

Winter/Spring 2018

Chairman's Message ..... 1  
 Legislative Link ..... 1  
 Proposed FE06..... 3  
 NCSB Ethics Committee Actions ..... 4  
 BlockChain 101 ..... 5  
 Referrals/Member Directory ..... 6  
 2081 Membership Drive ..... 7  
 2017 Leadership ..... 8  
 2018 Sponsors ..... 8



Real Estate Lawyers Association of North Carolina

The Quarterly Newsletter for RELANC Members ♦ Winter/Spring 2018



# RELANC



## Legislative Link



The North Carolina General Assembly's main web site is [www.ncleg.net](http://www.ncleg.net).

The Legislature is not currently in session.

As of May 15, when it reconvenes, you will be able to view legislation, load live audio, and see live agendas and activity, all at the same link.

<http://www.relanc.com>

## Chairman's Message

*Christopher T. Salyer, Hutchens Law Firm, Fayetteville*

As I was struggling with what final comments I wanted to leave you with, it was suggested that I express my vision of RELANC going forward. I decided this would be a good topic to wrap things up as my year in the chair comes to an end and another year and chapter of RELANC begins. We have previously updated the membership regarding the legislation that has come through or is tied up in the General Assembly. There will be a few bills we continue to track as they either make their way to being laws or end up in a legislative graveyard. I am sure there will be an update once the General Assembly is back in session.

I really had to step back and think of where I see RELANC concentrating its efforts in the future, keeping in mind the desires of our members and the whole reason RELANC was formed in the first place. Before I address RELANC's future, I want to reiterate where we are. This past year we have continued to get involved and appointed to task forces, committees and councils. We will continue to be proactive and hopefully not as much reactive on the issues and challenges that arise. There are several members of RELANC participating in or on committees giving valuable input not only to our legislators and fellow lawyers but other trades and offices that are an integral part of the real estate community. I see RELANC continuing as a source of information or "go to" while working with the real estate community to address the

*Continued on next page*

## Chairman's Message, continued

challenges we are facing or will be facing. RELANC will continue being a valuable resource to North Carolina and its citizens.

I believe RELANC will continue to grow. Our most recent membership drive netted 72 new attorneys who will bring their interests and focus to the group. In addition to this growth within our practice area, there are other areas of practice whose interests are aligned with RELANC's. Many of our members practice in multiple legal specialties and are members of their organizations. This will give us a bigger membership along with a perspective from attorney's practices that cross the real estate practitioner's path.

Another issue I see, and RELANC may be able to coordinate, is helping educate new attorneys wanting to start a real estate practice, as well as keeping our current members informed and educated regarding changes that will affect their practices. We have Mr. Ozie Stallworth from the Secretary of State's office as the keynote speaker at our annual meeting this year. He will be addressing e-notarization as well as the e-closing best practices guidelines that are being proposed and reviewed. I do not see RELANC taking an active role in CLE programs that compete with the NCBA's programs, but it is possible that we will offer programs that fill some gaps in this knowledge base for the real estate practitioner.

Last but not least I will be looking forward to turning over the chair to Ms. Ashleigh Black who will be stepping up and leading the board this coming year. I look forward to working with Ashleigh as we open the next chapter. I would like this opportunity to thank her for stepping into this role and taking the lead. I would also like to thank all of those partners that have given us support as well as all of the attorneys that have helped make this a challenging but very rewarding experience.

I could go on, and there are some ideas I am sure I will think of later, but I think I will end with my legal disclaimer; The opinions contained herein are solely the opinion of the author and are not necessarily the opinion of the RELANC board of directors. I look forward to seeing you at the annual meeting.

*~Chris Salyer, 2017 Chairperson*



## Lobbying & Task Force Contacts



*James A. Harrell, Jr.*



*Kim Rosenberg,  
Attorneys Title  
RELANC Board Member,  
Co-chair, NC Best Practices  
Task Force & NCLTA  
Legislative Committee*



*Randy Herman  
The Banks Law Firm  
RELANC's Representative  
Secretary of State  
Land Records Task Force*



*Chris Salyer, RELANC Chair  
Liaison to the NCBA Real  
Property Section Council  
Appointed to the NC E-Mortgage  
Closing Advisory Committee*



## NC State Bar Proposed 2017 Formal Ethics Opinion 6: Participation in Online Platform for Finding and Employing a Lawyer, July 27, 2017

