THE NORTH CAROLINA STATE BAR

JOURNAL

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IN THIS ISSUE

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Contents

FEATURES

Contents

DEPARTMENTS

BAR UPDATES

Current Issues

By Margaret M. Hunt

Several issues of importance to North Carolina lawyers have recently been the subject of newspaper articles and editorials and merit further comment. The first was a recent hearing before the Disciplinary Hearing Commission involving a North Carolina lawyer who investigates post-conviction claims of innocence. Several articles about the hearing implied that because the work of the lawyer was so important, the State Bar should overlook any allegations of misconduct.

When allegations of misconduct are reported to the State Bar by a member of the public, by clients, or by other lawyers, the State Bar's Grievance Committee evaluates whether, given all of the relevant facts and circumstances, there is probable cause to believe that the lawyer's conduct violated the Rules of Professional Conduct. The Grievance Committee consists of lawyers who are solo practitioners and members of small, medium, and large firms. These lawyers represent a wide variety of practice areas and have been elected by their peers from across the state to represent their respective judicial districts. A number of nonlawyers also serve on the Grievance Committee. In evaluating each grievance, the committee's guiding principle is that the protection of the public requires all lawyers, no matter what types of practices they have or what situations they may find themselves in, to comply with the Rules of Professional Conduct. In this particular case, the Grievance Committee referred the matter to the Disciplinary Hearing Commission for a full due process hearing on the allegations of misconduct.

The State Bar applauds lawyers who work to rectify miscarriages of justices and to make needed reforms to improve the functioning of our judicial system. Criminal lawyers in post-conviction cases often believe that a terrible injustice has occurred. In some cases, that belief is warranted. The stakes (i.e. the client's liberty or life) in such cases are high. Nonetheless, the applicability of the Rules of Professional Conduct cannot be determined by an individual lawyer's belief in the rightness of a client's cause, or the interests at stake in the representation. For example, a lawyer in a domestic case who is convinced that the opposing party is abusing the parties' children still must act in accordance with legal and ethical mandates in zealously pursuing the client's case. Likewise, a prosecutor's fervent belief that a criminal defendant is guilty and would pose a terrible risk to the public if not convicted would in no way excuse his or her violation of the Rules in order to obtain a conviction. Indeed, the requirements of the Rules may be most important in constraining lawyers' conduct when the stakes are high and the lawyer's commitment to a cause is passionate. Those are the situations in which lawyers are most inclined to take risks that jeopardize the integrity of the system and public trust in the profession and the administration of justice. As a profession integral to the functioning of one of our branches of government, lawyers are justifiably held to high standards. Inherent in those high standards is the principle that the end cannot justify unethical conduct as a means. The State Bar has and will continue to apply those high standards thoughtfully and consistently.

The second issue meriting comment relates to lawyers who want to end their practices. Until last year the only method available to a lawyer who wanted to terminate his or her North Carolina practice was to petition for inactive status. At the request of one North Carolina lawyer, who expressed his disillusionment with the legal profession and his desire to sever all ties to the profession, the State Bar last year adopted a rule to allow lawyers to resign from the State Bar. This request was only the second such request in the institutional memory of the State Bar. This particular lawyer, in a letter published recently in the *Charlotte Observer*, stated that he "forced the NC Bar to let me resign rather than take inactive status membership." This is a misstatement of the facts in that he did not force the State Bar to do anything. Rather, his request to resign was reviewed by the State Bar's Issues Committee whose members concluded that if a lawyer wants to sever all ties to the legal profession, he or she should be entitled to do so. The committee recommended the adoption of a rule to allow an attorney to resign. No adverse comments were received after the publication of the proposed rule in the State Bar *Journal*, the council adopted the rule without objection, and it became effective upon the approval by the Supreme Court. All State Bar rules must be approved by the North Carolina Supreme Court before they become effective.

Under the new rule, a lawyer may now elect to resign upon the showing that there are no pending grievances, all fees due to the State Bar are paid in full, and, if applicable, the lawyer has complied with the rules regarding the winding down of his or her practice. Once the Order of Relinquishment is entered, the former lawyer can no longer hold himself out to be a North Carolina lawyer, is no longer required to follow the Rules of Professional Conduct, and cannot petition the State Bar to be reinstated to active status. Rather, if a lawyer wants to return to active status, he or she must instead apply for admission to the Board of Law Examiners, must undergo a rigorous character and fitness investigation, and must pass a bar examination.

Each year approximately 350 lawyers petition for transfer from active to inactive status. They petition for this change because they are not practicing law in North Carolina, either

CONTINUED ON PAGE 23

I Am the State Bar

By L. Thomas Lunsford II

My favorite movie in high school was Woody Allen's "Bananas." Set in the turbulent country of San Marcos, which was then known primarily for its export of the title fruit and venereal disease, the film offered a humorous treatment of the basic conventions of Latin American revolution. In a script full of jokes about a fascist dictator's being supplanted by a left-leaning strongman, I was delighted not so much by the punch lines as by the comic logic of the insurrection and its aftermath. I particularly liked a scene that occurred immediately after the rebels seized power. A few visionary leaders of the struggle were gathered at the seat of government for a bit of revolutionary post-mortem with their leader, a Castrogenous guy named Vargas. Allen's character, Fielding Mellish, expressed his relief that in the wake of victory, he and the others could finally return home to their families. Once back in their communities, they could organize free elections, and enjoy the fruits of freedom and democracy with their fellow citizens. But even as he spoke, the dream of government of, for, and by the people began to evaporate. Vargas, with eyes growing glassier by the minute, rejoined with a completely different view of the future. He noted that the people, who were essentially peasants, were not then ready for self-government, and advised that for the time being at least, he would have to remain in power to insure that the revolution would not be subverted. Realizing that greatness was being thrust upon him, he gravely announced, "I am the State."

In much the same way, and with only a touch of irony, I feel constrained to tell you that, "I am the State Bar." Although Vargas and I have much in common—we both look good in fatigues and like to wear sunglasses indoors—we came to be exalted in different ways. His merger with the body politic was essentially self-directed. I have become synonymous with my employer by force majeure. I refer, of course, to the winter storm that impacted Raleigh on Friday, January 19, 2016, and coincided with the duly scheduled quarterly meeting of the State Bar Council. Because the storm threatened to paralyze the entire state, President Margaret Hunt was compelled to postpone the meeting and all pending policy decisions, including the adoption of a budget. The meeting is rescheduled for February 1, 2016. In the meantime, the agency must operate without reference to an official spending plan, and it appears that I have, by an act of God, acquired absolute power insofar as money is concerned. I wonder what I should pay myself?

Since the council is supposed to reconvene next week, it seems likely that I will have unchecked access to the treasury for only a few days. Still, anyone familiar with the anachronistic provision in our rules that specifies the sort of notice necessary for a "special" called meeting might be forgiven for doubting our ability to make it happen so quickly. Incredibly, the operative provision, which was apparently drafted when every lawyer had a working knowledge of Morse Code, still requires that notice be given in writing by telegraph or by United States Mail at the law office of each councilor. There is no provision for digital communication—indeed, no contemplation of wirelessness at all, and no allowance for the possibility that the council might one day include nonlawyers and lawyers who don't have law offices, as such. Be that as it may, however, the rule does admit the possibility of substituting a written waiver of notice for the notice specified. In consequence thereof, our administrative staff is now attempting, in a desperate race against time, to persuade each of our 68 councilors to email us his or her waiver of telegraphic notice by the end of the week. Assuming the success of this extraordinary endeavor, we should have a budget in place long before you actually read this essay. In all likelihood, I will by that time no longer "be" the State Bar. Instead, I will once again be an obsequious bureaucrat with a budget to administer and a lively interest in ridding our by-laws of leftover nonsense.

Those few of you who routinely read my column will recognize the foregoing discussion as a fairly straightforward introduction to a series of articles about the State Bar's finances. Those unfamiliar with my characteristically oblique approach to journalism may have experienced it as a baffling sort of film criticism. If such was your misimpression, I beg your pardon and offer as justification the simple fact that most people can be persuaded to consider our budget only by guile and artifice. Although no worthy endeavor can ever fully justify dishonesty, or any other violation of the Rules of Professional Conduct for that matter, I firmly believe that disingenuousness in the service of financial understanding is no vice.

Before proceeding with your fiscal epiphany, I would like to reference another fairly quaint rule of the State Bar. Rule .0411 provides that the Secretary, which I am in addition to being the agency itself, must maintain the State Bar's "books of account." Those records must be kept open for inspection by any member of the State Bar "during regular business hours." That being the case, if you don't think you can stand to read further on this subject, you might just want to drop by my office in downtown Raleigh some afternoon to conduct a "random

audit." After all, what's good for the goose…

My intention is to write three consecutive installments on the subject of money in this space. If, however, something dramatic happens in the world of *pro hac vice* admission in the meantime, you can be sure that I will interrupt the program for "breaking news." The first article, which you are currently reading, will concern the revenues featured in the State Bar's operational budget. The second will meditate upon our anticipated expenses. The third will concern the finances of the five financially self-sufficient and semi-autonomous boards and agencies for which the State Bar is responsible. I should note that I last wrote thusly about our finances back in 2004. That series of articles was so popular at the time that I agreed to revisit the subject at least once every 12 years. This is the fulfillment of that promise.

The State Bar's proposed operational budget for 2016 projects more income than expense, which is a good thing. If all our projections are realized and all of our assumptions are borne out, and if I'm prevented from paying myself what I'm really worth, we should reach the finish line next December with about $138,000 more in our treasury than we are starting out with. To the extent that we deviate from the budget, it will most likely be a function of unanticipated expenditure—or savings—rather than a revenue surprise. That's the good thing about our financial equation. "Income" is generally a constant. The variable for which we are solving is, more often than not, "expense."

We project $9,321,595 in revenue in 2016. As you can see from the accompanying pie chart on the following page, the lion's share—almost 90%—will be derived from the annual membership fee, or "dues," that you and the other active members of the State Bar are required to pay. This fact alone goes a long way toward assuring that the funds necessary to run the Bar and sustain its programs will be available from year to year. Although the amount of the charge may seem onerous to those who are unemployed or underemployed, most of us can afford to pony up $300 a year to remain licensed, and most of us do in fact pay.

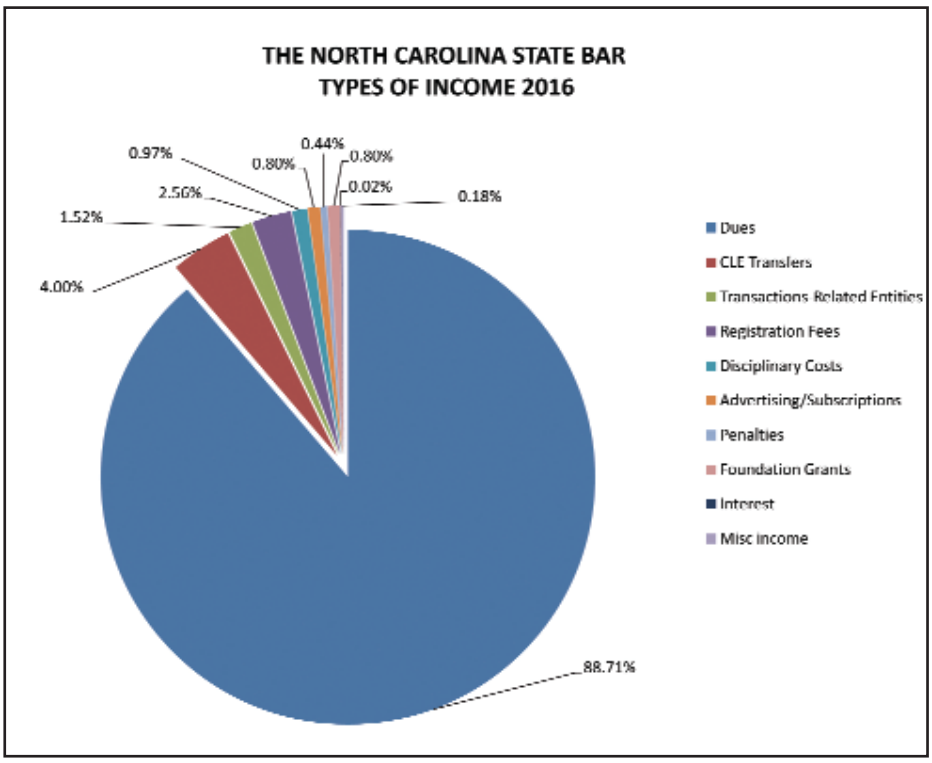
Incidentally, it is worth noting that mandatory membership and mandatory dues have salutary effects beyond the maintenance of a reliable income stream. Because practicing lawyers who disagree with policy decisions are not free to quit the State Bar, policymakers on the council are probably more free to do what the public's interest requires than would otherwise be the case. Regulatory choices that may be unpopular can be made without reference to membership recruitment and retention. The decision to impose mandatory continuing legal education, for example, would have been much more difficult to make if all those dues-paying members who disagreed with its premise or its compulsory character had been able to "walk." It is also significant that our primary source of revenue is ours alone. If we were dependent upon appropriations from the general revenue of the State of North Carolina, we would be competing biennially with school teachers, highway engineers, and, sadly, the courts for an adequate slice of an always insufficient economic pie. In such a political competition, one wonders how lawyers would fare.

The amount of dues revenue projected in the budget is 2.2% more than we received last year. This represents a concomitant amount of growth in the population of lawyers in North Carolina during 2015. We are pretty confident about that calculation since it is predicated upon the number of invoices we sent out last Thanksgiving, discounted by an experience-based factor that allows for attrition by death, disbarment, and disassociation. Although our budget is a year-to-year exercise in prognostication, our crystal ball has a bit more scope. We routinely make extended cash forecasts in order to make sure we'll have enough money on hand in the foreseeable future to manage increasing expenses. To this end, we imagine the possibility of inflation, the certainty of higher operating costs, the likelihood of new programmatic initiatives, the inevitability of unforeseeable events, and a financial burden that increases organically—and proportionately—as we are called upon to regulate more and more licensed attorneys. As I have said before in this space, continued growth of the lawyer population at something close to the current rate is crucial to our ability to continue doing "business as usual" over the next several years. Given that our anticipated operational surplus for the current year is in the neighborhood of $138,000, and a one-percent variance in our dues collections is worth about $82,000, it is easy to see how quickly rising costs in conjunction with a "slow growth" or a "no growth" scenario would have us eating into our cash reserves.

Although we have enough cash on hand to afford a fair amount of deficit spending, we can live "in the red" for only so long before having to beseech the General Assembly for authority to raise dues, which are now at the maximum level allowed by statute. Our leadership, as you may know, is committed to forestalling that exercise for as long as possible, and certainly through the end of the decade.

How likely is lawyer population growth to decelerate in North Carolina? That's a very interesting question and the tea leaves are difficult to read. We know that the seats in our seven law schools are full, but that the number of applicants for law school admission has fallen off. We know that near record numbers of people are sitting for the bar exam, but that pass rates may be trending downward. We know that more and more people are practicing in Charlotte and Raleigh, but that fewer and fewer folks are practicing in rural communities. We know that it seems harder and harder to make a living practicing law, but that more and more nonlawyers want to try it. And we know that there is a huge unmet need for legal services, but we don't yet understand that need as a commercial market for legal services. Where all this leaves us in five years—or ten—is anyone's guess, but you can be sure that we are keeping a close eye on the numbers.

Although the State Bar's other income sources are small in comparison to dues revenue, collectively they account for more than a million dollars. In our budget they are identified as 22 distinct line items. For the purposes of this article and the accompanying pie chart, they are grouped in ten categories according to their common characteristics. The first such category, from which approximately $372,000 or 4% of our income is expected to be derived in 2016, is directly related to the economic engine that is the



Board of Continuing Legal Education. As everyone knows, the board's administration is supported by fees paid by lawyers or by CLE sponsors on their behalf. The fee, which is currently $3.50 per hour of approved instruction taken, not only supports the mandatory CLE program, it also finances the operations of the Chief Justice's Commission on Professionalism and the Equal Access to Justice Commission. The former receives $1 for each hour taken, and so does the latter. For its trouble in collecting the fee and handling the accounting and distribution of the money, the State Bar gets to keep $.25 per hour. This year that handling fee is expected to yield about $87,000. The beautiful thing about the way the CLE program is financed is that the amount of income generated is theoretically unlimited. Because fees are collected for each hour taken and lawyers can take an almost infinite number of hours, there is the potential each year for the generation of more money than is necessary to administer the CLE program. As it happens, lawyers generally do take more CLE than is strictly required, and substantial surpluses have been generated annually for many years. In order to make responsible use of the extra money, an arrangement was negotiated several years ago between the CLE Board and the State Bar Council. It provides for the transfer of excess funds from the board to the Bar for the benefit of the Lawyer Assistance Program—a program that helps hundreds of lawyers around the state each year with issues related to substance abuse and mental illness and, in the process, protects the public. In 2016 it is expected that the total subsidy will approach $285,000.

The State Bar also benefits from other transactions with regulatory offspring that, like lots of adult children in our society these days, have taken up residence under the parental roof. The Board of Legal Specialization, the Board of Paralegal Certification, the Client Security Fund, IOLTA, and, of course, the Board of Continuing Legal Education all pay rent for the space they occupy in our building, and are charged for overhead, copying services, and data processing. This year we anticipate that such transfers will yield about $143,000.

The State Bar is second only to the Selective Service System when it comes to registrations. Mostly we register professional business organizations such as professional corporations, professional limited liability companies, and interstate law firms. But we also register prepaid legal services plans and lawyers who are admitted to practice *pro hac vice*. Happily enough, fees for these services are either statutorily imposed or authorized. And they do mount up. For the purposes of the coming year, we anticipate receipts from various registrations to amount to around $238,000.

And that's not all. We also derive some revenue from the activities of the disciplinary program. Most of that money comes to us in the form of costs paid by lawyers found to have committed professional misconduct by the Grievance Committee or the Disciplinary Hearing Commission. I'm not sure that such "disciplinary dividends" can be fairly described as income in that they are essentially reimbursement of expenses incurred by the State Bar, but let's not quibble about it. They accumulate and spend just like other money and are expected to total about $90,000 this year.

We sell advertising in the *Journal* and expect to make about $55,000 from it in 2016. We also sell a few subscriptions, mostly to retired lawyers who can't imagine life without my essays on professional regulation. In addition, each year a few people with even more eccentric reading tastes also buy the essential but relentlessly dry *Lawyer's Handbook*, which is a steal at $14.95 a copy. The proceeds from these purchases go right to the bottom line and are deemed likely to enhance our financial position by something close to $4,500 this year.

Some years ago, the State Bar began assessing penalties against those who were delinquent in paying their dues. It was supposed that the incentive for timely payment thus provided would lead to the elimination of such recalcitrance. Surprisingly, the late-payment penalty has not since disappeared from our revenue projections. Rather, it has become a regular, if not entirely reliable, source of income. In 2016 we expect that 1,366.67 of you will pay the $30 penalty, resulting in revenues of exactly $41,000. I wonder if you people realize that by behaving more responsibly you could pocket the penalty and use the money to purchase two additional copies of the *Lawyer's Handbook* to give as Christmas presents to those on your list who are particularly hard to shop for.

The last major income item is actually in the nature of beneficence, once removed. The North Carolina State Bar Foundation was organized to raise money to support the construction and maintenance of the new State Bar Building. Its fund-raising effort, in which so many of you kindly and generously participated, resulted in donations and pledges in

CONTINUED ON PAGE 39

NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

EXECUTIVE DIRECTOR
NORTH CAROLINA BAR ASSOCIATION

The North Carolina Bar Association (NCBA) is soliciting applications for the position of Executive Director, to succeed Allan Head who is retiring at the end of 2016 after 43 years of exemplary service to the NCBA.

