THE NORTH CAROLINA STATE BAR

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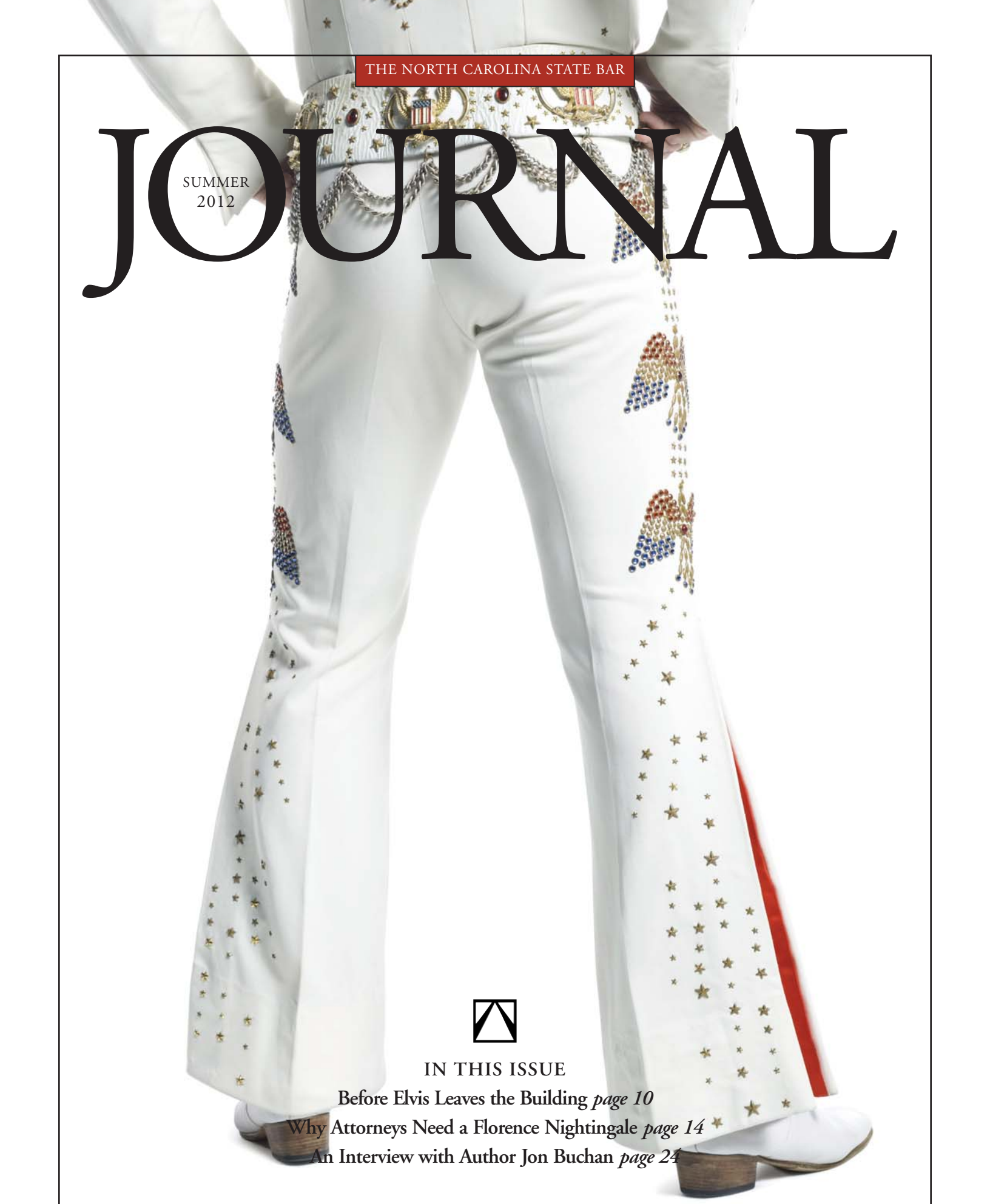

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Update Membership Information: Members who need to update their membership information must do so by contacting the Membership Department via one of the four following methods: (1) log on to the Member Access section of the State Bar's website (www.ncbar.gov); (2) mail changes to: NC State Bar, Membership Dept., PO Box 26088, Raleigh, NC 27611-5908; (3) call (919) 828-4620; or (4) send an e-mail to amaner@ncbar.gov. **In deciding what address to list with the State Bar, be advised that this address will be used for all official correspondence from the State Bar and that membership information is a public record pursuant to the NC Public Records Act.**

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FOR THE ISSUES OF LIFE IN LAW

State Bar 101

By James R. Fox

This quarter's column is for those of you who have not had any significant contact with the State Bar. In particular, I would like to reach our newest members with an overview of what we do with some emphasis on discipline. For the rest of you, hopefully this will be simply a timely refresher.

The State Bar provides a great many services to the public and the profession, but without doubt most of the questions I encounter from our membership involve discipline. The questions are welcome. Discipline consumes the largest amount of our resources, and I find that there is a lot of incomplete—and in some cases erroneous—information out there where it is concerned.

The disciplinary process is designed first and foremost to protect the public. It starts, of course, with the Rules of Professional Conduct (RPCs) as interpreted by our State Bar Ethics Committee. As you know, the RPCs provide the standards of conduct whose breach creates the necessity for disciplinary action. Apparently a lot of people think such a necessity exists. Our staff—and in particular our Attorney-Client Assistance Program (ACAP)—handled over 14,000 telephone calls, 2,300 letters, and 550 e-mail messages last year. Most of the calls expressed discontent about some aspect of the legal process, including the perceived conduct of a particular lawyer. As part of this process, the State Bar contacted 3,300 lawyers about these calls. Because these matters were deftly and sympathetically handled by ACAP, the vast majority of them did not result in grievances.

When a grievance is filed, the State Bar's Office of Counsel (composed of chief bar counsel Katherine Jean, 12 deputy bar counsel, one trust account compliance counsel, five paralegals, and ten investigators) will investigate the matter. Grievances come from numerous sources: clients, judges, opposing parties, other attorneys, and members of the public. In addition, some grievances are filed by State Bar counsel based on news reports or other sources. Grievances also result from random audits of trust accounts by the State Bar's trust account auditor. Last year 1,499 grievances were filed and thoroughly evaluated by the disciplinary staff. Assuming the facts are true, but no disciplinary rule violation appears, bar counsel sends a report to the chair of the Grievance Committee recommending dismissal, and if the chair agrees the matter will stop there. A considerable number of grievances are winnowed out in this manner, but doing so fairly and fully consumes a major amount of State Bar resources (by the way, bar counsel have substantial duties other than discipline).

Where there is reason to believe that there is a possible disciplinary violation, bar counsel sends a letter of notice to the involved attorney inquiring about the matter and seeking a response. At this point some practical advice is in order. Anyone who receives a letter of notice should take it seriously, collect the relevant facts and records, and respond in a timely and temperate way. It's also a good idea to consult with a lawyer whose judgment the recipient respects. Getting an objective review of the matter before a response is sent can be extremely valuable. Under no circumstances should a letter of notice simply be ignored (you would be surprised how often this happens). Failing to respond is a disciplinary violation in itself. On the other hand, prompt and thorough rebuttal of an alleged violation at this stage often results in dismissal of the matter.

When a response does not result in a dismissal, the matter is referred to the Grievance Committee, currently comprised of 38 State Bar councilors and eight public and advisory members sitting in three subcommittees. The subcommittees—subject to review by the entire Grievance Committee—act much like grand juries and consider each grievance in entirely confidential deliberations. Applying their practice experience and their knowledge of the Rules of Professional Conduct, they decide whether the matter: (1) ought to be dismissed; (2) should be the subject of written private or public discipline, i.e. letter of warning, admonition, reprimand, or censure; or (3) is serious enough, if substantiated, to merit suspension from practice or disbarment. The Grievance Committee has the authority to mete out written discipline, but sends potential suspension or disbarment cases to the Disciplinary Hearing Commission (DHC).

The staff then drafts and files a complaint with the DHC, at which point the matter becomes public. Again, please take to heart some practical advice. It is a big mistake to attempt self representation. Anyone who is faced with a DHC proceeding needs a good lawyer and preferably someone who handles DHC cases regularly. A livelihood is at stake, and a law license, once lost, is extremely difficult to regain. Last year 22 lawyers were disbarred by the DHC for theft from clients or firms, or other grave offenses. Twenty-one were suspended for a period of up to five years for a variety of other very serious offenses. Suspension orders often contain conditions that must be met before reinstatement may be sought. There is a mechanism for pursuing reinstatement from disbarment after five years. It involves hearing and disposition by the entire State Bar Council; however, please note that no disbarred attorney has been reinstated in many years.

I should stress that the DHC is entirely independent from the State Bar. It sits in three-person panels—two lawyers and one nonlawyer in each case. It operates pretty much like a superior court does. Applying the North Carolina Rules of Civil Procedure and Evidence, it decides whether rules have been broken and if so what penalty is appropriate. The State Bar has the burden of proof by clear, cogent, and convincing evidence on both of these issues. In deciding the appropriateness of a penalty, the DHC relies on a long list of aggravating and mitigating factors contained in the State Bar's Rules. As suggested above, the theft of money from clients or law firms virtually always results in disbarment, irrespective of the amount involved. If either the Bar or the respondent disagree with the hearing panel's decision, an appeal lies of right to the North Carolina Court of Appeals and, potentially, to the Supreme Court.

It may be useful, especially for those of you who are new to practice, to know what conduct most often results in grievances. In rough order of occurrence, the following do: neglect of client matters; failure to communicate with clients; unwarranted disputes over fees, including especially retainers and advance fees; refusal to turn over files after withdrawal or discharge; and inadequate supervision of staff. The practice areas with the heaviest volume of these and other grievances over time have been domestic, criminal or real estate. However, no area of practice is unaffected, and the incidence of grievances by practice area fluctuates substantially from year to year.

While this column principally concerns itself with discipline, there are many other State Bar activities with a significant impact on both the public and the profession. For example, the Ethics Committee and its staff provide both formal and informal advice to North Carolina attorneys where interpretation and likely application of particular ethical rules are concerned. Another very active State Bar committee is Authorized Practice. It addresses the unfortunately large number of instances of unauthorized practice in North Carolina as they come to the State Bar's attention.

Since the late 1980s, Continuing Legal Education (CLE) has been mandatory for North Carolina lawyers. The State Bar's CLE Board sets, regulates, and oversees policies and practices for this important area. On the State Bar's recommendation the Supreme Court has also approved a specialization program under the oversight of the Board of Legal Specialization. Hundreds of lawyers, after successfully completing a rigorous qualification process, have been certified as specialists in a variety of disciplines. Similarly, the State Bar through its Board of Paralegal Certification now offers certification to paralegals who complete a program of examination and maintain education requirements.

Since 1983 the State Bar has had an IOLTA program—short for Interest on Lawyers Trust Accounts. By the end of 2011 the program had brought in almost $75 million in revenue and made more than $68 million in grants to various legal service programs directed at the legal needs of poor and underserved elements of the population in North Carolina. Additionally, since 1984 a Client Security Fund Program has existed. It is funded by licensee assessment and under it clients can receive up to $100,000 in compensation for losses resulting from the

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Naming Opportunities

By L. Thomas Lunsford II

In 1967 the citizens of Mayberry, North Carolina, decided to honor the person deemed to be the foremost citizen in their community's illustrious history by commissioning a statue of that individual. After giving the matter considerable thought, a committee of civic leaders selected Seth Taylor, a prominent man of business and great grandfather of the incumbent sheriff, as the honoree. The vote was almost unanimous. The lone dissenter was the town's barber, Floyd Lawson. He held out for his own ancestor, Daniel Lawson, who had the distinction of being Mayberry's first Indian agent. Shortly before the statue was to be unveiled, intelligence was received indicating that Seth Taylor was actually a crook. Unbeknownst to his friends and neighbors who had been led to believe that a railroad was to be routed through Mayberry, Taylor arranged for the track to pass through Mount Pilot instead. Trading on inside information ahead of the announcement, he then got rich by selling land in Mayberry at a premium while buying property in Mount Pilot at a discount. Although the committee was devastated by the news and mortified by the prospect of celebrating a character they knew to be a scoundrel, they were reluctant to "go public" with the story and risk embarrassment to themselves and the community. It was at that moment that Floyd Lawson had an epiphany. It occurred to him that Seth Taylor, in his chicane and avarice, had really done his hometown a great service. By routing the railroad through Mount Pilot, he "spared" Mayberry all the problems that ultimately came to afflict her larger sister city. Instead of getting dirty and crowded and prosperous like Mount Pilot, Mayberry became the state's "garden spot," a friendly small town where everyone got along and "all the children had good teeth." Emboldened by that realization, the committee elected to go forward with the dedication of the statue, winking at Taylor's illicit scheme and thanking him for benefiting their community, albeit unintentionally.

Faithful readers of this column will know that I often advert to the old *Andy Griffith Show* for guidance in the administration of the State Bar. Practical and moral instruction abounds in each episode, even in those post-fifean installments that coincided with the advent of color television. The plot described above is not atypical. For the discerning viewer, the virtues of governing by consensus, making the best of a bad situation, and flossing are well and convincingly affirmed. All of that goodness notwithstanding, however, the story should not and will not be viewed uncritically by those of us entrusted with the regulation of the legal profession. To the extent that it appears to endorse the veneration of a swindler, or anyone else who has committed a substantial violation of the Rules of Professional Conduct, it is rejected!

The State Bar's intolerance of unethical conduct is manifested principally through the disciplinary program, but it does find expression in other ways. For instance, law students whose actions exemplify bad character are refused admission to the Bar. Lawyers who become aware of someone else's misconduct are required to report it. Legal specialists who are suspended for professional misconduct are automatically decertified. And, perhaps most significantly, lawyers who are chosen to receive the John B. McMillan Distinguished Service Award, the State Bar's highest honor, are not publicly identified and honored until a check of the disciplinary files determines that they have never been disciplined and are not the subject of pending grievances. These rules and policies are deemed necessary to preserve the integrity of the profession and the credibility of self-regulation, both of which are essential to the administration of justice in our state.

Knowing what we now know of his fictional character, it is unthinkable that Seth Taylor could ever be admitted to the Bar or, heaven forbid, be given the Distinguished Service Award. Indeed, we would prefer that he not be associated at all with the legal profession in North Carolina. That being the case, we would, in all likelihood, refuse any contribution he might care to make to the independent foundation[1] that has been created to support the construction of the State Bar's wonderful new headquarters. And we would certainly decline to acknowledge any such contribution in a place of honor upon the premises. I know this because the council, through its Facilities Committee, which is superintending the construction of the new building and working closely with the State Bar Foundation concerning its ongoing capital campaign (which is described in more detail on page 50 of this publication), has recently adopted very clear "Donor Recognition Guidelines."

The Donor Recognition Guidelines (DRGs) resulted from extensive discussions within the Facilities Committee as to whether and under what circumstances it would be proper for the State Bar to solicit or accept donations for its new building. They were developed to ensure that contributions to the foundation come only from appropriate sources and are recognized only in appropriate ways. In this regard, it should be noted that there were a number of members of the council and the staff who initially questioned the propriety of the State Bar's asking, directly or indirectly, for contributions from persons or entities that it regulates—principally the lawyers and law firms of the state. There was understandable concern that it might appear to some that influence could be purchased by financially supporting the building campaign. Others felt that this "appearance problem" was not so significant as to deny lawyers the

opportunity to participate in the endeavor, and to deprive the Bar of the benefit of its constituents' support. Happily enough, the concerns of many, if not all, people were allayed last year when the State Ethics Commission ruled that the foundation could properly solicit donations from lawyers and law firms.

Of course, it is one thing to be generally desirous of contributions, it's quite another to be indiscriminate among potential donors. The fact is, as much as we'd like to have unlimited funds for the enhancement of our new building and the reduction of our debt, there are some people out there whose money we'd rather do without. Seth Taylor comes to mind, as do the North Koreans. And please be assured that the foundation is not looking for largesse from people or entities to whom the State Bar is adverse or likely to be adverse in litigation—or from anyone who is seeking or is likely to seek a business relationship with the agency. Fortunately, our ethical antennae are well-attuned by study and practice to the discernment of conflicts of interest and other rude behaviors with which the State Bar ought not to be associated. This moral sensitivity, and a DRG that invests the Facilities Committee with complete discretion to accept or decline any gift, should enable the Bar to avoid the importunings of unworthy benefactors. However, just to make sure there's no mistake in regard to one crucial matter, the DRGs do expressly provide that, "gifts from lawyers with prior discipline will not be accepted" and, "gifts from law firms bearing the names of lawyers with past discipline will not be accepted."

Once a decision was made to allow an independent foundation to solicit contributions in support of the new building, another fundamental question arose. How should contributors be recognized? Anyone familiar with major capital campaigns will readily acknowledge that most prospective donors are to some extent incentivized by the promise of public recognition. This is not to discount the significance of other powerful motivations like professional pride and civic responsibility, but merely to suggest that people like to be thanked and given credit for the good that they do. The difficult thing to figure out is how that can be done without giving the impression that the beneficiary—in this case the State Bar—is "for sale." I'm pleased to say that the foundation's approach to the issue has been characterized by professionalism and restraint. To be sure, the DRGs provide that in return for significant gifts at particular levels, certain public spaces in the building can be sponsored, and contemplate that those sponsorships will be acknowledged by tasteful plaques in or adjacent to those spaces. Such contributions will also be permanently listed on a beautifully designed and prominently situated "donor wall" just off the lobby. This is fairly standard practice in regard to the recognition of major contributions. What distinguishes the foundation's plan, beyond the understated elegance of its execution, is the relatively small number of spaces available for such sponsorship—no restrooms, phone booths, hallways, or broom closets will be "named." It's also worth noting that the DRGs provide that neither active lawyers nor their firms may sponsor either of the building's two most important spaces—the courtrooms—thus ensuring that no one will ever be tried for alleged professional misconduct in a courtroom bearing his or her name.

Although the preceding paragraph has reference mainly to the actual or anticipated benefactions of those with the deepest pockets, the truth is that everyone's participation in the capital campaign will be honored. The DRGs contemplate permanent recognition of every gift of $250 or more, and while that's not an insignificant amount of money these days, it's a fairly small price to pay for the immortality that inheres in an etched brick or engraved plaque. More than individual recognition though, I think that what is really important here is the creation of a fitting home for the profession in North Carolina, a monumental place that will bind us together and represent our commonality as lawyers. As we stand on the temporal threshold of the State Bar's 99-year lease of property at the corner of Edenton and Blount Streets, there is much that divides us. We are differentiated by race, age, gender, sexual orientation, wealth, specialty, employment, and myriad other circumstances and characteristics that seem to become more important with each passing year. Perhaps this isn't in and of itself something to lament, but it does appear to me that our fractionalization is making it harder and harder to remember our common denominator—the fact that we are all licensed attorneys—and that is lamentable. I suspect the trend toward segmentation of the Bar is irreversible, but feel that there is still good reason to extol the things that unify us, like membership in the State Bar, a very well-regulated capital campaign, and the construction of our excellent new building. ■

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

Endnote

1. The State Bar Foundation is an independent organization that was created to raise money to support the construction and maintenance of the State Bar's new building. It is governed by a Board of Trustees composed of distinguished former presidents, none of whom are currently involved in the administration of the State Bar.

Before Elvis Leaves the Building: Drafting a Will for a Client of Diminishing Capacity

By Margaret Robison Kantlehner

Lawyers who serve their clients over a period of years may be among the first to become aware of a client's diminishing capacity at the same time that they may be approached by the client to draft the client's will. This article will explore how those lawyers may be able to ethically proceed with representation of the client in the drafting and execution of a new will.

Erik Isakson/Corbis

Consider this scenario: The phone message says, "Mr. B's caregiver called to ask for an appointment for Mr. B, who would like to change his will." Upon returning the call, the lawyer speaks with the caregiver, who relates that Mr. B is home after a week's hospitalization to investigate his symptoms of a stroke. The caregiver further elaborates on Mr. B's condition, stating that he is much stronger now, and not nearly as out of it as he was several days ago. Mr. B has told the caregiver to call the lawyer to have his will changed. The lawyer inquires as to the extent of the changes anticipated. The caregiver replies that she does not know everything that Mr. B wants to change, but she does know that Mr. B is going to leave his Mercedes to the caregiver. The caregiver would like to bring Mr. B in for an appointment to take care of this change. Mr. B is asleep, but he will be at the appointment and be able to confirm his intentions then. The lawyer sets an appointment. What must the lawyer be prepared to consider while working with Mr. B?

I. Background

The earliest formal ethics ruling listed under Rule 1.14 of the North Carolina Rules of Professional Conduct is CPR 314, which states that an attorney who believes his or her client is not competent to make a will may not prepare or preside over the execution of a will for that client.[1] As a result, many North Carolina lawyers, out of an abundance of caution, refuse to draft a will for a client who exhibits the slightest signs of diminished capacity. These clients are effectively denied their right to determine what happens to their property at death at a point

in their lives when such decisions are crucial to the client and to the client's peace of mind. Instead of summarily refusing to write a will for a client who exhibits signs of diminished capacity, a lawyer should fully explore the extent of the client's capacity and the rules governing the representation of such a client. The rules include North Carolina Rule of Professional Conduct 1.14, Client with Diminished Capacity, which guides the lawyer in determining whether representation of the client is appropriate, and the standards for testamentary capacity, which guide the lawyer in determining whether the client has capacity to execute a will.

How should a lawyer proceed in order to form a belief about whether a client has the capacity to enter into an attorney-client relationship, and whether the client has sufficient capacity to execute a will?

A. Representing a Client with Diminished Capacity

Rule 1.14 of the North Carolina Rules of Professional Conduct governs the lawyer's relationship with a client of diminished capacity. Paragraph (a) of that Rule states:

> (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.[2]

While the lawyer may fear that a client's capacity is diminished, she must still be aware that his capacity may be sufficient for his execution of a valid new will. With that thought in mind, the lawyer can proceed to explore the client's capacity, so long as she maintains as far as reasonably possible a "normal client-lawyer relationship with the client." Comment 1 to Rule 1.14 says, "The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters."[3]

In the event that the lawyer concludes that the client *does not have* capacity to make decisions about important matters, what are the lawyer's ethical responsibilities?

RPC 1.14 (b) and (c) state:

> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem or guardian.
>
> (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

The lawyer may proceed to take appropriate protective action, disclosing client confidences only to the extent necessary to ensure protection of the client. The lawyer may proceed to seek appointment of a guardian for the client, if appropriate to protect the client from substantial harm.

On the other hand, if the lawyer determines that the client *does have capacity* to work with the lawyer in a normal client-lawyer relationship, the lawyer may proceed to consider the particular rules regarding testamentary capacity.

B. Testamentary Capacity

In North Carolina, a person has testamentary capacity if he:

1. comprehends the natural objects of his bounty,

2. understands the kind, nature, and extent of his property,

3. knows the manner in which he desires his act to take effect, and

4. realizes the effect his act will have upon his estate.[4]

Because the elements of testamentary capacity involve subjective understanding and knowledge, assessments must look at whether the client actually understands and knows each of these things, not just at whether the client is capable of understanding and knowing them. A caveator of the will must show that only one of the above elements is lacking in order to prove that testamentary capacity is lacking.[5] However, general testimony relating to mental confusion and deteriorating health is insufficient to show a lack of testamentary capacity at the time the will was executed.[6] The presumption in North Carolina is that every person has the capacity to make a valid will.[7] Caveators must prove a lack of such capacity by the greater weight of the evidence.[8] Testamentary capacity is generally thought to be one of the lowest standards of capacity, so care should be taken to form a belief based on the testamentary capacity standard and not a higher standard, such as the one used in determining whether a client should be

adjudicated incompetent.[9]

II. Practical Determination of How to Proceed

Instead of abandoning a client just when the client most needs a lawyer's assistance, the lawyer can take practical steps to form a belief about the client's capacity to work with the lawyer as required by the Rules of Professional Conduct, and to determine whether the client has sufficient capacity to execute a will.

A. Initial Assessment of Client's Capacity

Lawyers make at least a subconscious initial assessment of their client's capacity every time they meet. Often, there is no indication of impaired or diminished capacity and no need for any methodical consideration of the matter.[10] When there is evidence of diminished capacity or medical history that could involve diminished capacity, the lawyer should begin a more intentional assessment, scheduling an appointment to begin the process.[11]

The lawyer should meet with the client under comfortable circumstances, so that his capacity is not likely to be hampered by anxiety over the meeting arrangements. The lawyer should 1) meet with the client alone, 2) conduct interviews in shorter sessions, scheduled when the client is anticipated to be most lucid, 3) understand the client's values, standards, and the behaviors that might result from them, and 4) presume the client is competent until evidence to the contrary exists.[12] The interview(s) should be well documented with thorough notes in the client file from all of the law firm staff who interacted with the client.[13]

In the event that the initial assessments cause the lawyer to be concerned about the client's level of capacity, the lawyer should request that the client seek a mental health professional's (physician or psychologist's) contemporaneous opinion as to capacity.[14] The client should consent, in writing, for the lawyer and mental health professional to communicate and disclose information regarding the client. By explaining that the lawyer wants the prepared documents to be enforceable, the lawyer should gain the client's consent to disclosure.

In communicating with the mental health professional, the lawyer can either seek an informal opinion from the mental health professional, who would document the opinion rendered in a letter or email, or she can request a more thorough assessment.[15] The lawyer should ensure a helpful assessment by identifying North Carolina's elements for testamentary capacity, as discussed above, for the mental health professional.

A thorough contemporaneous professional evaluation will involve:

1. collecting data regarding the testator's assets, potential heirs, and general cognitive and everyday functioning,

2. conducting a comprehensive mental status examination of the testator to identify impairments to capacity, and

3. completing a thorough clinical interview of the client, all conducted as close in time to the execution of the will as is possible.[16]

The lawyer should seek documentation of the process used for the assessment, in addition to the mental health professional's written opinion as to capacity. One of the lawyer's goals is preservation of the contemporaneous evidence in anticipation of a caveat. In the absence of contemporaneous documentation of capacity by the mental health professional, a caveat may be based on a retrospective or postmortem assessment of capacity, weakening the caveat.

In the event that the client has testamentary capacity, the will should be executed as soon as possible, ideally directly following an appointment with the mental health professional. Law office staff must be briefed on the importance of contemporaneousness in order to schedule the client's execution appointment appropriately. Staff should be present at the execution, take time to converse with the client, and listen carefully to the client's answers to questions involving his purposes, assets, and family with great attention. Staff should then describe their observations of the client in a memorandum that will be placed in the client's file. Great care should be taken to ensure that the execution ceremony before the witnesses and notary proceeds with all formality and care. If the client is on the decline, he may not have sufficient capacity to sign corrected documents later.

B. Capacity Presumptions for Clients Previously Adjudicated Incompetent

What if the lawyer discovers during the course of the representation that the client was adjudicated incompetent in North Carolina? What effect does guardianship have on a client's testamentary capacity?

