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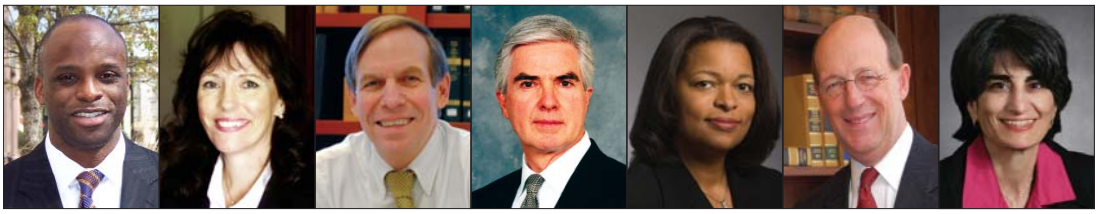

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FEATURES

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Facing the Future while Honoring the Past: A New Home for the North Carolina State Bar

By M. Keith Kapp

April 17, 2013, was an important day in the history of the North Carolina State Bar. We dedicated the new headquarters of the Bar in the heart of Raleigh at the corner of Blount and Edenton Streets. The State Bar has served our state, its citizens, and our profession for 80 years. Finally, we have a facility worthy of that task, a facility built to meet today's needs and the future's challenges while honoring our history. We would not have had the opportunity to celebrate without the vision and hard work of many people.

We began the process of building this facility about six years ago. Our first step was asking State Bar councilors where they would like a new headquarters to be. Staying in downtown Raleigh was the overwhelming choice. With the vital support of the council of State and the General Assembly, we secured our wonderful site linking the vibrant business center of our capital city with the State Government Complex and the elegant Executive Mansion. I extend particular thanks to the Council of State for approving our lease for this site and allowing us to take the lead in developing this particular block.

We knew from the first we needed architects who understood the importance of honoring our site and the historic streetscapes surrounding it. The Winston-Salem firm of Calloway Johnson Moore and West—now known as CJMW—assisted us in the design of the building. From the request for proposal through design, they understood what lawyers wanted when we asked for a classical structure that recalled the past and looked forward to the future. With CJMW's help, we have a building that I think truly graces this site. It will be a LEED certified building—environmentally conscious and energy efficient—built with many North Carolina materials. Who knew that Palladian windows, with their wonderful cascades of light, helped with LEED certification points? CJMW did! CJMW also understood—unlike some of their competitors—that when we asked for classical references, we did not want to see sticks for columns and plate glass windows. Thank you, CJMW, for listening when we said we wanted a modern workplace that reminded us of our state's fine old courthouses.

I also want to thank our construction company—also a North Carolina business—the Resolute Building Company of Chapel Hill. I took particular pleasure in watching the building come out of the ground, because once we entered that phase, things moved much more quickly. I chaired the Facilities Committee from the beginning of design through the groundbreaking, and I felt that my tenure was often like dancing the two-step—two steps forward and one step back. John Silverstein, my successor as Facilities Committee chair, surely has his own stories to tell. He also has our gratitude for his excellent work.

I keep mentioning North Carolina companies because I want you to know that a lot of the money that has gone into the facility has stayed right here in our state. Even the financing had help from North Carolina-based First Citizens Bank and BB&T. That has meant jobs and investments during tough economic times, and I am glad we have been able to buy local as much as possible and still come in under budget with no dues increase to members of the State Bar.

We could not have done this without cooperation from the leaders of state government. Approvals of the General Assembly and the Council of State secured us the site. Also key was collaboration with the Department of Administration, including the administration of the project through the State Construction Office. Former Secretary Moses Carey, attorney Don Teeter, and construction officer Greg Driver were particularly helpful, as were officials in the Department of Transportation who allowed us to block a lane of traffic on two of Raleigh's major commuting streets for all these weeks.

I would also like to single out our owner's representative, Phil Stout. Phil handled construction for Wake County for many years, and his expertise has been essential in making sure this bunch of lawyers wound up with a quality building that actually works.

John McMillan has been involved in the creation of this splendid new facility at every stage. We owe thanks to John especially for the concept of the North Carolina State Bar Foundation. A group of the State Bar's past presidents created a foundation to support this construction project. The private funds raised by the foundation, with the explicit approval of the State Ethics Commission, made it possible to complete this building as it should be done. Co-Chairs Irwin W. "Hank" Hankins and Barbara B. "Bonnie" Weyher and the entire foundation leadership team raised more than $3,000,000. Thanks to their successful efforts, this North Carolina building has a foyer with Mt. Airy granite, not plain terrazzo, and many more things to make it sparkle, including a very fine collection of North Carolina art.

What is the work that this building will house? Certainly, it will house the staff of the State Bar, and I hope all of the staff members

CONTINUED ON PAGE 39

Home Sweet Home

By L. Thomas Lunsford II

Last week I attended the Grand Opening of the new North Carolina State Bar Building. It was one of the most gratifying events of my professional life. More than 300 of North Carolina's leading citizens joined the chief justice and members of the State Bar Council to dedicate a truly remarkable structure that will, for decades to come, house the agency's operations and be the home of the legal profession in our state. For two delightful hours, lawyers, judges, legislators, and well wishers from all walks of life were able to appreciate what six years of planning, designing, fund-raising, engineering, cajoling, negotiating, compromising, and refusing to compromise can produce—a 60,000 square foot building with an old soul and a modern heart that wonderfully blends a neo-classical façade with interior spaces that are gracious, functional, and timelessly contemporary. Although the entire building, including the administrative and professional offices on the third and fourth floors, was open for inspection, the guests tended to congregate in the public areas on the first two floors. There they enjoyed the profession's hospitality in a variety of interesting spaces. They strolled around the rotunda's circular gallery, they admired perfect architectural forms and fine art in the expansive pre-function area, they viewed downtown Raleigh and the State Government Complex from the balcony that stretches along Blount Street, and they visited two of the finest courtrooms anywhere. Most of the speechmaking took place in the large courtroom where the Disciplinary Hearing Commission will conduct disciplinary trials and the State Bar Council will hold its business meetings. It is a capacious, beautifully appointed room in which important things are bound to occur. Indeed, its suitability for solemn occasions is so obvious and compelling that one prominent lawyer at the Grand Opening was moved to declare, "If I ever have to be disbarred, I'd like for it to happen in this fine room!" I couldn't have said it better myself.

Of course, it's one thing to be grandly opened, it's quite another to actually move in. As I write this a few days after the ribbon-cutting, I must confess that I am doing so within the considerably less inspired and inspiring confines of the "old" State Bar building at 208 Fayetteville Street. Although our staff had hoped to be serving the membership and the public at the new address (217 East Edenton Street) by now, the vicissitudes of construction were such that we have had to holdover in our timeworn digs for a couple of months longer than expected. At the moment, the building's interior is essentially finished and ready for occupancy. The exterior is, however, not quite complete. Indeed, it may take six more weeks before the material that will form the cornice surrounding the top of the structure is fully installed. Meanwhile, the citizens of Raleigh must continue to abide the pinkish hue and distinctive Caribbean vibe of the underlying insulation. The good news is that our friends in the State Construction Office have agreed to grant us "beneficial occupancy" of the building in advance of its completion. As things stand now, it seems likely that we will be exercising full dominion and control on or before the first of May—or about a month before you get this issue of the *Journal*.

In any event, the composition of this essay on my old computer in my old office has, perhaps not surprisingly, engendered nostalgic feelings within the executive breast. I know that you all are primarily interested in our collective future on the corner of Edenton and Blount, and I certainly share that bias, but I do think a word or two about the road the agency and I have trod toward our new professional abode would be in order.

As some of you surely know, the structure we have occupied for the last 34 years wasn't conceived originally as an office building. It was in its first incarnation a department store—part of the Efird's chain. I don't know exactly when it was built, but I have seen a photograph of doughboys parading down Fayetteville Street past Efird's right after the First World War. Anyway, back in the late 70s it was purchased and renovated by the State Bar for its regulatory purposes. I was hired shortly thereafter as a trial lawyer, famously promising then to "clean up" the legal profession within six months. I have been so engaged ever since, doing administrative, legal, and janitorial work out of a nondescript office on the second floor, not far from where sporting goods, boys shoes, and ladies foundation garments were once offered for sale at popular prices. When I was hired, I was the agency's 13th employee. There are now 82 people on the staff. During my tenure at the Bar, the population of licensed attorneys has grown enormously, rising from approximately 7,000 to more than 25,000. And there has been a corresponding increase in regulatory responsibility and activity at the State Bar, straining our resources in many respects. A building that once felt very accommodating has become in recent years manifestly inadequate—too small to house our staff and too expensive to maintain. With no good way of expanding the outmoded structure, our options were quite limited. We had to relocate. After considerable discussion, we decided that the Bar should construct a new building in the vicinity of downtown that would facilitate our work and signify the importance of lawyers to our society for most of the rest of the 21st Century. This decision was made almost six years ago, at a time when I still required a barber periodically. A lot has

happened since then.

After an extensive search, we were offered a very desirable site by the State of North Carolina in the block immediately south of the Governor's Mansion. With the approval of the Council of State, we ultimately executed a 99-year ground lease on very favorable terms. The site was once occupied by Meredith College, then by the old Mansion Hotel, and then by the legendary Heart of Raleigh Motel, but in recent years has been employed more productively as a hard surface parking lot. As anyone familiar with downtown Raleigh knows, the highest and best use of any piece of property is for parking automobiles. Now, we are honored to be occupying about 30 former parking spaces.

The design of the building was somewhat problematic. Our very talented architects initially came up with a rectangular concept of great dignity, using a variety of classical design elements that beautifully referenced the best of ancient Greece and relatively modern Raleigh. Unfortunately, they didn't take into account the fact that the "master plan" for the State Government Complex called for an "L-shaped" structure on the site to accommodate a mythic parking deck in the center of the block. When the content of the master plan proved to be non-negotiable, it was necessary for the architects to trash the rectangle and to reconceptualize the building as a "dogleg," an architectural form unknown to the Greeks. Although it took an inordinate amount of time to redesign the building and to resolve an incidental dispute regarding who should be responsible financially for the additional work, the end result was a much more interesting and lovely piece of architecture than had been originally imagined. A cylindrical "rotunda" was designed to join the structure's two wings, creating a very impressive entrance, dramatic public spaces, and a fine office for whoever is privileged to be the agency's executive director from time to time.

I will leave it to others to describe in detail the layout, upfit, and furnishing of the building's interior. A narrative tour is really beyond the scope of my column. Suffice it to say that there is more than enough room to meet, to work, and to grow in a structure that is now in the front rank of public buildings in North Carolina. And the really beautiful thing about it is that the project was brought to fruition within the context of the Bar's existing revenue structure. Although there are still a few relatively minor unresolved issues that will bear upon the final cost of the building, it now appears that the entire undertaking will involve an investment of approximately $18,400,000. $12,000,000 of that sum is being funded by a loan from First Citizens Bank. An additional $2,500,000 was derived from the sale of the "old" State Bar building last August. The remainder is being paid from the State Bar's treasury and from funds raised by the North Carolina State Bar Foundation. Our cash projections, which assume steady 3% growth in the State Bar's membership and, coincidentally, dues revenue, and which incorporate the significantly increased debt service associated with the new mortgage, indicate that it should not be necessary to ask the General Assembly for authority to increase the membership fee during the current decade. Of course, the future is somewhat cloudy on both the revenue and expense sides of our equation. The fact that law school applications have fallen drastically in the last three years has not gone unnoticed by the State Bar's leadership, and one wonders whether our membership will continue to grow indefinitely. Rest assured that various slow-growth and no-growth scenarios are being considered even as we congratulate ourselves on acquiring a new facility that will provide the capacity to regulate and serve twice as many lawyers as now abound.

Speaking of financial matters, I would direct your attention particularly to the contribution of the North Carolina State Bar Foundation, which has to date raised over $3 million for the construction and maintenance of our new headquarters. Although the new building would have been an excellent facility without the additional funding supplied by the foundation, it would have been much less impressive. As originally designed, the building would have been functional, efficient, durable, and nice. Thanks to the generous donations of thousands of North Carolina lawyers and several corporations with an extraordinary appreciation for the rule of law, the building has become all those things and much more. Instead of pine and poplar, the millwork in all the public spaces is furniture-grade cherry. Many floors and walkways initially specified as concrete or terrazzo have since been supplanted by Mount Airy granite. Where walls were first conceived only as sheetrock canvases for vast indiscriminate applications of off-white latex paint, there is now mounted a fantastic collection of North Carolina art. These and other embellishments and enhancements of the building might have been difficult to justify as expenditures from the State Bar's treasury. They are in every sense appropriate, however, as the manifest fruits of an enormously successful private fund-raising effort and as an expression of professional pride.

One final word about the building and what the foundation hath wrought. When the building was first laid out, about 1,400 square feet of space on the first floor were left "unprogrammed" and reserved for expansion, lease, or some other then unforeseen use. When money became available from the foundation last year, a decision was made to build out and furnish a spacious suite of offices and conference rooms that could be used by lawyers visiting in downtown Raleigh. The suite, which shares the facility's state of the art technology, is wired for video-conferencing and is available on a first-come, first-served basis for meetings, depositions, mediations, and meditations during regular business hours—absolutely free of charge. So, whether you're coming from North Wilkesboro or north Raleigh, you've got a comfortable place to hang your hat within 150 yards of the Supreme Court, the court of appeals, the federal courthouse, the state capitol, and the General Assembly, courtesy of the foundation and your friends on the State Bar Council. I encourage you to avail yourself of our hospitality and your new headquarters whenever you're in the neighborhood. You'll be mighty welcome. ■

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

Grand Opening Celebration for the New State Bar Building

On April 17, 2013, the North Carolina State Bar hosted a Grand Opening celebration for its new headquarters on the southwest corner of Blount and Edenton Streets in downtown Raleigh, one block south of North Carolina's Executive Mansion. Guests and media had an opportunity to tour the new State Bar headquarters.

As part of the program, special remarks were delivered by Grand Opening Event Co-chairs Barbara B. Weyher and M. Ann Reed, Chief Justice Sarah Parker, NC State Bar Foundation Chairman John B. McMillan and NC State Bar President M. Keith Kapp. A ribbon-cutting was held prior to the reception.

Guests begin to arrive to the grand opening event. All photos from Nick Schlax Photography.

The Need for a New Building

Over six years ago, the State Bar's leadership began the search for a new home near the seat of government that would be large enough to accommodate current operations as well as projected growth. Many alternatives were considered, including expansion of the building the agency then occupied and adaptive reuse of other existing downtown buildings, but nothing in the marketplace was appropriate. Finally, the governor and the Council of State were persuaded that a state-owned parking lot in the block just south of the Governor's Mansion—within two blocks of the Capitol, the Legislative Building, the Supreme Court, and what will be the state's new Visitors' Center—would be the perfect location for the State Bar's new headquarters, and agreed to lease the property to the State Bar. The new facility is now an integral part of the State Government Complex in downtown Raleigh.

At a cost of approximately $18.4 million, the new headquarters building contains a total of 60,000 sq. ft. on four floors. Funds

(Photo left) NC State Bar Vice-President Ronald L. Gibson; NC State Bar Facilities Chairman John M. Silverstein; NC Paralegal Certification Board Representative Sharon Wall; NC State Bar Executive Director L. Thomas Lunsford II; NC State Bar Past-President James R. Fox; Chief Justice Sarah Parker; NC State Bar President M. Keith Kapp; and NC State Bar President-Elect Ronald G. Baker Sr. ceremoniously cut the ribbon to the new building.

"The North Carolina State Bar" is proudly displayed in several locations of the exterior of the new building.

for the building came from proceeds from the sale of the State Bar's former building, existing reserves, the NC State Bar Foundation's capital campaign, and a loan from First Citizens Bank and Trust Company. No state funds were spent on the project and no dues increase for the state's lawyers is anticipated.

Capital Campaign to Support the New Building

The NC State Bar Foundation, a 501(c)(3) charitable corporation formed in 2010, was created for the sole purpose of raising funds for the new building. The foundation's Board of Trustees is made up of seven past presidents of the State Bar. The foundation's campaign was chaired by Irvin W. Hankins of Charlotte and Barbara B. Weyher of Raleigh, two of the foundation's trustees. In anticipation of this effort, the foundation sought and received approval from the state's Ethics Commission for the solicitation of contributions from lawyers and law firms.

A view of the building's western elevation.

(Photo below) Guests admire a mural above the grand staircase landing that depicts the history of law in North Carolina.

The foundation operates independently from the State Bar.

With a lead gift of $500,000 from the North Carolina State Bar's Board of Paralegal Certification, a campaign to raise $2.5 million commenced in early 2012. By the end of 2012, the foundation had exceeded this goal. Thus far, the foundation has raised over $3 million.

"The most gratifying aspect of the campaign was the enthusiastic participation of the lawyers who know best the work of the State Bar," said McMillan.

The funds raised by the foundation have made possible state of the art technology and energy efficiency, leading to an anticipated LEED (Leadership in Energy and Environmental Design) Gold certification. In addition, foundation funds have been used to beautify the building and enhance the experience of it for visitors and employees. Particularly significant in that regard was the purchase of an art collection that represents the best of North Carolina artists from the mountains to the sea. ■

The North Carolina State Bar Foundation would like to thank the following organizations and individuals for their generous contributions toward the construction of the new North Carolina State Bar Building. This building is a permanent manifestation of professional pride in what has been and will be accomplished by the State Bar and its members on behalf of the people of North Carolina.

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The Promise of Veterans Court

By The Honorable Wendy S. Lindley and Solange E. Ritchie

"When I got back from Iraq, I had a hard time adjusting. I was emotionally numb. I didn't care about my family. I didn't care about myself. I found life to be meaningless. I was filled with hate and anger."

"I did not have the tools to deal with PTSD, traumatic brain injury, and an amputation. Instead of asking for help, I chose a slow suicide of drugs and alcohol."

"I was like a person on their deathbed, waiting for a life-saving organ transplant. This program has given me that—a life-saving transplant—only it wasn't an organ that you gave me. You have given me a new outlook on life, a different way to live."

These are the actual words of veteran graduates of a unique program in Orange County, California called the combat veterans court ("veterans court"). Veterans court in Orange County was established in November 2008 to serve combat veterans with mental health issues who have become involved with the criminal justice system. This groundbreaking program—the first to be established in California and the second in the nation—embodies an approach based on compassion and healing, as opposed to blame and incarceration.

The program has attracted national attention as an innovative and effective way to help combat veterans overcome the issues that impede their full reintegration into society, while protecting public safety and reducing the costs associated with recidivism. The program has been designated as a mentor court by the National Association of Drug Court Professionals.

After the war in Vietnam, our combat veterans returned home to an indifferent, if not hostile, reception. During the years that followed, American society as a whole seemed to turn its back on the returning veterans, and to ignore the terrible psychological damage that many had suffered as a result of their combat experience. This continues to the present day, where younger and younger veterans are returning from combat service in Iraq and Afghanistan. Many survived horrific physical injuries and wounds, and still suffer the psychological scars of war, only to be greeted with a county that seems not to care about their service or survival.

For the criminal justice system it remained business as usual: addicted veterans found themselves on the wrong side of the "war against drugs"; mentally ill veterans often found themselves in jail or prison, untreated, and then released to a life on the streets with no one to care; and homeless veterans found themselves reviled as an unpleasant nuisance.

To our shame as a country, we did not acknowledge our moral obligation to those who had sacrificed so much for us.

Now, however, there is a growing recognition that the mental health of combat veterans returning from service overseas is a serious national concern. News media carry stories about the issue and discuss what can be done in response to it. In the justice system, too, there has been an increasing momentum to do things differently. Each day we hear of combat veterans with no hope, no jobs once they return from combat service, and little in the way of help from a

society that seems to have forgotten them. But the tide is changing.

One indication of this change is California Penal Code section 1170.9, amended in September 2006 to say that if a person convicted of a criminal offense can show that the offense was committed as a result of post-traumatic stress disorder (PTSD), substance abuse, or psychological problems stemming from military service in a combat theater, the court may order the defendant into a treatment program instead of jail or prison.

A second indication of positive change is the establishment of veterans courts, such as the one on Orange County, California, presided over by the Hon. Wendy S. Lindley. Based on the drug court model, veterans courts are designed to provide a holistic and collaborative approach to the identification and treatment of all of the problems that underlie the offender's criminal behavior. Working in partnership with the Veteran's Administration (VA) and others who are interested in the welfare of veterans, the programs offer participants the support of a team and the involvement of a caring judicial officer in overcoming those problems and getting their lives back on track.

Following the lead of Judge Robert Russell in Buffalo, New York, Judge Lindley established a veterans court in Orange County. She has spoken to dozens of jurists and administrators from around the country who are working to set up veterans courts in their home states. Judge Lindley was recently honored for this and other work by the Orange County Bar Association, receiving one of its highest honors—the Harmon G. Scoville Award—in 2012. She has also been honored by the California Judicial Council, the Chief Probation Officers of California, the California Public Defenders Association, the California Women Lawyers, and the California Psychiatric Association for her tireless work helping veterans and others in need.

In veterans court in Orange County the focus is on the offender, rather than the crime. The goal is to understand and address the causes of the criminal behavior, and to realize that—for an offender suffering from PTSD—reckless driving, domestic violence, and substance abuse may all be manifestations of an underlying problem that can be successfully treated. Also, that effective treatment won't be obtained through traffic school, or through a traditional batterer's intervention program, or through prison.

A full-time case manager, funded by a grant obtained by the VA Long Beach Healthcare System, and a half-time deputy probation officer, funded by the county, guide veteran court participants through a phased program that includes mental health counseling, self-help meetings, weekly meetings with a care coordinator and a probation officer, the development of a life plan, frequent and random drug and alcohol testing, and regular court review hearings.

The VA Long Beach Healthcare System also provides residential and outpatient treatment for seriously addicted substance abusers, and handles other health-related issues. Participants are assisted in their recovery and re-entry into society by volunteer mentors who have themselves experienced combat. New partnerships have been formed with other service providers to offer additional support to veterans in the program.

The issues faced by returning combat veterans involved in the criminal justice system

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are especially appropriate for resolution through a collaborative treatment approach. Often, these offenders face a complex web of challenges—mental health and stress issues that they attempt to "manage" via substance abuse, isolation and strained family relations, the need for anger management, and the difficulty of re-integrating into the civilian workforce. For the collaborative team, many resources are becoming available that can assist them with these issues. In addition, it is the belief of Judge Lindley and others who serve our returning veterans that military service personnel respond well to an authority figure whose overriding concern is for their survival and the success of their mission—in this case, the mission being to reclaim their lives.

The creation of a veterans court is not without its own challenges. Some may object that the program gives unwarranted special treatment to one group of criminal offenders. In reply, it must be noted that veterans court is a mental health court. However, mental health issues, if left unaddressed in jail or prison, continue to be manifested in criminal behavior when the offender is released. So the veterans court is "win-win" for all involved.

Others may object that a veterans court costs too much—a charge that previously has been made against drug court. However, studies over the past 15 years have consistently shown that treatment courts not only enhance public safety, they also dramatically reduce recidivism and actually save money when compared with the usual way of processing offenders, i.e. incarceration.

