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Jennifer R. Duncan

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Contents

FEATURES

Continued on page 4.

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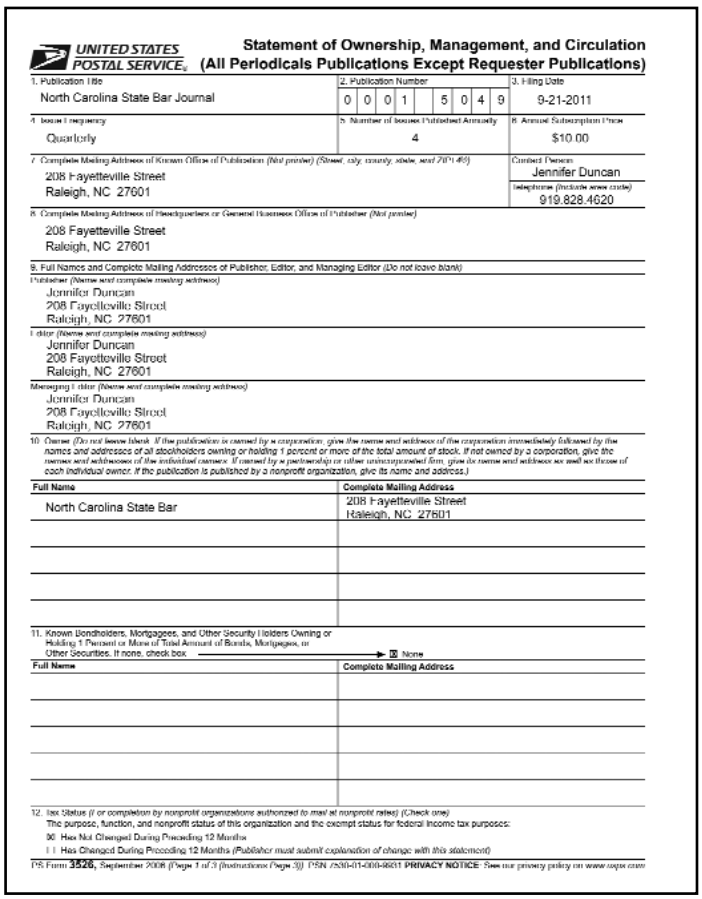
Contents



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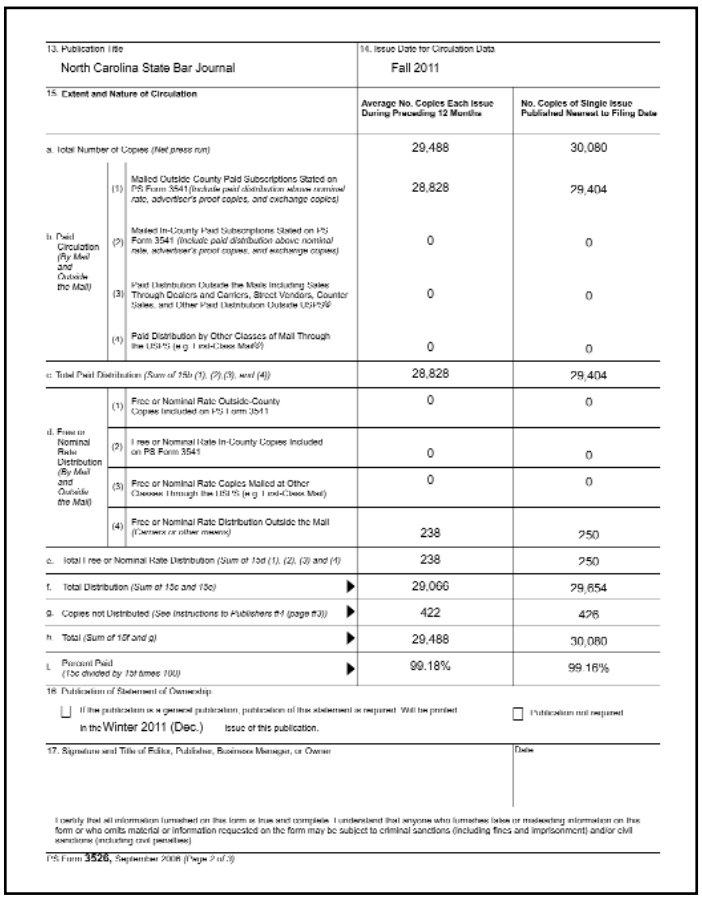

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PS Form **3526**, September 2006 (Page 2 of 3)

Breaking Ground

By L. Thomas Lunsford II

My hair started circling the drain in 1972 when I was 19, foreshadowing an insidious, creeping sort of follicular betrayal that would rob me of my dignity long before my photograph began to regularly appear in the State Bar *Journal*. I didn't think about it much at the time. Back then I had plenty of hair, or so it seemed, and the few strands that seceded whenever detergent was applied were contemporaneously unmourned, survived as they were by the numberless constituents of my sideburns and cheesy mustache. I ignored all the warning signs of male pattern baldness. The widow's peak that appeared "overnight." The spot just north of the cranial pole where nothing would grow. And, of course, my grandmother's oft-repeated suggestion that an application of thousand island dressing under a bathing cap once or twice a week might "do wonders." In spite of all the mounting—and dwindling—evidence, I clung pathetically to the idea of a forehead defined and demarcated by brow and bangs, and denied my genetic inheritance.

Over the years I employed many strategies for sustaining the conceit that I really wasn't going bald—and the related notion that, even if I was, it didn't really matter. One of my favorite delusions involved the idea that I just happen to be one of those people who tend to look good in hats. In my 20's this fanciful notion became an article of faith. I began to favor baseball caps, indoors and outdoors, at home and at work. This was an especially comforting affectation, suggesting at once the possibility of hair and athletic prowess, when neither actually existed. As the years advanced and a more professional approach was required, I gravitated toward the fedora. Happily enough, this transition coincided with the popularity of Indiana Jones and implied, at least to me, more commonality with Harrison Ford than with Larry David. Anyway, things in my fantasy world remained in a delicate psychic equilibrium for nearly 40 years until October 19 when I was called upon to participate in the ceremonial groundbreaking for the State Bar's new headquarters in downtown Raleigh. It was at that event that my "cover was blown," so to speak. As you can see from the photograph that accompanies this essay, I was obliged on that occasion to don, without benefit of instruction or reflection, a "hard hat." It wasn't a good look for me. Instead of bolstering my carefully cultivated persona of competence, insouciance, and savoir faire, the article in question seemed to identify me as the least confident and most dispensable member of the Village People. Someone to laugh at rather than with. In a word, I was "hatbroken."

I'm bound to say that the other dignitaries appearing in the picture fared much better. Chief Justice Parker, for instance, is a person of such dignity that an ill-fitting hat cannot detract from her steadfast personification of true professionalism, and her remarks on the occasion were pitch perfect. Likewise, Raleigh Mayor Charles Meeker and State Bar President Tony di Santi managed to provide perspective that will be well-remembered long after the silly hats and the commemorative shovels are consigned to the landfill. Indeed, all who participated in or attended the ceremony on that rainy but exceedingly fine day are likely to recall the event as a watershed moment in the history of the organized Bar in North Carolina and in their own professional lives. It foreshadowed quite convincingly that a fitting and enduring home for the legal profession in this state will actually soon appear on the corner of Blount and Edenton Streets in downtown Raleigh.

Construction will likely commence on or about November 15 and should continue for at least 14 months. The final terms of the construction contract are now being negotiated with the project's general contractor, Resolute Building Company of Chapel Hill. Resolute was the low bidder among the 13 firms that competed for the contract in an elaborate bidding process orchestrated by the State Construction Office. The contract price, which is exclusive of furnishings, design fees, and other "soft cost" items, is $12,962,700—about $1.4 million less than our very capable architects (Calloway, Johnson, Moore and West from Winston-Salem) were estimating. Needless to say, this was very encouraging news that, along with other favorable developments in regard to the sale of the State Bar's existing building and the terms of the financing we have arranged for the new building, has strengthened our belief that a truly outstanding structure can be built, furnished, maintained, and paid for without a significant dues increase.

Funding for the new building will be provided from four sources: a tax-exempt loan of $12,000,000 from First Citizens Bank and Trust Company, the proceeds from the sale of our current building at 208 Fayetteville Street, existing cash reserves, and tax-exempt contributions marshaled by the newly-constituted North Carolina State Bar Foundation. The loan agreement with First Citizens, which resulted from the issuance of an RFP last year that evoked a half dozen serious proposals, is particularly noteworthy. It contemplates a remarkably low fixed interest rate of 3.4% for 10 years with payments to be amortized over a 20-year period and with a balloon payment coming due at the end of the 10-year term. Frankly, this deal is much more favorable than any we dared hope for when serious planning for the project began four years ago during the Hankins administration—and before the economy tanked. It is also a testament to the credibility of the project, the creditworthiness of the State Bar, and

the vision of our partners at First Citizens. And, while we are on the subject of credit, plenty of that commodity is owed to the lawyers who have represented the Bar in the negotiation and documentation of these arrangements. Mary Nash Rusher of Hunton and Williams and Chuck Nichols of Nichols Law PA, both of Raleigh, have each rendered outstanding service at heavily discounted rates as a contribution to the profession and the citizens of North Carolina.

The State Bar has, through the kindly offices of NIA Carolantic, recently entered into a contract for the sale of its existing building for $2,700,000 to an investor from Brazil, of all places. The contractual arrangements, which provide also for a very convenient and reasonable leaseback that will obviate the necessity of an intermediate relocation of the State Bar's operations, should yield approximately $2,400,000 after payment of a commission and paying off the existing mortgage. The deal is contingent upon approval by the Council of State, which seems likely, and is subject to cancellation by the prospective purchasers during a short "due diligence" period, which seems unlikely. All in all, there is good reason to believe that the Bar may soon be a successful seller in a commercial real estate market that is extremely weak by virtually any historic standard. In this regard, special thanks are owed to our energetic and savvy brokers Steve Stroud and Robin Anders.

It is imagined but not yet assumed that a substantial amount of the project's cost will be defrayed by funds donated by lawyers, law firms, and corporations through the North Carolina State Bar Foundation. The foundation, which is the brainchild of former NCSB President John McMillan, was created recently to raise funds to support the construction and maintenance of the State Bar's new headquarters. Mr. McMillan chairs the Board of Trustees. The board also includes former presidents Hank Hankins, Ann Reed, Bill King, Bonnie Weyher, Jim Dorsett, and Dudley Humphrey. This past summer the foundation, which has been accorded status as a charitable organization under section (501) (c) (3) of the Internal Revenue Code, conducted a feasibility study to determine whether a capital campaign in support of the State Bar's new building could be successfully undertaken. The resulting report indicated that such an effort could and should be a success. It was determined that as much as two million dollars could be raised. Based on that intelligence, the foundation's board has decided to proceed with a campaign. As a first step, it has obtained advice from the staff of the State Ethics Commission and found that it is permissible for the State Bar to solicit and receive, albeit indirectly, contributions from the people it regulates—the lawyers and the law firms of North Carolina. It has also retained the services of a consulting firm, Capital Development Services of Winston-Salem, to design and organize the campaign, and has hired Virginia Yopp of Raleigh to serve as campaign coordinator.

From Left: Raleigh Mayor Charles E. Meeker, State Bar Vice-President M. Keith Kapp, Former State Bar President M. Ann Reed, Immediate Past State Bar President Barbara B. Weyher, Chief Justice Sarah Parker, State Bar President Anthony S. di Santi, State Bar President-Elect James R. Fox, State Bar Executive Director Tom Lunsford

In recognition of the fact that the State Bar represents all the lawyers in the state, the majority of whom practice by themselves or in small firms, the foundation and State Bar want to make sure that participation in the capital campaign is not restricted to those large entities with the deepest pockets. It is hoped that the membership will broadly participate and share in the sense of ownership and pride that the building should engender. To that end, the foundation's board will encourage the State Bar Council to provide an appropriate means to publicly recognize all meaningful contributions, large and small, on the premises. The State Bar's Facilities Committee, which is chaired by John Silverstein, councilor from Raleigh, will meet sometime during the fourth quarter to consider the adoption of guidelines for donor recognition. Considerations of taste and propriety will be paramount.

Speaking of the Facilities Committee, I would be remiss if I failed to mention in this article the committee's immediate past-chair, Keith Kapp. In addition to his regular duties as a managing partner with Williams Mullen in Raleigh, he was until last week fully employed, but uncompensated, as the ramrod of the entire project—responsible for managing an astounding array of commercial enterprises, governmental bureaucracies, design professionals, and loosely-integrated personalities. That he has emerged with his own psyche intact is a testament to clean living, a wholesome family environment, the teachings of the Moravian Church, and a very dedicated administrative assistant. His contribution to the effort cannot be overstated.

Oh well, there is much more that could be said about this business, but I've got to save some of the most salacious material for my memoirs. For the moment, suffice it to say that over the next several months construction should be proceeding with "cunning and vigor," to borrow a phrase from Woody Allen. As the drama continues to unfold, you may be sure that among those present on the jobsite looking after your interests will be any number of men and women in hardhats. Alas, I will not be one of them. I'll be the bald guy just outside the fence initialing change orders and wearing a bathing cap. ■

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

Laura's Law—What Caused It, Will It Work, and Why?

By Representative Tim Moore and Bill Powers

In July 2010 Laura Fortenberry was killed when Howard Clay Pasour crossed the center line and hit another vehicle head on. Pasour was drunk driving...again. He had an infamous history in the Gaston County Courts and to some represents a perfect storm in the criminal justice system of North Carolina.

In an effort to address DWI related fatalities, North Carolina House Representative Tim Moore (R, Cleveland) championed House Bill 49 entitled Laura's Law. Nearly unanimous in legislative approval, it goes into effect December 1, 2011. Howard Pasour is housed in the Scotland County Correctional Institute and will remain so until January 14, 2033, according to the Department of Corrections.

Laura's Law substantially increases the penalties for repeat driving while impaired (DWI) offenders, modifying North Carolina sentencing guidelines to include an "Aggravated Level 1 DWI" punishment framework. Mandatory, active prison time is a pre-requisite, together with special costs, installation of a secured continuous remote alcohol monitoring (SCRAM) bracelet, and up to a $10,000 fine.

Representative Moore and Bill Powers, both attorneys, discuss the intent and projected effect of Laura's Law. Moore serves Cleveland County, North Carolina, and is the House Rules Committee chair. Powers represents some of the toughest DWI cases in North Carolina.

Bill Powers: It remains to be seen whether Laura's Law will effectively address the very real problem in North Carolina of chronic impaired drivers. North Carolina deserves answers to tough questions, the most obvious of which is: Would that smiling, beautiful young lady be alive today if the law had already been in effect?

Over the years Pasour picked up numerous charges including DWI, driving without a license, driving while license revoked, possession of drugs and paraphernalia, hit and run, assault, larceny, worthless checks, resisting a public officer, *et al.* A quick review of the Administrative Office of the Courts database shows Howard Clay Pasour (aka Paysour) named 107 different times in Gaston County alone.

What factors contributed to or otherwise allowed Pasour to remain a danger to both himself and the community? Was it an overworked criminal justice system? During his many charges, arrests, dismissals, and guilty pleas, were the courts precluded a complete criminal history due to antiquated computer systems? Were there some good lawyering, plea deals, and promises to change? Was it just one factor or a combination thereof?

Rep. Moore: Some of Pasour's past charges were dismissed or handled as part of pleas. Other cases indicate indictment by a grand jury from district to superior court and some show confusion as to the proper spelling of Pasour's last name. Howard Pasour clearly wasn't convicted of all his charges as indicated by "VD" or Voluntarily Dismissed, yet a nominal review of the record by those familiar with the courts of North Carolina would have no difficulty understanding Pasour was a gun, waiting to go off.

Certain truths are hard to dispute. First, Pasour had a longstanding, pervasive problem with alcohol and drugs. Second, he drove repetitively while impaired and while his license was revoked, despite being on probation and having picked up charges for impaired driving, no operator's license, and driving while license revoked on several occasions. Third, he seems to have possessed little concern about leaving the scene of accidents and was familiar with at minimum the Gaston County Courthouse. Howard Pasour's criminal record in North Carolina speaks for itself—multiple prior DWI convictions and numerous other driving offenses. Howard Pasour should have been in prison the day he killed Laura Fortenberry. He wasn't. While we can't change the past, we as lawmakers can, and must, do all within our power to make our streets and roadways safe for the innocent and law abiding.

Bill Powers: Howard Pasour was going to drive drunk no matter what anyone—be it lawyer, prosecutor, or judge—said or did to him. He represents that small, yet very dangerous, micro-minority of offenders whom either do not care or cannot be made to recognize the danger they constitute to society.

District Attorney Locke Bell, representing Judicial District 27A in Gaston County, describes examples of more than a fair share of DWI fatalities. "I don't know about the rest of the state, but Gaston County has seen tragedy after tragedy," said Bell. "Laura's Law, or something like it, is needed to help protect us from these people who drink and drive, and drink and drive, and drink and drive some more."

In response to Fortenberry's death, Bell shared his frustrations during a conversation with Rep. Moore. "I wanted a law passed that addressed repeat DWI convictions that take place in a short period of time. I wanted active jail time for the people with three DWIs in seven years. I wanted a three-year sentence to get their attention and to protect us from them. And that's what I asked Tim to do for us."

Rep. Moore: This clearly is an example where Pasour should have been in prison at the time he killed Laura. That little girl might be alive now. Several steps have been taken to ensure the safety of drivers on the road. Those convicted of drunken driving will be required to wear an alcohol-sensor ankle bracelet for longer stints of time. They will have a tough fine and a longer period in jail. Three years to be exact.

Bill Powers: Disputing the existence of a problem would be less than honest or helpful. The primary concern for North Carolina should not be *whether* proactive steps should be taken to avoid tragedies like Laura Fortenberry, but rather, *what really works?* Representatives of law enforcement, the courts, prosecutors, and defense attorneys should be involved in the process of legislation. Opposing legal minds may actually come of up more effectual ways to

address a problem that vexes the system as a whole.

Rep. Moore: Laura's Law amends several different DWI-related statutes including §20-179, §20-17.8, §20-19, §7A-304, and §15A-534. Most notably, impaired driving sentencing that falls under §20-179 establishes a special "Aggravated Level One" impaired driving status and punishment. Relevant enhanced punishments include:

- Maximum fine increased from $4,000 to $10,000
- Maximum imprisonment increased from 24 months to 36 months
- Elimination of parole for active incarceration terms
- Creation of mandatory minimum active split term of 120 days
- Elimination of credit for inpatient treatment against 120 day split term
- Creation of mandatory secured continuous remote alcohol monitoring (SCRAM) ankle bracelet for 120 day term following incarceration
- Special "$100 DWI fee" in addition to other costs, fees, and fines

Laura's Law is designed to serve multiple purposes, including retribution, incapacitation, and deterring recidivism with bright line, tough, active terms. The first step is to get repeat offenders off the streets. That is the most obvious way to prevent needless fatalities. There also must be an immediate, discernable punishment for those who flagrantly flaunt the laws and put the safety of others in harm's way.

Bill Powers: District Attorney Bell has a point and clearly Representative Moore and the General Assembly were right to take action. It's hard enough to defend cases involving impaired driving for first-time clients. Repeat offenders, especially those who kill, severely and negatively affect public perception as a whole. Simply put, North Carolinians are tired of the carnage on the streets. Defense counsel seek not to be critical of well-meaning legislators. The concern, if that is a fair term, is to preserve the rights of society as a whole while also addressing the actions of a few.

Frankly, Laura's Law may be too lenient in some areas, and despite the best of intentions, may totally fail to make a difference. I proposed the following as a ways to address the problem:

1. Amend the Habitual Felony DWI statute
   a. rather than 7 or 10-year window, lifetime prior record considered (like Habitual Felon Statute under traditional sentencing guidelines) and
   b. rather than 3 + 1 DWIs within a stated statutory period, amend to 2 +1 "three strikes you're out" status.
2. Include boating while impaired as an implied consent offense under 20-138.1
   a. define a boat as a "vehicle" or "conveyance"
3. Allow for inpatient treatment to be credited towards the active term
   a. of 120 sentence, court may consider and credit treatment in its discretion
   b. incentive to begin recovery, on a long-term basis
4. After incarceration period, follow up with step down probationary term
   a. 5 years supervised probation (following 120 day "split" active term); and
   b. first 2 years probation intensive; and
   c. 1st year house arrest; and
   d. 1 year SCRAM bracelet; and
   e. second 2 years regular supervised; and
   f. last year unsupervised, if warranted; and
   g. mandatory "court review" quarterly during first 2 year intensive term
5. Modify $10,000 fine, which under the NC Constitution goes solely to schools and not the courts, court programs, treatment, or the Department of Corrections.
   a. establish $5,000 DWI fee (in lieu of $100 presently proposed) to pay for extended probationary term costs/time to court in quarterly reviews; and
   b. mandate $500 DWI "video" fee to every person convicted of DWI; and
   c. during house arrest, mandatory restitution to victim in amount set by court or as awarded pursuant to civil judgment; and
   d. during house arrest, mandatory restitution to state for costs of incarceration
6. Install and require video surveillance in DWI stops, arrests, and processing (South Carolina Rule)
   a. $500 DWI "video" fee
   b. officer safety
   c. higher DWI conviction rate with video evidence
7. Establish task force with annual (or 6 month) reviews to assess efficacy of present state of DWI laws
   a. include judges, prosecutors, defense lawyers, and legislators
   b. review costs to system
   c. propose amendments and modifications

Rep. Moore: Laura's Law was the first salvo in our battle against dangerous, repeat impaired drivers. There are a lot of ideas out there. No one likes driving while impaired. We saw the opportunity, we drafted a clean, succinct bill, and frankly, there was almost no opposition in either the House or Senate to its passage. One must remember the sentences imposed by the court are to some extent discretionary. For example, the $10,000 fine is not required, but allowed. The 120 day active term was a non-negotiable item. We needed immediate, serious consequences to grab attention.

We not only increased terms for active incarceration, we also included mandatory alcohol screening with a SCRAM device. There must be a period of non-consumption, in addition to jail, fines, court costs, and treatment. The financial costs may be substantial, but consider the costs endured by Laura's mom and family. Consider also the costs to Mr. Pasour and his family. He could have prevented the tragedy, yet failed to heed the courts. We're going to make certain something like this does not happen again. We're tough on DWI crimes, as promised. Laura's Law will save lives in North Carolina. Certainly, incarceration is the ultimate safety in protecting our citizens.

Laura's Law also gives judges the ability to impose greater fines and require devices to prevent alcohol consumption. The mandatory penalties are needed to prevent tragedies arising from good intentions. Stricter terms of probation, combined with closer supervision, are also needed to prevent habitual offenders from injuring and killing others. More can be done to strengthen North Carolina's DWI laws. Laura's Law is an excellent first step in that process.

Bill Powers: There is a substantial difference between a first time offender who had "one too many" and a career DWI offender. Perhaps during the next legislative term, metrics regarding the efficacy of Laura's Law will be available. Having said that, Laura's Law likely does not go far enough and fails to completely address the problem. Reasonable minds may differ. Specifically targeted modifications to the law make better sense and may prove more financially sound.

As good as it may feel to have Mr. Pasour

CONTINUED ON PAGE 32

DEPRESSION, STRESS, CAREER ISSUES, AND ADDICTIONS. BELIEVE IT OR NOT, THIS IS AN UPLIFTING STORY.

Actually, there are many stories. Every one of them about someone in the legal field.

Lawyers are as vulnerable to personal and professional problems as anyone else.

Competition, constant stress, long hours, and high expectations can wear down even the most competent and energetic lawyer. This can lead to depression, stress, career problems, relationship issues, financial problems, or alcohol and substance abuse.

So where's the uplifting part? That's where we come in.

The Lawyer Assistance Program was created by lawyers for lawyers. While we started as a way for attorneys to deal with alcohol related problems, we now address any personal issue confronted by those in the legal profession.

Our message to anyone who may have a personal issue, whether a lawyer, a judge, or a law student, is don't wait. Every call we take is confidential and is received by a professional staff person. You can be confident that you're talking to the right person and that no one will know about it.

We understand what it's like to face personal problems within the profession, because we only help lawyers.

Our service is not only confidential, it's free, paid for with your yearly bar fees.

If you have a personal issue, or know someone who does, we can be the crucial first step in turning things around, a role we've played for many of your peers.

We have countless success stories we could tell, and yes, they are uplifting. But we do our work quietly, confidentially, and professionally so the stories will stay with us.

We're here for you. Visit **www.nclap.org**, call **1-800-720-7257** or nclap@bellsouth.net.

We can help if you get in touch with us.

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FRIENDS

FOR THE ISSUES OF LIFE IN LAW

Partners in Life and the Law: Conversations With and About Lawyer Couples

By LeAnn Nease Brown

About two years ago, 15B Judicial District Bar Counselor Dottie Bernholz and I began a conversation about the joys and challenges of two lawyer couples. Later, Bonnie Weyher, former North Carolina State Bar President, joined the discussion over lunch. Recognizing that we were not the only people who might enjoy a conversation on the unique professional and personal situations encountered by attorneys married to or partnered with other attorneys, I sought shared observations and experiences from lawyer couples I knew or met along the way. Many completed a short survey (for which I express gratitude). Others shared ideas and anecdotes in conversation.

SIS/Stephanie Carter

While this article does not reflect the findings of a scientific survey or offer a researched academic analysis, I hope it is the beginning of a conversation relevant to a good number of the members of our Bar; lawyers who love and live with other lawyers.

Some lawyer couples practice together as do my husband and I. I was curious as to whether any felt their co-workers or clients had difficulty separating the roles. For example, do firm members assume spouses agree on issues and vote as a block (when that may not be the case at all)? Some lawyer couples report that experience. Do clients or colleagues occasionally find it useful to use one spouse as a messenger? Finding the husband out of the office, the firm client calls the wife: "After your husband gets out of court tonight, will you ask him to call me?" or "Do you know when your husband plans to schedule our meeting?" Many respondents have had this experience. The opposite experience may also be true. One husband reported an instance of a client who refused to "talk to the wife" even though she was co-counsel on his case. Another told of a member of the faculty of her law school who reported to her 3L husband how his 1L wife was doing in class.

Lawyers who do not practice together are not immune. One observed that within her community, non-lawyers assumed (incorrectly) that she knew information about her husband's more public cases, and occasionally she has experienced a rebuke from a citizen who did not agree with her husband's decision to handle a particular criminal matter. Occasionally, in her small Bar, she found others asking her to serve in the messenger role

even though she does not practice with her husband at all.

Although there are times the distinction between law partners and spouses is blurred, the respondents believe that, most of the time, clients and co-workers view married lawyers as independent of the other. Most lawyer spouses report presenting a professional persona that is different than the way they interact in their private social life. Most respondents who work together felt that the firm dynamic was not negatively impacted by the presence of a married couple or couples within a firm. That said, the bond between married lawyers who work together every day seems strong. As one noted, "I have a very deep trust and confidence in my law partners, but an especially deep trust in my law partner and life partner."

Lawyer spouses probably have more difficulty separating their roles than do their colleagues and clients. In our experience, many a dinner conversation has moved seamlessly from family concerns to firm concerns and back. We do not always leave the office behind. Others report that their discussions often focus on legal and client issues. And perhaps that is not all negative. As one respondent noted:

> Of course I will pick his brain, just like I do other lawyers in my firm or social circles, to get his thoughts about legal issues which arise in my cases or any legal arguments, particularly when it is a novel issue or outside the box. That is the benefit of having a great legal mind next to you at night.

Households with two working spouses by necessity require a great deal of juggling to meet the demands of home and work. Is it more pronounced for lawyer couples? Is there a pattern to the trade-offs experienced by lawyer couples? In her article in the North Carolina State Bar *Journal* in Summer 2011, *Women at Work: Gender Discrimination, and Professional Life Satisfaction*, Darcy Clay Siebert noted that "[m]en and women in our study appear surprisingly similar on occupational issues and the findings reflect a generally stressful profession." She notes that "[w]orkload differences are also minimal." Yet, her study found proportionally more women in government and public sector jobs and more men in private practice. As Siebert notes, "every income study finds that women lawyers' income lags behind male lawyers' income significantly." Siebert cites numerous studies supported by the data in her survey that women are significantly more likely to quit practicing and leave firms than men.

Married lawyers responding to the questionnaire noted that their "trade offs" reflect those of other couples where both spouses work, but the "trade offs" may be more difficult for lawyer couples due to the long hours and pressures of the practice of law. Competing interests related to the husband/father and wife/mother roles are juggled with the time pressures related to lawyering. Decisions as to "what gives" were reported by most respondents as mutual (and negotiated) based on practical considerations such as the demand of particular types of practice (think litigation), financial considerations, and who had the ability (for whatever reason) to be flexible. In this stressful and demanding profession, it is not surprising that the struggle for work-life balance is made more complex when juggling two demanding law practices. As one lawyer noted, "Being married to another lawyer, particularly another litigator, has made it very difficult to balance the demands of our practice of law and family life.

It actually creates an additional source of conflict that we did not anticipate." Another listed "scheduling issues" as the most negative aspect of being married to another lawyer. The benefit of both partners understanding what it means to be a lawyer is sometimes a burden. A lawyer spouse can evaluate the seriousness of the professional commitment with both empathy and cynicism. Looking back on this juggling act, one respondent observed, "As to the decision of who would pick up the kids for soccer, etc. it would depend on who had a court schedule or other commitments." She did note she occasionally checked the court calendar "to make certain that he wasn't translating the word 'court' as 'golf.'"

Despite the difficulty of balancing professional and personal life, almost uniformly the lawyer couples who provided feedback for this article identified the mutual understanding that exists among lawyers as the most positive aspect of being a lawyer couple. "A lawyer spouse understands the time demands of a litigation practice, your professional goals, and the highs and lows of practicing law." We are "trained to take the same analytical approach to problem solving and are able to narrow the issues and prioritize those that really matter."

Another observed, "She understands quite well job-related stress." Another said, "There is mutual understanding about pressures, scheduling, and money." And another observed, "The law is a jealous mistress. It takes another lawyer to understand the long hours, the time away from home, the preoccupation with someone else's problems, and the inconveniences that can be introduced by unexplained hearings and trials."

Since the greatest articulated benefit of being part of a lawyer couple is being understood, it is not surprising that one of the frustrations articulated by several lawyers who do not practice together was the barrier presented by confidentiality issues. Respondents expressed frustration that they could not discuss matters of a confidential nature with the lawyer they perhaps trust the most.

Why do lawyer couples value the quality of understanding so much and even envy those who practice together and may discuss work matters in an unfettered way? David N. Shearon, president of "Thriving Lawyers" believes that lawyers face five challenges to thriving: value conflicts (where legal matters create conflicts with universal values), zero sum conflicts (where legal matters create situations where gain is at the expense of another), highly developed adversarial skills (no parenthetical needed), necessary evils (causing discomfort to others as an advocate), and the culture of the law (adversarial, argumentative). To the extent the job of lawyering presents these challenges, having a lawyer spouse who understands the challenges and who relates to the value conflicts and necessary evils can provide support that may not exist in the community at large.

In her book *Should You Marry a Lawyer?* Fiona H. Travis, Ph.D. (a psychologist) focuses on what she believes is a "lawyer personality." Citing former New York lawyer Carol Kanarek, who consults with lawyers on life and career issues, Travis asserts that while the divorce rate is high among lawyers, lawyer to lawyer marriages are stronger. Travis recognizes the understanding that exists in lawyer couples regarding the challenges and pressures of practicing law. She emphasizes the fact that lawyers approach problem solving and disagreements in a similar fashion as positive factors in lawyer couple relationships. Lawyers married to other lawyers have a partner who is trained to analyze and to argue. Perhaps the rules of engagement about advocacy and compromise are another way lawyer couples understand one another. Stated another way, lawyers may be better at arguing with one another. I will note here that several respondents remarked (I think tongue in cheek) that the biggest "negative" to being married to another lawyer is "never winning an argument" and "having to surrender when there is an impasse." I will not speculate as to why all who noted this phenomenon were male. One respondent who met his wife during a clerkship (she was senior clerk) noted that the experience was "great preparation for marriage...I became quite accustomed to answering 'yes ma'am' and 'no ma'am' to questions from the woman who is now my wife."

If, as Fiona Travis suggests, there is a lawyer personality that prefers "order over spontaneity," "logic over diplomacy," "rationality over emotion," and an "emphasis of personal differences over similarities," lawyers successfully married to other lawyers may be experiencing the rational logic of love. Since a spouse's understanding of what it means to be a lawyer is an almost universal positive cited by married lawyers, the fact that both partners think like lawyers and share the personality traits seems to be of benefit to the lawyer couple relationship. Perhaps that explains the observation in Travis' book that a survey by a Chicago-based dating service found that single lawyers, particularly women, preferred dating other lawyers.

If there is a benefit to dating and marrying another lawyer, what about ethics and conflicts issues? The Rules of Professional Conduct, at least eight ethics opinions, and one proposed opinion provide guidance when spousal (or other familial) relationships result in conflicts. Comment 11 to Rule 1.7 states:

> When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling, or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. *See* Rule 1.10.

As was first made clear in RPC 11 (October 24, 1986) addressing then Rule 5.9, the Rules do not disqualify other lawyers in the firm and do not require client disclosure and consent where the spouse is not actively involved in the representation unless the spouse/lawyer's own interest is involved. Under any circumstance, the conflict is waivable with client consent after full disclosure.

When asked whether conflict issues had affected the respondents, most observed that it had not been an issue as they practiced together or in very different areas of the law. However, the desire to share confidential information and the acknowledgement that it could not be done by spouses in different practice environments was often mentioned in response. Some respondents did report that concerns about conflicts had affected them in the job market. One shared the story about both applying to work in the same district attorney's office. It was determined that both could work there so long as neither supervised the other. The respondent noted the irony

CONTINUED ON PAGE 27

Cross-examining Your Dark Days

Doubts and Struggles in the Practice of Law

By Mike Wells

One of the best learning experiences I had as a law student was working at the courthouse my first summer in law school. Not growing up in a lawyer family, I had not been in a courtroom until then. I was always amazed how clear a case sounded after a complaining witness had testified on direct examination, and I often wondered why the case was being contested at all until the complaining witness was cross-examined by the other attorney. There is nothing like a good, old-fashioned give-and-take cross-examination to sift out the real facts.

I learned the very valuable lesson that summer that all lawyers learn: there is always another side to a story, and the smart lawyer should "cross-examine" carefully every set of facts, no matter how straightforward and convincing they may seem.

But just as doctors are often the worst patients, so, too, do lawyers often fail to follow the most basic rules of their learned profession when it comes to their personal lives.

Disturbingly, more and more lawyers are making poor choices in fulfilling their professional responsibilities. But if they could gain a more balanced perspective of their problems before they made a critical mistake, they likely could avoid them.

Years ago, a very, very fine lawyer I knew made a mistake. He had made some investments that had not fared well in a difficult economy. He took money from a client's trust account. He paid it back, with a high rate of interest for the client. Of course, he was found out. The lack of financial harm to the client, in the end, was incidental. The harm to the profession was profound.

The lawyer—as good as there was in his area of practice, a father and devoted husband, and a faithful community servant—never practiced again. And he never will.

