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A Cyberattack is What Happens While You're Busy Making Other Plans

BY ALICE NEECE MINE

I just completed my first year as executive director of the State Bar. It has been a wonderful year and I continue to be humbled by the trust that has been placed in me.

I started the year with four goals (in addition to the ever-green goals of ensuring that our usual regulatory functions continue in an orderly, efficient, and cost-effective manner, and that the State Bar Council and officers are well-served by the staff).

The first goal was to refinance the mortgage on the State Bar's "new" headquarters (not quite so new at close to seven years) to reduce our interest rate and monthly payments and to eliminate some pesky financial covenants that impeded efficient management. CHECK!

The second goal was to migrate the State Bar's employee pension plan from an annual valuation, trustee-directed plan to a daily valuation, participant-directed plan. This change would better protect and give employees more control over their own pension funds. CHECK!

The third goal was to facilitate the introduction of legislation raising the current statutory cap on membership dues for the first time in 15 years to ensure a healthy financial footing for the State Bar going forward. Checkmate. Our bill remains in the Senate Rules Committee from which we hope it will emerge during the 2020 session.

The fourth goal was to reimagine how the State Bar manages information technology (IT) to reduce our costs and increase our efficiency and security. The first step was to transition to managed services for helpdesk and network security functions. CHECK! The next step was to move our data storage and

computing "into the cloud." But that was the 2020 plan. SURPRISE! A cyber attack on the State Bar's network on September 30, 2019, abruptly reminded me that only presumptuous fools plan.¹



I was on the bus to the office on October 1 when I read an email from Assistant Director Peter Bolac with the subject line, "This is not good." Indeed. The State Bar was the target of a ransomware attack, a combined "infection" from the Neshta virus (possibly of Russian origin) and the Mr. December virus (as in "we are going to freeze your files," I suppose). Together the viruses infected and encrypted the files stored on our network drives, and propagated across the network, attempting to compromise as many machines (both servers and workstation computers) as possible. From the Incident Response Form prepared by our managed services company: "Mr. Dec will encrypt all of the infected host's files... the victim's compromised machine files are typically non-recoverable." However, because of the rapid response of our internal IT guy—

who drove to the State Bar building as soon as the infection was confirmed and, racing through the building, pulled cables from all nine servers and 93 computers—only 20% of the workstation computers were infected. My own computer was not so fortunate. When it was turned back on, the message onscreen, shown in the photo below, confirmed I was infected. Unlucky indeed!

I told the State Bar staff that it may be better to be lucky than good but, when you are unlucky, it is best to be surrounded by good people. And that we were. The managed services company stepped into the void and their cloud engineer went to work using data backups to recreate our servers virtually "in the cloud." While the computers were down, the staff resorted to pen and paper to continue their work whenever possible. When employees' work required access to our databases, they still found ways to contribute. The can-do attitude of every member of the staff was inspiring and so greatly appreciated by the newbie ED. As a consequence of the good work of the recovery team and our staff, we only had serious downtime for a half day; the website was down for a week; and we returned

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An Interview with Our New President, C. Colon Willoughby Jr.

Raleigh attorney C. Colon Willoughby Jr. was sworn in as president of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar's Annual Dinner on Thursday, October 24, 2019.

Q: What can you tell us about your upbringing?

I grew up on a small farm in eastern North Carolina that has been in our family for 100 years. We raised tobacco, cows, and grain. It was a wonderful place to grow up, where many of our neighbors had been friends for generations.

Q: What was your first leadership position?

I think it was probably leading the cows back to the barn.

Q: When and how did you decide to become a lawyer?

While I had thought about it for a number of years, I made the decision while I was working as a mortgage banker in the mid-1970s dealing with troubled loans. Many of the workout projects required me to get assistance from the legal department and I thought it was very interesting work. I went to law school thinking I would be a corporate lawyer, and somehow got on a different path.

Q: You were the elected district attorney for the 10th prosecutorial district (Wake County) for 27 years—one of North Carolina's longest-serving prosecutors. In 2014, you joined McGuire Woods LLP as a lawyer in the firm's government regulatory and criminal investigations practice. Tell us how your career as a lawyer has evolved and why you've chosen to take a different path after so many years in public service? What has surprised or challenged you about private practice?

I have been fortunate to have had a number of really good work experiences. My first job was practicing in a small Raleigh firm



With his wife Tricia looking on, C. Colon Willoughby Jr. is sworn in as president of the North Carolina State Bar by North Carolina Supreme Court Chief Justice Cheri Beasley.

with Gerald Bass and Burke Haywood in a general practice for seven years. We did a lot of different things—civil, criminal, and domestic litigation, closed loans, handled wills and estates and incorporations, and did some land use and zoning. It was much like a small town practice. From there I was a prosecutor for 27 years in what may be the most interesting DA's office in our state because of the interaction with state government. Most recently, I have been practicing in the large international law firm of McGuire Woods for five years and getting the opportunity to work on some interesting cases for a variety of clients. In leaving state government, I had a pretty steep climb on the technology curve.

Q: What has been your proudest achievement as a lawyer?

I am proudest of the talented staff of lawyers and assistants we were fortunate enough to recruit to come to the District

Attorney's Office, and the impact they still have on our courts and government in North Carolina.

Q: You were one of the elected State Bar councilors for the 10th Judicial District Bar from 1998 to 2006, while you were still the DA for the district. Very few prosecutors have served on the State Bar Council. Why did you become involved in State Bar work?

The work of the State Bar impacts not only the legal community, but also the business climate, many other institutions, and our way of life here in North Carolina. The operation of our courts and the regulation of our legal system are important for our state's growth and future, and the State Bar's work helps insure that. What we do is not flashy, but it is important in protecting all our citizens, and it seemed like a natural extension of my work in the DA's Office.

Q: What has your experience on the Bar

Council been like and how has it differed from what you anticipated?

I did not realize the amount of time and energy that so many volunteer lawyers put into protecting the public and the integrity of the legal system. Both the council and all the committee volunteers really do a lot. I have enjoyed and gotten so much out of the experience. I wish more folks had the opportunity to serve on the council and its committees.

Q: How has the work of the State Bar changed since you first became involved?

The issues have gotten more complex, particularly in the areas of technology, the unauthorized practice of law, and cyber security. We should be vigilant and continually review those subjects with the changes going on in our society.

Q: Can you tell us about the most difficult issue you've faced as an officer or member of the State Bar Council?

The issues surrounding the LegalZoom matter and changes in residential real estate closing processes were difficult struggles and created tension. Our officers and the council guided us through those with skill and vision, and with the help of many lawyers and the legislature, we came out on the other side in a better place. Personally for me, some of the reinstatement proceedings have been among the hardest decisions I have had to make.

Q: During your tenure as a councilor you chaired two very important committees, the Grievance Committee and the Authorized Practice Committee. Some people regard service on the Grievance Committee as the most important job at the State Bar. What did that involve and what did you learn from your work with the disciplinary program? What do think your fellow lawyers most need to know about the disciplinary program and the authorized practice program?

I wish all North Carolina lawyers could see the meticulous care that the State Bar staff puts into their investigations and reports. They do an extraordinary job of presenting the relevant information to make the councilors' job easier. Trying to determine if there was a rule violation, and if so, whether it was a careless or foolish mistake, or the result of a bad pattern and hard heart is important. Having the staff present accurate, balanced information is critical to us getting it right.

Q: In your opinion, does it make sense for lawyers to regulate themselves? Is it good

public policy? Do we deserve the public's trust?

Self-regulation by the State Bar has been one of the great strengths of our legal system in North Carolina. History will show how we have done a conscientious job of scrutinizing lawyers' conduct, holding them accountable, and protecting the public. Our North Carolina system has won high praise for being the most transparent lawyer discipline system in the United States. We are proud of our record and will continue to uphold our responsibility in a fair and open manner.

Q: What do you think are the biggest issues currently facing the State Bar Council?

We are in a dynamic time in our world today, and we must be responsive to the legal needs of our citizens. Access to high quality, affordable legal services presents challenges to all regulatory Bars across the country. Insuring that lawyers provide competent services, and that justice in both the civil and criminal courts is not a function of one's wealth or position, continues to be our mission. Our lawyers are addressing those issues.

Q: Programmatically speaking and otherwise, what do you hope to accomplish while president of the North Carolina State Bar?

I hope we continue our assessment of Proactive Management Based Regulation, look carefully at the issue of whether some legal services can safely be offered to the public by alternative service providers and persons who are not lawyers, increase awareness and protection from cyber threats, and be the catalyst for discussions about how to improve the legal system. I don't know that we have the answers to all of those questions, but I hope we can have discussions that will ultimately lead to the right answers.

Q: To make room for innovation in the practice of law, several states (including California and Utah) are investigating whether to abolish or modify the prohibitions on sharing a legal fee with a nonlawyer and on nonlawyer ownership of and investment in law firms. What is your reaction to these proposals?

As a regulatory Bar, we have a continuing responsibility to review our regulatory positions to make sure they are constitutionally sound and consistent with public protection. Over the years, various regulatory Bars have been required by the courts to reassess a number of issues like fixed fee schedules, lawyer advertising, and the provision of legal services through the Internet. We, as a Bar, should



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take the initiative to carefully self-assess our regulations and shouldn't have to have the Supreme Court tell us that we need to change our positions. There is no education in the second kick of a mule.

Q: Do you foresee significant changes in the near future in the ways that lawyers practice law in North Carolina?

Like the rest of society, rapid technology development is driving changes in the practice of law. Marketing and delivery of services will be different for lawyers, just like every other business and profession. Cyber security concerns and protecting our clients' vulnerability will become increasingly important.

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Mental Health in the Legal Profession: Starting a Conversation with the Lawyers of Tomorrow

BY PETER NEMEROVSKI

There is a mental health crisis in the legal profession. Every week seems to bring another report of a promi-

nent lawyer who died by suicide, or some other grim reminder of the sad state of affairs in our profession.

The numbers confirm that something is wrong. In a 2016 survey of 12,825 attorneys across 19 states, 20.6% of the respondents exhibited problematic drinking, compared to the 11.8% one would expect to find in a highly educated workforce. The attorneys in the study also showed high levels of depression (28%), anxiety (19%), and stress (23%), with 11.5% reporting suicidal thoughts during their legal careers.

All too often, lawyers facing mental health crises fail to seek treatment, in part because of the stigma associated with conditions like alcoholism, depression, and anxiety. In the 2016 study, the two most commonly cited barriers to treatment were not wanting others

to find out they were seeking help, and concerns regarding privacy or confidentiality.

As a law professor who teaches primarily first-year students, I recently decided to devote some class time to a discussion of mental health in the legal profession. I had three goals: First, I wanted to make students aware of the serious issues facing the profession that they will soon be joining. With this awareness, I hope they pay attention to their own mental health as they navigate their careers, and that they become part of a generation of lawyers that makes substantial progress in addressing these issues.

Second, I wanted to share with them some of my own mental health struggles. I take

daily medication for anxiety and depression, and in 2017 I went to rehab for alcohol abuse. By talking about these things with students, I hoped to do my little part to reduce the stigma and reinforce the truth that a lawyer can have a successful career while dealing with mental health challenges.

Third, I wanted to hear from the students. I wanted to know whether they had thought about mental health issues, what relevant experiences they might be willing to share, and what they think solutions might look like.

The students and I had a productive discussion, even though certain points I made didn't come out right. When I talked about



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my own mental health history, I made it sound like I was miserable practicing law and that my job contributed to my depression. That's not true: I mostly enjoyed practicing law. Moreover, I want my students to be excited about the profession they're joining and the work they will do, and some of my comments were not helpful to that end. In addition, when I spoke about the need for compassion and understanding toward those facing mental health challenges, I probably came across to some students as scolding them for being cruel to their classmates—again, not my intention and not what I believe.

For their part, the students were very aware of the crisis and willing to talk about it. Several pointed out that the stresses of the legal profession begin in the first year of law school, with students feeling enormous pressure to earn high grades, make law review, and get prestigious firm jobs or judicial clerkships.

One student commented that despite our good intentions, the people in the room—first-year law students and a professor who has not practiced law in nine years—cannot fix this problem alone. Indeed, we need practicing attorneys, and especially those in posi-

tions of power in their firms or other offices, to do their part to address the mental health crisis in our profession. Based on my own experiences as an attorney and professor, here are some things I think practicing attorneys can do to help:

- Talk to the new attorneys in your office about mental health. You will find that they are ready for these conversations, and that they bring a wealth of knowledge and ideas to the table.
- Make mental health discussions a part of existing programs in your office, such as orientation for new attorneys, annual reviews, or mentoring programs. Consider bringing in experts to provide relevant training for attorneys in leadership roles.
- Be open to talking about your own struggles with anxiety, depression, or addiction. Doing so is not easy, but young attorneys facing mental health challenges need to know they are not alone.
- Make sure young attorneys are aware of the resources available to them. The North Carolina Lawyer Assistance Program provides free, confidential assistance to lawyers dealing with addiction and other mental health issues. If you've used the program yourself and are comfortable talking about your expe-

riences, do so.

- Don't be part of the problem. In my six years working in law firms, I saw many practices that are at best unhelpful and at worst potentially harmful to attorneys' mental health: rewards for attorneys who bill unhealthy numbers of hours; a culture of heavy drinking at law firm social events; and partners who think associates should never turn down work. Not all of this is automatically bad, but firms and other law offices should consider the effects of their policies and cultures on their attorneys' mental health.

The lawyers of tomorrow are well aware of the mental health crisis in the legal profession. They've given it serious thought, and they are very open to talking about solutions. Some of them are already facing serious mental health challenges, and many more have been impacted in one way or another by these issues.

I hope members of the bar, in North Carolina and beyond, will continue this important conversation. ■

Peter Nemerovski is a clinical associate professor at The University of North Carolina School of Law.

LAP and Its Regulatory Purpose

BY ROBYNN MORAITES

There's been a fair amount of discussion lately, both nationally and in North Carolina, about what services and programs should be considered essential to the regulation of the



legal profession. In the course of this ongoing dialogue, I have been asked how the Lawyer

Assistance Program fits into this self-regulation framework.

There are some old studies on file effectively demonstrating the correlation between impairment and harm to the public. In the late 1990s, a study of the Client Protection Fund cases in Louisiana examined the correlation between impairment and trust account violations. They found that 80% of trust account violation cases involved some form of substance use disorder or a compulsive gambling disorder (a process addiction). The Illinois Bar also conducted a study around that same time. Illinois looked at discipline cases broader than just trust account violations over a several year time span. Depending on the year, they found that anywhere from 40% to 75% of lawyer discipline cases involved some form of substance use disorder or mental health issue (like depression). Another study in Oregon found that 80% of the Client Security Fund cases involved a substance use disorder, gambling, or mental health issue.

A reasonable follow-up question might be, then, how much of an impact does a

Lawyer Assistance Program make in curtailing these types of discipline cases? As we often say, one cannot prove a negative. But maybe we can.

Oregon is the only state in the nation that has a self-insured Bar. All lawyers are insured by the Oregon State Bar Professional Liability Fund; there are no outside liability insurance carriers or providers. So the Oregon Bar has the ability to track 100% of malpractice claims. The Oregon State Bar Professional Liability Fund provides 100% of the funding of the Oregon Attorney Assistance Program (OAAP). The OAAP is also housed within the Oregon Bar, as is the Office of Disciplinary Counsel. So Oregon is in the unique position to be able to track malpractice claims, discipline cases, and involvement in the lawyer assistance program (i.e. recovery). It is the only state in the nation capable of compiling reliable data that is not based on self-reporting, but is rather based on statistics and demographics contained within the different divisions and

departments of the Bar itself.

The OAAP conducted a study in 2001 involving 55 recovering lawyers who were in private practice for five years before their sobriety dates and five years after their sobriety dates, a ten-year period in all. The first part of the study compared the incidence of malpractice claims for each of the five-year periods, while a second part looked at discipline complaints. In order to assure that the identity of the recovering lawyers would remain confidential, the study was conducted by OAAP Attorney Michael Sweeney.

During the five years before sobriety, the 55 lawyers had 83 malpractice claims filed against them. The number dropped dramatically—to 21 claims—in the five years after sobriety. This represents an astounding overall 75% decrease in total claims, specifically a 30% annual malpractice rate before sobriety, and an 8% rate after sobriety. The same lawyers had 76 discipline complaints during the five years before sobriety and 20 discipline complaints during the five years after sobriety. This represents a similar overall decrease of approximately 75%, with a 28% annual discipline complaint rate before sobriety, and a 7% discipline complaint rate after sobriety.

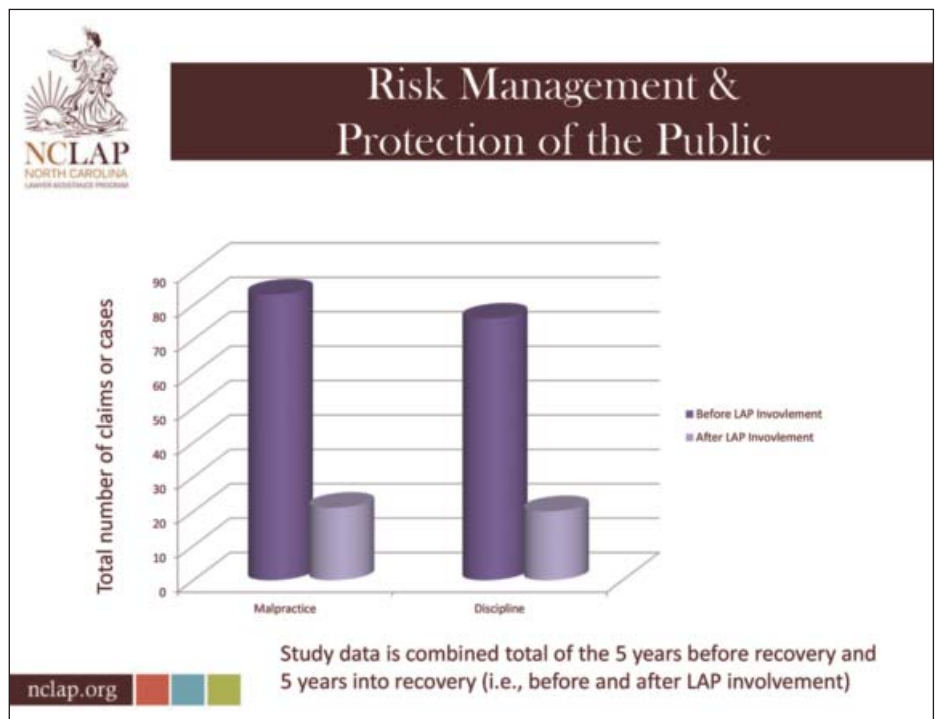
The study found that malpractice and discipline complaint rates for lawyers before recovery are nearly four times greater than for lawyers in recovery. In addition, applying Oregon's average malpractice cost per claim in 2001 (\$16,500) to claims made against the 55 lawyers in the study, the reduced incidence of malpractice resulted in a savings of approximately \$200,000 per year—attributable to just 55 lawyers in recovery. The costs to the Oregon State Bar disciplinary process were less quantifiable, but it is obvious that sobriety brings savings that follow from the reduction in discipline matters in need of prosecution.

The study then went a step further to compare lawyers in recovery to the general bar population. The study found that lawyers in recovery had lower malpractice and discipline complaint rates than the general population of lawyers. In 2001, Oregon's annual malpractice claims rate for lawyers in private practice was 13.5%, compared to 8% for lawyers in recovery. Similarly, the annual discipline complaints rate for Oregon lawyers was 9%, compared to 7% for lawyers in recovery.

While medical and social science researchers are always careful not to equate correlation with causation, it seems pretty clear from the OAAP study that substance use disorders (specifically alcoholism in this particular study) are a root cause of both malpractice and discipline complaints, and that the accompanying costs, whether lost dollars because of malpractice claims or the loss of favorable public opinion and reputation because of ethical violations and discipline claims, are great. The study also makes pretty clear that recovery directly equates to less harm to the public.

During one of our national trainings at the ABA conference for the Commission on Lawyer Assistance Programs, one of the presenters was discussing the regulator's duty to effectively discipline lawyers who have committed ethical violations. I have repeated her tongue-in-cheek analogy many times and will summarize it here. Part of the challenge of discipline, if it is to be effective, is for regulators to determine in which bucket a particular offense/offender goes. There are three buckets to choose from: bad, stupid, or sick.

If a lawyer is a bad actor, discipline is appropriate and effective. For a bad actor, discipline serves a useful retributive purpose and will hopefully deter future intentional



The Oregon Attorney Assistance Program study found that malpractice and discipline complaint rates for lawyers before recovery are nearly four times greater than for lawyers in recovery.

bad acts.

If a lawyer made an honest mistake (lumping all mistakes from silly to egregious in the stupid category), discipline might not be warranted because it serves no real retributive purpose. From simply having been involved in the discipline process, it is unlikely that the lawyer will make the same mistake again or will take extra caution in the future when unsure about what action to take. But regulators may decide that discipline is warranted for its deterrent effect to hammer home the point that lawyers are in a unique fiduciary role and extra care must be taken to not make mistakes.

If a lawyer is sick, however, discipline or punishment will have no deterrent effect whatsoever. The behavior will continue until the underlying ailment is treated and addressed. Almost universally, when regulators are seeing the same lawyer churn back through the discipline process again and again, whether the lawyer is aware of it or not, there is usually an underlying impairment involved. If a lawyer is suffering from major depression and is unable to return client calls or meet critical filing deadlines month after month, year after year, it doesn't matter how many times that lawyer is disciplined. Until the depression is addressed and

treated, the lawyer is incapable of doing anything differently. The same holds true for substance use disorders and a host of other impairments.

