

THE NORTH CAROLINA STATE BAR

JOURNAL

SPRING
2019



IN THIS ISSUE

Justice William Haywood Bobbitt *page 10*
Changes Coming for Raise the Age *page 14*
The Gauntlet to Political Asylum *page 18*

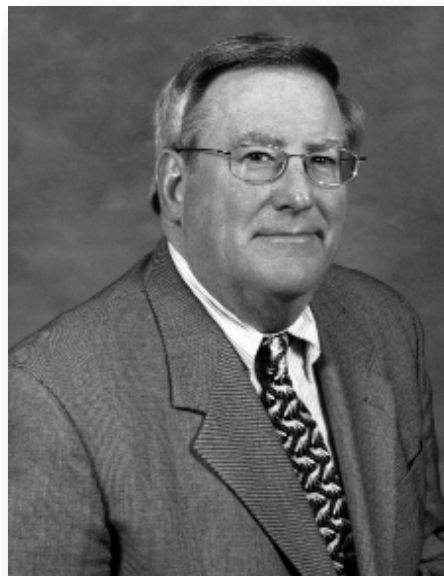
As this issue was going to press, we learned of the passing of former North Carolina State Bar President John B. McMillan. A more in-depth celebration of Mr. McMillan's life will be published in a forthcoming issue of the *Journal*.

WHEREAS, it is believed that John McMillan has served the State Bar as a volunteer longer than anyone in the history of the organization. His service, first as a member of the Disciplinary Hearing Commission, then as its chair, then as a member of the council, and finally as an officer, has been as momentous as it has been long. He has led from the front with wisdom, steadfastness, and courage. He has enriched us all by his example, and honored us with his fellowship. In more than three quarters of a century we have had many fine presidents, but none better than John McMillan.

— *Resolution of Appreciation, North Carolina State Bar Council, 2009*

"I do not know of any attorney who has done more for the State Bar than John McMillan."

— *John Silverstein, Immediate Past-President, North Carolina State Bar*



John B. McMillan
August 31, 1942 – February 6, 2019

THE
NORTH CAROLINA
STATE BAR
JOURNAL

Spring 2019
Volume 24, Number 1

Editor
Jennifer R. Duncan

© Copyright 2019 by the North Carolina State Bar. All rights reserved. Periodicals postage paid at Raleigh, NC, and additional offices. Opinions expressed by contributors are not necessarily those of the North Carolina State Bar. POSTMASTER: Send address changes to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The *North Carolina Bar Journal* invites the submission of unsolicited, original articles, essays, and book reviews. Submissions may be made by mail or email (jduncan@ncbar.gov) to the editor. Publishing and editorial decisions are based on the Publications Committee's and the editor's judgment of the quality of the writing, the timeliness of the article, and the potential interest to the readers of the *Journal*. The *Journal* reserves the right to edit all manuscripts. The *North Carolina State Bar Journal* (ISSN 10928626) is published four times per year in March, June, September, and December under the direction and supervision of the council of the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. Member rate of \$6.00 per year is included in dues. Nonmember rates \$10.73 per year. Single copies \$5.36. The *Lawyer's Handbook* \$16.09. Advertising rates available upon request. Direct inquiries to Director of Communications, the North Carolina State Bar, PO Box 25908, Raleigh, North Carolina 27611, tel. (919) 828-4620.

ncbar.gov

Follow us at:

Twitter: @NCStateBar

Facebook: [facebook.com/NCStateBar](https://www.facebook.com/NCStateBar)



Contents

FEATURES



10 William Haywood Bobbitt—A Justice from an Earlier Time

By E. Osborne Ayscue Jr.



14 Raise the Age: What Changes Are Coming for Juvenile Justice?

By Eric J. Zogry



16 Judges Under Attack—The Judicial Response Committee to the Rescue

By Judge Robert H. Edmunds Jr., Judge John C. Martin, Judge S. Gerald Arnold, and Lisa M. Sheppard

18 The Gauntlet to Political Asylum

By Helen Parsonage

20 Amendments to the North Carolina Rules of Appellate Procedure

By Judge Robert H. Edmunds Jr.

22 The Heart of the Matter

By Peter F. Frost

Contents

DEPARTMENT S

- 5 President's Message
- 8 State Bar Outlook
- 23 The Disciplinary Department
- 24 Legal Ethics
- 25 Trust Accounting

- 26 Lawyer Assistance Program
- 28 Pathways to Wellbeing
- 30 Legal Specialization
- 32 IOLTA Update
- 33 Proposed Ethics Opinions
- 36 Rule Amendments

B A R U P D A T E S

- 37 In Memoriam
- 46 Client Security Fund
- 47 Law School Briefs
- 49 Distinguished Service Award

Officers

- G. Gray Wilson, Winston-Salem
President 2018-2019
- C. Colon Willoughby Jr., Raleigh
President-Elect 2018-2019
- Barbara R. Christy, Greensboro
Vice-President 2018-2019
- Alice Neece Mine, Chapel Hill
Secretary-Treasurer
- John M. Silverstein, Raleigh
Past-President 2018-2019

Councilors

By Judicial District

- 1: C. Everett Thompson II, Elizabeth City
- 2: G. Thomas Davis Jr., Swan Quarter
- 3: Charles R. Hardee, Greenville
- 4: Debra L. Massie, Beaufort
- 5: Kevin Joseph Kiernan, Clinton
- 6: W. Allen Cobb Jr., Wilmington
- 7: Vacant
- 8: Charles S. Rountree III, Tarboro
- 9: C. Branson Vickory III, Goldsboro
- 10: Heidi C. Bloom, Raleigh
Walter E. Brock Jr., Raleigh
Theodore C. Edwards II, Raleigh
Katherine Ann Frye, Raleigh
Fred M. Morelock, Raleigh
Robert Rader, Raleigh
Donna R. Rascoe, Raleigh
Warren Savage, Raleigh
- 11: James Thomas Burnette, Oxford
- 12: Eddie S. Winstead III, Sanford
- 13: Marcia H. Armstrong, Smithfield
- 14: Harold Lee Boughman Jr., Fayetteville

- 15: Michael R. Ramos, Shallotte
- 16: Dorothy Hairston Mitchell, Durham
William S. Mills, Durham
- 17: Charles E. Davis, Mebane
- 18: Charles Gordon Brown, Chapel Hill
- 19: William C. Fields Jr., Raeford
- 20: David F. Branch Jr., Lumberton
- 21: Richard Buckner, Rockingham
- 22: Alan S. Hicks, Roxboro
Matthew W. Smith, Eden
- 23: Thomas W. Anderson, Pilot Mountain
- 24: Patrice A. Hinnant, Greensboro
Stephen E. Robertson, Greensboro
- 24H: Raymond A. Bretzmann, High Point
- 25: Jay White, Concord
- 26: David N. Allen, Charlotte
Robert C. Bowers, Charlotte
A. Todd Brown, Charlotte
Mark P. Henriques, Charlotte
Dewitt McCarley, Charlotte
Gena Graham Morris, Charlotte
Eben T. Rawls, Charlotte
- 27: Jennifer Davis Hammond, Salisbury
- 28: John Webster, Albemarle
- 29: Richard Costanza, Southern Pines
- 30: H. Ligon Bundy, Monroe
- 31: George M. Cleland IV, Winston-Salem
Kevin G. Williams, Winston-Salem
- 32: Kimberly S. Taylor, Taylorsville
- 33: Sally Strohacker, Mocksville
- 34: John S. Willardson, Wilkesboro
- 35: Andrea N. Capua, Boone
- 36: M. Alan LeCroy, Morganton

- 37: Clark R. Bell, Asheboro
- 38: Timothy L. Patti, Gastonia
- 39: Rebecca J. Pomeroy, Lincolnton
- 40: Anna Hamrick, Asheville
- 41: H. Russell Neighbors, Marion
- 42: Christopher S. Stepp, Hendersonville
- 43: Gerald R. Collins Jr., Murphy

Public Members

- Thomas W. Elkins, Raleigh
- Dr. Joseph E. Johnson, Greensboro
- Mohan Venkataraman, Morrisville

Executive Director

- Alice Neece Mine

Assistant Executive Director

- Peter Bolac

Counsel

- Katherine Jean

Editor

- Jennifer R. Duncan

Publications Editorial Board

- Andrea Capua, Chair
- Stephen E. Robertson, Vice Chair
- Heidi C. Bloom
- Margaret Dickson (Advisory Member)
- Darrin D. Jordan (Advisory Member)
- L. Thomas Lunsford II (Advisory Member)
- Christopher S. Stepp
- John Webster

Philip Sadler Tribute

BY G. GRAY WILSON

W e like to think that things happen for a reason, but I have no way of proving that supposition, and lawyers generally

like suppositions. Sometimes I think that much that happens in this world is entirely random, or at least so far beyond human comprehension (and even the Bible says there is a lot of that going on) as to appear without design.

By way of example, I married a woman who decided to become a certified yoga instructor, or yogini, as she is now known. I then learned that yoginis not only like to practice “down dog” and all those assorted bodily contortions, but they also like to hang out together after the session is over. Even worse, my spouse began to drag me to some of her yoga sessions, where I was exposed not only to my marked deficiencies in athletic prowess, but also to other yoga practitioners, including other yoginis.

Now, yoginis talk to each other—quite a lot, apparently—because at some point my wife told another yogini that I was an attorney, and that I had recently become a State Bar officer. Well, it turns out that this yogini was the daughter of an attorney from Pulaski, Virginia, named Philip Sadler, who just happened to be the State Bar president of that commonwealth back in 1976, the year I obtained my law degree from that out-of-state institution of higher learning

known as Duke University. Of course, I knew none of this until one Saturday morning last summer when I was approached, after surviving another yoga session, by this other yogini, one Elizabeth Edler Sadler Weiler. She presented me with the gavel I now hold in my hand and asked me if I would accept it on behalf of her father. She explained a little bit about his life and service to the profession, but I informed her as kindly as I knew how that I could not accept such a valuable heirloom. She pressed me, stating that there were no other attorneys in her family and that she wanted me to take this gift so that it would have a proper home. So, I did, and it rests in my office display case, except when I take it on the occasional journey to show it off to other groups of attorneys in other district bars.

But in this age of misplaced superlatives, there is a special reason I want to share the story of this humble man. I could point to a hundred others in North Carolina who have

provided similar service, but then I would be shorting someone else you may know, not to mention a number of my own mentors who have taught me much over the years about how to practice law in a civilized, professional manner. I have absolutely no personal knowledge of Mr. Sadler, much less any familial or professional attachment that would impair my assessment of his career. So here goes; chalk it up to objectivity.



Sadler was born October 27, 1915, in Silver Point, Tennessee (population several hundred then, now 1,403). He grew up dirt poor, one of nine children

living in a large white farm house with a vegetable garden in the back next to a large hog pen. His father was a carpenter, but during the great depression, there was little demand for his skills, so everyone in the family had to contribute to putting food on the table. Sadler began his education in a one-room schoolhouse that included grades k through eight. He and his brothers were expected to handle the more difficult outside chores on the land, but Sadler preferred to read and study. He would often hide in the hay barn with a book.

Sadler received a bachelor of science degree from Tennessee Polytechnic Institute, formerly known as the University of Dixie (I am not making this up) in 1938. He taught high school and worked for the federal government, served in the US Navy during World War II, then received his law degree from the University of Virginia in 1947.

During the war he served in Europe and Asia, was awarded the Purple Heart for his role in the Battle of Okinawa, and earned a navy unit citation and battle stars for service in both theaters. He was stationed on the

minesweeper destroyer Macomb, which came under attack during the invasion of the island that claimed the lives of 14,000 American soldiers, one of the highest casualty rates in this last Pacific campaign. The Macomb had already sunk a German submarine in the Atlantic Ocean when it was ordered to the Pacific theater. There is a North Carolina connection to the name of the ship. Captain William Macomb led the union naval force in the bombardment and capture of Plymouth, North Carolina, in October 1869 during the civil war.

Sadler's ship was providing radio picket station duty to alert the fleet of kamikaze attacks from the north. The Macomb, participating in the entire campaign, shot down several enemy planes. On April 27, 1945, in the early predawn hours, an enemy aircraft raid was picked up by her radar. For an hour the Macomb fired almost continuously while maneuvering at top speed; three planes were splashed. Her luck ran out on May 3rd during a twilight enemy raid. She downed one Japanese kamikaze aircraft, but a second suicide plane, a "Tony" carrying a 500-pound bomb, came in fast and crashed into her aft five-inch gun mount, causing extensive damage. Amazingly, the bomb went through the ship and out the other side without exploding. Nevertheless, three men died—one fatally burned—three men were thrown into the water and went missing, and 13 others were injured, including Sadler. Sadler suffered a serious burn to his arm, which he always attempted to hide from his family later in life. At that moment, Sadler prayed to God that if he would only let him survive the war, he would devote the rest of his life in his service. The destroyer stayed afloat some-

how, but a number of others were sunk. For this campaign, the Macomb was awarded the navy unit commendation for having, "...by her own aggressiveness and the courage and skill of her officers and men, contributed substantially to the success of the Okinawa invasion...."

The Macomb proceeded to Saipan for battle repairs following the May 3rd engagement. Soon after the repairs were completed, the war ended. The Macomb rendezvoused with the 3rd fleet on August 13 en route to the Japanese home islands. On August 29, just ahead of the battleships Missouri and Iowa, she dropped anchor in Tokyo Bay, where she was witness to the formal surrender. Sadler retired his commission with the rank of lieutenant commander.

After law school, Sadler entered private practice with a law firm in Pulaski and eventually became the senior partner in the law firm of Gilmer, Sadler, Ingram, Sutherland & Hutton, from which he retired on December 31, 1993, and moved to Charlottesville. When he joined the law firm, his senior partner was Howard Cecil Gilmer, friend and confidant of Judge Thornton Lemmon Massie, one of the victims of the notorious Carroll County massacre on March 14, 1912.

While in practice, Sadler served as the local county bar president from 1965-66. He was elected to the Executive Committee of the Virginia State Bar and served from 1971-73. He was a member of the Virginia State Bar Council from 1971-74, and chaired several State Bar committees. He became president of the State Bar in 1975, completed that obligation in 1976, and then served on the National Conference of Bar Presidents until

1978. He was also vice president of the Virginia Bar Foundation from 1976-78 and president in 1978. He was a member of the Board of Directors of the Virginia Association of Defense Attorneys in 1977, and was selected to serve on the Judicial Nominations Committee as the representative of the ninth district of Virginia in 1983. He was also elected as a fellow in the preeminent American College of Trial Lawyers and the International Society of Barristers. He had a host of other professional affiliations.

That Sadler was an accomplished trial lawyer was indisputable. Long-time partner Bob Ingram raved about his colleague. "Phil Sadler was a superlative trial lawyer...it has been a joy to practice law with him these past 37 years. He was always a consummate gentleman and a lawyer's lawyer. He was a fine example of what we are here for." Debbie Blevins, a junior associate who had only been with the law firm for a few months, was told by a witness in a court-appointed criminal case that the client had paid him to lie by providing a false alibi on the stand. The associate panicked and ran to Sadler, who calmed her down and walked her through the process of handling this challenging ethical issue with the witness, client, and judge. She recalls, "He was a rock in the midst of a tsunami of trouble. I wish for every young lawyer that kind of support, that kind of role model."

Sadler was a man who would help anyone who walked in the door with a legal problem. His partner Ingram noted, "I never met a more compassionate man who truly cared about his clients and the people of the community. It did not matter from what walk of life or what their troubles might be. He was totally unselfish in his love and giving to them." As a trial lawyer, Sadler often found himself in the role of advocate for the "underdog." He routinely accepted cases *pro bono*, and was often paid with garden vegetables, a country ham, and one time with some guinea hens.

But this history relates to the career of a lawyer. Aside from his professional commitment, Sadler was a humanitarian in the truest sense of the word. For reasons unknown, he literally threw himself into the community where he lived and worked and changed the face of Pulaski County, Virginia. From the Jaycees to the Chamber of Commerce, Sadler held too many memberships and offices to list in civic organizations

Speakers Bureau Available

Speakers on topics relative to the North Carolina State Bar's regulatory mission are available at no charge for presentations in North Carolina to lawyers and to members of the public. Topics include the State Bar's role in the regulation of the legal profession; the State Bar's disciplinary process; how the State Bar provides ethical guidance to lawyers; the Lawyer Assistance Program of the State Bar; the Client Security Fund; IOLTA: Advancing Justice for more than 20 Years; and current challenges to the regulation of the practice of law in North Carolina. Requests for speakers on other relevant topics are welcomed. For more information, call or email Lanice Heidbrink at 919-828-4630 or lheidbrink@ncbar.gov.



Fastest smartest malpractice insurance. Period.

800.906.9654
GilsbarPRO.com

that showered him with awards for public service. He was instrumental in establishing the Pulaski County free clinic, and was an avid supporter of New River Community Action, Habitat for Humanity, Pulaski Daily Bread (a local food bank), the March of Dimes, the American Heart Association, the Tuberculosis Association, the Emergency Needs Task Force, Christmas All Year, and SHARE! (self-help and resource exchange). He was active in the local school board, the Board of Visitors of King College, the YMCA, and, of course, politics. He stood as a candidate for the Virginia Senate, a political battle he narrowly lost. He was a lifelong member of the First Presbyterian Church of Pulaski, where he served as an elder.

When he relaxed, which apparently was not often, he smoked Winston cigarettes and drank a Coke with a pack of peanuts in it. He also drank Schlitz beer when he could not have his favorite liquors, scotch and bourbon, both with ice and a little water. He was diagnosed with lung cancer in late 1993 and died seven weeks later on January 27, 1994.

One of the earlier tributes in the local media described the life of the man in this fashion:

His work in helping the needy in Pulaski County is an example of his humble touch, that down to earth approach to people...he has been a distinguished citizen, but that is only part of the story. In both his public and private life, he has demonstrated a deep and abiding feeling for those whose opportunities have been limited by circumstances or by cruel conditions imposed on them by events beyond their control. He has more than outstanding ability; he has a sense of compassion. The two together give him his distinction.

Why does someone of such humble origin, who could have spent his life as a simple carpenter like his father, or lived like a country squire with a comfortable legal practice devoted entirely to his own self-aggrandizement, head out into the world to serve others as this kind and gentle man did? Can it all be explained as a simple bargain one makes with his maker under wartime stress? What is it that drives the heart and soul of a man or woman to accomplish what Sadler did, to lift up a corner of the world and carry it on his shoulders without complaint or material reward?

Sadler's herculean efforts on behalf of the

lost, oppressed, and dispossessed never brought him fame, fortune, or power, never put a racing stripe down his back, puffed him up with overweening pride, or sent him off parading around the public domain with smug, self-righteous arrogance. How does one fathom the motivation of an individual who walks among us, leading the life of a saint while engaged full time in a legal profession rife with conflict, complexity, and frustrating—often maddening—courtroom schedules and proceedings?

Perhaps in this life there is no real, verifiable, empirical answer to such questions, but I would offer two subjective observations from one who has practiced trial law for over 40 years and seen just about everything, and who now stands—honored beyond imagining but acutely cognizant of my own unworthiness—poised and privileged to assume the helm of the State Bar of this great and wonderful state. First, if there is a heaven beyond this burned out cinder we inhabit, Sadler surely resides there in high standing. Second, Philip Sadler is a true hero. ■

G. Gray Wilson is a partner with the Winston-Salem firm of Nelson Mullins Riley & Scarborough LLP.

New Shoes

BY ALICE NEECE MINE

After it was announced last year that I would be taking Tom Lunsford's place as secretary and executive director of the State Bar upon his retirement at the end of 2018, I was told on numerous occasions that I "would have big shoes to fill." In the literal sense, this is absolutely true, Tom is a man's size 10½; I am a women's size 7½. In the figurative sense, it is also true. Tom has been an exceptional leader of the State Bar for 27 years—a tremendous run. At the low end of the evaluation scale, during his tenure there was no scandal, no malfeasance by staff or officers, no mismanagement. At the high end of the scale, Tom created and maintained a culture of hard work, cooperation, personal responsibility, and excellent work product among a staff that grew under his leadership from 21 to 87 employees as the size of State Bar membership grew from 13,000 to 29,000. He guided the State Bar Council and officers through troubled waters including the transition following the termination and disbarment of his predecessor for financial malfeasance; the Nifong disciplinary proceedings; and litigation with LegalZoom. In 1998-1999 he oversaw a major renovation of the State Bar offices on Fayetteville Street that required the staff to migrate from floor to floor over an 18-month period. In 2013 he proudly helped to cut the ribbon on the beautiful new State Bar Headquarters in downtown Raleigh, a project that he managed from conception to execution without an increase in dues for our members. On every occasion, Tom was calm, collected, insightful, diplomatic, and deferential to the ultimate authority of the State Bar Council and officers, and always cognizant of the State Bar's obligation to regulate the legal profession in the best interests of the public.



No, I cannot fill Tom's shoes—literally or figuratively—because I am not Tom. But not to worry, I will be bringing my own shoes as I step into the position of executive director.

Perhaps the most important aspect of my shoes is that they are not new. I have 26 years of experience assisting in the administration of the State Bar as assistant executive director. I know how things are done at the State Bar and I know how to get things done.

There are some skills and characteristics that I do not share with Tom, his cool intellectualism being at the top of the list. I can get pretty passionate about matters of professional responsibility—perhaps a byproduct of my 26 years as chief ethics counsel for the State Bar, during which time I studied and applied our Rules of Professional Conduct and formal ethics opinions to thousands of ethical dilemmas faced by lawyers every day. From studying at the feet of the master for 26 years, however, I have learned how to temper my passion with diplomacy and real-world analysis.

I intend to do a lot of walking in my shoes. I plan to visit more local bars and to continue to make presentations across the state, CLE and otherwise. I want to tap into our incredible network of past and present State Bar councilors to see what they think the State Bar is doing well and what we can do better. I intend to ask our talented State Bar staff the same questions. And I would like to hear from you: what are we doing well in our efforts to regulate the legal profession in the best interests of the public and how might we improve?

Near the top of the list of things that Tom did exceptionally well is write an executive director's message that State Bar members

actually read. Tom often joked about his "15 dedicated readers." But I know for a fact that there are hundreds (thousands?) of lawyers who opened the *State Bar Journal* each quarter for no other reason than to read Tom's *State Bar Outlook* column (and maybe peek at the discipline page). Often starting with some reference or analogy to an episode of *The Andy Griffith Show* (Tom's favorite), Tom's articles are superb essays on the issues impacting the North Carolina State Bar and the legal profession in general. Writing well about what is, admittedly, a very dry subject is a great talent indeed. Alas, this is one aspect of Tom's shoes that I acknowledge my shoes will only tap dance over. So I promise to write executive director columns only when I have something to say and to say it as concisely as possible.

I am tremendously honored to wear the shoes of executive director of the North Carolina State Bar. In case you are worried that, at a women's 7½, my shoes aren't big enough, remember: I wear high heels.¹

Alice Neece Mine is the executive director of the North Carolina State Bar.

Endnote

1. I promise not to use the theme of this article as a reason to start every column with a reference to *Sex and the City*.

Need to rent a law office located within a law firm? Attorneys search for free in 40,000 zip codes. www.LawSpaceMatch.com Find the perfect amenities for renting a law office for your law practice instantly. And don't forget to post your attorney profile on our site for more exposure.

NORTH CAROLINA **PRO BONO** RESOURCE CENTER

NC PRO BONO REPORTING DEADLINE: MARCH 31, 2019

WHAT SHOULD I REPORT?

The North Carolina Pro Bono Reporting Form collects information about all the activities encouraged in NC Rule of Professional Conduct 6.1: pro bono legal service; legal service at a substantially reduced fee; activity that improves the law, the legal system, or the legal profession; nonlegal community service; and financial support of legal service providers. You are also able to share optional information about your legal volunteerism and organizations or associations you would like to be aware of your involvement.

HOW DO I REPORT?

Visit [**ncprobono.org/report**](http://ncprobono.org/report) and provide information about the activities included in NC Rule of Professional Conduct 6.1. You will need to report the total number of pro bono legal service hours you provided in 2018 - this is the only activity from Rule 6.1 that leads to recognition through the North Carolina Pro Bono Honor Society. Questions about other activities from Rule 6.1 only require general information about participation. You will also need your North Carolina State Bar ID Number to submit your entry.