The NCBA is a voluntary membership organization of more than 19,500 lawyers, judges, paralegals and law students based in Cary, North Carolina, at the N.C. Bar Center. The Executive Director is the chief operating officer and managing executive of the NCBA and also oversees the NCBA Foundation, Inc., under the supervision of the NCBA Board of Governors, Executive Committee and President. The Executive Director has supervisory responsibility for a staff of 60 employees and oversees combined budgets of $10.5 million. More information about the NCBA is at *tinyurl.com/NCBAFactSheet*.

The Executive Director is responsible for implementing policies, strategies and programs approved by the Board and priorities set by the President, and the establishment and review of staffing and organizational structure in consultation with the President and the Board. The Executive Director oversees the finances of the NCBA, fundraising activities of the NCBA Foundation and management of the N.C. Bar Center.

Exceptional academic credentials are required and a law degree is preferred. Excellent interpersonal communication and interaction skills, including the ability to build and maintain relationships with a vast network of volunteers, are a must. It is also important to possess experience or familiarity with the legislative process.

The successful candidate should have leadership experience managing large staffs and budgets as well as extensive knowledge of information technology. The complete job description can be found at *tinyurl.com/NCBAEDJobDescription*.

The Search Committee is chaired by NCBA Past-President Elizabeth L. Quick of Womble Carlyle Sandridge & Rice, LLP.

Direct indications of interest, inquiries, applications and nominations to:

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The Creation and Work of the Commission on the Administration of Law and Justice

By Will Robinson

In his January 2015 investiture remarks, Chief Justice Mark Martin pledged to strengthen North Carolina's Judicial Branch. The chief justice highlighted his administrative plan that prioritized the need for a time-limited study commission to evaluate the operation of the court system.

This priority became a reality nine months later when the North Carolina Commission on the Administration of Law and Justice (NCCALJ) was launched. The NCCALJ continues the judicial branch's tradition of deliberate, innovative, system-wide review of our state's courts to promote improvements in the administration of justice.

At the NCCALJ's inaugural meeting in September, Chief Justice Martin directed the commission to "undertake a comprehensive evaluation of our state judicial system and make actionable, real-world recommendations for strengthening our courts." With financial support from the Governor's Crime Commission, the Z. Smith Reynolds Foundation, and the State Justice Institute, the NCCALJ's efforts are now underway. This article provides some basic information on the structure, goals, and timelines of the commission and its work to date.

To facilitate efforts towards comprehensive evaluation, the commission is organized into five 13-member committees to focus independently, yet collaboratively, on one of five specific areas of inquiry: civil justice, criminal investigation and adjudication, legal professionalism, public trust and confidence, and technology.

Chairing the Civil Justice Committee is David Levi, dean of the Duke Law School; chairing the Criminal Investigation and Adjudication Committee is Retired Federal Magistrate Judge William Webb; chairing the Legal Professionalism Committee is Catharine Arrowood, immediate past president of the N.C. Bar Association; chairing the Public Trust and Confidence Committee is Brad Wilson, president and CEO of BlueCross BlueShield NC; and chairing the Technology Committee is Justice Barbara Jackson of the North Carolina Supreme Court.

Committee membership is multi-disciplinary and comprises key stakeholders within the justice system as well as leaders from the private sector and from the other two branches of government. (See nccalj.org/about/commission for a list of committee members.) Each committee is staffed by one or two reporters. Non-voting, *ex officio* members also have been appointed to provide additional expertise to the work of the committees.

Since the inaugural meeting in September 2015, NCCALJ has held monthly meetings in either individual committee settings or as a full commission. In their first three months, the five committees engaged in broad inquiry within their respective spheres to identify specific areas for innovation and improvement.

During spring 2016, committees will begin the process of prioritizing issues and identifying possible recommendations. Recognizing the judicial branch's primary purpose of serving the citizens of North Carolina, the commission will invite public comment on topics under consideration in the summer of 2016. After gathering public and stakeholder input, the NCCALJ's five committees will use the remaining months of 2016 to finalize recommendations. The commission will provide a series of committee reports and recommendations to the chief justice, the public, and the General Assembly in early 2017. Recommendations will outline steps for action within the justice system and will be delivered in time for the 2017 legislative session.

Committee and full commission meetings are open to the public, and visitors are welcome to attend. To keep the public informed of its work, the commission has created a website, nccalj.org, where a calendar of upcoming meetings can be found as well as minutes, agendas, and presentation materials from past meetings. Public input on the commission's work is encouraged and can be provided through the website as well. ■

Will Robinson is executive director of the North Carolina Commission on the Administration of Law and Justice. Prior to joining the commission, Will held several positions at the Supreme Court of North Carolina. A native of the state, he attended Duke as an undergraduate and earned his law degree from UNC.

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New York Times v. Sullivan: A Retrospective

By G. Gray Wilson

On March 29, 1960, *The New York Times* ran a full-page advertisement titled "Heed Their Rising Voices," which solicited funds to defend Rev. Martin Luther King Jr. against an Alabama perjury indictment. The ad detailed mistreatment of civil rights protesters, some of which involved the Montgomery police force.


Heed Their Rising Voices

Your Help Is Urgently Needed . . . NOW !!

A number of statements were factually inaccurate, as noted by the court, although they were generally minor. For example, referring to the Alabama State Police, the advertisement stated: "They have arrested [King] seven times...," when he had only been arrested four times. African-American students who staged a demonstration at the state capitol sang the National Anthem instead of "My Country Tis of Thee," as reported. Although Montgomery Public Safety Commissioner L. B. Sullivan was never mentioned by name in the advertisement, he took great umbrage that the criticism of the police was leveled at him, given his duty to supervise the police department.

Sullivan sued *The Times* and four African-American ministers whose names appeared in the ad, albeit without their knowledge. Plaintiff made quick work of the defendants in the lower court. The trial lasted three days, and within three hours of receiving the case, the jury returned a verdict against all defendants for $500,000, the entire sum requested by plaintiff. The verdict included compensatory and punitive damages, all awarded in a single lump sum. The Alabama Supreme Court affirmed in a lengthy opinion, and *The Times* petitioned the highest court in the land for *certiorari*, which was granted. Fearing a tsunami of other lawsuits, *The Times* pulled all of its reporters out of Alabama while the case was on appeal. With $300 million at issue in other libel actions against news media or organizations below the Mason-Dixon, *The Times* had reason to be worried.

Sound like ancient history? Half a century has elapsed since the United States Supreme Court issued its seminal opinion in *The New York Times Company v. Sullivan*, 376 US 254 (1964). The decision, which recognized the "actual malice" threshold for defamation claims against public officials, is second nature to the current trial bar, and second only to the ruling in *Brown v. Board of Education* a decade earlier as the hallmark of the Warren court, whatever other deficiencies from which it may have suffered. Paul Newman and Sally Field milked it for a full-length movie unrelated to the facts of the Alabama lawsuit in 1981 ("Absence of Malice"), but Newman has since moved on to his reward, along with nearly all of the actual cast and court roster from the 1964 case. Along with a host of legal seminars and symposia devoted to the case, at least two books received critical acclaim: *Make No Law: The Sullivan Case and the First Amendment* (Anthony Lewis-1991) and *New York Times v. Sullivan: Civil Rights, Libel Law, and the Free Press* (Kermit Hall and Melvin Urofsky-2011).

The unanimous decision reads like a period piece, with the individual petitioners referred to as "Negroes," which in this age of political rectitude would be like labeling Asians as "Orientals." The actual trial before an all-white jury in Montgomery, Alabama, was presided over by Judge Thomas Goode Jones, who authored a provincial manifesto entitled Southern Creed, which touted the Stars and Bars (Confederate battle flag) as "the glorious banner of the Confederacy as it waves in the Southern breeze, a symbol of freedom and devotion to constitutional rights,

an emblem of honor and character."[1] During the presentation of the case, an objection was lodged to the manner in which one of plaintiff's counsel pronounced the word "Negro." The offending attorney responded that he had said it that way his entire life, after which the court declined to intervene.[2]

There is irony here also. The Supreme Court had no problem articulating the benefits of free speech where criticism of the government was concerned, but lacked a handy precedent to latch onto as a vehicle for constitutional intervention. So the court adopted the actual malice standard from a 1908 Kansas Supreme Court ruling, the same court that had heretofore enforced the "separate but equal" doctrine of *Plessy v. Ferguson* (1896), later rejected by the Warren court in 1954. In the defamation case, the Kansas court found that a newspaper article critical of a state attorney general running for reelection, even if rife with false and derogatory statements, was privileged if "the whole thing [was] done in good faith and without malice."[3]

That was certainly the case with *Sullivan*. *The Times* ad, purchased for $4,800, was replete with factual errors and racially-charged hyperbole, but the reader would search it in vain for any mention of the named plaintiff, one of three elected commissioners of the City of Montgomery, Alabama. And *The Times* published a retraction of the ad at the request of the Alabama governor at the time, but declined to do so as to the plaintiff.

In 2014, on the 50th anniversary of the ruling, *The Times* published an editorial heralding the Supreme Court decision, while reflecting on the state of freedom of the press 50 years after the ruling and comparing it with treatment of the Fourth Estate in other nations. The editorial board hailed the decision as "the clearest and most forceful defense of press freedom in American history":

> The ruling was revolutionary, because the Court for the first time rejected virtually any attempt to squelch criticism of public officials—even if false—as antithetical to "the central meaning of the First Amendment." Today, our understanding of freedom of the press comes in large part from the *Sullivan* case. Its core observations and principles remain unchallenged, even as the Internet has turned everyone into a worldwide publisher—capable of calling public officials instantly to account for their actions, and also of ruining reputations with the click of a mouse.[4]

Other commentators have jumped on the Internet bandwagon. "Today one of the reasons I think we don't have as many libel cases is not just because the *Sullivan* rule is so widely accepted by everyone, but in a digital world there's so much greater opportunity for response," observed Bruce W. Sanford, a Washington-based First Amendment lawyer. David Ardia, a University of North Carolina law professor and co-director of the school's Center for Media Law and Policy, agrees that in the 60s, the only avenue for responding to defamation and "reach an audience was to get into the same newspaper, and that's no longer the case." Ardia suggests that the "megaphone" of the Internet is available to everyone.[5] Not everyone agrees. During her Supreme Court confirmation hearing, Justice Elena Kagan (honorary fellow of the college) noted that while the *Times* rule is vital to free speech, it could leave a plaintiff with a damaged reputation without a viable civil remedy.

Whether the Internet provides the optimum forum for settling debates with a playground screaming match is also debatable, but don't ask singer-songwriter-actor Courtney Love. She drew a lawsuit over a tweet she sent out about a former lawyer, claiming she had been "bought off" in a case involving the estate of Love's late husband, rock star Kurt Cobain of Nirvana. The attorney, Rhonda Holmes, sued Love for $8 million for injury to her professional reputation. She made it all the way to a California jury in 2014, which hit her over the head with the *Sullivan* rule. Finding that Love's statement was false, but not knowingly so, the jury returned a verdict in favor of the defendant.

The *Love* case follows a litany of related decisions from the Supreme Court in the wake of *Sullivan*:

- *Curtis Publishing Co. v. Butts*, 388 US 130 (1967) (news organizations liable for recklessly disseminating information about public figures other than government officials);
- *Gertz v. Robert Welch, Inc.*, 418 US 323 (1974) (actual malice not required for defamation of private individual if media negligent);
- *Hustler Magazone v. Falwell*, 485 US 46 (1988) (applying malice standard to intentional infliction of emotional distress); and
- *Milkovich v. Lorain Journal Co.*, 497 US 1 (1990) (extending opinion privilege to libel claims unnecessary to protect free speech).

It did not take much more than a click of the mouse to eliminate nearly all of the witnesses to this historic event, save perhaps some unnamed law clerk or two. Chief Justice Earl Warren (honorary fellow in the college) expired in 1974, only a decade after the decision was handed down. Justice William Douglas, the most vocal liberal on the court (he not only joined in the unanimous opinion written by Justice William Brennan Jr. (honorary fellow), but also concurred the two separate opinions authored by Justices Black and Goldberg (honorary fellow) followed in 1980. Reverend Ralph Abernathy, the most prominent of the four clerical defendants, died over 25 years ago in 1990. The plaintiff, L. B. Sullivan, died a year later in 1991. Justice Brennan followed in 1997. The last surviving member of the Warren court at the time, Byron White (honorary fellow), passed in 2002. Defense counsel T. Eric Embry from Birmingham, later a justice on the Alabama Supreme Court, stepped in to defend the case when other prominent members of the state trial bar declined to participate. Embry died in 1992. Louis Loeb, who argued the case for *The Times* before the Supreme Court, died in 1979. Herbert Wechsler and William P. Rogers, who also represented the defendants before the Supreme Court, died in 2000 and 2001, respectively.

Merton Roland Nachman Jr., a premier defamation attorney in Montgomery and later fellow of the college, represented plaintiff. Now retired, infirm, and in his 90s, Nachman is the only survivor from the cast of this vintage courtroom drama. I recently spoke with his daughter Amy, who still visits with her father in the house in Montgomery where he has lived his entire life. She bemoaned the fact that her father always considered the case his greatest loss. I reassured her that it was far from a loss, and that we are all in his debt. ■

G. Gray Wilson is a senior partner with the law firm of Wilson & Helms LLP in Winston-Salem, and a former State Bar councilor from Judicial District 21.

Endnotes

1. A. Lewis, *Make No Law: The Sullivan Case and the First Amendment*, p. 25 (1991).
2. *New York Times v. Sullivan*, 273 Ala. 656, ___, 144 SO.2d 25, 45 (1962).
3. 376 U.S. at 281, *citing Coleman v. MacLennan*, 78 Kan. 711, 98 P. 281 (1908).
4. *The New York Times* Editorial Board (March 9, 2014).
5. J. Gresko, Associated Press (March 8, 2014).

Portrait Presentation of James G. Exum Jr.

By J. Anderson Little

The following remarks were made on October 13, 2015, at the presentation of the portrait of James G. Exum Jr., former chief justice, Supreme Court of North Carolina.

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Mr. Chief Justice, associate justices, may it please the Court,

I have been asked by our honoree to say a few words about a facet of his work that has been particularly important and satisfying to him, an assignment I am honored to undertake today.

In 1982 and '83, Justice Exum and other thoughtful lawyers and jurists across this country began to observe that the courts of our land were becoming places of first, rather than last, resort for the settlement of disputes among its citizens.

Noting that the vast majority of cases brought to trial involve factual rather than important legal or constitutional issues, Justice Exum wrote that such cases frequently could be resolved outside the courtroom. In addition, he noted that

> Litigation can be especially harmful when it is between persons who, before the dispute arose, enjoyed some kind of meaningful, positive personal relationship… Usually these kinds of disputes involve, as Judge Braxton Craven was fond of saying, "people problems," not "legal problems." When we are dealing primarily with people's problems, the courtroom does not have nearly the resolving power of other, less structured, dispute settling devices. Litigation in these cases is frequently a severe obstacle to reconciliation between the parties.
>
> Most litigation, as those of us who have spent our lives engaging in it know, is often not a healing process. It is better, to be sure, than physical violence between the disputants. But litigation itself can be a form of violence, verbal violence, which in its long-lasting effect on an individual can be even more damaging than physical strife.

As Justice Exum examined the current state of the courts, he also thought about the role of lawyers in advising and representing clients who often come to them thinking that the courts are the only step available to them to right the wrongs that have been inflicted upon them by others.

And as he did, he was reminded of the many spiritual traditions throughout history that emphasized a spirit of settlement and reconciliation in the field of human conflict. In his own spiritual tradition, a portion of the Gospel of Mark known as the Beatitudes came to his mind, specifically the one that says, "Blessed are the peacemakers, for they shall be called children of God."

Later in 1983, Justice Exum was invited to give an address at a national conference at Wheaton College in Ohio sponsored by the Christian Legal Society. It was entitled, "The Lawyer as Peacemaker," and it was much discussed afterward by those in attendance, especially by lawyers in attendance from North Carolina.

Upon returning from that event, Justice Exum began making similar talks at district bar meetings around the state. And finally, his remarks were written up as an article for the NC Bar Association's publication, *Bar Notes* (1983). It received wide distribution and acclaim throughout the state.

In that 1983 article, Justice Exum said the following:

> The time has clearly come for lawyers to begin to emphasize their role as mediators, conciliators, and peacemakers, as counselors for what is right, not merely advocates for what is legally possible… Lawyers need to remind themselves that the courtroom is often not a place conducive to peacemaking or conflict healing, yet peacemaking and conflict healing are the first obligations of our profession.

One of the lawyers in NC who was moved and inspired by Justice Exum's vision of lawyering in that article was Charlie Fulton, then president of the NC Bar Association. Building upon Justice Exum's

vision of the lawyer as peacemaker and the growing national interest in judicial reform, Fulton appointed an Alternatives to Litigation Task Force of the NCBA's Board of Governors.

He appointed Wade Barber initially to chair the effort, Larry Sitton to chair the subcommittee on community based alternatives to litigation, and Justice Exum to chair the subcommittee on court based alternatives.

It was an exciting time in the development of the NC court system. But as dedicated and as excited as all the participants of that task force were, none of them could have predicted the changes in our court system and in the practice of law that they and their successors would bring about.

So let me walk you through some of the changes we have seen in the 32 years that have elapsed since the establishment of that task force, bearing in mind that this is only the perspective of one lawyer who experienced those changes as a trial lawyer and then as a mediator.

In 1983, few of us lawyers initiated settlement discussions for fear that we would signal weakness by doing so. As a result, cases were settled on the eve of trial and sometimes literally on the court house steps, and lawyers often lost weekends to trial preparation for cases that were never tried.

In 1983 court dockets were soft because no one knew what cases really needed to be tried. As a result, litigants often paid for multiple trial preparations because their cases would be continued multiple times from court term to court term.

In 1983 most settlement efforts were made in lawyer-to-lawyer phone calls without the participation of our clients, who often didn't understand how and why their cases settled.

In 1983 there was no such thing as settlement conferences. It was almost unthinkable that lawyers, their clients, and insurance representatives would meet together and devote a full day to negotiating the settlement of their cases.

In 1983 our civil procedure was devoted almost exclusively to procedures for trying civil lawsuits. Settlement events and settlement procedures were nonexistent.

But today, in 2015, in almost every contested case in state courts, federal courts, in the Office of Administrative Hearings, and in the Industrial Commission, the parties and their attorneys meet and participate in some kind of settlement event, usually a settlement conference moderated by a trained mediator.

Today, lawyers and their clients actively participate together in settlement discussions carefully analyzing their case and their goals and developing settlement proposals.

Today, lawyers know better which cases they will have to prepare for trial well in advance of that trial. As a result, their trial preparation is better scheduled and organized.

Today, the time for disposition of cases in our courts has dropped dramatically and more cases are settling.

Today, court dockets are firmer, and fewer litigants have to pay for multiple trial preparations.

In 1983, few of us studied the art and science of negotiations. When mediation was first installed as a mandatory settlement event, lawyers were forced to negotiate in more of a public setting than they were used to, and our performances were not always pretty.

In 1983 there was no emphasis on negotiation training in our law schools, and almost no one signed up for the one elective negotiation course available every other semester. When my class was admitted to the bar, we had no preparation for settling litigated matters.

Today, in 2015, our system of legal education is changing. Courses in ADR, negotiation, and mediation are being offered on a regular basis, and in some schools, clinical training in negotiation or mediation is being provided.

Today, many law students are graduating with the thought that they want to practice law in a different way. Some want to become collaborative lawyers who help their clients define their goals, discover the facts of their disputes, analyze their legal options and remedies, and negotiate with opposing counsel and their clients to settle their clients' conflicts, but who do not want to represent their clients in contested proceedings.

Others want to go directly into the practice of mediation to help disputing parties settle their disputes whether they have legal claims or not.

Today, practicing lawyers are seeking out CLE courses on negotiation and mediation. Many of them have devoted an entire week to mediation training, not because they want to mediate, but because they want to become better negotiators and advisors to their clients.

In 1983, many said that lawyers, whether by training or temperament, could never become good mediators.