Lawyer assistance programs are positioned to offer a unique and vital regulatory function that other programs of the Bar cannot do as effectively. The discipline arm of the Bar, considered one of the core features of the self-regulatory function, operates in a retributive framework after damage has been done and in response to harm that has already occurred to the public. Lawyer assistance programs operate in a proactive capacity. We are trying to reach lawyers before they commit ethical violations and before the public has been harmed. We are also effective after an ethical violation has been committed. In the example given above of the depressed lawyer, a referral to LAP is appropriate at any time in the process. We can never guarantee that a lawyer will recover, but the lawyer will stand a much better chance if given the opportunity earlier in the process. While the discipline arm of the Bar can include conditions requiring a lawyer to get help for impairments, part of the benefit of lawyer assistance programs is that we provide the support, encouragement, and recovering-lawyer community needed to forge a



The Oregon Attorney Assistance Program study found that lawyers in recovery had lower malpractice and discipline complaint rates than the general population of lawyers

path to real recovery and to sustain it over the course of a career.

I would like to conclude this article with an excerpt from Tom Lunsford’s Winter 2016 State Bar Outlook column, *Going Overboard(s)*, wherein he described every program of the State Bar and how each fit within the Bar’s budgetary framework.

The Lawyer Assistance Program, as noted above, doesn’t really generate any income. And it doesn’t give away any money. It does, however, dispense something more precious than gold—hope. Through its professional staff and a large network of dedicated volunteers, the LAP provides free confidential assistance to lawyers, judges, and law students in addressing substance abuse, mental health problems, and other stressors that impair or may impair the ability to practice law effectively. As is well-known, the State Bar is in the public protection business and so is the LAP. Although the program’s orientation is humanitarian, its *raison d’être* is regulatory. The LAP is funded by the State Bar primarily because it saves clients. However, I suspect that most of the people who support, serve, and staff the LAP do so because it saves lives.

The annual cost of the program to the

lawyers of North Carolina is about three quarters of a million dollars. This is around 8% of the State Bar’s total budgeted expense for the year and is a testament to the importance the council attaches to the enterprise. The fact that the LAP is a State Bar program with an adequate source of recurrent funding is a double-edged sword, however. Because the money is readily available, the members of our staff are not involved in the sort of constant fundraising that preoccupies many of their counterparts who do similar work in other states for LAP programs that are organized as 501(c)(3)s. Our people are consequently free to work without distraction and with laser focus on a burgeoning caseload that reflects an almost inexhaustible demand for LAP services. The downside of State Bar affiliation is, no doubt, that a great many suffering lawyers wrongly suppose that the LAP is in cahoots with the Grievance Committee. Although rising numbers of self-referrals suggest that our efforts to dispel that misguided notion have been increasingly effective in recent years, it persists. That is unfortunate, to be sure, but not reason enough to depreciate the program’s great success, of which we all as

members of the North Carolina State Bar can be quite proud. ■

Robynn Moraites is the executive director of the North Carolina Lawyer Assistance Program. Large sections of this article were reprinted and modified with permission from the Oregon Attorney Assistance Program. The Oregon Study authors were Ira Zarov, who is the now-retired CEO of the Oregon State Bar Professional Liability Fund, and Barbara S. Fishleder, who is the program director for the Oregon Attorney Assistance Program and the director of loss prevention for Oregon’s Professional Liability Fund. Tom Lunsford is the recently-retired executive director of the North Carolina State Bar.

Willoughby Interview (cont.)

Q: If you had not chosen to become a lawyer, what do you think you would have done for a living?

I don’t know, maybe a farmer or a mortgage banker. Those were the only other skills I had.

Q: Tell us about your family.

I have been very lucky to have a wonderful family. I have been married for 46 years to my very patient, supportive wife, Tricia. Our two daughters and their spouses, along with our four delightful grandchildren, live about five minutes from our home in Raleigh. My parents, who are both in their 90s, live together near the coast. I get to see them and my sisters and extended family fairly often. Life is good.

Q: What do you most enjoy doing when you’re not representing clients or working for the State Bar?

Since I was a kid I have always enjoyed outdoor activities like fishing and hunting, even outdoor work. Exercise also helps keep me focused.

Q: How would you like for your administration to be remembered when the history of the State Bar is finally written?

Thoughtful. Competent. Grounded. ■

Colon Willoughby served as the elected district attorney for the 10th prosecutorial district (Wake County) for 27 years. He currently practices with McGuire Woods LLP.

Book Review About Our Legacy as Legal Professionals

BY JOHN PHILLIPS LITTLE JOHNSTON

You and I spent over 5,000 hours poring over law books during our three years in law school before beginning our respective careers. For the most part, reading constitutional law cases was a necessary misery.

We all read *Plessy v. Ferguson*, which in 1896 enshrined the doctrine of separate but equal. All of us read the 1954 landmark desegregation case *Brown v. Board of Education*, which, in overruling *Plessy*, effectively confronted the struggle between freedom and tyranny on the world stage. There is no question that America's former legal separation of its black citizens from its white citizens under the *Plessy* doctrine adversely affected our moral standing in the eyes of the world and marred our international relations. More importantly, there was the need to restore hope to those whose civil liberties had been so egregiously denied.

UNEXAMPLED COURAGE: The Blinding of Sgt. Isaac Woodard and the Awakening of President Harry S. Truman and Judge J. Waties Waring by United States District Court Judge Richard Gergel, breathes new life into the oft-times dusty, dry bones of constitutional law cases.

The author presides in the same Charleston courtroom as his courageous predecessor, former United States District Court Judge J. Waties Waring, a judge whose lineage can be traced back eight generations to his family's slave-holding plantation society in Charleston. In reading both Gergel's investigation of this wrenching part of history and the body of Judge Waring's erudite legal opinions that ensued, we are reminded of the enduring power of the rule of law.

Patrician Judge Waring witnessed the failure of the justice system firsthand in 1946 when he presided over the case against Police Chief Lynwood Shull in Batesburgh, SC. Chief Shull was charged with criminal misconduct when he pulled Sgt. Isaac Woodard off the back of a Greyhound bus in Batesburg, South Carolina, and blinded him. At the time of the assault, Sgt. Woodard was returning home at the end of World War II in full uniform, decorated with a chest full of medals awarded for combat bravery in the Pacific Theater.

According to the trial testimony, when Sgt. Woodard failed to say, "Yes, sir," when confronted by Chief Shull at the local jail, Shull gouged out both his eye globes with his nightstick.

An all-white jury quickly acquitted Shull of any crime. Judge Waring was conscience-stricken by the failure of the justice system to hold the obviously culpable police chief accountable.

This awakening by Judge Waring eventually led to a series of landmark civil rights decisions by Waring. His wife, Elizabeth, who left the courtroom in tears upon Shull's acquittal, supported his courageous stance in full.

Rocking the foundation of black disenfranchisement, Judge Waring's 1951 *Briggs v. Elliott* school desegregation ruling in which he declared segregation *per se* unconstitutional later became the reasoning and wording for the Supreme Court's unanimous 1954 decision in *Brown*, the most famous

Supreme Court decision of its time.

Waring's work reminds us that one courageous individual upholding the rule of law can right the wrongs of many.

Judge Waring, along with his wife and children, was ostracized by Charleston society. Though Judge Waring and his wife stayed in Charleston, their daughter, Ann, left their family home and sought sanctuary in Manhattan.

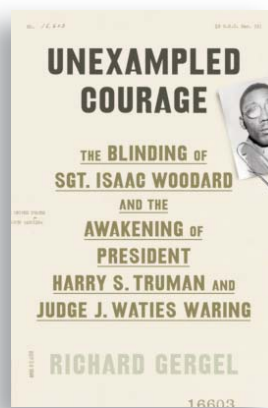
Left totally blind and penniless, Sgt. Woodard moved to the Bronx where he

lived out his days as a contented and devoutly religious man. Because he loved listening to radio church services every Sunday morning throughout his rich life, his family lovingly referred to him as an "armchair Christian." At the age of 73, he was buried in obscurity in Calverton National Cemetery in New York.

Both Woodard and Waring lived lives of unexampled courage and impactful service to others. Neither man allowed any bitterness to suppurate in the hidden crevices of their hearts.

Forget crying; their unexampled courage will make you sob.

This book is a tent revival for our heritage of legal professionalism. ■



Phil Johnston is vice-chair and co-founder of Koolbridge Solar, Inc. He has been a trustee of the University of North Carolina School of Law Foundation for 25 years. In 2019 he received the Albert Nelson Marquis Lifetime Achievement Award.

What We Know and Don't Know about IOLTA's Future and How You Can Help

BY MARY IRVINE

For the better part of ten years, IOLTA programs across the country have felt the impact of the long economic downturn and declining interest rates. Here in North Carolina, if you are an avid reader of the *Journal*, you have seen column after column lamenting the state of affairs for NC IOLTA, constrained in our ability to pass needed funds along to grantees due to the Great Recession. Of greatest concern during the downturn was the downstream impact of decreased revenue on low-income North Carolinians in need of legal aid. During this time, many of IOLTA's continuing grantees—a core group of legal aid providers and administration of justice programs—experienced cuts from nearly all sources, some forced to lay off staff, trim programming, or close offices.

Shortly after I took the reins in my new role as executive director in 2017, State Bar President Gray Wilson suggested I write an article for the *Journal* about the future of IOLTA. As I continued to settle into my role, I was not sure what to put on paper and in print to go out to 28,000 lawyers about a topic which remains uncertain. I proceeded to submit articles on other topics of interest or direct our communications efforts toward more tangible issues that I could say something about with at least some certainty.

In the past year, the economy has improved and North Carolina's IOLTA program has enjoyed the benefits of that improvement. Some of the increase in revenue came to us with relative ease—banks adjusted their rates on IOLTA accounts as

positive adjustments were made to other products offered across the bank. It is always a great day in the office when we receive news of an impending increase or open a monthly remittance to find an upward adjustment has been made. Frankly, however, other increases were hard fought as we proactively undertook an evaluation last year which asked banks to review all of their products and requested adjusted rates on IOLTA accounts where a lag behind interest rates for other similar products was identified.

Last year, NC IOLTA saw an increase in year-to-year income of 67% compared to 2017. But what's next? Current headlines note the slowing growth of the economy and forecast the potential for downward interest rate adjustments later this year. If these projections are correct, it appears that right on the heels of last year's positive increases, we might again see some banks lower their interest rates with associated drops in our IOLTA revenue to follow. Since I started in 2017, together with the IOLTA Board, I have worked to consider the future for IOLTA in light of changes in the economy and the profession as the board sets IOLTA's future course. While we cannot say for certain what



the future may bring for IOLTA, this is what we do know.

What We Know

In all 50 states, the District of Columbia, the US Virgin Islands, and Puerto Rico, IOLTA programs have been established to provide funding for charitable causes, often focused, as is the case in North Carolina, on providing civil legal aid to individuals who are unable to afford an attorney. Leaders of our State Bar who were involved at the program's inception have described the IOLTA concept to me as picking found money up off the sidewalk. The collection and use of revenue from interest earned on lawyers' trust accounts is really a pretty simple concept, though one that required the creativity

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and perseverance of bar leaders, in other jurisdictions and in North Carolina, to become a reality.

Civil legal needs remain high. We do know that the vast need for the resources IOLTA provides persists and may be deeper than it ever has been. The IOLTA movement spread at a time of great need in the 1980s when the Legal Services Corporation was facing funding cuts and opposition. By every measure, the need for civil legal aid persists today. According to a report by the North Carolina Budget and Tax Center, one in seven North Carolinians—1.4 million people—live in poverty. For families in poverty, this equals an annual household income below \$24,600 for a family of four. In comparison to other states, North Carolina ranks 14th for the number of our residents living in poverty. As the economy has recovered from the Great Recession, this recovery has not been shared evenly by all. On an income at this level or less, families cannot afford many basic necessities, let alone pay for an attorney when a civil legal issue arises.

The 2017 Justice Gap report released by the Legal Services Corporation indicates that 71% of families experience at least one civil legal problem each year and 86% of these

problems receive little to no legal assistance. Combined with the above, this means nearly a million North Carolinians face a civil legal problem each year and most of the problems go unaddressed. As documented in the Justice Index, North Carolina has about one civil legal aid attorney per 20,000 people in poverty, staffing which is plainly insufficient to address all of the civil legal aid issues faced by low-income individuals.

Changing technology impacts IOLTA revenue. We also know that technology has impacted how both the banking industry and legal profession operate, and presumably evolving technology will continue to bring opportunities and change in the future. Some of these changes impact IOLTA and our revenue.

For one, money moves more quickly today than it did in years past. The concept that drove IOLTA from its origin is that pooled funds sit in trust accounts for some period of time before payment or disbursement, generating interest while in the account. If the same amount of money is moving through lawyers' trust accounts but it is moving more quickly, it follows that the average daily balances in trust accounts would be lower. In the limited analysis NC IOLTA

has undertaken, average monthly balances reported by banks holding IOLTA accounts did take a dip for many years, but balances have returned to pre-recession levels in many instances. We will continue to monitor how average balances trend to better understand the current impact on IOLTA revenue.

Scams and fraud, another area of concern, have in some instances resulted in six-figure losses by law firms with scammers becoming increasingly sophisticated. Common trust account scams include, but are not limited to, fake client and check scams, forged trust account checks, and impersonation of a client through compromised wire instructions. In light of growing concerns around this problem, we have heard anecdotally that some firms have adjusted their policies and practices, dictating that transactions that previously would have passed through their trust accounts are now happening wholly outside of trust accounts, handled by other entities like title companies. Considering the risks, if law firms on a broader scale opt to avoid handling funds, IOLTA revenue could take a hit. Conversely though, we have also heard anecdotally that some firms have changed their policies in another direction to slow the process of disbursement, avoiding

Are your IOLTA funds held at a Prime Partner bank?

NC IOLTA funding provides critical civil legal aid to low-income North Carolinians and works to improve access to justice. Prime Partner banks help us do more.



If your bank is listed, thank them! If not, ask them to join the program.



Many thanks to our Prime Partners

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- BANK OZK
- CAROLINA STATE BANK
- CONGRESSIONAL BANK
- PINNACLE FINANCIAL PARTNERS
- PREMIER FEDERAL CREDIT UNION
- PROVIDENCE BANK
- ROXBORO SAVINGS BANK
- UNION BANK
- U.S. BANK

settlement agent accounts only

For a list of other banks eligible to hold NC IOLTA accounts, visit www.nciolta.org

disbursement of funds on provisional credit. This has the opposite effect on revenues.

Opportunities for diversification ought to be considered. Turning from issues that specifically impact trust account revenue, IOLTA programs nationally are also considering diversification of revenue. For many entities that administer their state's IOLTA programs, IOLTA revenue represents just one of a host of funding sources. As the American Bar Association lays out in the handbook published annually on issues of interest to IOLTA programs, entities that administer IOLTA are structured in a number of ways, each structure rooted within unique state landscapes with their own set of opportunities for growth.

Nationally, funds from interest on lawyers' trust accounts represent less than one-third of the dollars that IOLTA funders receive. Other sources of funding include private giving, state legislative funding from filing fees and appropriations, cy pres awards, attorney general settlement funds, escheated funds from attorney trust accounts, other fees typically assessed on lawyers, and investment income. This other revenue makes up 70% of income nationally received by entities that also administer IOLTA dollars. In North Carolina, revenue from IOLTA accounts made up 70% of total revenue of the IOLTA program in 2018 (state legislative funds administered by IOLTA are included to be consistent with the ABA's national calculation).

In 2015, as the economic recession persisted, a joint committee of the NC Equal Access to Justice Commission and NC

IOLTA convened to review available sources of funding that might bolster revenue and available funding for civil legal aid and other administration of justice causes. Using resources and data available from the American Bar Association, the committee looked at every potential source of funds currently being received and awarded by IOLTA programs. The analysis developed from the committee's work continues to provide guidance as new opportunities are considered.

What's Next and How You Can Help

The path forward remains uncertain. As the relatively new executive director of this program, who in general tends to be a glass-half-full person, I look forward to IOLTA's future with optimism. My optimism is, of course, moderated by the changing realities and ever-present need for increased funding. The challenge for NC IOLTA remains growing and faithfully using the resources we do have, financial and otherwise, to promote access to justice for all and provide critically-needed civil legal aid to low-income North Carolinians.

As we continue to sit with some uncertainty about what is next for IOLTA, I would call on all North Carolina lawyers to consider how you can help to support the broader goals of access to justice, in ways big and small. Here are a few suggestions:

- **Where you bank matters.** While I will stop short of suggesting one bank over another, where you bank matters. Interest rates and service charge policies at the 79 financial institutions that are eligible to offer

IOLTA accounts differ greatly. The eligible bank list found on IOLTA's website specifically highlights the banks we call "Prime Partners" that go above and beyond the IOLTA eligibility requirements in their commitment to improving access to justice in their communities. Prime Partner banks exceed minimal compliance with Rule .1317 by offering higher interest rates and waiving service charges. If IOLTA staff can assist you in navigating the process of opening a new account or moving an account from one bank to another, please give us a call.

- **Support cy pres.** North Carolina's cy pres statute directs unpaid residuals in class action litigation equally between the North Carolina State Bar for the provision of civil legal services and the Indigent Person's Attorney Fund for criminal legal services for indigents. Distribution of settlement funds to the IOLTA program or legal aid providers can also occur through mediation, arbitration, and settlement agreements. The NC Equal Access to Justice Commission produced a cy pres manual to provide information to attorneys and judges who may have the opportunity to direct cy pres funds to legal aid, whether through the IOLTA program or directly to a legal aid provider. The guide can be found on nciolta.org.

- **Give.** Give in any way that you can. Rule 6.1 calls on every lawyer to provide legal services to those unable to pay with an aspirational commitment of at least 50 hours of *pro bono* service each year. Rule 6.1 also urges us

CONTINUED ON PAGE 27

Life as a Small Town Lawyer— Two Perspectives

BY JOHN E. GEHRING AND DUSTIN T. NICHOLS

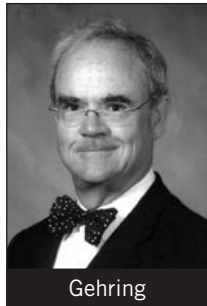
“We Need a Lawyer in Stokes County”

By John E. Gehring

That was the first sentence of a letter written by two business leaders in Walnut Cove, and received at the UNC School of Law placement service in the early 1970s. The letter clearly indicated that the area could, and would, support a new lawyer. At that time, there were three practicing attorneys in the county, two in King and one in Danbury. Plus there was one judge, one district attorney, and one assistant DA. Only one of the practicing attorneys kept weekend office hours, and I visited his office, without an appointment, the next Saturday morning. After waiting the required amount of time for an unannounced visitor, I met with the attorney. We soon reached a tentative understanding that he would hire me as his associate, at one-half my then salary and no benefits, but one more meeting was required because he wanted me “to meet someone.” The next Saturday morning I met Bruno Wright, the mentor of my new employer and the interview went like this: “Boy, what are your politics?” I answered “Democrat,” and he said, “You’ll do!” Politics in Stokes County was very serious business at that time, and remains the same or similar today. This new journey was interesting from the beginning and I learned early on that politics were more important than substance, and, in the political world, the most expedient path to travel was not necessarily the best path.

A couple of years later, my wife Jane and I

moved to Walnut Cove and I opened my law practice. I soon learned the new legal terms “dependent spouse” and “supporting spouse” when Jane was supporting our family from her job at Wachovia Bank and my earnings were almost in the negative zone.



Gehring

My office was located next door to the Nationwide Insurance agent, and his first visit to my office only proved the obvious, “You don’t have any business, do you?” His plan was to have me, dressed in my courthouse clothes, spend the morning in his office, and he would tell his customers that I was his new lawyer and he recommended me as a trustworthy and intelligent new addition to

our community.

A few days later, the owner of the local roller (feed) mill came into my office and asked, “You don’t have any business, do you?” He wanted me to come to his mill, dressed in work clothes, i.e., blue jeans, and he would tell his farmers essentially the same as the insurance agent told his customers.

As my business slowly grew, my Lions Club associates, my church friends, my barber, and others offered to help this young attorney. The local bail bondsman (the only one in Stokes County) asked me to give him a “handfull” of my business cards. Not fully knowing the State Bar ethics rules of the 1970s, I gave him only one card. When my back was turned, he took his handfull. Soon my DWI and other criminal matters started to blossom.

Saturday morning office hours were a mixed bag of confusion. When there was a

UNC football game in Chapel Hill, the office closed at 10 AM. On other Saturdays, there were no interruptions, with the exception of when my client Joe Lee McBride (not his real name) would appear at the door with his guitar and a smile. My waiting clients knew that the law business would be suspended while Joe Lee played his guitar and serenaded the crowd. “Suspended” is the operative word and Joe Lee heard it often, especially when the next word was “sentence.”

My office opened every morning at 6 AM and appointments usually took up the first two hours of each working day. I tried to then be in court by at least 8:30 in order to meet with other clients and the assistant DA for that day. It is said that the “early bird gets the worm,” and in my case the worm represented those clients who knew they could see me while on their way to work. My clients had never known an attorney who would schedule an office visit at their convenience instead of the lawyer’s convenience.

Some people say that the best time of their life is when they buy a beach house (or boat or horse) and that the second best time is when they sell the same. I could say that description fits when taking on domestic relations cases or a real estate transaction. A deed and/or note and deed of trust was all that was needed (and the funds, of course) to complete the transaction. Now real estate matters require numerous documents and multiple computers.

