THE NORTH CAROLINA STATE BAR

JOURNAL

WINTER
2024

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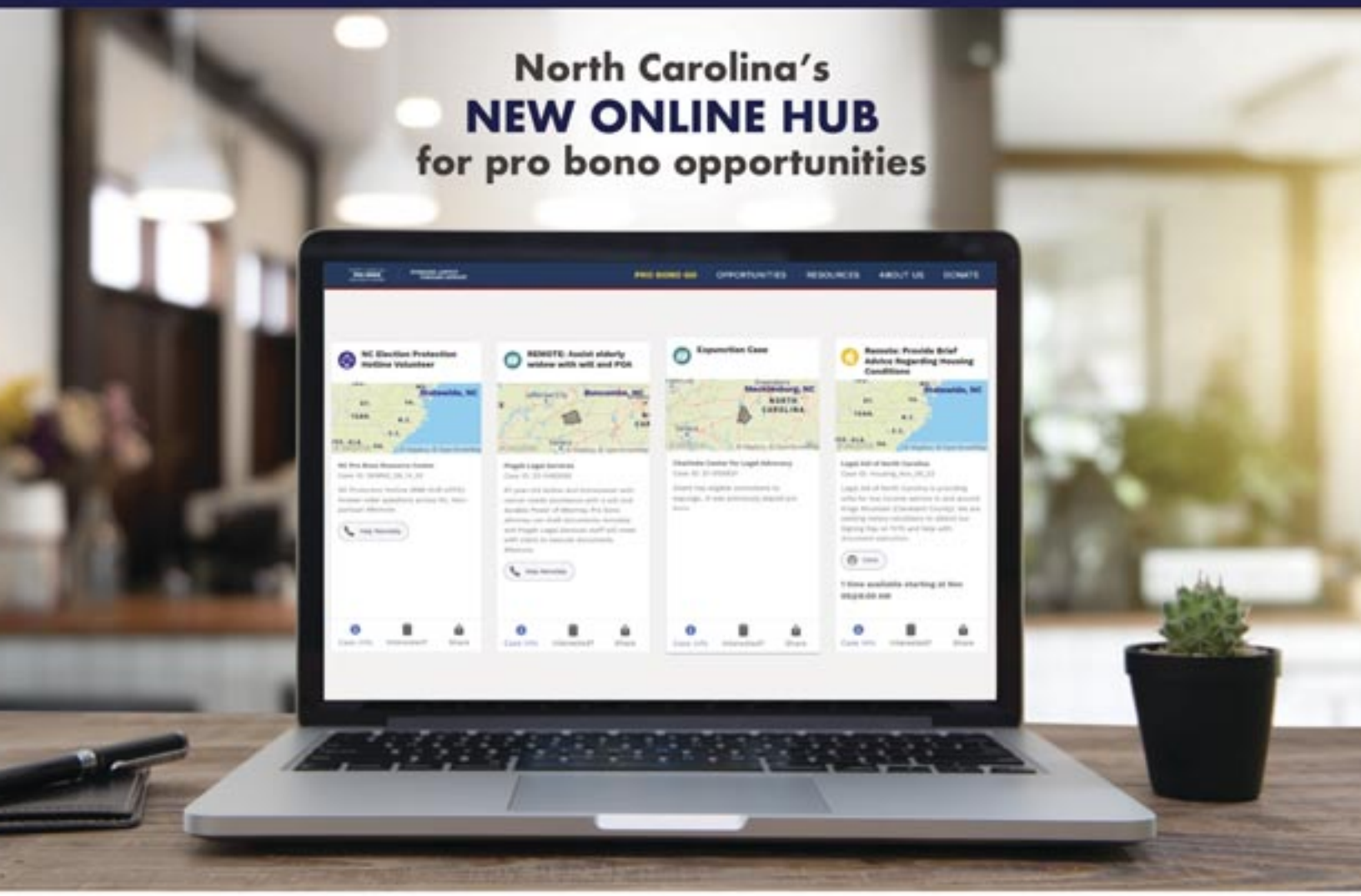

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THE
NORTH CAROLINA
STATE BAR
JOURNAL

Winter 2024
Volume 29, Number 4

Editor
Jennifer R. Duncan

 Periodicals postage paid at Raleigh, NC, and additional offices. POSTMASTER: Send address changes to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The North Carolina Bar Journal invites the submission of unsolicited, original articles, essays, and book reviews. Submissions may be made by mail or email (jduncan@ncbar.gov) to the editor. Publishing and editorial decisions are based on the Publications Committee's and the editor's judgment of the quality of the writing, the timeliness of the article, and the potential interest to the readers of the Journal. The Journal reserves the right to edit all manuscripts. The North Carolina State Bar Journal (ISSN 10928626) is published four times per year in March, June, September, and December under the direction and supervision of the council of the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. Member rate of $6.00 per year is included in dues. Nonmember rates $10.73 per year. Single copies $5.36. The Lawyer's Handbook $16.09. Advertising rates available upon request. Direct inquiries to Director of Communications, the North Carolina State Bar, PO Box 25908, Raleigh, North Carolina 27611, tel. (919) 828-4620.

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Publication of an article in the Journal *is not an endorsement by the North Carolina State Bar of the views expressed therein.*

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An Interview with Our New President—Matthew W. Smith

Eden Attorney Matthew W. Smith was sworn in as president of the North Carolina State Bar by Chief Justice Paul Newby at the State Bar's Annual Dinner on Thursday, October 31, 2024.

Q: Tell us about your upbringing.

I grew up on a small 30-acre farm in Northern Alamance County near towns called Altamahaw and Ossipee. Yes, they are actual places. Altamahaw still has a post office. The farm was my mother's family farm for generations. I grew up raising tobacco, corn, and other garden items. My first venture into business was selling cantaloupe and watermelon at farmers' markets and local stores at age ten. I do not miss the hard work, but there are days that I miss being on that farm.

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

It is hard to say exactly when. It was probably in late elementary school or middle school when I was challenged on why I believed certain things. It was then I found a penchant for being argumentative—when needed. I had a high school English teacher once tell me that I was never going to be more than a textile worker. I took that as a personal challenge. My family had limited dealings with the legal world as I was growing up, so I did not have a local lawyer/mentor to guide me. I am of the generation of *LA Law* on television, but I can honestly say I do not recall ever watching that show. I have always been a history buff. I noted that most of the major figures in American history were lawyers. I saw that they made a difference, and maybe in my own naïve way, I thought I could make a difference too.

Q: If you had not chosen to become a lawyer, what other career path might you have followed?

Ideally, I would have wanted to be the general manager of the Chicago Cubs or the head groundskeeper at Wrigley Field. Seriously, I think my sons are following the paths I would have chosen if not for law school, namely engineering and business. The idea of building a business, a product, or an invention fascinates me. I still consider myself a tinkerer in my garage—and I still fix things at the office with less-than-conventional methods and products.

With his wife Michelle looking on, Matthew W. Smith is sworn in as president of the North Carolina State Bar.

Q: You graduated from Campbell School of Law in 1998, and after passing the bar exam, you went to work for the Eden, NC, law firm where you still practice, Maddrey, Etringer, Smith, Hollowell & Toney. What is it like to practice with the same firm your entire career? Why have you stayed?

I interviewed with several places. The only one you could consider "big law" was an insurance defense firm in Raleigh. The rest were small-town firms, including in Eden. The feel was right with the place and the people. It was not too far from where I grew up, so I was somewhat familiar with the town. A few times in my career, other opportunities presented themselves, but very few ever truly interested me. As time moved on, my family and I became a part of the community, which made it harder to leave. I truly enjoy the people I work with on a daily basis at both the office and the courthouse.

Q: Eden's population in 1998 was 15,266; the 2020 census recorded Eden's population as 15,405. What's it like to practice law in a small town that has stayed a small town? How has practicing in a small town influenced your thinking about the practice of law and the legal profession?

I mentioned earlier that I sought a small town to begin my practice. I do not operate on a billable hour. In the beginning, it was challenging to manage student loan payments, pay rent, and raise kids, but those concerns faded as my practice grew. Eden has undergone a transformation in recent years. Fieldcrest Cannon, a Fortune 500

company, closed its headquarters here, and the Miller Brewery shuttered its plant a few years ago. The textile and tobacco plants in the county have also shut down. Thankfully, other industries, including Purina, have moved into these buildings, providing a tax base and job opportunities for the residents of this town and Rockingham County.

I am blessed to count as clients people I have represented for over 25 years. I can assist them with most matters, but in cases that fall outside my expertise or time constraints, I am grateful to have forged relationships with highly capable attorneys in neighboring Greensboro and Winston-Salem. I often find myself volunteering or, in some cases, being volunteered for civic organizations. In a small town, every organization wants an attorney on its board. You quickly learn that this is part of the practice in a small community.

Practicing in a small town has undeniably shaped my view of the legal profession. I have known only this way to practice law. My time on the State Bar Council has taught me about the practices of other small-town attorneys as well as those from large law firms in metropolitan areas. I truly believe that the vast majority of lawyers in North Carolina conduct themselves the right way, meaning they protect their clients' interests while upholding the values of justice.

Q: You describe your practice as focusing on real estate, estates, and "the areas of law typically covered by a small-town practice." What attracted you to this type of practice?

I was originally hired by my firm as the real estate market was changing in the late 1990s, and Joe Maddrey, who is a real property specialist, needed some help. I needed a job. The rest is history. A majority of my practice grew from real estate. Wills and estates are natural things folks ask about at the conclusion of a real estate closing. I also developed a small practice in real estate litigation. However, just about every lawyer that has come through Rockingham County in my time has served on the court-appointed list in either criminal court, juvenile abuse and neglect court, child support court, or served as a public administrator, public guardian, or guardian ad litem. It is an invaluable tool for the administration of justice and a significant way that new lawyers gain experience in the courthouse. I did my tour on those lists and still remain one of the public guardians and public administrators.

Q: What was your first leadership position?

This is such a corny but truthful answer: I was a band kid in high school and became the drum major.

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

I cannot point to one particular accomplishment, but when people see you around town and remember you from over ten years ago—whether it was for their first house purchase or their mother's estate—it is incredibly rewarding. The fact that they remember you as part of such significant moments in their lives speaks volumes. This sentiment applies across the spectrum of legal services, from adoptions to home closings. It happens every day in towns across North Carolina.

Q: How and why did you become involved in State Bar work?

My law partner, Joe Maddrey, served on the council for nine years and was also a member of the Disciplinary Hearing Commission. He encouraged me to run for the council when his term ended. At that time, my practice was quite busy, and I didn't believe I had the time to commit to council meetings. The eventual agreement was that I would serve one three-year term, and Joe could come back afterward. Nine years as a councilor and three years as an officer later, I suppose I broke the deal.

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

We recently named successors to the positions of counsel and executive director of the organization within the past year. The institutional knowledge and respect that Katherine Jean and Alice Mine held in those respective roles cannot be replaced. While their departure brings sadness, it also opens the door for a new approach to the issues that arise in the practice of law. The excellence that Carmen Bannon—who was appointed counsel in December 2023—brings to the role is well documented, and her outstanding commitment to the self-regulation function of the State Bar continues. The council has just named Peter Bolac as executive director of the State Bar. A search committee was formed, and after conducting interviews, Peter, who previously served as assistant executive director under Alice, was appointed her successor this past October. Peter has very large shoes to fill as Alice's successor, but he brings a keen mind and unwavering dedication to the mission of the State Bar, and I have every confidence that the leadership of the State Bar is in good hands.

Q: What is the most difficult issue you've faced as an officer or member of the State Bar Council?

In my ten-plus years on the council, we have faced many challenges at the Bar. I was a member of both committees that selected Carmen Bannon as counsel and Peter Bolac as executive director. Those decisions rank as the hardest decisions in not only my State Bar career but my professional career. The quality of the candidates, both internally and externally, was outstanding, and the decisions that rested with those hiring groups will affect the direction of the Bar for years to come.

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

We must competently address the emerging availability of artificial intelligence, both its benefits and drawbacks. North Carolina was one of the first states to issue an ethics opinion on the use of AI in the practice of law. We have rock stars like Brian Oten as ethics counsel, who has succeeded Alice Mine as one of the preeminent authorities on emerging ethics issues. I am grateful he is part of the State Bar team. Legal deserts remain a persistent issue, one that is close to my heart. As I engage with other Bar leaders across the nation, I find they are facing similar challenges. I have learned that there is no single solution. While the State Bar may not be the agency to solve the problem, we aspire to be a resource and clearinghouse for ideas.

Q: Tell us about your family.

I have been blessed to be married to one of my best friends from college, although we did not start dating until I was in law school. Michelle and I have been married for over 25 years, and she has tolerated my penchant for getting too involved in things, including the State Bar. She has her undergraduate degree and her Master's in Business Administration from our alma mater, Campbell University. I have two wonderful sons: Harrison, who is 22 and has a mechanical engineering degree from Campbell, is currently employed at Mohawk Flooring in Thomasville as a production engineer. He too is marrying a Campbell grad, Elle, this summer. Hunter is in his first year at Campbell studying business, so I have a lot of familiarity with Buies Creek. My mother, Brenda, was a teacher assistant, and my father, Luther, worked for Burlington Industries as a manager for their

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Ethical Considerations for Lawyers in the Wake of a Natural Disaster

By Brian Oten

As the people of western North Carolina assess the damage and begin to rebuild what was destroyed by Hurricane Helene, lawyers face the difficult task of addressing the impact on both their personal lives and their professional obligations. Despite the devastation, cases remain pending, client concerns persist (if not expand), and a lawyer's obligations to clients and the justice system endure.

A natural disaster can impact not only individual lawyers and law practices, but also the administration of justice itself. Lawyers—who are also spouses, parents, caretakers, and community members—may quickly become overwhelmed by various needs associated with their law practices, including their professional responsibilities. In the aftermath of a natural disaster, a lawyer must balance personal and professional responsibilities. The State Bar encourages lawyers in western North Carolina to prioritize their safety and that of their families and loved ones in the wake of Hurricane Helene.

When possible, however, a lawyer will need to return to practice and respond to client inquiries. The purpose of this article is to assist lawyers in identifying and prioritizing their first steps in addressing client needs and meeting professional obligations during this trying time.

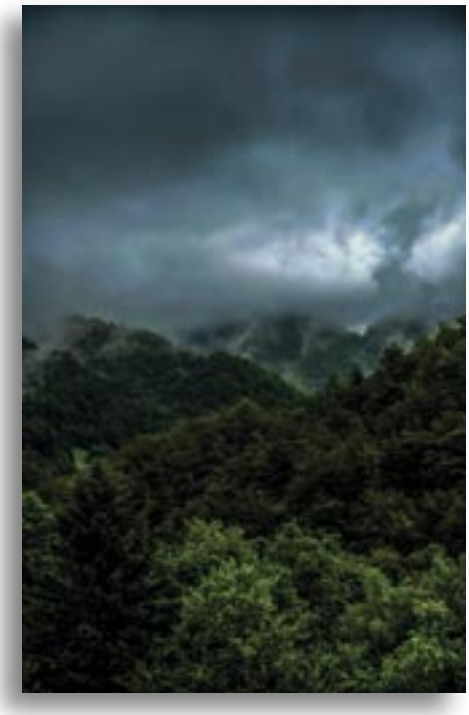
Lawyers in Western North Carolina are likely facing one or a combination of the following scenarios as a result of Hurricane Helene's destruction:

1. The lawyer's law office remains in place, but the lawyer does not have power, internet access, cell phone reception, or the general technological capability to resume practice.
2. The lawyer's law office suffered significant damage, including damage to client files (physical or digital).
3. The lawyer's law office was destroyed, along with the contents.

Each of these scenarios presents unique, unpredictable limitations and difficulties to navigate. Accordingly, it is important to note that "[t]he Rules of Professional Conduct are rules of reason[;]" what is reasonable in one scenario may not be reasonable (or possible) in another. N.C. Rules of Prof'l Conduct 0.2[1] (Scope).

The considerations listed below outline some of the more pressing aspects of a lawyer's ethical obligations in resuming the practice and responding to clients following a natural disaster. The list is by no means exhaustive; rather, it serves as a starting point for lawyers as they rebuild and reengage with their practices and attorney-client relationships. Lawyers should use their independent, professional judgment to determine what reasonable steps are appropriate under their individual circumstances.

When in doubt, rely on the State Bar. The State Bar serves as a resource to lawyers in understanding and meeting their professional responsibilities in these and all scenarios. Questions will likely arise as circumstances evolve, and lawyers may contact the State Bar's Ethics Staff for guidance, if needed, by emailing ethicsadvice@ncbar.gov or by calling the State Bar at (919) 828-4620.



Katerina Konovalova/istockphoto.com

Diligence and Communication

Lawyers have a duty to act with "reasonable diligence and promptness in representing a client." Rule 1.3. Additionally, Rule 1.4 recognizes that effective lawyer-client communication is a two-way street: the rule requires lawyers to keep their clients "reasonably informed" about the status of their matters, and anticipates client inquiries by requiring lawyers to "promptly comply with reasonable requests for information" from

their clients.

The duties of diligence and communication are essential under normal circumstances. Following a natural disaster, these duties become critical to maintaining the attorney-client relationship and addressing concerns that arise amid uncertainty. However, these duties must be evaluated within the scope of what is reasonable for both the lawyer and the client. What is considered "reasonable" and "prompt" in the wake of Hurricane Helene is circumstance-dependent, and the reality of destroyed infrastructure limits a lawyer's communication capabilities.

While a lawyer should prioritize his or her own safety, family, and loved ones after a natural disaster, there comes a point when a lawyer must check in with his or her law practice and clients. Although substantive work on the representation may not be possible, a good first step is for a lawyer to monitor court closings and orders that impact pending cases and other client interests (e.g., orders extending filing deadlines, etc.). If appropriate, a lawyer may need to seek an extension of time or request a continuance in a client's matter. Information concerning a county's courthouse and recent orders addressing filing deadlines can be found on the Administrative Office of the Court's website, www.nccourts.gov.

If possible, lawyers should also prioritize updating their outward-facing communications—such as sending an email to all clients or posting an update on the firm's website—to inform clients about the status of the practice. Helpful information to include in these communications could encompass the state of the law office (e.g., the office is closed, and clients should expect delays in receiving a response due to the present circumstances), an update on the status of the court system (e.g., courts are closed; filing deadlines have been extended), and assurance that clients will be contacted when the office reopens. Updates regarding clients' specific cases, including the rescheduling of pending court dates, should be prioritized when possible. Even if there is nothing pressing in a client's case, lawyers might consider sending a brief message to reassure clients that, despite this crisis, their matters are important and are not being neglected.

Similarly, the duties of diligence and communication suggest a lawyer should reach out to opposing counsel and relevant third parties when possible. Doing so is important not just for the lawyer's representation of a client, but also for purposes of professionalism. Communicating expectations or delays during this difficult time helps ensure all involved are on the same page and may prevent frustration or future disputes over deadlines.

Securing Confidential Information

Rule 1.6(c) requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." After a natural disaster, the risk of inadvertent or unauthorized disclosure of client information can increase significantly. For instance, physical files may be misplaced, transported to another location, damaged, or lost; similarly, electronic records may be compromised if proper security measures are not in place. As soon as practicable, lawyers should take steps to assess and secure all client-related information. While working remotely or in temporary locations, lawyers should also ensure that their communication methods and access to client information remain secure. This may include using encrypted communication tools when discussing and accessing sensitive client information, particularly if there is uncertainty about the security of standard channels (e.g., email or cloud storage). Given the potential for disrupted infrastructure, alternative communication methods may need to be utilized.

Conflict of Interest

Lawyers must be vigilant about potential conflicts of interest that may arise, particularly when clients have overlapping issues resulting from the disaster, such as claims against the same insurance provider or issues with shared property. When the clients' interests are aligned, one lawyer/firm can provide joint representation provided each client gives informed consent confirmed in writing; however, the lawyer should remain cautious in identifying and addressing any conflict arising from evolving circumstances in the joint representation. Rule 1.7(b).

Employee Supervision

Rules 5.1 and 5.3 require lawyers to supervise lawyer and nonlawyer staff to ensure their conduct aligns with the lawyer's ethical obligations. After a disaster, staff may face challenges in managing files and communications. Lawyers should provide clear guidance to those they supervise on resuming work activities following the disaster, including the handling of confidential information outside of the office.

Competence, Withdrawal from Representation, and Self-Care

Lawyers must provide competent representation to their clients. Rule 1.1. Distractions from personal challenges post-disaster can affect a lawyer's ability to represent clients adequately, and lawyers must recognize when they are unable to perform competently. After a disaster, maintaining competence may become challenging due to loss of access to resources, such as law offices, legal research tools, or files, and disruptions in communication with clients, opposing counsel, or the courts. To ensure competence, lawyers should make efforts to restore access to legal research tools and seek assistance from colleagues if they are unable to manage their caseloads effectively.

Rule 1.16(a)(2) states that a lawyer "shall withdraw from the representation of a client if [. . .] the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]" Lawyers may need to withdraw from representation if their ability to provide competent service is impaired due to the disaster. This may involve difficult conversations with clients and finding alternative representation for them.

Although not explicitly covered by the North Carolina Rules, the impact of a disaster on a lawyer's mental health can affect the ability to represent clients competently. Lawyers facing personal loss or trauma should seek support and avoid overburdening themselves with workloads that may impair professional judgment. The State Bar's Lawyer Assistance Program can be reached at www.nclap.org.

Professionalism

Maintaining professionalism in all interactions is crucial, especially during a time of crisis. Notably, the Rules of Professional Conduct permit and encourage lawyers to treat others professionally and respectfully. Rule 1.2 states that a lawyer does not violate the Rules of Professional Conduct "by acceding to reasonable requests of opposing counsel

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Responding to Disaster: Perspectives from the Legal Services Community

By Jaclyn Kiger, Alicia C. Edwards, and Jonathan Perry

The State Bar's Editorial Board asked two legal aid organizations responding to Hurricane Helene—Pisgah Legal Services and Legal Aid of North Carolina—to share information about the work being done within the legal community to support victims of this disaster and help them rebuild. As State Bar President Todd Brown shared in his message to members of the State Bar on October 2, "[o]ur legal community always comes together in times of crisis, and we remain committed to aiding those in need." We will continue to share information about opportunities to contribute to recovery efforts and the efforts within the legal community to respond in future editions of the *Journal*.

Western North Carolina is Our Home, and This Work Is Personal

By Jaclyn "Jackie" Kiger

Our home, Western North Carolina (WNC), bore the brunt of Hurricane Helene. Pisgah Legal Services is based in Asheville, which is located in Buncombe County, where the largest number of deaths from the storm have been reported.

It's hard to explain in words the level of devastation not only in Asheville, but also in other WNC communities where Pisgah Legal has offices, including Burnsville and Spruce Pine; our Marshall office was completely flooded along with the rest of the town and must be rebuilt.

Several members of our staff lost or had homes severely damaged by the storm.

Jackie Kiger, executive director of Pisgah Legal Services, provides snacks to individuals waiting for assistance at a FEMA clinic hosted at the organization's Asheville office on October 7.

We've seen our neighbors' businesses and livelihoods destroyed, our communities literally washed away, so this recovery effort is extremely personal for us.

After the storm hit on September 27, our first priority was to reach out to our staff and ensure they were safe. Thankfully, all our staff were accounted for. We quickly mobi-

lized and held two of our first FEMA application clinics at our Asheville and Hendersonville offices on October 7, even though most of the area didn't have power or running water, including homes of our employees and volunteers.

In the month since, we have held clinics throughout WNC with staff and volunteer attorneys and deployed our mobile "Justice Bus," which is equipped with much-needed Wi-Fi capability. What our clients and neighbors have survived and are still experiencing is heartbreaking, and we know this recovery will take years. **Pisgah Legal Services is in this recovery for the long haul.**

Number Served/How We Are Helping

As of this writing, we have held more than a dozen FEMA application clinics throughout WNC, assisting over 2,000 people. We've worked in partnership with nonprofits across the mountain region and in conjunction with FEMA and LANC.

Here are a few specific ways that Pisgah Legal is assisting people in WNC:

• **FEMA and Disaster Benefits:** Applying for FEMA assistance or other disaster relief benefits can be complicated. Our staff is assisting families with these applications to ensure they receive the help they're entitled to. We are also assisting with appeals for qualifying families who may have been denied FEMA assistance.

• **Housing and Evictions:** Evictions tend to rise sharply after natural disasters and our housing team is working to stop homelessness before it happens by delaying or preventing unlawful evictions. WNC already had an affordable housing crisis, and Helene has exacerbated it.

• **Know Your Rights:** Pisgah Legal's attorneys and advocates are providing resources for our WNC community members to understand their rights following a natural disaster in areas such as housing, consumer protections, and benefits.

• **Community Lawyering:** Our *pro bono* staff are hosting community legal clinics with volunteer lawyers. We are partnering with grassroots organizations who have established trust and know the needs of the community best.

• **Domestic Violence Prevention:** Domestic violence increases in times of high stress such as a natural disaster. PLS attorneys are working to support survivors during this stressful time, including helping them navigate complicated custody issues due to relocations and lack of contact.

Legal Aid of North Carolina staff provide information and brief advice to victims in Boone during an outreach event. The LANCMobile, a mobile services intake unit, allows for easier access in disaster-stricken areas.

In addition to direct services, Pisgah Legal has shared important information on our website and social media channels. We are also serving as a resource in media interviews to reach people in our 18-county region via television, newspapers, and radio, which has been particularly important for those who lost internet service for several weeks. (Some people still do not have internet, power, or water and Asheville will be without drinking water until mid-December in the best case scenario.)

Pisgah Legal Services assists more than 23,000 people each year in WNC. Our work is made possible by generous community support as well as strong volunteer involvement. Volunteer attorneys are vital members of the Pisgah Legal team—more than 250 attorneys provide *pro bono* legal assistance to help Pisgah Legal's clients each year. Now, many of those attorneys are stepping up to assist with our crucial work in connecting individuals to disaster assistance following Hurricane Helene.

Moving Forward

We stand alongside our WNC communities, and we will do everything we can to ensure that justice is served during this recovery process. With the support of the NC State Bar, we can continue to make sure that our state's most vulnerable populations have equal access to the legal assistance they need to rebuild their lives. We are grateful to be collaborating with Legal Aid of North Carolina, as we know that the needs of Western North Carolina are great, and by working together, we can help the many people who are in need.

If you would like to volunteer or make a gift to Pisgah Legal Services' Hurricane Recovery Fund, please visit pisgahlegal.org.

Jaclyn "Jackie" Kiger is the executive director of Pisgah Legal Services.

After the Storm: Legal Aid's Mission to Rebuild Communities in the Wake of Hurricane Helene

By Alicia C. Edwards and Jonathan Perry

Hurricane Helene devastated Western North Carolina when it hit at the end of September 2024, and the effects will be felt for years to come. The destruction from this storm is worse than anything our state has experienced before. As of this writing, 101 people have died, and homes, businesses, and

even land have been destroyed or washed away. The financial estimates to recover from this storm exceed $50 billion, not to mention the emotional and physical toll it has taken on our citizens and neighbors.

Legal Aid of North Carolina is a statewide nonprofit law firm whose mission is to represent low-income individuals to ensure equal access to justice. With this mission in mind, Legal Aid has been responding to disasters and giving legal assistance to survivors for decades. The Disaster Relief Project at Legal Aid was formed in response to Hurricanes Matthew (2016) and Florence (2018) to dedicate resources to this much-needed and critical practice area. While it is true that Legal Aid represents many people in crisis through both blue and stormy skies, the aftermath of a disaster is like no other crisis handled before. A disaster affects everyone in its path—whole swaths of communities across county lines and income demographics. Beyond representing individual clients, the Disaster Relief Project represents organizational clients that want to incorporate as nonprofits so that they can serve disaster survivors too. This allows us to make sure survivors are served holistically by creating resources in the community to cover multiple aspects of the recovery process.

Our previous experience in assisting survivors has typically been in the eastern part of our state. However, in August 2021, Tropical Storm Fred caused flooding and destruction in western North Carolina, albeit in a much smaller area than Helene with much of the damage concentrated in Haywood County. The complexities of responding to a disaster in a mountainous area are not new to Legal Aid. We are still representing people who were affected by Fred and who have now also been affected by Helene.

Our entire firm came together quickly after Helene hit to meet the emergent needs of the community—from updating our website and educational materials with Helene-specific information to meeting with survivors at volunteer centers, FEMA Disaster Recovery Centers, and Red Cross shelters. The need is great, and there are many ways to serve the community. The Disaster Relief team has been conducting numerous training sessions—both for attorneys and community leaders. We have been updating our social media with helpful posts and organizing simultaneous Zoom and Facebook Live sessions to reach the public with information across a spectrum of legal areas. The response from the legal community to serve those in the mountains has been overwhelming, with over 1,200 legal professionals on the volunteer list!

Due to the unique devastation in Western NC and the inaccessibility of many communities directly after the storm, the Disaster Relief team had to rely on our local staff already in the west to meet with survivors and conduct outreach. Several days after Helene, local staff spent a week at the Mitchell County Senior Center in Bakersville, NC. People streamed in for help—many with questions, many with specific legal needs. We immediately saw the resilience of the Western NC people. The cleanup process was ahead of schedule by as much as a month, thanks to neighbors helping each other clear roads and driveways. What has struck us most is how deeply rooted the people are in their independence and strength. In these mountain communities, asking for help is not common. Many of the individuals we worked with in the early days had no power, no water, and no idea when they would be able to return to normalcy. Yet, they remained humble, gracious, and, in some cases, even hesitant to accept assistance from outsiders. Despite the overwhelming need, the people in the mountains do not ask for help. They continue to rebuild, quietly and resolutely. In Yancey County, we assisted people who had lost their entire homes, with only the foundation and concrete steps remaining from where their homes once stood. Besides offering legal help, we also listened, letting people vent, cry, yell. In every community we enter, we always begin with the question, "How can we help you?" The communities know what they need; we are here to facilitate whatever positive change they seek.

Through our partnership with the Red Cross, we have staffed many of the shelters in Asheville, providing much-needed disaster legal assistance. The floodwaters in Buncombe County affected both those living in homes and those living in tents. Our clients have literally lost everything. One common legal issue was loss of all forms of identification, birth certificates, licenses, and social security cards. Some clients were facing a new form of poverty, unable to apply for even basic services without a way to prove their identity. Through new working partnerships, we have spent the past two weeks working with other nonprofits and governmental agencies, such as the DMV, DHHS, FEMA, and Vaya Health, to assist storm-affected communities.

At Legal Aid, we understand that legal needs come in waves after a disaster. Due to the extent of this storm's damage, we are prepared to represent survivors for as long as it takes—potentially the next decade or more—as they seek to recover from Helene. Many disaster assistance groups will have to move on to help other survivors from different storms, but the legal needs will remain, as will we. The work has just begun. This is why the Disaster Relief Project was created—to provide continuous legal service related to Helene, allowing our Legal Aid colleagues to continue representing clients in "typical" Legal Aid cases, such as evictions, foreclosures, domestic violence protective orders, and public benefits hearings, to name a few. Legal Aid will continue to serve the people in these communities—not as charity, but as a mission to expand access to justice, both during and after disasters. ■

Alicia C. Edwards is Legal Aid's Disaster Relief project director. Jonathan Perry is Legal Aid's western regional manager and managing attorney of the Foothills Office, located in Morganton, NC.

Disaster Legal Services Needed
in North Carolina

After Hurricane Helene hit Western North Carolina on September 28, President Biden issued disaster declarations in 39 counties in North Carolina and the Eastern Band of Cherokee Indians. Legal assistance provided by civil legal aid organizations and pro bono volunteers enable survivors in impacted communities to rebuild their lives, homes, and businesses by:

- Navigating access to FEMA benefits, insurance, and other assistance;
- Resolving issues related to property, home repair, foreclosure, and rental housing, including protection of consumers and contractor fraud; and
- Replacing wills and important documents.

THE NEED

- According to the Census Bureau, 577,000 people in North Carolina counties impacted by Hurricane Helene had high social vulnerability to disaster based on factors including poverty, disability, age, and lack of access to transportation, internet, and other resources.
- Vulnerable individuals who are most in need prior to disaster striking will be the most vulnerable in the days, months, and years that follow.

RESOURCES

- Individuals in need of legal assistance can contact the Disaster Legal Services Hotline operated by Legal Aid of North Carolina at (866) 219-5262 or apply for assistance online at www.pisgahlegal.org.
- The State Bar shared guidance on ethical considerations for lawyers following a natural disaster.
- Lawyers Mutual shared a resource for disaster planning and recovery.