The lawyer should proceed with caution, but may indeed proceed. In *In re Maynard*,[17] the North Carolina Court of Appeals summarizes the law as follows:

> As to *testamentary capacity*, a person for whom a guardian has been appointed is presumed *"in the absence of proof to the contrary"* to lack *testamentary capacity*. The presumption as to testamentary capacity is necessarily a rebuttable one, or there could be no "proof to the contrary."[18]

The *Maynard* court reasoned that although a person under a guardianship may not be "capable of transacting business in general, he may be capable of understanding the business of making a will and the elements of it."[19] The court further elaborated that the lack of competency to engage in a complicated business matter was not a proper test of capacity to make a will.[20]

Since the presumption that the ward lacks capacity is a rebuttable one, the lawyer should meet with the client and proceed cautiously through the process of accessing his capacity. As in the case of questionable capacity, she will want to preserve all the evidence she uses in making the decision regarding testamentary capacity. She should be mindful that the client, or the propounders of his will, must meet a greater evidentiary burden to rebut the presumption of a lack of testamentary capacity. If the lawyer is satisfied that the client has testamentary capacity, despite his adjudication of incompetence, she may draft his will and oversee its execution.

III. Conclusion - Representing Mr. B

What about Mr. B? In the case of Mr. B, the caregiver's report of his medical ordeal may cause concern. The lawyer should schedule her meeting with Mr. B to determine her best course of representation and to consider, in particular, whether the client, when properly advised and assisted, is capable of making decisions about important matters so that she can maintain a normal attorney-client relationship.

The lawyer has the benefit of a prior relationship with Mr. B. She will consult her records of Mr. B's prior discussions of his family and others close to him who would be considered the natural objects of his bounty. What about the caregiver? Is she the natural

object of Mr. B's bounty? It does not matter whether she is or not, since the determinative factor is whether Mr. B knows who his natural objects are.

Likewise, the lawyer with an ongoing representation of Mr. B should review notes from past meetings with Mr. B to gain a sense of the extent of Mr. B's property at the time of prior meetings, and to begin conversations with Mr. B regarding his present property holdings. The lawyer can request verification through account statements and property listing records if there are discrepancies in the "current" information presented by Mr. B. In the process of undertaking an investigation of Mr. B's property, the lawyer should take care to maintain client confidence with regard to the property, especially if there are suspicions that the caregiver would like to receive more than the Mercedes.

During the planned meeting, the lawyer can consider whether Mr. B knows the manner in which he desires his act to take effect. Was it Mr. B's idea to write a new will? Or did the caregiver make the suggestion that a new will would be necessary? Does Mr. B understand what a will would do in general and specifically to his property? Again, the lawyer can consult her files and consider her past experience with Mr. B. Is Mr. B's understanding of the manner in which he desires to have the will take effect consistent with Mr. B's past desires? Is the desired effect on Mr. B's estate consistent with past intended effects on his estate? If not, is the change made with Mr. B's full understanding? Factors that cause caveats include a dramatic change in the distribution of assets or a suspicion of undue influence. The lawyer should be attuned to the possibility of either. Even if the lawyer believes that Mr. B has testamentary capacity, the lawyer may advise Mr. B to seek an assessment by a mental health professional and arrange the execution ceremony for the same day of the assessment.

When a client of suspected diminished capacity requests that his lawyer assist him in drafting a will the lawyer should proceed cautiously. The lawyer should determine whether she believes the client is capable of maintaining a normal attorney-client relationship with the lawyer. If the lawyer does believe that the relationship can be maintained, she should next consider whether the client has sufficient testamentary capacity to make a will. A client with diminishing capacity may be the client who most urgently needs representation, especially for the execution of a new will. ■

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Endnotes

1. NC Rules of Prof'l Conduct 1.14 (2003) (noting an ethics opinion rendered under the Code of Prof'l Responsibility 314).
2. NC Rules of Prof'l Conduct 1.14 (2003).
3. NC Rules of Prof'l Conduct 1.14 cmt. 1 (2003).
4. *In re Will of Jarvis*, 334 N.C. 140, 145, 430 S.E.2d 922,925 (1993).
5. *In re Will of Kemp*, 234 N.C. 495, 499, 67 S.E.2d 672, 675 (1951).
6. *Seagraves v. Seagraves*, 698 S.E.2d 155, 169 (N.C. Ct. App. 2010).
7. *In re Sechrest*, 140 N.C. App. 464, 473, 537 S.E.2d 511, 517 (2000).
8. *Id.*
9. *See* N.C. Gen. Stat. Ann. §35A-1112 (West 2010) (setting out the process for adjudication of incompetence).
10. Lawyers rely on the presumption that a person is competent every time they meet with a client.
11. The appointment may be made through a caregiver, but care should be taken to meet alone with the client. *See* NC Rules of Prof'l Conduct 1.2, 1.4 (regarding drafting of documents only after direct consultation with the client).
12. Charles P. Sabatino, *Assessing Clients with Diminished Capacity*, in 22 Bifocal 1-2, 4 (2001).
13. Requiring office personnel to interact with the client and to then record their impressions in a memorandum to the file creates a record of the circumstances surrounding the visit and documents the plausibility of the lawyer's belief that the client has sufficient capacity.
14. While the opinion will probably not be literally contemporaneous, the opinion should be as close in time as possible to the actual execution of the will.
15. Mental health professionals may be most helpful if arrangements are made for the client to give the mental health professional a packet containing a letter of explanation from the lawyer and the necessary patient release at the time of the appointment.
16. *Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists* 87 (Am. Bar Ass'n Comm'n on Law and Aging and Am. Psychological Ass'n, 2008).
17. *In re Maynard*, 64 N.C. App. 211, 307 S.E.2d 426 (1983).
18. *Id.* at 225, 427.
19. *Id.* at 226, 427.
20. *Id.*

Nurse Consultants: Why Attorneys Need a Florence Nightingale

By Colleen Yopp

Early in my nursing career I took care of a 16-year-old boy who was recovering from a severe traumatic brain injury and multiple orthopedic injuries. The day of the accident, his family had headed out for vacation before dawn. Everyone in the car was asleep, except for his father who was driving. The car was struck head on by a tractor-trailer, killing the boy's mother instantly and ejecting him from the car. In the darkness, his father searched for him and finally found him non-responsive in a ditch.

ImageZoo/SIS

Before his discharge from rehabilitation, an attorney accompanied him and his father throughout a day of therapy. During that day, I noticed how carefully the attorney listened to the doctors and therapists, and how he later asked the father detailed follow-up questions about his son's future care needs. I remember thinking how complex this patient's ongoing care would be after discharge from the hospital, and wondering how an attorney—without any medical background—could begin to understand the needs of this patient and his family.

Little did I know that some years later I would join a large number of nurses who provide exactly that type of help to attorneys. Nurses who come from a variety of backgrounds now help attorneys in many areas of the law with issues relating to prognosis, causation, finding medical experts, and a host of other medical matters.

Finding Qualified Legal Nurse Consultants

Nurses provide support in many areas of litigation including medical malpractice, personal injury, toxic torts, product liability, workers' compensation, risk management, medical licensure investigation, fraud, abuse and compliance issues, criminal law, and elder law. Nurses work as independent contractors or in-house at law firms.

In addition to their nursing education, some nurse consultants also complete formalized training programs. Legal Nurse Consultant certificate programs provide licensed registered nurses with education and training to perform a critical analysis of clinical and administrative healthcare issues and

their relationship to the law, healthcare professionals, and consumers of healthcare. The two most prominent programs in the state are at Duke University and North Carolina State University. These programs prepare nurses to sit for the credentialing exam offered by the American Association of Legal Nurse Consultants (AALNC).

Nationally, the most recognized professional association is the AALNC. Locally, the only state chapter of the AALNC is the Eastern North Carolina Chapter of the American Association of Legal Nurse Consultants (ENCAALNC). The local chapter meets bi-monthly and offers opportunities for ongoing education and collaboration with colleagues who work across North Carolina in a variety of medico-legal areas. These credentialing programs and professional organizations are good places to start when searching for a qualified legal nurse consultant.

What Nurse Consultants Do

Initial case review is just the beginning, but it is a crucial starting place in a potentially lengthy and expensive litigation process. Analyzing the merits or defensibility of the medical issues in a case involving medical negligence is a complex task.

To provide sound counsel to healthcare providers, defense attorneys must accurately define the risk and liabilities of a case. Plaintiff attorneys must weigh the merits of the case in determining whether to accept a case at all.

Legal nurse consultants have a unique skill set and perspective in providing initial consultation about such cases. Nurses can effectively organize and summarize medical records and compare the resulting chronology with the allegations at hand.

Client Interview

Involving a nurse in the conduction of initial client interviews can provide attorneys with additional insight into the healthcare delivery system. Cases can be oversimplified at first and blame may be placed squarely on one person. For example, the issues arising from one incident may include questions of competency, compliance with hospital policies/procedures, staff education, research related to relevant medical equipment/medications, staffing issues, and work fatigue.

Medical Record Review

Whether a defense attorney representing hospitals or healthcare professionals or a plaintiff's attorney with an injured client, lawyers are rarely greeted with a complete set of medical records. Even with all of the records, unfamiliarity with medical terminology, disease processes, and the particular standard of care can present great challenges for attorneys reviewing cases. In addition, the transition from paper documentation to the electronic medical record (EMR) presents significant problems when attempting to produce or request a "legal copy" of the medical record. When printed, these computerized records are voluminous and often illogically organized. Nurses who have worked within the EMR system can often identify important facts that are buried within the records.

Sometimes the changes between paper charts and the EMR may cause records to be missed. In a recent case, more than 1,000 additional pages of medical records that had not yet been produced by the defense were discovered.

How could this happen? Much of the "paper chart" had not been scanned into the EMR after the patient was discharged and therefore was not archived appropriately for future production. Some items were thinned

out of the chart when the record was sent to the medical records department and were missing.

Additionally, a big chunk of the lab data was not produced because the laboratory department had changed computer programs and gaps in data existed because of the change in computer systems. These are just a few of the reasons, no matter which side an attorney represents, that hybrid records (consisting of paper in some areas and electronic documentation in others) can be a nightmare. Having a nurse available to find pertinent facts, identify what is missing, and assist in specific language related to record requests can be invaluable.

Expert Witnesses

In medical malpractice cases, expert witnesses are needed to identify the standard of care and evaluate causation. In non-malpractice cases, medical experts may be needed to testify about causation or prognosis, such as the extent of impairment from a brain injury suffered in a wreck. As the litigation process unfolds, nurses can provide ongoing communication with retained experts to ensure information is communicated throughout discovery, and that experts are prepared when it comes time to testify.

Healthcare professionals can be intimidated by a request from an attorney to serve as an expert witness. Nurses form professional networks while working in healthcare that allow them to reach out to colleagues who are either qualified to serve as experts, or happy to offer referrals to those who are a good fit.

Many doctors are initially leery about expert work. Some have never served as an expert, or have had a bad experience. Using nurses to identify and contact qualified experts can lead to a higher success rate in retaining the most effective witnesses.

Medical Research

Nurses can also efficiently complete literature searches while accessing multiple search engines and medical libraries. Organizing these materials in a way that they can easily be accessed can be crucial to providing medical support while building a case through depositions, mediation, and trial.

Retained experts may be able to use a substantial amount of literature that a nurse consultant has organized when referring to their opinions regarding standard of care and causation.

Providing Medical Education to Attorneys

Throughout the litigation process, nurses can provide case-related education to attorneys. Beginning with the initial evaluation of the case, nurses work to ensure medical issues are understood by attorneys, and are available to answer questions related to the patient's ongoing medical treatment and prognosis.

Nurses can act as a lifeline for attorneys when medical issues just don't make sense. In cases involving persons who have complicated ongoing care, nurses can compose chronologies including up-to-date medical records and summaries of future treatment recommendations.

In a personal injury case involving a client with underlying chronic disease and several medical providers it can be difficult to separate ongoing care related to the injury versus care provided because of chronic conditions. Nurses can create charts or other aids to outline how the client's complaints of pain and his pain management regimen has been changed by a recent injury.

Client Relations

On the plaintiff's side, nurses take on a role similar to case managers. Clients look to the nurses working with attorneys when they have questions about their medical care, insurance, referrals to specialists, school placement, durable medical equipment companies, medications, and pain management. Serving as the liaison between the attorney and the client to field such inquiries provides ongoing insight into the client's needs. This information becomes helpful when working to identify damages as related to loss of function, emotional pain and disfigurement, and future medical needs.

Keeping up with a client's ongoing surgeries, appointments with specialists, and identifying any unmet medical needs may require ongoing communication with the family, and at times the medical providers. This ongoing communication may be essential to know which medical records need updating.

Presentation of Damages

Evaluating damages can involve use of a certified life care planner. Nurses can provide life care planners with the necessary medical records and access to a client's treating providers to assist in their accurate depiction of a patient's future medical needs.

When attorneys employ medical illustration professionals or videographers to help demonstrate damages, nurses work to ensure these professionals understand the facts of the case and proposed liability theories, as well as connect them with pertinent experts to review exhibits as necessary.

Mediation and Trial Preparation

Throughout litigation, exhibits are used to support issues of negligence, causation, and damages. Nurses identify and organize pertinent medical records, deposition testimony, medical literature, and items produced during discovery while assisting attorneys with case presentation. They determine what medically-related information (including radiology studies and photos) may have the most impact during mediation or at trial, and make that information readily accessible, allowing attorneys time to focus on legal strategies.

Working in-house at a law firm gives a nurse consultant the opportunity to be involved in a case from beginning to end to offer insight into what is important as the case evolves.

Conclusion

The gulf between the world of healthcare and the legal profession can be diminished when nurses and attorneys work as a team. Nurses speak the language of healthcare organizations and providers, and work with attorneys to ensure they understand the many abbreviations and unfamiliar disease processes involved in a case.

Florence Nightingale was known as the "Lady with the Lamp." Attorneys and their clients can benefit from the nurse consultant's ongoing illumination of medical issues important to the outcome of their case. As long as lawsuits continue to involve issues of healthcare, attorneys will continue to benefit from the expertise of nurse consultants. ■

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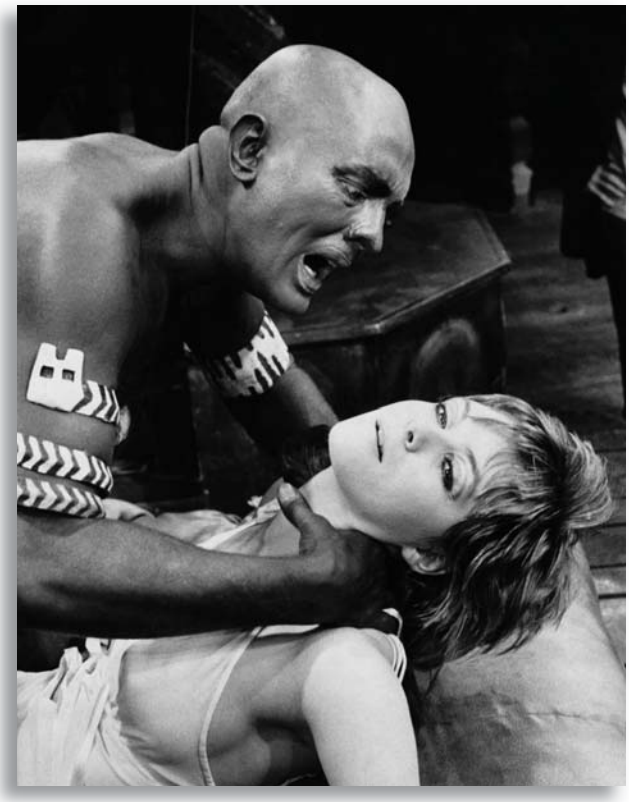
State of North Carolina v. Othello

By Jack Barnwell

Obtaining property by false pretenses, affray, assault with a deadly weapon, conspiracy to commit murder, assault with a deadly weapon with intent to kill inflicting serious injury, and murder. Does that recite the likely docket for a criminal session of superior court in Raleigh, Greensboro, or Charlotte? Yes, it does, but it also lists the crimes woven into the plot of Shakespeare's *Othello*. Shakespeare may or may not have spent some time as a law clerk, but he was intrigued by law as a profession and absorbed much of its jargon and process. Twenty of his plays have trial scenes.[1] He was a litigant himself.[2] And his plays have proved intriguing to lawyers, as demonstrated so well in Daniel Kornstein's *Kill All the Lawyers? Shakespeare's Legal Appeal*.[3]



Actor Jack Good as Othello, strangling his wife Desdemona, played by actress Sharon Gurney,, 1970. Frank Tewkesbury/Corbis

As critic Marjorie Garber observed, Shakespeare often invited playgoers to supply their own epilogues to what they had seen and heard; witness this leave taking: "Go hence to have more talk of these sad things."[4] In *Othello*, the closing couplet forecasts Lodovico's task to explain what has transpired: "Myself will straight aboard, and to the state/ This heavy act with heavy heart relate."[5] After considering what follows, readers are invited to decide how they would have prosecuted or defended Othello, what issues they would have presented on appeal, and whether this case has been rightly or wrongly decided by the court.

No. COA11-000
(Filed 1 November 2011)

Appeal by Defendant from judgments entered 9 July 2010 by Judge Cullen in superior court, Cumbria County. Heard in the court of appeals 16 August 2011.

Jon de Berneval for the State

Gene Zelatrice for Defendant-Appellant Othello

FINZIONE, Judge.

In the exercise of North Carolina's con-

current jurisdiction with the army in this case, Defendants Othello and Iago, in connection with the killing of Othello's wife Desdemona and the aggravated assault upon Othello's subordinate Michael Cassio, were charged by the state with two counts of conspiracy to commit first degree murder (09 CRS 001; 09 CRS 002), with one count of first degree murder (09 CRS 003), and with one count of assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI") (09 CRS 004). Defendant Othello ("Defendant" or "Othello") was separately charged with AWDWIKISI (09 CRS 123) as to his Co-Defendant Iago ("Co-Defendant" or "Iago"). To that charge Othello pled guilty prior to trial, and the trial court continued judgment, pending disposition of the remaining charges. The trial judge granted the Co-Defendant's motion for severance under N.C.G.S. § 15A-927. Pursuant to N.C.G.S. § 15A-2004, the district attorney elected to try Othello non-capitally on the first degree murder charge. The trial court dismissed the second conspiracy charge (09 CRS 002). The jury found Defendant guilty of the remaining conspiracy charge, guilty of first degree murder, and guilty of AWDWIKISI. For first degree murder Defendant was sentenced to life imprisonment without parole as mandated by statute; he was sentenced to consecutive terms of imprisonment within the presumptive range for each of the other offenses.[6] From the judgments entered on all charges to which he pleaded not-guilty, Defendant appealed as of right.

The case presented to us by this appeal can only be described as a tragedy. The crimes involved arose from the interplay of rivalry, deception, jealousy, and misapprehension among a group of military officers and their wives or paramours. In summary, the evidence introduced at trial tended to show the following:

Defendant Othello was a widely respected general officer. Cassio, a rising and well thought of lieutenant, and Iago, a veteran second lieutenant, were officers in Othello's command during his assignment to the army's center for simulation, training, and instrumentation in Central Florida. By coincidence, Iago and his wife, Emilia, were natives of the nearby resort city of Venice. Othello is of North African ancestry, and his superiors and subordinates often referred to him as "the Moor." In Venice, Othello courted and married Desdemona, daughter of Brabantio, a member of the city council. Brabantio initially objected to his daughter's sudden marriage to an older, dark-skinned man, whose cultural background differed considerably from hers. Nevertheless, persuaded that no undue influence was brought to bear on his daughter, he reluctantly accepted her marriage to the Moor. Immediately after this reconciliation, changing strategic considerations led to Othello's re-assignment—with his subordinates—to a command at Fort Vanter in Cumbria County where the crimes at issue unfolded.

At his new base Othello superseded Montano, an old comrade in arms. Cassio testified that in celebration of their commanding officer's recent marriage, Iago invited him to a party with Montano and several civilian friends. Against his better judgment Cassio agreed to go, knowing that alcohol would flow freely and aware, as he put it, that "I have very poor and unhappy brains for drinking." Montano testified that considerable alcohol was consumed at the party and that Cassio "was drunk." Cassio became embroiled in a fight with a man unknown to him, and when Montano tried to intervene, Cassio turned on and injured him.[7]

Othello came to the scene of the affray, and at his general's insistence Iago reported on Cassio's anger and drunken assault on Montano. Othello replied that he knew Iago's "honesty and love doth mince this matter, making it light to Cassio," and Othello relieved the lieutenant of his duties. Cassio testified that once the others had gone, Iago consoled him on his loss of place and damaged reputation, and counseled him on how to regain both: "Our general's wife is now the general . . . . Confess yourself freely to her, importune her help to put you in your place again." Cassio testified that he followed Iago's advice. Emilia, Iago's wife and Desdemona's close companion, agreed to Cassio's request that she arrange a meeting between him and Desdemona. To facilitate this interview, Iago promised to draw Othello away on a pretext of military business. Othello, returning to his residence near the base, caught sight of Cassio departing, and it was then that the conspiracy began to take root. According to the state's evidence, Othello asked Iago whether the man departing was Cassio, and the latter replied, "No, sure, I cannot think it, that he would steal away so guilty-like, seeing you coming."

That exchange was recorded in the written statement Defendant gave to police after recovering from a suicide attempt. The statement was received in evidence without objection and published to the jury. As this statement is the state's key evidence of the conspiracy offenses, we must discuss it in some detail. Although Defendant claims to be rude in his speech, we note in passing that the language of his statement is refined rather than demotic, almost lyrical, if somewhat grandiose.

Defendant conceded that he was guilty of murder, but protested that he had loved his wife deeply from the time she had shown great sympathy for his military hardships. He told her of his "hairbreadth 'scapes" in attacks, of being captured by an "insolent foe," and of his exchange as a prisoner of war. "She loved me for the dangers I had passed," he wrote. "And I loved her that she did pity them." At his new command, he intended to restore Cassio to his place, he wrote, until Iago implanted in his mind the insidious suspicion that his new bride was the adulterous toy of his temporarily disgraced lieutenant. Defendant described Iago's subtlety and skill in ferreting out Defendant's doubts and fears. Iago limned the sophisticated decadence of Venice, where women's "best conscience is not to leave't undone, but keep 't unknown." He rubbed raw his commander's sore spots: Othello's sensitivity about his dark skin, his age, and his cultural difference from his wife's relatives and her social set in Venice. ("Haply, for I am black and have not those soft parts of conversation which chamberers have, or for I am declined into the vale of years.")

Struggling with the gnawing suspicion that his young wife was an adulteress, Defendant demanded that Iago produce "ocular proof" of her affair with Cassio. Iago replied that the lovers would never be so indiscrete as to let themselves be caught in *flagrante delicto*; however, he assured Defendant that strong circumstantial evidence would condemn the guilty pair. Iago said that he had seen Cassio wipe his beard with the first gift Othello had given his wife, namely, a handkerchief, embroidered with a strawberry design. The handkerchief had belonged to Othello's mother.

Describing himself as overcome with violent jealousy and caught in the toils of Iago's trap, Defendant conceded he took an oath never to look back until his revenge was complete. Iago then swore to give his "wit, hands, and heart to wronged Othello's service," and

to obey Othello's commands in "what bloody business ever." Defendant told Iago to see that Cassio's murder was accomplished within three days; Defendant also instructed Iago to "furnish me some swift means of death for the fair devil [Desdemona]."

The conspirators met again later in the day, and Iago persuaded Defendant to conceal himself while Iago conversed with Cassio. Defendant could not overhear the conversation, but assumed from Cassio's laughter that he was boasting about his affair with Desdemona. Cassio subsequently testified at trial that, in fact, Iago had lured him into a conversation about Cassio's paramour, a prostitute named Bianca, to whom he had given the handkerchief he had found in his chambers, requesting that she copy the pattern. Bianca joined Iago and Cassio, and Othello saw the handkerchief in her hand. Iago easily persuaded Defendant that his young bride had given the handkerchief to Cassio, and "he hath given it [to] his whore." Having seen Cassio, Bianca, and the handkerchief, Defendant admitted that he determined to murder Desdemona that very night and that he asked Iago to obtain poison for the purpose of murder. According to Defendant, Iago replied: "Do it not with poison, strangle her in her bed, even the bed she hath contaminated." Defendant admitted he adopted that method because he thought the "justice of it pleases." Iago promised to kill Cassio the same night.

That evening Defendant and Desdemona entertained Lodovico, who had arrived with new orders for Defendant. Gratiano, Desdemona's uncle, had also recently arrived from Venice. Defendant escorted his guests outside, where he remained alone and soon heard Cassio, who was nearby, cry out that he was maimed and murdered. Believing that Iago had kept his word and that Cassio was dead, Defendant went to the bedroom in his residence where he accused his wife of adultery with Cassio. She denied those accusations, and Defendant admitted that he strangled his wife, incensed by the belief she was weeping for her dead lover.

Defendant's statement reported, finally, that after he had killed his wife, a distraught Emilia rushed into his residence and told him that Cassio had been wounded. Gratiano and Lodivco came to the scene of the assault and helped Iago carry the wounded Cassio inside Othello's residence for aid and treatment. Cassio, Gratiano, and Lodivco all testified in substance to the following: Emila confronted her husband, demanding to know whether he had told Othello that Desdemona and Cassio were having an affair. Iago tried to hush his wife, but she was in extreme agitation, crying out, "My mistress here lies murdered in her bed." Next, in response to Defendant's remark that Desdemona had given Cassio the handkerchief, Emila blurted out

> O thou dull Moor! That handkerchief thou speak'st of
> I found by fortune and did give my husband,
> For often with a solemn earnestness,
> More than belonged to such a trifle,
> He begged of me to steal it.

Without objection from Defendant, her words were admitted under the hearsay exception for excited utterances.

Cassio, Gratiano, and Lodovico all witnessed Iago rush at his wife, fatally stab her, and then flee. He was apprehended and brought back inside the residence. Defendant said, "Will you, I pray, demand that demidevil why he hath thus ensnared my soul and body?" He then stabbed his erstwhile co-conspirator, drawing blood. Defendant, noting his service to the government and his remorse for killing his wife, stabbed himself with a knife he had concealed on his person. He was given emergency medical attention, survived his attempt at suicide, and as noted, upon his recovery gave the statement we have summarized.

At the close of the state's case-in-chief, Defendant elected not to present evidence, but moved to dismiss the second count of conspiracy on grounds that the evidence supported only one conspiracy encompassing the death of both Cassio and Desdemona. Citing this court's opinions in *State v. Rozier*, 69 N.C. App. 38 (1984) and *State v. Lawrence*, 706 S.E.2d 822 (2011), the trial court agreed and granted Defendant's motion.

During the charge conference, Defendant's counsel informed the trial court that he intended to argue to the jury that Othello was guilty of second but not first degree murder. The trial court made the inquiry required by *State v. Harbison*, 315 N.C. 175 (1985), and it appears of record that Othello authorized his counsel to concede his guilt of second degree murder.