I have often wondered, especially when I read about other lawyers who misstep: how in the world did that lawyer not talk out his problem with someone who might help?

It is well documented that a disproportionately high number of lawyers suffer from depression, addictions, and morbid thoughts. What is it about lawyers that cause this?

I am not sure whether this is just true of lawyers or of most professional people, but I have a theory: I think we are hard-headed and prideful. We think we should be able to figure things out on our own. And if we can not, we can not imagine that other lawyers could be struggling.

But we all struggle, don't we? Just about different things, and to differing degrees.

Part of the difficulty is that we are just not in a position to see our personal situation clearly. One of my best friends is an ACC football official. He says their biggest grading error by supervising officials of the previous weekend's game is not their occasionally missed infraction. The question is: were you in a position to see the play clearly, and to see what you should have seen?

If you are standing in the shadow, you are not in a position to see things clearly. "There is no vulture like despair," said Lord Lansdowne. Depression, a really bad run of luck, an addiction, or a family uproar, are powerful, powerful forces, and they have claimed a lot of very good lawyers stronger than the likes of you and me.

And the common denominator of almost all of those who were done in? They tried to fight the vulture on their own.

Every person has struggles and weaknesses. But the struggles and weaknesses of others are not going to be so apparent to you. It certainly is not going to be talked about in the lawyers' break room in the courthouse, the grill at your club, or at your favorite lawyer watering hole. In a profession where self-confidence is essential, we all wear masks, especially in hard times. Every one of us.

And since most of us spend our money based on our historic income levels, don't kid yourself into thinking the rest of your lawyer buddies are not feeling the pinch of this economy, too, whatever their past levels of income.

So don't think you are the only one in a spot.

So what do you do? Before you make a terrible mistake like my friend did, talk to somebody, whether it is a trusted friend or someone with one of the excellent Bar programs devoted to these issues. The North Carolina Lawyers Assistance Program (800-720-7257, www.nclap.org), and Bar Cares (800-640-0735, www.ncbar.org) have helped a whole lot of lawyers fight the vulture of despair. A friendly cross-examination of your dark situation may yield more light than you realize, and another pathway out.

Nothing is ever as bad as you think it is. And no one should ever think they do not have a lot of company in the hard time area of the practice of law, an area of the law in which we all have lots of experience. Lower your pride and ask for a cross on your presumed set of facts before you commit an irreversible error. ■

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Our Children—The Legal System's Forgotten Ones

By Sally H. Scherer

Our legal system excludes, but significantly affects, many thousands of its citizens by dramatically and often permanently altering their lives even though they have done nothing wrong. What is the "problem" these citizens share? Only one—they are not yet 18 years of age. In the past decade, there has been increasing recognition in many states that children who find themselves involved with the judicial system need the help of a lawyer.

Children in North Carolina have regular and frequent contact with our courts and judicial system in many ways. In the great majority of these instances, they have no participation and no control over the process in which their fates are determined. They are witnesses in criminal prosecutions and in some civil cases.[1] Their fates are determined in juvenile court in parental neglect and abuse cases. Their lives are completely changed by adoption and termination of parental rights cases, and their lives may be forever altered in family court custody cases. They are injured parties in personal injury actions. Their educational and mental health needs are the subjects of administrative hearings. All of these children need the help of a qualified attorney.

In juvenile court, the child has a form of representation (discussed below), but the same allegations in a domestic custody case do not afford identical protection for a child. When a child's education, mental health, or medical needs are at issue, sometimes in administrative hearings which seriously affect them, no attorney is afforded.

Few attorneys realize the enormous impact the legal system has on the lives of our children and, thus, on our communities. In today's world, families rarely escape contact with the courts and legal system. Children usually are pulled into the legal system because of the acts of others over which they have no control. In these situations, they do not have the legal protection they need. Some children even find themselves in more than one action or in the same court multiple times through no fault of their own. For example:

■ A child whose parents separate but continue to fight over custody cause their daughter to be in court every year, testifying in

front of both parents, from age 10 until she reaches 18—the age of majority.

■ A boy who saw his father murder his mother is in juvenile court first as a dependent child needing to be placed somewhere. He is later in criminal court as a witness against his own father,[2] and finally he is the subject of a custody or adoption case. He might also be involved in a probate matter to settle his mother's estate.

■ A 13-year-old girl who is raped by her stepfather, becomes pregnant, and gives birth to a child is first in a juvenile proceeding as an abused child. She then appears in criminal court as the witness against her stepfather, and she may be back in juvenile court again when termination of *her* parental rights is sought so her child can be adopted.

These are only some of the permutations that bring a child into contact with the legal system despite the child's lack of fault. There is increasing recognition that these children need and deserve competent legal representation. Their lives are at stake. Other situations in which children find themselves with a need for legal help include: children with special needs not being met by schools, children denied Medicaid for needed treatment, school suspensions (rightly or wrongly) with no alternatives for the child, poor placement in foster homes, and more.

Guardians

Traditionally, the appointment of a guardian *ad litem* (GAL) who has the authority to make decisions for a child has been used in North Carolina to protect the interests of a child in a legal proceeding. Chapter 35A of the North Carolina General Statutes lists six different types of guardians in estates, property, and trust matters. A guardian *ad litem* is appointed pursuant to Rule 17 of the North Carolina Rules of Civil Procedure when children are parties and in some other cases,[3] including some custody cases.[4] Children who are parties in personal injury actions and claims involving estates appear through guardians *ad litem*. The juvenile code expressly states all juveniles are conclusively presumed indigent[5] and provides for appointment of a guardian *ad litem* in abuse and neglect cases.[6]

In juvenile abuse and neglect cases, however, there has been an increasing awareness that the child is not truly represented by a guardian *ad litem*. Most GALs are not attorneys, and the attorney who is appointed for the child in North Carolina when the GAL is not an attorney rarely ever meets the child. In reality, the attorney appears to be representing the GAL rather than the child. The GAL's role is to meet the child, make a thorough investigation, and determine what the GAL thinks is best for the child regardless of the child's perspective. The GAL then reports to the court and advocates (usually as a witness) what he or she believes is in the child's "best interest." It is a GAL's ultimate duty to "protect and promote the best interests of the juvenile" as determined by the individual GAL.[7] This usually does not include presenting the child's point of view or, if applicable, expressing his/her wishes.

In domestic court, a judge may rarely appoint a GAL (usually an attorney) for a child in a difficult custody case, and the largely undefined role for the GAL is to determine and advocate what the GAL believes is best. Depending on the county, and often on the particular judge, the role of a GAL might be seen as counsel for a party (even though the child is not a party), a substitute party, or both, or neither. Generally, a GAL is treated as the court's witness. The role varies and is confusing regardless of the best intentions everyone has for the child.

Our Changing Views

For the past 30 or 40 years, the thinking about representation of children, especially in juvenile and custody cases, has been undergoing a sea of change precisely because of confusion of the role GALs play and the changes in how we view children. We now realize that children, too, have rights and they, too, need competent legal representation to protect those rights and to provide meaningful advocacy. "Studies from Canada, the United States, Australia, England, Scotland, and Ireland demonstrated that children had been greatly undervalued in the legal system."[8]

The definitions recently approved by the ABA in its Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (Model Act)[9] clarify the different roles to be played by a guardian *ad litem* or an attorney representing a child. Under the terms of the Model Act, a "best interest advocate [GAL] means an individual, not functioning or intended to function as the child's lawyer, appointed by the court to assist the court in determining the best interests of the child." The "child's lawyer...means a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality, and competent representation, to the child as is due an adult client...."[10] These duties are detailed in the section of the Model Act listing the duties and scope of the representation of the child's lawyer, including the lawyer's determination of whether "the child is deemed capable of directing representation," eliciting the child's wishes, and advising the child as to options "[i]n a developmentally appropriate manner."[11]

As the Model Act indicates, we have moved from isolating and "protecting" children to including and listening to them. Most experts now believe the former, more paternalistic "*parens patriae*"[12] role of the court is no longer appropriate because children have thoughts, opinions, and attachments that are important. Children have information that is very relevant. Age alone does not make a child less capable than an adult of perceiving, remembering, or recalling events and experiences. Even pre-verbal children have "interests" that can be discerned and represented. The lives of children deserve to be known and to be heard. Their rights deserve to be protected as much as anyone else in the legal system, especially when they are the true "party in interest." Even though not a party in most juvenile and family court actions, it is the child whose interests and life are most at stake.

The advocate model of representation for a child is the same as for any client—advising, counseling, and helping the client pursue what he or she chooses,[13] but with an important additional obligation of trying to facilitate settlement.[14] If the child is too young, a lay guardian *ad litem* may be needed to testify so the attorney is not put in the position of reporting to the court, or making decisions and recommendations contrary to what the child wants, or being both an attorney and a witness. The advocate model is the traditional role of an attorney and is more effective in significantly reducing the number of cases that require court time and intervention because an advocate can work with the child, assert the child's position, and suggest possible solutions with the child and with others. A GAL can do none of these things. In a contested custody case, the child's advocate is obligated to use his or her best efforts to transform the decision-making process from a battle to a more effective and less destructive process.

The GAL's obligation is to make a report to the court, not to advise or counsel the child throughout the process. A child's lawyer is not driven by the same forces as the parent or other party's attorneys. In theory, the court process is to provide an orderly, fair means resulting in an impartial decision that promotes the child's best interests. The reality, however, is quite different—the child's needs and rights are often lost in the parental crossfire and, in some cases, the court's efforts to manage crowded dockets and meet overwhelming responsibilities. Rather than being centered around who the child is and what the child needs, custody litigation (whether in juvenile or family court) is centered around the parents or adults—who has done the worst to whom? Who is unfit and how? Which parent is "best" or most "fit"?

North Carolina

In North Carolina, we are fortunate to have some statewide organizations and regional non-profits providing legal representation for children in various ways and for various matters. The following organizations have been active in responding to custody issues in domestic court, and some do more than domestic court cases:

- ***The Council for Children's Rights*** (CFCR) in Mecklenburg County has been in existence the longest. It provides attorneys serving as an attorney/GAL for children in custody cases as well as in education, mental health, and juvenile cases. The custody division, run by John J. Parker III, advocates the best interests of children but maintains confidentiality unless allowed by the child to disclose information. They also partner with volunteer attorneys in every case; many from Hunton and Williams and Hedrick Gardner, and many from small and solo firms. CFCR also uses a lay GAL in every custody case. www.cfcrights.org
- ***The Children's Law Center of Central North Carolina*** is in Forsyth county. It is run by Iris Sunshine and provides "best interests" representation for children in custody issues in both domestic and domestic violence court. The center also handles some education cases. Representation of children was started in 2001 by a few attorneys with the help of Kilpatrick Stockton. In 2005, Amy Kuhlman and Penny Spry formed the center as a non-profit that advocates for a child's best interests. Volunteers in custody cases do not have an attorney-client relationship or duty of confidentiality with the child. Kilpatrick Stockton (now Kilpatrick Townsend) is still involved in this program and provides a pool of trained *pro bono* attorneys. www.childrenslawcenternc.org
- ***The Center for Cooperative Parenting*** exists in Orange and Chatham counties to help parents and children in high conflict custody cases by using GALs and parenting coordinators. They do not provide legal representation for children, although an attorney can be appointed as the GAL. www.centerforcooperativeparenting.org
- In Wake County, ***The Child's Advocate*** provides attorneys/GALs to represent children in high-conflict custody and other cases, including children who are victims or witnesses and need representation. As GALs, they must protect the child's best interests, but the attorneys have an attorney/client relationship and maintain confidentiality unless the child permits disclosure. They are also committed to ensuring the child's views and wishes, if any, are heard. The program is a legal-mental health collaboration to ensure no more harm is done to the child and the child's voice is heard. www.TheChildsAdvocate.org

Statewide, the following organizations have provided outstanding representation for children:

- ***Legal Aid of North Carolina*** has a section called "Advocates for Children" led by Lewis Pitts. It deals with many areas affecting children, including education, special education, Medicaid, school suspensions, and other significant issues. Legal Aid offices in different counties also provide different services, and some are for children. www.legalaidnc.org
- ***Disability Rights NC*** handles a host of issues for adults and children who are disabled, including education, special education, mental health needs, housing, voting, and other rights. They are also a good resource for other groups that support children. www.disabilityrightsnc.org
- ***Duke Children's Law Clinic***, overseen by Jane Wettach, provides legal representation for children in 11 counties, primarily Durham and Wake, on issues such as school enrollment and discipline, special education, suspension and expulsion, and SSI disability rights. They focus on low income families. www.law.duke.edu/childedlaw

What We Know

The only guidance for a trial judge in determining custody is the largely undefined term "the best interests" of the child. High divorce rates and bitter disputes concerning children born in and out of wedlock point to the increasing need to focus on the children. More and more custody cases are high-conflict, and more and more involve *pro se* litigants.[15] It is predicted that one of every two children born now will have divorced parents before they reach the age of 18.[16] Children's lives are altered by even the most amicable divorces,[17] but a high level of conflict has serious and long-term effects. These children are at significant risk for life-long developmental, emotional, and mental problems.

> High-conflict harms children whether it originates with the parents or is fueled by others in the adversarial system. The level and intensity of parental conflict is now thought to be the most important factor in a child's post-divorce adjustment and is the single best predictor of a poor outcome. Highly conflicted custody cases disrupt and distort the development of children, placing them at risk for depression and mental disorders, education failure, alienation from parents, and substance abuse. Children exposed to violence and high conflict "bear an acutely heightened risk of repeating the cycle of conflicted and abusive relationships as they grow up and try to form families of their own." These children often are afraid of intimate relationships and lack the abilities to manage conflict themselves.[18]

The statistics are staggering. The number of custody cases with domestic violence allegations is quite high, and mutual allegations such as substance abuse, child abuse, and child neglect are common.[19] AOC statistics indicate that in Wake County alone there were at least 1,200 custody orders entered last year with almost as many initial custody and modification filings, not including domestic violence filings with custody claims.[20] High conflict and disputed custody not only puts children at high risk, but also takes up disproportionately large amounts of professional and court time.[21] Adversarial proceedings escalate the level of conflict, and family lawyers are frequently seen as more adversarial than other lawyers.[22] We know that when children are represented, children and families fare better, children are more accepting of the outcome (even if different from what they want), and they have more

respect for the legal system just because they were heard and involved.[23] Children who are represented and have a voice are more satisfied and are far more likely to become well adjusted adults.[24]

Other States

Research in other countries as well as in the United States now supports independent legal counsel for children (acting in the traditional attorney role) whenever children's lives are being affected by the legal system.[25] As early as the late 1970s, 22 states were aware of the need and permitted judicial discretion to appoint an attorney for the child.[26] Today, at least 40 states in America have statutory authority for the appointment of an attorney, a GAL, or both in child custody cases.[27] Canada's Justice Department, the American Bar Association, the National Association of Counsel for Children, the Association of Family and Conciliation Courts (an international body of judges, lawyers, mediators, and mental health professionals), and the American Academy of Matrimonial Lawyers all approve using the traditional attorney role in representing children, and support ensuring that legal counsel is available for children in high-conflict custody cases and when they have special needs, or their families have special issues.[28]

> Children should be given real, not merely symbolic, roles in hearings that affect their lives. Children have interests independent of their parents. They cannot be represented by anyone other than themselves and they are competent to make their own decisions, we should recognize, and they should be treated as rights-bearing individuals rather than as members of families, especially when families are in crisis.[29]

In North Carolina, most children are not represented; they have no way to obtain counsel. Too often when they are supposed to be represented, they do not get what an adult does: an independent attorney who is an advocate and counsel, who tries to help resolve problems, who has an obligation of confidentiality, and who advocates for the client—not for what the attorney thinks is best for the client. Being an advocate for a child, as opposed to a GAL, imposes additional obligations on the attorney and affords more protections for the child. We benefit from having organizations working for children in North Carolina, but we need much more. Despite the great work and the best intentions of caring and competent judges, they can do only so much. The problem lies in the system, not the judges, whose jobs are profoundly difficult where children are concerned. This is *our* problem. As a profession, we must accept the premise that children have a right to be heard and a right to a lawyer. We must establish and protect that right.[30] As attorneys, we have a duty to "seek improvement of the law, access to the legal system, the administration of justice, [and to] employ that knowledge in reform of the law" through civic leadership and service.[31] As a part of this charge:

> The legal profession has a moral obligation to do all within its power to ensure that the adjudication process takes into account the vulnerable emotional states of children involved in family contests, and to provide them with an effective voice before the court whenever possible.[32] ■

Sally Scherer went to law school to help the unrepresented and underrepresented and recently started The Child's Advocate with the help of other attorneys and mental health professionals. She has practiced family law in Wake County for 30 years, with about 20 years practice in criminal law.

Endnotes

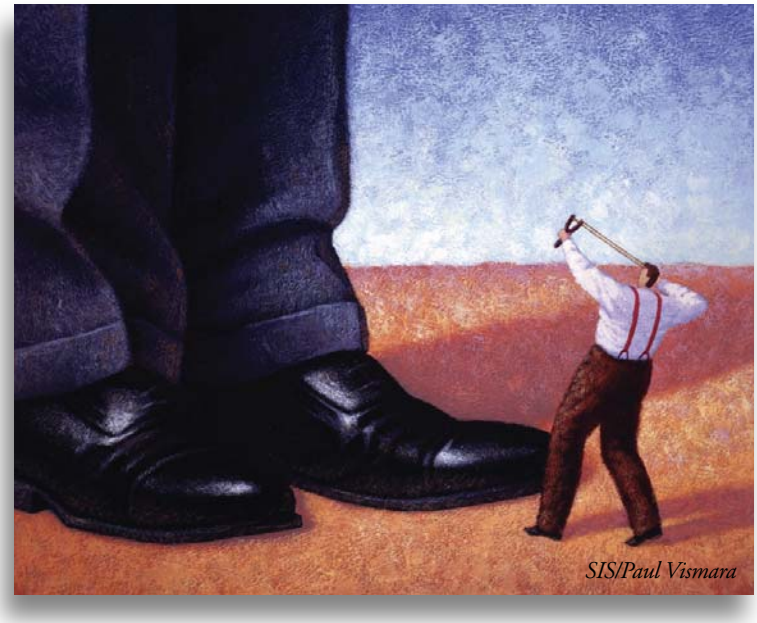
1. Children are easily traumatized by courts and by testifying in front of their abuser. *See, e.g.*, Jacqueline Y. Parker, *The Rights of Child Witnesses: Is the Court A Protector Or Perpetrator?*, 17 NEW ENG. L. REV. 643 (1981-1982).
2. Because children were being traumatized even more by testifying in front of the abuser than by the event itself, North Carolina adopted protective legislation a few years ago. N.C. Gen. Stat. § 15A-1225.1 affords protection for child witnesses under the age of 16 in criminal and some juvenile proceedings by allowing a judge to allow the child to testify in a more protected environment through remote TV or some other mechanism rather than facing the abuser in court. Having an attorney would help the child exercise this right.
3. Although Rule 17 is entitled "Parties," section (b)(3) permits appointment "in any case when it is deemed by the court in which the action is pending expedient to have the infant…have a general or testamentary guardian" has been used to allow appointment of a GAL in custody cases.
4. *See, e.g.*, *VanEvery v. McGuire*, 125 N.C. App. 578, 481 S.E.2d 377 (1997); *West v. Marko*, 141 N.C.App. 688, 695, 541 S.E.2d 226 (2001)(Fuller, J., concurring).
5. N.C. Gen. Stat. § 7B-2000 (Undisciplined and Delinquent Juveniles).
6. N.C. Gen. Stat. §7 B-600. If the GAL is not an attorney, a lawyer is appointed, but the duty of the representation is the child's "best interests," not the child's express interests. N.C. Gen. Stat. § 7B-601(a).
7. An attorney who acts as a GAL may face ethical problems such as being an attorney and then being called as a witness, not being able to preserve confidentiality, and not being able to give legal advice or counsel.
8. Ronda Bessner, *The Voice of the Child in Divorce, Custody, and Access Proceedings*, Department of Justice Canada, 2002-FCY-1E, §3.3, p. 20, available online at justice.gc.ca/eng/pi/fcy-fea/lib-bib/rep-rap/2002/2002_1/pdf/2002_1.pdf
9. Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, approved by the ABA August 2011; see also, Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act, 42 FAM. L.Q. 1 (2008); See also, NACC Recommendations for Representation of Children in Abuse and Neglect Cases (adopted April 2001 and includes custody and adoption cases).
10. Model Act § 1(c)&(d).
11. Model Act § 7(c).
12. As early as 1966, the US Supreme Court recognized the concept was used as justification to exclude children from legal proceedings. *In re Gault*, 387 U.S. 1, 16, 87 S.Ct. 1428 (1967).
13. New York has for many years been one of the states mandating appointment of a traditional attorney as well as a lay advocate for children in disputed cases. *See*, NY CLS FAM. CT. ACT section 241 *et seq.*, and their standards for attorneys should be read by any attorney representing a child. *See, Standards for Attorneys Representing Children in Custody, Visitation, and Guardianship Proceedings* (2008) under publications at www.nysba.org/childrenanndthelaw.
14. Linda D. Elrod and Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: the Interests of Children in the Balance*, 42 FAM. L. Q. 381 (2008).
15. *See, e.g.*, James C. May and Alexander W. Banks, *Lawyering for Children in High-Conflict Cases*, 33 VT. L. REV. 169 (2008).
16. Susan L. Pollet, *A Nationwide Survey of Programs for Children of Divorcing and Separating Parents*, FAM. CT. REV., Vol. 47 No. 3, July 2009, 523.
17. Linda D. Elrod and Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: the Interests of Children in the Balance*, 42 FAM. L. Q. 381 (2008).
18. *Id.* at 388-389 (citations omitted).
19. *See, e.g.*, Desmond Ellis, *Divorce and the Family Court: What Can Be Done About Domestic Violence?*, 46 FAM. CT. REV. 531 (July 2008).
20. Information from Wake County Family Court administrator.
21. Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans*, FAM. CT. REV., Vol. 46, No. 3, p. 500 (July 2008).
22. A.K. Schneider, N. Mills, *What Family Lawyers Are Really Doing When They Negotiate*, FAM. CT. REV., Vol. 44, No. 4, p. 612 (October, 2006).
23. Lucy S. McGough, *Protecting Children in Divorce: Lessons from Caroline Norton*, 57 ME. L. REV. 13, 25 (2005); Susan L. Pollet, *A Nationwide Survey of Programs for Children of Divorcing and Separating Parents*, FAM. CT. REV., Vol. 47, No. 3, p. 523 (July 2009).

CONTINUED ON PAGE 24

How David Bests Goliath in 2011

By Janet Kyle Altman

In the story of David and Goliath, the underdog beats a bigger, more experienced, and better-armed opponent with five smooth stones. David is nimble, and his tactics are unconventional. And though it's tempting to call him an outlier, according to political scientist Ivan Arreguín-Toft, smaller and nimbler forces win all the time using unconventional and unexpected strategies.



SIS/Paul Vismara

The iPad provides a growing arsenal to the Davids of the legal profession. Its portability, ease of use, and innovative apps help solo practitioners and small to mid-sized firms beat larger and more powerful opponents all the time.

It's rare to walk into a courthouse these days without seeing an attorney scrolling through email or doing some quick research on his iPad. Many professionals have been drawn to the iPad's convenience for document sharing, email monitoring, and more. For lawyers whose practices span several counties or states, the iPad's portability is a tremendous advantage. Now apps are available that take the iPad beyond convenience to deliver tangible benefits. Here are but a few examples:

1. Improve effectiveness in court, and cut costs—If it seems like jurors are less focused on your case than they used to be, it's not your imagination. Technology (first the internet, now smartphones and tweets) has changed the way messages are delivered and absorbed. Your spellbinding oral argument about the breach of contract that damaged your client's widget distribution empire just doesn't deliver the volume of stimulation our brains have come to expect. Presenting evidence electronically has become virtually essential.

And if you thought it was only available for the big budget matters, the news is excellent: the power of technology is now at the fingertips of any attorney, for any matter, using TrialPad for iPad for just $89.99.

TrialPad lets you organize documents in case folders and annotate, highlight, and redact them for presentation to judge or jury. You can annotate the same document in different ways for different witnesses and save them as "HotDocs" for easy access. And if you need to redact or highlight something on the fly, it's not projected to the courtroom until you're ready. If you've ever wrestled presentation boards into a courthouse during a rainstorm, faced the exclusion of an important exhibit because one small section was inadmissible, or hauled towers of boxes to court in case you needed an additional document, this App is a game-changer.

2. Access files from anywhere, and improve efficiency—Dropbox is a must-have. It gives you instant access to your documents from your iPad or pretty much any other device. Put case files, transcripts, or exhibits in your little piece of the cloud and they're at your fingertips. Files and transmission are encrypted. 2GB are free, and subscriptions up to 100GB are available for just $19.99 a month, with a discount for annual subscriptions. You can even create shared folders so your associates, clients, and experts can add documents or see your annotations.

Note: For a lawyer's professional responsibilities when using cloud computing see Proposed 2011 FEO 6 in the Proposed Opinions section of this issue.

3. Get legal research on the fly, cost effectively—Legal research apps abound, from familiar providers like Westlaw and Lexis Nexis to newer players focused on mobile access and powerful search tools. Your needs will drive your choices here, but check out Fastcase. The iPad app is free, and includes many of the benefits of its highly regarded web-based application, including cases and statutes from all 50 states and the federal government, and excellent search functions. Fastcase was voted #1 in customer satisfaction by *Law Technology News*.

4. Streamline practice management and client development—If you think practice management is just about keeping track of time and billing for existing clients, you're missing the boat. The lean, nimble law firm recognizes that tactics used in other industries can make the difference in business development. My Real Practice gets it: this app gives mobile access to contacts, matters, tasks, and billing tools. You get templates to create a website, and tools to monitor incoming prospective client leads. The basics are free and premium membership starts at $29 setup plus $19 per month.

Advances in technology have always helped innovative small to mid-sized firms leapfrog larger firms that can be weighed down by bureaucracy and politics. The iPad is the best example yet, helping agile players improve productivity, cut costs, and deliver better results for clients. ■

Janet Kyle Altman is marketing principal with Lit Software, LLC, a joint venture of Kaufman, Rossin & Co., and Saurian Litigation Support. She can be reached at janet@litsoftware.com.

A number of blogs discuss and review iPad apps for lawyers. Check out:

- Tablet Legal by Josh Barrett
  tabletlegal.com
- Legal iPad by Niki Black
  legal-ipad.com
- WalkingOffice by Rob Dean
  walkingoffice.com
- TechnoEsq by Finis Price
  technoesq.com
- iPad 4 Lawyers by Tom Mighell
  ipad4lawyers.squarespace.com
- iPhone J.D. by Jeff Richardson
  iphonejd.com
- The Mac Lawyer by Ben Stevens
  themaclawyer.com
- MacLitigator by Peter Summerill
  maclitigator.com
- Court Technology and Trial Presentation by Ted Brooks
  trial-technology.blogspot.com
- Macs in Law by Brett Burney
  macsinlaw.com
- The Hytech Lawyer by Bill Latham
  hytechlawyer.com

Metadata 201: Where the FEO Ends and E-Discovery Begins

By Erik Mazzone

"Oh good," I can almost hear you groaning. "*Another* article on metadata."

That sound you just heard was 20,000 lawyers simultaneously turning to the next page in this magazine.

Still there? Okay, then.

My prior article on metadata in this periodical, *Metadata 101: Beware Geeks Bearing Gifts*, in addition to providing a cost-effective and homeopathic insomnia aid, covered the topic from a what-not-to-do perspective. Don't send digital documents without removing the metadata. Don't mine your documents from opposing counsel for inadvertently included confidential client information in the metadata. Don't let the dictionary definition of metadata cause you to slip into an epistemological black hole.

Maybe that's just me.

Anyway, in the course of that article and my seeming zeal to cause the practicing bar as much technology-related psychic distress as possible, I left out a brief, but important, nugget about metadata. The purpose of this sidebar is to address the aforesaid implied, but omitted, nugget. That and to avoid being caned by Tom Lunsford for requiring the addition of this sidebar in the first place.

But I digress.

You see, the thing about metadata is that it is, deep in its digital little heart, just like all other information. For our lawyerly purposes, that means some of it is relevant and discoverable. Just because certain information is contained in metadata does not mean it is inherently and ontologically (and my parents thought a philosophy major was a waste of time) off limits and undiscoverable. All of the same rules of evidence about relevance and discoverability apply to metadata, as well. I don't know any of those rules, that information sadly having been replaced by multiple levels of Angry Birds, but I know all you smart lawyers out there know them.

The opinion on metadata is really about *confidential client information* that is inadvertently contained as metadata in a document. That's the stuff that's off limits, as you well know better than I. As for all of the other information in metadata—the stuff that is otherwise relevant and discoverable—don't let old 2009 FEO 1 or me throw you off-course. That's still in bounds; and that boundary marks the dividing line between where the FEO ends and E-Discovery begins.

Now back to your regularly scheduled litigating. ■

Erik Mazzone is the director of the Center for Practice Management at the North Carolina Bar Association.

Memorable Legal Characters—Ralph James Scott

By William F. Southerland

Ralph James Scott tried cases, not people. He used to say that if people were involved it was purely incidental. That public statement was meant to represent his devotion to the letter of the law and define his practice, but the legacy he left in the old Prosecutorial District 17 proved that his professional prowess towards the public was a hallmark of his service.

1962, Scott meeting President John F. Kennedy

Ralph Scott did not set out to be a career prosecutor or a member of Congress. He was born in 1905 and raised in the rural piedmont community of Shoals in Surry County. His mother suffered a horrific accidental death early in Ralph's life when she suffered an epileptic seizure, fell into the family's main fireplace, and was fatally burned. Ralph maintained a fear of fire for the rest of his life. His father, Sam, was a lower class jack of many trades who regularly physically abused his children and Ralph was no exception. Sam did obtain employment as a postmaster in the nearby community of Pinnacle and the family moved there for much of Ralph's adolescence. Ralph enjoyed school in Pinnacle, particularly since it offered an escape from the agrarian lifestyle that surrounded him and allowed him to become a champion debater at an early age. School also afforded Ralph friendships that would mold his future. Bill Sullivan was Ralph's best friend and was part of a wealthy family who had decided to send their son to Wake Forest for college to study bio-chemistry. Ralph decided this, too, was his best path for the future, and attempted to follow suit for no particular reason other than an escape from rural Stokes County. Despite the fact that Ralph had no money to enroll in school, he set out to find a way to attend college. After high school he took a job in the local tobacco fields, and then in the winter travelled to Florida to pick fruit, all the while saving money for tuition. However, even with his jobs and savings, it appeared that college was out of reach until Ellis Coon, the local banker, took an interest in Ralph's goals and loaned money for him to attend Wake Forest—this, of course, at a time when educational loans were non-existent. Once at Wake Forest, Ralph still required a place to live. He found residence with Ms. Jo Williams at her boarding house. Ralph worked for his room and board by living in the basement of the home and keeping the boiler fire going by shoveling coal, and yet still maintained his scholastic endeavors even

though he quickly discovered that bio-chemistry was not his forte. With his grades tanking in the sciences, Ralph discovered an interest in the ongoing coverage of the Scopes "Monkey" Trial in Tennessee. Ralph wasn't necessarily a religious man, but he certainly had opinions, and reading the courtroom coverage was intriguing to him on an intellectual level.

The fact that he had an overwhelming fear of public speaking became an obstacle that he would spend his entire career attempting to overcome by setting his mind to the practice of law from that point forward. Even in his later years, Ralph was known to wring his hands when making jury arguments and refuse public speaking engagements. Even the invitation to speak brought sweat pouring from his hands. Regardless, Ralph set his mind to the law and sat for and passed the bar even before receiving his degree from Wake Forest in 1930, and he remained a student of the law until his death in 1983. It seems his professor in his Supreme Court course left an extraordinary mark on Ralph—he felt compelled to record it in his personal diary on January 24, 1930: "Never before had I been touched so deeply by the attitude Dr. Gully takes toward the teaching of law. I think perhaps his primary aim is not the making of lawyers but the making of men…he emphasized the necessity and advisability of living a clean and upright life—'fight with all your might, but fight like a gentleman, hit straight from the shoulder.'"

Ralph settled in a Danbury office directly behind the old courthouse. The office itself had satisfied the practice of law for Judge John D. Humphreys and Governor Thomas Walter Bickett, and Ralph was no exception. His pocketbook showed that his earnings were never analogous to his skill and ability to practice in those early years of the 1930s. Rural North Carolina at the time was poor and always had been. The Great Depression for Stokes and Surry Counties was for many just another day, and a country lawyer like Ralph practiced for the love of the profession and the gentlemanly atmosphere of the practice. In fact, Ralph's ledger remains meticulously intact and reflects how he would trade goods and services for his own skills. His wife, Verna Denny's, devotion to teaching at the time provided the bulk of the family income while her husband established himself.

Ralph understood that the practice of law in those days was a sacred public trust and the professionals with whom he served were counselors of law first. He took this ideal from private practice and into the solicitor's office of the newly created Judicial District 17 including Surry, Stokes, Rockingham, and Caswell Counties. Ralph always took pride in the fact that he was the first and the last district attorney for District 17, since he was later named the interim district attorney in 1980 when the district was divided between Stokes and Rockingham Counties. That pride was well founded given the jury trials and courtroom administration that made Ralph legendary. His quiet and contemplative nature only served to strengthen his voice when he entered the courtroom. Since he wasn't loquacious, Ralph's mannerisms underscored his personality with his deep, booming voice or the way he always cleared his throat, cocked his head, and shrugged his shoulders before making his jury arguments. He would clasp his hands together with his index fingers pointed towards the jury as if to connect the dots of the case at hand. Ralph understood though that actions spoke loudly and served to emphasize his words. He was fond of a Justice Holmes's quote: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time in which it is used."

The courtroom was his turf, however, and he made it a point to own it without bombast or theatricality. He read the law and the Bible and studied them both with the same vigor in order to present allegations of criminal activity in ways that the public could understand. It wouldn't be difficult to compare Ralph in the courtroom to Atticus Finch in *To Kill A Mockingbird*. He could be so eloquent and amplify his voice when the extraordinary need arose for the jury's consideration. And yet, he was that Southern gentleman who did not treat defendants with disdain for their actions, but instead chose to punish them for their acts. The world was black and white in the courtroom because Ralph prosecuted crime fervently to seek justice. His ability to create a linear pattern of facts and apply the law to those facts gave him a distinct advantage when entering the courtroom, and as any Southern gentleman may attest, Ralph treated people with civility and respect as a fellow human being. He understood better than anyone that circumstance may contribute greatly to our character, but attitude defines who we are. And while he may have resembled a dignified statesman from a Grisham novel, his family life more closely followed a Faulkner tale.

Time and again set-backs arose for Ralph, whether it was as a consequence of his abusive father, the death of his mother, or even the necessity to prosecute his own brother, which he did on one occasion. Alcohol became a source of relief, and his substance abuse created an uncharacteristic temper in Ralph that made life with him nearly unbearable for his wife, Verna. He was nonetheless undeterred in the pursuit of his goal to be a conscientious and dedicated prosecutor as he never missed nor was he ever late for a session of Superior Court.