*At its meeting on January 25, 2018, the Ethics Committee voted to return proposed 2017 Formal Ethics Opinion 6, Participation in Platform for Finding and Employing a Lawyer, to a subcommittee for further study. Suzanne Lever, Assistant Ethics Counsel at NC State Bar, wrote an article outlining the issue for the NC State Bar Journal in its Fall 2017 issue, which was republished on the Lawyers Mutual web site in January 2018. Below is an excerpt from the article. Please keep following this issue and commenting when Opinions are released!*

“I am sure many of you are aware of Avvo’s online legal directory. However, you may not know that Avvo, as well as a handful of other platforms, is now offering fixed fee limited scope legal services online. How do these online legal service platforms work? In the case of Avvo Legal Services, Avvo determines the fee that will be charged for each discrete service and charges participating lawyers a percentage of the fee. The percentage charged to the lawyer, which varies depending on the particular legal service, is called a “marketing fee.” Avvo initially collects the entire legal fee from the consumer and deposits the funds in an Avvo bank account. On a monthly basis, Avvo pays the participating lawyer all legal fees generated by the lawyer in the preceding month. In a separate transaction, Avvo collects its marketing fees for these legal services by debiting the lawyer’s operating account.

“So basically, the business model for these online legal platforms involves the service collecting the legal fee from the client/consumer and then—wait for it—splitting the fee with the participating lawyer. Say what???

Now I know, and you know, that fee sharing is a no-no under the Rules of Professional Conduct. Rule 5.4(a) *clearly states* that a lawyer “shall not share legal fees with a nonlawyer, except” blah blah blah not relevant here. So what gives? Well, four jurisdictions give the thumbs down to this business model....

“The proposed opinion addresses many ethical issues implicated by the Avvo business model. In fact, 13 rules of professional conduct are cited in the proposed opinion, including Rule 5.4(a). In its discussion of fee-sharing, North Carolina falls in line with the other four opinions in concluding that the structure of the payments in the business model is irrelevant to the fee sharing issue, and also agrees that “the fact the marketing fee is a percentage of the legal fee implicates the fee-sharing prohibition.” Now here is where we go rogue.

*[writing on behalf of the committee]* “Our proposed opinion focuses on the purpose for the fee-splitting prohibition — “to protect the lawyer’s professional independence of judgment.” The opinion references two current North Carolina ethics opinions approving payment arrangements similar to that of the Avvo business model. The payment arrangements in 2010 FEO 4, involving a barter exchange program, and 2011 FEO 10, involving an online group coupon, were approved because the nonlawyer receiving the payment exercised no influence over the professional judgment of the lawyer, and the fee was a reasonable charge for marketing or advertising services. Similarly, Proposed 2017 Formal Ethics Opinion 6 concludes that, “if there is no interference by Avvo in the independent professional judgment of a participating lawyer, and the percentage marketing fees paid by the lawyer to Avvo are reasonable costs of advertising...the lawyer is *not prohibited from participating in [Avvo Legal Service] on the basis of the fee-sharing prohibition.*” Mic drop.

“To clarify the committee’s position, the Ethics Committee is considering an amendment to Rule 5.4(a). The amendment addresses the payment structure utilized in the Avvo business model. The proposed amendment is an additional exception to the prohibition on sharing legal fees set out in Rule 5.4(a) and allows a lawyer to pay a portion of a legal fee to a credit card processor, group advertising provider, or online platform for identifying and hiring a lawyer if the amount paid is for payment processing or for administrative or marketing services, and





there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship

“The proposed amendment to Rule 5.4(a) makes sense, but I'm not sure it solves the conundrum presented by Rule 5.4(a) and perhaps responsible for the inconsistent holdings in the ethics opinions. A literal application of Rule 5.4(a) would prohibit all payments by a lawyer to a nonlawyer employee or vendor if the source of the funds is legal fees previously earned by the lawyer. As already noted, comment [1] to Rule 5.4 states that the provisions of the rule “express traditional limitations on sharing fees.” These “traditional limitations” may be unnecessary and even unworkable in today's legal marketplace. The stated purpose for the prohibition against fee-sharing is met by other rules of professional conduct. Rule 2.1, Rule 5.4(c) and Rule 1.8(f), among others, protect a lawyer's professional independence of judgment without establishing an unworkable restriction on the lawyer's use of his own legal fees. Rule 5.4(a) states that a lawyer “shall not share legal fees with a nonlawyer.” Do lawyers who participate in Avvo Legal Services share legal fees with Avvo? Yes. Does it matter? I don't think so.

“If you have gotten this far I would like to emphasize two very important things about Proposed 2017 Formal Ethics Opinion 6: (1) it is a proposed opinion, and (2) it is being published for comment. If this proposed opinion makes you want to pack up and move to South Carolina, Ohio, Pennsylvania, or New Jersey, please unpack and send us your comments and concerns instead.”