Today there are over 1,400 trained and certified lawyer-mediators in NC who mediate the settlement of civil litigation throughout the state.

In 1983, few law offices had conference room facilities in which to meet and counsel clients or to host meetings with opposing parties to settle their litigation.

Today, new law offices are designed and built to host those meetings, and older offices are often renovated for the same purpose.

In 1983, most of our courthouses were built in an era when watching trials was a community activity, and our courtrooms were built to accommodate large numbers of people.

Today, our new courthouse spaces are being designed and built with conference rooms in mind, rooms in which lawyers can meet with and counsel their clients during court proceedings, and rooms in which settlement conferences can be convened in a neutral setting.

And so, we come full circle.

Thirty-two years ago, Justice Exum called on lawyers to take on and live the life of peacemakers, and to work to ensure that our courts would be places of last, rather than first, resort for the resolution of disputes among our citizens.

Who among us could have suspected that his vision would transform the education we receive, the law practices we build, and the courts in which we work. Clearly, ADR is no longer alternative in North Carolina. It is now woven seamlessly into the fabric of our courthouses, our law practices, and our civil procedure.

Today we remember the highest calling of our profession that Justice Exum so simply and eloquently described for us many years ago—the lawyer as peacemaker. And we in this room, along with many more who are not here today, are filled with gratitude for his service, his vision, and his inspiration. ■

J. Anderson Little practiced as a trial lawyer for 17 years of trial practice, and then formed Mediation Inc. to mediate full time. He has been a full-time mediator and mediator trainer for 23 years.

Pro Bono Attorney Perspective: Duke Energy Lawyer Helps International Human Rights Advocate Seek Citizenship

Dr. Katrin Michael, an Iraqi national and human rights advocate, survived a chemical bomb attack perpetrated by the Saddam Hussein regime that sought to silence a group of freedom fighters. Ann Warren, associate general counsel of Duke Energy Corporation in Charlotte, is a staunch supporter of *pro bono* work. The two met in 2007 when Ms. Warren agreed to represent Dr. Michael on a *pro bono* basis in her application for a U visa, which is typically awarded to immigrants that assist US law enforcement in prosecution of criminal cases. Dr. Michael testified against Saddam Hussein at the International War Crimes tribunal about the chemical attack, which formed the basis for her U visa application. "Obtaining the U visa was a huge legal win because it was a novel grant of the visa to a US immigrant that testified against a foreign dictator," says Ms. Warren.

After obtaining the U visa, Ms. Warren continued to represent Dr. Michael in a naturalization application for US citizenship. The case was more complex and lengthier than anticipated due to Dr. Michael's previous immigration proceedings and failure of the United States Citizen and Immigration Services to make a timely ruling on her application. "My *pro bono* work for Dr. Michael over the past seven years has been incredibly rewarding because she can now advocate for freedoms for Iraqis while living safely in the United States," says Ms. Warren. In August, Dr. Michael's naturalization application was approved and she became a United States citizen. When Ms. Warren called to tell Dr. Michael that her application had been granted, she said it was one of the two best days in her life, the other being the day she testified against Saddam Hussein.

President George W. Bush shakes hands with a survivor of a chemical weapons attack in Halabja, a Kurdish village in Northern Iraq, during an Oval Office meeting March 14, 2003. The attack killed 5,000 people. Photo by Eric Draper, courtesy of the George W. Bush Presidential Library and Museum/NARA.

Ms. Warren is not only committed to personally doing *pro bono* work, but has also formed a number of *pro bono* projects at Duke Energy. Ms. Warren helped organize a partnership with Parker Poe Adams & Bernstein and Ingersoll Rand to expunge criminal records for low income individuals whose records presented a barrier to employment and economic stability. She also led the creation of Wills for Schools, a project that prepares wills for Charlotte Mecklenburg County School system employees and their spouses. Ann is a member of the NC Equal Access to Justice Commission and serves as the co-chair of the commission's *Pro Bono* Committee. "*Pro bono* work has been some of the most rewarding legal work that I've done in my career, and I look forward to creating more opportunities for others to get involved in this type of work in the future," says Ms. Warren. ■

For more information about pro bono *opportunities in your area, visit NCProBono.org, a resource for North Carolina attorneys interested in doing* pro bono.

We want your fiction!

Historical Fiction *Romance*
International Espionage *Poetry*
Humor *Science Fiction*

13th Annual Fiction Writing Competition

The Publications Committee of the *Journal* is pleased to announce that it will sponsor the 13th Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. If you have any questions about the contest, please contact Jennifer Duncan, Director of Communications, North Carolina State Bar, ncbar@bellsouth.net, 910-397-0353.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Publications Committee of the *Journal*:

1. The competition is open to any member in good standing of the North Carolina State Bar, except current members of the Publications Committee, as well as North Carolina State Bar Certified Paralegals. Authors may collaborate, but only one submission from each member will be considered.

2. Subject to the following criteria, ***the story may be on any fictional topic and may be in any form—the subject matter need not be law related)***. Among the criteria the committee will consider in judging the articles submitted are: quality of writing; creativity; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The committee will not consider any article that, in the sole judgment of the committee, contains matter that is libelous or violates accepted community standards of good taste and decency.

3. By submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental, and that the article has not been previously published.

4. ***Articles should not be more than 4,000 words in length*** and should be submitted in an electronic format as either a text document or a Microsoft Word document.

5. Articles will be judged without knowledge of the identity of the author's name. Each submission should include the author's State Bar or certified paralegal ID number, placed only on a separate cover sheet along with the name of the story.

6. **All submissions must be received in proper form prior to the close of business on May 27, 2016**. Submissions received after that time will not be considered. Please direct all questions and submissions to: Jennifer Duncan, ncbar@bellsouth.net, 910-397-0353.

7. Depending on the number of submissions, the Publications Committee may elect to solicit outside assistance in reviewing the articles. The final decision, however, will be made by majority vote of the committee. Contestants will be advised of the results of the competition. Honorable mentions may be announced.

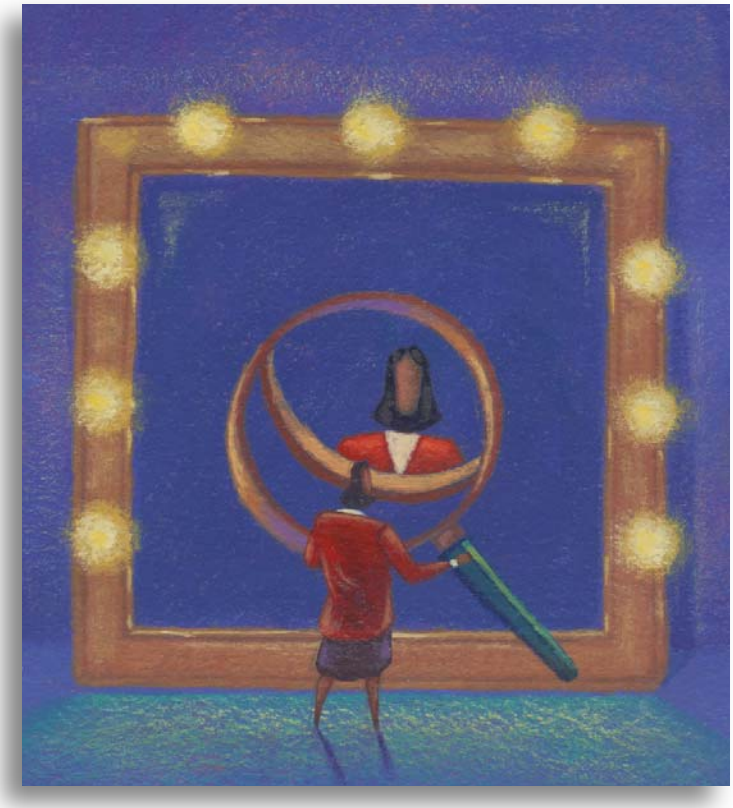
8. The winning article, if any, will be published. The committee reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the committee not to be of notable quality.

Deadline is May 27, 2016

Professional Identity - Are You a Dorian Gray?

By G. Stevenson Crihfield

Oscar Wilde wrote a classic novel entitled *The Picture of Dorian Gray*. The protagonist was a young, vain, and handsome man who had his portrait painted. He was so taken with the beauty of the portrait that he wished that he could always look as handsome, even though he might engage in bad conduct. His wish was granted and years later the portrait, when discovered in hiding, displayed a horrible, evil, degraded person. Mr. Gray still had his handsome countenance.



John Berry/Illustration Source

What does this have to do with us? The National Organization of Bar Counsel, a professional association of agencies and lawyers engaged in lawyer discipline and regulation through the enforcement of legal ethics, issued a report on law school professionalism initiatives.

In this report, it was concluded that law schools needed to do more to improve the development of professional identities in the law school experience. It was felt that while much had been done in the teaching of ethics and the rules of professional responsibility, there needed to be more work done in establishing professional identity.

The report noted that professionalism and professional identity are more difficult concepts to define than are the model rules of professional conduct and the rules in the various jurisdictions, since they are based on the historical and aspirational views of the role of lawyers in society. The report identified a non-exclusive list of the characteristics that law schools should inculcate into their students including confidence, knowledge, skill, honesty, trustworthiness, reliability, respect for legal obligations, responsibility, civility in dealing with others, personal integrity, and empathy. It also stated that professional identity also includes a commitment to, and a respect for, the administration of justice, the institution of the law, and public service in general.

The report continued by suggesting that ideally law schools should offer a mandatory orientation program prior to the beginning of first year classes that would introduce students to the concept of what it means to be a professional. Themes to be included are fiduciary duties, collegiality, advocacy, limitations on conduct, and the ramification of making decisions and taking actions in the course of representing a client.

Having spent most of my career in the courtroom, I have looked at Rule 12 of the General Rules of Practice entitled "Courtroom Decorum." It is notable that many of the concepts noted above are reflected in the rule. Attorneys will not be sent for when their cases are called in their regular order. Put another way, punctuality in attending to your matters is a necessary part of being a professional. Counsel, at all times, are to conduct themselves with dignity and propriety.

Business attire shall be appropriate dress for counsel while in the courtroom; parties, including adverse witnesses and suitors, will be treated with fairness and due consideration. Counsel should not knowingly misinterpret the contents of a paper, the testimony of witnesses, or otherwise misrepresent the proceeding. Lawyers are not to make detrimental remarks about the court and should at all times promote respect for the court.

When you place all of these characteristics into a sum total, lawyers are to have a professional identity, which limits their actions in comparison to society as a whole. Lawyers are not to lie, steal, or cheat. They are to behave in a courteous and mannerly way to all persons, regardless of their personal feelings, and they are to avoid bringing disrespect on the administration of justice, the court, and a profession as a whole.

I submit that lawyers should present themselves in society as a whole in a business-like way, attending to serious matters on behalf of their clients. Their personal appearance and their offices should reflect this attitude. Likewise, their conduct in the presence of the public should be similarly mandated.

If the enforcers of professional conduct believe that these matters should be made part of the professional identity of law students, it follows that we as practicing lawyers should have the same identities. The question is, do we? It is incumbent on each of us to look at ourselves and seek to improve those areas that fail to measure up to the aspects of professional identity that are believed to be an inherent part of the profession in which we have all chosen to spend our adult lives.

When each of us come to the end of our careers by whatever means, the question is, shall our portrait look like Dorian Gray's—marked with terrible signs of impropriety, dishonesty, bad manners, and other such activities? It is clear that lawyers are not permitted, by the rules and by professional identities, to behave in a way that the rest of society, in this day and time, feels is appropriate. I have suggested to law students that if they are not prepared to undertake that responsibility and that manner of behavior, they should leave law school and incur no more debt in a vain and futile effort. I don't want their portraits to look like Dorian Gray's. ■

G. Stevenson Crihfield, who is currently retired and living in Greensboro, spent 45 years doing general trial work. He is now a preceptor emeritus at Elon School of Law, and is an emeritus member of the Chief Justice's Commission on Professionalism.

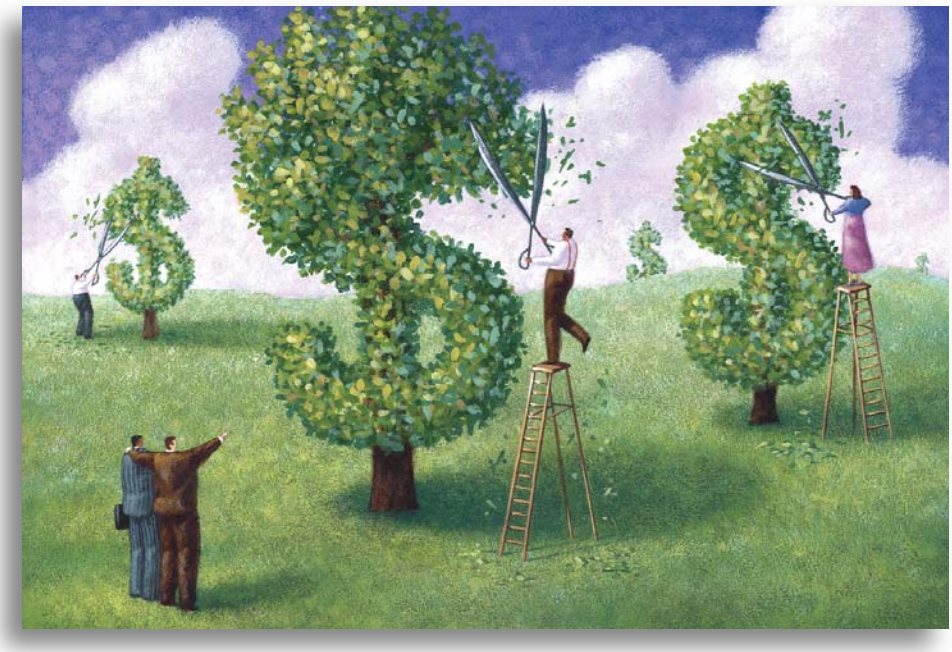
Last Lecture: Tips for Lawyers Who Want to Get Good Results for Clients and Make Money

By John Lande

I recently retired from teaching at the University of Missouri School of Law and wrote *My Last Lecture*[1] summarizing my advice for lawyers. Here are the highlights.

Understand Your Clients' Interests

Lawyers often assume that they know what their clients want—to get as much money or pay as little money as possible. While clients usually are very concerned about their bottom line, they often have additional interests. In virtually any kind of case, parties may have an interest in being treated respectfully and fairly, minimizing the cost and length of the process, freeing time to focus on matters other than the dispute, reducing the emotional wear and tear caused by continued disputing, and protecting privacy and reputations. Plaintiffs may have interests such as obtaining favorable tax consequences, getting nonmonetary opportunities, and receiving explanations or apologies. Defendants may have interests such as receiving acknowledgments about the lack of merit of the charges, making payments in kind, stretching payments over time, sharing liability with other defendants, preventing ancillary harm (such as loss of credit rating or business opportunities), receiving favorable tax consequences, obtaining nondisclosure agreements, and avoiding future lawsuits. If you satisfy your clients' interests, they are more likely to pay your bills, hire you again, and refer other clients to you.



Paul Vismara/Illustration Source

Pay Attention to What's Really Important in Your Cases, Not Just the Law or Winning

Lawyers generally want to make the best possible argument and win in litigation or transactional negotiations. Typically, it's good to show the law is "on your side," get favorable agreements, and win at trial. You are likely to feel good if you can make arguments that persuade others and win trials. That's often how lawyers measure success and get good reputations. It's certainly fine to take pride in your work and want to get recognition for it. But remember that your first priority should be your clients' interests, not yours. Winning is a means to achieving your clients' ends and it shouldn't be the end in itself. Don't "win the battle and lose the war." Since clients are likely to have multiple interests, your job should be to help them achieve their highest-priority goals.

Recognize the Importance of Emotions—Especially Yours

Many lawyers seem afraid of emotions. They assume that the law is only about rational analysis of the law and the facts. To them, emotions are messy and get in the way of good legal representation and decision-making. They wish that people—especially their clients—would put their emotions "to the side" and be more rational. But people can't avoid emotions, and it's foolish

to try. Emotions provide a lot of valuable information, such as what is important. Lawyers should particularly focus on their own fears, which typically permeate legal practice. As described in my article, *Escaping from Lawyers' Prison of Fear*, there is a long list of things that lawyers fear, including actions by law firm partners, clients, adversaries, and judges.[2] Although fear is a normal—and often helpful—emotion, it can lead to serious problems including mental health and substance abuse problems. Plan strategies to deal with stress such as meditation, diligent preparation, mental rehearsals, practice in simulated settings, positive self-talk, advice from mentors, and mental health services when needed. You can also reduce stress by managing your cases cooperatively whenever appropriate.

Get to Know Your Counterpart Lawyer

Lawyers often assume that their "opposing counsel" will be hard to work with. This can be a self-fulfilling prophecy. Sometimes your counterparts will be a pain in the neck, but often they just want to be reasonable while protecting their clients' interests. If you have a good relationship with your counterparts, you can work out problems pretty easily. If you have a bad relationship, your cases can become your own "private hell." If you have a case with a lawyer you have never worked with before, consider getting to know each other over coffee, lunch, or even just a phone call. If you do so, when problems arise in a case, your counterparts are more likely to call you and less likely to fire off a nasty email or file a motion.

Make a Habit of Preparing to Resolve Matters at the Earliest Appropriate Time

Although there are good reasons why lawyers delay moving ahead in some cases, you should generally avoid procrastinating. Lawyers know that the vast majority of cases settle without going to trial, but they often feel powerless to steer clients toward negotiation. Trapped in the "prison of fear," lawyers may worry about harming their clients if they settle before completing all possible discovery (even though most of it won't make any difference).[3] Lawyers (and their clients) often worry that merely *suggesting* negotiation would make them look weak, leading the other side to try to take advantage. Confident lawyers can "escape" from the prison of fear. As retired Judge Robert Alsdorf says, "Being willing to negotiate doesn't make you look weak. Being *afraid* to negotiate makes you look weak."[4] One lawyer I interviewed said, "Sooner or later, you will need to negotiate. You need to get out in front, get the facts, get the client on board. Try to prepare a settlement letter....This drives the case in the right direction. If you wait, you just get sucked into a pile of mud. If the other lawyer sends the letter, then you have to catch up."[5]

Be Prepared to Negotiate More than You Might Expect

In addition to negotiating final resolution of disputes, lawyers also negotiate with each other about substantive and procedural issues during litigation. For example, lawyers regularly negotiate about acceptance of service of process, extension of deadlines, scheduling of depositions, and discovery disputes. They also regularly negotiate with many other people as they handle their cases. Of course, they agree with clients about fee arrangements and how to handle cases. They reach agreements with coworkers in their firms, process servers, investigators, court reporters, technical experts, financial professionals, and mediators. They also reach agreements with judges about case management issues such as discovery plans and schedules, referral to ADR procedures, and ultimate issues during judicial settlement conferences. Indeed, litigation is a continuing stream of agreements. If you treat people respectfully and understand their interests, you can reach good agreements that satisfy your clients' interests without unnecessary disputes.

Get Help from Mediators When Needed

Sometimes, despite your best efforts, you can't reach a settlement when it would be in both parties' interest to settle. Mediators can help identify and overcome the barriers to settlement. These barriers may be poor communication, strong emotions, unrealistic expectations, pressure from others (such as superiors in their business, colleagues, or spouses), or need for reassurance from a neutral professional. Sometimes parties won't accept your advice, but will be persuaded by the same analysis from a mediator. Using a mediator can save everyone a lot of money and grief.

Be Prepared to Advocate Hard and Smart

Professor Stephen Easton advises that if you determine that an issue is important to fight about, you should "fight hard, fight smart, fight with conviction, passion, and perseverance, and fight to win."[6] I generally agree with this advice with two qualifications. First, even if you determine that an issue is very important to your client, it is *important to fight about it only after* you have unsuccessfully explored ways to satisfy your

CONTINUED ON PAGE 43

Courtroom Attire: Has Casual Dress Gone Too Far?