WHY SHOULD I REPORT?

There are four major reasons to report your pro bono legal service: (1) it's a way to showcase attorney volunteerism in NC - we want to share the good work being done by the legal profession in our state; (2) it's an opportunity to encourage your peers to grow their pro bono involvement by sharing about your own engagement; (3) it's a mechanism to identify areas to grow pro bono efforts in North Carolina and (4) it's an opportunity for recognition - attorneys who report at least 50 hours of pro bono legal service in a year will be inducted into that year's cohort of the NC Pro Bono Honor Society and receive a certificate from the Supreme Court of North Carolina recognizing their achievement.

CONNECT WITH US



ncprobono.org



PO Box 2448
Raleigh, NC 27602



facebook.com/ncprobono



twitter.com/ncprobono



linkedin.com/company/ncprobono

William Haywood Bobbitt—A Justice from an Earlier Time

BY E. OSBORNE AYSUE JR.

This reflection on the life of Chief Justice William Haywood Bobbitt, was written from a combination of a 1985 interview recorded 11 years after his retirement by two of his former law clerks, Willis P. Whichard and Eugene Hafer, from a tribute by then Associate Justice Whichard, presenting a portrait of Bobbitt to the North Carolina Supreme Court; from the personal recollections of Bobbitt family stories that came through the Justice's son, the late, William Haywood Bobbitt Jr., to his law partner E. Osborne Ayscue Jr.; and from the author's supplementary online research.

Behind conventional landmarks in the life of William Haywood Bobbitt lies a world that in many respects seems no longer to exist, a world seen through the eyes of a bright, modest, self-effacing man with a quiet smile, a wry sense of humor, and a perpetual twinkle in his eye.

Born in Raleigh on October 18, 1900, the fifth of five children born in his parents' first 11 years of marriage, William Bobbitt was a little over a year old when his family moved to Baltimore. His father, a pharmacist, went there in the hope of marketing a patent medicine he had invented. The medicine "did not measure up to the original expectations," and a little over a decade later he sold it to a competitor and moved his family to Charlotte.

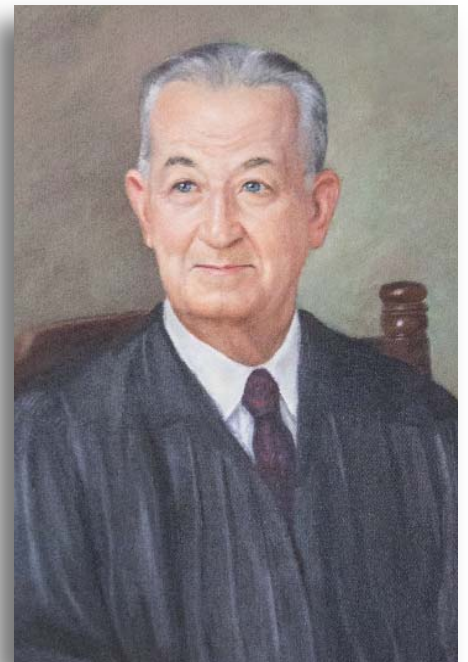
In Baltimore, health was a common problem. Young Bobbitt almost died as a child. He remembered having to learn again to walk after his recovery. His mother died of complications following the birth of his sister when he was seven. His father remarried, and Bobbitt thereafter had acquired

two more siblings.

He recalled two legacies from Baltimore. First, a Boy Scout troop introduced him to a lifelong relationship with that then-new movement. In Charlotte, he helped to form its first Boy Scout troop and became its initial First Class Scout. Second, Baltimore public schools were, in his view, far more advanced than those of Charlotte. He entered Charlotte High School, then only grades 8 through 11, so young that he graduated at age 16. Given the history of his academic career, his modesty probably gave the Baltimore schools more credit than was merited, and his own intellectual capacity too little credit.

A high school freshman on the verge of becoming a teenager, he always had a job. His father was usually "in rather straitened circumstances," given the number of children he had. During the school year, young Bobbitt clerked in a grocery store a part of each day, then worked after school as a shipping department file clerk. In the summertime, he rode to the edge of the county on a bicycle to work on a relative's farm, returning in early afternoon to the YMCA to shower and go to his afternoon job.

From his early days, Bobbitt was drawn to the Methodist ministry. Both of his grandfathers had been high-profile Methodist ministers, as was his own oldest brother. His interest in legal matters came from his "stamping ground," the YMCA, where lawyer Charles W. Tillett Jr. became a mentor to a group of boys. Another lawyer looked for some boy who might want to come to his law office to run errands and learn what was going on in that world. Bobbitt responded and became familiar with the courthouse, the Law



Building, and the lawyers. Hearing of an important case, he began to come to the courtroom to sit and listen.

Formal legal education in those days was minimal. One relied on one's own initiative and one's mentors to learn both the law and the practice of law. With his trademark modesty, Bobbitt related that he "got along pretty well" in high school and won a scholarship to William & Mary. After Tillett learned of his interest in the law, Bobbitt quickly received a letter from University of North Carolina President Edward Kidder Graham offering him a four-year scholarship to the University, in Bobbitt's words, "so long as my work was alright." A "scholarship" in those days consisted of the year's tuition, about \$40. Beyond that, one was on one's own.

The United States was entering World War I. Still only 17, Bobbitt was not eligible for the draft. He found a temporary war-related summer job in Washington, staying with an older brother who lived there. When the armistice was declared, he declined an appointment to Annapolis and returned to Chapel Hill. At the end of three years, one course short of graduation, he entered law school while taking his remaining undergraduate course, leaving two more courses to complete his law school curriculum.

His class at UNC was a virtual Who's Who of early 20th Century North Carolina—future Governor and Commerce Secretary Luther Hodges, long-time university official W. D. Carmichael Jr., newspaper publisher Jonathan Daniels, and early UNC Medical School Director Reece Berryhill. Bobbitt was not lost among them. In his freshman year he became a member of the Dialectic Society, a legendary debating society at the heart of the university. He accumulated numerous honors, including the Bingham Debating Medal and the Wylie P. Mangum Medal in Oratory, and won second place in a national Intercollegiate Oratorical Contest. In his senior year, he was president of the Dialectic Society and permanent president of his class. He was inducted into Phi Beta Kappa.

He was also inducted into the university's oldest and highest honorary society, the Order of the Golden Fleece. Patterned after the followers of Jason, sailing on the ship Argo in their mythical search for the golden ram of Zeus, each Argonaut was given his sequential number. Bobbitt became Argonaut 144. Argonaut 143 was Thomas C. Wolfe, the future author of *Look Homeward, Angel*.

Running out of money, Bobbitt applied for a job teaching at Charlotte High School. On the way to his school interview, he encountered attorney John McRae, a partner in the firm of Stewart and McRae, who invited him to his office, asking what he was planning to do next. McRae instantly advised him to stick with the law. Asking how much money he needed to finish those two courses, McRae offered to endorse his note at the bank so that he could go back to summer school. After that, he assured him, "You can come back here and work for us until you can get your license." Happy for the invitation to "read law" with one of the town's leading law firms—one which, unlike other prominent



Leonard T. Jernigan, Jr., attorney and adjunct professor of law at NCCU School of Law, is pleased to announce that a **new edition** of Jernigan's *North Carolina Workers' Compensation: Law and Practice* (5th Edition) is now available from Thomson Reuters-West Publishing (1-800-344-5009).

- Board Certified Specialist in Workers' Compensation Law
- NFL and National Hockey League Workers' Compensation Panel Member

THE JERNIGAN LAW FIRM

Leonard T. Jernigan, Jr.
Kristina B. Thompson

3105 Glenwood Avenue, Suite 300
Raleigh, North Carolina 27612

Practice Limited To:
Workers' Compensation
Serious Accidental Injury/Civil Law

(919) 833-0299
(919) 256-2595 fax
www.jernlaw.com

local firms, had no prospective lawyer sons on the horizon—Bobbitt accepted the offer.

Upon reaching age 21, Bobbitt took the bar examination. With his classic humor, he related, "[T]here was a rumor that I made the best mark on that examination....I didn't investigate it too carefully; I just didn't take any pains to deny it." Given a percentage of his firm's net income with a minimum guarantee, he comfortably proposed marriage to Sarah Buford Dunlap. They were married on February 28, 1924. Over the years, they produced a son and three daughters.

As a practicing lawyer, he quickly found that his prior experience taught him more about the practice of law than it did the black-letter law itself. After acting as McRae's assistant in his first trial, he took a solo case to the North Carolina Supreme Court, unsuccessfully representing, in the era of prohibition, a defendant accused of aiding and abetting in the manufacture of spiritous liquors.

His firm was soon involved in a major case, one that involved a lawyer named John J. Parker, a republican, who, while losing several statewide elections, had made a name for himself in a case before the United States

Supreme Court. By the end of 1922, Parker had moved to Charlotte, and the firm became Parker, Stewart, McRae and Bobbitt. This remarkable confluence eventually produced from one firm the longest-serving chief judge of a United States Court of Appeals, a republican, and a chief justice of the North Carolina Supreme Court, a democrat.

Bobbitt practiced as a generalist for 17 years. His trial work was composed principally of civil cases. When Mecklenburg County Superior Court Judge W. F. Harding announced his planned retirement after 25 years, those who first announced their candidacy were known for particular allegiances. The politics that shaped the judiciary in North Carolina—basically a one-party state—rested primarily on personal loyalty and regional bias, and a sense of justice could easily cross party lines. Bobbitt had given no thought to the bench, but a group of local lawyers, both democrat and republican, began looking for someone to run. When others on their prospective list declined, Bobbitt was given a long list of local lawyers who promised to do everything they could to support him if he would run. His partner,

Plummer Stewart, not eager for him to run, nevertheless ultimately urged, "Now William, we will have to get up a brag sheet." That was not difficult to compose, and it succeeded. Mecklenburg and Gaston Counties were in one district. He clearly enjoyed campaigning, spending much of his time in Gaston County, where he was less well known. With bipartisan support and the aid of lawyers not generally involved in politics, he was elected. He took office on January 1, 1939, and held the seat until February 1954, when he went onto the North Carolina Supreme Court.

The North Carolina Superior Courts were divided into three regional divisions. Bobbitt's division's rotation stretched west from Cabarrus County to the far corner at the Tennessee line and the northwest corner of the Virginia line. Many districts were so distant from Mecklenburg County that Bobbitt, like many of his fellow judges, spent the week where they were holding court.

His jurisdiction was both civil and criminal. With no intermediate appellate court above the level of minor local criminal infractions and small civil disputes, the superior courts handled virtually all of the civil and criminal trial load. Judges did not wear robes. "It was ridiculous," Bobbitt observed, "to wear robes when going to some of these courthouses, where you could hardly find a nail to hang your coat on." He noted that he never held court in a courthouse that had air conditioning.

His fairness, consideration, and learning began to attract lawyers who sought to have their cases heard in his court. Many observed that, after studying the case files in his hotel room at night, by the time the case was tried, he was more familiar with it than were the lawyers.

His was a six-day-a-week job. Returning to Charlotte on the weekends, he was in the

courthouse regularly on Saturday mornings, attending to matters within his jurisdiction as the resident judge of his two large counties.

In his day, the course of elevation to the North Carolina Supreme Court might best be described as a game of musical chairs played without music. How members of the Court were selected depended on the circumstance. Retirement or resignation at the end of a term produced one result. Resignation or retirement other than at the end of a term produced another result, one in which the governor made an appointment for the duration of the departed justice's term, and the appointee ran for office for both the remainder of that term and for the full term thereafter. Each governor kept a list of potential appointees to the Supreme Court, some of whom would be appointed and some of whom came and went. Bobbitt was aware that he was long on many of these lists. When Justice I. T. Valentine died in 1952, Bobbitt ran against R. Hunt Parker, a superior court judge from the east, and lost in the primary in reputedly the state's closest statewide race in over 30 years. When Chief Justice William A. Devin resigned in 1954, Governor William B. Umstead appointed Maurice V. Barnhill as chief justice of the Supreme Court and Bobbitt as an associate justice. Barnhill's term expired in 1956, and R. Hunt Parker replaced him as chief justice. When Parker died on November 14, 1969, the other justices went as a body to Governor Robert W. Scott, requesting that he appoint Bobbitt to the seat. He served for the next five years until he reached mandatory retirement age.

The relationship of the Supreme Court in Bobbitt's era was one of comfortable collegiality. When he first assumed the bench, the justices had no law clerks; however, within a year or so the General Assembly gave one to each justice. In a recorded interview conducted by two of his former clerks, Bobbitt said he felt "closer to these fellows (his law clerks)" than to any other group other than his own family. For many years, his former clerks held a celebration on his birthday. He took special pride in the elevation of one of them, Willis P. Whichard, through the judicial ranks to become himself an associate justice.

Bobbitt's collegiality was not confined to the Supreme Court building. When the Order of the Golden Fleece had its annual spring public tapping ceremony in Chapel Hill, a smiling Justice Bobbitt was often seen perched alongside Governor Terry Sanford in

the back seat of a State Highway Patrol car whose driver was assigned to transport the governor safely to and from Raleigh.

At his death, a *Raleigh News and Observer* editorial described his essence: "A merry mind, a merry twinkle...a merry fellow who treated all who crossed his path with even-tempered fairness, whether they lived modestly or in mansions."

Bobbitt's humor was indeed an essential part of his view of the world. He once told his son that, driving from Raleigh to Charlotte on a Friday evening, he stopped at an old-fashioned country filling station with an attendant who came out and pumped the gas. Noticing the vehicle's license plate, he asked, "Are you the lieutenant governor?" The justice, with a twinkle in his eye, replied, "No." The owner persisted. "The secretary of state?" Answer: "No." Finally, after another question or two he asked, "Well, what is you then?" Bobbitt responded that he was the chief justice of North Carolina. The attendant clapped his hands and uttered triumphally, "I knowed you was some kind of a face card!"

Once a president of the Mecklenburg County Bar asked him to address its annual meeting and, knowing that the chief justice could not accept a traditional honorarium, asked an innocent question that he hoped might elicit a hint as to what charity Bobbitt might be pleased to have honored. The justice interrupted, exclaiming, "Why would anyone want to pay to hear me talk?"

When the UNC School of Law honored him with its Distinguished Alumnus Award at a 1981 dinner at the Carolina Inn, those who could see the serving area saw the wait-staff quietly filtering in, lining up against the back wall. When Bobbitt rose in response to the dean's presentation, he said, "Thank you all very much. I am not going to make a speech, but I would ask you to give a round of applause to my granddaughter Betsy (who, in family tradition, was helping to work her way through college) and all of her friends who have waited on us this evening."

Justice Bobbitt served as president of the UNC General Alumni Association in 1954-55. The university awarded him an honorary Doctor of Laws degree in 1957 and its Distinguished Alumnus Award in 1976. Davidson College also awarded him an honorary Doctor of Laws Degree. An American Inn of Court bore his name.

Bobbitt's wife, Sarah Buford Dunlap Bobbitt, died in October 1965. Thereafter,

Interested in acquiring/merging with estate planning law firms or take over from retiring/deceased attorneys especially in western North Carolina? We have 7 lawyers and a full support team including probate. Very client-centric. Contact: Andrew A. Strauss at andy@strausslaw.com or 828.210.0506.

CHECKERED FLAG MEDIATIONS

DOUGLAS J. MEIS
Driver/Mediator

**Helping your clients
cross the finish line**

Phone: (336) 725-9090
www.lawyermeis.com
dougmeislaw@gmail.com

the remaining quarter century of his life was enhanced by his “special friendship” (his words) with Justice Susie Sharp, the Court’s first woman justice, who then succeeded him upon his retirement. Her wit and humor matched his own. Described as “two inseparable friends,” they dined together and shared a social life that included many significant events in both of their public lives. (Indeed, the recorded interview of Justice Bobbitt on which this article is partially based was carefully begun and timed so as not to encroach on his usual lunch engagement with Justice Sharp.)

The members of Bobbitt’s Court traditionally walked together along Fayetteville Street for lunch, with Justices Sharp and Bobbitt leading the parade. Once, they had all been eagerly awaiting the day when the first strawberries of the season would appear. When that day arose, Justice Sharp was ushered to the head of the buffet line, followed by Justice Bobbitt. She chose ripe red strawberries from the top of the container, as then did Bobbitt in his turn. When Justice Carlyle Higgins, the next in line, looked and saw that the next layer of berries was perhaps more

green than red, he is reputed to have turned to the procession behind him and exclaimed, “They ought not to let them have but one vote between them anyway.”

In Bobbitt’s world, the cardinal principle of the law was to see in every case a just and sensible result, produced by knowledge and love of the law, ignoring concerns about whom the result would please and whom it would displease. In the words of Associate Justice Willis P. Whichard, one of Bobbitt’s early law clerks, speaking at the dedication of the justice’s portrait in the Supreme Court, “He authored many opinions which, at the time, were of great importance to the public and to the jurisprudence of the state, and some of them will influence the jurisprudence of the state and the country for many years to come....They reflect the author’s extensive knowledge of the law, his capacity for clarity, and his soundness of judgment. The opinions of other justices with whom he served also bear the stamp of his influence, for he concerned himself with the Court’s products, and not with just his own.”

“If one were to list all the desirable qualities of a judge,” he continued, “Judge

Bobbitt would have each of them in great measure....intelligence, perceptiveness of legal issues, common sense, even temperament, hard work, impeccable character, honesty (as a person and intellectually), a love of the law, the desire to excel as a judge, and a desire to see a just and sensible result reached in every case.”

In the world in which we now live, almost 80 years after William Haywood Bobbitt began his career on the bench, we might well pause to look back and contemplate the lessons his life reflects. ■

E. Osborne Ayscue Jr. is a retired member of the Mecklenburg County Bar and a past president of that Bar, of the North Carolina Bar Association, and of the American College of Trial Lawyers. He now lives in Chapel Hill, where he spends much of his time writing. The seventh lawyer in Helms, Mulliss, McMillan & Johnston, the third largest firm in Charlotte when he joined the Bar in 1960, he has observed the span of time from those days through the remaining almost eight decades since Justice Bobbitt first went on the bench and the changes that those years have brought.

Raise the Age: What Changes Are Coming for Juvenile Justice?

BY ERIC J. ZOGRY

In 2017 the North Carolina passed the Juvenile Justice Reinvestment Act. This legislation increased the age of juvenile jurisdiction from 16 to 18, along with other substantive and procedural changes. But what is “raise the age”? This article will reveal a little history behind the issue, break down the main concepts of the new legislation, and provide a glimpse into the future regarding next steps with the changes in the law regarding juvenile jurisdiction.

What is “Raise the Age”?

Age is the factor which determines where a youth accused of committing a crime is processed. Currently, a youth at least age six but under age 16 on the date at which they are accused of committing an offense is charged in juvenile delinquency court (sometimes simply referred to as juvenile court). This is for any crime, from simple assault to first degree murder, and includes motor vehicle offenses. Up until last year, North Carolina was the only state in the country that automatically prosecuted 16-year-olds as adults, regardless of the crime charged (a few states continue to automatically charge 17-year-olds as adults). In recent years, a movement began in North Carolina to reconsider the law and “raise the age” of juvenile jurisdiction from 16 to 18.

How Did We Get Here?

The law stating that juvenile jurisdiction ends at 16 has been in effect since 1919. The issue of whether to raise the age has been debated many times over the last



©iStockphoto.com/kat19

century. The most recent movement began over ten years ago, when advocates, attorneys, and legislators joined a broader national discussion on juvenile jurisdiction. The United States Supreme Court determined in several landmark decisions that, for developmental reasons, adolescents should not be held as culpable as adults, and therefore not be subject to the death penalty or life in prison without considering the possibility for parole. Prompted by this shift in legal philosophy, there were several state studies of the issue. Most recently the North Carolina Commission on the Administration of Law and Justice studied and supported the change. The General Assembly considered several versions of the change in juvenile jurisdiction before settling on the proposal found in the budget, Senate Bill 257, sometimes referred to as the Juvenile Justice Reinvestment Act.

What are the Main Features of the New Law?

Jurisdiction—The foundational change in the law is that all 16 and 17-year-olds charged with a criminal offense will initially be processed in juvenile delinquency court. This will occur regardless of the severity of the charge. The only offenses that will be excluded for this category of youth are motor vehicle offenses (although see below further discussion on this exclusion). The law will be in effect for offenses committed on or after December 1, 2019. If a juvenile has been previously convicted of any criminal or motor vehicle offense prior to that date, the juvenile will be prosecuted as an adult.

Currently, for 13, 14, and 15-year-olds, the court must make two different findings and hold separate hearings (probable cause and transfer) to determine whether a juvenile should be transferred to adult criminal

court (except for the charge of first degree murder, for which the court must automatically transfer the case if probable cause is found). For 16 and 17-year-olds charged with a Class A, B1, B2, C, D, E, F, or G felony, there will be a new transfer process. Upon a finding of probable cause, the court must transfer these juveniles to adult criminal court. In the alternative, the prosecutor may seek an indictment from the grand jury, and upon such finding may present it to the juvenile court for transfer to adult criminal court.

In addition to the change in the ages of initial jurisdiction, the new law also sets parameters for court supervision for 16 and 17-year-olds. For 16-year-olds, court supervision ends at age 19, and for 17-year-olds, age 20. These same age parameters also apply to juveniles committed to a youth development center.

Victim's Rights—Under the current law, if a juvenile court counselor determines not to file a complaint (an accusation of a crime perpetrated) as a formal petition, the “complainant” may appeal that decision to the prosecutor. In some circumstances, the “complainant” and the victim may not be the same person, so this statute allows alleged victims to appeal the decision not to file a complaint. In addition, the new law directs the Division of Adult Corrections and Juvenile Justice (DACJJ) to create a system to provide information to alleged victims and complainants on the status of their cases.

Law Enforcement Access—Juvenile information is kept under strict confidentiality. However, under the new provisions, juvenile court counselors must now record consultations with law enforcement that did not result in the filing of a complaint. Additionally, in an effort to assist law enforcement at the time of investigation, the court counselor shall share, upon request of law enforcement, information from the court counselor’s record related to a juvenile’s record of delinquency or prior consultations with law enforcement.

JWise Juvenile Attorney Access—JWise is the court system’s database to help manage and provide collected information for cases in child welfare and juvenile delinquency court. Access to information in this database in delinquency court had been limited to clerks and judges. However, the new law now provides that both juvenile defense

counsel and prosecutors will have read-only access to delinquency information that should assist in streamlining the court process. Attorney access was implemented July 1, 2018.

School Justice Partnerships—Recognizing the increase in school-based offenses over recent years, the legislature provided that the director of the Administrative Office of the Courts (AOC) shall have the authority to “prescribe policies and procedures” for chief district court judges to help form what are known as “school-justice partnerships.” These partnerships are voluntary agreements among several stakeholders, including local courts, schools, and law enforcement, to create policies that provide for alternatives to criminalizing minor disciplinary school behavior.

Other Features—The new law creates a gang enhancement punishment, similar to an enhancement provided in the adult criminal statutes. The enhancement provides for a disposition level one higher than allowed by law if the juvenile is found to be involved in a gang and the offense occurred in a gang-related incident. DACJJ is to prepare guidelines for determining gang enhancement at the intake stage. Additionally, the law created the Juvenile Jurisdiction Advisory Committee (see below).

What's Next with Raise the Age?

As part of the Juvenile Justice Reinvestment Act, the General Assembly created the Juvenile Jurisdiction Advisory Committee (JJAC), comprised of 21 stakeholders and juvenile justice experts. The JJAC is to consider what issues will arise as a result of the implementation of the raise the age legislation. The issues can be related to resources, policy, or other aspects of the system that may need to be considered or adjusted for successful implementation. The JJAC has met several times and has created three subcommittees: Legislative and Legal Issues, Housing of Transferred Juveniles, and School Justice Partnerships. In January 2019 the JJAC submitted its first annual report to the General Assembly, outlining fiscal, legislative, and policy recommendations. The JJAC will meet until 2023 to continue to assist with implementation.

