THE NORTH CAROLINA STATE BAR

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An Update on Legislation and Litigation

By Ronald L. Gibson

In the Fall 2014 *Journal*, President Ron Baker's message discussed the status of important litigation and legislation affecting the practice of law, namely *LegalZoom.com, Inc. v. The North Carolina State Bar*, No. 11-CVS-15111 (Wake County), and House Bill 663.[1] Ron's message reviewed the events of summer 2014 leading to an agreement with LegalZoom to support a revised version of House Bill 663:

- The State Bar was advised the afternoon before the bill, entitled "Commodities Producer Protection," would be considered in Senate Judiciary Committee 1 the next morning. The bill had crossed over to the Senate in May 2013, had been stripped of its agricultural content, and was amended to substantially alter the definition of the practice of law. The bill as it existed would have approved LegalZoom's method of operation in North Carolina.
- The chair of the State Bar's Authorized Practice Committee, Mike Robinson of Winston-Salem, appeared before the Senate Judiciary Committee the next morning and described why the State Bar opposed the bill. The bill was voted out of the committee with a favorable report.
- The State Bar councilors and past-presidents contacted their local representatives and the legislative leadership to oppose the bill. Other lawyers also contacted their legislators. The bill was removed from the Senate calendar and sent to the Senate Rules Committee.
- The legislative leadership urged the State Bar and LegalZoom to confer in an effort to agree on language acceptable to both sides. The judge presiding over the pending case had already directed the parties to confer.
- The State Bar prepared and submitted proposed language to LegalZoom, which was rejected. The parties conferred a number of times, including a mediated settlement conference, and ultimately LegalZoom accepted the State Bar's proposed language with minor revisions, and agreed to support amending House Bill 663 by substituting the agreed upon language and settling the pending litigation by agreeing to conform its business practices to the proposed new statute. The proposed new language was not introduced, and the legislature did not take further action on the bill.

After the legislature adjourned last summer without further action on the bill, the State Bar approached LegalZoom about resolving the litigation by consent judgment using the language in the proposal submitted to the legislature. No agreement was reached.

The Dental Board Case

On February 25, 2015, The United States Supreme Court issued its opinion in *NC State Board of Dental Examiners v. FTC*.[2] The State Bar had been involved in the *Dental Board* case since the Fourth Circuit Court of Appeals affirmed the FTC decision by filing amicus briefs in support of the petition for rehearing, in support of the petition for *certiorari* and on the merits. The Dental Practice Act provides that the Dental Board is "the agency of the state for the regulation of the practice of dentistry," not unlike the Chapter 84 regulatory framework for the practice of law.[3] North Carolina dentists complained to the board that nondentists were charging lower prices for teeth whitening services than charged by dentists. The Dental Act does not specify that teeth whitening services is "the practice of dentistry." The board issued official cease and desist letters to nondentist teeth whitening service providers, product manufacturers, and others, warning that the unlicensed practice of dentistry is a crime. The Supreme Court found that this and other related board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Supreme Court held that the Dental Board could not assert the defense of state-action antitrust immunity since a controlling number of the board's decision-makers are active market participants (dentists) in the occupation the board regulates, and activities of the board are not subject to "active supervision by the state." At a minimum, the *Dental Board* opinion requires that the state supervision must include the substance of the decision and not just the process to reach it; the supervisor must have the right to veto or modify the decision; and the state supervisor cannot be an active market participant.

The State Bar officers and counsel conferred immediately after the *Dental Board* decision was announced to consider its implications for regulation of the practice of law. Most functions of the State Bar do not raise competitive concerns. The North Carolina Supreme Court reviews and approves or disapproves our rules and regulations. The disbarment or suspension of an attorney requires a hearing before the Disciplinary Hearing Commission, which is a separate adjudicative body whose decisions are subject to review by the appellate courts.