**RELANC MEMBERS: *Please keep following this issue and commenting when Opinions are released!***

## JANUARY 2018 NC State Bar Ethics Committee Actions



### Proposed 2018 Formal Ethics Opinion 1

#### Participation in Website Directories and Rating Systems that Include Third Party Reviews

January 25, 2018: *These opinions are published for comment.*

*Proposed opinion explains when a lawyer may participate in an online rating system, and a lawyer's professional responsibility for the content posted on a profile on a website directory.*

**Inquiry #1:** May a lawyer “claim her profile” or set up a profile on a website directory or business listing service such as Google's My Business, LinkedIn, or Avvo and provide information for inclusion in the profile? **Opinion #1:** Yes, if the information provided by the lawyer and as presented in the profile is truthful and not misleading. Rule 7.1(a).

**Inquiry #2:** May a lawyer pay to be included in a website directory of lawyers? **Opinion #2:** Yes. A lawyer may pay the reasonable costs of advertisements. Rule 7.2(b).

**There are eight more Inquiries and Opinions on this topic. Please go to the NC State Bar web site at <https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/> to read the rest and provide your comments to the Ethics Committee.**



# **What Will the Legal Industry Look Like with Blockchain?**

*Chris Combs, The Contract Analysis Blog at LinkSquares, January 24, 2018*

The Internet of information was the first generation of the digital revolution. The second generation will be powered by blockchain technology and bring us a new age: The Internet of value. This new digital landscape will completely reshape the way we interact and do business with one another.

## **What is Blockchain?**

Blockchain is a way to decentralize data. It is a global distributed ledger that runs on millions of devices (instead of centralized servers run by one governing party). This technology allows not just information to be moved, stored and managed securely and privately, but anything of value including money, titles, deeds, votes, and even identities.

This very public ledger maintains a collective history of ALL transactions that have ever occurred on the network. This makes fraud and hacking an impossibility. What's more, the introduction of Ethereum, which some have called a "decentralized virtual machine that can execute peer-to-peer contracts," has given businesses and individuals more control.

There is no denying that blockchain technology is appealing to many because trust is established through mass collaboration and robust code, instead of a need to trust powerful intermediaries like banks and governments. But how will blockchain affect the legal industry moving forward?

## **Protecting Your Clients from Disruption**

I know what you may be thinking, "Will blockchain technology and smart contracts do away with the need for lawyers altogether?" While this technology has certainly added fodder to the already many ubiquitous lawyer jokes, the truth is, that scenario is highly unlikely.

Smart contract creator, Nick Szabo, has had this to say about the need for lawyers, "Lawyers worried about losing their jobs to robots, you're actually doing something that's mostly complimentary to a smart contract. Smart contracts are mostly making possible new things that haven't been done before."