On appeal, Defendant Othello contends that he received ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel ("IAC"), a defendant must show first that his counsel's performance was deficient, which "requires a showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment." Second, the defendant must show that the deficient performance prejudiced the defense to such an extent "as to deprive Defendant of a fair trial, a trial whose result is reliable."[8]

Federal and state precedents emphasize that appellate review of IAC claims must accord great deference to counsel's professional judgment, meaning that "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy."[9] A Defendant who claims that his counsel was ineffective must specifically "identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance."[10] Defendant must show "a reasonable *probability* that, but for counsel's errors, there would have been a different result in the proceedings."[11]

Defendant Othello does not argue that in conceding his guilt of second degree murder his counsel's performance was *per se* deficient. In view of the evidence against him, Defendant concedes the strategy selected could bolster counsel's credibility in arguing to the jury that Defendant was guilty of the lesser rather than the greater degree of murder. Instead, Othello contends that his counsel was professionally unreasonable in failing to investigate the possibility of a diminished capacity defense. Counsel has a duty "to undertake reasonable steps to investigate all open avenues of defense."[12] The test for a reasonable investigation of what defense or defenses to employ "is whether a strategic decision was made after sufficient investigation, not whether that [strategic] decision was later proven to be correct."[13]

The defense of diminished capacity, resulting from mental illness or voluntary intoxication, can negate the element of premeditation and deliberation in first degree murder. If evidence supports this defense, the trial court will instruct jurors that they may find that Defendant, because of diminished mental capacity, was unable to form the specific intent to kill after premeditation and deliberation. If the jury so finds, it must return a ver-

dict of second rather than first degree murder. Defendant Othello claims that he suffered from a mental illness and that his counsel unreasonably failed to investigate the consequences of that illness *vis a vis* the charge of first degree murder. Othello contends that, whether from the post-traumatic stress of his combat experience and captivity, or from severe depression resulting from the belief that his wife was engaged in an adulterous affair with Cassio, or from a combination of those conditions he suffered "fits." He was with Iago when one such seizure occurred; as he was beginning to regain consciousness, Cassio happened upon the two. Iago explained the situation to Cassio: "My lord is fall'n into an epilepsy. This is his second fit; he had one yesterday." When Cassio suggested that they rub Othello about the temples, Iago allegedly replied:

> No, forbear.
> The lethargy must have his quiet course,
> If not, he foams at mouth and by and by
> Breaks out to savage madness.

According to Defendant, he reported this history of seizures to his counsel, but counsel took no action on this information.

The state responds that "decisions concerning which defenses to pursue are matters of trial strategy and are not generally second-guessed" by the appellate court.[14] The state argues that the strategy of conceding Defendant's guilt of a lesser included offense to avoid conviction of the greater offense has been recognized as a professionally competent course of action. The state cites law holding that a counsel's concession that his client had committed robbery "was consistent with defense counsel's overall strategy throughout the proceedings to exude openness and truthfulness with the jury and was reasonable in light of the abundant evidence tending to show the murder was committed for pecuniary gain."[15] Other precedent holds that counsel can have a "reasonable strategy to admit guilt of . . . offenses for which the evidence was overwhelming, in hopes of establishing greater credibility with the jury regarding the charge of first-degree murder."[16]

The strategy adopted by Defendant's counsel allowed him to argue that, although Othello had originally premeditated his wife's death, when it came to the act, he had second thoughts, saying to himself,

> [O]nce put out thy light
> Thou cunning'st pattern of excelling nature,
> I know not where is that Promethean heat
> That can thy light relume.

Then, according to counsel, Othello's jealousy was inflamed again, and he acted on the spur of the moment in killing his wife. Counsel argued further that Othello loved Desdemona "not wisely, but too well," and gave her a final, farewell kiss. Counsel argued that his client, like Cassio, was Iago's victim; that his client was a simple soldier who thought men honest that only seemed to be so; and that Iago knew Othello better than Othello knew himself. Over the state's objection, counsel argued that Othello was less culpable than Iago, denouncing the latter as one who repels but fascinates: a mastermind of evil who loves malevolence for the sake of malevolence.

As a threshold matter, we note that in *State v. Fair*, 354 N.C. 131, 166 (2001), *cert. denied*, 535 U.S. 1114 (2002), the court held that an IAC claim must be brought on direct review "when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing." However, *Fair* and other cases acknowledge that premature assertion of such a claim does not result in waiver of the right to assert the claim subsequently in post-conviction proceedings. Both federal and state jurisprudence recognize that the appellate record is most often inadequate to adjudicate an IAC claim, especially one that involves decisions made based on confidential communications between counsel and his client and on counsel's thought processes. The "record may reflect the action taken by counsel but not the reasons for it," for example, "whether a seemingly unusual or misguided action by counsel had a sound strategic motive or was taken because counsel's alternatives were even worse. . . ."[17]

In the case before us the record is inadequate to review the merits of Defendant's claim. We do not know whether, in fact, Othello reported his putative mental illness to counsel. If he did so, we do not know what investigation counsel made, if any; what results an investigation produced; or what consultation, if any, took place between counsel and his client about those results. In the final analysis we do not know what options counsel had and why he chose the course taken. Accordingly, we dismiss Defendant's IAC claim without prejudice to his right to assert that claim by motion for appropriate relief in the trial division. If Defendant files such a motion alleging IAC, he waives the attorney-client privilege regarding communications between counsel and Defendant to the extent counsel "reasonably believes such communications are necessary to defend against the allegations of ineffectiveness."[18]

NO ERROR

Judges TEATRALE and JURIDIQUE concur. ■

After completing his Ph.D. in American History, Jack Barnwell taught at the University of North Carolina, the University of Denver, the University of Colorado, and Vanderbilt University before turning to law. He practiced

CONTINUED ON PAGE 23

Remembrance

By William D. Kenerly

Fictional lawyers have always led exciting lives, especially on television. Growing up in the late '50s and early '60s, I watched point/counterpoint in Mr. Public Defender and Mr. District Attorney. Perry Mason was less balanced as he embarrassed and defeated the hapless prosecutor Hamilton Burger (HamBurger – get it?) So being an attorney seemed kind of cool, and these early shows planted the law school seed. After college the US Marine Corps beckoned and law school went to the back burner. But even as a marine infantry officer I became involved in the military justice system both as a nonlawyer prosecutor and as a "person of interest." Both experiences influenced my subsequent career choices and my views of the criminal justice system.

Being a "person of interest" is not fun, especially when you are innocent. In 1969 I was a first lieutenant of marines, and had just been released from the hospital where I had recovered from wounds sustained in Viet Nam. I was stationed at Camp Lejeune where my wife and I lived. On a Sunday in May 1969 we traveled to Chapel Hill to visit my wife's brother, a student at UNC. We decided to meet for a picnic at the amphitheater on campus. When we arrived I noticed that an anti-war seminar was being conducted in the area. That was pretty common in 1969, so we didn't pay too much attention—we just had our picnic, visited, and returned to base.

A few days later I was summoned to the provost marshall's office. Because of my interest in the law and law enforcement I had tried to get assigned to a military police unit, so I thought the summons was job related. When I reported to the provost marshall's office, I was directed to a back room and introduced to an investigator. He advised that an undercover agent had photographed my car at the amphitheater and that one of the seminar participants looked like me. Then he advised me of my rights. I exploded. I knew, first, that I had not participated in the anti-war activities; and, second, that even if I had participated, no law had been broken. I stated these things to the investigator somewhat strongly. Eventually the situation sorted itself out, but I have never forgotten the dangers of misidentification and the frightening ability of government to infringe on our private lives.

The marines never have enough of anything, and in 1969 they did not have enough lawyers. Previously, special courts martial (approximately equivalent to criminal district court) had utilized nonlawyer judges, defense counsel, and prosecutors—marine attorneys were reserved for general courts martial (read superior court). In 1968 the Uniform Code of Military Justice (UCMJ) was rewritten to require that special courts martial judges and defense counsel be attorneys, and those responsibilities occupied every attorney in my unit. The UCMJ did not mention prosecutors, so line officers were assigned. I was tasked as the nonlawyer prosecutor for my regiment.

Looking back on it, the 50 or so cases that I prosecuted over the next 18 months did not amount to much—about what today's district court prosecutors handle each day before the morning break. But I did get the opportunity to investigate and prepare cases, examine witnesses, and argue both the facts and the law to a court. This experience whetted my appetite for the law and propelled me into law school upon my discharge in 1970.

After being admitted to the Bar in 1973, I had the good fortune to be hired as a research assistant for then associate justice of the North Carolina Supreme Court Susie Sharp. Toward the end of my year with her, Justice Sharp asked about my career plans. I told her that I was interested in criminal law, but could not decide whether I wanted to defend or prosecute criminal cases. I will always recall her advice: "Defend for the shortest time possible, then move on to civil law." Always one to carefully consider the advice of another, I immediately sought employment as a prosecutor.

Eventually I was hired as an assistant solicitor (assistant district attorney after 1978), but first I spent a year in private practice in Salisbury. In 1974, judges had few guidelines for the appointment of counsel for indigent defendants. Consequently, I defended my first jury trial (armed robbery) with less than one year of experience in private practice. I learned a lot—some of it was rather disconcerting. The trial revealed that two people robbed a convenience store. After the robbers fled but before the police arrived, the victim received an anonymous phone call reporting that one of the Smith (an alias) boys had been involved in the robbery. The victim reported the "Smith" phone call to police, and the police provided the victim with a photo lineup that included my client. The photo of my client depicted him in his army uniform complete with his name tag—"Smith." Not surprisingly, the victim identified my client. I lost my suppression motion and my client was convicted, but he would not allow me to give notice of appeal.

The reason for my client's decision not to appeal became clear about a year later when the second defendant was arrested for the robbery based upon fingerprint identification. At his co-defendant's trial my former client testified as a defense witness. He testified that he had, in fact, committed the robbery with another, but that the person on trial was not his accomplice. This defendant was also convicted. For a young lawyer, any number of lessons could be gleaned from this experience. To me it showed how complicated—and interest-

ing—criminal law can be.

The criminal caseload exploded during my career, as did the entire criminal justice system. I served as an ADA in District 19 during 1975-1978, serving Rowan, Cabarrus, Randolph, and Montgomery Counties. The prosecution staff included the elected DA, five assistant prosecutors, one legal assistant, and one administrative assistant. When I was first elected district attorney in 1991, the district included Rowan and Cabarrus Counties. The staff was composed of six ADAs, two legal assistants, and an administrative assistant. By my retirement in 2010, only Rowan County remained in the district, and it was staffed by eight ADAs, four legal assistants, an administrative assistant, and an investigator—and we needed more. Hopefully the legislature will increase judicial assets to match the ever-increasing case load once the economy improves.

Finally, here are some observations about capital punishment. In 1972 the United States Supreme Court struck down all capital punishment statutes in the country, primarily because of the unchecked government discretion involved in capital verdicts. The North Carolina legislature responded by eliminating discretion—upon conviction of first degree murder, first degree rape, first degree burglary, or first degree arson the mandatory punishment was death. No one was executed pursuant to this statue. During my clerkship with Justice Sharp, she expressed her belief that this North Carolina statue was unconstitutional both as it applied to offenses other than first degree murder and as it treated "discretion." She filed a dissent in every capital case until the statute was repealed and replaced by current G.S. 15A-2000.

Over the past 38 years our legislature has migrated from mandatory death to an almost incomprehensible matrix of investigation, litigation, and post-conviction requirements in capital cases. Perhaps that is progress, and certainly our citizens should support a system that promotes and protects the constitutional rights of the accused. But I often think that currently, our legislature is happiest when we have a capital punishment statute, but no one actually gets executed. If the legislature is not comfortable with capital punishment then it should be banned. The current piecemeal attack on capital punishment is not fair to the families of victims or the criminal justice system.

Capital punishment is only one—albeit the most significant—of the issues for the future. As attorneys, the public will expect you to bring education and intelligence—as well as honesty and concern for public safety—to these debates. Anything less should be a crime. ■

William Kenerly is a graduate of UNC Law School. He served as district attorney from 1991-2010. Now retired, he and his wife look forward to spending more time with their six grandchildren, and hope to have more time for driving their 1967 Mustang.

Othello (cont.)

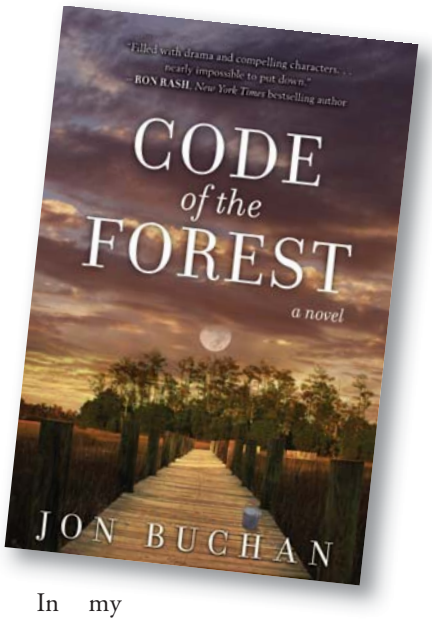
appellate law with the North Carolina Department of Justice for 18 years before retiring in the fall of 2011. He would like to thank Assistant Attorneys General Joseph Hyde and Jess McKeel as well as Daniel Kornstein of Kornstein, Veisz, Wexler & Pollard for their assistance and encouragement in writing this article.

Endnotes

1. Daniel Kornstein, *Something Else, More Shakespeare and the Law*, 5 (Bloomington, IN.: 2012).
2. *See*, Stephen Greenblatt, *Will in the World, How Shakespeare Became Shakespeare*, 71-72, 361-64 (NY: 2004); Anthony Holden, *William Shakespeare, the Man Behind the Genius*, 213-14, 262 (Boston: 1999).
3. (Princeton, NJ: 1994); *see also, e.g.*, The Association of the Bar of the City of New York, *The Elsinore Appeal, People v. Hamlet* (NY: 1996).
4. *Shakespeare After All*, 41 (N.Y.: 2004).
5. *Othello*, V, iii, 370-71.
6. *See*, N.C.G.S §§ 14-17, 14-32(a), 15A-2000, 15A-2004, and 15A-1340.17 (2011.)
7. All quotations from the trial transcript, i.e. the text of the play, are taken from G.B. Harrison, ed., *Shakespeare, the Complete Works* (N.Y:1952).
8. *Washington v. Strickland*, 466 US 668, 687 (1984).
9. *Id.* at 689 (citations omitted).
10. *Id.* at 690.
11. *State v. Braswell*, 312 NC 553, 563 (1985)(citing *Strickland*, 466 US at 698)(emphasis added).
12. *Wood v. Zahradnick*, 578 F.2d 980, 982 (4th Cir. 1978).
13. *State v. Frogge*, 359 NC 228, 241 (2005) (relying on *Wiggins v. Smith*, 539 US 510 (2003)).
14. *State v. Prevatte*, 356 NC 178, 236 (2002), *cert. denied*, 538 US 986 (2003); *accord, State v. Poindexter*, 359 N.C. 287, 291-292 (2005) (same holding specifically with regard to counsel's strategy of pursuing solely an insanity defense rather than an insanity and a diminished capacity defense).
15. *State v. Taylor*, 362 NC 514, 547 (2008), *cert. denied*, 175 L. Ed. 2d 84 (2009).
16. *State v. Yarborough*, 198 NC App. 22, 38, *cert. denied*, 363 NC 812 (2010)
17. *Massaro v. United States*, 155 L. Ed. 2d 714, 720-21 (2003); *see also, State v. Jackson*, 165 NC App. 763, 777 (dismissing IAC claims without prejudice because of inadequate record to adjudicate them), *appeal dismissed and disc. rev. denied*, 359 N.C. 72 (2004).
18. N.C.G.S. § 15A-1415(e)(2011).

An Interview with Author Jon Buchan

By John Gehring



Is there life after the law? Certainly—as author John Hart has shown us—there is life after the law. Other lawyers have switched from the practice of law to the practice of medicine or from the practice of law to grape growing/wine making for a living. But, is there life adjacent to the law where the legal and other interests travel side by side? My interview with Charlotte lawyer Jon Buchan, First Amendment rights advocate and new fiction author, sheds more light on this issue.

John Gehring: Ever since reading your new book *The Code of the Forest*, I have wondered how this work of fiction came to be and what prepared you for this adventure. My memories of trying a custody case in the Horry County court system tell me that this book could be, or might be, a true portrayal of the good old boy network in modern day action. But then, I am ahead of myself with these questions. Please describe your journey toward writing this work of fiction.

Jon Buchan: I grew up in the small South Carolina tobacco town of Mullins. When I finished Princeton in the early 1970s I was interested in journalism and knew I wanted to go back to South Carolina and learn more about its politics. I was a reporter covering South Carolina politics for a few years, first for *Osceola*—an alternative weekly newspaper in Columbia that I started with a group of like-minded South Carolinians—then for *The Charlotte Observer*. It was the age of the political scandals involving President Richard Nixon and Vice-President Spiro Agnew, and we were interested in "following the money." We wanted to write about who had political power in South Carolina and who benefited from that power. The South Carolina daily newspapers in that era simply didn't do that. The South Carolina political scene, especially the legislature, was full of colorful, larger than life characters, and we had a lot of fun writing about them. Now, there were serious, idealistic politicians interested in "good government" and progressive politics—like Alex Sanders, Nick Zeigler, Brantley Harvey, Tom Smith, John West, and others—but there were a lot of folks in state government pretty focused on carrying water for their special interests. Much of the real political decision making took place in the well-lubricated nighttime and weekend social gatherings. For a long time, I've pondered a story that focuses on the subtle forms of back scratching—good old boy networking that sometimes spills over into political cronyism and then over into outright corruption. And that's one of the themes of *Code of the Forest*. Frankly, it's not a theme unique to South Carolina politics as recent North Carolina history attests.

After law school at Duke I joined Helms, Mulliss & Johnston in Charlotte. I had the good fortune to have Ozzie Ayscue as my mentor, and for decades now he has been my law partner and friend. Most of what I learned about the law and a good bit of what I learned about life I learned from Ozzie. He represented *The Charlotte Observer* and was kind enough to let me take on some of that work, even helping him try—successfully—a libel case brought by the former Charlotte police chief against the *Observer* in the early 1980s. Over the past three decades I have enjoyed representing the *Observer* and other media clients in all manner of disputes, including libel and privacy claims, subpoenas seeking reporters' sources, fights over access to courtroom proceedings, and judges' "prior restraint" orders not to publish certain information. I've also been a general commercial litigator, but I particularly have loved the media and First Amendment work.

In my early 50s I began to think a lot about the ways most of us strive in life to be both self-reliant individuals but also connected with others. And I thought a good theme for a book would be how people—especially individuals who have suffered the pain of lost connections—can be afraid of connecting.

So I decided to take a stab at combining these themes, and adding in some of my firsthand experiences and stories I'd been told over the years. The novel, set in Georgetown, South Carolina, features Wade McNabb, a small town newspaper publisher who exposes a bribery scheme involving a powerful South Carolina state senator committed to helping a chemical plant get built along the Waccamaw River. The senator sues the newspaper and seeks its confidential source, threatening to make Wade lose his newspaper, just as his father had lost the paper decades earlier in a political struggle over race. Wade is defended by Kate Stewart, a young, independent trial lawyer who has left a larger firm to strike out on her own in Georgetown. Like many lawyers, she is pretty skeptical of journalists. And like many journalists, Wade is no fan of lawyers. So the alliance is a wary one—a little like porcupines mating. I don't want to tell more about

the plot here, but the story involves southern politics; the world of newspapers; law and courtroom drama; the South Carolina Lowcountry and its natural beauty; a little romance; and the tension between individual pride and self-reliance on the one hand, and the human need for the anchor of close connection on the slippery surface of this earth.

Gehring: All lawyers—at least all trial lawyers—have been on the receiving end of the good old boy network or home cooking and have lived to recount these experiences with anger, regret, or humor. Did personal trial situations—or personal observations—play a factor in your writing?

Buchan: Part of the opening chapter of the book—Ducks in the Freezer—is a tale of some gourmet "home-cooking" before a trial judge, and is based loosely on a story a young South Carolina lawyer told me in the mid-1980s about why he quit practicing law. In my early years as a still wet-behind-the-ears lawyer from Charlotte wandering into a courtroom in a smaller county far away, there were times when I wondered if maybe the other side's local lawyer got the benefit of the judge's doubt on close questions of law, but I don't think home-cooking is really a big issue in North Carolina. We have independent-minded judges here, and unlike in South Carolina, they aren't elected by the legislature. And *Code of the Forest* is set in the mid-1990s. I suspect things have changed some there in the last two decades.

Gehring: Your subtle exposure of the exclusionary gender/race-based good old boy network was an undercurrent throughout your story. Your vivid exposure of a greed based business model—made possible by the ruling political cliques—was also on target. Why the difference in treatment of these evils?

Buchan: I don't know that they are treated so differently. There is no question that in the 1970s, when much of the backstory occurs, women and African Americans were treated as second-class citizens in South Carolina. There were no African Americans in the South Carolina legislature, post-Reconstruction, until 1970. As late as the mid-1970s there were no women or blacks among the 16 or so trial court judges and the five Supreme Court Justices, and almost all of them were former legislators elected by their peers to these jobs. By the mid-1990s that had changed in many respects, but there were precious few women trial lawyers like Kate Stewart.

As you know, there are some stark portrayals in the book of some of the more brutal racial attitudes present in the South in the early 1970s. And it wasn't just in South Carolina that many judges in the 1980s referred to female advocates as "lady lawyers."

With regard to the use of political power for monied interests, that's been true forever and not just in South Carolina. Of course, there was a time in the early 1990s when 10% of the South Carolina legislature was caught in an FBI sting operation and indicted on charges of taking bribes in exchange for supporting specific legislation. In a democracy, money is always an issue. Remember the old cynical saying: "There are only two things that are important in politics. The first one is money, and I can't remember what the other one is." The recent US Supreme Court decision in the *Citizens United* case which enlarges the big-money pipeline to politicians—and the fallout from it in the current presidential primaries and election—certainly underscores that issue. Fortunately there are many dedicated public servants who push back against those forces—like young lawyer Kate Stewart, newspaper editor Wade McNabb, and a couple of other notable characters in the book I don't want to mention here because it would give away some of the plot.

Gehring: I understand that you will attend a writers conference in South Carolina later this spring. Do you anticipate having to use your knowledge as a First Amendment rights attorney to your own personal benefit? After all, your new book should have been released by then and hopefully read by many of the fictional characters contained therein.

Buchan: Yes, I was invited by the South Carolina Humanities Council to speak on a panel at the annual South Carolina Book Festival. I think *Code of the Forest* will be well-received in my home state. None of the main characters—good or evil—are based, by the way, on any real person. I love South Carolina, and it has often gotten a raw deal because of the antics of some of its more colorful politicians over the years, from Strom Thurmond to Mark Sanford to the current governor. But there are so many smart and dedicated public servants there—many of them lawyers—who have led the state forward, like longtime South Carolina Supreme Court Chief Justice Jean Toal, former Governor Dick Riley, the late federal judge Matthew Perry, recently appointed federal judge Richard Gergel, and circuit court judge Michael Baxley to name a few. I think many will identify with some of these stories of an era mostly past now and remember the roles they played "in the arena," as Teddy Roosevelt used to say, in bringing about positive change.

Now you asked about fiction writing as a life "adjacent to the law." As my family will attest, when I started writing this it was purely for fun—to tell my favorite stories so my children and their children would know about some of the culture that shaped my life. Over time I got more interested in making this a real novel, with pace and tension and proper character development. Because my real job as a lawyer is my main focus, the work on the book was done on weekends and nights, and during summer vacations on the South Carolina coast. It has been great fun creating this other universe peopled with characters I learned to love—even some of the evil ones. I plan to keep practicing law—representing folks who need my counsel and advocacy—for many years to come. And one of these days before long, I might just tap out the first chapter to the next book.

Gehring: Any other comments for your fellow attorneys who read the North Carolina State Bar *Journal*?

Buchan: I think half the courtroom lawyers I know have a story in them that would make a good novel with fascinating characters. My advice would be to read a book or two on novel writing just to get a feel for point of view and pace and clear writing. Then outline your story broadly, with a good timeline of events and characters, and decide who your main characters will be and how they will develop and change and what events will spark that change. Then start writing a chapter at a time and let those characters show you where they want to go. And stay with it. Courtroom drama is exciting to readers because, unlike in most of life, there is a clear winner and a clear loser. It makes for exciting tension and a good read.

Gehring: Thank you for the opportunity for this chat! ■

John Gehring of Walnut Cove is a State Bar Councilor from Judicial District 17B and a member of the State Bar's Publications Committee.

Celebrating 25 Years of Certification

BY DENISE MULLEN, ASSISTANT DIRECTOR OF LEGAL SPECIALIZATION

As board certification for North Carolina lawyers marks its milestone 25th year, the Board of Legal Specialization recognizes and celebrates the 59 lawyers who earned this distinction at the program's inception in 1987.

Notable Accomplishment

The certification program assists in the delivery of legal services to the public by identifying lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field. By identifying these lawyers, members of the public can more closely match their needs with available services. In addition, the legal specialization program seeks to improve the competency of members of the Bar by establishing an additional incentive for lawyers to participate in continuing legal education and to concentrate their efforts on becoming proficient in a specialty practice area.

Board certification is a notable accomplishment. Within the North Carolina legal community, board certification means a lawyer has substantial, relevant experience in a select field of law as well as demonstrated and tested proficiency in that practice area.

There are more than 25,000 active lawyers licensed to practice in North Carolina. Only 826 are board certified. Board certified lawyers earn the right to publicly represent themselves as specialists in a specialty practice area. In fact, they are the only lawyers allowed by the North Carolina State Bar to do so. This designation sets them apart as being lawyers with a public commitment to excellence in their area of law. The process is voluntary and can only take place after a lawyer has obtained significant practice experience in the specialty area for five years. Board certification requires an ongoing commitment to the specialty area which must be verified every five years with references from peers in the specialty. It also requires additional annual continuing legal education so that the specialists stay abreast of current trends in law.

Launching the Program

When the program began in 1987, three areas of certification were offered: bankruptcy law, estate planning and probate law, and real property law (commercial and/or residential). There were 92 lawyers in the initial class of applicants who passed the exams and became board certified specialists. Of that number, 59 have maintained the certification for the last 25 years![1]

Celebrating 25 Years

The lawyers who supported the program in the early days have enjoyed watching the program succeed and expand, adding seven new specialty areas: appellate practice, criminal (including the new juvenile delinquency subspecialty), elder, family, immigration, social security disability, and workers' compensation. The Board of Legal Specialization congratulates the legal specialists who have maintained their certification for 25 years. Thank you for your dedication to your specialty practice area and your loyalty to the specialization program. In recognition of their accomplishments, the 25 year specialists were asked to reflect on why they became certified and what certification has meant to their careers. Excerpts from the specialists' comments follow.

Reflections from Some of the Specialists

Why did you pursue certification the first year it was offered in 1987?


Harden

Holmes Harden, a board certified specialist in business and consumer bankruptcy law practicing in Raleigh: "I wanted to be identified as having special legal skills. 'Specialist' was not a word we could use to describe ourselves before 1987, and I believed that being so designated would help me build my practice as a young lawyer."


Stubbs

Trawick Stubbs,** a board certified specialist in business and consumer bankruptcy law practicing in New Bern: "Actually, Alan Head suggested that I apply as it was my main field. I also appreciated the professionalism and client service aspects of the program."

Michael Godwin, a board certified specialist in estate planning and probate law practicing in Greensboro: "I wanted to convey to clients and referral sources my competence and my commitment to being a first-rate professional."