In the area of the unauthorized practice of law, there are a limited number of instances where regulation by the State Bar might have any effect on competition. We concluded from our review of the State Bar's regulatory processes that there is clear authority to regulate the practice of law, to set out and enforce rules of discipline, and to prevent the unauthorized practice of law. However, the definition of the practice of law was written long before the advent of the internet. There is a need to update the definition of the practice of law to recognize that there is a difference between providing forms and scriveners' services, which are lawful, and creating legal documents based on information provided by the consumer, which is prohibited by Chapter 84.

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Philomathia

By L. Thomas Lunsford II

My old friend Louis Allen attained a measure of fame early in his legal career by successfully deploying the Andy Griffith defense on behalf of his criminally accused clients. Understanding that in the last few decades of the twentieth century most North Carolinians were familiar with and approving of the moral lessons of *The Andy Griffith Show*, Louis was on several occasions able to find episodes that, when summarized in the light most favorable to his client at closing argument, appeared to compel a not guilty verdict. Among the best stories for his purposes were those that focused upon the relationship of father and son. Prototypically, some mischief would occur in Mayberry and suspicion would fall on Opie, Andy's little boy. Andy, despite his status as the town's only dependably sensible individual, would accept the common wisdom and jump to the conclusion that his child was "guilty." Inevitably, the folly inherent in rushing to judgment was demonstrated powerfully—and sentimentally—to the television audience after the final commercial when the actual perpetrator was unmasked. Not surprisingly, the lesson was not lost on the people of North Carolina, virtually all of whom regularly tuned in, had seen the episode in question many times, and knew what was going to happen long before it happened, fictionally speaking. For a gifted storyteller like Louis, it was easy to find in such parables the essence of reasonable doubt. No juror in that generation, when skillfully reminded of Andy's awful mistake and the miscarriage of justice so narrowly avoided, could fail to understand that things are not always as they appear, and that innocence ought to be presumed rather than guilt.