Through the 1940s Ralph was becoming more involved in politics and by 1957 he had become United States Congressman for North Carolina's Fifth District. Representing the old tobacco belt, he became a steady voice for conservative Democrats in the South without getting involved in the race debate that was taking shape. As always, Ralph saw people as people regardless of their skin color or economic background. Despite his achievements and personal connections to Senator Ervin, President Kennedy, and so many other Washington elite, Ralph longed for home. He was out of his element surrounded by people who spoke whether they had something to say or not, and found fewer and fewer people actually listening to anything. Alcoholism was crippling Ralph and the fatigue from the job was taking its toll. Ralph left Washington after a decade to return to District 17 and his beloved courtrooms. Ralph committed to not drinking again after he left Washington and only did so again very late in his life at the recommendation of his doctor.

Ralph picked up where he left off as a prosecutor, but seemed to have mellowed with age. The stern and stately gentleman began showing his sense of humor more and more to those around him. He purchased a brand new white Camaro with racing slicks, a jacked up rear end, lambskin seat covers, and a mink steering wheel. To add to the sight, Ralph insisted on wearing gloves while driving and made quite the scene in rural Danbury as he rolled through town with his 396 cubic-inch behemoth rattling windows and rumbling towards the courthouse. To Ralph of course, entertaining himself was

worth all the puzzled looks he received from onlookers. The same was true when he appeared for court in Wentworth donning an earring just to see if anyone would comment on it. People of course reacted in shock, but attempted to disguise their disbelief, which added to the entertainment for him.

The practical jokes didn't stop Ralph from continuing his work as an assistant district attorney until he was 73. In September 1979 Ralph was picking a jury in Dobson and felt his left arm go numb. Later that night over dinner he began babbling incoherently and doctors diagnosed him as having had a stroke. Despite this challenge he remained a special assistant in the district attorney's office and continued to assist in the prosecution of more serious matters. Always a student of the law, Ralph even continued reading the latest legislation, case law, and advance sheets as soon as they were available to him. In August 1983 Ralph suffered a second stroke that left him unconscious and doctors discovered lung cancer as well, following years of smoking his beloved non-filtered Camels. Within a matter of days Ralph had passed away. He was buried on a hilltop cemetery in Pinnacle within sight of his childhood home.

Legacy is a mighty word that is often reserved for those who have devoted their life to public service and leave great contributions to their community and their profession. Ralph James Scott provided his legacy through his character and his actions to the people of the judicial district as well as the congressional district. He lived just long enough to see the new Stokes County Government Center open on the land he donated to the county, and he received the first Wake Forest Distinguished Alumni Award for his years of public service and contributions to society. The practice of law itself may not have been altered dramatically by his work, but like the law, Ralph proved that consistency and virtue will serve a longer lasting accomplishment. The law is created by the legislature and interpreted by the courts, and the ebb and flow over a lifetime can show remarkable changes to the meaning of the law regardless of any particular wording. Ralph Scott's impact on North Carolina still resonates through the people that he helped and their families who remember what he did for them in their time of need.

I have had the privilege of witnessing this first hand at home and throughout the state even though I never really knew the man himself. Ralph Scott has been a man in pictures with Presidents Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson; Senator Sam Ervin; Justice Franklin Freeman; and countless other influential 20th century figures, yet the lone memory I do carry is similar to so many other people—Ralph Scott caring for me with attention and kindness. I remember "Big Papa" holding me in his lap and giving me Juicy Fruit chewing gum when I was approximately four years old. It is odd to say that I recall something from such a young age, but I believe that is a testament to the character that so many people are fond of recalling. Ralph Scott should serve to remind us all that the practice of law is not a sword, but a shield to protect the citizens of the United States. I am proud that I sit in a courtroom today where his portrait hangs in a place of honor behind the judge's bench not to remind everyone of his achievements, but to display the integrity of the law and how we should aspire to represent those noble characteristics in a solemn place where the people's business is done—the courtroom. Atticus Finch said, "I'm no idealist to believe firmly in the integrity of our courts and in the jury system—that is no ideal to me, it is a living, working reality." The shadow that Ralph Scott casts is preserved by the promise we all should make to strive for justice inside and outside of the courtroom. And yet true character is not measured for Ralph Scott in the law, but instead is concluded best through one of his favorite quotes: "Every good thing in life, however small, every joy, every delightful thing, even the kind word and smile, casts upon you a corresponding duty and obligation. Don't believe, ever, that you will receive good things without giving as much in return. This does not mean returning in kind and value, but of such as you have. To receive the good things of life without giving something in return leaves one in a sense of debt that is incompatible with inner peace." ■

William Southerland was elected district court judge for District 17B in 2008 and previously served as an ADA for Stokes and Surry Counties. He attended the UNC-Chapel Hill and Texas Southern University. He is grateful for assistance of his grandmother, Patricia Southern (Ralph Scott's younger daughter), and all the aid she provided in compiling facts and photos.

Our Children (cont.)

24. Dale Hensley, *Role and Responsibilities of Counsel for Children in Alberta: A Practitioner's Perspective and a Response to Professor Bala*, 43 ALBERTA L. REV. 871 (May 2006).
25. E.g., Ann M. Haralambie, *Humility and Child Autonomy in Child Welfare and Custody Representation of Children*, 28 HAMLINE J. PUB. L.& POL'Y 177 (Fall 2006); Dale Hensley, *Role and Responsibilities of Counsel for the Child in Alberta: A Practitioner's Perspective and a Response to Professor Bala*, 43 ALBERTA L. REV. 871 (May 2006); Bessner, *supra* note 8, §3.3.
26. Wallace J. Mlyniec, *The Child Advocate in Private Custody Disputes: a Role in Search of a Standard*, J. OF FAM. LAW, Vol. 16, No. 1 1-17, 6-7.
27. Linda D. Elrod and Robert G. Spector, *A Review of the Year in Family Law: Working Toward More Uniformity in Laws Relating to Families*, FAM. L. Q., Vol. 44, No. 4, 469,511 (Winter 2011)(chart shows NC as having statutory authority, but such authority exists only in DV cases).
28. Bessner, *supra* note 8; Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings, approved by the ABA August 2011, *Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act*, 42 FAM. L.Q. 1(2008); NACC Recommendations for Representation of Children in Abuse and Neglect Cases (adopted April 2001; includes custody and adoption cases); Judy Cashmore and Patrick Parkinson, *Children's and Parents' Perceptions on Children's Participation in Decision Making After Parental Separation and Divorce*, FAM. CT. REV., Vol 46, No. 1, 91-104 (January 2008); AAML, Representing Children: Standards for Attorneys for Children in Custody or Visitation Proceedings with Commentary (approved March 20, 2009).
29. Bessner, *supra* at note 8, pp. 4-5.
30. North Carolina expressly provides authority for judges to appoint an attorney or GAL for children when the issue of custody is raised in domestic violence actions, but no such authority is given to the judges who make most of the custody decisions and are responsible for the final and modification custody orders under Chapter 50. *See*, N.C. Gen. Stat. §50B-3(3)(h).
31. NC Rules of Professional Conduct, Preamble: A Lawyer's Professional Responsibilities.
32. James C. May and Alexander W. Banks, *Lawyering for Children in High-Conflict Cases*, 33 Vt. L. Rev. 169, 172 (2008)(emphasis added).

An Interview with New President James R. Fox

Q: What can you tell us about your roots?

I grew up in a rural community in Alexander County in the edge of the mountains. The area is called Bethlehem (remarkably, it now has a stoplight). My mother fixed people's hair on the back porch of our house and my dad was an auto body repairman. I had two brothers and a sister, and lots of aunts and uncles and cousins. My parents did not have an opportunity to go to college, but were determined that their children would. The family was of modest means, but that wasn't as significant as it might have been if we hadn't lived out in the country with lots of good relatives. There were 85 students in my high school class. I was the first child in the extended family to go to college. I had an opportunity to go to either the University of North Carolina at Chapel Hill or Duke University on scholarships. I chose to go to Duke, although I remember it being a difficult decision. The same choice repeated itself with respect to law school with the same result.

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

I'm not exactly sure. I didn't grow up around lawyers since the area where I grew up didn't have any. I suppose I made up my mind, at least tentatively, as an undergraduate. The choice may have had something to do with the fact that I was in college in the late 60s when the Vietnam protests and the civil rights movement and their legal issues were at the forefront. I also seriously considered getting a PhD in history and teaching at the college level.

Q: What's your practice like now, and how did it evolve?

In 1971, in my third year of law school, I got a job with a large firm in Washington, DC, doing complex civil business litigation. It was largely a nationwide federal court practice. In time I became a partner and stayed for 12 years. In 1984 I got married and moved back to North Carolina where I joined Bell, Davis & Pitt doing the same sort of litigation. Five years ago one of my clients, Pike Electric Corporation, went public. I was asked to join the company as general counsel and risk manager, which, after considerable reflection I did. The job involves a variety of subjects including corporate, employment, and environmental matters, as well as SEC, OSHA, and other regulatory matters. In addition, there is litigation management, which probably consumes the biggest single portion of my time.

Q: You are the first in-house corporate lawyer to serve as president of the North Carolina State Bar. Do you think that this is significant?

Not particularly, except that it may make me sensitive to the needs and concerns of a broader range of lawyers.

Q: At the moment, an in-house corporate counsel need not be a member of the North Carolina State Bar. Is that a good thing?

Yes. I think as long as these lawyers obey the restrictions placed on them by the Rules of Professional Conduct, they perform a valuable service that should be encouraged.

Q: You are also the first president to be described as "of counsel" to a private law firm. What exactly does that mean?

It means I render as much consultation to and promotion of Bell, Davis & Pitt, PA, as I can consistent with my other obligations.

Q: Do you feel like a Winston-Salem lawyer or a Mount Airy lawyer?

Both. I still live in Winston-Salem and enjoy my relationship with both Bell, Davis & Pitt and Pike. Given the amount of time I spend traveling between Winston-Salem and Mount Airy, you might also say, if inclined to be waggish, that I am a US Highway 52 lawyer.

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

Gone into academia, probably as a professor of history.

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

Bob Wicker, then the president of the State Bar, was looking to fill a slot on the Disciplinary Hearing Commission. My partner at Bell, Davis & Pitt, Bill Davis (a former President of the State Bar himself), recommended me. I thought it would be a good way to render service to the profession which had given a lot to me.

Q: Can you tell us what it was like on the Disciplinary Hearing Commission, and was the experience positive or negative?

I think the experience was overwhelmingly positive. You get to protect the public by addressing serious professional misconduct and seeing that it is appropriately punished, and at the same time you get to salvage lawyers where the facts and the situation indicate you can and should.

Q: What has your experience on the Bar Council been like and how has it differed from what you anticipated?

It hasn't significantly differed from what I

anticipated. That is because when I was on the Disciplinary Hearing Commission, and particularly when I was its chair, I had a lot of contact with the council so I knew what I was getting into. I also knew what a great group of lawyers were on the council and its related boards and committees, and I have been pleased to see that continue.

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

Probably the furor over the penalty imposed in the aftermath of the *Hoke & Graves* case. That was a situation where prosecutors failed to turn over records to the defense after which there was a conviction and death sentence. It was later overturned on the basis of the records being withheld. The Disciplinary Hearing Commission found that the prosecutorial conduct was only negligent and imposed a penalty that was lighter than the criminal defense bar thought appropriate. The case further poisoned the relationship between defense lawyers and prosecutors, and between those two groups and the State Bar.

Q: You've been an officer during the past two years, first as vice-president and then as president-elect. What has that been like? Does the president generally call the shots unilaterally or does he seek consensus among all the officers before taking action?

I have really enjoyed it, especially the overview of the State Bar it provides. Additionally, getting to know the other officers well, and struggling with them to represent the State Bar effectively, has been rewarding. From observation, I think the president generally seeks consensus. That is certainly my style and what I intend to do.

Q: When you took office you expressed concern regarding a couple of legislative initiatives that the State Bar successfully opposed in the last session of the General Assembly that would have authorized lay ownership of law firms and limited practice by trade associations. Why were those proposals bad policy and why should lawyers be concerned?

Both proposals would inevitably lead to conflicts of interest and breaches of fiduciary duty, and in somewhat different ways, undercut the independence and loyalty of lawyers trying to properly serve clients. In the case of lay ownership, there is really no way the financial interest and the client interest can coexist in a variety of situations. Practice by trade associations also presents serious potential conflicts between the organizations and their "client" members.

Q: Are you concerned that many young lawyers these days are starting out in practice without access to good professional mentors? Why is that a problem and what, if anything, do you think ought to be done to address the situation?

Yes, I am very concerned. The lack of mentors for many of these young lawyers is a particular concern given their large number, and the fact that many of them can't find jobs or must practice in ways that cannot support them financially. I think this is likely to lead to increasing violations of the Rules of Professional Conduct, as well as a further breakdown in civility. I see no way to really address it other than by organizing mentoring across the state. That is a difficult project with some serious obstacles. The Bar Association has begun to pursue this and I encourage all our membership to participate in that or other individual mentoring programs they can find or start. In my opinion, the mentoring needs to be voluntary. I think a mandatory system would not work well. It would be resented and under those circumstances the quality of the effort would, I suspect, be difficult to maintain.

Q: The State Bar was recently sued by Legal Zoom Corporation. What's the dispute about and why is the litigation important?

The dispute arises from a cease and desist order issued by the State Bar's Authorized Practice Committee against Legal Zoom Corporation. Chapter 84 of North Carolina General Statutes prohibits individuals or entities from providing or offering to provide legal services in North Carolina including organizing corporations and preparing deeds. Moreover, business corporations may not provide or offer to provide legal services, even if the services are performed by attorneys. The State Bar's Authorized Practice Committee concluded that Legal Zoom had violated these statutory provisions and issued a cease and desist order prohibiting Legal Zoom's activities. Legal Zoom has responded by suing the State Bar for injunctive and declaratory relief that, among other things, would require the State Bar's Authorized Practice Committee to withdraw its cease and desist order. It would be inappropriate and perhaps unethical for me to comment on this pending litigation, which is being defended by the office of the attorney general. I can say that the matter will be defended vigorously. The litigation is important because it goes to the very heart of the exclusive right of North Carolina licensed lawyers to practice law in this state and to the public's right to competent legal services.

Q: Given your position as counsel for a publicly-traded corporation and your continuing affiliation with a large metropolitan law firm, do you think you can understand and empathize with those lawyers who live and work in the small towns of the state?

Yes, I do. You have to remember that I have been interacting with small town, small firm lawyers on the DHC and the council for going on 15 years, as well as in practice. Although Bell, Davis & Pitt now has 35 lawyers, when I first started there were only five of us, so I think I can empathize quite well. Beyond that, I think lawyers and many of their concerns are not so very different regardless of where they live and work.

Q: In your opinion, does it make sense for lawyers to be regulating themselves? Is it good public policy? Do we deserve the public's trust?

Yes, I think it makes quite good sense. We are the ones who know where the problems and pitfalls are. We also know how best to protect the public from the excesses of lawyers who don't have the best interests of the public at heart, and allowing us to do that is very sound public policy. I think we certainly deserve the public's trust because we have very rigorously regulated lawyers practicing in North Carolina and have not been hesitant to impose severe penalties on those who harm the public by seriously unethical conduct.

Q: You served on the State Bar's Grievance Committee for many years. What do you think about the disciplinary system? Is it working? Are we doing a good job? Where can we improve?

I have served on both the Disciplinary Hearing Commission and the Grievance Committee, so I have seen both ends of the disciplinary system. The system does work and it will continue to work just as long as we remember that our principal mandate is to protect the public and that we can't be afraid to severely punish serious breaches of the Rules of Professional Conduct. As to improvements, our grievance staff does a great job with the resources they have, but we need additional resources to shorten our backload.

Q: Can you tell us where we are in regard to the construction of the State Bar's new headquarters?

We are scheduled for a November 15 start

of construction, which should take about 14 months. The construction contract provides for a cost of a little under $13 million, which is about $1.4 million less than we had originally estimated. We have a $12 million loan from First Citizens Bank and Trust, and have a contract to sell our current building at $2.7 million. This together with our cash reserves and contributions to the North Carolina State Bar Foundation should make the project very doable.

Q: The North Carolina State Bar Foundation, which is independent of the Bar Council, is getting ready to launch a fund-raising campaign in support of the new building. Do you think lawyers ought to contribute?

I think they should and I believe they will. The building is, after all, the embodiment of who we are and what we contribute to the free and democratic way in which we live. How better to fund it than through the contributions of those whose commitment to the rule of law makes it all possible? The State Ethics Commission has approved this and the foundation will see that it is done appropriately.

Q: Is there anything else you would like to accomplish during your year as president?

I would like to see us be able to protect the public by seeing to it that bad legislative proposals like minority ownership of law firms by laypersons and attempts to allow corporations to practice law are defeated. I would also like to see us successfully protect the public from the unauthorized practice of law, including, but not limited to, the issues subsumed in the Legal Zoom case. I would also like us to begin dealing with the large crop of new lawyers now coming on line. And of course, mental health, substance abuse, and judicial and legal aid underfunding are particular problems I would like us to address in meaningful ways.

Q: Tell us a little about your family.

My wife Debbie is a graduate of Wake Forest University and the Duke University Divinity School, and is ordained in the Methodist Church. She is originally from western Surry County. Our older daughter Alexandra is at the University of North Carolina at Chapel Hill and wants to pursue a graduate degree in social work. Our younger daughter Victoria is a senior at Columbia University and interested in film and TV. Both will graduate this spring. We also have a much loved miniature dachshund named Oscar Mayer Fox. By the way, Oscar saw the interview with North Carolina Bar Association President Martin Brinkley on the front page of *Lawyers Weekly*, accompanied by the picture of Martin and his dog. Oscar is seriously miffed that he and I haven't been asked for a photo and a few trenchant remarks on behalf of the North Carolina State Bar. Oscar feels confident that *Lawyers Weekly* will rectify this situation lest it becomes a serious bone of contention.

Q: What do you enjoy doing when you're not practicing law or working for the State Bar?

I'm wondering whether there is much room left for anything else. When occasionally there is, I enjoy reading, woodcarving, and painting.

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

For vigorous protection of the public and the rule of law. ■

Partners in Life (cont.)

that his wife "could supervise me at home, but not at work." Another reported that before they were married they had competed for the same job in a firm. He got the job. The firm hired her a year later. One lawyer encountered difficulty when interviewing for work because her husband already practiced in the same geographic area. "Every interviewer discussed conflicts of interest." Even though her husband practiced in a small town and she was looking in larger firms, the possibility that they could end up on opposite sides of a case was of concern to her interviewers. "I was on *Law Review* and thought that would give me an in, but the questions about conflicts predominated." Eventually, she was hired by a larger firm. "Of course, the conflicts never developed...there simply weren't any cases that overlapped." As with other aspects of life as a lawyer couple, the respondents seemed to have worked through conflict issues if and when they came up. It appears that the Ethics Committee has been responsive in addressing different scenarios where conflict is possible.

The most surprising discovery made in my conversations with and about lawyer couples was our numbers. My conversation started among a small group of friends and colleagues. Each mentioned other lawyer couples they knew. I looked at the list of women presidents of the North Carolina State Bar and the North Carolina Bar Association and discovered that most (maybe all) are married to lawyers. I discovered many lawyer couples (with and without the same last name) each of whom I knew professionally, but had never connected with one another. In my conversations with lawyers about the topic and in reviewing the responses that a number of busy lawyers took the time to provide, I noted much warmth and humanity among the lawyer couples with whom I conversed. While it is true that not all happily married lawyers have lawyer spouses and not all lawyers who have lawyer spouses are (or were) happily married, for many lawyer couples, there is, as one respondent noted, "a benefit of having a great legal mind next to you at night." In the 1949 movie *Adam's Rib* (in an effort to lure defense lawyer Amanda away from her prosecutor husband), character Kip Lurie utters the phrase, "Lawyers should never marry other lawyers." As with any life choice, sometimes it works, sometimes not. But from the point of view of the couples with whom I have been conversing, Kip, you were wrong. ■

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Dead Time

By Marvin Sparrow

"Cord-el English," called out the DA.

"Cord-el English," she repeated, slightly louder, seeing no one approaching. She was ready to shift into second gear for the call and fail.

"In the box," said the jail officer, in a polite undertone, but with the mild suggestion of, "you should have known that."

A man arose from the orange jumpsuits of the jury box—the "pumpkin patch" as it was called at the courthouse. Thirty-some years of life had beaten him down roughly. The spider web tattoo on his neck seemed to hold his right eye in a dull focus on the judge and DA, while the left eye jerked about the public section, finally fixing on a well-dressed woman sitting on the front row.

Slate slipped through the swinging wooden gate, not letting it clack back together. He eased into the first empty seat just inside the bar, nodding at the nearest officers and the few other lawyers.

Judge Waxwing was running through the counsel inquiry in his every day monotone, too fast, too low, no distinct words, just a droning sound of language. Just as well—English knew the routine. The judge concluded his recitation with, "What do you want to do about counsel, sir?"

English mumbled, "Rep'zint m'self."

The judge asked, "Have you signed a waiver?" He looked to the clerk for the answer. She nodded. Judge Waxwing kept his paperwork in order.

The assistant DA was Marie Huskey—young, intelligent, anxious to move on. "Mr. English, you're charged with fictitious tag and no operator's license. How do you plead to those charges?"

"Guilty." A mumble.

"You'll have to speak up, sir," came from the bench.

English turned his muted glare to the judge, and spoke distinctly, "Guilty."

"Level?" asked Waxwing.

"Two," replied Huskey, consulting her terminal.

"Two?" asked the judge, clearly confused. Based on appearances, he assumed the answer should be three.

Huskey was annoyed that the judge doubted her record search. "That's all we have," she confirmed, picking up the next shuck. Time was wasting.

"Consolidate into one. Forty-five days, Sticks County Jail," intoned Waxwing.

"He has 63 days credit." The jail officer kept a precise count on the jail time.

"Credit for time served," pronounced the judge.

English showed his first flicker of life. He looked toward the jail officer. "So that's 18 dead time, right Sergeant Handyman?" he asked in a whisper.

"Eighteen," Handyman confirmed.

Slate had been thinking of anything else as he watched the familiar events. Same old, same old. But this detail pricked his dull brain, and now he took note of something out of the ordinary. English, the now sentenced prisoner, sat down in the jury box, and as he did, he signaled to the woman in the front row with both hands—all fingers extended first, then five and three—18. Slate turned to wonder whether the woman cared. He was surprised to see her recording the figure on papers attached to the clipboard on her knee.

The woman, professional looking, glanced to Sgt. Handyman for a final confirmation. He nodded again to the woman. She kept writing things down. She seemed to be filling blanks in forms. Meanwhile, Slate could see English struggling to do math, muttering the numbers. The orange jumpsuit and the spider web tattoo must have slowed the calculations. After a full minute, English looked up to the woman in the front row and mouthed, "Three twenty-four." Slate glanced around and saw the woman nod back, and signal with her fingers, "three- two-four." She mouthed the question, "Okay?"

English nodded enthusiastically, and turned to share a quiet smile with his fellow orange suited pumpkin. He was pleased.

"Mr. Junco, are you ready to handle your cases?" Huskey brought Slate out of his ruminations.

Slate was confused, a rare experience for him in district criminal court. He shook his head in the negative.

"Your honor, we can take the morning break now, if your honor pleases."

Waxwing pleased to do so. He escaped quietly off the bench. Break announcements were made. Lawyers and police officers started milling around, bantering about their cases. Slate just sat there pondering, "What the heck was going on?"

The mystery deepened. As the prisoners were being hooked on the long chain for the walk back to the jail, Handyman allowed English to lean over the bar and sign two papers that the unknown woman held on her clipboard. Straining to listen in the mild hubbub, Slate heard the woman say, "The check

The Results Are In!

This year the Publications Committee of the State Bar sponsored its Eighth Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of nine committee members. The submission that earned second prize is published in this edition of the *Journal*.

will be waiting when you're released. Just ask the booking officer."

The pumpkins shuffled off, ankle shackles clanking. Slate stood, puzzled. Slate Junco was known around town as an unenterprising lawyer. He had a pleasant demeanor and an unexplained knack with a jury. Perhaps once he had been sharp, but he had grown a step slow and a word short. Slate knew his reputation and didn't care. He was just playing out the back nine of his career, ready to be home puttering at other things.

But when something motivated Slate he could kickstart into action, and now he had a need to know. He hurried down the stairs and caught up with the clipboard woman on the courthouse steps.

"Excuse me, ma'm."

"Yes, Mr. Junco." The woman turned. Her manner betrayed a college education, a business attitude, self-assurance. She wasn't from Sticks County; that was obvious.

"Have we met?" asked Slate.

"No, sir. But of course I know who you are," the woman offered. "We get a lot of days from your cases."

Slate was puzzled, and exhibited his characteristic delay in conversation.

The young woman took the silence for unease and volunteered, "I'm Ernestine Angeline. From the Entrepreneurial Law Foundation in Charlotte. I've been working this region for a few months now."

Slate's stalled thoughts finally broke through into speech. "Pleased to meet you. Hmm, Charlotte...entrepreneurial...region. Ah, say, can I buy you a drink?"

Ernestine considered for a moment whether this absurd invitation meant the older man was hitting on her. She rejected the idea. In fact, the thought had not entered Slate's mind.

"Mr. Junco, it's ten thirty in the morning. I don't drink before noon," Ernestine answered demurely.

"Yes, of course. How about some lunch,... ah, breakfast, coffee? I would really like to talk with you."

"Sure, Mr. Junco. I have to run by the jail, and then I will meet you at Home Grounds for a cup of coffee."

Pleased, Slate ambled away without another word, rehearsing questions. There was a lot he wanted to know.

By the next afternoon, Slate had the answers. And by that time, a lot of other people were asking the same questions.

Less color was on the walls, more on the people. Slate mused at the adage standing in the doorway of the crowded, barren room that went by the exalted title of "judge's chambers." Judge Waxwing sat upright, yet relaxed, in the only cushioned chair, behind the overgrown night stand that served as a desk, scanning the lawyers around him. He might be light on temperament, but Judge Waxwing had good judicial posture. The three plastic and metal school cafeteria chairs were full of lawyer bulk. Other "licensed ones" stood against each blank wall. Slate was startled to see JJ there, leaning against a doorjamb. J. Jenkins Harbinger was rarely seen within a stone's throw of district court.

"Eighteen dollars a day. Where does that come from?" Waxwing was asking.

"That's what we charge them," Jane volunteered.

"Charge them. It is? What? How?" Waxwing seemed perplexed.

"When you enter judgment for costs, like on a split sentence, the clerk charges them $18 for every day they serve in jail." Jane, the rookie lawyer out of Wake, was blunt, lecturing the judge. She hadn't learned the lawyer skill of avoiding frankness in conversation.

Waxwing was grappling with the idea. Slate, realizing that the judge's ignorance was not feigned, was irritated. Slate could remember, almost verbatim, at least two conversations he had with Waxwing on this point years earlier, when the judge was first elected. Slate almost blurted out, 'You didn't listen to a word I said," but this time his slowness rescued him from trouble.

"I'm just going to order her to come in here and give us some answers. Grumps, get her in here." The judge was putting on a false display of power, which was bound to end badly.

None of the lawyers dared respond, but Grumps Vozboom, the bailiff, was a different type. Grumps knew how to obey a judge's order as well as any bailiff. But he had gotten his certification from the academy at Salemburg, the high point of his education, and he took his learning seriously. Grumps saw things as black and white, cut and dried. Caught in a little crevice between a judge and a paycheck, he knew how to answer.

"You don't have jurisdiction over her," Grumps told the judge flatly. "Only for misconduct within the courtroom, or within the courthouse area. You don't have power to summon a member of the public before the court unless they misbehave while court is in session." Vozboom spoke calmly, just the facts, without a hint of confrontation, but the message below the mild demeanor was clear. Vozboom would not obey an illegal order.

Under cover of the bailiff's bravery, the lawyers then could all nod their agreement. Judge Waxwing recognized a perfect opportunity to exercise judicial restraint. He changed tack, coming about on the young woman attorney, demanding an explanation.

Jane—Slate kept trying to remember her last name—had been a schoolteacher before law school. She now ventured to lecture Judge Waxwing like a fifth-grader. Her prac-

tical skills course had obviously not covered the risks of being upstart with a sitting judge.

"The inmates call it 'dead time,' your honor. It's any days they serve in jail that they can't get credit for. Sort of the reverse of 'credit for time served.' It's time served without credit."

"How can that happen?" growled Waxwing. He was getting annoyed with the subject and the tone. "I always give credit for time served."

"The problem is if a defendant serves more time waiting to go to trial than the maximum he can get as a sentence. Felonies aren't usually a problem, because we have a first appearance and probable cause in 15 days."

Jane seemed to be following a lesson plan. Could this be such a topic of conversation among the bar that she had done home preparation? Slate kept searching for her last name, something sort of French, Nomme, Nuance, Naif...that was it—Jane Naif.

Conveniently, the judge played the part of an eager pupil.

"But how often can that happen, Ms. Naif?"

Slate made a mental note. Maybe the judge takes a fancy to "Ms. Naif." Maybe that's how she gets away with it.

Jane moved on to the second part of the outline: "Most often it's because the court date is set far out, and they can't make bond. Like this guy English yesterday that you asked about"—Slate's mental notepad was getting crowded—"He was just in for NOL, trial set eight weeks from arrest, couldn't make a $500 bond."

"Who can't make a five hundred dollar bond?" asked Waxwing, genuinely incredulous. There were more things in heaven and earth than were dreamt of in the Waxwing philosophy.

"Quite a few people," Ms. Naif responded on cue, pulling out a highlighted jail list. "Seventeen of them in the jail now. The average time already in jail is 29.8 days, as of yesterday. And the average time until their next court date is 15.1 days, so that projects to an average jail time until disposition of just under 45 days. I didn't run charges and levels, but that gives us some starting information."

Slate was stunned. People were already crunching numbers. The judge must have asked people to "look into it." Slate was out of that loop. Just as well, he thought with a secret smile, I'm in another loop.

"So for a sentence of 30 days, the average liability would be 15 days, times $18, equals $270."

The word "liability" jumped around the room of lawyers like an electric spark. "Liability," a couple of mouths repeated.

"What is the liability, JJ? That's why I asked you to come." A psychologist might have noted "pressured speech" at the way Judge Waxwing turned to J. Jenkins Harbinger for his professional opinion.

"*Pulliam v. Allen*, Supreme Court, 1984, out of Virginia, judicial liability for attorneys fee for prospective relief for holding someone in jail awaiting trial longer than they can be imprisoned upon conviction."

"So we might have to pay damages?" Waxwing seemed to want to include all present company in his non-royal "we."

"Judicial liability," corrected Harbinger.

"Judicial immunity," countered Waxwing, like a word game.

"Attorneys fees," Harbinger stated, as if dropping a trump card. "A judge can be personally liable for paying attorneys fees. That is the whole point of the *Pulliam* decision."

"But how am I supposed to know someone is in jail that long?"

"N.C. Gen. Stat. § 7A-453, Sheriff shall inform the clerk of any indigent person in jail 48 hours without counsel." JJ loved to quote statute numbers as if everyone should know them.

"Do they do that?" asked Waxwing.

"Jail list, comes out every day, public document, so your knowledge would be presumed."

"Darn federal civil rights law. It's tricky business." The judge fell into troubled silent worry.

Harbinger used the interlude to suddenly confront Junco, catching him off guard. "I heard you were talking to her yesterday, Slate. What did you find out?" JJ asked.

Slate looked moonstruck. The question was so direct. He didn't want to show all his cards yet. But he couldn't refuse to answer, and he couldn't afford to appear evasive or be deceitful.

"The Junco pause," commented Judge Waxwing, not unkindly. It was a courthouse saying that "Many a judgment was entered while Junco was thinking about what to say."

Slate hit on a strategy. A good one—a gambit. He would give up some material for a time advantage. He decided to throw out some information he had intended to keep to himself. He hoped that in the flurry of reaction he could escape with the remainder of his knowledge concealed.

Slate pulled some papers from his folio, and handed them to Harbinger. That was a little misdirection stratagem. Everyone knew it was the judge looking for information. But JJ had asked the question. Predictably, Judge Waxwing almost snatched the papers from JJ's hands while Slate started his explanation.

"They call it a 'bill of sale.' We would probably call it an assignment of a chose in action. They buy the dead time, at $18 a day, as Ms. Naif said. Notice paragraph 4, at the bottom. 'I hereby transfer all rights to any claim I may have for compensation for the time aforementioned against any person, official, or governmental entity, to ELF and appoint ELF as my agent to prosecute or compromise any such claim, and to collect any compensation, including attorneys fees.'" He let the last two words fall softly.

"ELF?" Several voices in unison.

"Entrepreneurial Law Foundation. Out of Charlotte. New generation, civil rights as business. If they get hold of a good claim, they can collect fees. They already have over 1,700 hours signed up for Sticks County." Lawyers tried to do the math mentally, gave up. One pulled out a calculator.

Slate continued. "The paperwork also includes an affidavit. Ms. Angeline is a notary. So for cash in hand, ELF walks away with all the necessary tools for a lawsuit."

"Can they really pull this off?" Waxwing asked, incredulous.

"They already have," Slate told him. "Gaston County paid $55,000 last year to settle, in damages alone, another $80,000 in attorney fees."

Judge Waxwing heard a call to action. He stood, stepped toward the door, then turned back. Several lawyers stood in knee-jerk response.

"I'm calling the AOC right now, and the School of Government, and we better let the county attorney know. And we need to know if the AG's office defends these things. We need to move on this."

Jane Naif's fortitude did not fail her. "Don't we also need to work on correcting the problem, your honor? Can't we have a bar meeting with the DA and the clerk and the sheriff to prevent this from happening... at least to...prevent our liability from growing."

"Yes, certainly," said Waxwing, a step

down the hallway now. "Talk about that. Talk about it. And thank you for that report, Ms. Naif." Like the masked man, the judge was gone before they knew it.

Slate slipped unnoticed out the other door, the remainder of the papers guarded carefully. Retreating down the back corridor, he was humming a reggae line, "He who fights and runs away lives to fight another day." He had to drop by the bank and withdraw from his savings account. So far, so good.

Slate Junco was in his cups. More exactly, he was in his rum and cokes, sitting in a corner booth alone waiting for Jane Naif. He was trying to guess why she had asked him to meet at the restaurant after hours—*really* why. Her stated purpose was to "go over" the new court plan and the settlement agreement with him. That smelled of smokescreen. The new "remedial" court setting, whipped up in a short month with speed rarely encountered in court circles, would start next Monday. The guidelines had been published to the entire bar. Once a week, all accused defendants who had been in jail for a week without a lawyer would be summoned before a judge to inquire about bond, requests for counsel, and be given an opportunity to resolve their case by immediate guilty plea. The court would make a note of the maximum possible punishment and the date when a theoretical sentence would expire. If the punishment completion date was earlier than the scheduled court date, a special trial date would be set, regardless of the officer's regular court day. Future constitutional violations were thus to be avoided.

Meanwhile, the terms of the "secret and confidential" settlement agreement with ELF were common knowledge around the courthouse. The county had paid about $38,000 to resolve all accrued claims, set up an expedited arbitration process for any new claims which might arise, and agreed to institute the new court setting immediately. Waxwing had steered the package through the county attorney's office, with Naif's help with the clerk, sheriff, and the bar, thus eluding any supposed theoretical judicial liability.