Before long, thankfully, my practice centered on criminal and traffic defense work, which opened a whole new world for me. Where else in the world could a person of average intelligence make a good living talking in a criminal courtroom. Actually, I believe

2020 Meeting Schedule

Below are the 2020 dates of the quarterly State Bar Council meetings.

January 21-24	NC State Bar Headquarters, Raleigh
April 14-17	NC State Bar Headquarters, Raleigh
July 21-24	Renaissance Hotel, Asheville
October 20-23	NC State Bar Headquarters, Raleigh

(Election of officers on October 22, 2020, at 11:45 am)

that trial lawyers must be part actor, part showman, and also possess a knowledge of the law all at the same time. The courtroom is truly “the theater of the real.”

Most of my secretaries, or office managers, have been middle aged (whatever that means) with children. As a result, my secretaries knew many of the young speeders.

Our home was located 100 feet from my office and three blocks from the Walnut Cove Police Department. Normally, the first stop for my DWI clients was the breathalyzer room at the police station. The clients almost always exercised their right to have their lawyer present for the administration of the breathalyzer; phone calls usually started around 1 AM on Saturday and Sunday mornings. Jane delighted in informing me that I was needed at the police station. The amount of wine that we had consumed the evening before would always dictate whether I drove or walked to the police station. Most of the officers were my friends and they would smile when they saw me walking in, knowing that we had enjoyed wine with dinner. I often wondered if, offered the test, I would blow the same result as my client.

I closed my physical law office about five years ago when “we” (meaning both myself and Jane) decided that almost 50 years of practice was probably enough. Throughout the years I have lambasted those attorneys who practiced law with a license but without an office. Whoever heard of anyone practicing law out of their car, with the exception of the “Lincoln Lawyer?” Well, guess what? My car now displays both my privilege license and my shingle in the back window. Traffic tickets are now MY ticket to re-enter the theater of the real and to visit, at least on a monthly basis, with my second family—my courthouse family.

Advice for Aspiring Country Lawyers

1. Move your family to the place where you plan to open an office and become active in community affairs. It would help if you have a “supporting spouse” because you will have lean years (plural) ahead of you.

2. Never gossip about any person because you might be talking to his brother, cousin, uncle, etc.

3. Return every phone call by the end of the day: No exceptions!

4. Remember that the most important and powerful person is not the judge or the DA or the high sheriff; it is the personnel in the clerk’s office. They can make things go smoothly for you or not. They can make you or break you.

5. Establish a reputation for honesty in your business and personal dealings.

6. Learn to see the red flag when someone says, “You can trust me because I’m a (fill in the blank).”

7. Never charge a person for talking to him or her, especially if that person is a preacher, law enforcement officer, etc. You should probably lower your fee or not charge a fee at all because these people are noticeably underpaid for their service to the community.

8. Always arrive one hour (or more) early for court. This will give you time for face-to-face communication with the DA and officers in a non-adversarial atmosphere outside of the courtroom arena.

9. If you have an unusual name like Gehring, try to adopt a persona that will set you apart from others; I always wear a bowtie (the more colorful the better). Many bailiffs over the years have told me that a client was looking for their lawyer, Bow Tie Man. They could not pronounce my name!

10. If you were blessed enough to have been reared in a religious environment, be sure

to remember and practice the tenets of your faith.

11. Do you remember the story about the preacher who extolled his congregation to “tell it all, tell it all, brother” when confessing their sins? When the last parishioner finished his confession, the preacher yelled at him, “I would not have told that, brother!”

12. Maybe I have told too much in this article.

End of story. ■

John Gehring, a former State Bar councilor and chair of the Publications Committee, is now semi-retired, which means that he “works less and enjoys it more.”

The Five Keys to Success for Starting a Practice in a Rural County

By Dustin T. Nichols

“It is better to be a big fish in a small pond than a small fish in a big pond.” Those were the words of my uncle, a successful small town attorney in Florida, when mentoring me about my legal career about 15 years ago. I remembered that advice when my wife and I relocated from Florida to North Carolina so that my wife could pursue a career in medicine. It was 2010, shortly after the great recession, and jobs were scarce. I quickly realized that, despite having a few years of legal experience under my belt, my job prospects were bleak. Having grown up out of state, I had no legal or professional connections of any kind to rely upon. I knew that I needed to create a job rather than to wait for one to fall in my lap.

I began to research the rural counties surrounding Winston-Salem where we live. Somewhat fortuitously, one of my wife’s friends, also a lawyer, asked if I wanted to job-shadow her for the day as she traveled up to Stokes County to handle some domestic violence cases. Having nothing else to do, of course, I agreed to go. On that first visit to the Stokes County courthouse, I met a number of lawyers, clerks, and a few judges. Everyone was extremely welcoming and encouraged me to open a practice in Stokes County because, as they put it, they “needed the help.”

After that first visit, I knew where I wanted to open my practice. Shortly thereafter, I found a little office to rent, adjacent to a dog grooming business, and off I went. I started with a laptop computer, an old desk, and few



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pieces of office furniture that I purchased from Craigslist. I printed business cards and headed to the courthouse to drum up some business. Fast forward to almost ten years later, and I would submit the following five pieces of advice as the keys to establishing a successful rural county practice.

First, immediately get on every court appointed attorney list that your qualifications will allow. It is important that you get in the courtroom as soon as possible and that you become a recognized face in the local bar. There is simply no substitute for time in the courtroom.

Second, make sure to personally introduce yourself to every member of the local bar and let them know that you are opening a new law practice and accepting cases. Most established lawyers will refer out numerous cases per month that they are not interested in taking. These cases are not typically the “best cases,” but it is a great way to get your foot in the door. When you do get a case, work it like you would a million dollar personal injury case. It is amazing how fast word can

spread in a small town about the new lawyer who is willing to fight hard for his or her clients.

Third, get active in your local civic organizations and chamber of commerce.

Immediately upon opening my practice, I joined our local Rotary Club. Right from the start, every Thursday morning I was having breakfast with the city mayor, local business owners, school board members, and judges. Also, get out there and attend as many community events as your schedule allows. I have jokingly been accused of seeking out every free meal in the county. If that means I’m out in the community meeting people, then I guess I’m guilty as charged. In a small town, word of mouth can be your best advertising. Don’t be afraid to ask your clients and business contacts for referrals.

Fourth, treat the clerk of superior court and his or her assistants with the utmost respect. The clerks can be your most valuable resource. I have had clerks go above and beyond their duties by notifying me when I

have made a mistake or when a client has missed a deadline. Contrarily, I have watched colleagues not treat the clerks with the same congeniality and they have received a vastly different reception.

Finally, when you start a new practice you will invariably run into numerous situations that you don’t know how to handle or how to answer. Don’t be afraid to ask for help. Most lawyers are very willing to help out a colleague if they are just asked and appreciate that their advice was sought. It is always better to ask a colleague for advice than to guess and get it wrong.

Opening a law practice can be a very nerve-wracking endeavor. However, if you follow these five simple keys to success, I believe that anyone can open a successful rural county practice.

Nearly ten years after starting my law practice, my level of satisfaction with my career is at an all time high. I’m not quite sure yet if I’m considered a “big fish,” but I sure am enjoying my time in the pond. ■

Dustin Nichols is a solo practitioner practicing criminal and family law in King, North Carolina.



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

Sarah Jane Brinson of Clinton was disbarred by the Wake County Superior Court. Brinson pled guilty to violating Title 8, United States Code, Section 1324(a)(1)(A)(iv), a felony, by encouraging and inducing an alien to reside in the United States, knowing and with reckless disregard of the fact that such residency was illegal.

George L. Collins of Jacksonville surrendered his license and was disbarred by the Disciplinary Hearing Commission. Collins wrote a will making himself executor of his client's estate, charged the estate \$750 per hour, misrepresented the services he would provide, embezzled, did not properly maintain and disburse fiduciary funds, committed perjury, made a false statement of material fact to a tribunal, and made a false representation to the Grievance Committee.

Erica Erickson of Pisgah Forest committed notary fraud on multiple occasions, made misrepresentations to a court, and misled unrepresented parties. She was disbarred by the DHC.

John Hanzel of Cornelius misappropriated entrusted funds. He was disbarred by the DHC.

Gary Leigh of Shelby misappropriated entrusted funds, structured banking transactions to avoid IRS reporting, and neglected two clients' personal injury cases. He was disbarred by the DHC.

Steven P. MacGilvray of Raleigh surrendered his license and was disbarred by the DHC. MacGilvray stole a wallet containing \$1600 from the security screening area of the Wake County courthouse. He pled guilty to misdemeanor larceny, but acknowledged that he committed felony larceny.

Clinton Moore of Charlotte neglected and did not communicate with clients, col-

Wire Fraud Alert

In 2015, the State Bar began receiving reports of criminals hacking into the email accounts of lawyers and real estate brokers, altering wiring instructions, and diverting loan payoffs and other disbursements from real estate transactions. Since then, the State Bar has written extensively about this danger in its *Journal* and on its social media accounts, and has spoken extensively about this danger in continuing legal education programs. Because lawyers had not always taken appropriate precautions to protect entrusted funds, the Grievance Committee opened many grievance files. Initially, the Grievance Committee issued dismissals accompanied by letters of warning, advising respondent lawyers of their professional obligation to protect entrusted funds. After nearly three years of extensive education on this topic, members of the State Bar should now be fully aware of the dangers posed by these email scams. Accordingly, at its July 2019 meeting, the Grievance

Committee issued permanent discipline to three lawyers who failed to adequately protect entrusted funds from email scams. One admonition, which is private discipline, and two reprimands, which are public discipline, were issued. At its October 2019 meeting, the Grievance Committee issued one reprimand and three admonitions. All attorneys are advised to proceed with caution under any circumstance where funds are to be wired, and to contact the State Bar with any questions in this regard. The following links contain important information about handling entrusted funds in light of these dangers:

bit.ly/WireFraud1

bit.ly/WireFraud2

bit.ly/WireFraud3

bit.ly/WireFraud4

bit.ly/WireFraud5

lected excessive fees, engaged in conduct involving deceit and misrepresentation, and obtained property by false pretenses. He was disbarred by the DHC.

Holly M. Owen of Florida surrendered her law license and was disbarred by the Wake County Superior Court. Owen admitted that she misappropriated entrusted funds totaling at least \$3,248.50.

Marshall lawyer **David R. Payne** surrendered his law license and was disbarred by the State Bar Council. Payne pled guilty to violating 18 U.S.C. § 1014, a felony. He knowingly made false statements for the purpose of influencing the Bank of Asheville, an institution with accounts insured by the FDIC, in connection with a loan.

Suspensions & Stayed Suspensions

Phillip H. Hayes of Point Harbor was convicted of felony possession of cocaine, a Schedule II controlled substance, in Currituck County Superior Court. Hayes agreed to apply the purchase price to reduce a balance owed to him for legal fees. He was suspended by the DHC for five years. After serving four years of active suspension, Hayes may apply for a stay of the balance upon showing compliance with numerous conditions.

Kenneth B. Holmes of Statesville mismanaged and unknowingly misappropriated entrusted funds. Holmes also borrowed money from a client. He was suspended by the DHC for five years. After serving two years of active suspension, Holmes may apply

for a stay of the balance upon showing compliance with numerous conditions.

Susan M. Lynch of Raeford represented both the buyer and the seller in multiple real estate transactions. Lynch did not communicate with her clients; did not disclose a conflict of interest; did not obtain written informed consent to the conflict; did not exercise independent judgment and render candid advice to her clients; made false statements; engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation; and engaged in conduct prejudicial to the administration of justice. The DHC suspended her for five years. After serving 18 months of active suspension, Lynch may apply for a stay of the balance upon showing compliance with numerous conditions.

High Point lawyer **Robert R. Schoch** made misrepresentations to the court; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaged in conduct intended to disrupt a tribunal; used means that had no substantial purpose other than to embarrass and burden third persons; and engaged in conduct prejudicial to the administration of justice. He was suspended by the DHC for four years. After serving two years of active suspension, Schoch may apply for a stay of the balance upon showing compliance with numerous conditions.

Brook M. Webster of Yadkinville was convicted of secret peeping and trespassing on the Wake Forest University campus after he used a mirror to look at female students under desks in the WFU library. He was suspended by the DHC for two years. The suspension is stayed for two years upon Webster's compliance with numerous conditions.

Interim Suspensions

The chair of the DHC entered an order of interim suspension of the law license of Charlotte lawyer Daniel Chappell Flint. In October 2018, Flint was found guilty by a jury in California of violating Title 49, U.S.C. §§ 46314(a) and (b)(2), a felony. He entered a secured area of an airport carrying a pouch containing approximately \$148,145 that had not been screened by the TSA, falsely claiming that it was a diplomatic courier pouch, and presenting documents purporting to support the false claim of diplomatic status. Flint was sentenced to 14 months incarceration.

Censures

Matthew Carl Coxe of Jacksonville

received three censures from the Grievance Committee. In each case, Coxe did not communicate with his court-appointed client, neglected his client's case, and did not respond to the Grievance Committee.

Michael DeMayo of Charlotte made an overpayment to a client, then sent a letter to her entitled "Overpayment and Fraud" stating that failure to return the overpayment by a named date "will result in our being forced to swear out a warrant for theft and conversion. This is very serious and it is a crime." DeMayo was censured by the DHC.

Mark Farbman of Charlotte was censured by the Grievance Committee. In October 2014, Farbman undertook to represent a client in a personal injury case. When he received settlement funds in March 2016, Farbman paid himself a fee and reimbursed advanced costs, but did not deliver funds to which the client was entitled, telling his client's attorney-in-fact that he must retain the funds pending receipt of a Medicare lien demand. He took no action to resolve a Medicare lien. His client died in 2017. In April 2018, Farbman still had not complied with repeated requests to deliver the funds to new counsel retained by his client's estate.

The Grievance Committee censured **Patrice Featherstone** of Monroe. Featherstone allowed an out-of-state company that is not registered to practice law in North Carolina to use her name as the attorney of record in the preparation of 88 deeds. Featherstone did not provide any meaningful legal work in connection with the deeds. She refused to communicate with a seller to correct an error in the legal description of a deed. Featherstone had the same arrangement with a prior company which used her name on approximately 450 deeds.

Reprimands

Glenn Barfield of Goldsboro was reprimanded by the Grievance Committee for engaging in conduct prejudicial to the administration of justice, improperly seeking an *ex parte* order without notice to opposing counsel, making a misleading statement to an opposing party, and having direct communication with a represented party.

George C. Bell of Huntersville was reprimanded by the Grievance Committee. He obtained an order changing his client's probation from supervised to unsupervised by misrepresenting the client's probation status to the court.

Greensboro lawyer **Anthony P. Donato** was reprimanded by the Grievance Committee. In 2015, Donato's staff followed altered wiring instructions submitted by a fraudster, resulting in the fraudster's theft of entrusted funds. In 2019, while representing a different client, Donato again did not properly supervise his staff. As a result, his staff again followed altered wiring instructions submitted by a fraudster, again resulting in the fraudster's theft of entrusted funds.

Ronald Garber of Raleigh was reprimanded by the Grievance Committee for engaging in conduct prejudicial to the administration of justice by leaving a series of obscene phone messages for a courthouse official.

Thomas Goolsby of Wilmington was reprimanded by the Grievance Committee. Goolsby did not act with diligence in representing his client, did not communicate adequately with his client, and did not take steps to protect his client's interests upon termination of the representation.

Melissa S. Gott of Wilmington was reprimanded by the Grievance Committee. She did not ensure she had collected and disbursed closing funds in accordance with the lender's instructions despite repeated communications from the mortgage broker and lender alerting her to an issue and asking her to confirm numbers before disbursing. She also violated several trust accounting rules. The Grievance Committee found multiple mitigating circumstances.

Franz Holscher of Washington was reprimanded by the Grievance Committee. He represented a minor in a claim related to a March 2013 bus accident. His client contended that as a result of the accident she could not engage in physical activities. In response to opposing counsel's deposition questions, Holscher's client testified that she had not played basketball since the accident and could not engage in physical activities because she had not been released by her doctor. In response to Holscher's deposition questions, his client again testified that she had not played basketball since March 2013. In fact, Holscher had coached his client and her teammates in a recreational basketball game in January 2015. Holscher told the Grievance Committee that he had not remembered that his client played in the January 2015 game.

The Grievance Committee reprimanded

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Proceed with Caution: Person to Person Payment Applications

BY SUZANNE LEVER

My family has a dog named Zellie. She is a mixed breed rescue from Saving Grace, a wonderful dog rescue in Wake Forest, North Carolina. (Unabashed plug for Saving Grace—it is fantastic; let me know if you are looking for a new family member!)

Recently my daughter said she was going to send me some money through Zellie. I thought that was weird. She lives in Atlanta and Zellie lives with me in North Carolina. Plus, Zellie is a dog. I couldn't quite figure out the logistics. Turns out, she was going to send the money through Zelle, NOT Zellie. Honestly, I still didn't understand the logistics. My suggestion that she simply send me a check was met with an audible eyeroll. Potential clients, particularly younger ones, may have a similar reaction to a law firm policy of accepting only cash, check, or chickens for the payment of legal fees. But what is a lawyer's professional responsibility when considering or using money transfer services such as Zelle?

According to its website, "Zelle is an easy way to send money directly between almost any US bank accounts typically within minutes. With just an email address or mobile phone number, you can quickly, safely, and easily send and receive money with more people, regardless of where they bank." This type of application is known as a peer-to-peer or person-to-person (P2P) money transfer service.

There are numerous other P2P services including Venmo, Cash App, PayPal, Google Pay, and Apple Pay. For your sake and mine, I am not going to try to explain precisely how each of these payment services operate. (For more details on these services, go ask a millennial.) Broadly speaking, some of these applications move money directly from one bank account to another bank account,

while other applications move the money through an intermediary "digital wallet."

Until recently, lawyers were prohibited from using intermediary payment services for entrusted funds. RPC 247 states that advance fees, mixed funds, and money advanced for costs must be deposited "directly" into a trust account. RPC 247 relied on Rule 1.15-2, which states that "[a]ll trust funds received by or placed under the control of a lawyer shall be promptly deposited in either a general trust account or a dedicated trust account of the lawyer." On March 27, 2019, however, the North Carolina Supreme Court approved the following new comment to Rule 1.15:

[13] Client or third-party funds on occasion pass through, or are originated by, intermediaries before deposit to a trust or fiduciary account. Such intermediaries include banks, credit card processors, litigation funding entities, and online marketing platforms. A lawyer may use an intermediary to collect a fee. However, the lawyer may not participate in or facilitate the collection of a fee by an intermediary that is unreliable or untrustworthy. Therefore, the lawyer has an obligation to make a reasonable investigation into the reliability, stability, and viability of an intermediary to determine whether reasonable measures are being taken to segregate and safeguard client funds against loss or theft and, should such funds be lost, that the intermediary has the resources to compensate the client. Absent other indicia of fraud (such as the use of non-industry standard methods for collection of credit card information), a lawyer's diligence obligation is satisfied if the intermediary collects client funds using a credit or debit card. Unearned fees, if collected by an intermediary, must be transferred to

the lawyer's designated trust or fiduciary account within a reasonable period of time so as to minimize the risk of loss while the funds are in the possession of another, and to enable the collection of interest on the funds for the IOLTA program or the client as appropriate. *See* 27 N.C.A.C. 1B, Section .1300.

Under the revised comment, lawyers are permitted to use an intermediary payment service if the service is reliable and trustworthy. The lawyer has the personal responsibility to determine whether a particular service meets those standards. Specifically, "the lawyer has an obligation to make a reasonable investigation into the reliability, stability, and viability of an intermediary to determine whether reasonable measures are being taken to segregate and safeguard client funds against loss or theft and, should such funds be lost, that the intermediary has the resources to compensate the client."

The investigatory responsibilities set out in comment [13] are no joke considering the technical intricacies of the operations used by these payment services. The ABA has opined that the risk profile of peer-to-peer transactions will be tied to the risk profile of the underlying payment methodology. According to the ABA, a peer-to-peer transaction will have greater protections if it is based on a payment methodology that affords greater protection. The ABA urges lawyers to choose a service that offers the same kinds of protections provided by other payment options, such as credit and debit cards.

Comment [13] specifically approves of the use of credit or debit cards for collecting client funds. An exception to the prohibition on intermediary payment services has previously been allowed for credit card payments. Interestingly, the Ethics Committee approved of the use of "Master Charge and

other credit card services” in 1977. *See* CPR 129. Because the CPRs are not available in the Handbook or online, CPR 129 is reproduced here in its enlightening entirety:

CPR 129

(October 27, 1977)

Inquiry: Is it ethical for an attorney to offer Master Charge and other credit card services to clients for the payment of fees charged for services rendered to such clients?

Opinion: Yes.

Further guidelines for the acceptance of credit card payments are set out in RPC 247, Payment of Fees by Electronic Transfer (1997); 97 FEO 9, Credit Card Chargebacks Against a Trust Account (1998); and 2009 FEO 4, Credit Card Account that Avoids Commingling (2009). Pursuant to RPC 247, credit card fees or discount charges assessed against the trust account must be properly accounted for and must not be paid with client funds unless the funds were specifically collected for that purpose. In discussing credit card chargebacks, 97 FEO 9 provides that, “[u]nder all circumstances, a lawyer is ethically compelled to arrange for a payment (from his or her own funds or from some other source) to the trust account sufficient to cover the chargeback in the event that a chargeback jeopardizes the funds of other clients on deposit in the account.”