Veterans courts are too new to have established a record of success to match that of drug courts or other mental health courts, but it is clear that this approach is working. Of the 34 participants in the program in Orange County who have graduated since its inception, only two have been re-arrested.

The real life testimony from veteran graduates, such as those above, speaks volumes about the program's success. Recently, in Orange County a veterans court participant stood before Judge Lindley for his case review. When he was first accepted into the program, this man was a walking time bomb. Trained in violence, steeped in post-traumatic stress, he was beset with psychological problems and tormented by issues resulting from his combat experience—and all of it was locked up inside of him. Outwardly, and ominously, he did not connect with others. He made no eye contact. He spoke very little, and when he did speak, his voice was flat and without emotion.

Had he been sent to prison, his withdrawal, his repressed anger, and his alienation would surely have gotten worse, and upon his release, our society—having sown the wind of his torment—would surely have reaped a devastating whirlwind. Instead, he has been participating in veterans court—receiving counseling, attending group and individual therapy, and accessing a wide range of resources tailored to meet his needs.

In the hushed courtroom, this man spoke clearly and from deep within his heart. He recounted his slow but steady progress, he thanked the team that was helping him regain control over his life and his emotions, and then he looked at Judge Lindley and said he had finally come to realize that "it's all right for a soldier to cry."

Orange County's Veterans Court provides significant savings to the county because of the avoided costs of incarcerating the defendants. Following AB 109 realignment, both jail and prison time would be served in the county jail; so, this year the cost of both jail and prison bed days is calculated at $116.21 per day, which is an average of the 2010 costs at the five county jail facilities.

The calculation of the jail and prison bed cost savings is made only for program graduates, and any incarceration days that result from in-program sanctions are subtracted from the total number of jail or prison days that were stayed as a result of the alternative sentence. During 2012 the Orange County Veterans Court program *saved 5,773 jail and prison bed days*, which resulted in a *cost savings of $670,880*. Since inception, the program has *saved 8,357 jail and prison days*, for a *cost savings of $988,485*.

As mentioned above, the Orange County Veterans Court program has been fortunate to receive national recognition. It has been featured in *Other Than Honorable*, part of the documentary series *In Their Boots* about the impact of the wars in Iraq and Afghanistan on the lives of US service personnel. The 46-minute film depicts the challenges faced by returning combat veterans who become involved in the criminal justice system, and the therapeutic alternative to incarceration that is offered by the combat veterans court. It can be viewed at intheirboots.com/itb/shows/special-presentations/other-than-honorable.html.

Combat veterans court is also featured in videos by CNN and the California Judicial Council, which can be viewed on youtube.com by searching for "Second Chance for Veterans" and "Kleps Award: Orange County's Combat Veterans Court," respectively.

We, as a society, owe it to our veterans to do everything we can to help them overcome the problems that result from their military service. When these men and women become involved in the criminal justice system, we must seize the opportunity to intervene in their lives, and work together to make them whole once again. It is our hope that programs like veterans court will grow and thrive throughout the United States, as the need for such programs is certainly on the increase. ■

The Hon. Wendy S. Lindley is a superior court judge for the California Superior Court in Orange County.

Solange E. Ritchie is a litigation attorney in Orange County, California, who serves on the Collaborative Courts Foundation Board of Directors, a 501(c)(3) organization.

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"There's an App for That."

By Erik Mazzone

Does any other phrase quite capture our current phone and tablet-obsessed zeitgeist? The devices that power our lives are, in turn, powered by an army of little software programs called "apps." They organize us, entertain us and (literally, sometimes) guide us.

These are the apps of our lives.

Obligatory app pun. Groan, I know.

As of November 2012, Apple's App Store crested over 1 million apps submitted, with more than 700,000 available for download. Android apps, despite starting later, have caught up with and will, by the time you read this article, likely have surpassed the number of Apple apps.

Variety is great and all, but as a busy lawyer you've got limited time and energy to go hunting for the latest, greatest apps—and that hunt better not involve trial and error downloading of 700,000 apps.

To help you make the most of your available time in your app hunt, this article will cover where to go to find apps, some sources to help you keep on top of the new apps, and finally, a list of some of my favorite apps.

Where Do I Buy Apps?

For the uninitiated, the first thing to know is that the type of phone you use determines where you go to buy apps and, to some extent, which apps are available to you. The biggest, most popular apps—think Facebook—will be available on all major platforms. But many of the delightful, interesting apps out there may be only available for one type of phone or another.

If you are an Apple iPhone or iPad user (which I will refer to here as "iOS"—the name of the shared operating system between those two devices), you will buy all your apps from Apple's App Store. If, by contrast, you use an Android phone or tablet (such as the Samsung Galaxy or HTC Droid), you have several choices of where to purchase your apps, including Google Play and the Amazon Appstore for Android.

Since iOS and Android combined take up a vast majority of the market share for tablets and smartphones, this article will focus on those two platforms exclusively. For Blackberry and Windows Phone users, please direct all hate mail to Tom Lunsford, Executive Director, North Carolina State Bar.

How Do I Know Which Apps to Buy?

With an overwhelming number of apps available, it is helpful to have some sources to keep on top of what's new. Here, as with the app stores, the sources you will want to follow will depend on the kind of phone and tablet you use.

For iOS-using lawyers, my favorite website is **iPhone, J.D.**, which covers both iPhones and iPads. Written by Jeff Richardson, a prac-

ticing attorney from New Orleans, iPhone J.D. will help you keep up with all of the major stuff coming down the pike. Its particular focus on items useful to lawyers means more wheat than chaff, most days.

For Android users, the best website I've found for lawyers is **The Droid Lawyer**. The Droid Lawyer is also written by a practicing lawyer, Jeffrey Taylor, from Oklahoma City. Like iPhone J.D., The Droid Lawyer is updated regularly and does a good job of presenting the apps, updates, and news that Android using lawyers are most likely to want.

If you prefer to settle down with a book to get your app learning fix, **iPad in One Hour for Lawyers** and **iPad Apps in One Hour for Lawyers** are both topical, concise, and useful. Insofar as annually-updated print books on a technological subject that changes daily can be useful, that is.

On to the Apps

Okay, let's get on to the fun part. Your phone or tablet came preloaded with a set of apps. For the most part, these "native apps" are adequate. If you are hankering for a bit more than "adequate" though, here are some of my favorites.

Email

I probably spend more time on my phone's email application than anything else. While the native iOS Mail app is fine, my favorite email app is **Mailbox**. It's simple, well-designed, and includes several features that will have you wondering why it took somebody so long to include them in an email app. It's only available for iPhone and Gmail users as of the time of writing, but particularly with their recent acquisition by storage megalith Dropbox, I expect rapid expansion into all platforms.

Many of us use Outlook at the office and struggle to find suitable apps for Outlook on our phones. I've tested several for iOS and not found any I think are worth the money; however, Android is a different story. My favorite Android app for Outlook users is **TouchDown**, an excellent app with a steep $19.99 price tag.

Calendar

My favorite calendar app is **Agenda**. It has a sleek, minimalist design with useful daily, weekly, monthly, yearly, and agenda views, and makes creating meetings a breeze. The interface is logical and intuitive and I find navigating through a fairly busy calendar looking for particular events or open time to be quick and simple. Agenda is available for both iOS and Android and connects with both Exchange and Google Calendar, as well.

Task Manager

Most task manager apps look like the products of a sadistic joint venture between Stephen Covey and Willy Wonka. There are simply too many flags, stars, contexts, dates, reminders, notes, tags, and other effluvia to easily manage the information on your list.

The great majority of lawyers I know prize simplicity and ease of use when it comes to task lists, if not all technology, which is why the default lawyer to do list is a handwritten list on a yellow legal pad. (Or occasionally, a mental list like the one my father would proudly proclaim while jabbing his pointer finger at his temple. "My Franklin Planner is all right up here.")

Alas, mine is not, and if I don't write a task

down someplace, it ain't getting done. The only task manager I've found that comes close to the simplicity of the yellow legal pad is **Wunderlist**. Wunderlist is dead simple and elegant. It works more or less like a digital version of the yellow legal pad, with a few additional niceties in the form of email reminders, drag and drop re-ordering, and of course, wide availability on the phone in your pocket or the tablet in your briefcase. It's my go-to task manager.

Note Taking

For note takers in both iOS and Android camps, I enthusiastically recommend **Evernote**. Evernote does a lot more than just note taking, but at its core it is an excellent way to take, store and organize notes. I particularly love the integrated ability to record a meeting using the microphone on my iPad and have that audio file stored together with my typed notes. It's also free, which is nice.

I'm perfectly happy typing on the glass front of my iPhone or iPad, but some folks prefer to use a stylus and handwrite their notes. You really can have your cake and eat it too, as the app **Penultimate**—which handles handwritten notes—integrates beautifully with Evernote and allows your handwritten notes to be tucked into your existing Evernote notebooks. As of this writing, Penultimate is only available for iOS, but the support forums are ablaze with requests to make an Android version, so one is hopefully forthcoming soon.

Creating/Editing Documents

There's no getting around it—word processing on a tablet still falls short of the desktop experience of using Microsoft Word (we'll see if the Microsoft Surface tablet can change that). Word processing marks the only time I've really been disappointed in my iPad. It should work easier and better. It doesn't.

That said, it is a critical function, so here's what I recommend. There are two apps that vie for the best in class: **Documents to Go** and **Quick Office**. This is, by the way, an expensive class of app relative to almost everything else in this article, and each of them costs $14.99 on iOS and Android.

Document Storage

Tablets, unlike desktop computers, don't have great built-in functionality for storing documents. Luckily, unlike word processing, in this instance there are many apps available that do an excellent job.

For ease of use, nothing beats **Dropbox**. It's not cheap and it has had some worrisome security issues in the past year, but it is also rock solid, available everywhere, and super easy to use. Its similarly named competitor, **Box**, is also worthy of consideration. Box is less simple than Dropbox and lacks some of Dropbox's great features, but Box makes up ground by focusing more on being a professional (as opposed to consumer) solution. What it lacks in usability, it makes up for in a less tarnished security record. **Google Drive** is Google's document storage app. It is cheaper than the others and with Google's name on it, you can be fairly sure it will be around for the long haul.

All of these apps are available on iOS and Android, and all give you a small amount of space for free and then charge depending on how much additional space you want.

[And now, a word from our sponsors: (this being the State Bar *Journal* and all) if you are storing client information in any of these services, you will want to thoroughly read the Terms of Service and make sure whichever app you choose comports with your ethical duty to not compromise the confidentiality of your clients' data and meets the standard of reasonable care in using cloud-based software. This ad brought to you by your law license.]

Reading and Editing PDF

In addition to working with word processing documents, it is helpful to be able to read and markup PDF documents on the go. Both Android and iOS offer strong apps that get the job done. For Android users, **ezPDF** gives users the ability to view, edit, annotate, and save PDF documents. For iOS devices, the current best of breed is **iAnnotate**, which is winning awards for its innovative features, and at $9.99 it had better. Both apps offer the ability to connect with your document storage app, so once you markup a PDF you can easily store it and share it from there.

Just for Lawyers

Smartphones and tablets with their "always on" data means that with the proper apps, you can do your legal research from anywhere. Members of the North Carolina Bar Association have access to the legal research tool **Fastcase**. Fastcase has excellent apps for iOS and Android that allow you to take your research on the road.

For those who are most productive when dictating as opposed to typing, **Dragon Dictation** for iOS and **Dictadroid** for Android are decent dictation apps—though both are more at home with short messages. For more sophisticated dictation needs on either platform, **SpeakWrite** offers apps that allow users to dictate and upload their files to the SpeakWrite service (where additional transcription charges apply).

Litigators in particular have been the beneficiaries of the lawyer-app explosion. **JuryPad** is an iOS only app designed to help with *voir dire*. It features a visual interface so users can place potential jurors in the appropriate seat in the pool. **Depose** is an Android app that aids a lawyer in planning and taking depositions and allows the easy rearrangement of questions, the ability to save groups of questions as templates, as well as the ability to attach exhibits. After the deposition is finished, apps like **TranscriptPad** (iOS only) offer fresh takes on how to organize and review the transcripts.

TrialPad (iOS only) wants to take your tablet beyond pretrial litigation and into the courtroom. TrialPad combines several important technological features under one roof: managing, storing, annotating, and presenting documents in the context of courtroom litigation. It doesn't have all of the features of the competing desktop software options, but it is the leading tablet trial app so far and evolving fast.

Conclusion

This article only scratches the barest surface of the breadth and depth of the app universe. I hope it gives you a good starting point for trying some of the apps on this list as well as going out to find some of your own. If you come across some great new ones that you love, drop me a line and let me know. You never know what problem I'm sitting around wrestling with, just wondering if there's an app for that. ■

Erik Mazzone is the director of the Center for Practice Management at the North Carolina Bar Association where he dispenses practice management and technology advice, and helps dispose of leftover food from CLE programs.

Attorneys in the North Carolina General Assembly

By Margaret H. Dickson

Serving in the North Carolina General Assembly is a tremendous honor bestowed by one's community on the willing person it believes will serve it and our state most effectively. It is also an ongoing challenge, and meeting that challenge successfully requires imagination and inspiration, strong interpersonal skills, a solid intellect and logical thinking patterns, and no small amount of luck.

During my eight years in the General Assembly I noticed that many of the most successful legislators are attorneys. While non-attorney members are also quite successful, attorneys seemed to grasp both the meaning and the implications of bills, even complex ones, readily. During floor debate, the attorneys, particularly those with trial experience, often excel and are able to persuade colleagues to their points of view. I came to believe that while many members of both the House and Senate possess great intellect, fine communication skills, and innovative ideas, legal training and legal experience combine with those talents to produce strong legislators able to craft, understand, and present proposed legislation well.

Three veteran legislators who have active law practices agreed to share their thoughts about serving in the North Carolina General Assembly. Among them, Representatives Joe Hackney (D-Chatham), Mickey Michaux (D-Durham), and Deborah Ross (D-Wake) have three-quarters of a century's experience in the General Assembly. They responded to questions posed to each of them by the State Bar *Journal*.

State Bar Journal: Are your legal skills useful to your service in the General Assembly?

Representative Hackney: Very much so. After all, the legislative process requires examination of existing law, drafting of proposed changes, and consultation and negotiation

Numbers of Attorneys Serving in the General Assembly

NC Senate (50 members)
1999 - 18
2001 - 20
2003 - 15
2005 - 16
2007 - 15
2009 - 14
2011 - 15

Source: Office of the Senate principal clerk

NC House (120 members)
1985 - 25
1987 - 24
1989 - 22
1991 - 19
1993 - 23
1995 - 15
1997 - 17
1999 - 16
2001 - 14
2003 - 15
2005 - 17
2007 - 18
2009 - 24
2011 - 22

Source: Office of the House principal clerk

with those affected and those applying the laws.[1] Law office negotiating skills are also very useful.

Representative Michaux: My legal skills are extremely useful in my service in the General Assembly and have always been useful. Those who have studied the law and used it every day have a distinct advantage over the average layperson.

Representative Ross: Legal skills are very useful for understanding the implications of legislation and drafting bills and amendments. Oral advocacy and inquiry skills are also at a premium.

SBJ: Does any area of the law make General Assembly service easier and does any area make it more difficult?

Representative Hackney: I think those attorneys with a small town general practice have been important contributors to the legislative process over many decades. They tend to be familiar with many different areas of the law and the impact on the citizen. Most attorney-legislators can cite specific examples to enlighten the debate.

I think that whatever the specialty of the attorney-legislator, the legal training makes for a better legislator.

Representative Michaux: There is no one particular area that stands out except for constitutional law, which seems to be necessary in order to be able to understand what legislation is proposed and its effect on the constitutionality of the situation.

Representative Ross: Corporate and tax law are not as well represented as they should be. We have plenty of small town lawyers and not enough lawyers with sophisticated practices.

SBJ: How do you manage your practice and serve at the same time?

Representative Hackney: It can be difficult because client needs do not always coincide with breaks in the legislative schedule. Most attorneys in the General Assembly work very long days on Mondays and Fridays and some weekend days when we are in session, and do a lot of law practice on smart phones and computers from Raleigh. It's great to have partners to cover you as well.

Representative Michaux: It is difficult, but I have received a great deal of help from my brother who is associated with me in our firm.

Representative Ross: It is not easy. I try to restrict work to a handful of clients during the session. It is hard to take a Monday or a Friday off.

SBJ: Are judges sympathetic to the General Assembly schedule?

Representative Hackney: I have never had a problem with judges not understanding the legislative schedule. But you also have to know when it is necessary to skip a legislative meeting or session to go to court. Legislative meetings should not take precedence 100% of the time.

Representative Michaux: I have found them to be sympathetic with our schedule and they have helped in trying to work around it. Also the Rules aid me when I remind them that there is a rule which lets us continue a case.

SBJ: Can you give an example of how being an attorney has helped you in the General Assembly and perhaps helped avoid poor or unnecessary legislation?

Representative Hackney: A lot of bad legislation is proposed from both sides of the aisle. Much of it does not make it all the way through the process. This session there was a proposal to severely curtail our excellent pretrial release programs for the benefit of the private bail bond business. It appeared to be headed for passage. Several of the attorneys, including me, hammered away at the proposal at every opportunity until it finally was abandoned. We know how the jails operate, and careful pretrial release recommendations to the judges are critical.

Representative Michaux: There are many instances and probably the most recent one dealt with a legislator who wanted to set up a voting schedule for his district that seemed to want to violate Section 5 of the Voting Rights Act. When reminded of this, he withdrew the legislation.

Representative Ross: I like to tell clients that litigation does not solve all of your problems. By the same token a new law is not always the solution to a problem. I have come up with other resolutions dozens of times.

SBJ: If encouraging more attorneys to run for legislative office is a goal, what can be done to encourage that?

Representative Hackney: The hardest thing in convincing lawyers to run is making them understand that it does not mean financial ruin, or at least showing them a path to get by financially. This may involve the extensive use of technology, or having understanding law partners, or otherwise finding a way to be supported partially by their firm. Potential candidates also need to fully understand the legislative schedule, and have to be educated of the fact that there are extended periods when they do not have to be in Raleigh.

Representative Michaux: One of the basic necessities in attracting more attorneys to the legislature in my estimation is the matter of pay for service in the legislature.[2] In my opinion, this is what keeps a lot of people who could serve and provide great service to the state from becoming a part of that institution that plays a significant role in everyday lives.

Representative Ross: It might be good to recruit lawyers who have more transactional practices, since they do not have to worry about court schedules.

SBJ: Has your legal practice changed due to your service or have your areas of practice shifted? Have they been enhanced?

Representative Hackney: My practice has gradually shifted over the years to those areas that do not require constant court appearances. For instance, it's pretty hard to practice a lot of criminal law and serve in the legisla-

ture. It can be done, and has been, but it is not easy. Also, for obvious reasons, it is much easier for those of us who practice law within easy driving distance of Raleigh than those who are from the eastern or western parts of the state.

Representative Michaux: My practice has not changed significantly but has probably been enhanced because of the necessity of keeping abreast of the law and aiding in the enactment of those laws which govern.

Representative Ross: Yes. After Senate Bill 3 passed, I have more renewable energy clients. ■

The Honorable Joe Hackney represents Orange and Chatham Counties and has served in the North Carolina House of Representatives since 1981. He is completing his 16th term. He served as Speaker of the House from 2007-2010 and is currently the House democratic leader. He is the immediate past-president of the National Association of State Legislatures. He is nationally regarded for his legislative work in the areas of ethics reform, driving while impaired, and domestic relations including streamlined procedures for equitable distribution, alimony, and divorce.

Representative Hackney is a graduate of the UNC-Chapel Hill School of Law and is a partner in the Chapel Hill law firm of Epting & Hackney, currently emphasizing civil litigation and domestic relations.

The Honorable Mickey Michaux represents Durham County in the North Carolina House of Representatives and is completing his 16th term, having first been elected in 1972. He served as the House's chief budget writer from 2007-2010 and has been a member of the Governor's Crime Commission and the North Carolina Criminal Codes Commission. President Carter appointed Mickey Michaux as the first black United States attorney for the Middle District of North Carolina in 1977, a post that he held until the end of the Carter administration.

Representative Michaux is a graduate of the North Carolina Central University School of Law. He is also a licensed and practicing real estate broker and property and casualty insurance agent and broker. He is a member of and partner in the law firm of Michaux and Michaux, PA.

The Honorable Deborah Ross has represented Wake County in the North Carolina House since 2003. She has served as both a majority and a minority whip, and chaired the Judiciary I Committee from 2007-2010. She is well known for her legislative leadership in the areas of historic preservation, campaign and ethics reform, and domestic violence. Deborah Ross has served as an ethics consultant at Duke University's Kenan Institute for Ethics and as executive/legal director for the American Civil Liberties Union of North Carolina.

Representative Ross is of counsel at the law firm of Styers, Kemerait & Mitchell in Raleigh, emphasizing energy issues. She is also a Senior Lecturing Fellow at the Duke University School of Law.

Endnotes

1. The Legislative Drafting Division was established in 1978 and works with members of the General Assembly to craft proposed legislation. Prior to that time, members worked with the Attorney General's Office and the School of Government at the University of North Carolina at Chapel Hill to craft proposed legislation.
2. The basic annual pay for a rank and file member of the North Carolina General Assembly is $13,951 and an expense allowance of $559 per month. Members also receive a $104 per diem allowance when the legislature is in session to cover food and lodging. Members who reside within 50 miles of the General Assembly building in Raleigh are reimbursed differently. This schedule was enacted in 1994.

Meet the Federal Judges: Western District of North Carolina, Frank D. Whitney

By Michelle Rippon

In the early 1990s what was then the State Bar Quarterly *published a series of articles loosely held together with the theme, "Meet the Federal Judges." In the next few editions of the* Journal*, we will be updating that series.*

Three words immediately come to mind when describing the Honorable Frank D. Whitney: able, affable, and approachable. The reasons could be several—his clerkship with Judge David Sentelle at the United States District Court for the District of Columbia, his experience as a Boy Scout who achieved his Eagle Award, and yes, even his 30 years in the military.

Serving in the military was a family tradition. It was also a military experience that brought Whitney's father from New England to Charlotte. A. Grant Whitney served with William Henry Belk Jr. in North Africa during WWII and came to Charlotte to work as a corporate officer with the Belk Corporation. He spent 41 years with the company primarily handling risk management and insurance. A. Grant met Whitney's mother, Lillian, in Charlotte, and Frank, together with his brother and sister, became one of a diminishing number of Charlotte residents who can claim to be a true Charlotte native.

Frank attended Charlotte public schools and then Charlotte County Day where he graduated in 1978. He played football, was on the wrestling team, and ran cross country—"a Jack of all trades and expert at none," he jokes. During the summers and sometimes over holidays he did yard work for neighbors, worked in the parts department at a car dealership, and worked with his mother who was a manufacturer's representative.