So what did Jane Naif want to go over? Slate had arrived an hour early and had a couple of drinks. He had struggled to solve an endgame study in the worn book in his hands. Now alcohol and apathy had set in. His mind could no longer make the little figurines jump or slide to the intended square. Instead they danced around aimlessly, and sometimes fell off the board altogether, onto the margins of the page. He closed the book. Sometimes it got so hard to care.

He stared at the silent TV. His thoughts flittered and floated around like a butterfly, sometimes landing on a subject for several seconds, never collecting any nectar.

Jane walked in and greeted him. Slate noticed her sly smile. She ordered her wine and engaged in chit chat until it came. Glass in hand, she got indirectly to the point.

"You've heard about the settlement?" she asked.

"Of course."

"Confidential, of course."

"Of course."

"And you've seen the new court plan?"

"Yes."

"Will it solve the problem?"

"Way better than nothing," Slate said. He withheld endorsement. Need to wait and see.

Then, fearing she would take his comment as cynicism, he added, "It's good. Well done."

Naif was silent. Slate continued his addendum. "I appreciate your volunteer time to make it happen. You worked hard on it."

Naif accepted the compliment, but deflected it by saying it couldn't hurt her career to help solve a judge's problem.

"Mr. Junco," Jane started. Here it comes, thought Slate. "My report back to the local crowd did not reveal everything I learned."

A pause, possibly pregnant. Jane expanded on her comment. "The ELF website has a lot of information, available to the public. For example, it lists all of the investor members, with the date and amount of investment."

Slate needed time to fashion a response, and the spinning of his head did not help. He hoped the envelope was not sticking out of his jacket pocket, but he dared not check. He had been careful not to open the letter yet, to preserve plausible denial. Jane didn't push the subject, she just let it sit. Slate thought he ought to confirm his understanding, but obliquely, not in so many words that might amount to a confession. He settled on a course—heartfelt emotion with a slight plea for mercy and deliberate obtuseness.

"Twenty years I kept telling them about this problem," he said reflectively, staring away at CNN news clips. "Twenty years, seeing it happen over and over. No one would listen. No one gave a tinker's damn. No one."

Naif nodded. She was buying it. It was genuine enough.

Slate's bitterness burst through the alcohol fog. "They deserve to have to pay. Through the nose. Way more than they had to pay." He stopped just short of a rant against the courts and the judges and fate, got control again, and fell quiet, not daring to say more.

Naif let him know that she did not judge him. She did it in a mildly condescending way, so that he could reject her sympathy if he wanted. "I know you older lawyers had to tolerate a lot of injustice. I can't blame you for any grudge you hold. I have no reason to tell anyone anything."

"So you're making a veiled threat, and promising not to act on it." Slate was smiling, amused.

"Let's say, maybe it can help my career to have you owe me a favor." Jane was being playful now, grinning with delight. Slate was truly charmed.

"I need to make sure you acknowledge the debt," Jane continued, almost bubbling over into a giggle.

Slate nodded affirmatively, sincerely. He could learn to like this young lawyer.

"You can pay for my glass of wine also, Mr. Junco. I'm sure it won't be the last thing I ask of you." She was out the door before Slate could think of any parting remark.

He pulled the envelope from his pocket, ripped it open crudely, scanned the letter and the enclosed check. "We welcome you as a member of ELF...thank you for your advisory role in our recent litigation...enclosed is check for services, plus acknowledgment of investment and statement of dividend..." Slate glanced at the check. Whew, that was a hefty fee. He had never liked the phrase "entrepreneurial law." Now it took on a new meaning. Tricky business. But hey, business is business. ■

Marvin Sparrow grew up on a tobacco and dairy farm in Beaufort County. He attended Davidson and UNC-Charlotte. Marvin worked as a sheetrock hanger, paralegal, farm hand, and truck driver before surrendering to law school at NC Central. He has a solo general practice in Rutherford County.

Bruno's Top Tips: File Your Bank Directive

By Bruno DeMolli

Rule 1.15-2(k) Bank Directive:

Every lawyer maintaining a trust account or fiduciary account at a bank shall file with the bank a written directive requiring the bank to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds. No trust account or fiduciary account shall be maintained in a bank that does not agree to make such reports.

While it is tempting to spend another thousand words pleading for lawyers to perform quarterly reconciliations (55% of lawyers audited in the third quarter failed to reconcile quarterly), there are other concerns that merit attention. This edition of Bruno's Top Tips focuses on another glaring deficiency found during procedural audits: the failure of lawyers to have a bank directive on file with their trust account bank.

As shown above, Rule 1.15-2(k) requires all lawyers maintaining a trust account to file a written directive with their bank requiring the bank to notify the State Bar when an instrument drawn on the account is presented for payment against insufficient funds. The statistics from the procedural audits show that well over half of lawyers either do not have a directive on file with their banks, or do not have a copy of that directive in their offices.

It is imperative to have this directive on file with the bank and to keep a copy in your office for proof of compliance during a procedural audit. The reporting process mandated in the directive ensures that the State Bar is notified of overdrafts and bounced checks. Understandably, the grievance counsel is very concerned about activities that could indicate that a lawyer is misusing client funds. In recognition of this concern, filing the directive is mandatory: a failure to file a written directive with your trust account bank, regardless of whether any actual harm to clients has occurred, may subject you to potential disciplinary action with the State Bar.

Protect Yourself from Overdraft Protection

Some banks, upon opening two accounts at the same time, automatically set up mutual overdraft coverage between the accounts. Thus, if a lawyer opened an operating account and a trust account simultaneously, the accounts may be linked for overdraft protection. Using client funds in a trust account to cover overdrafts from a lawyer's operating account is a clear case of misappropriation and should never happen. Similarly, using a lawyer's operating account for overdraft coverage on a client trust account is commingling and should never happen. However, it is permissible for a bank to cover a trust account overdraft on its own as a convenience to the lawyer provided the bank notifies the State Bar of the overdraft. This must be an action taken by the bank on its own initiative and not an overdraft protection plan put in place by the lawyer.

Now is the time for lawyers to confirm with their bank that they have a directive on file and to ensure that there is a copy of that directive in the lawyer's office. If the lawyer or bank cannot find the copy, a new directive should be filed. If a bank refuses to make the reports to the State Bar, the lawyer must move the trust account to a bank that will. Remember, it is the lawyer's responsibility to file this directive, not the bank's. Further, while checking with the bank regarding the bank directive, lawyers should make sure that they do not have overdraft coverage set up between their trust and operating accounts.

A copy of the bank directive form can be found on the State Bar website (www.ncbar.gov) under "Resources and Forms."

Where Bruno is headed

Judicial districts randomly selected for audit during the fourth quarter of 2011 are District 22B, consisting of Davidson and Davie Counties, and District 29B, consisting of Henderson, Polk, and Transylvania counties. ■

Laura's Law (cont.)

in prison until 2033, he should pay the costs, not taxpayers. Prison is appropriate, yet if one wants to stop impaired drinking and driving, one must simultaneously address the root cause, to wit: drinking. Laura's Law does not adequately encourage abstinence or otherwise demand long-term supervision and treatment.

Rep. Moore: Good laws should not require tragedy. Studying DWI statistics, as an overall long-term approach, is more than appropriate. Citizens of North Carolina will be more offended if people continue to die despite Laura's Law.

Bill Powers: I call on the governor to establish a standing task force that unlike others in the past includes veteran judges, prosecutors, legislators, and defense lawyers with substantial experience handling DWI matters. The sole goal would be to systematically address the issue on the basis of results, allowing for continued tweaks, reviews, and analysis. Clearly a non-binding committee, it would bring to the table an institutional wealth of experience, information, and horse sense to address DWI laws. ■

Representative Tim Moore is currently serving his fifth term in the North Carolina General Assembly. Moore is an attorney and operates his own law firm in Kings Mountain, representing clients throughout Western North Carolina.

Bill Powers is a partner at Powers McCartan, PLLC, with offices in Charlotte, Concord, and Brevard. He travels throughout North Carolina handling DWI-related matters and is the author of the NC DWI Quick Reference Guide.

The Value of Paralegal Association Membership

By Patti Clapper

Times are tough for everyone right now, including law firms. You or your employer might be looking for ways to tighten the budget. You may even be looking for a job. Unfortunately, this may mean that you are not able to join or renew your dues to your favorite paralegal association. But during tough times, the value of belonging to a paralegal association is greater than ever before.

Networking. If you are unemployed, you need to understand the importance of this word. Get your name and face out there. Belonging to a paralegal association gives you access to hundreds of potential leads. I receive two or three emails a week with job listings that I forward on to unemployed paralegals I met at a networking function of one of the associations to which I belong.

Job postings. Some associations offer a job bank on their website. Some even allow you to post your resume for potential employers to view.

Out of county help. If you work in Wake County and need a copy of a document in Ashe County, normally you would have to call the Ashe County Clerk's Office to see how much it will cost to have them send it to you, and then wait a week for it to arrive. With a network of fellow association members to tap, you can make one phone call to someone in that area and have them get the document for you. This is also a great referral tool for clients who have problems in other counties. The website of one association I belong to allows me to search our member database by county and area of practice, making it very easy to find the help I need.

A database of legal information. I believe one of the most valuable benefits of belonging to an association is the database of legal information you have at your disposal. If you need a form pleading, chances are someone has one they are willing to share with you. If you need a copy of a federal case and do not have federal access with your research software, chances are someone else does and is willing to help. If my boss asks me to draft something and I do not have it in my forms already, or if he needs an attorney in another county, he will say, "Can't you ask your people?" Yes, my people are very valuable to me!

Long lasting friendships. One of the residual values of belonging to an association is the long-lasting friendships I have made over the last 15 years. Some of my fellow association members I only see a few times a year, but I consider them good friends.

Most associations offer different levels of membership, so even if you are unemployed right now, you may still be able to join and have access to some or all of these valuable benefits of belonging to an association. Choose your association wisely, look at which association is of value to you, both in cost and benefits, and then make sure you are getting your money's worth from the association. ■

Patti Clapper is a paralegal at Levine & Stewart in Chapel Hill. She is a past-president of the North Carolina Paralegal Association and serves on the Certification Committee of the North Carolina State Bar Board of Paralegal Certification. You can visit her blog at lglduck.blogspot.com.

NCSB Board of Paralegal Certification Donates Check to NC IOLTA

On October 21, 2011, the North Carolina State Bar Board of Paralegal Certification donated a check in the amount of $100,000 to the NC IOLTA program. NC IOLTA is a non-profit program created by the State Bar and approved by the North Carolina Supreme Court. NC IOLTA works with lawyers and banks across the state to collect net interest income generated from lawyers' general trust accounts for the purpose of funding grants to providers of civil legal services for the indigent, and to programs that further the administration of justice.

The Plan for Certification of Paralegals, approved by the NC State Bar and adopted by the NC Supreme Court in 2004, continues to be successful, and the number of certified paralegals grows each year. Because of this continued growth, certified paraleglas are able to graciously give back to the legal community through worthwhile donations such as this one, which will assist in providing necessary legal services to the public of North Carolina.

Hank Hankins (L), IOLTA Board Chair, and Renny Deese (R), Paralegal Board Chair

For more information about the North Carolina State Bar paralegal certification program, and to view a list of certified paralegals, please visit the paralegal certification website at nccertifiedparalegal.org, or call the State Bar at 919-828-4620. ■

Time Traveling

By Don Carroll

Over the years I have heard from hundreds of you who have read this column and taken the time to say thank you for something that I said that was helpful to you. This column is my time to say thanks to you. Thank you for reading the column and thank you for reaching out to tell me when it has beneficially impacted your life. Your words have meant a lot.

As I leave the LAP at the end of 2011, and Robynn Moraites swings fully into the saddle as your new LAP director, I want to do a little time traveling with you in order to touch on the spirit of the LAP. That spirit is the way I wish to say thanks to you the reader, and to a few I need to name. Let's start in the Southwest about 80 years ago and then I will try to connect the dots.

In 1932 Dr. Carl Jung made a trip to the American Southwest. Dr. Jung was then, and remains today, one of the preeminent explorers of the inner terrain of the human psyche and how we mature and develop as human beings. He spent most of his life working as a psychiatrist in Switzerland, but on his trip to the United States in 1932, he had the opportunity to meet with Chief Mountain Lake, a leader of the Taos people out in the Southwest. The two men hit it off immediately and had a memorable conversation. Chief Mountain Lake's remarks to Jung were very candid:

> See how cruel the whites look, their lips are thin, their noses sharp, their faces furrowed and distorted by folds. Their eyes have a staring expression; they are always seeking something. What are they seeking? The whites always want something. They are always uneasy and restless. We do not know what they want. We do not understand them. We think that they are all mad.

When Jung asks why he thinks they are all mad, Chief Mountain Lake replies, "They say they think with their heads."

"Why, of course," says Jung. "What do you think with?"

"We think here," says Chief Mountain Lake, indicating his heart.

At this exchange, Jung was deeply affected. He had met somebody who was at the level of maturity that today we would call "unconscious consciousness," and he was profoundly moved by that experience.

There are four stages of the development of the human psyche and spirit. They are:

1. **Unconscious Unconsciousness** – This is the stage where we all start out. At this stage we are driven by our unconscious patterns to feel okay in the world. At this stage, as the name implies, we are unconscious of what those patterns are. If we stay stuck in this stage, we can be affected by depression, alcoholism, workaholism, and a number of other conditions, and never have a clue of what the underlying patterns are that have triggered the depression, addictive process, or some chronic malady.

2. **Conscious Unconsciousness** – This is the stage where we develop some awareness of what the patterns are that are driving how we "do" life. Often, we get catapulted into this stage by some midlife crisis, health crisis, or other dramatic event which requires us to begin to look at what the driving patterns are that create difficulty for us. This is a stage of awakening. We begin to see what the patterns are, but we are not yet able to change their automatic compulsive operation in our life.

3. **Conscious Consciousness** – At this stage we are not only awake and aware of the patterns that are driving our behavior and the way we deal with life, we are also consciously able to intervene in those patterns. We realize that regardless of whether our unconscious patterns have driven us into depression, alcoholism, or just a general state of unhappiness, there is no switch we can flip to get an immediate outcome that is different. We see that we do not have direct control over whether we are happy in our life, or whether we are angry or full of self pity, but we have become aware that, while we cannot change the outcome of how we experience life directly, we can change the patterns that determine the outcome. Much of modern-day therapy, such as cognitive behavioral therapy, is focused on trying to develop an awareness of what these negative patterns are, how they arise out of faulty thinking, and how to implement new life patterns. Probably the most successful approach to becoming "consciously conscious" is found in the 12 steps of Alcoholics Anonymous. The steps provide a systematic procedure to gain insight into the underlying

emotions, drives, and needs that compel the need to medicate, which in turn trigger a neurochemical change in the brain resulting in alcoholism. This third stage of development is paradoxical in that, before change can occur, a complete acceptance is required (sometimes the word used is "surrender") of the reality of the underlying dysfunctional patterns. Once there is acceptance, awareness then provides the discipline to put new patterns into place. It is often a lengthy process because the pattern-setting mechanism of the human brain normally changes slowly.

4. **Unconscious Consciousness** – The stage at which Dr. Jung encountered Chief Mountain Lake occurs when one is no longer driven by the old compulsions for security, power, or control, but encounters life directly in the moment without the interference of defensive psychological patterns. When we meet someone in stage four, our experience is usually like Dr. Jung's—one of startling clarity at the presence and realness of such a person. Their unconscious way of encountering life is free of the old psychological defenses that initially created a sense of security but ultimately block the richness of life's experiences.

Although it is a timeless topic, recently there have been a lot of movies that turn on the idea that it is possible to go back into time and change events in the past so that the future is affected. In the recent movies *Déjà Vu* starring Denzel Washington, and *Source Code* starring Jake Gyllenhaal, the tension in the movies arises from a frenetic race to go back into the past to change the future. One of the reasons this movie theme is so popular these days is that we now understand from quantum physics that time travel is theoretically possible. These movies reflect the writers' imagination of how that possibility could actually play out.

Quantum physics explains the possibility of time travel. It also explains a lot that we have not understood about how healing occurs. If T.S. Eliot is right, most of our life journeys end up with us returning home, but with a new perspective. My experience over these many years is that there are no short cuts in the process of human development and maturation. It is the process itself which allows us to move from stage one to, if we're lucky, Chief Mountain Lake's stage four.

It has been an exciting time to be helping lawyers deal with issues of depression and alcoholism because the opportunity for healing from these illnesses, when understood from a quantum biology perspective, is not just about using old ego psychology methods of bolstering the ego's needs for power, control, and security. Rather, true healing lies in transforming one's life so pattern-driving ego needs are diminished. If it were possible to travel back in time and change things that the LAP has done, I am glad to report that, for the most part, there is not much I would wish to be different. We always wish that we could have touched more of those lawyers leading lives of quiet desperation and helped them move into greater health and well being. However, I am comforted by the knowledge that the LAP has been able to help provide assistance to thousands of North Carolina lawyers.

If I could change one thing it would be that there be less of a stigma for those people who are caught in the throes of the process of advancing to a greater level of consciousness, and who suffer depression or alcoholism as an unintended by-product of that journey. Less stigma and more acceptance of the process of change as necessary (even with the difficult outcomes at times of depression or alcoholism), would provide more hope and comfort to those who must endure the very painful process of becoming aware of self-defeating patterns, and who need support in order to surrender them for more life-giving patterns to take their place.

One of the deeply gratifying aspects of my work with the LAP over the years has been the opportunity to experience the dedication of those lawyers who have led the LAP Board. Anything worthwhile that the LAP has been able to do while I have been director is a direct result of their ability, integrity, and commitment. I am honored to be able to thank them here publicly: Judge Phil Howerton, Steve Philo, Dan Dean, Ed Hinson, Victor Boone, Sara Davis, Sam Davis, and Mark Merritt.

I am also deeply appreciative of the perceptiveness of the LAP Board in recommending Robynn Moraites to be the new director of the LAP. I believe that all the lawyers in North Carolina are in good hands having Robynn at the helm to assure that when help is needed by a lawyer, the right kind of professional, confidential, and peer-supported help will be available for them. The LAP's effort to help lawyers has primarily been successful over the years because of the selfless efforts of hundreds of volunteers and the dedication of LAP staffers Ed Ward and Towanda Garner. The support of Tom Lunsford, Alice Mine, and other Bar staffers has been essential and always gratifying. By her intelligence and grace, my own assistant, Buffy Holt, has made the daily routine and difficult situations always easier to navigate. Thanks, in the spirit of Chief Mountain Lake, from the heart to one and all.

Many of you have asked what I will be up to after this transition. I have been excited to discover in the past couple of years a desire to write fiction, and I hope to be working on another novel. In addition, I hope to be available to work with lawyers providing executive coaching and spiritual direction. Above all, I am deeply grateful for the opportunity that I have had to be a guide and to be a friend to so many of you over the years. I have walked with many of you, addressing life obstacles and recovering a new vitality in your lives. Probably it's the only job I could have had where at the conclusion I feel, as I do now, that my extended family consists of over 20,000 brothers and sisters. It's a good feeling. Thank you for it. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers which helps lawyers address problems of stress, depression, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you are a North Carolina lawyer, judge, or law student and would like more information, go to www.nclap.org or call toll free: Robynn Moraites (for Charlotte and areas west) at 1-800-720-7257, Towanda Garner (in the Piedmont area) at 1-877-570-0991, or Ed Ward (for Raleigh and down east) at 1-877-627-3743.

Lawyers, Start Writing!

In 2012 the State Bar's Publications Committee will once again host a fiction writing competition. The deadline will be in May. See the upcoming *Journal* for contest rules.

Where's Waldo?

By Suzanne Lever

We all know the frustration of misplacing our keys, reading glasses, or (heaven forbid) the television remote. Thankfully, these particular daily crises are usually resolved with a quick look under the couch or in the dog's bed. A more difficult dilemma arises when what's missing happens to be *your client*.

When a client stops communicating with his lawyer, the lawyer has a duty to "take reasonable steps to locate and communicate with the client." RPC 223. In RPC 223, a lawyer attempting to locate her client called the client, wrote to the client, contacted the client's last known employer, asked the former employer to forward a letter to the last known address the employer had on file, contacted the client's health care providers, contacted the medical insurance carrier, and checked the county property listings. The ethics opinion concluded that the lawyer's efforts to locate her client were more than reasonable.

In 2011, a lawyer has many resources available to assist in locating an errant client. For example, a lawyer may consider:

- Checking email directories
- Utilizing Google, social networking websites, and other search engines specifically designed to locate missing people
- Researching public records including property, tax, voter, marriage, and divorce records
- Writing and phoning the client at all known addresses and telephone numbers—being sure to ask the postal service or telephone company for updated information
- Calling the client's employer and interviewing coworkers
- Contacting the client's medical providers
- Contacting family members
- Reviewing the file for leads from documents that may list additional contact information
- Visiting the client's last known address and interviewing neighbors.

Remember that a lawyer is not required to turn over every leaf to locate a missing client. The ethics opinions require only that the lawyer take "reasonable steps." What is "reasonable" will depend on the facts particular to each client matter.

Sometimes, however, the lawyer's reasonable steps will not reveal the location of the wayward client. What actions are permissible/required by the lawyer at that point? Consider the following scenarios.

Scenario One: You are hired by a personal injury client. While you are investigating the matter, the client goes missing. The statute of limitations is fast approaching. May you file a complaint on the missing client's behalf to stop the running of the statute?

Answer: No. The Ethics Committee previously addressed this scenario in RPC 223. In that opinion, a lawyer has not heard from his client in over a year, and despite the lawyer's reasonable efforts, the lawyer is unable to locate the client. The opinion states that, under these facts, the client's failure to contact the lawyer within a reasonable time after the lawyer's last contact with the client must be considered a "constructive discharge." Because the lawyer had been discharged, he was required to withdraw pursuant to Rule 1.16(a)(3). The opinion concludes that the lawyer may not file a complaint on behalf of the missing client, although filing suit might stop the running of the statute of limitations, because the lawyer cannot know the client's objectives for the representation. The opinion emphasizes that the determination of the objective of the legal representation is the client's prerogative and that the client has the ultimate authority to determine the purposes to be served by the legal representation.

Hint: One risk manager suggests that if a lawyer has had difficulty contacting a client, and the statute of limitations is approaching, the lawyer should send a "drop dead letter" to the client at all of the client's last known addresses. The letter should advise the client that if the lawyer does not hear from the client by a certain date, the lawyer will take no further action on the matter. The letter should inform the client that certain time limits apply to the claim and that the client should immediately contact the lawyer or immediately obtain other counsel.

Caveat: A lawyer faced with an impending filing deadline and a missing client should consider whether he has the client's "implied consent" to file the complaint. Rule 1.2(a) provides that a lawyer "may take such action on behalf of the client as is impliedly authorized to carry out the representation." The facts in RPC 223 reveal that the lawyer had been hired to represent the client in regard to minor injuries, that he had not heard from the client in a substantial amount of time, and that in the last conversation between the lawyer and the client, the client had expressed plans to see additional health care providers. Under these circumstances, the opinion states that the lawyer cannot know whether the client wanted to proceed with the lawsuit, who the client was prepared to sue, and whether the allegations in the complaint would be accurate. Under a different set of circumstances, a lawyer might reasonably conclude that the client has made clear his objectives for the representation, that filing a complaint is consistent with the objectives, and that the lawyer possesses adequate verified information to prepare and file the complaint.

Scenario Two: You file a complaint on behalf of your client. Your client disappears. The opposing side files a motion to dismiss the action for failure to respond to discovery requests. May you file a voluntary motion to dismiss the action without prejudice to allow the client another year to resurface and re-file the matter?

Answer: No. Pursuant to Rule 1.2(a), a lawyer must abide by a client's decisions concerning the objectives of the representation. The client has not consented to the dismissal of his lawsuit, and the lawyer does not have

the authority to make this decision on the client's behalf in the absence of express or implied authority. In light of the client's failure to respond, the lawyer must file a motion to withdraw from the representation. *See* RPC 223 and 2003 FEO 16.

In 2003 FEO 16, a lawyer was appointed to represent the mother in a proceeding to determine whether her child was abused, neglected, or dependent. At the time of the appointment, the lawyer had minimal contact with the mother and did not know what position she would take in the proceedings. Both parents subsequently disappeared. At issue was whether the lawyer could advocate for an adjudication of dependency in the proceeding. The opinion holds that the lawyer has to file a motion to withdraw, and if the motion is denied, he must refrain from advocating for a particular outcome. Pursuant to 2003 FEO 16, "[i]f the client is not present to give instructions to the lawyer as to the objectives of the representation, the lawyer may not substitute his own objectives even if the facts appear to support a particular position."

To minimize the prejudice to the client, when the lawyer files the motion to withdraw, the lawyer should also request an extension of time for the client to respond to the discovery.

Caveat: The lawyer should also consider whether he has implied authorization under Rule 1.2(a) to file the voluntary dismissal.

Scenario Three: You negotiate an excellent settlement on behalf of your client that was not previously authorized by the client. You are unable to locate the client to obtain the client's consent to the settlement. The statute of limitations is fast approaching. May you accept the settlement on the client's behalf?

Answer: No. Rule 1.2(a)(1) states that a lawyer "shall abide by a client's decision whether to settle a matter." A lawyer may not circumvent the delegation of authority to the client in Rule 1.2(a)(1) by stating in the retainer agreement that the client confers upon the lawyer the authority to settle the matter without the client's consent. So, this would also be an appropriate time to send the client a "drop dead letter."

Scenario Four: You are hired by an insurance company to represent their insured. The insured cannot be located. May you appear on behalf of the insured?

Answer: Maybe. 2010 FEO 1 rules that a lawyer retained by an insurance carrier to represent an insured whose whereabouts are unknown, and with whom the lawyer has no contact, may not appear as the lawyer for the insured absent authorization by law or court order. Certain provisions in the insurance contract may affect the lawyer's ability to proceed with the representation on behalf of and in the name of the insured in the event contact with the insured is lost. The opinion provides that the lawyer may appear in the lawsuit on behalf of the insured if the insured has authorized the representation. However, if the insured cannot thereafter be located, the lawyer may not mislead the court about the insured's absence. The opinion also provides that the lawyer may have to file a motion to withdraw if the insured is not present to participate in the representation.

Scenario Five: You are hired by a client in a personal injury matter. During the representation, the client dies. Granted this is a somewhat different situation in that your client is not missing. However, this scenario presents similar issues as to continued representation.

Answer: There are several permutations of this particular scenario. As a matter of agency law, a lawyer's authority to act for a client terminates when the client dies. However, the lawyer may continue if the estate's personal representative approves continued representation of the client's surviving interests.

First, assume that an action has already been filed on behalf of the deceased client. If the matter is in litigation, the lawyer cannot withdraw without the consent of the court and must continue to represent the interests of the client/estate until the lawyer is released by the court. The lawyer should first determine whether there are plans to open an estate. If the decedent's family is going to open an estate, the lawyer should obtain the consent of the family to continue the representation until the estate is opened and a personal representative is appointed. If the family consents, the lawyer should notify the court and ask the court whether the lawyer should withdraw or continue the representation until such time as the estate is opened. If the family does not consent to the lawyer's continued representation, the lawyer should file a motion to withdraw.

The second step is to ask the personal representative, when appointed, if the personal representative would like for the lawyer to continue as the lawyer for the estate in the pending litigation. If not, the lawyer must file a motion to withdraw. If the personal representative consents to the continued representation, the lawyer may need to substitute the estate as the party.

If there are no plans to open an estate and there is litigation pending, the lawyer may determine that it is necessary to have an estate opened and a public administrator appointed. After a public administrator is appointed, the lawyer would take his directions from the public administrator. Alternatively, the lawyer may file a motion to withdraw.

If there is no pending litigation and the family does not plan to open an estate, the lawyer's authority to act on behalf of the decedent's interest is circumscribed, and in most instances, the lawyer may not seek to have an estate opened.

If a lawyer does run into any of these scenarios, he should contact his liability or malpractice insurance carrier for their additional risk management advice.

Be Proactive. Like purchasing, or perhaps handcrafting, a "stylish" beaded or macramé lanyard to attach to your reading glasses, there are precautionary steps a lawyer may take to minimize the risk of "misplacing" a client. The lawyer should utilize the client intake form to obtain as much information about the client as possible. At a minimum, a lawyer should obtain the following information from new clients:

- Full name
- Nicknames
- Date of birth
- Addresses—physical and internet
- Telephone numbers
- Social security number (state that providing this information is optional)
- Drivers license number
- Employers' names, addresses, and phone numbers
- Names of people who will know client's whereabouts
- Names and numbers of health care providers

The lawyer should emphasize to the client the importance of informing the lawyer of any changes of address, telephone number, or employment. In addition, the lawyer and the client should set up a specific contingency plan for communicating in the event the client's telephone service is disconnected. For example, have the client acknowledge that if the client's telephone service is disconnected, the lawyer has the client's

CONTINUED ON PAGE 70

Donation from Paralegal Program Bolsters NC IOLTA Funds

Income

2011 income update. Through the first two quarters of 2011 we have seen a 30% increase over last year for the same time period. However, we are not meeting our hoped for average monthly projection of $200,000 per month. Income flattened in the last two quarters of the year as we passed the anniversary of the implementation of comparability which had stopped our precipitous income slide in 2010. Therefore, we anticipate that 2011 income will not exceed the 2010 income total of $2.2 million.

SunTrust Bank. We have good news to report regarding SunTrust Bank, which stopped waiving service charges on IOLTA interest in mid-2010. This policy change dramatically affected our income as SunTrust is one of our largest banks. Discussions with SunTrust regarding its IOLTA policy have resulted in its decision to waive 75% of service charges for one year beginning with the August 2011 remittance while they work to build banking relationships with NC bar organizations. We particularly appreciate the fact that a number of SunTrust's attorney-customers asked them to revisit the change in prior policy.

Paralegal Program Donation. At the October State Bar Council meeting, Renny Deese, chair of the Board of Paralegal Certification, announced a $100,000 donation from the Paralegal Certification Program to NC IOLTA. "What a wonderful surprise it was to receive this news," said Evelyn Pursley, NC IOLTA director. "Though our trustees will still be faced with difficult decisions to make regarding grants at their December meeting, they will be bolstered by these much-needed funds as well as by this expression of support from the paralegal program and the State Bar, which it represents, in such difficult times." Alice Mine, director of the Paralegal Certification Program, explained, "The credit really goes to the members of the Paralegal Board—especially the paralegal members of our board—who chose to use these excess funds to advance the administration of justice via IOLTA."

Grants

In October NC IOLTA received grant applications requesting $2.9 million for 2012. NC IOLTA is administering just over $2.7 million in grants for 2011 (compared to $3 million in 2010 and a high of $4.1 million in 2009) using $1 million from the IOLTA reserve for a second year. Though grants have been restricted to a core group of grantees at the forefront of access to justice work for two years, grants to legal aid organizations were decreased by approximately 20% in 2010 and another 11% in 2011. The IOLTA reserve fund is now holding $800,000.

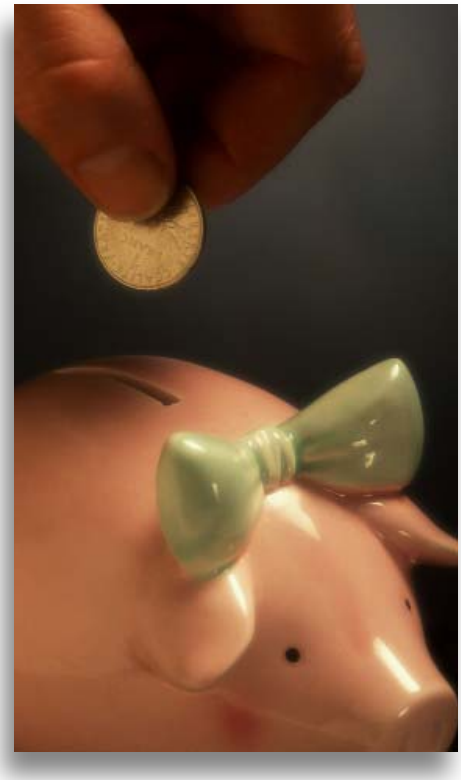
Settlement Agent Accounts Added to NC IOLTA

An amendment to the Good Funds Settlement Act (N.C. Gen. Stat. 45A-9) requires that interest bearing trust and escrow accounts of settlement agents handling closing and loan funds be set up as IOLTA accounts, and directed the NC State Bar to adopt rules to administer such accounts. Our reading of the legislation is that it does not require settlement agents to maintain interest bearing trust or escrow accounts, but if they do maintain an interest bearing trust account, the statute requires it to be set up as a NC IOLTA account. Revisions to the NC IOLTA rules were approved by the NC State Bar Council at the July meeting and published for public comment. The revisions were given final approval by the council at the October meeting. The rule revisions will now go to the NC Supreme Court for approval.

Accounts of settlement agents are being converted or established as IOLTA now. The requirement takes effect on January 1, 2012.

CY PRES Funds

Since 2007 we have received just over $50,000 from class action residual funds in



accordance with the provisions of NCGS 1-267.10. The statute sets out a procedure by which a court enters an order directing that unpaid residue from class action settlement be divided equally between the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents. The State Bar has asked IOLTA to administer these funds.

State Funds

In addition to its own funds, NC IOLTA administers state funding for legal aid on behalf of the NC State Bar. For the July 2010-June 2011 state fiscal year NC IOLTA administered just over $5 million in state funds. For the first quarter of the new fiscal year we have administered just over $1 million. The Equal Access to Justice Commission, the NCBA, and the legal aid programs continue to work to restore and increase state funds for legal aid. ■

Profiles in Specialization—Shelby Benton

AN INTERVIEW BY DENISE MULLEN, ASSISTANT DIRECTOR OF LEGAL SPECIALIZATION

I recently met with Shelby Benton, a board certified specialist practicing in Goldsboro, to talk about her certification in family law and the impact it has had on her career. Shelby attended North Carolina State University for her undergraduate degree, a Bachelor of Arts in criminal justice and political science, and Campbell University for law school. Following law school, she began working in Goldsboro for Braswell and Taylor handling a variety of litigation cases including criminal, personal injury, and medical malpractice. She began to focus on family law cases when she established a new firm, Hollowell and Benton, PA, in 1991. Shelby became a board certified specialist in family law in 1995.

Q: Why did you pursue certification?

Early in my career I handled other types of cases and decided that I wanted to focus on family law for a number of reasons. With the large military presence in Goldsboro, I felt that there would always be a need for experienced family law practitioners, particularly for someone with basic knowledge of military law. I had practiced enough to know that I could not be effective as a general practitioner, and I wanted a practice area that would enable me to have a family life as well. When I applied for certification I took about three months to study, working half days and studying half days. I had a lot of encouragement from my colleagues and I was really optimistic that this was the right direction for my career.

Q: Was the certification process valuable to you in any way?

It was in that it really helped me make the decision to commit myself to this practice area. I wanted to set that standard high for myself and commit to maintaining it. Studying for the exam reinforced that decision.

Q: Has certification been helpful to your practice?

Absolutely. It has been helpful to both my practice and my quality of life. I have built a solid network of family law specialist colleagues across the state who are helpful and who understand this practice area. I truly feel that we care about each other and care about representing our clients to the best of our abilities.

Q: What do your clients say about your certification?