FIRST SIX WEEKS

FEMA Applications, Utility Shutoffs, Lease Terminations, False Evictions, Security Deposit Disputes, Tenant Repair & Demand, Insurance Claims, Document Replacements, Emergency Custody, Protective Orders

1 MONTH – 6 MONTHS

Public Benefit Applications/Appeals, Unemployment Applications/Appeals, SBA Disaster Loan Applications, Mobile Home/Section 8 Questions, Property Title Clearing, Landlord-Tenant Disputes, Wage Theft, Identity Theft

6 MONTHS – 1 YEAR

FEMA Appeals, SBA Appeals, Evictions, Foreclosure Prevention, Contractor Fraud, Price Gouging, Insurance Disputes, Insurance Scams, Custody Disputes

1 YEAR — ONWARDS

Foreclosure, Flood Insurance Disputes, FEMA Recoupments, Disaster Tax Relief, Bankruptcies, Civil & Disability Rights, Succession & Probate

HOW YOU CAN HELP

Volunteer. Provide pro bono assistance to low- to modest-income North Carolinians impacted by disaster.

- Sign up to volunteer at ncbarfoundation.org or scan QR code.
- Anticipated volunteer opportunities include brief advice and counsel, in-person and remote clinics to provide assistance, and extended representation (appropriate for individuals who practice in areas of need).
- Out of state lawyers can register to volunteer with a legal aid organization pursuant to Supreme Court order which allows lawyers not licensed in NC to provide pro bono.
- If you are an attorney who is already connected with Pisgah Legal Services' pro bono programs and/or are in the counties served by Pisgah Legal and would like to volunteer in community-based projects to assist with disaster needs, you can contact katie@pisgahlegal.org.

Donate. Support legal organizations who are second responders working on the ground to assist survivors of Hurricane Helene.

- Pisgah Legal Services: pisgahlegal.org
- Legal Aid of North Carolina: legalaidnc.org

Be patient. Recovery from Hurricane Helene will last for many months following the initial impact. Legal aid organizations and the communities they support will continue to need our help.

LEGAL AID OF NORTH CAROLINA | NORTH CAROLINA BAR ASSOCIATION | NCBF NORTH CAROLINA BAR FOUNDATION | ABA AMERICAN BAR ASSOCIATION Young Lawyers Division | NORTH CAROLINA PRO BONO RESOURCE CENTER | PISGAH LEGAL SERVICES

Know Before You Go—

What "Absence from the State" Means for Gubernatorial Power in North Carolina

By Hannah L. Robinson

This article is an excerpt from a longer document prepared for a supervisor during my 2L summer working in the North Carolina General Assembly as a bill drafting intern. It analyzes North Carolina's current constitutional and statutory language regarding devolution of the office of governor upon the lieutenant governor through the lens of other states' constitutional provisions, statutes, and caselaw, with the intent to predict how a North Carolina judge might interpret that language if it came before a court.

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The two possible interpretations, over which there is much disagreement, have been termed *effective absence* and *physical absence.* Both are explained before exploring North Carolina's language and assessing the validity of arguments for each. While this subject has been increasingly discussed in news articles and considered by political figures, a North Carolina court has never ruled on this issue, and thus different analyses using different tools and concepts are helpful for practitioners and students interested in gubernatorial power and governmental operations generally.

Further, this article is unique in that it analyzes and interprets both constitutional and statutory language, compares North Carolina's provisions to other states' caselaw and constitutions, and discusses arguments for effective and physical absence interpretations.

I. DEFINING EFFECTIVE AND PHYSICAL ABSENCE INTERPRETATIONS

Constitutional conventions and legislative bodies have long since included provisions outlining who assumes gubernatorial duties and powers when the office becomes unexpectedly vacant (as in, for a reason other than normal election). These provisions often establish lines of succession to avoid a situation or period wherein there is no official capable of acting as governor; they also typically enumerate circumstances in which an acting governor becomes necessary. The largely non-controversial ones include the governor's death, mental or physical incapacity, failure to qualify for the office after an election, resignation, conviction, and impeachment. However, many also include "absence from the state" as such a circumstance, the meaning of which has been challenged, debated, and opined upon for over 150 years. Of those states that have considered this matter, courts and attorneys general are seemingly evenly split on whether a governor's absence from the state should be understood to mean the official's effective absence or physical absence.[1]

An effective absence argument takes a more lenient approach to a governor's crossing of state borders. Under this interpretation, a law providing for an acting governor during the elected governor's absence from the state is invoked only when the elected official is incapable of performing gubernatorial duties and functions from out of state. Otherwise, the elected governor maintains the office without interruption, and no individual acts as governor within the state. Some states have concluded that an acting governor is required only if an elected governor's absence would detrimentally impact the public interest, necessitating an in-state official, or if a crucial task must be completed immediately and can only be performed by an in-state official. This principle is nicely summarized by the Nevada Supreme Court in *Sawyer v. First Judicial District Court in and for Ormsby County*, where an effective absence is defined as one "which is measured by the state's *need* at a given moment for a particular act by the official then physically not present."[2]

A physical absence interpretation is much stricter, meaning that an acting governor is required as soon as the elected governor leaves the state. Most state constitutions mandate that the lieutenant governor become acting governor first; the state senate's president pro tempore is often second in line, and the speaker of the state's house is third. Under this interpretation, all that matters is whether the elected governor is literally outside the state's borders.

States adopting both effective and physical absence interpretations usually do so because of an emphasis on continuity in gubernatorial power and clarity for citizens and government actors alike. However, effective absence states typically prioritize keeping the individual citizens elected as governor in charge and avoiding confusion through deprioritizing the exact moment the governor walked across the state's borders. Contrariwise, physical absence states focus on the uninterrupted availability of an in-state gubernatorial figure and the relative clear indicator of absence that stepping outside of the state presents.

II. ANALYZING NORTH CAROLINA'S LANGUAGE

Constitution

Art. III, s. 3, cl. 2: "Succession as Acting Governor. During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor."

Statute

N.C. Stat. § 147-11.1. Succession to office of Governor; Acting Governor

(c) Acting Governor Generally. –

(1) If by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

[(2) and (3) further establishes devolution of office in the event that the appropriate individual "fails to qualify as Acting Governor," which presumably includes being absent from the state given the rest of the provision.]

(d) Governor Serving under Subsection (c). – An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant Governor from the State, then he shall act only until the Governor or Lieutenant Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant Governor.

Analysis

Whether North Carolina's language would be given an effective or physical absence construction depends greatly upon the court reviewing it. To simulate how a North Carolina court might consider a governor's absence under the relevant constitutional and statutory provisions, it is helpful to look at which state has the most similar language and how it was interpreted, how North Carolina's language specifically differs from that of other jurisdictions, the broader context of Article III's section 3, and North Carolina's language itself. In doing so, it seems likely that North Carolina would adopt a physical absence interpretation, though both are analyzed below. Interestingly, North Carolina has in practice operated under a physical absence construction, which supports the statutory and constitutional arguments made by this article.

It is important to note that this discussion might look different depending on the political leanings of both the court reviewing the language—especially if it reaches the North Carolina Supreme Court—and the two primary executive branch officials. For example, North Carolina currently has a Democratic governor, a Republican lieutenant governor, and a conservative majority on its Supreme Court. As such, there is a possibility that the Court might rule in favor of the Republican official succeeding to the office of governor as soon as the Democratic governor is physically absent so that he may take executive action consistent with conservative ideology (this argument would be the same if there was a liberal majority Supreme Court and the lieutenant governor was a Democrat). Ideology can also influence how the executive power is viewed: does the individual elected as governor have ultimate authority and thus the privilege to remain vested with

the office even outside of the state, or is the office separate from the individual occupying it? It seems most courts agree that the office of governor is a function and entitlement of the state, rather than of the elected individual, but as governors have somewhat risen in prominence and authority in a few states (i.e., Florida, California), it may be plausible that state courts could increasingly view the supreme executive power as one that follows the duly elected individual—even across state lines.

Finally, courts can and do have different answers to the same question regarding the right of citizens to always have an individual within the state borders capable of acting as governor. One prominent example can be found in comparing Nebraska's constitutional provision (before a 1970 amendment)[3] and the subsequent state Supreme Court decision to that of California.[4] At the time of litigation, both states had substantively similar provisions regarding a governor's absence: each devolved the office of governor upon the lieutenant governor in the event of impeachment, absence from the state, or "other disability."

The Nebraska Supreme Court in 1942 ruled that a governor's absence must be of a nature such that delay of action would injuriously impact the public interest for the office's power to be devolved upon the lieutenant governor;[5] continuity in who holds office and avoidance of confusion took precedence over the uninterrupted in-state availability of gubernatorial power. Conversely, the California Supreme Court in 1979 adopted a literal interpretation of the provision, holding that "virtually any physical absence...may create a need for...an acting governor" and finding it paramount that the exercise of executive power be available continuously in-state and without a time delay.[6] Thus, the court found that a physical absence interpretation was necessary to protect the public interest. This is a common distinction in cases addressing gubernatorial absences: continuity in elected government versus continuity in in-state executive power, avoiding confusion and potential policy whiplash versus avoiding time delay in gubernatorial action, and the nature of discretionary powers that do not require immediate action versus the nature of powers and duties as key indistinguishable functions of the office of governor that are both inherently vested within an acting governor.

State Most Similar to North Carolina

Nebraska's amended constitutional language[7] seems most like that of North Carolina. Both states separate absence from incapacity (North Carolina) or inability (Nebraska), inferring that absence from the state is not seen as a debatable disability so much as a literal circumstance. Nebraska also specifies that an acting governor is only required until the "absence or inability...ceases," which further separates a physical absence from an arguable inability; this is akin to North Carolina's statutory scheme in that an acting governor only holds the office until the governor "returns to the state." Moreover, comparing the wording of Nebraska's language before and after the amendment, it seems that the legislature intended for it to be interpreted literally rather than through an effective absence lens, as it was in 1942.

The legislatures of Nebraska, Louisiana,[8] and New Jersey[9] have all amended their relevant constitutional provisions in a way that appears more likely to be interpreted literally. The structure and language of each of these states' newer provisions is more like North Carolina's current law than each of their original provisions, which could be a point in favor of a physical absence interpretation for North Carolina. Finally, by not only omitting the word "disability" from the constitutional and statutory provisions but also separating the condition of absence from that of incapacity—and specifically only listing mental or physical incapacity—the North Carolina drafters created language that looks very different from much of what has been found by courts to take an effective absence meaning.

Broader Context of Article III, Section 3

Analyzing the entirety of the section from which this specific constitutional provision comes can clarify how the drafters meant for it to operate and be interpreted. Section 3 is titled "Succession to office of Governor" and includes five clauses.[10] The first, "Succession as Governor," lays out the conditions under which the lieutenant governor would be required to become *governor* (failure to qualify, death, resignation, removal). The second, "Succession as Acting Governor," provides absence from the state or mental or physical incapacity as the only conditions under which the lieutenant governor becomes *acting governor*. This is different from many other states (i.e., Oklahoma, North Dakota, Florida) that include failure to qualify, death, resignation, removal, absence from the state, and temporary incapacity in the same provision, and the two being separate in North Carolina's document—permanent succession versus temporary—seemingly points to a physical absence interpretation.

The need for a temporary acting governor is thereby constitutionally triggered only by absence from the state, physical incapacity, or mental incapacity. Clauses 3 and 4, titled "Physical Incapacity" and "Mental Incapacity" respectively, detail how a governor may personally declare a physical inability to carry out the duties of office and how the General Assembly may determine the governor mentally incapable. Both clauses lay out processes that must be followed, by either the governor or the legislature, and both processes have more than one step. However, there is no such clause providing additional detail for declaring, ascertaining, or resolving a governor's absence from the state, and subsequently no other governmental official is involved as with incapacity.

The lack of further information on absence from the state *and* the presence of such information for each category of incapacity seems to imply that absence from the state should be self-explanatory. One might think that incapacity would be self-explanatory, but there are several lines of extra detail in Section 3 describing the process(es) by which it is determined. The drafters chose to include that information for both physical and mental incapacity and could have done so for absence from the state—for example, by clarifying that temporary absences do or do not qualify or providing a time limit—but did not. Applying the reasoning of the California Supreme Court in *Governorship*, a court reviewing North Carolina's language should use this drafting choice as proof of legislative intent and refrain from imposing additional qualifications "by judicial fiat."[11]

Considering clauses 2, 3, and 4 together, a court could find that absence from the state was meant to stand alone as self-evident and thus any absence—even if temporary—should trigger an acting governor. Clause 1 only bolsters that conclusion because it separates conditions requiring a "new" governor from those requiring a temporary one, unlike some states that have combined the two. The broader context of the constitutional section seems to be another point in favor of a phys-

ical absence interpretation.

Analyzing Constitutional and Statutory Language

As discussed above, the structure of Section 3 supports a physical absence interpretation, but the language itself is often the more important part of a court's analysis.

Clause 2 of subsection 3 separates absence from incapacity in two ways: the two are distinguished by an "or," and incapacity is within its own phrase set off by commas. Reading clause 2 literally, that phrase ("or during the physical or mental incapacity of the Governor to perform the duties of his office") could be removed, creating no grammatical difference and clarifying the entire provision. The result would read: "During the absence of the Governor from the State, the Lieutenant Governor shall be Acting Governor." Because there is no dependent or qualifying language like "or other disability" as in other states, this phrase could stand alone and take the literal meaning that when the governor is outside of North Carolina, the lieutenant becomes acting governor. This is akin to Louisiana's amended language ("When the governor is temporarily absent from the state, the lieutenant governor shall act as governor."), albeit without the even clearer word "temporarily." Adding the "incapacity" phrase back into the clause seemingly does not impact how "absence" should be interpreted (for example, it does not require an assessment of whether the governor is incapacitated by being outside of the state), but merely adds another circumstance under which an acting governor may be required. Finally, the word "or" works together with the commas to indicate that absence is a condition completely apart from incapacity.

Moreover, unlike many states, North Carolina's language does not mention when devolution of the office of governor ceases; instead, clause 2 reads "*during* the absence...or *during* the...incapacity," which seems to mean that an acting governor is only required in that period of time when the governor is actually absent, or actually incapacitated, and not outside of that period. This is again similar to Louisiana's amended language, as well as California's.

The last sentence of clause 2 leaves the legislature no room to add qualifications to circumstances triggering an acting governor, unless by constitutional amendment, but does require a line of succession beyond the lieutenant governor to be established. The General Assembly did so in section 147-11.1, G.S., titled, "Succession to office of Governor; Acting Governor." Subsection (c) correlates with clause 2 of the Constitution and provides that if the lieutenant governor is also unavailable for any those same three reasons necessitating an acting governor (absence, physical incapacity, or mental incapacity), then the senate president becomes acting governor; a further line of succession is outlined in this subsection. Perhaps more telling is subsubsection 147-11.1(d)(1), which explicitly provides that if the acting governor's tenure is based upon the absence from the state of both the elected and lieutenant governors, then the acting governor "shall act only until the Governor or Lieutenant Governor returns to the State." Further, subsection 147-11.1(d)(2) separately provides the same for incapacity ("until the removal of the incapacity of the Governor or Lieutenant Governor").

Subsection 147-11.1(d) leaves no room for confusion. As aforementioned, absence and incapacity are split into two subsubsections, allowing for an explicit determination of when an acting governor's tenure ends if it started because of absence. Additionally, the express qualification that such official shall act only until the "return[] to the state" of the elected or lieutenant governor is clearer than the language used by many other states that mention absence,[12] and seems to point to a physical absence understanding rather than effective. There are two separate conditions under which an acting governor's tenure ends, and no room for ambiguity or subjectivity with a commonly used phrase like "until the Governor or Lieutenant Governor may resume duties of office." This would likely limit an argument for an effective absence interpretation.

Finally, subsection 147-11.1(c) operates in conjunction with clause 2 of the Constitution to bolster an argument for a physical absence interpretation. Clause 2 specifies that the lieutenant governor shall be acting governor during the elected official's absence from the state, and even though the word "during" seems a clear-cut instruction, one could argue there is ambiguity as to when the lieutenant's tenure as acting governor ceases under the Constitution. Section 147-11.1 works with this provision to make it clearer; the statute further establishes devolution of office if both the elected and lieutenant governors are absent (or incapacitated), but only until either the elected official returns (in which case clause 2 is no longer applicable and an acting governor is unnecessary) or the lieutenant governor returns (in which case subsection 147-11.1(c) is no longer applicable and the lieutenant becomes acting governor under clause 2). Each circumstance appears to operate automatically.

This also dismisses the possible ambiguity regarding when the *lieutenant* governor's tenure ceases. If the senate president is acting governor and the elected governor comes back, then the elected governor resumes holding gubernatorial office; if the senate president is acting governor and the lieutenant governor comes back, then the lieutenant becomes (or resumes as) acting governor. But if that devolution to the lieutenant did not also cease upon the return of the elected governor, then the statute would not make sense and there would be no reason to have a "succession as *acting* governor" clause separate from the "succession as governor" in the Constitution. Because of the statutory specification that the governor's return to the state ceases devolution to the senate president, it inherently follows that such devolution to the lieutenant must under the Constitution also cease—otherwise, there could be two individuals holding gubernatorial office at once, which is unconstitutional and violates the purpose of these laws.

One last note is that subsubsection 147-11.1(c)(1) specifies that absence or incapacity makes a governor or lieutenant governor not "qualified to discharge the powers and duties of office." Subsubsections (2) and (3) provide a further line of succession if the senate president or next official "fails to qualify" as acting governor. While that term is not expressly defined in these latter subsubsections, it is defined in subsubsection (1) and that meaning of "qualified" should apply to the two provisions below it. Therefore, if a senate president fails to qualify and the office devolves upon the house speaker, then that means the senate president is absent or incapacitated.

Ultimately, reading through the language of the statute—especially alongside clause 2—it seems on its face best understood through a physical absence interpretation.

Room for Effective Absence Interpretation?

Depending upon the specific court reviewing the language, there is the possibil-

ity that North Carolina's language could be interpreted to take an effective absence meaning instead. The strongest argument for that would likely be in an instance where the elected governor was absent and the lieutenant governor took non-emergency action as acting governor, like issuing an executive order misaligned with the elected official's present policy choices,[13] pardoning a prisoner or calling a state grand jury,[14] or another "discretionary" exercise of power.

In such a case, a North Carolina court may follow the lead of some other states' courts and find that the duties of the office of governor are not synonymous with its powers—especially acts of mercy or non-urgent and non-essential tasks. The court could conclude that, because absence and incapacity are put together in the same constitutional provision and incapacity is further detailed as being an inability of the governor to perform the duties of office, an absence requiring an acting governor should actually be interpreted as one that similarly renders the governor unable to perform gubernatorial duties. The relevant statutes would then be held to likewise only apply if the governor and lieutenant governor are absent from the state in a manner such that they are both unable to perform the required duties of office. Further, unless the task at hand required immediate attention and completion at the risk of injury to the public interest, a court in this instance would probably find that the lieutenant governor had acted improperly and was not invoked as acting governor.

While not necessarily a weak argument, it does seem that this would likely be a "strained construction"[15] and one that—depending on the factual circumstances—could potentially be considered a predetermined answer in search of support. As aforementioned, the structure and wording of the relevant constitutional and statutory provisions do not support an assertion that a governor's absence must be one that renders the official incapacitated or unable to act. Moreover, to distinguish between gubernatorial powers and duties would ignore the opinions of several courts that the two are inseparable when it comes to tasks presented to the governor in the name of the public good. It would also seemingly discount the fact that the North Carolina legislature in section 147-11.1 specifically wrote "powers and duties" rather than simply "duties." The legislature thus likely intended for acting governors to also have the authority to perform the arguably more "discretionary" tasks of the office of governor.

An effective absence interpretation also discounts a point brought up by many courts and one that is supported by North Carolina's language: that citizens have a right to an in-state individual capable of acting as governor at all times. The constitutional and statutory scheme is set up specifically so that there is always an acting governor present in North Carolina, as there is a long line of officials to which the office of governor shall devolve. There is a "backup" acting governor in case of the governor's absence, the lieutenant governor's absence, the senate president's absence, the house speaker's absence, the secretary of state's absence, the auditor's absence, the treasurer's absence, the superintendent of public instruction's absence, the attorney general's absence, the commissioner of agriculture's absence, the commissioner of labor's absence, and the commissioner of insurance's absence. The legislature specifically established a line of succession ten officials long after the lieutenant governor and in doing so has, barring a major and highly unlikely emergency, intentionally ensured that North Carolina is never without an in-state individual acting as governor. If the legislature had wanted the governor's absence to be effective rather than literal, there would likely not be such a thorough line of succession.

Finally, because that order of devolution is invoked only when the previous official is not qualified to act as governor (is absent or incapacitated), the argument that an acting governor is *not* required in the governor's literal absence is mitigated.

Conclusion

Though an effective absence interpretation may in some situations be arguably better public policy or less confusing, and some states have constitutional language that clearly is or certainly can be construed as an effective absence requirement, it seems far more likely that a physical absence meaning should be found in North Carolina.

North Carolina's language is more akin to that of states with physical absence interpretations than that of states with effective interpretations, and the context, structure, and wording itself of North Carolina's constitutional and statutory provisions seem to support a physical absence construction both on its face and through an assessment of legislative intent. In a gubernatorial election year like this one, concepts impacting the executive power like devolution of office are increasingly important; it is useful for practitioners, students, and the public alike to be aware of this issue and the various arguments surrounding when an acting governor is required in the state of North Carolina. ■

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Endnotes

1. Eight states (Florida, Missouri, Nevada, Kentucky, Idaho, Nebraska until 1970, Louisiana until 1975, and New Jersey until 2006) have adopted effective absence interpretations, and eight have employed a physical absence understanding (Connecticut, Mississippi, Oklahoma, California, Arkansas, Nebraska since 1970, Louisiana since 1975, and New Jersey since 2006). Moreover, Washington's attorney general has opined that a physical absence construction only applies in the lieutenant governor's presence; if the lieutenant governor is also outside of the state, then Washington operates under an effective absence interpretation. Finally, North Dakota's constitutional changes since the attorney general adopted a physical absence interpretation in 1969 seemingly now put North Dakota in the effective absence column as well.
2. 410 P.2d 748, 749 (Nev. 1966) (emphasis in original).
3. Neb. Const. art. IV, § 16 (amended 1970). The provision before 1970 read: "In case of the death, impeachment and notice thereof to the accused, failure to qualify, resignation, absence from the state, or other disability of the Governor, the powers, duties and emoluments of the office for the residue of the term or until the disability shall be removed shall devolve upon the Lieutenant Governor."
4. Cal. Const. art. V, § 10, cl. 1-2. The provision reads: "The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor. The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor..."
5. *Johnson v. Johnson*, 3 N.W.2d 414, 415 (Neb.1942).
6. *In re Governorship*, 603 P.2d 1357, 1362 (Cal. 1979).
7. Neb. Const. art. IV, § 16, cl. 3. The provision reads: "If the Governor or the person in line of succession to serve as Governor is absent from the state, or suffering under an inability, the powers and duties of the office of Governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases as provided by law..."
8. LA. Const. of 1868, title III, art. 53 (amended 1975). The provision read: "In case of impeachment of the Governor, his removal from office, death, refusal or

inability to qualify, or to discharge the powers and duties of his office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor for the residue of the term, or until the Governor, absent or impeached, shall return or be acquitted, or the disability be removed...."

LA. Const. art. IV, § 19. As of 1975, the provision reads: "Temporary Absences: When the governor is temporarily absent from the state, the lieutenant governor shall act as governor. When any other statewide elected official is temporarily absent from the state, the appointed first assistant shall act in his absence."

9. NJ Const. of 1844, art. V, § 13. The provision read: "In case of the impeachment of the Governor, his absence from the State or inability to discharge the duties of his office, the powers, duties and immoluments of the office shall devolve upon the President of the Senate...until the Governor absent, or impeached shall return or be acquitted..."

NJ Const. art. V, § 1, cl. 7. As of 2006, the provision reads: "In the event...of the absence from the State of a Governor in office, or the Governor's inability to discharge the duties of the office, or the Governor's impeachment, the functions, powers, duties, and emoluments of the office shall devolve upon the Lieutenant Governor, until the . . . Governor in office returns to the State, or is no longer unable to discharge the duties of the office...."

10. The fifth, "Impeachment," is irrelevant to and thus omitted from this discussion.
11. *Governorship*, 603 P.2d at 1362.
12. E.g., "until the absence…ceases as provided by law" (Nebraska, post-amendment, *likely physical*); "until the disability shall cease" (Arkansas, *physical*; Idaho, *effective*; Nevada, *effective*); "until the disability shall be removed" (Oklahoma, *physical*); "until the Governor be able to resume his duties" (Mississippi, *physical*); "if absent, he has returned" (Connecticut, *physical*); "until the disability is removed" (Missouri, *effective*).
13. *See, e.g.*, Idaho Att'y Gen. Op. No. 21-74751 (Oct. 7, 2021).
14. *See Montgomery v. Cleveland*, 98 So. 111 (Miss. 1923); *Ex parte Crump*, 135 P. 428 (Okla. Crim. App. 1913); *Sawyer v. First Judicial Dist. Court In and For Ormsby Cnty.*, 410 P.2d 748 (Nev. 1966).
15. *Montgomery*, 98 So. at 113.

Matthew Smith (cont.)

fleet of tractor trailers for over 35 years. I have one older sister, Amy, who became a teacher and is now retired. She will tell you I played the role of the annoying little brother to Emmy-worthy standards.

Q: What do you most enjoy doing when you're not representing clients or serving as a councilor or officer of the State Bar?

My wife Michelle and I are recent empty nesters with the youngest off to Campbell, so the true answer is in a state of transition at the moment. I think we will make plans after this coming year. Generally, I will tinker in the garage and try to keep my lawn up to the standards of my retired neighbors. As indicated in the next question, I am a baseball fan, so we will go to Greensboro Grasshoppers or Winston-Salem Dash minor league games whenever we can.

Q: I understand that you are a huge Chicago Cubs fan. How did a small-town North Carolina lawyer become so enamored of the Chicago Cubs?

I am asked that question a lot. When I first joined my firm, Joe asked me if I liked baseball, which I do. He and his son had been taking baseball trips for years, and it was customary for the lawyers to go on that trip. As a former Yankee fan, I enjoyed the thought of seeing the historic confines of Wrigley, but the Cubs? My first minute in Wrigley Field was baseball nirvana. I have been to Wrigley at least once every year except for the pandemic year. My office has turned into a Cubs/Wrigley Field shrine. And for those who are wondering, yes, 2016 was the best year ever. (For those who don't know baseball or have short memories: the Cubs won the World Series for the first time in 108 years.)

Q: What do you hope to accomplish while president of the North Carolina State Bar?

In my ten-plus years on the council, we have faced many challenges at the Bar. But as I was writing these responses, Hurricane Helene had just decimated our friends, colleagues, and neighbors in western North Carolina. I am saddened to learn of the loss of life of at least two attorneys from this devastation. Helping rebuild the judicial system in western North Carolina is a must for our profession. Additionally, I want to keep up our efforts to establish a better relationship between the Bar and the lawyers of the state. Too often I have heard that the Bar is only there to punish. Every councilor, every advisory member, and every person who has served the Bar would probably disagree with that view. The staff, the council, and all of the Bar's constituent groups are there to assist attorneys in becoming better while serving the mission of protecting the public.

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

I am hopeful that the coming year will be seen as a time when the transition of the State Bar and its leadership is complete and established. Also, that we began the process of making it easier for our profession to be a true calling once again. ■

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Ethical Considerations (cont.)

that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process." Rule 1.2(a)(2). Lawyers are people dealing with real problems just like everyone else; and the Rules of Professional Conduct allow lawyers—particularly when opposing counsel has been impacted by a hurricane—to offer grace, understanding, patience, and kindness in their practices.

Conclusion

Natural disasters create unique ethical challenges for lawyers. The North Carolina Rules of Professional Conduct provide a framework for maintaining professionalism, competence, and client protection under extreme circumstances. While personal recovery is essential, lawyers should still strive to navigate their ethical obligations to clients, the courts, and the public reasonably. Seeking guidance from the North Carolina State Bar and utilizing available legal resources is critical in managing these complex issues during times of crisis. By prioritizing communication, safeguarding client interests, and seeking necessary accommodations, lawyers can rebuild their practices and continue to serve their clients effectively. ■

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IOLTA Inspirations: Reflections on Summers Past and Present at the Courthouse

By Tom Langan, Mary McCullough, and Emmy Scott

Judge Tom Langan

After completing my first year of law school at Wake Forest in 1996, I decided to spend the summer interning for Judge Catherine C. Eagles. Judge Eagles had recently been appointed to the superior court bench in Guilford County, and a stipend was available for me to intern with her. The "clerkship" was funded through resources dedicated to public interest opportunities within North Carolina.

The most memorable case from the summer of '96 was a murder trial in High Point. The defendant had the memorably ominous name of Thaddeus Swindler. It was a retrial following an overturned conviction from the court of appeals. For me, it was a crash course in criminal procedure and evidence—classes I had yet to take at Wake Forest.

Roaming the back hallways and observing court in Greensboro and High Point, I was starstruck as some of the lions of the late 20th century North Carolina bench plied their trade. The cantankerous Judge Julius Rousseau of Wilkes County terrified me even as a mere spectator. Judge Sanford Steelman was courtly and contemplative. I was not surprised when, a few short years later, he was serving on the court of appeals. Future University of North Carolina President Judge Thomas W. Ross had recently authored the Structured Sentencing Act. Judges W. Douglas Albright, the senior resident, and William Z. Wood Jr. of Forsyth County also made lasting impressions.

Judge Eagles, of course, was appointed to the United States District Court for the Middle District in 2010, and she now serves with distinction as the chief judge. While still on the superior court bench, Judge Eagles was assigned to Surry County, where I was an assistant district attorney. It was a highlight of my early professional career to try a case in her courtroom.

Law students gathered with staff from the State Bar and Chief Justice's Commission on Professionalism to celebrate their work in rural communities this summer.

One afternoon, I borrowed Judge Ross' chambers to work on a research project for Judge Eagles and got distracted. I thumbed through his Rolodex (remember those?) and stopped cold when I spotted an entry for former President Jimmy Carter. I confirmed the Atlanta area code but wisely refrained from dialing, stammering, apologizing, and hanging up on the president. Bragging to my classmates that I had spoken to the president of the United States during my summer internship was not worth a visit from the Secret Service.

Looking back on that summer, I know

now that it inspired me to pursue a career in public service—first as a prosecutor in North Carolina's trial courts and ultimately as a member of the judiciary. And while I never spoke to President Carter, I can say that I did clerk for a federal judge—albeit 14 years prematurely!

When Jimbo Perry reached out to me about two 1Ls from Wake Forest who wished to spend their summers working with judges, I welcomed Emmy Scott and Mary McCullough with the hope that the seeds planted nearly 30 years ago in Guilford County would continue to bear fruit in the legal oases of Surry and Stokes Counties.

Mary McCullough

Spending my summer interning with Judge Tom Langan and his colleagues in Surry and Stokes Counties was not only enjoyable, but also an invaluable learning experience. I learned the ins and outs of the courtroom and what it means to be a legal professional who values compassion and loves what he does. My first interaction with Judge Langan and Chief Judge Bill Southern was when Emmy Scott and I were invited to lunch at Little Italy Restaurant in the small town of King. I was nervous as Emmy drove us there. However, I quickly realized I didn't need to feel this way at all, because these men were two of the kindest and most welcoming ambassadors for the communities they serve. The judges greeted Emmy and me with smiling faces and were eager to have us intern for them over the summer. Making a difference with my law degree is a top priority for me, so being able to jump-start that aspiration right after my 1L year? Sign me up! After returning from studying abroad with Wake Law in London, it was time to begin my internship. Emmy had a head start, so I quickly followed her lead. I was comfortable in no time, thanks in part to the bailiff who always said, "Morning, ladies!" when Emmy and I arrived at the courthouse (I'm talking about you, Chet Jessup). I also owe thanks to Prosecutors Abby Bishop and Casey Marshall, who never failed to make us crack a smile as they managed large dockets and stressful situations, and to Judge Marion Boone and Judge Gretchen Kirkman, two strong-minded women who took crap from nobody. Shelley Creed and Lindsay Moose, the judicial assistants, kept the trains running on time. I came to care deeply about the people I worked with and continue to stay in touch with many of them. Everyone made me feel welcome and did all they could to teach me as much as I was willing to learn. I spent most of my time in court. I love the courtroom and all its formality. One Friday, we had a complicated case that dealt with a land dispute over a multi-generational family farm in Surry County. It took me back to real property class in law school. I heard the word "easements" and remembered thinking, "Wait! I learned that. I know what that is." Judge Langan invited Byron Frazelle from The North Carolina Judicial Fellowship to research some of the complex legal issues arising in the case. I enjoyed speaking to Byron about his work as a fellow. This case was a real doozy—foreclosure, tax liens, judicial sales, remedies in equity! It was one of my favorite court days because it showed me that even judges with years of legal experience never stop learning—Judge Langan and I learned together. I have very fond memories from the summer of '24. One of my favorites is when Emmy, Judge Langan, and I were all eating lunch together in the office. I started talking about Dairy Queen and how Winston-Salem doesn't have one. Judge Langan looked up at Emmy and me and said, "Well, there's a DQ Grill and Chill just down the road. We have time…" Emmy and I looked at each other, then looked back at Judge Langan, and well, long story short, Judge Langan is in my front seat, Emmy's in the back, and we're all driving to the Dairy Queen. Memories like these bring a smile to my face even as I write this. I will never forget Surry and Stokes Counties, nor the people I met. I treasure every law lesson and every laugh.

