall be disregarded for counting purposes.<sup>2</sup> A secure-leave period that crosses from one calendar year into another counts against the attorney’s allowance for the calendar year in which the day occurs.
- (2) Secure-Leave for Birth or Adoption. Within the twenty-four weeks after the birth or adoption of an attorney’s child, that attorney may enjoy twelve additional weeks of secure-leave ~~periods~~ for the purpose of caring for the child. Secure-leave periods designated under this subsection shall be taken in blocks of time consisting of complete calendar weeks. The secure-leave allowance in (b)(2) is in addition to the secure leave allowance in (b)(1).
- (c) **How to Submit Designation.** An attorney must submit a ~~his or her~~ designation of a secure-leave period using the electronic filing site of the appellate courts at <https://www.ncappellatecourts.org>.
- (d) **When to Submit, Modify or Withdraw Designation.** An attorney must submit a ~~his or her~~ designation of a secure-leave period:

---

<sup>1</sup>Comment 1. “Courts” include the superior and district courts of North Carolina and their constituent operations: civil, criminal, juvenile, estates, special proceedings, domestic, etc.

<sup>2</sup>Comment 2. A designated day followed by a court holiday followed by a designated day shall be counted as two consecutive days. A designated Friday followed by a Saturday, Sunday and a designated Monday shall be counted as two consecutive days.



- (1) at least forty-five ~~ninety~~ days before the secure-leave period begins; and
- (2) before oral argument in any of the attorney's cases is scheduled for a time that conflicts with the secure-leave period.

In the event an attorney's plans for secure-leave change in whole or in part for any reason, the attorney may move the secure-leave to a different period by serving written notice of

- (1) a modified secure-leave period at least forty-five days before the modified secure-leave period begins, and
- (2) before oral argument in any of the attorney's cases is scheduled for a time that conflicts with the modified secure-leave period.

If the attorney serves written notice of cancellation or withdrawal, the number of days originally designated but not taken will not be counted against the attorney's annual allowance.

Any modification, cancellation or withdrawal of a previous secure leave designation shall state such action is not being taken for purposes of interfering with the timely disposition of any proceeding.

Child Birth/Adoption Exceptions. But because of the uncertainty of a child's birth or adoption date, the Supreme Court and the Court of Appeals will make reasonable exception to these requirements so that an attorney may enjoy leave with the child.

**SECURE-LEAVE PERIODS FOR ATTORNEYS**

- (a) Any attorney may designate one or more secure leave periods each calendar year as provided in this Rule.
- (b) Length, Number.
- (1) Secure-Leave for any Purpose. A secure leave period shall consist of a block of time of up to twenty days for any purpose. Secure-leave designated under this subsection may be taken in minimum blocks of two consecutive days provided the total number of days designated and taken do not exceed twenty days in a single calendar year. Saturdays, Sundays and holidays observed by the courts of North Carolina shall be disregarded for counting purposes.<sup>1</sup> A secure-leave period that crosses from one calendar year into another counts against the attorney's allowance for the calendar year in which the day occurs. ~~one or more complete calendar weeks.~~ During any calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed, in the aggregate, three calendar weeks.
- (2) Secure-Leave for Birth or Adoption. Within the twenty-four weeks after the birth or adoption of an attorney's child, that attorney may enjoy twelve weeks of secure-leave for the purpose of caring for the child. Secure-leave periods designated under this subsection shall be taken in blocks of time consisting of complete calendar weeks. The secure-leave allowance in (b)(2) is in addition to the secure leave allowance in (b)(1).
- (c) Designation, Effect. To designate a secure leave period an attorney shall file a written designation containing the information required by Paragraph (d) with the Chief Hearings Clerk. The designation shall be filed:
- (1) ~~no later than at least [thirty][forty-five] 90~~ days before the ~~beginning of the secure--leave period begins~~; and
- (2) before ~~any argument or other~~ proceeding in any of the attorney's cases before an administrative law judge ~~is has been~~ scheduled for a time that conflicts with during the ~~designated~~ secure leave period.

Upon such filing, the secure--leave period so designated shall be deemed allowed without further action by the presiding administrative law judge, and the attorney shall not be required to appear at any ~~argument or other administrative~~ proceeding during that secure--leave period.

---

<sup>1</sup>Comment 1. A designated day followed by a court holiday followed by a designated day shall be counted as two consecutive days. A designated Friday followed by a Saturday, Sunday and a designated Monday shall be counted as two consecutive days.

In the event an attorney's plans for secure-leave change in whole or in part for any reason, the attorney may move the secure-leave to a different period by serving written notice of

- (1) a modified secure-leave period at least forty-five days before the modified secure-leave period begins, and
- (2) before a proceeding in any of the attorney's cases before an administrative law judge is scheduled for a time that conflicts with the modified secure-leave period.

If the attorney serves written notice of cancellation or withdrawal, the number of days originally designated but not taken will not be counted against the attorney's annual allowance.

Any modification, cancellation or withdrawal of a previous secure leave designation shall state such action is not being taken for purposes of interfering with the timely disposition of any proceeding.

(d) Content of Designation. The designation shall contain the following information:

- (1) the attorney's name, address, telephone number and state bar number;
- (2) the date ~~of the Monday~~ on which the secure leave period is to begin and ~~of~~ the date Friday on which it is to end;
- (3) the dates of all other secure leave periods during the current calendar year that have previously been designated by the attorney pursuant to this Rule;
- (4) a statement that the secure leave period is not being designated for the purpose of delaying, hindering or interfering with the timely disposition of any matter in any pending action or proceeding; and
- (5) a statement that no argument or other proceeding has been scheduled during the designated secure leave period in any matter pending before an administrative law judge in which the attorney has entered an appearance.