I have clients who come in just for that reason—they've read that I am a board certified specialist in family law. This happens more often for out-of-state referrals and military personnel. I have my certification listed on my website, so my clients are typically aware that I've achieved this extra credential.

Q: How does your certification benefit your clients?

It gives more credibility to the work that I do and gives my clients faith in my abilities. It also saves my clients money—because these are issues that I deal with every day, my clients are not paying me to research basic family law questions. My experience and knowledge base allow me to work through the case issues fairly quickly and determine the best course of action to follow. My clients are able to trust in my advice.

Q: Are there any hot topics in family law now?

There are a few hot issues currently, mostly involving equitable distribution and divisible debt. There are also some changes needed in the alimony statutes that I think will be addressed in the next short session.

Q: How does your certification relate to those?

As a family law specialist, I have had an opportunity to be deeply involved in emerging issues. I served as chair of the North Carolina Bar Association's Family Law Section in 2009- 2010 and currently serve on its Board of Governors. While on the Family Law Council, I have been able to assist in drafting family law legislation and to respond to family law legislation drafted by others. I've really enjoyed the opportunity to be a part of shaping the legislation that I work with so closely.

Q: How do you stay current in your field?

After I studied for the specialization exam and realized how valuable that was, I decided to read Chapter 50 each year around my birthday. That was 16 years ago and I still do it every year! I also read all of the cases that come out and attend a good number of continuing legal education courses. The family law specialists' seminar—planned and put on by specialists—has been invaluable over the years.

Q: Is certification important in your practice area?

Absolutely. There are only two board certified specialists in family law in my county and only three in my judicial district. We are the lawyers that people turn to for complex family law matters including business valuations or high conflict custody cases.

Q: How does certification benefit the profession?

When lawyers specialize they are much more focused and involved in their practice area. That focus allows them to be better prepared and to save their clients money. They can easily identify cases where they will need outside assistance and know who to associate for help.

Q: How do you see the future of legal specialization?

I think the program will continue to grow. Lawyers really can't be effective these days accepting all types of cases. We need to specialize and limit what we handle so that we can represent our clients well. I was glad to see that an appellate practice specialty has been

CONTINUED ON PAGE 70

Grievance Committee and DHC Actions

Disbarments

Brian Chris Daniels of Harkers Island misappropriated funds from his former law firm employer and funds entrusted to the firm by clients. He was disbarred by the DHC.

Jennifer Green-Lee of Clayton surrendered her law license and was disbarred by the Wake County Superior Court. Green-Lee admitted that she misappropriated entrusted funds totaling at least $800,000.

W. Ray Hudson of Troy misappropriated funds held in trust for payment of a title insurance premium and failed to respond to the Bar. He was disbarred by the DHC.

Jason M. Price of Concord surrendered his law license and was disbarred by the State Bar Council. Price admitted that he misappropriated entrusted funds in excess of $25,000.

Robert M. Smith of Pikeville pled no contest to two counts of criminal contempt in Wayne County Superior Court. The Honorable R. Stuart Albright found that Smith was not "truthful, open, and honest" with a district court judge. He also found that Smith failed to appear in superior court on another matter, failed to notify the court of the reason for his absence, and had previously been held in contempt for similar conduct. Judge Albright found that Smith's conduct was willfully contemptuous and demonstrated a "willful and grossly negligent failure to comply with the schedules and practices of the court resulting in substantial interference with the business of the court." Judge Albright ordered Smith permanently disbarred.

Suspensions & Stayed Suspensions

Robert Burford of Raleigh deducted from his clients' Vioxx settlements purported expenses in amounts significantly greater than he actually incurred in an effort to circumvent the court's cap on attorney fees. The DHC imposed a two-year suspension. The suspension is stayed for five years.

Robert Hensley of Bradenton, Florida, neglected many clients and failed to respond to the Bar. He was suspended for four years. After 18 months he can apply for a stay of the balance upon compliance with numerous conditions.

Henderson lawyer **William Noel** violated many rules related to handling entrusted funds, including putting client court costs into his operating account, failing to reconcile his trust account, and failing to maintain required trust account records. Noel was suspended for three years. After serving one year, he can apply for a stay of the balance upon compliance with numerous conditions.

Wilmington lawyer **Leanne Quattrucci** misappropriated fees belonging to her law firm employer. She was suspended for three years. After six months she can apply for a stay of the balance if she completes additional ethics CLE hours. The DHC found extensive mitigating circumstances.

Interim Suspensions

The DHC entered an order of interim suspension in the case of **Benjamin J. Viloski** of Oak Island. A jury found Viloski guilty of felony offenses including conspiracy to commit mail and wire fraud, mail fraud, conspiracy to commit money laundering and transactions in criminally derived property, aiding and abetting concealment of money laundering, aiding and abetting transactions in criminally derived property, and making false statements to federal agents.

Censures

Joe Biesecker of Lexington improperly disbursed funds he was holding as a fiduciary in a dispute between two business partners. He was censured by the DHC and required to pay restitution to the business partner harmed by the improper disbursement.

Nancy Green of Charlotte was censured by the Grievance Committee. Green assisted a corporation in the unauthorized practice of law by preparing estate documents, sharing a flat fee with the corporation, and engaging in a conflict of interest.

Nile K. Falk of Rocky Mount was censured by the Grievance Committee. Falk made an unauthorized notation on a criminal defendant's shuck that the case should be dismissed if the prosecuting witness failed to appear at the next court hearing.

Reprimands

John J. Pavey of Sylva was reprimanded by the Grievance Committee. Pavey represented the borrowers and the lender in 13 construction loans. Because Pavey failed to make appropriate inquiries, the HUD-1 Settlement Statements he prepared contained inaccurate information. When the lender later foreclosed the deed of trust in one of those transactions, Pavey engaged in a conflict of interest by representing the borrowers in the foreclosure proceeding. The Grievance Committee considered Pavey's inexperience in the practice of law as a mitigating factor.

Robert M. Smith of Pikeville was reprimanded by the Grievance Committee. Smith failed to appear in court for his client's traffic cases resulting in revocation of her driver's license. The client was later arrested and briefly incarcerated for failing to appear in court.

Richard Tanker of Hendersonville was reprimanded by the Grievance Committee. Tanker improperly obtained an *ex parte* court order.

Christopher Walker of Charlotte was reprimanded by the Grievance Committee. Walker purported to accept a settlement offer without his client's permission and deposited the settlement check in his trust account without following the defense attorney's conditions for disbursement, which included the client's execution of a release. In addition, Walker's fee agreement falsely represented that Walker was entitled to enforce a charging lien.

Reinstatements

The DHC dismissed the petition of Winston-Salem lawyer **Phillip S. Banks III** for reinstatement from disability inactive status because he failed to present necessary medical evidence.

The DHC entered a consent order reinstating **Jacqueline C. Morris-Goodson** of

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Featured Artist—Marriott Little

Raleigh native Marriott Little's *Fair View IV* and *Fair View XIII* are from a series of over 20 canvases full of color, intricate lines and forms, and abstract expressions of nature. Little eloquently describes the inspiration for the award-winning *Fair View* series, recently displayed at the North Carolina Museum of Natural Sciences, as follows:

> This is about a flood, a hurricane, a restoration and a revelation...After suffering the ravages of a 1985 flood and a 1996 hurricane at my home on Fairview Road, a miraculous transformation occurred to my once heavily forested creek-side yard when Mother Nature created an almost perfect artistic composition of symmetry, asymmetry, color, and line, inspiring this new series of paintings entitled *Fair View*. I never know what shapes will appear in these garden abstractions, but most often an imaginative array of flora and fauna, and spirits and sprites can be found, along with the swooping dogwood tree, stepping stones, and trellis.


Fair View XIII

Little graduated from Duke University with a degree in art history and has studied with many well-know artists. She has won over 50 awards for her creative works in watercolor, oil, acrylic, and pastel. Her paintings are featured in the corporate collections of GlaxoSmithKline, SAS Institute, Bank of America, BellSouth, Wachovia Bank, Duke Medical Center, and *The News and Observer*. For more information about the art of Marriott Little, visit her Facebook page at www.facebook.com/pages/Art-by-Marriott-P-ttle/143660865712337. ■


Fair View IV

Each quarter the works of a different contemporary North Carolina artist are displayed in the storefront windows of the State Bar building. The State Bar is grateful to The Mahler Fine Art, the artists' representative, for arranging this loan program. The Mahler is a full-service fine art gallery in Raleigh representing national, regional, and North Carolina artists, and provides residential and commercial consulting. Readers who want to know more about an artist may contact owners Rory Parnell and Megg Rader at (919) 896-7503 or info@themahlerfineart.com.

Disciplinary Actions (cont.)

Oxford from disability inactive status.

Transfers to Disability Inactive Status

Jimmy H. Joyner Jr. of Graham was transferred to disability inactive status by the chair of the Grievance Committee.

Notice of Intent to Seek Reinstatement

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC 27611, before February 1, 2012 (60 days from publication).

In the Matter of Matthew Bromund

Notice is hereby given that Matt Bromund intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar.

In the Matter of Michael L. Yopp

Notice is hereby given that Michael L. Yopp of Dunn, North Carolina, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Yopp surrendered his law license and was disbarred July 19, 2002, for misappropriating client funds for his personal benefit, over-disbursing client funds, and failing to reconcile his trust account. ■

Council Revisits Authorized Practice Opinion on the Role of Laypersons in Residential Real Estate Closings

Council Actions

At a meeting on October 21, 2011, upon the recommendation of the Executive Committee, the State Bar Council voted to publish for comment a comprehensive revision of Authorized Practice Advisory Opinion 2002-1 (January 24, 2003). The proposed revision appears at the end of this article.

Also at its meeting on October 21, 2011, the State Bar Council adopted the ethics opinions summarized below:

2011 Formal Ethics Opinion 10

Lawyer Advertising on Deal of the Day or Group Coupon Website

Opinion rules that a lawyer may advertise on a website that offers daily discounts to consumers where the website company's compensation is a percentage of the amount paid to the lawyer if certain disclosures are made and certain conditions are satisfied.

2011 Formal Ethics Opinion 12

Disclosing Clerk's Error to Court

Opinion rules that a lawyer must notify the court when a clerk of court mistakenly dismisses a client's charges.

2011 Formal Ethics Opinion 13

Retaining Funds in Trust Account to Pay Disputed Legal Fee

Opinion rules that client funds or the funds of a third party that are placed in the lawyer's control for the purpose of being safeguarded, managed, or disbursed in connection with a transaction, but which were not designated or identified as funds for the payment of legal fees, may not be retained in the trust account, pursuant to Rule 1.15-2(g), as disputed funds to which the lawyer may be entitled.

2011 Formal Ethics Opinion 15

Communication with Adverse Party to Request Public Records

Opinion rules that, pursuant to the North Carolina Public Records Act, a lawyer may communicate with a government official for the purpose of identifying a custodian of public records and with the custodian of public records to make a request to examine public records related to the representation although the custodian is an adverse party, or an employee of an adverse party, whose lawyer does not consent to the communication.

Ethics Committee Actions

At its meeting on October 20, 2011, the Ethics Committee voted to send the following proposed opinions to subcommittees for further (or continued) study: Proposed 2011 FEO 4, *Participation in Reciprocal Referral Agreement*; Proposed 2011 FEO 11, *Communication with Represented Party by Lawyer Who is the Opposing Party*; and Proposed 2011 FEO 14, *Outsourcing Clerical or Administrative Tasks*. The following proposed opinion was tabledunti the committee's January 2012 meeting: Proposed 2010 FEO 14, *Use of Search Engine "Adwords" to Advertise on Internet*. The committee also reconsidered Proposed 2009 FEO 7, *Interviewing a Child Witness in a Criminal Case Alleging Physical or Sexual Abuse of Child*, which was tabled until the US Supreme Court issued two opinions this summer on in-custody interrogation of children. Although only minor revisions were made to Proposed 2009 FEO 7, in light of the long hiatus since its last publication, the committee decided to republish the proposed opinion.

One new proposed opinion and three revised proposed opinions are also published for comment. The comments of readers are welcomed.

Proposed 2009 Formal Ethics Opinion 7
Interviewing an Unrepresented Child Prosecuting Witness in a Criminal Case Alleging Physical or Sexual Abuse of the Child
October 20, 2011

Proposed opinion rules that a criminal defense lawyer or a prosecutor may not interview a child who is the alleged victim in a criminal case alleging physical or sexual abuse if the child is younger than the age of maturity as determined by the General Assembly (currently age 14) for the purpose of an in-custody interrogation unless the lawyer has the consent or authorization of a non-accused parent or guardian or a court order; a lawyer may interview a child who is this age or older without such consent or authorization provided the lawyer complies with Rule 4.3, reasonably determines that the child is sufficiently mature to understand the lawyer's role and purpose, and avoids any conduct designed to coerce or intimidate the child.

Public Information

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

Introduction:[1]

This ethics opinion examines when a criminal defense lawyer or a prosecutor may interview a child who is the prosecuting witness in a criminal case alleging physical or sexual abuse of the child. The opinion is purposefully limited to this factual situation and does not address whether a lawyer may, for example, interview a child who is a witness to a crime but is not the victim of the crime. The absence of an opinion on the latter subject does not, however, mean that the Ethics Committee has concluded that such interviews are permissible without consent or authorization of a parent, guardian, or the court. A lawyer should take into considera-

tion the principles articulated in this opinion when considering whether to interview any child who was a witness to a violent crime, especially one involving the child's family members.

The opinion addresses a difficult dilemma for a lawyer who has a duty to prepare competently by investigating each case and interviewing key witnesses but who does not wish to cause further harm to a child who may have been traumatized by physical or sexual abuse. In preparing this opinion, the Ethics Committee received input from mental health professionals and child advocates. That input led to the committee's determination that the emotional and intellectual sophistication of a child cannot be determined by a lawyer or established by an opinion of the Ethics Committee. However, the General Assembly has determined that a child at a certain age is legally mature for the analogous purpose of responding to an in-custody interrogation. N.C. Gen. Stat. §7B-2101(b). In the absence of a better benchmark, the committee accepts the General Assembly's policy decision on this issue.

When a lawyer is considering whether to seek the consent or authorization of a parent or guardian or a court order to interview a child who is alleged to be the victim of physical or sexual abuse, the lawyer should keep in mind the following information provided to the committee by the experts it consulted. Excessive interviews of child victims lead to additional trauma for the child. A person who is not trained in techniques for forensic interviewing of children often makes grave errors that can taint the interview or add to the child's trauma. It is preferable for the interview to be performed by a professional. To avoid intimidating the child, a support person for the child (family member or other appropriate person) should be present at the interview. In light of the foregoing, a lawyer should investigate whether forensic interviews with the child have already taken place and are available on tape; if a tape of an interview with the child is available, the lawyer should consider forgoing further interviews.

Inquiry #1:

Attorney A represents a criminal defendant on a charge of taking indecent liberties with a child. To prepare for trial, Attorney A would like to interview the child who is the victim of the alleged crime. The child is not a party to the criminal action. She does not have a lawyer and a guardian *ad litem* has not been appointed to represent her interests. May Attorney A interview the child without the consent of the child's parent or legal guardian?

Opinion #1:

Yes, if the child is older than the age of maturity for the purpose of an in-custody interrogation as determined by the General Assembly in N.C. Gen. Stat. §7B-2101(b) which provides that an in-custody admission of a child under the age of 14 is inadmissible if the interrogation was made outside the presence of the child's parent, guardian, custodian, or attorney. Below the age designated in the statute, it is presumed that a child cannot understand the purpose of an interview with a lawyer, the lawyer's role, or the child's right to decline the interview or terminate the interview at any time. If the child is this age or older, Attorney A may seek an interview with the child without the consent of the child's parent or legal guardian, provided Attorney A respects the rights of the child and there is no legal requirement that the consent of the parent or legal guardian be obtained. If the General Assembly changes the designated age in N.C. Gen. Stat. §7B-2101(b), or a successor statute, this opinion shall be similarly changed.

It is Attorney A's professional duty to prepare competently and diligently to defend the client; *a priori*, in most cases this includes interviewing the victim of the alleged crime if the victim will consent to the interview. Nevertheless, a child frequently does not have the emotional or intellectual maturity to make an informed decision about whether to consent to the interview or the emotional or intellectual maturity to understand the role of the lawyer or the purpose of the interview.

Rule 4.3(b) states that, when dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not

> state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

As noted in comment [1] to Rule 4.3, "[a]n unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client."

Many children are inexperienced in legal matters and will not understand the role of a lawyer who seeks an interview. Many children will naively defer to the lawyer because he or she is an adult. Many children will be easily misled or subject to the undue influence of an authority figure such as a lawyer. Because of their psychological and emotional immaturity, it is, therefore, presumed that a lawyer may not interview a child who is younger than age 14 without violating Rule 4.3(b) unless the lawyer obtains the prior consent or authorization of the child's (non-accused) parent or legal guardian or obtains

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by December 30, 2011.

Captions and Headnotes

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

an order from a court with jurisdiction.

A child who is age 14 or older may be interviewed without prior consent or authorization of a parent, guardian, or the court, provided the lawyer who seeks to interview the child reasonably determines that the child is sufficiently mature to understand, when disclosed by the lawyer, (1) the role of the lawyer, (2) who the lawyer represents, (3) that the purpose of the interview is to prepare the case for trial, (4) the right to have an adult present during the interview, and (5) that the child is at liberty to refuse or to terminate the interview. If the lawyer cannot reasonably conclude that the child is sufficiently mature, both emotionally and intellectually, to understand the five disclosures, the lawyer may not interview the child unless a legal guardian or parent consents or a court orders the interview. If the conduct of the legal guardian or the parent toward the child is at issue in the criminal case, consent must be obtained from a guardian *ad litem*, a court or other appropriate person or entity with authority to give consent. *See* Opinion #3; *see also* Rule 7.1 of the General Rules of Practice for the Superior and District Courts (providing procedure for appointment of lawyer to serve as guardian *ad litem* for minor who is victim or potential witness in a criminal proceeding).

Rule 3.4(b) prohibits a lawyer from counseling or assisting a witness to testify falsely. This includes making improper suggestions or offering inducements that might lead a naive and vulnerable child to change or alter his or her testimony. Although a lawyer may reasonably conclude that a child who is age 14 or older is sufficiently mature to consent to the interview, the lawyer may not engage in emotional manipulation or other forms of undue influence, coercion, or intimidation that may inhibit or alter the witness's testimony.

Rule 4.2(a) prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the other lawyer consents or the communication is authorized by law or court order. Before interviewing a child, if allowed to do so under this opinion, the lawyer must determine whether the child is represented and, if applicable, follow the requirements of Rule 4.2(a).

Inquiry #2:

May the prosecutor interview the child who is the alleged victim of physical or sexual abuse?

Opinion #2:

Yes, subject to the same constraints set forth in Opinion #1.

This opinion does not impede a prosecutor's fulfillment of the duty under the Crime Victims Rights Act, N.C. Gen. Stat. Chap. 15A, Article 46, to offer a victim the opportunity to consult with the prosecutor to obtain the views of the victim about the disposition of the case. *See* N.C. Gen. Stat. §15A-832(f). N.C. Gen. Stat. §15A-841 states that if the victim is mentally or physically incompetent, the victim's rights under the act may be exercised by the victim's next of kin or legal guardian. A prosecutor may, therefore, fulfill his or her duty under the act by speaking with the parent or guardian of an alleged victim who is under the age of 14.

Inquiry #3:

The defendant is the child's parent or legal guardian and is accused of conduct that, if proven, would constitute abuse or neglect of the child. May the defendant's criminal defense lawyer interview the child subject to the constraints set forth in Opinion #1?

Opinion #3:

In most instances of alleged child abuse or neglect by a parent or guardian, a guardian *ad litem* and, on occasion, an attorney advocate are appointed to represent the child. RPC 249 prohibits a lawyer from communicating with a child who has been appointed a GAL unless the lawyer obtains the consent of the attorney advocate or, if only a GAL is appointed, the GAL. If a GAL has not been appointed for the child, the lawyer may interview the child subject to the constraints set forth in Opinion #1.

Endnotes

1. This opinion does not address legal issues relating to due process or the confrontation clause.

Proposed 2011 Formal Ethics Opinion 6
Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property
October 20, 2011

Proposed opinion rules that a law firm may contract with a vendor of software as a service provided the lawyer uses reasonable care to safeguard confidential client information.

Inquiry #1:

Much of software development, including the specialized software used by lawyers for case or practice management, document management, and billing/financial management, is moving to the "software as a service" (SaaS) model. The American Bar Association's Legal Technology Resource Center explains SaaS as follows:

> SaaS is distinguished from traditional software in several ways. Rather than installing the software to your computer or the firm's server, SaaS is accessed via a web browser (like Internet Explorer or FireFox) over the internet. Data is stored in the vendor's data center rather than on the firm's computers. Upgrades and updates, both major and minor, are rolled out continuously…SaaS is usually sold on a subscription model, meaning that users pay a monthly fee rather than purchasing a license up front.[1]

Instances of SaaS extend beyond the practice management sphere addressed above, and can include technologies as far-ranging as web-based email programs, online legal research software, online backup and storage, text messaging/SMS (short message service), voicemail on mobile or VoIP (Voice over Internet Protocol) phones, online communication over social media, and beyond.

SaaS for law firms may involve the storage of a law firm's data, including client files, billing information, and work product, on remote servers rather than on the law firm's own computer and, therefore, outside the direct control of the firm's lawyers. Lawyers have duties to safeguard confidential client information, including protecting that information from unauthorized disclosure, and to protect client property from destruction, degradation, or loss (whether from system failure, natural disaster, or dissolution of a vendor's business). Lawyers also have a continuing need to retrieve client data in a form that is usable outside of a vendor's product.[2] Given these duties and needs, may a law firm use SaaS?

Opinion #1:

Yes, provided steps are taken to minimize the risk of inadvertent or unauthorized disclosure of confidential client information

and to protect client property, including the information in a client's file, from risk of loss.

The use of the internet to transmit and store client information presents significant challenges. In this complex and technical environment, a lawyer must be able to fulfill the fiduciary obligations to protect confidential client information and property from risk of disclosure and loss. The lawyer must protect against security weaknesses unique to the internet, particularly "end-user" vulnerabilities found in the lawyer's own law office. The lawyer must also engage in periodic education about ever-changing security risks presented by the internet.

Rule 1.6 of the Rules of Professional Conduct states that a lawyer may not reveal information acquired during the professional relationship with a client unless the client gives informed consent or the disclosure is impliedly authorized to carry out the representation. Comment [17] explains, "A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision." Comment [18] adds that, when transmitting confidential client information, a lawyer must take "reasonable precautions to prevent the information from coming into the hands of unintended recipients."

Rule 1.15 requires a lawyer to preserve client property, including information in a client's file such as client documents and lawyer work product, from risk of loss due to destruction, degradation, or loss. *See also* RPC 209 (noting the "general fiduciary duty to safeguard the property of a client"), RPC 234 (requiring the storage of a client's original documents with legal significance in a safe place or their return to the client), and 98 FEO 15 (requiring exercise of lawyer's "due care" when selecting depository bank for trust account).

Although a lawyer has a professional obligation to protect confidential information from unauthorized disclosure, the Ethics Committee has long held that this duty does not compel any particular mode of handling confidential information nor does it prohibit the employment of vendors whose services may involve the handling of documents or data containing client information. *See* RPC 133 (stating there is no requirement that firm's waste paper be shredded if lawyer ascertains that persons or entities responsible for the disposal employ procedures that effectively minimize the risk of inadvertent or unauthorized disclosure of confidential information). Moreover, while the duty of confidentiality applies to lawyers who choose to use technology to communicate, "this obligation does not require that a lawyer use only infallibly secure methods of communication." RPC 215. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information and the lawyer must advise effected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality. *Id.*

Furthermore, in 2008 FEO 5, the committee held that the use of a web-based document management system that allows both the law firm and the client access to the client's file is permissible:

> provided the lawyer can fulfill his obligation to protect the confidential information of all clients. A lawyer must take steps to minimize the risk that confidential client information will be disclosed to other clients or to third parties. *See* RPC 133 and RPC 215…. A security code access procedure that only allows a client to access its own confidential information would be an appropriate measure to protect confidential client information…. If the law firm will be contracting with a third party to maintain the web-based management system, the law firm must ensure that the third party also employs measures which effectively minimize the risk that confidential information might be lost or disclosed. *See* RPC 133.

In a recent ethics opinion, the Arizona State Bar's Committee on the Rules of Professional Conduct concurred with the interpretation set forth in North Carolina's 2008 FEO 5 by holding that an Arizona law firm may use an online file storage and retrieval system that allows clients to access their files over the internet provided the firm takes reasonable precautions to protect the security and confidentiality of client documents and information.[3]

In light of the above, the Ethics Committee concludes that a law firm may use SaaS if reasonable care is taken to minimize the risks of inadvertent disclosure of confidential information and to protect the security of client information and client files. A lawyer must fulfill the duties to protect confidential client information and to safeguard client files by applying the same diligence and competency to manage the risks of SaaS that the lawyer is required to apply when representing clients.

No opinion is expressed on the business question of whether SaaS is suitable for a particular law firm.

Inquiry #2:

Are there measures that a lawyer or law firm should consider when assessing a SaaS vendor or seeking to minimize the security risks of SaaS?

Opinion #2:

This opinion does not set forth specific security requirements because mandatory security measures would create a false sense of security in an environment where the risks are continually changing. Instead, due diligence and frequent and regular education are required.

Although a lawyer may use nonlawyers outside of the firm to assist in rendering legal services to clients, Rule 5.3(a) requires the lawyer to make reasonable efforts to ensure that the services are provided in a manner that is compatible with the professional obligations of the lawyer. The extent of this obligation when using a SaaS vendor to store and manipulate confidential client information will depend upon the experience, stability, and reputation of the vendor. Given the rapidity with which computer technology changes, law firms are encouraged to consult periodically with professionals competent in the area of online security. Some recommended security measures are listed below.

• Inclusion in the SaaS vendor's Terms of Service or Service Level Agreement, or in a separate agreement between the SaaS vendor and the lawyer or law firm, of an agreement on how the vendor will handle confidential client information in keeping with the lawyer's professional responsibilities.

• If the lawyer terminates use of the SaaS product, the SaaS vendor goes out of business, or the service otherwise has a break in continuity, the law firm will have a method for retrieving the data, the data will be available in a non-proprietary format that the law firm can access, or the firm will have access

to the vendor's software or source code. The SaaS vendor is contractually required to return or destroy the hosted data promptly at the request of the law firm.

• Careful review of the terms of the law firm's user or license agreement with the SaaS vendor including the security policy.

• Evaluation of the SaaS vendor's (or any third party data hosting company's) measures for safeguarding the security and confidentiality of stored data including, but not limited to, firewalls, encryption techniques, socket security features, and intrusion-detection systems.[4]

• Evaluation of the extent to which the SaaS vendor backs up hosted data.

Endnotes

1. FYI: Software as a Service (SaaS) for Lawyers, ABA Legal Technology Resource Center at abanet.org/tech/ltrc/fyidocs/saas.html.
2. *Id.*
3. Paraphrasing the description of a lawyer's duties in Arizona State Bar Committee on Rules of Professional Conduct, Opinion 09-04 (Dec. 9, 2009).
4. A firewall is a system (which may consist of hardware, software, or both) that protects the resources of a private network from users of other networks. Encryption techniques are methods for ciphering messages into a foreign format that can only be deciphered using keys and reverse encryption algorithms. A socket security feature is a commonly-used protocol for managing the security of message transmission on the internet. An intrusion detection system is a system (which may consist of hardware, software, or both) that monitors network and/or system activities for malicious activities and produces reports for management.

Proposed 2011 Formal Ethics Opinion 7
Using Online Banking to Manage a Trust Account
October 20, 2011

Proposed opinion rules that a law firm may use online banking to manage its trust accounts provided the firm's managing lawyers are regularly educated on the security risks and actively maintain end-user security.

Inquiry:

Most banks and savings and loans provide "online banking" which allows customers to access accounts and conduct financial transactions over the internet on a secure website operated by the bank or savings and loan. Transactions that may be conducted via on-line banking include account-to-account transfers, payments to third parties, wire transfers, and applications for loans and new accounts. Online banking permits users to view recent transactions and view and/or download cleared check images and bank statements. Additional services may include account management software.

Financial transactions conducted over the internet are subject to the risk of theft by hackers and other computer criminals. Given the duty to safeguard client property, particularly the funds that a client deposits in a lawyer's trust account, may a law firm use online banking to manage a trust account?

Opinion:

Yes, provided the lawyers use reasonable care to minimize the risk of loss or theft of client property specifically including the regular education of the firm's managing lawyers on the *ever-changing* security risks of online banking and the active maintenance of end-user security.

As noted in [Proposed] 2011 FEO 6, *Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property*, the use of the internet to transmit and store client data (or, in this instance, data about client property) presents significant challenges. In this complex and technical environment, a lawyer must be able to fulfill the fiduciary obligations to protect confidential client information and property from risk of disclosure and loss. The lawyer must protect against security weaknesses unique to the internet, particularly "end-user" vulnerabilities found in the lawyer's own law office. The lawyer must also engage in frequent and regular education about the security risks presented by the internet.

Rule 1.15 requires a lawyer to preserve client property, to deposit client funds entrusted to the lawyer in a separate trust account, and to manage that trust account according to strict recordkeeping and procedural requirements. *See also* RPC 209 (noting the "general fiduciary duty to safeguard the property of a client") and 98 FEO 15 (requiring a lawyer to exercise "due care" when selecting depository bank for trust account). The rule is silent, however, about online banking.

Nevertheless, online banking may be used to manage a client trust account if the recordkeeping and fiduciary obligations in Rule 1.15 can be fulfilled. The recordkeeping requirements for trust accounts are set forth in Rule 1.15-3. Rule 1.15-3(b)(3) specifically requires a lawyer to maintain the following records relative to the transfer of funds from the trust account:

> all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds belong;

If the online banking software does not provide a method for making an official bank record of the required information when money is transferred from the trust account to another account, such transfers must be handled by a method that provides the required records.

To fulfill the fiduciary obligations in Rule 1.15, a lawyer managing a trust account must use reasonable care to minimize the risks to client funds on deposit in the trust account by remaining educated as to the dynamic risks involved in online banking and insuring that the law firm invests in proper protection and multiple layers of security to address those risks. *See* [Proposed] 2011 FEO 6.

A lawyer who is managing a trust account has affirmative duties to regularly educate himself as to the security risks of online banking; to actively maintain end-user security at the law firm through safety practices such as strong password policies and procedures, the use of encryption, and security software, and the hiring of an information technology consultant to advise the lawyer or firm employees; and to insure that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm. Understanding the contract with the depository bank and the use of the resources and expertise available from the bank are good first steps toward fulfilling the lawyer's fiduciary obligations.

This opinion does not set forth specific security requirements because mandatory security measures would create a false sense of security in an environment where the risks are continually changing. Instead, due diligence and frequent and regular education are required. A lawyer must fulfill his fiduciary obligation to safeguard client funds by apply-

ing the same diligence and competency to manage the risks of on-line banking that a lawyer is required to apply when representing clients.

Proposed 2011 Formal Ethics Opinion 16
Responding to Ineffective Assistance of Counsel Claim Questioning Representation
October 20, 2011

Proposed opinion rules that a criminal defense lawyer accused of ineffective assistance of counsel by a former client may share confidential client information with prosecutors to help establish a defense to the claim so long as the lawyer reasonably believes a response is necessary and the response is narrowly tailored to respond to the allegations.

Inquiry #1:

The ABA recently issued Formal Opinion 10-456, which holds that a criminal defense lawyer accused of ineffective assistance of counsel by a former client cannot share confidential information with prosecutors to help establish a defense to the former client's claim of ineffective assistance of counsel unless the disclosure is made in a court-supervised setting.

Our Rule 1.6(b)(6) provides that a lawyer may reveal information protected from disclosure by Rule 1.6(a) to the extent the lawyer reasonably believes necessary:

> to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

This exception, also found in ABA Model Rule 1.6, allows a lawyer to reveal confidential information to respond to claims of ineffective assistance of counsel, provided the lawyer narrowly tailors the disclosure to that which is reasonably necessary to respond to the facts of the specific claim.

Under the ABA opinion, however, a lawyer would not be permitted to make such limited disclosure outside of a "court-supervised setting." The opinion provides that disclosure may not occur until a court directs the lawyer to disclose, presumably after considering any objections or claims of privilege raised by the former client. The opinion states:

> Although an ineffective assistance of counsel claim ordinarily waives the attorney-client privilege with regard to some otherwise privileged information, that information still is protected by [Model] Rule 1.6(a) unless the defendant gives informed consent to its disclosure or an exception to the confidentiality rule applies. Under [Model] Rule 1.6(b)(5), a lawyer may disclose information protected by the rule only if the lawyer "reasonably believes [it is] necessary" to do so in the lawyer's self-defense. The lawyer may have a reasonable need to disclose relevant client information in a judicial proceeding to prevent harm to the lawyer that may result from a finding of ineffective assistance of counsel. However, it is highly unlikely that a disclosure in response to a prosecution request, prior to a court-supervised response by way of testimony or otherwise, will be justifiable.

Outside of the court-supervised setting contemplated by the ABA opinion, may a North Carolina lawyer accused of ineffective assistance of counsel disclose information about the former representation to the extent that lawyer believes it is reasonably necessary to establish a defense to the accusation? For example, in response to prosecutors' inquiries, but before a court has ordered the lawyer to do so, may the lawyer disclose information about the representation of a former client that the lawyer believes is reasonably necessary to respond to a claim of ineffective assistance of counsel in the former client's post-conviction motion for appropriate relief?

Opinion #1:

Yes. We decline to adopt ABA Formal Op. 10-456 (2010).

Rule 1.6(b)(6), which applies to state and federal criminal representations, specifically provides that a lawyer may reveal confidential information protected from disclosure by Rule 1.6(a) to the extent the lawyer reasonably believes necessary to respond to allegations concerning the lawyer's representation of the client. Rule 1.6(b)(6) also affords the lawyer discretion to determine what information is reasonably necessary to disclose, and there is no requirement that the lawyer exercise that discretion only in a "court-supervised setting."

We take additional guidance from the North Carolina General Assembly in reaching this conclusion. Regarding state court post-conviction actions, N.C. Gen. Stat. § 15A-1415(e) provides that where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, the client "shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness." The statute further provides that the waiver of the attorney-client privilege "shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege."

Adoption of the ABA opinion would contradict the legislature's determination that lawyers should have the discretion, *without* court direction or supervision, to disclose privileged information in response to such claims in the narrowly-tailored fashion contemplated by Rule 1.6(b)(6). Adoption of the opinion would also contradict the language of Rule 1.6(b)(6) itself, which does not require a court-supervised setting to make a narrowly-tailored disclosure of confidential information in response to such claims. We decline to adopt an opinion that contradicts existing state law and rules governing disclosure of otherwise confidential and privileged information under these limited circumstances.