Emmy Scott

Before I was even hired, my experience in Surry and Stokes Counties was different and enriching. Our interview was over an informal lunch with Judges Tom Langan and Bill Southern. As Mary McCullough and I followed Judge Langan through the restaurant, we made it only about four feet before he stopped (or, more often, was stopped) to shake someone's hand. As we sat for lunch, every few minutes someone would come up to the table, exchange pleasantries with one or both judges, rouse a hearty laugh, and return to their plates. It was the perfect glimpse into a close-knit community. The judges both stressed the need for good lawyers to settle and practice in their district, reassuring us that the 23rd was a great place to practice law and raise a family. Let's just say I was easily persuaded to accept the invitation to spend my summer in this legal oasis.

The next step was not as easy: learning the lingo. After each day in court, I would ask the presiding judge my numerous questions about procedure, terminology, or even the names of the attorneys. Each judge would answer differently. Some were straightforward, expecting any clarification or curiosity to be directed by me. Others would, unprompted, apply my questions to legal doctrines I already understood, folding in the old with the new. In either case, these Q & A sessions fostered real learning that corresponded with each individual judge's style and temperament. As the internship progressed, I observed some

NC IOLTA Public Interest Internship Program

Beginning in 2024, NC IOLTA has reestablished the Public Interest Internship Program, which provides grants to accredited North Carolina law schools to support stipends for students pursuing summer public interest internships. Each of North Carolina's six accredited law schools receives up to $50,000 to allocate to students who will work in North Carolina counties designated as a legal desert. Eligible student placements include (1) NC-based nonprofit organizations that provide free civil legal services to low-income individuals, (2) public defender offices, (3) district attorney offices, and (4) courts across the state working under the supervision of a judge.

In 2024, 24 summer interns served legal deserts across the state during their summer internships. Students gathered at a convening held at the State Bar on September 6 to share more about their summer experiences and opportunities they see to support access to justice in rural communities.

Interested in hosting an IOLTA-funded summer intern in 2025? Entities that are interested in hosting a summer intern through the program should contact law school career services staff to advertise a position. If you need assistance connecting to law school staff, contact Mary Irvine at mirvine@ncbar.gov.

Tell Us in a Few Sentences

Welcome to a new column in the *Journal*, Tell Us in a Few Sentences. Each quarter we'll ask you, our readers a question. To kick things off, we asked some of the State Bar councilors to tell us...***who was your favorite law school professor and why***?

My favorite law school professor was William (Bill) Marshall at the UNC School of Law. He was highly engaging in the classroom and treated everyone with incredible kindness, regardless of their viewpoint. He genuinely cared about developing students' legal analysis skills, ensuring that their arguments were well-supported and thoughtfully reasoned. I have no doubt he changed the lives of many North Carolina attorneys, and the bar is better off with him educating its members. —***Nicholas Zanzot***

My favorite professor from law school is Professor Irving Joyner. He taught me criminal law, criminal procedure, and race and the law. He teaches in a straightforward manner but manages to use humor to keep students engaged. He is a walking history book, sharing his experiences in representing clients in some of the most impactful cases and circumstances in history. He inspires students in and outside the classroom and epitomizes what a true advocate for the voiceless or oppressed should be. I still learn something from him any time I am in his presence! —***Judge Dorothy Hairston Mitchell***

Tom Anderson at Campbell. was my civil procedure professor. He had me standing up for two classes grilling me about a case I had read but did not fully comprehend. I was losing the mental contest badly and felt like I was standing naked in front of my classmates. He asked me another question, and I answered, "I would do an autopsy on the backhoe." He said something like, "Exactly" and sat me down. I had no idea how that could possibly be the right answer but have never been so relieved. I still love civil procedure 32 years later. —***Gina Morris***

I was fortunate to be assigned to the trial advocacy class that Adjunct Professor Charles Becton taught at the University of North Carolina School of Law. He was larger than life and a wonderful teacher. Here is my favorite story of his.

When he was clerking for Chambers Ferguson and Stein, James Ferguson took him to a federal trial in the Eastern District of North Carolina. Judge John Larkins was on the bench. To his surprise, Ferguson had Becton sit in the second chair. Before the trial, he instructed Becton to watch Judge Larkins very closely when their opponent presented evidence. Any time he saw Judge Larkins' eyebrows go up, he was to object. With some trepidation, Becton obeyed. Judge Larkins sustained every single objection. When the trial ended, Judge Larkins called James Ferguson and Becton up to the bench and asked Ferguson to introduce him to his young colleague. "Your Honor, this is Charles Becton. I expect you will be seeing more of him." Judge Larkins replied, "I'll tell you one thing Ferguson, that boy sure does know his evidence law." —***Wade Harrison***

My favorite law school professor was our own Gordon Brown. Gordon taught UCC courses, sales and secured transactions, and I took both from him. He was a great storyteller, so he could make even those two yawners interesting. One day he walked into class with white patent leather shoes, a big white patent leather belt, and an axe handle and announced, "I'm the repo man. Today we will discuss self-help remedies!" I remember it like it was yesterday, not decades ago. An awesome teacher and performer! —***David Allen***

My favorite law professor was Jack Boger who later became dean of the UNC School of Law. He taught a class on reconstruction and the law, starting from the Emancipation Proclamation and culminating in the Civil Rights movement of the 20th century. Law and history—two of my favorites—in one amazing class. Boger loved this subject and his enthusiasm was infectious. Each student had to author an original paper on a subject and I never worked harder. Boger wanted original sources, and I spent hours at the Davis Library scouring for old newspapers on microfiche, original accounts, and period treatises. I have no idea what my paper was about—it's all lost to time. But what I remember vividly was the excitement of being in my library carrel, surrounded by research with my very first laptop in front of me and thinking about American history and what our laws reveal about our priorities as a nation and as a people. I was never the same again. —***Meredith Nicholson***

And now it's your turn, readers! **In a few sentences please tell us...what was your shortest trial?** Send your answers to the editor, Jennifer Duncan, at jduncan@ncbar.gov.

unforgettable court sessions. My first day in Child Abuse and Neglect Court in Stokes County was especially powerful. As the guardian ad litem, counsel for the Department of Social Services, and parent attorneys gathered, the best interest of the children was a unifying force. I could feel the courtroom move to accommodate a more collaborative approach. As each party zealously advocated

for their respective clients, nobody ever lost focus on the children. On my way home from the courthouse that evening, I saw the same lawyers gathering for coffee on Main Street, socializing and sharing a laugh. It was comforting to see professional adversaries who were also friends. Judge Marion Boone, in particular, made an impression on me—not just with her expertise forged from years as a defense attorney and even more as a judge, but by the power of her persona. She called me "Sweetie," "Honey," and, my personal favorite, "Precious." These small terms of endearment made me feel welcome, like I was truly a part of the community. As Judge Langan says, "The only thing more intimidating than a big city is a small town where you don't know anybody." Judge Boone had a way of making me feel right at home. One fond memory comes to mind: Judge Boone stood in the jury room in front of the lawyers during morning break, energetically reenacting the tale of her family hike in the Grand Canyon. Her robe (or "little black dress," as one bailiff affectionately dubbed it) swung this way and that as she grabbed a particularly stiff defense attorney to serve as a prop. At the conclusion of her tale, she modeled the beautiful balance of familiarity and formality that a rural Southern district court judge must possess. My favorite moments from the summer were ultimately connection-based. Lunch with Judge Langan and members of the local bar, asking Judge Gretchen Kirkman about criminal procedure, picking up lunch for the office, and getting to sit at the "cool kids' table" with the district attorney in court. Perhaps the most useful takeaway was marriage advice from a happily married seasoned divorce attorney in the judge's chambers. Each moment helped me understand the type of lawyer I want to be—invested, collaborative, and mentoring. ■

2025 Meeting Schedule

Below are the 2025 dates of the quarterly State Bar Council meetings.

January 21-24	NC State Bar Headquarters, Raleigh
April 22-25	NC State Bar Headquarters, Raleigh
July 22-25	Harrah's Casino & Resort, Cherokee
October 28-31	NC State Bar Headquarters, Raleigh
	(Election of officers on October 29, 2025, at 6:30 pm)

Managing the Arc of the Moral Universe—A Federal Judge, The Constitution, and State Compliance

By John W. Smith

"The arc of the moral universe is long, but it bends towards justice."

—Theodore Parker, 1853; Martin Luther King Jr., 1958

In 2004, Congress enacted legislation declaring September 17 a federal holiday. Now known as Constitution Day and Citizenship Day, it celebrates the day in 1787 that the delegates in Philadelphia signed what became our national Constitution. In that legislation, Congress also required every public educational entity that received federal funding to recognize the event and formulate educational programs on or near that day to better inform our citizenry of the importance of our fundamental document and the significance of citizenship.[1]

In 2023, I was invited to speak at such a program, primarily to pre-law, political science, and paralegal students at one of our excellent community colleges.[2] Educating the public about our courts and what we do has always been a high priority, so after speaking with the faculty and administration representatives about what interested them, I was glad to share my experiences. The invitation came with a request to explore some events in which I played a part that the political science faculty planners believed would be relevant to ongoing discussions on campus. I began with some trepidation, but sharing this story with the students and faculty became one of my most rewarding experiences. Ever since I gave that talk, I have thought about the extended question-and-answer session that followed; and, after considering the comments from some very bright students who will soon become colleagues in our legal community, I think it is important to share that story with a wider audience. As with every story, background and context are important.

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The making and evolution of our fundamental law is worthy of both celebration and study. Although some might like to imagine our United States Constitution as set in stone and a fixed document on which we can rely as unchanging, it is in fact a living document that was both magnificent and somewhat short of perfection from its beginnings. One of the wonderful things about our Constitution is that it was built upon a system of checks and balances so that it could embrace the great arc of justice to meet the needs of a growing and, hopefully, maturing society. I want to focus on one recent example of the flexibility of our Constitution and its capacity to adapt to change and respond to the needs of a growing and changing American culture. Buckle your seatbelts: we are going to talk about same-sex marriages, Constitutional law, and state action.

I was licensed to practice law in 1972. After several years in a general practice partnership, I became a trial lawyer as a criminal prosecutor where issues of crime, punishment, and rehabilitation were central. When I went on the bench in 1988, I realized that change and adapting to those changes were important. I will not go through the entire litany of societal and constitutional changes to which we responded as they sometimes

seeped into our behavior, and sometimes exploded with sudden and dramatic effects. Just think of Miranda, capital punishment,[3] civil rights, voting rights, domestic violence, mental commitments, Fair Sentencing Act, juvenile justice, and many other issues that got our attention.

In 2008, Chief Justice Sarah Parker[4] asked me to become director of the North Carolina Administrative Office of the Courts.[5] As every lawyer knows, our state court system stands parallel to and in some ways mirrors the federal court system; but our state legal system is truly separate with a different list of fundamental rights and a separate court system under a separate state constitution. Since 1965, we have had a unified statewide court system administratively managed by a constitutionally created Administrative Office of the Courts.[6] The director is appointed by and serves at the pleasure of the chief justice.[7] I served Chief Justice Sarah Parker, and after she retired, Chief Justice Mark Martin.[8]

When I began serving as director, I took an oath that was substantially identical to the one I took upon admission to the bar. It is the same as the one I took when I became a prosecutor, and again when I became a chief district court judge, and the same one I took when I became a superior court judge. It begins similarly to the oath I took when I was commissioned to active duty as an army officer in 1972. It is the same one every North Carolina public official must take upon assuming office:

> **I do solemnly swear that I will support and maintain the Constitution and laws of the United States, so help me God.** I solemnly and sincerely swear that I will be faithful and bear true allegiance to the state of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of said state, **not inconsistent with the Constitution of the United States**, and that I will faithfully discharge the duties of my office to the best of my knowledge and ability, so help me God.[9]

It is that first line that is the kicker. Our first state Constitution of 1776 required that all public officials take an oath.[10] The words "I will support the Constitution of the United States" have been a part of the required oath for public servants since our ratification of the United States Constitution in 1789. Our state statutes of 1791 adopted that language,[11] and that language was preserved intact through our second constitution of 1868.[12] The language of the oath was preserved in our third rewrite of 1971 which established our modern court system as it is today. A violation of the oath constitutes grounds for removal from office and is a specific crime with a monetary forfeiture.[13]

It is the obligation of that oath that became a lightning rod on October 10, 2014, as we confronted a sudden and dramatic change in the constitutional rights of some of our citizens. I want to talk to you not about abstract principles of constitutional law, but the hard practical impact of constitutional change.

For some background: in North Carolina, we have approximately 670 magistrates.[14] It is a judicial office[15] created by our 1971 state constitution when the old office of justice of the peace was eliminated.[16] The reason for that change is a story in itself and worth study, but for our purposes, every magistrate across the state is required to take the same oath I took.

Magistrates hear traffic cases. If you paid a speeding ticket before the new online payment system, you probably met one. They issue search warrants for law enforcement. They are the first judicial officer you see if you are arrested, and they will set your bond. They do a lot of other things, including preside in small claims court. But, most importantly, they also perform marriages.[17] They are the only North Carolina state official authorized to declare a couple married other than an ordained minister.[18] Even judges are not authorized to perform that important service without a special act of the legislature, which is extremely rare and very limited in time and scope. Our magistrates are the only state officials authorized to conduct this important civil ceremony, and they perform a lot of them: about 25,000 a year.[19]

While our state statutes set out the minimum requirements for a valid marriage conducted by a magistrate, the details of the ceremony are left to each individual magistrate; and beyond the statutory requirements, there is no statewide policy on the procedures. The minimal requirement is that each qualifying party express their desire to be married in the actual presence of the magistrate before two witnesses.[20] But most magistrates have ceremonies similar to those of a traditional wedding, even including the option of a closing benediction of "What God hath joined together let no one put asunder." While most of these wedding ceremonies are in the courthouse, magistrates sometimes will preside at a chosen site, especially along the coast or at resort venues. Some ceremonies have only the minimal participants, some are elaborate affairs with full wedding parties and guests. Before COVID-19, it was not unusual to see a bride in a wedding dress with bridesmaids and guests arriving and leaving a courthouse after an elaborate ceremony almost indistinguishable from a formal wedding by a minister. And some magistrates are, in fact, ordained ministers. The time allotted could range from 15 minutes to an hour, all in the discretion of the magistrate. Many magistrates considered it a sacred event and tried to accommodate the participants much as would a minister conducting similar ceremonies. There has always been a nominal statutory fee (currently $50) for marriage by a magistrate, who is required to fill out, sign, and return the marriage license to the register of deeds following the ceremony.[21]

The law had been clear from time immemorial: magistrates were permitted to marry any man and any woman who passed the statutory requirements. Generally, both parties had to be 18 years of age (or be 16 with parental approval), obtain a license to marry from the register of deeds, and not be married to anyone else at the time. A question arose some time ago as to whether a magistrate could marry couples of the same sex, and the answer was a clear "no" by our state statutes.[22] Magistrates were taught about this prohibition unambiguously at their statutorily required new-magistrates training school at the UNC School of Government in Chapel Hill.[23] In May 2012, Amendment One defining marriage as only between a man and a woman had passed, putting that prohibition into our state constitution.[24] When they began their first two-year term as of 2014, all 674 of our state magistrates had

taken their oath of office with the understanding they would not be marrying same-sex couples.[25]

There is a relevant piece of older constitutional law we need to mention. There was a time when our statutes and our state constitution clearly made mixed-race marriages illegal in North Carolina.[26] The US Supreme Court case of *Loving vs. Virginia* (1967)[27] struck down those laws (known as miscegenation laws), by declaring that such a prohibition is a violation of the United States Constitution. The story of the resistance to that new mandate is instructive,[28] as is the decision of *Brown vs. Board of Education* (1954) where "all deliberate speed" took on new meaning. Many of us often think of those decisions as ancient history and take for granted the change that came quickly in the first instance and at a glacial pace in the second. But in October 2014, a similar seismic shift had been brewing, and we all became footnotes in history as the landslide came. The aftershocks are still with us.

In 2014, a case involving same-sex marriages had worked its way into the United States District Court presided over by Judge William Osteen of the Middle District in Greensboro,[29] Another case had worked its way into the United States Western District Court of Judge Max Cogburn in Asheville.[30] The Fourth Circuit Court of Appeals in Richmond had recently struck down a Virginia law forbidding same-sex marriages in another case known as *Bostic v Schaefer*.[31] Since North Carolina is part of the federal fourth circuit, that holding affected us and if final would be binding on North Carolina; but the decision was on hold pending further appellate review to the US Supreme Court. On the morning of October 10, I had gone to work fully aware that the issue of gay marriage or same-sex marriage was now on the table. We are always conscious of the decisions of the federal district courts because they often declare the application of the "laws of the United States" and interpret the United States Constitution. The supremacy clause of the US Constitution requires that we pay attention when the federal courts interpret the Constitution. That afternoon, as I read Judge Osteen's order from the middle district, the effect of his ruling was immediately apparent:

> "Any source of state law that operates to deny same-sex couples the right to marry in the State or prohibits recognition of same-sex marriages lawfully solemnized in other States, Territories, or a District of the United States, or threatens clergy or other officiants who solemnize the union of same-sex couples with civil or criminal penalties, are UNCONSTITUTIONAL as they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution."

In the interest of time, I am going to oversimply and conflate the holdings. Copies of the decisions and the history of the litigation appear online and in bar journals. Basically, Judges Cogburn and Osteen both ruled that in North Carolina, the US Constitution in the equal protection and due process clauses of the fourteenth amendment[32] and the supremacy clause of Article VI[33] required that all state officers cease all discrimination with regard to same-sex couples seeking marriage. The language was clear, strong, and unambiguous, leaving no room for quibble. Initially, we fully expected that this would be the first step along a lengthy path that was winding its way through the federal courts but was becoming increasingly clear. We fully expected that an application and order for a stay would be forthcoming so that the issue could work its way to the US Supreme Court. Perhaps we might have time to prepare for such a change or the Supreme Court, more likely, would have provided additional guidance. Not only did the federal district courts quickly deny all requests for stays, but so did every court up the chain including the US Supreme Court. Most importantly, the US Supreme Court denied a stay to the *Bostic* case in the Fourth Circuit Court of Appeals out of Virginia,[34] which struck down laws against same-sex marriages.[35] Judge Cogburn denied a stay and Judge Osteen lifted stays he had previously issued. The decisions became immediately effective and binding throughout our state around 5:00 p.m. on Friday, October 10, 2014.[36]

As you can imagine, the outcry was immediate. Two years earlier, in April 2012, North Carolina had adopted "Amendment One" to the state constitution prohibiting same-sex marriages by a 2 to 1 vote of the people.[37] Because the federal holdings conflicted with established state law, magistrates and the judges who supervised them asked for, and then demanded, advise and instructions. In the federal decisions, it was clear that the expectation was that marriages of same-sex couples by state officers would commence immediately. Indeed, at least one Register of Deeds offices stayed open late in anticipation of a flood of applications for same-sex marriage licenses, and they were not disappointed.[38] As director of the Administrative Office of the Courts, I assembled our legal staff, and we began looking for a way to accommodate this expansion of the now constitutionally protected right of same-sex couples to marry. It was essential that we comply with the law, and you can imagine the discussion as our state constitution now collided with these federal holdings. Both the public and our public officials were demanding immediate answers. And a lot of them had answers of their own.

Here was the more pressing and determinative practical problem: the jurisdiction of magistrates at the time was statutorily determined and explicitly geographically limited. Each of our 674 magistrates was assigned to only one of our 100 counties. They had no jurisdiction outside of their home county except under very limited emergency circumstances. And there was absolutely no way a magistrate could cross into any non-adjacent district under any circumstances. Our state legislation intentionally and uncompromisingly limited the geographical jurisdiction of every one of our magistrates.[39] The jurisdiction of a judicial official is of fundamental importance. Bottom line: magistrates were county-level, limited-jurisdiction officials. And every one of them was now in the spotlight.

In North Carolina, custom and practice had created a requirement that at least one magistrate would always be on duty in every county. This requirement became compelling when the protection of domestic violence victims became a heightened priority. In the western counties and in the northeastern areas of our state many counties had only two, three, or four magistrates.[40] That created a severe problem for 24/7 full-time coverage, especially in the mountainous counties where it could take an hour to get from the outlying communities to the courthouse; and those were among the counties where resistance to the decision became vocal, volatile, and even inflammatory. To complicate matters even further, those were the counties most likely to have only two or three magistrates.

Sometimes, the special needs of a magis-

trate can be accommodated by their colleagues. If one magistrate needs to be free for Saturday or Sunday worship, or a religious holiday, or a family emergency, we have always striven to make those accommodations. If a magistrate becomes ill, shifts in schedules were necessary and accepted. But we had many counties where no magistrate was voluntarily willing to perform same-sex marriages. I will not go into all of the nuances that began to rise in resistance to the decision, but accommodation using our traditional measures was impossible. In many of our counties, there was legally and literally nobody who could or would step in where all of the magistrates chose to resist the mandate. And many were caught in terrific political pressure and scrutiny.

There was case law dating from the *Loving* decision on mixed-race marriages that a religious belief did not justify refusing to marry a mixed-race couple. Not only was it clear that the magistrate could be held individually liable, but it was a clear violation of the official's oath to disobey the federal rulings on interracial marriage.[41] This liability also rested as well on any official aiding and abetting in that refusal. Accountability and authority were further complicated by the compromises made in 1972 when the office of magistrate was created to replace the eliminated office of justice of the peace. Magistrates are now nominated by the elected clerk of superior court, appointed by the elected senior resident superior court judge, and managed by the elected chief district court judge who serves at the pleasure of the state's chief justice. But the Administrative Office of the Courts was responsible for overall administrative oversight and training of the magistrates. All of the judges knew (whether they publicly conceded it or not) that the law now mandated that same-sex marriages had the same protections as traditional marriages. The Administrative Office of the Courts was responsible for providing administrative guidance, and all these judicial officials turned to us for instructions. Indeed, for many judicial branch officials across the state there would be no compliance until instructions were received.

Without belaboring the details of how we came to the decision, it was clear that no position was tenable other than providing direction to the magistrates that no magistrate who conducted marriages could refuse to civilly marry qualified same-sex couples who came requesting marriage. We made it clear that a refusal not only violated the federal district judges' orders and the United States Constitution, but it also violated that first sentence in the oath to which each magistrate had sacredly sworn. And no statewide accommodation for religious exemptions was practical or possible. It is that last provision that caused a stir. If a religious exemption had been allowed, we would have had a large number of counties across the state in which there would be no magistrate to comply with the constitutional mandate. So, our memo was clear and unequivocal that refusal to treat same-sex marriages equally was a violation of a magistrate's oaths of office and it was a duty[42] of their office to comply with Judge Cogburn and Judge Osteen's mandates.[43]

That direction had the effect of stabilizing the situation across the state. Even in those counties with four or fewer active magistrates, each county found a way to accommodate the new decision. There was one county in which a magistrate on duty initially refused to conduct a ceremony[44] and one county in which all four magistrates claimed in the press that they would not comply.[45] But as the dust settled, after we sent out our memo as guidance, there was no instance of which I am aware where same-sex couples seeking marriage were not accommodated. After we pointed out the law and reminded all 674 magistrates of the language in their oaths, even magistrates who initially said they would refuse to perform their duties acknowledged the importance of the oath to which they had sworn and found ways to accommodate. While others in positions of responsibility often spoke critically and defiantly,[46] and the climate remained hot on the issue, unless there is some situation somewhere of which I am unaware, no same-sex couple in any county has failed to find a magistrate willing to conduct their ceremony.

We had about a dozen of our 674 magistrates who decided to resign as this change was implemented. Some were already retirement-eligible and would have been part of normal turnover, but at least six identified the change in the law as the reason for their resignation.[47] No magistrate had to be removed or disciplined for refusing to comply. Two magistrates actually brought lawsuits in the courts seeking redress on religious grounds. Those lawsuits were dismissed by the trial court and by the North Carolina Court of Appeals.[48] One magistrate made a claim through the Administrative Procedures Act, but that case was resolved.[49] One of the magistrates who resigned was a person of faith for whom I had the highest regard and admiration. He communicated with me and said to the press that it was a matter of religious conviction and conscience, and he knew he could no longer comply with the requirements of his oath. He saw resignation as his duty.

I had spoken to all of these magistrates at least twice a year at their conferences and would speak to them again at their conference soon after this decision dramatically changed their duties under the law. As in any controversial decision, most accepted it in the end. A few have remained defiant, but the transition became manageable. The volatility of the issue remains fodder for political division.

There were other problems that I am not going to cover in much detail. We tried to give some cover to a chief district court judge who was facing reelection by providing a strongly worded legal memo clearly articulating that magistrates in his district had to comply, hoping that the responsibility for his decisions and actions would shift to Raleigh; but he lost his election anyway at least partly because of his compliance with his oath. The people in those rural counties were not ready for the decision. The media found the county where all magistrates initially said they would refuse; but as time went on nothing came to a head about it. Another moderating factor was that magistrates subsequently appointed were fully aware that their duties included performing these marriages. They put their hands on the Bible and swore to uphold the United States Constitution and the Laws of the United States with full knowledge of their duties. But some resistance continued in situations where sincerely held religious convictions collided with that oath.

When our state legislature reconvened following this sea change, they began working on a statute known as "Senate Bill 2" that provided more flexibility.[50] It was controversial and allowed a magistrate to opt out based on "any sincerely held religious objection." The legislation was vetoed by Governor Pat McCrory who considered it a defiance of the federal court decisions.[51] His veto was overridden, and Senate Bill 2

became law. Some businesses and sports events moved out of our state in protest. However, the statute recognized that any magistrate who performed any marriages was required to conduct same-sex marriages (despite some legislators' rhetoric to the contrary before the statute was passed); and any magistrate who elected not to perform same-sex marriages was barred from conducting any marriages whatsoever.[52] Senate Bill 2 also broadened the geographical jurisdiction of magistrates so that colleagues willing to follow the law could step in to accommodate those with sincere convictions who had difficulty doing so. These adjustments helped ease some of the pressure that had persisted in these more remote counties with few magistrates or in which politicians pursued a more divisive rather than accommodating political strategy.[53]

There is a lot more to this story, and I wish we had time to explore it in more detail. The interplay between our state courts and the mandates of the federal courts declaring an expansion of constitutional protections is in itself a lesson in constitutional law. We have only scratched the surface of the beginnings of what became a newly expanded application of the United States Constitution. These federal district court decisions together with the five to four decision of the United States Supreme Court in *Obergefell vs. Hodges*[54] on June 26, 2015, changed the face of state legal practice and struck down a conflicting state constitutional amendment. The interplay of the first amendment of the US Constitution and these rulings is continuing to play out. Our state constitutional prohibition against same-sex marriage is still on the books for all to see, as was the state prohibition of interracial marriages for years after the prohibition was declared unconstitutional by the federal courts.[55] We can expect refinements and even frustrating inconsistencies as the balance between equal protection and religious freedom wobbles back and forth on this closely decided but important constitutional holding. Will the courts reject the claim of a religious exemption for court officials as it quickly did when raised against interracial marriages, or will the religious exemption be expanded to make a very controversial decision more acceptable to resistant state governments?[56] Only time will tell.[57]

As the abolitionist Theodore Parker observed and as Martin Luther King Jr. paraphrased: "The arc of the moral universe is long, but it bends towards justice." In 2014, we saw a new group of people come within that arc. Our state officials did as their sacred oath required, and the United States Constitution remains the law of the land. ■

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Endnotes

1. 36 US Code Sec. 106; and Pub. L. 108–447, div. J, title I, § 111, Dec. 8, 2004 (118 Stat. 3344) provided: "(b) Each educational institution that receives Federal funds for a fiscal year shall hold an educational program on the United States Constitution on September 17 of such year for the students served by the educational institution."
2. "Constitution Day" at Wake Technical Community College, September 20, 2023. The invitation came through Political Science Professor Anthony Petty; the event was introduced by Wake Tech President Scott Rawls.
3. It is worth mentioning that when I graduated from law school, first degree murder, first degree rape, kidnapping, and first degree burglary were all punishable by death in the discretion of the jury. That would be unthinkable today.
4. Chief Justice Sarah Parker was appointed by Governor Jim Hunt to the NC Court of Appeals in 1984. She ran for and was elected associate justice of the NC Supreme Court in 1992. She was appointed chief justice by Governor Mike Easley in 2006 upon the retirement of Chief Justice Beverly Lake. She was elected to a full term the following November, and retired in August 2014.
5. Immediately after I was sworn in, the "great recession" hit. The judicial branch consisted of approximately 6,500 public servants with a budget of over $450 million. In addition to the issue discussed in this article, our clerks, magistrates, and other judicial branch officials were challenged by an immediate 10% cut in both personnel and budget.
6. N.C.G.S. (North Carolina General Statute) Chapter 7A; NC Constitution, Article IV, Section 15. Our Article IV court system in 2014 included 100 elected clerks of superior court plus staff, 44 elected district attorneys plus staff, 112 superior court judges, 270 district court judges, 674 magistrates, trial court administrators, juvenile court staff, the supreme court, and court of appeals.
7. N.C.G.S. Chapter 7A, Article 29. GS 7A-341.
8. Chief Justice Mark Martin was appointed as a superior court judge by Governor Jim Martin in 1992. He was elected to the NC Court of Appeals in 1994 and served from 1995 through 1998. He was elected to the NC Supreme Court in 1998 and was appointed chief justice of the NC Supreme Court by Governor Pat McCrory upon the retirement of Chief Justice Sarah Parker in 2014. He retired in 2019 and currently serves as dean of the High Point University School of Law.
9. Article VI, Section 7, North Carolina Constitution; N.C.G.S. 11-7. This is the oath that combines the constitutional and statutory requirements. The oath is explicitly required of every member of the general assembly and every judicial officer. In addition to this language, additional particular language for certain specific offices, including judges and attorneys, is set out in GS 11-11.
10. NC Constitution of December 18, 1776: Section XII. "That every person, who shall be chosen a member of the Senate or House of Commons, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take an oath to the State; and all officers shall also take an oath of office."
11. Section 3 of the 1791 Act required the members of the state legislature and certain state officers to take the following oath: "I do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States." This new text brought North Carolina's oaths into conformity with federal constitutional and statutory law. Article VI of the United States Constitution which we had just ratified required all state legislators and state executive and judicial officers to take an oath or affirmation to support the United States Constitution. There were other requirements similar to the remainder of the modern oath.
12. The post-civil-war NC Constitution of 1868 added "Constitution and laws of the United States" to the oath. The Declaration of Rights in Article 1, Section 5, of the NC Constitution read: "That every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and that no law or ordinance of the State in contravention or subversion thereof can have any binding force."
13. GS 14-229, 14-230, 128-5. A person convicted of the criminal offense must be removed from office by the court.
14. The precise number of magistrates has fluctuated over the years: 2008 – 768; 2009 – 762; 2010 – 753; 2011 – 698; 2012 – 654; 2013 – 674; 2014 – 674; 2015 – 674; 2016 – 674; 2017 – 671; 2018 – 672; 2019 – 672; 2020 – 672; 2021 - 681. These fluctuations often had to do with retirements, vacant position eliminations due to budget considerations, and revisions for part-time positions. Compiled from *NCAOC Annual Reports* required by GS 7A-343(8).
15. *Bradshaw v. Administrative Office of the Courts*, 320 N.C. App. 132 (1987).
16. NC Constitution, Article IV, Section 10. The office of magistrate evolved from the old justice of the peace. The office of JP was a county-level office and dates from pre-Revolutionary times until eliminated in 1968. Most were appointed by the governor. Although other sources give a statutory date of 1778, other online information says JPs were given the power to marry in 1715 and 1741 due to the scarcity of ministers (Episcopal priests) in NC. *See* North Carolina History Project (John Locke Foundation), *Marriage*. Students to whom I first gave this talk were stunned to learn that the JPs salaries were based on fines and costs from convictions in criminal and traffic court. No conviction, no pay.
17. GS 7A-292.
18. GS 51-1 (see note below authorizing district court judges in some situation.)
19. From an April 21, 2020, NCAOC press release announcing Chief Justice Cheri Beasley's post-COVID-19 resumption order: "North Carolina magistrates perform about 25,000 marriages a year. In recent weeks, with many wedding venues closed, couples seek-

ing to be married brought large groups of witnesses and attendees to local magistrates' offices to be married there instead, prompting several counties to cease performing marriages altogether."