~~History Note: Authority G.S. 7A-750; 150B-40(e);~~

~~Eff. August 1, 2000;~~

~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.~~

Appendix .  
to  
Report of Subcommittee to  
Study Secure Leave Policy

(Appendix items are available via links below)

Item

- A [Subcommittee Meeting Minutes for March 12, 2021, April 1, 2021, May 3, 2021, June 8, 2021, July 6, 2021, August 10, 2021 and August 31, 2021.](#)
- B [Results of Survey of Secure Leave Rules of Sample Jurisdictions.](#)
- C [Report on Local Rules Affecting Implementation of Rule 26 of the Rules of General Practice.](#)
- D [Request for Participation Letters to North Carolina Advocates for Justice, North Carolina Association of Defense Attorneys, NC Association of Black Lawyers, North Carolina Association of Women Attorneys and North Carolina Bar Association.](#)
- E [Survey Regarding Secure Leave Topics.](#)
- F [The North Carolina State Bar v. Larry G. Hoyle, 18 DHC 6 \(2019\).](#)
- G [Miscellaneous correspondence concerning capability of Odyssey system to support a statewide unified filing system for secure leave designation, modification and withdrawal.](#)

# KEY CHANGES TO CLE RULES (IN 2024, IF APPROVED)

## Increase Reporting Period



3-year reporting period for lawyers to complete their CLE requirements. Lawyers split into 3 reporting groups.

**Reason:** Gives lawyers more flexibility to take courses at their own pace and eases administrative burden on CLE staff.

## Eliminate Annual Report



The requirement to file an Annual Report is eliminated.

**Reason:** If a lawyer's CLE record indicates compliance with the requirements, then a filing requirement is unnecessary.

## Change Fee Structure



Eliminates the \$3.50 per credit hour fee in favor of a course application fee and an annual CLE attendance fee.

**Reason:** Improves efficiency for the CLE program, reduces a lawyer's annual cost of attendance, and eliminates "bill collecting".

## No "Grace Period"



The CLE year will run from March 1 through the end of February.

**Reason:** Most lawyers don't realize that the CLE year ends in December, and that January/February is meant to be a grace period. A clean 12-month CLE year is more efficient for everyone.

## Carry-Over Credit



Up to 6 hours of Carry-over credit from one period to another can transfer as total hours (not specialty hours).

**In October, the Board will propose increasing the amount of carry-over credit back to 12 hours.**

## Improved Enforcement



Lawyers who fail to complete their hours requirements will be subject to additional compliance fees and a more streamlined suspension process.

**Reason:** With additional flexibility comes increased individual responsibility and accountability.

## ADDITIONAL CHANGES

- As part of the 36-hour requirement over three years, lawyers must complete at least:
  - 6 Ethics hours (Professional Responsibility, Professionalism, or Social Responsibility)
  - 1 Professional Well-Being and Impairment (PWI) hour
  - 1 Technology Training hour
- On-Demand programs will be approved for three years and thereafter may be renewed annually as long as the program continues to meet accreditation standards.
- The designation of “Registered Sponsor” is eliminated. (Note: The Board is evaluating whether to propose a new “registered” or “accredited” sponsor status.
- The Substance Abuse and Mental Health program definition is modernized and is now called Professional Well-Being (PW).
- A new type of ethics program called “Social Responsibility” is created and is defined as “a program, directly related to the practice of law, devoted to education about diversity, inclusion, bias, or equal access to justice.”
- Exemptions will be claimed during the annual membership dues renewal process.
- The CLE Board intends to maintain its historical funding in support of the Chief Justice’s Commission on Professionalism (CJCP) and the Equal Access to Justice Commission (EAJC).

## CONTACT US

For additional information, please contact Peter Bolac, Assistant Executive Director of the North Carolina State Bar and Director of the Board of Continuing Legal Education at [Pbolac@ncbar.gov](mailto:Pbolac@ncbar.gov) or (919) 828-4620.

# Legal deserts threaten justice for all in rural America

August 3, 2020

Share:



There are 1.3 million lawyers in the United States, but they are mostly concentrated in cities, while many small towns and rural counties have few lawyers. Despite efforts in some states to entice young lawyers to rural settings, the scarcity of rural attorneys is unlikely to change in the next decade, experts agreed.



“Nearly every state in the nation has large stretches of rural areas and counties with few lawyers in them,” said ABA President Judy-Perry Martinez.

*Getty Images*

The numbers come from the newly released [2020 ABA Profile of the Legal Profession](#). The second annual report is a compilation of statistics and trends in several categories, including maps and charts showing every U.S. county – where lawyers are abundant and where they are lacking.

On July 28, three experts in rural justice joined ABA President Judy Perry Martinez to discuss the problems caused by the lack of lawyers in many rural areas nationwide and what is being done about it. The program, titled “[Legal Deserts in America: A Threat to Justice for All](#),” was sponsored by the ABA Media Relations and Strategic Communications Division.

“Nearly every state in the nation has large stretches of rural areas and counties with few lawyers in them – or no lawyers at all,” Martinez said. “In fact, rural residents are disproportionately poor, and many are forced to travel long distances to find lawyers to handle routine matters that affect their everyday lives, such as wills, divorces and minor criminal and civil cases.”





South Dakota was one of the first states to tackle the problem, in 2012. Project Rural Practice combines funding from the state, rural counties and local bars to support young lawyers in small towns and farm counties. The results are “legal oases,” said Patrick Goetzinger, former president of the South Dakota State Bar who helped create the program.

In California, despite huge clusters of lawyers in Los Angeles, San Francisco and San Diego, there are also large swaths of legal deserts in rural areas, said Lisa Pruitt, a law professor at the University of California-Davis. “Unfortunately, in California, we don’t have any programs like” Project Rural Practice, Pruitt said, adding she is pessimistic about seeing many improvements in the next 10 years.

In Georgia, the 154 counties outside of metro Atlanta have 65% of the state’s population but only 30% of the state’s lawyers, said Lauren Sudeall, a law professor at Georgia State University. She, too, was not optimistic about seeing many improvements in the numbers by 2030. “But I hope that we can have a broader understanding of what access to justice means... Not just by looking at justice as sort of this binary do-you-have-a-lawyer-or-not question.”