Regardless of whether the application uses an intermediary account, it is the lawyer’s responsibility to ensure that the use of the P2P application is compliant with all of the lawyer’s professional responsibilities. Rule 1.15 requires a lawyer to manage a trust account according to strict recordkeeping and procedural requirements. The specific recordkeeping requirements set out in Rule 1.15 may prove problematic depending on the operation of the P2P application.

Above all, Rule 1.15 requires lawyers to safekeep entrusted property. Lawyers need to carefully scrutinize the security of the application before linking their trust account to any mobile or online application. 2011 FEO 7 addresses security concerns that arise when a law firm uses online banking to manage a trust account. As noted in 2011 FEO 7, “[f]inancial transactions conducted over the internet are subject to the risk of theft by hackers and other computer criminals.” Nevertheless, 2011 FEO 7 provides that law firms may use online banking

to manage a client trust account if the recordkeeping and fiduciary obligations in Rule 1.15 can be fulfilled. The opinion states that a lawyer must use reasonable care to “minimize the risk of loss or theft of client property specifically including the regular education of the firm’s managing lawyers on the ever-changing security risks of online banking and the active maintenance of end-user security.” *See also* RPC 209 (noting the “general fiduciary duty to safeguard the property of a client”) and 98 FEO 15 (requiring a lawyer to exercise “due care” when selecting depository bank for trust account).

Similar security concerns/obligations are emphasized in 2011 FEO 6, Subscribing to Software as a Service while Fulfilling the Duties of Confidentiality and Preservation of Client Property. The opinion provides that:

the use of the internet to transmit and store client data [or, in this instance, data about client property] presents significant challenges. In this complex and technical environment, a lawyer must be able to fulfill the fiduciary obligations to protect confidential client information and property from risk of disclosure and loss. The lawyer must protect against security weaknesses unique to the internet, particularly “end-user” vulnerabilities found in the lawyer’s own law office. The lawyer must also engage in frequent and regular education about the security risks presented by the internet.

(Lawyers also need to consider the duty to protect client information as set out in Rule 1.6. Certain P2P applications incorporate social media features. Lawyers need to be mindful of any social media aspects to a payment service that might disclose confidential client information, including payments made by client to lawyer.)

Finally, lawyers need to consider whether the use of the P2P application will result in the comingling of lawyer and client funds. Rule 1.15 prohibits comingling of entrusted property and attorney funds. Some applications only allow a lawyer to choose one account where transferred funds get immediately and directly deposited. Other applications accept payment on behalf of a user and retain the funds in an account within the application; the user must then proactively retrieve the funds from the application’s account to complete

the transfer of funds into the user’s bank account of choice. In the case of entrusted client funds, this type of application essentially places entrusted client funds in a nonattorney trust account until retrieved by the lawyer. Revised comment [13] states that such funds “must be transferred to the lawyer’s designated trust or fiduciary account within a reasonable period of time so as to minimize the risk of loss while the funds are in the possession of another, and to enable the collection of interest on the funds for the IOLTA program or the client as appropriate.” Considering the purpose and language of Rule 1.15, including the vulnerability of client funds remaining in a nonattorney trust account, the potential harm to be suffered by the client, and the lawyer’s requirement to safeguard those client funds, anything less than prompt transfer of those funds to the lawyer’s trust account upon becoming available would not be reasonable. Such applications are also ripe for potential comingling of the lawyer’s personal funds, earned fees, and client funds. At the very least, a lawyer would be wise to set up a separate account through which any transactions consisting of client funds are directed. Though having multiple accounts may be tedious (and will increase the lawyer’s record-keeping and monitoring efforts), the potential for client harm and related misconduct outweigh any concerns of convenience.

It is each lawyer’s responsibility to ensure that the transfer method employed by a P2P service complies with the lawyer’s professional responsibilities. This will be no easy task given the security concerns that arise with an application that involves the transfer of client funds and links directly to a lawyer’s trust account. For a lawyer who performs fixed or flat rate fee services, the risk of using P2P payment services may be minimal. However, with entrusted funds, the ethical issues are more complex and include the strict record keeping requirements and the prohibition against comingling associated with traditional transfers and handling of entrusted funds. For these reasons, a lawyer may want to forego the use of these newfangled P2P payment services when it involves entrusted funds and stick with cash, check, credit card, or chickens instead. ■

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

Don't Let Record Keeping Requirements Give You a HeadACHE

BY LEANOR BAILEY HODGE, TRUST ACCOUNT COMPLIANCE COUNSEL

It is hard to believe that the 2019 year end is clearly in view. There was a time when the end of the year was a person's last chance to make magazine purchases and secure a chance to win the Publishers Clearing House Sweepstakes. Every time I am asked a question about automated clearinghouse (ACH) transactions, I recall those commercials with lots of balloons and an oversized check that were the hallmark of the Publishers Clearing House Sweepstakes. It's ironic that I associate ACH transactions in which checks are converted to electronic transactions (bye-bye paper check) with the Publisher's Clearing House Sweepstakes which culminates with the winner receiving the biggest physical check ever.

The ACH Network is a batch processing system in which financial institutions accumulate ACH transactions throughout the day for batch processing in the future. ACH transactions result in paper checks being converted into electronic transactions. In ACH transactions, the necessary funds transfer information, which is normally transmitted by paper, is processed electronically instead. ACH transactions play a major role in how funds move today. Two examples of common ACH transactions are direct deposit and online bill payment. Among the touted benefits of ACH transactions are the ability to ensure that funds are delivered on a date certain and more quickly. It seems like everyone is doing it, conducting ACH transactions—even the IRS will direct deposit your tax refund if you'd like. These days it seems it is all about moving money fast.

If you have been reading my columns this year, you may have reached the conclusion that "fast" in the world of client money and trust accounts is not always good. At least as I wrote these articles, each of which was focused on the topic of fraud on lawyers' trust accounts, I hoped you would give some thought to slowing things down a bit when

moving client money. Wire fraud is often big and dramatic. It's the type of fraud on a lawyer's trust account that receives all the press, and based upon the reports I receive, also wreaks the most havoc on trust accounts. But what about ACH fraud on lawyers' trust accounts—is it a thing? Does Rule 1.15 even allow ACH transactions to be conducted in lawyers' trust accounts?

I will take these questions out of sequence and address the second question first. Rule 1.15 does not specifically reference ACH transactions within the text of the rule. However, Rule 1.15-3(a), which does not mention the words ACH transaction, is directly aimed at safeguarding against automatic conversion to ACH transactions. It provides that: "[a]ll general trust accounts, dedicated trust accounts, and fiduciary accounts must use business-size checks that contain an Auxiliary On-Us field in the MICR line of the check." I know first-hand because of discussions I have had with several lawyers about this rule that, in many cases, the reader's eyes glaze over once he or she makes it past the words "business-size checks," at which point the reader's brain simply translates the remainder of actual words on the page into "blah, blah, blah." Therefore, I will share with you the import of Rule 1.15-3(a). First, the MICR line of the check is the line of numbers on the bottom of checks. It usually contains two sets of numbers: the bank account number and bank routing number. Checks on which the MICR line only includes these two sets of numbers may be automatically converted to ACH transactions. If such checks are converted to ACH transactions, this may result in no digital image of the check being retained. This creates a problem, because lawyers are required by Rule 1.15-3(b)(2) and (c)(2) to maintain such digital images of checks. Now enter the Auxiliary On-Us field, which is a

third set of numbers that can be included on checks (these numbers must be a part of the MICR line of all trust and fiduciary account checks) and which appears in the leftmost position of the MICR line. This third set of numbers is often the check number, but can also be other combinations of numbers. The Auxiliary On-Us field is intended to communicate to financial institutions that the check that includes this field is not eligible for conversion to an ACH debit. Thus, Rule 1.15, albeit indirectly, speaks to the issue of ACH transactions in the language of the rule itself and limits automatic conversion of checks to ACH transactions.

The subject of ACH transactions is addressed directly in three of the comments to Rule 1.15, comments [19], [20], and [21]. Comment [19] explains the ACH process and its effect on the bank records produced. Comment [20] spells out the relationship between the Auxiliary On-Us field and ACH transactions, and the role of the Auxiliary On-Us field in preventing conversion of a check to an ACH transaction without authorization. Lastly, comment [21] sets the parameters of when a lawyer may permissibly conduct an ACH transaction in the trust account. It provides:

Authorized ACH debits that are electronic transfers of funds (in which no checks are involved) are allowed provided the lawyer maintains a record of the transaction as required by Rule 1.15-3(b)(3) and (c)(3). The record, whether consisting of the instructions or authorization to debit the account, a record or receipt from the register of deeds or a financial institution, or the lawyer's independent record of the transaction, must show the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust

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Rebecca Redwine, Board Certified Specialist in Business Bankruptcy Law

BY LANICE HEIDBRINK, EXECUTIVE ASSISTANT OF LEGAL SPECIALIZATION

“Thank you counselor, and I mean that in both senses of the word.”

A simple but poignant sentiment heard from a client that has resonated with Rebecca Redwine throughout her career and serves as one of the greatest compliments she received as an attorney. It is but one of the many compliments we can imagine she receives as a result of the intelligence and compassion she brings to her clients and her practice.

I had the honor of meeting Redwine when she sat for the business bankruptcy law exam in 2018, and even in a room full of nervous examinees, Redwine appeared calm and ready for the challenge. She passed the exam and became a business bankruptcy law specialist in February 2019.

Redwine grew up in Oxford, North Carolina, and graduated from the University of North Carolina School of Law. She began her career as an associate with the family law firm of Gailor Wallis Hunt in Raleigh. From there, she joined Everett Gaskins Hancock & Stevens as a bankruptcy associate. In 2010 she moved to Hendren & Malone, PLLC, which became Hendren, Redwine & Malone when she became a partner in 2016.

Q: What advice would you give to lawyers who are just beginning their career and want to practice bankruptcy law?

First, appreciate that we have a very collegial and professional Bar, and it is full of kind people who are willing to help those who are

learning. Second, always introduce yourself. Third, the Hardee’s across from the Greensboro courthouse will tow your car.

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

I am most motivated when I see that what we do makes a difference in the lives of our clients. My most memorable case was a Chapter 11 debtor that was a large trucking and towing operation, crippled by tax debt and subprime loans, with debt exceeding \$4.4 million. The principal was a young widow, left to deal with the untimely death of her husband and the financial crisis of their business. Ultimately, the company restructured and emerged from Chapter 11 with a consensual plan involving 15 classes. That was a really great day.

Q: What’s the most rewarding professional activity that you have been a part of?

I am a council member of the North Carolina Bar Association Bankruptcy Council, but I’m also the *Pro Bono* Committee Co-Chair. In 2015, in an effort to inspire our section members, we created an award recognizing outstanding *pro bono* service. This will be the fifth year we will honor one of our section members with the NC Bar Association Bankruptcy Law Section Outstanding Achievement *Pro Bono* Award during the statewide meeting at the NCBA Annual Bankruptcy Institute. I have to say, reviewing the nominations of such inspiring people and presenting this particular award certainly counts as a great day in the world of being an attorney.

Q: What motivated you to get certified as a specialist in bankruptcy law?

Honestly, it was my fellow members of

the North Carolina Bankruptcy Bar. I believe we have some of the best bankruptcy attorneys in the nation and it was inspiring to see so many specialists in our state. I had several members of our Bar encourage me and reach out to ask when I was going to take the exam. There’s nothing like peer pressure to make you sign up for something. However, seeing the successful careers of those I respect was the biggest motivator.

Q: Do you feel specialization has been good for the practice of bankruptcy law?

Yes, primarily as a networking referral source. There have been several instances over the past few years where I needed to refer a matter or piece of litigation to out-of-state counsel. If I do not have any contacts in the area, my first search begins with that state’s specialist list.

Q: What would you say to a lawyer who is considering applying to become a North Carolina board certified specialist?

Go for it. There’s no downside and the encouragement you will receive from your peers is unmatched. And there’s a large group of us who will take you out after you pass to celebrate.

Q: What are you happiest doing?

Sitting on a porch with our friends and a cold drink, listening to music, and watching my boys, Finch (5) and Whitford (3), play in the backyard.

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

I know the official state toast, I’ve sung on stage with Smokey Robinson, and I usually wake up at 5 AM.

Q: What would your colleagues say you’re most passionate about?

Eating lunch.

Q: What is your favorite food?

BLT on wheat bread with Duke’s mayonnaise. ■



Redwine

IOLTA Grantee Preserves North Carolina Land and Farms

According to a recent article by Stateline, rural African American farm families held between 16 million and 19 million acres of farmland in 1910.¹ Today, active farm land held by African American farmers amounts to just over 2.5 million acres, a staggering decrease of more than 80%.² In 2017, just 1.3% of farm producers in the United States were African American.³ Historically, the challenges associated with heirs property as well as a history of discrimination against African Americans, including by the US Department of Agriculture in their handling of requests for farm loans and assistance, contributed significantly to the losses of black-owned land.⁴

Concerned by the loss of black-owned land in North Carolina, a taskforce convened in 1982 to address the issue. Shortly thereafter, the Land Loss Prevention Project (LLPP) was founded by the North Carolina Association of Black Lawyers to stem the epidemic losses of black land by providing legal support and assistance to black farmers. Over the years, the mission expanded and today LLPP provides such support for all limited resource and financially distressed farmers, homeowners, and landowners across the state. NC IOLTA has provided support for LLPP since the first grants were awarded by the IOLTA program in 1984.

LLPP's case work is diverse, including agricultural law, real property, consumer protection, wills and estate planning, civil rights, zoning and municipal law, business issues, and bankruptcy when appropriate. Last year, LLPP served nearly 400 clients in 71 out of North Carolina's 100 counties.

The potential impact of the services provided by LLPP range from the personal and local, like preserving a farm or home for an individual client of limited means who can continue to live and subsist on their own property, to benefits impacting the broader public when families and farm businesses are

able to grow and thrive, for example, by providing food and jobs to their communities. In 2018-2019, LLPP preserved land, homes, and farms with a total tax value of \$2,915,276. Through the services they received free of charge from LLPP, farmers, homeowners, and landowners obtained more than \$2.6 million in debt relief, loan modifications, and awards during the past three state fiscal years.

A recent client story illustrates the impact of services provided by Land Loss Prevention Project. Last year, LLPP worked with the family spokesperson for a group of heirs of family land comprised of 70 acres. The heirs to the property, 73 in number, sought to build a legacy to the deceased family patriarch by making the inherited farmland income-producing for generations to come. LLPP attorneys assisted in refining the terms of the limited liability company's operating agreement to allow for continuity of family member ownership through the operation of the LLC. Attorneys also drafted deeds to enable each family member to grant their intestate interest in the property to the LLC of which they were all members. With this laborious process complete, the family business now has a platform for eligibility for agricultural programs to grow their business, which they could not have accessed previously. Further, members of the LLC who have limited resources will be able to leverage this family asset to improve their own economic stability and build a community-based business.

In response to the need, LLPP has grown the resources available through their SmartGrowth Business Center, a program that provides business planning services to strengthen farms and farm businesses, and to also prevent problems that routinely lead to farm loss. Services include business entity formation, contractual review, counseling regarding the availability of federal programs and requirements, and risk management

IOLTA Update

- Income received in 2019 through August from participating financial institutions increased by 110% compared to the same time period last year.

- Banks eligible to hold IOLTA accounts in North Carolina offer rates on the accounts ranging from .01% to 1.88% with an average rate of .43%. NC IOLTA continues to work with banks across the state to ensure IOLTA receives a rate on all IOLTA accounts comparable to similar accounts offered by the institution.

- The IOLTA Board of Trustees will review 2019 grant applications and award grants at the December grantmaking meeting. During the September planning meeting of the IOLTA Board, the trustees considered 2020 spending priorities and, as funding allows, committed to (1) significant investment in the reserve fund which has been used frequently over the last ten years due to the economic recession; (2) continued focus on and anticipated increase in regular grantmaking to core providers of legal aid and administration of justice projects; and (3) consideration of new applicants and opportunities.

education. In addition, through their outreach efforts, LLPP visits communities across the state to share legal information with more than a thousand farmers, landowners, homeowners, and individuals each year at workshops and seminars on various topics of interest.

Over the last few years, LLPP has assisted in the establishment and growth of a farmer's market in an area designated as a "food desert"—an area with little access to

affordable and nutritious food. Now, each Saturday during the season, five or six vendors (mostly small- to medium-sized farms) sell produce and goods at the market to approximately 2,500 visitors per year. Services provided by LLPP included preparation of foundational documents, research and consultation around securing a location for the market, analysis and assistance

regarding Internal Revenue Code classification and exemption, and technical assistance supporting an application for free access to the equipment necessary to accept Supplemental Nutrition Assistance Program (SNAP) benefits at the market.

For more information about the work of Land Loss Prevention Project, visit their website at landloss.org. ■

Endnotes

1. April Simpson, *Black Farm Families Are Losing Their Land. New State Laws Seek to Help*, Governing, Stateline, June 21, 2019, bit.ly/32U1Fwp.
2. *Ibid.*
3. United States Department of Agriculture, National Agricultural Statistics Services, *2017 Census of Agriculture*, April 2019, ACH17-2, nass.usda.gov/AgCensus.
4. Simpson.

The Disciplinary Department (cont.)

Greensboro attorney **Jason Keith**. A judge of the Federal District Court for the Middle District of North Carolina found that Keith did not act with diligence, was not familiar with the law, did not keep his clients informed about their cases, and did not give his clients appropriate advice in several criminal cases, but did not impose professional discipline.

James W. Kirkpatrick of Waynesville did not properly supervise nonlawyer staff. As a result, his staff did not verify wiring instructions before transmitting a seller's loan payoff. Kirkpatrick also did not immediately report the wire fraud to the State Bar's Trust Account Compliance Counsel. He was reprimanded by the Grievance Committee.

J. Eric Skager of High Point was reprimanded by the Grievance Committee. He neglected his client's traffic case, did not promptly tell his client that a failure to appear was entered in her case, and did not respond promptly to the Grievance Committee.

Transfers to Disability Inactive Status

Robert C. Soles Jr. of Tabor City was transferred to disability inactive status by the chair of the Grievance Committee.

Reinstatements from Suspension

In June 2016 the DHC suspended Michael P. Crowe of Winston-Salem for numerous rule violations, including engaging in a conflict of interest, directing an assistant to execute a false notary, engaging in dishonest conduct, and engaging in conduct prejudicial to the administration of justice. The DHC suspended Crowe for three years. He was reinstated by the DHC on

October 22, 2019.

Reinstatements from Disbarment

David Shawn Clark of Hickory was disbarred in 2013. Clark had sex with a client, made false statements to a tribunal and to the Grievance Committee, attempted to suborn perjury, was convicted of several criminal charges including communicating threats and obstruction of justice, intentionally disclosed client confidences, and engaged in a conflict of interest. The DHC recommended denial of his petition for reinstatement. Clark appealed to the council. At its October 25 meeting, the council voted to deny his petition for reinstatement.

In 1982, **James Walter Smith** surrendered his license and was disbarred by the council following his conviction of armed bank robbery. He withdrew his petition for reinstatement after the State Bar took his deposition.

Notice of Intent to Seek Reinstatement

Notice is hereby given that Robin Nicole Knight Krcelic of Charlotte intends to file a petition for reinstatement before the Disciplinary Hearing Commission of The North Carolina State Bar. Knight was disbarred effective January 31, 2005, and surrendered her license on January 26, 2005. The complaint alleged that while operating her law practice, client funds received from real estate closings were misappropriated. Subsequent findings after surrender of her law license and disbarment found that a nonlawyer assistant in her law office embezzled client funds.

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 February 1, 2020 (60 days after publication). ■

IOLTA's Future and How You Can Help (cont.)

each to voluntarily contribute financial support to organizations that provide legal services to individuals who are unable to afford a lawyer. NC IOLTA's grantee partners across the state appreciate your valuable contributions of volunteer time and financial gifts to expand their reach. If you need help connecting with a meaningful project or finding an organization that can make the best use of your talents and treasures, we can help you find that match.

• **Inform.** As lawyers, it is our job to be ambassadors for the law. The Preamble to the Rules of Professional Conduct calls on all lawyers to seek improvement of the law, access to the legal system, and the administration of justice, and to use our civic influence to do so. We can each work to inform those in our community—government officials, community leaders, neighbors, coworkers, and friends—about the role of lawyers in fixing community problems through the kinds of services offered by civil legal aid providers and other projects that promote the administration of justice. If you are interested in sharing the message of access to justice with a community leader or group in your area, please contact me.

• **Reach out.** As noted, it took thoughtful, committed leaders many years ago to start IOLTA programs across the country. No doubt, countless changes promoting access to justice over the years have required the same. You may have an idea for how we can do more to increase our available funds or how we can work together to support access to justice. I would love to hear from you. ■

Mary Irvine is the executive director of NC IOLTA.

The Enlightened Lawyer: Overcoming Stress and Creating Balance

BY DR. GERALYN DATZ

You've already been at the office for nine hours. The senior partner is on your case about a research memo you haven't had a chance to begin. That difficult client who insists on calling several times a week to complain about everything under the sun is at it again. Oh, and you've got a brief due tomorrow and you have no idea how you're going to finish it on time. You're exhausted and overwhelmed. It's only Monday!

The Environment and Culture of Law

Most people have no idea how they get "burned out" or why. It's hard to grasp that we could actually harm ourselves while trying to work hard or while helping others. This is a very real—and very misunderstood—problem in the legal profession.

The practice of law can be so all-encompassing that there doesn't seem to be an "off" switch—irrespective of the practice environment (sole practitioner, large firm, small firm) or practice area (criminal, corporate, entertainment, immigration, health, family, personal injury, real estate, tax, intellectual property, labor, or international). The boundaries of personal, work, family, and spiritual life may cease to exist, either temporarily or permanently. That can take an enormous toll on a person. When the toll becomes toxic to health and wellbeing, this is called "burnout."