20. G.S. 51-1.

21. G.S. 7A-309(1): The fee "shall be collected by the magistrate and remitted to the clerk of superior court for use by the State in support of the General Court of Justice."

22. G.S. 51-1.2. "Marriages, whether created by common law, contracted, or performed outside of North Carolina, between individuals of the same gender are not valid in North Carolina. (1995, Reg. Session 1996, c. 588, s.1)."

23. Magistrates must complete the course within six months of appointment; and NCAOC contracts with the UNC School of Government for the course as permitted by GS 7A-177.

24. Senate Bill 514 (2011); NC Constitution Article XIV, section 6: "Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State…."

25. A North Carolina constitutional amendment recently made the initial appointment two years, but if the magistrate is reappointed after that initial term, each successive term is for four years.

26. The statutory provision was repealed in 1973 (Repealed by Session Laws 1973, c. 108, s. 4.). The old provision read: N.C. GS 14-181, "Miscegenation – All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the third generation inclusive, are forever prohibited, and shall be void…." Rev., s 3369; Code, s 1084; Const. Art. XIV, s 8; R.C. c. 68, s. 7; 1834, c. 24; 1838-9, c. 24; C.S. 4340. The parties were subject to imprisonment for up to ten years. It was a misdemeanor to conduct the ceremony or issue a marriage license (GS 14-182). The state constitutional prohibition which was added in 1875 was never actually repealed but was quietly eliminated in the constitutional rewrite of 1971. Current GS 51-3.1 replaced the old provision in 1977, validating interracial marriages that had been conducted "before March 24, 1977." Ironically, it looks like the now invalidated "Amendment One" defining marriage as excluding same-sex couples now occupies the last section of Article XIV of our state Constitution, the spot formerly occupied by the provision barring interracial marriages.

27. *Loving v. Virginia*, 388 U.S. 1 (1967). As an interesting sidenote, despite the prohibition in our state laws and constitution, our state supreme court had held in 1877 that full faith and credit and comity required North Carolina to recognize an interracial marriage consummated in another state (South Carolina) where the marriage was legal. *State v. Ross*, 76 N.C. 242 (1877).

28. I have added this endnote only because of questions asked by students to whom my talk on this subject was given. The religious arguments against interracial marriages were strained from the beginnings, but scriptures often cited include Deut. 7:3-4, the story of the tower of Babel, Malachi 2:11, 2 Corinthians 6:14, the "curse of Canaan," and the creation story where everything is created "…after its kind." Almost all authorities agree those interpretations and extrapolations are unsupportable. But evangelists such as Garner Ted Armstrong (Radio, "The Good News of the World Tomorrow"), the Catholic Church, the Mormon Church, and others were influential in perpetuating this position. Many tended to tie interracial marriage to the "dangers" of integration. Although he had forcefully integrated the armed forces in 1948, President Harry Truman was quoted after his retirement as saying that interracial marriages "ran counter to the teachings of the Bible." (NYT, 9/12/1963 p.30) The original trial judge in the *Loving* case (op.cit.) enforced the miscegenation laws with a finding that reads: "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix." You will still find commentators that take the position that Christians should marry only Christians, but averring that race has nothing to do with it. I again direct inquiring minds to cautiously and skeptically turn to the internet. There is a great article covering this issue as to both miscegenation and same-sex marriages by James Oleske Jr., 50 Harvard Civil-Rights Law Review 99 (2015).

29. Judge Osteen is a UNC and UNC Law School graduate and was nominated by President George W. Bush in 1972. *Fisher-Borne v. Smith* and *Gerber v. Cooper*. (Judge Osteen allowed the speaker of the House and president *pro-tempore* of the NC Senate to intervene as parties so that they could prosecute an appeal of the decision.)

30. Judge Cogburn is from Asheville, went to UNC and then Cumberland School of Law. He was nominated by President Obama in 2011. The case was *General Synod of the United Church of Christ v. Cooper*. (Rev. Dr. Nancy Petty of Pullen Memorial Baptist Church in Raleigh was a plaintiff.) Reported as *General Synod of the United Church of Christ v. Resinger*, 12 F.Supp. 3rd 790.

31. *Bostic v. Shaefer*, No. 14-1167, 4th Cir.: A lawsuit filed in federal court in July 2013 that challenged Virginia's refusal to recognize same-sex marriages. The plaintiffs won in federal district court in February 2014, when US District Judge Arenda Wright Allen struck down Virginia's prohibition as a violation of constitutional rights under the Fourteenth Amendment. The Fourth Circuit Court of Appeals upheld that ruling in July 2014. The decision was initially stayed by the US Supreme Court, but as discussed below, that stay was later lifted.

32. Fourteenth Amendment: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its jurisdiction the **equal protection of the laws.**"

33. Article VI, Clause 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; **and the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

34. The US Fourth Circuit consists of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

35. *Bostic v. Schaefer* 760 F.3rd 352 cert. denied 135 S.Ct. 308 (2014). Review denied by order of the US Supreme Court October 6, 2014. The holding in *Bostic* became final and binding in Virginia, Maryland, West Virginia, South Carolina, and North Carolina (states of the 4th circuit.) the moment the stay was lifted.

36. The published decision came down late Friday afternoon of the 10th, but we had heard that the decision was coming earlier in the day. Monday, October 13, was Columbus Day, a federal holiday; but NC does not recognize it, so state and county offices were open on Monday, although the federal offices were closed.

37. Technically, the state constitutional amendment said bisexual marriages were the only valid marriages; but other laws made it criminal to conduct unauthorized marriages (GS 51-7, -15, -17, -19). The effect was to void and criminalize same-sex marriages. N.C. Senate Bill 514 (2011) contained the proposed state constitutional amendment, passed May 8, 2012, effective May 23, 2012. Article XIV of the NC Constitution was amended to add section 6 as follows: "Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts."

38. *See* Greensboro News and Record, Oct. 10, 2014; *NC Newsline*, by Sarah Ovaska-Few, October 9, 2014; WRAL Oct. 13, 2024.

39. Magistrates could not be assigned to non-contiguous districts outside of their home districts. GS 7A-146. Section 9, which addresses extra-territorial assignments, has been amended since these events to allow state-wide substitutions so that if all magistrates of a county or district recuse, there is procedure to send a non-recusing magistrate from another county to cover. That was not the case when these decisions were being made.

40. Forty counties had three or fewer magistrates. Half of all counties had four or fewer.

41. Wilmington Star News, Sunday, December 9, 1979: *Magistrates Ordered to Pay Couple's Fees*. Federal District Court ordered two Forsyth County magistrates to perform interracial marriages despite their personal religious objections and to pay legal fees of plaintiffs. *Figuerola and Person v. Lewter and Thomerson*.

42. I do not want to ignore the quibble that arose over whether magistrates had a "duty" to conduct marriages or not. As opponents and critics began grasping at straws to find a way to avoid and evade the holding, that became an argument. Even if conducting marriages was discretionary, that discretion cannot be abused or exercised in an unconstitutional way. And if no magistrate had a duty to provide a civil ceremony and all magistrates could equally refuse, then potentially only religious marriages would be available in NC. I considered the argument as a bad faith effort to resist and evade a clear court order. The issue persists in the amendment to GS 7A-292(b) of Senate Bill 2 discussed below.

43. The first memorandum went out over my signature on Monday, October 13, 2014. In that memo I wrote to all magistrates: "Magistrates should begin immediately conducting marriages of all couples presenting a marriage license issued by the Register of Deeds. No further authorization or instructions are necessary. Under the recent federal ruling, we can assure our magistrates that they are authorized to conduct those marriages of same-sex couples under the existing statutory authority they possess. Further detail will be forthcoming promptly, but marriages conducted by magistrates should not be delayed or postponed while awaiting further clarification of other questions or issues…" A longer more detailed memorandum with questions and answers went out the following day from our legal counsel, Pam Best. All memos were posted on the internet and were widely and publicly distributed. A Kentucky court official, Kim Davis, who refused to comply was jailed by a federal district court judge for contempt when she refused to issue the marriage license, so this was not a theoretical exercise. The same could have happened in NC.

44. Pasquotank. *The Daily Advance of Elizabeth City*, WVEC-TV news October 14, 2014, WRAL-TV, Oct. 15, 2014; Asheville Citizen Times, Oct. 15, 2024; Fayetteville Observer, Oct. 14, 2014; Winston-Salem Journal, Oct. 15, 2014; The Virginian-Pilot, Oct. 15, 2014; Chicago Sun-Times, Oct. 15, 2014. The couple were married the following day by another magistrate. The story cited the confusion that existed which was alleviated by our memo.

45. The only county identified in the press of which I am aware was McDowell. Newsweek, Sept. 10, 2015, et al.

46. The president *pro-tempore* of the Senate sent a letter dated October 24, 2014, also signed by most of his caucus, requesting that we reconsider our memoranda to the magistrates and reiterating the arguments that Judges Cogburn, Osteen, and the Fourth Circuit had rejected. His letter was released to the press before we could respond. I responded reaffirming our position on November 5. The letter and my response received media attention and are mentioned in the only NC reported case arising out of these circumstances: *Breedlove v. Smith* (Warren) 249 N.C.App. 472 (2016). Newspapers quoted a small part of my letter of response as follows: "Whether we agree or disagree with the holdings, the courts have defined the scope of due process and equal protection under the constitution of the United States on this issue," he wrote Wednesday. "Unless and until those holdings are stayed, modified, or reversed, our magistrates are affirmatively bound by those rulings in exercising their official powers." *See* Asheville Citizen Times and Charlotte Observer Nov. 6, 2014; and lengthy article by Anne Blythe in the Raleigh News & Observer February 13, 2015, which quotes from the correspondence extensively.

47. Gilbert Breedlove of Swain gave an interview 11/5/2014: He said, "I couldn't in good conscience (perform a same-sex wedding) if they were going to require me to do that. In that case, I couldn't in good conscience be able to carry out my duties as a magistrate, so I went ahead and resigned. For me there was no other option." And: "I cannot perform that job duty because of my religious beliefs, …Because of that conflict, my instinct is to go with the overriding factor of faith rather than the law of the land." Bill Stevenson of Gaston gave an interview to WFMY on 10/28/2014 wherein it was reported: "One thing Stevenson does agree with is the magistrate's responsibility to follow the law, which is why he said he didn't follow the lead of others across the state who have refused to perform the marriages, but have not resigned." John Kallam Jr. of Rockingham Co. said in 10/17/2014: "Since performing marriages is an integral part of being a magistrate and in light of recent changes in North Carolina law, I can no longer fulfil my oath of office in good faith." He is further quoted as saying, "Marrying gay couples 'would desecrate a holy Institution established by God himself.'" Quotes from media coverage: Asheville Citizen Times, USA Today, WSOC TV, Smoky Mountain News (10/22/2014), Mountain Express of Asheville, Charlotte Observer, WITN TV, Winston-Salem Journal, Greensboro News & Record, N&O, etc.

48. Two magistrates from Swain and Graham Counties had resigned after the guidance was issued. They sued the state in April 2015. Dismissed by order of the court 9/20/2016. *Breedlove and Holland v. (Smith) Warren*, NCAOC, 249 N.C.App. 472 (2016), upholding the dismissal of the action by the Honorable Brian Collins in the Wake County Superior Court. The decision was written by Judge Calabria, joined by Judges McCullough and Tyson of the NC Court of Appeals.

49. A magistrate who resigned was effectively represented by our colleague, Ellis Boyle, in an EEOC (Equal Employment Opportunity Commission) action in which he prevailed in a hearing before Administrative Law Judge Michael Divine from Maryland. Judge Divine ruled that local accommodation for religious exemptions should have been considered, and he awarded back pay and attorney fees, but denied other damages and reinstatement. The case was settled while on appeal to the US Fourth Circuit. It is noteworthy that Judge Divine wrote in his opinion: "This clearly placed Judge John Smith, director of the North Carolina Administrative Office of the Courts, in the position of Odysseus navigating between Scylla and Charybdis, or in modern terms, between a rock and a hard place [Note: Odysseus chose the somewhat safer course to pass closer to Scylla and lost some of his crew rather than risk loss of the entire ship. By choosing immediate implementation, Judge Smith apparently lost some of his crew… but maintained the continuing operations of the North Carolina Judiciary.]" *See Myrick v. Warren et al*, 16-EEOC-0001, page 4, filed from Baltimore March 8, 2017. I was the original named defendant in my official capacity as director, but my successor Marion Warren was substituted after my retirement. Copy currently available: s3.amazonaws.com/becketnewsite/Myrick-v.-Warren-et.-al.-16-EEOC-0001.pdf.

50. Senate Bill 2 sponsored by Senator Berger filed Jan. 28, 2015. The bill was passed after a gubernatorial veto. It gave the NCAOC increased authority to assign magistrates into other counties. The bill went through a number of iterations. A lawsuit challenging the exemption provision was dismissed for lack of standing on June 28, 2017, opinion of the 4th Circuit Court of Appeals in *Ansley v. Warren*, 16-282 (4th Cir. 2017). Tracing the authority to assign magistrates across county lines involves tracing: GS 7A-343(11), 7A-146(9), 7A-343(11) and the exemption provision itself, GS 51-5.5.

51. In announcing his veto within hours of the passage of the opt-out statutes by the General Assembly, Governor Pat McCrory said: "I recognize that, for many North Carolinians, including myself, opinions on same-sex marriage come from sincerely held religious beliefs that marriage is between a man and a woman. However, we are a nation and a state of laws. Whether it is the president, governor, mayor, a law enforcement officer, or magistrate, no public official who voluntarily swears to support and defend the Constitution and to discharge all duties of their office should be exempt from upholding that oath." WRAL, May 28, 2015; News & Observer, May 29, 2015; WFAE May 28, 2015; ABC11 May 29, 2015; Los Angeles Times, May 29, 2015; The New Yorker, June 11, 2015; Reuters, May 28, 2015; Washington Post (editorial) June 12, 2015. Governor McCrory is of the same party as the bill's sponsors.

52. Session Law 2015-75, Senate Bill 2: Any magistrate may claim a religious exemption for a period of at least six months and it remains in effect until revoked in writing. No marriages can be conducted by the exempt magistrate during the period of exemption. The act also broadens the authority of the director of the NC Administrative Office of the Courts to send magistrates from other parts of the state to cover during times in which no local magistrate is available. The bill amends a number of statutes by adding GS 51-5.5 Recusal, and amending 14-230, 161-27, 7A-292. The bill deserves more analysis than it has received. It has the merit of providing a mechanism to transfer magistrates across the state that was not permitted by our prior law, which facilitates accommodating magistrates with sincere religious beliefs. But it clearly agrees with our analysis that equal protection forbids discrimination based on that religious belief. Of interest to me is the provision that if magistrates opt out under the statute, it is incumbent upon the chief district court judge in each district to see that same-sex marriages are performed. Ironically, the burden of performing those marriages is shifted from our 674 magistrates to our 43 chief district court judges when all magistrates recuse in a district and no magistrate is available. The district court judges who now must perform the ceremony receive no similar exemption. Of course, the chief district court judge is appointed and answerable only to our chief justice. The virtue of logic, consistency, and equal protection all fail at that point. There is certainly a hint of punishment for the chief district court judges who were requiring their magistrates to obey the law. A challenge to the act by taxpayers in which the NCAOC was the defendant was rejected by Judge Max Cogburn in US District Court based on standing (*See Ansley op. cit. supra*, citing *Breedlove supra*.)

53. In 2015, the News & Observer reported that 32 magistrates opted out upon passage of the act. By 2018, WLOS reported that the number was down to 28 out of 670, or 4%. I have not confirmed those numbers. Interestingly, recusals are part of a magistrate's personnel record and not a public record. WLOS in Asheville did an in-depth study that suggested by 2019 most magistrates were complying. In one ironic incident, a straight couple appeared in their home county of McDowell to be married, but the only magistrate on duty was one who had claimed an exemption to avoid same-sex marriages. The statute forbade him from conducting any marriages to claim the exemption, so the straight couple had to reschedule their wedding since he was disqualified and no other magistrate was available. (Report by Kimberly King, WLOS-TV, May 6, 2019.)

54. *Obergefell v. Hodges*, 576 U.S. 644 (2015) is a landmark decision of the Supreme Court of the United States which ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

55. The old state constitutional amendment against interracial marriage dated from the 1870s. It remained on the books until it was quietly deleted during the 1971 rewrite. It is noteworthy that an unconstitutional religious test remains a part of our state constitution even today: Article VI, Sec. 8. "Disqualifications for office. The following persons shall be disqualified for office: First, any person who shall deny the being of Almighty God. …" These tests were declared unconstitutional by the US Supreme Court in 1961 by *Torcaso v. Watkins* (367 U.S. 488).

56. For an interesting discussion, *see* Harvard Civil Rights-Civil Liberties Law Review, Vol. 50, p.99 ff. (2015): *The Evolution of Accommodation: Comparing the Unequal Treatment of Religious Objections to Interracial and Same-Sex Marriages,* by James M. Oleske Jr.

57. A concluding commentary: It is worth observing that the virulent critics of the measures we took to implement the rulings of the federal courts will most likely become enthusiasts and supporters of the officials who must comply with the law if those courts roll back the rulings to which we had to quickly respond. This has already occurred with the overruling of cases like *Roe v. Wade*; and will probably arise again if and when the court reconsiders or refines its holding in the five to

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The Plea: A Book about the "Boy Murderer"

By Patricia L. Bryan

In December 2000, I was visiting Anamosa State Penitentiary in Iowa, doing research for a book, when I first heard the story of Wesley Elkins, known as the "boy murderer."

In the summer of 1889, in an isolated three-bedroom house in Clayton County, Iowa, 11-year-old Elkins was accused of killing John and Hattie Elkins, his father and stepmother. The couple was sleeping when John Elkins was shot in the head, and Hattie Elkins was beaten to death with a wooden club. The boy initially reported that an intruder had committed the crime. Three days after the murders, however, he admitted that he had killed his parents, and a lengthy statement attributed to him was printed in the newspapers. Wesley was arrested and indicted for first-degree murder. The case was widely publicized, and people in his community labeled him a born murderer, a child whose appearance masked an uncontrollable criminal nature. On the advice of his lawyer, Wesley pled guilty, and the judge sentenced him to life at hard labor at the state penitentiary.

I saw the handwritten convict register for January 14, 1890, the day Wesley entered the penitentiary. It records his age (11), occupation ("farmer"), social status ("single"), and mental culture ("poor"). At 11 years old, the boy weighed 76 pounds, stood 4 feet 7 inches tall, and wore a size 4 boot.

His story did not end at Anamosa. Wesley Elkins, nearly illiterate when he arrived, spent hours in the prison library, educating himself and reading widely. At the age of 17, he began to fight for his release from prison. Encouraged by prison officials and others, he wrote eloquent letters appealing for freedom, and they were published throughout the state. He won the support of politicians, educators, and social reformers.

State law required the legislature to approve pardons, and the debate about Wesley took place in 1902. Opponents spoke passionately against his release, warning that he would undoubtedly kill again and that, as a free man, he could reproduce offspring that would inherit his criminal instinct. But his supporters were fervent in his defense, explaining that the harsh mistreatment and neglect he suffered in his childhood had triggered his impulsive acts. His dramatic transformation in prison, they said, proved the possibility of rehabilitation.

The bitter debate on the statehouse floor lasted for days, and the vote was close, with a bare majority favoring parole. In April 1902, after more than 12 years behind bars, Wesley Elkins, then 24 years old, left the penitentiary. Ten years later, the governor of Iowa granted him a full and unconditional pardon.

I was intrigued by the story of Wesley Elkins. My decision to investigate the case might seem out of my field of expertise. Since 1982 I've been teaching tax courses and a law and literature seminar at UNC School of Law. But the murder of John and Hattie Elkins would not be the first century-old crime in Iowa that I would look into. In 2005, my husband, Tom Wolf, and I wrote a book, published by Algonquin, about another case from more than 100 years ago: *Midnight Assassin: A Murder in America's Heartland*. The book told the story of Margaret Hossack, an Iowa farm wife convicted of killing her abusive husband in 1900. I found out about Margaret Hossack because of my law and literature seminar. I always assigned the classic short story, *A Jury of Her Peers*, and I discovered that its author, Susan Glaspell, was a reporter on that case. Margaret Hossack had spent two years at the Anamosa penitentiary in the Female Department, and she was released in the same year as Wesley Elkins. I was visiting Anamosa in 2000 in connection with my research into Margaret Hossack, so it was she who led me to the story of Wesley Elkins.

I'm not a criminal lawyer, but, as I began to research Wesley's story, I wondered how a child could be convicted of first-degree murder, requiring criminal intent and premeditation. Although the confession printed in the newspaper left no doubt that Wesley satisfied those elements, it didn't read like the voice of an uneducated child, and I questioned the circumstances of that confession.

Local newspapers printed the confession as proof of Wesley's guilt, but they didn't describe how it had been obtained, or how Wesley was defended. Documents buried at the Iowa State Historical Society yielded more information. I found a trove of handwritten materials in the archives there, including transcripts from the inquest and the grand jury. There were signed statements submitted by lawyers and witnesses after Wesley was convicted, as well as statements from prison wardens. Memoranda

and letters to and from Wesley and others helped to fill in the gaps. Eventually I was able to put together a narrative of what had happened to Wesley.

We tell the full story of Wesley Elkins, from the time of the murders in 1889 until his death in 1961, in our book published by the University of Iowa Press in 2022: *The Plea: The True Story of Young Wesley Elkins and His Fight for Redemption*. In this brief article, I want to focus on a few months covering Wesley's confession and his interactions with the lawyers.

John and Hattie Elkins were murdered just before sunrise on July 17, 1889. Wesley had lived with them since he was nine, when he showed up unexpectedly after his mother's death in Waterloo. Neighbors of the Elkins understood that the couple had not welcomed Wesley, who was taken out of school and put to work tending fires at a sawmill. In the evenings, he was isolated from others his age and kept home to do chores. He wasn't seen much by others, and there was talk in the neighborhood that Wesley was physically abused by his parents.

In the early morning of July 17, Wesley was seen driving a buggy by a neighbor's farm. When the neighbor stopped him, Wesley reported that his parents had been killed. He said he was sleeping in the barn when he was awoken by a gunshot. When he went in the house, he found the dead bodies on his parents' bed. He claimed that an intruder had committed the crimes.

Authorities were called to the Elkins' house, and a doctor examined the dead bodies. The sheriff concluded that John Elkins' gun, which had been replaced on a hook on the wall, had been used to shoot the man. A heavy wooden club was found in the bushes, and the doctor concluded that Hattie had been killed by that weapon; its dimensions exactly fit the contours of her wounds.

Less than 24 hours after the murders were discovered, the coroner convened an inquest. Wesley was the first witness, and he told the same story he had reported to the neighbor and later to the sheriff: he heard a gunshot, entered the house, and discovered that his parents were dead. He believed that an intruder had murdered them. As the inquest jury knew, however, there was no evidence of an outsider; nothing was taken from the house, and the murder weapons were found on the property.

The inquest jury questioned ten neighbors, but none of them could shed light on what had happened. They did, however, have some information to share about Wesley. A few weeks before the murders, Wesley had tried unsuccessfully to run away, begging a neighbor to help him escape. When the neighbor wouldn't agree, Wesley stayed at his house for several hours until his father found him and angrily took him home. The jury listened as others reported their suspicions that Wesley was badly mistreated by his father. Neighbors who were not questioned by the jury later admitted that they knew that Wesley was threatened and abused at home.

The verdict from the inquest jury stated only the manner of deaths. But one jury member noted inconsistencies in Wesley's story and told others that he believed the boy was guilty. And yet it was difficult to believe that such a small child had committed these violent crimes. The sheriff was reluctant to arrest Wesley without more evidence. The governor offered a $500 reward to the person who could identify and deliver the guilty party to the authorities.

James Corlett, a lawyer and the sheriff's friend, was eager to collect the reward. After several private conversations with Wesley, Corlett told the sheriff that he was convinced that Wesley was guilty. If he could take Wesley alone in his buggy, he promised he could return with a confession. The sheriff, eager to close the case, agreed to the plan.

Corlett later described what happened during that buggy ride. He had driven to the site of a public hanging, which he had witnessed several months earlier. He described what he had seen: the gallows, the black hood fitted around the man's head, and the release of the trap door sending the man to his death. If Wesley continued to lie, Corlett said, he would meet the same fate. According to Corlett, it was then that Wesley admitted that he had killed his parents.

Corlett was in a hurry to fulfill the terms of the reward; he wanted to deliver Wesley to the authorities and have him arrested. It seems most likely that Corlett had already written and brought with him a short statement—maybe one or two sentences—for Wesley to sign. Perhaps he asked Wesley to confirm that he had acted alone. Maybe Wesley volunteered some details, or responded to leading questions from Corlett. But all Corlett needed at this point was Wesley's signature on a document admitting that he had committed the crimes. Once he had that, Corlett drove back to the courthouse. A magistrate signed the arrest warrant, and the sheriff escorted Wesley to the county jail where he would spend the next six months.

Corlett was quick to publicize that he had a confession from Wesley, and he released a lengthy statement to the newspapers. The statement was chronological and methodical, composed in complete and grammatical sentences with specific details. Most important to the authorities, the statement contradicted the story Wesley initially told.

According to the statement, Wesley admitted that he carefully planned the murders. He found the club three days before he killed his parents and placed it on a chair in his room. On the night of the murders, he waited until his parents were asleep, took the gun down from the hook on the wall, crept into their room and shot his father in the head. He ran back for the club, and when he returned, he found his mother bending down to light a lamp. Wesley struck her from behind and then continued hitting her until he was sure that she was dead. He heard his father groan, and so he hit him too. He tried to clean the gun, replaced it on the wall, and threw the club under the bushes. He drove to the neighbor's house and reported that his parents had been killed by an intruder.

Members of the community were stunned by the vivid depiction of the crimes. The only way they could explain it was to label Wesley as an aberration. He was, they claimed, forever cursed with an evil disposition, immoral and depraved from the day he was born.

Wesley would never deny that he had killed his parents, and he must have admitted that to Corlett in the buggy. Yet it's difficult to believe that the statement produced by Corlett came from a young and uneducated boy. Was it possible that an 11-year-old child, alone with an adult who had threatened him with death, could have launched into a five-minute monologue for Corlett to transcribe? It would have been easy for Corlett to reconstruct what he imagined Wesley had done. Corlett was well-versed in criminal law, and he knew the elements required for a conviction of first degree murder, including premeditation and an understanding of the consequences. In fact, Corlett later admitted to the grand

jury that he had not transcribed what the boy said in the buggy. He had written the confession later to represent the substance of Wesley's crime.

Wesley was kept isolated in a cell in the county jail while his fate was decided. His aunt wrote to ask to visit him, but her request was denied. The lawyer originally assigned to represent Wesley resigned, stating that he was too repulsed by the crime to continue. A young and inexperienced lawyer, 22-year-old James Crosby, was persuaded to take the case.

In October, the county prosecutor, Robert Quigley, convened a grand jury. Witnesses repeated their inquest testimony, and Corlett read aloud the statement he had prepared for the newspapers. It didn't take long for the grand jury to indict Wesley for first-degree murder.

Crosby, the defense lawyer, met with Quigley to discuss sentencing. Quigley was convinced that Wesley was guilty of first-degree murder and deserved to be put to death. He suspected, however, that no judge would send such a young boy to be executed. When Quigley recommended life in prison, the second most extreme punishment, Crosby did not disagree.

Crosby visited Wesley in his jail cell and told him that he had to plead guilty to first-degree murder to avoid a public hanging. In later years, Wesley couldn't remember that conversation. It was all, he said, "a jumble of confusion."

When Wesley appeared in court for the last time, he recited the words he had been told to say. The judge asked Wesley a few routine questions and told Corlett to read aloud the confession printed in the newspapers. The judge then announced his decision: 11-year-old Wesley was sentenced to life at hard labor at the Anamosa State Penitentiary, a maximum-security institution that housed the state's most dangerous criminals.

Eight years later, Crosby gave an interview that was reported in the newspapers. He said he had been convinced from the beginning that his client had "no moral conscience." He never doubted that Wesley had murder in his heart and would engage in his "murderous propensity at the least provocation."

Wesley arrived at the state penitentiary in January 1890 during a time of significant transformation of penal philosophies. Many social scientists were rejecting the view that congenital brain defects caused individuals to be born degenerates. Instead, progressive criminologists were focusing on environmental causes of crime. Prisons, including Anamosa, were now offering programs to encourage rehabilitation: education, vocational training, spiritual instruction, and incentives for good conduct. Reformers had a special interest in children who had suffered from poverty, neglect, and maltreatment at an early stage of development. Children, they argued, offered the greatest promise of full rehabilitation.

Marquis Barr, the head warden at Anamosa, was stunned when he first saw Wesley Elkins. The boy was slight and immature, and he seemed fearful and nervous. Barr asked him about the crime, and Wesley confided that he had been harshly abused by his father and stepmother, physically punished for slight transgressions. After many conversations with Wesley, Barr concluded that he had acted impulsively and that even months after the murders, Wesley did not grasp the enormity of what he had done. Barr was convinced that Wesley could benefit from the education and adult guidance he had so sorely lacked.

Fearing for the boy's safety, Barr initially kept Wesley under his close supervision. But then—in a decision that would change Wesley's life—the warden assigned Wesley to the prison library which housed more than 3,000 books. Encouraged by prison officials, Wesley proved to be a serious student, dedicating himself to his education. He read widely, favoring classic works of literature, history, and philosophy. Prison administrators were impressed by his determination and intelligence, just as his supporters would be in later years.

There were law books in the library, and, in the fall of 1892, 14-year-old Wesley read an opinion from the Iowa Supreme Court case dated 1879: *State vs Fowler* (52 Iowa 103). The opinion cited a well-established common-law rule that a child between the ages of seven and 14 must be assumed to be innocent of a crime. Under the law, a child could be convicted only if the state proves by convincing evidence that the defendant had sufficient capacity to comprehend what he had done. Without such proof, the child must be acquitted.

After reading the court's decision, Wesley was convinced that his lawyer had not raised what was called the "infancy defense." He understood that the lawyers and the judge had accepted the statement produced by Corlett as definitive proof of criminal intent.

Wesley's story differed from the one recounted in that statement. Soon after arriving at Anamosa, he confided to the warden about the cruel treatment he had suffered at his father's hands. Many nights, he said, he had lain in bed, comforting himself by imagining how he could escape. He had tried to run away from his parents, but the neighbors would not help him. On the night of the murders, he couldn't lie down; he had been hurt by a severe beating, and his head was aching. He must have lost control when he saw the gun on the wall and acted impulsively. He would regret and deplore what he had done for the rest of his life.

After reading the opinion from the Iowa Supreme Court, Wesley was convinced that he had not been properly defended. He went directly to the warden and asked to consult a lawyer. That request was ignored, but Elkins would not forget the suggestion that his fate was unjust.

It was then that Wesley decided to fight for his release. He wrote to a prominent journalist, Carl Snyder, who had published editorials excoriating the legal system for convicting Wesley of first-degree murder. That result, according to Snyder, was "barbarous, brutal, a blunder, a crime." At Snyder's urging, Wesley wrote to the governor asking for a pardon. Snyder also wrote a personal letter to the governor, insisting that "no sane man will hold that a child of 11 years old is morally responsible for such a deed as this boy committed."

Wesley applied for pardon the first time in 1895, when he was 17. When his application was publicized, it triggered vehement protests, and the application was quietly rejected by the appropriate committee for want of sufficient evidence.

Wesley applied three more times during the next eight years. He was his own best advocate, stressing that he had committed the crime before he reached the "age of reason." Legislators came to visit him in his prison cell, and they left impressed with his intelligence and maturity. Respected statesmen and educators lobbied for his release, focusing on the sad circumstances of his childhood that caused him to act impulsively. Social scientists declared that his dramatic transformation in prison justified the promise that moral consciousness was not inborn but could be developed with education and proper guid-

ance. A college professor agreed to supervise Wesley if he were freed.