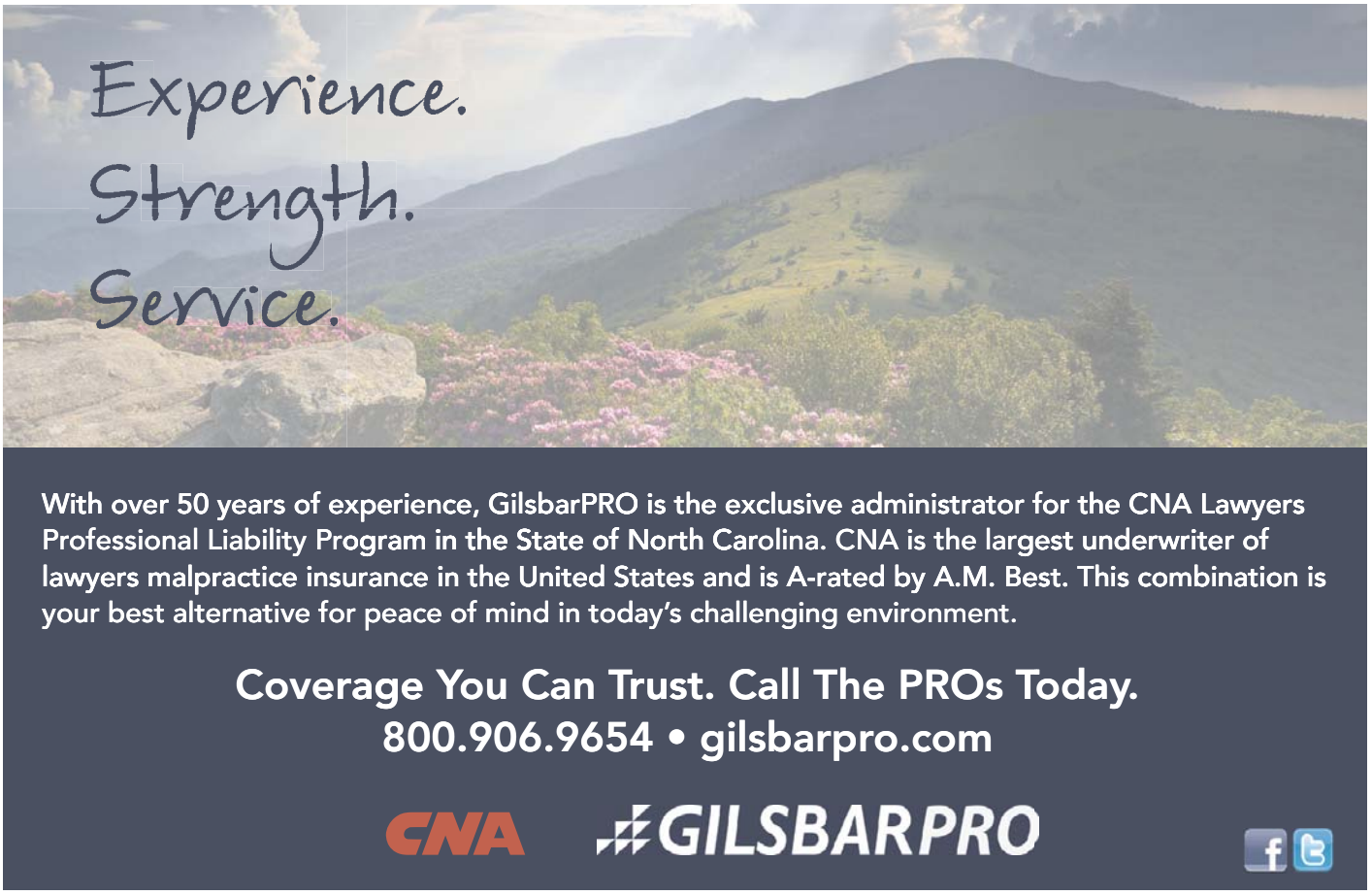
Louis, who is now the federal public defender in the Middle District, hasn't used the Andy defense in quite a while. He doesn't think it would be very effective anymore. The moral lessons are still cogent, of course, but the emotional resonance of the stories has been somewhat diminished by the fact that our experience of the old television program is no longer universal. In any given venire, there are now relatively few folks who know and love the people of Mayberry, or would even care if Opie were wrongfully convicted.

Although the Andy defense may have outlived its usefulness, I think it would be wrong to suppose that the program from which it sprang has nothing left to teach us. In that regard, I'm reminded of an episode that centered upon Mayberry Union High School's Class of '45. In contemplation of a class reunion, Sheriff Andy Taylor and Deputy Barney Fife felt called upon to leaf through their high school yearbook. The entry underneath Andy's photograph recited that, among other distinctions, he had belonged to the Philomathian Society. When queried as to what exactly went on in that organization, Andy reminded his friend that it was a group of people who cut out "current events" from the newspaper and pasted them in a scrapbook. He recalled that Barney had been "up for membership" but had not been selected, and had "cried."

For me, the value of that story lies not so much in acknowledging the heartache of adolescent rejection, but in recognizing the importance of "current events." Each quarter the State Bar Council meets and considers dozens of matters of significance to the legal profession and the people of North Carolina. The decisions resulting from these deliberations are properly viewed as "current events" and a great many are reported in the *Journal*. Unfortunately, the number of such items is so great that the average reader is frequently overwhelmed and often abandons his or her survey immediately after perusing the disciplinary report—and ascertaining that he or she is not in it. Allow me to suggest that there is a better way. Why not start your reading with the executive director's article, an often astonishing piece of journalism that recurs each quarter under the enigmatic caption, "State Bar Outlook." Although the Outlook is routinely overlooked by most lawyers, it is absolutely Philomathian in its dedication to "cutting out and pasting in" the State Bar's most important current events. To be sure, the author occasionally belabors boring topics like *pro hac vice* admission and his childhood in monographic fashion. But he is just as likely to identify sensational issues that really ought not to be missed by the busy attorney. As proof of that, please consider the following matters that relate to the law of professional responsibility and membership in the North Carolina State Bar.