It is important to understand why the legal profession is uniquely positioned to take a toll on a human being. Being a lawyer places one in a unique environment of "demandingness"—from the clients who are distressed, self-focused, and sometimes entitled, to the employers who expect top-quality, super-human results. Also a daily foe is an uncontrolled, high-contact, often urgent schedule that does not understand daycare pickups, birthdays, vacations, sporting events, or sleep. Lawyering can be a hyper-stressful setting where the rewards are few

and far between. While some cases may be won, the time between "wins" can be long and arduous. Sometimes a "no-win" mediation or ambiguous success can leave a lawyer feeling over-compromised and empty. There is always the pressure to perform, to log hours, and to appear "together" despite chaotic circumstances.

Finally, the context of practicing law is based on an adversarial paradigm, often involving some conflict, dispute, or wrongdoing. Sometimes there is resolution, but not always. Cases are won and lost through the distortion of reality. This can create a tainted reality for the practicing attorney. Legal cases and clients themselves pertain to social deviations, misbehavior, law breaking, mistreatment, and injustice. There is a side to the world, your city, and your workplace that may be sinister. It is inspiring to overcome the odds, bring justice where there is none, and contribute to a precedent. However, at other times it can feel like you against the world. The outcome of a case can be dark and unfair, and there are other compromises that must be made in the interest of income, time, or tenure in the job.

Humans, as a group, tend to fare poorly under these circumstances.

Are You in Balance?

In the same way that we need air, water, and food to survive, our minds need certain conditions to feel vital and healthy. We need to feel as if we have accomplished something, that we have a purpose, that we are loved and understood, and that we have "down" time away from intense stress. When we do not have these, we become out of balance.

When we are out of balance, we often try to create balance in ways that will never achieve it. We create doses of pleasure by overeating (particularly carbohydrates and "junk" food) or by drinking alcohol. We iso-



late and stay sedentary, thinking we need more rest when, in fact, we should exercise.

We seek outward relief and escape from recreational drugs when we should be turning inward and creating peace and new habits. We ignore the sources of support that would normally bring us relief (spouses, children, family, parents, friends, even pets) because we are in a "bad mood," judgmental, or just too exhausted to socialize. We structure our time so we can't take a break, or feel too drained to reach out to our spiritual community when we need replenishment. Under extreme stress we tend to make poor and impulsive decisions. Some turn to sexual infidelity or take risks (such as fast driving or aggressive behavior), which release temporary "feel good" hormones and neurotransmitters, but are ultimately self-sabotaging.

When our levels of stress become toxic, this can progress to burnout. Burnout is a state of overwhelming, long-term exhaustion and diminished interest in work. Professional symptoms of burnout include depression, cynicism, boredom, loss of compassion, and discouragement. The problem of burnout results from working long hours with limited resources, experiencing ambiguous success, and having contact with difficult clients.

The opposite of burnout is engagement. Engagement is the state of feeling energized, effective, and connected to one's life, career, and surroundings.

Which category do you fall into?

The Effects of Stress

Stress can become toxic to our bodies and mental health. Constant exposure to adversities or stressful work conditions can activate our fight-flight-freeze response. This is a biological response that, when used in small doses, is very helpful. It helps in the courtroom when you need to be on your feet and convincing. It can help you be aggressive in a meeting, and it gives you the edge over the competition when they aren't as passionate as you. It also can help you "walk away" from a bad negotiation rather than continuing to argue. The stress response can help you "freeze" when provoked, which may allow a better negotiating position later.

However, when the fight-flight-freeze system is constantly activated, health concerns may follow. The body and mind become depleted by the constant flux of hormones (cortisol) and neurotransmitters (adrenalin and epinephrine). Healthy tissues are degraded in the body, such as cardiac tissue. The immune system is suppressed. Sleep patterns change and lessen. Fatigue increases due to the constant rushes of stress hormones. Digestion changes and the body's ability to lose weight is reduced. Sex drive decreases. Headaches, depression, and panic attacks increase.

The effects of chronic stress often bring people to the doctor, but that "stress" usually carries other names—insomnia, impotence, constipation, frequent colds or flu, weight gain, fatigue, uncontrollable temper, high blood pressure, canker sores, ulcers, eczema, psoriasis, nightmares, chest pains, anxiety attacks, infertility, concentration problems, bodily pain, painful muscle tension or muscle spasms, and headaches.

Contrary to some beliefs, you don't have to have a diagnosed mental health condition to be affected by stress and burnout. Stress and burnout have their own independent effects on the body and mind. But if another mental health problem is present, the stress and effects of burnout are going to make the original problem worse because any remaining emotional and physical resources that the person has will be expended with the additional effects of chronic stress and

burnout. Burnout and stress will actually hasten a depressive episode, a drug relapse, or chronic pain, and increase the frequency of panic attacks. That is why it is so important to address the signs of burnout as soon as they appear.

Taming Burnout

If you are experiencing the effects of chronic stress and burnout, there is hope. One method is to begin looking at your "energetic bank accounts," consisting of the physical, emotional, and spiritual areas in your life. I encourage and coach clients to take an inventory of their physical health, their emotional state, and spiritual connectedness.

Ask yourself the following questions:

- How is your health? Your energy level? What is your weight and strength level?
- How do you feel emotionally? Are you getting your needs met in relationships? At work?
- How connected are you to feeling like your work makes a difference? Is your work a meaningful path for you? Are you connected to any kind of faith, healing, charity, or spiritual community?

If your answers are not what you wish them to be, it is important to start making "deposits" into these areas of your life.

For example, physical health can be changed by paying attention to eating habits and activity levels. Exercise is crucial to regulation of stress hormones, sleep, appetite, and energy levels.

Emotional health can be refueled by increasing positive social interactions, learning meditation and relaxation techniques, attending psychotherapy or counseling, and learning time management and assertiveness skills (e.g., learning how to say no!).

Spiritual practices can be enhanced formally or informally through re-identification with religious beliefs, attendance at services, or spending time acknowledging a higher power or developing connectedness and mindfulness. The method must always match the person's preferences and needs. This is often the most challenging part of overcoming burnout: changing behaviors. Assistance from an experienced professional can help.

The importance of a program like the North Carolina Lawyer Assistance Program (LAP) cannot be underscored enough. It is crucial to have support available from people

in your profession, confidentially and continuously available. The LAP staff are all clinically trained, seasoned professionals. They are easy to talk to and not pressuring. They know when a problem is serious and needs immediate help, and when someone just needs to talk. Asking for help is hard, but the LAP makes it easy. The LAP team knows all the best resources and can easily demystify the process of treatment support and recovery. They help people *change* and take control of their lives again. They will literally save months of extended suffering and many hours of searching for answers (and might just save your life).

The LAP is a tremendous resource that should not be a last resort. Frequently in my mental health practice, I hear clients tell me they waited until things were really bad before coming to see me. Why? Why do we wait so long for help? Help can be given at any stage of suffering, but certainly it makes sense to use resources that are useful BEFORE a problem becomes severe (from a physical and mental health perspective, as well as a familial, personal, and occupational standpoint). In the case of burnout, it is an avoidable phenomenon when the right steps are taken early in the process.

The journey from burnout to recovery is well described in Joan Borysenko's book, *Fried: Why You Burn Out and How to Revive*. "Revival from burnout is always about the recovery of lost authenticity. It's waking up to who we really are and realizing that heaven is not a destination, but a state of mind. If being fried can bring us to a point where we reconnect to our own true nature, then it's worth every moment of separation to rediscover the heaven that has been inside of us all along." ■

Dr. GERALYN DATZ, Ph.D., a licensed clinical health psychologist in Hattiesburg, MS, is a nationally recognized speaker and provides education about the impact of stress, medical illnesses, addiction, and burnout. She has been a lecturer for Louisiana State Bar Association programs since 2005.

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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,

CONTINUED ON PAGE 32

Building a Firm Foundation for Well-being Programs

BY LAURA MAHR

Where to Begin

As the buzz builds nationally for improved mental health and decreased substance abuse in the legal field, firms of all sizes are considering how to best provide well-being programs in-house. While it may be our lawyerly nature to spring into action when tasked with solving a problem, when creating well-being programs and policies, meaningful discussions are a great place to begin. First assessing your firm's need for well-being programming and reviewing existing policies and practices may help to funnel resources to the areas of greatest need. This article shares six topics for firms to discuss to build a strong foundation for in-house well-being programs.

ABA Calls Law Firms to Action

First, when initiating discussions about well-being programming at your firm, it's helpful to orient your leadership team and later your workforce to what initially ignited the well-being buzz in the legal field. The national conversation about lawyer well-being began in earnest in 2017 when the ABA's National Task Force on Lawyer Well-being released a lengthy report entitled "The Path to Lawyer Well-being: Practical Recommendations for Positive Change." (bit.ly/2x3WRHm)

In it, the task force urged all stakeholders in the legal field, including legal employers, to take action to improve well-being in our profession. This call to action was a response to the findings of the first national study on "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys" published in the *Journal of Addiction Medicine* (bit.ly/2GhpjI9). The study revealed that attorneys have alarmingly high levels of "problematic drinking" and significant mental health distress including high levels of anxiety and depression.

What the ABA is Asking of Firms

Second, when considering options for well-being programming, it is beneficial to understand the specific recommendations the ABA offers for improving well-being at the firm level. To "improve the substance use and mental health landscape of the legal profession," the ABA's Working Group to Advance Well-being in the Legal Profession launched a campaign asking legal employers (including law firms, corporate entities, government agencies, and legal aid organizations) to consider promoting the following "seven point framework for building a better future:"

- (1) Provide enhanced and robust education to attorneys and staff on well-being, mental health, and substance use disorders.
- (2) Reduce the expectation of alcohol at firm events by seeking creative alternatives and ensuring that nonalcoholic alternatives are always available.
- (3) Partner with outside providers who are committed to reducing substance use disorders and mental health distress in the profession.
- (4) Provide confidential access to addiction and mental health experts and resources, including free, in-house self-assessment tools.
- (5) Develop proactive policies and protocols to support assessment and treatment of substance use and mental health problems, including a defined back-to-work policy following treatment.



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(6) Show that the firm's core values include taking care of yourself and getting help when needed by regularly and actively supporting programs to improve physical, mental, and emotional well-being.

(7) Use the Lawyer Well-being Pledge, and the firm's commitment to these principles, to attract and retain the best lawyers and staff.

It may be useful to print the colorful infographic that depicts the seven point framework (bit.ly/2Myasxc) and use it as a conversation starter for well-being programming at your firm.

Address Beliefs that Hinder the Success of Well-being Programming

Third, before launching well-being programming, it is important for firm management to examine the beliefs they as individuals and collectively as a team hold about well-being. It is useful to explore and discuss the following topics:

Well-being and the bottom line: One of the most important beliefs to probe regards how firm management perceives workforce

well-being impacting the bottom line. Historically, firm management teams have held the belief that well-being programs, while nice, are not necessary for financial success. Many firm owners or management teams read the ABA's seven point framework and wonder, "Is this going to cost us money but give us no benefit?" Legal employers may be hesitant to spend time or money on well-being programs without a better understanding of how they promote financial success. If discussions reveal that there is no management team "buy in" for well-being programming, it is advisable to bring in an outside expert to educate firm management about the impact employee well-being has on the bottom line.

Substance abuse and the bottom line: Bringing in an outside expert on mental health and substance abuse disorders to talk with firm management may bring to light numerous ways alcohol and drug impairment impacts the firm's financial picture. For example, working under the influence of drugs or alcohol increases the likelihood that an attorney makes an error that results in ethical violations, malpractice claims, and decreased client satisfaction—all of which impact firm image and the bottom line.

Well-being as a risk management issue: It may also be helpful to consult with in-house or outside risk management experts who can help frame well-being as a risk management issue. In so doing, well-being may transition from a "nice to have" into a "must have" element of firm infrastructure. Perhaps funds earmarked for risk prevention education may be used for well-being educational programming and mental health/substance abuse CLEs.

Self-care and productivity: Bringing in an expert to shed light on the connection between attorney well-being and professional resilience may be eye opening and paradigm shifting for firm leaders. Many attorneys hold the belief that taking care of themselves decreases productivity and impedes success. A number of us have built successful careers and businesses through self-sacrifice and believe that this is the only way to succeed. Our legal community is just now beginning to embrace the idea that working from a place of resilience grows success. I regularly educate firm leaders on the surprising neuroscience research showing that well-being practices that grow professional resilience—things like meaningful self-care, mindful-

ness, meditation, exercise, eating well, rest, and taking a break after a stressful event—also improve our productivity and cognitive functioning.

What Policies and Programs are Already in Place?

Fourth, take time to review policies and programs your firm currently has in place that support well-being. Then discuss ways to level up their efficacy. It is important to review not only the written policies and protocols, but also look at how they are implemented.

For example, if your firm has paid vacation but staff aren't using their vacation hours, it may be helpful to understand why not. Or, if your firm has a "wellness week" but only a handful of support staff and zero attorneys attend the week's offerings, discuss what is inhibiting attorneys and support staff from taking part.

What's Working at Other Firms?

Fifth, many law firms for which I consult begin our discussions with this question: "What's everyone else doing?" Many firms are finding it's a lot more efficient to follow the pack than blaze the trail in creating in-house well-being programs. Robynn Moraites, director of the NC Lawyer Assistance Program, also often hears this question from firm leaders. She reports, "Many firms are now asking what other firms are doing. For better or for worse, because this is such a new horizon, not much precedent has been set. Firms are learning along the way what works in their culture and what doesn't. In three to five years we will have really good feedback about what works and what doesn't based on the initiatives firms are starting to implement now."

It can be helpful to learn what other firms are doing and discern whether their approach may work at your firm. Robynn shares some of the initiatives firms are trying: "What I am seeing for the first time is law firms going beyond an EAP or a wellness newsletter. I'm seeing general counsel and managing partners taking seriously the idea of well-being for their lawyers—not only from a risk management standpoint, but also from a firm culture standpoint." She adds, "Firms are getting serious about figuring out how to create meaningful engagement around well-being by regularly offering in-house mental health CLEs, mindfulness programs, and other well-being

programming that's relevant and interesting and promotes firm-wide well-being." Other programs that firms are offering include on-site chair massage and yoga classes or free gym memberships. Some firms pay for one-on-one resilience coaching for attorneys, and some larger firms bring resilience coaches or therapists in-house to have mental health experts at the ready.

Resources for Firms

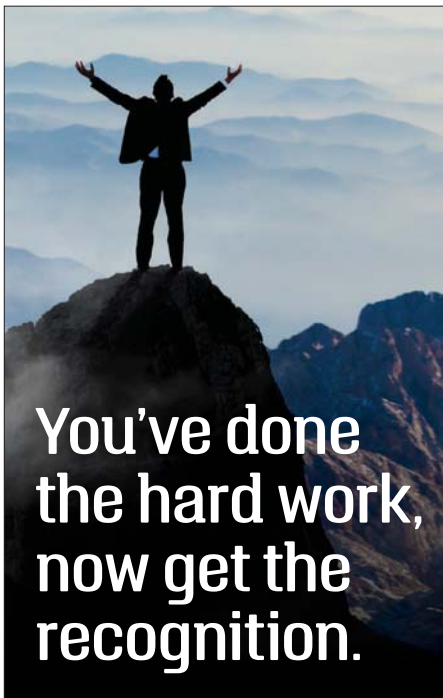
Sixth, when you are ready to move forward with in-house well-being programming, you may wish to hire an outside consultant to help guide the process, facilitate discussions, and provide expertise. If you are looking for well-being ideas, the ABA Presidential Working Group to Advance Well-being in the Legal Profession published a substantial toolkit for legal employers loaded with practical suggestions (bit.ly/2LTIqX), along with a companion "nutshell" version: bit.ly/2B3W1Me. ABA Immediate Past-President Bob Carlson says, "The toolkit offers practical guidance to help attorneys and employers acknowledge problems, encourage help-seeking behaviors, and foster civility throughout the profession."

Start Here

If while reading this you feel overwhelmed, pause and assess a reasonable next best step. Firm management may start by having management-level discussions about the topics recommended in this article. Associates may bring this article to firm leaders to initiate a discussion of their interest in well-being. Support staff may share this article and their concerns about well-being with supervisors. While this may be a time for discussion, assessment, education, and even some experimentation, it's likely that the benefits of moving slowly and intentionally will advance your firm's well-being programming quickly in the long run. ■

Laura Mahr is a NC lawyer and the founder of Conscious Legal Minds LLC, providing mindfulness based well-being 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, 25 years as a student and teacher of mindfulness and yoga, a love of neuroscience, and a passion for resilience. Find out more about Laura's work at consciouslegalminds.com.

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lawyers interested in learning about mindfulness and resilience in the practice of law, join Laura as she presents at these upcoming events:

AILA Midwinter CLE Conference, January 24, 2020, Curacao, agora.aila.org/

Conference/Detail/1636.

"Mindfulness for Lawyers: Building Resilience to Stress Using Mindfulness, Meditation, and Neuroscience" (online, on demand mental health CLE), consciouslegal-minds.com/register.

Trust Accounting (cont.)

account, also show the name of the client or other person to whom the funds belong. Rule of Prof'l Conduct 1.15, comment [21]

As you can see from the discussion above, Rule 1.15 does address the issue of ACH transactions in lawyer trust accounts, and while it requires some safeguards, it does not prohibit these transactions provided they do not involve checks and can be conducted such that the records required by Rule 1.15-3 are generated and maintained.

Now on to the other question. Sadly, yes, ACH fraud on lawyers' trust accounts is a thing. This year, I have received several reports of fraudulent ACH transactions on lawyers' trust accounts. In each case, the fraud was discovered when the lawyer noticed on the bank statement among the list of disbursements from the trust account an ACH transfer (often to a business entity like a credit card company or utility) that he or she did not authorize. Typically, the amounts involved in ACH fraud are significantly less than those lost due to wire fraud. For example, ACH fraudulent transactions have generally been for amounts in the hundreds and thousands of dollars. By contrast, the losses associated with wire fraud have been in the tens and hundreds of thousands of dollars. As is the case in wire fraud, protecting from losses associated with ACH fraud also requires slowing down. However, what should be done while slowing down is different. In the case of ACH fraud, guarding against it requires slowing down and taking time to perform the required monthly bank statement reviews so the fraud may be detected and brought to the attention of the financial institution for correction. Instances of ACH fraud on the trust account must also be reported to law enforcement and to trust account compliance counsel in accordance with Rule 1.15-2(p). ■

Lawyer Assistance Program (cont.)

depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. For more information, go to nclap.org or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh down east) at 919-719-9267.

IMPORTANT Change for 2020 Membership Fees Invoicing

The State Bar will no longer mail paper invoices for the collection of membership fees and the annual IOLTA certification. Instead, members will receive a postcard reminder to pay and certify online, along with the usual email notifications.

What you can expect to receive from the State Bar:

- Email notifications
- Postcard reminder

What is required of you NOW:

- Maintain a current email and mailing address
- "Whitelist" or mark as not spam: noreply@ncbar.gov

What is required of you once you begin receiving the membership fees notifications:

- Pay and make your IOLTA certification online OR print your membership fees invoice from your online account and submit a check along with the invoice
- Law firms wishing to make a single payment should print out the invoices for each attorney and mail them in along with a check

Questions? Call 919-828-4620.

Council Adopts Opinions on Virtual Currency, Self-Laudatory Groups, and Incentivized Social Media Interaction

Council Actions

At its meeting on October 25, 2019, the State Bar Council adopted the ethics opinions summarized below:

2018 Formal Ethics Opinion 8

Advertising Inclusion in Self-Laudatory List or Organization

Opinion rules that a lawyer may advertise the lawyer's inclusion in a list or membership in an organization that bestows a laudatory designation on the lawyer subject to certain conditions.

2019 Formal Ethics Opinion 5

Receipt of Virtual Currency in Law Practice

Opinion rules that a lawyer may receive virtual currency as a flat fee for legal services, provided the fee is not clearly excessive and the terms of Rule 1.8(a) are satisfied. A lawyer may not, however, accept virtual currency as entrusted funds to be billed against or to be held for the benefit of the lawyer, the client, or any third party.

2019 Formal Ethics Opinion 6

Offering Incentive to Engage with Law Practice's Social Networking Sites

Opinion rules that, depending on the function of the social media platform, offering an incentive to engage with a law practice's social media account is misleading and constitutes an improper exchange for a recommendation of that law practice's services.

Ethics Committee Actions

The Ethics Committee considered a total of six inquiries at its meeting on October 24, 2019, including the three opinions listed above that were subsequently adopted by the State Bar Council. Of the remaining three inquiries, two inquiries were returned to subcommittee for further study, including an inquiry addressing the permissibility of certain communications

with judges and a new inquiry concerning whether the Rules of Professional Conduct permit a lawyer to advance a client's portion of settlement proceeds. Lastly, the committee approved for publication a proposed opinion on the use of attorney eyes only disclosure restrictions, which appears below.

Proposed 2019 Formal Ethics Opinion 7 Attorney Eyes Only Disclosure Restriction October 24, 2019

Proposed opinion rules that a lawyer may agree to an "attorney eyes only" disclosure restriction without client consent.

Inquiry:

Lawyer represents Client in a wrongful discharge action and seeks production of discovery related to other employees (including employee personnel files). Due to the sensitivity of the information, opposing counsel agrees to produce the requested material only if Lawyer agrees to a "Stipulated Protective Order" containing an "Attorney Eyes Only" provision, which provides that opposing counsel may designate certain sensitive or highly confidential information as "Attorney Eyes Only," and discovery materials designated as "Attorney Eyes Only" may not be disclosed to Client.