By Erin McNeil Young

In some circles, I am still (thankfully!) considered a "young lawyer." However, I proudly declare myself a staunch member of the "old school" when it comes to my beliefs about courtroom attire. Thanks to my mother, I still believe in "dressing up" for church, graduations, and work—particularly since my work requires frequent appearances in courtrooms and various other types of legal proceedings. Dressing appropriately shows respect for the occasion and the others who are present.

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The North Carolina Rules of Professional Conduct place lofty responsibilities on the members of this esteemed bar. We have a duty to maintain the integrity of our profession. "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." As lawyers, we have to demand respect for our profession and the oath we took upon licensure. Whether we like it or not, the courtroom still demands a certain level of formality and solemnity as an indication of our respect for the law.

Unfortunately, it appears that the overall "casualization" of the American workplace has now begun to invade the courtroom—a place where decorum and respectability should still remain the norm. As an attorney, your courtroom apparel should be of such a caliber that your profession is obvious to those in the courtroom. We should think of our work apparel as the equivalent of the physician's "white coat"—the hallmark of distinction between the attorney and client, other courtroom attendees, or personnel.

Though the Rules of Professional Conduct do not contain a dress code, we should be mindful of some general guidelines for courtroom dress.

1. When in court, wear a suit. A clean, pressed, well-tailored suit is always appropriate in the office and in the courtroom.

2. Wear clothes that fit. If you have to ask if your outfit is too tight, too baggy, too short, or too "anything," it probably is. When in doubt, see No. 1.

3. Wear appropriate footwear. Your shoes should also match the occasion. e.g., mid-heel pumps for women and conservative oxfords/loafers for men. You will quickly lose credibility in front of a judge or jury when you are teetering to the podium in too-high heels or appear as though you have just walked in from the beach in sloppy boat shoes or sandals.

4. Remember that Elle Woods is a movie character, not a real courtroom role model. Though I found the movie *Legally Blonde* to be inspiring in many ways, the lead character's bright, pink ensembles might be somewhat distracting in an actual courtroom setting. I have nothing against wearing color; however, the style in North Carolina courtrooms still remains more conservative.

5. Play it safe. With few exceptions, the

courtroom is generally not the place to experiment with the latest trends. There are ways to showcase your personal style without offending the court. Avoid things like super-pointy shoes or stiletto heels, designer logos, and/or loud jewelry.

If you are reading this publication, you are probably fortunate enough to have weathered the uncertainties of legal employment associated with recent economic shifts. In honor of your success, dress as though you value not just your job, but more importantly, your career. Your attire should send the clear message that you are respectable, professional, and knowledgeable.

"If you want a fun job where you don't have to play this game, you should choose a different profession."—Annie, law student ■

Erin McNeil Young has been with the law firm of Yates, McLamb & Weyher in Raleigh since receiving her North Carolina law license in 1999. She focuses her practice on the defense of corporations, non-profit organizations, healthcare providers, and insurance companies in litigation involving claims of professional negligence and general liability.

Dressing for Court

A lawyer is the representative of other people. How the lawyer dresses has a direct reflection on the lawyer, their client, and their cause. Perception becomes a reality in court and in society. If you look like a slob in court, that is how you will be perceived. If you dress like a peacock, that is how you will be perceived. Nontraditional dress risks causing the lawyer to be seen and considered as a person without gravitas and one not to take seriously. Clients—rich and poor—want to hire a lawyer they can be proud of. For the lawyer, getting retained and then presenting a client's position starts with honesty and respectful behavior, of which professional dress is a part. In my 43 years of practice, it is rare that I have seen a truly respected and/or financially successful lawyer who treated their professional dress as if they were going to a ball game, a party, a bar, or the mall.

— Joe Cheshire

I wear a coat and tie to the office each day. Days in court are the same as days out of court. One of the reasons for this routine is that each time I don't wear a coat and tie, I get called to court. Most of the time, I wear a suit. I always wear a suit to court. Occasionally I wear a sport coat and tie to the office, but never to court. I acknowledge that a suit is my uniform and I am just a part of the old school. I have walked a thousand miles on the Appalachian Trail with my great mentor, Robert L. McMillan, surely one of North Carolina's best lawyers. He always wears a tie, even on the Appalachian Trail. Even when covered with mud and soaking wet from rain, he still wears a tie. I have never teased him about this. I understand it.

From the beginning of my practice, I decided that if I had the faintest hope of becoming a great lawyer, I should dress like I believed a great lawyer would dress. I should conduct myself as I believed a great lawyer would conduct himself or herself. I should look like a great lawyer, talk like a great lawyer, think like a great lawyer, and go where great lawyers go. My theory was that if I did these things, I would have a chance to be a great lawyer. When a new client comes to Tharrington Smith, I try to dress like a real pro. I know this person is looking and taking notes. I want my office to look like a place where a great lawyer would work. I always say: "You have come to a good place. We handle cases like your case. We have rarely seen a matter on which we can't make some improvement. We want you to leave feeling better."

Wearing professional looking clothing every day is in my DNA. I don't mean expensive or fancy clothing, but professional looking clothing: we know it when we see it. Everyone knows it, make no mistake about it. I only have one chance to make a good impression.

Now, here is the truth: I do not criticize my friends who dress down for work at the office or who don't wear suits to court. This is not a matter of feeling superior. For me, it is a matter of pride. I am so proud to be a lawyer. It is also, by the way, a matter of marketing your brand.

— Wade Smith

Joe Cheshire of Cheshire Parker Schneider Bryan PLLC and Wade Smith of Tharrington Smith, LLC. Joe and Wade are Raleigh criminal defense attorneys gracing courtrooms across the state and nation, always clothed in timeless attire anchored by a bow tie.

President's Message (cont.)

because they are not practicing law at all or because they are practicing law in another jurisdiction. Lawyers who wish to transfer from active to inactive status must follow a process that includes demonstrating they are in good standing, are current in all membership obligations, and have no grievances or disciplinary complaints pending against them. Once granted, inactive status relieves them of the obligation to pay dues and to satisfy mandatory continuing education requirements, but does not relieve them of the obligation to comply with the Rules of Professional Conduct.

Lawyers on inactive status are permitted to petition for reinstatement to active status, In doing so, they must follow a process designed to ensure that they are qualified both by character and fitness and by knowledge of the law to return to active practice in North Carolina.

The experience of the State Bar is that North Carolina lawyers are ethical, honest, and hardworking, who not only provide excellent legal services to their clients, but also regularly contribute their time and expertise to civic, governmental, nonprofit, and professional organizations. We regret when any member of the State Bar resigns and severs all his or her ties to our profession, and the State Bar anticipates that few lawyers will actually resign. Rather, we expect that most lawyers when they decide to terminate their practices are still proud to be lawyers, are proud to be recognized as lawyers, and will want to retain their association with our profession by petitioning for inactive status. ■

Margaret M. Hunt, an alumnus of Wake Forest University Law School, has practiced law in Brevard since being admitted to practice in North Carolina in 1975.

Retirement and Monte Carlo—Stacking the Odds

By Mike Colombo

Like Cosmo Castorini in the movie *Moonstruck*, I am not planning to die. In a classic exchange between Cosmo, who was having an affair, and his wife, Rose, she said, "I just want you to know no matter what you do, you're gonna die, just like everybody else." Cosmo simply replied, "Thank you, Rose."

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Well, since I am not going to die either, why should I plan for retirement? So what if I'm already on Medicare? If I'm not going to die, then I don't need to think about retirement anytime soon, right? Well, maybe what I *do* need to think about is outliving my funds if my earning capacity wanes.

I take some consolation in the fact that there are some really smart people out there who have the same problem with thinking about retirement like I do. Margaret Mead said, "Sooner or later, I'm going to die, but I'm not going to retire." Pablo Casals said it more succinctly. "To retire is to die."

I have several friends my age who have retired, and they seem to like it. Okay, maybe it's for me—someday. One of my friends who retired several years ago recently advised me, "Don't retire until you are certain you are ready, because you will probably keep working, but you won't get paid for it."

I love being a lawyer, but I love to play with family and friends, too. To be as competent and professional as we strive to be as lawyers, many of us have been working 60 hours a week for decades. Despite our best efforts, energy wanes as we age, and we're faced with choices about how to use it. Oliver Wendell Holmes said, "Men do not quit playing because they grow old. They grow old because they quit playing." I'm not willing to give up play. So I may eventually have to cut back, and someday, even retire.

Having said all that, I have to admit to the real reason I'm now willing to think about planning for retirement. One of my good friends at the State Bar asked me to write this article. He seemed to think that somebody might be interested in reading what I have to say about "...people outliving their retirement funds, the Monte Carlo option, and how to avoid both." I'm not sure why.

If I'm going to force myself to think about planning for retirement, then I guess I should focus on the key question. How can my wife and I best plan to do it in a way that stacks the odds in our favor so that we won't outlive our resources?

Let's start with Retirement Planning 101. Just go to ssa.gov and get your Social Security benefits and earnings history. You can even apply for benefits online. There is a lot to learn there about how to maximize your benefits. I now can draw full Social Security retirement benefits, and my wife can draw 50% of my Social Security payments. I have not applied for benefits, planning instead to wait until I reach age 70 so that I can get the automatic increase in benefits of 8% per year over this four-year period.

Don't think that I am doing optimal retirement planning by simply deferring my application for Social Security payments in this way. People better informed than I am about Social Security have suggested that I go ahead and apply for my retirement payments, have my wife apply for payments of 50% of my benefits, and then suspend my payments to allow them to increase 8% per year until age 70. My wife would begin getting her payments right away without affect-

ing my increases.

In the meantime, we can all hope that Congress takes action to fix Social Security before it becomes insolvent in 15 years, as forecasted by many financial experts. They say that the longer Congress waits to fix Social Security, the more likely it is that benefits will be reduced. Maybe I should consider other ways to finance my retirement. As Tennessee Williams said, "You can be young without money, but you can't be old without it."

In my estate planning practice, one of the first things I ask clients about is their goals. That seems to be a good idea with retirement, too. My primary financial goal in planning for retirement is to maintain my pre-retirement lifestyle. With defined-benefit pension plans having gone the way of the dinosaurs, it now is possible to meet a goal like this only by saving diligently and investing wisely during the working years.

Retirement consultant Aon Hewitt estimates that in order to maintain our standard of living upon retirement at age 65 throughout an average life expectancy, we need to accumulate 11 times our annual salary in savings, taking into account expected Social Security benefits. This means starting young, saving aggressively, and investing intelligently.

My wife and I have done some saving, and we recently met with a financial planner at a national firm. To get started, we had to provide information about our income, retirement goals, time horizon, family longevity, and current budget. Our advisor told us that he would use this information to run a Monte Carlo analysis. This would forecast the risk of outliving our retirement savings depending on variables such as the date of retirement and desired retirement income.

If you are like many people, when you first hear the term "Monte Carlo," gambling is the first thing that comes to mind. Is the use of a Monte Carlo analysis just a fancy way of saying that we're gambling about our retirement? To answer this, I went straight to my computer to do some in-depth research. In seconds I opened up the link in Wikipedia for the "Monte Carlo method." It turns out that it is a somewhat tried and true way to analyze risk and project results in a wide range of areas from nuclear physics to finance.

Wikipedia says, "The modern version of the Monte Carlo method was invented in the late 1940s by Stanislaw Ulam while he was working on nuclear weapons projects at the Los Alamos National Laboratory. Immediately after Ulam's breakthrough, John von Neumann understood its importance and programmed the ENIAC computer to carry out Monte Carlo calculations."

According to Wikipedia, Monte Carlo methods generally describe a broad class of computational algorithms that rely on repeated random sampling to obtain numerical results for physical and mathematical problems. I'm not sure what all that means, but in the financial world, they are used to provide a probability distribution. Without worrying about how or why this works, I accept the fact that this should be useful to me, and far better than my own seat-of-the-pants retirement planning.

Before discussing how a Monte Carlo analysis is being used to help with my retirement planning, I should mention that it is not necessary to go to a financial planner with a sophisticated back office for this kind of expertise. As with almost everything else, there are financial planning websites on the internet. Just type in "Monte Carlo simulation and retirement planning," and you will be up and running with almost endless options from Vanguard to boutique planners. If I were already retired, I might be willing to take the time to select one or more of these options to do my own planning. Since I want more play time, my wife and I have chosen to place our confidence in our financial planner instead.

As a result of this decision, I now have "The Colombo Family Investment Plan" which is far more comforting and surely more accurate than any financial or retirement planning I have done or am willing to do. Using the Monte Carlo method, my financial planner has provided us with colorful and readable charts and graphs to provide a "Range of Simulation Possible Outcomes." The useful takeaway is that the analysis projects the probability that I can retire now and meet my financial objectives until at least age 95. The good news is that this probability is higher than I expected. Even better, if I wait until age 70 or later to retire, this probability is significantly higher.

I get comfort from a footnote to my Monte Carlo projections that says the analysis stress tests my Investment Plan with 1,000 simulations to present various scenarios from the best to the worst. That's right, 1,000 simulations. I certainly don't understand all of that, but the actual scenarios from best to worse are informative and useful.

I realize that forecasting the future with many variables is extremely problematic. I'm really happy I'm a lawyer and not a weatherman. My wife and I don't know for sure if relying on a Monte Carlo analysis to plan for our retirement is the best approach. We do believe we have taken steps to stack the odds in our favor that we will not outlive our retirement resources. Perhaps we could and should do more. Instead, we'll take that time to go play with family and friends. ■

Mike Colombo is a founding partner of Colombo, Kitchin, Dunn, Ball and Porter in Greenville. He is certified by the North Carolina State Bar as a specialist in Estate Planning and Probate Law, and served as president of the North Carolina Bar Association in 2005-2006.

One Never Knows Where Research Might Lead

By John H. Culver III

I have been working on a case that requires legal research reaching back over 150 years. It is my good fortune that my firm has a well-stocked library, run by a well-informed librarian to whom I can turn when I have research questions. He keeps us on track when it would be easy for our research to run off the rails. But even he was surprised at something that I turned up during my recent quest into the stacks. We are all familiar with the General Statutes of North Carolina, which is the current code of all permanent North Carolina law of a general nature. It was first adopted in 1943.

Bruno Budrovic/Illustration Source

What you may not know is that until the early twentieth century, North Carolina statutory law was periodically compiled into one or two volumes by appointed commissioners who then reported their compilation to the General Assembly for enactment as the general code. The statutes did not grow organically from year to year, but rather were periodically compiled and reenacted based on the work of legislatively appointed commissioners.

By Chapter 314 of the Public Laws of 1903, Thomas Womack, Needham Gulley, and William Rodman were appointed commissioners to compile, collate, revise and digest all of the public statutes of the state. This was no small undertaking, as the last compilation had been prepared in 1883, and as the commissioners wryly observed, "20 years of legislation had practically emasculated" the prior compilation. Understand their appointed task: They were to review the past 22 years of legislation, and then prepare a comprehensive compilation which the General Assembly would review and then enact as the Revisal of 1905. It was their work that I picked up to perform some mundane research into the legislative appointment power. Little did I know what I would find in that compilation.

The owner of the volume had a quite varied practice. Pasted into the front and back of the volume were various articles about animal law, drinking, hunting, corporeal punishment, and adoption. For example, at some point in 1906, two superior court judges held that an individual may bring into the state as much whisky as one wants for personal use, despite a statute that prohibits

an individual from having more than one quart on hand. Judge Harding in Buncombe County exonerated someone from bringing in 20 pints from Tennessee because the state did not prove it was not for personal consumption. One Mr. J.T. Barnes of Ahoskie in Hertford County found himself without his quart when the shipping company required that he present a doctor's certificate to demonstrate that the shipment to him was for medicinal or mechanical purposes as required by the "Federal bone dry liquor law." When he failed to produce the requested certificate and the shipper failed to deliver the quart, he resorted to claim and delivery, and the magistrate ordered his quart turned over. The article points out that the decision was likely to be appealed, and thus should not be relied on for precedent.

At least five articles concern newly adopted or proposed canine laws. For example, the General Assembly passed a new dog law, and the dog is not taxed or restrained of his liberty. Rather the owner is liable for any damages caused by the animal. That law was shortly thereafter revised to provide for a $1 tax on each male and spayed female, and $2 tax on each unspayed female. An article from the *Greensboro Record* reminds us that it is a misdemeanor to allow chickens to roam at large and depredate the flowers and gardens of others. I had to look it up, but depredate means to ravage or plunder. Wise counsel from the *Greensboro Record*. As to corporeal punishment, the owner of the Revisal had pasted this jury charge from Judge Cooke in Wake County Superior Court: "You had as well undertake to break of heard of bull yearlings with small twine in the place of rope as try to control many hard-headed boys in the public schools...without allowing the teach to use the lash." Judge Coke was charging a jury in an assault case against a minor being accused of assault for pulling a knife on his teacher while being spanked, who argued that corporeal punishment was illegal.

But what was perhaps the most interesting item of all was an article with the enticing title: *What One Has to Know to Be a Lawyer in North Carolina*. Lest you think this is the magic elixir we all have sought at one time or another in our careers, the subtitle is terrifying: "List of Questions Submitted by the Supreme Court at Last Examination of Applications for License to Practice Law, Framed by Associate Justice Walker." In 1919 the bar exam was administered by Supreme Court Justice Platt D. Walker, later chief justice and founding president of the North Carolina Bar Association, who "put up" 66 questions to the 71 applicants. One of the applicants that year was Samuel James Ervin Jr., later to become one of our state's most well known senators. A written examination was first given in North Carolina in 1898, and an applicant need only have read law for two years. In fact, Senator Ervin reportedly attended law school *after passing the bar*. And just like now, there was a course available for study: "Jones' Quizzer, Consisting of the North Carolina Supreme Court Questions and Answers from September Term, 1898, to August Term, 1916," prepared by Gilmer A. Jones of the Franklin, NC, Bar.

Let's see how you would do on the 1919 exam:

What is embracery?

Is there any remedy for an improper refusal to comply with the demand for requisition?

What is the extent of the legislative power

CONTINUED ON PAGE 42

"There's an App for That"—Risks of Inadvertent Disclosure of Client Information on Mobile Devices

By Suzanne Lever

BYOD and Threats to Confidentiality

Lawyers are increasingly reliant upon personally owned and/or managed mobile devices, such as smart phones and tablets, to perform their work as well as maintain their personal relationships. Enter "Bring Your Own Device" (BYOD). BYOD is an approach to mobile technology that permits access to a law firm's computer network and email system through employee-owned mobile devices. These mobile devices typically have some mechanism for installing software applications ("apps") that run on the device. Examples of commonly downloaded apps include Pandora Radio, Facebook, Instagram, and LinkedIn.

In basic terms, mobile apps are software programs that are downloaded to and installed upon a mobile device. These programs communicate with a remote server when in use, and often access information on users' mobile devices to operate properly. Some apps request the device user to allow access to information on the device such as location, photographs, or even the contacts in your address book.

For example, when you launch the camera app on a smart phone it will generally ask you if it can use your location. If you agree, your acquiescence will allow pictures taken with the camera to be "geotagged." A photo's geotag will identify when and where the picture was taken. If you then allow another app (like Facebook or Instagram) to use the camera, those apps may gain access to the time and location data as well.

When you download a social networking app you may see a pop-up message such as "Facebook Would Like to Access Your Contacts," to which you can reply "Allow" or "Don't Allow." When you share access to your contacts, you are granting the app access to other people's personal information.

Depending on the type of client information that is stored in the employee's device, allowing apps to access information on the device may have ethical implications. A lawyer could take a photo of a draft document to email to opposing counsel and potentially reveal the location of where the photo was taken. This scenario would be problematic if the location was, say, a warehouse that a client was trying to convert for a new, secret product. A photo of a client's bruised face taken at a battered women's safe house could inadvertently reveal the location of the safe house. If a lawyer uses his phone's camera to take a photo of a confidential document in a case, and the lawyer then opens Instagram to upload a picture of his child playing soccer, technically the lawyer has disclosed client information because Instagram has access to the lawyer's photos.