Proposed 2014 FEO 1—*Protecting Confidential Client Information when Mentoring.* This proposed ethics opinion is published for comment elsewhere in the *Journal*. It is intended to make clear the circumstances under which a lawyer can ethically allow a law student or new lawyer he or she is mentoring (a "protégé") to sit in on a private client conference. Although the opinion is by its terms supportive of mentoring and permissive of such encounters, it recognizes that the presence of a protégé at a client conference could result in a waiver of the attorney-client evidentiary privilege. This is because the protégé is typically not an agent of the mentor, but is simply an observer who is not engaged in the rendition of legal services. Recognizing that it is not the lawyer's prerogative to jeopardize unilaterally the client's confidential information, the opinion would require that the mentoring lawyer obtain the client's informed consent regarding possible loss of the privilege prior to the conference.

Before its publication, the proposed opinion was reviewed by a subcommittee of the Ethics Committee at two meetings that were



attended by representatives of various mentoring programs. The subcommittee was advised that observation of actual attorney-client conferences is for many students and novice lawyers essential to professional development and a key component of successful mentoring. It was also suggested that if informed consent were required, clients would reflexively deny their permission, thereby effectively eliminating these important educational opportunities and greatly handicapping the mentoring effort. As these discussions continued, it became apparent that the issue before the Ethics Committee manifests a very real conflict between the interests of the legal profession (and the general public) and the interests of individual clients. Clearly, effective mentoring is necessary to the professional development of competent attorneys, an adequate supply of which is essential to the administration of justice. Just as compelling is the client's right to expect that no one with whom confidential information is shared in the confines of the law office can be compelled to testify regarding the substance of any such conversation. The State Bar's role under such circumstances is to divine how the Rules of Professional Conduct ought to be applied to adjust the conflict between these competing interests. In so doing, it has considerable latitude in interpreting its own confidentiality rules, but has no authority to determine how the substantive law of evidence, as expressed in the attorney-client privilege, is applied. Having perceived that the protégé's presence at a client meeting would risk an important client interest as a matter of law, all that remains for decision, it would seem, is whether the lawyer can ethically disregard that risk. In my view, the proposed opinion properly strikes the balance in favor of the client's interest—in favor of disclosure.

Relinquishment—As dedicated readers of my column will recall, I ruminated on the question of whether a lawyer has a right to resign from the North Carolina State Bar in the Spring 2013 issue of the *Journal*. As is my custom in regard to such imponderable questions, I offered no opinion of my own, but noted that an answer would surely be forthcoming in the fullness of time. Recent events have gone a long way toward confirming that prophecy and my overall prescience as a ruminator. Elsewhere in this issue you will find a set of proposed amendments to the rules that, if adopted, would allow an attorney to "relinquish" his or her membership in the North Carolina State Bar. It is unclear as a matter of semantics just how that concept differs from "resignation," but it does seem to connote the voluntary and permanent character of the desired change in status. It also suggests the absolute separation of the moving party from the party being moved from, so to speak.

The impetus for this rulemaking sprang from correspondence we received last summer from a lawyer who no longer wants to be—a lawyer that is. He plainly intended to effectuate his "resignation" by means of that device, and was disappointed when his letter was treated administratively as a "petition for inactive membership status." He advised us that his intention was and is to make a political statement relating to his conviction that the legal profession, as embodied by the State Bar, has failed in its obligation to promote social justice. That being the case, he no longer wants to be in any way affiliated. In his view, he has a First Amendment right not to be required to remain in association with the rest of us. Unfortunately, that theory is somewhat difficult to square with the existing statutory scheme. Chapter 84 of the General Statutes, which governs the State Bar, seems to recog-

nize only two means of egress from the membership rolls, disbarment and death—and the efficacy of death is only implied. Resignation seems never to have been contemplated, just membership—active or inactive pending disgrace or decomposition.