In reaching this conclusion, however, we are also relying on the fact that both N.C. Gen. Stat. § 15A-1415(e) and Rule 1.6(b)(6) clearly admonish lawyers who choose to respond to claims of ineffective assistance of counsel, regardless of the setting, to respond in a manner that is narrowly tailored to address the specific facts underlying the specific claim. Simply put, the pursuit of an ineffective assistance of counsel claim by a former client does not give the lawyer *carte blanche* to disclose all information contained in a former client's file. Comment [15] to Rule 1.6 emphasizes that Rule 1.6(b) permits disclosure only to the extent the lawyer reasonably believes necessary to accomplish one of the purposes specified in the exceptions set out in paragraph (b). Disclosure should be no greater than what is

reasonably necessary to accomplish the purpose. Therefore, once a lawyer has determined that disclosure of confidential or privileged information is necessary to respond to a claim of ineffective assistance of counsel, and once the lawyer has decided to make that disclosure, the lawyer still has a duty to avoid the disclosure of information that is not responsive to the specific claim. In the same vein, a prosecutor requesting information from defense counsel in relation to an ineffective assistance of counsel claim must limit his request to information relevant to the defendant's specific allegations of ineffective assistance. *See* Rule 3.8; Rule 4.4.

Proposed Revisions to Authorized Practice Advisory Opinion 2002-1 On the Role of Laypersons in the Consummation of Residential Real Estate Transactions Adopted January 24, 2003 Revised October 21, 2011

NOTE: Revisions are shown with overstrikes (deletions) and bold, underlined print (additions).

The North Carolina State Bar has been requested to interpret the North Carolina unauthorized practice of law statutes (N.C. Gen. Stat. §§84-2.1 to 84-5) as they apply to residential real estate transactions. The State Bar issues the following authorized practice of law advisory opinion pursuant to N.C. Gen. Stat. §84-37(f) after careful consideration and investigation. This opinion supersedes any prior opinions and decisions of any standing committee of the State Bar interpreting the unauthorized practice of law statutes to the extent those opinions and decisions are inconsistent with the conclusions expressed herein. **As a result of its review of the activities of more than 50 nonlawyer service providers since the adoption of this opinion on January 24, 2003, including injunctions issued against two companies, the committee is clarifying the opinion concerning issues that it has addressed since adoption of the opinion.**

Issue 1:

May a nonlawyer handle a residential real estate closing for one or more of the parties to the transaction?

Opinion 1:

No. Residential real estate transactions typically involve several phases, including the following: ~~abstraction of~~ **reviewing the purchase agreement for any conditions that must be met before closing; abstracting** titles; ~~application~~ **providing an opinion on title; applying** for title insurance policies, including title insurance policies that may ~~incorporate~~ **require** tailored coverage~~; preparation of~~ **to protect the interests of the lender, the owner, or both;**[1] **preparing** legal documents, such as deeds (in the case of a purchase transaction~~) and~~**),** deeds of trust~~; explanation of~~**, and lien waivers or affidavits; interpreting and explaining** documents implicating parties' legal rights, obligations, and options; ~~resolution of~~ **resolving** possible clouds on title and issues concerning the legal rights of parties to the transaction; **overseeing** execution and acknowledgement of documents in compliance with legal mandates; **handling the** recordation and cancellation of documents in accordance with North Carolina law; ~~and disbursement of~~ **disbursing** proceeds **when legally permitted** after legally-recognized funds are available **and all closing conditions have been satisfied; and providing a post-closing final opinion of title for title insurance after all prior liens have been satisfied**. These and other functions are sometimes called, collectively, the "closing" of the residential real estate transaction. As detailed below, the North Carolina General Assembly has determined specifically that only persons who are licensed to practice law in ~~the~~ **this** state may handle ~~many~~ **most** of these functions.[2]

A person who is not licensed to practice law in North Carolina and is not working under the direct supervision of an active member of the State Bar may not perform functions or services that constitute the practice of law.[3] ~~For example,~~ Under the express language of N.C. Gen. Stat. §§ 84-2.1 and 84-4, a ~~non-lawyer~~ **nonlawyer** who is not working under the direct supervision of an active member of the State Bar would be engaged in the unauthorized practice of law if he or she performs any of the following functions for one or more of the parties to a residential real estate transaction: ~~preparation~~ **(i) preparing** or aiding in preparation of deeds, deeds of trust, **lien waivers or affidavits,** or other legal documents; **(ii)** abstracting or passing upon titles; **or (iii)** advising or giving an opinion upon the legal rights or obligations of any person, firm, or corporation~~; or holding~~. **Under the express language of N.C. Gen. Stat. § 84-4, it is unlawful for any person other than an active member of the State Bar to hold** himself or herself out as competent or qualified to give legal advice or counsel or as furnishing any services that constitute the practice of law. **Additionally, under N.C. Gen. Stat. § 84-5, a business entity, including a corporation or limited liability company, may not provide or offer to provide legal services or the services of attorneys to its customers even if the services are performed by licensed attorneys employed by the entity.** ***See, Duke Power Co. v. Daniels*****, 86 N.C. App. 469, 358 S.E.2d 87 (1987);** ***Gardner v. North Carolina State Bar*****, 316 N.C. 285, 341 S.E.2d 517 (1986); and** ***State ex rel. Seawell v. Carolina Motor Club, Inc.*****, 209 N.C. 624, 184 S.E. 540 (1936).**

Accordingly, a ~~non-lawyer~~ **nonlawyer** is engaged in the unauthorized practice of law if he or she performs any of the following functions in connection with a residential real estate closing (identified only as examples):

1. Abstracts or provides an opinion on title to real property;

2. Explains the legal status of title to real estate, the legal effect of anything found in the chain of title, or the legal effect of an item reported as an exception in a title insurance commitment except as necessary to underwrite a policy of insurance and except that a licensed title insurer, agency, or agent may explain an underwriting decision to an insured or prospective insured, including providing the reason for such decision;

3. Explains or gives advice **or counsel** about the rights or responsibilities of parties concerning matters disclosed by a land survey under circumstances that require the exercise of legal judgment or that have implications with respect to a party's legal rights or obligations;

4. Provides a legal opinion ~~or,~~ advice**, or counsel** in response to inquiries by any of the parties regarding legal rights or obligations of any person, firm, or corporation, including but not limited to the rights and obligations created by **the purchase agreement,** a promissory note, the effect of a pre-payment penalty, the rights of parties under a right of rescission, and the rights of a lender under a deed of trust;

5. Advises**, counsels,** or instructs a party to the transaction with respect to alternative ways for taking title to the property or the legal consequences of taking title in a partic-

ular manner;

6. Drafts a legal document for a party to the transaction or assists a party in the completion of a legal document, or selects or assists a party in selecting a form legal document among several forms having different legal implications;

7. Explains or recommends a course of action to a party to the transaction under circumstances that require the exercise of legal judgment or that have implications with respect to the party's legal rights or obligations;

8. Attempts to settle or resolve a dispute between the parties to the transaction that will have implications with respect to their respective legal rights or obligations~~.~~**;**

9. Determines that all conditions of the purchase agreement or the loan closing instructions have been satisfied in accordance with the buyer's or the lender's interests or instructions;

10. Determines that the deed and deed of trust may be recorded after an update of title for any intervening conveyances or liens since the preliminary opinion;

11. Determines that the funds may be legally disbursed pursuant to the North Carolina Good Funds Settlement Act, N.C. Gen. Stat. § 45A-1 *et seq.*[4]

The foregoing list of examples of functions that constitute the practice of law is not exclusive, but reflects a range of responsibilities and duties that involve the following: the exercise of legal judgment; the preparation of legal documents such as deeds, deeds of trust, and title opinions; the explanation or interpretation of legal documents in circumstances that require the exercise of legal judgment; the provision of legal advice or opinions; and the performance of other services that constitute the practice of law.

Issue 2:

May a nonlawyer who is not acting under the supervision of a lawyer licensed in North Carolina (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; and (2) receive and disburse the closing funds?

Opinion 2:

Yes. So long as a nonlawyer does not engage in any of the activities referenced in Opinion 1, or in other activities that likewise constitute the practice of law, a nonlawyer may: (1) present and identify the documents necessary to complete a North Carolina residential real estate closing, direct the parties where to sign the documents, and ensure that the parties have properly executed the documents; or (2) receive and disburse the closing funds.

Although these limited duties may be performed by nonlawyers, this does not mean that the nonlawyer is handling the closing. Since, as described in Issue 1 above, the closing is a collection of services, most of which involve the practice of law, a lawyer must provide the necessary legal services.[5] And, since N.C. Gen. Stat. § 84-5 prohibits nonlawyers from arranging for or providing the lawyer or any legal services, nonlawyers may not advertise or represent to lenders, buyers/borrowers, or others in any manner that suggests that the nonlawyer will (i) handle the "closing;" (ii) provide the legal services associated with a closing, such as providing title searches, title opinions, document preparation, or the services of a lawyer for the closing; or (iii) "represent" any party to the closing.[6] The lawyer must be selected by the party for whom the legal services will be provided.

Notwithstanding this opinion, evidence considered by the State Bar with respect to this advisory opinion indicates that, at the time documents are presented to the parties for execution, a lawyer who is present may identify or be asked about important issues affecting the legal rights or obligations of the parties. A lawyer may provide important legal guidance about such issues, but a nonlawyer is not permitted to do so. Moreover, a consumer's retention of a licensed North Carolina lawyer provides financial protection to the consumer. The North Carolina Rules of Professional Conduct require a lawyer to properly handle all fiduciary funds, including residential real estate closing proceeds. In the event a lawyer mishandles the closing proceeds, the lawyer is subject to professional discipline, and the State Bar Client Security Fund may provide financial assistance for a person injured by the lawyer's improper application of funds. On the whole, the evidence considered by the State Bar indicates that it is in the best interest of a consumer to be represented by a lawyer with respect to all aspects of a residential real estate transaction.

The evidence the State Bar has considered suggests, however, that performing administrative or ministerial activities in connection with the execution of residential real estate closing documents and the receipt and disbursement of the closing proceeds does not necessarily require the exercise of legal judgment or the giving of legal advice or opinions. Indeed, the execution of closing documents and the disbursement of closing proceeds may be accomplished—and often have been accomplished—by mail, by email, or by other electronic means, or by some other procedure that would not involve the lawyer and the parties being physically present at one place and time. The State Bar therefore concludes that it should not be presumed that performing the task of overseeing the execution of residential real estate closing documents and receiving and disbursing closing proceeds necessarily involves giving legal advice or opinions or otherwise engaging in activities that constitute the practice of law.

Nonlawyers who undertake such responsibilities, and those who retain their services, should also be aware that (1) the North Carolina State Bar retains oversight authority concerning complaints about activities that constitute the unauthorized practice of law; ~~and~~ (2) the North Carolina criminal justice system may prosecute instances of the unauthorized practice of law**; and (3) that N.C. Gen. Stat. § 84-10 provides a private cause of action to recover damages and attorneys' fees to any person who is damaged by the unauthorized practice of law against both the person who engages in unauthorized practice and anyone who knowingly aids and abets such person.** In addition, nonlawyers and consumers should bear in mind that other governmental authorities such as the Federal Trade Commission, the North Carolina Attorney General, district attorneys, and the banking commissioner, have jurisdiction over unfair trade practices and violations of requirements regarding lending practices.

Endnotes

1. By statute, title insurance in North Carolina can be issued only after the title insurance company has received an opinion of title from a licensed North Carolina attorney who is not an employee or agent of the company and who "has conducted or caused to be conducted under the attorney's direct supervision a

CONTINUED ON PAGE 54

Amendments Approved by the Supreme Court

At a conference on August 25, 2011, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

Amendments to the Discipline and Disability Rules

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

The amendments to Rule .0112 require a respondent lawyer to submit a signed response to a letter of notice and make non-substantive improvements to the rule.

Amendments to the Procedures for the Administrative Committee

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

The amendments correct two erroneous references to the "period of suspension" (rather than the "period of inactive status") in rule amendments approved in March that require a petitioner for reinstatement who has been inactive for one year or more to take twelve CLE credit hours for each year of inactivity or, if inactive or suspended for seven years or more, to pass the bar examination.

Amendments to the Rules Governing the CLE Program

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

The amendments expand the definition of professional responsibility courses to include instruction on ethical decision-making and give the CLE Board the authority to determine how CLE credits are applied to satisfy a deficit.

Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty

The amendments create juvenile delinquency law as a subspecialty of the criminal law specialty.

Amendments to The Plan for Certification of Paralegals

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

The amendments permit on-line voting for paralegal candidates for the board.

Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct

The amendments to Rule 7.3, *Direct Contact with Potential Clients*, clarify that the advertising notice on targeted letters soliciting professional employment must be in font that is as large as any other printing in the letter.

Amendments Pending Approval of the Supreme Court

At its meeting on October 21, 2011, the Council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text see the Fall 2011 edition of the *Journal* or visit the State Bar website: ncbar.gov):

Proposed Amendments to the Rules Governing IOLTA

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts (IOLTA)

The proposed amendments include the trust and escrow accounts of real estate settlement agents in the IOLTA program as required by N.C. Gen. Stat. 45A-9. Prior to adoption, the Council approved a technical amendment to Rule .1319 to clarify that a North Carolina lawyer who serves as a settlement agent and uses an interest-bearing trust or escrow account to receive and disburse closing funds must establish the account as an IOLTA account.

Proposed Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, Minimum Standards for Certification of Specialists

The proposed amendments clarify that the evaluation of a specialization applicant's peer review information includes consideration of each peer reference's practice experience in the specialty and relationship to the applicant. The proposed amendments also allow judicial service to satisfy the substantial involvement requirement for recertification.

Proposed Amendments

At its meeting on October 21, 2011, the Council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Membership Rules

27 N.C.A.C. 1A, Section .0200, Membership—Annual Membership Fees

In the last edition of the *Journal*, a proposed new rule defining "good standing" was published for comment. At its October meeting, the Council voted to revise and republish the proposed rule. The proposed rule clarifies

when a certificate of good standing will be issued to a member of the State Bar. The proposed rule is entirely new. Revisions since last publication are shown in bold, underlined font.

.0204 Good Standing Definition and Certificates

(a) Definition

A lawyer who is an active member of the North Carolina State Bar and who is not subject to a pending administrative or disciplinary suspension **or disbarment** order or an order of suspension that has been stayed is in good standing with the North Carolina State Bar. An administrative or disciplinary suspension **or disbarment** order is "pending" if the order has been **announced in open court by a state court of competent jurisdiction or by the Disciplinary Hearing Commission or if the order has been** entered by **a state court of competent jurisdiction, by the** Council or **by** the Disciplinary Hearing Commission but has not taken effect. "Good standing" makes no reference to delinquent membership obligations, prior discipline, or any disciplinary charges or grievances that may be pending.

(b) Certificate of Good Standing for Active Member

Upon application and payment of the prescribed fee, the Secretary of the North Carolina State Bar shall issue a certificate of good standing to any active member of the State Bar who is in good standing and who is current on all payments owed to the North Carolina State Bar. A certificate of good standing will not be issued unless the member pays any delinquency shown on the financial records of the North Carolina State Bar including outstanding judicial district bar dues. If the member contends that there is good cause for non-payment of some or all of the amount owed, the member may subsequently demonstrate good cause to the Administrative Committee pursuant to the procedure set forth in Rule .0903(e)(1) of subchapter 1D of these rules. If the member shows good cause, the contested amount shall be refunded to the member.

(c) Certificate of Good Standing for Inactive Member

Upon application, the Secretary of the North Carolina State Bar shall issue a certificate of good standing to any inactive member of the State Bar who was in good standing at the time that the member was granted inactive status and who is not subject to any disciplinary order or pending disciplinary order. The certificate shall state that the member is inactive and is ineligible to practice law in North Carolina.

Proposed Amendments to the Rules on Prepaid Legal Services Plans

27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans

The proposed amendment will make the initial and annual registration fees paid by prepaid legal services plans nonrefundable if the registration is denied or revoked.

.0308 Registration Fee

The initial and annual registration fees for each prepaid legal services plan shall be $100. **The fee is nonrefundable.**

Proposed Amendments to the Administrative Reinstatement Rules

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

The proposed amendments make the following changes to the rules on reinstatement from inactive status and administrative suspension:

· Add subheadings to make the rule easier to navigate;

· Specify the effective date for the provisions approved by the Supreme Court in March 2011;

· Define "year" as 365 day period (and not a calendar year);

· Add payment of the judicial surcharge to the list of fees that must be paid for reinstatement;

· Allow active military service to offset the years of inactive status or suspension giving rise to the bar exam requirement for reinstatement;

· Prohibit an inactive or suspended member whose petition is denied from petitioning for reinstatement until the next calendar year;

· Specify that a lawyer who is inactive or suspended for 7 years or more but active in another state must fulfill CLE requirements for reinstatement; and

· Require payment of any delinquency shown on the financial records of the NC State Bar (including judicial district bar dues) and fulfillment of any delinquent administrative requirement (e.g., CLE hours; annual CLE report form; IOLTA certification) to qualify for reinstatement within 30 days of service of a suspension order

.0902 Reinstatement from Inactive Status

(a) Eligibility to Apply for Reinstatement

Any member who has been transferred to inactive status may petition the council for an order reinstating the member as an active member of the North Carolina State Bar.

(b) **Definition of "Year"**.

As used in this rule, a year is a 365 day period of time unless a calendar year is specified.

(c) ~~Contents of Reinstatement Petition~~ **Requirements for Reinstatement.**

~~The petition shall set out facts showing the following:~~

(1) **Completion of Petition.**

~~that the~~ **The** member ~~has provided~~ **must provide** ~~all~~ **the** information requested ~~in an application~~ **on a petition** form prescribed by the council and ~~has signed~~ **must sign** the ~~form~~ **petition** under oath~~;~~**.**

(2) **CLE Requirements for Calendar Year Before Inactive**.

~~unless~~ **Unless** the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph ~~(b)~~ **(c)**(6) of this rule, ~~that~~ the member ~~satisfied~~ **must satisfy** the minimum continuing legal education requirements, as set forth in Rule .1518 of this subchapter, for the calendar year immediately preceding the **calendar** year in which the member was transferred to inactive status, (the "subject year"), including any deficit from a prior **calendar** year that was carried forward and recorded in the member's CLE record for the subject year~~;~~**.**

(3) **Character and Fitness to Practice.**

~~that the~~ **The** member ~~has~~ **must have** the moral qualifications, competency and learning in the law required for admission to practice law in the state of North Carolina, and **must show** that the member's resumption of the practice of law within this state will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest~~;~~**.**

(4) **CLE Requirements For Members Granted Inactive Status Prior to March 10, 2011.**

[~~this provision shall be effective~~ **Effective** for all members who are transferred to inactive status on or after January 1, 1996, through ~~the effective date of these amendments~~ **March 9, 2011.**] ~~if~~ **If** more than 2

years ~~(as used in this rule, a year is measured in 12-month increments and does not refer to a calendar year)~~ have elapsed between the date of the entry of the order transferring the member to inactive status and the date the petition is filed, ~~that within one year prior to filing the petition,~~ the member ~~completed~~ **must complete** 15 hours of continuing legal education (CLE) approved by the Board of Continuing Legal Education pursuant to Rule .1519. of this subchapter. Of the required 15 CLE hours, 3 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism~~:~~**. The CLE hours must be completed within one year prior to the filing of the petition.**

(5) **CLE Requirements If Inactive Less Than 7 Years.**

[~~this provision shall be effective~~ **Effective** for all members who are transferred to inactive status on or after ~~the effective date of these amendments~~ **March 10, 2011.**] ~~if~~ **If** more than 1 but less than 7 years have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, ~~that during the period of inactivity and within 2 years prior to filing the petition~~, the member ~~has completed~~ **must complete** 12 hours of approved CLE for each year that the member was inactive. **The CLE hours must be completed within 2 years prior to filing the petition.** For each 12-hour increment, 4 hours may be taken online; 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism; and 5 hours must be earned by attending courses determined to be practical skills courses by the Board of Continuing Legal Education or its designee~~:~~**.** ~~provided, if~~ **If** during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision~~:~~**.**

(6) **Bar Exam Requirement If Inactive 7 or More Years.**

[~~this provision shall be effective~~ **Effective** for all members who are transferred to inactive status on or after ~~the effective date of these amendments~~ **March 10, 2011.**] ~~if~~ **If** 7 years or more have elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member ~~has obtained~~ **must obtain** a passing grade on a regularly scheduled North Carolina bar examination~~; provided, each~~**.**

(A) Active Licensure in Another State. Each year of active licensure in another state during the period of inactive status shall offset one year of inactive status for the purpose of calculating the 7 years necessary to actuate this provision. **If the member is not required to pass the bar examination as a consequence of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (c)(5) for each year that the member was inactive.**

(B) Military Service. Each calendar year in which an inactive member served on full-time, active military duty, whether for the entire calendar year or some portion thereof, shall offset one year of inactive status for the purpose of calculating the 7 years necessary to actuate the requirement of this paragraph. If the member is not required to pass the bar examination as a consequence of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (c)(5).

(7) **Payment of Fees, Assessments and Costs.** ~~that the~~

The member ~~has paid~~ **must pay** all of the following:

(A) a $125.00 reinstatement fee;

(B) the membership fee**,** ~~and~~ Client Security Fund assessment **and the judicial surcharge** for the year in which the application is filed;

(C) the annual membership fee, if any, of the member's district bar for the year in which the application is filed and any past due annual membership fees for any district bar with which the member was affiliated prior to transferring to inactive status;

(D) all attendee fees owed the Board of Continuing Legal Education for CLE courses taken to satisfy the requirements of ~~Rule .0902(b)(2) and (4)~~ **paragraphs (c)(2), (4), and (5)** above;

(E) any costs previously assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission; and/or the secretary or council of the North Carolina State Bar; and

(F) all costs incurred by the North Carolina State Bar in investigating and processing the application for reinstatement.

~~The reinstatement fee, costs, and any past due district bar annual membership fees shall be retained; however, the State Bar and district bar membership fees assessed for the year in which the application is filed shall be refunded if the petition is denied~~. .

(d) ~~(c)~~ Service of Reinstatement Petition….

[re-lettering paragraphs (d) through (g)]

(i) Denial of Petition.

When a petition for reinstatement is denied by the Council in a given calendar year, the member may not petition again until the following calendar year. The reinstatement fee, costs, and any fees paid pursuant to paragraph (c)(7) shall be retained. However, the State Bar membership fee, Client Security Fund assessment, judicial surcharge and district bar membership fee assessed for the year in which the application is filed shall be refunded.

The Process

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

Comments

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

.0904 ~~Compliance~~ Reinstatement from ~~After~~ Suspension ~~for Failure to Fulfill Obligations of Membership~~

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

A member who receives an order of suspension for failure to comply with an obligation of membership may preclude the order from becoming effective **and shall not be required to file a formal reinstatement petition or pay the reinstatement fee** ~~by submitting a written request and satisfactory showing~~ **if the member shows** within 30 days after service of the suspension order that the member has ~~complied with or~~ ~~fulfilled~~ **done the following:**

(1) fulfilled the obligations of membership set forth in the order~~; and~~

~~(2) has~~ paid the ~~costs of the suspension and reinstatement procedure~~ **administrative fees associated with the issuance of the suspension order~~,~~** including the costs of service**;**

(3) paid any other delinquency shown on the financial records of the State Bar including outstanding judicial district bar dues;

(4) signed and filed CLE annual report forms as required by Rule .1522 of this subchapter;

(5) completed CLE hours as required by Rules .1518 and .1522 of this subchapter; and

(6) filed any IOLTA certification required by Rule .1319 of this subchapter.

~~Such member shall not be required to file a formal reinstatement petition or pay the reinstatement fee.~~

(b) Reinstatement More than 30 Days after Service of Suspension Order.

At any time more than 30 days after service of an order of suspension on a member, a member who has been suspended for failure to comply with an obligation of membership may petition the council for an order of reinstatement.

(c) **Definition of "Year"**.

As used in this rule, a year is a 365 day period of time unless a calendar year is specified.

(d) ~~(c)~~ **Requirements for** Reinstatement ~~Petition~~. ~~The petition shall set out facts showing the following:~~

(1) **Completion of Petition.**

~~that the~~ **The** member ~~has provided~~ **must provide** ~~all~~ **the** information requested ~~in a~~ **on a petition** form prescribed by the council and ~~has signed~~ **must sign** the ~~form~~ **petition** under oath~~;~~**.**

(2) **CLE Requirements for Calendar Years Before Suspended**.

~~unless~~ **Unless** the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph ~~(c)~~**(d)**(4) of this rule, ~~that~~ the member ~~satisfied~~ **must satisfy** the minimum continuing legal education (CLE) requirements, as set forth in Rule .1518 of this subchapter, for the calendar year immediately preceding the year in which the member was suspended (the "subject year"), including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year**. The member shall also sign and file any delinquent CLE annual report form.**

(3) **CLE Requirement If Suspended Less Than 7 Years.**

~~if~~ **If** more than 1 but less than 7 years ~~(as used in this rule, a year is measured in 12-month increments and does not refer to a calendar year)~~ have elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, ~~that during the period of suspension and within 2 years prior to filing the petition,~~ the member ~~has completed~~ **must complete** 12 hours of approved CLE for each year that the member was suspended. **The CLE must be completed within 2 years prior to filing the petition.** For each 12-hour increment, 4 hours may be taken online; 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism; and 5 hours must be earned by attending courses determined to be practical skills courses by the Board of Continuing Legal Education or its designee~~; provided;~~**.** ~~if~~ **If** during the period of suspension the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision~~;~~**.**

(4) **Bar Exam Requirement If Suspended 7 or More Years.**

~~if~~ **If** 7 years or more have elapsed between the effective date of the suspension order and the date that the petition is filed, the member ~~has obtained~~ **must obtain** a passing grade on a regularly scheduled North Carolina bar examination~~; provided, each~~**.**

(A) Active Licensure in Another State. Each year of active licensure in another state during the period of suspension shall offset one year of suspension for the purpose of calculating the 7 years necessary to actuate this provision. **If the member is not required to pass the bar examination as a consequence of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (d)(3) for each year that the member was suspended.**

(B) Military Service. Each calendar year in which a suspended member served on full-time, active military duty, whether for the entire calendar year or some portion thereof, shall offset one year of suspension for the purpose of calculating the 7 years necessary to actuate the requirement of this paragraph. If the member is not required to pass the bar examination as a consequence of offsetting, the member shall satisfy the CLE requirements set forth in paragraph (d)(3).

(5) **Character and Fitness to Practice.**

~~that the~~ **The** member ~~has~~ **must have** the moral qualifications, competency and learning in the law required for admission to practice law in the state of North Carolina, and **must show** that the member's resumption of the practice of law will be neither detrimental to the integrity and standing of the Bar or the administration of justice nor subversive of the public interest~~;~~**.**

(6) **Payment of Fees, Assessments and Costs.**

~~that the~~ **The** member ~~has paid~~ **must pay** all of the following:

(A) a $125.00 reinstatement fee **or $250.00 reinstatement fee if suspended for failure to comply with CLE requirements**;

(B) all membership fees, Client Security Fund assessments, **judicial surcharge** and late fees owed at the time of suspension and owed for the year in which the reinstatement petition is filed;

(C) all district bar annual membership fees owed at the time of suspension **and owed for the year in which the reinstatement petition is filed**;

(D) all attendee fees, fines and penalties owed the Board of Continuing Legal Education at the time of suspension and attendee fees for CLE courses taken to satisfy the requirements of ~~Rule .0904(c)~~ **paragraphs (d)**(2) **and (3)** above;

(E) any costs assessed against the member by the chairperson of the Grievance Committee, the Disciplinary Hearing Commission, and/or the secretary or council of the North Carolina State Bar; and

(F) all costs incurred by the North Carolina State Bar in suspending the member, including the costs of service, and in investigating and processing the application for reinstatement.

(7) **Pro Hac Vice Registration Statements.**

~~that the~~ **The** member ~~has filed~~ **must file** any overdue pro hac vice registration statement for which the member was responsible~~;~~**.** ~~and~~

(8) IOTLA Certification.

The member must complete any IOLTA certification required by Rule .1319 of this subchapter.

(9) Wind Down of Law Practice During Suspension.

~~that, during the 30 day period after the effective date of the order of suspension, the~~ **The** member **must demonstrate that the member** fulfilled the obligations of a disbarred or suspended member set forth in Rule .0124 of Subchapter 1B~~,~~ **during the 30 day period after the effective date of the order of suspension,** or that such obligations do not apply to the member due to the nature of the member's legal employment.

(e) ~~(d)~~ Procedure for Review of Reinstatement Petition.

….

[**re-lettering paragraphs (e) and (f)**]

(h) Denial of Petition.

When a petition for reinstatement is denied by the Council in a given calendar year, the member may not petition again until the following calendar year. The reinstatement fee, costs, and any fees paid pursuant to paragraph (d)(6) shall be retained. However, the State Bar membership fee, Client Security Fund assessment, judicial surcharge and district bar membership fee assessed for the year in which the application is filed shall be refunded.

Proposed Amendments to The Plan of Legal Specialization

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

The proposed amendments add juvenile delinquency criminal law and appellate practice to the list of specialties.

.1725 Areas of Specialty

There are hereby recognized the following specialties:

(1) bankruptcy law

(a) consumer bankruptcy law

(b) business bankruptcy law

(2) estate planning and probate law

(3) real property law

(a) real property - residential

(b) real property - business, commercial, and industrial

(4) family law

(5) criminal law

(a) ~~criminal appellate practice~~

~~(b)~~ state criminal law

(b) **juvenile delinquency law**

(6) immigration law

(7) workers' compensation

(8) Social Security disability law

(9) elder law

(10) appellate practice.

Proposed Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .2900 Certification Standards for the Elder Law Specialty

The proposed amendment adds "veterans' benefits" to the list of course subjects that satisfy the CLE requirement for certification in elder law.

.2905 Standards for Certification as a Specialist in Elder Law

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

(a) Licensure and Practice ….

(d) Continuing Legal Education – An applicant must earn ~~no less than~~ forty-five (45) hours of accredited continuing legal education (CLE) credits in elder law and related fields, as specified in this rule, during the three full calendar years preceding application and the year of application, with not less than nine (9) credits earned in any of the three calendar years. Of the forty-five CLE credits, at least ten (10) credits must be earned attending elder law–specific CLE programs. Related fields shall include the following: estate planning and administration, trust law, health and long term care planning, public benefits, **veterans' benefits,** surrogate decision-making, older persons' legal capacity, social security disability, Medicaid/Medicare claims, special needs planning and taxation. No more than twenty (20) credits may be earned in the related fields of estate taxation or estate administration

(e) Peer Review …. ■

Proposed Ethics (cont.)

reasonable examination of the title." N.C. Gen. Stat. § 58-26 1.

2. Except as permitted under *State v. Pledger*, 257 N.C. 634, 127 S.E.2d 337 (1962), which allows a party having a "primary interest" in a transaction to prepare deeds of trust and other documents to effectuate the transaction.

3. The State Bar notes that the North Carolina General Assembly and Supreme Court are the entities that have the power to make the ultimate determination whether an activity constitutes the practice of law.

4. Since the original adoption of this opinion, the committee has reviewed numerous complaints concerning nonlawyers, many of whom hold out to the closing parties that they will conduct "closings," including disbursement of funds, at any time of day, including after normal business hours. However, under the Good Funds Settlement Act, N.C. Gen. Stat. § 45A-4, funds may not be disbursed until the deed and deed of trust (if any) have been recorded, which in most counties requires physical delivery to the register of deeds during normal business hours. Accordingly, while execution of the documents may be conducted at any time, the actual "closing" and disbursement of funds may not occur until after the required documents are recorded.

5. Except as permitted under *State v. Pledger*, *supra*, or by an individual *pro se*.

6. Almost without exception, these nonlawyer service providers are corporations or limited liability companies that market their services to lenders, not consumers. Most are also title insurance agents. Accordingly, lenders commonly inform borrowers that the nonlawyer will be conducting the closing without any meaningful opportunity for the borrower to decide to retain a lawyer to protect its interests. Additionally, when the nonlawyer is a title insurance agent, the borrower usually is given no choice on insurer or available rates. The committee expresses no opinion whether these actions may violate N.C. Gen. Stat. § 75-17, which prohibits a lender from requiring its borrower to obtain a policy of title insurance from a particular insurance company, agent, broker, or other person specified by the lender.

State Bar Swears in New Officers


Fox


Kapp


Baker

Fox Installed as President

Winston-Salem attorney James (Jim) R. Fox was installed as president of the North Carolina State Bar. He was sworn in by Chief Justice Sarah Parker of the North Carolina Supreme Court at the State Bar's Annual Dinner on Thursday, October 20, 2011.

Mr. Fox received his AB degree in History from Duke University in 1968 and his JD from Duke University School of Law in 1971, where he served on the Editorial Board of the Duke Law Journal. He was a partner in the firm of Howrey & Simon in Washington, DC, where he practiced from 1971 to 1984. In 1984 he returned to North Carolina and began practice with the Winston-Salem firm of Bell, Davis & Pitt, where he was a partner until 2006. Fox remains of counsel to Bell, Davis & Pitt, and is currently serving as general counsel to Pike Electric, Inc., a publicly held electric power, construction, and maintenance company located in Mount Airy. A litigator and trial lawyer, Mr. Fox is a fellow of the American College of Trial Lawyers and an adjunct professor of Trial Practice and Pretrial Litigation at Elon University School of Law.

Mr. Fox has had substantial involvement in local and state bar organizations. He served as chair of the State Bar's Disciplinary Hearing Commission, as chair of the NCBA's Trial Practice Curriculum Committee, as a member of the Executive Committee of the North Carolina Bar Association's Litigation Section, and as vice-president of the Forsyth County Bar Association. While on the State Bar Council, Fox has chaired the Grievance Committee, Statute of Limitations Study Committee, and Special Disciplinary Guidelines Committee, and was vice-chair of the Authorized Practice Committee. He has also served on the Special Committee on Real Property Closings, Emerging Issues Committee, Executive Committee, Program Evaluation Committee, and Disciplinary Review Committee.

Mr. Fox is also active in numerous civic organizations, as well as in Duke Alumni activities. He resides in Winston-Salem with his wife, Debbie. They have two daughters, Alexandra and Victoria, who are in college.

Kapp Elected as President-Elect

Raleigh attorney M. Keith Kapp was sworn in as president-elect of the North Carolina State Bar. He was sworn in at the State Bar's Annual Dinner on Thursday, October 20, 2011.

Kapp earned an AB degree with honors from UNC and a JD, also with honors, from UNC School of Law.

Kapp is a partner, vice-president, and vice-chair of the Board of Directors at his firm, Williams Mullen. He represents businesses ranging from multi-national to private or family-owned enterprises in connection with their commercial litigation and regulatory needs. He advises clients on the laws of contract, shareholder rights, antitrust, franchise relations, warranty, consumer protection, unfair trade practices, and various regulatory statutes. As a member of the Commercial Arbitration Panel of the American Arbitration Association, Kapp also provides arbitration services.

Kapp has had substantial involvement in local and state bar organizations. He served as president of the Wake County Bar Association and served on the Board of Governors of the North Carolina Bar Association. As a State Bar councilor, Kapp chaired the Ethics Committee, Facilities Committee, and Administrative Committee. He has also served on the Grievance Committee, Emerging Issues Committee, Issues Committee, Paperless Banking Committee, Executive Committee, Disciplinary Review Committee, and Program Evaluation Committee.

Mr. Kapp is active in numerous civic organizations including the Moravian Ministries Foundation, the Raleigh Kiwanis Club, and the Raleigh Little Theatre.