In terms of his own career, Whitney was self-directed. He chose Wake Forest University for his undergraduate school because of its strong ROTC program, and thus began his military career in the United States Army and then in the army reserve. Whitney's father had wanted to be an attorney, which seems to have motivated his son to attend law school. (Whitney's brother is also an attorney, practicing with the Parker Poe law firm in Charlotte.) After graduating from Wake Forest in 1982, he attended law school at UNC Chapel Hill. Given Whitney's career after law school, it surprises even him that he had no plans to be a trial attorney. In law school he chose transactional courses—tax, securities, and corporate law—and avoided the courtroom courses. He also chose the four year JD/MBA program. He graduated in 1987.

Judge Whitney flying in a Blackhawk helicopter from Camp Victory to the US Embassy, Iraq, August 2011.

He began his career, as planned, practicing transactional law with a large firm in DC that represented a number of large government contractors. Whitney's security clearance as a member of the armed services was an asset in terms of the firm's clients. However, Whitney also hoped to clerk with Judge David Sentelle, and a year after joining the firm he did take a year off for a clerkship. He returned to the firm where he practiced until 1990 when he was offered the opportunity to return to Charlotte as an assistant US attorney for the Western District of North Carolina. Then in 2002 he was nominated by President George W. Bush as the lead federal prosecutor for the Eastern District of North Carolina. Apart from his practice in DC, and a year in private practice from 2001-2002, his entire career was spent in the courtroom.

As a prosecutor, Whitney handled, among others, a variety of complex tax and health care fraud, money laundering, and forfeiture matters as well as drug conspiracy cases. What struck him the most was the power of the grand jury subpoena—"every man's evidence"—which permitted the government to subpoena virtually every document in the possession of an individual under investigation in a criminal matter.

On February 14, 2006, Judge Whitney was nominated by President George W. Bush

to assume the seat vacated by district court Judge Brent McKnight who had died while in judicial service. He was confirmed by the United States Senate on June 22, 2006, and received his commission as an Article III federal judge for the United States District Court for the Western District of North Carolina, Charlotte Division, on July 5, 2006.

Judge Whitney advises attorneys who appear before him that he runs "a tight ship." Once attorneys have discussed and agreed to deadlines in their case management plan, there is little room for extensions of time for dispositive motions or the trial date. He has a reputation of saying "no." Several years ago his law clerks prepared a very large stamp with the word "NO" and beneath it Judge Whitney's electronic signature. Some expedited cases can be tried within six months of filing the answer. Standard cases are normally tried within a year, and complex cases within 18 months. He strives to provide litigants with the certainty that their cases will be heard as scheduled. That same certainty assists the attorneys to serve their clients efficiently.

Judge Sentelle once gave Whitney some sage advice for attorneys in his courtroom: "Never lose your credibility with a federal judge. Remember we are here for life." With this in mind he sees advantage to the local rule that requires out of state attorneys to associate with local counsel because local counsel are not inclined to offend the judge. With respect to his rulings, Judge Whitney considers that he is trying the case before two courts—the district court and the court of appeals. He likewise admonishes attorneys to take that same advice—don't create error in the record. It's simply not efficient. It is also helpful to remember that, "a good lawyer knows the law. A great lawyer knows the judge."

Judge Whitney is one of the few judges who hear most summary judgment motions. Nevertheless, he still reminds attorneys that good writing is more important than good advocacy. During the hearing he will focus on the questions or concerns that are raised as he reads the briefs. The advantage in this approach is that preparing in advance of the hearing allows him to make a ruling from the bench if the motion is denied. Should he decide to grant the motion, the preparation for the hearing and the opportunity to have addressed his concerns results in a well organized oral order or written decision that can be prepared more quickly. This is especially important as the trial date generally looms only a month away.

Whitney's trials are run efficiently. The days are long with only short breaks. He prefers to rule on evidentiary issues from the bench. However, he will accommodate a request for a sidebar. He uses the sidebar to give the jurors the opportunity to stand and stretch. He also suggests that they not focus on the bench to give their attention a rest, too. He is not too quick to rule on objections when attorneys ask leading questions as experience tells him that it's not unusual for an attorney to deliberately let opposing counsel elicit favorable testimony. Not unexpectedly, he has observed that the best attorneys are the ones who handle their cross examination well—knowing when not to pursue a question. Finally, he has discovered that jurors generally try to do "the right thing in criminal cases and the fair thing in civil cases."

With the advent of alternative dispute resolution in the federal courts, Judge Whitney notes that a number of attorneys seem to treat direct and cross examination as if they were asking questions in a deposition. Whitney, however, is willing to assist parties who wish to engage in settlement negotiations and will conduct judicial settlement conferences much like a mediation.

If you were to ask Frank Whitney what he enjoys most about being an Article III judge, it would be the independence of the judiciary and the permanency of the position. His greatest difficulty is dealing with sentencing hearings—listening to family members of both the accused and the victim. He is also challenged by the number of *pro se* cases that he must review, both criminal and civil. Each requires time and attention to assure that there are no issues that should be addressed. He frequently does his own drafting and handles the "gavel cases"—those filings on ECF that check the judge into a user friendly screen for cases that simply require a text only order.

His advice for young people thinking about law school is, "don't presume you will practice law." There are so many other options for a law school graduate. Students need to remember that a law degree is helpful in virtually every other profession. Making thoughtful career choices after law school might lessen the stress and emotional challenges that attorneys experience when the practice overwhelms them.

In order to help law school students find the right calling, Judge Whitney teaches a course at the Charlotte School of Law in "Judicial Externship." Through this program, students are placed in *pro bono* law clerk positions with law firms, with prosecutors, public defenders, legal services nonprofits, as well as state and appellate court judges. They learn about law clerk ethics, how to draft bench memos, and other skills to help them work productively with their assigned mentors. The course includes one day overview of criminal and civil procedure.

Perhaps not so well known is the fact that Judge Whitney has ties to Egypt. His wife Catherine was born in Cairo. Her grandfather was the attorney general of Egypt. "Catherine keeps me grounded," he admits. Once he leaves his chambers and arrives home, he is just a husband who has a list of "honey do" responsibilities. He speaks of her and his two daughters, Annie and Hunter, with affection as he points out their photographs.

Judge Whitney's chambers do have a special history as they were home to two icons of the court—Robert Potter and Brent McKnight. The judge has tremendous respect for both. As he ponders difficult issues from behind the desk that was once theirs, he frequently asks himself how they might respond.

Outside the courtroom Frank Whitney is recognized for his many contributions to his community and the bar. Among others, he has served on the Charlotte-Mecklenburg Historic Landmarks Commission and the Legal Services of Southern Piedmont Board of Directors. He currently serves on the Ethics Committee of the North Carolina State Bar. In June 2012 the North Carolina Bar Association recognized him with its Citizen Lawyer Award.

Over the course of his career Judge Whitney has sacrificed significant time to serve as a member of the US Armed Forces. Once he had signed a contract with the army at Wake Forest he began a regimen of serving one weekend a month and up to two weeks every summer on military duty. In law school the commitment was particularly stressful during exams. He worked long hours to compensate for the time he took off for his

CONTINUED ON PAGE 28

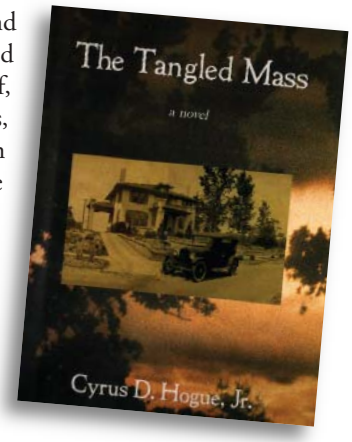
The Tangled Mass: The Trial of E. L. Smoak

By Cyrus D. Hogue Jr.

When I entered the first grade there was a little redheaded girl in the class who lived about a mile up the road from my parents, and she continued in my class and classrooms until 1936 when we were juniors in high school. When she missed school in December little notice was made of it until we were gathered in a classroom and told that she had died. This was taken in stride without much comment, and we were certainly not provided with grief counselors as is done today. Little was made of it until subsequent events revealed the following.

It was 1936 in North Carolina—the depths of the depression. Gasoline was twenty cents a gallon, a Baby Ruth was five cents, and a Tootsie Roll was one cent. In Wilmington the only thing that kept things going was the Atlantic Coastline Railroad (ACL), which faithfully paid its many workers in cash on the third and eighteenth of each month, bringing much needed business to the merchants. Among these workers was Edgar Leroy Smoak, a mechanic in the railroad shops that were downtown next to the passenger station. He lived on the road to Carolina Beach about a mile beyond the city limits. He had a daughter, Annie Thelma Smoak, who was born in 1921 and attended the public schools. His first wife had died shortly after the birth of Annie, and later he married Alice Mason Smoak, who died in July 1935. After she died he brought in a "housekeeper" who lived with him and did not get along with Annie. Annie died December 1, 1936. Annie's death certificate read as the cause of death "idiomatic convulsions" and was signed by a doctor who had treated her around Thanksgiving, but had not seen her since. She was buried in South Carolina within two or three days of her death.

There was little entertainment at that time, other than a Joe Louis fight or *Amos and Andy*, so a murder case made many headlines and caused much speculation. Her death was not noticed until her grandfather came and approached the sheriff, David Jones, advising him that he thought Annie had been poisoned as well as his daughter, her stepmother.



This started an investigation, a search warrant, and an order for a disinterment resulting in an autopsy of both bodies. Certain organs were sent to the Duke Hospital Pathology Department where it was found that they contained residue of many grams of strychnine. A search of the house found evidence that insurance had been collected by E. L. Smoak on both occasions. It was also found that strychnine had been purchased by Smoak from a pharmacy near the railroad yards. At the time, the purpose of the purchase was noted to worm his dogs and to treat his hogs. With this evidence the grand jury returned a true verdict of first degree murder against E. L. Smoak.

The district solicitor at the time was John J. Burney Sr., and with this information he proceeded to prepare his case to go to trial.

There were no assistants to help him, and a patrolman, C. David Jones, and a deputy, Earnest Alfred, were all the help he had in maneuvering some 53 witnesses, including about ten experts, into court and onto the witness stand. A special term of superior court was held in February 1937 with Judge John H. Clement presiding. There was, of course, much sensational publication about

it with headlines such as "POISON MASTER" and others appearing in the *Wilmington Morning Star* and statewide.

Smoak had a court appointed defense attorney, but had also raised enough money from friends and fellow workers to hire L. Clayton Grant to help defend him.

Burney opened his case with the testimony of the drugstore owner that Smoak had purchased a small bottle of strychnine on November 19, 1936, shortly after he left work, and had subsequently and previously purchased it. He entered into evidence of the death of Annie and Smoak's wife Alice Mason Smoak, the disinterment of their bodies, and the careful removing and preserving of certain organs before they were carried to Duke for analysis by the Coroner, Dr. A. H. Elliott.

He then presented evidence that life insurance policies had been purchased on Annie in 1935 and 1936, each in the amount of $445, and that he collected on them shortly after their deaths. He had paid the premium on the second policy in November through December 14, two weeks in advance of when he had paid the premium on any other policy. He had also acquired a burial insurance policy on Annie in October 1936, which he collected and used to transfer her body to South Carolina for burial. There was much discussion and objection regarding the evidence about the death of Alice Smoak, which admitted over objection became a ripe subject in the appeal at a later date. There was also evidence that Alice Smoak was pregnant at the time of her death, and that at one time Smoak had indicated that he desired no more children.

Burney then introduced the toxicologist from Duke, who he qualified as an expert, and who testified that he found about a half a grain of strychnine in the organs of Annie, and that in his opinion only about a third of what was in the organs could be recovered. He was also allowed to testify over objection that he found similar amounts of poison in the organs of Alice Smoak, and that in his opinion the amounts found in both bodies were enough to cause death. This was followed by of six medical doctors, qualified as experts, who answered a hypothetical question—with respect to the poison found—that in their opinion the cause of death in both cases was strychnine poisoning. The undertaker who handled the funeral of both descendents testified that at the time of death and continuing until the time they were disinterred their hands and feet were distended in a manner indicating that they had been in pain at the time.

Evidence was entered that policies and papers found with the search warrant indicated that Smoak had purchased life insurance on other members of the family, including the mother of the "housekeeper" who had lived with him, and that she had been made very sick with symptoms similar to poisoning. There was much other collateral evidence presented by the prosecution that helped affirm the substantive evidence that had already been presented.

After several days of testimony the prosecution rested. The defendant's motion to dismiss was made and denied. Argument was made that there was no evidence that Smoak ever personally gave the poison to the victims. It was denied, and exception was taken. Although it is not in the record, surely Smoak was advised that he did not have to testify. He had adamantly denied

The State Bar Journal *asked Cy Hogue, the son of the author, Cyrus Hogue, to critique how his father's life (and stories) helped shape him as a person. Below are his comments.*

"In life I have often wanted to ask a person speaking to me, 'What makes you think that the person to whom you are talking is interested in what you are saying?'" Thus, my father opens the prologue of his memoir, *The View from Pew Seven*. There is no doubt that he thought this at times, but here, he was supposing that his memoir might be perceived in the same way. It is ironic to think he could so perfectly describe the reaction that I, as a child, would often have had when he was talking to me.

You never really know your parents until you have similar life experiences. It has been gratifying for me to know my father as an adult through the help and advice that he has given me in my law practice, the high opinion that his friends and clients have of him, and, ultimately, sitting down as a companion and discussing any manner of things. One of my regrets at this point—and I do not find regrets of much use at 63—is that I never practiced law with him. I have been told by those who knew him as an attorney that he was a "lawyer's lawyer."

Having come into the practice of law in Wilmington in 1947 it was not a time of specialists. His first fee was $10 for drawing a deed, which was his total take for the month. He then went on to do all matter of things: first degree murder defense, insurance defense, governmental takings, business sales, appellate work in the state and federal courts, et alia. And, most importantly, he always returned his calls. ■

from the outset that he had killed either of the victims, and he took the stand under the questioning of Grant, who led him through his hard working life, service in the army, and his marriage and the birth of his loving daughter. Even though Burney cross examined him intensely, he still proclaimed his innocence, stating that he purchased the drug to worm his dog and to treat hogs he expected to buy.

The defense offered evidence of his character, which was excluded over objection, and rested without further evidence, renewing its motion for dismissal.

It was reported that the oratory on both sides reached great heights of crescendos proclaiming guilt or innocence, after which, Judge Clement carefully instructed the jury how the facts of circumstantial evidence could be used to conclude the guilt of the defendant or exonerate him. The jury was out about two and a half hours, bringing in a verdict of first degree murder from which an appeal was taken. The verdict was rendered in February 1937, and the appeal is reported in 213 NC 79 at the February 1938 term with a decision by Judge Heriot Clarkson that runs for 16 pages, including two and a half pages that have been cited many times since.

The case is important in criminal law in its analysis and use of circumstantial evidence in a first degree case, and because the conviction was upheld on this point. It is also a tutorial on the preparation of a case and the use of hypothetical questions, particularly in medical cases. It is so important that the facts are fully and accurately stated in the question so that the hypothesis is fully supported. The decision confirming the competency of the evidence of the poison found in Alice Smoak was proper because it related to the crime being charged, and the facts were similar.

So the conviction was sustained on all points. John Burney Sr. went on to become resident superior court judge of the 5th Judicial District and was a dedicated public servant. Smoak was executed shortly thereafter, still proclaiming his innocence. Looking at the case from another perspective, it is interesting to see how fast the court operated in trying the case within a month or two of the crime, and the appeal to and decision from the Supreme Court all occurred within a year. Today it would probably take five years at least. Back then, you just got your folks together and went to court; today most cases have rolling backpacks full of paper before you can even get to trial. Is justice served any better?

The case has received much national attention, becoming the subject of a radio show, being featured in four detective magazines—*Master Detective, True Detective Mysteries, Front Page Detective,* and *Real Detective*—and many newspapers. ■

Cyrus Hogue is a 92-year-old attorney who still drops by the office every day to check his mail. He authored The Tangled Mass, *an account of this sensational case in which armed guards had to be shipped in to provide security for the courthouse proceedings. As the author notes, he was acquainted with the victim.*

Judge Frank Whitney (cont.)

military duties while he was in private practice and as a United States attorney. Recently he was mobilized and deployed for almost seven months serving in Iraq, Kuwait, and Afghanistan as an army reserve military judge—the first Article III federal judge to serve as an Article I military judge. While there he presided over 25 courts martial. He was well qualified to handle an array of criminal cases heard in a combat zone including alcohol related offenses, AWOL, desertion, conduct unbecoming, sexual assault, and larceny cases.

Judge Whitney retired in May 2012 after serving his full 30 years in the military. There is a sense of emptiness in leaving behind such an integral part of his life. However, there is a lot to fill the void. In addition to his course in Judicial Externship, he teaches a course in National Security at the Charlotte School of Law. The course gives him an opportunity to borrow from his experiences as a military intelligence officer, judge advocate, and military judge. Exercise remains important. He ran a half marathon with his older daughter this past winter, he enjoys sailing, and his wife is teaching him how to play tennis—"more of a challenge than she originally anticipated!" And in June he will assume the duties as chief judge of the district—yet another important and challenging role that, like all his other accomplishments, he will take on with enthusiasm. ■

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Investing in Our Future, Creating Tomorrow's Leaders

By Susan H. Johnson

"All rise." Heart pounding, the young attorney glances at opposing counsel as they stand to honor the court. The presiding judge strides to the bench, while both attorneys try to steady their nerves as they once again mentally review their opening statements. Will the plaintiff's client receive compensation for the debilitating injuries she suffered after sustaining multiple sports-related concussions? Or will the defense successfully demonstrate that the plaintiff's own actions in hiding her injuries should absolve the soccer coach and soccer club of liability? The stakes are high—but not in the way that you think. For these young "attorneys" are not fighting over money damages, but for the opportunity to represent their school and our state in the National High School Mock Trial Championship in Indianapolis, Indiana.

On March 1-2, 2013, eight regional high school mock trial champions converged upon Campbell Law School in Raleigh, four-time host of the North Carolina Advocates for Justice (NCAJ) High School Mock Trial State Finals competition. After three hard-fought rounds of competition, the students from Central Carolina Homeschoolers emerged victorious. They enjoyed a short respite as they eagerly awaited release of the brand new national competition case on April 1. Then the team began five weeks of whirlwind, intense preparation before they and 45 other state and national champions from as far away as South Korea descended upon Indianapolis for a Super Bowl of their own.

The North Carolina Academy of Trial Lawyers (now the North Carolina Advocates for Justice, or NCAJ) took charge of the mock trial program more than 20 years ago. At that time, only six teams from across North Carolina competed. The program grew quickly, eventually expanding to include eight regional competitions, and even to hosting the National High School Mock Trial Championship in Charlotte in 2005.

Now organized and operated by the non-profit Carolina Center for Civic Education (CCCE), with major sponsorship by the NCAJ, high school mock trial continues its tradition of teaching students about our justice system and trial by jury. By taking on the roles of witnesses and attorneys in a fictional civil or criminal case, students come to understand in a deeper way their rights and responsibilities as citizens. "The mock trial experience is a wonderful way to enhance the public awareness and perception of the judicial system and the right to trial by jury," Gordon Widenhouse, CCCE president and mock trial program founder, explains. "Watching the program grow and hearing the students, teachers, and parents express the difference it makes in their lives is most gratifying."

As a result of the program, participants and observers see the legal profession in a new and positive light, for the program is only possible due to the committed involve-

ment of hundreds of legal professionals across our state. Attorneys invest untold hours mentoring teams ranging from the coastal cities of Wilmington and Manteo, to rural towns in Snow Hill and Randleman, to urban schools in Charlotte and Raleigh, to the mountain hamlets of Asheville and Franklin. Local firms sponsor each regional competition as well as the state finals in Raleigh, helping to defray the costs of hosting the event. In addition, nearly 400 judges, attorneys, law students, and paralegals volunteer at our eight regional competitions, providing feedback to the students and making sure the myriad logistics of the day run smoothly. At state finals, supreme court justices; court of appeals, superior court, and district court judges; and dozens of attorneys return every year to preside over the trials and serve as scoring jurors, ensuring a memorable experience for all.

"It is remarkable that, year after year, members of the bench and bar volunteer to help," said Widenhouse, whose firm sponsors the state finals. "I get excited when the state finals rolls around and so many colleagues and friends step up to assist in so many ways."

Indeed, the experience is enjoyable for the legal professionals who volunteer. As Asheville regional coordinator and sponsor Mark Melrose notes, "My favorite parts of the competition are those moments during cross examination when the student attorneys and witnesses become so totally immersed in their roles, the facts, and the law that they must respond in character and without preparation. The surprise objections, the reaction of the witnesses maintaining their personas, and the ad lib response by opposing counsel can be fascinating. When it all clicks, I am reminded why I continue to do this year after year. I sometimes 'forget' that it is not a real case, and I realize that the students' understanding of the value and complexity of our legal system is something they will carry with them throughout their lives. That is good for them, and for us."

Through mock trial, students gain self-confidence, analytical reasoning abilities, and communication skills that will promote their success as the future leaders of our nation – whether their career plans include the study of law, medicine, engineering, business, or education. As Dr. Amy Marschall, teacher coach at Raleigh Charter High School, explains, "Mock trial is wonderful for students, whether they want to pursue law or not, for so many reasons. They develop their writing skills tremendously because they have a real task to do for a real audience. They develop the ability to create a narrative, and they see that stories can be told very differently, even if the facts are the same. They learn to work on a team where every single person must accept full responsibility for part of the effort. And finally, but not least important, they learn to speak in front of an audience. That is a skill that will serve them well in any profession and in any number of civic activities."

Each year the new case is released in early fall, and students, teachers, and attorney advisors labor for months to create and refine their presentations. Often the experience is life-changing for the students involved. Winner of the 2012 "M. Gordon Widenhouse Jr. Award for Inspirational Team Leadership," Zachary Aldridge of J. H. Rose High School termed his mock trial experience as, "the single most important learning experience of my life. To participate successfully in the program, students have to muster enough confidence to go into a large courtroom, filled with many spectators, and convincingly deliver their evidence. For a high school student, this task can be very challenging regardless of being an attorney or a witness. The mock trial program taught me how to stand in front of a crowd and speak with confidence."

Richard He of Raleigh Charter School, winner of the 2013 Widenhouse Award, described lessons he learned through mock trial participation. "In my first two years in mock trial I got the opportunity to work on my public speaking skills and critical thinking skills, and grew to love the complex environment during trial competition, which resembled that of an elaborate chess game. This year, as a senior and as team captain, I was able to learn about true leadership through first-hand experience. I realized that passion is the most important aspect of leadership, [as it] convinces others that something is worth doing. My three years in mock trial have transformed me not only into an effective and responsive leader, but also into a citizen with a broader appreciation for the American legal system and a strong interest in pursuing a career in law."

Mary Felder, a four-year competitor and recent graduate of Raleigh Charter School, elaborates further. "Mock trial is the chance to be recognized as an individual in a team setting. It has been a way to grow so close to a group of such different people, working

toward a collective goal. I can't even express the rush it gives; I feel as though I am having so much fun, but working toward something important. Of course I understand the US judicial system in a way I never did before, and I feel more invested in the choices we make as a country, since I can now think about all the cases we hear about on news and read about in the paper in a logical way, and draw my own conclusions, rather than accepting other's opinions. It feels like I am a part of something big—something real. I have an activity that requires me to think logically, and really stop to look at things objectively, while at the same time, I have an absolute blast. It has definitely brought me out of my shell—it has been the biggest and best thing I have ever taken part in."