That notwithstanding, however, a subcommittee of the Issues Committee was appointed in January to consider whether lawyers must or ought to be able to resign from the State Bar and, if so, how so. The subcommittee made its report in April and recommended the rule amendments alluded to above. Its consensus in favor of resignation, or "relinquishment," was bolstered by research showing that many other states allow it. Is was encouraged by the understanding that a resigning lawyer could be held accountable for misconduct discovered after the resignation has taken effect. And it was predicated upon the legal conclusion that G.S. 84-16 allows the State Bar Council to "resolve questions pertaining to membership status." Having thus decided to recommend that resignation be accommodated, the necessity of resolving the petitioner's constitutional claim was, for the time being at least, obviated.

Under the proposed rules, "relinquishment" cannot be accomplished by the "relinquishor" (a term of my own invention of which I am particularly fond) alone. A petition must be filed and, after having determined that all required conditions have been satisfied, the State Bar must enter an order of relinquishment. Notable among the six enumerated conditions are the following: that there be no pending, unresolved allegations of professional misconduct; that all fees owed to the State Bar, the Board of Continuing Legal Education, and the Disciplinary Hearing Commission be paid; that any ongoing law practice be properly wound down; and that the petitioner acknowledge that readmission to the Bar can only be attained under the auspices of the Board of Law Examiners and in accordance with the procedures applicable to first-time applicants, and that any information relating to professional misconduct received by the State Bar after the date of the order of relinquishment will not be treated as confidential.

Although the right to resign is in theory a rather beguiling notion, some have resisted the idea over the years because resignation appears to afford the lawyer who is facing professional discipline a means of "cheating the hangman," as it were. That a miscreant might avoid professional sanction and opprobrium by the simple expedient of quitting offends my sense of justice, and perhaps yours as well. For that reason, apparently, a provision of the proposed rule declares that "[R]elinquishment is not a bar to the initiation or investigation of allegations of professional misconduct and shall not prevent the State Bar from prosecuting a disciplinary action against the former licensee for any violation of the Rules of Professional Conduct that occurred prior to the date of the order of relinquishment."

Frankly, it is unclear to me exactly what good might be accomplished by prosecuting a disciplinary action against a former lawyer. Since such an individual would have no license to suspend and could not be disbarred, the only available remedy would be some sort of censure, the effectiveness of which would likely be minimal. I suppose that the resulting Findings of Fact and Conclusions of Law might be of interest to bar admissions authorities, should the former lawyer ever seek readmission to the fraternity. But it's hard to imagine that our limited resources couldn't be better used to discipline ill-behaving practitioners who still have licenses and constitute a real and present threat to the public. Maybe I'm missing something in that regard. It wouldn't be the first time.

Be that as it may, the important thing here is that you are now caught up on some very important current events. That's a good thing, for sure, but not a sufficient end in itself. A thoroughly engaged and thoughtful lawyer would almost certainly be inspired by this article to read carefully the cited ethics opinion and the proposed rules and to consider submitting comments in regard thereto. Indeed, a close reading of all the material published for comment in the *Journal* would seem to be indicated. Of course, I realize that you're very busy and that you may not have the time to deal with this stuff immediately. That's OK, but just to make sure you don't forget to do it, I suggest that you take a moment right now to cut this essay out of the magazine and paste it in your scrapbook. ■

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

President's Message (cont.)

House Bill 436

The officers decided to approach the leadership of the legislature about passing a bill modernizing the definition of the practice of law and amending G. S. §84-37 to provide supervision by the attorney general before the State Bar sends a cease and desist demand or files a lawsuit to enjoin the unauthorized practice of law in those instances when there may be a competitive concern. In early March the State Bar officers visited the leaders of the House and Senate to discuss the proposed legislation. The leadership was very receptive to our proposed bill and suggested potential sponsors of the bill. House Bill 436 was introduced and passed the House on April 20. At the time this article went to press, the bill was being considered by the Senate. The full text of the bill that passed in the House on April 20 is published on the following two pages. Please read the text of the bill so that you know what was proposed and supported by the State Bar, rather than relying on descriptions or comments by others on the substance of the bill.