Apps will generally only ask for access the FIRST time that you run the app. Thus, if you allow Instagram to access your child's soccer photos in 2012, the program may remember that setting after you start using a new photo-to-PDF conversion program in 2016 (maybe even after moving to a new phone because some settings automatically transfer to new phones).

Demand for Increased Security

Firm clients are strongly communicating how important security is to them. Clients rightfully expect their information to be secure and are increasingly asking more specific security-related questions. It has become an important component of their decision process when awarding or maintaining business. Some clients even require security-specific audits for their professional services firms and business partners.

Duty of Competence Includes Technology

At a conference on October 2, 2014, the North Carolina Supreme Court approved several amendments to the North Carolina Rules of Professional Conduct. Many of these amendments were the result of revisions suggested by the North Carolina State Bar Study Committee on the ABA Ethics 20/20 Commission. The committee reviewed amendments to the Model Rules of Professional Conduct adopted by the ABA upon the recommendation of the Ethics 20/20 Commission. The task of the ABA commission was to amend the ABA Model Rules of Professional Conduct to respond to changes in the practice of law due to technology and globalization. The State Bar's committee reviewed the Ethics 20/20 amendments to the Model Rules of Professional Conduct and made recommendations as to similar amendments to the North Carolina Rules.

An amendment to the comments to Rule 1.1 (Competence) was approved by the Court. Comment [8] to Rule 1.1 now provides:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with the technology relevant to the lawyer's practice**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject (emphasis added to show changes).

The ABA commission commented in their report that, "[b]ecause of the sometimes bewildering pace of technological change, the commission believes that it is important to make explicit that a lawyer's duty of competence, which requires the lawyer to stay abreast of changes in the law and its practice, includes understanding relevant technology's benefits and risks."

A lawyer or law firm utilizing BYOD

telecommunication needs to understand the risks of such technology. The primary concern is a lawyer's obligation to safeguard client information under Rule 1.6. Rule 1.6(c) provides that "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Comments [19] and [20] to Rule 1.6 further discuss a lawyer's duty to safeguard confidential client information. Comment [19] provides that:

> The unauthorized access to, or the inadvertent or unauthorized disclosure of, information acquired during the professional relationship with a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

Comment [20] provides that:

> When transmitting a communication that includes information acquired during the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy.

Pursuant to the above comments, a lawyer may use any technology if the lawyer has determined that the technology affords reasonable protection against disclosure of confidential information and the lawyer takes reasonable precautions in the use of the technology.

Although a lawyer has a professional obligation to protect confidential information from unauthorized disclosure, the Ethics Committee has held that this duty does not compel any particular mode of handling confidential information, nor does it prohibit the employment of vendors whose services may involve the handling of documents or data containing client information. *See* RPC 133. Moreover, while the duty of confidentiality applies to lawyers who choose to use technology to communicate, "this obligation does not require that a lawyer use only infallibly secure methods of communication." RPC 215. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information, and the lawyer must advise affected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality. *Id.*

For example, in 2008 FEO 5, the committee held that the use of a web-based document management system that allows both the law firm and the client access to the client's file is permissible, provided the lawyer can fulfill his obligation to protect the confidential information of all clients.

In 2011 FEO 6, involving the use of "cloud" data storage, the Ethics Committee concluded that a lawyer may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information. 2011 FEO 7, which discusses the use of online banking to manage a law firm's trust account, provides that a law firm may use online banking "provided the lawyers use reasonable care to minimize the risk of loss or theft of client property specifically including the regular education of the firm's managing lawyers on the ever-changing security risks of online banking and the active maintenance of end-user security." The ethical duty to obtain frequent and regular education is also emphasized in 2011 FEO 6. The opinion provides that "[g]iven the rapidity with which computer technology changes, law firms are encouraged to consult periodically with professionals competent in the area of online security."

Therefore, prior to permitting BYOD telecommunication, which may include downloading apps, a law firm must determine that the technology and devices it will use afford reasonable protection against disclosure of confidential client information. The law firm must also take reasonable precautions to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, client information.

Measures You Can Take

What measures should a lawyer and law firm consider or take to reduce the risk of exposing client information when making decisions about the use of particular mobile apps?

In general, a law firm that permits BYOD telecommunication and a lawyer who elects to make use of such technology must both carefully consider and address the risks associated with BYOD technology. Because many of the same security risks are present in personally managed devices that are not necessarily mobile (home computers), a firm allowing employees to use any personally managed device should consider and address the associated risks.

BYOD affects a law firm's ability to control the use of employee owned/managed devices in the same manner it controls the use of computers and equipment owned and managed by the firm. In relation to apps, a law firm may lose control over the apps that are downloaded on the device, or the access the owner grants while downloading the apps on the device.

One reasonable measure to consider is the establishment of a BYOD policy that defines the law firm's security policies. A law firm might address the following issues in its BYOD policy: (1) permitted devices; (2) acceptable use; (3) lock screen password requirements; (4) prohibition on subverting security controls—devices should not be "rooted" or "jailbroken" from their original, vendor supported state; (5) support limitations; (6) loss or theft procedure; (7) employee discharge strategy; (8) training; and (9) acceptable apps/privacy settings that must be adhered to for applications that are allowed.

When determining which apps are permissible on personally managed devices, law firms should take into consideration: (1) what type of client information is stored on the device; (2) the trustworthiness of the app and app vendor; (3) whether a particular app requires access to information on the device; and (4) if access to information on the device is required, what specific information is accessed and for what purpose.

Even in the absence of a firm-wide BYOD policy, lawyers should take the following common sense steps when downloading apps on a mobile device: (1) pay attention to the pop-ups that appear when you download

CONTINUED ON PAGE 33

Profiles in Specialization—Fred G. Crumpler

By Lanice Heidbrink

When family law specialist Fred G. Crumpler was presented with the American Board of Trial Advocates Lifetime Achievement Award this past October, his colleague Michael Lewis described him as "tireless, fearless, and relentless," "a great role model," "charismatic," and a "paradigm of professionalism and collegiality" with a "passion for the law." Crumpler is all of these things and more. The Lifetime Achievement Award is just one of the many honors he has received over his career. His list of accomplishments is extensive. In 1980, Crumpler was the first recipient of the Harvey Lupton Award for his outstanding work as a criminal lawyer in Forsyth County. In 1988 he was admitted to the American College of Trial Lawyers. In 2014 the governor presented Crumpler with the Order of the Long Leaf Pine Award. He's also been recognized for a number of years by *Best Lawyers in America* for his work in criminal law, family law, and personal injury law.


Crumpler

Crumpler earned his law degree from Wake Forest Law School in 1957. He began his law career with the Institute of Government before meeting Elsie Webb, the man who would become his mentor and a strong influence throughout his career. Webb graciously invited Crumpler to join him at his Rockingham firm, Pittman, Webb and Lee. After three years with the firm, Crumpler moved to Winston-Salem, and with the help of Webb became an approved title searcher for a local bank. While Crumpler was grateful for and enjoyed this opportunity, his passion for law and his desire to help clients needing a good trial lawyer led him to focus his practice on being a criminal trial advocate.

Crumpler mastered criminal cases, and at one time won five first degree murder trials in a row. One of his most notable accomplishments was his representation of Henry Alford in *North Carolina v. Alford*, 400 US 25 (1970), which resulted in the court's recognition of the Alford Plea. Crumpler's excellence in criminal cases became so well known that colleague and friend Mike Lewis noted that "his reception area was like a bus station, with clients waiting hours to see him." Crumpler's attempts to slow down his caseload by substantially raising his fees only resulted in more cases as his reputation flourished.

As his criminal law practice continued to thrive and he began to handle more family law cases, Crumpler decided to pursue board certification. He saw getting certified in family law as a way to further show that he was qualified to protect his clients' interests. In 1989 Crumpler was among the first class of specialists to be certified in family law. Throughout his 26 years as a specialist, he has been an enthusiastic advocate for the specialization program. He believes that certification is not just for young lawyers coming out of law school, but for any lawyer who would like to continue to develop his or her practice. Crumpler believes his decision to become certified is rewarded in his interactions with lawyers from other parts of the country that are exclusively seeking family law specialists.

Crumpler is currently a partner at Crumpler Freedman Parker & Witt in Winston-Salem. When not working he enjoys spending time with his wife of 31 years, Marsha, and the dogs that rescued them, Nicholas (a Lab mix) and Jackson (a German Shepard). ■

Lanice Heidbrink is executive assistant to Alice Mine and administrative assistant to the specialization board.

For more information on the State Bar's specialization programs, visit us online at nclawspecialists.gov.

New Specialists Announced

The Board of Legal Specialization is pleased to announce that there are now more than 1,000 board certified specialists in North Carolina! A special congratulations to the specialists certified on Monday, November 23, 2015.

The following lawyers met all of the certification requirements, and were certified by the North Carolina State Bar Board of Legal Specialization on November 23, 2015.

Bankruptcy

Results will be available from the American Board of Certification Spring 2016

Appellate

Andrew Erteschik, Raleigh
Deborah Sandlin, Raleigh

Criminal (including Juvenile Delinquency)

Thomas Amburgey, Asheville; State Criminal Law
Kelly Dawkins, Wadesboro; State Criminal Law
Matthew Geoffrion, Greenville; State Criminal Law
Matthew Holloway, Asheville; State Criminal Law
Ann Kirby, Greenville; State Criminal Law
Kellie Mannette, Chapel Hill; State Criminal Law and Juvenile Delinquency
Robert McAfee, New Bern; Federal and State Criminal Law
Helen Parsonage, Winston-Salem; Federal and State Criminal Law
Jeremy Smith, Charlotte; State Criminal Law
Todd Smith, Graham; Federal Criminal Law (previously certified in State Criminal Law)
Deonte' Thomas, Raleigh; State Criminal Law

CONTINUED ON PAGE 39

Lawyers Receive Professional Discipline

Disbarments

Randy Lemay Cartrette of Whiteville surrendered his law license and was disbarred by the Columbus County Superior Court. Cartrette pled guilty to one misdemeanor count of common law forgery and seven misdemeanor counts of common law obstruction of justice.

Christopher Heiskell, formerly of Raleigh but now residing in West Virginia, used a law firm credit line to obtain unauthorized funds, obtained a reimbursement by false pretenses, neglected client matters, and made false statements during the grievance investigation. During his disciplinary hearing, Heiskell surrendered his law license and was disbarred by the DHC.

Meleisa Rush Lane of Fayetteville misappropriated entrusted funds and did not file and pay federal and state income, corporate, and payroll taxes. She was disbarred by the DHC.

Victor Morgan of Jacksonville neglected several clients' cases and did not properly wind down his law practice after he was suspended in June 2013. Morgan also did not refund unearned fees or respond to communications by the State Bar. He was disbarred by the DHC.

Jimmy Pettus surrendered his law license and was disbarred by the DHC. Pettus admitted that he misappropriated federal and state tax withholdings and employees' Simple IRA contributions for his own benefit or for the benefit of his law firm.

Suspensions & Stayed Suspensions

Daiva Bulluck of Jefferson mismanaged entrusted funds, did not maintain client ledgers, did not reconcile her trust account, and did not respond to the State Bar's request for records. She was suspended by the DHC for three years. The suspension is stayed for three years upon her compliance with numerous conditions.

Leroy R. Castle of Durham did not comply with his client's request that he return the client's documents. He was suspended by the DHC for three years.

John Peter Cattano of Charlottesville, Virginia, made misleading or false statements in his petition for reinstatement from inactive status and in correspondence with the State Bar. The DHC suspended Cattano for three years. The suspension is stayed for three years upon his compliance with numerous conditions.

Joseph C. Delk of Lenoir underwent two random audits that revealed extensive violations of trust accounting rules. Delk utilized entrusted funds for unauthorized purposes by disbursing more funds for the benefit of clients than he held in trust on their behalf and by failing to reimburse his trust account for credit card fees deducted by the card companies. The DHC suspended Delk for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Sir Ashley Harrison of Charlotte neglected multiple clients and did not respond to the State Bar. The DHC suspended him for five years. After serving three years active suspension, Harrison will be eligible to petition for a stay of the balance upon showing compliance with numerous conditions.

Jonathon McElroy of Asheville committed extensive trust accounting violations, disbursed funds differently than he recorded on HUD-1 Settlement Statements, did not timely complete title opinions and pay title insurance premiums, did not appear in court for his client, did not inform clients for whom he held entrusted funds that he had been enjoined by the court from handling entrusted funds, did not communicate adequately with his clients, and did not provide information requested by the Grievance Committee. The DHC suspended him for five years. After serving three years of the suspension, McElroy will be eligible to apply for a stay of the balance upon showing compliance with numerous conditions.

Dan Merrell of Kitty Hawk submitted affidavits for use in an appeal and in a civil case that revealed confidential information acquired through his previous attorney-client relationship with the Town of Kill Devil Hills and used confidential information to the disadvantage of his former client. At the close of the State Bar's evidence, Merrell conceded the violation of Rules 1.6 and 1.9(c). He was suspended for four years. The suspension is stayed on enumerated conditions.

Jonathan Silverman of Sanford engaged in sexual intercourse with his current client and engaged in a conflict of interest by continuing or resuming the representation. The DHC suspended Silverman for three years. After serving 18 months active suspension, Silverman will be eligible to petition for a stay of the balance upon showing compliance with numerous conditions.

Cassandra Skerrett of Hendersonville converted and accessed a client's computers. After the client terminated the representation, Skerrett dismissed the former client's civil complaints without consent, intentionally prejudiced the former client, and did not protect the former client's interests. In another former client's matter, Skerrett took entrusted settlement funds as administrative fees or as a purported nonrefundable flat fee without the client's authorization, charged and collected a clearly excessive fee, and made cash withdrawals from a trust account that she maintained for the client. The evidence did not establish that Skerrett assisted the client in committing tax evasion. The DHC suspended Skerrett's license for four years. After serving two years active suspension, she will be eligible to petition for a stay of the balance upon showing compliance with numerous conditions.

Robert Tucker of Asheville did not perform quarterly reconciliations of his trust account, disbursed more funds on behalf of clients than he held in trust for their benefit, did not send annual accountings of entrusted funds, and did not take timely action to resolve outstanding checks and to complete disbursements. In some instances, Tucker did not consult with his client before disbursing the client's funds after receiving disbursement instructions that were inconsistent with the client's stated

goals. In one closing, Tucker did not communicate adequately with a lender regarding the lender's closing instructions and provided the lender a HUD-1 Settlement Statement that did not show the source of funds received from the borrower. In some instances involving a potential conflict of interest between the client and an entity of which Tucker was a member, Tucker did not obtain informed consent confirmed in writing from clients. The DHC suspended Tucker for two years. The suspension is stayed for three years upon his compliance with numerous conditions.

The DHC suspended **H. Russell Vick** of Greensboro for one year. The suspension is stayed on enumerated conditions. Vick did not ensure that his law partner, Jimmy Pettus, conformed to the Rules of Professional Conduct. Pettus was disbarred after he admitted that he misappropriated federal and state tax withholdings and employees' Simple IRA contributions for his own benefit or for the benefit of the firm. The panel found that, during part of the relevant time, Vick suffered from a neurological illness which contributed to his lack of attention to and awareness of Pettus's actions.

Carl Wright of High Point did not reconcile his trust account, did not maintain proper trust account records, disbursed funds from his trust account on behalf of clients for whom he had not yet deposited funds in trust, did not timely disburse entrusted funds, did not provide written accountings of entrusted funds, and commingled his personal funds with entrusted funds. The DHC suspended Wright for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Interim Suspensions

The chair of the DHC entered an interim suspension of the law license of **Karla Simon**. Simon, of California or Connecticut, was convicted in Massachusetts of 29 counts of misdemeanor Violation of Harassment Prevention Order and nine counts of felony Intimidate Witness/Juror/Police/Court Official.

The Cherokee County Superior Court entered an interim suspension of the law license of Bryson City lawyer **Eric Winston Stiles** after Stiles was charged with felony offenses including illegally possessing methamphetamine with the intent to sell or deliver.

Censures

The Grievance Committee censured Laurinburg lawyer **Luther Douglas**. While administratively suspended, Douglas engaged in the unauthorized practice of law by appearing in court on behalf of two clients and accepting service of a motion on behalf of another client.

The Grievance Committee censured **Christopher Lane** of Clemmons. Lane agreed to provide services for a Florida law firm as a local attorney characterized as a "Class B Partner." Because no member or employee of the firm was licensed to practice law in North Carolina, Lane assisted the firm in the unauthorized practice of law. By accepting payment from the firm out of a portion of the fees the firm charged its clients, Lane shared a fee with a nonlawyer.

The Grievance Committee censured Hendersonville lawyer **Timothy Mullinax**. Mullinax led his client to believe that he had filed a complaint and summons and a motion for expedited hearing when he had not filed any pleadings. Mullinax also did not timely respond to the State Bar.

Timothy D. Smith of Charlotte was censured by the Grievance Committee. Smith failed to reasonably comply with requests for information from his client. Smith also billed his client for steps taken to prepare and argue a motion to withdraw. In imposing a censure, the Grievance Committee considered that Smith has received three prior reprimands, two of which involved poor communication.

The Grievance Committee censured Winston-Salem lawyer **Teresa Stewart**. She incorrectly assumed that her immigration client did not speak English and delegated all communication with the client to her Spanish-speaking support staff, who she did not properly supervise. Stewart filed a facially deficient application for the client with the US Immigration Service and provided an incomplete response when asked for information and documentation omitted from the original application. Her client's application was denied. Stewart did not adequately explain to her client why the application was denied, nor did she advise her client of any remaining options. Stewart also did not properly reconcile her trust account and engaged in other trust account violations.

The Grievance Committee censured Greenville lawyer **James Streeter**. Streeter did not inform his clients that he took a voluntary dismissal of their civil case, did not communicate with his clients when they inquired about the status of their case, and withdrew from representation without informing his clients. The clients learned about the dismissal over a year later when it was too late to refile the complaint. Streeter also did not respond to the Grievance Committee and did not appear pursuant to its subpoena.

The Grievance Committee censured Greenville lawyer **Robert White**. White did not inform his clients that he took a voluntary dismissal of their civil case, did not communicate with his clients when they inquired about the status of their case, and withdrew from representation without informing his clients. The clients learned about the dismissal over a year later when it was too late to refile the complaint. White also did not timely respond to the Grievance Committee and mischaracterized his role in the representation.

Reprimands

The Grievance Committee reprimanded **Betsy Butler** of Nags Head. A random audit of her trust accounts showed that Butler did not perform quarterly reconciliations, did not always properly document the sources of deposits or the recipients of wire/electronic transfers, and did not provide NSF directives to her banks. These failures and her failure to adequately supervise a nonlawyer assistant allowed the assistant to divert funds from the account without detection. In imposing a reprimand, the Grievance Committee considered Butler's cooperation and the fact that she had established proper trust accounting procedures before the random audit occurred.

The Grievance Committee reprimanded Asheville lawyer **Caleb Decker**. A random audit of Decker's trust account revealed that he did not maintain individual client ledgers, did not conduct required reconciliations, did not consistently provide accountings of funds in the account, did not provide a NSF directive to his bank, did not always promptly disburse entrusted funds, and did not maintain deposit slips. In imposing a reprimand, the Grievance Committee considered Butler's

cooperation and the fact that he fully rectified the deficiencies.

The Grievance Committee reprimanded **Alison Erca** of Raleigh. Erca unlawfully removed a megalodon tooth from a display case in the North Carolina Maritime Museum and left the museum with it.

The Grievance Committee reprimanded **Jeanne Hall** of Brevard. Hall improperly loaned money to her clients.

The Grievance Committee reprimanded **Sam Drewes Ryan** of Carolina Beach. After collecting a minimum fee from a client, Ryan did not communicate with the client until Ryan terminated representation. She also collected an excessive fee by failing to refund an unearned fee, charged an excessive administrative fee, and deposited court costs into her operating account instead of her trust account.

