

NORTH CAROLINA BAR ASSOCIATION

seeking liberty + justice

When the Walls Come Tumblin' Down...: Preparing for and Confronting Construction Defect Litigation in North Carolina



LIVE

Fri.–Sat., September 28–29, 2018
Charlotte Marriott City Center
100 West Trade Street, Charlotte

REGISTER TODAY!

Save an extra 10% if
registration is received
by September 7, 2018.

www.tinyurl.com/CLE803CLM

**Construction Law Section
Annual Meeting included.**

9.0
HOURS

TOTAL CLE CREDIT

1.0
HOUR

Ethics/Professional
Responsibility

AVAILABLE FORMATS



PROGRAM SUMMARY

This program is intended to steer attendees through the construction defect claim process, from as early as drafting a client's contracts to better defend against potential future claims, through pre-litigation considerations, the collaborative process either before or after litigation, and through litigation and the various issues that may arise therein.

This program is designed to:

- Provide a thorough understanding of how to prepare for and tackle construction defect claims
- Appeal to both the contractual and litigious interests of construction defect claims
- Equip North Carolina attorneys to better instruct and meet their clients' needs in connection with construction defect claims

WHAT PEOPLE ARE SAYING...



As a new construction attorney, this program was very helpful as a general overview of relevant, growing topics in the industry.



I found every topic to be tremendously helpful.



Very informative and useful practice materials.

—Attendees, *From Handshake to Payment*, 2017 North Carolina/South Carolina Joint Construction Law Program

REGISTER TODAY!

Online: www.tinyurl.com/CLE803CLM | **By phone:** 800.228.3402

By mail: Attn: Accounting-NCBA, 8000 Weston Parkway, Cary, NC 27513

STEP 1: Tell us who you are. (Please print clearly.)

Print Full Name: _____

Address: _____

City, State and ZIP: _____

Daytime Phone Number: _____

Email Address: _____

NC State Bar No. (Required for MCLE Credit): _____

STEP 2: Select your tuition rate. (Register early and save 10%. Payment must be received three (3) weeks prior to program date to qualify for the early rate.)

Standard Rate: \$745 / \$670 *Early*

NCBA Member: \$620 / \$560 *Early*

Construction Law Section Member: \$575 / \$520 *Early*

CLE Premier Pass: \$0

STEP 3: Select your learning format.

Live (803CLM) Video Replay (See below.)

Video Replay registration (if selected).

Video Replays are scheduled for this program. The agenda may not include certain breakouts/tracks shown at the original program. For a list of dates and locations visit www.tinyurl.com/CLE803CLM, and indicate your choice below.

Location: _____ Date: _____ Code: _____

STEP 4: Complete your payment information.

(Registration is complete only after payment is processed. Please print clearly.)

I am registering for this program at the tuition rate checked above.

Enclosed is a check, payable to NCBA. Please charge my credit card.

Card Number: _____ Exp. Date: _____

Total Amount: _____ Signature: _____

Discounts are available for NCBA members who are students, law professors, judges or legal services/public interest attorneys. Call CLE at 800.228.3402 for details.

AGENDA

FRIDAY, SEPTEMBER 28, 2018 | 8:15 a.m. – 4:15 p.m.

- 8:15 Registration and Continental Breakfast** | Sponsored by CCIS Inc. and Cornelius Consulting
- 8:55 Welcome and Introductions** | Behm, Gray, Litwak and Moore
- 9:00 Drafting Contracts to Protect Your Client from Defect Claims** | Burchette, Johnson and West
- Considerations in contract drafting to protect your client's interests
 - Necessary provisions and provisions to look out for
 - Perspectives from the design professional and contractor's viewpoints
- 10:30 Break** | Sponsored by Williams Overman Pierce LLP
- 10:45 Evaluation of Considerations in Defending a Defect Claim** | Slaughter
- Discussion of various aspects of defending a defect claim, including:
- Initial review of materials
 - Additional insured coverage
 - Determining experts
 - Evaluating potential cross-claims and counterclaims
 - Perspectives of a third-party defendant
 - Alignments amongst multiple defendants
- 11:45 Networking Lunch**
- Construction Law Section Annual Meeting**
R. Jason Herndon, Parker Poe Adams & Bernstein LLP, Raleigh, 2018-2019 Section Chair, Presiding
- 12:45 The Use of Collaborative Law in Construction Cases** | Ong
- Discussion of the rise of collaborative law in construction cases
 - Description of the Collaborative Law Act (proposed legislation)
 - Benefits of embracing collaborative law in construction defect claims
- 1:45 The Intersection of Construction Defects and Various Experts** | Rosenwood
- Discussion of the interplay between code violations and liability
 - How to approach code review and obtain governmental approval
 - How blaming a governmental inspector does not constitute a defense
 - How to use expert witnesses to benefit your case
- 2:45 Break** | Sponsored by SKA Consulting Engineers Inc.
- 3:00 Posturing Your Case to Tackle Insurance Coverage Issues** | Malone
- Perspective from an insurance coverage counsel
 - How to draft pleadings to trigger coverage – what to include and what to avoid
 - What insurance issues to consider in posturing your case
- 4:15 Adjourn (followed by reception)**

AGENDA

SATURDAY, SEPTEMBER 29, 2018 | 8:15 a.m. – 12:30 p.m.