In 2011-2012, 61 teams of seven to eight students competed in regional mock trial competitions at eight locations across North Carolina. In 2012-13, the CCCE Board embarked on a new outreach project to bring the benefits of the program to under-served areas of the state, including lower income urban schools, rural schools in eastern NC, and new schools in the mountains. Additional teacher resource materials were developed, and more than 60 schools were contacted to explain the benefits of the mock trial program and to offer extra support to those interested in starting new teams. The CCCE conducted on-site team training sessions at nine schools, videotaping one session to post on our website as a resource for all schools statewide. Attorney advisors were recruited to mentor each new team, and additional help was provided via email and phone consults. As a result of these efforts, 15 new teams from 13 new organizations joined the program this year, and total participation in the regional competitions grew to 72 teams.

To build on this year's growth, the CCCE will continue to reach out to new schools in the coming year. Also, in order to educate more schools about the benefits of mock trial, summer camps in two locations will be offered this year (tentatively Chapel Hill and Fayetteville). These two to three-day camps will introduce new schools to mock trial and will build further upon the foundation for returning schools.

The growth and outreach of the mock trial program and the learning opportunities offered by the CCCE are exciting, to say the least. This growth and opportunity, however, can only happen with the investment of time and resources from the legal community. Those who partner with it will find it to be well worth the investment. As Rebecca Britton, CCCE vice-president and Fayetteville regional coordinator notes, "Being part of something so extraordinary with such an impact on its participants—the future leaders of this State and our communities—is incredibly fulfilling because the time you spend so clearly and tangibly has such a positive impact in so many ways. That is why I have supported and been a part of this program for the last 20 years. To me, it is one of best ways that we as members of this honorable profession give back."

Gary Shipman, Wilmington regional sponsor, agrees. "I have been a proud sponsor of NCAJ's Mock Trial Program for several years, and have participated (and continue to participate) as a judge for years prior to our sponsorship. I assist with this program for incredibly selfish reasons—I get back far more than I give. Each year I relive those [childhood] years of wondering what it was really like [to be a lawyer] by watching students actually find out. Year after year I sit in stunned amazement at the level of analysis and preparation demonstrated by the teams. Each year I see the eager eyes of the participants as they receive constructive critique from 'real lawyers,' and I finish that day with a renewed sense of why I chose (and why many of them will choose) this profession."

Perhaps teacher advisor Nemal Patel most clearly describes the significant benefits of the mock trial program to the student participants. Nemal competed in high school mock trial at J.H. Rose High School in Greenville, a school that fields multiple teams each year. Now part of the "Teach for America" program, Nemal invests in tomorrow's leaders by coaching the mock trial team at Garinger High School in Charlotte. Nemal describes his love for mock trial: "Without the leadership qualities I picked up as a high school competitor, I can say without a doubt that my life would be significantly different. I would not have taken the initiative to coach a team or to become a teacher, or had the skills to excel at a rigorous university. I may not have even been accepted to the school that I attended without mock trial. I attribute many of my victories, both on a large scale and small, to the mock trial program. Moving forward, I encourage every coach, every attorney advisor, and every parent to make the most of this brilliant program!"

Investing in our future, creating tomorrow's leaders. The CCCE motto sums up the motivation driving so many attorneys to participate in this important endeavor both with their time and resources. Volunteers not only inspire our youth with a greater understanding of the law and legal profession, but also find that they themselves are encouraged with hope for the future leaders of our state. ■

Susan Johnson is the program coordinator for CCCE. For more information on the program, or to explore how you might invest in the next generation, visit the CCCE website at ncmocktrial.org or contact the author directly at 919-360-0848 or SueHeathJohnson@gmail.com.

IOLTA Receives Additional Cy Pres Funds to Bolster Still Sagging Interest Income

Income

All IOLTA income earned in 2012 has now been received and recorded. We can report exceeding total income of $3 million for the first time since 2008, but only because of the $1.2 million received from residual funds from a class action suit in Washington state in which the court awarded funds to all IOLTA programs across the country. The picture for our traditional income sources remains bleak, though additional cy pres funds received or on the horizon could also improve the income picture for 2013.

IOLTA Account Income—Total income from IOLTA accounts for 2012 decreased by almost 14% and was under $2 million for the first time since 1994! We expect this situation to continue as banks are now re-certifying their comparability compliance at even lower interest rates. However, the Federal Reserve is no longer predicting they will keep interest rates at the current unprecedented low level through a particular date, but rather as long as the unemployment rate remains above 6.5%, and inflation between one and two years ahead is projected to be no more than a half percentage point above their 2% longer-run goal.

Settlement Agent Accounts—The amendment to the Good Funds Settlement Act (N.C. Gen. Stat. 45A-9) requiring that interest-bearing trust and escrow accounts of settlement agents handling closing and loan funds be set up as IOLTA accounts took effect on January 1, 2012. Though many of these accounts are not interest-bearing and are not being set up as IOLTA accounts, we have identified around 50 new accounts as settlement-agent only accounts (those not associated with an attorney licensed in North Carolina) from which we received over $35,000 in 2012. We will, of course, receive more from these accounts when transactions and interest rates increase. However, we expect no large increase unless establishing these accounts with IOLTA is made mandatory.

Cy Pres—In February we received almost $130,000 in cy pres from Asheville law firm Wimer & Associates as a result of a class action case filed in Buncombe County in 2004. Because the class included a large number of difficult to identify consumers suffering only small monetary losses, the settlement provided for a cy pres distribution in lieu of a claims process. With court approval, the funds were distributed to regional charitable organizations so that they could be expended for the benefit of citizens in the settling five states. In NC, the funds were divided equally among NC IOLTA at the NC State Bar (for civil legal aid); Pisgah Legal Services in Asheville; NC Habitat for Humanity; and the NC Indigent Defense Service.

Strategically positioned to serve the entire state, NC IOLTA is an ideal nexus for the simple and effective distribution of cy pres awards in North Carolina for civil legal services for low income residents. IOLTA works closely with local legal aid organizations and legal professionals to develop and fund statewide legal aid projects where help is needed most. As the attorney asked to recommend which charities would receive cy pres funds, Mr. Wimer said of NC IOLTA, "…the IOLTA program stood out as one that assists the interests of North Carolina citizens who do not have a strong enough voice to advocate for themselves."

The Equal Access to Justice Commission (EAJC) has published a manual, *Cy Pres and Other Court Awards,* to educate judges and attorneys as to the importance of such awards to legal aid organizations. The manual includes information on different types of court awards, tips for structuring award agreements, examples of awards, and a primer on how to structure a cy pres settlement. The manual is available on the NC Equal Access to Justice website, ncequalaccesstojustice.com, and the NC IOLTA website, nciolta.org.

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 almost $2.4 million in reserve funds over three years, grants have dramatically decreased (by over 40%), and our reserve fund was depleted to under $450,000. Receiving $1.2 million in cy pres funds in 2012, however, meant that we were able to keep 2013 grants steady at the 2012 level of $2.3 million without using any additional funds from reserve. And, in fact, at our April board meeting, the trustees were able to replenish the reserve with a half million dollars, bringing the fund total to just under $1 million to assist with grants in 2014.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. State funding has decreased due to reductions to both the appropriated funds and the filing fee allocations. Total state funding distributed for calendar year 2012 was $3.6 million, decreased from $4.4 million in 2011. The Equal Access to Justice Commission and the NCBA continue to work to sustain and improve the funding for legal aid.

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NC IOLTA Grantee Spotlight

By Evelyn Pursley, IOLTA Executive Director

Equal Access to Justice Community

In the largest sense, the entire bar (that's a small "b") is the equal access to justice community. We make that commitment in the Preamble to the Rules of Professional Conduct: "The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay..."

However, as approximately two million North Carolinians qualify for legal aid assistance (including 34% of all children and 18% of seniors), we go on to acknowledge that while "the provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, … the efforts of individual lawyers are often not enough to meet the need. Thus, the profession and government instituted additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs were developed by the profession and the government. Every lawyer should support all proper efforts to meet this need for legal services."

NC IOLTA is among those programs—established to support legal aid for the poor. It is the non-profit program created by the NC State Bar and approved by order of the NC Supreme Court to collect net interest income generated from participating lawyers' pooled trust accounts and use those funds to make grants for programs that provide civil legal service to the poor or otherwise work to improve the administration of justice.

NC IOLTA's Civil Legal Assistance for the Indigent grant program provides general support for a network of organizations that together provide basic access to the justice system for low income people residing in every county in North Carolina.

IOLTA as Grantor

As in other jurisdictions, North Carolina's IOLTA program is an integral part of the legal aid community that includes its grantees. As a grantor, we review materials throughout the grant year, from grant applications and agreements through external audits and regular objective reports on the use of funds and case statistics. Grant decisions are made annually by the NC IOLTA Board of Trustees, which administers the program according to the rules adopted by the NC State Bar Council and approved by the NC Supreme Court.

The nine-member board is appointed by the NC State Bar Council for a term of three years, with eligibility to serve two terms. Great care is taken to ensure diversity of the board, not only for race and gender, but also by weighing factors such as geographic location, type of legal or financial institution experience, firm size, and bar leadership.

IOLTA trustees review all grant applications annually and receive written reports and presentations on grantee activities at IOLTA board meetings. In addition, I as IOLTA director spend time with staff of the grantee programs, including not only the directors, but also attorneys and staff responsible for compliance, accounting, data management, etc. Such knowledge of the staff allows me to address queries about reports and programs appropriately and efficiently. I also attend board meetings of these non-profit law firms, which allows me to gauge the level of involvement of their board members and whether there is true board governance. Acquiring documents such as bylaw revisions, audits, and strategic plans at the board meetings enables me to hear the staff explain the issues and gauge board interest and understanding. (Such visits to board meetings are a response to the concern expressed at a recent NC Network of Grantmakers workshop on grantee site visits that board governance can be the hardest thing to evaluate.) Of course, many IOLTA trustees also have close knowledge of the grantees from seeing their work in their own communities and/or having served on their boards or as pro bono attorneys for the programs.

IOLTA Supports and Engages in Collaborative Efforts

Our relationship with our grantees also includes involvement with collaborative efforts. NC IOLTA provided important support in establishing, and still participates in, the Equal Justice Alliance (formerly known as the Legal Services Planning Council), a voluntary association of civil legal aid provider organizations; and the Equal Access to Justice Commission, a group of representatives from the judiciary, state government, business and foundation community, as well as other stakeholders in the improvement of legal aid, chaired by the chief justice of the NC Supreme Court.

Equal Justice Alliance—In 1999 the legal aid organizations came together to form a network to ensure access to justice for low income North Carolinians, and continues to work together with alliance members and other organizations to that end. For three years IOLTA financially supported the alliance, during which the members decided to pay member dues so that IOLTA funds could be used for more direct legal services. The Alliance's mission is coordination of a sustained, comprehensive, integrated, statewide system to provide the most effective legal services to people in poverty in North Carolina. It is guided by the vision of a system that provides a full range of services to a wide range of clients.

The Foreclosure Project is a good example of this work. The alliance's legal assistance providers, along with the Financial Protection Law Center and the NC Housing Coalition, sought and received funding to assist low-income North Carolinians facing foreclosure. Together, these efforts under the auspices of the Z. Smith Reynolds Foundation and the state, originally through the NC Office of the Commissioner of

Banks, have extended protection to hundreds of imperiled individuals; increased organizational collaborative consultation, outreach, and service; and supported funding diversification.

These organizations work together to make improvements, including most recently working to make consistent the computer codes used for case reporting so that outcomes can be designed and consistently reported. Outcomes are the desired reporting standard for many foundations, and the state of North Carolina is moving towards having grantees use outcome measurements. The next step is to work with the Center for Poverty, Work, and Opportunity at UNC to use the outcome data to develop reports on the economic benefits to the state of North Carolina from the work of the legal aid programs.

Equal Access to Justice Commission—In November 2005, shortly before his retirement from the bench, Chief Justice Lake, by order of the state supreme court, established the NC Equal Access to Justice Commission—the 19th state to establish a formal state-level body devoted to this issue. The commission is now ably led by current Chief Justice Sarah Parker, who noted in its first report, "The peaceful resolution of civil disputes is essential to the preservation of ordered liberty in a democratic society ... our citizens lose confidence in the process when meaningful access to the forum for resolution of disputes is denied to a significant segment of our population."

For three years, IOLTA made a grant to pay for the services of an executive director to serve both the alliance and the commission. We were fortunate to be able to hire a director, Jennifer Lechner, who is already nationally known from doing this work in another state. In 2009 the State Bar began providing funding to this commission through CLE sponsorship fees as it does with the Professionalism Commission.

It is the mission of the North Carolina Equal Access to Justice Commission to expand access to the civil justice system for people of low income and modest means in North Carolina. The commission brings together bar leaders, the judiciary, legal aid providers, legislators, business leaders, client representatives, law schools, community agencies, and foundations to address the lack of access to the civil justice system for the poor in a variety of ways, such as educating the public about the realities of poverty and barriers to access to the civil justice system; increasing pro bono representation; providing guidelines and assistance to those representing themselves in the courts pro se; providing more support for legal aid attorneys, including through law school debt reduction; and improving access to the courts for those with limited English proficiency.

Over the past several years the commission has established a website, ncaccesstojustice.org, for educational purposes, and where individuals can donate pro bono service and/or money to legal aid. It has published a manual, *Cy Pres & Other Court Awards,* as a reference for North Carolina attorneys & judges in directing such awards to legal aid. It has established and oversees a collaborative annual law firm fundraising campaign and organizes the education campaign for members of the General Assembly. The commission has also provided important support for the rule revisions providing for pro bono emeritus (allowing retired, inactive lawyers to do pro bono work for legal aid organizations); Rule 6.1 that provides an aspirational goal of 50 hours of pro bono service annually; and moving NC IOLTA to a mandatory program that requires comparability of interest rates on trust accounts.

The fact that so many North Carolina leaders are committed to this effort is an indication of its importance to our state. As Tom Lambeth, former director of the Z Smith Reynolds Foundation, stated at the Equal Access to Justice Summit in October 2007, "The ABA in its mandate to the Task Force on Access to Civil Justice uses language that captures your challenge ... [i]t mentions 'problems that can imprison one in poverty or discrimination.' That is, of course, the reality with which you—we—must deal. That denial of access to civil justice imprisons those denied in a situation that prevents them from being all that they might be. It prevents them from contributing all that they might contribute to the common good. Yet they are not the only prisoners when such a condition prevails. All of the community in which they live is to some extent imprisoned. We are all denied the benefits that would come from a society in which equality of access and opportunity prevail ... So, if you do not believe in equal access to justice as a matter of common humanity, believe in it as essential to economic development."

What is Civil Legal Aid?

• Civil legal aid programs provide free legal services to low-income people in non-criminal cases where clients may face the loss of their home, family, livelihood, or personal safety; however, unlike in criminal cases, there is no constitutional right to counsel for parties in civil cases.

• Legal aid providers are independent nonprofits that receive a mix of public and private funds.

The NC Constitution provides that: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay." *Sec. 18. Court shall be open.*

Legal aid providers assist in providing this core government function by:

• Helping victims of domestic violence escape abuse;

• Fighting predatory consumer practices and scams;

• Preserving homes and improving housing conditions;

• Protecting and improving household income for families and seniors;

• Establishing eligibility for access to medical care and coverage in federal programs; and

• Recruiting and training lawyers in private practice to donate their time, money, and services in order to increase access and to reduce costs.

Legal Aid Providers Do Not:

• Provide representation in criminal matters;

• Provide representation in personal injury, medical malpractice, or other tort cases.

Legal Aid Providers Do:

• Resolve more than 80% of their cases outside of court;

• Litigate only the most meritorious cases—when they do go to court, they win 90% of their cases; and

• Bring millions of dollars to North Carolina to ameliorate the ravages of poverty.

How is legal aid funded?

• Federal funding
• State funding
• Local government funding
• NC IOLTA
• United Way/Foundations
• Individuals and Law Firms

Visit ncaccesstojustice.com for more information on how to help:

• Provide pro bono representation (meeting Rule 6.1 obligation); or

• Donate money to legal aid. ■

When "Helping" Hurts—A Guide for Law Firms and Families, Part 2

By Robynn Moraites

The LAP recently conducted an interview with a managing partner of a firm who years ago orchestrated an intervention with a leading lawyer in the firm. This example illustrates how a law firm can proactively address an issue of impairment. The following is taken from that interview and told from the point of view of the managing partner. In order to maintain the highest level of confidentiality, all gender-related personal pronouns have been removed.

We have an attorney who started as an associate and came to us as a young lateral. The attorney worked with us for years without incident. The only thing we noticed was that the attorney partied a lot and bragged about it, but it was nothing too out of the ordinary. I did question the attorney's judgment when the attorney got drunk at some firm functions early on, but the attorney's performance was very competent. We had a lot of confidence in that attorney, and so did the clients. After the attorney had been with us for about seven years we were comfortable making the attorney a partner based on excellent work performance.

I never worked with the attorney personally; our practice areas did not overlap. But I always saw the attorney at our firm's social events. Several years went on without incident, and then I started receiving reports occasionally from younger associate attorneys with whom the attorney worked. The reports at first were that the attorney wasn't showing up to meetings with them or replying to their emails. They couldn't get in touch. There was no oversight or supervision. No mentoring was occurring. Assignments would be made and that would be it. When they needed assistance, the attorney wasn't available.

The attorney's secretary brought to my attention that the attorney had started changing and cancelling client appointments. The attorney was calling in sick a lot. I would have never known because we really didn't see a significant drop in billable hours. There was nothing happening other than these reports that would have raised concern.

Then I noticed that the attorney did not look well and appeared hung over, but the attorney would always attribute it to something else. The attorney began looking pale and clammy, with circles under the eyes, and started to look disheveled. Interestingly, I never smelled alcohol. Soon we were all noticing the deteriorating health and learned of significant marital and financial issues. The attorney talked with some of the partners about these various issues, but never mentioned problems with drinking, nor did we ask about it.

About a year before the firm decided to take action, I talked to the then-current LAP chair about what to do. I decided to wait and watch. I didn't want to be wrong. The attorney was still doing competent work, trying cases and winning them, so I was comfortable knowing clients were not being hurt. I wanted to give the attorney the benefit of the doubt. Everybody liked each other at the firm, but the attorney didn't have any real social friends within the firm.

The situation deteriorated over the year with more of the same kind of reports, so I approached the partners individually. They had noticed some things as well, though nobody had the concerns I had. To their credit, they did not dismiss my concerns, and when I suggested I would call the LAP, they thought that was a good idea.

I went over the history and the signs with a LAP staff member who confirmed my suspicions and told me that we were going to need to confront the attorney to seek recovery. I was warned going into the

intervention, "The attorney will deny it and lie about it. That's the pattern. Don't tolerate it."

We gathered all the partners together and brought the attorney in to talk. The attorney admitted the drinking problem, but thought it was something that could be handled without help. We told the attorney to get an evaluation from the LAP and if the LAP gave a clean bill of health, we would accept it. The attorney agreed to do this and met with a LAP staff person. The LAP concluded that there was a need for in-patient treatment, with the recommended length of stay of 90 days given the condition of the attorney.

We had another firm meeting then, and the attorney reported that the LAP staff person had recommended 90-day in-patient treatment. We all agreed with the recommendation. We told the attorney to follow what was recommended by LAP. The attorney understood our position but respectfully declined because of the financial consequences of taking three months off from work and the cost of treatment. The attorney claimed that family obligations precluded in-patient treatment and was also worried that clients would find out the reason for the departure.

We told the attorney that the firm would

lend money for treatment, but the response was that the attorney did not want to be in debt to us. The LAP staffer had alerted us that this was the likely response, so we were ready. We said—and this was the hardest part—that we wanted the attorney to get better, that the attorney was a valuable member of the firm, that we'd lend the money for treatment, that we'd pay for whatever the insurance wouldn't pay, but if the attorney didn't go to treatment then there would be no job at the firm. We threw the hammer down. The reaction was anger; in fact, extreme anger. But within a day or two, it sunk in that treatment wasn't optional. There was no choice and there were no other options. The attorney borrowed money from the firm to cover what the insurance would not cover and went to treatment.

While the attorney was in treatment, the partners obviously knew about it. In order to cover the workload, we had to tell some of the associates about the attorney's treatment because they were the ones who had to cover the work for three months. It was our understanding that the attorney would be completely incommunicado, so this had to be done. We didn't have any problems with continuances or the local bar, and we never had to tell opposing counsel anything specific. We said there were some personal issues that were keeping the attorney away from the office. No one asked any questions and we did not tell any clients.

There was a real willingness on the part of our partners to step in and provide help. No one even questioned it. We opted to continue to pay salary and insurance benefits during treatment. Everyone supported that decision and supported the attorney during this time.

When in-patient treatment was finished, the attorney came back into the practice. The attorney continued in a recovery program as well. The attorney doesn't talk about it much, except on the sobriety anniversary day. The attorney doesn't come to many firm social gatherings these days. We always drink at these events, so the attorney won't come to a firm cocktail party, but will attend a firm holiday dinner for a few hours. The loan was repaid, an action recommended by the LAP as an important part of the recovery process. It was an investment for the firm, but an extremely good one. Our attorney is one of our most successful and productive lawyers.

Over the years, I have seen a complete transformation. All aspects of the life of this attorney in recovery seem to be incredible these days. I have no idea how, but somehow the broken family life was repaired. Involvement with children increased. Physical fitness returned. Vacations are taken. Balance has been restored.

The attorney became an incredible mentor to young lawyers. Absence and a lack of instruction or guidance have been replaced by teaching, and very good teaching at that. The attorney is far more reliable and congenial and much more of a team player now within the firm.

The most amazing part is witnessing how a good practice has become an amazing practice. I was concerned initially because of the levels of stress at our firm and in that practice area in particular. It's stressful for the most stable of us, much less someone coming out of treatment. I worried it was too much to take on all at once. But the attorney stepped up to the challenge, and has had success like never before. The attorney is very skilled at winning really difficult cases, is in high demand, has brought tremendous success to the firm, and has great prospects. We always knew this attorney was an asset that we wanted to get better, and this attorney in recovery has exceeded our expectations in the process.

Best of all, the anger is gone. The anger turned into appreciation. The attorney's predominant emotion is one of extreme gratitude that everything happened the way it did. We all just have an incredible respect for what has been accomplished. It takes an extremely strong person to overcome alcoholism and battle for recovery.

My advice to a partner at a firm in a similar situation would be that if you see red flags and you're unsure if they're meaningful, call the LAP. Advice and guidance are sitting there waiting to be given. I didn't want to open up a can of worms if it wasn't necessary. The LAP staff person hit the nail on the head right away and really helped pull it all together for me. The LAP staff person said the LAP was there not just supporting our partner, but supporting the firm as well.

I understand more now that when red flags start to show up at work, that's usually the last domino to fall. When you see something, you need to take action right when you see it. I should have acted earlier when I started receiving those early reports of the attorney not working with the associates and calling in sick a lot. Pay attention to those kinds of reports and listen to the people who work the most closely with the lawyer.