Find Out More

Check out our website, ncjuveniledefender.com. If you click on “Information for Defenders,” you’ll see a subheading for



**THE MEREDITH
PARALEGAL
PROGRAM**

Choose the only American Bar Association approved program in the Triangle.

At Meredith, we've been preparing women and men to excel in the legal profession for more than 30 years. You'll conduct research and analyze cases. Gain experience through a pro bono clinic. Build a network in the legal community. And receive personalized job placement assistance to help you find just the right position.

Get started today.
meredith.edu/legal

16-218

**MEREDITH
COLLEGE**

“Raise the Age.” There you’ll find the law, links, and other tools to help attorneys understand the changes and apply strategies to provide quality representation. For more information about this issue or anything related to juvenile defense, please contact our office. ■

Eric J. Zogry has been the North Carolina state juvenile defender since 2005. The Office of the Juvenile Defender provides services and support to defense attorneys, evaluates the current system of representation and makes recommendations as needed, elevates the stature of juvenile delinquency representation, and works with other juvenile justice actors to promote positive change in the juvenile justice system.

Judges Under Attack—The Judicial Response Committee to the Rescue

BY JUDGE ROBERT H. EDMUNDS JR., JUDGE JOHN C. MARTIN, JUDGE S. GERALD ARNOLD,
AND LISA M. SHEPPARD

There can be no question that an independent and honorable judiciary is a cornerstone of a free society and essential to the existence of the democratic form of government. History teaches us that the judiciary must adhere to high ethical standards to maintain the public's confidence, and that the courts must be free from interference by the



©iStockphoto.com/DNY59

legislative and executive branches, owing allegiance only to the constitutions and laws of the governments they serve.

Thus, it is little wonder that history also teaches us that those who would seek to undermine a democracy and pursue power for themselves often begin the process by attacking the courts, trying to shake the public's confidence in the judiciary. In modern times, this process has been exacerbated by the trend toward resolving divisive issues in the courts rather than through public debate. As a result, judges and

courts have come under attack from the media and dissident litigants who are critical of decisions that affect almost every aspect of daily life.

Such attacks have been especially evident in recent years, no doubt intensified by the evolution of the news media, from considered and measured reporting to sensationalism and instant electronic postings and broadcasts; irresponsible, inaccurate, and

misleading postings on social media; judicial elections funded by special interests; polarizing criticisms of specific rulings by political activists on either or both ends of the political spectrum; and personal attacks on jurists who have rendered legally correct but socially unpopular decisions.

Yet, when such inaccuracies, unfounded criticisms, intentional misrepresentations, and outright mocking of the courts have

occurred, the courts and individual judges are constrained by ethical rules from responding to the attacks or commenting publicly about pending decisions and legal issues. For that reason, the organized bar has come to realize that public education about the critical role of the courts is essential, and that when courts and judges are unfairly and unjustly attacked, professionalism requires that leaders of the bar should rise to their public defense.

The detrimental effects of unfair and unjust criticism of the courts and judges have been recognized nationally by the American Bar Association and in North Carolina. Some years ago, then-Chief Justice Burley Mitchell had the foresight to create an informal committee of former judges and leaders of the legal community in North Carolina to respond to unfair attacks on judges and the judiciary. Today, that committee has been formalized as the Judicial Response Committee of the Chief Justice's Commission on Professionalism. The Judicial Response Committee is composed of former Supreme Court Justice Bob Edmunds as chair, former Court of Appeals Chief Judge Gerald Arnold, former Court of Appeals Chief Judge John Martin, and Lisa M. Sheppard, executive director of the Chief Justice's Committee on Professionalism.

The committee's charter states that its role is to consider appropriate actions in response "to specific media content directed at NC judges attacking them for performing their judicial duties," when asked by the targeted judge. In other words, the committee is designed to respond to op-ed columns, editorials, "news" reports, advertisements, tweets, etc. that, intentionally or not, misrepresent the responsibilities of a judge or the role of the judiciary, when doing so would be appropriate in the circumstances and would promote the public's trust and confidence in the judicial system.

An example of the committee's work arose when a newspaper columnist ran two articles sharply criticizing a judge for clearing her courtroom when a notorious juvenile matter was heard. Even though the closing of the courtroom was mandated by statute, the articles ignored the law while accusing the judge of grandstanding and deliberately subverting the public's right to open courts. The writer appeared indifferent to the explanation for the judge's actions, so the committee contacted the writer's editor

to point out that the judge was acting in accordance with law.

On the other hand, the committee recognizes the First Amendment's guarantee of free speech and does not respond to media materials that, while critical, do not distort the judge's role or responsibilities. An editorial that blisters a judge for his or her decision or opinion on the grounds that the reasoning is suspect or even that the opinion or decision was "really" based on the judge's registration will not generate a response from the committee. Such an editorial may be as lamentable as it is shocking, but it is protected by the Constitution. As demonstrated on a daily basis by (fill in your choice of newspaper here), editors are allowed to be wrong.

Moreover, judges are public figures and thus subject to greater scrutiny than are private citizens. While most judges understand the need to be thick skinned, especially in an election year or when a controversial case is before the court, sharp criticism can come as an unwelcome surprise. The committee has the responsibility of telling upset judges that, while the critical article may be unfair and their distress understandable, the article is not an attack for taking judicial actions required by law.

This distinction between statements of opinion and misstatements of fact is critical. A judge or justice who is subjected to media criticism because of unfair and unjustified editorial bias, or who is attacked during an election season because of a decision on a controversial topic, will naturally wonder who will spring to their defense. As long as the criticism does not misrepresent the judge's job or the legal constraints under which the judge operates, the committee won't respond.

The committee's work in a particular case begins with a complaint filed (usually, but not necessarily, by the affected judge) with Lisa Sheppard at the Commission on Professionalism. She will contact the other members of the committee, who will promptly evaluate the complaint and decide whether the material fits within the committee's charge. If so, the committee will consider the appropriate response, if any.

When the committee determines that a response is indicated in a particular situation, the nature of the response can vary. For traditional media, a personal touch may be the most effective remedy. With that in

mind, in February 2018 the committee met with newspaper editors who were attending a convention in Raleigh. Media attorneys John Bussian, Amanda Martin, and Mark Prak, who are familiar with the viewpoints of both judges and editors, and who understand the importance of the committee's work, were instrumental in arranging the meeting.

Committee members, joined by former Chief Justice Mitchell, explained the response process to the editors in attendance, adding that the members are available for consultation before an article or column is published. The editors were interested in the committee's function and generally expressed a willingness to listen if a member of the committee should call in response to a publication. The fact that the caller would be speaking on behalf of the Chief Justice's Commission may have helped.

Of course, newspapers are not the only pertinent medium. The committee is expected to respond to content in any format, whether in traditional print, broadcast, or social media. Where the material in a medium is filtered through an editor, the committee can quickly determine who to contact to discuss a questionable report. Social media presents a less tractable problem because anyone with an account can post, like, or forward an item without any controls other than those imposed by the host site, which may be physically located in a different hemisphere. The committee will always be a work in progress as long as the definition of "media" continues to expand.

Several chief justices have supported the committee's work. Among public figures, judges are uniquely vulnerable in their inability to strike back when hit below the belt. All lawyers, as officers of the court, should be willing to speak up in support of our judiciary. The committee is an element—but only an element—of the defense of our judges. Every lawyer reading this article is part of the team. ■

Judge Robert Edmunds, a former justice on the North Carolina Supreme Court, serves as chair of the Judicial Response Committee. Judge Gerald Arnold and Judge John Martin both served as chief judge on the North Carolina Court of Appeals. Lisa Sheppard is the executive director of the Chief Justice's Committee on Professionalism.

The Gauntlet to Political Asylum

BY HELEN PARSONAGE

A ccording to the 2017 Juvenile Justice

Annual Report, there were 2,740 children under the age of 18 in detention centers across North Carolina, of which only 10%



©iStockphoto.com/coffeekei

were aged 11 or 12—the youngest ages listed. There were no children under the age of 13 in Youth Development Centers, which are reserved for those juveniles who have been adjudicated for violent or serious offenses or who have a lengthy delinquency history, and which only held 187 13-17-year-olds at the time of the report.

In contrast, the Department of Homeland Security detains children as young as 12 months old in a string of detention centers along the southern border. Currently about 13,000 are detained. Some of those children are detained with their mothers in Dilley, Texas.

Dilley is a small town, just over an hour southwest of San Antonio and about the same from the US Mexico border. Its economy is based on watermelons and now shale oil. There are nodding donkeys and a lot of

unemployment. It has a population of roughly 4,000 people, and it houses one of the largest immigration detention centers in the country. The facility, designed to hold up to 2,400 women and children, was opened by the Department of Homeland Security in 2014 to house families seeking asylum at the border. It was christened the South Texas Family Residential Center, a name that conjures up something more akin to a homeless shelter than a jail, but a jail it is. It is run by Core Civic Corporation, a private prison

company which also runs the Stewart Detention Center in Georgia and is the object of several lawsuits alleging abuse and forced labor violations.¹

One September morning I drove the 70 or so miles from San Antonio to Dilley to spend a week as a volunteer lawyer, providing legal information and preparation for the women and children in advance of their interviews with asylum officers. Those interviews would determine if they could stay and pursue asylum in the immigration courts, or

if they would be sent back to Honduras, El Salvador, or Guatemala, where they had fled horrific violence. I had read accounts from colleagues who had been before me, and I'd spent countless hours in North Carolina's jails visiting criminal defendants, so I felt prepared. I wasn't.

The town itself is small and without a lot of character. A couple of convenience stores and gas stations sit alongside a couple of motels. The two biggest features are the state prison, and next door to it the Family Residential Center (FRC). FRC is a sprawling mass of beige portacabin-type buildings standing on an expanse of white gravel that is blindingly white and incredibly hot. Prison fencing and barbed wire surround the whole compound, making it abundantly clear that this is a prison.

Volunteers enter through tight security in one of the buildings and are admitted into what amounts to a double-wide. It's like being in a mobile classroom, with round tables surrounded by rings of plastic chairs, and individual rooms along the side for client meetings. Unlike the 110 degrees outside, in here it is freezing and I'm very glad I listened to the advice to bring a sweater. Looking out through the windows, the only sign that there are children here somewhere is a long line of strollers parked outside one of the huts.

After a few moments, the doors are opened to let in a large group of detainees—mostly women and preschool- to elementary-school aged children, with a small number of teens. The uniform is jeans, sneakers, and a rainbow of colored t-shirts. I have seen many adults in prison uniform—seeing little ones in prison uniform behind barbed wire is a sight I will not soon forget.

Each morning we start with a group session to do an introduction to the process, but quickly we are into the small rooms to start preparing clients for interviews with asylum officers and immigration judges. Over and over, women tell me gut-wrenching stories of rape, murder, threats, and violence. My job is to take that raw material and help the women express themselves in a way that will get them past a credible fear interview (CFI). 8 U.S.C. § 1158(a) allows any noncitizen inside the US (regardless of whether they entered legally or not) to apply for asylum based on either past persecution or a well-founded fear of future persecution. For those who are intercepted at the border and subject to expedited removal, the first step is to pass a CFI. Passing

this first hurdle requires showing a significant possibility that the person will establish eligibility for asylum at a later hearing, not that the person is eligible for asylum. Since volunteer attorneys began helping on the ground in Dilley, more than 90% of the women passed the initial interview and were able to go forward with a full-blown asylum hearing.

For many of the women in Dilley, the door to asylum was opened in 2014, when the Board of Immigration Appeals decided *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), in which a claim for asylum on the basis of domestic violence was recognized for the first time. After years of litigation, women who could show that they were victims of domestic violence in a country where such violence was either expressly or tacitly condoned by the government, or where the government proved ineffective (or ineffectual) to prevent or punish it, could finally seek the protection of the United States. I spent a lot of the time preparing clients for claims based on domestic abuse.

Most of the interviews had to be conducted with small children in the room. Although there is a playroom of sorts in the hut, most of the children are too anxious to be separated from mom. This poses problems as women recount details of domestic and sexual abuse in front of their own children, many of whom are old enough to understand what is said, and some of whom have witnessed or experienced the same abuse. The women shiver, not just from the memories, but from the cold. In one interview I was able to open the window just an inch or two to let in some of the sweltering heat, but I was later told not to. After the first day, I took in a shawl for my clients to wear to keep warm—but they had to take them off before the guards saw them. It was one of the many rules that seemed heartless. Another forbade us from giving crayons to children to keep them entertained, in case they wrote on the walls.

Over the course of a day, I saw up to 12 individual cases, one after the other. What struck me most was the power and resilience of these mothers. Most had fled from firsthand experiences of violence I could barely imagine, many with small children in tow. They had traveled hundreds of miles to reach safety. Yet, as they shared these personal accounts with me, they were at the same time feeding their children and wiping their faces (there were a lot of coughs and colds), and doing those mundane daily things all moms

do. It was humbling. Girls as young as 12 and 13 told me about gang members who tried to abduct them into a life of domestic and sexual servitude as soon as they became teens. These women and girls were survivors.

Five 12-hour days later, I was exhausted and moved by the experience. On my last day, during a rare quiet moment, I wandered towards the small playroom at the back of the hut. There was a television and a small stack of DVDs. This time there were one or two children staring raptly at the screen. They were watching *Frozen*, as so many millions of American children do. I heard the familiar strains of "Let It Go," but this time dubbed into Spanish. I learned that the Spanish version of "Let It Go" is "Libre Soy." That literally means "I Am Free." The detention center guard sat expressionless in the playroom, apparently impervious to the irony.

Epilogue: Since I visited Dilley, the attorney general has sought to overrule *Matter of A-R-C-G-*. In *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), he stated: "The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim," and "[g]enerally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum." Following *Matter of A-B-*, the attorney general issued guidance to asylum officers conducting CFIs that, "claims based on membership in a putative particular social group defined by the members' vulnerability to harm of domestic violence or gang violence committed by non-government actors will not establish the basis for asylum, refugee status, or a credible or reasonable fear of persecution."² This guidance was enjoined by an order of the United States District Court for the District of Columbia in *Grace v. Whitaker*, 1:18-cv-01853-EGS on December 19, 2018.

Litigation in *Matter of A-B-* and in *Grace v. Whitaker* is ongoing. In the meantime, the FDC in Dilley, Texas, continues to detain toddlers and small children. ■

Helen Parsonage, partner at the law firm of Elliot Morgan Parsonage in Winston-Salem, is certified as a specialist in immigration law and state/federal criminal law by the North Carolina State Bar Board of Legal Specialization.

CONTINUED ON PAGE 22

Amendments to the North Carolina Rules of Appellate Procedure

BY JUDGE ROBERT H. EDMUNDS JR.

On December 19, 2018, the Supreme Court of North Carolina issued an order amending the North Carolina Rules of Appellate Procedure. These amendments became effective on January 1, 2019, and apply to all appeals currently pending in the appellate courts, no matter when the notice of appeal was filed.

Many of the amendments focus on updates to the Appellate Rules necessitated by the January 2019 statutory changes to appellate jurisdiction in appeals of cases involving termination of parental rights. However, the amendments also streamline and simplify the procedural rules applicable to other Rule 3.1 appeals.

Other amendments apply to all appeals, including: (1) consolidating privacy and confidentiality provisions within a single rule, (2) modifying the procedures and scope of Appeal Information Statements, (3) reducing the number of copies to be filed, and (4) modifying the method for calculating an appellant's briefing deadline in direct appeals.

The changes are found in Appellate Rules 3, 3.1, 4, 9, 11, 12, 13, 18, 26, 28, 30, 37, 41, 42, and Appendices A, B, and D. While this memorandum describes the major changes, practitioners should review the red-line version that shows all the amendments.

1. Qualifying Juvenile Appeals—Appellate Rule 3.1

In this revision, Appellate Rule 3.1 has

been wholly rewritten to address qualifying juvenile appeals filed under N.C.G.S. § 7B-1001 and similar cases “certified for review by the appellate courts in which the right to appeal under this statute has been lost.”

The prior version of Rule 3.1 addressed only qualifying juvenile cases that were appealed directly to the court of appeals. As of January 2019, a subset of qualifying juvenile cases (i.e., Termination of Parental Rights (TPR) cases) are now required to be appealed directly to the Supreme Court from the trial division. Revised Rule 3.1 now provides a unified procedure for qualifying juvenile appeals taken to either appellate court.

Revised Rule 3.1 also streamlines and updates many of the procedures applicable in Rule 3.1 cases. For example, new Rule 3.1(c) modifies the services terms applicable to transcripts in juvenile appeals. When a transcript is ordered for a Rule 3.1 appeal, the court reporter must serve copies of that transcript on all parties to the appeal, not just the party that placed the order. Moreover, transcriptionists in many instances will have a little extra time to deliver Rule 3.1 transcripts.



Photo courtesy of the North Carolina Judicial Branch.

Under the previous version of Rule 3.1, parties who could not reach an agreement regarding the contents of a record on appeal could file separate records on appeal. Under amended Rule 3.1, the settling of the record will follow the procedures applicable to any other appeal, though on an expedited schedule. In other words, parties in Rule 3.1 cases are now required to file a single record on appeal using the tools supplied in Appellate Rule 11 (which can include Rule 11(c) supplements or, in rare instances, requests for judicial settlement).

All documents in Rule 3.1 cases must be filed electronically. Counsel in these cases can no longer file documents by hand-delivery or by mail. The amended rules do not distinguish between Termination of Parental

Rights appeals to the Supreme Court and other Rule 3.1 appeals to the court of appeals. Consequently, the prohibition against e-filing records in the court of appeals has been lifted for Rule 3.1 appeals.

Although several sections of Rule 3.1 provide for expedited deadlines applicable to the parties, the provision in old Rule 3.1 that required the appellate courts to give Rule 3.1 cases “priority” has been removed.

Finally, while old Rule 3.1(b) addressed the protection of a juvenile’s identity, that process has been moved to Rule 42, discussed below.

2. Sealed and Confidential Information—Appellate Rule 42

New Appellate Rule 42 consolidates into one place all the rules addressing privacy and confidentiality on appeal that previously had been scattered throughout the Rules of Appellate Procedure. Several aspects of amended Rule 42 merit mention.

Under Rule 42(b), particular types of appeal should automatically be treated by the parties and by the courts as sealed: (1) qualifying juvenile appeals (including TPR appeals), (2) juvenile delinquency appeals, and (3) any appeal filed pursuant to N.C.G.S. § 7A-27 involving a sexual offense committed against a minor. In fact, both civil and criminal appeals that involve sexual offenses committed against minors are now automatically sealed. When settling the record on appeal, appellate counsel must agree on the pseudonym or initials they will use in appellate filings to identify a covered party and include a stipulation to this agreement in the record on appeal.

In addition, Appellate Rule 42 largely codifies the appellate clerks’ long-standing (though unwritten) preference regarding filing information under seal in the appellate courts. When an item is sealed in the trial tribunal, it remains sealed on appeal. No further order from an appellate court is required. However, the parties must submit a copy of the authority under which the item was sealed below when the sealed item is filed in the appellate division.

In contrast, when an item was not sealed in the trial tribunal or doesn’t fall within a category of matters that are automatically sealed, a party must move for permission to file an item under seal in the appellate division.

Rule 42 also provides details about how parties should label sealed items filed with

the appellate courts.

Finally, Rule 42(e) expands the category of items (“Identification Numbers”) that “must” be excluded or redacted from all filed documents. The prior rule specifically required redaction of social security numbers only. Rule 42(e) expands the list to include driver license numbers, financial account numbers, and tax identification numbers. Even so, when particular identification numbers are “necessary to the disposition of the appeal,” counsel may instead move to seal the document in which the numbers appear.

3. Appeal Information Statements—Appellate Rule 41

Appellate Rule 41, which had previously addressed Appeal Information Statements (AIS) in the court of appeals, has been significantly shortened. Amended Rule 41 now requires that an AIS be filed in appeals to both the court of appeals and the Supreme Court. The AIS must be filed before the appellant’s brief is filed and counsel must use the appellate courts’ electronic filing site to submit an AIS.

4. Only One Copy of Records and Memoranda of Additional Authority Need Be Filed—Appellate Rules 9, 11, 12, 18, and 28

Under the prior version of Appellate Rule 12(c), only one copy of the printed record on appeal was filed, but other record filings (such as documentary exhibits and various record supplements) had to be filed in triplicate. The 2018 amendments to Appellate Rule 12 (along with corresponding changes to Rules 9(b)(5), 9(d)(2), 11(c), and 18(d)) now allow parties to file a single copy of each component of the record with the appellate courts.

Similarly, amended Appellate Rule 28(g) requires a party to file only a single copy of a Memorandum of Additional Authority.

5. New Method for Calculating Appellant’s Opening Brief Deadline—Appellate Rule 13

Amended Appellate Rule 13, which governs the filing and service of briefs, has been changed to provide that an appellant’s brief must be filed within 30 days (60 days in capital cases) after the printed record is filed. Under the old version of this rule, the 30-day period was triggered by the clerk’s mailing of



the printed record to the parties.

6. Electronic Filings Now Mandatory for More Documents

Prior to 2018, electronic filing in the appellate courts was optional. In the amended rules, electronic filing in the appellate courts was made mandatory for several types of documents. An attorney who might be involved in an appeal should register for e-filing privileges in the appellate division long before an appeal begins. ■

Judge Robert Edmunds, a former justice on the North Carolina Supreme Court, is chair of the North Carolina Bar Association's Appellate Rules Committee.

The Heart of the Matter

BY PETER F. FROST

One of Graham Greene's most enduring novels explores a man's fear of judgment, in a religious sense, as he believes he has committed mortal sin. Set in an anonymous equatorial colonial land, it concerns itself chiefly with the protagonist's attempt to come to terms with what he believes will be his fate of being eternally damned for his sin—heavy stuff, to say the least. And, I would argue, indisputably at the heart of timeless human questions of good, evil, and moral judgment.

My recent retirement from the Justice Department in Washington for different pastures in North Carolina caused me to reflect on my 30-plus years of practicing law, and on Graham Greene's focus on morality and propriety. His title, in this context, seems to me to capture all that I and my many colleagues have done—have been privileged to do—in our own society. I don't mean that we, as trial lawyers, are eternally damned for our sins...far from it. Rather, that we as attorneys and individuals of all stripes have been privileged to toil away at the epicenter, the very heart, of all that makes western, and particularly American, culture ultimately worthwhile, namely our constitutional system of courts.

In recent years it has become fashionable to speak of the "rule of law," particularly when the speaker is unhappy with something a politician has done (or not done). Usually the speaker is complaining that his or her opponent is attempting to escape judgment for their actions, or taking action that is inconsistent with one alleged "rule of law" or another. These protests, almost always implicitly or explicitly political, are also almost always untethered to anything as inconven-

ient as a need for proof. It is only when a matter reaches a courtroom that the rubber, shall we say, must actually meet the road.

In court there are rules, to go along with the popular concept of the "rule of law," and litigants and their counsel are inescapably bound by them. Known as the Rules of Evidence, these little gems are well and carefully designed to separate the probative wheat from the prejudicial chaff. They are designed to ensure that gossip, conjecture, speculation (to a degree), and otherwise unreliable statements and documents are excluded from consideration by the finder of fact.

These rules serve the extremely admirable purpose of ensuring objectivity and fairness in our judicial system, tenets that must be preserved and fostered if courts are to perform their function in society, namely resolving disputes so that citizens do not resort to what is euphemistically known as "self-help," i.e., fighting. This resolution of civil disputes, whether contract or tort, and enforcement of criminal statutes, are key to an orderly society. The founders most wisely lifted our own common law system lock, stock, and two smoking barrels from Great Britain, bringing with it an already well-developed record of civil decisions and, perhaps most importantly, the presumption of innocence in criminal matters.

We, as lawyers, are the keepers of those judicial flames. In perhaps no other profession does one get to participate, so personally and provocatively, every single day in the system in which all of our society's bases converge—where the Constitution, in all its infinite wisdom and glory, informs and directs all that occurs. Right to trial by jury? Sixth Amendment. Right to remain free from unreasonable searches and seizures? Fourth Amendment. Right not to incriminate one's self? Fifth Amendment. Double jeopardy?