Each time, opponents were vocal and strongly opposed the pardon. They repeated their arguments that Wesley was malevolent, immoral, and a danger to society. Inborn criminality, they insisted, could not be cultivated out of a person.

There is, of course, much more to the story, and in *The Plea*,we describe the emotional debate on the statehouse floor that was widely publicized throughout the state. Finally, on his fourth attempt and thanks to the tireless efforts of his supporters, Wesley was successful. He was 24 when he walked out of prison in 1902, after spending 12 years behind bars.

Wesley was required to write a letter to the governor every month for the ten years before he was pardoned. These letters had been sealed in the archives of the State Historical Society of Iowa, but I was fortunate to be the first person to gain access to these important documents. Together with census records, I was able to gather information about Wesley's life after he was released.

We tell much of this part of the story in Wesley's own words. Starting in 1902, he went to college preparatory classes in Iowa, and then moved to Minnesota where he attended classes, excelled in school, and worked as an accountant for the Northern Pacific Railroad. He contacted relatives, bought a house, and supported himself and an extended family. He always worried that people would find out about his past. After he was pardoned in 1912, he traveled to Hawaii. At the age of 42 he married, and the couple stayed together for the next 37 years. They never had children. According to a short obituary, Wesley was working as a chicken farmer when he died in 1961 at the age of 82. As he would have wished, the obituary says nothing about his early life, the acts he committed as a child, the years he spent in prison, or the public debate that ended with his freedom. ■

After teaching tax courses and a seminar in law and literature for 40 years, Patricia L. Bryan is now professor emeritus at the University of North Carolina School of Law at Chapel Hill. Bryan is the co-author (with Thomas Wolf) of The Plea: The Story of Young Wesley Elkins and His Fight for Redemption *(U. of Iowa Press 2022), which was named the winner of the 2023 Midwest Book Award in the category of Regional History. Bryan and Wolf are also the co-authors of* Midnight Assassin: A Murder in America's Heartland *(Algonquin 2005; U. of Iowa Press paperback 2007), which tells the story of Margaret Hossack, an Iowa farm wife who was accused of killing her husband and whose 1901 murder trial was the inspiration for Susan Glaspell's short story "A Jury of Her Peers."*

Celebrating the Lives and Contributions of Four NC State Bar Presidents

By Alice Neece Mine

Since Fall 2023, four past-presidents of the North Carolina State Bar have passed away. Robert "Bobby" Robinson, the 59th president, served from 1993 to 1994; Fred Moody, the 61st president, served from 1995 to 1996; Dudley Humphrey, the 69th president, served from 2003 to 2004; and Steve Michael, the 72nd president, served from 2006 to 2007. These four remarkable gentlemen were great lawyer-leaders who helped guide the State Bar through difficult times and the daily challenges of professional regulation. In addition to their leadership, they provided over 50 years of combined service on the State Bar Council (each served three consecutive three-year terms) and as State Bar officers (a four-year commitment). As a staff member who served under each of these presidents, I am deeply saddened by the loss of the history, institutional knowledge, and wisdom each man embodied. However, I am grateful for the roles they played in maintaining the integrity of the legal profession in North Carolina. On a personal level, I am thankful for the friendships I developed and maintained with Bobby, Fred, Dudley, and Steve over the years. They were all generous in their encouragement and support, especially when I was a young staff member; insightful in their approaches to leadership; and fully dedicated to the mission of regulating the profession in the public's best interest.

If you served with them on the council, admired their leadership, enjoyed their friendship, or simply appreciate their selfless dedication to our profession and its values, please consider joining me in honoring and remembering Bobby, Fred, Dudley, and Steve with a donation to the North Carolina State Bar Foundation. The foundation, formed in 2011 as an independent 501(c)(3) corporation, was established to support the construction of the State Bar's headquarters building in downtown Raleigh. Its purpose is to provide long-term financial support for the North Carolina State Bar in its mission to regulate the practice of law in the public interest. Gifts to the foundation will support ongoing programs of the State Bar and new initiatives, and they are an effective way to express support for the State Bar and its leadership, both past and present. You can learn more about the foundation and how to donate at ncbar.gov/about-us/north-carolina-state-bar-foundation. Any gift to the foundation in memory of these four remarkable past-presidents will be greatly appreciated by their families and by the State Bar.

59th President Robert "Bobby" J. Robinson (November 7, 1936-April 27, 2024)

Bobby Robinson joined the State Bar Council in 1984 as the councilor for what was then the 28th (now 40th) Judicial District Bar, representing the lawyers in his beloved hometown of Asheville and surrounding Buncombe County. His legal career was exemplary, starting with a clerkship with US Federal District Court Judge Wilson Warlick of the Western District of North Carolina, and culminating in his retirement in 2020 after 56 years as an associate, partner, stockholder, and president of the Asheville firm of Patla, Straus, Robinson & Moore.

During his presidency of the State Bar in 1994, Bobby had his greatest impact on the regulation of the profession by spearheading the transition of the Positive Action for Lawyers Committee (PALS) from an all-volunteer, 12-step program largely focused on helping lawyers struggling with alcoholism, to the officially staffed department now known as the Lawyer Assistance Program (LAP). As explained on its website, the LAP "provides free, confidential, non-disciplinary assistance to lawyers, judges, and law students in addressing mental health issues, including problems with drugs or alcohol, and other life stresses which impair or may impair an attorney's ability to effectively practice law. NC LAP assistance is designed to promote recovery, protect the public, prevent disciplinary problems for lawyers, and strengthen the profession." Since becoming an essential program of the State Bar, the LAP has helped thousands of North Carolina lawyers recover. We are grateful to Bobby for his foresight in establishing a program that continues to benefit all members of the Bar.

61st President Fred Henry Moody (August 21, 1948-September 12, 2023)

Fred Moody, a native of the North Carolina mountains, began his law practice in Bryson City in 1972. He continued practicing in Bryson City as a trial lawyer for 51 years until his death. Fred loved to try cases before a jury and, as the keynote speaker at the State Bar's 50-Year Lawyers Luncheon in 2022, regaled the audience with stories from his years of practicing "small town law." Although his audience was in stitches from his perfectly timed delivery, it was clear that Fred was a consummate trial lawyer and never anyone's fool.

Fred was elected by his colleagues in the 30th (now 40th) Judicial District Bar to represent them on the State Bar Council in 1983. After serving three consecutive terms on the council and two years as an officer, he became State Bar president in 1995. During his presidency, and from his perspective as a former chair of the Grievance Committee, Fred played an instrumental role in reviewing and improving the procedures of the Grievance Committee.

69th President G. Dudley Humphrey Jr. (December 22, 1933-November 11, 2023)

Dudley Humphrey grew up in the Wilmington area. After law school, where he was a member of the *Law Review* and the Order of the Coif, he moved to Winston-Salem in 1961 to take an associate position with Hudson Ferrell Petree Stockton & Stockton. He was the firm's ninth lawyer. Over time, Petree Stockton became Kilpatrick Townsend & Stockton, an international law firm with over 600 lawyers, and Dudley remained a partner with the firm for over 50 years.

Dudley's relationship with the State Bar began with service on the Disciplinary Hearing Commission, the independent administrative court that adjudicates disciplinary actions against lawyers. Service on the commission piqued his curiosity about the State Bar, and in 1991 he ran for councilor for the 21st (now 31st) Judicial District Bar. In 2004, while president of the State Bar, he provided crucial leadership during a controversy over the State Bar's disciplinary process, which questioned whether the process was equally rigorous when investigating and disciplining prosecutors compared to defense lawyers. Dudley fearlessly met the challenges of engaging both the prosecuting and defense bars in an examination of the disciplinary process and used transparency and candor to seek a resolution that was fair to all lawyers subject to investigation for allegations of misconduct.

72nd President Steven Michael (January 23, 1949-June 10, 2024)

Steve Michael grew up in Winston-Salem. Although he earned his BS degree from East Carolina University, he went on to receive his JD from the UNC School of Law in Chapel Hill, becoming a diehard Tar Heel fan. After a brief stint in private practice in Raleigh, Steve worked as an assistant district attorney in the Wake County DA's Office from 1977 to 1980.

Recognizing the advantages of living near the beach, Steve practiced in Manteo before moving to Kitty Hawk in 1985, where he joined Sharp Michael Outten & Graham. He served as resident superior court judge for the First District from 1991 to 1992 before returning to private practice with his Kitty Hawk firm until his retirement in 2016. Steve took special pride in representing the local Department of Social Services, helping to protect children from abuse.

Steve became the State Bar councilor for the 1st Judicial District Bar in 1996 and served three consecutive terms before being elected an officer. He became State Bar president in 2006. During his presidency, the State Bar brought disciplinary charges against the Durham County district attorney for misconduct associated with what came to be known as the *Duke Lacrosse Case*. It was a highly publicized disciplinary proceeding, and the integrity of the State Bar's disciplinary process was on the line. President Michael was present at every moment of the Disciplinary Hearing Commission's proceedings, offering his full support for the State Bar's Office of Counsel and reinforcing his faith in the Bar's mission to protect the public and maintain the integrity of the profession. ■

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

Grievance Committee and DHC Actions

NOTE: More than 32,500 people are licensed to practice law in North Carolina. Some share the same or similar names. All public orders of discipline are available on the State Bar's website.

Disbarments

Jonathan Metcalf of Charlotte neglected two clients, misappropriated client funds, and did not respond to the Grievance Committee. Metcalf surrendered his law license and the DHC entered an order of disbarment.

Suspensions & Stayed Suspensions

Derek Fletcher of Charlotte neglected and failed to communicate with several clients, charged a clearly excessive fee, and did not refund an unearned fee. The DHC entered a consent order suspending Fletcher's law license for five years, with the opportunity to petition for a stay of the suspension after one year if he complies with conditions.

Richard Batts of Rocky Mount failed to conduct required trust account reconciliations and reviews, failed to maintain accurate client ledgers, failed to deposit entrusted funds into his trust account, failed to promptly transfer entrusted funds received via PayPal to the trust account, failed to make transfers from PayPal to the trust account in a manner that identified the clients whose funds were being deposited and in what amounts, and improperly disbursed funds from the trust account. The DHC imposed a one-year stayed suspension, which Batts has appealed.

Completed Grievance Noncompliance Actions before the DHC

Erin J. Phillips of Cashiers failed to comply with grievance investigations and failed to show good cause for her noncompliance. The DHC entered an order suspending Phillips' license until she demonstrates that she has complied with the investigations.

Andrew Chafin of Asheboro failed to comply with grievance investigations and failed to show good cause for his noncompliance. The DHC entered an order suspending Chafin's license until he demonstrates that he has complied with the investigations.

Steven Wright of Wilmington failed to comply with grievance investigations and failed to show good cause for his noncompliance. The DHC entered an order suspending Wright's license until he demonstrates that he has complied with the investigations.

Interim Suspensions

R. Scott Lindsay of Murphy was convicted of 12 counts of felony obstruction of justice and two counts of misdemeanor obstruction of justice. The DHC entered an order of interim suspension of Lindsay's license.

Reprimands

Taylor Beamon of Huntersville was reprimanded by the Grievance Committee for undertaking a representation he was not competent to handle, failing to diligently pursue a client's case, and failing to fully respond to the State Bar's requests for information.

Francis Collins, formerly of Linden, was reprimanded by the Grievance Committee for creating a conflict of interest by engaging in unacceptable and unprofessional romantic and sexually charged communications with his client.

Jillian Hishaw of Charlotte was reprimanded by the Grievance Committee for filing a frivolous appeal and for engaging in conduct that was prejudicial to the administration of justice by failing to investigate her client's prior abuse of the court process and failing to review an existing decision of the court concerning proper venue.

Laura Niedosik of West Jefferson failed to verify wiring instructions for a real estate transaction (and/or failed to properly supervise her paralegal in doing so), resulting in entrusted funds being fraudulently wired. The DHC entered a consent order of discipline reprimanding Niedosik.

Completed Petitions for Reinstatement/Stay – Uncontested

In 2019, the DHC imposed a two-year suspension, stayed for two years, based on **Brooke Webster's** criminal conviction for secret peeping. In 2020, the suspension was activated for noncompliance with conditions of the stay. Webster was eligible for reinstatement in December 2022, but did not file a petition until 2024. The Office of Counsel did not object to the petition and the DHC entered an order reinstating Webster's license.

Completed Petitions for Reinstatement/Stay – Contested

Fletcher L. Hartsel Jr. of Concord surrendered his law license and was disbarred by the council in October 2018 due to state and federal convictions for fraud in his solicitation, use, and tax reporting of campaign contributions. After a July 2024 hearing, the DHC recommended that Hartsell be reinstated. Hartsell's petition will come before the council for consideration after the settled record is transmitted to the secretary of the State Bar.

Transfers to Disability Inactive Status

James F. Morgan of High Point was transferred to disability inactive status by consent this quarter. ■

Arc of the Moral Universe (cont.)

four same sex marriage decision. Free speech and robust criticism comprise effective checks and balances to the judiciary. Indeed, the criticism from our own general assembly (which controls our courts funding) caused a review and honing of our decisions in the matter. The problem comes when political or even religious zealotry begin to seek to undermine and frustrate bedrock principles set out in our Constitution and enshrined in our oaths. Our north star for the obligations of our judicial officials, who are among our most influential public servants, is summarized in Article 1 Section 18 of the North Carolina Constitution: "Right and Justice shall be administered without favor, denial, or delay." Personal prejudices and biases must yield to the rule of law, or we are adrift indeed. (*See* James Madison, Federalist #10, 1787.)

Elizabeth Edwards, Board Certified Specialist in Immigration Law

By Denise Mullen, Managing Director, Board of Legal Specialization

I recently had an opportunity to talk with Elizabeth Edwards, a board-certified specialist in immigration law. Edwards works at the Aziz Law Firm in Charlotte, focusing on assisting clients with both immigration and nationality needs. Edwards became interested in immigration law after working on an immigration case during a law school class and has focused her practice on immigration issues ever since, becoming a board-certified specialist in 2000.

Q: Tell us about yourself—college, law school, early career, etc.

I attended Wake Forest University for my undergraduate degree and UNC School of Law for law school. Oddly enough, I hold the same position now that I did when I graduated from law school, so I have been practicing immigration law for 29 years.

Q: What led you to become a lawyer?

Becoming a lawyer was honestly a family affair. My grandfather was a lawyer, and my father was a lawyer, so I grew up attending bar association meetings at the beach and CLEs wherever Dad was speaking. Despite his advice that I probably really didn't want to go to law school, I went anyway and enjoyed much of it—not all, but a lot. Early on, I knew I leaned toward administrative law; whether that would be tax, immigration, or environmental law was unclear at first.

Q: So, what helped you settle on immigration?

Two things—one practical and one more emotional. The practical aspect was that when I got to law school and started taking all my tax classes—which I had originally preferred—it became clear that to practice tax law at a high level, you had to continue your education after earning your JD and pursue an LL.M. in tax. I did not, however, want to proceed with more schooling at that time.

I had taken an immigration law class in law school and enjoyed it. During that class, we had the opportunity to work with an immigration attorney on one of their cases, which I found very interesting. I was a history major in college, and while working on an asylum case, I realized that it allowed me to use my interest in history to conduct research and formulate arguments. I really enjoyed it.

The immigration attorney I worked with was Cynthia Aziz. We got along very well, and I appreciated the case she assigned to me. Working with a client while still in law school. was a valuable experience that helped me settle on a career path.

Q: What made you pursue board certification in immigration law?

I was encouraged to pursue board certification by other attorneys, some of whom had written the exam and others who had passed it during the first couple of years the immigration exam it was given. In my job, I was fortunate to engage in a wide variety of immigration work, covering almost every aspect of immigration law practice. My exposure to different issues in immigration law made preparing for the test seem manageable.

Q: Can you share a success story that means a lot to you within your immigration practice?

One of the most memorable cases for me involved a gentleman who came to me desperate because he had entered the United States on a specific visa that allowed him to open his own business. He was successful and needed to extend his visa, but he had received bad advice. Despite talking to many people and trying various approaches, none were correct for obtaining the extension. By the time I spoke with him, he was out of status. If he left the US to try to fix it, there was a chance he could be barred from returning, creating a real mess.

We were able to appeal to the government, presenting all the documentation of his efforts and how he had received incorrect guidance. Ultimately, we restored his

non-immigrant status, allowing him to continue operating his business, which remains successful today. I was very happy to handle that case through to a successful resolution.

Q: What's the most challenging aspect of working in immigration law?

Our work depends greatly on who is leading the government. Every time there is a change in administration, so too do the immigration policies. This can be incredibly challenging because we might take on a case, feel confident about our strategy, and then, just as we are ready to file, a new policy or provision emerges that complicates or even negates our clients' chances.

Another challenge is that when the government—regardless of which party—issues an executive order or new policy, someone on the other side will inevitably file a lawsuit and it's going to be enjoined or there's going to be a stay, halting the execution, of the law or policy. One court might make a decision, and just a week later, a higher court may issue a contradictory ruling, rendering our prior work irrelevant or put on hold. The constant changes and inconsistencies present significant challenges.

Q: What do you find most enjoyable about your work?

I have always enjoyed hearing about different cultures, holidays, and family traditions. Learning about the countries people come from, and understanding their reasons for being here—whether positive or negative—has been fascinating and educational.

Q: What aspects of being a lawyer fit you well?

In some respects, the detailed and nuanced nature of regulations and statutes, as frustrating as it can be at times, feels like a giant puzzle. Learning where the pieces fit and successfully putting them together provides a real sense of accomplishment.

Q: Who do you consider to be a role model or mentor, and why?

My father, Mark B. Edwards, who was an tax and estate attorney, has been a significant role model in understanding how to balance family life with a legal career. I observed how hard he worked, yet he would prioritize family whenever necessary. From an immigration perspective, Cynthia taught me a great deal—essentially everything. Additionally, several other members of the immigration bar in North Carolina have been incredibly supportive, and I can still call on them for advice or assistance.

Q: What advice do you wish you had received when starting out?

This may sound unusual, but I firmly believe that everyone who attends law school should be required to take a psychology class. While it's crucial to understand the law, regulations, and the facts of your case, it's equally important to comprehend people's backgrounds and perspectives to explain things effectively. This includes both clients and coworkers. Dealing with people in a calm and productive manner is somewhat scarce these days.

Q: Are there any volunteer organizations or groups, related to your work or outside of it, that you enjoy?

In the realm of immigration, I've done various volunteer jobs. I've spoken at various CLEs. I've done citizenship classes and participated in community discussions. Outside of immigration, I am passionate about music. I have sung in my church choir for over a decade and also played hand bells, which I greatly enjoy, fostering camaraderie with other members of the group.

I also love to travel and take every opportunity to explore locally, all over the U.S., as well as internationally. I am trying to see as much of the world as I can. Traveling allows me to indulge my interest in history, and in some respects, it also assists my legal practice by providing additional points of connection with my clients. ■

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The Forward-Thinking Mind of Alice Mine

By Laura Mahr

It is a rare individual who dedicates the majority of their career to leading a State Bar. After 31 years of wholehearted service to the legal profession in North Carolina, Alice Mine will step down from her role as executive director of the North Carolina State Bar on December 31, 2024. Her retirement marks the end of a remarkable chapter in the Bar's history, during which Alice played a pivotal role in championing attorney well-being initiatives.

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Under her encouragement and leadership, the North Carolina State Bar embraced a holistic approach to supporting attorneys, recognizing the importance of mental health, resilience, and overall well-being. Her efforts have helped to transform the culture of the profession in the state and also set an example for the legal community nationwide. Last fall, I had the joy of talking with Alice to capture some of her reflections about her career and her decision to retire at the end of the year.

Laura: You've been a champion for the well-being of the attorneys and judges in our Bar for over three decades. I'm curious how your own well-being is playing a role in your decision to retire?

Alice: My decision to retire was the result of a careful process of discernment. A big part of my decision was anchored in wanting to enjoy life with my husband while we have the time and energy to do so. Over the past few years, he has been battling cancer. While he's healthy now, his journey made me ask myself, "What is the best thing I can do for my family?" We're somewhere between the "go-go years" and the "no-go years," and I want to ensure that we make the most of this phase before circumstances change.

At the same time, as I reflected on my overall energy level, I realized I was heading toward professional burnout. While I wasn't putting any less time or thought into my job—I've always taken it seriously—I began to feel tired. I noticed that I was becoming more drawn to spending time in my garden or pursuing other interests. This shift in priorities made me realize that I'm ready to do something different with my life. I knew that I didn't want to reach a point where I was burned out and unable to give my best to the Bar or to myself. I realized that I want to be fully present for my family and for the life I want to live beyond my career. Retirement feels like the right step to ensure that I can do that.

Laura: I'm curious how you foresee your relationship with your physical, mental, emotional, and spiritual health changing as you move into retirement?

Alice: That's a big question mark for me right now; it's something I've been thinking a lot about as I move into this next phase of life. I think there's a real need to prepare for retirement, otherwise it can feel like falling off a cliff. Without some preparation, it's easy to get lost once the structure of work is gone. I've been reading a book called *The Inner Work of Age* by Connie Zweig, which talks about the transition from "role" to "soul" as we age. Zweig, now in her 70s, discusses how much of our identity is tied to the roles we play—whether that's being a lawyer, educator, or leader. For me, it's been my role as a lawyer and an executive. The inner work of aging, though, is about releasing those roles and discovering who you are on a deeper, spiritual level. It's about embracing the idea of being an elder, and stepping into a role where you guide the next generation, sharing your experience and wisdom. That's the direction I foresee myself moving in emotionally, spiritually, and mentally.

Physically, I have a more practical goal—I'd really like to get back to the gym! After years of a busy schedule, I'm hoping to have the time and space to focus more on my physical health and get into a consistent routine again. It's something I've missed and look forward to in retirement.

Laura: Looking back, what are some of the reasons that you believe that the North Carolina State Bar is on the front edge of attorney, judicial, and law school student well-being?

Alice: One of the key reasons North Carolina's Bar is at the forefront of well-being leadership is the open-minded and forward-thinking approach we've taken toward wellness over time as an organization. The Bar has adopted a "problem-solving mindset" that has allowed us to support innovative ideas around well-being. For example, leaders like former State Bar President Cressie Thigpen set a strong precedent by acknowledging that well-being is not just a side issue, but an essential part of the Bar's responsibility to its members. This leadership laid the foundation for well-being to become a core priority in our work as demonstrated by the mental health CLE requirement (now called the "professional well-being" or PWB CLE hour) adopted during Cressie's presidency over 25 years ago.

Another critical area where we've seen this leadership in action is within the North Carolina State Bar Grievance Committee. When the committee reviews allegations of lawyer misconduct, it's often clear that there's a mental health component involved in many of the cases. Rather than just focusing on punitive measures, the committee has taken an open-minded approach, recognizing the relationship between well-being and misconduct. This has been pivotal in reframing how we support lawyers who are struggling. It highlights the Bar's understanding of the importance of addressing mental health issues as a core tenant in maintaining professional competency.

A more recent example is the adoption of rules by the State Bar Council at its November 1, 2024, meeting that, if approved by the Supreme Court, will create within the grievance process a self-directed deferral program. This process will enable a lawyer accused of certain types of misconduct to obtain a deferral of a grievance if the lawyer takes an active role in finding solutions to the lawyer's ethical and professional challenges. It's a growth-mindset approach that empowers attorneys to engage with their own mental health and well-being proactively, rather than passively going through a disciplinary process. This shift demonstrates that the Bar is committed to fostering not only accountability, but also personal growth and rehabilitation for its members.

Laura: What are some of the most significant changes that you've seen in your tenure at the North Carolina State Bar around the concept of well-being in our profession?

Alice: Over the course of my tenure at the Bar, I've seen a significant evolution in how we approach well-being within the legal profession. Initially, the focus was primarily on addressing alcoholism through the creation of the Positive Action for Lawyers (PALS) program, which was a volunteer 12-step initiative designed to help attorneys struggling with addiction. Over time, there was a recognition that we needed to formalize this program within the State Bar, acknowledging that issues like alcoholism directly impact an attorney's ability to practice law. In 1994, PALS (now called the Lawyer Assistance Program or LAP) became a department within the State Bar with paid staff; it was the beginning of the sustained and meaningful focus on what we now call "well-being" in the profession.

However, as time went on, it became clear that focusing solely on alcoholism was too narrow a scope. There was a growing realization that the concept of "fitness to practice law" needed to encompass more than just sobriety—it had to include mental health, addressing issues like anxiety and depression. This led to an expansion of the program to include broader mental health concerns. A critical first step was not only creating and staffing these programs, but also giving them the financial resources they needed to truly make an impact.

The next major shift came when we invited LAP volunteers to waive their anonymity and share their personal stories with the members of local district bars. This opened up a much-needed dialogue. After seeing the impact of this dialogue on Bar members, State Bar President Thigpen advocated for every lawyer in the state to be exposed to mental health and addiction issues through mandatory CLEs. His push led to a groundbreaking change when the CLE Board and the State Bar Council adopted the requirement for mental health education, ensuring that every attorney in the state receives training on these critical issues.

More recently, we've seen a proactive shift in how we approach well-being. People like myself started advocating for CLE credit not just for programs that educate on recognizing mental health and addiction issues and intervention, but also for programs that address the stress that leads to these issues for lawyers—in other words, CLE programs that focus on prevention. For example, teaching lawyers the tools to stay healthy and avoid mental health or addiction problems before they arise. The CLE Board embraced this idea wholeheartedly, and this was a sea change. Instead of waiting until attorneys were in crisis, we began to focus on cultivating well-being from the start. With the support of leaders like Robynn Moraites, the director of the LAP, we've moved toward a more holistic understanding of professional wellness. One example of this is the name change to "Professional Well-Being Credit," which puts a positive, preventative spin on the concept. It is hoped that this change in focus will help ensure that lawyers are equipped with the tools they need to maintain both personal and professional resilience.

Laura: Can you share some of the things that you personally have done that have advanced the awareness and importance of well-being for North Carolina lawyers, judges, and law school students during your tenure?

Alice: Overall, I believe my openness to the idea that well-being directly ties into competency has helped advance the awareness and importance of mental health for North Carolina lawyers, judges, and law stu-

dents. By embracing these initiatives, we've been able to expand support networks and integrate well-being into the fabric of our profession.

I've always believed in fostering new ideas and ensuring that we have the resources available to implement them. I hope this way of approaching problems has helped to advance the conversation around mental health and well-being within our profession. One of the key things I've focused on during my tenure has been maintaining an open-minded, problem-solving approach, particularly when it comes to well-being in the legal profession. For example, when people like Robynn came to me with creative ideas—such as extending well-being initiatives to law school students—I was immediately supportive.

As a leader, I've also made it a priority to connect the concept of well-being with the Bar's mandate around fitness and competency. We often talk about Rule 1.1, which is all about ensuring that attorneys are competent. From my perspective, well-being is an essential part of that competency. If an attorney isn't mentally or physically well, their ability to serve their clients and uphold their professional duties can be compromised. This belief has been a driving force behind my support for initiatives aimed at enhancing well-being. My role has been to help create an environment where these ideas can be brought to life, and where well-being is recognized as a key component of professional fitness.

Laura: Unfortunately, after we first discussed this article, Hurricane Helene wrought destruction across western North Carolina. What do you anticipate its impact will be on the mental health and well-being of attorneys in Asheville, other western communities, and across the state?

Alice: At this juncture, it is hard to say what exactly the impact will be. It will take a lot of compassion, resources, support, and understanding to help the lawyers in the affected communities rebuild their personal lives, their law practices and, equally important, their sense of security, their hope, and their well-being. The LAP is already working on resources and referrals to help lawyers in the western parts of our state. Lawyers in the rest of the state—including myself—are also experiencing grief for the loss of so much in our beloved North Carolina mountains, and there is also survivor's guilt over the reality that our professional colleagues and friends experienced so much trauma and loss while our lives went on as normal. The impact of both forms of grief and loss on the collective mental health of the members of the Bar must be carefully considered and addressed for many years to come. For those of us who were out of harm's way, I strongly recommend reaching out to our colleagues in the west to offer compassion, support, and help with rebuilding—whether actual rebuilding of offices, providing office equipment, or even legal resources when there is not a conflict. Most importantly, when a lawyer who lives or works in the disaster area is opposing counsel, we can grant that lawyer the grace of understanding, compassion, and additional time or other appropriate accommodations in the legal matter.

Laura: Looking ahead, what is your hope for the future of the emphasis on well-being and improved mental health in our field and for our Bar?

Alice: My hope for the future of well-being and mental health in our profession is that we continue to move forward and not backtrack—and this is particularly true in light of the anticipated impact of Hurricane Helene on lawyers throughout the state.

One of the silver linings of the COVID-19 pandemic was the shift in how we approach work-life balance. It gave us permission to work remotely when needed and allowed for more flexibility in organizing our work and personal lives. This adaptability has been a gift, as it enables individuals to take care of both their professional responsibilities and personal well-being in a more balanced way.

We've also made tremendous progress in taking ourselves a little less seriously and embracing a more relaxed, human approach to the practice of law. Early in my time at the State Bar, programs like PALS and then the LAP were often viewed as shameful or something to avoid. People didn't want to admit they needed help. Now, the majority of referrals to the LAP are self-referrals, which marks a huge decline in stigma around seeking support for mental health and well-being. This shift is incredibly promising.

What excites me most is seeing the newer generation of lawyers openly embracing their mental health without the fear of stigma. It's become more normalized for lawyers to prioritize their well-being, and that's a huge cultural shift that I hope continues to grow. There's a recognition that maintaining mental health is part of being a competent and effective legal professional.

If I could wave a magic wand and change one thing about our profession as it relates to well-being, it would be to ensure that every attorney, regardless of their experience or position, feels empowered to prioritize their mental health without hesitation or judgment. I want to see well-being fully integrated into how we define competency and professionalism in law, so it's not just something we talk about, but something we actively live by every day.

Laura: Alice, as you step into retirement, I want to personally thank you for your many contributions to attorney wellness in North Carolina which will undoubtedly endure. I'm grateful for your forward-thinking vision that supported the initiation of this column in 2016, and the myriad of ways that your forward-thinking mind has not only transformed how the legal profession approaches mental health and wellness, but has also paved the way for future generations of attorneys to thrive both personally and professionally. I will miss your leadership, and I wish you and your family great health and the very best life has to offer in the years to come. ■

Alice Mine was executive director and secretary-treasurer of the North Carolina State Bar from October 2018 through November 1, 2024. Before joining the State Bar in 1993 as assistant executive director and ethics counsel, she practiced law in Durham, North Carolina, for seven years, concentrating in the areas of employment law and transactions. As assistant executive director and ethics counsel, Ms. Mine was staff counsel to the State Bar Council's Ethics Committee, director of the Board of Legal Specialization, director of the Board of Continuing Legal Education, and director of the Board of Paralegal Certification. Ms. Mine was an adjunct professor at Duke University School of Law where she taught professional responsibility from 2011 to 2014.

Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being consulting, training, and resilience coaching for attorneys and law offices nationwide. Through the lens of neurobiology, Laura helps build strong leaders, happy lawyers, and effective teams. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a teacher and student of mindfulness and yoga, and eight years studying neurobiology and neuropsychology with clinical pioneers. If you are interested in learning more about Laura's CLE offerings that grow your team's confidence and build resilience, contact Laura through consciouslegalminds.com.

Hurricane Helene—A Wide Wind Field

By Robynn Moraites and Cathy Killian

In the context of hurricanes, a "wind field" refers to the spatial distribution of winds around the eye of the storm. Think of it like a "blast radius." It includes both the hurricane-force winds, which can extend from about 25 to 150 miles from the center, as well as the tropical-storm-force winds, which can reach hundreds of miles from the center. Hurricane Helene had an unusually large wind field of 345 miles. That 345-mile-wide wind field cut a path of physical destruction through our beloved western North Carolina. The emotional impact and traumatic toll indicate a much wider wind field: the entire state of North Carolina.

Certainly, as I write this column (two weeks post-Helene), hundreds of thousands of—maybe a million—people are still in the acute-emergency, disaster-recovery phase, without power, Internet, cell phone, and/or water service. Maybe by the time you read this column in the Journal (early December), most services will have been restored. Water is going to take a lot longer. Even longer than that? The emotional recovery.

Cathy Killian, our clinical director, has broad experience in disaster response, which began in the aftermath of Hurricane Hugo that decimated Charlotte in 1989. When Hugo hit Charlotte, it was devastating. The emotional impact was also devastating for many people because the extent of the damage was so unexpected. It caught everybody off guard. It was only after the fact that the powers that be could see the vulnerability of the city's infrastructure—much like they are experiencing now with Asheville's water system and the roads across the western region that have been washed away.