Robert Ray, a board certified specialist in estate planning and probate law practicing in Fayetteville: "I felt strongly that if the State Bar was going to certify attorneys as specialists in an area where my practice was concentrated, then I wanted to be among those certified! I am proud to have been in the first class of board certified lawyers."

R. Woody Harrison,** a board certified specialist in residential real property law practicing in Wilson: "I pursued certification to help lead the way in hopes that all real property attorneys would certify and encourage realtors to send closings only to certified attorneys. I maintain the certification out of loyalty and belief in the concept."

E. Fred McPhail Jr.,** a board certified specialist in commercial real property law practicing in Charlotte: "When the specialization program was conceived, Cliff Everett Sr. was the president of the NC State Bar and Charlie Fulton was the president of the NC Bar Association. Charlie recommended me to Cliff as a member of the initial real prop-

erty specialty committee. I was very flattered to be considered for this position by two of the most distinguished attorneys I have known. Our committee, chaired by Dick Glaze, helped to formulate the program for real property specialization, and members of the committee were allowed to apply for certification. My practice at that time was primarily real property and I felt that specialization was the wave of the future, especially for those who practice in the larger cities."


Holding

Graham Holding Jr., a board certified specialist in estate planning and probate law practicing in Charlotte: "I thought it would be beneficial for clients—as well as other lawyers—to know that I not only specialized in estate planning and fiduciary law, but was also board certified and that as a result they would expect me to be knowledgeable in this area."

Why have you maintained certification for 25 years?

Sara H. Davis,* a board certified specialist in business and consumer bankruptcy law practicing in Asheville: "Shortly after I was certified I became a member of the Board of Legal Specialization and then chair of the Board. As I became more involved in the nationwide move to specialization I realized how important board certification is as a way for consumers to identify attorneys with special expertise in certain areas of the law. Trying to find a lawyer by looking in the phone book is not a very comfortable search. Seeing the designation of an attorney as a board certified specialist makes finding a good attorney a lot more certain. I believe in the program; I am aware of the hard work many lawyers have put in over the years to make this a successful program, and the equally hard work of the State Bar staff to keep the program credible and viable."

J. Michael Booe,** a board certified specialist in business and consumer bankruptcy law practicing in Charlotte: "I decided to pursue the board certification at first for mainly competitive purposes. Once I had achieved it, I was proud of the distinction and didn't want to let it go."

E. Cordell Avery,** a board certified specialist in residential real property law practicing in Greenville: "I am proud of my real property practice. This is not a practice area in which one should dabble. I want my clients to know that their real property matters are being handled by an attorney who must meet strict requirements of skill and professionalism."


Avery

Alfred G. Adams, a board certified specialist in commercial and residential real property law practicing in Winston-Salem: "I am supportive of the reasoning behind the need for specialization and I am proud of being named as a legal specialist. I worked hard to achieve the designation, and so it is natural to hold onto those things one values in the legal profession."


Adams

Douglas Q. Wickham, a board certified specialist in business and consumer bankruptcy law practicing in Raleigh: "I initially pursued certification to set myself apart from

Hats Off to the Class of 1987!

Bankruptcy Law

Rayford K. Adams III
Herbert F. Allen
David R. Badger
Steven L. Beaman
J. Michael Booe
Gregory B. Crampton
Donald A. Davis
Sara H. Davis
Albert F. Durham
Terri L. Gardner
David G. Gray
Joseph W. Grier III
Holmes P. Harden
Edward C. Hay Jr.
Richard M. Hutson II
Bruce F. Jobe
Robert K. Johnson
Anita Jo Kinlaw-Troxler
Richard M. Mitchell
Roger A. Moore
Robert M. Pitts
P. Wayne Sigmon
Richard D. Sparkman
Trawick H. Stubbs Jr.
Douglas Q. Wickham
John S. Williford Jr.
N. Hunter Wyche Jr.

Estate Planning/Probate Law

Richard A. Bigger Jr.
Lawrence E. Bolton
Michael A. Colombo
Thomas R. Crawford
Michael H. Godwin
Robert C. Gunst
Robert H. Haggard
Charles B. Hahn
John C. Hine
Graham D. Holding Jr.
C. Gray Johnsey
Ronald P. Johnson
Brian F. D. Lavelle
Scott E. Lebensburger
Paul H. Livingston Jr.
Neill G. McBryde
Michael L. Miller
James W. Narron
Richard A. Orsbon
Robert G. Ray
Christy Eve Reid
W.Y. Alex Webb

Real Property - Residential and Commercial

Alfred G. Adams
Douglas O. Thigpen

Real Property - Commercial

Howard L. Borum
M. Jay DeVaney
E. Fred McPhail, Jr.
Samuel T. Oliver Jr.

Real Property - Residential

E. Cordell Avery
Frank W. Erwin
R. Woody Harrison Jr.
Sheryl H. Williams

the ordinary. I have maintained it because I see that people and businesses with more complex legal situations are more likely to make contact with me."

Michael A. Colombo,** a board certified specialist in estate planning and probate law practicing in Greenville: "The things that I hoped would come with achieving board certification have happened. I was a young lawyer with a small firm in a small town. My certification made a statement to other lawyers, bank officers, the local community, and even the wider community of lawyers state-wide. I began to see a difference in the way they related to me. I had a credential that others could see as an objective validation of my knowledge and experience."

N. Hunter Wyche Jr.,** a board certified specialist in business and consumer bankruptcy law practicing in Raleigh: "I initially pursued the board certification designation mostly for personal satisfaction, but maintained it over the years because I realized that it was too precious to drop!"


Wyche

How has certification been helpful to your practice?

Richard M. Hutson,** a board certified specialist in business and consumer bankruptcy law practicing in Durham: "I have found certification to be most helpful in gaining referrals made to me from other specialists. I also use the directory of specialists quite often when I make referrals."

Graham Holding Jr., a board certified specialist in estate planning and probate law practicing in Charlotte: "I think it has helped in giving clients and other lawyers more confidence in my services knowing that I am board certified. The additional CLE requirements in this area have also been helpful in ensuring that I continue to be knowledgeable and am keeping abreast of developments."


Reid

Christy Eve Reid,* a board certified specialist in estate planning and probate law practicing in Charlotte: "Board certification keeps me current in my practice area and gives clients confidence in having me as their attorney."


Hahn

Charles B. Hahn, a board certified specialist in estate planning and probate law practicing in Greensboro: "Certification allows for continuing professional development and gives me a feeling of accomplishment. It also helps in client development, particularly referrals. It shows that I have taken that extra step toward competence in a particular field." (photo)

Bruce F. Jobe, a board certified specialist in business and consumer bankruptcy law practicing in Lumberton: "I initially supported the NC State Bar specialization program to help identify specialists in specific legal areas. Being a board certified specialist identifies me to the public and has helped me with referrals from other attorneys and initial contacts from potential clients."


Jobe

W.Y. Alex Webb, a board certified specialist in estate planning and probate law practicing in Aberdeen: "The certification attracted and retained clients who appreciate the best. It proves to associates (and current and future partners) that I am committed to practicing this specialty at a high level."


Webb

Rayford K (Trip) Adams III,** a board certified specialist in business and consumer bankruptcy law practicing in Winston-Salem: "It has been very helpful to be a part of the group of bankruptcy specialists. By definition, we are all committed to this practice area and devote a significant portion of our practices to bankruptcy. We have a presence in the bankruptcy bar and we know that each of us is tuned in to what's happening in the practice area."


Adams

James W. Narron,** a board certified specialist in estate planning and probate law practicing in Smithfield – "Board certification has done a lot to help the public realize that competent legal services are available in smaller communities, where access may be easier and overhead is smaller. We also have to be aware of the public perception of the legal profession. A large part of our job is to foster in the minds of the public the perception that lawyers are good and capable people. That is the whole intent and purpose of the certification program."


Narron

*Served on board of legal specialization
**Served on specialty committee

Endnote

1. Most of the lawyers who are no longer certified have retired from the practice of law.

Annual Meeting

You are asked to take notice that the annual meeting of the North Carolina State Bar will be held on Friday, October 26, 2012, in conjunction with the council's quarterly business meeting. Further, the council will hold an election on Thursday, October 25, 2012, at 11:45 a.m. at the Raleigh Marriott City Center, Fayetteville Street, Raleigh, to choose the agency's president-elect, vice-president, and secretary-treasurer for 2012-2013. All members of the Bar are welcome to attend these events.

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*Juvenile Delinquency subspecialty is new in 2012.

North Carolina State Bar
Board of Legal Specialization

Bruno's Top Tips: New IRS Regulations on Credit Card Transactions

Lawyers need to be aware of the new IRS rules regarding credit card transactions and how they may affect trust accounts. The following article is reprinted with permission from LawPay, a credit card processing company. For more information on LawPay, visit lawpay.com. The North Carolina State Bar does not endorse LawPay or any other company or business service.

New IRS Section 6050W - What it is and How it Affects Attorneys

By Amy Porter, CEO, LawPay

It is estimated there are over 10,000 credit card transactions made every second around the world. This astonishing number results in over $7.5 trillion in credit card payments per year (American Bankers Association). If you are one of the lucky businesses processing these transactions, congratulations, you are now subject to the newest IRS requirement – Section 6050W.

What is 6050W?

Section 3091(a) of the Housing Assistance Tax Act of 2008 (the "Act") added section 6050W to the Code requiring merchant acquiring entities and third party settlement organizations to file an information return for each calendar year, reporting all payment card transactions and third party network transactions with participating payees occurring in that calendar year. It was created in an effort to further reduce the estimated $345 billion tax gap from the business sector by providing additional information to the IRS on aggregate credit card transactions. Effective January 2012, all credit card processors (i.e. LawPay, First Data, TSYS, etc.) and third party payment aggregators (PayPay & Square) will be required to report gross card transactions to the IRS. This means the gross dollar amount of all transactions will be reported on a special 1099-K, regardless of returns or any processing fee deductions.

The amount to be reported to the IRS with respect to each lawyer is the total gross amount of all of the transactions made for that lawyer in the calendar year. The preamble to the final regulations under section 6050W makes clear that the amount reported is to be the total gross amount "without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts." 75 FR 49821-01, 2010 WL 3207681 (August 16, 2010).

Commentators on the final regulations had suggested "defining 'gross amount' as net sales, taking into account credit transactions, chargebacks, and other adjustments on the ground that gross amount is not a true indicator of revenue." *Id.* The Treasury rejected these suggestions because "[t]he information reported on the return required under these regulations is not intended to be an exact match of the net, taxable, or even the gross income of a payee." *Id.*

What about IOLTA?

In the case of attorneys, Section 6050W does not make a distinction between credit card transaction deposits made to a trust or IOLTA bank account and an attorney's operating bank account. This has many attorneys concerned that the IRS will view these transactions incorrectly as income. However, there are two important items to note: (1) the new 1099-K is only intended to be "informational," (2) your processor should include a merchant industry code on your 1099-K identifying you as a law firm or provider of legal services. The reporting requirements under section 6050W require credit card processors to report to the IRS on Form 1099-K the total gross amount of payment card transaction processes for each client over the calendar year, without reduction to account for amounts deposited into IOLTAs. Although there are few instructions from the IRS informing taxpayers on how to account for discrepancies between 1099-Ks issued to them and amounts reported on the taxpayer's return, it is clear that the IRS does not intend the Form 1099-K to match net, taxable, or even gross income. Thus, the amount shown on the Form 1099-K will not in all instances be required to be reported as income.

Match or Mis-Match?

In addition to the gross volume reporting, Section 6050W also requires processors to verify and match your federal tax ID (TIN) and legal name to IRS records. 6050W requires an exact match on both items to file your 1099-K correctly. Due to technology limitations with most Visa & MasterCard processors, merchant statements are usually limited to only 25-35 characters. As such, many law firm merchants have either abbreviated their name or used an acronym for their merchant account. If this is the case, you will need to contact your processor to assure that your legal name on your merchant account exactly matches the legal name you use to file your tax returns (at least within the maximum number of characters provided by your merchant processor).

Painful Penalty

First the good news…Originally set to begin January 2012, the IRS has decided to use the 2011 tax year as a "trial run" for reporting on 1099-Ks. Due to system and reporting limitations with both the IRS and virtually all card processors, the timeline for matching legal names and TINs has been extended until the 2012 tax year. The bad news, however, is that beginning January 2013 the IRS will impose a 28% withholding penalty on all credit card transactions if the merchant information on file is not an exact match with their records. It is still

unclear what steps merchants will need to take to reclaim held funds, even if the legal name and TIN information is corrected.

Due to the steep withholding penalty, it is imperative that you confirm the information on your 1099-K this year. If you have not yet received a 1099-K from your processor, call and request a copy. All 1099-Ks should have been sent out in late January for a "trial run." You will notice there is nothing further that needs to be done for the current 2011 tax year.

Fees for 6050W?

It seems any time the IRS changes a policy or tax requirement, a new fee is created by the banking institutions to reclaim their own costs. As a merchant, you will be happy to know Section 6050W specifically states that processors may not charge for implementing the 1099-K process. Beware of new 6050W charges disguised as "Government Fees" or "TIN-Matching Fees" that may have been recently added to your merchant account.

No Need for Alarm

The intent of Section 6050W is to assist the IRS in identifying businesses not filing accurate tax returns. In other words, the IRS appears to be targeting businesses most likely to omit or avoid reporting correct tax information. Requiring a taxpayer to account for discrepancies between amounts reported on Form 1099-K and the taxpayer's return would be consistent with reporting on Form 1099-Misc. In the case of Form 1099-Misc, a taxpayer reporting business income on Form 1040 reports only amounts that are "properly shown" on the 1099-Misc. In the case of deviations, the taxpayer is instructed to "attach a statement explaining the difference" (*see* 2010 Instructions for Schedule C: Profit or Loss From Business). Thus, it would be consistent with IRS policy in other areas to similarly require a taxpayer reporting a return amount different from the amount shown on Form 1099-K to attach a statement showing the reason for the difference. In the case of a lawyer depositing amounts into an IOLTA account, the statement would show the amount of such deposits over the year, which is excludable from gross income.

Fortunately, the IRS has recently provided guidance for the 2011 tax filing year through a notice to tax filers dated January 31, 2012, entitled "Clarification to the instructions for Schedule C, E & F on Reporting 1099-K Amounts" (irs.gov/formspubs/article/0,,id=253098,00.html). Not only has the requirement to report the amounts of gross credit card transactions been deferred for the tax year 2011, there are other indications that the IRS may NOT require small business tax filers to reconcile the differences between 1099-K amount and income for future tax years.

Lastly, if come January 2013 you have still not matched your legal name and TIN with your processor, my advice is to stop accepting credit cards until you verify that your legal name and federal tax ID names match. There is no reason to risk a 28% withholding penalty when it is so easily avoidable. While LawPay is taking a very proactive approach to these new rules from the IRS by validating all attorney merchants, not every processor is following suit. Don't wait for your credit card processor to contact you! The IRS has assigned the reporting requirements on the credit card processors, but the ultimate liability lies squarely with you and your firm.

For more information on Section 6050W visit IRS.gov or consult directly with your tax advisor. ■

President's Message (cont.)

dishonest conduct of a lawyer. The fund has paid out over $9,200,000 in compensation since it was created. To reduce the possibility of misappropriation or mishandling of client funds, the State Bar has established strict trust accounting standards and publishes the *Trust Account Handbook* which explains the requirements for segregating, safekeeping, and recordkeeping of client funds. This is supported by a well-known program of random audits of trust accounts.

A Fee Dispute Resolution Program also exists using mediation and nonbinding arbitration. These processes can be triggered by the client. The program has been remarkably successful in resolving fee disputes between lawyers and their clients, and undoubtedly forestalls a significant number of grievances each year. Another signature activity of the State Bar is its Lawyers Assistance Program (LAP), which assists attorneys in overcoming drug and alcohol addiction, as well as such problems as stress, depression, anxiety, and compulsive disorders. The LAP uses a number of lawyer volunteers who have personal experience or training in addiction or mental health issues. The program is entirely confidential and divorced from the State Bar's disciplinary function. It has been very successful over a long period of time and is something of which the State Bar, the LAP Board, and all of the program's volunteers are justifiably quite proud.

One final note: as the number of lawyers in North Carolina has increased (there are now some 25,000 of you growing at a rate of 3% to 4% annually), so have the demands placed on our staff and the physical facility they have occupied since 1979. In 2008 this growth required the State Bar to begin planning for a new facility. Construction is now underway on a $17,000,000 State Bar headquarters located in the government complex in downtown Raleigh. The facility is being financed by proceeds from the sale of the existing building, cash reserves, long-term borrowings, and the fundraising efforts of a newly created State Bar Foundation—not a dues increase. In addition to fulfilling staff and program needs, the facility will be available on prior arrangement for use by North Carolina lawyers who have business in the state capital. Construction on the building is scheduled for completion in the first quarter of 2013. We think you will be justifiably proud of this facility and what it enables us to do for the public and our profession.

Here ends my brief outline of some major State Bar activities, including especially State Bar disciplinary activities. I hope it serves an educational function for all those with little past exposure to our organization, in particular those who are just coming to the Bar. If you have any questions about our operation, please direct them to the staff, councilors, and officers of the State Bar. We are here to help you with any regulatory or other professional issues you may encounter. ■

James R. Fox is a trial lawyer and senior partner in the firm of Bell, Davis & Pitt, PA in Winston-Salem.

Pssst. Hey Judge...

By Suzanne Lever

I often get inquiries from lawyers asking whether a particular communication with a judge—usually made by opposing counsel—is an improper *ex parte* communication. After I gently remind the inquiring lawyer that my role is to advise lawyers as to their *own prospective* conduct, I direct them to Rule 3.5(a)(3) and accompanying Ethics Opinions Notes.[1] Because I receive so many calls on this particular rule, it seemed that an article discussing the rule was warranted.

Rule 3.5(a)(3) provides that a lawyer shall not communicate *ex parte* with a judge except: in the course of official proceedings; in writing, if a copy of the writing is furnished simultaneously to the opposing party; orally, upon adequate notice to opposing party; or as otherwise permitted by law.

A particular *ex parte* communication may be considered permissible or impermissible under Rule 3.5(a)(3) based on its CONTENT.

Unlike the prohibition on *ex parte* communications "as to the merits of a matter" in a prior version of the *ex parte* rule (Rule 7.10(b) of the superseded (1985) Rules of Professional Conduct), Rule 3.5(a) seems to prohibit all *ex parte* communications with a judge. Comment [8] to Rule 3.5 narrows the prohibition to communications with a judge *relative to a pending matter* "in circumstances which might have the effect or give the appearance of granting undue advantage to one party."

For example, a lawyer may not communicate *ex parte* with a judge concerning opposing counsel's alleged improper behavior. Although the opposing lawyer's behavior does not go to the merits of the case, his behavior is "relative to the matter." As stated in 98 FEO 13, one party may not gain an unfair advantage by using an *ex parte* communication to "cast opposing counsel in a bad light."

98 FEO 13 restricts *informal written communications* with a judge or judicial official relative to a pending matter, even if a copy of the writing is furnished simultaneously to the opposing party. The opinion provides that informal written communications with a judge or other judicial official should be limited to the following: (1) written communications—such as a proposed order or legal memorandum—prepared pursuant to the court's instructions; (2) written communications relative to emergencies, changed circumstances, or scheduling matters that may affect the procedural status of a case; (3) written communications sent to the tribunal with the consent of the opposing lawyer; or (4) any other communication permitted by law or the rules or written procedures of the particular tribunal.

Sometimes a lawyer may engage in an *ex parte* communication with a judge regarding a scheduling or administrative issue, even though these issues are also "relative to the matter." 97 FEO 3 provides that a lawyer may engage in an *ex parte* communication with a judge regarding scheduling or administrative matters *if* necessitated by the administration of justice or exigent circumstances *and* diligent efforts to notify opposing counsel have failed.

A particular *ex parte* communication may be considered permissible or impermissible under Rule 3.5(a)(3) based on its CONTEXT.

When an *ex parte* communication is specifically authorized by law, Rule 3.5(a)(3)(D) permits a lawyer to communicate with a judge without notifying the opposing party or lawyer. For this exception to apply, there must be "a statute or case law specifically and clearly authorizing such communication. Such authorization may not be inferred by the absence in the statute or case law of a specific statement requiring notice to the adverse party or counsel prior to the *ex parte* communication." 2001 FEO 15. "Customary procedures" do not equal "authorized by law."

Although customary, the North Carolina Administrative Office of the Courts recently opined that a post-judgment motion seeking an order in aid of execution cannot be heard or issued *ex parte*. Because there is no statutory authority for hearing these motions *ex parte*, it would be a violation of Rule 3.5 for a lawyer to submit such an *ex parte* motion to the court.

The failure to follow local court rules, or other applicable Rules of Professional Conduct, may make an *ex parte* communication unethical. If there is a statute authorizing communication with a judge to obtain an *ex parte* order, and there is also a local court rule requiring the lawyer to notify opposing counsel before communicating with a judge *ex parte*, a lawyer may not communicate with the judge without notifying the opposing lawyer. Rule 3.4(c) states that a lawyer shall not "knowingly disobey...an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to

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New Interpreter Reimbursement Program Will Help Lawyers with Deaf Clients

By Kelly Farrow

Funded by a grant from the North Carolina State Bar's Board of Paralegal Certification, the State Bar is implementing a program to help offset the cost of hiring licensed interpreters for you and your deaf clients. The Interpreter Reimbursement Program will enable solo practitioners and lawyers at small firms in North Carolina to provide licensed interpreters for themselves and their deaf clients while reducing the financial obligation for doing so.

Können Sie dieses lesen? Как о этом?[1]

Communicating with a client when you don't speak his language can be difficult and risky. Being able to relay important information to your client about his case effectively is crucial, and if you aren't able to communicate in his language, both of you may be missing critical details. The best way to ensure that both your client and you are well-informed is to hire a licensed interpreter. A licensed interpreter allows both parties to communicate in their native languages, thereby reducing the risk of miscommunication regarding the facts of the case or legal issues.

This is especially true for deaf or hard of hearing clients. Deaf people may communicate through a variety of means, including American Sign Language, Contact Language (formerly known as Pidgin Sign English), Signing Exact English (SEE), Cued Speech, Auditory Verbal Unisensory methods, and Oral Auditory methods.[2] If you have a deaf client you may need help from a licensed interpreter. Deaf clients should be consulted initially to determine the most relevant communication method. A licensed interpreter with training in the preferred communication method can then be hired to assist you and your deaf client.

Written communications can also be challenging for some deaf clients, especially if they do not have strong skills or formal training in written English. Some of the communication means used by deaf people, such as American Sign Language, are very different from written and spoken English. For example, American Sign Language varies greatly from written English, using different grammar, syntax, and vocabulary. Thus, trying to communicate effectively in writing in a language other than your first language is as difficult as trying to communicate verbally in a language other than your first language.

Your Legal Obligations

Many lawyers are unaware of their responsibility to provide interpreter services at no cost to deaf clients. A lawyer's office is included in the definition of a "public accommodation" in Title III of the Americans with Disabilities Act of 1990 (ADA).[3] These regulations implementing the ADA, which can be found in 28 CFR § 36, state that:

> [a] public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e. significant difficulty or expense.[4]

Additionally, 28 CFR § 36.303(c) states that a "public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. This includes an obligation to provide effective communication to companions who are individuals with disabilities." This responsibility applies not only to deaf clients, but to all people associated with a client's case who are deaf, including witnesses and others with whom the lawyer needs to communicate effectively, and to prospective clients as well.

How To Get Reimbursed

Lawyers who use a licensed interpreter to work with a client after May 1 can submit a Request for Reimbursement to the Paralegal Certification Program. A Request for Reimbursement form can be found on the State Bar's website at ncbar.gov/resources/forms.asp, and should include an explanation of the client's disability, the extent of the interpreter services, and documentation of the time and charge to the lawyer.

Resources in North Carolina

There are resources available in North Carolina that can assist lawyers who have deaf clients. Disability Rights North Carolina (disabilityrightsnc.org) and The NC Department of Health and Human Services, Division of Services for the Deaf and the Hard of Hearing (DSDHH) (ncdhhs.gov/dsdhh) were consulted to prepare this article.

Disability Rights North Carolina is an independent, nonprofit organization that protects the rights of North Carolinians with disabilities through individual and

CONTINUED ON PAGE 37

I'll See You in Court!

By Melvin F. Wright Jr.

When you hear the expression, "I'LL SEE YOU IN COURT," it usually means that all prior discussions and attempts to resolve differences have failed and there is nothing left but to let a judge or a jury of 12 strangers decide the matter. Thank goodness we have the option of court in this country. But this phrase can also be an attempt to bully, scare, or intimidate—which is not a good thing. Maybe it is just me, but it seems that there has been an increase in boorish behavior in the United States.

For example, what was your reaction when Rep. Joe Wilson, a US Congressman and lawyer from South Carolina, yelled at President Barack Obama in September 2009 during a joint session of Congress, "You lie!"? Whatever your political affiliation, I hope you were shocked and upset. At the time, you were probably not aware that Rep. Wilson was a lawyer, but now that you know, does it upset you even more?

Have you worried about what lawyers and judges are doing about rudeness, lack of civility, and unprofessional conduct? Have you been willing to step up, when necessary, to try to make a difference? Former Chief Justice Burley Mitchell often reminds us that, as a self-regulating profession, we have responsibilities as lawyers regarding our conduct and our professionalism. Paragraph (13) of the Preamble of the North Carolina Rules of Professional Conduct states:

> [13] Although a matter is hotly contested by the parties, a lawyer should treat opposing counsel with courtesy and respect. The legal dispute of the client must never become the lawyer's personal dispute with opposing counsel. A lawyer, moreover, should provide *zealous but honorable* representation without resorting to unfair or offensive tactics. The legal system provides a civilized mechanism for resolving disputes, but only if the lawyers themselves *behave with dignity*. A lawyer's word to another lawyer should be the lawyer's bond. As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster *civility* among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties. (Emphasis added.)

When we act honorably, with dignity, and in a civil manner, we do not yell at another lawyer and particularly not the president of the United States. To his credit, later that evening Rep. Wilson issued an apology for his "lack of civility."

However, it is not just the conduct of lawyers that is of concern—it is a societal issue. Movies, TV shows, radio talk shows, political debates, and athletic events are all full of conduct that Tom Lunsford, the executive director of our State Bar and *Andy Griffith Show* aficionado, can assure us that Opie never saw in idyllic Mayberry. Your response would probably be that times have changed. Have they ever!

Recently I attended an ACC basketball game and was shocked and embarrassed by an incident that occurred during halftime. It involved a fan who, during the first half, had tried to convince all within hearing distance that he knew more than either coach and took every opportunity to loudly berate the officials and opposing players. During halftime, Woody Durham—a revered radio announcer for the home team—was honored with a plaque from a school official and inducted into the Order of the Long Leaf Pine by Governor Bev Perdue. When Gov. Perdue was introduced, the fan and others started booing. I felt it was so inappropriate that I turned and said, "Please stop!" When he asked, "What did you say?" I again said, "Please stop! That is inappropriate!" He then said, "I am a Republican, I served in the army, and I do not give a (expletive)." A friend who was with me then said that this was not about the governor, but about honoring Woody Durham. At that point, the fan's wife joined in to try to get him to be quiet. He reluctantly stopped, but not before adding, "I can say what I want to."