Seventh Amendment. No cruel or unusual punishment? Eighth Amendment. Habeas corpus? Article I. And these are only the most well-known and glaringly obvious references.

The fact is that our entire federal judicial and legislative system is designed by the founders within the pages of our Constitution, and state systems are almost universally based on those same provisions. And, as litigators, we get to work with them every single day. We toil at the intersection of human actions, societal expectations, and our citizenry's best attempts to oversee the implementation of the founders' vision: the courtroom.

It is a singular privilege. And one law students and lawyers alike would do well to keep in mind, regardless of how difficult, unfair, or personally taxing they may sometimes think their chosen profession or course of study may be. You work, or seek to work, at the heart of the matter. And you can make all the difference. Make it matter. ■

Peter Frost recently retired from a 25 year career as a civil trial lawyer at the Department of Justice in Washington, DC. He has since relocated to the Outer Banks and hopes to continue his career there.

Gauntlet to Political Asylum (cont.)

Endnotes

1. See e.g. *Barrientos v. CoreCivic, Inc.*, U.S.D.C. (M.D. Ga.), Case No. 4:18-cv-00070-CDL; *Ndambi, et al. v. CoreCivic*, Case No.18-cv-3521, US District Court, District of Maryland.
2. Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with *Matter of A-B-*, PM-602-0162, July 11, 2018, bit.ly/2unSV1v.

Grievance Committee and DHC Actions

NOTE: More than 29,000 people are eligible to practice law in North Carolina. Some share the same or similar names. All discipline reports may be checked on the State Bar's website at ncbar.gov/dhccorders.

Disbarments

Charles K. Blackmon of Greensboro surrendered his law license and was disbarred by the State Bar Council on January 18, 2019. Blackmon admitted that he misappropriated and converted to his own use funds totaling at least \$4,250 to which his law firm employer was entitled.

Andrew Craig Jackson Jr. of West Jefferson surrendered his law license and was disbarred by the Wake County Superior Court on November 1, 2018. Jackson installed a video camera in the bathroom of his law office for the purpose of secretly recording individuals using the bathroom without their knowledge or consent.

Suspensions & Stayed Suspensions

Jeffrey Warren Ellingworth of Syracuse, New York, and formerly of Charlotte, did not inform clients that his license was suspended, engaged in the unauthorized practice of law, neglected multiple clients, did not participate in mandatory fee dispute resolution, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and did not respond to the Grievance Committee. The Disciplinary Hearing Commission suspended him for four years. After serving two years of the suspension, Ellingworth will be eligible to apply for a stay of the remaining two years upon showing compliance with numerous conditions.

The DHC suspended former Superior Court Judge **Arnold O. Jones** of Goldsboro for five years. Jones was convicted of the felony of promising and paying gratuities to a public official in violation of 18 U.S.C. 201(c)(1)(A). He attempted to induce a law enforcement officer to unlawfully obtain his wife's text messages.

Tania Leon of Charlotte forged her hus-

band's endorsement on a check to take funds to which she was not entitled from their joint investment account and filed a complaint against her husband for money owed in which she made false statements and asserted frivolous positions. The DHC suspended her for two years. The suspension is stayed for two years upon Leon's compliance with numerous conditions.

Hubert N. Rogers III of Lumberton violated multiple trust account rules. The DHC suspended him for two years. The suspension is stayed for four years upon Rogers' compliance with numerous conditions.

Interim Suspensions

The chair of the DHC entered an order of interim suspension of the law license of **Steven P. MacGilvray** of Raleigh after MacGilvray pled guilty to misdemeanor larceny.

Reprimands

The Grievance Committee reprimanded **Alan Briones** of Raleigh. Briones represented a client in a time-sensitive civil claim. He delayed and neglected the case. He ultimately filed a complaint containing significant errors. When the client pointed out the errors, Briones said he would file an amended complaint and later said he had filed it when he had not. Briones did not respond timely to the Grievance Committee and, when he did respond, falsely represented that the client owed additional attorney's fees and was responsible for the lack of communication.

The Grievance Committee reprimanded **James A. Clark** of Raleigh. When a lawyer left the interstate law firm with which Clark was associated, Clark took over representation of a client without explaining her right to remain with the firm or seek representation elsewhere. Clark did not timely pursue the client's appeal. When the firm's interstate law firm registration expired, Respondent assisted the firm in the unauthorized practice of law.

Rocky Mount lawyer **Thomas J. Moore II** was reprimanded by the Grievance Committee for failing to file three civil com-

plaints before the claims were barred by applicable statutes of limitation.

The Grievance Committee reprimanded Charlotte lawyer **Allen Torres** for making a false representation in response to a request for production of documents.

Alton Williams of Raleigh was reprimanded by the Grievance Committee. Williams did not tell his client that the client was called and failed, and did not diligently handle his client's traffic case. Williams also neglected a client's personal injury case by not communicating with the subrogation claim holder and the client about funds held in his trust account.

Reinstatements from Disability Inactive Status

Elisabeth Murray-Obertein of Morganton petitioned to be reinstated from disability inactive status to active status. The DHC entered an order on December 6, 2018, that will reinstate Murray-Obertein to active status if she satisfies enumerated conditions.

Reinstatements from Disbarment

Shawn David Clark of Hickory petitioned for reinstatement from disbarment. He was disbarred in 2013 for having sex with a client, making false statements to a tribunal and to the Grievance Committee, suborning a witness to give false testimony, committing criminal acts including communicating threats and obstruction of justice, engaging in conduct involving deceit and misrepresentation, and engaging in a conflict of interest. The State Bar moved to dismiss the petition because it was filed before Clark was eligible to apply for reinstatement. Clark withdrew the petition but indicated that he intends to refile.

Orders to Show Cause

The Wake County Superior Court held **Charles L. Morgan Jr.** of Charlotte in contempt and censured him pursuant to N.C.

CONTINUED ON PAGE 45

A Client Threatens Suicide—What Can You Do?

BY SUZANNE LEVER

One of the most difficult situations a lawyer can face is a client who is threatening suicide. I have received calls from frantic lawyers concerned about their client's well-being, but also concerned about their responsibilities under the Rules of Professional Conduct. Some lawyers believe they have an affirmative duty under the rules to try to prevent the suicide, while others believe the rules prohibit them from taking any preventative action. Neither of these assumptions is correct.

Lawyers often feel unqualified to appropriately handle the situation and understandably want to seek professional assistance in dealing with the client in crisis. Lawyers seeking ethics guidance are often concerned that revealing the client's suicidal intent to others will violate the duty of confidentiality under Rule 1.6. Without a doubt, the protection of client confidences is one of the most significant responsibilities imposed on a lawyer. Rule 1.6(a) prohibits a lawyer from revealing information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized, or the disclosure is permitted by Rule 1.6(b). Ideally, the lawyer will consult with the client and obtain consent to disclose the client's intent to a third party. If the lawyer is unable to obtain the client's consent, the question becomes whether the Rules of Professional Conduct mandate or permit disclosure without the client's consent.

There are two provisions in the Rules of Professional Conduct that may permit a lawyer to disclose a client's threats of suicide to third parties. Rule 1.6(b)(3) provides that a lawyer may reveal information otherwise protected from disclosure to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or bodily harm. Rule 1.14(b) allows disclosure of confidential information when the lawyer reasonably believes that a client's suicide threat

is credible. (Disclosures made pursuant to Rule 1.14 are considered "impliedly authorized" under Rule 1.6(a)). While these two rules allow the lawyer to make a disclosure to prevent the client from harming himself, they do not require it. The remainder of this article discusses what a lawyer may do in this scenario, not what he or she must do.

Both Rule 1.6(b)(3) and Rule 1.14(b) allude to a lawyer's "reasonable belief" that the client intends to harm himself. Lawyers often struggle with assessing the credibility of the client's threat. The Restatement (Third) of the Law Governing Lawyers § 66 (2000) has recognized various factors to consider in deciding whether the disclosure of confidential information is necessary to prevent reasonably certain death or substantial bodily harm, including the following:

1. The degree to which it appears likely that the threatened death or serious bodily harm will actually result in the absence of disclosure;
2. The irreversibility of the consequences once the act has taken place;
3. The lawyer's prior course of dealing with the client; and
4. The extent of adverse effect on the client that might result from disclosure contemplated by the lawyer.

Cathy Killian, one of the clinical directors for the North Carolina State Bar's Lawyer Assistance Program, offers the following questions as a way of assessing the situation: Is there suicidal ideation only, or actual intent? If there is intent, is there an immediate risk? If there is an immediate risk, do they have a plan? If they have a plan, do they have the means to carry out this plan and is this plan truly lethal or just self-injurious?

A lawyer may consult a mental health professional to help evaluate the credibility of a threat of suicide. However, the disclosure to the mental health professional should be no greater than necessary to obtain an opinion.

Rule 1.14, cmt. [6]. The lawyer may want to contact his own physician, a knowledgeable acquaintance, or a crisis hotline. The National Suicide Prevention Lifeline is a free resource not only for people who are in crisis themselves, but also for those who are concerned about someone else. A list of suicide warning signs and risk factors is posted on the Lifeline's website (suicidepreventionlifeline.org/how-we-can-all-prevent-suicide). A lawyer may also contact the Lifeline directly for assistance at 800-273-8255.

If the lawyer determines that the client's threat is credible, the lawyer may take "reasonably necessary" preventative measures. What particular measures are reasonably necessary depends upon the circumstances and the facts known to the lawyer.

Reasonably preventative measures may include counseling the client against suicide and encouraging the client to get help. In some scenarios, the lawyer may determine that reasonably necessary preventative measures include disclosing confidential client information to an individual or entity that has the ability to protect the client. Comment [5] to Rule 1.14 suggests contacting family members, support groups, professional services, or adult-protective agencies. As with the consultation to evaluate the credibility of the client's threat, the disclosure of information to the individual or entity should be no more extensive than is reasonably necessary to prevent the harm to the client. In addition, "reasonably necessary" measures should be the least restrictive actions under the circumstances.

Ms. Killian recommends that lawyers be proactive in preparing to deal with clients in crisis, in addition to the basic familiarization with the Rules of Professional Conduct. One suggestion is for lawyers to have the contact information for the mobile crisis unit in their area or other appropriate

CONTINUED ON PAGE 32

Mark the RealEstate Guy

BY LEANOR BAILEY HODGE, TRUST ACCOUNT COMPLIANCE COUNSEL

For the lawyer, it began, as usual, with a telephone call to her office answered by a paralegal. "Hello?" "Hi, I am calling to check on the status of the wire you sent for the proceeds from the closing your office conducted two days ago." This exchange, common and innocent enough, did not yet expose the extent of the problem at hand. The communication, in typical fashion, continued with the paralegal obtaining additional information from the caller. "What was the address of the property that was the subject of the closing transaction?" "And the name of the buyer?...Your name?" As one would reasonably expect, the caller was then placed on hold while the paralegal, let's call him Lionel, conducted a brief investigation. Lionel's investigation began by finding and reviewing the physical closing transaction file. After a brief examination of the documents in the file, Lionel was slightly relieved to locate a copy of the wire transfer confirmation sheet. However, the story did not end there.

Confidently and with the wire transfer confirmation sheet in hand, Lionel returned to the caller prepared to provide proof that the law firm properly disbursed and transmitted the closing proceeds. However, Lionel's confidence was short lived. As Lionel and the seller continued their discussion, it soon became evident that the account to which the funds were wired was not the account of the seller. Although this was not ideal, Lionel did not panic...yet. Instead, he continued his investigation: "Would you please give me the wire information again...perhaps there was a typographical error on our end when submitting the wire instructions." The seller duly provided the requested information and Lionel dutifully listened and recorded each digit. He repeated the number to the seller, who confirmed that the number Lionel recorded was the same as that which the seller provided. Lionel then compared the number he wrote down to the number on the wire confirmation sheet he obtained from the file.

The numbers were definitely not the same and the discrepancy was certainly NOT the result of a clerical error as he had hoped. In that moment, Lionel's heart sank from his chest to his toes...\$348,636...this is going to be a major issue. Lionel decided that it was time to inform Laurel, the lawyer who handled this closing. Accordingly, Lionel informed the seller that he had not been able to determine the cause of the issue and informed her that Laurel would follow up with her later in the day. The seller, who was concerned when she placed the call, reluctantly agreed to await a call from Laurel with further information, but was now beyond worried because she could hear the angst in Lionel's voice.

After Lionel disconnected from the call with the seller, he thought to himself: "This is DEFINITELY a problem," and proceeded directly to Stacy's desk. Stacy was the paralegal who assisted Laurel with this transaction. When Lionel approached Stacy, her attention and work space was dedicated to four closing transactions scheduled to occur the following day. Lionel nervously approached Stacy at her desk: "Hey...can you tell me anything about one of the closings you did a couple of days ago? I just got off the phone with the seller and she says they have not yet received the sales proceeds." Now no longer thinking about the events of the next day, Stacy's full focus and attention shifted to Lionel. "Did you cross-check with the seller to confirm that none of the numbers was transposed on the paperwork used to initiate the wire?" she asked. Stacy had assisted with three transactions that day, all of which involved wiring of funds. Lionel confirmed that he performed such a check and informed Stacy of his opinion that the issue was not caused by a typing mistake—the funds were wired to a different account using wiring instructions that were completely different than those provided by the seller. Stacy was concerned. "Which file was it?" she asked hesitantly. Lionel provided

the names of the parties and the address location. That's when Stacy remembered: the real estate broker had emailed her an hour before the closing with a last-minute change to the wire instructions. Stacy was certain he would

CONTINUED ON PAGE 31

Escrow Consulting & Accounting, LLC

Protecting Your Trust Accounts

**Are Your Trust Accounts in
Accordance with Rule 1.15?**

Protecting your business by...

- Confirming Monthly and Quarterly Reconciliations Meet NC Bar Rules

- Validating Client Trust Ledgers Are Fully Funded

- Ensuring Trust Accounts Are in Compliance and Making Necessary Ledger Corrections

- Services vary from a one-time review of client prepared reports to EOA reconciling the trust accounts on a monthly basis.



Dawn Cash-Salau

252.531.4241

TrustComplianceNC.com

© 20120 years of professional excellence in legal accounting

Workaholics: An Honorable Addiction

BY KAY GILLEY

"I've achieved every goal I ever set, and I still feel empty."

The words vary. The message is the same. Uttered with defeat and resignation, they lack the exhilaration promised from accomplished goals. The executives and professionals I work with share their desperation with me. On a treadmill through life, they race faster and faster on a trip to nowhere. It doesn't seem to matter that achieving each goal brings bittersweet dissatisfaction. Work is a drug to which they are addicted, and they have been powerless to stop the cycle.

With few exceptions, my clients are work addicts. Unlike alcoholics and abusers of other substances, theirs is an addiction that is not only socially acceptable, it is actually encouraged and rewarded.

Far from the skid row bum or the flop-house junkie, by most standards they are models of success. Top attorneys, physicians, accountants, and entrepreneurs, they live in prestigious neighborhoods and drive luxury automobiles. Their children attend the "right" private schools and universities. They are community leaders.

But as one man lamented, "My wife took my family from me." The truth was that he had left his family years before, falling victim to the seduction of his addiction—work.

In a paradox of monumental proportions, these successful people who believe they are engaged in this chase for their families often lose their loved ones in the process.

The husband of one woman reported that he'd grown accustomed to falling asleep either before his wife got home or with her working in bed beside him. Another had engaged in an extramarital affair for nearly a year before his wife even noticed his frequent absences. Still another said if she couldn't find her workaholic partner at any hour, all she had to do was walk into the home office, and he'd be huddled over the computer.

Work addiction almost always involves

long hours, but that alone does not make work an addiction. It is a far more complex problem than that. While many actual behaviors of work addicts and non-addicts may be similar, the distinguishing characteristics lie both in how and why they are done. Workaholics live in survival mode with a need to prove something to themselves and the world. While others know they have a choice about whether or how much to work, work addicts do not. Non-addicted individuals may occasionally launch into a project that they are excited about or which has a deadline. Workaholics always believe they are "under the gun."

How Work Addiction Develops

Often the children of alcoholic or abusive parents, work addicts grew up literally learning to survive by being so perfect that there would be nothing to instigate violence. Since preventing the eruption of an explosive or threatening parent almost always proves impossible, the bar was always being raised higher and higher. As a consequence, the work addict suffers from both feelings of inadequacy and responsibility for making things work. Repeated accomplishments salve lagging self-esteem and make them feel worthy for short periods of time. But like the drug of choice for other addicts, achievement is a quick high always baiting the craving for yet one more fix.

The workaholic rarely got unconditional love and acceptance as a child. Love was something that had to be earned. So the child always sought to figure out what they could do to earn love. As a consequence, the young person often excelled in school and maybe athletics; as well as watch-dogging the home front. It should not be surprising then that the adult workaholic focuses on doing as a familiar way to both earn and show love.

Furthermore, because the feelings generated in the dysfunctional family were often too emotionally painful to cope with, the



adult who learned to bury his or her feelings as a child will continue to suppress them as an adult. As our examples show, long hours provide an escape from intimacy, making relationships difficult. The inability to maintain relationships extends to colleagues, support staff, and even clients. One client refused to give his very competent paralegal cases that she could easily handle. Both she and his secretary were frustrated as they watched the pile on his desk grow higher and higher, while both of them were underutilized and eager to help. It was only when he was about to lose both of them, at the very time his wife threatened to leave and his unmarried daughter became pregnant, that the cold reality of his addiction forced him to examine how he would choose to live and work in the future.

Recapturing the Joy

This man's life reflects those of other workaholics that show up in my office at midlife. Having allowed their race through life to rob them of the passion that reinvigorates and renews us, their lifestyle is a time bomb waiting to go off, if it hasn't already. Crippled relationships often create distracting personal crises with spouses and children. The inability to participate as team

members frays relationships with colleagues. Physical self-neglect fosters a range of stress-related illnesses.

Those who have managed to “hang on” and avoid a full-blown crisis are often lethargic, alienated from their families, or “under the gun” from a spouse who insists that something must change. Burned out and stressed out, by midlife the only alternative many see is bailing out of their careers at their very prime. Professionals in every field are dropping out of their careers prematurely in record numbers, blaming the job for their woes, rather than looking at the real culprit, which is the way they have chosen to relate to their work. My task is to help them heal their spiritual and emotional wounds so they can recapture the joy that work promises.

Recovering from work addiction is as challenging as any. Alcoholics and other substance abusers break the control of their addictions by giving up use of their drugs. However, work addiction is a defensive attitude in which we attack life as if it were a series of battles to be won rather than a fulfilling experience to be enjoyed. Even if we could stop working, which most of us can't, the behaviors are often turned to other activities. Breaking our work addiction demands that we change our relationship to life. It requires us to be aware of the choices that we are making in each moment of our lives. It isn't easy. It can be done.

The following ideas are ones that I have found most useful for both my clients and myself.

The most important step in breaking the grip of the disease is to admit to being a workaholic and then to express the intention to choose a different way of behaving in the future.

Acknowledgment allows the work addict to start becoming aware of their behaviors and then begin changing them. Although it was a small step, when I was beginning my recovery process I would notice how often I'd be charging into the grocery store on the way home from work as if I were ready to do battle. Just learning to take a deep breath and remind myself that it wouldn't take any longer if I chose to enjoy my shopping trip always made a dramatic shift in both my mental attitude and my physical body as I relaxed.

Taking a deep breath is a powerful way to come back into our bodies and into the present moment. Virtually all of my clients have

identified that when they get into their survival mode, they either stop breathing or breath very shallowly. The simple practice of taking a deep breathe reduces the frustrations of the day and allows us to focus completely on what is in front of us right now.

Set aside a few minutes each day to do nothing. Don't read, listen to music, watch TV, sleep, or take a walk. Just do nothing. This will be a most challenging assignment, but in just ten minutes each day, even the most severely addicted will shortly notice that time spent just being is a powerful rejuvenator.

Begin to be aware of what you feel and what you want as well as what you think. Using “I” statements, rather than the impersonal “we” or “you,” helps us distinguish between our unique wants and needs and what we may have assumed were universal ones.

Get in touch with your physical senses as well. Literally take a few minutes each day to smell the roses and consciously utilize your other senses. It is common by the second day of my three-day intensive with clients for them to start noticing that birds sing more loudly and the flowers smell more sweetly.

Spend a few minutes listening deeply to someone you care about. Ask them how they feel and what they want. Often you will discover that ten minutes of your time is more valuable to them than anything money could buy. Those moments of connection will be with both of you forever.

Start recapturing your hopes and dreams. Identify something that you've always wanted to do and start doing it. I discovered a level of aliveness that I could not have imagined when I began realizing a lifelong desire to be a dancer. I've had clients who had always wanted to compose music, sing, paint, write, sculpt, play a saxophone, and do stand-up comedy. Each reawakened delight in life when they followed their forgotten dreams.

Ask for support. This is very hard for a work addict who is accustomed to taking charge and doing things alone, but it is essential to recovery for several reasons. Asking for support allows us to acknowledge that we are not in this thing called life alone. We do have friends who want to help us. Furthermore, asking for help allows us to feel the intimacy of being vulnerable with another person, something for which we all yearn. Finally, changing a deeply ingrained survival pattern

may be the most difficult thing you have ever done. An encouraging friend will dramatically increase chances of success.

Verbal recognition and appreciation for new behaviors, such as, “It is great to have you home for dinner,” can encourage repeat behavior. Another wonderful form of support is to ask your support partner the question, “What can I do to support you right now?” It offers the recovering workaholic an opportunity to listen to their own needs and offer a range of responses which may work for them at any moment. Possibilities might include, “I don't need anything right now, but thanks for asking,” to “I'd like some alone time,” or “I'd really like a hug.”

Get help from a professional who really understands the seriousness of this addiction.

Healing work addiction will be challenging, but the rewards are great. The compromise of deeper, more meaningful relationships, improved physical health, and renewed vigor and passion for your profession is the choice we make when we choose true aliveness instead of the near-life experience that most workaholics have had.

You see, life is not about money. Life is not about what we do or what we accomplish. The one who dies with the most toys still dies.

Life is consciously choosing to live our own unique and special lives and to live them passionately. It is about having meaningful relationships with those we love. And it really is a choice. What will you choose? ■

Kay Gilley earned her masters of science degree in industrial relations with a minor in law from the University of Oregon Graduate School of Management. Her books include Leading from the Heart and Alchemy of Fear. She is a consultant on organizational management and creativity to business and professionals. She can be contacted through her website at intentional-leadership.com or by calling 919-572-2879.

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 (western areas of the state) at 704-910-2310, (or Nicole Ellington (for eastern areas of the state) at 919-719-9267.

National Movement for Lawyer Wellbeing Takes Hold in NC Law Firms with a Mindfulness Focus

BY LAURA MAHR

Last September I spoke at the ABA Commission on Lawyer Assistance Program's (CoLAP) national conference on improving professional connections in the legal field through mindfulness and on building resilience to compassion fatigue. As a first-time attendee and presenter, I was honored to meet advocates for lawyer wellbeing from around the country, including LAP providers from almost all 50 states. After spending over a decade as a lawyer advocating for the needs of my clients, I was moved to be in the presence of this passionate group of individuals whose focus lies in advocating for the needs of lawyers.

In my hallway conversations at the conference, I discussed with others the Lawyer Wellbeing Movement that is gaining momentum across the country. Terry Herrell, the chair of the ABA Working Group to Advance Well-Being in the Legal Profession, references this "movement" in her article "How the ABA is Trying to Advance Lawyer Well-Being" (lawpracticetoday.org/article/aba-trying-advance-lawyer-well). In the article, she says the movement is, "catalyzed around the striking data published in articles about two large-scale studies—one on lawyers and one on law students—that found that both groups experience substance use and mental health disorders at rates that significantly exceed those of the general population." She further notes that, "both populations also were similarly reluctant to seek help for such problems."