#### Related links:

- Watch video of the program “[Legal Deserts in America: A Threat to Justice For All](#)”
- [2020 ABA Profile of the Legal Profession](#)
- ABA Journal: “[No Country for Rural Lawyers: Small-town attorneys still find it hard to thrive](#)”
- ABA Journal: “[What this law prof has learned about rural justice](#)”
- “[Legal Deserts: A Multi-State Perspective on Rural Access to Justice](#),” Harvard Law & Policy Review, 2018
- Legal Services Corporation: [Access to Justice in Rural Areas](#)





# 2019 FORMAL ETHICS OPINION 4

## Search Adopted Opinions

### COMMUNICATIONS WITH JUDICIAL OFFICIALS

*Adopted: July 16, 2021*

*Opinion discusses the permissibility of various types of communications between lawyers and judges.*

*In connection with the adoption by the Council of the opinion below on July 16, 2021, the following prior ethics opinions were withdrawn: RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17.*

The Ethics Committee has issued a number of opinions interpreting and applying the Rules of Professional Conduct to various lawyer-judge communications. *See* RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17. However, these opinions—spanning 30 years—were based upon different iterations of the Rules of Professional Conduct. This opinion addresses and clarifies a lawyer’s responsibilities under the current Rules of Professional Conduct in communicating with a member of the judiciary while acting in a representative capacity. As a result, upon adoption of the present opinion, the State Bar Council withdrew the aforementioned opinions.

This opinion addresses a lawyer’s professional responsibility in communicating with a member of the judiciary during the course of litigation where the opposing party is represented by counsel. While this scenario is common, it is very possible that a lawyer may need to communicate with a member of the judiciary during the course of litigation where the opposing party is self-represented. A lawyer’s professional responsibility to avoid improper communications with the tribunal applies equally to situations where the opposing party is represented and where the opposing party is *pro se*. To preserve the integrity of and instill confidence in the justice system, a lawyer should take great care to ensure his or her conduct in communicating with a tribunal is compatible with the Rules of Professional Conduct, particularly when dealing with an unrepresented party.

Lawyers communicate with judges on a daily basis. Communicating with members of the judiciary is required for the effective representation of clients and the administration of justice. Lawyers’ communications with judges generally fall into one of three categories: 1) clearly permissible communications, e.g., formal pleadings and arguments during public proceedings and other communications authorized by law or court order; 2) clearly prohibited communications, e.g., spontaneous, in-person *ex parte* communications about the merits of a case; and 3) informal communications (e.g., email communications about scheduling dilemmas). This opinion primarily addresses informal communications.

Communication between lawyers and the courts by way of formal filings are the backbone of an effective justice system. The submission to a tribunal of formal written communications, such as pleadings and motions, pursuant to the tribunal’s rules of procedure does not create the appearance of granting undue advantage to one party. Presuming the filings comply with the Rules of Civil Procedure, the local rules, and any other requirements imposed by law or court order, such communication is entirely permitted under the Rules of Professional Conduct.

The Rules of Professional Conduct impose some limits on lawyers’ communications with judges. These limits are designed to ensure fair and equal access to the presiding tribunal by the parties and their representative counsel. To this end, Rule 3.5(a)(3) prohibits a lawyer from communicating *ex parte* with a judge or other official unless authorized to do so by law or court order. Rule 3.5(d) defines “*ex parte* communication” as “a communication on behalf of a party to a matter pending before a tribunal that occurs in the absence of an opposing party, without notice to that party, and outside the record.”

The following are some common scenarios involving informal communications with judges.

#### **Inquiry #1:**

Lawyer A represents Wife in a domestic case against Husband, who is represented by Lawyer B. Lawyer A’s young child is sick, requiring Lawyer A to stay home to care for his child for the rest of the week. Lawyer A is scheduled to appear in court for a hearing in Wife and Husband’s domestic case tomorrow but can no longer attend the hearing due to childcare issues. May Lawyer A inform the court of his inability to attend court and informally request that the hearing be continued by email or text message to the judge presiding in the domestic case, without copying Lawyer B?

#### **Opinion #1:**

No. The definition of *ex parte* communications encompasses all communications concerning a matter that is pending before a tribunal, including scheduling issues. Rule 3.5(d). The Rules of Professional Conduct do not exempt scheduling matters from the prohibition on *ex parte* communications. Accordingly, although *ex parte* communications concerning scheduling matters are often limited and innocent in nature, they are prohibited unless authorized by law or court order. In this instance, Lawyer A’s communication is sent a) on behalf of himself and his client, b) concerning a matter pending before the tribunal (the domestic proceeding), c) outside of the record, d) without notice to the opposing counsel, and e) in the absence of opposing counsel. Accordingly, Lawyer A’s communication is an *ex parte* communication with the court, and thus prohibited unless authorized by law or court order. *See* Rules 3.5(a)(3) and (d).

#### **Inquiry #2:**

Same scenario as Inquiry #1. Does Lawyer A cure the *ex parte* nature of his communication by sending an email or text message to all judges in his district concerning his inability to attend court that week and requesting all hearings for which he is responsible during the week be continued, without copying Lawyer B or any other opposing counsel or party?

Opinion #2:

No. If Lawyer A has a matter pending and the communication is sent to the judge presiding in that matter, amongst other judges, the communication remains ex parte and is prohibited. *See* Opinion #2. If Lawyer A has multiple cases pending, the single, generic communication described in this inquiry may constitute multiple instances of prohibited ex parte communication.

Inquiry #3:

Same scenario as Inquiry #1. May Lawyer A inform the court of his inability to attend the day's hearing and informally request that the hearing be continued via email or text message to the presiding judge, with Lawyer B copied on the email or text message?

Opinion #3:

Yes, provided the communication is not prohibited by law, local rules, or the presiding judge, and does not address the merits of the underlying case (see Opinion #4, below). Pursuant to Rule 3.5(d), a communication by a lawyer to a judge is a prohibited ex parte communication if made "in the absence of an opposing party" (or in the absence of opposing counsel). A communication to a judge that is simultaneously provided to the opposing party/counsel is not made "in the absence of an opposing party" and therefore is not an "ex parte communication" as defined in Rule 3.5. This is true of both hard copy communications and electronic communications, including text messaging and emails.

Lawyers are encouraged to remember that simultaneous provision of a communication does not necessarily result in simultaneous receipt of that communication. When possible and appropriate, a lawyer should provide reasonable advance notice to opposing counsel of the need and intention to communicate with the presiding judge about the subject of the communication.

