

# NORTH CAROLINA BAR ASSOCIATION

seeking liberty + justice

## Where You Stand is Where You Sit: The Multifaceted View of the Public Records Act



### LIVE and WEBCAST

Friday, November 16, 2018  
North Carolina Bar Center  
8000 Weston Parkway  
Cary

### REGISTER TODAY!

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[www.tinyurl.com/CLE795PRP](http://www.tinyurl.com/CLE795PRP)

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HOURS

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## AVAILABLE FORMATS



## PROGRAM SUMMARY

The Public Records Act allows citizens and groups a right to access government information, but this ideal can often conflict with reality. The phrase “Where you stand is where you sit” captures the idea that the world looks different depending on where you are viewing it from, and one’s vantage point can lead to the polarization of “us” versus “them.”

This program about the Public Records Act starts out with a statutory and case law update and moves into a day full of learning and discussion of viewpoints. Topics include:

- North Carolina Guide to Open Government and Public Records
- Covering legal fees
- Legitimate information requests
- Use of third-party vendors
- Law enforcement and public safety records

Come sit (or stand) with us on Friday, November 16, as we all learn new ways to view the complex Public Records Act. You may end up changing seats before the end of the day!

## WHAT PEOPLE ARE SAYING...



This was an excellent program that covered the subject matter well and provided good practice tips.



Overall, this was a well thought out CLE. All speakers provided excellent information.

— Attendees, 2017 Joint Program of the Administrative Law and Government & Public Sector Sections

# AGENDA

FRIDAY, NOVEMBER 16, 2018 | 8:15 a.m. – 4:45 p.m.

- 8:15 Registration and Continental Breakfast**
- 8:55 Welcome and Introductions** | Gray
- 9:00 Statutory and Case Law Update** | Bluestein  
The Public Records Act is ever-evolving. Join the UNC School of Government’s leading expert for an update on recent changes.
- 9:45 Unveiling the Wall of Transparency** | Attorney General Stein and Woods  
It has been 10 years since the Attorney General’s Office first created a comprehensive guide for Public Records Act requests. The Governor’s Office released its new request guidelines in mid-July and Attorney General Josh Stein is poised to release an updated version. Learn how state agencies are instructed to respond and what is in the latest version of the AG’s guidelines.
- 10:30 Break**
- 10:45 Who Pays (and Who Should)** | Engstrom  
A recent law review article by the former Elon Law School Legal Method and Communication Fellow analyzes NC’s law and how it leaves open to interpretation who should cover the costs of legal fees when a person sues the government for lack of transparency. Hear about NC’s Public Records (and Open Meetings) Act fee-shifting provisions in the larger national context.
- 11:30 Networking Lunch**
- 12:15 “Free Discovery” or Legitimate Request: Responding to the Tedious, Complex and Harassing Request** | Payne  
It seems that the state’s public records laws are being used more and more for reasons beyond their intended purpose of facilitating open, transparent governance. Requests are made to determine if a cause of action exists, or to harass government or the people who use its services. The story of one county in particular that had to seek legislative relief to curb abuse is explored, as well as broader issues.
- 1:15 Panel Discussion: A Public Records Act Wish List** | Currin, Gray and Martin | Moderator: Kalfas  
Practitioners often develop a list of changes they believe should be made to the statutes they rely on daily. Government, public sector and administrative lawyers are no different. Two long-term government attorneys and one of the state’s leading experts on media law talk about their wish lists.
- 2:15 Break**
- 2:30 Ambiguities of Third-Party Vendors** | Tufts  
With the evolution of storage methods for vast amounts of paper and electronic records, government entities are moving towards third-party vendors. Handing over physical custody of records that lawfully belong to “the public” presents its own legal ambiguities. Get answers to questions about companies that archive these files offsite and often have contract terms that do not coincide with the Act.
- 3:15 The Challenges of Law Enforcement and Public Safety Files** | Maddux  
Law enforcement and public safety records have unique challenges, but body-worn camera footage and government-owned cameras watching everything from parks to buildings to traffic intersections add another dimension to existing public records laws. Asheville has had its share of those issues; hear about lessons learned.
- 4:15 The Duty to Respond with It All\*** | Oten  
It is difficult as an attorney to hand over a document you know is damaging to your client, but a Public Records Act request is like a discovery request; you have a legal and ethical obligation to disclose. The State Bar’s Ethics Counsel reminds us of our obligations under the Rules of Professional Responsibility.
- 4:45 Adjourn**
- \* Indicates portion providing Ethics/Professional Responsibility credit

# PROGRAM DETAILS

## SPEAKERS

- **Attorney General Joshua H. Stein**, North Carolina Department of Justice, Raleigh
- **Frayda S. Bluestein**, UNC School of Government, Chapel Hill
- **Robin T. Currin**, City of Raleigh, Raleigh
- **Elliot M. Engstrom**, Cleveland County, Shelby
- **Jeffrey P. Gray**, Bailey & Dixon LLP, Raleigh
- **John B. Maddux**, City of Asheville, Asheville
- **C. Amanda Martin**, Stevens Martin Vaughn & Tadych PLLC, Raleigh
- **Brian P. Oten**, North Carolina State Bar, Raleigh
- **Mark Payne**, Guilford County Attorney, Greensboro
- **Shannon H. Tufts**, UNC School of Government, Chapel Hill
- **Narcisa I. Woods**, North Carolina Department of Justice, Raleigh

## MODERATOR

- **Nahale F. Kalfas**, Solo Practitioner, Durham

## 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](mailto:akemple@ncbar.org) for more information.

## HOTEL INFORMATION

Contact hotels directly for reservations at the special NCBA room rate. Rates are based on availability and rooms may sell out.

### Embassy Suites

201 Harrison Oaks Boulevard, Cary

- **Nightly Rate:** \$169 single/double
- **Reservations:** 919.677.1840 or [www.tinyurl.com/NCBA-Embassy](http://www.tinyurl.com/NCBA-Embassy)
- **Corporate Account Code:** 2691626

### TownePlace Suites by Marriott

120 Sage Commons Way, Cary

- **Nightly Rate:** \$114 studio queen with sleeper sofa (Sunday–Thursday)
- **Reservations:** 919.678.0005
- **Ask for the NCBA corporate rate.**

## PLANNERS

- **Jeffrey P. Gray**, Bailey & Dixon LLP, Raleigh
- **Nahale F. Kalfas**, Solo Practitioner, Durham

We extend our sincere gratitude to the NCBA Administrative Law and Government & Public Sector Sections as well as the planner and speakers who volunteer their time and expertise toward the goal of presenting an educational program of the highest quality.

# REGISTER TODAY!

**Online:** [www.tinyurl.com/CLE795PRP](http://www.tinyurl.com/CLE795PRP) | **By phone:** 800.228.3402

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## 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.)

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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/CLE795PRP](http://www.tinyurl.com/CLE795PRP) and indicate your choice below.

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## Where You Stand is Where You Sit: The Multifaceted View of the Public Records Act

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**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](mailto: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.