NC LAP Director's Perspective on the National Lawyer Wellbeing Movement

I asked North Carolina Lawyer Assistance Program Director Robynn Moraites her perspective on the current state of affairs regarding lawyer wellbeing. "There is a bit of a wellness revolution going on right now in the profession," she said. "The fact that we are having

real conversations about lawyer wellbeing is a great improvement. Not only in North Carolina, but nationally. Historically, most large firms have left these issues to in-house employee assistance programs (EAP), which are rarely utilized. Recently, lawyer wellbeing is recognized not only as a risk management issue, but also as a productivity issue. There is real support from top management at firms of all sizes to take a closer look at quality of life and firm culture issues, resulting in firms walking the walk and not just talking the talk about ways to support lawyers' mental health."

NC Firms Take Part in Shaping Lawyer Wellbeing Movement

I asked Ms. Moraites to talk specifically about steps North Carolina law firms have been taking to proactively address lawyer wellbeing. She responded, "In 2016, LAP had the opportunity to present a Risk Management Roundtable, detailed in a 2017 Lawyer's Weekly article, (nclawyersweekly.com/2017/10/12/setting-the-pace-on-lawyer-health). In the meeting, nine of the largest law firms in the state came together to talk about attorney mental health, addiction, and wellbeing. Coming out of that meeting, many of the participating firms began adopting the model policy promoted by the ABA. In addition, we (LAP) have been conducting trainings with lawyers and support staff from firms large and small. Law firms across the state have sponsored in-house mindfulness CLE programs." "In addition," Robynn added, "the State



Bar—the Continuing Legal Education (CLE) Committee specifically—has shown incredible support and foresight in approving mindfulness and other stress reduction CLE programs. There are some states in which mental health CLE is not even permitted."

NC Firms Bringing Mindfulness Trainings In-House

As Ms. Moraites mentioned, several pioneering law firms have brought Mindfulness and Neuroscience for Building Resilience to Stress CLE courses in-house. I created this course and my business, Conscious Legal Minds, to help the legal field better understand the connection between mindfulness and practicing law, and to introduce lawyers, judges, and law school students to innovative mindfulness and neuroscience tools to help cope with stress. In the past three years, firms of varying sizes—urban and rural—began contracting Conscious Legal Minds to tailor mindfulness CLE courses for them in-house. Some firms include the training at their annual lawyer retreat, others offer the course over a series of weeks at lunch; some offer the course for lawyers only, others include support staff; some firms choose for me to conduct the

mindfulness training in-person, while others prefer virtual trainings, and some choose a combination of virtual and in-person.

What Firm Managers Have to Say About in Promoting Lawyer Wellbeing

I recently asked four of these pioneering firm leaders, “What role do you think firm management has in promoting lawyer wellbeing through trainings and other benefits?”

James Farrin, president and CEO, Law Offices of James Scott Farrin: I think it’s our responsibility as managers to empower all of our employees, and do what we can to promote their wellbeing. Research shows that attorneys can be particularly vulnerable to stress, and some fall victim to substance abuse and depression. Mindfulness training is relatively inexpensive, and it can give us skills that not only make us more resilient and more productive in the workplace, but also allow us to handle our personal and family lives better. Why wouldn’t I want that for myself, my employees, and my loved ones?

Brian Gilman, COO, Smith Debnam Narron Drake Saintsing & Myers, LLP: A primary responsibility of management in any organization is the safeguard and development of its personnel. As lawyers and staff spend nearly every day at the “tip of the spear” of stress incumbent in the practice of law, promoting wellbeing in our most valuable resource is easily identifiable as a management priority.

Cliff Homesley, partner, Homesley & Wingo Law Group PLLC: Firm management sets the tone for the priorities of the firm. Though we all like to efficiently deliver client services, have a satisfying work place, and make a good living, there are fundamentals behind those things that must be emphasized. The first being quality of life for the firm and its clients.

Linda Johnson, managing partner, Senter, Stephenson, Johnson, PA: Practicing law is stressful for all members of the firm. Our practice areas—estate administration and guardianship administration—bring a lot of drama and stress to the office. I wanted to find ways for all of us to manage the stress while working.

Why Firm Managers are Bringing Mindfulness Training In House

I was also curious about what interested each of these firms in bringing the Mindfulness and Neuroscience for Building

Resilience to Stress CLE course in-house.

James Farrin: Our law offices brought mindfulness training in-house because legal work can be stressful, especially in a busy and demanding environment. Anything that we can do to decrease stress and increase coping skills should help with employee morale and retention and result in better service and outcomes for our clients as well. I had done some meditating previously and thought that it helped me personally, so I thought that some of our attorneys and staff could benefit from mindfulness training as well.

Brian Gillman: We brought mindfulness training to our firm because the pervasive changes experienced in the legal industry since 2008 have only served to increase our focus in identifying resources to assist our attorneys and staff in balancing the demands of a successful law practice with those in our personal life. As our management team became aware of the compelling impact of mindfulness techniques, we quickly began exploring ways we could introduce them at our firm.

Cliff Homesley: Mindfulness is basically a common-sense concept of living in the present moment. This is ultimately the only way to properly address client needs and to interact with our coworkers. We inherently live in the past or future, so it takes training to be able to stay present.

Linda Johnson: I brought the mindfulness training to my firm because I believe that firm management needs to be extremely committed to the lawyers and staff members’ physical and mental wellbeing. An individual cannot function and do their best job for the client if they are not mentally and physically healthy. Our jobs are very demanding, and we need to take care of ourselves and our staff members.

Benefits Firms are Receiving from Sponsoring Mindfulness Trainings

Finally, I asked each of these leaders about some of the benefits the firm received from sponsoring Mindfulness and Neuroscience for Building Resilience to Stress CLE trainings at their firms.

James Farrin: Reduced stress and better focus. It’s easier to move on from a difficult call or encounter and be present for the next one when one practices mindfulness.

Brian Gillman: The response of naturally skeptical attorneys to the mindfulness concepts introduced at our annual attorney retreat exceeded our expectations. We all

learned simple techniques that were easily incorporated into our day, and both the level of need and the impact of mindfulness was evidenced in immediate requests for more training.

Cliff Homesley: It was an opportunity for self-examination and to learn to manage priorities so that we can give attention to the most important needs.

Linda Johnson: It was such a great team building event for the office. I believe that each of us learned skills from the training to apply during our work day. It was a great education for learning about mindfulness.

Where We Go from Here

I’m inspired that in North Carolina, advocacy for lawyer wellbeing includes law firm management and mindfulness programs, in addition to historically more conventional key players and more traditional wellness programs. As more and more firms step in as stakeholders for lawyer wellbeing, it is encouraging that established stakeholders are working together as well. “There is increasing collaboration between various stakeholders that have lawyer wellbeing foremost in their mission in our state: the Chief Justice’s Commission on Professionalism, Lawyers Mutual Insurance, the Lawyer Assistance Program, Bar CARES, the LAP Foundation of North Carolina Inc.” notes Ms. Moraites. “While there is certainly always more that can be done, North Carolina continues to be a leader in fostering and promoting multiple approaches to address this important topic.” New leadership from a variety of players across the state—not to mention increased numbers of individual lawyers seeking mindfulness and resilience-based executive coaching—bodes well for our state holding its own, if not leading the way, in the National Movement for Lawyer Wellbeing. I am staying tuned to see where North Carolina firms go as we follow these trailblazers down the path toward a more mindful, collaborative, and resilient Bar. ■

Laura Mahr is a NC lawyer and the founder of Conscious Legal Minds LLC, providing mindfulness-based coaching, training, and consulting for attorneys and law offices nationwide. Her work is informed by 11 years of practice as a civil sexual assault attorney and 25 years as a student and teacher of mindfulness and yoga, and a love of neuroscience. Find out more about Laura’s work at consciouslegalminds.com.

Darrin Jordan, Board Certified Specialist in State Criminal Law

BY LANICE HEIDBRINK, EXECUTIVE ASSISTANT OF LEGAL SPECIALIZATION

"I thoroughly enjoyed working with Darrin when he chaired the State Bar's Ethics Committee. Darrin is an insightful and practical leader who understands the nuances of the Rules of Professional Conduct, but always seeks to apply them in a real-world way."

—Alice Mine

State Bar executive director

If you ask most of his colleagues, you'll find that Darrin Jordan makes an impression on everyone he meets. Darrin is serious and passionate about the practice of law, which you can sense immediately upon meeting him, but you also find pretty quickly that he is kind, thoughtful, introspective, and genuinely cares about his community, fellow lawyers, and everyone he meets. I had the pleasure of interviewing Darrin and enjoyed getting to know more about an individual who has given so much through his devotion to helping not only the community, but lawyers who want to join him in giving back to the profession.

Darrin grew up in Salisbury, North Carolina, and graduated from Campbell University School of Law in 1990. He went on to become an assistant district attorney in Cabarrus County from 1994-1997 and served as a Rowan County Assistant District Attorney from 1997-2000.

Darrin is, in a word, busy. While practicing law full-time, he also served as a member of NC State Bar Council for Judicial District 19C* (now district 27) from 2009 to 2018. The Ethics Committee and Legal Assistance Program Board (LAP) are among the State Bar standing committees on which he has served. He is currently serving as an advisory member of both the State Bar Legislative

Committee and the Editorial Board. In addition to these activities, Darrin finds time to volunteer with the Carolina Center for Civil Education, coordinating the mock trial competitions, and to serve as a presenter and organizer for several continuing legal education courses for the Rowan County Bar.



Jordan

Darrin became a board certified specialist in state criminal law in 2004, and has been a strong advocate for the specialization program and the many benefits that come from being certified.

Q: What originally motivated you to become a specialist?

Encouragement from fellow criminal law specialists Marshall Bickett (now a district court judge) and James Davis. We met for lunch frequently, and during those lunches we would discuss new criminal law issues and encourage each other to stay up to date. James became a specialist first, then he recruited Judge Bickett, and they both encouraged me to apply.

Q: What career accomplishments are you most proud of and why?

I have been blessed to have worked with incredible individuals and lawyers during my service on the North Carolina State Bar Council as a councilor, as a commissioner on the North Carolina Indigent Defense Services Commission, and as a member of Chief Justice Martin's Commission on the Administration of Law and Justice. I've learned so much from working with the members of these organizations, both professionally and personally, and I am grateful.

Q: How does certification benefit the public?

Certification benefits the public in two

crucial ways. First, it helps identify attorneys who have dedicated a major part of their practices to being the very best within an area of law. Secondly, certification makes certain that those attorneys devote themselves to that area of law by concentrating their annual CLE credit on attending seminars that are specifically about their specialty practice area.

Q: How has specialization changed in your 15 years as a specialist?

I'm not sure that it has changed in my 15 years other than there seems to be an emphasis to encourage attorneys not in the private sector (i.e. district attorneys and public defenders) to seek certification and scholarships have been set up for that purpose. I think that encouraging these individuals raises the quality of our entire judicial system and I support this effort. Anything that we can do as a profession to increase public confidence in attorneys and our judicial system is a step in the right direction.

Q: Name the top three benefits you've experienced as a result of becoming a specialist.

First, it has encouraged me to always learn more about being a criminal defense attorney, whether it is learning substantive law or the trial advocacy skills that make me a better trial attorney. Second, as I mentioned before, it has given me an opportunity to meet other criminal law specialists who I can rely on to give me their opinions and advice on issues I need help with in handling cases. Finally, I've benefited by being a part of an implicit referral network because specialists go to the directory of board certified specialists when they are looking for an attorney in another North Carolina jurisdiction.

Q: What's something that most people don't know about you?

Despite all the work I have done on both the state and local level for our profession, I really do practice law, go to court every day

(except when I'm at a meeting), and try jury trials on a regular basis (when called upon). While I am sure my partners and support staff get frustrated with all the time I spend away from the office, they are extremely supportive and, in kind, I am extremely grateful.

Q: What are you happiest doing, when you're not working?

My first love (outside of my family) is standing in the middle of a cold mountain

stream with a fly rod in hand catching our only native trout, brook trout. I also love growing vegetables in my garden and keeping bees. In the winter months I enjoy attending hockey games with my daughter, Anna. ■

For more information on how to become certified, visit our website at nclawspecialists.gov.

Trust Accounting (cont.)

be able to help her get to the bottom of and resolve this issue. Unfortunately, when Stacy called the real estate broker and explained the concern, she learned that he did not email her to provide a change to the wire instructions. Closer scrutiny of the email she received showed that the sender had subtly altered the email address by changing the letter "l" to the number "1," so that instead of being sent by Mark@realestateguy.com, it was actually from Mark@real1estateguy.com. Stacy's concern quickly turned into full panic. She knew she needed to inform Laurel, the closing lawyer, that the firm had likely fallen victim to wire fraud.

The increase in electronic banking has given rise to an increase in email scams devised to gain access to electronically transmitted funds. The scammers gain access to email accounts and monitor the email traffic for information about transactions that are scheduled to occur. According to the FBI, the email accounts hacked are often chosen from publicly available information on real estate listing sites. Also, scammers have been known to target all parties to a real estate transaction. Once a transaction is found, the scammer then perpetrates the scam by spoofing the email address of one of the parties to the transaction (as occurred with Mark, the real estate broker, in the case above) and sends an email to the lawyer's office communicating a change in the wire instructions for the transaction. The spoofed email usually looks identical to the true email to anyone who is acting under time pressure. The end result, if proper protective measures are not in place and followed, is the wiring of funds to the scammer instead of the true and intended recipient. Scams of this type have

collectively resulted in losses exceeding millions of dollars.

Pursuant to Rule of Professional Conduct 1.15, a lawyer who receives funds that belong to a client is required to safeguard such funds. According to 2015 FEO 6, lawyers must use reasonable care to prevent third parties, like Mark@real1estateguy.com, from gaining access to client funds held in the trust account and have a responsibility to implement reasonable security measures. Calling a seller when there is a requested change in wire instructions has been determined to be one such reasonable measure. The following are a few additional steps lawyers may take to further their efforts to prevent third parties from gaining access to funds in the trust account:

1. Have a written policy that requires any change in payment type or location be confirmed either by telephone using a known number obtained at the beginning of the representation or in person;
2. Confirm the routing number provided to you is for the bank used by the other party; and
3. Regularly check your email account log-in activity for possible signs of email compromise.

The FBI recommends victims of fraud act quickly upon discovering the fraud and take the following steps:

1. Contact your financial institution and request a recall of the funds;
2. Contact your local FBI office and report the fraudulent transfer; and
3. File a complaint with IC3 at ic3.gov, regardless of dollar amount.

In addition to following the recommendations of the FBI, lawyers must also remember to report the fraudulent transfer to trust account compliance counsel as required by Rule of Professional Conduct 1.15-2(p). ■



Ready for your next challenge?

The next milestone is within reach...
apply for specialty certification in 2019!

Appellate Practice • Bankruptcy
Arbitration • Elder • Estate Planning & Probate
Family • Immigration • Juvenile Delinquency
Privacy & Information Security (MEMO)
Real Property • Social Security Disability
Trademark • Willits • Workers' Compensation

Accept the challenge.

919.828.4620
nclawspecialists.gov



BOARD OF LEGAL SPECIALIZATION
NORTH CAROLINA STATE BAR

Interest Income to IOLTA from Participating Banks Begins to Recover

Income

All 2018 IOLTA income from participating banks that hold IOLTA accounts will not be received and entered until the end of January, after this edition of the Journal has gone to press. Participant income through November 2018 was more than \$2.5 million, an increase of 64% over the same period in 2017. This increase during the same period from 2016 to 2017 was only 2%. IOLTA revenue is still far from pre-recession levels, but we hope this positive income trend will continue into 2019 to enhance the availability of funds for grantmaking.

Grants

At the November 30 grantmaking meeting, the IOLTA trustees approved 2019 IOLTA grant awards. Regular 2019 IOLTA grants totaled nearly \$1.85 million, an 11% increase in grantmaking over 2018.

- \$1,447,000 to support providers of direct civil legal services;
- \$305,000 to volunteer lawyer programs;

and

- \$112,500 to projects to improve the administration of justice.

An additional grant of \$998,000 was made to the Home Defense Project Collaborative to support foreclosure prevention legal services provided by six legal aid organizations across the state. This grant was made with funds from the national Bank of America settlement.

The IOLTA trustees also dedicated funds to rebuild the reserve fund, which has a current balance of \$367,201. Though the amount will not be finalized until all 2018 income has been received, we anticipate a contribution of at least \$500,000.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid under the Domestic Violence Victim Assistance Act on behalf of the NC State Bar. In 2017-2018, NC IOLTA distributed \$1,060,596 in domestic violence state funds.

Domestic Violence Victim Assistance Report Now Available

Each year, as required by statute, NC IOLTA produces a report to the General Assembly detailing the funds administered and outcomes achieved under the Domestic Violence Victim Assistance Act. In 2017-2018, Legal Aid of North Carolina and Pisgah Legal Services closed cases for more than 6,300 victims of domestic violence. The full report can be found on our website, nciolta.org.

The General Assembly also appropriated \$100,000 to Pisgah Legal Services for veterans' legal services that NC IOLTA administered. To date, NC IOLTA has administered \$505,082 in domestic violence state funds for 2018-2019. \$100,000 was appropriated to Pisgah Legal Services for veterans' legal services again in 2018-2019. ■

Legal Ethics (cont.)

community resources readily available. She also suggests that lawyers make contact with a few counselors in the community to which they can refer clients, and/or that can provide the lawyer with guidance on dealing with suicidal clients. Another suggestion is that if the lawyer is aware that a client is seeing a mental health professional, the lawyer ask the client to sign a release at the beginning of the representation allowing the lawyer to contact the professional if needed. Finally, the lawyer should know that expressing empathy and genuineness, and adopting a collaborative stance with the client, will help engender

confidence to the client that there is a more positive alternative to suicide.¹

The Rules of Professional Conduct offer, among other things, terms with which lawyers can resolve difficult situations that arise with clients. A client's expressed suicidal thought or intention is one of the most difficult scenarios we will face as lawyers. If you ever find yourself in that situation, know that it is not professional misconduct for a lawyer, acting reasonably and in good faith, to exercise her professional judgment to disclose or not to disclose in this most delicate and critical of situations. Evaluate the credibility of the threat to the best of your ability—and with any assistance that may be available—

and then use your best judgment to determine whether it is reasonably necessary to reveal the client's suicidal intent to others. Err on the side of safety. If you are still not sure, contact a State Bar ethics lawyer and seek advice. ■

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

Endnote

1. Lawyer's Mutual also has helpful information on this issue on its website, including the article "Having a Plan in Place Could Save a Life," by Monisha Parker, located at lawyersmutualnc.com/blog/having-a-plan-in-place-could-save-a-life.

Committee Publishes Proposed Opinions on Sexual Relationships with Opposing Counsel, ERISA Plans, and Acting as an Intermediary in Domestic Cases

Council Actions

The State Bar Council had no action items from the Ethics Committee this quarter. However, the Ethics Committee considered a total of eight inquiries at its meeting on January 17, 2019. Five of those inquiries were sent or returned to subcommittee for further study, including Proposed 2018 Formal Ethics Opinion 8, Advertising Membership in Marketing Company with Misleading Title, as well as inquiries concerning informal communications with a judge, a lawyer's ability to receive Bitcoin and other cryptocurrency in connection with a law practice, attorney's eyes only discovery agreements, and a lawyer's ability to access the social media presence of represented and unrepresented persons. Lastly, the committee approved three new opinions for publication, which appear below.

Proposed 2019 Formal Ethics Opinion 1 Lawyer as an Intermediary January 17, 2019

Proposed opinion rules that a lawyer may not jointly represent clients and prepare a separation agreement.

Inquiry:

Lawyer represents clients in domestic relations matters. Lawyer has been contacted by a married couple wishing to separate and then later obtain a divorce. No litigation has been initiated. The married couple agree on the terms of separation. The couple does not have sufficient funds to pay two lawyers and wants Lawyer to prepare the separation agreement for both parties. May Lawyer prepare a separation agreement for both parties?

Opinion:

No. Rule 1.7 provides that a lawyer shall

not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client, or the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client. Rule 1.7(a).

Rule 1.7(b) recognizes that a conflict can be resolved by client consent. However, some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. Rule 1.7, cmt. [14]. The commentary to Rule 1.7 further provides,

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

Rule 1.7, cmt. [15].

In 2013 FEO 14, the Ethics Committee determined that, in most instances, common representation in a commercial loan closing is nonconsentable. Common representation was found to be inappropriate because of the "numerous opportunities for a lawyer to negotiate on behalf of the parties" and "numerous opportunities for an actual conflict to arise between the borrower and the lender." 2013 FEO 14.

These same issues and concerns are present in the case of a separation agreement. Although the parties may believe they have

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment – including comments in support of or against the proposed opinion – or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at the next quarterly meeting. Any comment or request should be directed to the Ethics Committee c/o Lanice Heidbrink at lheidbrink@ncbar.gov no later than March 29, 2019.

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.

agreed on the terms of separation, there are potentially numerous opportunities for Lawyer to negotiate on behalf of the parties regarding, *inter alia*, custody, property divi-

sion, and family support. In the event an actual conflict arises, the prejudice to the parties would be substantial.

Lawyer has a professional duty to provide competent and diligent representation to each client and ensure that the legal interests of each client are protected. Rules 1.1 and 1.3. When the clients are legally adverse to each other in the same matter and there are numerous opportunities for Lawyer to negotiate on behalf of the parties, impartiality is rarely possible. *See* 2013 FEO 14. Lawyer, therefore, cannot adequately advise one client without compromising the interest of the other client. Because Lawyer cannot adequately represent the interests of each client, Lawyer has a nonconsentable conflict and cannot prepare the separation agreement for both parties.

**Proposed 2019 Formal Ethics
Opinion 2
Conditions Imposed on Lawyer by
Client's ERISA Plan
January 17, 2019**

Proposed opinion rules that lawyer may not agree to terms in an ERISA plan agreement that usurp client's authority as to the representation.

Lawyer represents an injured worker in a denied workers' compensation claim. Client participated in a self-funded health benefits plan (Plan) through his workplace. The Plan was established under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C.A. § 1001 *et seq.* As a precondition to issuing payments for Client's medical expenses, the Plan requested that Client and Lawyer sign an Agreement that includes the provisions described below.

The Agreement between the Plan and Lawyer's client (referred to as "the promisor") sets out that the promisor was injured on the job; that the promisor is currently proceeding or promises to initiate a claim against his employer; that the promisor's claim is disputed; and that the promisor is in need of benefits under the Plan.

The Agreement states that, as a condition of receiving Plan benefits, the promisor agrees to fully prosecute his pending claim and agrees not to abandon or settle his claim without the written approval of the Plan. The Agreement states that the prom-

ises made in the Agreement are binding upon the promisor and the promisor's attorney and requires the signature of the promisor's attorney.

Inquiry:

Do the Rules of Professional Conduct permit Lawyer to agree not to abandon or settle the Client's claim without the approval of the Plan?

Opinion:

No. Lawyer may not agree to any terms in the Agreement that contradict Lawyer's professional responsibility to abide by Client's directives regarding the representation as set out in Rule 1.2.

The Agreement requires Client and his counsel to fully prosecute the pending workers' compensation claim and to obtain written approval from the Plan before abandoning or settling the claim. As to Lawyer, these requirements conflict with Lawyer's professional responsibilities to Client as set out in Rule 1.2. Pursuant to Rule 1.2, Lawyer has an ethical obligation to "abide by a client's decisions concerning the objectives of representation" and "abide by a client's decision whether to settle a matter." If Client signs the Agreement and subsequently decides to abandon or settle the matter without the Plan's approval, Lawyer has a professional obligation to follow Client's directives. Lawyer may not agree to the conditions in the Agreement that usurp Client's authority as to the objectives of the representation.

**Proposed 2019 Formal Ethics
Opinion 3
Engaging in Intimate Relationship
with Opposing Counsel
January 17, 2019**

Proposed opinion rules that an ongoing sexual relationship between opposing counsel creates a conflict of interest in violation of Rule 1.7(a).

Introduction:

The Rules of Professional Conduct apply to all lawyers in their various representative capacities. Accordingly, although this opinion is based upon a scenario involving representation in a criminal matter, the conduct at issue may threaten the integrity of both the criminal and civil justice systems, and therefore the analysis con-

tained herein is applicable to lawyers in both criminal and civil matters.

Lawyer A is an assistant district attorney in District Q. Lawyer B represents criminal defendants in District Q. Lawyer A and Lawyer B engage in a sexual relationship over a one- to three-month period. During the relationship, Lawyer A prosecutes several cases in which Lawyer B represents the defendants. Lawyer A and Lawyer B do not inform their respective clients or superiors about the relationship.