Cathy was assigned to a task force established after Hugo to examine Charlotte's vulnerabilities including future disaster preparedness and recovery. Much of this column's content is taken from her observations from those early post-Hugo task force years. We are also providing tips if you are supporting someone emotionally who was directly or indirectly impacted by the storm.

Tip: If you are talking to someone who was impacted by the storm and you don't know what to say or feel awkward because you have not been impacted as badly (or at all), it is perfectly okay to say, "I don't know what to say." Just listening or being with the person is enough. If you're communicating by text message, a simple, "I'm thinking about you," goes a long way to helping the person feel supported.

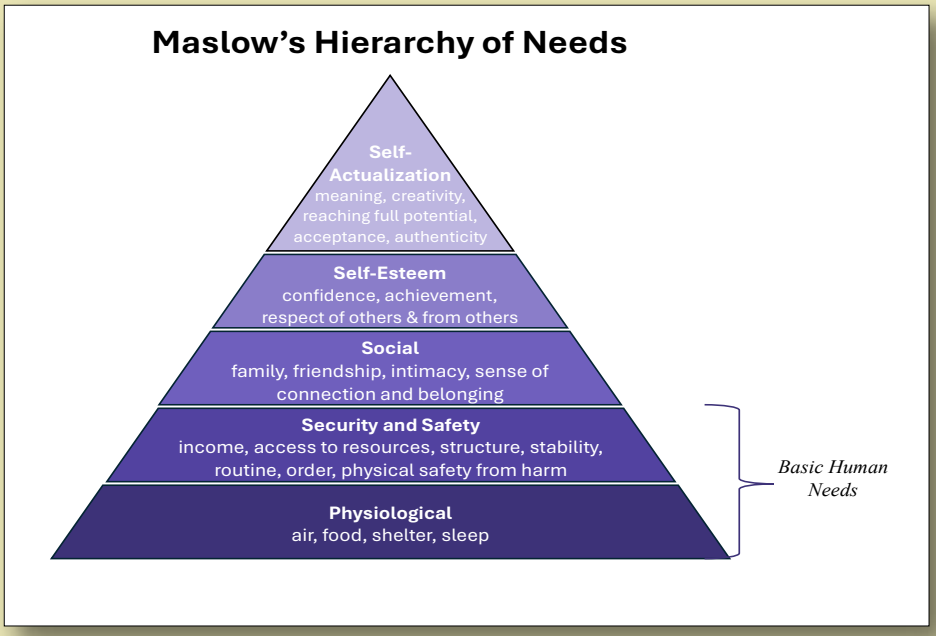
The emotional recovery from a disaster of this magnitude comes in stages and layers, and to understand it you need to know about Maslow's Hierarchy of Needs. See Figure 1 next page. Basic needs include physiological needs like food, water, and shelter as well as safety and security needs, like a source of income, structure, order, physical safety, and access to resources. Maslow posited that lower-level needs must be largely satisfied before higher-level needs can be pursued or addressed. It becomes obvious when looking at the Hierarchy of Needs that people are not worried about self-actualization and self-esteem when they don't have food, water, shelter, income, or physical safety.

In fact, people cannot begin to process the emotions that come with an event of this magnitude until they feel safe and secure enough to do so. As I write this column, and possibly as you read it, thousands of people in the western region are still in the process of re-establishing ways to fulfill these basic needs in their lives. Having some information about when their power might be restored, options for financial assistance, organizations that can provide services, etc. helps them deal with the survival emotions involved, which get activated when our safety and security are jeopardized. So, while providing information and resources is an obvious practical priority, it is an emotional priority as well that can

move impacted people in the direction of stability.

Tip: If you were directly impacted by the storm, we urge you to not make any major life decisions for at least six weeks. It takes much longer for the hyper-adrenalized, fight-or-flight response to leave our system than seems reasonable to our logical lawyer minds. When we are in a heightened fight-or-flight response, we are not thinking clearly but do not necessarily realize it. How do we know when the hyper-adrenalized response has passed? We crash with exhaustion. This is normal. Rest. Give yourself time to adjust.

Tip: Be patient with yourself and/or loved ones who were impacted by this natural disaster. Their need for security may cause them to be emotionally dysregulated, irritable, and tired. Give yourself and others time to reacclimate to their environment, needs, and emotions. Some folks may need help to even assess what they need in this early phase. They may struggle to focus and at times be unable to listen to you. It is more important that you listen to them, which may be what they need the most at that moment. Help them find essential resources, such as the information on Congressman Edwards' website (which lists the places where one can get all the basics) edwards.house.gov/services/hurricane-helene-resources. Assist them in identifying where



they can stay if they cannot stay in their home. Help them find out if others are safe and/or assist them in notifying others that they are safe. Remaining calm yourself and helping them to stay calm is essential.

Once the initial shock wears off and folks are safe—which could take weeks or even months in the hardest hit areas—the personal impact begins to set in, whether it's the complete loss of everything or just a loss of minor things. To the outside observer, reactions to catastrophic loss make sense, whereas the reactions from someone who is seemingly spared or minimally impacted may not. Relatively minor losses can bring a sense of relief and gratitude, but the realization that it could have been everything makes it almost as difficult to initially process as if they had lost it all.

Tip: If you are supporting someone in this early phase, do not minimize their losses or try to change their perspective. Do not encourage gratitude because they could have lost more. Avoid encouraging them to focus on the positive, as it will come off as dismissive and invalidating of their experience, potentially jeopardizing your relationship. The best approach is to listen and ask what you can do to help them establish a sense of normalcy. As an example, if you have a second home, offer to let them use it for a little while to escape the on-the-ground chaos and get a reprieve. Don't have a second home? Do you have a spare guestroom that you could offer someone for a weekend? Do you have water supplied by a well? Offer a hot shower. Offer to watch the kids for a few hours. These seemingly small things are a huge help. The point here is to focus on what you can contribute rather than urging them to look on the bright side.

Tip: If you have a spare office at your law firm, offer it to a displaced lawyer. We have heard about larger firms in the Piedmont and Eastern regions of the state offering conference rooms for displaced lawyers to use as offices.

There are two aftermaths: immediate and long-term.

In the immediate aftermath, our greatest virtue emerges. Communities and neighborhoods band together to help each other in remarkable ways. We are hearing firsthand accounts of this throughout the region. "A Paradise Built in Hell: The Extraordinary Communities That Arise in Disaster" by Rebecca Solnit (published 2009) explores the well-established, documented response of people coming together to help each other in the immediate aftermath of major disasters, such as 9/11, highlighting the altruism, solidarity, and mutual aid that emerge in such situations. It is the same kind of altruism that motivates people from across the country to donate supplies to victims.

But then the long-term aftermath kicks in, which brings an altogether different emotional landscape. Press coverage dies down. The national focus turns elsewhere. Maybe the National Guard leaves the area. Actually dealing with the mundane, practical stuff comes next. This is where we will see a lot of anger and frustration, often directed at whomever is in front of us/them. Just like during COVID, having to do things so drastically differently from what we are accustomed to is a difficult adjustment to begin with. Inevitably, people realize that whatever they are doing temporarily has become unsustainable—so more adjustments are needed. This can wear out even the most resilient among us.

There are never enough general contractors, carpenters, electricians, tree people, etc., to go around, and the ones that are available are focused on larger problems (or the highest paying opportunities). They aren't going to focus on or attend to the smaller repairs and things that many people need, especially given the hundreds and hundreds of miles of huge problems. Impatience and frustration are common reactions.

After Hurricane Hugo, many complained about having to clean up their yards on their own because their yard person didn't have time (was busier with bigger projects, etc.). But that alone turned out to be a positive thing that allowed—rather forced—people to feel like they had some control over things. Just like COVID, that feeling of having no control is one of the most difficult aspects of a natural disaster.

A few days after Helene, I spoke with a district bar president who had cell service. She relayed a story about a lawyer she knew who was busy cutting his grass while we were on the phone. It may seem counterintuitive because one's first thought might be, who cares about how your lawn looks when the whole world has been flipped upside down? But it isn't about how the lawn looks. Remember Maslow's Hierarchy of Needs? We all have a basic need for safety and security, established through order and routine. Controlling the things that we can control, and doing the things we can do to create a feeling of normalcy, go a long way toward establishing that sense of safety and security.

Tip: If you were affected by the storm and your world is upside down, keeping your same routine is one of the positive things you can do. For example, wake up at the same time every day, even if you aren't going to work. This helps foster a small sense of "normalcy" and comfort. Given the extent of the devastation, the act of rebuilding,

"Adjusting to the new normal is difficult and takes time. It is imperative to allow everyone (including ourselves) to grieve accordingly. The worst thing we can do is tell someone (or ourselves) that we should or shouldn't feel a certain way (or expect it all to be processed in a certain timeframe)."

cleaning, and repairing may feel overwhelming—even paralyzing for some people who don't know where to start. Help your friends and loved ones with identifying small, achievable goals to chip away at the recovery process. This way, they won't feel pressure to take care of everything all at once. Helping folks devise an action plan is very helpful, as it gives them something positive to do and can help them set realistic expectations. Devising a plan and acting on it systematically not only feels productive, but also aids in keeping folks focused in the moment (a form of mindfulness) and helps quell the anxiety. Doing what we can do, while remaining flexible to adapt our plans to changing circumstances, helps us feel more in control and bolsters our feelings of stability and security.

With a crisis of this magnitude, it can be difficult to determine when the invisible line is crossed where it becomes okay—and no longer invalidating—to give a "pep talk." Suffice it to say, that time is not right now. Down the road apiece, from a resilience perspective, helping folks change their perspective to be more positive may be helpful. Here is where resilience tools, like gratitude lists, can help.

Tip: When the time is right, look for opportunities to help others see the glass as half-full. For example, helping a friend to see that rather than staying upset about the damage done to their house, they have an opportunity to finally redo that kitchen.

In the long-term aftermath, once people's basic needs have been met and they feel secure, they will be dealing with a lot of trauma and grief. People will be grieving various losses, from the tangible/visible (i.e., a house, a neighborhood) to the intangible/less visible (i.e., retirement plans). With grief, everyone processes their emotions differently and moves at their own pace.

I want to take a minute to address those who were not in the path of Helene's physical destruction but who also have been affected by the wider wind field: those of us in other parts of the state who also feel devastated and traumatized by the destruction. We have lawyers in other parts of the state who did not hear from loved ones for a week to ten days and who could not drive to check on them due to road conditions. Other lawyers have adult children who are first responders in the area, exposed to traumatic and heartbreaking circumstances day in and day out, who will undoubtedly be facing their own secondary/vicarious trauma and PTSD. Talk about feeling powerless. LAP volunteers and clients have banded together to support each other in incredible ways and to reinforce use of recovery tools to stay sane and grounded in the face of grave uncertainty. But Helene's impact did not stop there.

In ever-expanding concentric circles, Helene's emotional wind field extends still further, ensnaring those of us who have fond memories of time spent in the mountains with friends and family, at weddings, at spiritual retreats, and certainly at legal conferences. In so many ways, the legal community resembles a big family of sorts. To date, we have heard of the tragic passing of two lawyers due to the storm, Michael Drye of Asheville/Buncombe County and Joseph Hoyle of Kings Mountain/Cleveland County. These lawyers were well-known not only in their home judicial districts but across the state. We are all stunned and grieving the loss of these colleagues, as well as our beloved mountain towns. One of the biggest challenges moving forward is accepting that things will never be the same again and adjusting to the "new normal."

Tip: Adjusting to the new normal is difficult and takes time. It is imperative to allow everyone (including ourselves) to grieve accordingly. The worst thing we can do is tell someone (or ourselves) that we should or shouldn't feel a certain way (or expect it all to be processed in a certain timeframe). Affirming our or others' feelings is the beginning of processing them. This kind of devastating loss, stemming from a natural disaster, often creates what is known as "complicated grief." It can look or feel like being emotionally frozen or stuck, but it's not. It takes considerable time to process through all the layers of loss. It is okay and perfectly normal if you find you need professional help to navigate this experience. LAP's licensed clinicians can provide support around grief and loss and/or refer you to appropriate resources. There is also information about grief and loss on our website.

To assist with the longer-term emotional processing and recovery, we will be contacting elected bar councilors and district bar presidents to offer and schedule facilitated disaster/crisis debrief sessions across the western region in the coming months. These sessions will bring lawyers together and provide a safe, structured way to process the event in a non-judgmental, mutually supportive atmosphere. We offer direct counseling and are also working with BarCARES to provide counseling referrals by Zoom (i.e., telehealth) for counselors based in the Piedmont and down east. It will take some time for everyone to get their bearings. Please do not hesitate to contact us and we will work to get you the mental health resources you need.

To reach us, visit nclap.org. ■

Robynn Moraites the director of the North Carolina Lawyer Assistance Program (NC LAP) and Cathy Killian is the clinical director. NC LAP is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. 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.

Council Adopts Opinion on Artificial Intelligence; Committee Publishes New Opinion

Council Actions

At its meeting on November 1, 2024, the State Bar Council adopted the ethics opinion summarized below:

2024 Formal Ethics Opinion 1

Use of Artificial Intelligence in a Law Practice

Opinion discusses a lawyer's professional responsibility when using artificial intelligence in a law practice.

Ethics Committee Actions

At its meeting on October 31, 2024, the Ethics Committee considered a total of eight inquiries, including the adopted opinion referenced above. Four inquiries were sent or returned to subcommittee for further study, including an inquiry examining the ethical requirements relating to a lawyer's departure from a law firm and an inquiry addressing a lawyer's ability to increase the rate charged for services during the representation. The committee also approved an advisory opinion concerning a lawyer's professional responsibility in the aftermath of a natural disaster, guidance on the use of a specific aspect of North Carolina's Enterprise Justice ("Odyssey") eCourts system, and the publication of one new proposed formal ethics opinion for comment, which appears below.

Proposed 2024 Formal Ethics Opinion 3
Fee Agreement Requiring Payment of Estate Planning Lawyer's Future Legal Fees
October 31, 2024

Proposed opinion rules that estate planning engagement agreement may require payment of legal fees for lawyer's participation in collateral litigation related to the estate plan under certain conditions.

Law Firm is experiencing a substantial increase in the number of estate planning lawyers who are being subpoenaed in collateral litigation proceedings. Law Firm is investigating ways to recoup estate planning lawyers' billable time in responding to subpoenas, discovery requests, and providing testimony.

Law Firm would like to include a provision in their engagement agreement with estate planning clients providing that the client agrees that the client's estate will reimburse Law Firm for fees and expenses incurred when a firm lawyer is required to respond to inquiries concerning any aspect of the estate plan. Law Firm is considering including the following provision outlining obligations regarding future legal proceedings:

> Client agrees that if a member of or person rendering services to Law Firm is deposed, called to testify, or required to respond to discovery in the context of legal proceedings concerning any aspect of Client's estate plan, Law Firm will be compensated for that person's services at his or her hourly rate to clients at the time of the deposition, other testimony, or other discovery. Client also agrees that Law Firm will be entitled to full reimbursement for costs incurred in connection with the production of documents in response to subpoenas and demands for the production of documents issued in any such legal proceedings. This agreement will bind not only Client but also anyone managing Client's financial affairs (before and after Client's death), Client's heirs, and the beneficiaries under Client's estate planning documents.

Inquiry:

Do the Rules of Professional Conduct permit inclusion of Law Firm's proposed provision in Law Firm's engagement agreements with estate planning clients?

Opinion:

No. Even presuming the proposed fee provision is legal and enforceable,[1] the proposed provision fails to comply with other requirements set out in Rule 1.5. Rule 1.5(a) provides that a lawyer shall not make an agreement for, charge, or collect "a clearly excessive fee." The proposed provision requires the client's estate to compensate any lawyer in the firm who is deposed, called to testify, or

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 its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at ethicscomments@ncbar.gov no later than December 21, 2024.

Public Information

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

required to respond to discovery in the context of legal proceedings concerning *any aspect* of the client's estate plan. There is no exclusion in the provision for legal fees resulting from a firm lawyer's incompetence or negligence. Law Firm may not charge an estate planning client for future legal services necessitated by a lawyer's incompetence or negligence in drafting the client's estate plan. Such charges would be clearly excessive in violation of Rule 1.5(a).

In addition, the proposed fee agreement provision is too vague to comply with Rule 1.5(b). Rule 1.5(b) provides that when a lawyer has not regularly represented a client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible must be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. Comment [2] to Rule 1.5 states that the writing should state "the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation." The language in the proposed provision does not adequately provide the "basis, rate or total amount" of the future fees. The inclusion of such a broad fee provision violates Rule 1.5(b) and also serves as a deterrent to individuals bringing legitimate challenges in probate matters in violation of Rule 8.4(d). *See also* N.C. Gen. Stat. § 6-21(2) for court oversight on attorney fees in estate proceedings, including both general administration and disputes like will caveats.

This is not to say that it is always impermissible to include a provision in an employment agreement requiring the payment of legal fees arising after an estate planning client's death. Nor is it impermissible for a lawyer to seek reimbursement from the estate for lost wages or expenses incurred as a result of the lawyer's compelled participation in an estate proceeding. Without some payment assurances, a lawyer might be hesitant to represent a client who wants to change his estate plan when aged or infirm, or when the change diverges from the expected plan of distribution. A lawyer may not be willing to take the risk of spending many unbillable hours testifying as a witness or otherwise participating in a will contest. Therefore, it may be reasonable, and not clearly excessive, to include a provision providing payment of certain future legal services rendered in furtherance of a difficult or complicated estate planning representation.

The South Carolina Bar addressed this issue in S.C. Ethics Advisory Op. 23-01 (2023). The South Carolina opinion considers whether a lawyer who prepares estate planning documents for clients may include in his retainer agreement a provision providing that the lawyer is to be paid his hourly rate for time spent responding to discovery or testifying as a fact witness after the lawyer's legal work is concluded. The advisory opinion provides that, because Rule 1.5 allows a lawyer to charge his hourly rate for potential future time spent testifying as a fact witness relating to a representation, the lawyer is permitted to include such a provision in the retainer agreement. The advisory opinion concludes that, "as long as the lawyer's hourly rate complies with the reasonableness requirement of Rule 1.5(a), this kind of charge is not categorically unethical, provided the client agrees to it when the lawyer's services are first engaged." S.C. Ethics Advisory Op. 23-01. (South Carolina Rule 1.5(a) states that a lawyer "shall not make an agreement for, charge, or collect an *unreasonable* fee or an *unreasonable* amount for expenses. (emphasis added)).

We similarly conclude that including a provision in a fee agreement for payment of the lawyer's fees and expenses for future testimony or discovery related to the services rendered is permissible, provided that (1) the scope of the provision is limited, (2) the fees and expenses are not clearly excessive, (3) the terms of the provision are clearly communicated to the client in a written fee agreement, and (4) the client consents to the provision.

The scope of the provision must be limited to proceedings where the law firm is not a party to the proceeding in which the information is sought, and where the quality, sufficiency, or effectiveness of the law firm's work is not in question. As stated above, Law Firm may not charge an estate planning client for future services necessitated by a lawyer's incompetence or negligence in drafting the client's estate plan. In addition, any contemplated fees and expenses must not be clearly excessive based on the factors set out in Rule 1.5(a). Furthermore, the law firm must make reasonable efforts to minimize time, costs, and expenses. Finally, the firm needs to ensure that the circumstances under which the client's estate is responsible for payment of future fees and expenses are clearly communicated to the client and specifically set out in a written fee agreement.

It is important that the client understands that this provision means the estate could incur additional fees and costs in the future if the lawyer's involvement is required beyond the original scope of the estate planning services. The client also needs to understand that the rate for fees may change over time. In order to provide fairness and predictability to the law firm and the client, it is permissible to allow the rate for services to adjust to reflect the lawyer's prevailing hourly rate at the time of the collateral litigation, with appropriate safeguards such as caps or adjustment clauses. For example, the fee provision may specify that the rate will be the lawyer's prevailing hourly rate at the time of the testimony or discovery with the qualification that any increase in the hourly rate shall not exceed [X%] per annum, or a maximum rate of [$XXX] per hour, or some combination of factors. This approach ensures that the law firm is fairly compensated for their services while also protecting the client or estate from unexpectedly high fees. Whatever method is chosen, the potential rate increase must be clearly explained in the retainer agreement.

By way of illustration, we conclude that the following fee provision would be acceptable:

> Client agrees or directs Client's estate to compensate Law Firm at our normal hourly rates, not to exceed 3% per annum above Law Firm's current rate as specified in this agreement, plus costs and expenses, for work done by Law Firm where (1) Law Firm is requested or authorized by you or your estate, or required by government

CONTINUED ON PAGE 65

Need Ethics Advice?

After consulting the Rules of Professional Conduct and the relevant ethics opinions, if you continue to have questions about your professional responsibility, any lawyer may request informal advice from the ethics department of the State Bar by calling (919) 828-4620 or by emailing ethicsadvice@ncbar.gov.

Amendments Pending Supreme Court Approval

At its meeting on November 1, 2024, the council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for its approval. (For the complete text of the rule amendments, see the Summer 2024 edition of the *Journal* or visit the State Bar website: ncbar.gov.)

Proposed Amendments to the Rules Governing Discipline

27 N.C.A.C. 1B, Section .0100, Rule .0111, Grievances: Form and Filing

27 N.C.A.C. 1B, Section .0100, Rule .0112, Investigations; Initial Determination; Notice and Response; Committee Referrals

27 N.C.A.C. 1B, Section .0100, Rule .0137, Vexatious Complainants

The rule amendments and new Rule .0137 implement the provisions of Session Law 2024-25 (Senate Bil 790) that establish standing requirements for a person filing a complaint and allow the chair of the Grievance Committee to designate a person as a vexatious complainant. In addition, proposed amendments to Rule .0112 will (i) create a voluntary, individualized grievance deferral program in which respondents collaborate with the Office of Counsel to create a deferral agreement that is tailored to address the respondent's underlying misconduct, and (ii) specify that a participant in a deferral program must participate personally and communicate directly with Office of Counsel staff.

Proposed Amendments to the Rules Governing the Specialization Program

27 N.C.A.C. 1D, Section .2600, Rule .2605, Certification Standards as a Specialist in Immigration Law

27 N.C.A.C. 1D, Section .2600, Rule .2606, Standards for Continued Certification as a Specialist

The rule amendments proposed by the Board of Legal Specialization reduce the CLE requirements for initial certification and for recertification as an immigration law specialist.

Highlights

· 27 N.C.A.C 1B .0113 and .0136 of the Discipline and Disability Rules, published last quarter, were revised and approved for republication.

· Amendments to 27 N.C.A.C. 1B .0111, .0112, and .0137 of the Discipline and Disability Rules, published last quarter and approved by the council for transmission to the Supreme Court for approval, will establish standing requirements to file a complaint, allow the designation of a vexatious complainant, and create an individualized grievance deferral program.

Proposed Amendments for Re-publication

At its meeting on November 1, 2024, the council voted to publish for comment the following revisions to proposed rule amendments originally published during the third quarter:

Proposed Amendments to the Rules Governing Discipline

27 N.C.A.C. 1B, Section .0100, Rule .0113, Proceedings before the Grievance Committee

27 N.C.A.C. 1B, Section .0100, Rule .0136, Expungement or Sealing of Discipline [New Rule]

The proposed amendments to Rule .0113 and new Rule .0136 implement the provisions of Session Law 2024-25 (Senate Bil 790) that require the State Bar to produce certain records to a respondent; to provide an opportunity for a respondent to address the Grievance Committee; and to adopt a rule on expungement. After publication, comments were received on both rules.

In response to comment on Rule .0113, revisions to subsection (e) of the rule, relative to respondent appearances before the Grievance Committee, are proposed. Revisions to Rule .0136 are proposed to address eligibility, the procedure for seeking expungement, and the agency's maintenance of a confidential record of expungements.

Rule .0113 Proceedings before the Grievance Committee

(a) Probable Cause - The Grievance Committee or any of its subcommittees acting as the Grievance Committee with respect to grievances referred to it by the chair of the Grievance Committee will determine whether there is probable cause to believe that a respondent **committed** ~~is guilty of~~ misconduct justifying disciplinary action. In its discretion, the Grievance Committee or a panel thereof may find probable cause regardless of whether the respondent has been served with a written letter of notice. The respondent may waive the necessity of a finding of probable cause with the consent of the counsel and the chair of the Grievance Committee. A decision of a panel of the committee may not be appealed to the Grievance Committee as a whole or to another panel (except as provided in 27 N.C.A.C. 1A, .0701(a)(3)).

(b) Oaths and Affirmations - The chair of

the Grievance Committee will have the power to administer oaths and affirmations.

(c) Record of Grievance Committee's Determination - The chair will keep a record of the Grievance Committee's determination concerning each grievance and file the record with the secretary.

~~(d) Subpoenas - The chair will have the power to subpoena witnesses, to compel their attendance, and compel the production of books, papers, and other documents deemed necessary or material to any preliminary hearing. The chair may designate the secretary to issue such subpoenas.~~

(~~e~~**d**) Closed Meetings - The counsel and deputy counsel, the witness under examination, interpreters when needed, and, if deemed necessary, a stenographer or operator of a recording device may be present while the committee is in session and deliberating, but no persons other than members may be present while the committee is voting.

(e) Procedure When Counsel Recommends Admonition, Reprimand, Censure, or Referral to the Disciplinary Hearing Commission. If the counsel recommends admonition, reprimand, censure, or referral to the Disciplinary Hearing Commission,

(1) At least thirty days before the committee's consideration of the counsel's recommendation, the counsel shall provide to the respondent:

(A) all financial audits and all other materials provided to the committee that are not privileged and are not work product; and

(B) any evidence in the possession of the State Bar that indicates the respondent did not engage in the alleged misconduct, or a certification that no such evidence is in the State Bar's possession.

(2) The respondent shall have the opportunity to hear the counsel's presentation of the factual basis for the recommendation and to address the subcommittee to which the grievance is assigned. The chair of the Grievance Committee shall have discretion to offer respondents the option of participating via video conference ~~determine whether the respondent will hear the counsel's presentation of the factual basis in person or via video conference, to determine whether the respondent will address the subcommittee in person or via video conference,~~ **and to determine the amount of time the counsel and the respondent will have to address the subcommittee, ensuring the respondent is allowed at least the same amount of time as is granted to the counsel for its recitation of factual basis.**

(f) …

Rule .0136, Expungement or Sealing of Discipline [NEW RULE]

(a) By the Chair of the Grievance Committee.

(1) Expungement of Admonition by the Grievance Committee. A **lawyer** ~~respondent~~ who accepted an admonition from the Grievance Committee may petition the chair of the committee to expunge the admonition as set forth herein. The petition shall be served upon the State Bar Counsel**.** ~~and shall show that~~ **T**he petitioner **shall show rehabilitation** ~~has been rehabilitated~~ by **executing and attaching to the petition an affidavit** certifying the following **requirements for expungement of an admonition**:

(A) The admonition ~~was not issued for~~ **(i) did not involve** violation of Rules of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) **or attempted violation of Rule 1.19, or (ii) did involve violation of Rule 8.4(c) but the admonition was solely related to the contents of the lawyer's advertising or marketing materials**;

(B) Five years have elapsed since the effective date of the admonition;

(C) The petitioner has not been the subject of any ~~order of~~ professional discipline since the effective date of the admonition;

(D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the admonition and no criminal charges other than minor traffic violations are currently pending against the petitioner;

(~~D~~**E**) There are no grievances pending against the petitioner **with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction**; ~~and~~

(~~E~~**F**) There are no disciplinary ~~complaints~~ **proceedings** pending **against the petitioner** in the Disciplinary Hearing Commission**,** ~~or~~ in any court**,** ~~against the petitioner.~~ **or in any other jurisdiction; and**

(G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.

(2) Expungement of Reprimand or Censure by the Grievance Committee. A ~~respondent~~ **lawyer** who accepted a reprimand or a censure from the Grievance Committee may petition the chair of the committee to expunge the reprimand or the censure as set forth herein. The petition shall be served upon the State Bar Counsel**.** ~~and shall show that~~ The petitioner ~~has been rehabilitated~~ **shall show rehabilitation** by **executing and attaching to the petition an affidavit** certifying the following **requirements for expungement of a reprimand or censure**:

(A) The reprimand or censure ~~was not issued for~~ (i) **did not involve** violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) **or attempted violation of Rule 1.19, or (ii) did involve violation of Rule 8.4(c) but the reprimand or censure was solely related to the contents of the lawyer's advertising or marketing materials**;

(B) Ten years have elapsed since the effective date of the reprimand or censure;

(C) The petitioner has not been the sub-

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments by January 3 to Peter Bolac, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

The Process

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

Inclusion of the NC Board of Law Examiners' *Rules Governing the Admission to the Practice of Law in NC* in the Administrative Code

At its meeting on November 1, 2024, the State Bar Council approved the codification of the Board of Law Examiners' Rules Governing Admission to the Practice of Law in the State of North Carolina in Title 27 of the North Carolina Administrative Code—the title currently devoted to the rules of the State Bar. The council approved the codification with no changes to the content of the rules as currently extant.

The council also approved the transmission of the codified rules to the North Carolina Supreme Court for its approval and incorporation into the official minutes of the Court.

ject of any ~~order of~~ professional discipline since the effective date of the reprimand or censure;

(D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the reprimand or censure and no criminal charges other than minor traffic violations are currently pending against the petitioner;

(~~D~~E) There are no grievances pending against the petitioner **with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction**; ~~and~~

(~~E~~F) There are no disciplinary ~~complaints~~ **proceedings** pending **against the petitioner** in the Disciplinary Hearing Commission~~, or~~ in any court ~~against the petitioner~~**, or in any other jurisdiction; and**

(G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.

(3) Determination by the Chair of the Grievance Committee.

(A) The Office of Counsel shall have 30 days from the date of service of the petition to produce any information or documentation concerning whether the requirements for expungement are satisfied. Such information shall be transmitted to the petitioner and the chair of the committee.

(B) If the chair of the Grievance Committee concludes that the requirements in Rule .0136(a)(1) have been satisfied ~~by the petitioner~~, the chair shall enter an order expunging the admonition. If the chair of the Grievance Committee concludes that the requirements in Rule .0136(a)(2) have been satisfied ~~by the petitioner~~, the chair shall enter an order expunging the reprimand or censure.

(b) By the Chair of the Disciplinary Hearing Commission.

(1) Expungement of Admonition Entered by the Disciplinary Hearing Commission. A ~~defendant~~ **lawyer** in whose case the Disciplinary Hearing Commission entered an order of discipline imposing an admonition may petition the chair of the commission to expunge the admonition as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. ~~and shall show that t~~**The** petitioner **shall show rehabilitation** ~~has been rehabilitated~~ by **executing and attaching to the petition an affidavit** certifying the following **requirements for expungement of an admonition:**

(A) The admonition ~~was not issued for~~ **(i) did not involve** violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) **or attempted violation of Rule 1.19 or (ii) did involve violation of Rule 8.4(c) but the admonition was solely related to the contents of the lawyer's advertising or marketing materials;**

(B) Five years have elapsed since the effective date of the admonition;

(C) The petitioner has not been the subject of any ~~order of~~ professional discipline since the effective date of the admonition;

(D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the admonition and no criminal charges other than minor traffic violations are currently pending against the petitioner;

(~~D~~E) There are no grievances pending against the **petitioner with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction**; ~~and~~

(~~E~~F) There are no disciplinary ~~complaints~~ **proceedings** pending **against petitioner** in the Disciplinary Hearing Commission~~, or~~ in any court~~, against the petitioner.~~ **or in any other jurisdiction; and**

(G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.

(2) Expungement of Reprimand or Censure Entered by the Disciplinary Hearing Commission. A ~~defendant~~ **lawyer** in whose case the Disciplinary Hearing Commission entered an order of discipline imposing a reprimand or a censure may petition the chair of the commission to expunge the reprimand or censure as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. ~~and shall show that~~ **The** petitioner **shall show rehabilitation** ~~has been rehabilitated~~ by **executing and attaching an affidavit** certifying the following **requirements for expungement of a reprimand or censure:**

(A) The reprimand or censure ~~was not issued for~~ (i) **did not involve** violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) **or attempted violation of Rule 1.19 or (ii) did involve violation of Rule 8.4(c) but the reprimand or censure was solely related to the contents of the lawyer's advertising or marketing materials**;

(B) Ten years have elapsed since the effective date of the reprimand or censure;

(C) The petitioner has not been the subject of any ~~order of~~ professional discipline since the effective date of the reprimand or censure;

(D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the reprimand or censure and no criminal charges other than minor traffic violations are currently pending against the petitioner;

(~~D~~E) There are no grievances pending against the petitioner **with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction**;~~ and~~

(~~E~~F) There are no disciplinary ~~complaints~~ **proceedings** pending **against the petitioner** in the Disciplinary Hearing Com-

mission, ~~or~~ in any court ~~against the petitioner~~, **or in any other jurisdiction; and**

(G) The petitioner has not previously been granted expungement or sealing of a disciplinary action.