The Grievance Committee reprimanded **Jeffrey Stephenson**, formerly of Raleigh. Stephenson provided initial title opinions and drafted deeds for South Mountain Group, Inc., a Georgia corporation which provided closing services for North Carolina real estate transactions. He thereby aided a corporation in the unauthorized practice of law.

Transfers to Disability Inactive Status

Janet M. Pueshel of Raleigh was transferred to disability inactive status by the chair of the Grievance Committee.

Stays of Existing Suspensions

Marshall Dotson of Asheboro was suspended for five years in September 2013. After serving one year of the suspension, Dotson was eligible to petition for a stay of the balance. The DHC granted his petition. Dotson must show compliance with numerous conditions during the stay.

In February 2014 the DHC suspended **William Shilling**, formerly of Franklin, for two years. After serving one year of the suspension, Shilling was eligible to petition for a stay of the balance. The DHC granted his petition. Shilling must show compliance with numerous conditions during the stay.

Notice of Intent to Seek Reinstatement

In the Matter of Theophilus Stokes III

Notice is hereby given that Theophilus O. Stokes III of Greensboro, North Carolina, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of The North Carolina State Bar. Stokes surrendered his license and was disbarred January 12, 2010, for a plea and finding of guilty to two misdemeanor offenses of receiving stolen goods in the Guilford County Superior Court on December 9, 2010.

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC, 27611, before May 1, 2016. ■

Legal Ethics (cont.)

an app; (2) think carefully before clicking "Allow" in response to any app request; (3) periodically review the access requirements on the apps you have downloaded; (4) learn how to access and manipulate the privacy settings on your mobile devices.

These lists are not exhaustive. To emphasize what has been previously stated, given the complexity of the subject matter, and the rapidity with which technology changes, lawyers and law firms are encouraged to consult periodically with professionals competent in BYOD information security. ■

Suzanne Lever is assistant ethics counsel for the North Carolina State Bar.

In Memoriam

Jerry A. Campbell
Taylorsville, NC

Thomas Roberts Cannon
Raleigh, NC

Howard Coble
Greensboro, NC

Harvey Lindenthal Cosper Jr.
Charlotte, NC

Gary Bryan Crocker Jr.
Charlotte, NC

Walter Carl Dauterman Jr.
Winchester, OR

Robert Dick Douglas Jr.
Greensboro, NC

Harold Mills Edwards
Charlotte, NC

Richard Charles Forman
Greensboro, NC

Paul B. Guthery Jr.
Charlotte, NC

John T. Hall III
Raleigh, NC

Thomas Sidney Harrington
Eden, NC

Joan Elizabeth Hedahl
Fayetteville, NC

William Franklin Johnson Jr.
Charlotte, NC

Janette Soles Nelson
Raleigh, NC

Oliver Addison Parker
Lauderdale by the Sea, FL

Barbara Stockton Perry
Kinston, NC

William L. Richards
Bryson City, NC

Leroy Robinson
Charlotte, NC

John Charles Rush
Raleigh, NC

Albert M. Salem Jr.
Tampa, FL

Howard Earl Singletary Jr.
Albemarle, NC

Horace Edney Stacy Jr.
Lumberton, NC

Itimous Thaddeus Valentine Jr.
Nashville, NC

Frank Jefferson Ward Jr.
Sanford, NC

Claud R. Wheatly Jr.
Beaufort, NC

A Parent's Roller Coaster Ride into Recovery, Part 1

By Anonymous

My son is an addict. His addiction has had a profound impact on my life. Addiction—which includes alcoholism—is a disease, and it wreaks havoc on family members as well as the addict. Naturally, we seek and yearn first for the addict's sobriety, and we want to do whatever we can to "fix" the addict. However, I have learned that, due to the nature of the disease, we are powerless to fix the addict or cure him of addiction. My experience—and the experience of countless others—reveals that the addict's recovery cannot be forced or willed or controlled by family members, no matter how hard we try. But fortunately, thousands of addicts/alcoholics find sobriety and recovery. There is a way, and plenty of hope.

I have also learned that, regardless of whether the addict is using or not, we family members can learn to cope with a loved one's drinking or drugging or other addictive behaviors, and that we can even find a measure of serenity amidst the chaos and pain of it all, if we focus on the one thing we do control—taking care of ourselves. And by doing so, we often can contribute to the addict's recovery.

But I learned none of this quickly or easily. My journey with my son's addiction started in the summer before his senior year in high school, when he tested positive for drug use. It shook me up, for sure. At the time, Brian (not his real name) was a rising senior in high school, a few months short of his 18th birthday. He had been treated by a pediatrician for ADD since his elementary school years. Due to some changes in Brian's behavior patterns and school performance his junior year, the pediatrician suspected drug abuse and suggested that we drug test him. I was stunned when I heard that he tested positive. While I knew that drugs and alcohol were a widespread problem among teenagers, I had never expected that the problem would strike any of my children. And it happened right under my nose without me knowing it. But now I could not deny it. My son's well-being was at stake. My wife and I were determined to find out the extent of the problem and deal with it.

We confronted Brian with the results of the test. Surprisingly, he did not try to deny it or evade it. Instead, he was defiant—he said he liked using drugs and did not intend to stop and didn't think it was a big deal. My wife and I knew that we were face to face with a huge problem. We loved our son with all our heart and we wanted the best for him. We resolved to fight for that. But the next several months tested my resolve and my love for him. It became a hellish journey for me.

To put all this in perspective, I need to first tell you about Brian before addiction. From the time he was a little kid, Brian had been a carefree, fun loving youngster, mischievous in a good sort of way, with lots of wonderful friends and a great sense of humor. He loved and enjoyed his family. Growing up, Brian and his little brother (who is two years younger) were very close; and Brian enjoyed playfully teasing his little sister, who is our youngest child. He enjoyed sports and skateboarding. He loved music. He had fun and interesting hobbies. He was a good student in school.

In the months after our confrontation, Brian's life rapidly spiraled downward before our very eyes. It seemed that no matter what we tried to do about it, we couldn't make it better, we couldn't change him. He began hanging out with a new group of friends. He stopped playing sports. He became increasingly apathetic about school. He was failing, or in danger of failing, all of his classes. His teachers had given up hope that he could salvage his senior year, and it was not for their lack of trying. This was a time when most seniors were applying to and visiting colleges. Brian had always planned to go to college. He loved figuring out how things worked or

were put together, and he had often talked about going to school to become an engineer. As parents, we placed a high priority on education, and of course we had dreams of college for Brian. But by the time he was well into his fall semester, as his addiction worsened, he seemed to have lost interest in college as well as any motivation to get there. We took him on a few college visits, but at some point he said, "Can't you tell I don't want that?"

Brian had become inconsiderate, angry, and defiant toward us. He frequently disappeared or failed to report in or come home when expected. A number of times he stayed out all night. That was particularly agonizing, not knowing where he was, my mind racing, imagining the worst. We continually tried all we could think of to get him to change his ways. We considered ourselves fairly strict parents. We had high expectations for our children when it came to respect for authority, truthtelling, diligence in school, courtesy, and family citizenship. As Brian's addiction progressed, we ratcheted up the discipline, hoping that punishment—such as grounding and taking away the things that he liked and wanted the most—would stop him. But instead he just became more defiant and unmanageable, and was apathetic about the values we expected him to live by. He began spending more and

more time with his drug friends, or in his room with the door closed. When he wasn't in his room or out of the house, he spent hours on end on the family computer. When we got together with extended family or friends, he acted totally disconnected and disengaged. His isolating and dark moods progressed to the point that when you looked into his eyes, it was if he no longer had any soul.

We also engaged in the fruitless pursuit of drug testing him, thinking that if we had "proof," we would gain leverage over him and get him to stop. But somehow he found a way to pass those drug tests. (We later learned that kids knew ways to "beat" the drug tests.) At times when we confronted him about being obviously high, his reply would be, "Well, I passed the drug test." It was insane.

We tried to persuade him, reason with him, punish him; we tried all the tactics that might be expected to have some impact with most kids. But none of it worked. In fact, it often developed into heated arguments, and sometimes he simply ignored us or walked away. Brian just got worse and worse. He began to steal money from us to fund his drug habit. On his 18th birthday, Brian was arrested for shoplifting at a convenience store. We hired an attorney to represent him, fearing that his future would be harmed by a criminal record.

Brian's addiction and out-of-control behavior affected the entire family. We sought help from a family counselor, but the counselor did not have expertise with addiction and we realized we needed more specialized help to guide us. My wife began attending Al-Anon, a 12-Step support fellowship for people who are affected by the alcoholism or addiction of loved ones. It seemed that everywhere we turned, people recommended that we try Al-Anon. I had never heard of Al-Anon before and was not yet ready to go.

I was an emotional wreck. I alternated between anger *at* him and deep emotional pain *for* him. I would suddenly break into crying spells. A couple of times I even ended up curled into a fetal position, sobbing uncontrollably. I was sad, terrified for Brian's well-being, feeling lost and overwhelmed by my inability to change him. I had never experienced emotional pain this deep.

Up until this time, I had lived a happy, fulfilling life with no extraordinary hardship, emotionally, physically, or otherwise. The legal profession is all about identifying and solving problems, and attaining high standards of excellence in meeting client needs and demands. We lawyers have developed knowledge, skills, and tools that allow us to solve major problems. We are used to being in control, fixing things by some combination of reasoning, persuasion and other techniques. But absolutely none of that worked with Brian and his addiction.

By early January, we decided Brian needed inpatient treatment. We found an appropriate treatment center and made the arrangements for him to go in late January. It was hard waiting and living with the uncertainty as to whether he would agree to go to treatment once we told him of our plans.

During this time, I had two experiences which marked the gateway to my own journey of recovery from the effects of Brian's addiction on my life. One morning, my wife and I were engaged in what had become a common occurrence in our house—an argument with Brian about something he had done or not done or should do or shouldn't do. I was in my typical mode of expecting him to listen and obey, to just stop doing drugs and bad stuff and straighten up his life. I was angry at him, and I took his behavior personally, as if he were doing it just to make my life miserable. Brian eventually got up and walked out in the middle of my rant. In the first "moment of truth" in my own recovery, my wife said, "Brian's addiction is a disease, and it is understandable for you to be mad, but if you are going to be mad, you should be mad at the disease and not at the person." I had never thought of separating the person from the disease. It was an epiphany to me. It cracked open the door to seeking an understanding of the disease while also having compassion for the addict. It was my first step toward learning that Brian's behavior was not a personal affront directed at me.

A week after Brian's assessment, my wife and I attended a Saturday morning group meeting for parents of adolescent alcoholics and addicts. I found myself sitting in a world I had never dreamed would include me or my family. It seemed surreal, but the reality was beginning to sink in. I remember feeling a certain therapeutic element in the group, and it made me long for more encounters with other people dealing with similar struggles. We attended a talk by a physician who was a recovering alcoholic. He explained that addiction is a disease. He went over a lot of medical and scientific aspects, and also spoke of his own personal experience with the disease as an alcoholic and a physician. This session was my first significant exposure to the disease concept. It fascinated me and left me yearning to learn more so I could be in a better position to understand and help my son. Plus, I felt a sense of relief from the idea that my son's substance abuse may be a disease rather than a moral failing.

But I still had not started going to Al-Anon. My wife talked about how much it was helping her, but for some reason I put off going. I was anxious for the arrival of the fateful day when we would take Brian to the treatment center, and I was filled with fear over the possibility that he might refuse to go. My crying spells became more frequent. I remember some mornings when I got all ready for work, but then broke down crying and needed my wife to calm me down so I could get up and go to work. I also noticed a decline in my stamina and ability to concentrate at work. I struggled to manage my workload, and in a few matters I failed to meet clients' needs on a timely basis. I even lost one client because of that.

When the day arrived to take Brian to the inpatient treatment center, I vividly remember feeling like it was the most important moment in our family's life. Would he agree to go? What would we do if he refused? We planned it out carefully. That morning, before school, we would tell Brian we had arranged for a 28 day stay. We also had an angel in our corner—Bill (not his real name), who was a family friend and had known Brian personally for years and who was a staff member with the Lawyer Assistance Program. Bill had a steady, calm demeanor, and we knew that Brian liked and respected him personally. Bill graciously agreed to join us that morning for our little "intervention." Bill's support, presence, and professional experience gave us strength and comfort, and it seemed to have the desired calming effect on Brian, or at least it kept Brian from turning the meeting into an antagonistic battle with his parents. Albeit with reluctant resignation, he agreed to go.

On the drive to the treatment center, Brian was surly and resentful. It was a rainy, dreary winter day's drive, but at one point along the drive, a rainbow briefly broke out. My wife and I will never forget that moment—we saw it as a sign of hope. Amidst the pain, chaos, and fear of dealing

with an addicted loved one, sometimes hope is all you have to hang on to, and we were learning to grasp for hope any way we could.

We felt a tremendous sense of relief checking Brian into the treatment center and putting him in the hands of professionals. At check-in, we also wrote a very large check for the cost of the program, adding to the ongoing list of financial and other losses we had suffered from Brian's addiction.

With Brian now away and in good hands, we were grateful for a break in the chaos. We put our focus on restoring some sanity at home with our other two children. So much of our energy and attention had been spent on Brian's addiction that we had allowed ourselves to be distracted from the needs of our other two children. Space here does not allow for all the details, but both of Brian's younger siblings were profoundly affected in their own ways by his addiction and his eventual recovery journey.

Even with the relief of knowing Brian was in treatment, I still felt ongoing deep emotional pain for him and great uncertainty as to his eventual outcome. I continued to have crying spells and problems with concentration and stamina at work. I often got distracted thinking about how he was doing at rehab. Looking back, I can now see that it was partly obsessive thinking, and partly an effort to intentionally feel a sense of solidarity with and support for him on his journey. It did not occur to me to focus on my own needs; it was still all about him getting well. I began having problems sleeping, something I had never experienced before. My wife convinced me that I was depressed and that I should go see a doctor. I went to a psychiatrist, who diagnosed me with situational depression. Between medication and therapy, I experienced an amazing relief of the depression symptoms. I have not experienced any depression symptoms since then. My experience left me with the strong belief that anyone with depression-like symptoms should seek a professional evaluation instead of just trying to shrug it off or slog through it.

My wife and I attended the treatment center's family educational program. It was gut wrenching, as I came face to face with the harsh realities of the disease and its consequences, with my grief over what the disease had taken from my son and our family, and the uphill battle a recovering addict faces. But above all, that family educational program was a major positive turning point for me. It was the beginning of my awareness of how deeply addiction affects family members, friends, and others in the addict's life, and that we family members must focus on our own recovery. Before this, it never occurred to me that anyone other than the addict needed to work at recovery.

I recall a counselor saying, "The addict will not get into recovery until the pain of using is worse than the pain of not using." That wisdom has always stuck with me as a reminder that I need to be careful not to be an enabler. The leader also emphasized the serious nature of the addict's disease and that the addict's recovery process must be the highest priority. He drilled into us a fact which has been constantly reinforced to me in my years of recovery in Al-Anon since then: Addiction is a progressive disease which, if left untreated, will be fatal. Most of us at that family weekend program did not yet understand that fact. While we wanted our addict to get into recovery, we were also preoccupied with other things, such as would our addict finish high school and get into college. One lady expressed frustration that her son was missing school while he was in treatment, and she was anxious to get him out of there and back to school. The leader responded, "What good is a well-educated dead person?" Wow, what a dramatic and powerful way to say that *life itself* is at stake, and that recovery must be the number one priority for the addict.

I finally attended my first Al-Anon meeting. Like others back home in the months before, the leader of the family program encouraged us to go to Al-Anon, saying that the addict's recovery is up to him, and that we family members need to work on our own recovery from the effects the disease has had on us. I am grateful that I finally listened to all those voices and walked into that first Al-Anon meeting, because Al-Anon through the years has become a source of great serenity, strength, and hope, not only in dealing with my addict, but also in so many other aspects of my life.

Brian completed 28 days, and upon the recommendation of staff he agreed to stay for an additional 60 days in their extended inpatient program. We wanted him to get more exposure to recovery in this professional setting, and selfishly we were relieved to have two more months of life in our home before having to face Brian's return and all the uncertainty and anxiety that would entail. I was grateful for this continued respite and I believe it allowed my family some good healing time.

During that time I began attending Al-Anon meetings on a regular basis. I was now convinced that I needed to make a commitment to working the Al-Anon program. Nothing I had done up to that point had cured my son, and my own life was dominated by pain, chaos, anxiety, obsession, fear, and exhaustion, all centered around his addiction. I admit that I first went to Al-Anon because I thought they were going to show me how I could cure my son's problems. Instead, they told me from their own experience that I cannot control or cure addiction or my addict. That now made sense to me, since I had been spectacularly unsuccessful at that despite my great efforts, and also because I had begun to learn more about the disease. But the Al-Anon folks also assured me that I didn't cause my son's addiction—it wasn't my fault, no matter how hard I had tried to beat myself up about it. They suggested that I instead turn my attention to the one person I can control—me. They encouraged me to focus on taking care of myself, so that I can have a chance to find some measure of serenity and peace in my life regardless of whether the addict is sober or not. They also posed this question: "You can see what the drinking is doing to the alcoholic. But can you see what it is doing to you?" So I trusted them and began to focus on that question and other basic Al-Anon principles. In those early days, I committed myself to regular ongoing Al-Anon work of attending group meetings, reading Al-Anon literature, and talking with others to learn from them and to process my own issues. I began working the steps and I began to get some real relief and peace.

This story will be continued in the next issue of the *Journal.* ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

Settlement Funds Benefit 2016 Grant-Making

Income

All IOLTA income earned in 2015 will not be received until after this edition of the *Journal* goes to press. However, we can report that we are no longer seeing the dramatic monthly declines in income from IOLTA accounts. Income from the accounts was up by 6% for the first three quarters. We did also receive the largest number (five) of cy pres awards, which brought us another $75,000. We hope this indicates greater awareness of the North Carolina statute regarding class action residuals and other court award possibilities. Most significantly, we did receive our portion ($842,896) of the funding for IOLTA programs included in the settlement with Bank of America announced by the Department of Justice in August 2014. We remain hopeful that a rise in interest rates and perhaps further funds from other sources will bring income levels closer to normal.

Grants

As previously reported, the IOLTA trustees dramatically reduced the number of grants beginning in 2010, as we dealt with a significantly changed income environment due to the economic downturn, which has seen unprecedented low interest rates being paid on reduced principal balances in the accounts. The trustees decided to focus grant-making on organizations providing core legal aid services. Even with that change, IOLTA grants have dramatically decreased by over 50% from their highest level of just over $4 million in 2008 and 2009. During this downturn in income from IOLTA accounts, we have relied heavily on cy pres and other court awards designated for the provision of civil legal aid to the poor. Receiving our portion of the funding for IOLTA programs included in the settlement with Bank of America was crucial to our ability to make 2016 grants.

The IOLTA trustees decided to use half of the Bank of America settlement funds, leaving half to remain invested for use in 2017, as otherwise our reserve is under $250,000. We were able to make slightly more than a 3% increase in the individual grants, and to bring total grants back to $2 million—an emotional boost to all. Though the settlement funds are restricted to foreclosure work, we do have six strong legal aid programs that have been collaboratively handling significant foreclosure work. That work is highlighted in an article in the winter issue of the North Carolina State Bar *Journal*. As other resources for this work are decreasing or ending, these funds will provide significant support to continue the foreclosure projects.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state distribution for the 2013-14 fiscal year was $3.5 million. The state budget adjustments for 2014-15 eliminated the appropriation for legal aid work ($671,250 at that time). Total state distribution for the 2014-15 fiscal year was just under $2.8 million. The Equal Access to Justice Commission and the NC Bar Association continue to work to sustain and improve the funding for legal aid.

New NC IOLTA Trustee

In July 2015 the State Bar Council appointed E. Fitzgerald (Jerry) Parnell III to a second three-year term as a member of the Board of Trustees of NC IOLTA. He determined that increasingly time consuming duties with the American Bar Association were interfering with his duties as an IOLTA trustee and resigned from the NC IOLTA Board. At its January quarterly meeting, the NC State Bar appointed The Honorable Jane V. Harper as new trustee to complete Jerry Parnell's current term (9/1/2015 through 8/31/2018).