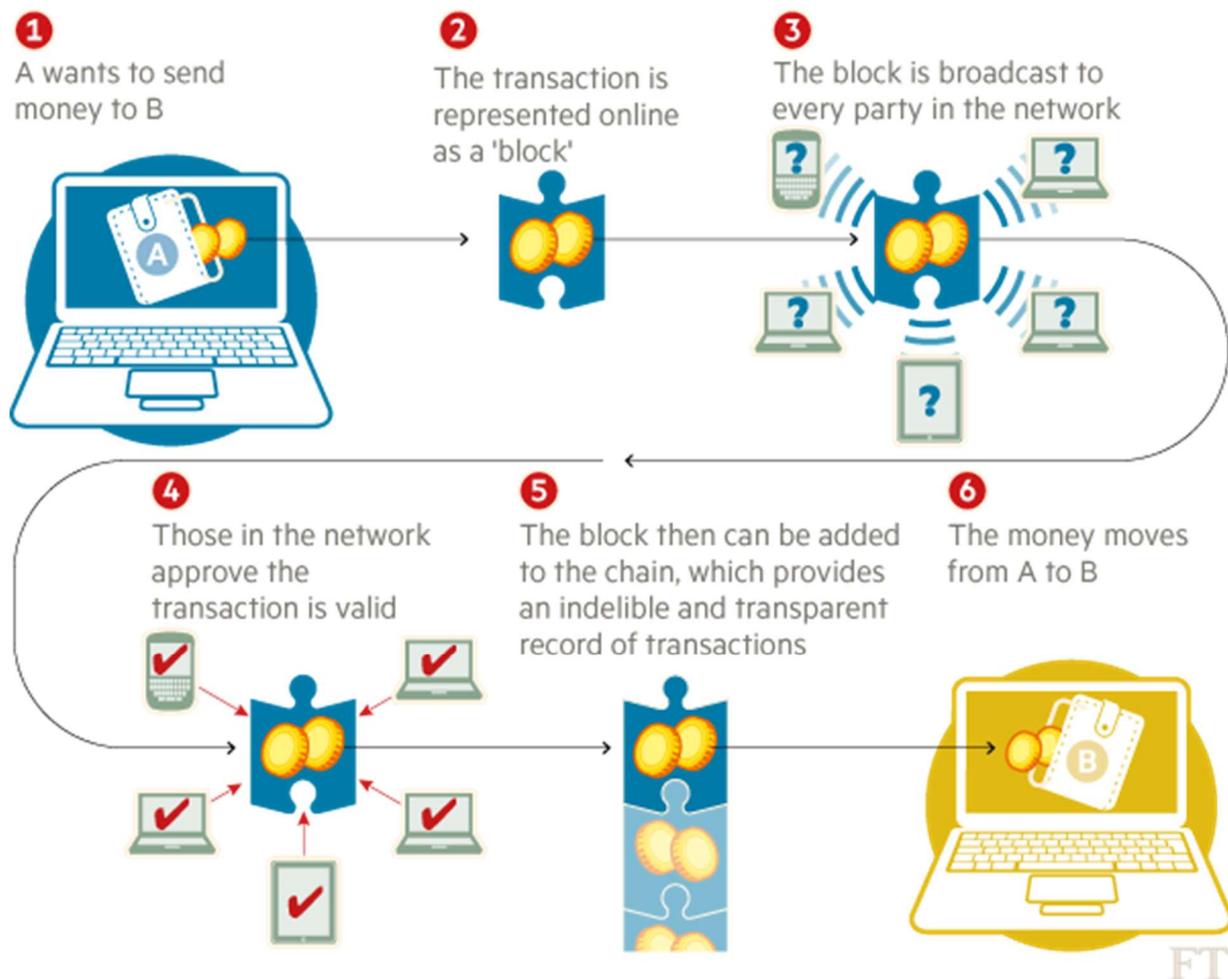
In the immediate future, lawyers will be very busy helping clients deal with the impact of blockchain on their own business. This new technology will disrupt numerous industries that rely heavily on lawyers' advice, creating even more opportunities for teams to counsel and manage new regulatory and legal structures. Lawyers who position themselves as blockchain experts will shape the future of industries and also be relied upon by other businesses for guidance and support.

## **The Legal Industry is Already Adopting Smart Contracts**

Thanks to their immutable and autonomous nature, smart contracts are an enticing alternative to traditional legal contracts, and many legal teams have already begun to embrace them. In the summer of 2017, a group of law firms and legal teams joined the Ethereum Enterprise Alliance (EEA). One of the firms is Hogan Lovells, which happens to be the 14th largest law firm by revenue in the United States.



## How a Blockchain Works



### This is not insignificant.

With such major law firms already signing on to blockchain and smart contracts, it signals a wider adoption to come. Beyond the EEA, Frost Brown Todd (FBT), a 500+ attorney law firm based in the US, announced their completion of a prototype smart contract to be used in software escrow agreements. Attorney Josh Rosenblatt, head of FBT's Blockchain team, has stated that, "For a lot of people in the industry, until you get your hands dirty, it's hard to understand what the advantages and disadvantages really are."

As blockchain technology matures, the legal industry will continue to be impacted. Those lawyers who start learning about blockchain and smart technology now, will be better able to serve their clients moving forward.

### Receive Referrals via RELANC

This year has seen a *significant increase in the number of referrals* requested through the RELANC office. We have received calls from members of the public throughout the state, seeking names and numbers of a member attorneys to assist them with their closings and other real estate matters. **This is an important member benefit, as the web site now contains a county and city-based directory of all members.** If you have changed your contact information *in any way* in recent history, please update your record with the NC State Bar and send a copy to your Executive Director, Bonnie Biggs, at [bonniebiggs@relanc.com](mailto:bonniebiggs@relanc.com).





## February 2018 Membership Update

*In 2018 RELANC embarked upon the largest membership campaign in its history. Over a thousand attorneys statewide were invited to join by email and written letter, in the span of one week. Here is what we sent them, signed by 2017 Chairman Chris Salyer.*

Over the last 8 years, **RELANC** has positively impacted your law practice. In some form or fashion, you and **RELANC** have crossed paths, likely by attending a call-in webinar, a conference, CLE, or other event designed for North Carolina attorneys practicing in the residential and/or commercial real estate sector. Even if you have not had that direct contact, **RELANC** has been present in the legislature fighting for you and your clients.