Kapp is married to Chancy McLean Kapp. Their daughter Katie is working on a Masters Degree in social work at UNC-G.

Baker Elected as Vice-President

Ahoskie attorney Ronald G. Baker Sr. was sworn in as vice-president of the North Carolina State Bar. He was sworn in at the State Bar's Annual Dinner on Thursday, October 20, 2011.

As an undergraduate Baker attended the University of North Carolina as a Morehead Scholar, and he earned his JD with honors from the University of North Carolina School of Law.

Baker practiced with Henson, Donahue & Elrod in Greensboro from 1975-1978, then moved to Ahoskie and has since practiced with what is now Baker, Jones, Daly & Carter, PA.

Baker has substantial involvement in bar organizations. He is a member of the North Carolina Bar Association and the American Bar Association. He has served on the board and is past-president of the North Carolina Association of Defense Attorneys, and has been a North Carolina representative to the Defense Research Institute. As a State Bar Councilor, Baker has chaired the Grievance Committee. He has also served on the Client Assistance Committee, Authorized Practice Committee, Legislative Committee, Administrative Committee, Disciplinary Advisory Committee, Executive Committee, Program Evaluation Committee, Special

CONTINUED ON PAGE 57

Resolution of Appreciation of
Anthony S. di Santi

WHEREAS, Anthony S. di Santi was elected by his fellow lawyers from the 24th Judicial District in January 2001 to serve as their representative in this body. Thereafter, he was elected for three successive three-year terms as councilor; and

WHEREAS, in October 2008 Mr. di Santi was elected vice-president, and in October 2009 he was elected president-elect. On October 28, 2010, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. di Santi has served on the following committees: Grievance, Administrative, Publications, Executive, Legislative, Authorized Practice, Issues, Issues Demographic Data Subcommittee, Disciplinary Advisory, Special Litigation, Facilities, Ethics, Special Committee to Study Disciplinary Guidelines, Program Evaluation, Finance and Audit, Appointments, and Program Evaluation Authorized Practice Subcommittee; and

WHEREAS, Tony di Santi, being fully conscious of the fact that every president of the State Bar stands in the front of a long train of exceptional leaders who have each been responsible for the preservation of the institution and for its revitalization, undertook throughout his tenure to build upon the good work of his predecessors. Typical of his careful stewardship of initiatives that were conceived by others but not yet fully realized when he assumed the presidency, was his implementation of the Summer Meeting Internship Program by means of which law students were for the first time systematically introduced to the State Bar's entire regulatory program in the context of a single quarterly meeting. Under his direction this innovative means of acculturating novice lawyers was deemed a great success, enabling self-regulation to be understood and appreciated by the next generation of lawyers from the very onset of their professional careers; and,

WHEREAS, with further reference to his admirable propensity to build upon the foundations of his political forbearers, Tony di Santi undertook to support, with considerable zeal and steadfastness, the planning and preparation for the State Bar's long-anticipated exodus from the wilderness of Fayetteville Street to the promised land at the corner of Edenton and Blount. Throughout his presidency, as important arrangements were being made for the financing of the State Bar's new headquarters, for the sale of its old headquarters, for the design and construction of the new building, and for the approval of the entire enterprise by the Council of State, di Santi was a constant presence, unobtrusively but effectively supporting his Facilities Committee and bringing to bear his personal credibility and the prestige of his office at every critical juncture; and

WHEREAS, Tony di Santi breathed new life into another successful, but not consistently sustained, effort to open therapeutically the lines of communication between prosecutors and defense lawyers throughout North Carolina. Calling together outstanding practitioners and opinion leaders from both segments of the Bar, di Santi convened a conference for dialogue on the highest plain in conjunction with the council's summer meeting so that the moral and professional authority of the State Bar might diminish tension and discord among those fine lawyers, and foster ever greater measures of justice and respect for the law; and

WHEREAS, just as di Santi has been committed to the liberal elaboration of good ideas, he has been admirably conservative in his devotion to laws and policies that have long served the profession and the people of North Carolina well. In that regard, be it well understood that his leadership was vital to the State Bar's successful resistance to two particularly ill-conceived legislative initiatives that would have imperiled clients by allowing nonlawyers to own law firms and by permitting trade associations to practice law; and

WHEREAS, Tony di Santi was also conservative in his stewardship of that most precious of State Bar assets, the time of his fellow councilors. By insisting that routine council meetings last no more than three days, di Santi demonstrated his great respect for all who subscribe to this resolution; and

WHEREAS, Tony di Santi embodied and perpetuated, by and through the force of his gracious and magnanimous personality, the State Bar's well-known culture of professionalism, decency, and humaneness. Not surprisingly, he has on a daily basis personified the State Bar in the very best way possible.

NOW, THEREFORE, BE IT RESOLVED that the council of the North Carolina State Bar does hereby publicly and with deep appreciation acknowledge the strong, effective, and unselfish leadership of Tony di Santi, and expresses to him its debt for his personal service and dedication to the principles of integrity, trust, honesty, and fidelity.

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 Anthony S. di Santi.

2011 Appointments to Boards and Commissions

January Council Meeting

Lawyer Assistance Program Board (3-year terms)—There are three appointments to be made. Sheryl T. Friedricks and Barbara A. Scarboro are not eligible for reappointment. David W. Long is eligible for reappointment.

April Council Meeting

ABA House of Delegates (2-year terms)—There are three appointments to be made. Calvin E. Murphy, Steven D. Michael, and Robert F. Siler are not eligible for reappointment.

Disciplinary Hearing Commission (3-year terms)—There are five appointments to be made. Theodore C. Edwards III, C. Colon Willoughby Jr., and Robert F. Siler are not eligible for reappointment. Steven D. Michael and Ronald R. Davis are eligible for reappointment.

Legal Aid of North Carolina (LANC) (3-year terms)—There is one appointment to be made. Raymond E. Owens Jr. is not eligible for reappointment.

July Council Meeting

Board of Legal Specialization (3-year terms)—There are three appointments to be made. Jeri L. Whitfield and Carl W. Davis Jr. (public member) are not eligible for reappointment. Lana S. Warlick is eligible for reappointment.

IOLTA Board of Trustees (3-year terms)—There are three appointments to be made. Irvin W. Hankins III, Michael A. Colombo, and F. Edward Broadwell Jr. are eligible for reappointment.

October Council Meeting

Client Security Fund Board of Trustees (5-year terms)—There is one appointment to be made. Michael Schenck III (public member) is not eligible for reappointment.

Board of Law Examiners (3-year terms)—There are three appointments to be made. Judge A. Leon Stanback, William K. Davis, and Samuel S. Woodley Jr. are eligible for reappointment.

Board of Continuing Legal Education (3-year terms)—There are three appointments to be made. Michael K. Pratt and Heather C. Baker are not eligible for reappointment. Judge J. H. Corpening II is eligible for reappointment.

Board of Paralegal Certification (3-year terms)—There are three appointments to be made. Renny W. Deese, John M. Harris, and Tammy Moldovan (paralegal) are not eligible for reappointment.

NC LEAF (1-year terms)—There is one appointment to be made. William R. Purcell II is eligible for reappointment. ■

New Officers (cont.)

Committee to Study Disciplinary Guidelines, Appointments Committee, and the Issues Committee.

Mr. Baker is active in numerous civic organizations. He is a past-president and life member of the Ahoskie Jaycees, is a US Jaycees ambassador, is a former Hertford County commissioner, and is past-chair of the Hertford County Board of Education and the Hertford County Committee of 100. ■

In Memoriam

George Dietrich Beischer
Durham

Doran J. Berry
Fayetteville

George B. Boyle
Cary

Derb Stancil Carter
Fayetteville

Henry Elliot Colton Jr.
Chapel Hill

Thomas Edward Davis
Morrisville

John McIntosh Geil
Raleigh

Rodney R. Goodman Jr.
Kinston

Arbor W. Gray
Washington

Daniel D. Khoury
Manteo

Allen Benefield Koenig
Asheville

Ben F. Loeb Jr.
Chapel Hill

James Robert Lovett
Charlotte

Earle R. Purser
Raleigh

Herbert Arthur Sandman
Raleigh

Gene Bryson Tarr
Winston-Salem

William Jackson Townsend
Fayetteville

John Frederick Earl Turnage
Rocky Mount

Jeremy Scott Wilson
Lincolnton

Charles Holt Young
Raleigh

Law School Briefs

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

Campbell University School of Law

Melissa Essary Announces Plans to Step Down as Dean of Campbell Law—Melissa Essary will step down from the law school dean's position after six years when she will return to full-time faculty responsibilities on July 1, 2012. Essary made history in 2006 when she became the first female dean of the law school. For additional information on her accomplishments, please visit the "news" section of the law school's site: law.campbell.edu.

Campbell Law School Posts 92% Passage Rate on July Bar Exam—Campbell Law School graduates scored a 92% passage rate on the July 2011 North Carolina Bar Examination. No other law school in the state has had greater success in preparing its students for the exam. This continues the tradition of Campbell Law graduates achieving the highest average passage rate for the past 25 years. In other states its graduates have achieved 100% passage rates.

Judge Leonard Named to Campbell Law School Board of Visitors—Judge Rich Leonard has been named to the Campbell Law School Board of Visitors. He has served as a judge with the US Bankruptcy Court for the Eastern District of North Carolina since 1992, and was the court's chief judge from 1998 until 2005. The Campbell Law School Board of Visitors is comprised of esteemed legal, judicial, and business leaders who serve two-year renewable terms.

Campbell Law Holds Swearing-In Ceremony—Sixty-one members of the class of 2011 took part in a September 9 swearing-in ceremony in Raleigh at the law school. The Honorable Paul C. Ridgeway, Wake County Superior Court Judge and member of the Campbell Law class of 1986, presided and led the swearing in of attendees as they became official members of the North Carolina Bar.

Charlotte School of Law

Charlotte School of Law and UNC-Charlotte Announce Dual JD/MBA Program—Charlotte School of Law (CSL) and the University of North Carolina at Charlotte have signed an agreement establishing a dual JD/MBA program that will prepare students for careers in law and management and provide them with the skill sets to meet the challenges of a modern corporate environment. The new program will launch in Fall 2012. The dual degree will allow students to earn a Master of Business Administration degree from the Belk College of Business at UNC-Charlotte and a Juris Doctor degree from CSL in eight semesters. Pursued independently, a student would need ten semesters to complete both degrees.

Constitutionality of Health Care Reform Debated at CharlotteLaw—Elizabeth Wydra, general counsel of the Constitutional Accountability Center, and Professor Nelson Lund, a Patrick Henry Professor of Constitutional Law and the Second Amendment at George Mason University School of Law, debated the constitutionality of the Patient Protection and Affordable Care Act on Wednesday, September 28, at the Charlotte School of Law. The debate was hosted by the student chapters of the American Constitution Society and the Federalist Society.

University of Münster Agreement Enhances Students' Experiences, Career Preparation—The Charlotte School of Law and the faculty of law of the University of Münster, a public university located in the city of Münster, North Rhine-Westphalia in Germany, have entered into an agreement that establishes a program allowing student and faculty exchanges as well as additional cooperative initiatives, including joint courses, summer programs, research, and other ventures. This new partnership expands Charlotte School of Law's international program and helps establish opportunities for students and faculty to experience different facets of international and comparative law.

Duke Law School

Admissions Process Underway for New Master's in Judicial Studies—Duke Law School officially launched its new Master of Laws in Judicial Studies program with a luncheon for North Carolina state and federal judges on Wednesday, September 14. US Supreme Court Justice Samuel A. Alito offered remarks at the event. He will teach a short course on the US Supreme Court and the Constitution during the program's first term in Summer 2012. Created under the auspices of the new Duke Center for Judicial Studies, the LLM program is the only graduate degree program at a major law school devoted to the education of judges. Applications can be found at law.duke.edu/judicialstudies.

Global Leader Scholarship to Bring Top Chinese Students to Duke Law—A new full-tuition scholarship draws on Duke Law School's strong relationships with the Chinese legal and academic communities to provide outstanding Chinese graduates the opportunity to earn a law degree from Duke Law School. The scholarship will be awarded annually to the applicant who demonstrates the highest level of academic achievement, a record of and capacity for leadership, and a commitment to the use of law in addressing the economic, social, and ethical challenges China faces as an increasingly important player on the world stage. The first scholarship recipient is expected to enroll at Duke in the 2012-2013 academic year.

AIDS Legal Project Lands $150,000 Grant from Ford Foundation—Duke Law School's AIDS Legal Project has received a $150,000 grant from The Ford Foundation to launch a research and advocacy initiative directed at the impact of HIV and AIDS in the South. Faculty and students in the pilot AIDS Policy Clinic will work with the

Duke Center for Health Policy and Inequalities Research to collect and process data on such issues as infection rates, deaths, and resources available to individuals in areas hard-hit by HIV and AIDS. They will use the data to launch advocacy initiatives at the federal level.

Elon University School of Law

Celebrating Major Milestones—Marking the school's first five years and the achievement of full approval from the ABA, a broad spectrum of the Elon Law community came together for an evening of celebration on October 6, 2011.

"I have never known a community that has rallied around the founding of a law school in the way that Greensboro has rallied around Elon," said law school dean George R. Johnson Jr. in welcoming remarks.

"I believe passionately and fervently that what our university does is prepare citizens that the world desperately needs right now, and that is what is happening especially at Elon Law," said Leo M. Lambert, president of Elon University. "This is a place that is turning out lawyers that are going to make a difference in the world."

Former Greensboro Mayor Jim Melvin, an early and pivotal supporter of Elon Law, acknowledged founding donors who made it possible to create the law school's $10 million state-of-the-art facility in downtown Greensboro.

"Sandra Day O'Connor said she had been in over 100 law schools, and she said this was the best building she had seen especially for law, and so that is a wonderful tribute to you," Melvin said.

David Gergen, chair of Elon Law's National Advisory Board, recognized Founding Dean Leary Davis, Johnson, and the faculty, advisory board, and students for their contributions to the early achievements of the school. He also thanked members of the legal community who have contributed to the education of Elon Law students.

"There are so many people in this community here in Greensboro who became preceptors for the students, spent hour after hour with these students, and gave them something unique in legal education, and that is somebody who cares, who looks after them, and who wants them to succeed as human beings," Gergen said.

North Carolina Central University School of law

For the fall of 2011 the North Carolina Central University School of Law had an entering class of 206 students, of which 172 were enrolled in the day program and 34 enrolled in the evening program. The law school received 2,579 applications during its last admissions cycle. Total law school enrollment for the 2011-2012 academic year is 550 students.

The fall issue of *National Jurist* magazine ranked NCCU School of Law No. 4 in the nation for clinical legal education. On an annual basis, the magazine ranks law schools in this category by dividing the total number of full-time clinical course positions by the total number of full-time students. In the rankings compiled for 2011, NCCU School of Law placed fourth with a ratio of 62.7% (308 clinical positions divided by 491 students). Yale University School of Law is ranked No. 1 in this category.

In September 2011 the law school launched a Foreclosure Prevention Clinic using the school's Technology Assisted Legal Instruction and Services Program (TALIAS). TALIAS employs telepresence technology to broadcast legal information to established sites throughout the state as a way of extending legal services to those in need.

NCCU School of Law is proud to be the host of the annual one-day conference of the Institute for Law Teaching and Learning on March 3, 2012. The conference entitled "Technology In and Beyond the Classroom: How to Use Technology to Leverage Learning" will focus on using technology to enhance teaching and learning in and out of the classroom.

University of North Carolina School of Law

2011 North Carolina Law Review Symposium—The journal hosts its annual symposium November 18, examining "Social Networks and the Law," with featured speakers including Federal Trade Commission Commissioner Julie Brill, and Tim Sparapani, former public policy director at Facebook and former senior legislative counsel for privacy rights at the ACLU. Visit nclawreview.org/symposium.

CLE Programs—Recent and upcoming CLE programs include the Dan K. Moore Program in Ethics, October 14; Shape of the Coast, November 4; a symposium on "Law, Race, and Albion Tourgée," November 4; and the Festival of Legal Learning, February 10-11, 2012. Visit law.unc.edu/cle.

Law Alumni Awards—The school presented two alumni with the Distinguished Alumni Award at the annual Leadership Awards Dinner, October 13: William D. Johnson, class of 1982, chair, president, and CEO of Progress Energy; and Wade H. Hargrove Jr., class of 1965, senior partner in the Raleigh, NC, office of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, and chair of the UNC Board of Trustees. The school also conferred its Outstanding Recent Graduate Award to Ashley H. Campbell, class of 2003, associate attorney at Ragsdale Liggett, PLLC, in Raleigh.

Law School Welcomes First LL.M. Class—Dean John Charles "Jack" Boger, class of 1974, officially welcomed UNC School of Law's inaugural LL.M. class on August 25. There are six students in the new LL.M. program, including three from South Korea and one each from China, India, and Russia.

PreLaw ***Ranks UNC Law 7th Best for Standard of Living***—UNC School of Law was ranked No. 7 on the list of "Best Law Schools for Standard of Living," according to The National Jurists' *PreLaw* magazine published September 6. UNC was also included in the National Jurist ranking (released August 22) of the nation's "Best Value Law Schools." ■

Client Security Fund Reimburses Victims

At its October 20, 2011, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $68,612.20 to 16 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The new payments authorized were:

1. An award of $23,970.02 to two applicants who suffered losses because of Jennifer Green-Lee of Clayton. The board found that Green-Lee was retained to handle a real estate closing in which one applicant was selling real property to the other. Green-Lee failed to make the proper disbursements from the closing proceeds. Due to misappropriation from her trust account, Green-Lee's trust account balance was insufficient to pay all her clients' obligations. Green-Lee was disbarred on August 19, 2011.

2. An award of $1,076.18 to a former client of Jennifer Green-Lee. The board found that Green-Lee was retained to handle the client's refinance closing. Green-Lee failed to pay off the client's prior loan from the closing proceeds. Although a title insurance company paid most of the applicant's loss pursuant to an Insured Closing Letter, some of the applicant's loss was not covered.

3. An award of $2,500 to former clients of W. Rickert Hinnant of Winston-Salem. The board found that Hinnant was retained to sue the clients' landlord for mold contamination. Hinnant failed to provide any valuable legal services for the fee paid. Hinnant was disbarred on June 15, 2011. The board previously reimbursed two other Hinnant clients $9,000.

4. An award of $1,500 to a former client of Mark Jenkins of Waynesville. The board found that Jenkins was retained to seek lost wages owed by the client's employer. Jenkins failed to provide any valuable legal services for the fee paid. Jenkins was disbarred on March 31, 2011, and died on April 5, 2011.

5. An award of $1,000 to a former client of Mark Jenkins. The board found that Jenkins was retained to represent a client in a custody matter. Jenkins failed to provide any valuable legal services for the fee paid.

6. An award of $19,300 to a former client of Mark Jenkins. The board found that Jenkins was retained by a client in a fiduciary capacity to hold funds intended for a property purchase. When the purchase fell through, the client also retained Jenkins to contest the will of the property owner who had died. Jenkins failed to file suit prior to his death and his trust account balance was insufficient to pay all his clients' obligations due to misappropriation.

7. An award of $4,000 to a former client of Mark Jenkins. The board found that Jenkins was retained to sue a client's neighbor for property damage. Jenkins failed to provide any valuable legal services for the fee paid.

8. An award of $300 to a former client of Mark Jenkins. The board found that Jenkins was retained by a client to get a cremation fee remitted. Jenkins lied to the client about services provided even though he had failed to provide any valuable legal services for the fee paid.

9. An award of $2,100 to a former client of Mark Jenkins. The board found that Jenkins was retained to handle a client's property dispute. Jenkins provided no valuable legal services for the fee paid.

10. An award of $2,500 to a former client of Mark Jenkins. The board found that Jenkins was retained to file a claim against the client's brother's estate for money owed. Jenkins failed to provide any valuable legal services for the fee paid. Jenkins had promised the client a refund prior to his death.

11. An award of $300 to a former client of William Noel III of Henderson. The board found that Noel was retained to prepare a will for a client. Noel failed to prepare the will and promised to refund the fee, but never did. Noel failed to provide any valuable legal services for the fee paid. The board previously reimbursed one other Noel client $150.

12. An award of $65 to a former client of William Noel III. The board found that Noel was retained to handle a traffic matter. Noel failed to appear on the client's behalf and provided no valuable legal services for the fee paid.

13. An award of $500 to a former client of William Noel III. The board found that Noel was retained to handle a client's traffic matters. Noel failed to appear on the client's behalf and provided no valuable legal services for the fee paid.

14. An award of $4,060 to a former client of Mark Waple of Fayetteville. The board found that Waple was retained to petition the Army Discharge Review Board for a change in the client's discharge certificate. Waple failed to file the petition prior to abandoning his practice. The board previously reimbursed four other Waple clients $30,850.

15. An award of $5,441 to a former client of Mark Waple. The board found that Waple was retained to handle a wrongful discharge matter. Waple charged the client a separate fee for an administrative hearing that he did not attend. ■

2012 Meeting Schedule

Below are the 2012 dates of the quarterly State Bar Council meetings.

January 24 - 27	Raleigh Marriott City Center, Raleigh
April 24 - 27	Raleigh Marriott City Center, Raleigh
July 17 - 20	Carolina Hotel, Pinehurst
October 23 - 26	Raleigh Marriott City Center, Raleigh
	(Election of officers on October 25, 2012 at 11:45 am)

John B. McMillan Distinguished Service Award

Recent Award Recipients

George Rountree III is a recipient of the John B. McMillan Distinguished Service Award. Born in Wilmington, Mr. Rountree received his undergraduate degree, *cum laude*, from the University of Arizona, where he was the co-captain of the varsity basketball team. In 1960, Mr. Rountree received his LLD from the University of Arizona College of Law, and thereafter returned to his native Wilmington. In the 1970s, Mr. Rountree served in the North Carolina House of Representatives and North Carolina Senate, and was the legislative counsel to Governor James E. Holshouser Jr. in 1975. A proctor member of the Maritime Law Association and a member of the Southeastern Admiralty Law Institute, Mr. Rountree was inducted into the North Carolina Bar Association General Practice Hall of Fame in 2004. Mr. Rountree is very active in his community, serving on the Board of Trustees of the University of North Carolina-Wilmington and holding leadership positions with the YMCA, the Sertoma Club, the New Hanover Regional Medical Foundation, and the Wilmington Regional Film Commission. Mr. Rountree has trained numerous young lawyers, is a role model in New Hanover County, and remains a zealous advocate for his clients. Mr. Rountree's tireless commitment to worthy causes and his distinguished career as a lawyer in New Hanover County make him a worthy recipient of the John B. McMillan Distinguished Service Award.

Richard J. "Dick" Tuggle is a recipient of the John B. McMillan Distinguished Service Award. Mr. Tuggle is a double Tar Heel, receiving both his undergraduate degree and law degree, with honors, from the University of North Carolina at Chapel Hill. Both an accountant and an attorney, he became a licensed CPA in 1955 and a licensed lawyer in 1959. He started his legal career with what is now Smith Moore Leatherwood following a brief accounting career and service in the United States Army. In 1974, Mr. Tuggle left the Smith firm to found Tuggle Duggins & Meschan, where he has remained ever since, watching the firm grow to 32 lawyers. He concentrates his practice in mergers and acquisitions, general business litigation, taxation, and estate planning.

Mr. Tuggle is a founder, trustee, and past-president of the Southern Federal Tax Institute; founder and past-president of the Greensboro Estate Planning Council; a member of the NC Association of CPAs; has been listed in *The Best Lawyers in America* since 1991; and is one of only 16 North Carolina fellows in the American College of Tax Counsel. Recently, the North Carolina society of CPAs gave Mr. Tuggle a lifetime achievement award. A lawyer who truly loves his job, Mr. Tuggle is a wonderful role model to members of the 18th Judicial District and is known and revered for his tireless work ethic, his mastery of the law, and his mentorship to all that have worked with him. ■

Seeking Distinguished Service Award Nominations

The John B. McMillan Distinguished Service Award program honors current and retired members of the North Carolina State Bar throughout the state who have demonstrated exemplary service to the legal profession. Such service may be evidenced by a commitment to the principles and goals stated in the Preamble to the Rules of Professional Conduct, for example: furthering the public's understanding of and confidence in the rule of law and the justice system; working to strengthen legal education; providing civic leadership to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel; seeking to improve the administration of justice and the quality of services rendered by the legal profession; promoting diversity and diverse participation within the legal profession; providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; encouraging and counseling peers by providing advice and mentoring; and fostering civility among members of the bar.

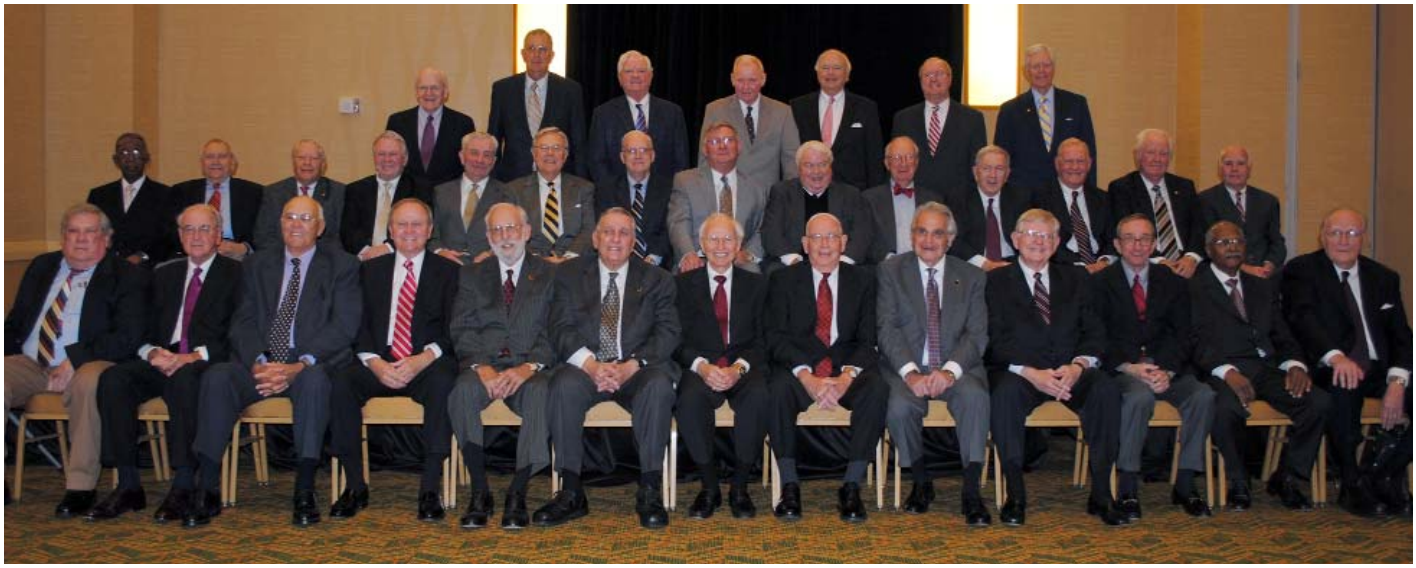
Awards will be presented in recipients' districts, usually at a meeting of the district bar. The State Bar Councilor from the recipient's district will participate in introducing the recipient and presenting the certificate. Recipients of the Distinguished Service Award will also be recognized in the State Bar *Journal* and honored at the State Bar's annual meeting in Raleigh. Members of the bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, www.ncbar.gov. Please direct questions to Peter Bolac at the State Bar office in Raleigh, (919) 828-4620. ■

Notice of Revocation of Registrations of Prepaid Legal Services Plans

The registrations of Family Estate Solutions and Professional Legal Plans are revoked as of September 6, 2011. Pursuant to the State Bar's rules and regulations, North Carolina licensed attorneys cannot participate in these plans as the plans are no longer registered to operate in North Carolina.

Fifty-Year Lawyers Honored

As is traditional, 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, Robert F. Baker, addressed the gathering, and each honoree was presented a certificate by the president of the State Bar, Anthony S. di Santi, in recognition of his service. After the ceremonies were concluded, the honorees in attendance sat for the photograph below. ■



First row (left to right): William T. Rightsell Jr., Lloyd F. Baucom, Ted B. Lockerman, Palmer E. Huffstetler Sr., Robert T. Hedrick, Gus L. Davis Jr., Leon H. Corbett Jr., Charles M. Davis, Robert Morton Weinstein, John H. Zollicoffer Jr., James Y. Preston, Theaoseus T. Clayton, Emil F. "Jim" Kratt Second row (left to right): Calvin L. Brown, Peter N. Maydanis, William H. McNair, Donald L. Boone, John E. Raper Jr., Henry A. Mitchell Jr., J. Patrick Adams, William W. Aycock Jr., Robert M. Clay, Alfred L. Purrington III, Josiah S. Murray III, T. S. Royster Jr., P. C. Barwick Jr., Wiley F. Bowen Third row (standing, left to right): Joe T. Millsaps, Samuel S. Williams, H. Parks Helms, William L. Powell Jr., Edgar B. Fisher Jr., Carl J. Stewart Jr., Robert F. Baker

Annual Reports of State Bar Boards

Board of Legal Specialization

Submitted by Jeri L. Whitfield, Chair

It has been another successful year for the State Bar's specialization program. In the spring, we received 96 applications from lawyers seeking certification. This includes 18 applicants for our newest specialty in appellate practice. There are currently 818 board certified specialists in the nine other specialty areas of bankruptcy law, criminal law, elder law, estate planning and probate law, family law, immigration law, real property law, social security disability law, and workers' compensation law.

Supreme Court Justice Robert Edmunds chaired the specialty committee appointed to write the standards for the new specialty in appellate practice. He and his committee of six appellate judges and practitioners spent countless hours over the past ten months working with a psychometrician to develop an examination on appellate practice that is valid, reliable, and will realistically test appellate practice skills. The committee's work included pre-testing the exam on four Supreme Court and court of appeals law clerks who volunteered for the assignment (or so we were told). The exam will be administered on October 21 and November 2. One part of the exam is take-home: examinees will have a week to critique and edit a 32-page brief. The board hopes that this experiment in alternative exam formats will open the way for more innovative approaches to testing for the other specialty certifications. The board is grateful to Justice Edmunds and the members of his committee for their exceptional dedication to writing an exemplary exam.

At the annual luncheon honoring newly-certified specialists on April 29 in Chapel Hill, I had the honor of presenting the board's three special recognition awards named in honor of past chairs of the board. The Howard L. Gum Excellence in Committee

Service Award was given to Charles Coltrane, a Greensboro lawyer who is chair of the family law specialty committee. The James E. Cross Leadership Award was presented to Vernon Sumwalt from Charlotte for his leadership in the field of workers' compensation law. The Sara H. Davis Excellence Award was presented to councilor and specialist Marcia Armstrong from Smithfield for her excellent work in family law.

This year the State Bar *Journal* featured interviews with board certified specialists George Oliver who practices bankruptcy law in New Bern, and Supreme Court Justice Edmunds who talked about his experience as a certified specialist in state, federal, and appellate criminal law as well as his current leadership of the appellate practice specialty committee. I was also honored to be interviewed about my certification in workers' compensation law and my new position as chair of the Board of Legal Specialization.

In August, the Supreme Court approved rules creating a new criminal law subspecialty in juvenile delinquency law which will be offered for the first time in 2012. The request to create the subspecialty came directly from juvenile defense lawyers who labor in a difficult and poorly compensated practice area where the stakes are high for the children they represent. Recognition as a certified specialist will be uniquely meaningful to these unsung heroes of the legal profession.

Sadly, the terms of board members Michael Weddington and public member Steve Jordan ended this year. While serving as board chair from 2008 to 2011, Mike used gentle persuasion, personal integrity, and an open mind to guide the board and the staff toward the establishment of enlightened, effective, and pragmatic policies for the administration of the specialization program. Steve's experience as the administrator of group homes and subsequently with the Department of Health and Human Services gave him insight into board policies and procedures that was invaluable during board deliberations.

Although we will miss Mike and Steve, we are exceptionally pleased with the new board members appointed by the council in July. Public member Priscilla Patterson Taylor from Chapel Hill brings a wealth of experience and wisdom to the board from her former work as the executive director of a private charitable foundation and over ten years of service on the UNC Board of Governors. Judge Teresa Vincent, a district court judge in Greensboro for 11 years, will provide a judicial perspective on specialization. Both new board members hit the ground running at their first board meeting in September when neither was shy about joining in a lively debate on whether related-field, nonlawyer professionals should be allowed to serve as peer references for specialty applicants. The board voted unanimously (including the public members) to table the proposal indefinitely. I extend the board's appreciation to the council for these two excellent appointments.

I also want to express my appreciation for the excellent work of the NC State Bar staff. The board is particularly appreciative of the thoughtful, organized leadership provided by Alice Mine and her able staff of Denise Mullen and Lanice Heidbrink.

In closing, on behalf of the board I want to say "thank you" to the council for its continuing support and assistance in meeting the two key objectives of the specialization program: assisting the public by identifying qualified practitioners who are proficient in specialty areas, and improving the competency of the bar. With your support, the board will continue to meet these goals by establishing specialties in areas appropriate for certification and by applying reasonable, objective standards for certification that protect the interests of the public.

Board of Continuing Legal Education

Submitted by Marcia Armstrong, Board Member

On behalf of the Board of Continuing Legal Education I am honored to present the annual report on the continuing legal education program.

Despite bad economic times, lawyers continue to meet and exceed their mandatory CLE requirements, and I am pleased to report that 99% of the active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2010. By mid-March 2011, the CLE department processed and filed over 22,400 annual report forms for the 2010 compliance year. North Carolina lawyers took a total of 324,282 hours of CLE in 2010, or 13 CLE hours on average per lawyer. This is one hour above the mandated 12 CLE hours per year, an increase from 2009 when lawyers took an extra half hour of CLE on average.

The board strongly supports the 12 hour professionalism requirement for lawyers licensed on or after January 1, 2011. This requirement will help new lawyers start the practice of law with a solid understanding of their professional and ethical obligations—it goes to the heart of the State Bar's mission to ensure that the public is served by lawyers who are competent and who understand our system of self-governance. Attendees are required to complete an evaluation of the program to receive CLE credit. The feedback from the evaluations will be used to adjust the content requirements for the program next year. One evaluator said that the program "refreshed and refined some of the knowledge I already had, and also touched on materials/issues that I was previously oblivious to." Another complimented the "wealth of practical information on how to set up my own practice." Many found the technology and law practice management sections to be exceptionally helpful. Although the overall view of the program was positive, there was criticism of "Bar scare tactics" and of the redundancy of the content on ethics and professionalism. Of course, many of the evaluators simply recommended more coffee breaks.

On March 10, 2011, the Supreme Court approved amendments to the reinstatement rules requiring a lawyer who petitions for reinstatement to complete 12 hours of CLE for each year that the lawyer was either inactive or suspended. Of the 12 hours, at least two hours must be in the area of professional responsibility, and five hours must be earned by attending practical skills courses.

This year the board studied whether the four credit hours allowed for online CLE should be expanded and whether to allow credit hours for self-study programs. After a lengthy discussion, the board determined that the rules should not be amended at this time.

The board continues to operate on a sound financial footing and in 2011 provided $383,466 in funding for the support of the Lawyers Assistance and Equal Access to Justice programs.