However, even a communication that is not a prohibited ex parte communication may nevertheless be prohibited by law or court order, including local rules or administrative orders entered by the tribunal. A presiding judge or the rules of a tribunal may also provide guidance and/or instruction to lawyers concerning such communications, as the Rules of Professional Conduct are not meant to disable or abridge "the inherent powers of the court to deal with its attorneys." N.C. Gen. Stat. § 84-36. Lawyers are advised to review all relevant laws and court orders, including local rules, prior to engaging in such communication.

Inquiry #4:

Same scenario as Inquiry #2. May Lawyer A communicate his inability to attend the hearing and informally request a continuance via email or text message to the presiding judge, with Lawyer B copied on the email or text message, if the email or text message contains additional argument from Lawyer A on the matter to be heard by the court in the upcoming proceeding?

Opinion #4:

No. Even though such a communication may not be a prohibited ex parte communication, it is still improper. Unsolicited communications addressing the merits of the underlying matter made outside the ordinary or approved course of communication with the court are prejudicial to the administration of justice in violation of Rule 8.4(d). As noted above, the purpose of the prohibition on ex parte communications is to ensure fair and equal access to the presiding tribunal by parties and their counsel. Allowing one party unfettered access to make off-the-record arguments to the presiding judge via electronic communication undermines the principle of fair and equal access to the presiding judge. *See* Rule 3.5 cmt. [8] ("All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party."). It is also antithetical to the notion that cases are tried in a public forum rather than in private discussions behind closed doors. Providing notice and copying the opposing party/counsel on such a communication does not remedy these problems. Unless the communication is authorized by law or court order, or unless the communication is solicited by the presiding judge, informal communications that address the merits of the case are improper and constitute misconduct under Rule 8.4(d).

Inquiry #5:

Judge has instructed Lawyers A and B to send trial briefs concerning a pending motion to the judge via email, with a copy to opposing counsel. May Lawyers A and B submit substantive argument on the merits of a pending matter via email as the court has requested?

Opinion #5:

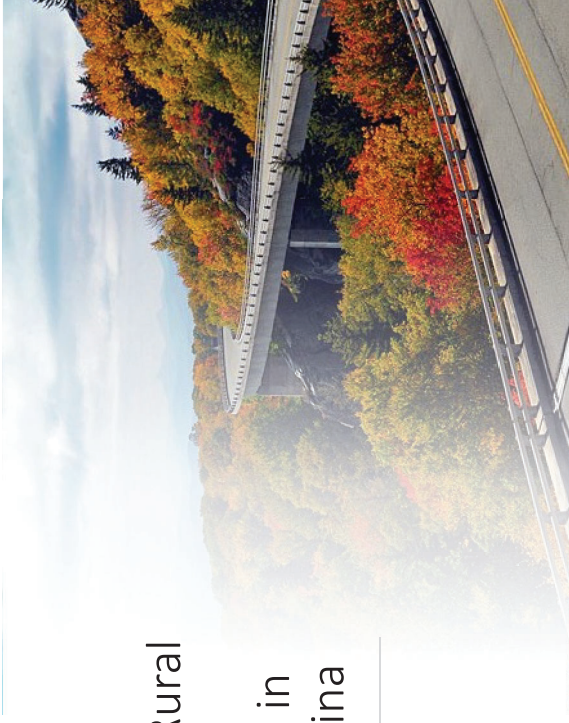
Yes. If the presiding judge has instructed counsel to communicate directly with the court, the communication is not a prohibited ex parte communication under Rule 3.5 and is not prejudicial to the administration of justice under Rule 8.4(d) even if the requested communication will be on the merits of a pending matter. This conclusion applies to any appropriate request from a judge to all counsel for communication, including trial briefs and proposed orders. Again, the Rules of Professional Conduct are not meant to disable or abridge "the inherent powers of the court to deal with its attorneys." N.C. Gen. Stat. § 84-36. The presiding judge has the authority to determine how counsel are to communicate with the court; except as prohibited by law or court rule, such communications are within the discretion and preference of the tribunal and the presiding official.

# Introduction to Legal Deserts

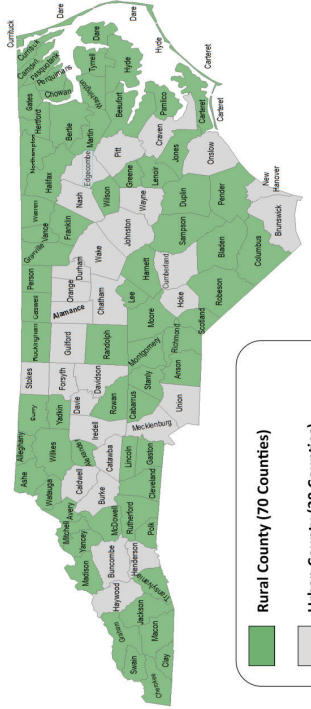
Brian Otten  
North Carolina State Bar



# Overview: Rural and Urban Populations in North Carolina



## North Carolina Rural and Urban Counties



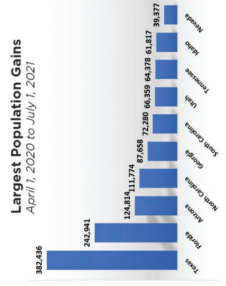
Notes:  
 - Rural: defined as a non-metropolitan or non-adjacent metropolitan county.  
 - Urban: defined as a central metropolitan county.  
 - Data from Federal Office of Management and Budget



## Population Growth & Change

Between 2010 and 2020, North Carolina's population grew from 9,535,483 to 10,439,483, an increase of 903,905 or 9.5%. Over this same period, 51 North Carolina counties lost population (for a total combined loss of 147,224) and 49 counties gained population (a total combined gain of 1,051,129).

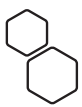
Between the April 1, 2020 Census count and July 1, 2021, North Carolina added 192,000 people, according to the U.S. Census Bureau's latest population estimates (a gain of 1.1%). On July 1, 2021, 10.6 million people were living in North Carolina and the state remained the 9th largest state in the nation.