There was one time about a year after the attorney returned from treatment that I became concerned. I forget now exactly the incident or reason for my concern. I knew that because of confidentiality the LAP couldn't talk to me, but I could talk to the LAP. So I called and told the LAP staff person about my concerns. The LAP staffer listened and said, "Let me make some calls. I'll get back to you." I received a call a few days later assuring me that the LAP staffer had spoken to some of the volunteers who were mentoring the attorney and that there was nothing to worry about. It was suggested that in this scenario I should let the incident pass and not confront the attorney. The LAP staff person said that sometimes a confrontation might be called for, but that in this case with whatever my concern was, all was well. And it was.

Looking back, I feel like I should have done something sooner. But then again, people have to be ready for help. It has all worked out well and I am grateful for the guidance the LAP gave me and our firm along the way. ■

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-892-5699, Towanda Garner (in the Piedmont area) at 919-719-9290, or Ed Ward (for Raleigh and down east) at 919-828-6425.

Thank You to Our Meeting Sponsor

Thank you to the following sponsor of the State Bar's quarterly meeting:

The Title Company of North Carolina

Lawyers Receive Professional Discipline

Disbarments

Leon Robert Coxe III of Jacksonville surrendered his law license and was disbarred by the Wake County Superior Court. Coxe admitted that entrusted funds totaling $123,689 were misappropriated from his trust account and used for his personal benefit. Coxe asserted that his wife transferred the misappropriated funds, but admitted that he abdicated to his wife the duty to manage those funds and admitted that his wife had a prior history of trust account mismanagement. Coxe also admitted that he "borrowed" $150,000 from settlement funds owed to a client without the client's informed consent, without advising her to seek independent counsel, and without providing her a reasonable opportunity to do so.

Geoffrey Simmons of Raleigh was disbarred by the Disciplinary Hearing Commission. He misappropriated entrusted funds.

Nicholas A. Stratas Jr. of Raleigh pled guilty in Wake County Superior Court to felony embezzlement, felony forgery, felony obstruction of justice, misdemeanor larceny, and unauthorized use of a motor vehicle. As part of his plea agreement, he surrendered his law license and was disbarred by the Wake County Superior Court.

R. Danette Underwood of Clayton surrendered her law license and was disbarred by the State Bar Council. Underwood admitted that she misappropriated entrusted funds exceeding $22,000.

Suspensions & Stayed Suspensions

Sameka Bennerman of Rocky Mount did not deposit intact into her trust account mixed funds comprised of her attorney fee, court costs, and fines, and did not properly maintain entrusted funds. The DHC suspended her for one year. The suspension is stayed for one year upon Bennerman's compliance with numerous conditions.

Jeffrey Berman of Greensboro brought a frivolous custody action, made a false representation to the court, and concealed material information from the court while requesting *ex parte* relief. The DHC suspended his license for one year.

Dujuan Brown of Philadelphia was convicted in Virginia of the felony of driving while intoxicated – third offense and of hit and run. The DHC suspended him for three years. After serving one year of active suspension, he will be eligible to apply for a stay of the balance upon compliance with numerous conditions.

Thomas Clements of Fayetteville did not properly wind down his law practice and did not inform his clients after he was administratively suspended for failure to comply with CLE requirements. Clements was suspended for two years. The suspension is stayed for two years upon compliance with numerous conditions.

Melissa Goldsmith of Hendersonville did not issue final title opinions, did not disburse title insurance premiums, mismanaged entrusted funds, did not identify clients on checks, and did not respond to the State Bar. The DHC suspended Goldsmith for five years. After serving two years of active suspension, she will be eligible to apply for a stay of the remaining three years upon compliance with numerous conditions.

Wilbur L Linton Jr. of High Point did not adequately monitor his trust account and did not maintain required trust account records. The DHC suspended him for two years. The suspension is stayed for three years upon Linton's compliance with numerous conditions.

Victor H. Morgan Jr., who was practicing in Jacksonville, had a random audit that uncovered numerous trust account deficiencies. There was no evidence of misappropriation. The DHC suspended Morgan for three years. After serving 18 months of active suspension, Morgan will be eligible to apply for a stay of the remaining 18 months upon compliance with numerous conditions.

Michael C. Park, formerly of Belmont and now in Texas, did not timely record deeds, did not disburse entrusted funds, and committed trust account recordkeeping violations. The DHC suspended him for one year. The suspension is stayed for one year upon Park's compliance with numerous conditions.

Dismissal

In a 2-to-1 decision, the DHC concluded that the State Bar did not prove violations of the Rules of Professional Conduct by clear, cogent, and convincing evidence and dismissed the complaint against **Gary Scarzafava** of Raleigh.

Interim Suspensions

The chair of the DHC entered an interim suspension of the law license of Hickory lawyer **David Shawn Clark**. The chair found that Clark pled guilty in Catawba County Superior Court to two counts of misdemeanor communicating threats and one count of common law obstruction of justice; engaged in a sexual relationship with a client; asked the client to lie and deny the sexual relationship so Clark could defend against an alienation of affection lawsuit threatened by the client's husband; when the client refused to lie, threatened her with losing custody of her children; threatened to kill his legal secretary after she refused to lie about her knowledge of the sexual relationship between Clark and his client; made false statements in the defamation lawsuit he filed against his client; revealed his client's confidential information; and made false statements to the Grievance Committee.

The chair of the DHC entered an interim suspension of Lake Waccamaw lawyer **Robert H. Melville Jr.** Melville pled guilty in federal court to the felonies of conspiracy to commit bank and wire fraud.

Censures

Wanda Daughtry of Greensboro was censured by the Grievance Committee. Daughtry did not timely file inventories and accountings for several estates. She did not provide an accounting during six years of service as trustee of an irrevocable trust. She did not clearly explain to her workers' compensation client that she was withdrawing

from the representation and continued to communicate with the client about the case for 11 years.

Colin P. McWhirter of Shelby was censured by the Grievance Committee. In a speeding case, McWhirter did not appear for a scheduled court date, did not notify his client that he failed to appear, and did not promptly refund the unearned fee.

Samuel Richardson III of Oak Ridge was censured by the Grievance Committee. Richardson submitted an order to the court that he knew incorrectly included an award for attorney fees. He also engaged in improper *ex parte* communication by failing to provide opposing counsel a copy of his letter to the judge.

Reprimands

Joseph Eric Altman of Rockingham was reprimanded by the Grievance Committee. Altman did not appear for a scheduled court date and was held in criminal contempt because of his chronic failure to timely appear in court. In another client's case, he did not reply to a counterclaim and did not respond to a discovery request. In a third matter, he prepared estate planning documents for a client at the direction of a third party without the client's knowledge and consent.

Kenneth R. Davis of Elizabethtown was reprimanded by the Grievance Committee for failing to respond to the State Bar.

Robert D. Floyd of Colorado Springs, Colorado, was reprimanded twice by the Grievance Committee. In the first case, Floyd neglected and failed to communicate with two clients and did not respond to a petition for mandatory fee dispute resolution. In the second, Floyd did not deposit mixed funds into his trust account and did not perform legal services he undertook to perform.

Thomas L. Kummer of Las Vegas, Nevada, was reprimanded by the Grievance Committee. Kummer disbursed escrowed funds without the agreement of all parties and held himself out as able to practice law in Nevada, where he is not licensed.

Ronnie C. Reaves of Weldon was reprimanded by the Grievance Committee. Reaves prepared estate planning documents and a deed at the direction of a third party without the client's knowledge or consent.

Reinstatements

In November 2010 **Michael F. Easley** of Raleigh pled guilty to the felony offense of certification of a false campaign finance report. In January 2012 the DHC suspended Easley for two years. He received credit for time served on interim suspension. The secretary entered an order reinstating Easley to active practice effective February 4, 2013.

In October 2012 the Massachusetts Supreme Court suspended **Jame I. Durodola** of Charlotte for two months because he did not maintain professional liability insurance as required to accept appointments to represent indigent criminal defendants and knowingly made a false certification that he was covered by such insurance. In November 2012 the chair of the Grievance Committee entered an order of reciprocal discipline suspending Durodola for two months. The secretary entered an order reinstating Durodola to active practice effective March 25, 2013.

V. Richard Hayes of Raleigh sought reinstatement from a 2009 disciplinary suspension. During a January 2013 hearing, the DHC concluded that because he did not keep required trust account records, Hayes cannot comply with the conditions of reinstatement contained in the order of discipline. The DHC reinstated Hayes subject to extensive conditions, including that he must transfer funds currently in his trust account to the State Bar, pay to publish notice of the availability of the funds formerly held in the trust account, and pay the cost of any trustee or administrator necessary to handle claims to those entrusted funds.

The DHC denied the petition of **Edwin A. Peters** of Garner for reinstatement. Peters was disbarred in 2007 for misappropriating entrusted funds totaling at least $8,281.85.

Notice of Intent to Seek Reinstatement

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC 27611, before August 1, 2013 (60 days from publication).

In the Matter of John C. Stiles

Notice is hereby given that John C. Stiles intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Stiles surrendered his license and was disbarred on April 14, 2000, for misappropriating clients' funds while suffering from a mental disability and for which restitution has been made. ■

President's Message (cont.)

know that one of my main interests has been to provide them a workspace that is pleasant and comfortable as well as efficient and productive. It will house all the related organizations of the State Board except the Board of Law Examiners. This will be the home for LAP, IOLTA, ethics council, grievance council, unauthorized practice council, and many other functions required to protect the public and regulate the profession. It will provide conference spaces available for North Carolina lawyers to reserve for depositions, mediations, and meetings, absolutely free of charge.

Most importantly, the building will be the place from which the State Bar carries out its charge to serve and protect the citizens of North Carolina as we regulate the profession of law in North Carolina. Our lawyers must be highly trained, rigorously licensed, and carefully monitored to ensure that they provide legal services of the highest quality to the citizens, governments, and businesses of our state. Our state has more than 25,000 lawyers, all sworn to uphold the rule of law, the hallmark of the United States of America, which gives the people of our great country the opportunity to live and to work protected from tyranny and discrimination.

I was honored as its president to dedicate the new headquarters of the North Carolina State Bar, a graceful and functional building in the capital of the Old North State.

Tom Lunsford, our executive director, and his staff welcome your visit when you are in Raleigh. They are proud of where they work. Come visit. ■

M. Keith Kapp is a partner, vice-president, and vice-chair of the Board of Directors at Williams Mullen.

NOTICE TO LAWYERS WHO PARTICIPATED IN 210D and 210FAM PLANS

The sponsor of 210D and 210Fam plans has voluntarily withdrawn the registrations of these plans and has stopped offering the plans in North Carolina. The plans are no longer registered to operate in NC and no NC licensed attorney can participate.

Profiles in Specialization—Family Law Specialty Committee

By Denise Mullen, Assistant Director of Legal Specialization

Eleven specialty committees make up the lifeblood of the lawyer certification program in North Carolina. Much like the State Bar, the program is governed by lawyers who volunteer their time. Each committee is made up of seven lawyers who are board certified and provide oversight of the certification process for their specific practice area. This includes tasks ranging from evaluating applications for certification and recertification to drafting and grading exam questions. The program would not exist without their devotion and hard work.

Robert Ponton, a board certified specialist in family law since 1993, recently completed a six-year term on the family law specialty committee and was selected by the Board of Legal Specialization to receive the 2013 Howard L. Gum Service Award in recognition of his dedication to and leadership of the family law committee as chair for the past year. Robert's comments on committee service follow, along with comments from some of the other members of the Family Law Specialty Committee. Also serving on the committee are family law specialists: Eugene M. Carr, Hendersonville; Dallas C. Clark, Greenville; Elizabeth G. Hodges, Charlotte; Jill S. Jackson, Raleigh; Jon B. Kurtz, incoming chair, Winston-Salem; Barbara R. Morgenstern, Greensboro; and Charles (Whit) Clanton, Raleigh.

Q: How much time do you spend on committee work each year?

Jon Kurtz: Our committee typically spends one full day revising the exam, one full day grading the exam, and several additional hours reviewing applications for certification and for recertification. This year, as the committee chair, I also spent two days in psychometric training and in meetings with the Board of Legal Specialization and other committee chairs. Each year we also spend several hours dealing with exam regrading issues.

Q: Which committee responsibility takes up the most time or energy?

Jill Jackson: I believe that the most challenging part of committee work is the process of updating the exam. We try to keep track of questions that were problematic from the prior year or that might need updating, and then we write new questions to replace those. The process of writing new questions is the most difficult because we need to be sure that we are testing substantive law and that the questions are clear.

Q: What is your most favorite and/or least favorite committee responsibility?

Dallas Clark: Most favorite—writing the exams, trying to make the questions as close to perfect as possible; least favorite—vetting the applications, as to whether CLE should be approved, or as to whether the peer evaluations are up to muster.


Ponton

Robert Ponton: Writing the exam questions and working with the other members of the committee is my favorite responsibility. The dedication of the committee members is inspirational and the breadth of knowledge is amazing.

Q: How does your committee function as a group? How do you discuss difficult application or exam scoring issues?

Dallas Clark: To a large extent, some of the process is very collaborative, and I have learned a great deal just from listening to the observations of fellow committee members.

Robert Ponton: This process has been the most gratifying. We grade the questions that we write, meeting shortly after the exam to grade. This year we had over 20 applicants. We worked together and followed up via email on various exam issues. The dedication of the committee and the seriousness with which they approach the task is great.

Q: How do you view the committee's role in the specialization program as a whole?

Jill Jackson: The committees are absolutely vital to the specialization program. We take our role very seriously and work hard to be sure we prepare a challenging but fair exam.


Clanton

Whit Clanton: The committees in each specialty are the gatekeepers of the program. Because they are responsible for applying the standards for certification, they are ultimately responsible for what certification means to the public.

Barbara Morgenstern: The committee's role is vital to the process. If we don't do our job well in testing applicants for their knowledge of family law or ensuring proper credit is given for an exam question, the specialization accreditation becomes meaningless.

Q: How does your committee evaluate peer review responses?

Jon Kurtz: Peer responses are important. We want to see evidence that an applicant is well respected in their field and that other attorneys consider the applicant as qualified for status as a specialist.

Robert Ponton: We divide up the applications and individual recommendations. This is a difficult process requiring judgment.


Morgenstern

Barbara Morgenstern: We read them and if questions arise, follow up with a telephone call to the reference or to other judges or specialists in the applicant's geographical area of practice for additional information or clarification.

Q: What have you learned about the study of psychometrics (exam statistics)?


Jackson

Jill Jackson: We (the committee) have given careful thought to whether we are testing what we intend to test with each question. We think about psychometrics [in order to understand] people's responses to the exam questions, and we try to revise/update the exam each year if it seems as though people are answering our questions differently than what we intended. We made considerable revisions to our exam several years ago—because of what we learned about psychometrics—to really focus the exam on what we want to test for family law specialization.

Q: How does your committee write exam questions?

Jon Kurtz: We attempt to prepare a broad based exam that covers the major issues that a specialist would encounter in a family law practice. We want to make certain that an applicant understands the basics of family law, but that they can also recognize how to apply those foundations to complex legal issues. One common source for questions is the various appellate decisions that are published for several years prior. These can provide fact patterns that are important for practitioners to recognize. We each submit new questions every year and everyone on the committee reviews those together. We want to be sure that the question (and the model answer) is correct, and make sure that the question is fair and tests an important concept. We will frequently go through several drafts before finalizing a question for the exam.

Q: How does your committee select topics for exam questions?

Jill Jackson: We focus more of the questions on the "big" topics of family law and try to cover the range of "big" issues in each topic; but we also look to the list of topics provided to applicants by the Bar and include questions from a range of other "minor" topics. For example, we may not include as many questions about domestic violence (DV) as about equitable distribution (ED), because DV is less prevalent in family law than ED. But we do include some questions about DV because we feel a specialist should be knowledgeable about all possible areas of family law.

Barbara Morgenstern: We try to test areas where the law has recently changed, either statutorily or by case law, and to reach a nice balance of questions on the areas tested.

Q: Has membership on the committee made you a better specialist?

Dallas Clark: It certainly has. It has kept me on my toes.

Jill Jackson: Absolutely. I learn something new or think about something in a different way every time we get together.

Q: What would you say to encourage other lawyers to pursue family law certification?

Jill Jackson: I say go for it—the exam is

CONTINUED ON PAGE 43

Congratulations to the Newest Specialists

Bankruptcy
Terry Duncan, Consumer, Charlotte
Lance Martin, Business, Asheville

Appellate
Jaye Elizabeth Bingham-Hinch, Raleigh
Kari R. Johnson, Raleigh
Michael Duane Jones, Charlotte

Criminal
John Cox - Juvenile Delinquency Criminal Law, Graham
Nardine Guirguis - Federal/State Criminal Law, Raleigh
Geeta Kapur - Juvenile Delinquency Criminal Law, Durham
Hayes Ludlum - State Criminal Law, Warsaw
Valerie Pearce - Juvenile Delinquency Criminal Law, Charlotte
Barbara Rynne - State Criminal Law, Charlotte
Michael Stading - State Criminal Law, Charlotte
Ryan Watson - State Criminal Law, Charlotte
Julie Boyer Willaford - Juvenile Delinquency Criminal Law, Roxboro
Mary Wilson - Juvenile Delinquency Criminal Law, Raleigh
Eric Zogry - Juvenile Delinquency Criminal Law, Raleigh

Elder Law
Lawrence Craige, Wilmington
E. Wyles Johnson, Kinston
Letha McDowell, Virginia Beach, VA
Anthony Nicholson, Durham

Estate Planning
Zachary Lamb, Asheville
Ray D. Munford Jr., Raleigh

Family
Walker Lee Allen II, Greenville
Ruth Bradshaw, Winston-Salem
Laura Burt, Charlotte
Tom Bush, Charlotte
Nicholas Cushing, Charlotte
Melissa Essick, Raleigh
Frank Hiner, Elizabeth City
Evan Horwitz, Raleigh
Irene King, Charlotte
Lauren Lewis, Charlotte
Justin Mauney, Raleigh
Randolph Morgan III, Raleigh
Shelia Passenant, Charlotte
Sundee Stephenson, Beaufort
Gene Tanner, Raleigh
Hillary Whitaker, Burlington
Alicia Whitlock, Raleigh
Juliana Woodmansee, Durham

Immigration
Hannah Little, Charlotte
Janeen Hicks-Pierre, Charlotte
Jeff Widdison, Wilmington

Real Property
Rebecca Reinhardt - Residential and Commercial Real Property Law, Asheville

Social Security
Benjamin Burnside, Greensboro

Workers' Compensation
Joseph Hamrick, Charlotte
Joel Hardison, Raleigh
Jason McConnell, Charlotte
J. Gregory Newton, Raleigh
John Prather, Raleigh
Martha Ramsay, Charlotte
David Vtipil, Raleigh

These lawyers met all requirements and were certified on November 20, 2012.

"Who You Gonna' Call?" New Admittee's FAQs, Part Two

By Suzanne Lever

Welcome again to the North Carolina State Bar! Hopefully you have read the first article in this series and have been anxiously awaiting the second installment.

Here it is!

But first, let's recap:

The North Carolina State Bar ("Bar") is the state agency responsible for regulating the practice of law in North Carolina. The Bar website, along with the North Carolina State Bar *Journal*, is a place to:

- Learn more about the regulation of the legal profession in North Carolina;
- Review proposed ethics opinions and proposed amendments to the rules and regulations of the Bar;
- Research the existing rules, regulations, and ethics opinions of the Bar; and
- Catch up on the latest news and information from the Bar.

Not sure where to find the information you need? Check out our Bar Staff Contacts page: ncbar.gov/contacts/c_staff.asp.

Now for the new stuff.

To get you started, I have compiled a Q&A of the questions most frequently asked by new lawyers seeking advice from the Bar.

FAQs Relating to Getting Ethics Advice

Q: How do I get a question of legal ethics answered?

Any member of the Bar may request a ruling from the Bar on his or her own contemplated professional conduct. You may call or email the Bar. If you call the Bar, you should tell the receptionist that you have an ethics question. Your call will be directed to one of the assistant ethics lawyers. To avoid "telephone tag," you may want to email your inquiry to Suzanne Lever (slever@ncbar.gov) or Nichole McLaughlin (nmclaughlin@ncbar.gov).

If you have a question relating to the conduct of *another* lawyer, you must write to the Bar for a response and send a copy of the letter to the lawyer whose conduct is at issue. This will give the other lawyer an opportunity to comment upon the inquiry. Also, inquiries that involve novel or controversial questions of legal ethics will not be answered over the telephone. You will be asked to put the question in writing and mail it to the Ethics Committee for its consideration at its next quarterly meeting. The records of the Ethics Committee are public. Therefore, you may want to express your ethics question in a hypothetical format.

Q: Are there any limitations on the types of ethics inquiries that I may submit to the Bar?

Yes. An opinion will not be provided if the material facts of the inquiry are in dispute or the inquiry requires an interpretation of law rather than legal ethics. Also, inquiries relative to a conflict of interest that is the subject of a motion to disqualify pending before a tribunal will not be answered unless the tribunal requests the opinion of the Bar.

A written inquiry that discloses a possible violation of the Rules of Professional Conduct may be referred to the Grievance Committee of the Bar for investigation. If an oral inquiry discloses a possible violation of the Rules, the caller may be encouraged to report the matter to the Bar.

Q: If I seek ethics advice, either over the telephone or via email, is the information provided and the advice received confidential?

Yes. Information received by designated staff counsel from a lawyer seeking an informal ethics advisory is confidential information pursuant to Rule 1.6(c) of the Rules of Professional Conduct. Such information may only be disclosed as allowed by Rule 1.6(b), and as necessary to respond to a false or misleading statement made about an informal ethics advisory. In addition, if a lawyer's response to a grievance proceeding relies in whole or in part upon the receipt of an informal ethics advisory, confidential information may be disclosed to Bar counsel, the Grievance Committee, or another appropriate disciplinary authority.

Q: If I get an opinion over the phone from a State Bar ethics lawyer, may I rely upon the advice I receive? Is the opinion binding on the State Bar?

Informal oral ethics opinions (given by phone or email) are intended to provide feedback and guidance to lawyers who are trying to deal with difficult ethical dilemmas. Although an opinion of a State Bar ethics lawyer is not a formal ethics ruling because it cannot be reviewed and approved by the Ethics Committee, you may rely upon the advice that you receive. Like an emailed informal ethics opinion, an opinion of a State Bar ethics lawyer is not binding upon the Grievance Committee if a grievance is subsequently filed. Nevertheless, if a grievance is subsequently filed against you, the fact that you sought and followed the advice of a State Bar ethics lawyer will be the evidence of your good faith effort to comply with the Rules.

FAQs Relating to Advertising

Q: Will a State Bar ethics lawyer review a legal advertisement before it is published or broadcast?