(3) Determination by the Chair of the Disciplinary Hearing Commission.

(A) The Office of Counsel shall have 30 days from the date of service of the petition to file a response with information or documentation concerning whether the requirements for expungement are satisfied. The response shall be transmitted to the petitioner.

(B) If the chair of the commission concludes that the requirements in Rule .0136(b)(1) have been satisfied ~~by the petitioner~~, the chair shall enter an order expunging the admonition. If the chair of the commission concludes that the requirements in Rule .0136(b)(2) have been satisfied ~~by the petitioner~~, the chair shall enter an order expunging the reprimand or censure.

(c) Effect of Expungement of Admonition, Reprimand, or Censure.

(1) An admonition, reprimand, or censure that is expunged by the chair of the Grievance Committee or by the chair of the Disciplinary Hearing Commission shall be removed from the petitioner's disciplinary record and from the State Bar website ~~and cannot be used in any future disciplinary proceedings against the petitioner~~. **For disciplinary actions expunged by the Disciplinary Hearing Commission, all filings in the case shall be removed from the publicly accessible records of the commission.**

(2) In determining the disposition of any future grievances against the petitioner, the State Bar's Grievance Committee will not consider expunged discipline.

(3) The State Bar shall maintain a confidential record of expunged discipline, including all filings in the Disciplinary Hearing Commission case that resulted in the discipline, which will not be available for public inspection and will not be disclosed except as provided in subsection (h) of this rule.

(4) The petitioner will not be held thereafter to have made a false statement by reason of failing to recite or acknowledge the expunged discipline. This subsection shall not apply in a DHC or judicial disciplinary proceeding in which the petitioner has been found to have engaged in misconduct and the tribunal is determining what discipline should be imposed.

(d) Sealing Order of Stayed Suspension Entered by the Disciplinary Hearing Commission.

(1) A ~~defendant~~ **lawyer** in whose case the Disciplinary Hearing Commission entered an order imposing a stayed suspension of the ~~defendant~~ **lawyer**'s law license may petition the chair of the commission to seal the order of discipline as set forth herein. The petition shall be filed with the commission and served upon the State Bar Counsel. ~~and t~~**T**he **petitioner** shall show **rehabilitation** ~~that the petitioner has been rehabilitated~~ by **executing and attaching to the petition an affidavit** certifying the following **requirement for sealing an order of discipline**:

(A) The **order of discipline imposing the** stayed suspension ~~was not issued for~~ **(i) did not involve** violation of Rule of Professional Conduct 1.19, 3.3(a), 8.4(b), or 8.4(c) **or attempted violation of Rule 1.19**, or **(ii)** the stayed suspension ~~was issued for~~ **did involve** violation of Rule 8.4(b) or (c) but ~~those violations~~ **the order of discipline was** related solely to the ~~defendant~~ **lawyer's** failure to file and/or pay personal income taxes;

(B) Ten years have elapsed since the effective date of the stayed suspension;

(C) The petitioner has not been the subject of any ~~order of~~ professional discipline since the effective date of the stayed suspension;

(D) The petitioner has not been convicted of violating the laws of the United States or any state or local government other than minor traffic violations since the effective date of the order of discipline and no criminal charges other than minor traffic violations are currently pending against the petitioner;

(~~D~~**E**) There are no grievances pending against the petitioner **with the North Carolina State Bar and no allegations of professional misconduct against the petitioner are currently under investigation in any other jurisdiction**;

(~~E~~**F**) There are no disciplinary ~~complaints~~ **proceedings** pending in the Disciplinary Hearing Commission, ~~or~~ in any court, ~~against the petitioner~~ **or in any other jurisdiction**; ~~and~~

(~~F~~**G**) The ~~stayed~~ suspension **imposed in the order of discipline was entirely stayed, no portion of the suspension** was ~~not~~ activated by the commission~~.~~**, and the period of the stay was not extended by the commission due to noncompliance with conditions; and**

(H) The petitioner has not previously been granted expungement or sealing of a disciplinary action.

(2) Determination by Chair of the Commission.

(A) The Office of Counsel shall have 30 days from the date of service of the petition to file a response with information or documentation concerning whether the requirements for sealing a disciplinary order are satisfied. The response shall be transmitted to the petitioner.

(B) If the chair of the commission concludes that the requirements of Rule .0136(d)(1) have been satisfied by the petitioner, the chair shall enter an order sealing the order of stayed suspension **and all other filings in the case, including the filings related to the petition to seal the disciplinary order.**

(3) Effect of Sealing an Order of Stayed Suspension.

(A) An order of stayed suspension that has been sealed by the chair of the Disciplinary Hearing Commission shall be removed from the State Bar website and **all filings in the case shall be removed from** the publicly accessible records of the commission.

(B) The State Bar ~~shall~~ **will** maintain a confidential record of the **sealed order of** stayed suspension **and other filings in the case, which** ~~that~~ shall not be available for public inspection. The sealed order of stayed suspension may be introduced into evidence and considered in any future disciplinary action against the petitioner. **Otherwise, the sealed order shall not be disclosed except as provided in subsection (h) of this rule.**

(e) Order**s** of Active Suspension, Activated **or Extended** Order**s** of Stayed Suspension, and Order**s** of Disbarment Shall Not Be Expunged or Sealed. An order of discipline imposing an active suspension, imposing a stayed suspension that was ~~subsequently~~ activated **or extended due to noncompliance**, or imposing disbarment shall not be expunged or sealed.

(f) Eligibility Limited to Single Disciplinary Action. A lawyer who is granted ex-

pungement or sealing of professional discipline pursuant to this rule is not eligible for expungement or sealing of additional professional discipline.

(g) Rescission of Expungement or Sealing of Discipline. Upon receipt of information indicating that a certification in the affidavit supporting a petition to expunge or seal a disciplinary action was false, the Office of Counsel may submit a written request to the chair of the Grievance Committee or file a motion in the Disciplinary Hearing Commission requesting that the expungement or sealing of the disciplinary action be rescinded. The request or motion shall be served upon the lawyer who made the certification and the lawyer shall have 30 days from the date of service to submit a written response. If the chair of the Grievance Committee or the Disciplinary Hearing Commission concludes that the expungement or sealing of the disciplinary action was based upon a false certification by the petitioner, the order of expungement or order sealing the disciplinary order shall be rescinded.

(h) Confidential State Bar Records. The State Bar shall maintain confidential records of expunged discipline, sealed disciplinary orders, petitions to expunge or seal, and orders granting expungement or sealing pursuant to this rule. These confidential records may be disclosed only as follows:

(1) Upon request of a judge of the North Carolina General Court of Justice for the purpose of ascertaining whether a lawyer has previously been granted an expungement or sealing of professional discipline.

(2) Upon request of a lawyer seeking confirmation that disciplinary action against the requesting lawyer has been expunged or sealed.

(3) Pursuant to a search warrant, grand jury subpoena, or court order directing or authorizing the State Bar to provide records to any law enforcement or national security agency.

(4) In response to a petition for expungement by a lawyer to whom expungement or sealing was previously granted and who is therefore ineligible for expungement or sealing of additional disciplinary actions pursuant to section (f) of this rule.

(5) In a request to rescind the expungement or sealing of a disciplinary action pursuant to section (g) of this rule.

(6) In a DHC or judicial disciplinary proceeding in which the petitioner has been found to have engaged in misconduct and the tribunal is determining what discipline should be imposed.

(~~f~~i) Removal of Disciplinary Record of Deceased Lawyer from State Bar Website. One year after **the State Bar is notified of** a lawyer's death, the State Bar shall remove from the State Bar website any orders of discipline entered against the lawyer.

(j) Removal of Orders of Dismissal from State Bar Website. Three years after the entry of an order by the Disciplinary Hearing Commission dismissing all charges of misconduct against a lawyer, the lawyer against whom the dismissed charges were filed may request that the order of dismissal be removed from the State Bar website. Requests for removal under this section shall be directed to the State Bar Counsel, who shall direct that the order be removed from the website if the order dismissed all charges of misconduct against the lawyer and three years have elapsed since entry of the order.

Proposed Amendments

At its meeting on November 1, 2024, the council voted to publish for comment the following proposed rule amendments:

Proposed Amendments to the Rules Governing the Continuing Legal Education Program

27 N.C.A.C. 01D, Section .1500, Rules Governing the Continuing Legal Education Program

The proposed amendments expand the types of live, in-house programs that can be presented by a person or organization that is not affiliated with the lawyers attending the program or their law firm.

Rule .1523, Credit for Non-traditional Programs and Activities

(a)…

(d) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by lawyers, except, in the discretion of the Board, as follows:

(1) programs to be conducted by public or quasi-public organizations or associations for the education of their employees or members;

(2) programs to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law; or

(3) live ~~ethics~~ **ethics, professional well-being, or technology training** programs presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

…

Proposed Amendments to the Discipline and Disability Rules

27 N.C.A.C. 01B, Section .0100, Discipline and Disability Rules

The proposed amendments empower the chair of the Disciplinary Hearing Commission to review vexatious complainant designations and to rule on requests to expunge or seal discipline. The amendments are necessary to implement provisions of Session Law 2024-25 (Senate Bill 790) that require the State Bar to establish both a process for declaring a complainant "vexatious," resulting in limitations on the filing of further complaints, and a process for expunging certain disciplinary records.

Rule .0108, Chairperson of the Hearing Commission: Powers and Duties

(a) The chairperson of the Disciplinary Hearing Commission of the North Carolina State Bar will have the power and duty...

(7) to enter an order suspending a member

CONTINUED ON PAGE 54

State Bar Swears In New Officers


Smith


Frye


Williams

Smith Installed as President

Eden attorney Matthew W. Smith was sworn in as president of the North Carolina State Bar by Chief Justice Paul Newby at the State Bar's Annual Dinner on Thursday, October 31, 2024.

Smith holds a bachelor's degree from Campbell University and earned his law degree from Campbell University's Norman Adrian Wiggins School of Law.

A member of the North Carolina State Bar Council since 2014, Smith has served in key leadership roles, including vice-chair and chair of the Grievance Committee, as well as vice-chair and chair of the Authorized Practice Committee.

Since 1998, he has been an associate and partner at Maddrey Etringer Smith Hollowell & Toney, LLP, in Eden, focusing on real estate, estates, guardianships, and various aspects of small-town legal practice.

Smith is actively involved in his community as a member of the Board of Directors for the Boys' & Girls' Club of Eden. He also served on the Eden Planning and Zoning Board as both a member and chair from 2009 to 2022.

Married for 23 years to his wife, Michelle, Smith is the proud father of two sons: Harrison, 22, and Hunter, 18. He enjoys spending time in the mountains and is a devoted Chicago Cubs fan.

Frye Sworn In as President-Elect

Katherine Frye, a native of Hickory and a prominent Raleigh attorney, was sworn in as president-elect of the North Carolina State Bar by Chief Justice Paul Newby during the State Bar's Annual Dinner on October 31, 2024.

Frye established Frye Law Offices in Raleigh in 2003 as a solo practice. In August 2024 she expanded her practice to form Oak City Family Law, where she now partners with Sarah Privette, the current president of the Wake County Bar Association. Together, they are dedicated to serving family law clients and providing leadership within the legal community.

Since 2016, Frye has represented Wake County (the 10th Judicial District) on the NC State Bar Counil. She has served as vice-chair of the Grievance Committee, chair of the Communications Committee, and chair of the Ethics Committee before being appointed as an officer in October 2023.

A graduate of the Norman Adrian Wiggins School of Law, Frye is a Fellow of the American Academy of Matrimonial Lawyers, a North Carolina Board Certified Specialist in family law, and a certified mediator with the NC Dispute Resolution Commission. She has also held numerous leadership roles with the Wake County Bar and the NC Bar Association.

Williams Elected Vice-President

Winston-Salem attorney Kevin G. Williams was sworn in as vice-president of the North Carolina State Bar by Chief Justice Paul Newby at the State Bar's Annual Dinner on Thursday, October 31, 2024.

Williams earned his undergraduate degree in business administration from The University of North Carolina at Chapel Hill in 1993. He currently serves as president and chair of the Executive Committee of Bell, Davis & Pitt, PA, where he has practiced as a member of the firm's litigation section since graduating from Wake Forest University School of Law in 1998.

Williams is actively involved in his professional and local communities. Professionally, he has served as a State Bar councilor for the 21st (now 31st) Judicial District since 2016, and is currently serving in his second year as chair of the Grievance Committee. He is also an active member of the North Carolina Bar Association, the Forsyth County Bar Association, and the Joseph Branch Inn of Court, of which he currently serves as president. Personally, Williams is a member of St. Paul's Episcopal Church and serves on the Board of Directors of the YMCA of Northwest North Carolina. Williams and his wife, Aimee, have been married for 29 years. They have three children—Sydney (25), Ethan (23), and Trevor (21)—with whom they spend as much time as their children will allow. ■

Proposed Amendments (cont.)

pending disposition of a disciplinary proceeding when the member has been convicted of a serious crime or has pled no contest to a serious crime and the court has accepted the ~~plea~~plea;

(8) to review decisions by the chair of the State Bar's Grievance Committee to designate a complainant as vexatious and to enter orders upholding or vacating the designation;

(9) to receive and rule upon petitions to expunge orders of the commission that imposed admonition, reprimand, or censure;

(10) to receive and rule upon petitions to seal orders of the commission that imposed a stayed suspension.

… ■

Resolution of Appreciation for A. Todd Brown

WHEREAS, A. Todd Brown was elected by his fellow lawyers from Judicial District 26 in 2013 to serve as their representative in this body; and he was, thereafter, re-elected councilor for two successive three-year terms; and

WHEREAS, in October 2021, Mr. Brown was elected vice-president; and in October 2022, he was elected president-elect; and, on October 27, 2023, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his tenure with the North Carolina State Bar, Mr. Brown served on the following committees and boards: Ad Hoc Committee on Rules 1.3 and 8.4(d); Ad Hoc Trust Accounting Committee; Administrative Committee, including as chair; Appointments Advisory Committee, including as vice-chair and chair; Communications Committee; Disciplinary Review Committee II; Ethics Committee; Executive Committee, including as vice-chair and chair; Finance and Audit Committee, including as vice-chair and chair; Grievance Committee, including as vice-chair and chair; Issues Committee, including as vice-chair and chair; Special Litigation Committee; Special Committee to Study Amendments to the ABA Model Rules on Advertising; Special Subcommittee on Regulatory Change; and Special Subcommittee on Diversity and Inclusion, including as chair; and

WHEREAS, at his investiture, President Brown, movingly, humbly, and with incredible candor, shared the story of his upbringing in a severely impoverished rural community in South Carolina, where he lived, with seven family members, in a four-room house without running water or indoor plumbing for years; as he described, "throughout my childhood… the stigma of poverty was alive and well in our house and community." President Brown shared his personal story not as a "rags to riches" tale intended to impress but in order that the council might better understand who he is, his values, and the significance to his life of education and the unconditional love of his mother; and

WHEREAS, recognizing that the critical work of the State Bar to regulate the legal profession in the best interests of the public cannot be accomplished without a dedicated, capable, and motivated staff, President Brown demonstrated his unfailing support for the staff by encouraging a comprehensive study of the salary structure at the State Bar. When the results of the study demonstrated that many employees were underpaid, he embraced and promoted the 2024 budget in which, to rectify these disparities, the appropriation for salaries was increased substantially over previous years, to the great appreciation of the staff, and to the benefit of the council, the legal profession, and the public that the staff serves; and

WHEREAS, President Brown's extensive experience as managing partner of the Charlotte office of Hunton Andrews Kurth, a large international law firm, enabled him to provide insightful management and financial guidance to the administrators of the State Bar; and his good business sense shined through all his actions as State Bar president; and

WHEREAS, perhaps the single greatest challenge during President Brown's tenure was the management of the State Bar's response to legislation in the 2023-24 budget bill authorizing the appointment of a "State Bar Review Committee" to examine the rules and procedures governing the State Bar's disciplinary process. With the Review Committee and the Legislature, President Brown set a tone of cooperation and engagement, encouraging State Bar staff to work with defense lawyers to present proposals to the committee for improving the disciplinary process that were acceptable to all. President Brown demonstrated his support of the State Bar's disciplinary program and its staff by traveling from Charlotte to be front and center observing all meetings of the committee in the Legislative Office Building in Raleigh. The recommendations of the committee that were embodied in legislation are currently being implemented with the hope that they will ultimately prove beneficial to the disciplinary process; and

WHEREAS, the disciplinary functions of the State Bar were also advanced by President Brown's support of two initiatives of the Issues Committee that promote education and rehabilitation over discipline: the consolidation of the Trust Account Compliance Program and the Random Audit Program to create one Trust Account Compliance Department within the Office of Counsel that will enable a coordinated focus on providing education and resources, in lieu of discipline, to lawyers with trust account management problems; and the creation of a self-directed deferral program that engages the respondent lawyer in the design of a deferral that will address the lawyer's professional deficiencies, thereby providing the Grievance Committee with alternative ways to address professional misconduct while also providing the respondent lawyer an opportunity to acknowledge the conduct and take affirmative steps to improve; and

WHEREAS, President Brown continued his predecessors' commitment to improving communications and engagement with the stakeholders and constituents of the State Bar, selflessly traveling across the state to present five John B. McMillan Distinguished Service Awards; to hold district bar meetings and a special meeting of district bar presidents; and to address the superior court judges at their conferences; and

WHEREAS, President Brown was not prone to rash decisions or snap judgments, showing exceptional diligence in reading everything given to him for consideration or review, making helpful suggestions for improvement, and always finding all the typos; and

WHEREAS, President Brown oversaw the peaceful transition of the management of the State Bar, helping to ensure that the positions of State Bar counsel and executive director were filled by the next generation of great lawyer-leaders; and

WHEREAS, President Brown accom-

plished the preceding while a nominee for a special superior court judgeship, and, in the least political of ways—consistent with his humility, temperament, and quiet competence—endured the politics of obtaining the appointment. The councilors and the staff have no doubts that the judicial system of North Carolina will be better for his service on the bench; and

WHEREAS, President Brown always answers the question "how are you?" with a simple, genuine, "doing fine, can't complain," thereby demonstrating his incomparable people skills. He never brings his personal problems to the table, always shows respect for everyone he encounters, and unfailingly expresses appreciation for the efforts and talents of others, especially members of the State Bar staff; and

WHEREAS, as he exchanges his presidential britches for a black robe, President Brown's grateful proteges raise their glasses for a splash (preferably of excellent Cab) to salute the 89th president of the State Bar, who went from wingman to pilot without a hiccup, and to the consummate wisdom, pragmatism, kindness, and humanity he brought to his service as president of the State Bar.

NOW, THEREFORE, BE IT RESOLVED that the Council of the North Carolina State Bar does hereby, and with deep appreciation, express to A. Todd Brown 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, integrity, professionalism, and equality.

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 A. Todd Brown.

In Memoriam

Edward Anderson
Kingston, TN

Robert Baynes
Greensboro, NC

Samuel Britt
Lumberton, NC

Jefferson Bruton
Hendersonville, NC

Robert Bryan Jr.
Garner, NC

Elizabeth Bunting
Simpsonville, SC

Robert Collier Jr.
Statesville, NC

John Davenport
Raleigh, NC

Michael Drye
Asheville, NC

Richard Faust
Raleigh, NC

David Frankstone
Chapel Hill, NC

Barbara Goldstein
Tucson, AZ

Robert Haire
Sylva, NC

Charles Henderson
Cary, NC

Patti Holt
Wrightsville Beach, NC

Kenneth Honeycutt
Monroe, NC

Joseph Hoyle
Kings Mountain, NC

Stephen Johnson
Winston-Salem, NC

Jack Klass
Lexington, NC

James Lanier Jr.
Atlantic Beach, NC

Andrew Lax
Charlotte, NC

Elizabeth Maddox
Raleigh, NC

Susan McClees
Oriental, NC

Brenda McLain
Shelby, NC

Duncan McMillan
Raleigh, NC

Roy Michaux Jr.
Charlotte, NC

William Mills
Matthews, NC

William Graham Mitchell
New Bern, NC

Jack Moody
Siler City, NC

David Moore II
Greensboro, NC

Dean Murphy
Cary, NC

Daniel Retchin
Wilmington, NC

Robert Savage Jr.
Apex, NC

Clyde Smith Jr.
Raleigh, NC

Nicholas Smith Sr.
Lynchburg, VA

Robert Smith
Raleigh, NC

Richard Stanley
Beaufort, NC

Robert P. Stranahan III
Durham, NC

Trawick Stubbs Jr.
New Bern, NC

James Talley Jr.
Charlotte, NC

Robert Valois
Raleigh, NC

Gretchen White
Mineral, VA

Beth Wolfe
Durham, NC

Traci Zeller
Charlotte, NC

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, Judge James A. Beaty Jr., addressed the attendees, and each honoree was presented a service pin by the president of the State Bar, A. Todd Brown, in recognition of the lawyer's 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) James Drennan, Karen Bethea-Shields, J. Calvin Cunningham, William Freeman, Gordon Belo, Paul Carruth, Phillip Dixon, Tom Berkau, Jim Gale, Charles Bentley, David Caudle, Guido De Maere, Jim Everett, Jerry "Ty" Browder *Second row*: Steve Beaman, Jimmy Carter, David Beard, Woodberry Bowen, Richard Bennett, Kenneth Benton, Robert Brady, Kenneth Eagle, Edward Finley, Jim Deal, Lewis Fisher, David Ashcraft, Michael Culpepper, Paul Duffy *Top row*: Beverly Beal, Sam Carlisle, Tom Comeford Jr., James A. Beaty Jr., Wilton Russell Duke

First row (left to right) Jonathan Maxwell, Lynn Hogue, Robert HobGood, Henry Hight, Sheri McGirt, Mike Marshall, Barbara Gore Washington, James Levinson, Randall May, Clarence Mattocks, Kenny Greene, Ronald Johnson, Michael Bruce Magers, Richard Wright Wilson *Second row*: L. Holt Felmet, Hiram Mayo, Dan McLamb, Henry Gorham, David Hill, Dave Hillier, Michael Godwin, Robert Kaylor, Gary Hemric, Douglas Martin, Gregory Malhoit, J. Gates Harris, Jack Thornton, Kenneth Johnson *Top row*: Steve Gaydica III, John McClain Jr., George Hearn, Ben Irons, Donald Hicks, Larry Leake, Philip Lohr, Robert Grant Jr.

First row (left to right) Ron Perkinson, Richard Prentis, Larry Pollard, Tyler Warren, James Tolin, Richard Stevens, Donald Watson, William Daniel Pate, Alden Webb, Bonnie Peter, Richard Watson, Betty Quick, James Warren, Bob Whitley *Second row*: Norman Smith, Vernon Wharton, Thomas Whitaker, Carroll Tuttle, Bryce Thomas, Charles Montgomery, Robert Monroe, Cynthia H. Rabil, William Rabil, Roger S. Tripp, Dan McLawhorm, Ed Winslow, Ronald Stephens, William O. White Jr. *Top row*: Henry (Hank) P. Van Hoy II, Reginald Smith, Jody Moore

John B. McMillan Distinguished Service Award

Clifton T. Barrett

Clifton T. Barrett received the John B. McMillan Distinguished Service Award on September 18, 2024, at the Guilford Inn of Court meeting held in Greensboro, North Carolina. State Bar President-Elect Matthew W. Smith presented the award and State Bar Councilor Manisha P. Patel also participated in the presentation.

Mr. Barrett graduated cum laude from Wake Forest University with a bachelor of arts in history in 1982 and earned his JD from Wake Forest University School of Law in 1985. Following his graduation from law school, Mr. Barrett began his legal career as an assistant district attorney in Forsyth County. Over the next nine years, he tried over 175 jury trials to verdict, including 18 murder trials and the first criminal trial in North Carolina (and one of the first criminal trials in the country) involving the admission of DNA evidence. Mr. Barrett subsequently advised prosecutors all over the United States about the use of DNA evidence in criminal trials.

In 1994 Mr. Barrett became an assistant United States attorney for the Middle District of North Carolina, a position he still holds today. From 1997 to 2022 Mr. Barrett served as the chief of the Criminal Division, with responsibility for overseeing all federal criminal prosecutions in the Middle District of North Carolina. He also continued to prosecute a wide variety of criminal cases himself, while training and mentoring an entire generation of federal prosecutors in his office. Most importantly, Mr. Barrett always modeled and promoted civility and professionalism in the practice of law. As a result, he has earned the respect of not just fellow prosecutors, but also the criminal defense bar and the judiciary as well.

Mr. Barrett's public service has extended beyond his work in the Middle District of North Carolina. For the last nearly two decades, he has participated in the United States Department of Justice's Evaluation and Review Program, first as an evaluator and then as a team leader. In those roles, Mr. Barrett traveled around the country assessing operations in United States Attorney's Offices and offering suggestions to improve the administration of justice. In addition, he served on the Criminal Chiefs' Working Group from 2000 to 2007, providing advice to the United States Attorney General, and regularly taught criminal trial advocacy at the United States Department of Justice's National Advocacy Center in Columbia, South Carolina.

Mr. Barrett also devoted himself to legal education in North Carolina, as an adjunct professor at Wake Forest University, where he has taught trial practice since 1996. Notably, as one of his colleagues commented, Mr. Barrett "didn't just come for the class period – he'd take [his students] out to dinner after class so they could sit in a relaxed atmosphere and...learn about being an attorney...He devoted a tremendous amount of time to that effort because he thought it was important to train the next generation of attorneys who would eventually take our place."

Harry B. Crow Jr.

Harry B. Crow Jr. received the John B. McMillan Distinguished Service Award on September 18, 2024, in Monroe, North Carolina. State Bar President A. Todd Brown presented the award. State Bar Councilor David Allen assisted in the presentation.

Mr. Crow was born and raised in Union County and attended Monroe's public schools before enrolling at The University of North Carolina at Chapel Hill, where he earned his undergraduate degree in 1966. In 1969 he graduated from UNC School of Law.

From 1969 to 1973, Mr. Crow served as a captain in the US Army's Judge Advocate General (JAG) Corps. His military career was distinguished by his work in Washington, DC, with the US Army Judiciary, and later in Vietnam. After attending language school in Monterey, California, Mr. Crow was sent to Vietnam and served with the Military Assistance Command, Vietnam. There, he advised the Vietnamese JAG Corps, taught at the University of Saigon's Faculty of Law, and instructed high-level legal officials, including the Vietnamese minister of justice and Supreme Court members. From 1973 to 1975, Mr. Crow was a legal advisor with the US Agency for International Development, then part of the US Department of State, where he continued his work in Vietnam.

In 1975 Mr. Crow returned to Monroe, where he has since practiced law. Over the last 55 years, Mr. Crow has served his clients with distinction, handling a broad spectrum of legal matters. His practice spans civil and criminal courts, real estate transactions, estate planning, business deals, and agency representation before the Social Security Administration, NC Industrial Commission, and NC Employment Commission. One of Mr. Crow's most vital contributions has been offering bankruptcy services to residents of Union and Anson Counties. For many years, Mr. Crow was one of the few attorneys providing consumer bankruptcy services, ensuring that those in financial distress had access to the relief they needed.

Mr. Crow's legal career has been marked by a deep commitment to ensuring that justice is accessible to all, regardless of their financial means. He has frequently represented those who are disadvantaged, offering his services *pro bono* without seeking recognition. Mr. Crow has instilled these values in his sons, who now practice law with him at Crow Law Firm. Together, the Crow Law Firm has earned consistent recognition as Pro Bono Honorees in the Mecklenburg Access to Justice Program.

Mr. Crow served as a State Bar councilor for nine years and was president of the Union County Bar. As a public administrator for Anson County, he played a key role in the administration of estates and legal affairs. From 1990 to 1995, Mr. Crow served on the board of Legal Services of Southern Piedmont, providing crucial support to low-income residents in need of legal assistance.

In addition to his legal work, Mr. Crow has been an active force in local politics and

civic life. As chair of the Union County Democratic Party for six years, Mr. Crow helped shape the political landscape in his community. In 2012 he was honored with the STARS award by the Democratic Women of North Carolina for his efforts in building the local party. His commitment to public service continued with his appointment to the Union County Board of Elections in 2016, where he served as chair from 2019 to the end of 2023.

Throughout his career, Mr. Crow has earned a reputation for civility, humility, and professionalism. Known for his courteous demeanor and respectful interactions with judges, attorneys, and clients alike, he sets a high standard for others to follow. In recognition of his dedication to the principles of professionalism, integrity, and public service, Mr. Crow was awarded the 2023 Chief Justice's Professionalism Award by Chief Justice Paul Newby.

David W. Long

David W. Long was presented with the John B. McMillan Distinguished Service Award on November 4, 2024, at the North Carolina State Bar building. State Bar President-Elect Katherine Frye presented the award. Other speakers included Bonnie Weyher, Wade Smith, Joe Zeszotarski, Cecil Harrison, and Sandy Chrisawn.

Born in Punxsutawney, Pennsylvania, Mr. Long was inspired to pursue a legal career by his father and grandfather, both of whom were lawyers. He earned his BA from Duke University in 1964, where he was the manager of the men's varsity basketball team. He remains an avid Duke fan to this day. After graduating from the UNC School of Law in 1967, he began his career with the Raleigh law firm of Poyner, Geraghty, Hartsfield, and Townsend, a predecessor of Poyner Spruill. Mr. Long later left private practice to work in the US Attorney's Office. After gaining experience there, he returned to Poyner Spruill, where he has since practiced in the litigation group, distinguishing himself in both criminal and civil law.

Mr. Long's career as a trial lawyer has been remarkable. Though he has handled many civil cases, his primary focus has been criminal defense, including complex white-collar crime cases involving allegations of political bribery, tax fraud, antitrust violations, and election fraud. His reputation for excellence extends beyond North Carolina, with cases litigated in federal courts across the United States. His exceptional skill as a trial lawyer and his exemplary professionalism have earned him membership in the American College of Trial Lawyers, the International Association of Barristers, and the American Board of Trial Advocates.

Mr. Long has devoted much of his career to bar leadership and community service. He served multiple terms on the Wake County Bar Board of Directors and on the Wake County Professionalism Committee. He was elected president of the 10th Judicial District Bar where he focused on improving the local grievance process. Mr. Long later represented the 10th Judicial District as a State Bar councilor for three consecutive three-year terms, actively serving on multiple committees, including the Ethics Committee. After completing his term as councilor, he continued to contribute as an advisory member on the Ethics Committee. Mr. Long also served on the Disciplinary Hearing Commission and has been a guest lecturer at both Duke and Campbell law schools.

Mr. Long's contributions extend to other important roles, including chairing the Advisory Group for the Eastern District of North Carolina under the Civil Justice Reform Act of 1991 and serving on the Federal Bar Advisory Council, where he was chair for two years. He has served on the Inmate Grievance Resolution Board, the Criminal Justice Partnership State Advisory Board, and the Innocence Inquiry Commission. Mr. Long has also mentored many young lawyers. His community involvement includes serving as president of the Capital Area Soccer League (CASL) and coaching youth soccer. In recognition of his many contributions, Mr. Long received the David W. Daniel Award as well as the Wake County Bar's Joseph Branch Professional Award.

Mr. Long's career and character truly embody the ideals of professionalism, dedication, and kindness.

Robert W. Wolf

Robert W. Wolf received the John B. McMillan Distinguished Service Award on September 11, 2024, in Rutherfordton, North Carolina. State Bar President A. Todd Brown presented the award. State Bar Councilor Merrimon B. Oxley assisted in the presentation.

Mr. Wolf attended The Citadel and Wake Forest School of Law. He subsequently joined the US Army. After his tour of duty, Mr. Wolf moved to Rutherford County, North Carolina, where he has had a small-town general practice throughout his career.

For many years, Mr. Wolf has served as a dedicated attorney in Rutherford County, where he has earned a reputation for his selflessness and commitment to helping those in need. In this rural community, where many cannot afford legal representation, Mr. Wolf put his clients before financial concerns. Mr. Wolf has been known to accept payments in the form of hams, preserves, and pound cakes. Mr. Wolf stays abreast of legal changes and developments, ensuring his clients receive the best possible representation. Additionally, Mr. Wolf has been a mentor to many younger attorneys in his community. He has also supported diversity within the legal profession, being a strong advocate for women attorneys and attorneys of color.