8:15 Registration and Continental Breakfast

Sponsored by Construction Process Solutions Ltd. and RGL Forensics

8:55 Welcome and Introductions | Behm, Gray, Litwak and Moore

9:00 How to Survive the Discovery ePocalypse – A Guide to eDiscovery Best Practices | Bailey

- A description and background of ESI
- Cost-effective tips concerning ESI workflow
- The benefit of ESI protocol agreements at the outset of litigation
- Metadata's importance and how to properly leverage it
- Complete understanding of the EDRM (Electronic Discovery Reference Model)
- eDiscovery review platforms
- Current eDiscovery trends

10:15 Ethical Implications of Multiple Parties* | Campbell

- Discussion of the tripartite relationship among attorney, insurer, and client and how it plays out at all stages of litigation, including pre-litigation
- How to approach and handle joint defense agreements and arrangements

11:15 Break | Sponsored by Cicayda

11:30 The Economic Loss Rule | Coats

- Description of the doctrine and its history
- Discussion of its current treatment in NC courts
- Practical considerations as either plaintiff or defendant

12:30 Adjourn

* Indicates portion providing Ethics/Professional Responsibility credit.



The *North Carolina Construction Law Deskbook, Seventh Edition (2016)* includes case law and developments that have impacted the construction industry, including:

- E-Verify requirements for State contracts
- Awarding of contracts by public entities through design-build and design-build "bridging"
- Public-private partnerships (P3s)
- LEED building rating system

Also includes time-saving fillable/editable forms, contracts and letters, as well as sample ConsensusDocs and AIA forms!

For details or to order, go to www.ncbar.org/CLE and click on *Publications*.

PROGRAM DETAILS

SPEAKERS

- **Brad Bailey**, Cicayda LLC, Birmingham, AL
- **Carl J. Burchette**, Hamilton Stephens Steele + Martin PLLC, Charlotte
- **Christopher J. Campbell**, McAngus Goudelock & Courie LLC, Charlotte
- **David S. Coats**, Bailey & Dixon LLP, Raleigh
- **W. James Johnson**, Smith Terry & Johnson, Asheville
- **John I. Malone Jr.**, Goldberg Segalla, Greensboro
- **John W. Ong**, Cranfill Sumner & Hartzog LLP, Charlotte
- **Erik M. Rosenwood**, Rosenwood Rose & Litwak PLLC, Charlotte
- **Nicole B. Slaughter**, Hamlet & Associates PLLC, Wilmington
- **Allen L. West**, Hamilton Stephens Steele + Martin PLLC, Charlotte

SPECIAL ACCOMMODATIONS

NCBA makes every effort to ensure a quality learning experience. If you have dietary restrictions or need special accommodations, please contact us at least one (1) week prior to the program start date.

CLE SCHOLARSHIPS

CLE scholarships are available. Contact Membership Services at 800.662.7407 or email Amy Kemple at akemple@ncbar.org for more information.

HOTEL INFORMATION

Contact hotel directly for reservations at the special NCBA room rate. Rate is based on availability and rooms may sell out.

Charlotte Marriott City Center

100 West Trade Street
Charlotte NC 28202

- **Nightly Rate:** \$169 single standard
- **Reservations:** 800.359.3204 (specify the Construction Law Section Annual Meeting) or register online at www.tinyurl.com/NCBA-CLrooms
- **Cutoff Date:** Friday, September 7, 2018

PLANNERS

- **Christopher K. Behm**, Block Crouch Keeter Behm & Sayed LLP, Wilmington
- **Philip T. Gray**, Stephenson Law LLP, Cary
- **Nancy S. Litwak**, Rosenwood Rose & Litwak PLLC, Charlotte
- **Parker E. Moore**, Johnston Allison & Hord PA, Charlotte

We extend our sincere gratitude to the NCBA Construction Law Section and the planners and speakers who volunteered their time and expertise toward the goal of presenting an educational program of the highest quality.

EARLY ARRIVALS RECEPTION

Thursday, September 27, 2018

6:00–7:30 p.m.

Ink N Ivy

222 South Church Street, Charlotte

Sponsored by Block Crouch Keeter Behm & Sayed LLP, Contract Solutions and StephensonLaw LLP

FRIDAY EVENING RECEPTION

Friday, September 28, 2018

4:30–6:00 p.m.

Event Hub at Charlotte Marriott City Center
100 West Trade Street, Charlotte

Sponsored by MBP and Stasmayer Inc.

