

School of Law
The University of North Carolina – Chapel Hill



**The 2009
Dan K. Moore
Program in Ethics**

**Ethical
Issues in
Troubled
Times**

**October 16,
2009**



UNC
SCHOOL OF LAW

Program Highlights Include:

- 3 hours of CLE ethics credit
- 1 hour of CLE substance abuse credit
- Attorney mobility issues - screening lateral hires
- Outsourcing of legal services
- Ethics and technology
- Managing stress in troubled times

The Carolina Club, George Watts Hill Alumni Center
UNC-Chapel Hill, Chapel Hill, North Carolina

Register Online!

**Co-Sponsored by the
UNC School of Law Center for Banking and Finance**

The Dan K. Moore Program in Ethics

The Dan K. Moore Program in Ethics is a very well regarded continuing legal education program sponsored annually by

the UNC School of Law. This program is dedicated to the exemplary legacy of professional ethics left to us by the distinguished life and work of Dan K. Moore, the esteemed former governor of North Carolina and a 1929 graduate of the UNC School of Law.

For the past seven years the Dan K. Moore program has focused on issues relevant to attorneys who advise corporate clients. The 2002 program discussed lawyer liability and responsibility in a post-Enron world, the 2003 program focused on the SEC's new rules under the Sarbanes-Oxley Act governing lawyer conduct and the relationship of those rules to the lawyer conduct rules of the state bars, the 2004 program addressed new challenges in ethics and governance for corporate lawyers, the 2005 program considered the lawyer's role in responding to enforcement actions against a corporate client, the 2006 program discussed ethical issues arising from the relationship between lawyers and accountants in their representation of a corporate client and the 2007 and 2008 programs addressed conflicts of interest for corporate lawyers.

The response to these programs from those who advise corporate clients as outside attorneys or in-house attorneys was overwhelming. Thus, the program is again directed to this audience and will explore a variety of ethical issues that may arise in the representation of a corporate client.

About this Year's Program

The program will address a variety of ethical issues of interest to both in-house counsel and attorneys in private practice,

especially during these troubled times. The program will consider a variety of ethical issues of particular concern during this economic downturn. The legal profession is experiencing unprecedented upheaval as new associates arrival dates are deferred, salaries are reduced and attorneys are laid off. Lawyer mobility is an increasingly important issue and we will touch upon issues relating to that including screening of lateral hires, unauthorized practice issues and admission into a new state bar. As clients and firms attempt to control and reduce legal fees during the economic downturn, the variety of ethical issues associated with outsourcing legal services will also need to be explored. Technology also increases efficiencies in the delivery of legal services, but carries its own costs and ethical issues, including how to handle metadata included in documents sent by opposing counsel, privilege issues associated with email communications, and ethical issues associated with lawyer use of social networking sites such as "Facebook" and "Twitter." Finally, dealing with the stress that comes with deferrals, layoffs and the uncertain business climate is addressed in a segment that qualifies for substance abuse credit.

After lunch, each table will be asked to discuss their approach to an ethical problem that will be distributed at the program. This additional opportunity for discussion and interaction is a unique and popular aspect of this program. As was the case with prior programs, the discussion among the panelists is guaranteed to be lively and there will be ample opportunity for questions from and interchange with the audience.

About the Center for Banking and Finance

The Center for Banking and Finance was established at the UNC School of Law on July 1, 2000. The Center was created

to recognize and further the important role of banking and finance to the economy of North Carolina, as well as the leadership role played by North Carolina-based financial institutions in the continuing evolution of the financial services industry.

The Center studies the legal and policy issues related to banking and finance, advances the teaching of these important areas and sponsors conferences for industry professionals, including the Ninth Annual Consumer Law & Consumer Credit Symposium at the Festival of Legal Learning, February 5-6, 2010, at the Friday Center on the UNC campus in Chapel Hill and the Fourteenth Annual Banking Institute, March 25-26, 2010, at The Ritz-Carlton in Charlotte, NC.

The Center is directed by professor Lissa Broome and guided by a distinguished Board of Advisors. For more information about the Center or its activities, please contact Lissa Broome, (919) 962-7066 or lbroom@email.unc.edu, or visit www.law.unc.edu/centers/banking.