## North Carolina population growth 1990-2035



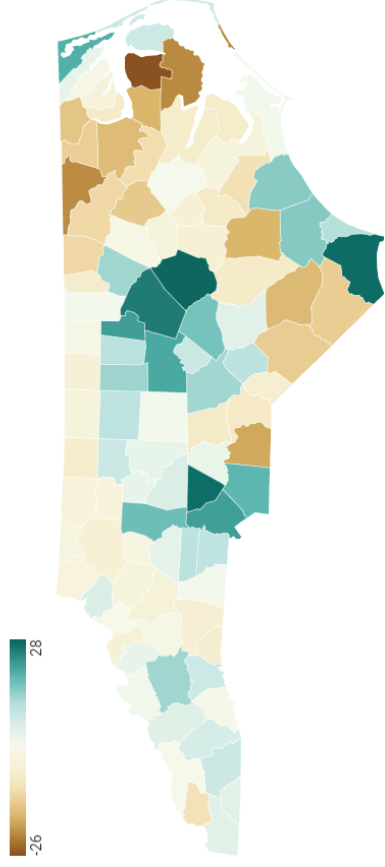
Source: U.S. Census Bureau, NC OSBM



- Sources:
- Office of State Budget and Management (Dec. 22, 2021)
- Carolina Demography, UNC-Chapel Hill (Aug. 12, 2021)

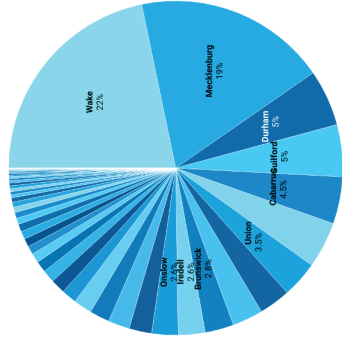
## Fastest growth in Triangle, Charlotte, Wilmington

Population growth rate (%) for NC counties, 2010-2020



## North Carolina County Population Growth

Population growth by county, 2010-2020



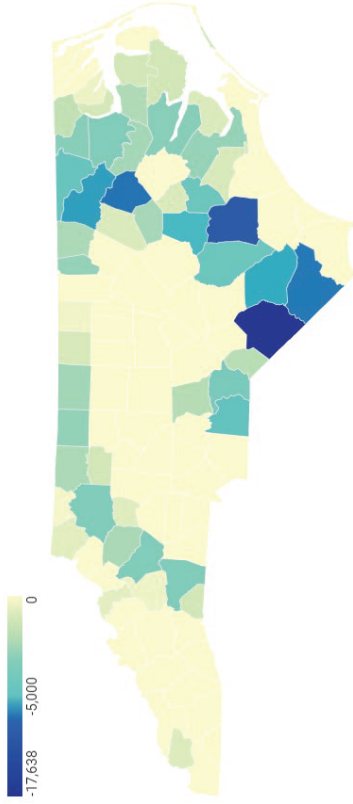
- Wake (22%)
- Mecklenburg (11%)
- Durham (9%)
- Chatham (5%)
- Union (5%)
- Orange (4%)
- Guilford (3%)
- Other counties (0.1% to 2.8%)

Population data from the 2020 Census

Source: Carolina Forward - Created with Datawrapper

## Largest population losses in Sandhills, Northeast

Numeric change in population for NC counties that lost population, 2010-2020



Map: Carolina Demography • Source: U.S. Census Bureau • Get the data • Download Image • Created with Datawrapper

What is a "legal desert?"



- 1 Mecklenburg
- 2 Washington
- 3 Edgecombe
- 4 Northampton
- 5 Johnston
- 6 Johnston
- 7 Currituck
- 8 Chowan
- 9 Wayne
- 10 Pasquotank

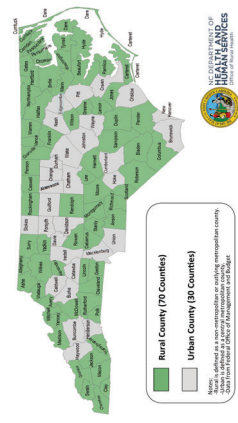


## Legal Deserts Defined

A legal desert is an area where there is less than 1 lawyer for every 1,000 residents  
48 NC counties qualify as a "legal desert"

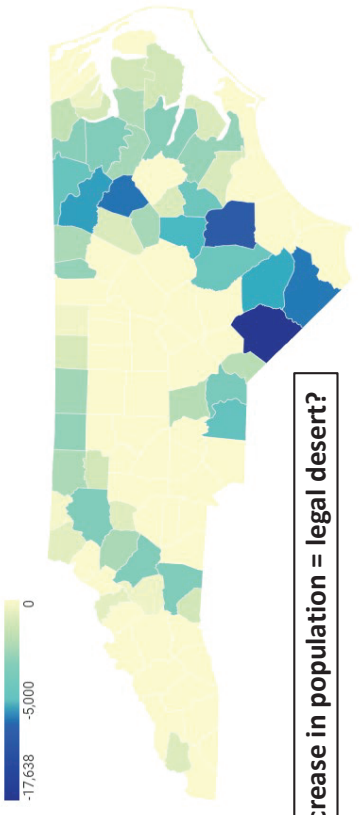


## North Carolina Rural and Urban Counties



## Largest population losses in Sandhills, Northeast

Numeric change in population for NC counties that lost population, 2010-2020



Decrease in population = legal desert?

Map: Carolina Democracy • Source: U.S. Census Bureau • Get the data • Download Image • Created with Datawrapper

## NC Population Growth, 2010-2020

Name	2010 Population	2020 Population	Numeric Change	Growth Rate (%)
North Carolina	9,835,483	10,439,388	983,905	9%
Alamance	151,131	171,415	20,284	13%
Alexander	37,108	36,444	-754	-2%
Allegany	11,155	10,888	-267	-2%
Anson	26,648	22,055	-4,593	-18%
Ashle	27,281	26,577	-704	-3%
Avery	17,797	17,806	9	0%
Beaufort	47,759	44,652	-3,107	-7%
Bertie	21,282	17,834	-3,348	-16%
Bibb	35,199	29,686	-5,584	-16%
Burke	107,431	136,693	29,262	27%
Burcombe	258,418	269,452	11,034	13%
Burke	90,912	87,570	-3,342	-4%
Cabarrus	178,911	225,804	47,793	27%
Calwell	83,029	80,652	-2,377	-3%
Carrden	9,689	10,355	775	4%
Carteret	66,469	67,886	1,217	2%
Caswell	23,719	22,796	-983	-4%
Catawba	154,438	160,610	6,252	4%
Chatham	63,505	76,285	12,780	20%