Harper served on the District Court bench in Mecklenburg County from 1990 through 2006—and still serves as an emergency judge. She was among the first judges assigned to hold Domestic Violence specialty courts in 1995. She chaired the 26th District Domestic Violence Committee and several 26th District committees overseeing family court matters. A former president of The NC Association of Women Attorneys, she was named that organization's Judge of the Year in 1992. Judge Harper began her career as a lawyer for Legal Aid (1980-84). We believe her experience will serve our board well, and she brings the perspective of the Charlotte area. ■

Committee Requires Meritorious Basis for Challenging Fee Request of Opposing Counsel in Workers' Comp Case

Council Actions

At its meeting on February 1, 2016, the State Bar Council adopted the ethics opinion summarized below:

2014 Formal Ethics Opinion 1

Protecting Confidential Client Information When Mentoring

Opinion encourages lawyers to become mentors to law students and new lawyers ("protégés") who are not employees of the mentor's firm, and examines the application of the duty of confidentiality to client communications to which a protégé may be privy.

Ethics Committee Actions

At its meeting on January 21, 2015, the Ethics Committee sent the following proposed opinions to subcommittee (or returned to subcommittee) for further study: proposed 2015 FEO 8, *Representing One Spouse on Domestic and Estate Matters after Representing Both Spouses Jointly*, and proposed 2015 FEO 9, *Holding Out Non-Equity Lawyers as "Partners."* The committee also voted to publish one new proposed opinion, which appears below.

The comments of readers on proposed opinions are welcomed. Comments received by April 19, 2016, will be considered at the next meeting of the Ethics Committee. Comments may be emailed to ethicsadvice@ncbar.gov.

Proposed 2016 Formal Ethics Opinion 1
Contesting Opposing Counsel's Fee Request to Industrial Commission
January 21, 2016

Proposed opinion rules that the defense lawyer for the employer and the employer's workers' compensation insurance carrier is not prohibited by the Rules of Professional Conduct from contesting the fee request of the plaintiff's counsel so long as there is a meritorious basis for the opposition and the defendants have standing to do so.

Inquiry:

Plaintiff is injured and has a workers' compensation claim. Plaintiff retains Lawyer for representation. Plaintiff thereafter asserts claims for (a) indemnity benefits (wage loss); (b) medical benefits; and (c) attendant care compensation, both retroactive and prospective. Both Plaintiff and Plaintiff's spouse enter into contingency fee contracts of employment with Lawyer that provide for a 25% contingency fee to be paid out of all amounts recovered on Plaintiff's behalf, specifically including compensation recovered for attendant care rendered by the spouse. As of the date Lawyer is hired, Plaintiff's spouse has provided all retroactive attendant care for which compensation is being sought.

Lawyer pursues a claim for both retroactive and prospective attendant care compensation. Lawyer recovers compensation for (1) retroactive attendant care rendered by the spouse and (2) prospective attendant care. The retroactive attendant care award/settlement is to be paid in a lump sum directly to the spouse. Pursuant to the contracts of employment, Lawyer seeks a 25% contingency fee from the compensation for retroactive attendant care payable to the spouse. In addition to the fee contracts already signed by Plaintiff and his spouse, both Plaintiff and his spouse execute affidavits consenting to the 25% fee requested by Lawyer. There is no dispute between Plaintiff, Plaintiff's spouse, and Lawyer as to the payment of the fee.

When Lawyer submits a request for approval of the fee to the North Carolina Industrial Commission, the defense lawyer for the employer and its workers' compensation carrier formally opposes Lawyer's request although the total amount payable by his clients will not be affected by the fee award and, therefore, the employer and the carrier have no financial interest in the fee. The retroactive attendant care recovery in question will either all be paid to Plaintiff's spouse or 25% from the recovery will be paid to Lawyer and 75% of the recovery will be paid to Plaintiff's spouse in accordance with the contract of employment. There are no circumstances under which approval and payment of the fee could result in any additional financial expense or exposure to the employer or the workers' compensation carrier.

May the lawyer for the employer and

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

the workers' compensation carrier oppose Lawyer's fee request in an Industrial Commission proceeding?

Opinion:

Yes, if there is a meritorious basis for doing so and, as a matter of law, his clients have legal standing to challenge the fee award.

The Rules of Professional Conduct provide that a lawyer "shall not make an agreement for, charge, or collect an illegal or clearly excessive fee." Rule 1.5(a). In addition, Rule 3.1 prohibits a lawyer from controverting an issue in a proceeding "unless there is a basis in law and fact for doing so that is not frivolous" and Rule 4.4(a) prohibits a lawyer from using means to represent a client "that have no substantial purpose other than to embarrass, delay, or burden a third person." If the defense lawyer reasonably believes that Lawyer is requesting approval of a fee that is illegal or clearly excessive under Rule 1.5(a), then it would not be a violation of the Rules of Professional Conduct for the defense lawyer to raise his concerns with the State Bar or the appropriate tribunal.

Rule 8.3, on a lawyer's duty to report professional misconduct, is an acknowledgement that self-regulation of the legal profession requires North Carolina lawyers to come forward when aware that another lawyer has violated the Rules of Professional Conduct even if the reporting lawyer (and his clients) are unaffected by the alleged misconduct. The duty to report is subject to the duty of confidentiality to the client. Therefore, a lawyer may not report misconduct to the State Bar or a tribunal with jurisdiction over the matter unless the client consents or another exception to the duty of confidentiality applies. Rule 8.3(c). In addition, the duty to report only arises if the violation raises a substantial question about the honesty, trustworthiness, or fitness of the lawyer in question. No opinion is expressed as to whether the fee application at issue in this opinion violates Rule 1.5 or, if it does, whether such conduct raises a substantial question about the lawyer's honesty, trustworthiness, or fitness.

Whether the defendants have standing in the Industrial Commission to challenge Lawyer's request for fee approval is a legal question outside the purview of the Ethics Committee. ■

Legal Specialization (cont.)

Geoffrey Ryan Willis, Raleigh; Federal and State Criminal Law

Estate Planning

Mark Hale Jr., Goldsboro
James Hickmon, Charlotte
Chad McCullen, Raleigh
Christian Perrin, Charlotte
Nancy Lucille Siler, Charlotte
Kimberly Whitley, Hickory

Family

Carole Albright, Greensboro
Lauren Arnette, New Bern
Ashley Bennington, Greensboro
Thomas Keith Black, Greensboro
Andrea Bosquez-Porter, Raleigh
Kerry Burleigh, Raleigh
Meredith Cross, Raleigh
Evonne Hopkins, Raleigh
Richard Johnson, Huntersville
Sarah Lycans, Jacksonville
Steven Mansbery, Raleigh
Andrew Rheingrover, Charlotte
Bruce Scott, Winston-Salem
Mark Springfield, Raleigh
Ryan Tarrant, Raleigh
Emily Tyler, Raleigh
Carrie Vickery, Winston-Salem
Anna Warburton, Winston-Salem
James Huntington Wofford, Charlotte

Immigration

Aisha Khan, Chattanooga, TN
Evelyn Smallwood, Durham

Real Property Law

Steven Black, Greensboro; Residential

Deleon Parker Jr., Rocky Mount; Residential

Social Security

Kimberly Bishop, Raleigh
Charlotte Hall, Raleigh

Trademark

William Cannon, Raleigh
Christopher Thomas, Raleigh

Workers' Compensation

Megan Callahan, Greensboro
Laura Carter, Raleigh
Viral Mehta, Charlotte
Susan Vanderweert, Durham ■

State Bar Outlook (cont.)

excess of $3,000,000. About half of that money was used to enhance the structure and its furnishings beyond what might have been expected in and of a government building. The balance has been invested. The foundation's Board of Trustees has recently decided to allot to the State Bar annually an amount sufficient to defray the ordinary and extraordinary costs of maintaining the building. This year's transfer of funds is expected to be around $75,000.

Finally, aside from a couple of small miscellaneous items, all that remains is interest income. Even if you examine the pie chart carefully you may not be able to "see" the yield on our deposits. That's because there isn't expected to be any to speak of. The statute requires that our funds be deposited in fully collateralized accounts. Such accounts, of which we maintain three, entail virtually no investment risk and pay virtually no interest these days. On an average daily balance of millions, we earned about a thousand dollars last year. This year's budget estimates that we'll do twice as well, but don't bet on it.

Well, my assistant has just advised me that she has now received a written waiver of telegraphic notice of the rescheduled meeting on February 1, 2016, from every member of the council. It appears, therefore, that the power vacuum into which I rushed during the composition of this article will be extremely short lived. Though disappointed and somewhat diminished, I will nevertheless have something to celebrate on that day. On February 1, 1981, I was first employed by the North Carolina State Bar. Now, 35 years later, I rejoice in my good fortune. I may not be the State Bar in any meaningful sense, but for a great many years, and many great years, I have been honored to be a part of it. And I'm mighty grateful. ■

L. Thomas Lunsford II is the executive director of the North Carolina State Bar.

Amendments Approved by the Supreme Court

On November 5, 2015, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar (for the complete text see the Fall 2015 edition of the *Journal* or visit the State Bar website):

Amendments to the Rules and Regulations Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

Amendments to Rule .1513, *Fiscal Responsibility*, and Rule .1606, *Fees*, increase the CLE credit hour fee (the attendee or sponsor fee) from $3 to $3.50 per hour of approved credit, and allocate the additional $0.50/credit hour to the North Carolina Equal Access to Justice Commission to support the administration of the activities of the commission. The effective date of the amendments is January 1, 2016.

Amendments Pending Approval by the Supreme Court

At its meetings on October 23, 2015, and February 1, 2016, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text of all proposed rule amendments see the Fall and Winter 2015 editions of the *Journal* unless otherwise indicated):

Proposed Amendments to the Discipline and Disability Rules

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys

The proposed amendments to the Discipline and Disability Rules separate Rule .0114, *Formal Hearing*, into five shorter rules; to wit: Rule .0114, *Proceedings before the Disciplinary Hearing Commission: General Rules Applicable to All Proceedings*; Rule .0115, *Proceedings before the Disciplinary Hearing Commission: Pleadings and Prehearing Procedure*; Rule .0116, *Proceedings before the Disciplinary Hearing Commission: Formal Hearing*; Rule .0117, *Proceedings before the Disciplinary Hearing Commission: Post-trial Motions*; and Rule .0118, *Proceedings before the Disciplinary Hearing Commission: Stayed Suspensions.* In addition, the content of existing Rule .0114 is reorganized within this five-rule structure, and numerous substantive changes are proposed, including amendments to the provisions on mandatory scheduling conferences, settlement conferences, default, sanctions, and post hearing procedures relative to stayed suspensions. Proposed amendments to the substance of existing Rule .0115, *Effect of a Finding of Guilt in Any Criminal Case*, (renumbered as Rule .0119) explain the documents constituting conclusive evidence of conviction of a crime and the procedure for obtaining an interim suspension.

With the division of existing Rule .0114 into five shorter rules, existing Rule .0115 and all subsequent rules in this section will be renumbered, and cross references to other rules throughout the section will be renumbered accordingly.

Proposed Amendments to the Rules Governing the Board of Law Examiners

27 N.C.A.C. 1C, Section .0100, Board of Law Examiners

Proposed amendments to Rule .0101, *Election*, are recommended by the North Carolina Board of Law Examiners to modernize the outdated rule and to conform provisions of the rule to current practice in regard to the appointment of members of the board.

Proposed Amendments to the Rules and Regulations Governing the Administration of the CLE Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

A proposed amendment to Rule .1517, *Exemptions*, clarifies that the exemption from CLE requirements for members who teach law-related courses at professional schools has reference only to graduate level courses.

The Process

Proposed amendments to the Rules of the North Carolina State Bar are published for comment in the *Journal*. They are considered for adoption by the council at the succeeding quarterly meeting. If adopted, they are submitted to the North Carolina Supreme Court for approval. Amendments become effective upon approval by the Court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined; deletions are interlined.**

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

The proposed amendments to Rule .1518 require a sponsor of a Professionalism for New Attorneys Program to be an accredited sponsor. The proposed amendments to Rule .1602 allow credit to be granted to private/in-house CLE programs concerning professional responsibility and professional negligence/malpractice presented live by providers that are not affiliated with the host law firm or law department and have been pre-qualified to present such programs.

Proposed Amendments to the Standards for the Estate Planning and Probate Law Specialty

27 N.C.A.C. 1D, Section .2300, Certification Standards for the Estate Planning and Probate Law Specialty

The proposed rule amendments to the standards for the estate planning specialty eliminate the subject matter listings for related-field CLE and for the exam, and explain that, in lieu thereof, the listings are posted on the specialization program's website.

Proposed Standards for a New Specialty in Utilities Law

27 N.C.A.C. 1D, Section .3200 Certification Standards for Utilities Law Specialty

A new specialty in utilities law was proposed by the Board of Legal Specialization upon its determination that representation of clients in utilities law matters requires knowledge of the law, procedures, and forums unique to this practice area. This proposed new section of the rules for the specialization program sets forth standards for the new specialty which are comparable to the standards for the other areas of specialty certification.

Proposed Amendments to the Rules on Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals; Section .0200, Rules Governing Continuing Paralegal Education

Proposed amendments to the standards for certification of paralegals add the disciplinary suspension or revocation of an occupational or professional (non-legal) license and the unauthorized practice of law to the list of conduct that may be considered by the board when determining whether an applicant is honest, trustworthy, and fit to be certified as a paralegal. The proposed amendment to the rules on paralegal continuing education eliminates the $75 accreditation fee for any continuing paralegal education program that is presented without charge to attendees.

Proposed Amendments

At its meeting on February 1, 2016, the council voted to reconsider the following proposed rule amendment (which was approved for transmission to the Supreme Court at its meeting on October 23, 2015):

Proposed Amendments to the Rules Governing the Board of Law Examiners

27 N.C.A.C. 1C, Section .0100, Board of Law Examiners

Proposed amendments to Rule .0105, *Approval of Law Schools*, recommended by the Board of Law Examiners, eliminate the experience requirement from the rule. The rule was amended in 2014 to allow a graduate of a non-ABA accredited law school to be considered for admission to the State Bar if the graduate was previously admitted to the bar of another jurisdiction, and remained in good standing with that bar for ten years.

Also at the meeting on February 1, 2016, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Procedures for the Administrative Committee

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee

Proposed amendments to Rule .0905 specify that *pro bono* practice status for an out-of-state lawyer ends when the lawyer ceases working under the supervision of a North Carolina legal aid lawyer, and clarify that the status may be revoked by the council without notice to the out-of-state lawyer or an opportunity to be heard.

.0905 *Pro Bono* Practice by Out-of-State Lawyers

(a) A lawyer licensed to practice in another state but not North Carolina who desires to provide legal services free of charge to indigent persons may file a petition with the secretary addressed to the council setting forth: ...

(b) ...

(d) Upon receipt of a petition and other information satisfying the provisions this rule, the council may, in its discretion, enter an order permitting the petitioner to provide legal services to indigent persons on a *pro bono* basis under the supervision of a member employed by a nonprofit corporation qualified to render legal services pursuant to G.S. 84-5.1. The order shall become effective immediately upon entry by the council. A copy of the order shall be mailed to the petitioner and to the supervising member. No person permitted to practice pursuant to such an order shall pay any membership fee to the North Carolina State Bar or any district bar or any other charge ordinarily imposed upon active members, nor shall any such person be required to attend continuing legal education courses.

(e) ...

(g) **Permission to practice under this rule terminates upon notice from the member identified in the petition pursuant to Rule .0905(a)(3) above, or from the nonprofit corporation employing such member, that the out-of-state lawyer is no longer supervised by any member employed by the corporation. In addition**, ~~Permission to~~ practice under this rule **being entirely discretionary on the part of the council, the order granting such permission** may be withdrawn by the council for good cause shown ~~pursuant to the procedure set forth in Rule .0903 of this subchapter~~ **without notice to the out-of-state lawyer or an opportunity to be heard**.

Proposed Amendments to the Hearing and Appeal Rules of the Board of Legal Specialization

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization

Proposed amendments to Rule .1804 of the hearing rules for the specialization pro-

gram simplify the procedure for a failed applicant to appeal a final certification decision of the Board of Legal Specialization to the council.

.1804 Appeal to the Council

(a) Appealable Decisions. An appeal may be taken to the council from a decision of the board which denies an applicant certification (i.e., when an applicant's application has been rejected because it is not in compliance with the standards for certification or when an applicant fails the written specialty examination), denies an applicant continued certification as a specialist, or suspends or revokes a specialist's certification. The rejection of an application because it is incomplete shall not be appealable. ~~(Persons who appeal the board's decision are referred to herein as appellants.)~~

(b) Filing the Appeal. An appeal from a decision of the board as described in paragraph (a) may be taken by filing with the executive director of the North Carolina State Bar (the State Bar) a written notice of appeal not later than 21 days after the date of the notice of the board's decision to the applicant who is denied certification or continued certification or to a lawyer whose certification is suspended or revoked.

~~(c) Time and Place of Hearing. The appeal will be scheduled for hearing at a time set by the council. The executive director of the State Bar shall notify the appellant and the board of the time and place of the hearing before the council.~~

~~(d) Record on Appeal to the Council.~~

~~(1) The record on appeal to the council shall consist of all documents and oral statements by witnesses offered at any reconsideration hearing. The executive director of the board shall assemble the record and certify it to the executive director of the State Bar and notify the appellant of such action.~~

~~(2) If a court reporter was present at a reconsideration hearing at the election of the appellant, the appellant shall make prompt arrangement with the court reporter to obtain and have filed with the executive director of the State Bar a complete transcript of the hearing. Failure of the appellant to make such arrangements and pay the costs shall be grounds for dismissal of the appeal.~~

~~(e) Parties Appearing Before the Council. The appellant may request to appear, with or without counsel, before the council and make oral argument. The board may appear on its own behalf or by counsel.~~

(c) ~~(f)~~ Appeal Procedure. ~~The council shall consider the appeal *en banc*. The council shall consider only the record on appeal, briefs, and oral arguments. The decision of the council shall be by a majority of those members voting. All council members present at the hearing may participate in the discussion and deliberation of the appeal. Members of the board who also serve on the council are recused from voting on the appeal.~~ **The appeal to the council shall be under such rules and regulations as the council may prescribe**

(d) ~~(g)~~ Scope of Review. Review by the council shall be limited to whether the appellant was provided with procedural rights and whether the board, or the reconsideration panel where applicable, applied the correct procedural standards and State Bar rules in rendering its decision. The ~~appellant~~ **applicant** shall have the burden of making a clear and convincing showing of arbitrary, capricious, or fraudulent denial of procedural rights or misapplication of the procedural standards or State Bar rules.

(e) ~~(h)~~ Notice of the Council's Decision. The appellant shall receive written notice of the council's decision.

(f) Costs. The council may tax the costs attributable to the proceeding against the applicant.

Proposed Amendment to the Standards for the Workers' Compensation Specialty

27 N.C.A.C. 1D, Section .2700, Certification Standards for the Workers' Compensation Specialty

The proposed amendment to the standards for recertification in the workers' compensation specialty clarifies that a specialist must earn at least six CLE credits in workers' compensation law courses in each year of the five year period of certification.

.2706 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2706(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - ...

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited continuing legal education (CLE) credits in workers' compensation law and related fields during the five years preceding application. ~~Not less than six credits may be earned in any one year~~. Of the 60 hours of CLE, at least 30 hours shall be in workers' compensation law, and the balance may be in the following related fields: civil trial practice and procedure; evidence; insurance; mediation; medical injuries, medicine, or anatomy; labor and employment law; Social Security disability law; and the law relating to long-term disability or Medicaid/Medicare claims. ~~Effective March 10, 2011,~~ **T**~~t~~he specialist must earn not less than six credits in courses on workers' compensation law each year and the balance of credits may be earned in courses on workers' compensation law or any of the related fields previously listed.