Mr. Wolf's contributions extend beyond the courtroom. He has served as the president of the local bar for many years. He also served on the Disciplinary Hearing Commission alongside John B. McMillan. Mr. Wolf has always prioritized serving his community. He has been actively involved on the boards of local nonprofits, including Family Resources of Rutherford County, Hospice, Rutherford County Habitat for Humanity, and the Vocational Rehabilitation Workshop. Currently, he serves as the chair of the board for the Forest City Housing Authority, a position he has held for many years. Additionally, Mr. Wolf was the attorney for the local school board, a role he viewed as a civic duty, accepting only a minimal retainer fee.

Robert W. Wolf is a dedicated, compassionate attorney who has spent his career in service to his clients and community. His selflessness, legal acumen, and commitment to mentoring the next generation of lawyers have made him a respected figure in Rutherford County. Whether advocating for clients in court or giving back through countless hours of community service, Mr. Wolf is a most deserving recipient of the John B. McMillan Distinguished Service Award.

Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession for the John B. McMillan Distinguished Service Award. Information and the nomination form are available online: ncbar.gov/barprograms/distinguished-service-award. Please direct questions to Suzanne Lever at slever@ncbar.gov. ■

Client Security Fund Reimburses Victims

At its October 29, 2024, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $37,298 to 34 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $1,050 to a former client of Arthur M. Blue of Carthage. The board determined that the client retained Blue to handle three separate traffic tickets. Blue charged $500, $300, and $500 respectively to handle each of the tickets and was paid a total fee of $1,050. Blue continued the traffic cases numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and then passing away prior to resolving the client's cases. Blue transferred to disability inactive status by consent order on April 19, 2023, and subsequently died on May 31, 2023.

2. An award of $2,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle several traffic offenses. Blue charged a fee of $2,000, which the client paid in two installments. Blue continued the traffic cases numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away prior to resolving the client's cases.

3. An award of $4,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a divorce. The client paid a $4,000 deposit, but Blue passed away before he could complete the representation. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

4. An award of $1,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle several traffic tickets. Blue charged a $1,000 fee, which the client paid. Blue missed six court appearances and continued the traffic cases numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away prior to resolving the client's cases.

5. An award of $100 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a fee of $100. Blue passed away before he could represent the client in court. Blue provided no meaning legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

6. An award of $400 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a misdemeanor traffic offense. Blue charged and was paid a $400 fee. Blue continued the client's case several times and failed to appear at the last court date due to health reasons, which resulted in a failure to appear and the client being arrested. Blue failed to provide any meaningful legal services for the fee paid prior to being enjoined by the State Bar and subsequently passing away.

7. An award of $600 to a former client of Arthur M. Blue. The board determined that the client retained Blue to appear in court and handle a couple traffic charges. Blue charged and was paid a $600 fee. Blue failed to enter a notice of appearance or appear in court on the court date and the client was arrested for failure to appear. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

8. An award of $355 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $355 fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

9. An award of $150 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $150 fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

10. An award of $300 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $300 fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

11. An award of $600 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle traffic charges. Blue was paid $600 towards his $750 quoted fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

12. An award of $156 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged a flat fee of $150, which the client paid, plus a $6 processing fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

13. An award of $150 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle traffic charges. Blue charged and was paid a $150 fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

14. An award of $208 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $208 fee. Blue failed to appear on the client's court date. He provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

15. An award of $2,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue for representation on a DWI charge. Blue was paid $2,000 towards his $2,600 quoted fee. Blue continued the case, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

16. An award of $2,250 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a DWI

charge. Blue charged and was paid a fee of $2,250. He obtained an order to recall the order for the client's arrest, placed the DWI matter back on the court's calendar, and sought continuances on the case, but provided no meaningful legal services before being enjoined by the State Bar and subsequently passing away.

17. An award of $150 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $150 fee. He obtained continuances of the case, but otherwise provided no meaningful legal services for the paid before being enjoined by the State Bar and subsequently passing away.

18. An award of $200 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle multiple traffic charges. Blue charged and was paid a $200 fee. He continued the cases numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

19. An award of $155 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $155 fee. He continued the case numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

20. An award of $2,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a DWI and DWLR charges. Blue was paid $2,000 towards his $2,500 quoted fee. Blue continued the cases numerous times, but otherwise provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

21. An award of $150 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $150 fee. Blue failed to appear on the client's behalf to handle the ticket. He provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

22. An award of $250 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $250 fee. Blue kept continuing the case and then filed a motion to withdraw. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

23. An award of $624 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic matter. Blue charged and was paid a $624 fee. The client signed a waiver of appearance then was told the case was continued only to later receive a letter advising that her license would be indefinitely suspended due to her failure to appear. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

24. An award of $925 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle multiple traffic offenses. The client paid Blue $925 over several months. However, Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

25. An award of $175 to a former client of Arthur M. Blue. The board determined the client retained Blue to handle a traffic ticket. Blue charged and was paid a $175 fee. He provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

26. An award of $150 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $150 fee. He provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

27. An award of $125 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a traffic ticket. Blue charged and was paid a $125 fee. Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and subsequently passing away.

28. An award of $2,300 to a former client of Alan T. Briones, formerly of Raleigh. The board determined that the client retained Briones to assist him in obtaining an injunction and filing a civil suit against his business partners. Briones charged and was paid a $2,000 retainer fee plus $300 for a filing fee. Briones failed to file the injunction, failed to file the complaint in a timely manner, and failed to pursue the case.

29. An award of $3,000 to a former client of Charles M. Kunz of Durham. The board determined that the client hired Kunz to review and prepare a Motion for Appropriate Relief and to attempt to negotiate a consent agreement with the DA or calendar a hearing in his criminal matter. Kunz accepted payment totaling $3,000 towards his fee knowing of his pending disbarment and failed to perform any meaningful legal services for the paid fee prior to his disbarment and subsequent passing. Kunz was disbarred on April 14, 2023, and died on April 21, 2023. The board previously reimbursed 41 other Kunz clients a total of $247,530.

30. An award of $2,000 to a former client of Charles M. Kunz. The board determined that the client hired Kunz to assist with an immigration status change to extend his student visa. Kunz performed some legal services on the client's behalf, but it is difficult to quantify the services as meaningful given that the client's university program would meet the requirements for the status change. Kunz's conduct left the client in a worse position and possibly facing deportation or being barred from reentering the United States. Therefore, Kunz failed to provide any meaningful legal services for the fee paid.

31. An award of $2,500 to a former client of D. Jeffrey Rogers of Lumberton. The board determined that the client retained Rogers to assist her with equitable distribution. Rogers charged and was paid $2,500. The client's case was delayed due to COVID, then Rogers developed health related issues and closed his practice. Rogers admits to failing to perform any legal services for the fee paid.

32. An award of $2,500 to a former client of Edward D. Seltzer of Charlotte. The board determined that the client hired Seltzer to help him expunge his criminal record from 1983 in order to reinstate his right to own a firearm. Seltzer charged and was paid a $2,500 fee. Seltzer provided no meaningful legal services for the fee paid prior to his passing on June 30, 2021. The board previously awarded five other Seltzer clients a total of $76,150.

33. An award of $2,000 to a former client of Jonathan E. Speight of Smithfield. The board determined that the client hired Speight to handle a 2012 DWI charge. Speight charged and was paid a $2,000 fee. Speight had the client attend classes but never obtained a new court date or filed anything on the client's behalf. Speight provided no meaningful legal services for the fee paid prior to, presumptively, abandoning his legal practice.

34. An award of $2,770 to a former client of R. Cherry Stokes of Greenville. The board determined that the client hired Stokes to handle several criminal charges. Stokes accepted

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2024 Third Quarter Random Audits

Audits were conducted in Bladen, Buncombe, Chatham, Cumberland, Durham, Harnett, Johnston, Lee, Mecklenburg, New Hanover, Orange, Pender, and Wake Counties.

One audit each was conducted in Chatham, Harnett, Johnston, Lee, and Pender Counties, two audits were conducted in Bladen and Durham Counties, three audits were conducted in Cumberland County, four audits were conducted in New Hanover County, five audits were conducted in Buncombe County, six audits each were conducted in Mecklenburg and Orange Counties, and 17 audits were conducted in Wake County.

The following are the results of the audits.

1. 34% failed to escheat unidentified/abandoned funds as required by GS 116B- 53.

2. 26% failed to provide a copy of the Bank Directive regarding checks presented against insufficient funds.

3. 24% failed to sign, date, and/or maintain reconciliation reports.

4. 22% failed to:

- review bank statements and cancelled checks each month;
- identify the client on confirmations of funds received/disbursed by wire/electronic/online transfers.

5. 20% failed to complete quarterly transaction reviews.

6. 18% failed to indicate on the face of each check the client from whose balance the funds were drawn.

7. 16% failed to complete quarterly reconciliations.

8. 14% failed to:

- complete monthly bank statement reconciliations;
- use business size checks containing the Auxiliary On-Us field;
- maintain images of cleared checks or maintain them in the required format;
- identify the client and source of funds, when the source was not the client, on the original deposit slip.

9. Up to 10% failed to:

- take the required one-hour trust account CLE course;
- provide written accountings to clients at the end of representation or at least annually if funds were held more than 12 months;
- prevent over-disbursing funds from the trust account resulting in negative client balances.

10. Areas of consistent rule compliance included:

- properly maintained a ledger for each person or entity from whom or for whom trust money was received;
- properly prevented bank service fees being paid with entrusted funds;
- properly maintained a ledger of lawyer's funds used to offset bank service fees;
- properly removed signature authority from employee(s) responsible for performing monthly or quarterly reconciliations;
- properly deposited funds received with a mix of trust and non-trust funds into the trust account;
- properly recorded the bank date of deposit on the client's ledger;
- promptly removed earned fees or cost reimbursements;
- promptly remitted to clients' funds in possession of the lawyer to which clients were entitled;
- properly signed trust account checks (no signature stamp or electronic signature used);
- properly maintained records that are retained only in electronic format.

Based on the geographic plan for 2024, audits for the fourth quarter will be conducted in Alamance, Davidson, Hoke, Lenoir, Mecklenburg, Moore, Pitt, Union, Wake, and Wayne Counties. ■

Client Security Fund (cont.)

numerous payments from the client, most of which occurred after his own June 2021 felony conviction and some during his Disciplinary Hearing Commission prosecution in 2022. Stokes knew or should have known that he would not be able to complete his representation of the client. Stokes obtained several continuances for the client but failed to provide any meaningful legal services for the fee paid.

Funds Recovered

It is standard practice to send a demand letter to each current or former attorney whose misconduct results in any payment from the fund, seeking full reimbursement or a confession of judgment and agreement to a reasonable payment schedule. If the attorney fails or refuses to do either, counsel to the fund files a lawsuit seeking double damages pursuant to N.C. Gen. Stat. §84-13, unless the investigative file clearly establishes that it would be useless to do so. Through these efforts, the fund was able to recover a total of $18,770.08 this past quarter. ■

Upcoming Appointments

Anyone interested in being appointed to serve on one of the State Bar's boards, commissions, or committees should visit bit.ly/NCSBInterestForm to complete a "Boards and Commissions Interest Form." The deadline for completion of the interest form is January 3, 2025. Your information will be included in agenda materials for the January meeting of the council. The council will make the following appointments at its January 24, 2025, meeting:

Lawyer Assistance Program Board (three appointments; three-year terms)—There are three appointments to be made. Anthony Flanagan (volunteer member) is eligible for reappointment. Michael E. McGuire (clinician member) and Warren Savage IV (councilor member) are not eligible for reappointment.

The LAP Board is a nine-member board comprised of three State Bar councilors, three LAP volunteers, and three clinicians who are experienced in working within the substance abuse and/or mental health field. The LAP Board establishes policy related to the execution of the LAP mission and is responsible for oversight of the operation of the Lawyer Assistance Program subject to the statutes governing the practice of law, the authority of the council, and the rules of the board.

North Carolina State Bar Foundation Board (one appointment; four-year term)—There is one appointment to be made. M. Keith Kapp is eligible for reappointment.

The Board of the North Carolina State Bar Foundation is composed of seven members, all of whom must be past-presidents of the North Carolina State Bar. The board oversees the sound investment of the assets of the foundation for the purpose of generating income for the support of the maintenance and operation of the State Bar building and for the support of the programs of the State Bar. ■

February 2025 Bar Exam Applicants

The February 2025 bar examination will be held in Raleigh on February 25 and 26, 2025. Published below are the names of the applicants whose applications were received on or before October 31, 2024. 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.

Nabeel Abdelmajid
Jamestown, NC
Addie Ackley
McLeansville, NC
Iman Affane
Harrisburg, NC
Suraya Akkach
Raleigh, NC
Tsvetina Alexandrov
Cary, NC
Kelvin Allen
Durham, NC
Dawnwin Allen
Charlotte, NC
Alexis Alston
Greensboro, NC
Erin Anderson
Bessemer City, NC
Macaylee Anderson
McLeansville, NC
Jordan Anderson
Durham, NC
Anthony Angelone
Sebastian, FL
Sommer Arena
Rolesville, NC
Yvonne Arnold
Davidson, NC
Melo Augustine
Mcleansville, NC
Benjamin Austin
Huntersville, NC
Abigail Bailey
Charleston, SC
David Bancroft
Cary, NC
Ayana Banks
Mocksville, NC
Sushma Bansal
Sugar Land, TX
Latashia Baptist
Raleigh, NC
Brittany Barnes
Plymouth, NC
Daven Barnett
Waxhaw, NC
Cameron Bauer
Charlotte, NC
Tekia Bazemore
High Point, NC
Ashlee Bell
Durham, NC
Jennifer Benavides
Greensboro, NC
Ashley Benefield
Greensboro, NC
Denise Bennett
Oxford, NC
Alexandra Bentley
Clemmons, NC
Alexis Biesemeyer
Greensboro, NC
Martha Bird
Oak Ridge, NC
Riley Bittner
Greensboro, NC
Emma Blackman
Four Oaks, NC
Jake Blum
Wilmington, NC
John Bonanno
Cary, NC
Melissa Bond
Zebulon, NC
Sarah Borrey
Tryon, NC
Nathaniel Bowers
Raleigh, NC
LaTosha Bradley
Clayton, NC
Jacob Brault
Summerville, SC
Christian Brooks
Winston-Salem, NC
Brianna Brooks
Deep Run, NC
Jacob Brooks
Ennice, NC
Harrison Brown
Greensboro, NC
Carole Brown
Asheville, NC
Jenna Brzykcy
Taylorsville, NC
Sara Bullard
Brooklyn, NY
Jaclyn Burke
Greensboro, NC
Larissa Burke
Charlotte, NC
Dominique Buteau
Greensboro, NC
Brian Butler
Swannanoa, NC
Lucy Campbell
Raleigh, NC
Stephen Carney
Burlington, NC
Kathryn Carter
Salemburg, NC
Alexis Carter
Wilson, NC
Kathryn Caudill
Walnut Cove, NC
Kyle Cayton
Reidsville, NC
Dorothy Chater
Chapel Hill, NC
Seoyeon Cho
Winston-Salem, NC

Nicholas Ciani
Fort Lauderdale, FL
Rebekah Cid del Prado
Durham, NC
Julie Cline
Greensboro, NC
Rachelle Cline
Charlotte, NC
Andrea Col
High Point, NC
Hannah Cola
Reminderville, OH
Samuel Collins
Pilot Mountain, NC
Pedro Colon-Berrios
Apex, NC
Olivia Condon
Greensboro, NC
Kiera Connolly
Flemington, NJ
Brenna Connor
Mount Pleasant, SC
Andrew Conway
Greensboro, NC
Grace Cooper
Greensboro, NC
Ashley Cooper
Browns Summit, NC
Amanda Covington
Cary, NC
Marissa Cummings
Fayetteville, NC
Joselyn Cummings-Flores
Raleigh, NC
Emily Darrigrand
Wake Forest, NC
Stephen Davis
Asheboro, NC
Seraka Davis
Wake Forest, NC
Caroline DeCarvalho
Greensboro, NC
Ryan Denver
Greensboro, NC
Joanna Diaz
West Palm Beach, FL
Cody Dockery
Greenville, NC
Collin Donaghy
Greensboro, NC
Amber Dover
Charlotte, NC
Paige Doyle
Burlington, NC
Cameron Drake
Charlotte, NC
Carson Durham
Greensboro, NC
Hanh Dworkowski
Mint Hill, NC
Amy Embert
Indiatlantic, FL
Kwanteshia English
Mount Dora, FL
Elizabeth Escobar
Hickory, NC
Brittany Eudy
Salisbury, NC
Elizabeth Fadl
Burke, VA
John Ferebee
Macclesfield, NC
Cuyler Field
Concord, NC
Siomara Flores
Chesterfield, VA
Madelyn Fogleman
Winston-Salem, NC
Karah Francois
Huntersville, NC
Emma Friedland
Greensboro, NC
Sarah Fuller
Greensboro, NC
Larry Futrell
Ahoskie, NC
Anyia Gaines
Asheville, NC
Bianca Garcia
Des Plaines, IL
Julia Gardea
Findlay, OH
Lisa Garner
Greensboro, NC
Brianna George
Durham, NC
Nick Gera
Durham, NC
Austin Gilliard
Raleigh, NC
Conner Gillmer
Greensboro, NC
Sanya Glauber
Chapel Hill, NC
Graelyn Glover
Garner, NC
Brooks Godbold
Salisbury, NC
Daniela Gonzalez
Orlando, FL
Maritza Gonzalez
Fletcher, NC
Michael Govan
Suffolk, VA
Mia Graves
Greensboro, NC
Novian Graves
Greensboro, NC
Joel Green
Indian Trail, NC
Meagan Green
Asheville, NC
Aselah Greenwood
Murfreesboro, TN
Madeline Gregory
Winston-Salem, NC
Michael Griddine
Fayetteville, NC
Sara Griffin
Mount Gilead, NC
Lucy Groves
Greensboro, NC
Borjius Guient
Gonzales, LA
Davis Gunter
Bennett, NC
Jesse Gutstein
Burlington, NC
Marina Handwerk
Santa Ana, CA
Richard Hanson
Wilmington, NC
Alicia Harris
Wilmington, NC
Laurey Harris
Huntersville, NC
Remington Harrison
Raleigh, NC
Jacqueline Hayes
Chapel Hill, NC
Sierra Heil
Columbia, SC
Maria Herrera
Durham, NC
Amanda Higginson
Winterville, NC
Tiffany Hilburn
Benson, NC
Sara Hill
Fayette, OH
Sabian Hill
Raleigh, NC
Makayla Hines
Lithia, FL
Tenisha Hines
Jamesville, NC
Taylor Holloman
Gibsonville, NC
David Holt
Greensboro, NC
Ashton Hopson
Greensboro, NC
John Howard
St. Louis, Missouri
Tracey Hower
Charlotte, NC
Nigia Hunt
Durham, NC
Lauryn Hyatt
Greensboro, NC
Hana Ibrahim
Greensboro, NC
Brendan Ikner
Greensboro, NC
Jordon Inzerillo
Greensboro, NC
JoAnna Ivey
Surf City, NC
Rebecca Iyoob
Charlotte, NC
Leyo Jackson
Fayetteville, NC
Jodie Jackson
Morrisville, NC
John Jackson
Chapel Hill, NC
Jerry Jen
Cary, NC
Ashley Joines
Greer, SC
Meredith Jones
Holly Ridge, NC
Ryan Jones
Raleigh, NC
Ella Jung
Sanford, NC
Justin Kaplan
Charlotte, NC
Sydney Keesee
Kannapolis, NC
Maiyisha Keita
Memphis, TN
Adya Khanna
Raleigh, NC
Mhakai King
Charlotte, NC
Kirsten King
Indianapolis, IN
Kayla Kirkman
Burlington, NC
Julie Kirstein
Fairview, NC
Kyle Knape
Raleigh, NC
Melanie Kolodziej
Charlotte, NC
Joseph Korin
Greensboro, NC
Emily Kwan
Wellesley, MA
Tina Lakic
High Point, NC
Alexander Lambert
Hope Mills, NC
Jordan LaTorre
Hillsborough, NC
Courtney Latourrette
Ashburn, VA
William Lea
Raleigh, NC
Stephanie LeBlanc
Vero Beach, FL
Christina Lee
Cary, NC
Sang Eun Lee
La Mirada, CA
Erika Lessane
Concord, NC
Joseph Lewis
Greensboro, NC
Jessica Lineberry
Salisbury, NC
Marena Long
North Topsail Beach, NC
Julia Lopez
Madeira Beach, FL
Amanda Lopez
Waxhaw, NC
Kebin Lopez Bautista
Jacksonville, FL
Lona Loudon
Raleigh, NC
Jeffrey Lovingood
Marble, NC
Kirstin Lowry-Sommers
Pinehurst, NC
Dexter Maceus
Matthews, NC
Marina Malak
Wake Forest, NC
Marcus Maldonado
Garner, NC
Jacob Markham
Charlotte, NC
Luke Marshall
Garner, NC
Matthew Martin
Holly Springs, NC
Christian Matthews
Newport, NC
Lauren Maybin
Zirconia, NC
Brooke McCormick
Metamora, IL
Kayla McLaurin
Spencer, NC
Ashlee McLean
Winston-Salem, NC
Italo Medelius-Marsano
Durham, NC
Kristin Melo
Raleigh, NC
Eduardo Mendes
Greensboro, NC
Anai Mendez
Saint Pauls, NC
Naisha Mercury
Greensboro, NC
David Miller
Charlotte, NC
Terrass Misher
Gastonia, NC
Stephanie Montoya
Claremont, NC
Jessica Morales
Winston-Salem, NC
Emily Morris
Raleigh, NC
Will Morrison
New Albany, OH
Suzannah Mozier
Chapel Hill, NC
Jerry Murphy
Tyler, TX
Jackson Myers
Apex, NC
Daphne Myers
Ephrata, PA
Saadiqa Myles
Durham, NC
Anna Nash
Greensboro, NC
Bridgette Navejar
Fayetteville, NC
Brenda Neal
Ithaca, NY
Laurin Neal
Lexington, NC
Emily Nelson
Fayetteville, NC
McCaul Nelson
Raleigh, NC
Clyde Nelson
Charlotte, NC
Helen Nguyen
Morrisville, NC
Victoria O'Quin
Jackson, MS
Kailyn Oakley
Raleigh, NC
Ayooluwa Onasanya
Greesnsboro, NC
Joaquin Ortiz
Chesapeake, VA
Brooklyn Owens
Wilmington, NC
Karl Palenkas
Rocky Mount, NC
Rachel Parent
Raleigh, NC
Gabriella Parisi
Charlotte, NC
Garrett Parks
Mocksville, NC
Nicholle Parsons
Bay Shore, NY
Andrea Pascal
Greensboro, NC
Hinal Patel
Kathleen, GA
Earthvi Patel
Raleigh, NC
Nicole Patsy
Charlotte, NC
Robert Penington

Raleigh, NC
Jasmine Perrin
Charlotte, NC
Ashley Pertler
DeBary, FL
Kenna Peterkin
Cary, NC
Carmen Peterson
Charlotte, NC
Mark Pfanstiehl
Cary, NC
Angelita Phillips
Charlotte, NC
Charles Phillips
Raleigh, NC
Sarah Pierre
Saint Martinville, LA
Nicole Pingree
Shelton, CT
Nathaniel Pool
Landis, NC
Moriah Porter
Reidsville, NC
James Porter
Morrisville, NC
Shircola Powell
Knightdae, NC
Eryka Praileau
Greenville, SC
Philip Preen
Sherrills Ford, NC
Alyssa Presson
Charlotte, NC
Angel Price
Bloomfield Hills, MI
Nicolas Quiroga
Greensboro, NC
Lizet Ramirez-Rios
King, NC
Anilla Ramnarine
Greensboro, NC
Danielle Randolph
Mooresville, NC
Kendall Rankin
Raleigh, NC
Victoria Rasberry
Winterville, NC
Rain Rehbein
Fort Worth, TX
Joy Reibold
Greensboro, NC
Robert Reid
Columbia, SC
Robert Retic
High Point, NC
Thomas Revel
Wilmington, NC
Lisa Roach
Raleigh, NC
Jason Roberts
Durham, NC
Mark Rose
Fort Mill, SC
Cherish Rotundo
Naples, FL
Emmett Rouse
Luray, SC
Rachel Russ
Pantego, NC
Justin Russell
Carrboro, NC
Olivia Rust
Greensboro, NC
Cameron Samek
Greensboro, NC
Morgan Sampson
Cary, NC
Megan Saturley
Asheville, NC
Baleigh Scheibner
Raleigh, NC
William Scott
Salisbury, NC
Kaylee Searcy
New Bern, NC
Dana Shearer
Asheville, NC
Jacob Shelton
Mt. Pleasant, NC
Kellyn Shute
Durham, NC
Lance Sigmon
Hickory, NC
Hailey Sim
Greensboro, NC
Victoria Small
Sunset Beach, NC
Lauren Smith
Manassas, VA
Yvonne Smith
Liberty, NC
Jamila Smith
Chapel Hill, NC
Andrecia Smith
Charlotte, NC
Grayon Sotir
Wake Forest, NC
Emily Spitler
greensboro, NC
Danny Stamey
Pasadena, CA
Harrison Stanwyck
Cedar Grove, NC
Victoria Stepien
Fanwood, NJ
Kathryn Stevens
Charlotte, NC
Thomason Stockton
Raleigh, NC
Taylor Stokes
Evergreen, CO
Jason Stoogenke
Matthews, NC
Emma Strickland
Beaufort, NC
Kemal Su
Cary, NC
Amber Sullivan
Roebuck, SC
Alejandro Swinson
Angier, NC
Aashna Tarasaria
Greensboro, NC
Tabreah Tatem
Elizabeth City, NC
Rylee Taylor
Durham, NC
Krystal Telfair
Raleigh, NC
Shaneek Thompson
Davidson, NC
Nguyen Tien
Greensboro, NC
Julia Tobolski
Greensboro, NC
Lindsay Trapp
Charlotte, NC
Sean Travis
Kinston, NC
Kathleen Turpin
Greensboro, NC
Jackson Valentine
Zebulon, NC
Lidya Vincent
Tampa, FL
Inja Vojnovic
Charlotte, NC
Monica Ward
Charlotte, NC
Zuri Ward
Raleigh, NC
Henry Watkins
Boca Raton, FL
Marnise Webb
Charlotte, NC
Kelsey Webb
Pfafftown, NC
Amelia Wellman
Goldston, NC
Briana Whitfield
Greensboro, NC
Serenity Wiles
Greensboro, NC
Samantha Wilkie
Hendersonville, NC
Emma Marie Wilkinson
Greensboro, NC
Celeea Williams
Durham, NC
Doriana Williams
Raleigh, NC
Jack Willis
Clemmons, NC
Alfred Wilson
Reidsville, NC
Alexandra Wilson
Fort Mill, SC
Jamar Wilson
Raleigh, NC
Monica Winghart
Redwood City, CA
Andrew Wood
Charlotte, NC
Jordan Woodlief
Charlottesville, VA
Brock Wright
Raleigh, NC
William Yates
Purlear, NC
Lindsay Young
Jamestown, NC
Asha Zahrt
Clayton, NC

Annual Reports

The State Bar's boards—Continuing Legal Education, Legal Specialization, Parlalegal Certification, and Lawyer Assistance Program—have released their annual reports, which can be read on our website at bit.ly/2024AnnualReports.

Proposed Ethics Opinions (cont.)

regulation, subpoena, or other legal process, to produce information or our personnel as witnesses with respect to your estate plan or our work for you in the representation; (2) Law Firm is not a party to the proceeding in which the information is sought; and (3) the quality, sufficiency, or effectiveness of the Law Firm's work is not in question in the proceeding. This obligation applies even if our representation of you has ended. Any fees and expenses charged to Client or Client's estate shall not be clearly excessive, and Law Firm will make every reasonable effort to minimize time, costs, or expenses related to such a request.

The sample language is not the only language that would be permissible. Law Firm may utilize a unique fee provision specifically tailored to their estate planning practice and clientele as long as the scope of the provision is limited, the fee and expenses are not clearly excessive, and the terms of the provision are clearly communicated to the client. ■

Endnote

1. Rule 1.5(a) provides that a lawyer shall not make an agreement for, charge, or collect "an illegal fee." The proposed opinion purports to bind not only the estate planning client, but also anyone managing the client's financial affairs (before and after Client's death), Client's heirs, and the beneficiaries under Client's estate planning documents. The legality/enforceability of the proposed provision is outside the purview of the Ethics Committee. Law Firm has a duty to determine whether such a provision is illegal or unenforceable and may not include an illegal or unenforceable provision in the engagement agreement. *See* Rule 1.5(a). *See also* Rule 8.4(c) (professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar

	2023	2022
Assets		
Cash and cash equivalents	$10,735,772	$10,984,339
Property and equipment, net	11,943,376	12,667,889
Other assets	786,517	504,858
	$23,465,665	**$24,157,086**
Liabilities and Fund Equity		
Current liabilities	$4,337,878	$5,602,852
Long-term debt	7,513,306	7,923,867
	11,851,184	**13,526,719**
Fund equity-retained earnings	11,641,481	10,630,367
	$23,492,665	**$24,157,086**
Revenues and Expenses		
Dues	$9,552,089	$9,368,830
Other operating revenues	1,219,994	1,288,184
Total operating revenues	**10,772,083**	**10,657,014**
Operating expenses	(10,028,199)	(9,473,262)
Non-operating Revenue (expenses)	240,230	(181,032)
Net income (Loss)	**$984,114**	**$1,002,720**

The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)

	2023	2022
Assets		
Cash and cash equivalents	$21,803,973	$12,313,349
Interest receivable	1,501,758	1,149,213
Other assets	268,482	206,260
	$23,574,213	**$13,668,822**
Liabilities and Fund Equity		
Current Grants approved but unpaid	$10,033,277	$6,101,864
Other liabilities	1,095,538	159,289
	11,128,815	**6,261,153**
Fund equity-retained earnings	12,445,398	7,407,669
	$23,574,213	**$13,668,822**
Revenues and Expenses		
Interest from IOLTA participants, net	$15,547,105	$7,577,606
Other operating revenues	555,593	251,732
Total operating revenues	**16,102,698**	**7,829,338**
Operating expenses	(11,611,810)	(6,601,158)
Non-operating revenues	546,841	88,983
Net Income (loss)	**$5,037,729**	**$1,317,163**

Board of Client Security Fund

	2023	2022
Assets		
Cash and cash equivalents	$2,942,720	$3,300,976
Other assets	1,450	8,175
	$2,944,170	**$3,309,151**
Liabilities and Fund Equity		
Current liabilities	$15,810	$15,578
Fund equity-retained earnings	2,928,360	3,293,573
	$2,944,170	**$3,309,151**
Revenues and Expenses		
Operating revenues	$42,702	$909,651
Operating expenses	(431,772)	(522,691)
Non-operating revenues	23,857	3,733
Net Income (loss)	**$(365,213)**	**$390,693**

Board of Continuing Legal Education

	2023	2022
Assets		
Cash and cash equivalents	$487,384	$226,174
Other assets	310,423	206,998
	$797,807	**$433,172**
Liabilities and Fund Equity		
Current liabilities	$72,429	$37,396
Fund equity-retained earnings	725,378	395,776
	$797,807	**$433,172**
Revenues and Expenses		
Operating revenues	$1,156,946	$908,321
Operating expenses	(827,344)	(902,760)
Non-operating revenues	-	-
Net Income (loss)	**$329,602**	**$5,561**

Board of Legal Specialization

	2023	2022
Assets		
Cash and cash equivalents	237,920	199,240
Other assets	730	28,400
	$238,650	**$227,640**
Liabilities and Fund Equity		
Current liabilities	14,124	13,640
Fund equity-retained earnings	224,526	214,000
	$238,650	**$227,640**
Revenues and Expenses		
Operating revenues-specialization fees	$221,663	$213,201
Operating expenses	(211,137)	(196,987)
Non-operating revenues	-	-
Net Income (loss)	**$10,526**	**$16,214**

Board of Paralegal Certification

	2023	2022
Assets		
Cash and cash equivalents	$405,708	$475,589
Other assets	900	325
	$406,608	**$475,914**
Liabilities and Fund Equity		
Current liabilities - accounts payable	20,370	79,537
Fund equity-retained earnings	386,238	396,377
	$406,608	**$475,914**
Revenues and Expenses		
Operating revenues-fees	$248,248	$244,819
Operating expenses	(258,387)	(231,492)
Non-operating revenues	-	-
Net Income (loss)	**$(10,139)**	**$13,327**

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Winter 2024