I want to express my appreciation to the legislative leadership, Senate President Pro Tem Phil Berger and Speaker of the House Tim Moore for their support, along with the bill sponsors in both houses who met with us to hear why this bill is important for the practice of law and the protection of the public.

The State Bar heavily relies on the volunteer efforts of many lawyers. At the legislature, John McMillan, Michelle Frazier, and Nick Fountain continue to provide extraordinary voluntary service to our profession and to the people of North Carolina. Many North Carolina lawyers have contacted their legislators to support the State Bar's efforts. I thank all of you for your support. ■

Ronald L. Gibson is a partner with the Charlotte law firm of Ruff, Bond, Cobb, Wade & Bethune, LLP.

Endnotes

1. Link to Fall *Journal* ncbar.com/journal/archive/journal_19,3.pdf.
2. *N.C. State Board of Dental Examiners v. FTC*, ___ U.S.___, 135 S. Ct. 1101, 191 L. Ed. 2d 35 (2015).
3. N.C. G.S. §90-22 *et seq.*

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2015

H 3

HOUSE BILL 436
Committee Substitute Favorable 4/15/15
Third Edition Engrossed 4/20/15

Short Title: Unauthorized Practice of Law Changes. (Public)
Sponsors:
Referred to:

April 1, 2015

A BILL TO BE ENTITLED AN ACT TO FURTHER DEFINE THE TERM "PRACTICE LAW" FOR THE PURPOSE OF PROTECTING MEMBERS OF THE PUBLIC FROM SERIOUS HARM RESULTING FROM THE UNAUTHORIZED PRACTICE OF LAW BY A PERSON WHO IS NOT A TRAINED AND LICENSED ATTORNEY AND TO ESTABLISH A PROCESS OF REVIEW BY THE ATTORNEY GENERAL PRIOR TO ANY ACTION BY THE STATE BAR TO ENJOIN THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-2.1 reads as rewritten:

"**§ 84-2.1. "Practice law" defined.**

(a) The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

(b) The phrase "practice law" does not encompass any of the following:

(1) ~~the~~ The drafting or writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5 or by mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.

(2) The production, distribution, or sale of materials, provided that all of the following are satisfied:

a. The production of the materials must have occurred entirely before any contact between the provider and the consumer.

b. During and after initial contact between the provider and the consumer, the provider's participation in creating or completing any materials must be limited to typing, writing, or reproducing exactly the information provided by the consumer as dictated by the consumer or deleting content that is visible to the consumer at the instruction of the consumer.

c. The provider does not select or assist in the selection of the product for the consumer; provided, however, (i) operating a Web site that requires the consumer to select the product to be purchased; (ii) publishing descriptions of the products offered, when not done to address the consumer's particular legal situation and when the products offered and the descriptions published to every consumer are identical; and (iii) publishing general information about the law, when not done to address the consumer's particular legal situation and when the general information published to every consumer is identical, does not constitute assistance in selection of the product.

d. The provider does not provide any individualized legal advice to or exercise any legal judgment for the consumer; provided, however, that publishing general information about the law and describing the products offered, when not done to address the consumer's particular legal situation and when the general information published to every consumer is identical and does not constitute legal advice or the exercise of legal judgment.

e. During and after initial contact between the provider and the consumer, the provider may not participate in any way in selecting the content of the finished materials.

f. In the case of the sale of materials including information supplied by the consumer through an Internet Web site or otherwise, the consumer is provided a means to see the blank template or the final, completed product before finalizing a purchase of that product.

g. The provider does not review the consumer's final product for errors other than notifying the consumer (i) of spelling errors, (ii) that a required field has not been completed, and (iii) that information entered into a form or template by the consumer is factually inconsistent with other information entered into the form or template by the consumer.

h. The provider clearly and conspicuously communicates to the consumer that the materials are not a substitute for the advice or services of an attorney.

i. The provider discloses its legal name and physical location and address to the consumer.

j. The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer.

k. The provider does not require the consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between the provider and the consumer.