Yes. Although prior review of an advertisement is *not required* by the Rules, the State Bar ethics lawyers will provide an advance informal oral or email opinion on whether an advertisement complies with Rules 7.1 through 7.5 of the Rules of Professional Conduct. The advertisement may be submitted in the form of written copy, tape recording, or, if it is a television advertisement, video, DVD, or a link to a website. Frequently the

State Bar ethics lawyer will recommend changes to the advertisement to help the lawyer avoid statements that, although not clearly misleading, may have a tendency to mislead. Like other verbal or emailed informal ethics opinions, an opinion of a State Bar ethics lawyer on a legal advertisement is not binding upon the Grievance Committee if a grievance is subsequently filed. Nevertheless, compliance with the advice of the State Bar ethics lawyer is evidence of a lawyer's good faith and carries substantial weight with the Grievance Committee.

Q: May a lawyer send a targeted direct mail solicitation to potential clients?

Rule 7.3(c) allows a lawyer to solicit professional employment from a potential client known to be in need of legal services by written, recorded, or electronic communication provided the statement, in capital letters, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES" (the advertising notice) appears on a specified part of the communication. If the solicitation is by letter, Rule 7.3(c)(1) requires the advertising notice to "be printed at the beginning of the body of the letter in a font as large or larger than the lawyer's or law firm's name in the letterhead or masthead." In addition, Rule 7.3(c)(1) requires direct mail letters to potential clients to be placed in an envelope. The advertising notice must be printed on the front of the envelope, in a font that is as large as any other printing on the envelope, and the front of the envelope "shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice."

Specific questions as to lawyer advertising should be directed to Nichole McLaughlin at nmclaughlin@ncbar.gov.

FAQs Relating to a Lawyer's Relationship with Other Firm Employees

Q: What are an associate's ethical duties when a partner orders the associate to do something the associate considers improper?

A subordinate lawyer is bound by the Rules of Professional Conduct even if the lawyer acts at the direction of another person. Rule 5.2(a). However, the subordinate lawyer does not violate the Rules if the subordinate lawyer acts in accordance with the supervising lawyer's "reasonable resolution" of an "arguable" question of professional duty. Rule 5.2(b). In other words, if it is clear at the time that the actions are undertaken that it is a violation of the Rules of Professional Conduct, a subordinate lawyer cannot blindly follow the directions of a supervising lawyer and claim a "Nuremberg defense," i.e., "I was just following orders."

For example, if a subordinate is told by a supervising lawyer to file a pleading that the subordinate lawyer knows is frivolous, the subordinate would be violating the Rules of Professional Conduct if he or she files the pleading. *See* Rule 5.2, cmt. [1].

However, the subordinate lawyer does not violate the Rules if there is an "arguable" or close question about whether the supervising lawyer's directions would result in a violation of the Rules. For example, if there is a serious question about whether the interests of current clients conflict under Rule 1.7, the subordinate lawyer can rely on the supervising lawyer's reasonable resolution of the question. *See* Rule 5.2, cmt. [2].

Determining whether a directed course of action is a "reasonable resolution" of an "arguable" question of professional duty can at times be difficult, particularly for a less experienced lawyer. As a starting point, the subordinate lawyer should discuss his or her concerns with the supervising lawyer. If the subordinate lawyer is still concerned that the supervising lawyer's resolution is not "reasonable," the subordinate lawyer should talk to other partners in the firm, particularly if there is a partner designated as the "ethics counsel" or if there is an ethics committee created at the firm to resolve these questions. The subordinate lawyer may also call the State Bar ethics lawyers for guidance.

If the subordinate lawyer determines that the supervising lawyer is asking him to engage in a course of action that would clearly result in a violation of the Rules, then the subordinate lawyer must refuse to participate or assist in the matter even if refusal may result in the subordinate lawyer's dismissal from the firm.

Q: Am I responsible for the conduct of nonlawyers such as paralegals, legal assistants, and law clerks I supervise?

Nonlawyers such as student law clerks, legal assistants, and paralegals are not directly bound by the Rules of Professional Conduct. However, supervising lawyers must make reasonable efforts to ensure that the firm has effected precautionary measures and that the nonlawyer assistants' conduct is compatible with the professional obligations of the lawyer. Supervising lawyers must give nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline. The supervising lawyer can be held responsible for the ethics violations of the people he or she supervises.

Don't turn that dial! There will be one more article addressing questions frequently asked by new lawyers seeking advice from the Bar. You won't want to miss it! ■

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

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Legal Specialization (cont.)

thorough but fair, and you will be a better lawyer for having done even a modest amount of preparation. Simply rereading the statutes to prepare for the exam will make you a better, more knowledgeable lawyer.

Barbara Morgenstern: The preparation I did for the specialization exam was extremely thorough and, therefore, helpful to me in my practice. It is a great review of the law. Being able to represent to your peers, to the judges, and to the public that you have been certified as a specialist means you have achieved the highest level of expertise and gives the public and judiciary confidence in your ability and knowledge of the area of practice certification.

Whit Clanton: It is both professionally and personally very rewarding to be able to call yourself a board certified specialist in your field. Having the certification is of course beneficial in terms of what it means to potential clients and referring lawyers. Passing the test gave me a great sense of personal accomplishment, and the process of studying for the test undoubtedly made me a better family lawyer. ■

Honesty—A Key Value

By Kelly Farrow

Thomas Jefferson said, "Honesty is the first chapter in the book of wisdom." Indeed, honesty is the foundation upon which many aspects of our personal and professional lives are built. As paralegals, our professional reputations depend heavily on our honesty and integrity.

Think about an instance in your life when a person was not honest with you. How did you feel when you found out? Do you still have doubts about things he or she says? Do you feel like you could ever trust him or her completely again? Did it make you question the honesty of others in your life?

The Board of Paralegal Certification (the "board") recently revoked the certification of a paralegal based on circumstances directly related to honesty. This particular paralegal had submitted her application for recertification indicating that she had completed a six-hour continuing legal education (CLE) seminar, thus fulfilling the annual continuing education requirements for recertification. It was later discovered that she left the seminar at the lunch break, and had actually completed only 2.75 hours of CLE. Not only did she fail to complete the CLE requirements for recertification, but she also made false representations to the board by indicating on her recertification application that she had completed those requirements.

Rule .0121 of the Plan for Certification of Paralegals (27 N.C.A.C. 1G) sets out the reasons a paralegal's certification may be suspended or revoked by the board, these include: making false representations, omissions, or misstatements of material fact to the board; failing to abide by all of the rules and regulations; no longer meeting the standards for certification; violating the confidentiality agreement with regard to the certification exam; and being convicted of a crime that reflects adversely on the individual's honesty, trustworthiness, or fitness as a paralegal. The common theme that runs through all of these reasons is honesty.

The North Carolina State Bar does not have a disciplinary process for certified paralegals. It does not take complaints against certified paralegals for alleged misconduct unless they concern the unauthorized practice of law. The only disciplinary action the board may take is to suspend or revoke a paralegal's certification under the provisions of Rule .0121.

During the recent revocation hearing, the paralegal explained that she left the seminar to have lunch and then stopped at her office to send her recertification application because the deadline for renewal was a few days away. She maintained that she had intended to go back to the seminar at some time that afternoon to complete the CLE hours, but that she got busy at the office and did not have time to return to the seminar. But her recertification application—stating that she had completed six hours of CLE—had already been signed, notarized, and submitted to the State Bar.

After the State Bar notified the paralegal of the discrepancy in her completed CLE hours, she tried to rectify the situation by completing the remaining 3.25 hours of CLE required for recertification. However, by signing the recertification application, a certified paralegal "solemnly swear[s] or affirm[s] under penalty of perjury that the information in this application is true, complete, and correct." By signing and submitting a recertification application indicating that she had completed six hours of CLE, the paralegal made a false representation to the board. Thus, the board revoked her certification under the provisions of Rule .0121.

The board has revoked the certifications of only two other certified paralegals since the inception of the paralegal certification program in 2005, both for "making false representations, omissions, or misstatements of material fact to the board." One of these revocations was based on the paralegal not disclosing a prior criminal conviction, and the other was based on the paralegal misrepresenting her work experience as a paralegal and forging her attorney's signature on her application. Again, these revocations were directly related to issues of honesty.

"If you tell the truth you don't have to remember anything," Mark Twain wrote. Even though Twain's words reek of cynicism, they make a good point. Being honest can keep you out of precarious waters and on the road to career advancement. Trust can be hard to earn, but it is even harder to earn back after it is lost. ■

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

IOLTA Update (cont.)

Grantee Spotlights

We are responding to the many attorneys who have told us that they think IOLTA is one of the best and most important bar programs—the one that makes them the most proud—by including more information about the work of our grantees in Grantee Spotlights. Look for these articles published quarterly in the State Bar *Journal* and access them on our website, nciolta.org. We are focusing on work where more than one program can be highlighted. Look for these articles:

- In the winter 2012 issue: Pro Bono celebration in Charlotte by three organizations that use IOLTA funding for work involving pro bono attorneys;
- In the spring 2013 issue: Medical Legal Partnerships, an innovative program in which legal aid attorneys and doctors work together to identify and solve problems; and
- In this issue: IOLTA as grantor and collaborative efforts with the Equal Justice Alliance and Equal Access to Justice Commission. ■

Amendments Approved by the Supreme Court

On March 8, 2013, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar (for the complete text see the Fall 2012 and Winter 2012 editions of the *Journal* or visit the State Bar website):

Amendments to the Discipline and Disability Rules

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

The amendments eliminate ambiguity, add a new provision allowing the Office of Counsel to initiate a disability proceeding while a disciplinary proceeding is pending, and explain the procedure to be followed when a Disciplinary Hearing Commission panel finds probable cause to believe a defendant in a disciplinary proceeding is disabled.

Amendments to the Lawyer Assistance Program Rules

27 N.C.A.C. 1D, Section .0600, Rules Governing the Lawyer Assistance Program

The amendments eliminate consensual suspension by court order in favor of consensual transfer to inactive status by court order. The lawyer may only return to active status pursuant to a court order.

Amendments to the Procedures for Reinstatement from Inactive or Suspended Administrative Status

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

The amendments to the rules on reinstatement from inactive and from suspended status cap the CLE requirement for reinstatement of members who have been inactive or suspended for seven or more years and who have been practicing in another state or serving in the military. The amendments also clarify that CLE taken in another state may be used to offset the CLE requirement for reinstatement even if the CLE was taken more than two years prior to the petition.

Amendments to The Plan for Legal Specialization

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty, and Section .3100, Certification Standards for the Trademark Law Specialty

The amendments to the standards for the criminal law specialty provide that jury trial experience is a component of the substantial involvement standard for certification in the criminal law specialty. A new section of the Plan for Legal Specialization establishes standards for a new specialty in trademark law.

Amendments to The Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals, and Section .0200, Rules Governing Continuing Paralegal Education

The rule amendments limit to 30 days the time for appeal from a hearing panel of the Board of Paralegal Certification to the State Bar Council. The rule amendments to the rules governing continuing paralegal education clarify that law school courses are approved activities for the purpose of satisfying the continuing paralegal education requirements.

Amendments Pending Approval of the Supreme Court

At its meeting on April 19, 2013, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text see the Spring 2013 edition of the *Journal* or visit the State Bar website):

Proposed Amendments to the Rules on Election of Councilors

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

The proposed amendments, including a proposed new rule, permit judicial district bars to adopt procedures for early voting in district bar elections for State Bar councilor as long as there is appropriate notice and reasonable access to early voting locations for all active members in the judicial district.

Proposed Amendments to the Rules on Reinstatement from Administrative Suspension

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

The proposed amendments extend to one year the time period during which an administratively suspended member may be reinstated by order of the secretary of the State Bar.

Proposed Amendments to the Standards for Certification of Specialists

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

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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.**

Foreclosures Continue to Present Issues of Professional Conduct to the Committee

Council Actions

At its meeting on April 19, 2013, the State Bar Council adopted the ethics opinion summarized below:

2013 Formal Ethics Opinion 3

Safekeeping Funds Collected from Client to Pay Expenses

Opinion examines a lawyer's responsibilities when charging and collecting from a client for the expenses of representation.

Ethics Committee Actions

At its meeting on April 18, 2013, the Ethics Committee voted to send the following proposed opinions to subcommittees for further (or continued) study: Proposed 2011 FEO 11, *Communication with Represented Party by Lawyer Who is the Opposing Party*; Proposed 2012 FEO 7, *Copying Represented Persons on Email Communications*; Proposed 2013 FEO 1, *Release/Dismissal Agreement Offered by Prosecutor to Convict*; and Proposed 2013 FEO 2, *Providing Defendant with Discovery During Representation*. The Ethics Committee also voted to publish two revised proposed opinions (Proposed 2012 FEO 11 and Proposed 2012 FEO 13) and four new proposed opinions. The comments of readers are welcomed.

Proposed 2012 Formal Ethics Opinion 11
Use of Nonlawyer Field Representatives to Obtain Representation Contracts
April 18, 2013

Proposed opinion rules that a law firm may send a nonlawyer field representative to meet with a prospective client and obtain a representation contract if a lawyer at the firm has reviewed sufficient information from the prospective client to determine that an offer of representation is appropriate.

Inquiry #1:

ABC law firm employs a large staff of nonlawyers, including paralegals, assistants, and others. Among the nonlawyer staff are employees called "field representatives." When a prospective client contacts ABC, the firm sends a field representative to the prospective client's home or other location chosen by the prospective client. The field representative provides information about the firm in an effort to convince the prospective client to choose firm ABC for representation. If the prospective client agrees, the field representative provides a representation contract and obtains the client's signature on the contract. The field representation also obtains information from the prospective client concerning the representation.

No lawyer with the firm consults with the prospective client before the field representative meets with the person. No lawyer with the firm reviews the information obtained by the field representative before the field representative obtains the client's signature on the representation contract. Is ABC's use of field representatives in this manner permissible under the Rules of Professional Conduct?

Opinion #1:

No. A law firm may not send a nonlawyer field representative to meet with a prospective client and obtain a representation contract when no lawyer with the firm has reviewed the prospective client's relevant facts and circumstances to make an initial determination that an offer of legal services is appropriate.

Inquiry #2:

If a lawyer at the firm has reviewed sufficient information from the prospective client to determine that an offer of representation is appropriate, may a firm employ a field representative to meet with the prospective client and obtain a representation contract?

Opinion #2:

The Ethics Committee has previously determined that a lawyer may delegate certain tasks to nonlawyer assistants. *See, e.g.*, RPC 70, RPC 216, 99 FEO 6, 2002 FEO 9. Pursuant to RPC 216, when a lawyer delegates a task to a nonlawyer, the lawyer has a duty under the Rules of Professional Conduct to take reasonable steps to ascertain that the nonlawyer assistant is competent; to provide the nonlawyer assistant with appropriate supervision and instruction; and to continue to use the lawyer's own independent professional judgment, competence, and personal knowledge in the representation of the client. *See also* Rule 1.1, Rule 5.3, Rule 5.5.

In 2002 FEO 9 the Ethics Committee specifically determined that a nonlawyer may oversee the execution of real estate closing documents and the disbursement of the proceeds even though the lawyer is not physically present at the closing. 2002 FEO 9 states that, in any situation where a lawyer delegates a task to a nonlawyer assistant, the lawyer must determine that delegation is appropriate after having evaluated the complexity of the transaction, the degree of difficulty of the task, the training and ability of the nonlawyer, the client's sophistication and expectations, and the course of dealing with the client. The opinion holds that the lawyer is still responsible for providing competent representation and adequate supervision of the nonlawyer.

Similarly, under certain circumstances, a nonlawyer field representative may oversee the execution of a representation contract. The firm lawyer must consider the factors set out in 2002 FEO 9 and determine whether such delegation is appropriate.

The lawyer must also take precautions to avoid assisting the unauthorized practice of law. *See* Rule 5.5(d). The lawyer must instruct the field representative to disclose to the prospective client that he is not a lawyer and that he cannot answer any legal question. The lawyer must also admonish the field representative not to provide legal advice and to contact the lawyer should a legal question arise. Likewise, the lawyer must be available by some means to consult with and answer any legal questions the prospective client may have.

Proposed 2012 Formal Ethics Opinion 13
Duty to Safekeep Client Files upon Suspension, Disbarment, Disappearance, or Death of Firm Lawyer
April 18, 2013

Proposed opinion rules that the partners and managerial lawyers remaining in a firm are responsible for the safekeeping and proper disposition of both the active and closed files of a suspended, disbarred, missing, or deceased member of the firm.

Inquiry #1:

The law firm A & B, PA, was formed as a professional corporation in 1992. Lawyer A and Lawyer B were the initial shareholders in the firm. In 1993, Lawyer C joined the firm and became a shareholder. The professional corporation's articles of incorporation were amended to change the professional corporation's name to A, B & C, PA.

In 1998 Lawyer C closed a real estate transaction for a client of the firm. The file was placed among the firm's inventory of client files.

In 2008 Lawyer A and Lawyer B learned that Lawyer C had committed numerous embezzlements from the firm's trust account in a cumulative amount exceeding $1,000,000. Lawyer C (hereinafter, "C") was ousted from the firm and was subsequently disbarred. The firm's articles of incorporation were amended to change the professional corporation's name back to A & B, PA. When C was ousted from the firm, Lawyer A and Lawyer B reviewed the files for the clients of the firm whose legal services had been provided by C. When their review was completed, Lawyer A and Lawyer B instructed or allowed C to take possession of those client files. Since 2008, paper client files have been in a storage facility to which C's lawyer has the key, and electronic client files, to the extent that there were any, have been stored in a password-protected manner by C's lawyer.

The client whose transaction was closed by C in 1998 is now seeking her file, which is believed to be in the storage facility. C is in prison. C's lawyer cannot access the storage facility due to physical infirmity. However, C's lawyer is willing to give Lawyer A and Lawyer B the key to the storage facility, and to authorize them to access and retrieve the client files. Lawyer A and Lawyer B assert that they are not obligated to help the client obtain her file.

When a lawyer leaves a firm and is subsequently disbarred, what is the professional responsibility of the lawyers remaining with the firm relative to the safekeeping and proper disposition of the files of the clients of the disbarred lawyer?

Opinion #1:

The remaining lawyers in the firm are responsible for the safekeeping and proper disposition of both the active and closed files of the disbarred lawyer in their custody. As used in this opinion, "files" applies to both electronic and paper files unless otherwise indicated. Because of the risk of loss, closed files may not be relinquished to a disbarred lawyer who is no longer subject to the regulation of the North Carolina State Bar and no longer required to comply with the Rules of Professional Conduct.

Rule 1.15 requires a lawyer to preserve client property, including information in a client's file such as client documents and lawyer work product, from risk of loss due to destruction, degradation, or disappearance. *See also* RPC 209 (noting the "general fiduciary duty to safeguard the property of a client"); RPC 234 (requiring the storage of a client's original documents with legal significance in a safe place or their return to the client); 98 FEO 15 (requiring exercise of lawyer's "due care" when selecting depository bank for trust account); and 2011 FEO 6 (allowing law firm to use "cloud computing" if reasonable care is taken to protect the security of electronic client files).

If a lawyer practices in a law firm with other lawyers, the responsibility to preserve a client's property, including the client's file, is not solely the responsibility of the lawyer providing the legal services to the client. Rule 5.1(a) of the Rules of Professional Conduct requires the partners in a law firm and all lawyers with comparable managerial authority to make "reasonable efforts to ensure that the firm…has in effect measures giving reasonable assurance that all lawyers in the firm…conform to the Rules of Professional Conduct."

The professional responsibilities of the partners and the lawyers with managerial authority relative to the files of the firm are the same, regardless of whether the lawyer has departed the firm because of suspension, disbarment, disappearance, or death.[1] The lawyers are responsible for (1) ensuring that any open client matter is promptly and properly transitioned to the lawyer of the client's choice, and (2) retaining possession of and safekeeping closed client files of the departed lawyer until the requirements for disposition of closed files set forth in RPC 209 can be fulfilled. *See, e.g.*, RPC 48 (explaining duties upon firm dissolution including continuity of service to clients and right of clients to counsel of their choice).

All firms should recognize the possibility of suspension, disbarment, disappearance, or death of a firm lawyer. Law firms should plan for and include in their operating procedures a means or method to access and secure all client files for which the firm would be responsible if such an event were to occur.

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.

Inquiry #2:

Do Lawyer A and Lawyer B have a duty to help a former client of the firm obtain the file relating to the legal services provided to her by C when C was a member of the firm?

Opinion #2:

Yes, when the location of a file is known, the lawyers have a duty to take reasonable measures to assist a client to obtain the file. *See* Opinion #1 and RPC 209.

Endnote

1. This opinion does not address the professional responsibilities of the firm lawyers when a lawyer leaves the firm to practice elsewhere.

Proposed 2013 Formal Ethics Opinion 4
Representation in Purchase of Foreclosed Property
April 18, 2013

Proposed opinion examines the ethical duties of a lawyer representing both the buyer and the seller on the purchase of a foreclosure property and the lawyer's duties when the representation is limited to the seller.

Editor's note: This opinion supplements and clarifies 2006 FEO 3.

Inquiry #1:

Bank A foreclosed its deed of trust on real property and was the highest bidder at the sale. Bank A listed the property. Seller entered into a contract to purchase the property.

An addendum to the Offer to Purchase and Contract ("Contract") signed by the parties states that the closing shall be held in Seller's lawyer's office by a date certain and that Seller, Bank A, "shall only pay those closing costs and fees associated with the transfer of the Property that local custom or practice clearly allocates to Seller ... and the Buyer shall pay all remaining fees and costs." Bank B is providing financing for the transaction.

Seller chose Law Firm X to close the residential real estate transaction. Law Firm X did not participate in the foreclosure of the property prior to the sale; however, Law Firm X regularly does closings for properties sold by Bank A.

Law Firm X proposes to send Buyer a letter advising Buyer that it has been chosen as settlement agent and advising Buyer that it will be representing both parties in the transaction. Law Firm X will charge Buyer $425 for the closing.

May Lawyer at Law Firm X participate in the joint representation of Buyer and Seller as contemplated by the Contract?

Opinion #1:

If a lawyer is named as the closing agent for a residential real estate transaction pursuant to an agreement such as the one set out above, the lawyer has a duty to ensure that he can comply with Rule 1.7 prior to accepting joint representation of the buyer and seller. When contemplating joint representation, a lawyer 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 cannot reasonably conclude that he will be able to provide competent and diligent representation to all clients. *See* Rule 1.7, cmt. [15]. 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 Ethics Committee has previously concluded that, under certain circumstances, it may be acceptable for a lawyer to represent the borrower, the lender, and the seller in the closing of a residential real estate transaction. *See, e.g.* CPR 100, RPC 210. Joint representation may be permissible in a residential real estate closing because, in the usual transaction, the contract to purchase is entered into by the buyer and seller prior to the engagement of a lawyer. Therefore, the lawyer has no obligation to bargain for either party. Similarly, the buyer and the lender have agreed to the basic terms of the mortgage loan prior to the engagement of the closing lawyer. However, in CPR 100, the Ethics Committee specifically stated that:

> [a] lawyer having a continuing professional relationship with any party to the usual residential transaction, whether the seller, the lender, or the borrower, should be particularly alert to determine in his own mind whether or not there is any obstacle to his loyal representation of other parties to the transaction, and if he finds that there is, or if there is any doubt in his mind about it, he should promptly decline to represent any other party to the transaction.