Inquiry #1:

Does Lawyer A's and Lawyer B's conduct violate the Rules of Professional Conduct?

Opinion #1:

Yes. Rule 1.7(a) states that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." The Rule goes on to say that a concurrent conflict of interest exists "if the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer." Rule 1.7(a)(2). Rule 1.7 addresses situations where there is both an actual material limitation and a potential material limitation. *See id.* ("...may be materially limited...") (emphasis added). Comment 8 to Rule 1.7 states that "[t]he mere possibility of subsequent harm does not itself preclude the representation or require disclosure and consent." Instead, the critical questions to consider in determining whether a material limitation exists as a result of a personal interest during a representation are "[1] the likelihood that a difference in interests will eventuate and, if it does, [2] whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." Rule 1.7, cmt. [8]. Accordingly, determining whether a materially limiting personal interest exists depends on an examination of the surrounding circumstances of the situation at issue. If a materially limiting personal interest exists, representation may only continue if the lawyer satisfies the terms of Rule 1.7(b), including that the lawyer reasonably believes that s/he will be able to provide competent and dili-

gent representation to the affected client, and the lawyer discloses the conflicting interest to his/her client and obtain the client's written, informed consent to continue in the representation. *See also* Rule 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.").

We have previously opined that spouses cannot participate in a matter as opposing counsel unless their relationship is disclosed to the affected clients and the clients provide written, informed consent to continue in the representation. *See* RPC 11. Other jurisdictions have similarly determined spousal relationships between opposing counsel constitute a conflict of interest. *See generally* Mich. Formal Op. R-3 (1989) ("A lawyer whose spouse represents the opposing party in a case may not continue to handle the case unless the parties are informed of the relationship between the lawyers and consent to continued representation."). At least one jurisdiction (New York) found that dating relationships between opposing counsel can constitute a conflict of interest because "[a] dating relationship between adversaries is inconsistent with the independence of professional judgment[.]" N.Y. State Bar Ass'n Op. 660 (1993). ("Whatever hereafter may be said of friendships in varying degrees, we believe that a frequent dating relationship is clearly over the line that separates ethically cognizable conflicting interests from those which are not.") That same opinion found that criminal cases required heightened scrutiny in evaluating potential conflicts of interest resulting from personal relationships to preserve the integrity of the criminal justice system. *Id.* ("Irrespective of the subjective intent of the prosecutor and defense counsel, and regardless of howsoever scrupulous they may be in the conduct of their professional obligations, the appearance of partiality in the administration of justice is so strong that a couple who date frequently should not be permitted to appear opposite one another in criminal cases.")

In *Commonwealth v. Croken*, the Supreme Court of Massachusetts vacated a trial court's denial of the defendant's motion for a new trial based in part on the question of whether the defendant's counsel engaged in a conflict of interest by participating in an intimate relationship with a member of

the prosecuting office during the representation. *Commonwealth v. Croken*, 432 Mass. 266, 277 (2000). In reaching its conclusion, the court held:

A lawyer's personal interests surely include his interest in maintaining amicable relations with his relatives, his spouse, and anyone with whom he is comparably intimate. This interest is, of course, often significantly pecuniary in character, but it also has irreducible emotional and moral dimensions, and it heavily bears on how any ordinary human being goes about making important decisions. It follows that in a case where a lawyer's representation of a client may be significantly limited by his ties to his relatives and intimate companions, professional ethics are implicated just as they would in a case where the lawyer represents a second client with litigation interests potentially adverse to those of the first client....We do hold that, where a criminal defense lawyer represents a client and a close relative or an intimate companion is a colleague of the prosecutor who seeks to convict the client, the requirements of [Rule 1.7] must be met.

Id. at 273.

We find the reasoning expressed in the New York and Massachusetts opinions persuasive. The nature of a continuing, sexually intimate relationship between opposing counsel during an ongoing dispute creates a personal interest for the participating lawyers that materially limits the lawyers' respective abilities to exercise independent judgment, preserve confidences, and otherwise render unencumbered representation. Such a relationship could also detrimentally impact the profession and the administration of justice, as the relationship could serve as grounds for post-conviction or post-judgment relief, as well as contribute to the negative image of lawyers. As noted in comment 1 to Rule 1.7, "Loyalty and independent judgment are essential elements in the lawyer's relationship to a client." A client should be informed of the possibility that his or her lawyer may be professionally or emotionally compromised due to the lawyer's ongoing sexual relationship with the opposing lawyer.

This opinion does not undertake the task of determining the point at which a personal relationship with opposing counsel

triggers the protection afforded to clients under Rule 1.7(a)(2). However, under the circumstances presented in this inquiry, a lawyer's representation of a client is materially limited by the lawyer's personal interest in an ongoing sexual relationship with opposing counsel, and that conflict of interest requires the participating lawyers to satisfy the conditions of Rule 1.7(b) in order to continue the representation, including disclosing the relationship to their clients and obtaining their clients' written, informed consent. The personal interest conflict is not imputed to members of the lawyer's firm or office under Rule 1.10 so long as the conflict "does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm." Rule 1.10(a).

Inquiry #2:

Assume Lawyer B notifies his client(s) and the provisions of Rule 1.7(b) were met. Does Lawyer A have an obligation to obtain such consent? If so, from whom?

Opinion #2:

Yes. Lawyer A also has a conflict and must satisfy the requirements of Rule 1.7(b) to continue in the representation. *See* Opinion #1. Elected district attorneys are entitled to enact their own internal office policies in accordance with the law of this state. The identification of the person or governmental body to whom the assistant district attorney's report should be made is a legal and policy question that is beyond the purview of this committee.

Inquiry #3:

Would the answer to Inquiry #1 change if the relationship was a more long-standing, emotionally involved relationship?

Opinion #3:

No. The relationship described in this inquiry is more akin to a marital relationship and therefore must be disclosed to the client to continue with the representation, in addition to complying with the other requirements of Rule 1.7(b). *See* RPC 11; *see also* N.Y. State Bar Ass'n Op. 660 (1993). The added circumstance of a long-standing, emotionally involved relationship enlarges the personal interest conflict and creates a likelihood of material limitation in violation of Rule 1.7(a)(2). ■

Amendments Pending Supreme Court Approval

At its meeting on January 18, 2019, the council of the North Carolina State Bar had no rule amendments before it for adoption. However, at its meeting on October 26, 2018, the council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval. (For the complete text of the proposed rule amendments, see the Fall 2018 edition of the *Journal* or visit the State Bar website.)

Proposed Amendments to the Rules on Discipline and Disability of Attorneys

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

Proposed amendments to Rule .0113 establish a procedure for imposition of censures that is consistent with the procedures for imposition of reprimands and admonitions. Proposed new Rule .0135 establishes a procedure to suspend the license of a licensee who is not in compliance with demands of the Grievance Committee for information or evidence relating to a grievance investigation.

Proposed Amendments to the Minimum Standards for Continued Certification of Specialists and to the Recertification Standards for All Specialties

27 N.C.A.C. 1D, Section .1700, The Plan for Legal Specialization; Section .2100, Certification Standards for the Real Property Law Specialty; Section .2200, Certification Standards for the Bankruptcy Law Specialty; Section .2300, Certification Standards for

the Estate Planning and Probate Law Specialty; Section .2400, Certification Standards for the Family Law Specialty; Section .2500, Certification Standards for the Criminal Law Specialty; Section .2600, Certification Standards for the Immigration Law Specialty; Section .2700, Certification Standards for the Workers' Compensation Law Specialty; Section .2800, Certification Standards for the Social Security Disability Law Specialty; Section .2900, Certification Standards for the Elder Law Specialty; Section .3000, Certification Standards for the Appellate Practice Specialty; Section .3100, Certification Standards for the Trademark Law Specialty; Section .3200, Certification Standards for the Utilities Law Specialty; and Section .3300, Certification Standards for the Privacy and Information Security Law Specialty

The proposed amendments reduce the number of peer references required for recertification as a specialist from ten to six for all specialties.

Proposed Amendments to the Rules of Professional Conduct

27 NCAC 2, Rule 1.15, Safekeeping Property; Rule 3.5, Impartiality and Decorum of the Tribunal; and Rule 5.4, Professional Independence of Lawyer

The proposed amendments to the official comment to Rule 1.15 explain the due diligence required if a lawyer uses an intermediary (such as a bank, credit card processor, or litigation funding entity) to collect a fee. The proposed amendments to Rule 3.5 correct a

Highlights

- Upon the recommendation of a special committee appointed to study the Attorney Client Assistance Program, the council publishes proposed rule amendments that will, among other things, improve the operation of the State Bar's fee dispute program and eliminate district bar fee dispute programs.
- At the request of the Board of Continuing Education, amendments eliminating the cap on online CLE are proposed and published below for comment.

typographical error included in an amendment to the Rules of Professional Conduct approved by the North Carolina Supreme Court on April 5, 2018. They also revise the official comment to specify that gifts or loans to judges are only prohibited if made under circumstances that might give the appearance that the gift or loan was made to influence official action. The proposed amendments to Rule 5.4 add an exception to the prohibition on fee sharing with a nonlawyer that allows a lawyer to pay a portion of a legal fee to certain third parties if the amount paid is for administrative or marketing services and there is no interference with the lawyer's independent professional judgment.

Proposed Amendments

At its meeting on January 18, 2019, in response to the Final Report and Recommendations of the Attorney Client Assistance Program/Fee Dispute Program

Review Committee, the council voted to publish the following proposed rule amendments for comment from the members of the Bar:

Proposed Amendment to the Rule on Standing Committees and Boards of the State Bar

27 N.C.A.C. 1A, Section .0700, Standing

Committees and Boards of the State Bar

The proposed amendment eliminates the requirement that the Grievance Committee establish and implement a disaster response plan to assist victims of disasters in obtaining legal representation and to prevent the improper solicitation of victims by lawyers.

.0701 Standing Committees and Boards

(a) Standing Committees...

(1) Executive Committee...

(2)...

(3) Grievance Committee. It shall be the duty of the Grievance Committee to exercise the disciplinary and disability functions and responsibilities set forth in Section .0100 of Subchapter 1B of these rules and to make recommendations to the council for such amendments to that section as the committee deems necessary or appropriate. The Grievance Committee shall sit in subcommittees as assigned by the president....One subcommittee shall oversee the Attorney Client Assistance Program. It shall be the duty of the Attorney Client Assistance subcommittee to develop and oversee policies and programs to help clients and lawyers resolve difficulties or disputes, including fee disputes, using means other than the formal grievance or civil litigation processes; ~~to establish and implement a disaster response plan, in accordance with the provisions of Section .0300 of Subchapter 1D of these rules, to assist victims of disasters in obtaining legal representation and to prevent the improper solicitation of victims by lawyers;~~ and to perform such other duties and consider such other matters as the council or the president may designate...

Proposed Amendments to Rules Governing Organization of the North Carolina State Bar

27 N.C.A.C. 1A, Section .1000, Model Bylaws for Use by Judicial District Bars

The proposed amendment reflects the elimination of judicial district bar fee dispute programs.

.1010 Committees

(a) Standing committee(s): The standing committees shall be the Nominating Committee, Pro Bono Committee, ~~Fee Dispute Resolution Committee~~, Grievance

Committee, and Professionalism Committee provided that, with respect to ~~the Fee Dispute Resolution Committee and~~ the Grievance Committee, the district meets the State Bar guidelines relating thereto.

~~(b) Fee Dispute Resolution Committee:~~

~~(1) The Fee Dispute Resolution Committee shall consist of at least six but not more than eighteen persons appointed by the president to staggered three year terms as provided in the district bar's Fee Dispute Resolution Plan.~~

~~(2) The Fee Dispute Resolution Committee shall be responsible for implementing a Fee Dispute Resolution Plan approved by the Council of the North Carolina State Bar to resolve fee disputes efficiently, economically, and expeditiously without litigation.~~

~~(c) (b) Grievance Committee: ...~~

Proposed Amendments to the Rules on Discipline and Disability of Attorneys

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

The proposed amendments reflect the Grievance Committee's authority to operate the Attorney Client Assistance Program and the Fee Dispute Resolution Program.

.0106 Grievance Committee: Powers and Duties

The Grievance Committee will have the power and duty

(1) to direct the counsel to investigate any alleged misconduct or disability of a member of the North Carolina State Bar coming to its attention;

(2) ...

(14) to operate the Attorney Client Assistance Program (ACAP). Functions of

In Memoriam

Stavros Agapion
Cary, NC

Carlos Mark Baldwin
Jacksonville, NC

Charles Lloyd Bateman Jr.
Chapel Hill, NC

Lacy Wilson Blue
Charlotte, NC

Adelaide Austell Craver
Shelby, NC

David G. Crockett
Southern Pines, NC

Susan R. Franklin
Chapel Hill, NC

John S. Freeman
Charlotte, NC

Charles L. Fulton
Raleigh, NC

George Franklin Givens
Raleigh, NC

Ralph C. Harris Jr.
Charlotte, NC

Bernard Benjmain Hollowell
Bayboro, NC

Addison Vann Irvin
Elizabeth City, NC

Kathryn Elizabeth Kasper
Henrico, VA

Kyra Lowry
Pembroke, NC

William Blair Lucas
Raleigh, NC

William A. Marsh Jr.
Durham, NC

Frederick C. Meekins
Charlotte, NC

William Gane Robinson
Charlotte, NC

Thomas Haywood Stark
Chapel Hill, NC

Hamlin Landis Wade
Charlotte, NC

David Tutherly Watters
Raleigh, NC

Staten Langbourne Wilcox Jr.
Charlotte, NC

James Lynwood Wilson
Liberty, NC

Wiley Porter Wooten
Burlington, NC

ACAP can include without limitation:

- (a) assisting clients and attorneys in resolving issues arising in the client/attorney relationship that might be resolved without the need to open grievance files; and
- (b) operating the Fee Dispute Resolution Program.

Proposed Amendments to the Rules on Discipline and Disability of Attorneys

27 N.C.A.C. 1B, Section .0200, Rules Governing Judicial District Grievance Committees

The proposed amendment reflects the elimination of judicial district fee dispute programs.

.0202 Jurisdiction and Authority of District Grievance Committees

(a) District Grievance Committees are Subject to the Rules of the North Carolina State Bar ...

(b) ...

(d) Grievances Involving Fee Disputes

(1) Notice to Complainant of Fee Dispute Resolution Program ...

(2) Handling Claims Not Involving Fee Dispute ...

(3) Handling Claims Not Submitted to Fee Dispute Resolution by Complainant ...

(4) Referral to Fee Dispute Resolution Program - Where a complainant timely elects to participate in fee dispute resolution, ~~and the judicial district in which the respondent attorney maintains his or her principal office has a fee dispute resolution committee, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the judicial district fee dispute resolution committee. If the judicial district in which the respondent attorney maintains his or her principal office does not have a fee arbitration committee, the chairperson of the district grievance committee shall refer the portion of the grievance involving a fee dispute to the State Bar Fee Dispute Resolution Program for resolution. If the grievance consists entirely of a fee dispute, and the complainant timely elects to participate in fee dispute resolution, no grievance file will be established.~~

(e) Authority of District Grievance

Committees ...

Proposed Amendments to the Rules on Standing Committees and Boards of the State Bar

27 N.C.A.C. 1D, Section .0700, Procedures for Fee Dispute Resolution

The proposed amendments eliminate judicial district bar fee dispute programs; eliminate language that would allow a third-party payor of legal fees or expenses to file a fee dispute petition; state that the fee dispute program does not have jurisdiction over disputes regarding fees or expenses that are the subject of a pending Client Security Fund (CSF) claim or CSF claim that has been paid in full; provide that, ordinarily, a fee dispute will be processed before a companion grievance; and modernize existing language of this section.

.0701 Purpose and Implementation

The purpose of the Fee Dispute Resolution Program is to help clients and lawyers settle disputes over fees. ~~In doing so, the~~ The Fee Dispute Resolution Program ~~shall will attempt to~~ assist the lawyers and clients in resolving disputes concerning ~~determining the appropriate fee for~~ legal fees and expenses. ~~services rendered.~~ The State Bar ~~shall will~~ implement the Fee Dispute Resolution Program under the auspices of the Grievance Committee (the committee) as part of the Attorney Client Assistance Program (ACAP). It will be offered to clients and ~~their~~ lawyers at no cost. ~~A person other than the client who pays the lawyer's legal fee or expenses may file a fee dispute. The person who paid the fees or expenses will not be permitted to participate in the fee dispute resolution process.~~

.0702 Jurisdiction

(a) The committee has jurisdiction over a disagreement arising out of a client-lawyer relationship concerning the fees and expenses charged or incurred for legal services provided by a lawyer licensed to practice law in North Carolina.

(b) The committee does not have jurisdiction over the following:

- (1) a dispute concerning fees or expenses established by a court, federal or state administrative agency, ~~or~~ federal or state official, or private arbitrator or arbitrator panel;

~~(2) a dispute involving services that are the subject of a pending grievance complaint alleging violation of the Rules of Professional Conduct;~~

~~(3)(2)~~ a dispute over fees or expenses that are or were the subject of litigation or arbitration unless

(i) a court, arbitrator, or arbitration panel directs the matter to the State Bar for resolution, ~~or~~

(ii) both parties to the dispute agree to dismiss the litigation or arbitration without prejudice and pursue resolution through the State Bar's Fee Dispute Resolution program; or

(iii) litigation was commenced pursuant to 27 N.C. Admin. Code 1D § .0707(a);

~~(4)(3)~~ a dispute between a lawyer and a service provider, such as a court reporter or an expert witness;

(4) a dispute over fees or expenses that are the subject of a pending Client Security Fund claim, or a Client Security Fund claim that has been fully paid.

(5) a dispute between a lawyer and a person or entity with whom the lawyer had no client-lawyer relationship, ~~except that the committee has jurisdiction over a dispute between a lawyer and a third-party payor of legal fees or expenses;~~ and

(6) a dispute concerning a fee charged for services provided by the lawyer that do not constitute the practice of law.

(c) The committee will encourage settlement of fee disputes falling within its jurisdiction ~~pursuant to Rule .0708 of this subchapter.~~

.0704 Confidentiality

The Fee Dispute Resolution Program is a subcommittee of the Grievance Committee, which maintains all information in the possession of the Fee Dispute Resolution Program. Pursuant to N.C. Gen. Stat. § 84-32.1, documents in the possession of the Fee Dispute Resolution Program are confidential and are not public records. The existence of and content of any petition for resolution of a disputed fee and of any lawyer's response to a petition for resolution of a disputed fee are confidential.

.0706 Powers and Duties of the Vice-Chairperson

The vice-chairperson of the Grievance

Subcommittee overseeing ACAP, or his ~~or~~ her designee, who must be a councilor, will:

(a) approve or disapprove any recommendation that an impasse be declared in any fee dispute petition for resolution of a disputed fee be dismissed; and

~~(b) call and preside over meetings of the committee; and~~

~~(c)(b)~~ refer to the Grievance Committee all cases in which it appears ~~to the vice chairman~~ that

(i) a lawyer might have demanded, charged, contracted to receive or received an illegal or clearly excessive fee or a clearly excessive amount for expenses in violation of Rule 1.5 of the Rules of Professional Conduct; or

(ii) a lawyer might have failed to refund an unearned portion of a fee in violation of Rule 1.5 the Rules of Professional Conduct; or

(iii) a lawyer might have violated one or more Rules of Professional Conduct other than or in addition to Rule 1.5.

.0707 Processing Requests for Fee Dispute Resolution

(a) ~~Requests~~ A request for resolution of a disputed fee must be submitted in writing to the coordinator of the Fee Dispute Resolution Program addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. A lawyer is required by ~~Rule 1.5 of the Rules of Professional Conduct 1.5~~ to notify in writing a client with whom the lawyer has a dispute over a fee (i) of the existence of the Fee Dispute Resolution Program and ~~to wait at least 30 days after the client receives such notification before filing a lawsuit to collect a disputed fee~~ (ii) that if the client does not file a petition for fee dispute resolution within 30 days after the client receives such notification, the lawyer will be permitted by Rule of Professional Conduct 1.5 to file a lawsuit to collect the disputed fee. . .

(b) ~~All~~ A petitions for resolution of a disputed fee must be filed (i) before the expiration of the statute of limitation applicable in the General Court of Justice for collection of the funds in issue or (ii) within three years of the termination of the client-lawyer relationship, whichever is later.

(c) The State Bar will process fee disputes and grievances in the following order:

(1) If a client submits to the State Bar simultaneously a grievance and a request

for resolution of disputed fee involving the same attorney-client relationship, the request for resolution of disputed fee will be processed first and the grievance will not be processed until the fee dispute resolution process is concluded.

(2) If a client submits a grievance to the State Bar and the State Bar determines it would be appropriate for the Fee Dispute Resolution Program to attempt to assist the client and the lawyer in settling a dispute over a legal fee, the attempt to resolve the fee dispute will occur first. If a grievance file has been opened, it will be stayed until the Fee Dispute Resolution Program has concluded its attempt to facilitate resolution of the disputed fee.

(3) If a client submits a request for resolution of a disputed fee to the State Bar while a grievance submitted by the same client and relating to the same attorney-client relationship is pending, the grievance will be stayed while the Fee Dispute Resolution Program attempts to facilitate resolution of the disputed fee.

(4) Notwithstanding the provisions of subsections (c)(1),(2), and (3) of this section, the State Bar will process a grievance before it processes a fee dispute or at the same time it processes a fee dispute whenever it determines that doing so is in the public interest.

~~(c)(d)~~ The coordinator of the Fee Dispute Resolution Program or a facilitator will review investigate the petition to determine its suitability for fee dispute resolution. If it is determined that the dispute is not suitable for fee dispute resolution, the coordinator and/or the facilitator will prepare a ~~dismissal letter setting forth the reasons the petition is not suitable for fee dispute resolution facts and a recommendation for its dismissal~~ dismissal letter setting forth the reasons the petition is not suitable for fee dispute resolution and recommending that the petition be discontinued and that the file be closed. The coordinator and/or the facilitator will forward the ~~dismissal~~ letter to the vice-chairperson. If the vice chairperson agrees with the recommendation, the petition will be ~~dismissed~~ discontinued and the file will be closed. The coordinator and/or facilitator will notify the ~~party~~ parties in writing ~~of the dismissal~~ that the file was closed. Grounds for ~~dismissal~~ concluding that a petition is not suitable for fee dispute resolution or for

closing a file include, but are not limited to, the following:

(1) the petition is frivolous or moot; or

(2) the committee lacks jurisdiction over one or more of the parties or over the subject matter of the dispute;₂

~~(3) the fee has been earned; or~~

~~(4) the expenses were properly incurred.~~

~~(d)(e)~~ If the vice-chairperson disagrees with the recommendation ~~for dismissal to close the file~~, the coordinator will schedule a settlement conference.

.0708 Settlement Conference Proceedings Procedure

(a) The coordinator will assign the case to a facilitator.

(b) The ~~facilitator~~ State Bar will send a ~~Letter of Notice~~ letter of notice to the ~~respondent~~ lawyer by certified mail notifying the respondent that the petition was filed and notifying the respondent of the obligation to provide a written response to the letter of notice, signed by the respondent, within 15 days of service of the letter of notice upon the respondent, and enclosing copies of the petition and of any relevant materials provided by the petitioner.

(c) Within 15 days after the ~~Letter of Notice~~ letter of notice is served upon the ~~lawyer respondent~~, the ~~lawyer respondent~~ must provide a written response to the petition signed by the respondent. The facilitator ~~may be authorized to~~ grant requests for extensions of time to respond. The ~~lawyer's~~ response must be a full and fair disclosure of all the facts and circumstances pertaining to the dispute. The response shall include all documents necessary to a full and fair understanding of the dispute. The response shall not include documents that are not necessary to a full and fair understanding of the dispute. The facilitator will provide a copy of the ~~lawyer's~~ response to the ~~client~~ petitioner unless the ~~lawyer respondent~~ objects in writing.

(d) The facilitator will conduct an investigation.