He was right about that. The First Amendment protects freedom of speech, but lawyers and judges are also expected to abide by Rules of Professional Conduct, Professionalism Codes, Rules of Court, Standards of Judicial Conduct, and Court Opinions. In short, as members of the legal profession, we are expected to follow a higher standard.

When we hear about lawyers and judges criticizing each other in open court and then read about it in the newspaper, it is upsetting. We are expected to counsel and represent others who are unable to resolve differences. Why are lawyers castigating and making disparaging remarks about their opponent in front of a judge or jury? We are supposed to know better. What do you think about inappropriate conduct by members of the legal profession outside of the workplace? Passion is an important part of what we do, but should passion trump civility and good manners?

Judges have the power of contempt and the inherent authority to discipline lawyers who do not act in accordance with the rules they are obligated to follow. Rule 12, Courtroom Decorum of the General Rules of Practice for North Carolina Superior and District Courts states: "Counsel are at all times to conduct themselves with dignity and propriety…All personalities between counsel should be avoided. The personal history or peculiarities of counsel on the opposing side should not be alluded to… Abusive language or offensive personal references are prohibited…Counsel should yield gracefully to rulings of the court and avoid

detrimental remarks both in court and out."

Instead of engaging in public conduct that shocks the conscience and becomes the subject of embarrassing headlines, try to disagree without being disagreeable, as suggested by Bernard Meltzer. The nature of what we do often requires that we take a position contrary to that of the advocate on the opposite side—that is how our system works. Stephen L. Carter reminds us that, "Our duty to be civil toward others does not depend on whether we like them or not. Civility requires that we listen to others with knowledge of the possibility that they are right and we are wrong."

The State Bar recently hosted a gathering of criminal defense attorneys and district attorneys to discuss common goals and issues. During the discussion, a well-respected criminal defense attorney from Raleigh stated that there are certain lawyers on both sides of the aisle who are so extreme in their thinking that any form of compromise short of their stated position is unacceptable. I think it is safe to say that these individuals are often the lawyers who garner the headlines because of their attitudes, actions, and outrageous conduct. If, in the future, you are inclined to use the phrase, "I'll see you in court," I hope it is after a respectful discussion and negotiation. Most would prefer hearing, "I am sorry we could not resolve this matter among ourselves. But thank goodness we have judges and juries who can help us with this matter." Then with a parting handshake say, "My client and I look forward to working with you on reaching a fair resolution for all involved."

When we make mistakes from time-to-time (and we all do), the legal community should rally around and provide the help needed. The good news is that our profession has established programs to assist those who are acting unprofessionally, who are depressed, or who are suffering from addiction. However, lawyers and judges sometimes have problems asking for assistance—they need you to step in and offer to help. If they are resistant to help, at least you have tried and planted the seed. Maybe, after thinking about it for a few days, they will call you or seek assistance from the various Bar resources.

If you know a lawyer or judge that may benefit from a confidential peer intervention because of professionalism issues, please call the NC Chief Justice's Commission on Professionalism (CJCP) at (919) 890-1455. We will be glad to discuss the problem and offer more information about the Professionalism Support Initiative (PSI) and other programs.

PSI (a program of the CJCP)—With support from the State Bar's Client Assistance Program, the Judicial Standards Commission, and local bar associations, the PSI serves as a confidential positive peer intervention program to improve professionalism among lawyers and judges. The CJCP has a PSI training video with a manual and provides these materials to local bar associations and other groups throughout the Bar. For more information go to nccourts.org/Courts/CRS/Councils/Professionalism/PSI.asp. ■

Melvin F. Wright Jr. is the executive director of the Chief Justice's Commission on Professionalism.

Programs for Confidential Assistance

Professionalism Support Initiative (PSI) - A program of the CJCP, the PSI serves as a confidential positive peer intervention program to improve professionalism among lawyers and judges. Call 919-890-1455.

LAP (North Carolina Lawyer Assistance Program) – A confidential program of the NC State Bar to address problems with alcoholism, other drug addictions, and mental health disorders. Call 1-800-720-7257.

BarCares – A confidential program of the NC Bar Association to address personal, family, and work issues including depression, substance abuse, and other forms of stress. Call 1-800-640-0735.

Legal Ethics (cont.)

test the validity of such an obligation." If a lawyer believes in good faith that notifying the opposing lawyer or the opposing party prior to communicating with a judge will result in the harm that the statute which authorizes the *ex parte* communication seeks to avoid (e.g. abduction of a child), the lawyer may test the validity of the rule by disclosing to the judge at the beginning of the *ex parte* communication that the opposing lawyer (or the opposing party if unrepresented) was not notified as required by the local court rule and the reason therefore. The court may then determine whether to proceed without notifying the opposing lawyer (or the opposing party).

98 FEO 12 sets forth disclosures a lawyer must make to the judge *prior* to engaging in an *ex parte* communication so that the judge may determine whether he will hear the matter *ex parte*. In addition, Rule 3.3(d) provides that during the *ex parte* proceeding "a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." The fact that the opposing party is represented by counsel is a material fact that must be disclosed to the court. In addition, if the lawyer did not notify the opposing lawyer prior to the *ex parte* communication with the tribunal, this fact must also be disclosed.

And remember, judges also have a rule prohibiting *ex parte* communications. *See* N.C. Code of Judicial Conduct Canon 3A(4). (Except as authorized by law, judge should neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding.) The North Carolina Judicial Standards Commission reprimanded a judge for "friending" a lawyer involved in a hearing before him and using an online social network to discuss the case with the lawyer. *See* N.C. Judicial Standards Comm., Inquiry No. 08-234 (April 1, 2009). The commission found that the *ex parte* communications indicated a disregard of the principles of judicial conduct and constituted conduct prejudicial to the administration of justice.

In conclusion, don't call me to complain about your fellow lawyers and don't call the judge either. ■

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

Endnote

1. If a lawyer's inquiry involves the conduct of another lawyer, the lawyer must put the inquiry in a letter to the State Bar and a copy of the letter must be mailed to the lawyer whose conduct is in issue.

Silent Suffering: The High-Functioning Alcoholic Lawyer

By Don Carroll and Robynn Moraites

How do we understand the gap between the level of alcoholism that exists among North Carolina lawyers and the fact that most of the time most of us look like we're functioning pretty well? The recent survey that Professor Darcy Siebert completed of North Carolina lawyers reported that 25% of the lawyers in the state drink five times or more per week. Over 52% (52.3%) drink until high at least one or more times each month. In other words, half the Bar self reports that they are drinking excessively at least once a month.

The North Carolina survey reflects data that has appeared in earlier studies. The *International Journal of Law and Psychiatry* reported that problem drinking develops in 18% of lawyers who practice for two to 20 years and in 25% of lawyers who practice 20 years or longer. Other studies report the number of lawyers with alcohol abuse disorders is above the national average of about 9%. Some of the studies indicate that figure is significantly above 9%.

There appears to be a gap between this data and the fact that most days— at the courthouse and in our interaction with each other—we as members of the Bar seem to be functioning pretty well. What is actually going on?

We can understand this apparent discrepancy in two ways.

First, like a computer, much of how we think as lawyers is binary. Something is either white or black; yes, we identify with something or no, we don't. For most of us the image that we have of people who suffer from alcoholism is one from the media or seeing homeless people with brown bags in their hands under bridges. Or we have an idea that an alcoholic drinks to drown his sorrows and misfortune in life. These images are pictures of severe late-stage alcoholism when people have lost almost everything. These ideas or images are what we *emotionally* identify as what alcoholism looks like. We therefore have this picture in mind of what we think an alcoholic looks like, while we simultaneously observe that almost none of us in the Bar looks like that or behaves like that.

The truth is, however, that most people who suffer from alcoholism, particularly lawyers and other professionals, are high-functioning alcoholics. While we do not look at all like the seemingly hopeless street alcoholic, we suffer much of the same emotional and spiritual emptiness that comes with being trapped in the grip of alcoholism. Yet we remain high-functioning in our work life. In fact, keeping up the appearance of proper functioning in our work life becomes paramount because without it we would have to face the emotional reality of the effect alcoholism is having on our lives. In addition, there is always the fear of losing the ability to purchase the alcohol—or other drugs—needed to satisfy the obsession that is characteristic of the disease.

Because of her own personal difficulty in coming to grips with her alcoholism while she was able to maintain a respectable job, home life, and friends, Sarah Allen Benton recently wrote a book entitled *Understanding the High-Functioning Alcoholic*. Her book reveals the story of many high-functioning alcoholics, many of whom could be lawyers. These are stories not of obvious tragedy, but of tremendous silent suffering. She estimates, based on surveys and professional experience, that at least half of all alcoholics are the high-functioning type. These individuals often work for years while abusing alcohol and sometimes putting their lives and the lives of their clients at huge risk.

FRIENDS PALS

Individuals who are in positions of power, and who are not closely supervised in their work, are often able to appear to continue to function well for years without immediate job consequences from excessive drinking or drug use. In fact, the use and abuse of alcohol or other drugs tends to be viewed as simply a reward for hard work. In his memoir, *A Drinking Life*, Peter Hamill, a writer, said, "If I was able to function, to get the work done, there was no reason to worry about drinking. It was part of living, one of the rewards."

Because one of the diagnostic criteria for determining when alcoholism exists includes identification of problems created by the excessive use of alcohol, many high functioning alcoholic lawyers escape being identified as having the illness. Lawyers who often have garnered significant accomplishments in the profession as well as a stellar reputation among their peers find their accomplishments and standing in the legal community both a justification for drinking and a way to avoid seeing themselves as alcoholics. Ms. Benton said, "My success was the mask that disguised the underlying demon that fed my denial."

Often, the high-functioning alcoholic lawyer will occasionally have a glimmer of insight that something is not quite right before any external consequences have begun to occur. This insight suggests the need to seek medical assistance to determine if there is an alcohol problem. However, this glimmer of insight is usually

overridden by the feeling most lawyers have—that we would be perceived as weak to reach out and ask for help. This perception of weakness is not so much about admission of weakness to others, as it is a sign of some weakness we do not want to admit to ourselves. If a lawyer does yield to family pressure to reach out and get medical input about his or her drinking, the high-functioning alcoholic lawyer who is not yet ready to admit to him or herself that there is a problem will usually get an internist or psychiatrist who he or she can co-opt into minimizing the effect of the drinking. Sadly, this reinforcement from the healthcare provider (who has probably unknowingly been manipulated) actually affirms the lawyer's denial.

Like all alcoholics, as the illness progresses, the high-functioning alcoholic tends more and more to hide his or her excessive consumption of alcohol by drinking alone. Often the pattern of drinking includes drinking alone before or after a social event, but not during the event itself. And like other alcoholics, high-functioning alcoholics often can abstain from alcohol for days or weeks at a time without experiencing significant withdrawal symptoms. This is another way the illusion is created that there is no need to get help. Although external consequences like loss of a job or family or arrest for alcohol-related offenses has not yet occurred, like other alcoholics who may have suffered some of those consequences, the high-functioning alcoholic's life nevertheless becomes increasingly narrowed as the illness progresses. The focus of each day turns on when he or she can drink, making sure that alcohol will be available at some point. Another clue, often, is if a lawyer begins experiencing blackouts, which are periods of not remembering what occurred during a period of drinking.

Gradually, the high-functioning alcoholic's life becomes more and more compartmentalized; he or she separates the drinking life and the seemingly successful work life. This strategy works until some kind of crisis occurs: either a dramatic, physical medical problem caused by the alcoholism or some other calamity, such as an alcohol-related arrest or disappearing without communication to colleagues and missing a crucial court date or client meeting, when it becomes clear to everyone that the problem is indeed alcohol. Unfortunately, by that time, very often many of the best years of the person's life have passed. The good news is that there is effective medical treatment for alcoholism and other addictive drug illnesses. One need not continue to suffer in silence for many years, trying to hold up appearances and keep it all together.

As Ms. Benton's book suggests, there is no need to suffer year after year in a small prison of success. We can take to heart what the statistics for our profession mean and take advantage of the opportunity (there for all of us who might have concerns about our drinking or drug habits) to reach out and get good confidential assistance from the Lawyer Assistance Program for a referral to an addiction's specialist in evaluating if we have a high-functioning alcoholic problem. ■

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.

Interpreter Reimbursement Program (cont.)

systems advocacy. It also provides information and education for lawyers who serve deaf clients.

DSDHH helps deaf people attain equal access to services that are available to the public in North Carolina, and can also be a good resource for lawyers who have deaf clients. The DSDHH website provides a list of licensed interpreters by region of the state. The DSDHH also has tips and guidelines for hiring and working with an interpreter to be able to better serve your deaf clients.

In addition, the Interpreting Services Program of the North Carolina Administrative Office of the Courts provides interpreters free of cost for all deaf litigants and witnesses during court proceedings, and during out-of-court meetings related to indigent defense cases.

The State Bar's Interpreter Reimbursement Program

The use of a licensed interpreter is absolutely crucial to providing effective and accurate communication with deaf clients. The State Bar's Interpreter Reimbursement Program will reduce the expense of hiring a licensed interpreter. This program will reimburse a lawyer for the out-of-pocket expenses associated with hiring a licensed interpreter for a deaf client up to $150 per client meeting. For more information about the Interpreter Reimbursement Program and how to apply for reimbursement, please visit the North Carolina State Bar website at ncbar.gov.

We are grateful to the Board of Paralegal Certification for making this program possible. ■

Kelly Farrow is the assistant director of the Paralegal Certification Program.

Endnotes

1. "Can you read this?" (in German); "How about this?" (in Russian); translated at babelfish.yahoo.com.
2. Communication Methods Used by Individuals Who are Deaf or Hard of Hearing brochure, NC Department of Health and Human Services, Division of Services for the Deaf and the Hard of Hearing, February 2011.
3. 42 USC § 12181.
4. 28 CFR § 36.303(a).

Thank You to Our Meeting Sponsor

Thank you to The Title Company of North Carolina for sponsoring the Councilors' Picnic.

IOLTA Struggles with Low Income but is Working to Increase New Income Sources

Income

All IOLTA income earned in 2011 is not yet calculated; however, the income picture remains bleak. Total income from IOLTA accounts for 2011 was flat at $2.2 million, but is now declining again. We saw an income increase from comparability (which was implemented beginning July 2010) from the last two quarters of 2010 through the first two quarters of 2011. Then, income not only leveled off, but declined somewhat. We saw a 9% decline in the third quarter, and a 23% decline in the last quarter. So far, the first quarter of 2012 is showing a 20% decline. We expect this situation to continue as banks are now re-certifying their comparability compliance at even lower interest rates. And the Federal Reserve is now predicting they will keep interest rates at the current unprecedented low level through 2014.

Total income for 2011 was bolstered by other sources of income. We received a $100,000 donation from the State Bar's Paralegal Certification Program. Unlike many IOLTA programs, NC IOLTA is not part of a bar foundation that engages in fund-raising. Therefore, this gift was unusual and very much appreciated in these difficult times. We also received two payments of cy pres funds totaling over $30,000. Additionally, we have started receiving income on the accounts of settlement agents.

Cy Pres Funds

Since 2007 we have received just over $50,000 from class action residual funds in accordance with the provisions of the NC statute that sets out a procedure by which the court enters an order directing payment of the unpaid residue from class action settlements to be divided equally between the Indigent Person's Attorney Fund and the North Carolina State Bar. The State Bar has asked IOLTA to administer the funds it receives, which are for the provision of civil legal services for indigents.

Many states have seen significant funds generated from cy pres awards and/or from settlement awards. The Equal Access to Justice Commission (EAJC) plans to educate lawyers and judges about the statute and other methods for sending such funds to legal aid. We hope to have a brief cy pres manual available soon, which will be posted on the EAJC website and accessible through the NC IOLTA and State Bar websites.

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. This requirement took effect on January 1, 2012. Though it appears that many of these accounts are not interest bearing and are not being set up as IOLTA accounts, we have identified over 30 new accounts as settlement agent only accounts (those not associated with an attorney licensed in North Carolina). We received just over $3,000 in 2011 from accounts established prior to the effective date, and just over $4,000 in the first quarter of 2012. We will be watching closely to see how these new accounts affect our income.

Grants

Beginning with the 2010 grants, we have limited our grant-making to a core group of (mainly) legal aid providers. Even with that restriction and using $1 million in reserve funds in two consecutive years, grants have dramatically decreased (by approximately 20% in 2010 and 11% in 2011). Faced with a smaller reserve fund (~$800,000) and projections that interest rates will remain low for some time, the NC IOLTA trustees decided to decrease grants by 15% and use between one third and one half of the remaining reserve

CONTINUED ON PAGE 62

Prime Partner Banks Make a Difference for NC IOLTA

Prime Partner Banks are those that go above and beyond the eligibility requirements of the IOLTA rule to support the NC IOLTA program in its mission to ensure that low-income North Carolinians have access to critically needed legal aid. We are pleased to report that many NC based banks have adopted the more favorable IOLTA policies, especially following implementation of comparability, which has meant that NC IOLTA is receiving a much increased percentage of its income from these banks when compared to the large multi-state banks.

We salute and thank the following Prime Partner banks for their commitment to support the State Bar's grant-making program in its mission to ensure that low-income North Carolinians have access to critically needed legal aid—particularly in the current economic downturn.

Prime Partner Banks

Asheville Savings Bank
Bank of North Carolina
Bank of Oak Ridge
Coastal Bank & Trust
Forest Commercial Bank
Heritage Bank
HomeTrust Bank
KeySource Bank
LifeStore Bank
Macon Bank
New Dominion Bank
Old Town Bank
Providence Bank
Roxboro Savings Bank
Towne Bank
Vantage South Bank
Waccamaw Bank

Lawyers Receive Professional Discipline

Disbarments

J. Neal Rodgers of Charlotte surrendered his law license to the State Bar Council and was disbarred. Rodgers admitted that he misappropriated entrusted funds totaling approximately $80,000.

Theophilus O. Stokes III of Greensboro participated in fraudulent check exchanges and was convicted of two misdemeanor counts of receiving stolen goods. He surrendered his law license and was disbarred by the Disciplinary Hearing Commission.

John E. Tate of Hendersonville surrendered his law license to the Wake County Superior Court and was disbarred. Tate admitted that he misappropriated entrusted funds totaling approximately $120,000.

Bambi Walters of Williamsburg, Virginia, surrendered her law license and was disbarred by the DHC. Walters admitted that she misappropriated entrusted funds totaling $6,000.

Suspensions & Stayed Suspensions

The DHC found that **Dean H. Humphrey** of Wilmington settled a case without his clients' consent, forged his clients' names on settlement checks without their knowledge or consent, and misled the Grievance Committee. The DHC suspended him for one year. After serving six months, Humphrey will be eligible to apply for a stay of the balance.

M. Thomas Norwood III of Mooresville abandoned clients and made false representations to the federal court. The DHC suspended him for one year.

Benjamin Small of Concord was suspended for two years. The DHC found that Small had *ex parte* communications with the court, filed frivolous claims, and engaged in conduct prejudicial to the administration of justice, all in an effort to collect a guardian ad litem fee. The DHC also found that, in a separate criminal case, Small filed a frivolous motion and took other actions that had no substantial purpose other than to embarrass or burden a third party.

The DHC entered a consent order of discipline suspending **Dennis Sullivan** of Wilmington for three years. The suspension is stayed for five years on numerous conditions. Sullivan did not file state and federal income tax returns for five years and pled guilty to five counts of failure to file state returns.

Interim Suspensions

The DHC entered an order of interim suspension in the case of **Alexander Lapinski** of Durham. Lapinski pled guilty in the US District Court for the Middle District of North Carolina to one felony count of unlawful procurement of citizenship or naturalization under 18 U.S.C. §1425 by aiding and abetting his client in seeking US citizenship under a false name.

The DHC entered an order of interim suspension in the case of Asheville lawyer **Shannon Lovins**. She pled guilty in Rutherford County to multiple criminal drug-related offenses. If she successfully completes probation, she will be eligible for conditional discharge under N.C.G.S. 90-96. The interim suspension is stayed on numerous conditions including participation in the Lawyers Assistance Program, abstention from use of drugs and alcohol, and monitoring to ensure such abstention.

Censures

David E. Duke of Wendell was censured by the Grievance Committee. Duke did not respond to a petition for mandatory fee dispute resolution and to a letter of notice from the Grievance Committee. Duke also did not refund an unearned fee. In a separate case, Duke did not communicate with his client, did not properly withdraw from representation, did not return the client's file, and did not cooperate with the judicial district grievance committee.

Cameron Ferguson of Newland was censured by the Grievance Committee. He made false or misleading statements in advertising materials which also did not include his first name or office address.

Reprimands

Ronald L. Pressley of Raleigh was reprimanded by the Grievance Committee. Pressley neglected his client's personal injury case, did not communicate with his client, and knowingly made a false statement to his client.

Donald W. Marcari of Chesapeake, Virginia, was reprimanded by the Grievance Committee. Marcari's advertising did not include a disclaimer regarding his membership in the Million Dollar Advocacy Forum.

Mark R. McGrath of Durham was reprimanded by the Grievance Committee. McGrath undertook joint representation involving a potential conflict of interest. He did not inform his clients of all ramifications of joint representation—including explaining that if they became adverse, he would have to withdraw from representing all of them—and did not obtain their informed consent to the conflict. The committee also found that McGrath's correspondence with opposing counsel was unprofessional.

Shani Davis-Harrison of Durham was reprimanded by the Grievance Committee. She did not comply with court obligations, did not appear for at least one hearing, and did not seek and obtain the court's permission to withdraw.

Vickie L. Whitley of Stanley was reprimanded by the Grievance Committee. She executed jurats falsely representing that the persons who signed the documents appeared before her. She also engaged in a conflict of interest and utilized nonlawyer assistants to perform title searches, which she was not sufficiently knowledgeable to supervise.

Reinstatements

The DHC recommended that the council deny disbarred Asheville lawyer **Larry R. Linney's** petition for reinstatement. Linney appealed to the council. The secretary dismissed Linney's appeal when he did not timely file his proposed record on appeal.

The DHC denied the petition of **David S. Harless** of West Virginia for reinstatement from disability inactive status. The panel granted Harless leave to file another petition in six months. ■

Featured Artist—Ron Slaughter

I think art exists to communicate states of consciousness, which are larger synthetic wholes than those of ordinary experience. I am inspired by the aspects of light on color in the natural landscape; and in achieving a balance between that perception which is empirically accurate and the perception of those actual visual elements of light and texture which make up the painted surface and perhaps are not physically accurate. I manipulate the plastic elements utilizing their inherent nature in order to create a surface that "works" thematically and pictorially. For me, painting is a dialogue between the artist and the painting. I try to utilize a methodology and a vocabulary unique to the act of painting as unconsciously as I can manage.

Slaughter 1

Artist Ron Slaughter conveys his exploration of light on the North Carolina landscape in his small and large scale works. Ron received a BA from East Tennessee State University, and an MFA from Florida State University where he was awarded a fellowship to study with Karl Zerbe, founder of the Boston Museum School.

Ron has been in numerous regional and national competitions and shows, among them: the Hunter Gallery in Chattanooga; the National Invitational in Lithography at the Ringling Museum in Sarasota; juried by Henry Geldzaler of New York City, where the work won an honorable mention; a one person show at the Dorsey Gallery in Roanoke, VA; the Marita Gilliam Gallery in Raleigh; two shows at the West Broadway Gallery in Manhattan; the National Invitational in Atlanta; the Carroll Reece Museum at Eastern Tennessee State University; the Roanoke Fine Arts Center in Roanoke, VA; and Hollins College in Hollins, VA. His work is in private, museum, and corporate collections throughout the United States and Europe. ■

Quince

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.

Council Rejects Opinion on Communications by Lawyer/Litigant with Opposing Party

Council Actions

At its meeting on April 27, 2012, the State Bar Council, by a divided vote, failed to adopt the proposed ethics opinion summarized below:

Proposed 2011 Formal Ethics Opinion 11

Communication with Represented Party by Lawyer Who is the Opposing Party

Proposed opinion rules that a lawyer who is a party in a lawsuit, whether *pro se* or represented by counsel, may communicate with the represented opposing party relative to the subject matter of the representation with the consent of the opposing party's lawyer.

The inquiry will be reconsidered by the Ethics Committee at its next meeting in July. Also at the meeting of the State Bar Council on April 27, 2012, the ethics opinions summarized below were adopted:

2010 Formal Ethics Opinion 14

Use of Search Engine Company's Keyword Advertisements

Opinion rules that it is a violation of the Rules of Professional Conduct for a lawyer to select another lawyer's name as a keyword for use in an Internet search engine company's search-based advertising program.

2011 Formal Ethics Opinion 4

Participation in Referral Arrangement

Opinion rules that a lawyer may not agree to procure title insurance exclusively from a particular title insurance agency on every transaction referred to the lawyer by a person associated with the agency.

2011 Formal Ethics Opinion 14

Outsourcing Clerical or Administrative Tasks

Opinion rules that a lawyer must obtain client consent, confirmed in writing, before outsourcing its transcription and typing needs to a company located in a foreign jurisdiction.

Ethics Committee Actions

At its meeting on April 26, 2012, the Ethics Committee voted to publish the following four proposed opinions. The comments of readers are welcomed.

Proposed 2012 Formal Ethics Opinion 1
Use of Client Testimonials in Advertising
April 26, 2012

Proposed opinion rules that testimonials that discuss characteristics of a lawyer's client service may be used in lawyer advertising without the use of a disclaimer. Testimonials that refer generally to results may be used so long as the testimonial is accompanied by an appropriate disclaimer. The reference to specific dollar amounts in client testimonials is prohibited.

Inquiry #1:

Are testimonials that merely imply positive results but do not state specific results considered "soft" endorsements under 2007 FEO 4? Some examples are, "the attorney did a great job for me," "I was pleased with the outcome of my case," or "I can get my life back on track now."

Are testimonials that do not include any specific monetary amounts but do indicate a favorable result considered soft endorsements? Some examples of these types of testimonials are, "He was able to get my case settled to my satisfaction," "the charges against me were dropped/dismissed," "my medical bills were covered/paid," or "I was able to get Social Security/workers' compensation benefits."

If these kinds of testimonials are not considered soft endorsements, are they still permissible in legal advertising? Do they require disclaimer language similar to language required by 2009 FEO 16?

Opinion #1:

Testimonials that discuss characteristics of a lawyer's client service may be used in lawyer advertising without the use of a disclaimer. Testimonials that refer generally to results may be used so long as the testimonial is accompanied by an appropriate disclaimer. The reference to specific dollar amounts in client testimonials is prohibited.

Rule 7.1 provides that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication that is likely to create an

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.

Citation

To foster consistency in citation to the North Carolina Rules of Professional Conduct and the formal ethics opinions adopted by the North Carolina State Bar Council, the following formats are recommended:

· To cite a North Carolina Rule of Professional Conduct: N.C. Rules of Prof'l Conduct Rule 1.1 (2003)

· To cite a North Carolina formal ethics opinion: N.C. State Bar Formal Op. 1 (2011).

Note that the current, informal method of citation used within the formal ethics opinions themselves and in this *Journal* article will continue for a transitional period.

unjustified expectation about results the lawyer can achieve is misleading. Rule 7.1(a)(2). Depending upon their content, client testimonials have the potential to create unjustified expectations.