In addition to the above determination, Rule 1.7 requires that the lawyer obtain any affected client's informed consent to the joint representation and to confirm that consent in writing. Rule 1.7.

Comment [6] to Rule 1.0 (Terminology) provides that, to obtain "informed consent," a lawyer must "make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision." Comment [6] clarifies that, ordinarily, this will require: (1) communication that includes a disclosure of the facts and circumstances giving rise to the situation; (2) any explanation reasonably necessary to inform the individual of the material advantages and disadvantages of the proposed course of conduct; and (3) a discussion of the individual's options and alternatives.

To obtain Buyer's "informed" consent in the instant scenario, Lawyer must: (1) explain the proposed scope of the lawyer's representation; (2) disclose Lawyer's prior relationship with Seller; (3) explain the advantages and risks of common representation; and (4) discuss the options/alternatives Buyer has under the Contract, such as hiring his own lawyer at his own expense. *See* Rule 1.0, 97 FEO 8, 2006 FEO 3.

If the above requirements are met, Lawyer may proceed with the common representation. If Lawyer subsequently determines that he can no longer exercise his independent professional judgment on behalf of both clients, he must withdraw from the representation of both clients.

If Lawyer determines at the outset that the common representation will be adverse to the interests of either Buyer or Seller, or that his judgment will be impaired by loyalty to Seller, Lawyer may not represent both parties. Similarly, if Buyer does not consent to the joint representation, Lawyer may not represent both parties.

Inquiry #2:

Buyer notifies Lawyer at Law Firm X that he wants to have his own lawyer represent him at the closing. Therefore, Law Firm X intends to limit its representation to Seller. To clarify its role in the transaction, Lawyer sends Buyer an Independently Represented Buyer Acknowledgement to sign agreeing that, although Law Firm X was providing services necessary and incidental to effectuating a settlement of the transaction, including providing an opinion of title for the Buyer's policy to the title insurance company chosen by and affiliated with Bank A, there will be no attorney-client relationship between Law Firm X

and Buyer. Law Firm X informs Buyer that the charge for the closing will be reduced to $325.

May Law Firm X limit its representation to Seller and charge Buyer $325 for closing the real estate transaction?

Opinion #2:

Upon notice that Buyer wants to have his own lawyer represent him at the closing, Lawyer must first determine whether Buyer desires Law Firm X to continue to represent his interests in conjunction with his own lawyer. If Buyer desires Law Firm X to continue to represent his interests in the closing, then Law Firm X may continue to advise Buyer and the firm would not be required to adjust its fee.

If Buyer does not consent to the joint representation, Lawyer may limit his representation to Seller in the absence of a conflict of interest. Under the circumstances, it is incumbent upon Lawyer to clarify its role to Buyer. 2006 FEO 3 specifically holds that a lawyer may represent only the seller's interests in a transaction and provide services as a title and closing agent, as required by the contract of sale. There must, however, be certain robust and thorough disclosures to the buyer.

Pursuant to 2006 FEO 3, Lawyer must "fully disclose to Buyer that Seller is his sole client, he does not represent the interests of Buyer, the closing documents will be prepared consistent with the specifications in the contract to purchase and, in the absence of such specifications, he will prepare the documents in a manner that will protect the interests of his client, Seller, and, therefore, Buyer may wish to obtain his own lawyer." 2006 FEO 3.

If Lawyer limits his representation to Seller, Lawyer may not perform any legal services for Buyer. At the conclusion of the representation, Lawyer needs to consider the factors set out in Rule 1.5(a) and determine whether the fee of $325 is clearly excessive *for the services performed for Seller*.

Whether the contract to purchase the property requires Buyer to pay Lawyer's fee for *representation of Seller* is a legal question outside the purview of the Ethics Committee. However, a lawyer may be paid by a third party, including an opposing party, provided the lawyer complies with Rule 1.8(f) and the fee is not illegal or clearly excessive in violation of Rule 1.5(a). *See* RPC 196.

Similarly, Buyer's authority to renegotiate the terms of the Contract pertaining to the selection of the closing lawyer, and/or the payment of the closing costs and fees associated with the closing, are outside the purview of the Ethics Committee.

Inquiry #3:

May Lawyer provide an opinion of title to the title insurance company for Buyer's title insurance policy under the circumstances described in Inquiry #2?

Opinion #3:

In representing Seller, Law Firm X may provide an opinion on title to the title insurer sufficient and necessary to satisfy the requirements of the Contract and facilitate completion of the transaction on behalf of Seller. *See* CPR 100, RPC 210, 2006 FEO 3.

CPR 100 and RPC 210 provide that a lawyer who is representing the buyer, the lender, and the seller (or any one or more of them) may provide the title insurer with an opinion on title sufficient to issue a mortgagee title insurance policy, when the premium is paid by the buyer. CPR 100 further recommends that, because a buyer-borrower is usually inexperienced in the purchase of real estate and the securing of loans thereon, "any lawyer involved in the transaction, even though not representing the borrower, should be alert to inform the borrower of the availability of an owner's title insurance policy which is usually available to the borrower up to the amount of the loan at little or no expense to the borrower, and assist the borrower in obtaining an owner's title insurance policy."

Proposed 2013 Formal Ethics Opinion 5
Disclosure of Confidential Information to Lawyer Serving as Foreclosure Trustee
April 18, 2013

Proposed opinion rules that a lawyer/trustee must explain his role in a foreclosure proceeding to any unrepresented party that is an unsophisticated consumer of legal services; if he fails to do so and that party discloses material confidential information, the lawyer may not represent the other party in a subsequent, related adversarial proceeding unless there is informed consent.

Inquiry:

Lender requests that Lawyer's Firm serve as the substitute trustee under a note and deed of trust to commence foreclosure proceedings based on an alleged event of default. Borrower under the note and deed of trust is a limited liability company. While Firm is acting as substitute trustee, Borrower's member-manager meets with Lawyer and explains to Lawyer why he believes Borrower is not in default. Borrower is a small business and its member-manager is inexperienced in matters requiring legal representation.

During the meeting with the member-manager, Lawyer did not explain the role of the trustee or the trustee's relationship to the borrower and lender in a foreclosure. The member-manager informed Lawyer that Borrower's theory is that the note required the subject property to be cleaned and cleared, and Borrower does not believe this condition was met. Borrower's member-manager shows Lawyer pictures and other documents supporting Borrower's theory of the case during this meeting.

The foreclosure proceeding is subsequently dismissed and superior court litigation between Borrower and Lender ensues. A new substitute trustee is appointed under the deed of trust. The primary issue in the lawsuit is the same issue Lawyer and the member-manager of Borrower discussed at their meeting while Firm was substitute trustee, i.e. whether Lender fulfilled its obligations under the note to clean and clear the property.

Now that Firm is no longer the substitute trustee, may Lawyer represent Lender in the lawsuit?

Opinion:

RPC 90 provides that a lawyer who as trustee initiated a foreclosure proceeding may resign as trustee after the foreclosure is contested and act as lender's counsel. The opinion notes that former service as a trustee does not disqualify a lawyer from subsequently assuming a partisan role in regard to foreclosure under a deed of trust or related litigation. *See also* RPC 64 (lawyer who served as trustee may after foreclosure sue the former debtor on behalf of the purchaser).

The facts of RPC 90 contemplate that the trustee resigns "when it becomes apparent that the foreclosure will be contested." In the instant matter, it appears that Lawyer continued to participate as trustee in the foreclosure after he knew that it was contested. Lawyer met with the member-manager of Borrower and discussed Borrower's theory as to the issue of default. Lawyer obtained information from

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 31, 2013.

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.

the member-manager specifically related to the issue in controversy.

The responsibilities and limitations of a lawyer acting as trustee on a deed of trust arise primarily from the lawyer's fiduciary duties as trustee as opposed to any client-lawyer relationship. RPC 82. As a fiduciary, a lawyer/trustee has a duty to act impartially as between the parties and to ensure that the foreclosure is prosecuted in accordance with the law and the terms of the deed of trust. *See* RPC 82. However, the trustee's role may be unclear to an unsophisticated consumer of legal services who is unrepresented in the foreclosure. This may lead this party to make uncounseled disclosures to the lawyer/trustee on the erroneous assumption that the lawyer represents the party and has a duty of confidentiality to the party. Therefore, it is the lawyer/trustee's duty to explain the following to any party to a foreclosure that is unrepresented by counsel and inexperienced in the employment of lawyers or the mechanics of a foreclosure proceeding:

- the trustee's role is to ensure that the correct procedures are impartially followed in the prosecution of the foreclosure proceeding;
- the trustee does not represent either the lender or the borrower; and
- communications made by the lender or the borrower to the trustee will not be held in confidence and may be used or disclosed in subsequent actions between the lender and the borrower.

Lawyer failed to explain these limitations on the trustee's role to the member-manager of the LLC, which was unrepresented and apparently inexperienced in the mechanics of a foreclosure proceeding. The member-manager reasonably assumed that the disclosures he made to Lawyer would be held in confidence. Because Lawyer, in his fiduciary capacity, encouraged or allowed Borrower to confide in him without explaining the trustee's role or warning Borrower that the information could be disclosed or used, Lawyer may not subsequently represent Lender in a subsequent substantially related matter if the information Lawyer received from Borrower is material to the matter. Such a practice would constitute conduct that is prejudicial to the administration of justice. *See* Rule 8.4(d). However, Borrower's informed consent, confirmed in writing, would permit Lawyer to proceed with the representation. *See* Rule 1.7(b).

A lawyer/trustee may represent a lender against a borrower in a subsequent proceeding if the lawyer resigns as trustee upon recognizing that the foreclosure will be contested and the lawyer has not received information that may be used to the disadvantage of Borrower in the subsequent matter.

Proposed 2013 Formal Ethics Opinion 6
State Prosecutor Seeking Order for Arrest for Failure to Appear When Defendant is Detained by ICE
April 18, 2013

Proposed opinion rules that a state prosecutor does not violate the Rules of Professional Conduct by asking the court to enter an order for arrest when a defendant detained by ICE fails to appear in court on the defendant's scheduled court date.

Inquiry #1:

A defendant is an undocumented alien who is arrested for a crime. He is given a secured bond by the magistrate, placed in custody in the jail, and served with a US Immigration and Customs Enforcement (ICE) detainer. The defendant hires a bondsman to pay the secured bond and the bondsman does so. ICE comes to the jail and takes the defendant into custody, transporting him to a federal holding facility. The defendant's court-appointed lawyer brings verification of the defendant's detention by ICE to the prosecutor handling the case. Later, the defendant's lawyer appears in court on the defendant's court date and explains to the court that the defendant is in the custody of ICE. The defense lawyer asks the state to have the defendant brought to trial, enter a voluntary dismissal, or dismiss the case with leave pursuant to N.C. Gen. Stat.§15A-932.

The prosecutor asks the judge to call the defendant for failure to appear and to issue an order for his arrest pursuant to N.C. Gen. Stat.§15A-305(b)(2) which provides that "[a]n order for arrest may be issued when:...[a] defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required."

The court enters a forfeiture of the bond pursuant to N.C. Gen. Stat.§15A-544.3(a), which provides that when a defendant who was released upon execution of a bail bond fails to appear before the court as required, the court shall enter a forfeiture for the amount of the bail bond in favor of the state and against the defendant and the surety on the bail bond. Nevertheless, N.C. Gen. Stat.§15A-544.3(b)(9) provides that a forfeiture of a bail bond will be set aside if, on or before the final judgment date, "satisfactory evidence is presented to the court" that one of a number of listed "events" has occurred. That list includes the following "event" at subparagraph (vii):

> the defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains

incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

N.C. Gen. Stat.§15A-544.3(b)(9); *accord* N.C. Gen. Stat.§15A-544.5(b)(7).

If ICE decides to release the defendant from custody and there is an outstanding order for his arrest from a North Carolina court, ICE will detain the defendant until he can be released to the custody of the State.[1] *See* N.C. Gen. Stat.§15A-761.

Is the prosecutor's conduct a violation of Rule 3.8 or any other Rule of Professional Conduct?

Opinion #1:

No. Rule 3.8, on the special responsibilities of a prosecutor, prohibits a prosecutor from prosecuting a charge that the prosecutor knows is not supported by probable cause. The comment to the rule, moreover, emphasizes the prosecutor's duty to seek justice. However, there is no legal requirement that a defendant's failure to appear in court be willful. In the instant inquiry, the legal requirements for requesting an order of arrest were satisfied and there was a procedural reason for seeking the order of arrest. Therefore, although the prosecutor knows that the defendant's failure to appear is not willful, the prosecutor's exercise of his professional discretion within the requirements of the law does not violate the Rules of Professional Conduct.

Inquiry #2:

Did the judge violate the Rules of Professional Conduct or the Code of Judicial Conduct by issuing the order for arrest and forfeiting the bond?

Opinion #2:

Opining on the professional conduct of judicial officers is outside the purview of the Ethics Committee. Therefore, no opinion will be offered in response to this question.

Endnote

1. As a practical matter, however, a person who is detained by ICE is rarely released. Deportation or federal incarceration is more likely.

Proposed 2013 Formal Ethics Opinion 7
Sharing Fee from Tax Appeal with Nonlawyer
April 18, 2013

Proposed opinion rules that a law firm may not share a fee from a tax appeal with a nonlawyer tax representative unless such nonlawyer representatives are legally permitted by the tax authorities to represent claimants and to be awarded fees for such representation.

Inquiry:

A is a nonlawyer independent tax representative who has worked with Company B in seeking to achieve a reduction in the county assessment of Company B's property for *ad valorem* taxes. Under A's contract with Company B, if A is successful in achieving a reduction in the assessment, he is entitled to receive a percentage of Company B's tax savings. It is assumed that A is limiting his representation to activities that do not constitute the practice of law.

Pursuant to the contract with Company B, A is authorized to obtain counsel provided it does not increase the amount Company B is required to pay for representation.

A and Company B want to appeal to the North Carolina Property Tax Commission seeking a reduction in the assessment. A licensed lawyer is required to pursue the appeal.

With Company B's consent, may A retain Lawyer to represent Company B on the appeal and pay Lawyer a percentage of A's share of any tax savings for Company B? May Lawyer be paid out of A's share on an hourly basis?

Opinion:

Rule 5.4(a) regulates the distribution of fees that, because of the prohibition on the unauthorized practice of law, may only be earned by a lawyer. *See* 2005 FEO 6. The purpose of the prohibition, as noted in comment [1] to the rule, is to protect the lawyer's professional independence of judgment from interference from a nonlawyer. The prohibition also prevents solicitation of cases by lawyers and discourages nonlawyers from engaging in the unauthorized practice of law. *See* 2003 FEO 10.

Unless nonlawyers are legally permitted to represent taxpayer/claimants before any taxing authority, and to be awarded fees for such representation, the proposed arrangement constitutes improper fee sharing in violation of Rule 5.4(a).

The instant scenario can be distinguished from those addressed previously by the Ethics Committee in 2003 FEO 10 and 2005 FEO 6. The two prior opinions apply to nonlawyer representatives of disability claimants before the Social Security Administration (SSA). 2003 FEO 10 holds that a Social Security lawyer may agree to compensate a nonlawyer representative for the prior representation of a disability claimant before the SSA. 2005 FEO 6 provides that the compensation of a nonlawyer law firm employee who represents Social Security disability claimants before the SSA may be based upon the income generated by such representation. However, nonlawyers are legally permitted to represent disability claimants before the SSA and to be awarded fees for such representation. *See* 42 U.S.C. § 406. When generated by a nonlawyer as authorized by law, such a fee cannot be designated a "legal fee" subject to the limitations of Rule 5.4(a). *See* 2005 FEO 6.

Lawyer should negotiate his fee directly with Company B. ■

Proposed Amendments (cont.)

The proposed amendments require an applicant for initial and continued certification as a specialist to have a satisfactory disciplinary history.

Proposed Amendments to The Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The Plan for Certification of Paralegals, and Section .0200, Rules Governing Continuing Paralegal Education

The proposed amendments to the Plan provide a procedure whereby an individual whose certification has lapsed for failure to complete the requirements for renewal within the prescribed time limit may request reinstatement by the Board of Paralegal Certification. The proposed amendments to the rules on continuing paralegal education (CPE) require a CPE sponsor to apply for CPE accreditation for a program if more than five paralegals apply for individual accreditation of the program.

Proposed Amendments

At its meeting on April 19, 2013, there were no proposed rule amendments for the consideration of the council. ■

Client Security Fund Reimburses Victims

At its April 18, 2013, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $255,409.20 to 21 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $36,652.30 to an applicant who suffered a loss because of Jennifer Green-Lee of Clayton. The board found that Green-Lee was retained to close the sale of a lot from a development company to a construction company. Green-Lee failed to make all the proper disbursements from the closing proceeds. Due to misappropriation, Green-Lee's trust account balance is insufficient to pay all of her clients' obligations. Green-Lee was disbarred on August 19, 2011. The board previously reimbursed eight other Green-Lee clients a total of $233,223.43.

2. An award of $246 to a former client of Jimmy H. Joyner Jr. of Graham. The board found that Joyner was retained to handle a client's traffic ticket. Joyner failed to provide any valuable legal services for the fee paid and another attorney handled the matter for the client. The reimbursement will be paid to the attorney who handled the matter for the client. Joyner was transferred to disability inactive status on October 10, 2011. The board previously reimbursed two other Joyner clients a total of $25,235.

3. An award of $1,500 to a former client of William Noel III of Henderson. The board found that Noel was retained to handle criminal charges for a client. Noel failed to appear on the client's behalf and provided no valuable legal services for the fee paid. Noel was suspended on August 12, 2011. The board previously reimbursed four other Noel clients a total of $1,015.

4. An award of $17,222.95 to a former client of Richard W. Rutherford of Raleigh. The board found that Rutherford was retained to handle a client's personal injury matter. Rutherford settled the matter and retained funds to settle a Medicare lien. Rutherford failed to settle the Medicare lien prior to being disbarred. Rutherford's trust account balance is insufficient to pay all of his clients' obligations. Rutherford was disbarred on November 19, 2005.

5. An award of $1,140 to a former client of W. Darrell Whitley of Lexington. The board found that Whitley was retained to handle a client's personal injury matter. Whitley received med pay for the client, but failed to pay any medical providers and only disbursed a portion of the funds to the client prior to his death. Due to misappropriation, Whitley's trust account balance is insufficient to pay all of his clients' obligations. Counsel was directed to determine whether there are any medical liens prior to disbursement. Whitley died on December 6, 2011. The board previously reimbursed 14 other Whitley clients a total of $381,795.25.

6. An award of $50,000 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury claim. Whitley settled the matter without her knowledge or consent. Whitley failed to pay any of the settlement to his client or to any medical providers. Counsel was directed to resolve any medical liens prior to disbursement.

7. An award of $2,500 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and retained funds to settle a Medicare lien. Whitley failed to settle the Medicare lien prior to his death. Counsel was directed to resolve any potential lien prior to disbursement.

8. An award of $7,745.67 to a former client of W. Darrell Whitley. The board found that Whitley was retained by an executrix to handle a medical malpractice claim arising from her father's death. The client paid Whitley $10,000 to use for anticipated expenses in the claim. Whitley failed to disburse the remaining balance of the expense money to the estate after taking a voluntary dismissal of the matter. Counsel was directed to contact the clerk of superior court for direction as to this reimbursement.

9. An award of $16,949.22 to former clients of W. Darrell Whitley. The board found that Whitley was retained to handle the clients' personal injury claims. Whitley settled the matters and retained funds to pay medical liens. Whitley failed to settle the medical liens or disburse the funds to the clients. Counsel was directed to resolve any medical liens prior to disbursement.

10. An award of $14,500 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter without his client's knowledge or consent. Whitley failed to pay any of the settlement to his client or any medical provider. Counsel was directed to resolve any medical liens prior to disbursement.

11. An award of $5,994.74 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury claims arising from two accidents. Whitley settled the client's matters, but failed to make all the proper disbursements. Counsel was directed to resolve any medical liens prior to disbursement.

12. An award of $33,661.30 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury claims from an injury and an accident. Whitley settled one of the client's cases, disbursed a portion of the settlement to the client, and stated he would invest the remaining funds on the client's behalf. Whitley failed to invest or disburse the remaining funds to the client prior to his death. Whitley settled a second personal injury claim for the client without the client's knowledge or consent and failed to disburse any of the settlement proceeds to the client or to anyone on the client's behalf. Counsel was directed to resolve any medical liens prior to disbursement.

13. An award of $5,302.36 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a

CONTINUED ON PAGE 55

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

Bankruptcy Judge J. Rich Leonard Named Dean of Campbell Law—J. Rich Leonard, United States Bankruptcy Court judge for the Eastern District of North Carolina, has been appointed as the next dean of Campbell Law, effective July 15, 2013. Leonard's appointment fills the position currently held by Interim Dean Keith Faulkner. He has served as a United States bankruptcy judge for the Eastern District of North Carolina since 1992, and as chief judge from 1999 through 2006. Prior to that time, he was a United States magistrate judge (1981-1992) and clerk of court of the US District Court for the Eastern District of North Carolina (1979-1992). For more than a decade, Leonard also acted as a consultant to the US Department of State to work with judiciaries in many developing countries.

Campbell Law Graduates Lead State on February 2013 NC Bar Exam—Campbell Law graduates led all seven North Carolina law schools in first-time and overall bar passage on the February 2013 bar exam. First-time test takers from Campbell Law scored a 90% bar passage rate, while repeaters passed at a 62.5% clip. The February bar exam results continue Campbell Law's 26-year run of owning the best overall record of success on the North Carolina bar exam. That streak was solidified last July 2012 when Campbell Law led the state with a 94.53% bar passage rate.

Campbell Law Team Wins South Texas Mock Trial Challenge—Campbell Law was the winner of one of the nation's most prestigious mock trial competitions in late March, as Michael Hedgepeth, Jessica Burgess, Philip Kuhn, and Anna McNeill brought home a national championship by winning the South Texas Mock Trial Challenge in Houston, Texas.

Charlotte School of Law

Jay Conison Appointed New Dean—Charlotte School of Law welcomed Jay Conison as its new dean on April 15. Dean Conison has extensive experience in strategy, finance, business development, external affairs, and overall management of law schools. Most recently he served as dean of Valparaiso University Law School. Dean Conison's scholarly and professional work focuses on issues in legal education and the business of law schools. He is currently reporter for the American Bar Association Task Force on the Future of Legal Education and recently served as chair of the Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar.

Charlotte School of Law Earns Place on National Honor Roll for Community Service—Charlotte School of Law was one of three law schools named to the 2013 President's Higher Education Community Service Honor Roll. This designation is the highest honor a college, university, or professional school can receive for its commitment to volunteering, service-learning, and civic engagement.

Bar Pass Rate Ranked Third in the State—Charlotte School of Law's bar passage rate for first time takers on the February 2013 North Carolina bar exam was 69.8%, which ranked us third amongst the seven North Carolina law schools and above the state average of 62.4%.