Lawyer reasonably believes that the requested material is necessary for Lawyer to effectively advise and represent Client. Lawyer is concerned that refusal to accept the "Attorney Eyes Only" restriction will cause opposing counsel to object to the discovery request and/or move for a protective order, resulting in delayed production, entry of a protective order for the requested material, or an order denying Lawyer's

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 January 6, 2020.

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.

request for the material.

May Lawyer agree to the Stipulated

CONTINUED ON PAGE 36

Amendments Approved by the Supreme Court

At a conference on September 25, 2019, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

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 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.

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 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.

Amendments to the Rules Governing the Organization of the

North Carolina State Bar

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

The amendments reflect the elimination of judicial district bar fee dispute programs.

Amendments to the Rules on Discipline and Disability of Attorneys

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys; Section .0200, Rules Governing Judicial District Grievance Committees

The amendments acknowledge the Grievance Committee's authority to operate the Attorney Client Assistance Program and the Fee Dispute Resolution Program. They also reflect the elimination of judicial district bar fee dispute programs.

Amendments to the Rules Governing the Practical Training of Law Students

27 N.C.A.C. 1C, Section .0200, Rules Governing the Practical Training of Law Students

The amendments facilitate compliance by North Carolina's law schools with the ABA accreditation standards for law schools by supporting the development and expansion of supervised practical training of varying kinds for law students including clinics, field placements, and *pro bono* activities. The amendments also ensure that the clinical legal education programs at the state's law schools satisfy the requirements for legal practice by law students in N.C. Gen. Stat. § 84-7.1.

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 amendments to numerous rules in Section .0700 accomplish the following: 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

Highlights

- Supreme Court approves rule amendments eliminating the annual 6.0 cap on online CLE credit hours.
- Proposed amendments to the Plan for Certification of Paralegals will permit an applicant to qualify to sit for the certification exam based upon work experience as an alternative to qualifying by education.

of a pending Client Security Fund (CSF) claim or CSF claim that has been paid in full; and provide that, ordinarily, a fee dispute will be processed before a companion grievance.

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

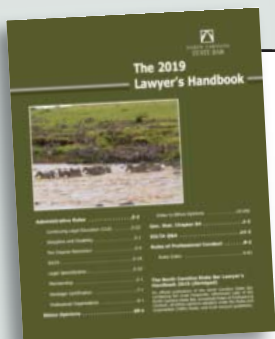
27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; and Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

Amendments in both sections of the rules governing the administration of the CLE program eliminate the annual 6.0 cap on online CLE credit hours. In addition, an amendment to Rule .1518 eliminates the requirement that all attendees of the Professionalism for New Admittees program must complete a course evaluation to receive CLE credit.

Amendments to the Rules of Professional Conduct

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

The amendments to Rule 1.5 expand the information a lawyer must communicate to a client before the lawyer may initiate legal proceedings to collect a disputed fee.



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*Lawyer's
Handbook*

Order a hard copy by submitting an order form (found on the State Bar's website at bit.ly/2qXcDTA) by March 27, 2020. The digital version will still be available for download and is free of charge.

Amendments Pending Supreme Court Approval

At its meeting on October 25, 2019, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval. (For the complete text of the proposed rule amendments, see the Fall 2019 edition of the *Journal* or visit the State Bar website: nbar.gov.)

Proposed Amendment to the Rules Governing the Administrative Committee

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

Committee

The proposed amendment will allow service of a notice to show cause via publication in the State Bar *Journal* when the State Bar is unable to serve a member using other authorized methods.

Proposed Amendment to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization

The proposed amendment clarifies the prohibition on waiving the minimum years of

practice requirement for specialty certification.

Proposed Amendment to Immigration Law Specialty Standards

27 N.C.A.C. 1D, Section .2600, Certification Standards for the Immigration Law Specialty

The proposed amendment permits the Board of Legal Specialization to offer the immigration law specialty exam either annually or every other year based upon the recommendation of the Immigration Law Specialty Committee.

Proposed Amendments

At its meeting on October 25, 2019, the council voted to publish the following proposed rule amendments for comment from the members of the Bar:

Proposed Amendments to the Immigration Law Specialty Standards

27 N.C.A.C. 1D, Section .2600, Certification Standards for the Immigration Law Specialty

The proposed amendments update and clarify the requirements for substantial involvement for certification as a specialist in immigration law.

.2605 Standards for Certification as a Specialist in Immigration Law

Each applicant for certification as a specialist in immigration law shall meet the minimum standards set forth in Rule .1720 of this subchapter. In addition, each applicant shall meet the following standards for certification in immigration law:

...

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of immigration law.

(1) An applicant shall affirm that during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the prac-

tice of immigration law, but not less than 400 hours in any one year. Service as a law professor concentrating in the teaching of immigration law **for two semesters** may be substituted for one year of experience to meet the five-year requirement.

(2) An applicant shall show substantial involvement in immigration law for the required period by providing such information as may be required by the board regarding the applicant's participation in at least five of the seven categories of activities listed below during the five years immediately preceding the date of application. **For the purposes of this section, "representation" means the entry as the attorney of record and having primary responsibility for presenting the case before the appropriate adjudicatory agency or tribunal.**

(A) Family Immigration. Representation of clients before ~~the U.S. Immigration and Naturalization Service and the United States Citizenship and Immigration Services (USCIS) or the State Department in the filing of petitions and family-based applications, including the Violence Against Women Act (VAWA).~~

(B) Employment-Related Immigration. Representation of employers ~~and/or~~ aliens before ~~at least one of the following: the N.C. Employment Security Commission, the U.S. Department of Labor~~

~~(DOL), U.S. Immigration and Naturalization Service USCIS, Homeland Security Investigations, or the U.S. Department of State in employment-related immigration matters and filings or U.S. Information Agency.~~

(C) Naturalization **and Citizenship**. Representation of clients before ~~the U.S. Immigration and Naturalization Service and judicial courts~~ **USCIS** in naturalization **and citizenship** matters.

(D) Administrative Hearings and Appeals. Representation of clients before immigration judges in ~~deportation, exclusion removal,~~ bond redetermination, and other administrative matters; and the representation of clients in appeals taken before the Board of Immigration Appeals **and the Attorney General, the Administrative Appeals Unit Office, the Board of Alien Labor Certification Appeals and DOL, Regional** commissioners, ~~Commissioner, Attorney General, Department of State Board of Appellate Review, and or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OCAHO).~~

(E) ~~Administrative Proceedings and Review in Judicial Courts~~ **Federal litigation**. Representation of clients ~~in judicial matters such as applications for~~ **before Article III courts in habeas corpus petitions, mandamus or Administrative**

~~Procedures Act complaints and declaratory judgments, criminal prosecution of violations of matters involving immigration laws, district court naturalization and denaturalization proceedings, or petitions for review or certiorari in judicial courts, and ancillary proceedings in judicial courts.~~

~~(F) Asylum and Refugee Status. Representation of clients in these matters before USCIS or immigration judges in applications for asylum, withholding of removal, protection under the Convention Against Torture, or adjustment of status for refugees or asylees.~~

~~(G) Employer Verification, Sanctions, Document Fraud, Bond and Custody, Rescission, Registry, and Fine Proceedings. Representation of clients in these matters. Applications for Temporary or Humanitarian Protection. Representation of clients before USCIS, Immigration and Customs Enforcement (ICE), immigration judges, or the Department of State in applications for Temporary Protected Status, Deferred Action for Childhood Arrivals (DACA), Nicaraguan Adjustment and Central American Relief Act (NACARA), parole in place, humanitarian parole, deferred action, orders of supervision, U and T visas, or other similar protections and benefits.~~

Proposed Amendments to The Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals

The proposed amendments eliminate the educational prerequisite for paralegal certification for applicants who satisfy work experience requirements. To be certified, applicants who satisfy the work experience requirements must pass the certification examination.

.0119 Standards for Certification of Paralegals

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) Education or Work Experience. The applicant must have earned one of the following requirements:

(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program;

(B) a certificate from a qualified paralegal studies program and an associate's or bachelor's degree in any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education (an accredited US institution) or an equivalent degree from a foreign educational institution if the degree is determined to be equivalent to a degree from an accredited US institution by an organization that is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credentials Evaluators (AICE); ~~or~~

(C) a juris doctorate degree from a law school accredited by the American Bar Association; or

(D) a high school diploma or equivalent plus five years of experience (comprising 10,000 work hours) as a legal assistant/paralegal or paralegal educator and, within the 12 months prior to the application, completed one hour of CLE on the topic of professional responsibility. Demonstration of work experience may be established by sworn affidavit(s) from the lawyer(s) or other supervisory personnel who has knowledge of the applicant's work as a legal assistant/paralegal during the entirety of the claimed work experience.

(2) National Certification. If an applicant has obtained and thereafter maintains in active status at all times prior to application (i) the designation Certified Legal Assistant (CLA)/Certified Paralegal (CP) from the National Association of Legal Assistants; (ii) the designation PACE-Registered Paralegal (RP)/Certified Registered Paralegal (CRP) from the National Federation of Paralegal Associations; or (iii) another national paralegal credential approved by the board, the applicant is not required to satisfy the educational or work experience standard in paragraph (a)(1).

(3) Examination. The applicant must achieve a satisfactory score on a written examination designed to test the applicant's knowledge and ability. The board shall assure that the contents and grading of the examinations are designed to produce a uniform minimum level of competence among the certified paralegals. ■

Proposed Opinions (cont.)

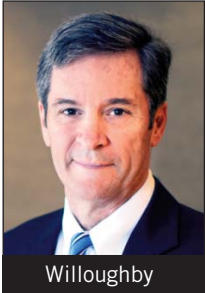
Protective Order containing the "Attorney Eyes Only" provision?

Opinion:

Yes. Rule 1.2(a)(3) allows a lawyer to "exercise his or her professional judgment to waive or fail to assert a right or position of the client." Accordingly, a lawyer may agree to receive information under certain restrictions such as an "attorney eyes only" condition if the lawyer determines that doing so is in the client's best interest and is in accordance with applicable law. In evaluating an "attorney eyes only" disclosure restriction, the lawyer should consider whether such a restriction is appropriate in the client's specific matter. If the lawyer concludes that such a restriction is reasonably necessary to obtain relevant materials to effectively represent his or her client, the lawyer can receive the information pursuant to the restrictive conditions, but the lawyer should consider negotiating for the least restrictive disclosure requirement. Nevertheless, the lawyer may rely on his or her professional judgment to receive the information pursuant to an "attorney eyes only" or other limiting agreement. Rule 1.2(a)(3).

A lawyer, however, should proceed with caution when evaluating an "attorney eyes only" agreement. The use of an "attorney eyes only" disclosure restriction may create a conflict of interest for the lawyer under Rule 1.7(a)(2) in that the lawyer's representation of the client may be materially limited by the lawyer's responsibilities to opposing counsel via the disclosure restriction. This is particularly true in a criminal case, where a lawyer's duties under such an agreement could conflict with the client's statutory or constitutional rights to receive certain information. In addition, the lawyer must promptly inform his or her client of the discovery agreement. *See* Rule 1.4. If the lawyer and client cannot agree about the means to be used to accomplish the client's objectives, and the lawyer cannot reach a mutually acceptable resolution with the client, the lawyer may need to withdraw from the representation. Rule 1.2, cmt. [2]. ■

State Bar Swears In New Officers



Willoughby



Christy



Jordan

Willoughby Installed as President

Raleigh attorney C. Colon Willoughby Jr. was sworn in as president of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar's Annual Dinner on Thursday, October 24, 2019.

Willoughby earned an undergraduate degree in business administration from the University of North Carolina at Chapel Hill, and an MBA from East Carolina University. In 1979 he graduated from Campbell University's Norman Adrian Wiggins School of Law.

Willoughby is a partner with the Raleigh firm McGuireWoods, where he focuses his practice on government, regulation, and criminal investigations. Prior to joining McGuireWoods, he worked as a mortgage banker, as a member of the faculty at Peace College, as a private practitioner, and served as the elected district attorney in Wake County for 27 years.

His other professional activities have included serving as president of the Wake County Academy of Trial Lawyers, director of the Wake County Bar Association, president of North Carolina Conference of District Attorneys, and a member of the Board of Directors of the National District Attorney's Association. He is also a fellow in the American College of Trial Lawyers.

Willoughby served as a State Bar councilor for the 10th Judicial District from 1998-2006, and was elected again in 2014. During his time as a councilor he served as chair of the Authorized Practice Committee, and as vice-chair of the Grievance

Committee.

Willoughby has been extensively involved in the community. He has served on the Board of Governors of Summit House, Inc., as director of Artspace, Inc., as a member of the

Raleigh Rotary Club, on the Triangle YMCA Board of Directors, and on the Board of Directors for NCLEAF. He also is an active member of White Memorial Presbyterian Church, where he serves as an Elder.

Christy Sworn In as President-Elect

Greensboro attorney Barbara R. Christy was sworn in as president-elect of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar's Annual Dinner on Thursday, October 24, 2019.

Christy earned her BS magna cum laude from Appalachian State University, and her JD from the University of North Carolina School of Law.

A member of Schell Bray, her practice focuses on commercial real estate transactions.

Christy's professional activities include volunteering with Legal Aid of North Carolina's Lawyer on the Line initiative. She is also a North Carolina State Bar board certified specialist in real property law—business, commercial, and industrial transactions, a fellow with the American College of Real Estate Lawyers, and a member of the Piedmont Triad Commercial Real Estate Women. Additionally, Christy is involved with her community, serving on the Board of Directors for Southern Alamance Family Empowerment, Inc., and is a past member of the UNC Law Foundation, Inc. Board of Directors.

As a Bar councilor for the 18th Judicial District, Christy has served as vice-chair of

the Authorized Practice Committee, Grievance Committee, and Legislative Committee, and as chair of the Ethics Committee.

Christy and her family live on a small farm in the Snow Camp community where they raise beef cattle, honey bees, and fruit trees. She is a member of Saxapahaw United Methodist Church where she has been the long-time church pianist.

Jordan Elected Vice-President

Salisbury Attorney Darrin D. Jordan was sworn in as vice-president of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar's Annual Dinner on Thursday, October 24, 2019.

Jordan earned his BA from Catawba College in political science and accounting in 1987, and his JD from Campbell University School of Law in 1990.

A partner of Whitley Jordan & Inge, PA, he has been a board certified specialist in criminal law since 2004. He maintains a state and federal criminal law practice in Salisbury and he is admitted to the federal district courts in both the middle and western districts.

Jordan was a member of the North Carolina State Bar Council representing Judicial District 19C from 2010–2018, during which time he served as chair of the Ethics and Communications Committees as well as the Lawyers Assistance Program Board.

Jordan currently serves as a commissioner on the NC Indigent Defense Services Commission, a position he has held since 2014 and was recently named chair of that commission. In 2012, he was presented with the Professor John Rubin Award for Extraordinary Contributions to Defense Training Programs, which is awarded each year by the Indigent Defense Services Commission in honor of its namesake at the UNC School of Government. He has

CONTINUED ON PAGE 49

Fifty-Year Lawyers Honored

Members of the North Carolina State Bar who are celebrating the 50th anniversary of their admission to practice were honored during the State Bar's Annual Meeting at the 50-Year Lawyers Luncheon. One of the honorees, Howard Satsky, addressed the attendees, and each honoree was presented a certificate by the president of the State Bar, Gray Wilson, in recognition of his or her service. After the ceremonies were concluded, the honorees in attendance sat for the photographs below and on the following page. ■



First row (left to right): Zeb E. Barnhardt Jr., Joseph R. Beatty, Thomas C. Duncan, William M. Claytor, Lawrence W. Hewitt, Ronald J. Bowers, Robert F. Fleming, William F. Hamel, William E. Anderson, Leon M. Killan III *Second row* (left to right): Frederick Thorns Craven Jr., Albert A. Corbett Jr., David F. Meschan, Charles Darsie, Charles L. Becton, Ellis Jackson Harrington Jr., Robert C. Hunter, Richard H. Hicks Jr., Mickey A. Herrin, Richard B. Howington, John E. Lansche Sr., Gerald W. Hayes Jr. *Third row* (left to right): David V. Liner, David M. Lawrence, Stephen T. Daniel Jr., K. Edward Greene, Charles W. Kafer, Robert P. Hanner II

State Bar Outlook (cont.)

to almost complete functionality within nine business days.

We are not whole yet. Unfortunately, because some of our backups were corrupted, some data was lost and must be re-entered. Some departments are experiencing “latency” (it takes a long time for the computer to respond to commands) because our data and commands must travel across fiber back and forth from the State Bar building to the cloud computing hosting site. But the good news is that *no data was stolen* (“exfiltrated” in geek speak) from our computers; we did not pay a penny of ransom² to the

criminals who kidnapped our network; and the State Bar is up and operational.

The silver-ish lining to the cloud is the cloud: our data storage and computing are now fully “in the cloud” where it is clearly safer to be because of the multiple layers of security a cloud storage facility provides to its tenants. We cannot rest here, however. We have plenty of work to do figuring out the most secure, economical, and efficient way to fulfill the State Bar’s technology needs going forward.

So, the end of the story is that the 2020 plan for our network was jump started in 2019 by the cyberattack. But I don’t get a CHECK for this goal this year: “this is not good” might have been really, really bad if

our servers and databases could not have been reconstructed from backups. My blood has been stirred enough for the present. I think I will make little plans for next year.³ ■

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

Endnotes

1. “You cannot plan the future. Only presumptuous fools plan. The wise man steers.” Terry Pratchett, *Making Money*.
2. The demand was two bitcoin per server, or roughly \$17,200 per server.
3. “Make no little plans; they have no magic to stir men’s blood...” Daniel Hudson Burnham, 1910.



First row (left to right): Samuel T. Wyrick III, Thomas C. Worth Jr., W. McNair Tornow, James F. Morgan, Burley B. Mitchell Jr., Robert F. Page, Daniel T. Perry III, David M. Moore II. Second row (left to right): William L. Sauls, James Peeler Smith, Robert K. Smith, Harry B. Crow Jr., James R. Prevatte Jr., A. Thomas Small, Carl L. Tilghman, Russell G. Walker Jr. Third row (left to right): Phillip C. Shaw, Jerry J. Rutledge, Charles P. Wilkins, Gary E. Trawick, Sarah Parker, Neill G. McBryde, David F. Meschan, Edwin J. Walker Jr., Howard P. Satsky

State Bar Hosts Opioid Summit

The North Carolina State Bar Opioid Summit/CLE was held on October 4, 2019, at the State Bar building in downtown Raleigh. At this day-long CLE, attendees heard from individuals in recovery, impacted family members, leading experts, and practicing lawyers about the opioid epidemic in North Carolina and how it impacts the legal profession. Chief Justice Cheri L. Beasley and State Bar President Gray Wilson gave introductory remarks, followed by a keynote address from North Carolina Attorney General Josh Stein.

The morning agenda included presentations on the state's response to the epidemic (Anna Stein, NCDHHS), the science of opioid use (Dr. Blake Fagan), a view from the bench (Judge J.H. Corpening), and the prosecutor's perspective (District Attorney Ben David).

During lunch, attendees were inspired by a panel of individuals, most in long-term recovery from opioid misuse, who serve their communities in many ways, including efforts at harm reduction. The panelists gave frank answers about their dealings with the justice system and how lawyers can improve relationships with

clients who are opioid users.

The afternoon included a heartbreaking account from Charlotte Senior Deputy City Attorney Hope Root, who spoke candidly about her son's struggle with opioid use.

The day concluded with a panel of practicing lawyers discussing representation of clients who suffer from opioid use disorder, which was deftly moderated by Smithfield Lawyer Marci Armstrong and State Bar Ethics Counsel Brian Oten.

Thanks to support from the NC Administrative Office of the Courts, the Opioid Summit was livestreamed to nearly 20 local district bars across North Carolina, from Cherokee to Columbus Counties. The event was recorded and is now available on the State Bar's YouTube page at



North Carolina Attorney General Josh Stein addresses attendees at the North Carolina State Bar Opioid Summit.

bit.ly/2PKHhKk (a link to the video is also available on the State Bar website). Note: Lawyers must watch the video in an approved video replay setting to receive CLE credit.