(c) Peer Review - ... ■

Research (cont.)

of a state?

State the difference in the effect of partial illegality of consideration and partial illegality of promises.

Suppose that goods are stolen and then sold by the thief to an innocent purchaser, will the latter acquire a good title as against the true owner?

How does an executory devise differ from a remainder?

In what order do legacies abate?

And just for jollies, at the end of the list of questions appears this quote: "Of all animals, dogs appear to evince the keenest musical susceptibility." ■

John Culver is a partner with the Charlotte office of K&L Gates, LLP, and concentrates on complex civil litigation. Most recently he represented the General Assembly in the North Carolina Supreme Court in defense of claims by three governors who sued the legislature for violating separation of powers.

John B. McMillan Distinguished Service Award

Sidney S. Eagles Jr.

Sidney S. Eagles Jr. was born in Asheville and raised in Saratoga, NC. He earned both his undergraduate and law degrees from Wake Forest University, where he currently serves on the School of Law's Board of Visitors. After graduating from law school, Mr. Eagles served as a judge advocate for three years in the United States Air Force; he retired from the reserves as a colonel, earning the Legion of Merit among other decorations. Mr. Eagles has been an outstanding public servant and lawyer his entire career, having served as counsel to the speaker of the North Carolina House of Representatives and as a special deputy attorney general, where he was revisor of statutes and secretary to the NC General Statutes Commission. In 1983 Mr. Eagles began serving as a judge on the North Carolina Court of Appeals. He served for over two decades, retiring as chief judge in 2004. Mr. Eagles is currently of counsel with Smith Moore Leatherwood in Raleigh. In addition to serving the profession as a member of the Judicial Opinion Writing Manual Committee of the American Bar Association's Appellate Judge's Conference, Mr. Eagles devoted 32 years of service to Campbell University Law School as an adjunct professor. A past president of the Wake County Bar Association and 10th Judicial District Bar, Mr. Eagles was awarded the Wake County Bar's Joseph Branch Professionalism Award in 2008. Sidney Eagles has given a lifetime of service as a leader, mentor, and educator, and is a deserving recipient of the John B. McMillan Distinguished Service Award.

Samuel O. Southern.

Born and raised in Raleigh, Mr. Southern earned his bachelor's degree from Duke University in 1966 and his law degree from the University of North Carolina School of Law in 1969. After law school, Mr. Southern served in the navy's Judge Advocate General's Corps, where he eventually became a US Military judge. In 1999, Captain Southern retired from the naval reserves after 30 years of dedicated service. Mr. Southern practiced law for 46 years, recently retiring from his health law practice at Smith Moore Leatherwood in Raleigh. Throughout his career he mentored and trained young lawyers, instilling in them the values that define his career and the ideals of the profession. He was a frequent speaker at health law meetings and chaired the North Carolina Bar Association's Health Law Section from 1998-1999. He remains a key voice in the debate around tort reform, and played an instrumental role in the development of the peer review protections in North Carolina. In recognition of his service throughout his career, Mr. Southern has been awarded the Order of the Long Leaf Pine from the governor of North Carolina, the Order of the Palmetto from the governor of South Carolina, and the Meritorious Service Award from the president of the United States. In the words of his nominator, Mr. Southern is "recognized in and outside of the courtroom as a consummate professional." For all the reasons stated and more too numerous to list, Samuel Southern is a deserving recipient of the John B. McMillan Distinguished Service Award.

Seeking Award Nominations

The John B. McMillan Distinguished Service Award honors current and retired members of the North Carolina State Bar who have demonstrated exemplary service to the legal profession. Awards will be presented in recipients' districts, with the State Bar councilor from the recipient's district introducing the recipient and presenting the certificate. Recipients will also be recognized in the *Journal* and honored at the State Bar's annual meeting in Raleigh.

Members of the bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, ncbar.gov. Please direct questions to Peter Bolac, PBolac@ncbar.gov ■

Last Lecture (cont.)

client's interests without fighting. Second, I suggest using the word "advocate" instead of "fight" because people often think that lawyers fight in unnecessarily nasty ways. Lawyers need to advocate effectively, sometimes exercising power both in negotiation and court. If you convey your willingness and ability to advocate effectively, your counterparts may act more reasonably. If you give them the choice of handling the case the easy way or the hard way and they believe you are ready to do it the hard way, they may prefer the easier way. ■

John Lande is the Isidor Loeb Professor Emeritus of the University of Missouri School of Law. He is the author of Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money, *a detailed practice guide published by the American Bar Association. He can be reached at landej@missouri.edu.*

Endnotes

1. John Lande, *My Last Lecture: More Unsolicited Advice for Future and Current Lawyers*, 2015 J. DISP. RESOL. (forthcoming), available at papers.ssrn.com/sol3/papers.cfm?abstract_id=2640261.
2. John Lande, *Escaping from Lawyers' Prison of Fear*, 82 UMKC L. REV. 485, 485-91 (2014), available at papers.ssrn.com/sol3/papers.cfm?abstract_id=2416839.
3. John Lande, *Lawyering with Planned Negotiation: How You Can Get Good Results for Clients and Make Money*, 6-12 (2d ed. 2015).
4. John Lande, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, 16 CARDOZO J. CONFLICT RESOL. 63, 94 (2014), available at papers.ssrn.com/sol3/papers.cfm?abstract_id=2405625.
5. *Id.* at 74.
6. Stephen D. Easton, *My Last Lecture: Unsolicited Advice for Future and Current Lawyers*, 56 S.C. L. REV. 229, 237 (2004), available at innsofcourt.org/uploaded/global/files/2004_winning_essay.pdf.

Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Campbell University School of Law

Campbell Law, Southwest Univ. School of Law in China ink historic agreement—Campbell Law School and Southwest University School of Law in Chongqing, China, have inked an agreement that will allow Chinese students to earn an American law degree in as little as two years.

Under the agreement, Southwest students may attend Campbell Law for a semester or year and earn credits toward their Chinese degree, while Campbell Law students can study at Southwest and earn credits towards their American degree. The collaboration also pledges that the two schools create a Visiting Scholars Program in which faculty members from one school may spend a semester or academic year in residence at the other institution.

Trio of Campbell Law students awarded ACC scholarships—Three Campbell Law students have been tapped to receive $2,500 scholarships from the Association of Corporate Counsel's (ACC) Research Triangle Area Chapter. Third-year students Noel Anderson and Jeremy Harn, as well as second-year student Cyrus Corbett will each collect the honor for the 2015-16 academic year.

Law Clinics Advisory Council established—Campbell Law has announced the creation of the Law Clinics Advisory Council. Comprised of 15 leading legal, community, and public service professionals, the council will assist the dean and the directors of each clinic in developing, evaluating, and strategically planning for each of Campbell Law's three clinics, as well as launching new initiatives. Campbell Law currently operates the Restorative Justice, Senior Law, and Stubbs Bankruptcy clinics. Additional clinical programs are under exploration.

Professor Currin elected to WCBA/Tenth Judicial District Board of Directors—Campbell Law Professor Margaret Currin has been elected to the Wake County Bar Association (WCBA) and Tenth Judicial District Bar Board of Directors. Currin, a 1979 charter class graduate of Campbell Law, is one of five alums elected to WCBA/Tenth Judicial District positions.

Charlotte School of Law

CharlotteLaw Professor recognized with service award—Assistant Professor Kama Pierce was recognized as an unsung hero and community servant leader by the Martin Luther King Jr. Committee of the city of Charlotte at their annual "MLK Growing the Dream" luncheon on January 16, 2016.

CharlotteLaw professor selected as Notable Latino—CharlotteLaw Assistant Professor Fernando Nunez was recently selected as a Notable Latino of the Triad by the Latino Community Coalition of Guilford (LCCG). LCCG is a program of the Center for New North Carolinians at UNC-Greensboro that strives to strengthen the Latino community in Guilford County by promoting advocacy and education through a collaborative network.

CharlotteLaw student named to Hong Kong internship—CharlotteLaw 3L Maritza Adonis was selected as a spring 2016 intern with the Hong Kong International Arbitration Centre (HKIAC). HKIAC is a reputed independent provider of innovative dispute resolutions services and one of the oldest arbitral institutions in the Asia-Pacific region. HKIAC is currently at the forefront of the international arbitration community for its innovative arbitration practices. HKIAC is one of the top choices for foreign parties to resolve their international business disputes.

NASCAR and Charlotte School of Law Collaboration—NASCAR and CharlotteLaw partnered to present the inaugural NASCAR Negotiation Competition in North Carolina (NC3) November 13-15, 2015, at both the NASCAR offices and the CharlotteLaw campus, both in uptown Charlotte. The competition, a motorsports-themed negotiation simulation, was open to law schools from across the Carolinas. Participating schools sent two students to negotiate a real-life motorsports legal problem. During this year's competition, the issue centered on a mock driver services agreement between a new driver and a race team. The judges for the competition included an array of seasoned practitioners in the motorsports industry, including in-house legal counsel with NASCAR, and legal representatives of top drivers and teams.

Duke Law School

Duke Forward campaign surpasses fundraising goal—With $90 million raised, Duke Law has surpassed its initial goal for the Duke Forward fundraising campaign. More than 60 new student financial aid funds have been established and 21 existing scholarship endowments have been enhanced with gifts in the campaign, which wraps in 2017. Campaign giving has also endowed eight new professorships and provided funds for research and scholarship, including faculty-led centers.

Recent leadership gifts include a $5 million grant from The Duke Endowment to help establish as many as six new endowed faculty positions in the next two years through a matching-gift program. A recent $1 million gift from the Kathrine Robinson Everett Charitable Trust will be used to create a new scholarship fund to support students who are serving, have served, or will serve in the US military.

Education program for appellate judges to convene at Duke Law—Duke Law School has been selected to co-host the Appellate Judges Education Institute's (AJEI) Annual Summit beginning in 2017. The summit annually brings together hundreds of federal and state appellate judges, appellate court staff attorneys, and practitioners for practical, cutting-edge continuing legal education. AJEI is affiliated with the Appellate Judges Conference of the Judicial Division of the American Bar Association.

Holton appointed to NC Equal Access to Justice Commission—Charles Holton, the director of the Duke Law Civil Justice Clinic, has been appointed to the NC Equal Access to Justice Commission for a three-year term. The

commission's mission is to expand access to the civil justice system for North Carolinians of low income and modest means by helping to coordinate the delivery of civil legal aid services. Holton has chaired the board of directors for Legal Aid of North Carolina, and is a longstanding member of the local advisory committee for LANC's Durham office.

Elon University School of Law

A voice for children in the high courts—In Elon Law's Guardian ad Litem (GAL) Appellate Advocacy Clinic, the first of its kind in North Carolina, students represent the best interests of abused and neglected children in appeals of juvenile matters in the North Carolina Court of Appeals and Supreme Court. Alan Woodlief, senior associate dean and associate professor of law, directs and spearheaded the creation of the clinic.

"We are pleased that the clinic enables students to learn principles of juvenile law and important advocacy skills that will help them to excel as attorneys, while assisting the GAL program with appellate cases," Woodlief said.

"The clinic is a winner all around, with the students getting valuable experience, the GAL program gaining valuable *pro bono* assistance in delivering its services, and the juveniles involved having their interests well represented," said Deana K. Fleming, associate counsel with the GAL Program State Office legal team.

New law practice incubator—The Elon Law Legal Incubator supports Elon Law graduates who wish to develop solo law practices and creates opportunities for lawyers to provide reduced-cost legal services for low-income residents of Guilford County. Four Elon Law graduates, selected through a competitive application process, form the inaugural group of attorneys participating: Blinn Cushman, Kathryn Corey, Tyrone Davis, and Robin Kester.

Participants in the incubator develop law practices of their own, but work in a cooperative shared space environment that is provided by Elon Law and functions as a complete law office. Participants provide services to fee-paying clients, while also providing 300 hours of *pro bono* or "low bono" services over the 18-month duration of their time with the program. Through programs provided or coordinated by Elon Law, participants receive training in the business of running a law practice and training in substantive areas of the law.

North Carolina Central School of Law

LSRJ Cari Sietstra Award—NCCU School of Law's Law Students for Reproductive Justice chapter has been chosen as the recipient of the 2014-15 Cari Sietstra Award for Excellence in Organizing.

Named in honor of LSRJ's visionary founder, this prize is awarded annually to a current LSRJ member or chapter that has demonstrated excellence in campus organizing in the previous three semesters. Criteria considered include applicants' efforts to advocate for reproductive justice on their campuses and in their communities, successes in overcoming adversity, and participation in the LSRJ network on the regional or national levels.

NCCU Law students and faculty volunteer at 2015 Bull City Stand Down for Veterans—NCCU Law students and faculty volunteered Friday, September 18, at the 2015 Bull City Stand Down, an annual resources fair for homeless and at-risk veterans. Veterans were able to visit tables and speak with organizations offering assistance with employment, housing, credit, taxes, legal mental health, and other services.

Veterans Law Clinic Professor Craig Kabatchnick and his 13 students staffed a table, providing information about services available through the clinic to assist veterans in obtaining VA benefits. Another group of NCCU Law students assisted Legal Aid of NC staff at their table, helping veterans with questions about housing, wills, family law, and expungement of criminal records. Other students helped with whatever tasks needed doing, from helping veterans locate the right size clothing to breaking down tables at the end of the day. A total of 27 law students volunteered.

University of North Carolina School of Law

Faculty, alumni, and students receive awards for public service, international law research, domestic violence advocacy—The Honorable Sarah Parker '69 received the UNC Distinguished Alumna Award on University Day, October 12. Parker served as an associate justice of the Supreme Court of North Carolina for 13 years and as chief justice from 2006 until mandatory retirement in 2014.

Professor Theodore M. "Ted" Shaw, director of the UNC Center for Civil Rights, received the Giduz Award for public service from the Harvard Club of the Research Triangle.

Professor John Coyle's international law research paper was selected by the Federalist Society for Law and Public Policy Studies for discussion at its colloquium in Los Angeles.

Third-year student Skye David received the Steve Smith Aspiring Activist Award from the North Carolina Coalition Against Domestic Violence.

Students excel in moot court competitions—The UNC Hispanic/Latino Law Students' Association moot court team earned third place at the National Latina/o Law Student Association Moot Court Competition in Chicago in October. The UNC Asian American Law Students Association placed in the top four teams at the National Asian Pacific American Bar Association Moot Court Competition in Atlanta in October.

$100,000 diversity scholarship—Linda and Bill Farthing '74 established a $100,000 diversity scholarship at UNC School of Law. "Our gift will help boost that talent pool and help law firms that recruit at Chapel Hill have the opportunity to find the best and brightest candidates who are diverse racially and economically," Bill says. "That's a benefit for the law firms and the school itself, and is of extraordinary benefit to our society."

CLE programs—Recent and upcoming CLE programs include the Festival of Legal Learning, Chapel Hill, February 12-13; The 2016 ABCs of Banking Law, Charlotte, March 30; the 2016 Banking Institute, Charlotte, March 31-April 1. Visit law.unc.edu/cle.

Wake Forest University School of Law

The Veterans Legal Clinic launched at Wake Forest Law in the fall of 2015 with the mission to provide legal services to veterans with legal issues stemming from or relating to their military service who are currently underserved by existing programs. The clinic began with four students working under the supervision of Professor Steve Virgil, who has spent the past two years researching and working with a group of interested law students, most of whom are veterans. Professor Virgil, who is executive director of the law school's experiential education programs, says the clinic seeks to serve North Carolina military personnel

CONTINUED ON PAGE 46

Client Security Fund Reimburses Victims

At its January 21, 2016, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $86,482 to six applicants who suffered financial losses due to the misconduct of North Carolina lawyers. The board also approved payments of $47,117 to two other applicants if the lawyer against whom they made the claims does not pay the losses as he promised to do.

The payments authorized were:

1. An award of $25,000 to a former client of Mary March Exum of Asheville. The board determined that Exum was retained to handle a possible appeal of a client's custody order. The client paid Exum prior to the judge ruling in her matter. The client almost immediately requested a refund of the fee since she needed the money for other purposes, and did not know whether an appeal would be necessary. Exum attempted to make the refund with post-dated checks. Exum never effectively made the refund and failed to provide any valuable legal services for the fee paid.

2. An award of $7,350 to a former client of Derek R. Fletcher of Charlotte. The board determined that Fletcher was retained to represent a client's father on a criminal charge after Fletcher had been administratively suspended for failing to complete CLE. The client paid Fletcher $7,350 for representation that Fletcher was not authorized to provide. Fletcher was suspended on December 1, 2014. The board previously reimbursed one other Fletcher client a total of $1,100.

3. An award of $1,103.05 to an applicant who suffered a loss caused by Dallas Pounds of Lumberton. The board determined that Pounds was retained to represent a client in her personal injury claim resulting from an accident. The client went to the applicant for treatment. The applicant sent a lien to Pounds. Pounds settled the matter but failed to make all the proper disbursements prior to his death. Due to Pounds having removed unattributed amounts from his trust account just prior to his death, the trustee appointed to wind down his practice delivered the remaining client files and a check for the remaining trust account balance to the State Bar, and gave notice to former clients and their medical providers to file CSF claims for reimbursement of amounts that should have been in Pounds' trust account. All claims were paid from the trust account funds sent to the State Bar by the trustee except a portion of this one medical provider's claim. Pounds died on January 6, 2014.

4. An award of $3,126.28 to a former client of Geoffrey Simmons of Durham. The board determined that Simmons was retained to handle a client's uninsured motorist claim. Simmons settled the matter but failed to make all the proper disbursements prior to his trust account is being frozen by the State Bar due to misappropriation. Simmons' trust account balance is insufficient to pay all his client obligations. Simmons was disbarred on June 12, 2013.

5. An award of $7,800 to a former client of Elesha Smith, formerly of Raleigh. The board determined that Smith's firm was retained to represent a client on two serious criminal charges. After a dispute with her partner who was responsible for the case prior to leaving Smith's firm, Smith took over the representation. Smith, however, stopped communicating with the client, failed to respond to the ADA's plea offer, and stopped communicating with the court. Smith was transferred to disability inactive status on January 15, 2015. The board previously reimbursed one other Smith client a total of $1,312.50.

6. An award of $42,062.67 to a couple who were clients of Devin F. Thomas of Winston-Salem. The board determined that Thomas was retained to represent the clients in personal injury claims arising from an auto accident. Thomas settled both matters and received the settlement funds and med pay checks. Thomas failed to make any disbursements prior to his trust account is being frozen by the State Bar due to misappropriation. Thomas' trust account balance is insufficient to pay all his client obligations. Thomas was administratively suspended on December 16, 2015 and has a disciplinary case pending in the Disciplinary Hearing Commission.

Law School Briefs (cont.)

including active duty service members, reservists, veterans, and nonaffiliated veterans. The clinic focuses on a number of practice areas including employment law, consumer protection, discharge upgrades, and landlord/tenant law. The goal of the clinic is to fill a gap in legal services to current and former military personnel that is unmet by other legal service organizations. All legal assistance will be provided by Wake Forest Law students under the supervision of a licensed attorney.

The Wake Forest *Journal of Law & Policy* will host its Spring 2016 symposium, "Held Hostage: Government Regulation in an Age of Political Gridlock," on Friday, March 18, in the Worrell Professional Center. The event is free and open to the public. Free CLE credit is available. This symposium will take a look at the future of government regulation in times of political gridlock. "Today, the absence of political gridlock in Congress seems like a distant memory," says symposium editor Shirley Smircic. "Congress has been choked by politics, and passing laws is almost an impossible feat. This political gridlock can have a substantial impact on government regulation, from reducing greenhouse gas emissions to regulating rail safety." This year's symposium will feature roundtable discussions to encourage interaction and scholarship between the speakers and symposium participants. The symposium will be webcast live. Learn more at law.wfu.edu. ■

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Spring 2016