A distinction can be drawn between "hard" and "soft" testimonials. A "hard" testimonial goes to the outcome of a case or matter. A "soft" testimonial does not go to the outcome of the case or matter, but rather focuses on shared values or characteristics of the lawyer's client service.

The Ethics Committee has concluded that a lawyer may incorporate "soft" client endorsements in their advertising materials without violating Rule 7.1. *See* 2007 FEO 4. A lawyer may use client testimonials stating that a lawyer handled a case efficiently, always acted in a professional manner, was considerate of the client's particular needs, etc. Examples of other soft endorsements include:

- "The lawyer was very knowledgeable."
- "The service provided by the law firm was excellent."
- "The attorney was very patient."
- "We were very impressed and pleased with the commitment to service."
- "My experience was one of courtesy and I found myself at ease at all times."

See Conn. Informal Op. 01-07 (2001). These statements are permissible under Rule 7.1 because they do not refer to the outcome of a particular matter and do not create unjustified expectations about the results the lawyer can achieve in any case.

"Hard" testimonials, or testimonials that indicate a particular favorable result in a case, have the potential to mislead a potential client to form an unjustified expectation that the same results can be obtained on his or her behalf. Examples of such statements include:

- "The charges against me were dropped/dismissed."
- "My medical bills were covered/paid."
- "I was able to get Social Security/workers' compensation benefits."
- "My lawyer settled my case for "$500,000."

Comment [3] to Rule 7.1 states that the creation of unjustified expectations may be prevented by the use of an appropriate disclaimer. In that regard, the Ethics Committee previously approved the use of disclaimers to cure the potentially misleading nature of case summary sections on a law firm's website. *See* 2009 FEO 16. The New York State Bar has applied the same rationale to client testimonials. *See* NY State Bar Assoc. Comm. on Prof'l Ethics, Op. 771 (2003).

We similarly conclude that a lawyer may include in marketing materials client testimonials that refer generally to the outcome of a specific matter, so long as the testimonials are accompanied by an appropriate and effective disclaimer. The reference to specific dollar amounts in client testimonials is prohibited.

The disclaimer must comply with the requirements set out in Rule 7.1(b) pertaining to communications containing dramatizations. Pursuant to Rule 7.1(b), the disclaimer may be oral or written. The disclaimer must appear or be spoken at the beginning and the end of the communication and must be conspicuous. For example, any written disclaimer accompanying a written testimonial must be printed in the same font size and color as the font size and color used for the testimonial. Any oral disclaimer accompanying an oral testimonial must be spoken at the same volume as the testimonial and must be spoken at a conversational speed that is easily understood.

A written disclaimer accompanying an oral testimonial on a television advertisement must appear on the screen in a conspicuous font size and color and must appear for a sufficient amount of time that a lawyer can reasonably conclude that a reasonably competent individual viewing the advertisement has the time to read the disclaimer.

For video testimonials embedded in a law firm website, the video may contain the written or oral disclaimer as described above. Alternatively, the webpage containing the link to the testimonial video may display a conspicuous written disclaimer directly above or below the link to the video containing the testimonial.

Inquiry #2:

Are the requirements under the Rules of Professional Conduct for client testimonials in television, radio advertisements, billboards, or video clips on websites different than the requirements for testimonials in written or printed materials?

Opinion #2:

No. However, certain mediums would not allow for a disclaimer that would meet the requirements set out above. For example, it is not reasonable to expect a driver to have time to read a disclaimer on a roadside billboard.

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 June 30, 2012.

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.

Proposed 2012 Formal Ethics Opinion 2
Lawyer-Mediator's Preparation of Contract for Parties to Mediation
April 26, 2012

Proposed opinion rules that a lawyer-mediator may not draft a business contract for parties to mediation.

Inquiry #1:

At the conclusion of the mediation, may the mediator, who is also a lawyer, draft a new business contract for the two *pro se* parties?

Opinion #1:

No. It is a nonconsentable conflict of interest.

Rule 1.12(a) allows a lawyer to represent a party in connection with a matter in which the lawyer participated personally and substantially as a mediator if all parties to the proceeding give informed consent, confirmed in writing. However, even with consent, joint representation of the two parties to an agreement presents a concurrent conflict of interest for the lawyer-mediator. *See* Rule 1.7(a).

Notwithstanding the existence of a concurrent conflict of interest under Rule 1.7(a), a lawyer may represent joint clients if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client; and (4) each client gives informed consent, confirmed in writing. Rule 1.7(b). However, an analysis of the risks associated with the proposed joint representation leads to the conclusion that such representation is not appropriate.

The lawyer-mediator must consider whether the interests of the parties will be adequately protected if they are permitted to give their informed consent to the representation and whether an independent lawyer would advise the parties to consent to the conflict of interest. Representation is prohibited if the lawyer-mediator cannot reasonably conclude that he will be able to provide competent and diligent representation to all clients. *See* Rule 1.7, cmt. [15].

Some of the special factors that a lawyer should consider before agreeing to joint representation are set out in Rule 1.7, cmts. [29]-[30]. The effect of the joint representation on client-lawyer confidentiality and the attorney-client privilege is a concern. *See* cmts. [30], [31]. In addition, a lawyer representing common clients has a duty to provide each client with necessary and appropriate advice. As stated in comment [29] to Rule 1.7, the representation of multiple clients "is improper when it is unlikely that impartiality can be maintained." The business and tax issues that must be addressed when crafting a comprehensive business contract may result in adverse interests. If the ultimate agreement turns out to be one-sided and unfavorable to one party, the lawyer-mediator's role could be closely scrutinized. There is also the risk that the proposed joint representation will fail or that the business contract will be the subject of future litigation between the two parties. In either event, the parties will have to retain new lawyers for the subsequent litigation.

But is it the unique concerns associated with the instant scenario which make the joint representation inappropriate. In the instant inquiry, the two parties have had a "falling out" which, in fact, necessitated the mediation process. As stated in comment [29]: "[g]enerally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good." Additionally, there is a risk of confusion by the parties as to their mediator changing roles at the conclusion of the mediation to jointly represent the parties. There is a also a risk of damaging the integrity of mediation as a process distinct from litigation. Finally, the lawyer's duty to provide each client with necessary and appropriate advice might require informing one party that they made a "bad deal" during the mediation process. It is untenable for a lawyer to counsel a client that an agreement the lawyer has assisted him to reach in mediation may not be in that client's best interests.

After the conclusion of the mediation, the lawyer-mediator may represent one of the parties in the drafting of the business contract so long as both parties give their informed consent to the representation, confirmed in writing. *See* Rule 1.12. If the lawyer-mediator agrees to represent one of the parties in the drafting of the business contract, and the other party will be unrepresented, the lawyer-mediator must comply with the requirements of Rule 4.3 when dealing with the unrepresented party.

This opinion does not prohibit a lawyer-mediator from assisting the parties in preparing a memorandum or other summary reflecting the parties' mutually acceptable understanding of the issues discussed in the mediation.

Proposed 2012 Formal Ethics Opinion 3
Imposition of Finance Charges on Delinquent Client Account in Absence of Advance Agreement
April 26, 2012

Proposed opinion rules that a lawyer may charge interest on a delinquent client account, without an advance agreement with the client, to the extent and in the manner permitted by law.

Inquiry:

A law firm would like to impose finance charges on delinquent client accounts pursuant to N.C. Gen. Stat. § 24-11. N.C. Gen. Stat. § 24-11(a) provides in part:

> On the extension of credit under an open-end credit or similar plan...under which no service charge shall be imposed upon the consumer or debtor if the account is paid within 25 days from the billing date, there may be charged and collected interest, finance charges, or other fees at a rate in the aggregate not to exceed one and one-half percent (1 1/2%) per month on the unpaid balance of the previous month...

May the law firm impose finance charges pursuant to N.C. Gen. Stat. § 24-11 although a client has not agreed to such finance charges in advance?

Opinion:

Yes. 98 FEO 3 provides that if a lawyer wants to charge up to one and one-half percent per month interest on the unpaid portion of a client's balance from the previous month, the lawyer must comply with N.C. Gen. Stat. §24-11, conform his conduct as a creditor to the requirements of any other applicable consumer credit laws, and have an agreement to this effect with the client.

In contrast to 98 FEO 3, case law has interpreted N.C. Gen. Stat. § 24-11 to allow a service provider to impose a monthly finance charge upon an overdue open-credit account without an advance agreement so long as the service provider gives advance notice of the intention to impose the finance charges. *See, e.g.*, *Hydes Ins. Agency Inc. v. Nolan*, 30 N.C. App. 503 (1976), 227 S.E.2d 169; *Inco v. Planters Oil Mill*, 63 N.C. App. 374, 304 S.E.2d 782 (1983); *Hedgecock Builders Supply Co. v. White*, 92 N.C. App. 535, 375 S.E.2d 164 (1989). The finance charges may only be collected on amounts that become due after initial notice by the creditor that it is going to collect the charges.

Case law further provides that such notification is sufficient if it occurs at the time the credit is initially extended, or if it occurs at any point prior to the time when

the amounts on which the finance charges are applied become due. *Hedgecock Builders Supply Co. v. White*, 92 N.C. App. 535, 375 S.E.2d 164 (1989); *Harrell Oil Co. v. Case*, 543 S.E.2d 522 (2001). N.C. Gen. Stat. §24-11 requires that a bill for the balance due on an account must be mailed to the customer at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made to avoid the imposition of any finance charge. N.C. Gen. Stat. §24-11(d).

The Ethics Committee has concluded that the notice required by law is sufficient to protect the interests of clients with delinquent accounts. Therefore, a lawyer may charge interest on unpaid balances for legal services to the extent and in the manner permitted by law. To the extent that the case law on the issue of notice is unclear, the Ethics Committee requires that any such notice must be in writing. *See* Rule 1.5 (recommending written fee agreements).

98 FEO 3 is overruled to the extent that it conflicts with this opinion.

Proposed 2012 Formal Ethics Opinion 4
Screening Lateral Hire Who Formerly Represented Adverse Organization
April 26, 2012

Proposed opinion rules that a lawyer who represented an organization while employed with another firm must be screened from participation in any case in which she previously represented the organization, but general knowledge of the organization's litigation policies and procedures is not sufficient to disqualify her from other cases against the organization.

Inquiry #1:

From October 2004 until February 9, 2012, Attorney J was employed with Law Firm H where she did workers' compensation defense work. During this time, Attorney J handled many such cases for Large Manufacturer and its insurer. Three other lawyers at Law Firm H also handled Large Manufacturer's workers' compensation cases. During Attorney J's employment, the firm represented Large Manufacturer in approximately 345 workers' compensation cases. Attorney J was the primary lawyer on approximately 64 of these cases and provided some assistance on an additional 73 cases. Attorney J handled cases as they were assigned to her and did not have any management authority or make any management decisions on behalf of the firm regarding such cases.

During her employment with Law Firm H, Attorney J was privy to Large Manufacturer's workers' compensation policies and procedures, litigation strategies, and system for case preparation. The lawyers from Law Firm H often conferred on the defense strategies for Large Manufacturer's cases. In addition, Attorney J participated in workers' compensation strategy meetings with representatives of Large Manufacturer as well as with defense counsel from Law Firm Y, another firm providing workers' compensation defense representation to Large Manufacturer. On occasion, these discussions included defense strategies for responding to the litigation tactics employed by Attorney S, a plaintiffs' lawyer.

Attorney J resigned from Law Firm H to work for Law Firm S and its principal lawyer, Attorney S. Law Firm S is a plaintiffs' personal injury firm that routinely handles workers' compensation cases against Large Manufacturer. At the time of her employment by Law Firm S, a screen was implemented to isolate Attorney J from participation in any case in which Large Manufacturer is the defendant. The screen, therefore, includes any case on which Attorney J was defense counsel while she was employed by Law Firm H. The screen prohibits any employee or lawyer with Law Firm S from speaking to Attorney J about the cases and denies Attorney J access to the paper or computer files for these cases.

May Attorney J work at Law Firm S?

Opinion #1:

Yes, if Attorney J is properly screened from participation (1) in any case in which Attorney J represented Large Manufacturer or any other adverse party, and (2) any case in which a lawyer with Law Firm H represents or represented Large Manufacturer or any other adverse party, and about which Attorney J acquired material confidential information while she was employed with Law Firm H. Written notice of the screen must be given to every affected former client.

Rule 1.9(a) prohibits a lawyer who has formerly represented a client in a matter from thereafter representing an adverse party in the same or a substantially related matter unless the former client gives informed consent. This provision of the rule prohibits Attorney J from representing any workers' compensation claimant in a case in which she formerly defended Large Manufacturer.

Rule 1.9(b), on the other hand, prohibits a lawyer from representing anyone in the same or a substantially related matter in which a firm with which the lawyer was formerly associated had previously represented the adverse party and about whom the lawyer acquired confidential, material information unless the former client gives informed consent. As explained in comment [5] to Rule 1.9:

> [p]aragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

This provision of Rule 1.9 only prohibits Attorney J from representing a workers' compensation claimant in a case in which one of the other lawyers at Law Firm H defended Large Manufacturer and about which Attorney J acquired confidential information that is material to the case.

Even if Attorney J is disqualified, Rule 1.10(c) permits screening of Attorney J to avoid imputing her disqualification to the other lawyers in her new firm. The rule provides:

> [w]hen a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:
>
> (1) the personally disqualified lawyer is timely screened from any participation in the matter; and
>
> (2) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule.

Comment [4] to Rule 1.9, on lawyers moving between firms, elucidates the policy

considerations justifying the use of screens in this situation:

> [When] lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

As long as a screen is implemented to isolate Attorney J from participation in these cases, the consent of Large Manufacturer to the representation of the claimants by a lawyer with Law Firm S is not required. *See* Rule 1.0(l) and 2003 FEO 8 (setting forth screening procedures). To the extent the screen that was erected at the time of Attorney J's employment with Law Firm S exceeds the requirements of the Rules as explained in this opinion, that part of the screen may be discontinued.

Inquiry #2:

Large Manufacturer contends that Attorney J was privy to information about Large Manufacturer's defense of workers' compensation cases that could materially advance the interests of any client of Attorney J with a workers' compensation claim against Large Manufacturer.

May Attorney J represent claimants on new workers' compensation cases against Large Manufacturer if the claimant did not seek representation from Law Firm S until after Attorney J's employment?

Opinion #2:

Yes. If the new matters are not the same or substantially related to Attorney J's prior representations of Large Manufacturer, she is not disqualified from the representations. Rule 1.9(a).

Nevertheless, Attorney J has a continuing duty to monitor any new case against Large Manufacturer to be sure that the representation will not result in the use of specific confidential factual information of Large Manufacturer to the disadvantage of the former client in violation of Rule 1.9(c). Rule 1.9(c) prohibits a lawyer who has formerly represented a client in a matter or whose former firm has formerly represented a client in a matter from thereafter using confidential information relating to the representation to the disadvantage of the former client, except as allowed by the Rules or when the information has become "generally known." A screen must be promptly implemented to isolate Attorney J from participation in any such case. *See* Opinion #1.

Attorney J's general knowledge of Large Manufacturer's workers' compensation litigation policies and practices is not in itself sufficient to disqualify her. As observed in comment [3] to Rule 1.9, "[i]n the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation." Such general knowledge of litigation strategy has been described as "playbook" information and most courts agree that it is short-lived information that is not specific enough to require disqualification. As observed by one court, disqualification based upon knowledge of a general approach to litigation would effectively prohibit lawyers from ever representing an adversary of a former client. *See Annotated Model Rules of Professional Conduct* (7th ed.) 2011 at 171 (citing *Niemi v. Girl Scouts of Minn.*, 768 N.W. 2d 385 (Minn. Ct. App. 2009)).

Inquiry #3:

May the other lawyers in Law Firm S represent claimants on new workers' compensation cases against Large Manufacturer?

Opinion #3:

Yes, if Attorney J is screened from those cases for which she has acquired specific factual information of Large Manufacturer that is disqualifying. *See* Opinion #2.

Inquiry #4:

Should Attorney J be screened from participation in workers' compensation cases against Large Manufacturer that were defended by lawyers from Law Firm Y while Attorney J was employed by Law Firm H?

Opinion #4:

No. Attorney J was not employed by Law Firm Y and, therefore, disqualifications from that firm are not imputed to her. Rule 1.10.

Inquiry #5:

Large Manufacturer has many long-term employees who over time may file multiple workers' compensation claims against Large Manufacturer. If Lawyer J or another lawyer with Law Firm H defended Large Manufacturer against a particular employee while Attorney J was employed by the firm, Law Firm H contends that there is a substantial risk that Attorney J will have specific confidential information of Large Manufacturer that would be relevant and useful to the representation of the particular claimant. For example, a manager's thoughts and opinions regarding the claimant could be factually specific information that would not be generally known and which might be used to the disadvantage of Large Manufacturer.

May Attorney J represent a claimant on a new workers' compensation case against Large Manufacturer if the claimant had previously filed a workers' compensation case against Large Manufacturer that was defended by a lawyer from Law Firm H while Attorney J was employed by the firm?

Opinion #5:

As stated in Opinion #2, Attorney J has a continuing duty to monitor any new case against Large Manufacturer to be sure that the representation will not result in the use of specific confidential factual information of Large Manufacturer to the disadvantage of Large Manufacturer in violation of Rule 1.9(c). A screen must be promptly implemented to isolate Attorney J from participation in any such case. ■

Amendments Approved by the Supreme Court

At a conference on March 8, 2012, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

Amendments to the Membership Rules

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

A new rule defining "good standing" clarifies when a certificate of good standing will be issued to a member of the State Bar.

Amendments to the Administrative Reinstatement Rules

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

The amendments make a number of changes to the rules on reinstatement from inactive status and administrative suspension including the following: defining the compliance "year" as 365 day period; allowing active military service to offset the years of inactive status or suspension giving rise to the bar exam requirement for reinstatement; prohibiting an inactive or suspended member whose petition is denied from petitioning for reinstatement until the next calendar year; specifying 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 requiring payment of any delinquency shown on the financial records of the State Bar and fulfillment of any delinquent administrative requirement to qualify for reinstatement within 30 days of service of a suspension order

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 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.

Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, Minimum Standards for Certification of Specialists, and Section .2900, Certification Standards for the Elder Law Specialty

The 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 amendments also allow judicial service to satisfy the substantial involvement requirement for recertification, add juvenile delinquency criminal law and appellate practice to the list of specialties, and add "veterans' benefits" to the list of course subjects that satisfy the CLE requirement for certification in elder law.

Amendment to the Rules on Prepaid Legal Services Plans

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

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

Amendments Pending Approval of the Supreme Court

At its meeting on April 27, 2012, 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 Spring 2012 *Journal* or visit the State Bar website):

Proposed Amendments to the Procedures for Election of State Bar Councilors

27 N.C.A.C. 1A, Section .0800, Election and Appointment of State Bar Councilors

The proposed amendments permit judicial district bars to adopt procedures for online voting for State Bar councilors as long as the procedures provide for appropriate notice, ensure secure voting, and offer access to ballots to all active members in the judicial district.

Proposed Amendments to the Administrative and CLE Suspension Rules

27 N.C.A.C. 1D, Section .0900, Procedures for Administrative Committee, and Section .1500, Rules Governing the Administration of the Continuing Legal Education Program

The proposed amendments will facilitate the service of notices to show cause (NSC) for failure to fulfill a membership or CLE requirement by allowing for service of a NSC by designated delivery service and for acknowledgement of service of a NSC by email. They also allow for a suspension order for the same conduct to be served by mailing the order to the last address on file with the State Bar if, after due diligence, the member cannot be served by registered/certified mail, designated delivery service, or personal service. The proposed amendments clarify that a written response to a NSC must "show cause" for not suspending the member rather than merely provide an explanation for the failure to fulfill an obligation of membership.

Proposed Amendments to Legal Specialization Rules

27 N.C.A.C. 1D, Section .1700, The

Plan of Legal Specialization

The proposed amendments specify that the substantial involvement and CLE requirements for certification apply to the calendar years prior to application and clarify the standard for peer review.

Proposed Amendments to Rules for Paralegal Certification

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

A proposed new rule creates an inactive status for certified paralegals who are suffering financial hardship, illness or disability, on active military duty, or following a military spouse to another state or country. To be reinstated to active status after two years or more of inactivity, an inactive certified paralegal must take 12 hours of CPE. After five years of inactive status, certification lapses. To be certified again, the paralegal must apply and pass the certification exam.

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.

Proposed Amendments

At its meeting on April 27, 2012, the council voted to publish the following proposed rule amendments for comment from the members of the Bar:

Proposed Amendments to Discipline and Disability Rules

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

The proposed amendments make the Grievance Committee's procedure for referring cases to the Trust Account Supervisory Program consistent with the procedures for referrals to approved law office management programs and the Lawyer Assistance Program.

.0105 Chairperson of the Grievance Committee: Powers and Duties

(a) The chairperson of the Grievance Committee will have the power and duty

(1) ….;

~~(16) in his or her discretion, to refer grievances primarily attributable to unsound law office management to a program of law office management training approved by the State Bar and to so notify the complainant;~~

~~(17) except in cases involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or other cases deemed inappropriate by the chair, in his or her discretion to refer lawyers who are found during random auditing or otherwise to be significantly out of compliance with the Rules of Professional Conduct to a trust accounting supervisory program administered by the State Bar on terms and conditions approved by the council.~~

[Re-numbering remaining paragraphs.]

(b) ….

.0106 Grievance Committee: Powers and Duties

The Grievance Committee will have the power and duty…

(1) ….

(13) in its discretion to refer grievances primarily attributable to the respondent's failure to employ sound trust accounting techniques to the trust account supervisory program in accordance with Rule .0112(k) of this subchapter.

.0112 Investigations: Initial Determination; Notice and Response; Committee Referrals

(a) **Investigative Authority**

…

(i) **Referral to Law Office Management Training** –

(1) If, at any time before ~~prior to~~ a finding of probable cause, ~~the chair of~~ the Grievance Committee~~, upon the recommendation of the counsel or of the Grievance Committee,~~ determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound law office management techniques and procedures, the ~~chair~~ committee may ~~, with the respondent's consent, refer the case to a program of~~ offer the respondent an opportunity to voluntarily participate in a law office management training program approved by the State Bar before the committee considers discipline.

If the respondent accepts the committee's offer to participate in the program, ~~T~~the respondent will then be required to complete a course of training in law office management prescribed by the chair which may include a comprehensive site audit of the respondent's records and procedures as well as attendance at continuing legal education seminars. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Law Office Management Training Program – If the respondent successfully completes the law office management training program, ~~T~~the ~~Grievance C~~committee may consider the respondent's successful completion of the law office management training program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to successfully complete the ~~program of~~ law office management training program as agreed, the grievance will be returned to the committee's agenda for consideration of imposition of discipline ~~at the Grievance Committee's next quarterly meeting~~. The requirement that a respondent complete

law office management training pursuant to this rule shall be in addition to the respondent's obligation to satisfy the minimum continuing legal education requirements contained in 27 NCAC 1D .1517.

(j) **Referral to Lawyer Assistance Program**

(1) If, at any time before ~~prior to~~ a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's substance abuse or mental health problem, the committee may offer the respondent an opportunity to voluntarily participate in a rehabilitation program under the supervision of the Lawyer Assistance Program Board before the committee considers discipline.

If the respondent accepts the committee's offer to participate in a rehabilitation program, the respondent must provide the committee with a written acknowledgement of the referral on a form approved by the chair. The acknowledgement of the referral must include the respondent's waiver of any right of confidentiality that might otherwise exist to permit the Lawyer Assistance Program to provide the committee with the information necessary for the committee to determine whether the respondent is in compliance with the rehabilitation program. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Rehabilitation Program – If the respondent successfully completes the rehabilitation program, the ~~Grievance Committee~~ committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the respondent fails to complete the rehabilitation program or fails to cooperate with the Lawyer Assistance Program Board, the Lawyer Assistance Program will report that failure to the counsel and the grievance will be returned to ~~included on~~ the ~~Grievance Committee's~~ committee's agenda for consideration of imposition of discipline. ~~at the Grievance Committee's next quarterly meeting~~.

(k) **Referral to Trust Account~~ing~~ Supervisory Program –**

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound trust accounting techniques, the committee may offer the respondent an opportunity to voluntarily participate in the State Bar's trust account supervisory program for up to two years before the committee considers discipline. ~~The chair of the Grievance Committee, in his or her sole discretion, may refer a lawyer whose trust account record keeping is found, during random auditing or otherwise, to be significantly out of compliance with the Rules of Professional Conduct into a supervisory program for two years.~~

If the respondent accepts the committee's offer to participate in the supervisory program, ~~During the lawyer's two year participation in the program,~~ the ~~lawyer~~ respondent must fully cooperate with the Trust Account Compliance Counsel and must provide to the Office of Counsel quarterly proof of compliance with all provisions of Rule 1.15 of the Rules of Professional Conduct. Such proof shall be in a form satisfactory to the Office of Counsel. If the respondent does not accept the committee's offer, the grievance will be returned to the committee's agenda for consideration of imposition of discipline.

(2) Completion of Trust Account Supervisory Program - If ~~a lawyer~~ the respondent ~~agrees to enter the supervisory program, timely complies with all rules of the program, and~~ successfully completes the program, the ~~Grievance Committee will not open a grievance file on the issue of the lawyer's pre-referral noncompliance with trust account record keeping rules~~ committee may consider successful completion of the program as a mitigating circumstance and may, but is not required to, dismiss the grievance for good cause shown. If the ~~lawyer~~ respondent does not fully cooperate with the Trust Account Compliance Counsel and/or ~~does not agree to enter the program or agrees to enter the program but~~ does not successfully complete ~~it~~ the program, the grievance will be returned to the ~~Grievance Committee's~~ committee's agenda for consideration of imposition of discipline. ~~a grievance file will be opened and the disciplinary process will proceed.~~

(3) The ~~chair of the Grievance Committee~~ committee will not refer to the program any case involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or any other case the ~~chair~~ committee deems inappropriate for referral. The committee will not refer to the program any respondent who has not cooperated fully and timely with the committee's investigation. If the Office of Counsel or the ~~Grievance Committee~~ committee discovers evidence that a ~~lawyer~~ respondent who is participating in the program may have misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, the chair will terminate the ~~lawyer's~~ respondent's participation in the program and the disciplinary process will proceed. ~~will instruct the Office of Counsel to open a grievance file.~~ Referral to the Trust Accounting Supervisory Program is not a defense to allegations that a lawyer misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, and it does not immunize a lawyer from the disciplinary consequences of such conduct.

Proposed Amendments to the Procedures for Fee Dispute Resolution

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

The proposed amendments clarify that the Fee Dispute Resolution Program does not have jurisdiction over fees or expenses established by private arbitrators.

Rule .0702 Jurisdiction

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

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

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

(2) ….

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

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

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

(4) ….

Proposed Amendments to the IOLTA Rules

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

The accounts of lay "settlement agents" are now required by law to be IOLTA accounts. The proposed rule amendments clarify that a settlement agent account may be established at a bank outside of North Carolina provided the account is not maintained by a North Carolina lawyer, the bank is FDIC insured, and the bank has a certificate of authority to transact business from the North Carolina Secretary of State.