As one attendee noted, the Opioid Summit CLE was "not just a home run, it was a grand slam." The information from the program will help lawyers be better lawyers, and the emotional impact of the program will also be felt for years to come. ■

Resolution of Appreciation for G. Gray Wilson

WHEREAS, G. Gray Wilson was elected by his fellow lawyers from Judicial District 21 in 2007 to serve as their representative in this body. Thereafter, he was elected for three successive three-year terms as councilor; and

WHEREAS, in October 2016, Mr. Wilson was elected vice-president and in October 2017, he was elected president-elect; and, on October 25, 2018, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. Wilson has served on the following committees: Appointments Advisory Committee, including as vice-chair and chair; Authorized Practice Committee; Attorney Client Assistance Committee; Distinguished Service Committee; Ethics Committee; Executive Committee, including as vice-chair and chair; Facilities Committee; Finance and Audit Committee, including as vice-chair and chair; Grievance Committee, including as vice-chair; Issues Committee, including as vice-chair and chair; Legislative Committee; Program Evaluation Committee; Program Evaluation LAP/Grievance Subcommittee; and Publications Committee, including as chair; and

WHEREAS, for six years, Mr. Wilson served with distinction as a member of the Board of Paralegal Certification, earning the respect and admiration of certified paralegals across the state; and, in his role as chair of the board for three years, he was known for welcoming input from all quarters “for the good of the order;” and

WHEREAS, Mr. Wilson organized, promoted, and led the Living Law, a continuing legal education program hosted at State Bar headquarters that used the Socratic method to encourage lawyers to explore moral, philosophical, and professional ideals through literature, music, and film; and

WHEREAS, during his year as president, Mr. Wilson initiated special projects to enhance the protection of the public by strengthening the State Bar’s regulatory program and facilitating the efficient provision of legal services, including committees to study Proactive Management Based Regulation, courthouse access, and official identification for deponents, as well as a liaison committee to facilitate communication and coordination of effort between the North Carolina State Bar and the North Carolina Bar Association; and

WHEREAS, President Wilson conceived and led the Opioid Summit held at State Bar headquarters and live streamed across the State, facilitating discussion of the crucial role lawyers and the legal system must play in helping to resolve the opioid crisis; and

WHEREAS, during the transition following the retirement of long-serving Executive Director Tom Lunsford, President Wilson provided steady leadership and unfailing support and encouragement to Mr. Lunsford’s successor; and this wise and patient leadership was particularly important to the State Bar staff in the aftermath of and recovery from a malicious ransomware attack; and

WHEREAS, Mr. Wilson’s friends and colleagues are often puzzled but are always delighted to be addressed by him in Italian, German, Russian, Polish, French, Latin, or the Southern vernacular; and

WHEREAS, Mr. Wilson successfully thwarted any lugubrious attitudes by championing innovative ideas that were “bold and wet;” and

WHEREAS, throughout a lifetime of distinguished service, Mr. Wilson has by example inspired his peers, friends, and colleagues to strive for greater wisdom, erudition, and professionalism.

NOW, THEREFORE, BE IT RESOLVED that the council of the North Carolina State Bar does hereby, and with deep appreciation, express to G. Gray Wilson its debt for his personal service to the State Bar, to the people of North Carolina, and to the legal profession, and for his dedication to the principles of leadership, generosity, integrity, and scholarship.

BE IT FURTHER RESOLVED that a copy of this resolution be made a part of the minutes of the Annual Meeting of the North Carolina State Bar and that a copy be delivered to G. Gray Wilson.

Client Security Fund Reimburses Victims

At its October 24, 2019, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$155,878.73 to 18 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$4,000 to a former client of Dee W. Bray of Fayetteville. The board determined that Bray was retained to handle a client's criminal matter. Bray entered an appearance with the court, but failed to provide any meaningful legal services for the fee paid prior to being placed on disability inactive status by the court on February 2, 2017. The board previously reimbursed 24 other Bray clients a total of \$176,650.

2. An award of \$3,500 to a former client of Dee W. Bray. The board determined that Bray was retained to handle a client's DWI and disorderly conduct charges. Bray failed to provide any meaningful legal services for the fee paid by the client prior to being placed on disability inactive status.

3. An award of \$9,000 to a former client of Dee W. Bray. The board determined that Bray was retained to represent a client on serious criminal charges. The client paid \$9,000 of Bray's quoted \$15,000 fee. Bray failed to provide any meaningful legal services for the fee paid prior to being placed on disability inactive status.

4. An award of \$4,000 to a former client of Sarah Brinson of Clinton. The board determined that Brinson was retained to prepare a U-Certification and a U-Visa for a client. Brinson failed to provide any meaningful legal services to the client for the fee paid. Brinson was disbarred on August 7, 2019.

5. An award of \$3,030 to a former client of Sarah Brinson. The board determined that Brinson was retained to handle the applicant's husband's immigration matter. Brinson failed to provide any meaningful legal services to the client for the fee paid.

6. An award of \$1,275 to a former client of Paige C. Cabe of Sanford. The board

determined that Cabe was retained to file several small claims actions for a chiropractor against a family of clients he had treated. Cabe failed to file any claims or provide any meaningful legal services for the fee paid. Cabe was disbarred on November 25, 2018. The board previously reimbursed five other Cabe clients a total of \$43,316.48.

7. An award of \$1,500 to a former client of Michael S. Eldredge, formerly of Lexington. The board determined that Eldredge was retained to represent a client on a DWI charge. Eldredge failed to provide any meaningful legal services to the client for the fee paid. Eldredge was disbarred on August 17, 2017. The board previously reimbursed six other Eldredge clients a total of \$75,237.92.

8. An award of \$273 to a former client of David Gurganus of Williamston. The board determined that Gurganus was retained to handle a client's speeding ticket, and was paid for the representation, the court costs, and the fines. Gurganus got the matter reduced to a city code violation, but failed to pay the court costs and fines. Gurganus was suspended until further order of the court on August 30, 2018. The board previously reimbursed one other Gurganus client a total of \$4,650.

9. An award of \$925 to a former client of Steven Troy Harris of Durham. The board determined that Harris was retained to draft and send a letter to a client's ex-wife seeking changes to their custody agreement. Although he attempted to provide the services, Harris knew or should have known that his license was administratively suspended prior to accepting the fee for this matter. Harris was administratively suspended on November 12, 2015. The board previously reimbursed four other Harris clients a total of \$34,000.

10. An award of \$307.75 to a former client of John O. Lafferty Jr. of Lincoln. The board determined that Lafferty closed a real estate purchase for a client and retained funds from the closing proceeds to pay a title

insurance premium. Lafferty failed to pay the title insurance premium. Due to misappropriation, Lafferty's trust account balance is insufficient to pay all of his clients' obligations. Lafferty was disbarred on April 5, 2019.

11. An award of \$22,886.23 to an applicant who suffered a loss because of John O. Lafferty Jr. The board determined that Lafferty was wired funds from a real estate closing in his capacity as a fiduciary for the beneficiaries of the trust that sold the property. Lafferty disbursed shares of the funds to three of the four beneficiaries then disbursed the fourth portion to himself.

12. An award of \$198.75 to a former client of John O. Lafferty Jr. The board determined that Lafferty was retained to close a couple's revocable trust's purchase of real property. From the closing proceeds, Lafferty retained funds to pay a title insurance premium, but failed to pay the premium. Due to misappropriation, Lafferty's trust account balance is insufficient to pay all of his client obligations.

13. An award of \$363 to a former client of John O. Lafferty Jr. The board determined that Lafferty was retained to handle a client's speeding ticket in December 2018. Lafferty failed to provide the client with any meaningful legal services for the fee paid prior to surrendering his license in April 2019.

14. An award of \$100,000 to a former client of John O. Lafferty Jr. The board determined that a client retained Lafferty to close his purchase of his sisters' interest in inherited property. The client paid Lafferty the amount necessary to purchase his sisters' interest plus his third of the shared costs for the legal work. Lafferty received and accepted the funds days after the effective date of his disbarment and deposited those funds directly into his operating account. Lafferty did prepare and file two easements, but failed to use the remaining \$112,361.30 to provide any of the other services or pay the

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Law School Briefs

Campbell University School of Law

Campbell Law School ranked fifth in the nation in Fordham University School of Law's Trial Competition Performance Ranking (TCPR) for the 2018-19 academic year. Campbell Law is the only North Carolina law school to make the list's Top 25. Campbell Law is tied for fifth with the University of Arkon School of Law with 12 points. Since Fall 2016, Campbell Law ranks sixth among the top advocacy programs—tied with Baylor, Cumberland, and Loyola Chicago Law Schools with 25 points each. The TCPR is an objective snapshot of achievement in inter-scholastic law school trial competitions, according to Fordham's Brendan Moore Trial Advocacy Center. Professor Joe Lester and Faulkner Law School compiled all the competition results at trialteamcentral.org.

Campbell Law School students launched the inaugural Campbell Law Reporter (CLR) Podcast on Wednesday, October 16, 2019. CLR is a legal podcast that strives to expand the university's mission to lead with purpose by reporting with purpose. "We hope to breathe new life into the dusty reporters on the shelves by reporting the content through captivating discussion," says Hunter Koehl '20, editor-in-chief of the podcast. Episodes will be released every other Wednesday throughout each semester. This semester the podcast features interviews with NC Court of Appeals Judge Allegra Collins '07, Professor Zac Bolitho, Admissions Director Morgan Cutright, Professor Elizabeth Berenguer, and Professor Robert Montgomery.

Duke Law School

New Duke Law center delves into science of criminal justice—A new center based at Duke Law School is applying legal and scientific research to reforming the criminal justice system. The Duke Center for Science and Justice brings together faculty and students in law, medicine, public policy, and arts and sciences to pursue research, policy and law reform, and education in three areas: accuracy

of evidence in criminal cases; the role of risk in criminal outcomes; and addressing a person's treatment needs as an alternative to arrest and incarceration. It will also examine the needs of formerly incarcerated persons who are re-entering society. A central goal of the center is to convey the results of research to stakeholders in the criminal justice system.

The center is led by Brandon Garrett, the L. Neil Williams Jr. professor of law and a leading scholar of criminal procedure, scientific evidence, and wrongful convictions.

The center is supported by a \$4.7 million grant from the Charles Koch Foundation, which supports research and educational programs in areas such as criminal justice and policing reform, free expression, foreign policy, economic opportunity, and innovation. Additional support for Garrett's research has been provided by Arnold Ventures and the Center for Statistics and Applications in Forensic Evidence.

With additional philanthropic support, Duke hopes to expand the focus of the center's educational mission to supporting students who are entering criminal justice careers through scholarship aid, internship funding, a criminal-justice focused curriculum, and opportunities for interdisciplinary engagement with graduate and undergraduate students. The law school also hopes to launch a criminal justice clinic to provide training in how to litigate a criminal case at the pre-trial and trial stage.

University of North Carolina School of Law

UNC ranks No. 1 with 93% July NC bar exam passage rate—For the third time in a row, Carolina Law held the top spot for overall bar passage rate among North Carolina law schools. Ninety-three percent of the 126 Carolina Law graduates who took the bar exam in July passed. First time test takers also performed well with a 94% passage rate for the 124 Carolina Law graduates who took the North Carolina bar exam.

Earn CLE credit at festival—Celebrating

30 years on February 7-8, 2020, the Festival of Legal Learning is the premier conference for you to satisfy your annual CLE requirements in a day and a half. Visit law.unc.edu/cle.

Carolina Law receives \$374,000 grant from Lumina Foundation—The grant will fund the study of the relationship between debt, achievement, and equity in higher education, with a specific focus on Latino/a students.

Alumni establish scholarship for first-generation law students—Charles and Sue Plambeck have bequeathed and pledged \$1 million to support the UNC School of Law, UNC College of Arts & Sciences, the Center for the Study of the American South, the American Indian Center, and the Wilson Library Special Collections. Their largely unrestricted gift enables university leaders to direct dollars where they're needed most, with special funds set aside for a scholarship at the law school.

Prosecutors and Politics Project studies DA's roles in shaping state criminal justice policy—A \$55,000 gift from the Charles Koch Foundation will support the study and allow for ten students to assist Professor Carissa Hessick.

White House nominates Professor Richard Myers '98 to be a judge of the United States District Court for the Eastern District of North Carolina—Myers, who joined the UNC Law faculty in 2004, was nominated by President Trump to fill the longest-standing vacancy in the federal courts.

Wake Forest School of Law

Wake Forest Law to host an executive education program on blockchain and fintech—"Blockchain, Crypto, & Fintech Law: Decoded and In Practice" will bring together nationally recognized experts for a daylong executive education program that includes courses on blockchain, cryptocurrency, and fintech. Designed and led by Wake Forest Law Professor Raina Haque, this event will focus on training and applying core concepts to

multiple businesses that span industries.

The program will be held on Friday, February 7, 2020, at Wake Forest University Charlotte Center in Charlotte, NC. Attendees will receive a certificate of completion. Seven NC and SC CLE credits are pending. Go to wfu.law/blockchain to learn more and register.

WFU ranked no. 1 in NC for trial competition performance since 2016—Wake Forest School of Law is ranked first in NC and among the top three schools nationally for Trial Competition Performance since 2016, according to the latest Fordham Law Ranking.

Since 2017, Wake Forest School of Law has brought home four national championships in just two years with the National Trial Team most recently winning the 2018 National Board of Trial Advocacy (NBTA) Tournament of Champions. The win makes Wake Forest the only law school to win the AAJ Student Trial Advocacy Competition, the National Moot Court Competition, the American College of Trial Lawyers National Trial Competition, and the Tournament of Champions in consecutive years.

WFU Law receives several accolades from PreLaw Magazine—Wake Forest School of Law was recognized as a 2019 Best Value Law School as well as the number seven Best Value 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, making it the fourth year in a row that the school has been distinguished as a leader in business law by the magazine.

Wake Forest was also named among the nation's top for human rights law and family law by *PreLaw Magazine*, with the publication also naming Wake Forest a high performer for big law firm placement.

Professor Kami Chavis adds to national discussion on police accountability—Professor Kami Chavis contributed to national discussions on the two fatal shootings of unarmed black community members in Dallas and Fort-Worth, Texas, by white police officers.

In response to the verdict of Dallas ex-cop Amber Guyger, Chavis told *USA Today* that "The confluence of racial stereotypes, racial profiling, and police use of aggressive tactics is a challenge in confronting police brutality."

She also spoke with NPR *Morning Edition's* Steve Inskeep to discuss policing and procedure following the fatal police shooting of Atatiana Jefferson. "This is an

instance where the body camera footage can be quite helpful," she said, noting that the police officer did not identify himself as law enforcement.

Professor Chavis is a renowned expert on

police accountability, body cameras, and hate crimes. She is the director of the Wake Forest Law Criminal Justice Program and is an associate provost for academic initiative at Wake Forest University. ■

In Memoriam

Joseph Edward Anthony
Durham, NC

Harold Walton Berry Jr.
Raleigh, NC

Christopher Powell Brewer
Raleigh, NC

Patricia G. Bruce
 Mooresville, NC

Eugene Joseph Cella
Morrisville, NC

Richard C. Craven
Aberdeen, NC

James Lee Davis
New Bern, NC

Thomas Sims Erwin
Raleigh, NC

Harry McCarley Giles Jr.
Greensboro, NC

Kay R. Hagan
Greensboro, NC

Stephany C. Hand
Durham, NC

David Vernon Hartley
Cary, NC

Rodney Gene Hasty
Asheville, NC

Lanny Lee Hiday
Chapel Hill, NC

Jonathan Lee Hipps
Charlotte, NC

Harold Thomas Jarrell Jr.
Greensboro, NC

Dale Patton Johnson
Clinton, NC

Robert Watkins King Jr.
Charlotte, NC

Robert Gilliam Kittrell Jr.
Henderson, NC

Harold Powers Laing
Wrightsville Beach, NC

I. Beverly Lake Jr.
Wake Forest, NC

James Edward Landers Jr.
Winston-Salem, NC

Charles Stuart Lanier
Jacksonville, NC

Ted Brooks Lockerman
Clinton, NC

Henry Clyde Lomax
Charlotte, NC

Janet Marie Lyles
Morehead City, NC

John Benjamin Morrow
Gastonia, NC

Michael R. Philips
Westerville, OH

Steven Edward Philo
Franklin, NC

James Bethel Richmond
Durham, NC

Vernon Haskins Rochelle
Morehead City, NC

Julius A. Rousseau Jr.
Winston-Salem, NC

Henry MacMillan (Mac) Tyson II
Shalotte, NC

James Quimby Wallace III
Morehead City, NC

Thomas Wilson Warlick
Newton, NC

Cynthia Leigh Wittmer
Raleigh, NC

William Michael Workman
Charlotte, NC

Annual Reports of State Bar Boards

Board of Continuing Legal Education

Submitted by George L. Jenkins Jr., Chair

Lawyers continue to meet and exceed their mandatory continuing legal education requirements. By mid-March 2019, 25,853 annual report forms had been filed either electronically or by hard copy for the 2018 compliance year. I am pleased to report that 99% of the active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2018. The report forms show that North Carolina lawyers took a total of 375,557 hours of CLE in 2018, or 14 CLE hours on average per active member of the State Bar. This is two hours above the mandated 12 CLE hours per year.

The CLE program operates on a sound financial footing and has done so almost from its inception over 30 years ago. Funds raised from attendee and non-compliance fees not only support the administration of the CLE program, but also support three programs that are fundamental to the administration of justice and the promotion of the professional conduct of lawyers in North Carolina. The program's total 2018 contribution to the operation of the Lawyers Assistance Program (LAP) was \$211,076. As of September 30, 2019, the board has also collected and distributed \$300,768 to support the work of the Equal Access to Justice Commission and \$301,009 to support the work of the Chief Justice's Commission on Professionalism. In addition, the CLE program generated \$75,222 to cover the State Bar's costs for administering the CLE-generated funds for the LAP and the two commissions.

This fall the Supreme Court approved amendments to the rules governing the CLE program to eliminate the six hour on demand cap on CLE courses. Education is the primary purpose of CLE and lawyers should have more opportunities to satisfy their requirements with the removal of the cap.

The Supreme Court also approved an amendment eliminating the requirement

that attendees of the Professionalism for New Attorney's program complete a course evaluation to receive CLE credit. The court also approved numerous non-substantive amendments that improve clarity of the rules.

The board strives to ensure that the continuing legal education requirements meaningfully advance the competency of North Carolina lawyers. We welcome any recommendations or suggestions that councilors may have in this regard. On behalf of the other members of the board, I thank you for the opportunity to contribute to the protection of the public by overseeing the mandatory continuing legal education program of the State Bar.

Board of Legal Specialization

Submitted by Larry H. Rocamora, Chair

North Carolina's Legal Specialization program exists for two reasons: First, to assist in the delivery of legal services to the public by identifying lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, so that the public can more closely match its needs with available services; and second, to improve the competency of the Bar. 27 N.C.A.C. 1D, .1701. I am proud to report that, under the guidance of the Board of Legal Specialization, and with the tireless efforts of the specialty committees and staff, our program is stronger than ever and continually achieving the very purpose for which the State Bar Council created the program in 1985. On top of that, our program is entirely self-sufficient.

With the addition of 62 new specialists last November, there are now over 1,100 certified legal specialists in North Carolina. Notably, in 2018 we became the first state in the nation to administer an exam and certify specialists in privacy and information security law, an ever-growing field and is increasingly in demand amongst the public. The State Bar's specialization program certifies lawyers in 13 specialties. This spring we received 86 applications from lawyers seeking certifica-

tion. Of the 2019 applicants, 76 met the substantial involvement, CLE, and peer review standards for certification and were approved to sit for the specialty exams that are being administered in the State Bar building and at the Mecklenburg County Bar in Charlotte this month.

To assist lawyers interested in becoming certified specialists but who are not yet qualified, in 2018 we successfully created and implemented a new process allowing lawyers to fill out a Declaration of Intent form. This form allows our staff to track, communicate with, and assist interested lawyers regarding the lawyer's eligibility under the applicable certification standards. I am happy to report that this new process has been both successful and appreciated by members of the profession, with over 225 individuals submitting declarations to this point.

In May 2019, the Board of Legal Specialization held its annual luncheon to honor both long-time and newly certified specialists at the Marriott Crabtree Valley in Raleigh. At the lunch, the specialists who were certified in November 2018 were recognized and presented with specialization lapel pins. The board also recognized 47 specialists who were originally certified in 1989 and 1994 and who have maintained their certifications for the past 30 and 25 years, respectively. Additionally, we had the honor of presenting the board's three Service and Excellence Awards named in honor of past chairs of the board. The Howard L. Gum Excellence in Committee Service Award was given to Tom Fulghum, an immigration law specialist from Durham, for his dedication, service, and leadership as chair of the Immigration Law Specialty Committee. The James E. Cross Leadership Award was presented to Matt Cordell, who is a privacy and information security law specialist in Greensboro, for his widely recognized knowledge and dedication to the field. The Sara H. Davis Excellence Award was presented to Angela Doughty, a certified specialist in

trademark law from New Bern, for serving as an exceptional role model for other lawyers and exemplifying excellence in her daily law practice.

In June 2019 the board held a reception in Charlotte at the Mecklenburg County Bar Center. At the reception we recognized the newly certified specialists as well as those who have maintained their certifications for the past 25 years who could not attend the annual luncheon in Raleigh. Additionally, we asked our Charlotte-area specialists to invite a peer to the reception who they felt should pursue specialty certification. Throughout the reception, these lawyers took advantage of the opportunity to speak with our current specialists and learn about the specialization program, the application process, and the beneficial impact specialization has had on the public and their individual practices. Feedback from the reception was overwhelmingly positive, and we hope to hold similar events in different parts of the state during the coming years.

I am also happy to report the Jeri L. Whitfield Legal Specialty Certification Scholarship Fund established to provide scholarships for specialization application fees for prosecutors, public defenders, and non-profit public interest lawyers who wish to become certified specialists was very successful in 2019. The fund is administered by the North Carolina Legal Education Assistance Foundation (NC LEAF). We received several donations during the specialists' luncheon in April and several specialists made donations when paying their annual specialization fees. The fund balance at the beginning of 2019 was \$440, and we received an additional \$1,612 for the scholarship fund thus far in 2019. All contributions are tax deductible and can be made through NC LEAF. As a result of this scholarship fund, I am pleased to report that four public interest applicants received scholarships this year, thereby offering these lawyers the opportunity to not only attain certified status, but also instill trust and confidence in the legal services received by the clients they serve.

Our exams continue to be a strong and objective measure of proficiency for the various specialties, and we are ever-striving to improve both the content of the exams and the testing experience. In 2019 we re-initiated our working relationship with Dr. Terry Ackerman with the University of Iowa. Dr.