(3) The completion of a preprinted form by a real estate broker licensed under Chapter 93A of the General Statutes, and prepared in accordance with rules adopted by the North Carolina Real Estate Commission.

(c) For the purposes of this section, the following definitions shall apply:

(1) Materials. – Legal written materials, books, documents, templates, forms, or computer software.

(2) Production. – Design, creation, publication, or display, including by means of an Internet Web site.

(3) Provider. – Designer, creator, publisher, distributor, displayer, or seller."

SECTION 2. G.S. 84-37 reads as rewritten:

"**§ 84-37. State Bar may investigate and enjoin unauthorized activities.**

(a) The Council or any committee appointed by it for that purpose may inquire into and investigate any charges or complaints of (i) ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar Board of Paralegal Certification," by individuals who have not been certified in accordance with the rules adopted by the North Carolina State ~~Bar.~~ Bar, or (iii) noncompliance with G.S. 84-2.1(b)(2) by any provider of materials, as those terms are defined in G.S. 84-2.1(b)(2). The Council may issue a letter of warning or, after complying with the provisions of subsection (a1) of this section, may issue a demand to cease and desist or bring or cause to be brought and maintained in the name of the North Carolina State Bar an action or ~~actions, upon information or upon the complaint of any person or entity~~ actions against any person or entity that engages in rendering any legal ~~service,~~ service in violation of any provision of this Chapter, holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in this subsection, or makes it a practice or business to render legal services that are unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.

(a1) Prior to issuing a demand to cease and desist or bringing an action or actions as set forth in subsection (a) of this section, the Council, or any committee appointed by it for that purpose, shall submit the proposed demand to cease and desist or action and an explanation of why regulatory action by the Council is needed for review by the Attorney General. The Attorney General shall review the proposed demand to cease and desist or action and any material submitted in support thereof to ensure that the Council or any committee appointed by it is acting to protect the public interest and consistent with State policy and with the Council's authority as set forth in this Chapter. The purpose of the review by the Attorney General is to ensure that the proposed demand to cease and desist or action is State action that is consistent with the authority of the Council and that would be entitled to State action immunity under the federal antitrust laws. The Attorney General shall review the substance and procedure of any decision by the Council or any committee appointed to send a demand to cease and desist or to file an action to ensure that the proposed action is consistent with State policy. The Attorney General shall have the authority to approve or disapprove the proposed sending of a demand to cease and desist or the filing of an action or to modify any demand to cease and desist or action to ensure that it accords with State policy. The Council or any committee appointed by it for that purpose may forgo review by the Attorney General when seeking injunctive relief is necessary to prevent ongoing fraud or imminent harm to consumers or when the Council or any committee appointed by it for that purpose has made a specific determination in writing that the relief sought is not likely to have a material adverse effect on competition. The Attorney General may appoint a designee to perform any duties required or authority provided under this subsection.

(b) In an action brought under this section, the final judgment if in favor of the ~~plaintiff~~ North Carolina State Bar shall perpetually restrain the defendant or defendants from the commission or continuance of the ~~unauthorized~~ unauthorized, unlicensed, or unlawful act or acts. A temporary injunction to restrain the commission or continuance of the act or acts may be granted upon proof or by affidavit, that the defendant or defendants have violated any of the laws applicable to ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law or the ~~unauthorized~~ unauthorized, unlicensed, or unlawful use of the designations set forth in subsection (a) of this section or any other designation implying certification by the State Bar. The provisions of law relating generally to injunctions as provisional remedies in actions shall apply to a temporary injunction and the proceedings for temporary injunctions.

(c) The venue for actions brought under this section shall be the superior court of any county in which the relevant acts are alleged to have been committed or in which there appear reasonable grounds that they will be committed in the county where the defendants in the action reside, or in Wake County.