.1316 IOLTA Accounts

(a) IOLTA Account Defined.

….

(b) Eligible Banks. Lawyers may maintain one or more IOLTA Account(s) only at banks and savings and loan associations chartered under North Carolina or federal law, as required by Rule 1.15 of the Rules of Professional Conduct, that offer and maintain IOLTA Accounts that comply with the requirements set forth in this subchapter (Eligible Banks). Settlement agents shall maintain any IOLTA Account as defined by N.C.G.S. 45A-9 and paragraph (a) above only at an Eligible Bank**; however, a settlement agent that is not a lawyer may maintain an IOLTA Account at any bank that is insured by the Federal Deposit Insurance Corporation and has a certificate of authority to transact business from the North Carolina Secretary of State provided the bank is approved by NC IOLTA.** The determination of whether a bank is eligible shall be made by NC IOLTA, which shall maintain **(i)** a list of participating Eligible Banks available to all members of the State Bar and to all settlement agents**, and (ii) a list of banks approved for non-lawyer settlement agent IOLTA Accounts available to non-lawyer settlement agents**. A bank that fails to meet the requirements of this subchapter shall be subject only to termination of its eligible **or approved** status by NC IOLTA. A violation of this rule shall not be the basis for civil liability.

(c) ….

Proposed Amendments to the CLE Rules

27 NCAC 1D, Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments provide CLE credit to lawyers who teach classes at accredited law and paralegal schools and who teach classes or courses on topics of substantive law at accredited graduate schools.

.1605 Computation of Credit

(a) Computation Formula

….

(d) Teaching Law Courses

(1) Law School Courses. If a member is not a full-time teacher at a law school in North Carolina who is eligible for the exemption in Rule .1517(b) of this subchapter, the member may earn CLE credit for teaching ~~courses~~ **a course or a class in a quarter or semester-long course** at an ABA accredited law school. A member may also earn CLE credit by teaching ~~courses~~ **a course or a class** at a law school licensed by the Board of Governors of the University of North Carolina, provided the law school is actively seeking accreditation from the ABA. If ABA accreditation is not obtained by a law school so licensed within three years of the commencement of classes, CLE credit will no longer be granted for teaching courses at the school.

(2) Graduate School Courses. Effective January 1, 2012, a member may earn CLE credit by teaching a course on substantive law or a class on substantive law in a quarter or semester-long course at a graduate school of an accredited university.

~~(2)~~ **(3)** Courses at Paralegal Schools or Programs. Effective January 1, 2006, a member may earn CLE credit by teaching **a** paralegal or substantive law ~~courses~~ **course or a class in a quarter or semester-long course** at an ABA approved paralegal school or program.

~~(3)~~ **(4)** Credit Hours. Credit for teaching ~~courses~~ **activities** described in Rule .1605(d)(1) ~~and (2)~~ **– (3)** above may be earned without regard to whether the course is taught online or in a classroom. Credit will be calculated according to the following formula:

(A) Teaching a Course. 3.5 Hours of CLE credit for every quarter hour of credit assigned to the course by the educational institution, or 5.0 Hours of CLE credit for every semester hour of credit assigned to the course by the educational institution. (For example: a 3-semester hour course will qualify for 15 hours of CLE credit).

(B) Teaching a Class. 1.0 Hour of CLE credit for every 50 – 60 minutes of teaching.

~~(4)~~ **(5)** Other Requirements. ….

Proposed Amendments to Trust Accounting Rules

27 NCAC 2, Rules of Professional Conduct, Rule 1.15, Safekeeping Property

Rule 1.15-2 requires a lawyer maintaining a trust or fiduciary account to file a written directive that requires the depository bank or other financial institution to report to the State Bar when an instrument drawn on the account is presented for payment against insufficient funds. The proposed amendments clarify that the bank directive requirement is limited to trust and fiduciary accounts with demand deposit.

Rule 1.15-1, Definitions

(a) ….

(d) "Demand deposit" denotes any account from which deposited funds can be withdrawn at any time without notice to the depository institution.

[Re-lettering remaining paragraphs.]

Rule 1.15-2, General Rules

(a) ….

(k) Bank Directive.

Every lawyer maintaining a trust account or fiduciary account **with demand deposit** at a bank or **other financial institution** shall file with the bank or **other financial institution** a written directive requiring the bank or **other financial institution** to report to the executive director of the North Carolina State Bar when an instrument drawn on the

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Campaign Underway to Raise Funds for New State Bar Headquarters

By Virginia Yopp

The State Bar Foundation has begun work to raise $2.5 million for the new State Bar headquarters building in Raleigh.

The leadership phase of the campaign began in mid-March with a series of statewide information sessions and luncheons. Incorporated in 2009, the North Carolina State Bar Foundation, Inc. exists to raise funds to assist in the construction and maintenance of the North Carolina State Bar's new headquarters building.

A team of dedicated supporters of the State Bar from across the state is providing leadership to the campaign. Planning for the campaign began in June 2011 following a feasibility study that determined the effort was likely to be successful. Funds raised by the Foundation will guarantee state of the art technology and energy efficiency in the new building, including the coveted Gold LEED (Leadership in Energy and Environmental Design) certification. In addition, Foundation funds will provide enhancements to increase the appearance, durability, and the experience of the building.


EXTERIOR

As the North Carolina economy has grown over the last 20 years, the legal profession has grown with it. Over 25,000 lawyers now belong to the State Bar and that number is expected to double in the next 20 years. The agency's current offices are in a cramped and outdated facility of 28,000 square feet that no longer accommodates its staff and functions.

LOBBY

"The number of lawyers in North Carolina has quadrupled since we moved into our current building in 1979," said John McMillan, former State Bar President and Foundation Chairman. "The population of our state has doubled and the State Bar staff has grown from 13 to 82 over the past 30 years."

Plans for the new building have been in the works for nearly five years. In December 2007, then State Bar President Hank Hankins of Charlotte appointed Bonnie Weyher of Raleigh as chair of the State Bar's Facilities Committee, which planned the new building. Hankins with Weyher—also a former president of the State Bar—are co-chairs of the capital campaign. The Facilities Committee remains intact and oversees the project under the leadership of Keith Kapp, who chaired the committee from 2009-2012, and John Silverstein, who currently chairs the committee.

Following much thought and considera-

tion—and the development of numerous sets of architectural plans—the Council of State was persuaded in January 2009 to lease the Bar a very suitable parcel of land within the state government complex on the corner of Blount and Edenton Streets for 99 years in return for $1. The new State Bar building will have a timeless traditional design, and its location near the state government complex will underscore the essential role that the State Bar and lawyers play in the administration of justice. Rather than relocating to another downtown storefront, to a high-rise office building, or to a suburban office park, the North Carolina State Bar is constructing a building in the heart of Raleigh that will be both memorable and enduring.

At a total cost of about $17 million, the new facility will house 60,000 square feet on four floors. Proceeds from the sale of the current headquarters building ($2.5 million) plus $12 million in borrowed funds and funds from the State Bar's cash reserves will cover most of the cost of the new building. However, contributions to the campaign are essential to cover the remaining cost of the project.

"One of the foremost shared goals of this campaign is that this entire project will be accomplished without an increase in lawyers' membership dues," stated McMillan.

Although work began quietly on the campaign in mid-March, the Foundation actually received its first gift in 2009. The State Bar's Board of Paralegal Certification generously donated $500,000 to the Foundation soon after its incorporation and has directed that these funds be used for the new building. Several law firms have made pledges that bring total contributions to just over $1 million as of April 20.

Progress on the new State Bar building; May 3, 2012

The Foundation expects to wrap up the quiet leadership portion of its campaign in June. The regional phase will follow when targeted donors will be approached across the state. Eventually, the at-large phase of the campaign will seek donors at all levels of gifts statewide. Appropriate donor recognition within the new building will be available for gifts to the campaign.

"It is very important to the campaign leadership that every law firm, attorney, and organization with an association to the State Bar have an opportunity to be a part of this once-in-a-lifetime effort," said Hankins. "North Carolina is now one of the ten largest states. It deserves a bar headquarters on par with its sister states of comparable size."

For more information on the North Carolina State Bar Foundation, construction updates, and the campaign, please visit NCBarFoundation.org. ■

Virginia Yopp is the director of the State Bar Foundation.

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

Faulkner Named Interim Dean—Campbell University has named B. Keith Faulkner interim dean of Campbell Law School effective July 1. Faulkner replaces Melissa Essary, who has served as dean since 2006. Essary will join the faculty of the law school upon leaving the dean's office. Faulkner, who currently serves as the vice dean for administration and external relations for the law school, has also held the positions of executive associate dean for academic affairs and administration, and associate dean for external relations since his arrival in 2004.

Professor Anderson Honored with Iredell Award—Phi Alpha Delta Fraternity honored and presented longtime professor Tom Anderson with the 2012 Justice James Iredell Award at a gala ceremony on March 28. At Campbell Law, Professor Anderson coached numerous trial teams to regional championships and top-10 placements at national competitions. He received the North Carolina Academy of Trial Lawyers prestigious Charles Becton Award for Outstanding Teaching of Trial Advocacy, and twice received the Campbell Law Outstanding Professor Teaching Award by a vote of the students. He was also the first recipient of the Campbell Law Dean's Award for teaching. Upon his retirement as a full-time faculty member he was named Campbell Law Professor of Law Emeritus by the Campbell University Board of Trustees.

Ludlum Selected for North Carolina Bar Association Hall of Fame—Campbell Law alum J. Garrett Ludlum has been selected for enshrinement into the North Carolina Bar Association General Practice Hall of Fame. Ludlum is the first Campbell Law alum to receive the honor. A member of the Campbell Law inaugural class of 1979, he will be inducted into the Hall of Fame in June.

Duke Law School

Justice Stevens Addresses Duke's 2012 Graduates—Retired Supreme Court Associate Justice John Paul Stevens spoke at Duke Law's annual hooding ceremony on May 12. He shared insights from his long career as a lawyer and jurist with graduates during a special *Life in the Law* interview with Dean David F. Levi prior to the ceremony.

Powell Returns to Duke Law Faculty—H. Jefferson Powell returned to the Duke Law faculty in May. A member of the law faculty from 1989 to 2010, Powell's return followed service as deputy assistant attorney general in the Office of Legal Counsel at the US Department of Justice and as a professor at George Washington University Law School.

A distinguished constitutional law scholar, Powell has also served in a variety of positions in federal and state government during his career, including as principal deputy solicitor general in 1996. He has briefed and argued cases in both federal and state courts, including the United States Supreme Court. Most recently, Powell and Duke Law professor Walter Dellinger wrote the amicus brief that the congressional Democratic leadership filed in the US Court of Appeals considering the constitutionality of the Affordable Care Act.

Inaugural Judicial Studies Conference Addresses Judicial Control of Agencies–Duke's Center for Judicial Studies held its inaugural conference on April 27 focusing on the political and judicial control of administrative agencies. Organized by Professor Arti Rai, a patent expert, and Professor John de Figueiredo, an administrative law, business, and law and economics specialist, the conference brought together leading scholars of law and political science, as well as judges and policymakers, to examine presidential control of administrative agencies through executive branch mechanisms—such as the White House Office of Information and Regulatory Affairs—and judicial mechanisms—such as judicial review of agencies' statutory interpretation.

Elon University School of Law

O'Connor and Gergen Headline Conference on Law and Leadership—The April 13-14 Conference on Law and Leadership, co-hosted by Elon Law and the Center for Creative Leadership, featured keynote addresses by US Supreme Court Justice (ret.) Sandra Day O'Connor in her third visit to Elon Law and David Gergen, chair of Elon Law's Advisory Board and former adviser to four US presidents. Speakers included Dennis Glass, president and CEO of Lincoln Financial Group, and Thomas Ross, president of the 17-campus University of North Carolina.

O'Connor said the transparency of the Supreme Court's reasoning through its published opinions helps to sustain the nation's democracy.

"Nothing issues out of that court without explanations, and if there's disagreement among the justices you can read all about it in their opinions," O'Connor said. "That is very impressive and I think continues to sustain our system as we have it, and I think it's pretty good."

David Gergen expressed concern about declining public trust in the impartiality of the Supreme Court's decisions.

"I worry about the degree to which the judiciary is being politicized and being seen as politicized," Gergen said. "If we let the Supreme Court slip away from us as a respected institution, we're going to lose something very precious."

Elon Law Dean George R. Johnson Jr., said, "The insights offered by Justice O'Connor and David Gergen about the importance of public confidence in the impartiality of our nation's highest court enriched a valuable discussion at our first Conference on Law and Leadership about the roles that lawyers should play in our society, especially the leadership roles that

lawyers have traditionally played, and that our society and the profession expects of them."

A full report on the conference, including insights from corporate counsel, law firm managing partners, and scholars, is available at elon.edu/lawleadership.

University of North Carolina School of Law

Election Protection—The UNC Center for Civil Rights, UNC Pro Bono Program, and the Lawyers Committee for Civil Rights Under the Law hosted a hotline on Election Day, May 8, 2012. Students and volunteers answered phone calls from voters who had questions about voting or who thought that they had been denied their right to vote.

Commencement—US Attorney General Eric H. Holder delivered the commencement address for the class of 2012 on May 12. Holder was sworn in as the 82nd attorney general in 2009, and is the first African American to hold that post. Before that time, Holder was a litigation partner at Covington & Burling, LLP in Washington, DC. From 1997-2001, Holder served under President Clinton as the deputy attorney general.

Banking Institute—President of the Federal Reserve Bank of Richmond, VA, Jeff Lacker addressed bankers and their lawyers during the Center for Banking and Finance's annual Banking Institute in March. Lacker spoke about "A Program for Financial Stability."

CLEAR—The Center for Law, Environment, Adaptation, and Resources (CLEAR) hosted a discussion, "Private Sector Adaptation: Information and the Role of Government," in March to explore private sector climate change adaptation and the role of government in providing information to facilitate adaptation.

North Carolina Law Review Hosts Social Networks Symposium—Speakers and panelists at the November symposium considered new legal challenges presented by online communities. Download free video at itunes.unc.edu.

Wake Forest University School of Law

The Wake Forest School of Law plans to begin a one-year Master of Studies in Law (MSL) program starting in the Fall 2012 semester. The MSL program offers an integrated understanding of law useful in many professional settings. Through an innovative curriculum that explores the core concepts of law, students gain new perspectives on contemporary business, politics, and society. The two-semester residential MSL program is designed for college graduates interested in career paths in which law is relevant, such as accounting, business, corporate compliance, criminal justice, education, health care, human relations, intellectual property, international trade, journalism, finance, non-profit organizations, politics, public

CONTINUED ON PAGE 54

In Memoriam

Abner Alexander
Winston-Salem

Sylvia Ximines Allen
Fayetteville

Mathew E. Bates
Greensboro

Robert Belton
Nashville, TN

James Breckenridge Blackburn III
Chapel Hill

Harvey J. Boney Jr.
Jacksonville

Allen Winfield Boyer
Charlotte

Steven Marc Carlson
Boone

Christopher McLauchlin Collier
Statesville

Larry Gregson Graham
Broadway

Sofie Wonderly Hosford
Wilmington

John Robert Hufstader
Asheville

Amelia Ann Rogers Jordan
Jacksonville

Larry E. Leonard
Thomasville

Knox Kent Lively III
Greensboro

Robert Blackwell Lloyd Jr.
Greensboro

John R. Lynch Jr.
Matthews

William McBlief
Garner

Connie J. Miller
Charlotte

Renard Roy Mitchell Jr.
North Myrtle Beach, SC

Cynthia A. O'Neal
Zebulon

Clifton Waldo Paderick
Clinton

Richard Wayne Pickett
Concord

Robert Louis Quick
Winston-Salem

Jesse Richardson Rudisill Jr.
Hickory

Abraham Lincoln Sherk III
Winston-Salem

David Thomas Simpson Jr.
Charlotte

John Cowles Tally
Fayetteville

Robert Eirwin Thomas
Hickory

Richard J. Tuggle
Greensboro

Lewis E. Waddell Jr.
Newton

Robert Lee Watt III
Reidsville

Parker Whedon
Charlotte

Nancy Lightner Wooten
Winston-Salem

Marshall V. Yount
Hickory

Client Security Fund Reimburses Victims

At its April 26, 2012, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $168,543.02 to 11 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The new payments authorized were:

1. An award of $10,000 to an applicant who suffered a loss because of William Barrow of Raleigh. The board found that Barrow handled the settlement of a wrongful death claim for an estate. From the settlement proceeds, Barrow should have deposited funds with the clerk's office for this applicant who was then a minor. Barrow failed to transfer the funds to the clerk or otherwise safeguard the funds in trust. Barrow was disbarred on December 9, 1998.

2. An award of $8,489.40 to an applicant who suffered a loss because of Jennifer Green-Lee of Clayton. The board found that Green-Lee was retained to close a client's construction loan. Green-Lee issued a check from the closing to the applicant for the net proceeds of the construction draw, which failed to clear prior to Green-Lee's account being frozen by the State Bar due to misappropriation. Green-Lee's trust account balance was insufficient to pay all her clients' obligations. Green-Lee was disbarred on August 19, 2011. The board previously reimbursed four other Green-Lee clients $109,159.43.

3. An award of $100,000 to a former client of Jennifer Green-Lee. The board found that Green-Lee handled a real estate purchase for a client. From the closing proceeds provided by the client, Green-Lee failed to disburse the sale proceeds to the sellers. Due to misappropriation, Green-Lee's trust account balance was insufficient to pay all her clients' obligations.

4. An award of $2,000 to a former client of Mark Jenkins of Waynesville. The board found that Jenkins was retained to handle a custody matter. 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. The board previously reimbursed ten other Jenkins clients a total of $33,475.

5. An award of $1,759.50 to a former client of Larry Overton of Winston-Salem. The board found that Overton was retained to handle a client's domestic matter. Overton acknowledged his failure to provide legal services for the fee paid. Overton was disbarred on April 22, 2011.

6. An award of $1,250 to a former client of Larry Overton. The board found that Overton was retained to handle a custody modification matter. Overton failed to provide any valuable legal service for the fee paid.

7. An award of $295 to a former client of Alan Roughton of Washington. The board found that Roughton was retained to handle a client's traffic ticket. Roughton failed to provide any valuable legal service for the fee paid.

8. An award of $2,500 to a former client of Alan Roughton. The board found that Roughton was retained to handle a client's domestic matter. Roughton failed to provide any valuable legal service for the fee paid.

9. An award of $400 to a former client of Robert Morgan Smith of Goldsboro. The board found that Smith was retained to handle a client's traffic ticket. Smith failed to provide any valuable legal service for the fee paid. Smith was disbarred on October 14, 2011.

10. An award of $4,285.57 to a former client of Nicholas Stratas Jr. of Raleigh. The board found that Stratas was retained to handle a client's personal injury matter. Stratas settled the client's matter and retained funds from the settlement until resolution of a Medicare lien. Stratas abandoned his practice and a trustee was appointed. Stratas' trust account balance was insufficient to cover all of Stratas' clients' obligations due to misappropriation.

11. An award of $37,563.55 to a former client of Nicholas Stratas Jr. The board found that Stratas was retained to handle a client's personal injury matter. Stratas settled the matter and gave the client a check for the net proceeds. Prior to the client cashing the check, Stratas abandoned his practice. Stratas' trust account balance was insufficient to cover all of Stratas' clients' obligations due to misappropriation. ■

Law School Briefs (cont.)

health, regulatory affairs, or sustainability. MSL students take a specially-designed core curriculum taught by Wake Law professors and also enroll in elective upper-level law courses that further their career goals. Like other graduate programs, the MSL program requires a thesis (or seminar paper) under the supervision of a faculty advisor. Although MSL graduates do not practice law, their MSL degree allows them to hone their skills in critical reading, writing, and thinking. The result is an awareness, confidence, and discipline to solve problems in today's many challenging and changing professional settings. Find more information on the Wake Forest MSL program including curriculum, faculty, tuition/financial aid, and admissions process at msl.law.wfu.edu. ■

Proposed Amendments (cont.)

account is presented for payment against insufficient funds. No trust account or fiduciary account shall be maintained in a bank or **other financial institution** that does not agree to make such reports.

(l)…. ■

John B. McMillan Distinguished Service Award

Recent Award Recipients

L.P. "Tony" Hornthal Jr. is a recipient of the John B. McMillan Distinguished Service Award. A native of Tarboro, Mr. Hornthal is a double Tar Heel, receiving both his undergraduate degree and law degree from the University of North Carolina at Chapel Hill. He started his legal career as a research assistant at the North Carolina Supreme Court, spent two years with the North Carolina Attorney General's office, and has been in private practice in Elizabeth City since 1965. Throughout his legal career, Mr. Hornthal has zealously advocated for his clients in nearly all areas of civil litigation. In addition to being a talented litigator, Mr. Hornthal diligently served the legal profession as president of both the North Carolina Bar Association and the North Carolina Association of Defense Attorneys. In addition, Mr. Hornthal has served on the State Bar's Disciplinary Hearing Commission, the Legislative Study Commission, the NC-IOLTA Board of Directors, and the Judicial Standards Commission. Mr. Hornthal has also demonstrated a passion for community service, serving as president of the Albemarle United Way and the Elizabeth City Rotary Club and as a dedicated member of his church. Tony Hornthal is a wonderful role model to the members of the 1st Judicial District and is known and revered for his mentorship to all who have worked with him and for his dedication to his community.

Justice Harry C. Martin is a recipient of the John B. McMillan Distinguished Service Award. A native of Lenoir and Blowing Rock, Justice Martin graduated from Harvard Law School in 1948. He began his career in a general solo practice and continued in private practice with the firm of Gudger, Elmore & Martin until 1962. Justice Martin became superior court judge of Buncombe County in 1962, and served in that position until 1978. He was appointed to the North Carolina Court of Appeals in 1978 and the North Carolina Supreme Court in 1982. Justice Martin served as an associate justice on the NC Supreme Court until 1992 when he returned to private practice. In addition, Justice Martin was the first chief circuit mediator of the United States Court of Appeals for the Fourth Circuit, and the first chief justice of the Cherokee Supreme Court, Eastern Band of Cherokee Indians. In recognition of his service, the Eastern Band of the Cherokee Indians made Justice Martin an honorary tribe member in 2007. In addition to his professional service, Justice Martin has lectured all over the state, published numerous legal articles, and has chaired countless committees and commissions. Justice Harry C. Martin has provided a lifetime of distinguished service to the legal profession and the people of North Carolina. ■

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. ■

Don't Miss Important State Bar Communications

Log on to ncbar.gov and make sure we have your email address.

July 2012 Bar Exam Applicants

The July 2012 Bar Examination will be held in Raleigh on July 24 and 25, 2012. Published below are the names of the applicants whose applications were received on or before March 6, 2012. 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.

Albert Aberle
Greensboro, NC
Alexander Abramovich
Chapel Hill, NC
Lauren Ackermann
Durham, NC
Jeremy Adams
Raleigh, NC
Ilesanmi Adaramola
Ringgold, VA
James Adcock III
Fuquay-Varina, NC
Meghan Addison
Raleigh, NC
Oluwatoyin Adefila
Greensboro, NC
Justin Agans
Bloomington, IN
Jonathan Alef
Charlotte, NC
Jeffrey Alexander
Charlotte, NC
Latavia Alexander
Durham, NC
Dene' Alexander
Durham, NC
Lauren Allen
Durham, NC
Stephen Allen Jr.
Charlotte, NC
Sheyna Alterovitz
Chapel Hill, NC
Jane Anders
Mount Holly, NC
Jessica Anderson
Greensboro, NC
Elizabeth Anderson
Virginia Beach, VA
Alice Anderson
Winston-Salem, NC
Jennifer Anderson
Chapel Hill, NC
Chase Anderson
Seattle, WA
Valerie Andrade
Pittsboro, NC
Kerry Andrews
Concord, NC
Richard Andrews II
Chapel Hill, NC
Danielle Appelman
Greensboro, NC
Melissa Apperson
Greensboro, NC
Thomas Archer
Charlotte, NC
Charles Archie
Chapel Hill, NC
John Arco
Clarksburg, WV
Sarah Arena
Chapel Hill, NC
Calvin Armstrong
West Des Moines, IA
Kimberly Arndt
Wilimington, NC
Anna Arnopolsky
Greensboro, NC
Lisa Arthur
Chapel Hill, NC
Katherine Asaro
Chapel Hill, NC
Vincent Asaro
Durham, NC
Laura Askins
Fuquay-Varina, NC
Aysun Atakturk
Cary, NC
Andrew Atkins
West Palm Beach, FL
Tara Austin
Hudson, NC
Christopher Avery
Greensboro, NC
Kristy Avery
Statesville, NC
Gwendolyn Babson
Winnabow, NC
Lorelle Babwah
Carrboro, NC
Andrew Bagnell
Natick, MA
Ryan Bakelaar
Durham, NC
Joseph Baker
Bloomington, IN
Elizabeth Baker
Huntersville, NC
Thanasis Ballas
Clemmons, NC
Ashley Banks
New Orleans, LA
Jaron Barbee
Durham, NC
Katherine Barber
Winston-Salem, NC
Kevin Barbieri
Farmington Hills, MI
Blake Barnard
Raleigh, NC
Christopher Barnes
Chapel Hill, NC
Katherine Barnes
Chapel Hill, NC
Claude Barnhill
Cary, NC
Catherine Barr
Charlotte, NC
Nigel Barrella
Washington, DC
Laura Barringer
Raleigh, NC
Carl Barrington III
Fayetteville, NC
Raven Barron
Hickory, NC
Margaret Barrow
Raleigh, NC
Christopher Bartley
Kettering, OH
Jessica Battle
Charlotte, NC
Deirdre Beasley
Durham, NC
Rebecca Beaudry
Charlotte, NC
Elizabeth Beavers
Eden, NC
Daniel Becker
Raleigh, NC
Seth Beckley
Charlottesville, VA
Blair Beddow
Raleigh, NC
Andrew Behrns
Williamsburg, VA
Bradley Bell
Greensboro, NC
Stephen Bell
Winston-Salem, NC
Greer Benge
Lenoir, NC
Berenice Benjamin
Chapel Hill, NC
Gary Benthin
Charlotte, NC
Hamza Benzine
Greensboro, NC
Kathryn Paige Berntson
Burlington, NC
Andrew Berrier
Winston-Salem, NC
Michael Berwanger
Jamaica Plain, MA
Taran Beshers
Charlotte, NC
Aaron Biek
Charlotte, NC
William Biggerstaff
Durham, NC
Steven Birkos
Durham, NC
Katelyn Bishop
Raleigh, NC
Kara Bitar
Durham, NC
Kathy Blackburn
Chapel Hill, NC
Chanelle Blackie
Arlington, VA
Teresa Blake
Raleigh, NC
Amelia Blankenship
Charlotte, NC
Camille Blanton
West Palm Beach, FL
Lisa Bloch
Ft. Lauderdale, FL
Rachel Bloom
Durham, NC
Sarah Blount
Bethel, NC
Zachary Blum
Charlotte, NC
David Boaz
Chapel Hill, NC
Richard Bobholz
Philadelphia, PA
Nicole Boddie
Cary, NC
Justin Bolling
Charlotte, NC
Dan Bolton
San Antonio, TX
Alexandra Boney
Raleigh, NC
Crystal Boni
Durham, NC
Thomas Booms
Charlotte, NC
Kathleen Booras
Charleston, SC
Ryan Bostic
Beckley, WV
Venus Boston
Durham, NC
Elise Bouchard
Durham, NC
Blake Boyette
Raleigh, NC
Lauren Boyette
Raleigh, NC
Justin Brackett
Mooresboro, NC
Ryan Bradley
Saluda, NC
Clare Bradley
Hampton, VA
Martha Bradley
Raleigh, NC
Scott Branam
Charlotte, NC
Corry Brannen
Durham, NC
John Branson
Columbia, SC
Lauren Brasil
Cary, NC
Brice Bratcher
Cary, NC
Marcelius Braxton
Carrboro, NC
Daina Bray
Chapel Hill, NC
Eric Brei
Philadelphia, PA
Emily Bretz
Charlotte, NC
Noah Brisbin
Chapel Hill, NC
Daniel Britt
Durham, NC
Logan Britt
Charlotte, NC
Mallory Britt
Charlotte, NC
Kevin Brockenbrough
Philadelphia, PA
Amy Brodland
Greensboro, NC
Stuart Bromfield
Greensboro, NC
Laura Brooks
Wake Forest, NC
Robert Brooks
Durham, NC
Kimberly Brow
Chapel Hill, NC
Shelley Brown
Durham, NC
Kelly Brown
Raleigh, NC
Benjamin Brown
Winston-Salem, NC
Sarah Brown