Ackerman previously provided psychometric analysis for the program's exams for several years, and Dr. Ackerman has resumed that role in providing valuable psychometric analysis for each of our specialty exams to ensure they remain valid and reliable. We also continue to utilize ExamSoft and its recently released testing program, Examplify, for all of our testing needs. Examsoft is a secure, cloud-based software that is used by many law schools and on most bar exams. The program's significant capabilities help streamline all aspects of the testing process, from writing and storing exam questions to grading and analyzing exams.

Also in this year's specialization news, the State Bar *Journal* featured interviews with Christon Halkiotis, a state criminal law specialist who was at the time with the Guilford County District Attorney's Office (Ms. Halkiotis has since moved into private practice); Darrin Jordan, a state criminal law specialist from Salisbury; Linda Johnson, an estate planning and probate law specialist from Fuquay Varina; and Deonte' Thomas, a state criminal law specialist with the Wake County Public Defenders Office. Regrettably, the chair of the board, Robert A. Mason, a specialist in elder law from Asheboro, rotated off of the board this year. We are thankful for the council's addition of our new board member, Matthew Ladenheim, a trademark specialist from Huntersville, as well as the council's appointment of Kim Coward, a residential real property law specialist from Cashiers, as vice-chair of the board.

On behalf of the board, I want to express my sincere appreciation to the members of the council for your continuing support of the Legal Specialization program.

Board of Paralegal Certification

Submitted by Warren Hodges, Chair

North Carolina's Paralegal Certification program exists for two reasons: First, to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer; and second, to improve the competency of those individuals. 27 N.C.A.C. 1G, .0101. I am proud to report that, under the guidance of the Board of Paralegal Certification, and with the tireless efforts of various volunteers and staff, our program is thriving and contin-

ually achieving the very purpose for which the State Bar Council created the program in 2004. Importantly, our program is entirely self-sufficient.

Fourteen years after the first application for paralegal certification was accepted by the board on July 1, 2005, there are today over 3,900 North Carolina State Bar certified paralegals. This year, 101 paralegals sat for the April 2019 exam; of that number, 66 passed the exam. We recently administered our October 2019 exam, for which 165 paralegals were eligible. We anticipate designating well over 100 new certified paralegals after the results of the October exam are released in November.

Also in 2019, the board will have considered over 3,600 recertification applications. To maintain certification, a certified paralegal must complete six hours of continuing paralegal education (CPE) credits annually, including one hour of ethics. I am pleased to report that certified paralegals have continued to improve their competency by taking over 21,000 hours of CPE in the last 12 months.

The board held its annual retreat in May at the State Bar building in Raleigh. Among the various agenda items were consideration of work experience as a qualifying factor to allow an applicant to sit for our certification exam, and the initiation of new outreach efforts to strengthen our paralegal community. As to the proposed amendment regarding exam qualifications, after discussion in May, the board considered and approved a proposed administrative rule amendment allowing paralegals who achieve substantial work experience as a paralegal to sit for the certification exam. Previously, and with the exception of paralegals who were certified at the inception of this program, individuals could only sit for the paralegal certification exam if they satisfied certain paralegal-related educational requirements. Our rules, however, did not permit our state's valuable and experienced paralegals who did not obtain particular degrees to sit for the exam. This proposed rule amendment seeks to change that by enabling those paralegals who have obtained at least five years of paralegal experience to sit for the certification exam. We believe this rule appropriately recognizes the value of real-life paralegal experience, while also upholding and respecting the value of a paralegal education as it relates to our certification process and our overall mission to pro-

tect the public. This rule is before the State Bar Council for consideration at the October 2019 meeting, and we hope the council joins us in supporting our experienced paralegals.

As to the new outreach efforts, after discussion by the board, our program decided to initiate new efforts to reach out to and strengthen our paralegal community in 2019. We kicked off this initiative by hosting a certified paralegal lunch event in June at the Mecklenburg County Bar Center in Charlotte. We had over 120 individuals attend, with some traveling over two hours to attend the event, and we reached our maximum capacity for the event approximately one week after registration opened. During the event, paralegals heard an update on the program from myself and from our program director, Brian Oten, and were encouraged to network with each other over lunch. Following lunch, Brian Oten presented a CLE to the group on the State Bar, detailing the role the State Bar plays in theirs and attorneys' lives, the various functions of the State Bar, and the resources available to both lawyers and paralegals through the State Bar. The stated goal of this event was to assist in improving the competency of our certified paralegals through education and through the creation of opportunities to interact with and build productive professional relationships amongst our certified paralegals. The response—both in terms of registration and to the content of the event—was overwhelmingly positive. The success of this event clearly demonstrated to our program the need for such events and confirmed the direction we intend to travel for our program. We have a similar lunchtime event scheduled for certified paralegals in November in Greenville, and we intend to host additional events over the next years throughout the state.

Our exam continues to be a strong and objective measure of proficiency for paralegals, and we are ever-striving to improve both the content of the exam and the testing experience. In 2019, we re-initiated our working relationship with Dr. Terry Ackerman with the University of Iowa. Dr. Ackerman previously provided psychometric analysis for our program's exam during the early years of our existence, and Dr. Ackerman has resumed that role in providing valuable psychometric analysis to ensure our exam remains valid and reliable. We also continue to utilize ExamSoft and its recently

released testing program, Exemplify, for all of our testing needs. Examsoft is a secure, cloud-based software that is used by many law schools and on most bar exams. The program's significant capabilities help streamline all aspects of the testing process, from writing and storing exam questions to grading and analyzing exams. We are currently speaking with different paralegal schools around the state in an attempt to offer our certification exam at their facility using ExamSoft. If we succeed in this endeavor, we will be able to offer the certification exam in a number of convenient locations, thereby increasing paralegals' access to our program and the public's access to certified paralegals.

We welcomed State Bar Councilor Matthew W. Smith of Eden and attorney Benita Powell of Fayetteville to the board in 2019. Both Matthew and Benita have impressively acclimated to their new roles, offering fresh insight and contributing to our discussion and vision of the program in invaluable ways. We thank the State Bar Council for its thoughtful consideration in appointing the leadership of our program.

The Board of Paralegal Certification looks forward to continued success certifying qualified paralegals to help with the delivery of legal services to the citizens of North Carolina. We welcome any recommendations or suggestions that councilors may have for ways in which the board might improve the paralegal certification program. On behalf of the other members of the board, thank you for the opportunity to contribute to the protection of the public by overseeing this important program of the North Carolina State Bar.

Lawyer Assistance Program

Submitted by Robynn Moratias, Director

Now in our 40th year, your NC Lawyer Assistance Program (LAP) staff and volunteers remain dedicated and extremely busy. The ABA's Task Force Report on Lawyer Well-Being created a groundswell of support across the nation and the profession. As a result, LAP is now working more closely with certain stakeholders like law schools and large national and multi-national law firms.

Last year at the time of this report, LAP volunteers had just begun holding office hours at five of our six law schools. Based on the success of the first academic year, we have been invited back this academic year and plan

to now be at all six schools. Our pilot year went well. Volunteers interacted with 150 law students. Students of every class (1L, 2L, 3L) either made private appointments in advance or dropped by our table to talk and ask questions. The topics of greatest interest were 1) questions about the character and fitness portion of the bar application, and 2) general anxiety and stress related to law school. We had several students schedule appointments with our clinical staff, some without ever stopping by the table. UNC invited LAP to be part of its student orientation last year and this year. NC Central had LAP volunteers present at a stand-alone, special event during mental health week, which was widely attended. We hope these office hours and related activity will become a fixture at each school going forward.

LAP staff continued providing in-house trainings for midsize and large law firms that participated in either the risk management roundtable or the summit hosted by Lawyers Mutual Insurance. Large firms in NC are beginning to evaluate their culture, their HR policies (and whether those policies encourage lawyers to seek assistance when needed), and to develop wellness initiatives and programs. Many firms have asked LAP to provide ideas and input. LAP has historically worked one-on-one at the individual level and will continue to do so. Systemic and institutional change like real and effective in-house wellness programs are new territory. I have attended brainstorming sessions at several firms. Each firm is starting from scratch given this is a growth edge (for all of us—the entire profession) with no best-practice road maps yet established (here in NC or nationally). As these initiatives take hold and we evaluate their efficacy, I hope that within a few years LAP will be able to share information about those that appear to have the greatest impact and value.

LAP staff and volunteers gave 75 CLE presentations this year. Attendance at the Minority Outreach Conference remains strong and we hope to break our record high of 600 registered for the 2020 event.

Due to the State Bar ransomware attack, LAP's data was corrupted and had to be restored. As a result, at the time of this printing, we do not have final numbers for the number of new files opened and closed. LAP will be issuing its annual report with those figures in time for the quarterly State Bar council meeting in January. ■

February 2020 Bar Exam Applicants

The February 2020 bar examination will be held in Raleigh on February 25 and 26, 2020. Published below are the names of the applicants whose applications were received on or before October 30, 2019. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

Brian Akers Jacksonville, NC	Orlando, FL	Matthew Darr Greensboro, NC	Sanford, NC	Zachary Green Greensboro, NC
LaShon Albert Winston Salem, NC	Khristen Boyette Durham, NC	James Davis Davidson, NC	Theodore Fort Raleigh, NC	Alexis Greene Morrisville, NC
Dawnwin Allen Charlotte, NC	Marissa Branson Greensboro, NC	Lindsey Davis Raleigh, NC	Kara Foster Raleigh, NC	Susan Gregory Sarasota, FL
Daniel Allison Hillsborough, NC	Joshua Brantley Cana, VA	Nichad Davis Charlotte, NC	Kerese Foster Greensboro, NC	Kirsten Grieser Raleigh, NC
William Apple Lakeview, NC	Jolie Brown Goldsboro, NC	Hollie DeBaro Greensboro, NC	Savannah Fox Greensboro, NC	Purna Gupta Woodside, NY
Zeliha Arslan Washington, DC	Kelly Brown Goldsboro, NC	Katherine Devine Asheville, NC	Nicholas Fracassi North Wilkesboro, NC	Lejla Hadzic Concord, NC
Mili Banerji Charlotte, NC	Miya Bryant Rocky Mount, NC	Lauren Deyo Greenville, SC	Joshua Franks Raleigh, NC	Sierra Hagg Granite Falls, NC
Victor Bao Palmetto Bayt, FL	Hai Bui Baytown, TX	Greg Dixon Elizabeth City, NC	Charles Fraser Charlotte, NC	Benjamin Hahn Greenville, NC
Joshua Barfield Sharpsburg, NC	Nathan Bunch Raleigh, NC	Alexander Doernberg Cary, NC	Kelly Frecker Miami, FL	Shaun Haines Weddington, NC
Sontina Barnes Raleigh, NC	Adam Burton VA Beach, VA	Kate Easwaran Matthews, NC	Montre Freeman Roanoke Rapids, NC	Christian Hairston Greensboro, NC
Elizabeth Barnette Monroe, NC	Alaina Byrd Charlotte, NC	Preston Edwards Greensboro, NC	Louis Fristensky Wayneville, NC	Donald Haley Charlotte, NC
Nancy Baron Raleigh, NC	LeRon Byrd Chapel Hill, NC	Heidi Egges Fort Mill, SC	Sarah Fuentes Charlotte, NC	Sara Hall Raleigh, NC
Julia Bartz Stem, NC	Micah Byrd Winston-Salem, NC	Leonard Elder Cary, NC	Regina Fulton Raleigh, NC	Li'Vahn Hamden Chapel Hill, NC
Sana'a Bayyari Cincinnati, OH	Tyler Carpenter Charlotte, NC	Savannah Eliseo Colfax, NC	James Futrell Durham, NC	Donald Hamilton Morrisville, NC
Joey Beasley King, NC	Lasley Cash Charlotte, NC	Rebecca Elliott Greensboro, NC	Lydia Gabbard Chapel Hill, NC	William Handy Charlotte, NC
Katheryn Berlin Charleston, SC	Jon Causey Salisbury, NC	Christina Ellison Morrisville, NC	Natalie Galvez Gastonia, NC	Edmond Haney Haw River, NC
Samera Beshir Miami, FL	Mackenzie Ceraso Charlotte, NC	Cherif Elsheikh Long Beach, CA	Richard Gambs Charlotte, NC	Cameron Hardesty Raleigh, NC
Kimberley Beyer Glenville, NC	Erik Chamberlin Charlotte, NC	Matthew Esterline Rocky Mount, NC	Lisa Garner Greensboro, NC	Thomas Harding Durham, NC
Graham Billings Charlotte, NC	Annabelle Chambers Winter Park, FL	Whitney Eudy Mount Pleasant, NC	Tukesia Garner Charlotte, NC	Aaron Harris Durham, NC
Brandye Birdsall Elizabeth City, NC	Yanique Chambers Charlotte, NC	Margaret Eury Greensboro, NC	Jacquelyn Gauntlett Greensboro, NC	Kia Harvey Winston-Salem, NC
Livia Birtalan Raleigh, NC	Jingchi Chen Washington, DC	Corrie Evans Leland, NC	Damon Gialenios Fuquay-Varina, NC	David Hasenauer Raleigh, NC
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PS Form 3526, July 2014 (Page 2 of 2)

Client Security Fund (cont.)

clients' sisters.

15. An award of \$620 to former clients of John O. Lafferty Jr. The board determined that a couple retained Lafferty to petition for the adoption of their adult foster child. Lafferty failed to provide any meaningful legal services for the fee paid.

16. An award of \$500 to a former client of Nikita V. Mackey of Charlotte. The board determined that Mackey was retained to file an answer to a civil complaint against the client's company. Mackey neglected the matter, failed to communicate with the client, and never filed the answer to the complaint on behalf of the company. The board previously reimbursed one other Mackey client a total of \$500.

17. An award of \$1,500 to a former client of Christi Misocky of Monroe. The

board determined that Misocky was retained to prepare a separation agreement for a client and his wife to sign. Misocky failed to provide any meaningful legal services for the fee paid. The board previously reimbursed three other Misocky clients a total of \$7,455.

18. An award of \$2,000 to a former client of Suzanne Nelson of Raleigh. The board determined that a client sought legal advice from Nelson regarding guardianship or custody of her niece. The client paid an initial nonrefundable retainer of \$1,500 for which Nelson sent a partially drafted complaint for the client to fill out and sent the client a letter and a link to information about guardianship and custody. Shortly thereafter, the client decided not to move forward with a guardianship. A few months later, Nelson contacted the client with an update that indicated that she had a plan for

moving forward, and reminded the client that she owed \$2,000 for further legal services. The client paid the \$2,000, but again changed her mind about seeking custody and asked Nelson for an accounting and a refund of the remaining balance. Nelson provided no accounting or refund and provided no meaningful legal services for the \$2,000 fee paid above the retainer.

After considering items 10 and 12 above, and being advised by its counsel that John Lafferty's trustee had discovered that many clients who had paid Lafferty for title insurance premiums would be filing claims as Lafferty failed to complete final title opinions and never disbursed the premiums to the title insurance company, the board authorized its counsel to reimburse those clients who got no policy for the premium paid without those claims having to be presented to the board. ■

State Bar Swear In New Officers (cont.)

coordinated annual continuing legal education programs in Rowan County for the last 12 years in the areas of criminal law and family law.

Jordan is a member of the North Carolina Advocates for Justice, where he currently serves on the Board of Governors,

and was a Commissioner of Chief Justice Mark Martin's Commission on the Administration of Law and Justice where he served on the Criminal Adjudication and Investigation Committee.

In addition to his numerous professional activities, Jordan formerly served on the Board of Directors for Elizabeth Hanford Dole Red Cross and the Rowan Helping Ministries. For six years he was the Cub Master of Cub Pack 254 of Bethpage United Methodist Church in

Kannapolis. In 2011, he received the District Award of Merit for service to the Kannapolis District, Central North Carolina District of the Boy Scouts of America.

He is a member of Fulton #99 Masonic Lodge in Salisbury and he attends Harvest Community Church in Kannapolis. He resides in Kannapolis with his wife and two children, who both attend college, and he enjoys fly fishing, vegetable gardening, and raising honey bees. ■

The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar		
	2018	2017
Assets		
Cash and cash equivalents	\$8,134,482	\$7,858,566
Property and equipment, net	14,674,655	15,460,710
Other assets	859,850	1,056,065
	\$23,668,987	\$24,375,341
Liabilities and Fund Equity		
Current liabilities	\$6,484,668	\$6,477,580
Long-term debt	9,199,750	9,701,118
	15,684,418	16,178,698
Fund equity-retained earnings	7,984,569	8,196,643
	\$23,668,987	\$24,375,341
Revenues and Expenses		
Dues	\$8,586,298	\$8,449,799
Other operating revenues	980,445	1,030,945
Total operating revenues	9,566,743	9,480,744
Operating expenses	(9,437,543)	(9,407,056)
Non-operating expenses	(341,274)	(373,445)
Net income	\$(212,074)	\$(299,757)

The NC State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)		
	2018	2017
Assets		
Cash and cash equivalents	\$2,881,365	\$1,723,201
Interest receivable	426,347	216,852
Other assets	6,318,318	9,397,027
	\$9,626,030	11,337,080
Liabilities and Fund Equity		
Grants approved but unpaid	\$3,896,665	\$4,597,745
Other liabilities	374,817	1,209,834
	4,271,482	5,807,579
Fund equity-retained earnings	5,354,548	5,529,501
	\$9,626,030	11,337,080
Revenues and Expenses		
Interest from IOLTA participants, net	\$3,016,977	\$1,818,133
Other operating revenues	132,265	88,573
Total operating revenues	3,149,242	1,906,706
Operating expenses	(3,465,210)	(3,266,308)
Non-operating revenues	141,015	125,103
Net income (loss)	\$(174,953)	(1,234,499)

Board of Client Security Fund		
	2018	2017
Assets		
Cash and cash equivalents	\$1,432,123	\$1,448,612
Other assets	1,080	4,850
	\$1,433,203	\$1,453,462
Liabilities and Fund Equity		
Current liabilities	\$31,240	\$48,653
Fund equity-retained earnings	1,401,963	1,404,809
	\$1,433,203	\$1,453,462
Revenues and Expenses		
Operating revenues	\$914,342	\$1,726,154
Operating expenses	(917,299)	(863,855)
Non-operating revenues	111	137
Net loss	\$(2,846)	\$862,436

Board of Continuing Legal Education		
	2018	2017
Assets		
Cash and cash equivalents	\$372,764	\$388,470

Other assets	672	3,732
	\$373,436	\$392,202
Liabilities and Fund Equity		
Current liabilities	60,581	75,532
Fund equity-retained earnings	312,855	316,670
	\$373,436	\$392,202
Revenues and Expenses		
Operating revenues	\$704,819	\$708,094
Operating expenses	(708,634)	(736,563)
Non-operating revenues	-	-
Net (loss) income	\$(3,815)	\$(28,469)

Board of Legal Specialization		
	2018	2017
Assets		
Cash and cash equivalents	158,430	164,785
Other assets	443	3,502
	\$158,873	\$168,287
Liabilities and Fund Equity		
Current liabilities	12,038	12,154
Fund equity-retained earnings	146,835	156,133
	\$158,873	\$168,287
Revenues and Expenses		
Operating revenues-specialization fees	\$195,600	\$184,535
Operating expenses	(204,898)	(206,060)
Non-operating revenues	-	-
Net income	\$(9,298)	\$(21,525)

Board of Paralegal Certification		
	2018	2017
Assets		
Cash and cash equivalents	\$406,749	\$424,871
Other assets	825	3,754
	\$407,574	\$428,625
Liabilities and Fund Equity		
Current liabilities - accounts payable	44,079	65,893
Fund equity-retained earnings	363,495	362,732
	\$407,574	\$428,625
Revenues and Expenses		
Operating revenues-fees	\$249,955	\$256,660
Operating expenses	(249,192)	(285,898)
Non-operating revenues	-	-
Net income	\$763	\$(29,238)

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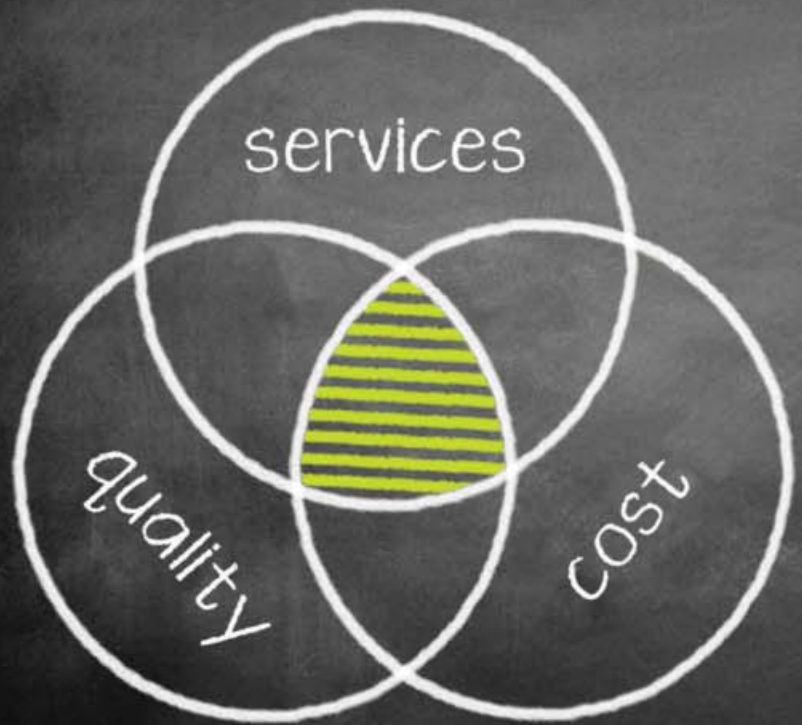
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