Agenda

Friday, October 16

9:15 a.m. Registration and Coffee

9:45 a.m. Welcome & Introduction to Program

10:00 a.m. Managing Stress in Troubled Times

This session will recount the evolution of the practice of law and how it has impacted stress, particularly recent events where lawyers have experienced a decline in business, employment deferrals, salary reductions and layoffs. The signs, including non-obvious signs, of stress and depression will be highlighted. This segment will also discuss strategies for dealing with stress during these troubled economic times, and qualifies for substance abuse continuing legal education credit.

11:00 a.m. Break

11:10 a.m. Ethical Issues in Troubled Times

In these difficult times, many attorneys find themselves looking for new positions. The panelists will discuss how attorney mobility is affected by conflicts of interest with potential firms and screening rules to resolve the conflicts, state bars without reciprocity privileges, working in-house in a state in which the attorney is not licensed and practicing in a federal law area in a state in which the attorney is not licensed.

12:10 p.m. Lunch and Break-out Discussion

After lunch, each table will be asked to discuss how they would approach an ethical challenge that will be described at the program.

1:05 p.m. Ethical Issues in Troubled Times *(continued)*

In troubled times, clients are interested in reducing the cost of legal services. Some firms and companies outsource legal services to reduce the cost. The panel will explore several ethical issues associated with outsourcing including unauthorized practice, confidentiality, conflicts of interest, billing practices, and whether client consent is required for outsourcing.

1:20 p.m. Internal and External Ethics Consultations - Caution Should Prevail in Troubled Times

The panel will address the 2008 ABA Opinion on consulting on ethics issues, including disclosure of confidential information in ethics consultations, whether there is a duty to inform clients of ethical consultations, possible conflicts of interest, whether to report possible misconduct and whom ethics counsel ultimately represents. The panel will also identify external resources for ethics information and consultation.

1:50 p.m. Break

2:00 p.m. Ethics Meets Technology in the Brave New World

The panelists will discuss different state approaches to the use of metadata in documents supplied by opposing lawyers and explore the North Carolina State Bar's Proposed Opinion on the subject. Other ethics issues brought about by the use of technology in legal practice will also be discussed, including concerns related to the attorney-client privilege and email communications and the ethical issues associated with attorney use of social networking sites such as "Facebook" and "Twitter."

3:00 p.m. Adjournment

Program Directors

Lissa L. Broome

Wachovia Professor of Banking Law and
Director of the Center for Banking & Finance,
UNC School of Law, Chapel Hill

Thomas Lee Hazen

Cary C. Boshamer Distinguished Professor of Law,
UNC School of Law, Chapel Hill

Program Panelists

Alison R. Bost

Womble Carlyle Sandridge & Rice, PLLC, Charlotte

Robert M. Bryan

Robinson Bradshaw & Hinson, Charlotte

John M. Conley

William Rand Kenan Jr. Professor of Law, UNC School of Law, Chapel Hill

David B. Fountain

Vice President - Legal, Progress Energy Service Company, LLC, Raleigh

Lisa M. Lukasik

Visiting Assistant Professor of Law; Norman Adrian Wiggins School of Law, Campbell University, Raleigh

Darryl R. Marsch

Senior Vice President and General Counsel, Krispy Kreme Doughnuts, Inc., Winston-Salem

Glen A. Martin

Psychologist and Senior Coordinator, Liaison Services; Counseling and Wellness Services, UNC Chapel Hill, Chapel Hill

Melvin J. Wright, Jr.

Executive Director, Chief Justice's Commission on Professionalism, Raleigh

Program Directors

Lissa L. Broome

Broome is the Wachovia Professor of Banking Law and director of the Center for Banking and Finance. She teaches banking law and secured transactions and has taught contracts and ethical issues for business lawyers. She is the co-author of *Regulation of Bank Financial Service Activities*, a banking law casebook, and co-author of *Securitization, Structured Finance and Capital Markets*. She also directs the Director Diversity Initiative, which works to increase the diversity of corporate boards of directors through its training programs, advocacy, research and diverse director database (ddi.law.und.edu/default.aspx). Broome received her undergraduate degree from the University of Illinois and her law degree from Harvard Law School.

Thomas Lee Hazen

Hazen is the Cary C. Boshamer Distinguished Professor of Law. He teaches business associations and securities regulation, and is the author or co-author of casebooks on corporations, corporate finance, broker-dealer regulation, mergers and acquisitions and securities regulation. He is the author of a widely regarded six-volume treatise on securities regulation, a three-volume treatise on derivatives regulation and a two-volume treatise on broker-dealer law. He has also served as an expert witness in a number of high-profile securities cases. Hazen received his undergraduate and law degrees from Columbia.

