A. Definitions - What is a gang?

1. **Federal definition.** The federal definition of gang as used by the Department of Justice and the Department of Homeland Security's Immigration and Customs Enforcement (ICE), is [1]:
   A  An association of three or more individuals;
   B  Whose members collectively identify themselves by adopting a group identity, which they use to create an atmosphere of fear or intimidation, frequently by employing one or more of the following: a common name, slogan, identifying sign, symbol, tattoo or other physical marking, style or color of clothing, hairstyle, hand sign or graffiti;
   C  Whose purpose in part is to engage in criminal activity and which uses violence or intimidation to further its criminal objectives.
   D  Whose members engage in criminal activity or acts of juvenile delinquency that if committed by an adult would be crimes with the intent to enhance or preserve the association's power, reputation or economic resources.
   E  The association may also possess some of the following characteristics:
      1  The members may employ rules for joining and operating within the association.
      2  The members may meet on a recurring basis.
      3  The association may provide physical protection of its members from others.
      4  The association may seek to exercise control over a particular geographic location or region, or it may simply defend its perceived interests against rivals.
      5  The association may have an identifiable structure.

2. **State definition.** A number of states use the following definition of gang, often with minor modifications (this definition was originally devised by the California legislature):
"criminal street gang' means any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts [...], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.” [2]

4. North Carolina’s definition of a Gang is found in: NCGS 15 A 1340.16

A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

B. How does having a client with a gang affiliation impact your work and what are solutions for dealing with the issues presented.

1. Gangs can be the actual motivation for the crime committed.
   a) the activity may have been committed as an initiation into the gang-

N.C.G.S. § 14-50.16. Pattern of criminal street gang activity. (a) It is unlawful for any person employed by or associated with a criminal street gang to do either of the following:
   (1) To conduct or participate in a pattern of criminal street gang activity.
   (2) To acquire or maintain any interest in or control of any real or personal property through a pattern of criminal street gang activity.

A violation of this section is a Class H felony, except that a person who violates subdivision (a)(1) of this section, and is an organizer, supervisor, or acts in any other position of management with regard to the criminal street gang, shall be guilty of a Class F felony.

2. The crime can be committed in order to gain rank within the gang.
3. To defend the honor of the gang or a result of a direct order issued by a ranking member of a gang.
4. To benefit the whole of the gang’s financial interest or territory.

2. Gang affiliation can affect:
1) Amount of pretrial bond. - Amount and Denial of Pretrial Bond: 

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(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:
(1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
(2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
(3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

How is a gang defined in NCGS 14-50.16:

b) As used in this Article, "criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:
(1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult;
(2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and
(3) May have a common name, common identifying sign or symbol.

2) Conditions of probation from the amount of time you spend meeting with your probation officer.: § 15A-1343.2.

Special probation rules for persons sentenced under Article 81B.
(a) Applicability. - This section applies only to persons sentenced under Article 81B of this Chapter.
(b) Purposes of Probation for Community and Intermediate Punishments. - The Division of Adult Correction of the Department of Public Safety shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to
ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(b1) Departmental Risk Assessment by Validated Instrument Required. - As part of the probation program developed by the Division of Adult Correction of the Department of Public Safety pursuant to subsection (b) of this section, the Division of Adult Correction of the Department of Public Safety shall use a validated instrument to assess each probationer for risk of reoffending and shall place a probationer in a supervision level based on the probationer's risk of reoffending and criminogenic needs.

Validated gang members are subject to no less than level 3 supervision under probation. This means that regardless of any other matrix or factors unique to an individual they come into the system with the expectation that they are in need of extra resources and have a much higher level exception of remaining involved in criminal activity.

A level 3 probationer will be subject to at least one home visit every 60 days and at least one contact with the probationer every 30 days. A level 3 classification also dictates a harsher response for violation of probationary rules.

Additional classes and education maybe required to complete probation successfully.

3) Plea negotiations.

4) Jury selection.

5) Jury Verdicts.

6) The Judgment imposed by the Court: It is an aggravating factor, the State must prove it beyond a reasonable doubt or the defendant must admit it in order to escalate punishment. **NCGS 15 A 1340.6**

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.

3. Gang affiliation exclusion: Evidentiary Issues

1) Gang affiliation must be relevant to some disputed issue or it is inadmissible under Rule 401 and 402
2) Gang affiliation evidence is not admissible to show the defendant’s character to commit an offense.

3) Rule 403 Relevant and otherwise admissible evidence should be excluded if its value is outweighed by its prejudicial effect. What is unfair prejudice within the context of a 403 balancing test: An undue tendency to render a verdict based on an improper purpose, often by appealing to an emotional response. State v. Rainey, 198 NC App 427.

4. Gang membership can impact how you relate to your client and develop a sense of professional rapport?
   
   a) People join gangs for many reasons.
      protection
      sense of family
      financial stability
      familial history

   b) The gang and his brothers in the gang may be the first consistent sense of loyalty the person has.

   c) The leadership in the gang can impact the client’s decision to plead or go to trial. To make a proffer or disclose information to mitigate the client’s circumstance.

5. Gang membership can impact the cooperation of the State’s witnesses.

   a) Intimidation of witnesses and open file discovery.

      - redaction of information from disclosure to defendant’s
      - ethical implications of withholding information from disclosure to the client.

      - waiver of confidentiality
      - waiver of confrontation

6. North Carolina State Bar Opinion on disclosure of discovery to incarcerated defendants:

   Ethical Rule Implications:

   Rule 1.4
As a matter of professional responsibility, Rule 1.4 requires a lawyer to “keep a client reasonably informed about the status of a matter” and “promptly comply with reasonable requests for information.”

Rule 1.2 (a) (1)

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(1) A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Commentary to Rule 1.4:

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

However, the Bar ruled, upon the client’s request, a lawyer must allow the client the opportunity to meaningfully review relevant discovery material unless one or more of the following conditions exist: (1) the lawyer believes it is in the best interest of the client’s legal defense to deny the request; (2) a protective order or court rule limiting the discovery materials that may be shown to the defendant or taken to a jail or prison is in effect; (3) such review is prohibited by the specific terms of a discovery agreement between the prosecution and the defense lawyer; (4) because of circumstances
beyond the defense counsel’s control, such review is not feasible in light of the volume of discovery materials and the time remaining before trial or before a decision must be made by the client on a plea offer; or (5) disclosure of the discovery materials will endanger the safety or welfare of the client or others.