CharlotteLaw Edge—Beginning Fall 2013, Charlotte School of Law will implement the CharlotteLaw Edge for incoming students—an innovative approach to preparing students to step directly into roles as practicing attorneys after law school. We are leading legal education in an exciting direction by placing a strong emphasis on experiential learning, starting on the first day of classes. This curriculum is designed to produce graduates who are not only successful on the bar exam, but also ready to "hit the ground running" in practicing law or in alternative law-related careers. In addition to legal theory, our new curriculum emphasizes practical training in the skills and knowledge required to practice law, run law practices, communicate with clients, and manage cases and transactions.

Duke Law School

Duke Law Welcomes the Following Scholars to its Governing Faculty in 2013—Mathew D. McCubbins, whose work explores the intersections of law, business, and political economy, will hold a joint appointment in Duke's Department of Political Science and Duke Law School beginning in 2014. McCubbins is now the provost professor of business, law, and political economy at the University of Southern California and director of the USC-CalTech Center for the Study of Law and Politics.

Marin K. Levy, whose scholarly interests include civil procedure, judicial administration, federal courts, remedies, and bioethics, joined the governing faculty on January 1 as associate professor of law. Levy first joined the Duke Law faculty as a lecturing fellow in 2009; she has served as a visiting associate professor of law since 2012.

Darrell A. H. Miller, whose scholarship focuses on civil rights, constitutional law, civil procedure, and legal history, will join the governing faculty on July 1. He comes to Duke from the University of Cincinnati College of Law. Prior to entering the legal academy, Miller practiced with Vorys, Sater, Seymour and Pease in Columbus, Ohio, where he specialized in complex and appellate litigation.

Elisabeth de Fontenay, whose primary research interests are in the fields of corporate law, corporate finance, and financial institutions, will join the faculty July 1 from Harvard Law School where she is a Climenko Fellow and lecturer on law. De Fontenay has practiced as a corporate associate at Ropes & Gray, LLP in Boston, special-

izing in mergers & acquisitions and debt financing.

Duke Law adds International Human Rights Clinic—Duke Law School will launch an international human rights law clinic in the next academic year. Jayne Huckerby, a prominent human rights lawyer, advocate, and teacher, will join the faculty July 1 as an associate clinical professor of law and director of the new clinic.

Elon University School of Law

Alumni Excel in the Profession—Anna Ksor Buonya, a 2010 graduate of Elon Law, testified at an April 11 Congressional hearing that examined Vietnamese government human rights violations. Buonya spoke at the hearing of the US House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations as a spokesperson and refugee policy advocate for the Montagnard Human Rights Organization. Buonya is general counsel for The Counsel of Indigenous People of Today's Vietnam.

A legal fellow at the ACLU of Pennsylvania, Elon Law alumnus Jonathan C. Dunsmoor ('10) currently oversees the *Bailey v. City of Philadelphia* project. Dunsmoor's work stems from a 2010 federal class action alleging that thousands of people each year were being illegally stopped, frisked, searched, and detained by the Philadelphia Police Department (PPD). Through this work and as part of a settlement agreement, Dunsmoor was instrumental in the development of a March 19 report indicating that the overall number of PPD stops had decreased by nearly 15% since 2010, but that approximately 45% of stops and frisks were still made without reasonable suspicion, and that African-Americans and Latinos continued to be stopped at higher rates, with 76% of the stops and 85% of the frisks targeting minorities.

Ryan Stewart, a 2009 graduate of Elon Law and attorney with Womble Carlyle Sandridge & Rice, LLP, is part of a team at his firm working with the Export-Import Bank of the United States to develop a Global Credit Express program designed to help small businesses create jobs and fuel economic growth. The program will give loans up to $500,000 to small businesses that export or plan to export goods to foreign markets. The pilot program will provide $100 million in loans and could lead to expansion of the program.

North Carolina Central University School of Law

NCCU Expands its Intellectual Property Clinic—North Carolina Central University School of Law has expanded its Intellectual Property Clinics. Under the auspices of the Certification Pilot Program of the US Patent and Trademark Office (USPTO), patent filing will be included in addition to NCCU's trademark practice. NCCU thus becomes one of only 11 law schools in the country to offer the joint program.

This move is a swift, strategic response to the announcement last year of USPTO's plan to open three regional offices—in addition to its new facility in Detroit, Michigan—to include sites in Dallas, Denver, and California's Silicon Valley. The USPTO press release made reference to the 40 million American jobs that are directly or indirectly the result of intellectual property (IP). To keep that engine humming, USPTO and the Obama Administration recognized that it had to do something about the backlog of patent applications and appeals.

"We're always seeking to provide training to our students in the areas that have the greatest employment potential, or that respond to pressing community need," said Phyliss Craig-Taylor, dean of NCCU's School of Law. "The USPTO expansion will lead to the direct hiring of dozens of highly specialized lawyers, and it could also generate greater hiring in the marketplace as a result of faster processing times at the Patent and Trademark Office."

NCCU is working to establish a pipeline of qualified students for its IP Clinic. This initiative will provide an excellent career alternative for those students with backgrounds in science and technology. Once enrolled, they will file real cases for those who are unable to pay the market rate through the USPTO. Intellectual property professors Charles Smith and Brenda Reddix-Smalls submitted the proposal for the Patent Clinic to the USPTO. Adjunct professors Vedia Jones-Richardson and Jose Cortina will supervise the Trademark and Patent Clinics, respectively.

University of North Carolina School of Law

Commencement—Seth Waxman, the 41st solicitor general of the United States and WilmerHale partner, delivered the commencement address for the class of 2013 on May 11. Waxman was nominated by President Clinton on September. 19, 1997, and took the oath of office on November 13, 1997, serving as solicitor general until January 20, 2001.

Banking Institute—The implementation of the Dodd-Frank Act, operational risk, and the Consumer Financial Protection Bureau were just some of the topics addressed at the 17th Annual Banking Institute held March 21-22 in Charlotte. The keynote speaker was James Strother, general counsel at Wells Fargo & Company.

Director Diversity Initiative—The diversity of corporate boards in North Carolina has stagnated since 2009 and lags the diversity of Fortune 100 boardrooms, according to data released by the UNC School of Law Director Diversity Initiative (DDI). As of September 30, 2012, only 12.02% of board members of the largest 50 corporations headquartered in North Carolina were female, down slightly from the 2009 report. Minorities constituted 7.08% in the 2012 study of board members, up slightly from 2009. Only 13 of the boards had at least 25% diverse membership, down from 16 boards in 2009. Up from 11 in 2009, 12 companies had no females or minorities on their boards.

Pro Bono Program—The Pro Bono Program at UNC School of Law played an instrumental part in helping The University of North Carolina at Chapel Hill earn recognition as an institution with a strong commitment to community service. UNC has been named to the 2013 President's Community Service Honor Roll with Distinction by the Corporation for National and Community Service. The law school's Pro Bono Program was one of three campus programs cited for contributing to the award.

Wake Forest University School of Law

The Wake Forest University School of Law will offer a new clinical externship program for law students beginning this summer in Charlotte. Taught by Community Law and Business Clinic Director Steve Virgil, the Carolina Externship will focus on students who are interested in practicing in a corporate or business practice following law school. "Led by Dean Blake D. Morant,

the faculty and administration of the Wake Forest Law School are dedicating new energy and thinking to how best to integrate externships and clinical programs into our curriculum," Virgil explains. "Changes in our profession demand increased experiential courses and clinical programs during law school, making this the perfect time for our school's effort." The program, which will be available for the first time during 2013 Summer Session I and begins May 28, is offered as a four credit hour graded course that involves both a class and externship placement. For the externship, students will be placed full time with firms or in-house counsel offices in Charlotte. Classes will be held at the WFU Charlotte Center. In special circumstances, placements in other cities may be available, with course work handled by distance education. The Carolina Externship offers several benefits, according to Virgil. "Students can enhance their professional network, develop practical skills, and receive course credit that will provide flexibility for their third year," he added. Ideal placements, according to Virgil, will be in-house or general counsel offices where students may expect to work on issues affecting the corporation. Students may be expected to conduct research, draft memos, review documents, or prepare materials for the office, among other duties. Charlotte-based corporations or law firms interested in hosting a summer extern as part of the program should contact Virgil at virgilsm@wfu.edu. ■

Client Security Fund (cont.)

client's personal injury matter. Whitley settled the matter, but failed to settle the client's medical lien. Counsel was directed to resolve the medical lien prior to disbursement.

14. An award of $10,000 to a former client of W. Darrell Whitley. The board found that Whitley was retained to set up and administer a family trust to benefit a client's grandchildren. Whitley misappropriated the entrusted funds, but did disburse some of his own money to four of the six grandchildren prior to his death.

15. An award of $14,433.33 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and received the settlement funds, which included med pay. Whitley disbursed a small portion of the funds to the client, but failed to pay any medical providers or settle any medical liens. A portion of the reimbursement will be paid to a medical provider that has compromised its lien and the remainder will be disbursed to the client's current attorney who will resolve any remaining liens prior to any disbursement to the client.

16. An award of $13,000 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter without the client's knowledge or consent. Whitley failed to disburse any of the settlement to the client or anyone on her behalf. Counsel was directed to resolve any medical liens prior to disbursement.

17. An award of $8,000 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and retained funds to settle a Medicare lien. Whitley failed to settle the Medicare lien prior to his death. Counsel was directed to resolve the Medicare lien prior to disbursement.

18. An award of $778 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and retained funds to settle medical liens. Whitley failed to pay all the medical liens prior to his death. Counsel was directed to resolve any medical liens prior to disbursement.

19. An award of $3,033.33 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and retained funds to settle medical liens. Whitley failed to pay all the medical liens prior to his death. Counsel was directed to resolve any medical liens prior to disbursement.

20. An award of $10,000 to a former client of W. Darrell Whitley. The board found that Whitley was retained to handle a client's personal injury matter. Whitley settled the matter and retained funds to pay medical providers. Whitley failed to disburse the remaining funds to the client or anyone on the client's behalf prior to his death. Counsel was directed to resolve any medical liens prior to disbursement.

21. An award of $2,750 to a former client of Lyle Yurko of Charlotte. The board found that Yurko was retained to research possible post-conviction remedies for the client's son. Yurko abandoned his practice without providing any valuable legal services for the fee paid. The board previously reimbursed 12 other Yurko clients a total of $103,580. ■

July 2013 Bar Exam Applicants

The July 2013 Bar Examination will be held in Raleigh on July 30 and 31, 2013. Published below are the names of the applicants whose applications were received on or before April 19, 2013. 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, 5510 Six Forks Rd. Suite 300, Raleigh, NC 27609.

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Washington, DC
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Cary, NC
Deana Adamson
Charlotte, NC
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Winston-Salem, NC
David Ahlers
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Megan Albaugh
Raleigh, NC
Ashley Alexander
Chapel Hill, NC
India Ali
Durham, NC
Ava Alim
Charlotte, NC
Robert Allison
Raleigh, NC
Thomas Allmond
Macon, GA
Timothy Allsup
Pittsboro, NC
Marcus Almond
Jersey City, NJ
Kaushal Amin
Charlotte, NC
Michael Andersen
Winston-Salem, NC
Chelsea Anderson
Greensboro, NC
David Anderson
Wilmington, NC
Tiffany Anderson
Charlotte, NC
Alyssa Andrew
Charleston, SC
Justin Angell
Raleigh, NC
Bonnie Ansley
Raleigh, NC
Brett Anthony
Pittsburgh, PA
Constance Apple
Pleasant Garden, NC
Eric Applefield
Atlanta, GA
Jessica Armentrout
Thomasville, NC
Kathleen Asquith
Chapel Hill, NC
Shanae Auguste
New Bern, NC
Hannah Autry
Raleigh, NC
Jonathan Avery
Durham, NC
Laura Azarelo
Charlotte, NC
Nadia Aziz
Charlotte, NC
George Bailey III
Raleigh, NC
Jonathan Bain
Greensboro, NC
Kelsey Baird
Lilly, PA
Katharine Baker
Chapel Hill, NC
Kamau Bandele
Raleigh, NC
Ashley Banks
Raleigh, NC
Stephanie Barlow
Raleigh, NC
Elizabeth Barnard
Durham, NC
Alane Barnes
Raleigh, NC
Lani Barnes
Mooresville, NC
Matthew Barnes
Raleigh, NC
Claude Barnhill
Cary, NC
Randall Barrier
Jacksonville, FL
James Bartorelli
High Point, NC
James Bartow Jr.
Chapel Hill, NC
Buki Baruwa
Knoxville, TN
Jillian Baucom
Cary, NC
Brandon Bauduin
Morrisville, NC
Lacey Beam
Kings Mountain, NC
Chaz Beasley
Conover, NC
Jackson Bebber
Chapel Hill, NC
Matthew Beck
Washington, DC
Cristina Becker Ellis
Lexington, VA
Derek Belcher
Raleigh, NC
Ashlee Bell
Durham, NC
Jeramick Bell
Durham, NC
Thomas Bell
Leland, NC
Jimmie Bellamy Jr
Durham, NC
Kristin Belton
Whitsett, NC
Salma Benkabbou
Charlotte, NC
Lincoln Bennett
Greensboro, NC
Jordan Benton
Winston-Salem, NC
James Bernier Jr
St Thomas, VI
Tracy Berry
Annapolis, MD
Rita Beznos
Durham, NC
Amit Bhagwandass
Chapel Hill, NC
Chelsea Binder
Charlotte, NC
Susanna Birdsong
Washington, DC
Emily Black
Chapel Hill, NC
Joseph Blackwell
Charlottesville, VA
Andrew Blair
Raleigh, NC
Courtney Blake
Charleston, SC
Naiema Blanchard
Raleigh, NC
Joan Blazich
Holly Springs, NC
Michelle Bleda
Winston-Salem, NC
Jonathan Bogues
Durham, NC
Marvilyn Bohannan
Mebane, NC
Megan Boler
Charlotte, NC
Jocelyn Bolton-Wilson
Cary, NC
Candace Bond
Durham, NC
Brandon Boone
Charlotte, NC
Martha Bordogna
Winston-Salem, NC
Sarah Boshears
Mebane, NC
Tony Botros
Cary, NC
James Bowens
Winterville, NC
Mark Bowers
Carrboro, NC
Michael Bowers
Tega Cay, SC
Walter Bowers
Harrisburg, NC
Michael Bowlin Jr.
Charlotte, NC
Alexander Bowling
Wake Forest, NC
Kathryn Bowman
Cary, NC
Kevin Boxberger
Durham, NC
Ryan Boyce
Charleston, SC
Sage Boyd
Raleigh, NC
Clayton Bradley
Charlotte, NC
Kathleen Bradshaw
Chapel Hill, NC
James Brandhorst III
Charlotte, NC
Andrew Brandt
Huntersville, NC
Trevor Brandt
Raleigh, NC
Kathryn Brausch
Washington, DC
Kyle Brazile
Durham, NC
William Breslin
Delray Beach, FL
Matthew Brickey
Mocksville, NC
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Raleigh, NC
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Charlotte, NC
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Dana Brinkley
Raleigh, NC
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Chapel Hill, NC
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Charleston, SC
Margaret Brooks
Charlotte, NC
Stuart Brooks
Greenville, NC
Andrew Brown
Raleigh, NC
Ann Brown
Tuscaloosa, AL
Brandon Brown
Charlotte, NC
Brittany Brown
Morrisville, NC
Kimberly Brown
Arden, NC
Meghan Brown
Sanford, NC
Ryan Brown
Greensboro, NC
Susan Brown
Greensboro, NC
Timothy Broyhill
Winston-Salem, NC
Dylan Bruce
Gainesville, FL
Justin Bryant
Mount Airy, NC
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Charlotte, NC
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Raleigh, NC
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Greensboro, NC
Kathryn Buckner
Chapel Hill, NC
Charlotte Buell
Charlotte, NC
Lindsey Bullard
Raleigh, NC
Brandi Bullock
Durham, NC
Kate Bullock
Winston-Salem, NC
Jesse Bulluck
Charlotte, NC
Ashlee Burgess
Raleigh, NC
Jessica Burgess
Raleigh, NC
Tyler Burgess
Cary, NC
Susan Burgin
Oxford, MS
Erin Burke
Raleigh, NC
Sherea Burnett

Graham, NC
George Burnette Jr.
Raleigh, NC
James Burnham
Delray Beach, FL
Sarah Burris
Albemarle, NC
Kimberly Byrd
Kannapolis, NC
Amanda Byrum
Chapel Hill, NC
Blair Byrum
Matthews, NC
Katherine Cadwallader
Raleigh, NC
Thomas Cadwallader
Durham, NC
Robert Caison
Selma, NC
Taylor Callicutt
Charlotte, NC
Casey Calloway
Charlotte, NC
Christopher Campbell
Waxhaw, NC
Douglas Campen
Raleigh, NC
Morgan Canady
Greensboro, NC
Laura Candler
Atlanta, GA
Damian Cannon
Chapel Hill, NC
Andrew Cappelletti
Chapel Hill, NC
Brittany Capps
Ruffin, NC
Darren Caputo
Saint Petersburg, FL
Stacey Carless
Raleigh, NC
Keith Carney
Raleigh, NC
Jennings Carpenter
Chapel Hill, NC
Drew Carroll
Waxhaw, NC
Stephen Carruthers
Raleigh, NC
Joseph Caruth
Greensboro, NC
Katherine Carver
Carrboro, NC
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Charlotte, NC
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Charlotte, NC
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Raleigh, NC
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Brasstown, NC
Justin Chin
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Yolanda Chitohwa
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Grace Cho
Washington, DC
John Choi
Hendersonville, NC
Nicholas Christie
Durham, NC
Kathleen Chuchra-Zbytniuk
South Royalton, VT
Kaitlin Clardy
Morgantown, WV
Holden Clark
Gastonia, NC
George Clark II
South Royalton, VT
Louis Clarke
Lexington, VA
Bonnie Claxton
Cullowhee, NC
James Clayton
Raleigh, NC
Justin Clayton
Raleigh, NC
Melanie Clayton
Raleigh, NC
Sean Clayton
Chapel Hill, NC
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Charlotte, NC
Brian Clifford
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Noah Coakley
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Kimberly Cochran
Columbia, SC
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Rural Hall, NC
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Katherine Cohen
Cambridge, MA
Brandon Cole
Charlotte, NC
William Coleman
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Jeremy Collins
Durham, NC
Sarah Collins
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Brian Combs
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Vivian Connell
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Tamira Conner
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Durham, NC
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Clark Cooper
Cary, NC
Micah Cooper
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Michael Cooper
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Deaven DeMarco
Arlington, VA
Sarah Demarest
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Scott Dennis
Macon, GA
Anthony DeRosa
Cary, NC
Thomas DeVita
Washington, DC
Evan DeWandler
Richlands, VA
Brett DeWitt
Gibsonville, NC
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Chris Diaz
Charlotte, NC
Christopher Dietzel
Durham, NC
Tara DiJohn
Gainesville, FL
David Dill
Clayton, MO
Darcel Dillard
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Anna Dowdy
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Reine Duffy
Chapel Hill, NC
Melinda Dugas
Bunker Hill, WV
Jordan Duhe
Raleigh, NC
Karen Dula
Charlotte, NC
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Charlotte, NC
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Raleigh, NC
Krystle Edwards
Raleigh, NC
Asa Edwards IV
Charlotte, NC
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Chapel Hill, NC
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Durham, NC
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Winston-Salem, NC
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Ivy Gibson
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Cornelius Graves
High Point, NC
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Charlotte, NC
Ebony Green
Durham, NC
William Green
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Columbia, SC
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Winston-Salem, NC
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Stedman, NC
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Grundy, VA
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Pilot Mountain, NC
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Wilkesboro, NC
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Chicago, IL
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Chicago, IL
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Nikol King
Matthews, NC
William King
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Boone, NC
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Kelly Lantz
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Winston-Salem, NC
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Portland, OR
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Raleigh, NC
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Durham, NC
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Durham, NC
Nathaniel Lemons
Belmont, NC
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Tampa, FL
Sabrina Leshore
Raleigh, NC
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Charlotte, NC
Todd Leverette
New York, NY
Alyssa Levine
Raleigh, NC
Michael Levine
Chattanooga, TN
Brian Lewis
Sanford, NC
Gabrielle Lewis
Raleigh, NC
Gwendolyn Lewis
Greensboro, NC
Kareemah Lewis
Atlanta, GA
ThienTrang Lieng
Charlotte, NC
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Gastonia, NC
Elizabeth Ligon
Durham, NC
Patrick Lineberry
Durham, NC
Brent Liner
Raleigh, NC
Elizabeth Linzan
Charlotte, NC
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Cleveland Heights, OH
Michael Litrenta
Key West, FL
Herman Little
Raleigh, NC
William Little
Mount Holly, NC
Brian Litwak
Chapel Hill, NC
Meghan Lock
Raleigh, NC
Charity Loftis
Timberlake, NC
Lewis Lohr
Chapel Hill, NC
Harry Lorello
Raleigh, NC
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Zebulon, NC
Davis Love
Columbia, SC
Jonathan Lovejoy
Raleigh, NC
Michael Lovejoy
Raleigh, NC
Bryce Lowder
Charlottesville, VA
Emily Lowder
New Orleans, LA
Jonathan Lucas
Durham, NC
Allison Luke
Asheville, NC
Mignon Lunsford
Birmingham, AL
Amanda Lutz
Raleigh, NC
Katrice Lyles
Chapel HIll, NC
Marc Macenko
Durham, NC
Steven MacGilvray
Greenville, NC
Eric Maddox
Winson-Salem, NC
Megan Maguire
Charlotte, NC
Adam Mallon
Apex, NC
Jennifer Malm
Charlotte, NC
Ian Mance
Durham, NC
Debra Manduley
Raleigh, NC
Shahram Mangouri
Boston, MA
Brendan Manning
Charlotte, NC
Alexandra Manno
Charlotte, NC
John Manzo
Southern Pines, NC
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Watertown, CT
Matthew Mariani
Raleigh, NC
Nichele Marks
Chicago, IL
Courtney Marlowe
Taylorsville, NC
Collier Marsh
Lexington, KY
Charles Marshall Jr.
Columbia, SC
Kimberly Marston
Lexington, VA
Jon Martin
Boston, MA
Joshua Martin
Oakland Park, FL
Farris Martini
Chapel Hill, NC
David Mason
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Stephanie Mason
Charlotte, NC
Jonathan Massell
Chapel Hill, NC
Simon Massie
Charlotte, NC
Madeline Masters
Richmond, VA

Victoria Mathias
Athens, GA
Andrea Matt
Raleigh, NC
Kathryn Maultsby
Greensboro, NC
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Durham, NC
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Chapel Hill, NC
Laurel Maynard
Charlotte, NC
Tyler Mays
Matthews, NC
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Winston-Salem, NC
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Palmdale, CA
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Jacob McDonald
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Durham, NC
Andrew McDuffy
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Dixon McKay
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Belmont, NC
Candace McKnight
Raleigh, NC
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Garner, NC
Elizabeth McLean
Morrisville, NC
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Chapel Hill, NC
Katherine McMillen
Wilmington, NC
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Eden, NC
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Ellerbe, NC
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Morgan Messick
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Tabitha Messick
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Yokohama,
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