(e) The facilitator will conduct a telephone settlement conference, ~~between the parties.~~ The facilitator ~~is authorized to carry out~~ may conduct the settlement conference by ~~separate telephone calls with each of the parties or by conference calls~~ conference call or by telephone calls between the facilitator and one party at a time, depending upon which method the facilitator believes has the

greater likelihood of success.

(f) The facilitator will ~~define and describe~~ explain the following to the parties:

...

(6) the circumstances under which the facilitator may communicate privately with any ~~of the parties~~ party or with any other person;

...

(g) ~~The facilitator has a duty~~ It is the duty of the facilitator to be impartial and to advise ~~all participants~~ the parties of any circumstance that might cause either party to conclude that the facilitator has a possible bias, prejudice, or partiality.

(h) It is the duty of the facilitator to timely determine when the dispute cannot be resolved by settlement and to declare that an impasse exists and that the settlement conference should end.

(i) Upon completion of the settlement conference, the facilitator will prepare a disposition letter to be sent to the parties ~~detailing~~ explaining:

- (1) that the settlement conference resulted in a settlement and the terms of settlement; or
- (2) that the settlement conference resulted in an impasse.

.0709 Record Keeping

The coordinator of fee dispute resolution will keep a record of each request for fee dispute resolution. The record must contain the following information:

- (1) the ~~client's~~ petitioner's name;
- (2) the date the petition was received;
- (3) the ~~lawyer's~~ respondent's name;
- (4) the district in which the ~~lawyer~~ respondent resides or maintains a place of business;
- (5) what action was taken on the petition and, if applicable, how the dispute was resolved; and
- (6) the date the file was closed.

~~.0710 District Bar Fee Dispute Resolution~~

~~Subject to the approval of the council, any judicial district bar may adopt a fee dispute resolution program for the purpose of resolving disputes involving lawyers residing or doing business in the district. The State Bar does not offer arbitration as a form of dispute resolution. The judicial district bar may offer arbitration to resolve a disputed fee. A judicial district bar fee dis-~~

~~pute resolution program shall have jurisdiction over disputes that would otherwise be addressed by the State Bar's ACAP department. Such programs may be tailored to accommodate local conditions but they must be offered without cost and must comply with the jurisdictional restrictions set forth in Rule .0702 of this subchapter.~~

~~.0711 District Bar Settlement Conference Proceedings~~

~~(a) The chairperson of the judicial district bar fee dispute committee will assign the case to a facilitator who will conduct a settlement conference. The facilitator is responsible for arranging the settlement conference at a time and place convenient to all parties.~~

~~(b) The lawyer who is named in the petition must attend the settlement conference in person and may not send a representative in his or her place. If a party fails to attend a settlement conference without good cause, the facilitator may either reschedule the settlement conference or recommend dismissal of the petition.~~

~~(c) The facilitator must at all times be in control of the settlement conference and the procedures to be followed. The facilitator may communicate privately with any participant prior to and during the settlement conference. Any private communication with a participant will be disclosed to all other participants at the beginning of the settlement conference or, if the private communication occurs during the settlement conference, immediately after the private communication occurs. The facilitator will explain the following at the beginning of the settlement conference:~~

- ~~(1) the procedure that will be followed;~~
- ~~(2) the differences between a facilitated settlement conference and other forms of conflict resolution;~~
- ~~(3) that the settlement conference is not a trial;~~
- ~~(4) that the facilitator is not a judge;~~
- ~~(5) that participation in the settlement conference does not deprive the parties of any right they would otherwise have to pursue resolution of the dispute through the court system if they do not reach a settlement;~~
- ~~(6) the circumstances under which the facilitator may meet and communicate privately with any of the parties or with any other person;~~

~~(7) whether and under what conditions communications with the facilitator will be held in confidence during the settlement conference;~~

~~(8) that any agreement reached will be reached by mutual consent; and~~

~~(9) that, if the parties reach an agreement, that agreement will be reduced to writing and signed by the parties and their counsel, if any, before the parties leave the settlement conference.~~

~~(d) The facilitator has a duty to be impartial and to advise all participants of any circumstance that might cause either party to conclude that the facilitator has a possible bias, prejudice, or partiality.~~

~~(e) It is the duty of the facilitator to timely determine when the dispute cannot be resolved by settlement and to declare that an impasse exists and that the settlement conference should end.~~

Proposed Amendments to the Rules on Professional Conduct

27 N.C.A.C. 2, Rule 1.5, Fees

The proposed amendment expands the information a lawyer must communicate to a client before the lawyer may initiate legal proceedings to collect a disputed fee

Rule 1.5 Fees

(a) A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee or charge or collect a clearly excessive amount for expenses. The factors to be considered in determining whether a fee is clearly excessive include the following:...

(b) ...

(f) Any lawyer having a dispute with a client regarding a fee for legal services must:

- (1) at least 30 days prior to initiating legal proceedings to collect a disputed fee, notify his or her client in writing of the existence of the North Carolina State Bar's program of fee dispute resolution; the notice shall state that if the client does not file a petition for resolution of the disputed fee with the State Bar within 30 days of the lawyer's notification, the lawyer may initiate legal proceedings to collect the disputed fee
- client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee; and

- (2) participate in good faith in the fee

dispute resolution process if the client submits a proper request. Good faith participation requires the lawyer to respond timely to all requests for information from the fee dispute resolution facilitator.

Comment

Appropriate Fees and Expenses

[1] ...

Disputes over Fees

[10] Participation in the fee dispute resolution program of the North Carolina State Bar is mandatory when a client requests resolution of a disputed fee. A lawyer's obliga-

tion to respond timely to all requests for information from the fee dispute resolution facilitator continues even if the lawyer and the client reach a resolution of the dispute while the fee dispute petition is pending.

Before filing an action to collect a disputed fee, the client must be advised of the fee dispute resolution program. Notification must occur not only when there is a specific issue in dispute, but also when the client simply fails to pay. However, when the client expressly acknowledges liability for the specific amount of the bill and states that he or she cannot presently pay the bill, the fee is

not disputed and notification of the client is not required. ~~In making reasonable efforts to advise the client of the existence of the fee dispute resolution program, it is preferable to address a written communication to the client at the client's last known address.~~ If the address of the client is unknown, the lawyer ~~should~~ must use reasonable efforts to acquire the current address of the client. Notification is not required in those instances where the State Bar does not have jurisdiction over the fee dispute as set forth in 27 N.C.A.C. 1D, .0702.

[11] ...

Additional Proposed Amendments

Also at its January 18, 2019 meeting, the council voted to publish the following proposed amendments to the governing rules of the State Bar for comment from the members of the Bar:

Proposed Amendments to the Rules on Election, Succession, and Duties of Officers

27 N.C.A.C. 1A, Section .0400, Election Succession, and Duties of Officers

The proposed amendments expressly authorize the president to act in the name of the State Bar under emergent circumstances when it is not practicable or reasonable to convene a meeting of the council. Actions taken pursuant to this authority are subject to ratification at the next meeting of the council.

.0409 President

The president shall preside over meetings of the North Carolina State Bar and the council. The president shall sign all resolutions and orders of the council in the capacity of president. The president shall execute, along with the secretary, all contracts ordered by the council. Pursuant to Rule .0412, the president is authorized to act in the name of the State Bar under emergent circumstances. The president will perform all other duties prescribed for the office by the council.

.0412 Emergency Authority

When prompt action is required due to emergent circumstances and it is not practi-

cable or reasonable to assemble a quorum of the council, the president, in consultation with the officers and counsel, is authorized to act in the name of the State Bar to the extent necessary to carry out the functions of the State Bar until the next meeting of the council. Action taken pursuant to this rule shall be presented to the council for ratification at the next council meeting.

Proposed Amendments to the Rules and Regulations Governing the Administration of the Continuing Legal Education 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

The proposed amendments to the two sections of the rules that govern the administration of the CLE program eliminate the annual 6.0 cap on online CLE credit hours. In addition, there are numerous non-substantive proposed amendments that improve the clarity and consistency of the rules substituting the word "program" for the following words: "class," "session," "presentation," and "activity."

.1501 Scope, Purpose, and Definitions

(a) Scope ...

(c) Definitions

(1) ...

(5) "Continuing legal education" or "CLE" is any legal, judicial or other educational ~~activity~~ program accredited by the board. Generally, CLE will include educational ~~activities~~ programs designed...

(6) ...

(11) "On demand" program shall mean an accredited educational program accessed via the internet that is available at any time on a provider's website and does not include live programming.

(12) "Online" program shall mean an accredited educational program accessed through a computer or telecommunications system such as the internet and can include simultaneously broadcast and on demand programming.

(13)(14) "Participatory CLE" shall mean ~~courses~~ programs or segments of ~~courses~~ programs that encourage...

(14)(12) "Professional responsibility" shall mean those ~~courses~~ programs or segments of ~~courses~~ programs devoted to...

(15)(13) "Professionalism" ~~courses~~ programs are ~~courses~~ programs or segments of ~~courses~~ programs devoted to the identification and examination of, and the encouragement of adherence to, non-mandatory aspirational standards of professional conduct which transcend the requirements of the Rules of Professional Conduct. Such ~~courses~~ programs address...

(16)(14) "Registered sponsor" ...

~~(17)~~(15) “Rules” ...

~~(18)~~(16) “Sponsor” ...

~~(19)~~(17) “Technology training” shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. §143B1320(a)(11), or successor statutory provision, for a definition of “information technology”), including education on an information technology product, device, platform, application, or other tool, process, or methodology. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 and the course content requirements in Rule .1602(e) of this subchapter; ~~specifically, the primary objective of the program must be to increase the participant’s professional competence and proficiency as a lawyer. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool process or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; and g) practice management software. See Rule .1602 of this subchapter for additional information on accreditation of technology training programs.~~

~~(20)~~(18) “Year” ...

.1512 Source of Funds

(a) ...

(1) ...

(2) The board shall fix a reasonably comparable fee to be paid by individual attorneys who attend for CLE credit approved continuing legal education activities programs for which...

.1517 Exemptions

(a) ...

(i) CLE Record During Exemption Period. During...at accredited continuing legal education activities programs. Upon the termination of the member’s exemption, the member may request carry over credit up to a maximum of twelve (12) credits for any accredited continuing legal education activity

program attended during the calendar year immediately preceding the year of the termination of the exemption. Appropriate documentation of attendance at such activities programs will be required by the board.

(j) ...

.1518 Continuing Legal Education Requirements Program

(a) Annual Requirement. ...

(c) Professionalism Requirement for New Members. ...

(1) Content and Accreditation. The State Bar ... To be approved as a PNA Program, the program must be provided by a sponsor registered under Rule .1603 of this subchapter and ~~the~~ a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the presentation program...

(2) ...

(d) Exemptions from Professionalism Requirement for New Members...

.1519 Accreditation Standards

The board shall approve continuing legal education programs that meet the following standards and provisions.

(a) ...

(c) Credit may be given for continuing legal education activities programs where live instruction is used or mechanically or electronically recorded or reproduced material is used, including videotape, ~~or~~ satellite transmitted, and online programs. ~~Subject to the limitations set forth in Rule .1604(e) of this subchapter, credit may also be given for continuing legal education activities on CD-ROM and on a computer website accessed via the Internet.~~

(d) Continuing legal education materials are to be prepared, and activities programs conducted, by an individual or group qualified by practical or academic experience. Credit shall not be given for any continuing legal education activity program taught or presented by a disbarred lawyer except a course program on professional responsibility (including a course or program on the effects of substance abuse and chemical dependency, or debilitating mental conditions on a lawyer’s professional responsibilities) taught by a disbarred lawyer whose disbarment date is at least five years (60 months) prior to the date of the activity program. The advertising for the activity program shall disclose the

lawyer’s disbarment.

(e) Live Continuing legal education activities programs shall be conducted in a setting physically suitable to the educational activity nature of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.

(f) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the course program is presented. These may include written materials printed from a web-site or computer presentation, ~~computer website, or CD-ROM~~. A written agenda or outline for a presentation program satisfies this requirement when written materials are not suitable or readily available for a particular subject. The absence of written materials for distribution should, however, be the exception and not the rule.

(g) A sponsor of an approved program must remit fees as required and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the board in accordance with regulations. Participation in an online program must be verified as provided in Rule .1601(d).

(h) Except as provided in Rules .1501 and ~~.1604~~ .1602(h) of this subchapter, in-house continuing legal education and self-study shall not be approved or accredited for the purpose of complying with Rule .1518 of this subchapter.

(i) Programs that...content of the activity program would enhance legal skills or the ability to practice law.

.1520 Registration of Sponsors and Program Approval

(a) Registration of Sponsors. An organization desiring to be designated as a registered sponsor of programs, ~~or other continuing legal education activities~~ may apply...

(1)

(b) ...

.1521 Credit Hours

The board may designate by regulation the number of credit hours to be earned by participation, including, but not limited to, teaching, in continuing legal education activities programs approved by the board.

.1524 Reinstatement

(a) Reinstatement Within 30 Days of Service of Suspension Order ...

FOLLOW THE STATE BAR

Follow us on



twitter.com/NCStateBar

Like us on



facebook.com/NCStateBar

(c) Reinstatement Petition

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for noncompliance with the rules governing the continuing legal education program may seek reinstatement by filing a reinstatement petition with the secretary..... If not otherwise set forth in the petition, the member shall attach a statement to the petition in which the member shall state with particularity the accredited legal education ~~courses~~ programs that which the member has...

(d) ...

.1601 General Requirements for ~~Course~~ Program Approval

(a) Approval. CLE programs may be approved upon the written application of a sponsor, including a registered sponsor, or of an active member on an individual program basis. An application for such CLE program approval shall meet the following requirements:

(1) If advance approval is requested by a sponsor, the application and supporting documentation, including one substantially complete set of the written

materials to be distributed at the ~~course or~~ program, shall be submitted at least 50 days prior to the date on which the ~~course or~~ program is scheduled...

(2) In all other cases, the application and supporting documentation shall be submitted by the sponsor not later than 50 days after the date the ~~course or~~ program was presented or prior to the end of the calendar year in which the ~~course or~~ program was presented, whichever is earlier. Active members requesting credit must submit the application and supporting documentation within 50 days after the date the ~~course or~~ program was presented or, if the 50 days have elapsed, as soon as practicable after receiving notice from the board that the ~~course~~ program accreditation request was not submitted by the sponsor.

(3) ...

(5) The application shall be accompanied by a ~~course~~ program outline ...

(b) Program Quality and Materials... Any sponsor, including a registered sponsor, that expects to conduct a CLE program for which suitable written materials will not be made available to all attendees may obtain approval

for that program only by application to the board at least 50 days in advance of the ~~presentation~~ program showing why written materials are not suitable or readily available for such a program.

(c) Facilities ...

(d) ~~Computer-Based CLE: Verification of Attendance~~ Online CLE. The sponsor of an on-line ~~course~~ program must have a reliable method for recording and verifying attendance. ~~The sponsor of a CD-ROM course must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course.~~ A participant may periodically log on and off of ~~a computer-based CLE course~~ an online program provided the total time spent participating in the ~~course~~ program is equal to or exceeds the credit hours assigned to the program. A copy of the record of attendance must be forwarded to the board within 30 days after a member completes his or her participation in the ~~course~~ program.

(e) Records. Sponsors, including registered sponsors, shall within 30 days after the program is concluded

(1) ...;

(2) remit to the board the appropriate sponsor fee; and, if payment is not

received by the board within 30 days after the course program is concluded, interest at the legal rate shall be incurred...; and (3) furnish to the board a complete set of all written materials distributed to attendees at the course or program.

(f) Announcement. Sponsors that have advanced approval for programs may include in their brochures or other program descriptions the information contained in the following illustration:

This ~~course, seminar, or program~~ has been approved by the Board of Continuing Legal Education of the North Carolina State Bar for continuing legal education credit in the amount of ____ hours, of which ____ hours will also apply in the area of professional responsibility.

(g) Notice. Sponsors not having advanced approval shall make no representation concerning the approval of the course program for CLE credit by the board. The board will mail a notice of its decision on CLE activity program approval requests within ~~(45)~~ 45 days of their receipt when the request for approval is submitted before the program and within ~~(45)~~ 45 days when the request is submitted after the program. ...

.1602 Course Content Requirements

(a) Professional Responsibility Courses Programs on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions - Accredited professional responsibility courses programs on stress, substance abuse, chemical dependency, and debilitating mental conditions shall concentrate on the relationship between stress, substance abuse, chemical dependency, debilitating mental conditions, and a lawyer's professional responsibilities. Such courses programs may also include (1) education on the prevention, detection, treatment and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions, and (2) information about assistance for chemically dependent or mentally impaired lawyers available through lawyers' professional organizations. No more than three hours of continuing education credit will be granted to any one such course program or segment of a course program.

(b) Law School Courses - Courses offered by an ABA accredited law school with respect to which academic credit may be earned may be approved activities programs. ...

(e) Technology Training Programs - A technology training program must have the primary objective of A program on the selection of an information technology (IT) product, device, platform, application, web-based technology, or other technology tool, process, or methodology; or the use of an IT tool, process, or methodology to enhance enhancing a lawyer's proficiency as a lawyer or to improve improving law office management and must satisfy may be accredited as technology training if the requirements of paragraphs (c) and (d) of this rule are satisfied as applicable. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool process or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; g) practice management software; and h) a cybersecurity tool, process, or methodology specifically applied to the needs of the practice of law or law practice management. A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training courses programs on Microsoft Office, Excel, Access, Word, Adobe, etc., ~~programs~~; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a program that is sponsored by a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology unless the course program is solely about using the IT tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT tool, process, or methodology in return for presenting a CLE program about the IT

tool, process, or methodology.

(f) Activities That Shall Not Be Accredited - CLE credit will not be given for general and personal educational activities. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit:

- (1) ...;
- (2) ...;
- (3) courses designed primarily to sell services or products or to generate greater revenue, such as marketing or advertising (as distinguished from courses programs dealing with development of law office procedures and management designed to raise the level of service provided to clients).

(g) Service to the Profession Training - A course program or segment of a course program presented by a bar organization may be granted up to three hours of credit if the bar organization's course program trains volunteer attorneys in service to the profession, and if such course program or course segment meets the requirements of Rule .1519(2)-(7) and Rule .1601(b), (c), and (g) of this subchapter; if appropriate, up to three hours of professional responsibility credit may be granted for such course program or course program segment.

(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys, except as follows:

- (1) programs exempted by the board under Rule .1501(c)(10) of this subchapter; and
- (2) ~~as provided in Rule .1604(e) of this subchapter; and~~
- ~~(2)(3)~~ live programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

(i) Bar Review/Refresher Course. Courses Programs designed to review or refresh recent law school graduates or attorneys in preparation for any bar exam shall not be approved for CLE credit.

.1603 Registered Sponsors

(a) Application for Registered Sponsor Status. To be designated as a registered sponsor of programs ~~or other continuing legal~~

education activities under Rule .1520(a) of this subchapter, a sponsor must satisfy the following requirements: ...

(b) ...

.1604 [Reserved] Accreditation of Prerecorded, Simultaneous Broadcast, and Computer-Based Programs

(a) ~~Presentation Including Prerecorded Material.~~ An active member may receive credit for attendance at, or participation in, a presentation where prerecorded material is used. Prerecorded material may be either in a video or an audio format.

(b) ~~Simultaneous Broadcast.~~ An active member may receive credit for participation in a live presentation which is simultaneously broadcast by telephone, satellite, live web streaming (webcasting), or video conferencing equipment. The member may participate in the presentation by listening to or viewing the broadcast from a location that is remote from the origin of the broadcast. The broadcast may include prerecorded material provided it also includes a live question and answer session with the presenter.

(c) ~~Accreditation Requirements.~~ A member attending a prerecorded presentation is entitled to credit hours if

(1) the live presentation or the presentation from which the program is recorded would, if attended by an active member, be an accredited course; and

(2) all other conditions imposed by the rules in Section .1600 of this subchapter, or by the board in advance, are met.

(d) ~~Minimum Registration and Verification of Attendance.~~ A minimum of three active members must register for the presentation of a prerecorded program. This requirement does not apply to the presentation of a live broadcast by telephone, satellite, or video conferencing equipment. Attendance at a prerecorded or simultaneously broadcast (by telephone, satellite, or video conferencing) program must be verified by (1) the sponsor's report of attendance or (2) the execution of an affidavit of attendance by the participant.

(e) ~~Computer-Based CLE.~~ Effective January 1, 2014, a member may receive up to six hours of credit annually for participation in a course on CD-ROM or on line. A CD-ROM course is an educational seminar on a compact disk that is accessed through the CD-ROM drive of the user's personal computer. An on-line course is an educational

seminar available on a provider's website reached via the Internet.

(1) ~~A member may apply up to six credit hours of computer-based CLE to a CLE deficit from a preceding calendar year. Any computer-based CLE credit hours applied to a deficit from a preceding year will be included in calculating the maximum of six hours of computer-based CLE allowed in the preceding calendar year. A member may carry over to the next calendar year no more than six credit hours of computer-based CLE pursuant to Rule .1518(b) of this subchapter. Any credit hours carried over pursuant to Rule .1518(b) of this subchapter will be included in calculating the six hours of computer-based CLE allowed in any one calendar year.~~

(2) ~~To be accredited, a computer-based CLE course must meet all of the conditions imposed by the rules in Section .1600 of this subchapter, or by the board in advance, except where otherwise noted, and be interactive, permitting the participant to communicate, via telephone, electronic mail or a website bulletin board, with the presenter and/or other participants.~~

.1605 Computation of Credit

(a) ...

(c) ~~Teaching -~~ As a contribution to professionalism, credit may be earned for teaching in an approved continuing legal education activity program or a continuing paralegal education activity program held in North Carolina and approved pursuant to Section .0200 of Subchapter G of these rules. ~~Presentations Programs~~ accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three hours of credit for each thirty minutes of presentation. Repeat presentations programs qualify for one-half of the credits available for the initial presentation program. For example, an initial presentation of 45 minutes would qualify for 4.5 hours of credit.

(d) ~~Teaching Live Courses~~

(1) ...

(4) ~~Credit Hours.~~ Credit for teaching activities programs described in Rule .1605(d)(1) - (3) above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula: ...

.1606 Fees

(a) ~~Sponsor Fee -~~ ...The fee is computed as shown in the following formula and example which assumes a 6-hour course program attended by 100 North Carolina lawyers seeking CLE credit:

Fee: $\$3.50 \times \text{Total Approved CLE Hours}$
 $(6) \times \text{Number of NC Attendees (100)} =$
Total Sponsor Fee (\$2100)

(b) ~~Attendee Fee -~~ ...It is computed as shown in the following formula and example which assumes that the attorney attended an activity a program approved for 3 hours of CLE credit:

Fee: $\$3.50 \times \text{Total Approved CLE hours}$
 $(3.0) = \text{Total Attendee Fee } (\$10.50)$

(c) ... ■

The Disciplinary Department (cont.)

Gen. Stat. § 5A-12 for twice violating the court's injunction that prohibited him from handling entrusted funds and that required him to produce financial records to the State Bar.

The Wake County Superior Court entered a consent order censuring Hendersonville lawyer Scott Shelton pursuant N.C. Gen. Stat. § 5A-12 for violating the court's injunction that prohibited him from handling entrusted funds and that required him to produce financial records to the State Bar.

Notice of Intent to Seek Reinstatement

In the Matter of James Walter Smith

Notice is hereby given that James Walter Smith of Durham, NC, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. James Walter Smith was disbarred in 1982 pursuant to voluntary surrender of his license in which he admitted to the crime of Armed Bank Robbery on July 21, 1981.

Individuals who wish to note their concurrence with or opposition to the petition for reinstatement should file written notice with the Secretary of the North Carolina State Bar, PO Box 25908, Raleigh, NC, 27611, before May 1, 2018 (60 days after publication). ■

Client Security Fund Reimburses Victims

At its January 16, 2019, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$33,130.46 to 15 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$150 to a former client of Garey M. Ballance of Warrenton. The board determined that Ballance was retained to handle a client's traffic ticket. The client paid Ballance's fee, but he failed to handle the ticket and provided no meaningful legal services for the fee paid. Ballance was disbarred on November 13, 2015. The board previously reimbursed 15 other Ballance clients a total of \$21,751.