Board member Renee Hill is retiring this year. Renee joined the board in 2005 and as a law professor has provided a unique perspective on mandatory continuing legal education. The board greatly appreciates her service, and she will be missed.

The board will continue to strive to improve the program of mandatory continuing legal education for North Carolina lawyers. We welcome any recommendations or suggestions that councilors may have in this

regard. On behalf of the other members of the board, I would like to thank you for the opportunity to contribute to the protection of the public by advancing the competency of North Carolina lawyers.

Board of Paralegal Certification

Submitted by Renny W. Deese, Chair

Ladies and Gentlemen of the council, it is my pleasure to present the annual report of the Board of Paralegal Certification.

The Board of Paralegal Certification accepted the first application for certification on July 1, 2005. Since that date over 5,800 applications have been received by the board, and I am proud to report that there are currently 4,169 North Carolina State Bar certified paralegals.

Since July 2008, certification as a paralegal has required passage of a rigorous three-hour, 150 question, multiple-choice examination. The exam tests an applicant's knowledge of the following subjects: civil litigation, commercial law, criminal law, ethics, family law, legal research, real property, and wills, trusts, and estate administration; and the following practice domains: communication, organization, documentation, analysis, and research. The exam requires an applicant to demonstrate that he or she possesses the skills and knowledge necessary to provide competent assistance to lawyers.

The exam is administered in April and October. On October 1, 234 applicants sat for the exam. This was the largest pool of applicants for the exam to date. Although we have only anecdotal evidence to support our conclusion, we believe that the exam has become—and please forgive the pun—a "rite of passage" for new graduates of qualified paralegal studies programs at the state's community colleges and private institutions. It is the expected "next step" on the road to employment as a paralegal.

The Certification Committee that writes the exam is composed of seven exceptionally dedicated paralegals and paralegal educators. The terms of three members of the committee recently ended. On behalf of the board I would like to recognize and thank these selfless, hard-working volunteers. Lisa Duncan, the chair of the committee for six years, is now a member of the board and we continue to benefit from her experience as the director of the paralegal program at Central Carolina Community College. Virginia Burrows, a paralegal for K & L Gates, and Leslie McKesson, paralegal program coordinator for Western Piedmont Community College, were both instrumental to the committee's work. We are grateful for the volunteer service of the following paralegals and paralegal educators who are replacing Lisa, Virginia, and Leslie: Patricia F. Clapper of Chapel Hill and Kaye H. Summers from Durham, both paralegals for private firms, and Warren C. Hodges, the director of the paralegal program at Forsyth Technical Community College. Teresa Irvin, a six-year veteran of the committee, will serve as chair.

To maintain certification a certified paralegal must earn six hours of continuing paralegal education (CPE) credits—including one hour of ethics—every 12 months. I am pleased to report that certified paralegals continued to improve their competency by taking over 25,000 hours of CPE in the last 12 months.

Also during the past 12 months the board accomplished the following:

- Certified 242 paralegals by exam
- Recertified 3,037 paralegals
- Administered the exam to 402 applicants for certification
- Held numerous information sessions for paralegal students
- Taught CPE programs on professional responsibility

The term of Barry D. Mann, one of the founding members of the Board of Paralegal Certification, ends with this meeting of the council. Barry, who is a partner with the Raleigh firm of Manning, Fulton & Skinner, has served as the vice-chair of the board since his appointment. During this time he has been a champion of paralegals and a dedicated supporter of our certification credential. Barry brought an open mind and an open heart to the work of the board. Barry's good humor and compassion will be missed.

The term of paralegal board member Marguerite J. Watson, another founding member of the board, has also come to an end. Although soft-spoken, Mardy is a passionate supporter of paralegals and the certification credential. Mardy has dedicated her time and talent to the work of the board—religiously attending almost every board meeting since her appointment to the inaugural board. Her kindness and gentle persuasion will be missed.

Some of you will recall that at the October 2009 annual meeting the board presented a check to then-President John McMillan in amount of $500,000 as the contribution of the paralegal certification program to the construction of the new State Bar building. This contribution was possible because paralegals embraced the certification program from its inception, thereby enabling the program to operate "in the black" financially from the beginning. Prudent and frugal management of the program has again resulted in an accumulation of excess funds. As before, a board committee consisting of two paralegals and one lawyer was appointed to study how the funds should be used. The full board enthusiastically adopted the committee's recommendation that the excess funds be used to advance the administration of justice, a shared goal of lawyers and paralegals. At this time,I would like to ask Hank Hankins, the chair of the IOLTA board, to come forward for this presentation of a check for $100,000 to be used by the IOLTA program for grants to improve the administration of justice in our state.

The Board of Paralegal Certification looks forward to continued success as an integral part of the North Carolina State Bar.

Client Security Fund

Submitted by M. Ann Reed, Chair

Pursuant to the Rules of Administration and Governance of the Client Security Fund of The North Carolina State Bar (the "Fund"), the Board of Trustees submits this annual report covering the period October 1, 2010, through September 30, 2011.

The Fund was established by order of the Supreme Court dated October 10, 1984, and commenced operations January 1, 1985. As stated by the Supreme Court, the purpose of the Fund is "...to reimburse, in whole or in part in appropriate cases and subject to the provisions and limitations of the Supreme Court and [the] Rules, clients who have suffered financial loss as a result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina..."

Claims Procedures

The Fund reimburses clients of North Carolina attorneys where there was wrongful taking of the clients' money or property in the nature of embezzlement or conversion, which money or property was entrusted to the attorney by the client by reason of an attorney/client relationship or a fiduciary relationship customary in the practice of law. Applicants are required to show that they

have exhausted all viable means to collect those losses from sources other than the Fund as a condition to reimbursement by the Fund. Specific provisions in the Rules declare that certain types of losses are non-reimbursable.

All reimbursements are a matter of grace in the sole discretion of the board and not a matter of right. Reimbursement may not exceed $100,000 to any one applicant based on the dishonest conduct of an attorney.

The Board of Trustees

The board is composed of five trustees appointed by the council of the State Bar. A trustee may serve only one full five-year term. Four of the trustees must be attorneys admitted to practice law in North Carolina, and one must be a person who is not a licensed attorney. Current members of the board are:

M. Ann Reed, Chair, a former president of the North Carolina State Bar who just retired from her position as the senior deputy in the administrative division of the Attorney General's Office.

Karol P. Mack, vice-chair, is associate general counsel for Duke Energy Corporation in Charlotte.

Michael Schenck, the public member of the board, is a former CFO of Penick Village in Southern Pines and is retired and living in Raleigh.

William O. King, a former president of the North Carolina State Bar, is a partner with the firm of Moore & Van Allen, PLLC in Durham,.

LeAnn Nease Brown is an attorney with the firm of Brown & Bunch, PLLC in Chapel Hill.

Subrogation Recoveries

It is standard procedure to send a demand letter to each attorney or former attorney whose misconduct results in any payment, making demand that the attorney either reimburse the Fund in full or confess judgment and agree to a reasonable payment schedule. If the attorney fails or refuses to do either, suit is filed seeking double damages pursuant to N.C.G.S. §84-13 unless the investigative file clearly establishes that it would be useless to do so.

In cases in which the defrauded client has already obtained a judgment against the attorney, the Fund requires that the judgment be assigned to it prior to any reimbursement. In North Carolina criminal cases involving embezzlement of client funds by attorneys, our counsel, working with the district attorney, is sometimes able to have restitution ordered as part of the criminal judgment.

Another method of recovering amounts the Fund pays to clients of a dishonest attorney is by being subrogated to the rights of clients whose funds have been "frozen" in the attorney's trust account during the State Bar's disciplinary investigation. When the court disburses the funds from the trust account, the Fund gets a pro-rata share.

During the year covered by this report the Fund recovered $62,368.34 as a result of these efforts. Hopefully our efforts to recover under our subrogation rights will continue to show positive results.

Claims Decided

During the period October 1, 2010 - September 30, 2011, the board decided 76 claims, compared to 84 claims decided the previous reporting year. For various reasons under its rules the board denied 47 of the 76 claims in their entirety. Of the 29 remaining claims, some were paid in part and some in full. Reimbursements authorized totaled $460,379.87. The most common basis for denying a claim in its entirety is that the claim is a "fee dispute" or "performance dispute." That is, there is no allegation or evidence that the attorney embezzled or misappropriated any money or property of the client. Rather, the client feels that the attorney did not earn all or some part of the fee paid or mishandled or neglected the client's legal matter. However meritorious the client's contentions may be, the Fund's rules do not authorize reimbursement under those circumstances.

Funding

The 1984 order of the Supreme Court that created the Fund contained provisions for an assessment of $50 to provide initial funding for the program. In subsequent years, upon being advised of the financial condition of the Fund, the Court in certain years waived the assessment and in other years set the assessment in varying amounts to provide for the anticipated needs of the Fund.

In 2006 the Supreme Court approved a $25 assessment per active lawyer that will continue from year-to-year until circumstances require a modification. There is no need for a change in the assessment for calendar year 2012.

Financial Statements

A copy of the audited financial statement of the Fund as of September 30, 2010, has previously been furnished to each member of the council.

Conclusion

The Board of Trustees wishes to convey to the council our sincere appreciation to the staff personnel who have assisted us so effectively and generously during the past year. Without the continuous support of these people, our tasks would be much more difficult. We also express our appreciation to the Bar of North Carolina for their continued support of the Client Security Fund and their efforts in reducing the incidents of defalcation on the part of a few members of our profession.

Lawyer Assistance Program

Submitted by Mark W. Merritt, Chair

It has been a busy and productive year for the North Carolina Lawyer Assistance Program ("LAP"). The State Bar's rule governing the Lawyer Assistance Program provides:

> .0601 Purpose
>
> The purpose of the Lawyer Assistance Program is to: (1) protect the public by assisting lawyers and judges who are professionally impaired by reason of substance abuse, addiction, or debilitating mental condition; (2) assist impaired lawyers and judges in recovery; and (3) educate lawyers and judges concerning the causes of and remedies for such impairment.

The LAP is fulfilling its mission. In its 32nd year of operation the LAP responded to numerous calls and had many personal interviews with lawyers, judges, and law students. These contacts resulted in a current caseload as of the end of September of 791 cases.

Since 2000 the LAP has assisted over 1,912 lawyers, or approximately 7.6% of the bar. The individuals we serve often include the bar's most disadvantaged and distressed members.

Of our current files, 48% were opened as a result of voluntary contacts by a lawyer, judge, or law school student seeking assistance. The majority of the other files were opened after other members of the bar expressed concern to the LAP about an impaired lawyer. With respect to the cases that were opened, 58% involved psychological or mental health disorders, and 42% involved substance abuse or chemical addiction. The LAP handled 12 files

which involved preadmission issues referred by the Board of Law Examiners.

In 2007 the State Bar Council asked for there to be greater coordination between the Office of Counsel and the Lawyer Assistance Program in cases where the discovery or potential discovery of misappropriated client funds might lead to a suicide risk. The LAP has continued to be proactive in this context when it becomes aware of lawyers facing the likelihood of disbarment, offering assistance to the lawyer.

The LAP participated in a "Well Being in the Workplace" survey sponsored by the North Carolina Consortium of Professional Recovery Programs ("CPRP") and conducted by Professor Darcy Siebert of Rutgers University. Professor Siebert made an initial presentation on the survey's results to the State Bar Council at its April 2010 meeting. Her first two articles on the survey have been published in the State Bar *Journal*. Professor Siebert is working on additional articles. The next one is anticipated to be published in the *Journal* in 2012. The survey data and Professor Siebert's analysis continue to be very helpful in assisting the LAP to better understand the needs of the lawyers we serve.

The LAP internet site remains an important source of information about the LAP and how to contact the program. The website provides a listing of the members of the PALS Committee and the FRIENDS Committee, the two LAP peer group support committees, as well as information about depression and chemical addiction. Many calls, especially from younger lawyers, come from lawyers who first consulted the website.

The LAP website also contains pages which provide a comprehensive list of resources and confidential self-tests for substance abuse and depression. In addition, the website provides information about the two annual training workshops for volunteers, and a library of articles related to topics relevant to lawyer assistance.

As has been true over the years, the LAP network of volunteers and lawyer support groups provide a major part of the assistance given by the LAP to lawyers around the state. Without the extended volunteer network it would be impossible for the LAP to be as effective as it has been during the past year. Staff and volunteer efforts have prevented or limited possible harm to the public in numerous instances. In cases where discipline is initially deferred, or the lawyer is operating under a stayed suspension, the LAP's intervention has offered the opportunity to identify and resolve the root problems out of which the discipline issue arose and furthered the Bar's mission of protecting the public.

In 2010 Don Carroll announced his intention to retire as LAP Director at the end of 2011. Under the leadership of the chair, the LAP Committee made recommendations to President Anthony di Santi, President-Elect Jim Fox, Vice-President Keith Kapp, and Executive Director Tom Lunsford on a successing director. From a field of outstanding candidates, Robynn Moraites was hired effective July 1, 2011, as the new LAP director. Don has continued to work hand-in-hand with Robynn in order to assure the smoothest possible transition.

Details of the North Carolina Lawyer Assistance Program

The LAP provides assessment, referral, intervention, education, advocacy, and peer support services for all North Carolina lawyers and judges.

The LAP is designed to help lawyers find a way to address a wide range of health and personal issues including, most commonly, alcohol/drug abuse, stress/burnout, depression, anxiety, and compulsive disorders of all kinds including those involving food, sex, work, gambling, and the internet.

All calls are strictly confidential.

Educational Outreach

The North Carolina Lawyer Assistance Program believes that intervention begins with educating all segments of the bench, bar, and law schools about addiction, mental health issues, compulsive disorders, and recovery from those conditions. The LAP efforts have continued this year through presentations at law schools, ethics CLE workshops, and local and specialty bar association meetings.

The LAP sponsored several presentations and video presentations across the state in 2010-2011.

LAP CLE Videos

In January 2011 a new LAP history video entitled "A Story of Honesty, Compassion, and Hope" was provided to all Bar councilors to be made available in their districts to fulfill the triannual substance abuse/mental health (ethics) CLE requirement. LAP CLE videos have been shown 15 times throughout the state.

LAP Information Flyers/Brochures

- LAP (four-fold) flyer: North Carolina Lawyer Assistance Program
- PALS: Alcoholism and Other Chemical Addictions
- FRIENDS: Depression and Mental Health
- A Guide for North Carolina Judges: Dealing with an Impaired Lawyer
- Black Lawyers Association Leadership Urges Members Use of Lawyer Assistance Program
- Breaking the Silence – Lawyer Suicide
- A Chance to Serve
- Welcome to the Legal Profession
- Women Bar Leaders Encourage Use of Lawyer Assistance Program
- Impairment in the Legal Profession – A Guide for New Bar Councilors and Local Bar Leaders

LAP flyers/brochures are included in new lawyer packages, volunteer packages, requests for information by prospective clients, and in CLE programs. Approximately 2,500 LAP flyers/brochures were distributed in the presentations made this past year. Bar councilors are encouraged to obtain any flyers/brochures that may be helpful to be distributed in their districts.

The LAP book *A Lawyer's Guide to Healing* has been distributed as part of the LAP outreach.

Articles

LAP columns were submitted quarterly to the State Bar *Journal*.

Volunteer Development

Substantial efforts continue to be devoted to volunteer development. As of September 30, 2011, there were 145 PALS volunteers and 95 FRIENDS volunteers.

Training

The 31st Annual PALS Meeting and Workshop was held November 5-7, 2010, at the Holiday Inn Sunspree, Wrightsville Beach, North Carolina. Chief Justice Sarah Parker was in attendance. Guest speakers included Dr. Melissa Warner and Eleanor Woollard.

The FRIENDS 12th Annual Conference was held at Pine Needles Lodge & Conference Center, Southern Pines, North Carolina, on February 26, 2011. This conference was in conjunction with BarCares and the NC Bar Association Quality of Life Committee.

The ABA Annual CoLAP Conference was held in Tampa, Florida, September 13-16, 2011.

Upcoming Events

The 32nd Annual PALS Conference and Workshop will be held November 4-6, 2011, at the Crowne Plaza Resort, Asheville, North Carolina.

The FRIENDS 13th Annual Conference will be held at Pine Needles Lodge & Conference Center, Southern Pines, North Carolina, on February 25, 2012. This conference will be again be in conjunction with BarCares and the NC Bar Association Quality of Life Committee.

The ABA Annual CoLAP Conference will be held in Grand Rapids, Michigan, September 11-14, 2012.

Local Volunteer Meetings

The Lawyer Assistance Program continues the development of local volunteer meetings to provide greater continuity and support in meeting the needs of lawyers new in recovery and allowing volunteers the chance to grow in their own recoveries. Local volunteer support meetings for PALS and FRIENDS are held in many locations. Details on meeting locations are available on the LAP website, nclap.org.

Volunteer Communication

The LAP sends out *The Intervenor,* a newsletter, to all PALS volunteers three to four times a year to enhance communication among the volunteer network. Volunteers have contributed by writing articles for *The Intervenor* and by sharing personal stories in the *Journal.*

Case Management

Case management has four different stages:

1. Investigation – Initial contact with the program begins the investigative phase. All efforts at this stage are directed to determining if the lawyer has a problem with which the LAP can assist, the nature of the problem, and if the client is willing to get assistance.

2. Treatment/Stabilization – This phase begins when a lawyer understands that he/she needs help and agrees to obtain assistance.

3. Monitoring/Aftercare – This begins when a lawyer has completed inpatient/outpatient treatment or initial therapy consultations and is stabilized in a recovery program. In this stage the volunteer support is most active and helpful.

4. Inactive Status – A file is placed on inactive status when the active role of the LAP terminates. This may occur when the lawyer completes an initial two-year contract of monitoring and no longer needs a monitor, or the lawyer dies, moves out of state, is disbarred, or no longer wants any assistance.

Case Management Statistics

Statistics about the program reflect the number of people getting help; they do not reflect the time it takes to deliver that assistance. A self-referral might be appropriate for a phone evaluation and be immediately directed to a treating counselor to meet his/her needs. On the other hand, a third-party initiated investigation may take weeks to complete and even then the file may be put on hold for months in order for there to be sufficient opportunity to ascertain if the lawyer truly needs assistance. Every effort is made not to interfere by offering assistance unless there is meaningful evidence suggesting that it is needed or the lawyer is actively seeking help. Even then, in the addictions area assistance when offered is often initially refused, and the LAP may spend months building up trust so that assistance can be received when the lawyer finally becomes receptive. Like cases in law practice, the problem cases can often take tremendous amounts of time to move forward. Our approach is never to give up on offering help, but often that means waiting until a situation ripens. To be able to make client access to the LAP easier, the state of North Carolina is divided into three sections. Don Carroll's successor, Robynn Moraites, is now handling cases in the Western part of the state. Towanda Garner handles the piedmont section, and Ed Ward the eastern part of the state. Any lawyer may seek the help of any member of the professional staff. The continued expansion and utilization of trained volunteers will remain a key component in our future ability to bring assistance to more lawyers who need it.

Outcome Data

The cases that have been coded as successfully handled are a broad category that emphasizes help to the lawyer. First and foremost this includes cases where the client had a significant problem, entered into a recovery contract with the LAP, and successfully completed the contract. In addition, it includes cases where there was informal assistance given and a positive result achieved for the lawyer. This category also includes (1) cases where an investigation was made, or the client contacted and offered assistance, with the result that it was determined that no further action was needed on the client's behalf; and (2) cases that were investigated, the investigation was inconclusive as to the need for assistance, and the case was closed after two years when there did not appear any new information that help was needed. The success category does not include lawyers who died, went on disability status, were disbarred, or moved out of state. Although these categories reflect elimination of potential harm to the public, they do not show that a lawyer was actually helped. We regard outcomes as unsuccessful where a contract was entered into and the client failed in his or her efforts to achieve recovery, where a client went to treatment and left treatment and did not pursue recovery, and cases where it was unsuitable for the LAP to provide assistance.

The LAP is currently handling 791 files. There are 332 PALS and 459 FRIENDS files.

PALS Referrals:	**FRIENDS Referrals:**
Other Lawyer 87	Other Lawyer 83
Bar Staff 12	Bar Staff 45
Self 124	Self 253
Physician 1	Physician 2
Local Bar 1	Local Bar 3
Judge 23	Judge 11
Grievance 8	Grievance 14
Nonlawyer 4	Nonlawyer 8
Firm 20	Firm 13
Family 18	Family 6
DHC 2	DHC 6
DA 4	DA 1
BOLE 11	BOLE 1
Bar Examiner 1	Bar Examiner 1
EAP 0	EAP 1
Investigator 0	Investigator 2
Another LAP 4	Another LAP 3
Therapist 5	Therapist 1
Law School 4	Law School 0
Employee 0	Employee 2
Unknown 3	Unknown 3

Governance

Under the rules of the NC State Bar Council the LAP is governed by a nine-member board. The NC State Bar Council appoints the members of the Lawyer Assistance Program Board in three different groups: Three councilors of the NC State Bar; three persons with experience and training in the fields of mental health, substance abuse, and addiction; and three Bar members

CONTINUED ON PAGE 70

February 2012 Bar Exam Applicants

The February 2012 Bar Examination will be held in Raleigh on February 28 and 29, 2012. Published below are the names of the applicants whose applications were received on or before October 4, 2011. 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 Fred P. Parker III, Executive Director, Board of Law Examiners, PO Box 2946, Raleigh, NC 27602.

Melissa Abrams
Raleigh, NC
Davood Ahmadi-Torshizi
Raleigh, NC
Ryan Alber
Greensboro, NC
Michelle Allen
Raleigh, NC
James Allen
Durham, NC
Dawnwin Allen
Charlotte, NC
Wanda Allen-Abraha
Winston-Salem, NC
Leslie Amos
Raleigh, NC
Donald Anderson Jr
Apex, NC
John Arco
Clarksburg, WV
Zachary Armfield
Hope Mills, NC
Najib Azam
Greensboro, NC
Gwendolyn Babson
Winnabow, NC
Blair Bacisin
Raleigh, NC
Amanda Bailey
Charlotte, NC
Sarah Banks
Charlotte, NC
Nina Banks
Durham, NC
Raven Barron
Hickory, NC
Kimberly Bart
Durham, NC
Daniel Becker
Raleigh, NC
Brandon Belcher
Belvidere, NC
Helena Bell
St. Louis, MO
Margo Bennett
Williamston, NC
Kathryn Paige Berntson
Burlington, NC
Ariadne Berrios-Febles
Charlotte, NC
Stephen Billy
Charlotte, NC
Myra Blake
Chapel Hill, NC
Charles Blanton
Wilmington, NC
Jocelyn Bolton
Cary, NC
Dan Bolton
San Antonio, TX
William Bost
Salisbury, NC
Catherine Boutaud
Cary, NC
Tia Bowman
Cary, NC
Brittany Boykin
Greenville, SC
Michael Bradenham
Spring Lake, NC
Joyce Brafford
Raleigh, NC
Jennine Brazell
Charlotte, NC
Adam Breeding
Cornelius, NC
James Brown
Charlotte, NC
Ignazzina Brucia
Matthews, NC
Danielle Brudi
Mooresville, NC
James Bryan Jr
Raleigh, NC
Adrienne Bryant Clark
Wilson, NC
Jennifer Buchner
Charlotte, NC
Anna Buonya
Raleigh, NC
Travis Bustamante
Charlotte, NC
Pamela Butler
Wilmington, NC
Joseph Cabosky
Granville, OH
Leon Cain II
Fairfax, VA
Jazmin Caldwell
Charlotte, NC
Christine Camacho
Charlotte, NC
Christopher Cambridge
Raleigh, NC
Andrew Carmine
Wilmington, DE
Peter Carney
Delray Beach, FL
Alexis Carr
Greenville, NC
Amanda Carrano
Charlotte, NC
Taylor Carraway
Walstonburg, NC
Baccuhus Carver
Lillington, NC
Leslie Casse
Asheville, NC
Yuli Castro Lezcano
Durham, NC
Tasha Caulder
Hickory, NC
Judy Chang
Los Angeles, CA
Whitney Cherry
Jamestown, NC
Amanda Chestnut
Shallotte, NC
Devin Chidester
Mount Pleasant, SC
Nalina Chinnasami
High Point, NC
Jeong Yeong Cho
Ellicott, MD
Shin Jin Choi
Mint Hill, NC
Daniel Chung
Charlotte, NC
Christopher Clark
Miramar, FL
Nathaniel Coats
Raleigh, NC
William Collier III
Fort Washington, MD
Christian Connolly
Rehoboth, MA
Kristofer Cook
Durham, NC
Ross Cook
Chapel Hill, NC
Robert Core
Greensboro, NC
Melissa Cormier
Cary, NC
Kate Cosner
Traphill, NC
Jesse Coyle
Pinehurst, NC
Chanel Crawford
New Bern, NC
Michael Cromwell
Durham, NC
Delisa Daniels
Greensboro, NC
Matthew Danielson
Richmond, VA
Brenna Davenport
Raleigh, NC
Christa Davis
Burlington, NC
Morgan Davis
Raleigh, NC
Laura Dean
Brooklyn, NY
Steve Dellinger
Richmond Heights, MO
Brian Dempsey
West Orange, NJ
Buck Denton
Spring Hope, NC
Costina Detterman
Raleigh, NC
Andrew Dillon
Charlotte, NC
Christopher Douglas
Charlotte, NC
Melvin Dove
Saint Petersburg, FL
Nicholas Dowgul
Raleigh, NC
Jamie Duncan
Fort Mill, SC
James Duncan
York, SC
Donald Edmonds
Waxhaw, NC
Richard Edwards
Belmont, NC
Kriston Efird
Charlotte, NC
Jane Elbert
Cary, NC
Anderson Ellis
Spring Hill, TN
Susan Ervin
Mooresville, NC
Kelli Espaillat
Matthews, NC
Ingrid Eubanks
Durham, NC
Delicia Evans
Raleigh, NC
Patrice Featherstone
St. Petersburg, FL
Cecilia Featherstone
Jamestown, NC
Nicholas Fernez
Raleigh, NC
Jason Fife
Flat Rock, NC
Sheneshia Fitts
Raleigh, NC
Amy Folk
Durham, NC
Brandee Ford
Raleigh, NC
David Fox
Raleigh, NC
Darren Frank
Charlotte, NC
Carson Freeman
Newton, NC
Jennifer Friedland
Matthews, NC
John Fronk
Apex, NC
Richard Gantt
Cornelius, NC
Yang Gao
Durham, NC
Melba Garcia
Lawton, MI
Janee Garcia
Asheville, NC
Ryan Garka
Atlanta, GA
Stephen George
Charlotte, NC
Kelly Gibbs
Arlington, VA
Rachel Gilbert
Charlotte, NC
Megan Giltner
Charlotte, NC
Kelly Godwin
Raleigh, NC
Natalie Gominger
Durham, NC
Joshua Goodman
Charlotte, NC
Steven Grainger
Neptune Beach, FL
Isa Gratacos
New Bern, NC
Cornelius Graves
High Point, NC
Carissa Graves
Burlington, NC
Sarah Gray
Monroe, NC
Misty Greene
Morrisville, NC
Kyndra Griffin
Mount Holly, NC
Bruce Grindstaff
Spruce Pine, NC
Shayla Guest
Frederick, MD
Gloria Gyamfi
Daphne, AL
Kimberly Hall
Charlotte, NC
Benjamin Hambright
Charlotte, NC
John Hamilton II

Charlotte, NC
Michael Harman
Charlotte, NC
April Harrid
Triangle, VA
Megan Harrigan
Charlotte, NC
Michael Harrington
Linwood, NC
Laura Heaney
Swannanoa, NC
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Miami Beach, FL
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Raleigh, NC
Zachary Herrmann
Thomasville, NC
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Pinehurst, NC
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Durham, NC
David Hoffman
Midlothian, VA
Kelly Holcombe
Greensboro, NC
Ashley Housaman
Charlotte, NC
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Greensboro, NC
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Polkton, NC
Debna Hunt
Winston-Salem, NC
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Fuquay Varina, NC
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Palatine, IL
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Barco, NC
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Asheville, NC
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Saint Louis, MO
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Durham, NC
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Salisbury, NC
Cameron Jones
Charlotte, NC
Justin Jones
Fayetteville, NC
Camesha Jones
Durham, NC
Nicole Jones
Jacksonville, NC
Taryne Jones
Clemmons, NC
Artia Jones
Charleston, SC
Thomas Jones
Hertford, NC
Casey Jones
Wilson's Mills, NC
Michael Jones
Morganton, NC
Vinisha Joshi
Charlotte, NC
Madhavi Kasbekar
Round Rock, TX
Danielle Katz
Charlotte, NC
Rachel Kepley
Abilene, TX
Shahid Khan
Durham, NC
Sabeen Khawaja
Raleigh, NC
Alena Kleshik
Charlotte, NC
Ira Knight
Winston-Salem, NC
Jennifer Kocab
Hampstead, NC
Susan Kohlhausen
Raleigh, NC
George Kourtsounis
Raleigh, NC
Jaime Kunce
Jacksonville, NC
Johnny Lam
Greensboro, NC
Julie Lamberth
Durham, NC
Zeno Lancaster IV
Canton, NC
DeWarren Langley
Durham, NC
Megan Lawing
Charlotte, NC
Steven Lawson
Indian Trail, NC
Thomas Layman
Clemmons, NC
Seung-Hyun Lee
Goyang, Kyung-Ki,
Da Bok Lee
Centreville, VA
Sangeun Lee
Garden Grove, CA
Barbara Leifer-Woods
Fort Mill, SC
Daniel Lewis
Charlotte, NC
Jeffery Lewis
Lucama, NC
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Charlotte, NC
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Raleigh, NC
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Brooksville, FL
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Atlanta, GA
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Houston, TX
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Fort Wayne, IN
Haley Scism
Charlotte, NC
Erin Scott
Andalusia, AL
Kim Seaton
Chapel Hill, NC
Dawn Seibert
Montpelier, VT
Cheri Selby Pearson
Durham, NC
April Sgro
Franklin, NC
Lyndsey Sharpe
Charlotte, NC
Kristen Shearin
Matthews, NC
Megan Shepard
Charlotte, NC
Teresa Shields
Zebulon, NC

Sang Shin
Concord, NC
Nathan Shore
Yadkinville, NC
Richard Sin
Raleigh, NC
Richard Smith
Beaufort, NC
Beverley Smith
Greensboro, NC
Natalie Smith
Raleigh, NC
Joshua Smith
Burlington, NC
Timothy Snyder
Charlottesville, VA
Jennifer Sotack
Raleigh, NC
John Sotomayor
Cary, NC
Maggie Souders
Polkville, NC
Marcus Spake
Charlotte, NC
Blake Spale
Brighton, MA
Avery Staley
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Murrells Inlet, SC
Arthur Strollo III
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George Swayne
Winston-Salem, NC
Jeffrey Swing
High Point, NC
Isla Tabrizi
Charlotte, NC
Amanda Tauber
Chartlotte, NC
Brenna Taylor
Charlotte, NC
Andrew Taylor
Marietta, GA
Kevin Taylor Jr
Cary, NC
Seth Terndrup
Charlotte, NC
Lynn Thesing
Asheville, NC
Deanene Thornwell
Rock Hill, SC
Susan Torres
Newark, DE
Mark Townsend Jr.
Aliso Viejo, CA
Tiffany Tschudi
Jacksonville, FL
LaQuanda Tysinger
Chapel Hill, NC
Zachary Unger
Greenville, NC
Michael Vaio
Raleigh, NC
Meredith Vick
Cary, NC
Heather Villani
Grand Forks, ND
Jennifer Wagner
Charleston, WV
Corbin Walker
Charlotte, NC
Ashley Wall
Garner, NC
Janet Wallace
Greensboro, NC
Tiffany Walters
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Candace Walton
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Mary Whelpley
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Kristin White
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Laura White
Durham, NC
Jeremy Whitley
Charlotte, NC
Allycia Whitman
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Lance Williams
Gastonia, NC
Reginaldo Williams
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Kimberly Wilson
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Charlotte, NC
Paula Yost
Charlotte, NC
Andrew Yu
Carrboro, NC
Kelli Zappas
Pittsburgh, PA
Angelina Zon
Casar, NC
Robert Zuniga
Charlotte, NC

Board Reports (cont.)

who currently serve as volunteers to the LAP. In order to avoid any perception that the LAP Program is not entirely separate from the disciplinary functions of the State Bar, no member of the Grievance Committee may serve on the LAP Board.

The current members of the LAP Board are: Mark W. Merritt, chair and councilor; Fred F. Williams, vice-chair and volunteer; Sheryl T. Friedrichs, volunteer; Bert Nunley, volunteer; David W. Long, councilor; Margaret J. McCreary, councilor; and Burley B. Mitchell Jr., Joseph Jordan, and Professor Barbara Scarboro serving in the three expertise seats.

Staff

Robynn Moraites succeeded Don Carroll as LAP director effective July 1, 2011. Don continues to year-end in assisting Robynn in the transition. There were no other changes in the LAP staff: Ed Ward, assistant director; Towanda Garner, Piedmont coordinator; Buffy Holt, administrative assistant; Joan Renken, administrative assistant.

LAP Board Meetings Scheduled For 2011

The LAP Board meets quarterly during the time of the council meetings except in the fall, when the LAP Board meets, if necessary, at the time of the Annual PALS Meeting and Workshop.

LAP Board meetings are usually scheduled for lunchtime on Wednesday of the week the council meets. The 2012 schedule for the council is listed below:

January 24-27, 2012
Marriott Raleigh City Center, Raleigh

April 24-27, 2012
Marriott Raleigh City Center, Raleigh

July 17-20, 2012
Carolina Hotel, Pinehurst, NC

October 23-26, 2012
Marriott Raleigh City Center, Raleigh

Specialization (cont.)

added to the list. I think it will be a real benefit to the profession.

Q: What would you say to encourage other lawyers to pursue certification?

I would tell them to find an area of the law that they enjoy and immerse themselves in it. Go to all of the seminars offered, talk to other specialists, and really gain a depth of knowledge that can set you on a successful career path, both for your clients and for your own benefit. ■

For more information on the State Bar's specialization programs please find us on the web at www.nclawspecialists.gov.

Legal Ethics (cont.)

permission to contact a specific relative.

Finally, a simple way to reduce the likelihood of a client's disappearance, while also fulfilling your ethical duties under Rule 1.4, is to maintain regular contact with your client. Sending periodic case updates to a client's last known address will keep your client informed of the status of his case and you informed of any address changes that need to be investigated. (In the alternative, you could try tying bells on them. Let me know how that works out for you.) ■

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

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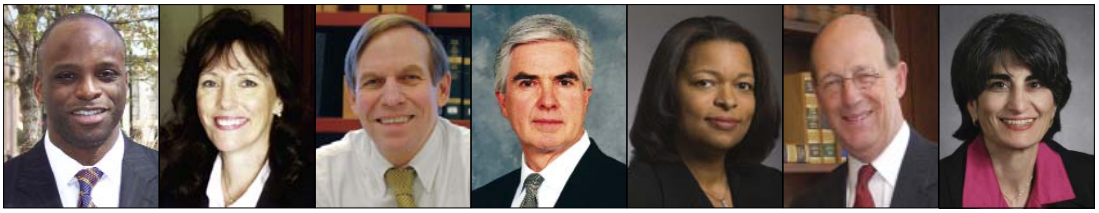

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