Map: Carolina Democracy • Source: U.S. Census Bureau • Get the data • Created with Datawrapper

### NC Population Growth, 2010-2020

Name	2010 Population	2020 Population	Numeric Change	Growth Rate (%)
Cherokee	27,444	28,774	1,330	5%
Chowan	14,793	13,708	-1,085	-7%
Clay	10,882	11,089	207	2%
Cleveland	98,078	99,519	1,441	1%
Columbus	58,098	50,623	-7,475	-13%
Craven	103,505	100,720	-2,785	-3%
Cumberland	319,431	334,728	15,297	5%
Currituck	23,547	28,100	4,553	19%
Dare	33,900	36,915	3,015	9%
Davidson	162,878	168,930	6,052	4%
Dave	47,240	42,772	-4,468	-9%
Durham	58,505	48,715	-9,790	-17%
Durham	267,387	324,833	57,446	21%
Edgecombe	56,552	48,900	-7,652	-14%
Forsyth	350,070	382,590	32,520	9%
Franklin	60,619	68,573	7,954	13%
Gaston	206,086	227,943	21,857	11%
Gates	12,197	10,478	-1,719	-14%
Graham	8,861	8,020	-841	-9%
Granville	59,916	60,992	1,076	2%

Table: Carolina Demography - Source: U.S. Census Bureau - Get the data - Created with Datawrapper

### NC Population Growth, 2010-2020

Name	2010 Population	2020 Population	Numeric Change	Growth Rate (%)
Greene	21,382	20,451	-931	-4%
Guilford	488,406	541,209	52,803	11%
Halifax	54,691	48,622	-6,069	-11%
Harnett	114,078	133,568	19,490	17%
Haywood	59,036	62,089	3,053	5%
Henderson	106,740	116,281	9,541	9%
Hertford	24,669	21,852	-2,817	-11%
Hoke	46,532	52,082	5,550	12%
Hyde	5,610	4,599	-1,011	-18%
Iredell	159,437	186,693	27,256	17%
Jackson	40,271	43,109	2,838	7%
Johnston	188,878	215,999	27,121	14%
Jones	10,133	9,172	-961	-10%
Lee	57,866	63,285	5,419	9%
Leech	59,495	55,122	-4,373	-7%
Lincoln	78,265	86,810	8,545	11%
McDowell	44,996	44,578	-418	-1%
Mason	33,922	37,014	3,092	9%
Mecklenburg	20,764	21,193	429	2%
Martin	24,505	22,031	-2,474	-10%

Table: Carolina Demography - Source: U.S. Census Bureau - Get the data - Created with Datawrapper

### NC Population Growth, 2010-2020

Name	2010 Population	2020 Population	Numeric Change	Growth Rate (%)
Mecklenburg	919,628	1,115,482	195,854	21%
Michell	15,570	14,003	-1,567	-10%
Montgomery	27,798	25,751	-2,047	-7%
Moore	88,247	97,727	9,480	11%
Nash	93,840	94,970	1,130	1%
New Hanover	202,667	225,702	23,035	11%
Northampton	22,099	17,471	-4,628	-21%
Onslow	177,772	204,576	26,804	15%
Orange	133,801	148,696	14,895	11%
Perdido	13,144	12,276	-868	-7%
Person	40,661	40,368	-293	-0%
Perquimans	52,217	60,203	7,986	15%
Person	13,453	13,005	-448	-3%
Person	39,464	39,097	-367	-1%
Person	168,148	170,243	2,095	1%
Pitt	20,510	19,328	-1,182	-6%
Randolph	141,752	144,171	2,419	2%
Richmond	46,659	42,946	-3,713	-8%
Robeson	134,168	116,530	-17,638	-13%
Rockingham	93,643	91,096	-2,547	-3%

Table: Carolina Demography - Source: U.S. Census Bureau - Get the data - Created with Datawrapper

### NC Population Growth, 2010-2020

Name	2010 Population	2020 Population	Numeric Change	Growth Rate (%)
Rowan	138,428	146,875	8,447	6%
Rutherford	67,810	64,444	-3,366	-5%
Sampson	63,431	59,036	-4,395	-7%
Scotland	36,157	34,174	-1,983	-5%
Stanly	60,585	65,504	4,919	8%
Stokes	47,401	44,520	-2,881	-6%
Surry	73,673	71,359	-2,314	-3%
Swain	13,981	14,117	136	1%
Tennessee	33,090	32,886	-204	-0%
Tyrrell	4,407	3,245	-1,162	-26%
Union	201,292	238,267	36,975	18%
Vance	45,422	45,578	156	0%
Wake	900,993	1,129,410	228,417	25%
Warren	20,972	18,642	-2,330	-11%
Washington	13,228	11,003	-2,225	-17%
Watauga	51,079	54,086	3,007	6%
Wayne	122,623	117,333	-5,290	-4%
Wilkes	69,340	65,969	-3,371	-5%
Wilson	81,234	78,794	-2,450	-3%
Yadkin	38,406	37,214	-1,192	-3%
Yancey	17,818	18,470	652	4%

Table: Carolina Demography - Source: U.S. Census Bureau - Get the data - Created with Datawrapper

## North Carolina Legal Deserts

- 48 of North Carolina's 100 counties qualify as a legal desert
- 46.7% of active, in-state North Carolina lawyers are in two counties (Wake and Mecklenburg)
  - Wake and Mecklenburg have 21.5% of the total state population
- 63% of active, in-state North Carolina lawyers are in five counties (Wake, Mecklenburg, Guilford, Durham, and Forsyth)
  - Those five counties account for 33.4% of the total state population
- Contrast:
  - Harnett County (1.28% of total state population, or 133,568 people) has 0.43% of lawyer population (109 lawyers)



Are legal deserts a problem?

Access to justice/legal services?



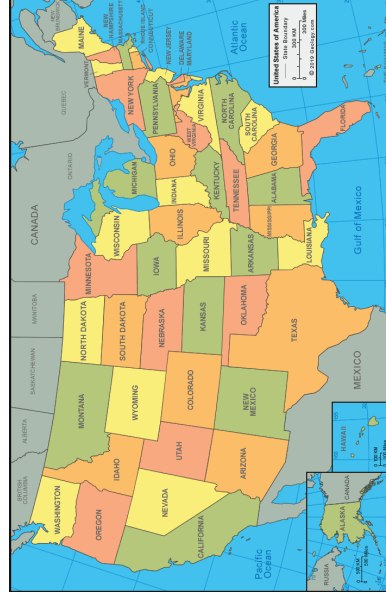
If so, what can be done about it?