**The Real Estate Lawyers Association of North Carolina**, a 400-member 501(c)6 nonprofit, advocates on behalf of real estate attorneys and their clients, the property-owning public. **RELANC** gives voice to real estate attorneys, addressing the constant change and evolution of ethical representation and client protection. Recent areas of focus include e-closings, mechanics lien legislation, cyber-fraud and cyber security, AVVO discussions, recording fees, and NC-SC boundary line matters. One of the biggest issues facing our bar is the Unauthorized Practice of Law (UPL), in which **RELANC** has become a major force towards detecting and fighting - both the LegalZoom matter and more recent and pervasive UPL occurring in your local communities.

**RELANC** also has a membership stake in several industry-wide groups such as the NC Land Records Taskforce, which influences state-wide road matters and other issues that involve a variety of constituencies such as the Secretary of State and Register of Deeds offices. These liaisons and partnerships are a key element of **RELANC**'s work. In a few short years, **RELANC** has become an active, sought-after participant in these organizations.

**RELANC** is the voice in Raleigh for real estate attorneys. **RELANC** is the only organization with a lobbyist in Raleigh at the legislature to protect you and your clients. Neither the State Bar nor the NCBA fight for you in this way. The State Bar is prohibited from having a lobbyist, while the NCBA is constrained to act only on matters for which its many divergent constituencies agree.

*This is a courtesy email letting you know that we are mailing you an invitation to join **RELANC**, which you will receive in a few days. Please take a minute to look at the invitation and visit the **RELANC** website. We would love to have you join **RELANC**. If you are a past member, we welcome your return. If you join, please consider attending our **Annual Meeting** on February 24, 2018, in Pinehurst.*

**New Member Matching Gift Program:** Investors Title Insurance Company has committed a **\$100 match for every NEW member** joining before February 25, 2018. This is in addition to their generous matching donation following the 2017 Fall Gathering.

We have seen more change in our profession in the last 5 years than at any other time in the last 30 years. Change will continue to come, and **RELANC** is on the battlefield with collective and effective strategies and responses. There are several matters on the horizon that could have a *major effect* on how we practice real estate law -- it is so important to have as many attorneys as possible aware of the issues affecting our practices.

*Growing our 400-person membership increases our voice.* I sincerely hope you will give some serious thought to joining **RELANC**. Please feel free to contact me or any board members listed on our web site if you have further questions.

**The outcome? 70 and counting. If membership from year-end 2017 fully renews at 414, you could reach 500 members this year. Please make this effort matter, by renewing now!**



# ANNUAL MEETING

## PINEHURST NC

### THE CAROLINA HOTEL

FRIDAY, FEBRUARY 23, 2018:  
EARLY ARRIVAL RECEPTION

SATURDAY, FEBRUARY 24  
9:00 A.M. TO ~2:30 P.M.  
BREAKFAST AND LUNCH

**KEYNOTE AND FEATURE TOPICS:**  
eCLOSINGS & eNOTARY  
WIRE FRAUD & CYBER FRAUD  
PARTICIPATION IN TASK FORCES &  
COMMITTEES

**ALSO:**  
LEGISLATIVE UPDATES  
BUSINESS MEETING  
LOBBYING REPORT



RELANC is committed to pursuing policies, laws and regulations at local, state and federal levels to combat, prevent, and deter persons or entities which engage in practices harmful to the client-consumers represented by North Carolina real estate attorneys.

### RELANC Leadership

**Chair:** Christopher T. Salyer, Fayetteville

**Vice Chair:** Michael G. Gorenflo, West End

**Secretary:** Ashleigh E. Black, Raleigh

**Treasurer:** Sal Balsamo, Charlotte

**Immediate Past Chair:**  
Hunter S. Edwards, Charlotte

#### Directors:

James M. Arges, Durham  
Stephen B. Brown, Chapel Hill  
Veronica Colvard, Asheville ☞  
Alan E. Ferguson, Greensboro  
Ken Gwynn, Raleigh  
JC Hearne, Wilmington  
Casey J. Heim, Raleigh ☞  
Benjamin R. Kuhn, Raleigh  
Daniel Portone, Charlotte ☞  
Kimberly B. Rosenberg, Raleigh  
Daniel A. Terry, Charlotte  
Michael M. Thompson, Asheville

☞ *New for 2017*



We're proud to join  
our North Carolina  
neighbors.

# RELANC