PROGRAM DETAILS

PROGRAM SPONSORS

Gold Level Sponsors: Contract Solutions and MBP

Silver Level Sponsors: CCIS Inc., Cicayda, Construction Process Solutions Ltd., Cornelius Consulting, RGL Forensics, SKA Consulting Engineers Inc., Stasmayer Inc. and Williams Overman Pierce LLP

Other Sponsors: Block Crouch Keeter Behm & Sayed LLP and StephensonLaw LLP

YOU MAY ALSO BE INTERESTED IN...

Upcoming Construction Law Live Programs:

Save these dates for future Live Construction Law programs. Be on the lookout for details in the weeks preceding these events.

February 21, 2019

Construction Law Winter Program in Cary

September 20-21, 2019

Construction Law Joint Program with South Carolina in Charleston, SC

Construction Law On Demand Programs:

Watch pre-recorded programs at your convenience from your computer or mobile device! These programs allow you to deepen your knowledge and earn MCLE hours anytime and anywhere.

Below is a sample of recently added Construction Law programs. To view the complete list of On Demand programs, visit www.tinyurl.com/NCBAOnDemand.

AIA Changes from the Designer's Perspective | Selected from *The Contracts They are a Changin': What North Carolina Lawyers Need to Know about the 2017 Amendments to the AIA Contract Documents* (2018 Construction Law Section Winter CLE), February 22, 2018

Carolina(s) On My Mind: 2017 Construction Law Update | Selected from *From Handshake to Payment: Navigating the Legal Landscape of the Modern Construction Project from Drafting Agreements to Litigating Disputes* (2017 North Carolina/South Carolina Joint Construction Law Program), September 22-23, 2017

Construction Risk and Designing the Project: Insurance for the Design Team | Selected from *Managing Risk: Insurance Considerations for the Construction Industry* (2017 Construction Law Section Winter CLE), February 23, 2017

NCBA

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When the Walls Come Tumbling' Down...: Preparing for and Confronting Construction Defect Litigation in North Carolina

NCBA is an accredited CLE sponsor under the MCLE regulations promulgated by the North Carolina State Bar Board of Continuing Legal Education.

INTRODUCING...

premier pass

The 2018-2019 CLE Premier Pass is
an exclusive NCBA member benefit
providing unlimited CLE
including access to hundreds of
On Demand programs.

www.tinyurl.com/PremierPass

REGISTRATION: All registrations are processed after payment is received. To qualify for the early tuition rate, payment must be received prior to the deadline indicated. Stated early discount rate percentage is approximate. Registrations may be capped based on venue size and may include an overflow room with additional seating. **CHANGES TO EXISTING REGISTRATIONS:** Should an attendee need to cancel his or her registration to a Live, Webcast or Video Replay program, the cancellation request must be received by 9:00a ET one (1) week prior to the start of the program to receive a full refund. Any attendee requesting cancellation less than one week prior to the program will receive a refund, less a \$75 administrative fee. An attendee may choose to transfer his or her registration at a program to the Live, Webcast or Video Replay format of the same program only. Transfer requests must be received by 9:00a ET one (1) business day prior to the program start date. An attendee may further choose to substitute his or her registration to a Live or Video Replay program only. Substitution means sending another person to attend the Live or Video Replay program when the original registrant is unable to attend. Substitution requests must be received by 9:00a ET one (1) week prior to the program start date. The substituted person may be assessed a different fee based on their NCBA membership classification. Cancellation, transfer and substitution requests must be provided in writing by email at askcle@ncbar.org or by calling 800.228.3402. If an attendee misses any portion of a program, that portion is not subject to substitution, refund or transfer. Except as provided herein, registrations including On Demand registrations, cannot be cancelled, substituted or transferred once purchased. **NO-SHOWS:** Anyone who is registered for a program, including CLE Premier Pass holders, but does not check in is considered a no-show. No-shows are not issued a refund, and Premier Pass holders will be assessed a \$75 administrative fee. These registrants will receive the digital materials, available in their online accounts, in full consideration of tuition paid. **MISCELLANEOUS:** The NCBA reserves the right to cancel or reschedule programs at any time. Should the NCBA cancel or reschedule a program, registrants may elect to receive a full refund or attend the newly scheduled program. Notifications regarding program changes will be sent to the email address on file. The NCBA is not responsible for any additional expenses incurred as a result of such cancellation or rescheduling. Each attorney must maintain a record of his or her attendance for the NC State Bar Annual Report. MCLE credit is reported by the NCBA only if a NC State Bar number is provided. Registration and attendance at NCBA CLE programs constitutes an agreement by the registrant with the NCBA for use and distribution of the attendee's image or voice in photographs, videotapes, electronic reproductions and audiotapes of such programs and activities. Unless specified, spouses or guests are not eligible to attend NCBA CLE programs and activities without registering to attend. These terms are subject to change.