What are other states doing about the issue?

## Questions

## Legal Deserts in North Carolina are not Unique...

- A number of other national and state-specific organizations have studied the issue of legal deserts.
- National:
  - Rural Justice Collaborative/National Center for State Courts
  - Legal Services Corporation & Equal Justice Works
    - Rural Summer Legal Corps
- State-specific:
  - Arkansas, Georgia, Illinois, Kansas, Maine, Montana, Nebraska, South Dakota
  - Through bar associations (voluntary) and law schools
- Goals: Create access to legal services in rural areas and/or recruit lawyers to open practices in rural areas.



## Other Jurisdictions' Efforts on Legal Deserts



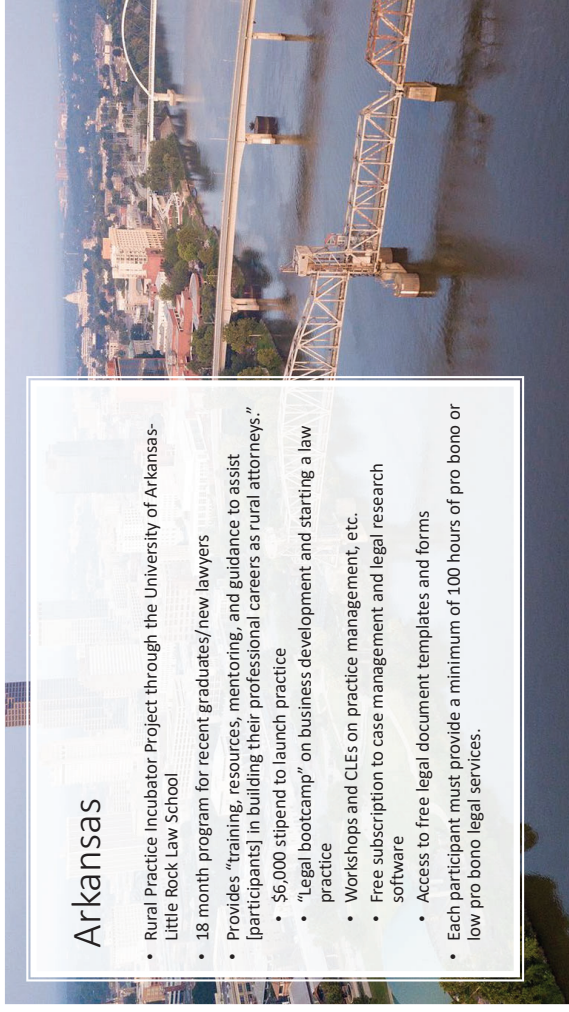
## Nationwide Effort: Rural Summer Legal Corps

- Facilitated by Legal Services Corporation & Equal Justice Works
- Connects law students seeking summer internships with different organizations across the country focused on providing legal services to rural communities
- 300 hours over an 8 to 10-week period
- \$5,000 stipend



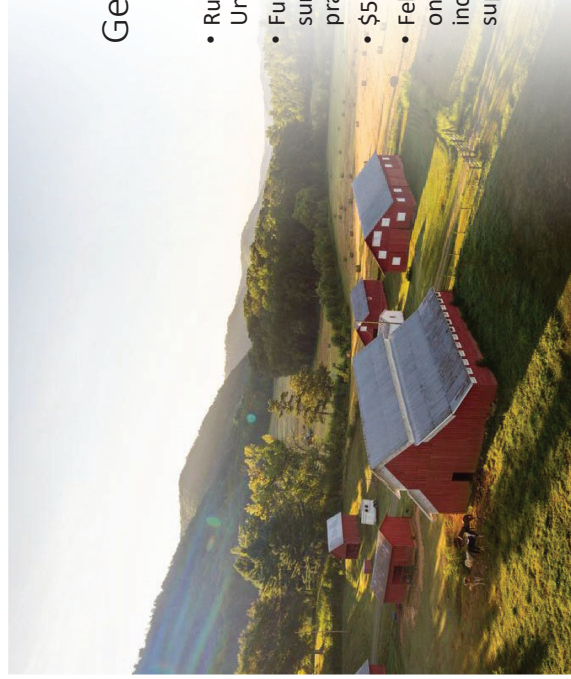
## Arkansas

- Rural Practice Incubator Project through the University of Arkansas-Little Rock Law School
- 18 month program for recent graduates/new lawyers
- Provides "training, resources, mentoring, and guidance to assist [participants] in building their professional careers as rural attorneys."
- \$6,000 stipend to launch practice
  - "Legal bootcamp" on business development and starting a law practice
  - Workshops and CLEs on practice management, etc.
  - Free subscription to case management and legal research software
  - Access to free legal document templates and forms
- Each participant must provide a minimum of 100 hours of pro bono or low pro bono legal services.



## Georgia

- Rural Justice Fellowship through University of Georgia Law School
- Funds law students to take summer internships with law practices in rural areas
- \$5,000 stipend for the summer
- Fellow is required to undertake one pro bono matter for a low-income client (under lawyer supervision) during the summer



## Illinois

- Rural Practice Fellowship Program through the Illinois State Bar Association
- 2 programs:
  - Summer Fellows Program – connects law students with rural practitioners for summer internships
    - \$5,000 grant and mentoring
  - Rural Practice Associate Fellows Program – places graduating law students and new attorneys as permanent associates with rural practices
    - \$5,000 stipend at start of employment; additional \$5,000 if still working for same firm after 1 year