2. An award of \$5,500 to a former client of Dee W. Bray Jr. of Fayetteville. The board determined that Bray was retained to handle a client's criminal charges. The client paid \$5,500 towards Bray's quoted \$7,500 fee. On February 2, 2017, Bray was placed on disability inactive status before he provided any meaningful legal services to the client for the fee paid. The board previously reimbursed 21 other Bray clients a total of \$160,250.

3. An award of \$9,400 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to handle a client's felony drug charges. Bray failed to provide the client with any meaningful legal services for the fee paid.

4. An award of \$1,500 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client charged with death by motor vehicle. Bray failed to provide the client with any meaningful legal services for the fee paid.

5. An award of \$1,250 to a former client of Wayne E. Crumwell of Reidsville. The board determined that Crumwell was retained to petition for a client's name to be removed from the sex offender's registry. Crumwell failed to provide any meaningful legal services to the client prior to his death. Crumwell died on November 6, 2016. The

board previously reimbursed nine other Crumwell clients a total of \$33,045.

6. An award of \$500 to a former client of Jeffrey W. Ellingworth, formerly of Charlotte. Ellingworth was retained by a client to send a demand letter and file suit in a civil matter against Wells Fargo. Ellingworth stopped communicating and moved from his office without notifying the client. Ellingworth told the client that he had written the demand letter to Wells Fargo, but never provided the client with any proof of such letter. The board determined that Ellingworth failed to provide any meaningful legal services to the client for the fee paid. Ellingworth was administratively suspended on February 26, 2016.

7. An award of \$338 to a former client of Powell W. Glidewell of Newland. The board determined that Glidewell was retained to handle a client's traffic matter. The client paid Glidewell's fee, plus costs and fines. Glidewell failed to appear on the client's behalf and provided no legal services for the fee paid. Glidewell was placed on disability inactive status on February 21, 2018.

8. An award of \$338 to a former client of Powell W. Glidewell. The board determined that Glidewell was retained to handle a client's traffic matter. The client paid Glidewell's fee, plus costs and fines. Glidewell failed to appear on the client's behalf and provided no legal services for the fee paid.

9. An award of \$1,120 to a former client of Christopher Greene of Charlotte. Greene was retained to represent a client in three immigration matters. Greene told the client that the case was before the judge, but there was no evidence that Greene filed anything in the client's matter. The board determined that Greene provided no legal services to the client for the fee paid. Greene was disbarred on February 11, 2017. The board previously reimbursed 12 other Greene clients a total of \$32,625.

10. An award of \$1,000 to a former client of Christopher Greene. The board deter-

mined that Greene was retained to help a client with his temporary protected immigration status. Greene failed to provide the client with any meaningful legal services for the fee paid.

11. An award of \$4,500 to an applicant who suffered a loss because of Christopher Greene. The board determined that Greene was retained to handle the applicant's brother's deportation matter. There was no evidence that Greene provided any meaningful legal services for the fee paid prior to the applicant's brother being deported.

12. An award of \$1,500 to a former client of Charles R. Gurley of Goldsboro. The board determined that Gurley was retained to represent a client on DWI and failure to reduce speeding charges after an auto accident. Gurley failed to provide meaningful legal services in the client's case prior to being suspended by the court. Gurley was enjoined from practicing law on November 22, 2017. The board previously reimbursed 69 other Gurley clients a total of \$63,859.

13. An award of \$1,000 to a former client of Charles R. Gurley. The board determined that Gurley was retained to handle a client's DWI charge. Gurley failed to provide meaningful legal services in the client's case prior to being enjoined from practicing law by the court.

14. An award of \$2,500 to a former client of Van Johnson of Elizabeth City. The board determined that Johnson was retained to file a Chapter 7 Bankruptcy for a client. Johnson failed to provide the client with any meaningful legal services for the fee paid prior to becoming disabled by illness.

15. An award of \$2,534.46 to a former client of Gary S. Leigh of Shelby. The board determined that Leigh was retained to represent a client in a personal injury claim. Leigh settled the matter and received \$9,790 in settlement proceeds from the liability insurance carrier. Leigh disbursed his 1/3 contingency fee to himself and a portion of the

CONTINUED ON PAGE 50

Law School Briefs

Campbell University School of Law

Campbell Law offers “design thinking” course in conjunction with NC State—Campbell Law School and NC State University are again partnering to offer a unique course aimed at training 21st century lawyers to be more innovative and empathetic, and ultimately more successful. The intention and philosophy of the course, “Design Thinking in Law,” are described in the syllabi as: “People with design thinking skills are more innovative, productive, and human-centered, thanks to the design process of empathizing, visualizing, prototyping, and iterating. Lawyers who are more client-centered and more empathetic could be more successful in their professional career. This course will introduce the concept and process of design thinking. Students will have the opportunity to practice and develop the design thinking skills through hands-on exercises and projects.” The course will be taught jointly by Campbell Law Professor Kevin P. Lee, who couples his long-standing interest in the phenomenon of human religiousness with his interest in the emerging networked, globalized society, and Professor Tsai Lu Liu, head of the Department of Graphic Design and Industrial Design, to law students at Campbell University’s Downtown Raleigh campus.

Campbell Law to offer summer study abroad opportunity in Ghana—Campbell Law has announced plans to expand its study abroad opportunities to sub-Saharan Africa in summer 2019. The three week residential program will begin mid-May with the first week spent in Accra, the capital of Ghana. The last two weeks will include an intensive classroom component at the University of Cape Coast Law School and two weekend excursions. Students will study a mix of international commercial law, international intellectual property law, and international human rights law. Campbell Law professors will teach along with their Ghanaian counterparts with expertise in the same areas.

Duke Law School

Duke Law School is expanding its nationally recognized clinical program with the launch of a new clinic focused on immigration law. When it opens next fall, the Duke Law Immigration Clinic will offer students the opportunity to develop critical professional skills while providing free legal services to immigrants who could not otherwise afford a lawyer. Supervised by clinic faculty, student-attorneys in the clinic will primarily represent individuals seeking asylum or facing deportation.

Duke plans to locate the new clinic near downtown Durham to enable direct access to clients and opportunities to collaborate with other direct services agencies that support the region’s immigrant population. A \$1.5 million gift from the Ting Tsung and Wei Fong Chao Foundation will support the clinic’s first three years of operations.

Carolyn McAllaster, the Colin W. Brown clinical professor of law and director of the HIV/AIDS Policy Clinic, received the NC AIDS Action Network’s 2018 Advocate of the Year Award in November for her long-time advocacy on behalf of people living with HIV in North Carolina. McAllaster, who in 1996 founded Duke Law’s Health Justice Clinic (then known as the AIDS Legal Project), also serves as project director for the Southern HIV/AIDS Strategy Initiative, advocating for increased federal resources to stop the spread of HIV in the South, which has the highest rates of new infection and HIV-related deaths in the United States.

Curtis Bradley, the William Van Alstyne professor of law and professor of public policy studies, served as reporter on the American Law Institute’s Restatement of the Law Fourth, The Foreign Relations Law of the United States, which was published in early November. Bradley, a co-director of the Center for International and Comparative Law and co-editor-in-chief of the *American Journal of International Law*, worked prima-

rily on the portions of the restatement relating to treaties.

Elon University School of Law

NC Attorney General Josh Stein delivers Elon Law commencement address—Elon Law conferred 102 degrees in a commencement ceremony that featured an address by North Carolina Attorney General Josh Stein, who reminded graduates of their duty to seek justice and to protect the rule of law in troubling times. “You will have a special duty to stand up when the Constitution—and the democratic norms and institutions that give it meaning—are undermined or threatened,” he told Elon Law’s Class of 2018. “Fortunately, Elon Law has prepared you to be a lawyer-leader since your first day.”

“Helpful mentor and friend” honored with top Elon Law award—Timauro Barfield was honored at Elon Law’s 11th commencement ceremony in December with the David Gergen Award for Leadership & Professionalism. Elon Law students are nominated for the award by their peers, professors, or staff and are selected based on law school activities that represent the twin principles of leadership and professionalism. Barfield, a graduate of High Point University and Georgetown University’s Paralegal Studies Program, co-chaired Elon Law’s national moot court competition, served as an Honor Council defender, aided classmates as an academic teaching fellow, and served as vice president of the Black Law Students Association.

Elon Law scholar reelected to UNIDROIT—Professor Henry Gabriel has been reelected to a five-year term on the Governing Council of the International Institute for the Unification of Private Law. Founded in 1926, UNIDROIT is an inter-governmental organization based in Rome with 63 member countries, including the United States. UNIDROIT studies needs and methods for modernizing, harmonizing, and coordinating private and, in particular, commercial law between states and groups of states, and to formulate uniform law instru-

ments, principles, and rules to achieve those objectives. Nominated by the United States government, this is Gabriel's fourth term on the council.

North Carolina Central School of Law

On October 27, North Carolina Central University School of Law's Trial Advocacy Board hosted its annual intra-school competitions. Students showcased their oral advocacy skills in the 1L Opening Statement Competition, 2L Mike Easley Opening Statement Competition, and 3L Willie Gary Closing Argument Competition. The participants were judged by, and received feedback from, Willie E. Gary, one of the law school's most distinguished alumni.

Attorney Gary '74 earned a reputation as a "giant killer" by taking down some of America's leading corporations. He has won some of the largest jury awards and settlements in US history, including cases valued in excess of \$30 billion. His success has earned him recognition as one the nation's leading trial attorneys.

On October 30, the Honorable Anita Josey-Herring was guest speaker for the Charles Hamilton Houston Seminar held in the law school's moot courtroom. Judge Josey-Herring is the current Charles Hamilton Houston chair and distinguished visiting professor for the 2018-19 academic year.

Josey-Herring is an associate judge in the Superior Court of the District of Columbia. She was appointed to the bench in November 1997 by President Bill Clinton, and is a 1987 graduate of Georgetown University Law Center.

On November 13, the School of Law's OutLaw Alliance hosted a panel discussion titled Defining Sex: Who is Protected from Gender Discrimination? The discussion focused on a leaked memo from the Department of Health and Human Services proposing that the term "sex" be redefined to exclude transgender and gender expansive people. Panelists included: Madeline Goss, a plaintiff challenging HB2 (the "bathroom bill") and its replacement HB142; Bennett McAuley, NCCU senior and lavender liaison for the campus LGBTQ Resource Center; Attorney Anna Semmes; Ames Simmons, director of Transgender Policy at Equality NC; and Alaye Nirel Washington, NCCU junior and lavender liaison for the LGBTQ center.

University of North Carolina School of Law

CLE credit—Earn CLE credit at The ABCs of Banking Law, March 20, Charlotte; The Banking Institute, March 20-21, Charlotte; and The J. Nelson Young Tax Institute, April 25-26, Chapel Hill.

Moot court success—The Negotiation team of 3Ls Rana Odeh and Jasmine Plott tied for first place in their regional ABA Law Student Division Negotiation Competition at Elon Law School in November. The pair will compete in February at nationals in Chicago.

Four recognized with UNC Law Alumni Association Awards—The awards will be presented as part of Law Reunion Weekend May 3. John L. Sanders '54 of Chapel Hill, a UNC School of Government faculty member from 1956-1994, will be presented with the Lifetime Achievement Award. The Honorable D.C. "Mike" McIntyre '81 of Hillsborough, a partner at Poyner Spruill LLP and former congressman, will be presented with the Distinguished Alumni Award. Jessica N. Holmes '09 of Cary, an adjunct professor at NC State University and chair of the Wake County Board of Commissioners, will receive the Outstanding Recent Graduate Award. Lissa L. Broome of Chapel Hill, Burton Craige distinguished professor and director of the UNC Center for Banking and Finance, will receive the Professor S. Elizabeth Gibson Award for Faculty Excellence.

Faculty awards—Professor Barbara A. Fedders received the Steven S. Goldberg Award for Distinguished Scholarship in Education Law at the Education Law Association's annual conference. Fedders was recognized with the award for her *Iowa Law Review* article, "Schooling at Risk." Clinical Associate Professor Peter Nemerovski was recognized by the Association of Legal Writing Directors (ALWD) for his five years of service on the ALWD Annual Survey Committee. Eric L. Muller received the Professor Keith Aoki Asian Pacific American Jurisprudence Award from the Conference of Asian Pacific American Law Faculty.

Wake Forest School of Law

WFU Law wins 2018 National Board of Trial Advocacy (NBTA) Tournament of Champions (TOC)—For the first time in history, Wake Forest School of Law won the 2018 National Board of Trial Advocacy

(NBTA) Tournament of Champions (TOC). The winning team of third-year students, which was coached by Wake Forest alumnus Mark Boynton, included Ashley DiMuzio, Mark Parent, Tracea Rice, and Virginia Stanton. This marks Wake Forest Law's fourth national championship in just two consecutive academic years, an achievement that is distinct to the Demon Deacons.

Professor Ron Wright authors op-ed in New York Times, multiple scholarly publications—Professor Ron Wright, a renowned expert on prosecutors and criminal procedure, published the *New York Times* op-ed, "Yes, Jury Selection Is as Racist as You Think. Now We Have Proof," which discusses the findings of the Jury Sunshine Project, a collaborative project with Wake Forest Professors Gregory Parks and Kami Chavis.

He also recently co-authored the paper, "Prosecution that earns community trust," for the Institute for Innovation in Prosecution at the John Jay College of Criminal Justice. His latest article, "Career Motivations of State Prosecutors," which was co-written by Kay Levine and published by the *George Washington Law Review*, describes the reasons prosecutors enter and stay in the profession.

WFU Law to host multiple NC Continuing Legal Education (CLE) courses in 2019—Wake Forest School of Law will host multiple CLE opportunities throughout the state during the spring of 2019. Attendance permits attorneys to fulfill mandatory CLE requirements, including technology, ethics, and general CLE credit hours.

Dean Suzanne Reynolds will tour the state to present several CLE ethics courses, including a number of courses on cybersecurity and the future of the law. Raina Haque, a professor of practice of technology, will also offer a comprehensive executive education program entitled, "Blockchain, Crypto, & the Law: Decoded & in Practice," in Charlotte. Details and registration for these events can be found at wfu.law/2019cle.

WFU Law receives accolades for value, business law—Wake Forest School of Law is among the Top 25 Best Value Law Schools in the country as well as the No. 2 Best Law School among private US law schools, according to the National Jurist's *preLaw Magazine*. The publication also named Wake Forest as a top school for business law, marking the third year in a row that the school has been distinguished as a leader in business law by the magazine. ■

John B. McMillan Distinguished Service Award

Judge B. Craig Ellis

Judge B. Craig Ellis received the John B. McMillan Distinguished Service Award on November 16, 2018, at a ceremony held at the Scotland County Courthouse in Laurinburg, NC. NC State Bar President-Elect C. Colon Willoughby Jr. presented the award.

Judge Ellis grew up and attended high school in Wilmington, NC, and earned his undergraduate degree from the University of Virginia. For four years he served as an officer in the United State Navy. He then earned his law degree from UNC in 1970. Judge Ellis practiced law in Laurinburg for the next six years. During that time, he also served as a part-time magistrate.

In 1976 Judge Ellis began his judicial career as a district court judge. He served in that role until 1984, at which time he was elected to the superior court bench, where he remained until his retirement in 2005. From 2004 to 2005 he served as president of the North Carolina Conference of Superior Court Judges.

Judge Ellis' record of service extends beyond his roles as district court and superior court judge. He has a longstanding commitment to the Boy Scouts of America beginning in 1955 when he received his Eagle Scout award. He has received virtually every honor that the Boy Scouts award. He has served on the Board of Trustees and the Executive Operating Committee of Scotland Memorial Hospital. He has received the Rotary Club Paul Harris Award, the Edwin Guest Pioneer Service Award, and the Jaycee Distinguished Service Award.

In 2007 Judge Ellis was awarded the NC Order of Longleaf Pine. This award is among the most prestigious awards conferred by the governor of North Carolina. It is awarded to persons for exemplary service to the State of North Carolina and their communities that is above and beyond the call of duty, and which has made a signifi-

cant impact and strengthened North Carolina.

Judge Ellis' life has been one of service—to his country, his state and local community, and to the judicial system. He is a most deserving recipient of the John B. McMillan Distinguished Service Award.

Robert L. Epting

Attorney Robert L. Epting (Bob) received the John B. McMillan Distinguished Service Award on December 7th at District 15B's Holiday Party at the Carolina Inn. The award was presented by North Carolina State Bar Executive Director Alice Mine.

Mr. Epting graduated from the University of North Carolina in 1963, and from its law school in 1970. After teaching for three years at UNC's Institute of Government, Mr. Epting opened his private practice. In 1974 Mr. Epting and Joe Hackney formed the firm Epting & Hackney.

Mr. Epting has almost 40 years of experience serving clients in and around Orange County. He is best known for his service to the Orange Water and Sewer Authority (OWASA). Mr. Epting served four years on the OWASA Board before he became its general counsel in 1984. He is an acknowledged expert in matters of administrative and environmental law, including water, environmental regulation, zoning, and personnel. In 2002 Mr. Epting was inducted into the General Practice Hall of Fame by the North Carolina Bar Association.

Mr. Epting has served on the North Carolina Environmental Management Commission and on the Chapel Hill Town Board and the North Carolina Parks and Recreation Board. He has handled a wide range of matters involving the administrative processes at UNC-Chapel Hill and UNC Hospitals. He also volunteers his time to the UNC School of Law.

Mr. Epting has served as a volunteer

attorney for the Orange County Rape Crisis Center for over four decades and was instrumental in forming the Chapel Hill domestic violence prevention agency. He was also one of the founders of the Orange County Family Violence Prevention Center. Additionally, he has served as board counsel to the Inter-Faith Council for Social Services, Inc.

Mr. Epting is an avid pilot and received the National Humanitarian of the Year award for his leadership in the Young Eagles Program.

Jonathan R. Harkavy

Attorney Jonathan R. Harkavy received the John B. McMillan Distinguished Service Award on November 15, 2018, at the Greensboro Bar Association meeting in Greensboro, NC. State Bar President G. Gray Wilson presented the award.

Mr. Harkavy graduated from Columbia Law School in 1968. He served as a law clerk for Judge Rives of the US Court of Appeals for the Fifth Circuit and then began his practice of law in New York City. He ultimately moved to Greensboro, NC, where he joined the law firm now known as Patterson Harkavy. Mr. Harkavy is considered one of the most knowledgeable labor and employment lawyers in the state. The Labor and Employment Section's highest honor is the Jonathan R. Harkavy Award, of which Mr. Harkavy was the first recipient. He is particularly well known for his annual presentation of updates of the US Supreme Court's labor and employment decisions.

Mr. Harkavy has taught securities law and corporate finance at Duke and Carolina Law Schools. He also taught employment courses at Wake Forest Law School. Mr. Harkavy has also taught labor and employment law to nonlawyers and has assisted in the training of mediators. He is a research associate at Harvard Law School and is co-author of the practice volume of Larsen's Employment Discrimination.

Mr. Harkavy is a past president of the 18th Judicial District Bar. He has served as chair of the NCBA's Committee on Dispute Resolution, chair of the Labor and Employment Law Section, and chair of the Appellate Rules Committee. He has also served as co-chair of the ABA's Committee on Employment at Will. He has served on the Civil Rights Advisory Committee for the Middle District, the Civil Rules Subcommittee for the Eastern District, and the Judges Faculty for the Fourth Circuit Judicial Conference.

Mr. Harkavy is a member of the Joseph Branch Inn of Court and a recipient of the NCBA's H. Brent McKnight Renaissance Lawyer Award

Jonathan Harkavy has spent a lifetime cultivating knowledge of the law and working to strengthen legal education, providing civic leadership, aiding the legal profession, and treating others with courtesy and respect.

James M. Talley Jr.

Attorney James M. Talley Jr. received the John B. McMillan Distinguished Service Award on November 14, 2018, at the Mecklenburg County Bar Law and Society Luncheon in Charlotte, NC. State Bar President G. Gray Wilson presented the award.

Mr. Talley received his law degree from UNC. He was a member of the Law Review and was inducted into the Order of the

Coif. He served as an officer in the United States Naval Reserve and retired as a captain in the Naval Security Group. In 1964 Mr. Talley joined the law firm that eventually became Horack, Talley, Pharr & Lowndes. His practice concentrates on commercial real estate development, business formation and operation, and financing for real estate and business ventures.

Mr. Talley served on the study committee to determine the best way to provide legal aid to the poor. He served as president and member of the Board of Directors of Legal Services of North Carolina, president and member of the Board of Directors of Legal Services of the Southern Piedmont, chair of the Task Force on Delivery of Legal Services, member of the North Carolina Commission on Delivery of Legal Services, and member of the Access to Justice Commission

Mr. Talley also served on the North Carolina Bar Association's Board of Governors from 1983 to 1986. He served as president of the Bar Association from 1994 to 1995 and co-president of the Southern Conference of Bar Presidents from 1995-1996. He served as the Mecklenburg County co-chair of the Centennial Campaign for the North Carolina Bar Foundation and he currently serves on the Board of Directors of the 4ALL Task Force. In addition, Mr. Talley served on the Board of Trustees of the North Carolina State Bar Plan for IOLTA from 2002-2008.

Mr. Talley is a sustaining life member of The Fellows of the American Bar Foundation, an honorary organization of attorneys, judges, and law professors whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

Nominations Sought

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 Suzanne Lever, SLever@ncbar.gov. ■

Client Security Fund (cont.)

funds to the client. Leigh retained the remaining funds purportedly for costs and medical liens. Prior to paying any remaining funds to Medicaid or other medical providers, the IRS seized Leigh's trust account to recover funds Leigh owed for unpaid income and withholding taxes for several years. Leigh failed to pay his taxes and failed to protect his clients' separate property from seizure by the IRS. The board previously reimbursed two other Leigh clients a total of \$5,699.37. ■

Thank You to Our Sponsors

On January 15, 2019, a dinner was held in celebration of the retirement of L. Thomas Lunsford II after 27 years of outstanding leadership and dedicated service to the North Carolina State Bar, North Carolina lawyers, and the people of the State of North Carolina as executive director of the Bar. The following individuals and organizations generously sponsored this event.

Gold Sponsor

Lawyers Mutual

Silver Sponsors

Bell, Davis & Pitt, P.A.
Charles & Martha Davis
di Santi Watson Capua Wilson & Garrett, PLLC
Hunton Andrews Kurth LLP
John Vernon, Attorney at Law
Kilpatrick Townsend & Stockton, LLP
Law Offices of Fred H. Moody, Jr.
Manning Fulton & Skinner, P.A.
McGuireWoods LLP
Moore & Van Allen PLLC
Mullins Duncan Harrell & Russell PLLC

Nelson Mullins Riley & Scarborough
Parker Poe Adams & Bernstein LLP
Poyner Spruill LLP
Robinson Bradshaw
Satisky & Silverstein, LLP
Schell Bray PLLC
Smith Anderson
Womble Bond Dickinson (US) LLP
Yates, McLamb & Weyher LLP

Bronze Sponsor

Cranfill Sumner & Hartzog LLP

NORTH CAROLINA

Leaders & INNOVATORS

***"WE AREN'T
SELLING INSURANCE.***

***WE'RE BUILDING
RELATIONSHIPS."***

Those words from our former president John Beard say it best.

Whether it's working with local bar groups, listening to community boards or meeting with solo practitioners, NC lawyers inspire everything we do.

Succession planning tools. State-of-the-art CLE.
A commitment to your well being.

From law schools to law firms, from coast to mountains, our relationships are our legacy ... and our innovation.

919.677.8900 800.662.8843

www.lawyersmutualnc.com

The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611

Spring 2019

If not for the confidential nature of what we do,
you'd hear about our success stories all the time.



One of these lawyers contacted LAP for help and today
has several years of recovery. Can you tell which one?

Free, confidential assistance is available.
Contact us today: info@nclap.org or WWW.NCLAP.ORG



NCLAP
NORTH CAROLINA
LAWYER ASSISTANCE PROGRAM

Charlotte & West
(704) 910-2310

Piedmont Area:
(919) 719-9290

Raleigh & East:
(919) 719-9267