Alison R. Bost

Bost is an attorney in Womble Carlyle's Charlotte office where she serves as the firm's Ethics and Conflicts Counsel. In this role, she advises firm attorneys on issues of legal ethics and professional responsibility. She also advises firm clients on ethics-related issues relevant to their particular businesses. Bost regularly provides training on ethics issues both to firm attorneys and staff and to firm clients. She has also made presentations on employment law and other litigation topics at various continuing legal education programs. In addition, Bost is experienced in litigation and appellate practice. She has handled a variety of civil cases in both North Carolina and federal courts since 1997. Her appellate work has addressed a number of different legal contexts, including employment law, local government/municipal law, federal and state constitutional law, workers' compensation, personal injury, insurance law, and procedural issues. Bost also provides pro bono appellate representation to children whose parents' rights have been terminated. She received her undergraduate degree from Guilford College and her J.D. from Wake Forest University.

Robert M. Bryan

Bryan has more than 25 years of experience at Robinson, Bradshaw & Hinson in Charlotte in a broad range of commercial matters. For the last 15 years, he has concentrated his practice in the intellectual property area. Bryan has extensive experience in acquisitions, joint ventures and licenses involving patents, trademarks, know-how, software and other intellectual property, in both domestic and international transactions. Bryan also advises clients on the development of programs for protecting proprietary rights and for complying with privacy laws and regulations. He earned his undergraduate and J.D. from the University of Virginia.

John Martin Conley

Conley is William Rand Kenan Jr. Professor of Law at the UNC School of Law. Prior to joining the UNC law faculty in 1983, Conley practiced law in Boston and in Charlotte, North Carolina for six years, specializing in civil litigation. He is also of counsel to the Charlotte firm of Robinson, Bradshaw & Hinson. Conley earned his undergraduate degree from Harvard University and a J.D. and a Ph.D. in anthropology from Duke University. He also served as an adjunct professor at Boston College Law School. His principal research and teaching are law and social science and intellectual property law.

David B. Fountain

Fountain is the Vice President of the Legal Department of Progress Energy headquartered in Raleigh, NC. Fountain joined the Legal Department in April 2000 and supported the merger between Carolina Power and Light Company and Florida Progress Corporation which formed Progress Energy in November 2000. Prior to joining Progress Energy, Fountain was an associate attorney in the Charlotte, NC office of the predecessor firm to McGuire Woods from 1994 to 2000. He specializes in commercial transactions, mergers, acquisitions and electric utility regulation. Fountain is a Morehead-Cain Scholar with undergraduate, M.B.A., and J.D. degrees from the University of North Carolina at Chapel Hill.

Lisa M. Lukasik

Lukasik is a Visiting Assistant Professor of Law at the Norman Adrian Wiggins School of Law at Campbell University. She is also a part-time attorney with Tharrington Smith, L.L.P. specializing in education law, and served as a Clinical Assistant Professor and Director of the S.O.A.R. Bar Success Program at the University of North Carolina School of Law. She clerked for the Honorable Willis P. Whichard on the North Carolina Supreme Court following graduation from law school. Before entering law school, she spent two years teaching English. Lukasik attended undergraduate school at Washington University in St. Louis and received her J.D. degree from the University of North Carolina School of Law.

Glen A. Martin, Ph.D.

Martin is a psychologist, and Senior Coordinator for Liaison Services at Counseling and Wellness Services at the University of North Carolina at Chapel Hill. He has been a therapist, supervisor, researcher and administrator for 27 years. Under Martin's leadership, Counseling and Wellness Services was awarded one of the first Garret Lee Smith Campus Suicide Prevention Grants. His current interests include training mental health professionals in the assessment and management of suicide risk in college students. Martin serves as Chair of the North Carolina Psychological Association's Colleague Assistance Committee. He earned his undergraduate degree from Muskingum College, and his Ph.D. in counseling psychology from Virginia Commonwealth University.