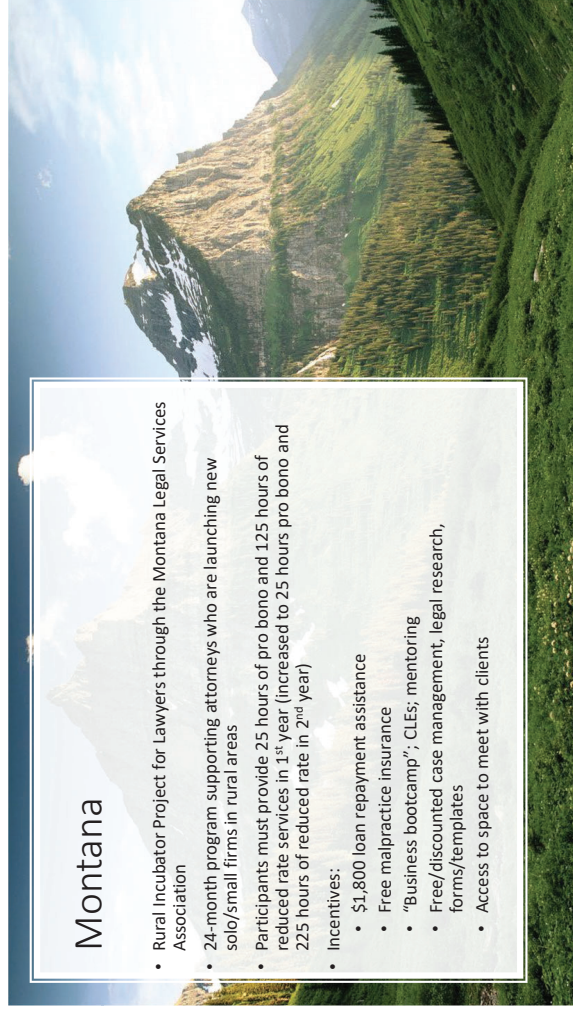
## Kansas

- Rural Practice Initiative through Kansas State University and Washburn University School of Law
- Encourages interest in pre-law undergraduate students to practice in rural areas
- Program provides:
  - Experiential opportunities re: rural practice (mini-lectures, mentoring with rural practitioners, attending law school classes, and taking trips to rural practices)
  - Insight about law school (admissions/qualifications) and transitional support for those entering law school
- Program offers a certificate to students



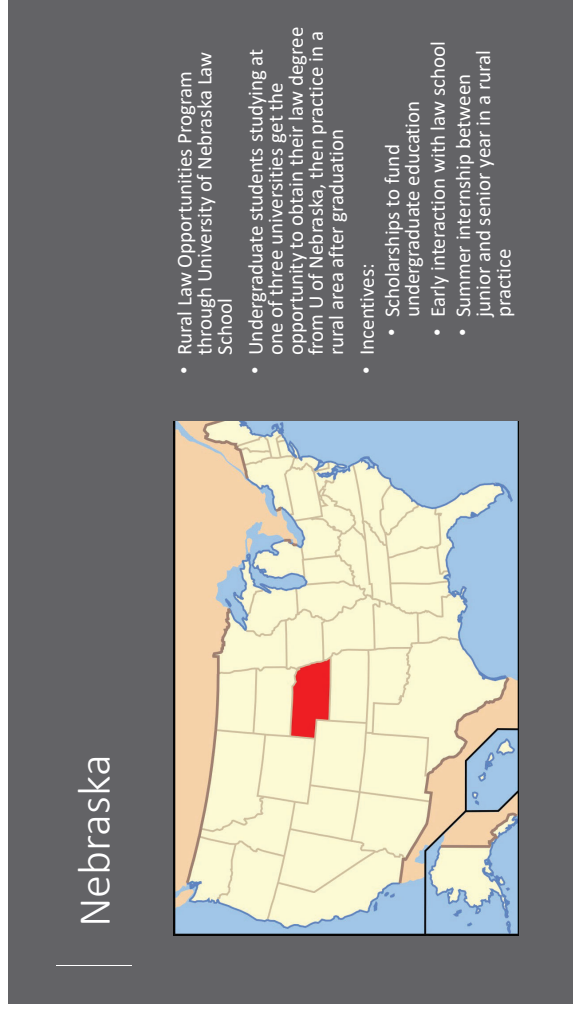
## Maine

- Rural Lawyer Project through Maine Law School
- Pairs law students with rural practitioners for a 10-week summer internship
- \$6,000 stipend for 2Ls; \$7,500 stipend for 3Ls



## Montana

- Rural Incubator Project for Lawyers through the Montana Legal Services Association
- 24-month program supporting attorneys who are launching new solo/small firms in rural areas
- Participants must provide 25 hours of pro bono and 125 hours of reduced rate services in 1<sup>st</sup> year (increased to 25 hours pro bono and 225 hours of reduced rate in 2<sup>nd</sup> year)
- Incentives:
  - \$1,800 loan repayment assistance
  - Free malpractice insurance
  - "Business bootcamp"; CLEs; mentoring
  - Free/discounted case management, legal research, forms/templates
  - Access to space to meet with clients



## Nebraska

- Rural Law Opportunities Program through University of Nebraska Law School
- Undergraduate students studying at one of three universities get the opportunity to obtain their law degree from U of Nebraska, then practice in a rural area after graduation
- Incentives:
  - Scholarships to fund undergraduate education
  - Early interaction with law school
  - Summer internship between junior and senior year in a rural practice



## South Dakota

- Rural Attorney Recruitment Program through the South Dakota Judicial System and South Dakota State Bar
- Provides lawyers an incentive payment to provide five continuous years of practice in a rural county
  - Annual payment = 90% of one year's resident tuition and fees at the University of South Dakota Law School (2022: \$16,793)
- Funding provided by judicial branch, SD State Bar, and county served
  - County served must agree to pay 35% of the total incentive payment
  - State Bar pays 15%
  - Judicial branch pays the remainder
- Limited to 16 lawyers (no lawyers accepted after June 30, 2022)

# Overview of Programs

Recruiting focus:	Lawyers opening rural practices: 4 programs Student (undergraduate and law) internships: 6 programs
Facilitated by:	Educational institutions: 5 programs State Bar Associations/Legal Organizations: 5 programs

# Discussion

- Is it appropriate for the North Carolina State Bar to address the issue of legal deserts in the state?
  - Study the issue?
  - Facilitate potential solutions?
- What existing solutions should the subcommittee study?
- What other resources, organizations, etc., should the subcommittee consult on this topic?

## Introduction to Legal Deserts

---

Brian Otten  
North Carolina State Bar