Charlotte, NC
Benjamin Brownlow
Chapel Hill, NC
Miles Bruder
Winston-Salem, NC
Patrick Bryan
Oxford, MS
Amy Buchanan
Morrisville, NC
Orla Buckley
Chapel Hill, NC
Joseph Budd
Charlottesville, VA
Erin Buehler
Anna, OH
Patrick Buffkin
Raleigh, NC
Frank Bullock
Chapel Hill, NC
Paul Bumbarger
Durham, NC
Elizabeth Bunton
Stoughton, MA
Kimberly Burke
Chapel Hill, NC
Matthew Burkert
Durham, NC
Heather Burleson
Durham, NC
Lyle Burnham
Cary, NC
Tracy Burns
Omaha, NE
Travis Bustamante
Charlotte, NC
Whitney Butcher
Greensboro, NC
Nickolas Butler
Jacksonville, FL
Alaina Byrd
West Columbia, SC
Quintin Byrd
Raleigh, NC
Edward Byron
Charlotte, NC
Anil Caleb
Fayetteville, NC
Feraud Calixte
Durham, NC
Jocelyn Calvin
Durham, NC
Lauren Campbell
Raleigh, NC
Christopher Campbell
Concord, NC
christopher carney
Charlotte, NC
Anna Carpenter
Charlotte, NC
Taylor Carraway
Walstonburg, NC
Andrew Carson
Charleston, SC
Rachel Carter
Raleigh, NC
Cameo Carter
Durham, NC
George Carter Jr.
Chapel Hill, NC
Anastasia Caton
New Orleans, LA
Nicole Catton
High Point, NC
Bo Caudill
Charlotte, NC
Ann Chace
Fuquay-Varina, NC
Matthew Chambers
Bloomington, IN
Thomas Chandler
Portland, OR
Justin Chandler
Oklahoma City, OK
Linda Chang
Alexandria, VA
Sophia Chase
Fairfax, VA
Cheryl Chew
Durham, NC
Devin Chidester
Mount Pleasant, SC
Nalina Chinnasami
HighPoint, NC
Victoria Chopra
Charlotte, NC
Daniel Christmann
Charlotte, NC
Holly Christy
Birmingham, AL
Ashley Church
Charlotte, NC
Marco Ciavarella
Forty Fort, PA
Stewart Cincotta
Raleigh, NC
William Claggett
Raleigh, NC
Cesar Clark
Durham, NC
Ashley Clark
Greensboro, NC
Kim Clarke
Gibsonville, NC
John Clarkson
Jacksonville, FL
Michael Clebone
Durham, NC
Lindsay Clifton
Raleigh, NC
Andrew Cline
Mount Pleasant, NC
Phillip Clontz
Greensboro, NC
Diana Coada
Columbia, SC
Leslie Cockrell
Winston-Salem, NC
Brent Cole
Asheboro, NC
Andrew Coleman
Miami, FL
Devon Coleman
Chapel Hill, NC
Jena Coley
Greensboro, NC
William Collier III
Charlottesville, VA
Pamela Collins
Pontiac, MI
Claire Collins
Charlotte, NC
Travis Colopy
Cleveland, OH
Andrew Colvin
Easley, SC
Everett Compitello
Bedford, VA
Megan Connole
Greensboro, NC
Lee Cooper
Greensboro, NC
Wesley Cooper
Beaufort, NC
Priscilla Cooper
Raleigh, NC
Charles Cooper
Cary, NC
Daniel Cormier
Greensboro, NC
Tara Corn
Raleigh, NC
John Corriher
Chapel Hill, NC
John Costello
Columbia, MO
Kate Cotten
Raleigh, NC
Jeremy Cotten
Raleigh, NC
Jesse Coyle
Pinehurst, NC
William Craft
Raleigh, NC
Lauren Cranford
Chapel Hill, NC
John Crangle
Lexington, SC
Margaret Craven
Raleigh, NC
Colin Crawford
Winston-Salem, NC
Michael Crook
Cary, NC
Saretta Crotinger
Charlotte, NC
Timothy Crotts
Raleigh, NC
Ashley Crowder
Charlotte, NC
David Crowe
Alexandria, VA
Amy Crowe
Morrisville, NC
Casey Crowley
Winston-Salem, NC
Amanda Cubit
Fort Mill, SC
Layla Cummings
Durham, NC
Chaneen Cummings-Kouassi
Charlotte, NC
Elizabeth Cunningham
Charlotte, NC
Kelly Dagger
Berkeley, CA
Robert Dailey
Winston-Salem, NC
Shamika Dalton
Durham, NC
Matthew Dameron
Raleigh, NC
Elizabeth Dangel
Charlotte, NC
Taylor Daniel
Chapel Hill, NC
Michael Danielson
Raleigh, NC
Andrew Darcy
Chapel Hill, NC
Amberly Dattilo
Durham, NC
David Davidjohn
Lynchburg, VA
Sarah Davidson Palmer
Durham, NC
Franklin Davis
Chapel Hill, NC
Bailey Davis
Winston-Salem, NC
Andrea Davis
Durham, NC
Hannah Davis
Winston-Salem, NC
Stacie Davis
Raleigh, NC
Weston Davis
Raleigh, NC
Kendra Davis
Durham, NC
Andrea Davis
Greensboro, NC
Jessica Davis
Mount Holly, NC
Alvaro De La Calle
Summerfield, NC
Heather Deal
Greensboro, NC
Ashley Dean
Chapel Hill, NC
Christine Deaver
Chapel Hill, NC
Meredith DeCamp
Raleigh, NC
Courtney Delaney
Charlotte, NC
Lauren DeMille
Matthews, NC
Tamara Demko
Tallahassee, FL
Andrew Dempster Jr
Fayetteville, NC
India Dennis
Durham, NC
Parin Desai
Indian Trail, NC
Sarah Dettenwanger
Durham, NC
Christopher Detwiler
Chapel Hill, NC
Hector Diaz
Raleigh, NC
Christopher Diaz
Charlotte, NC
Colin Dietch
Reidsville, NC
Jeffrey Dillman
Durham, NC
Andrew Dillon
Charlotte, NC
Joan Dinsmore
Chapel Hill, NC
Malik Dixon
Washington, DC
Christopher Dodge
Chapel Hill, NC
Susan Dodge
Randleman, NC
Heather Dolan
Wilmington, NC
Chad Doomy
Lyncburg, VA
Dennis Dorsey
Raleigh, NC
Thomas Doucette
Durham, NC
Nicholas Dowgul
Raleigh, NC
Andrew Downer
Charlotte, NC
Nicole Downing
Chapel Hill, NC
Samuel Drezdzon
Washington, DC
Danielle Duff
Durham, NC
Ashley Duncan
Charlotte, NC
Lauren Dungan
Huntersville, NC
Thomas Dykers
Chapel Hill, NC
Ashley Eatmon
Durham, NC
Donald Edmonds
Waxhaw, NC
Joshua Ehrich
Lynchburg, VA
Chidera Ejim
Durham, NC
Anthony Eldreth
Raleigh, NC
Jonathan Ellis
Winston-Salem, NC
Shonaka Ellison
Raleigh, NC
Marina Emory
Greensboro, NC
Joshua Engel
Syracuse, NY
Meghan Engle
Carrboro, NC
Scott Eren
Athens, GA
Toya Ervin
Durham, NC
Brodie Erwin
Winston-Salem, NC
Haley Essig
Raleigh, NC
Jose Estrada
Charlotte, NC
Samuel Evans
Asheville, NC
Thomas Eybl
Columbia, SC
Bethan Eynon
Chapel Hill, NC
Jonathan Falk
Norfolk, VA
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Columbia, SC
Jordan Faulkner
Lexington, SC
Phillip Feagan
Columbus, NC
Lourdes Fernandez
Holly Springs, NC
Camelia Fernandez
San Juan, PR
Nathan Fey
Farmington, CT
Bryan Fife
Denver, CO
Thomas Filopoulos
Winston-Salem, NC

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Charlotte, NC
Courtenay Fisher
Charlotte, NC
Macy Fisher
Raleigh, NC
Jacklan Fitzwater
Davidson, NC
Matthew Flammia
Raleigh, NC
James Fleischer Jr.
Cary, NC
Kara Fletcher
Durham, NC
Matthew Fletcher
Chapel Hill, NC
Tina Flowers
Winston-Salem, NC
Faith Foote
Vass, NC
Jordan Ford
Raleigh, NC
Raquel Foriest
Winston-Salem, NC
Jamaal Forney
Knoxville, TN
Josheda Forrester
Raleigh, NC
Aisha Forte
Winston-Salem, NC
Crystal Foushee
Cary, NC
Christopher Fowler
Chapel Hill, NC
David Fox
Raleigh, NC
William Frankovitch
Weirton, WV
Joseph Frost
Raleigh, NC
Olga Fudali
Raleigh, NC
Michael Fulkerson
Charlotte, NC
Joseph Fulton
Laurinburg, NC
Brandon Furlong
Virginia Beach, VA
Adam Furr
Greensboro, NC
Varsha Gadani
Chapel Hill, NC
Natasha Gaggar
Winston-Salem, NC
Stacey Gahagan
Durham, NC
Leah Gaines
Troutman, NC
Joshua Gaines
Washington, DC
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Asheboro, NC
Mary Gann
Durham, NC
Tukesia Garner
Charlotte, NC
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Jamestown, NC
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Jackson, MS
Jordan Garrett
Greenville, SC
Kristin Gatter
Jacksonville, FL
Michael Gentithes
Astoria, NY
Leann Gerlach
Raleigh, NC
Christopher Gibson
Winston-Salem, NC
Sarah Gibson
Charlotte, NC
Nicholas Giddings
Grand Island, NY
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Charleston, SC
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Raleigh, NC
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Clinton, NC
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Greensboro, NC
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Charlotte, NC
Kaitlyn Girard
Winston-Salem, NC
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Cary, NC
Melynn Glusman
Durham, NC
Olie Gnagno
Durham, NC
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Mount Airy, NC
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Charlotte, NC
Carolyn Gore
Whiteville, NC
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Burlington, NC
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Steven Gourley
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Raleigh, NC
Cornelius Graves
High Point, NC
Amanda Gray
New York, NY
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Greensboro, NC
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Raleigh, NC
Emily Greene
Lumber Bridge, NC
Misty Greene
Morrisville, NC
Travis Greene
Monroe, NC
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Lynchburg, VA
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Durham, NC
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Spruce Pine, NC
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Charlottesville, VA
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Carrboro, NC
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Burlington, NC
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Durham, NC
Ashley Hansen
Greensboro, NC
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Durham, NC
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Madison Hardee
New Orleans, LA
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Raleigh, NC
William Harkey
Raleigh, NC
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Arlington, VA
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Hilary Harper
Durham, NC
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William Harrison
Chapel Hill, NC
Yolonda Harrison
Morrisville, NC
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Charlotte, NC
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Efland, NC
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Raleigh, NC
Daniel Hayes
Raleigh, NC
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Winston-Salem, NC
Lorrie Heath
Saint Paul, MN
Carli Heath-Stanley
Vanceboro, NC
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Raleigh, NC
Virginia Hebert
Washington, DC
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Charlotte, NC
Kayvon Hejazi
Greensboro, NC
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Durham, NC
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Durham, NC
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Chapel Hill, NC
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Chapel Hill, NC
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Urbana, IL
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Kannapolis, NC
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Belews Creek, NC
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Kaysville, UT
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Houston, TX
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Key Biscayne, FL
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Fort Mill, SC
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Raleigh, NC
Parker Himes
Columbia, SC
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Raleigh, NC
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Chapel Hill, NC
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Raleigh, NC
Andrew Hoke
Greensboro, NC
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Atlanta, GA
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Monroe, NC
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Raleigh, NC
Amber Holt
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Durham, NC
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Columbia, SC
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Murphy Horne
Washington, DC
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Apex, NC
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Charlotte, NC
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Charlotte, NC
Bridget Howard
Charlotte, NC
Laura Howard
Cary, NC
Laura Howard
Raleigh, NC
Cynthia Howard
Goldsboro, NC
Joshua Howell
Tryon, NC
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Winston-Salem, NC
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Morrisville, NC
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Winston-Salem, NC
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Gainesville, FL
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Charlotte, NC
James Hunter
Asheville, NC
John Hunter III
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Charlotte, NC
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Raleigh, NC
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Durham, NC
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Durham, NC
Elizabeth Jackson
Spring Lake, NC
Brooks Jaffa
Durham, NC
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San Diego, CA
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Morrisville, NC
Ho Young Jang
Aberdeen, NC
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Miami Lakes, FL
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Chapel Hill, NC
Joelle Jefcoat
Charlotte, NC
Stanley Jenkins
Chapel Hill, NC
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New Bern, NC
Jennifer Joeckel
Burlington, NC
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Levi Johnson
Toledo, OH
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Dunn, NC
William Johnson
Durham, NC
Matthew Johnson
Tucson, AZ
Steven Johnson II
Raleigh, NC
Isaac Johnston
Raleigh, NC
William Johnston
Providence, NC
Carrie Johnston
Greensboro, NC
Alina Jolly
Lynchburg, VA
Thomas Jones
Hertford, NC
LaKisha Jones
Charlotte, NC
Alexander Jones
Reidsville, NC
Terri Jones
Westminster, MD
Monica Jones
Harrisburg, NC
Casey Jones
Wilson's Mills, NC
Jowanda Jones
Durham, NC
Jacinta Jones
Durham, NC
Erika Jones
Durham, NC
Marshall Jones
Raleigh, NC
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Columbia, SC
Katherine Jordan
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Grundy, VA
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Marc Joyner
Coral Gables, FL
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Chapel Hill, NC
Keith Karlsson
Raleigh, NC
Andrew Kasper
Durham, NC
David Kasper
Clemmons, NC
Benjamin Kastan
Durham, NC
Andrew Keaton
Durham, NC
Ryan Kehoe
Tallahassee, FL
William Kelly
Kernersville, NC
Matthew Kelly
Davidson, NC
Jeb Kelly
Durham, NC
Marisa Kelly
Winston-Salem, NC
Shannon Kelty
Carrboro, NC
Danielle Kennedy
Greensboro, NC
Sherry Kern
Kill Devil Hills, NC
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Charlotte, NC
Sabeen Khawaja
Raleigh, NC
Samuel Kilgore III
Raleigh, NC
Jessica Kimble
Winston-Salem, NC
Katherine King
Winston-Salem, NC
Rachel King
Durham, NC
Alexander King
Charlotte, NC
Stacy King
Washington, DC
Rachel Kinney
Winston-Salem, NC
Julia Kirby
Charlotte, NC
Julie Kirstein
Fairview, NC
Andrew Kisz
Washington, DC
Richard Klein
Chapel Hill, NC
Elizabeth Klein
Greensboro, NC
Anthony Klish
Raleigh, NC
Stephanie Klitsch
San Carlos, CA
Johanna Knight
Greensboro, NC
Lauren Knipp
Winston-Salem, NC
John Knott
Winston-Salem, NC
Jeffrey Koehler
Greensboro, NC
Margaret Kopp
Chapel Hill, NC
James Kraehenbuehl
Chicago, IL
Matthew Kraus
Fuquay-Varina, NC
Daniel Kraviec
Charlotte, NC
Martin Kreshon III
Charlotte, NC
Jonathon Krois
Cary, NC
Amanda Kuker
Columbia, SC
Oksana Kukharets
Mint Hill, NC
Glenn Kunkes
Atlanta, GA
HEE JIN KWAK
Concord, NH
Emily Laborde
San Francisco, CA
Selena Lackey
Trinity, NC
Clark Lacy
New York, NY
Jeffrey Lakin
Carrboro, NC
Joseph Lambert
Chapel Hill, NC
William Lambert
Durham, NC
Christopher Landry
Waxhaw, NC
Catherine Lane
Durham, NC
Dustin Lang
Cary, NC
Derrick Lankford Jr.
Winston-Salem, NC
Steven LaRocque
Cary, NC
Katherine Lautensack
Winston-Salem, NC
Caroline Lawler
Greenville, NC
Brandi Lawrence
Grundy, VA
Bryan Lawrence
Charlotte, NC
Pamela Lawrence
Wilmington, NC
James Lawrence III
Cary, NC
Joshua Lawson
Pittsboro, NC
Steven Lawson
Waxhaw, NC
Matthew Leach
Greensboro, NC
Tyrone Leader
Concord, NC
Carissa Lee
Charlotte, NC
Aaron Lee
Huntersville, NC
Tiffany Legette
Charlotte, NC
Sarah Legg
Asheville, NC
Barbara Leifer-Woods
Fort Mill, SC
Andrew Leslie
Winston-Salem, NC
Lindsay Levine
Cary, NC
Laura Lewis
Goldsboro, NC
Erin Liang
Boston, MA
Scott Libfraind
Chapel Hill, NC
Katie Linehan
Columbus, OH
Zachary Linsey
Winston-Salem, NC
Leigh Little
Charlotte, NC
George Littlewood
Chapel Hill, NC
Christen Littman
Chapel Hill, NC
Shiyao Liu
Durham, NC
Christina Lizzio
Charlotte, NC
Catherine Lloyd
Pittsboro, NC
Felicia Logan
Williamsburg, VA
Rosemary Logan
Eastover, NC
Charles Lohr
Knoxville, TN
Zachary Long
Wilmington, NC
Howard Long II
Highland Heights, KY
Dominic Longo
Greensboro, NC
Erinique Longsworth
Charlotte, NC
Josue Lopez
Greensboro, NC
Kimberly Lott
Cary, NC
Latoya Love
Durham, NC
Mark Lovering
Newport, RI
Edmund Luggen
East Lansing, MI
Allison Lukanich
Greensboro, NC
Lindsey Lynskey
Carolina Beach, NC
David Macala
Pineville, NC
Jillian Mack
Durham, NC
Eva MacKay
Lewiston, ME
Jacob Mackler
Winston-Salem, NC
Matthew Madden
Arlington, VA
Katherine Madon
Corbin, KY
Jack Magee
Chapel Hill, NC
Jeffery Maggs
Winston-Salem, NC
Martza Majstoravich
Newport, NC
Shea Maliszewski
Valparaiso, IN
Harmony Mancino
Raleigh, NC
Anne Maness
Arlington, VA
Savannah Mangum
Greensboro, NC
Robert Manoso
Charlottesville, VA
Kaya Manson
Durham, NC
Kevin Marcilliat
Durham, NC
Kevin Mark
Raleigh, NC
Zachary Marquand
Chapel Hill, NC
Elizabeth Marsh
Durham, NC
Christina Marshall
Raleigh, NC
Antoine Marshall
Raleigh, NC
Sherrill Marshall
Virginia Beach, VA
Theodore Martens
Winston-Salem, NC
Meghan Martie
Raleigh, NC
Benjamin Martie
Raleigh, NC
James Martin Jr.
Buies Creek, NC
Donald Martinat III
Raleigh, NC
Johnathon Marvel
Cincinnati, OH
Brandon Massengill
Raleigh, NC
Jennifer Mathews
Lexington, NC
Reginald Mathis
Durham, NC
Catherine Matoian
Raleigh, NC
Rosemary Matthews
Rocky Mount, NC
Jonathan Matthews
Columbia, SC
Timothy Mauritz
Winston-Salem, NC
Carolyn Mayer
Chapel Hill, NC
John Mayo
Charlotte, NC
Andre Mc David
Raleigh, NC
Kristian McAdams
Myrtle Beach, SC
Adam McBroom
Charlotte, NC
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Paul McChesney
Spartanburg, SC
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Raleigh, NC
Darah McClain
Charlotte, NC
Shawndria McCoy
Knightdale, NC
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Greensboro, NC
Kimberly McCurry
Shelby, NC
Margaret McDonald
Charlotte, NC
Maureen McDonnell
Charleston, SC
Lindsey McGaha
Charlotte, NC
Ashley McGough
Charlotte, NC
Janet McIlwain
Durham, NC
Amanda McKinney
Jamestown, NC
Lora McKinney
Raleigh, NC
Christopher McLain
Greensboro, NC
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Greensboro, NC
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Sheena Meader
Charlotte, NC
Charles Medlin
Charlotte, NC
Pavan Mehrotra
Chapel Hill, NC

Meghan Melo
Durham, NC
Jeremy Mendenhall
High Point, NC
Jonathan Metcalf
Greensboro, NC
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Raleigh, NC
Hannah Miller
Hickory, NC
Nicholas Miller
Carrboro, NC
Matthew Miller
APO AE, NY
Lee Miller-Finkel
Charlotte, NC
Miriah Millis
Greensboro, NC
Scarlett Millman
Fort Mill, SC
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Valdese, NC
Brian Mills
Valdese, NC
Eric Mills
Chapel Hill, NC
Eric Mine
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Benjamin Mitchell
Charlotte, NC
Tierryicah Mitchell
Fayetteville, NC
Megan Mitchell
Durham, NC
David Mofford
Durham, NC
Marina Montes
Durham, NC
Sh'Myra Moore
Salisbury, NC
Jefferson Moors
Chapel Hill, NC
Benjamin Moose
Charlotte, NC
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Elizabeth Morgan
Chapel Hill, NC
Brian Morgan
Greensboro, NC
William Morris
Greenboro, NC
Peter Morris
Charlotte, NC
Jill Morris
Lexington, VA
Dana Morrison
Charlotte, NC
Katharine Morton
Winston-Salem, NC
Tracy Moss
Concord, NC
Ivan Mousaw
Charlotte, NC
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Winston-Salem, NC
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Winston-Salem, NC
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Raleigh, NC
Stephanie Murr
Davidson, NC
Leandra Murray
Charlotte, NC
Evan Musselwhite
Raleigh, NC
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Alexandria, VA
Elizabeth Namirr
Columbia, SC
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Winston-Salem, NC
Shawn Nee
Columbus, OH
Joshua Neighbors
Greensboro, NC
Emery Nelson
Greensboro, NC
Brittany Nelson
Charlotte, NC
Christine Nelson
Madison, WI
Timothy Nelson
Raleigh, NC
Erica Nesmith
Durham, NC
Richard Nettles
Charlotte, NC
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Lexington, KY
Steven Newton
Morrisville, NC
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Danvers, MA
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Chapel Hill, NC
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Greensboro, NC
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Cary, NC
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Raleigh, NC
Andrew Norton
Raleigh, NC
Travis Norton
Durham, NC
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Greensboro, NC
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Ann Arbor, MI
Katharine O'Hale
New Orleans, LA
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Yokohama,
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Moyock, NC
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Whitsett, NC
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Chapel Hill, NC
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Morrisville, NC
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Charlotte, NC
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Wilkesboro, NC
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Rebekah Parker
Archdale, NC
Kelly Parker
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Raleigh, NC
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Raleigh, NC
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Sheboygan, WI
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Apex, NC
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Clemmons, NC
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Durham, NC
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Durham, NC
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Holly Springs, NC
Jamie Phillips
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Adam Phillips
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Neil Phillips
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Nicole Pluchinsky
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Brittany Plundo
Charlotte, NC
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Caitlin Poe
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Kevin Poe
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Asheboro, NC
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Chapel Hill, NC
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Waxhaw, NC
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Cary, NC
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Franklinton, NC
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Nathan Proctor
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Charlotte, NC
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Steven Quick
Raleigh, NC
Robert Quick
Fayetteville, NC
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Charlotte, NC
Joshua Rabon
Georgetown, SC
John Rabon
Raleigh, NC
Noorassa Rahimzadeh
Pfafftown, NC
Zein Rahman
charlotte, NC
Jarrod Rainey
New Orleans, LA
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Durham, NC
Alfred Randall
Durham, NC
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Fayetteville, NC
Serenity Rasmussen
Greenville, NC
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Heather Reading
Cary, NC
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Troy Reed
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Winston-Salem, NC
Ashley Reger
Raleigh, NC
Amber Reinhardt
Catawba, NC
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Carlisle, PA
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Gastonia, NC
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Sanford, NC
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Greensboro, NC
Amanda Rice
Midlothian, VA
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Leah Richardson
Durham, NC
Christopher Richardson
Charlotte, NC
Shayla Richberg
Durham, NC
Cole Richins
Matthews, NC
Meghan Rief
Raleigh, NC
Sonya Rikhye
Cary, NC
Sarah Riney
Cary, NC
Daniel Rissanen
Charlotte, NC
Davis Roach
Raleigh, NC
Keith Roberson

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Huntersville, NC
David Roberts
Charlotte, NC
Holly Robertson
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Richard Robertson Jr.
Charlotte, NC
Sharika Robinson
Morrisville, NC
Tara Rodriguez
Fayetteville, NC
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Carrboro, NC
Rachel Rogers
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Nina Roque
Hempstead, NY
Kathleen Rose
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Emily Rosemann
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Nicholas Russell
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Pamela Rutledge
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Brittany Sajbel
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IOLTA Update (cont.)

fund (45%) in order to make just over $2.3 million in grants for 2012. We have just under $445,500 remaining in reserve for future use.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the State Bar. For 2011 we administered just over $4.4 million. This amount is less than the previous year's $5.1 million and has decreased from a high of $5.5 million in 2009. The legal aid programs and the EAJC are working with the NC Bar Association in an effort to maintain state funding for legal aid and increase it if possible.

Other Ways to Assist Legal Aid

Since 2008 legal aid programs have suffered severe funding decreases from all sources:

- Federal funding cut 18%
- State funding cut 20%
- IOLTA funding down 40%
- United Way/Foundations down 14%

These decreases are occurring while the population eligible for legal aid services—those at or below 125% of the federal poverty guidelines—has increased every year (a total increase of 15% from 2008 to 2010). The EAJC has established a website where lawyers can help by making a donation to legal aid or by offering to provide *pro bono* representation to an eligible client. Visit ncaccesstojustice.com for more information. ■

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