Darryl R. Marsch

Marsch is the Senior Vice President and General Counsel of Krispy Kreme Doughnuts, Inc. He was named to that post in September 2008, after having served as Vice President and Associate General Counsel. Marsch was Senior Counsel for R.J. Reynolds Tobacco Company from 1998 to 2007, when he joined Krispy Kreme. Marsch began his legal career at the law firm of Jones Day in Washington, D.C. His undergraduate and J.D. degrees are from the University of Texas.

Melvin F. Wright, Jr.

Wright is the Executive Director of the Chief Justice's Commission on Professionalism. Wright also serves as an Adjunct Professor of Professional Responsibility at the UNC School of Law. He practiced law for almost 20 years prior to becoming the Executive Director of the Chief Justice's Commission with Wright, Parrish, Newton & Rabil, LLP, and then with Lewis and Daggett. Wright serves as Chair of the ABA's Standing Committee on Professionalism and its Center for Professional Responsibility. He earned his undergraduate degree from UNC-Chapel Hill and his J.D. from Wake Forest University School of Law.

Registration



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To register me for The 2009 Dan K. Moore Program in Ethics

Please print the following information:

Register Online!

Remember, online registration is available at www.law.unc.edu/cle No printing, no mailing, no postage! Immediate confirmation. What could be easier?

Registration Information

Mr. Ms. Mrs. Dr.

Name: _____

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Address: _____

City, State: _____ Zip: _____

Daytime Phone: _____ Fax: _____

E-mail address: _____

Name as you would like it to appear on nametag: _____

I am a graduate of the UNC School of Law. I am not a graduate of the UNC School of Law.

I would like to receive CLE credit in North Carolina. I would like to receive CLE credit in the state of: _____

My N.C. Bar number is: _____

My Bar Number* is: _____

**An attendance is prepared for the state you request; however, out-of-state fees are the responsibility of the attendee.*

Payment Information

Program Fee: \$195 or \$150 (corporate discount for 3 or more)

To Pay by Check: Please send your registration form and a check made payable to "School of Law – Office of CLE" (please, no staples) to:
UNC School of Law – Office of CLE, CB #3380, Chapel Hill, NC 27599-3380, Attn: DKM Registration.

To Pay by Credit Card: Please provide us with the following information: MasterCard VISA

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Now register online at
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General Information

Online Registration

Online registration is available for all Carolina Law CLE programs. Simply go to our Web site at www.law.unc.edu/cle, click on the online registration link and have your credit card ready! To register for the 2009 Dan K. Moore Program in Ethics, just enter all the details and submit the registration request for processing. No printing, no mailing, no postage! Immediate confirmation. What could be easier? Registering for a CLE program has never been faster or more convenient.

To Register

Registration Fee: \$195 or Group Discount (send 3): \$150

To register for The 2009 Dan K. Moore Program in Ethics, please mail the registration form and to the School of Law with a check made payable to "UNC School of Law – CLE." The \$195 registration fee includes all text materials, a continental breakfast, lunch and beverages. Onsite registration will be permitted subject to space availability.

Cancellations/Refunds

Cancellations received before **October 2** will be honored and fees refunded, less a \$50 processing fee. Cancellations made after this date may be subject to additional fees or no refund at all. In fairness to all attendees, confirmed participants who do not attend are liable for the entire fee unless other arrangements have been made with director of continuing legal education.

CLE Credit

Credit Hours: 3 hours of Ethics and 1 hour Substance Abuse

Continuing legal education credit will be reported to the N.C. State Bar Board of Continuing Legal Education by the UNC School of Law. Please indicate on your registration form if you desire CLE credit for this program.

CLE Credit in Other States

Please indicate the states in which you would like to receive credit on your registration form, and we will assist in that process. Payment of any out-of-state fees are the responsibility of the attendee.

Location

The Carolina Club, UNC-Chapel Hill

The 2009 Dan K. Moore Program in Ethics will be held at the Carolina Club in the George Watts Hill Alumni Center on the UNC-Chapel Hill campus. There is convenient parking in the Rams Head parking garage adjacent to the Carolina Club for an hourly fee. A map and parking information will accompany registration confirmation. Messages for program attendees on the day of the program may be left at (919) 962-1101.

For more information about CLE programs, contact Carolina Law:

By Email:

jcarlock@email.unc.edu

Online:

www.law.unc.edu/cle

By Phone:

Call the Office of CLE at (919) 962-1679
9:00 a.m. - 5:00 p.m., Monday - Friday



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