(d) The ~~plaintiff in the action~~ North Carolina State Bar shall be entitled to obtain documents and examine the adverse party and witnesses before filing complaint and before trial in the same manner as provided by law for examining parties.

(e) This section shall not repeal or limit any remedy now provided in cases of ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law. Nothing contained in this section shall be construed as disabling or abridging the inherent powers of the court in these matters.

(f) The Council or its duly appointed committee may issue advisory opinions in response to inquiries from members or the public regarding whether contemplated conduct would constitute the ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law."

SECTION 3. G.S. 84-10.1 reads as rewritten:

"**§ 84-10.1. Private cause of action for the unauthorized practice of law.**

If any person knowingly violates any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to commit the unauthorized practice of law, in addition to any other liability imposed pursuant to this Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in this section shall be entitled to maintain a private cause of action to recover damages and reasonable attorneys' ~~fees.~~fees and other injunctive relief as ordered by court. No order or judgment under this section shall have any effect upon the ability of the North Carolina State Bar to take any action authorized by this Chapter."

SECTION 4. This act is effective when it becomes law. ■

Reflections from Two Former District Attorneys—Interviews with Gilchrist and Grannis

An Interview with Peter Gilchrist

Conducted by Forrest Ferrell

Peter S. Gilchrist III served as district attorney for Mecklenburg for 36 years before retiring from the office. During his tenure of managing and prosecuting the criminal docket of the largest prosecutorial district in the state, Gilchrist developed a reputation of prosecuting high profile cases. He personally prosecuted all cases of lawyers indicted for criminal conduct.

Gilchrist began working for DA Tom Moore in 1970. When Moore decided not to seek re-election, Peter ran for and was elected in 1974. Until his retirement he had no opposition. He quickly put in place a system for tracking all criminal cases in the district and developed a case filing method still used today.

New policies in his office helped create better management of the docket. For example, he created trial teams to prosecute specific crimes such as murder, sexual offenses, habitual felons, and general felonies. Likewise, he created a team of seasoned prosecutors to handle all misdemeanor cases.

From his staff of attorneys came several excellent superior court judges. Among them were Chase Saunders, Gentry Caudill, Robert Bell, Shirley Fulton, and Calvin Murphy.

Forrest Ferrell (FF): What about being a lawyer attracted you?

Peter Gilchrist (PG): Nothing! I really never thought I'd be a lawyer. My family was in the chemical business and when I graduated from college, I had a degree in English. I had no marketable skills whatsoever and thought that maybe getting a law degree would be a good background. I went to law school and became very interested in corporate work and particularly interested in income taxes. I focused on tax and corporate work while I was at Duke Law School. I contemplated getting a Master's in Taxation, but I didn't. I was hired by Arthur Andersen and Company, which was then one of the Big 8 accounting firms, in their tax department. While I'd had some taxation courses, I really didn't have basic accounting. At the first office Christmas party, they gave me a little card to put inside the drawer of my desk saying, "Assets on the left, Liabilities on the right" (chuckles). The entire time I was working at Anderson I was going to night school taking accounting courses. I went back to Chapel Hill for a session of summer school for six weeks and took more accounting courses and I stayed there until I ended up getting my CPA. About that time I was realizing that I really didn't think I wanted to be an accountant and I still thought I would probably go into the family chemical company. I happened to go down to the courthouse and spoke to a family friend, Judge Willard Gatlin, who ran the juvenile and domestic relations court. I just sat down with him and talked for a couple of hours. I wasn't really interviewing for a job. When it was over he said, "why don't you come to work for me." I thought about it and ended up going down here. I took about a 40% salary cut, but I was single and could afford it. I thought this would be a good experience, so I started prosecuting fathers for bastardy cases and criminal nonsupport, which we used to do then. That was how I got started, but I really found it incredibly interesting and satisfying. When I was with Arthur Andersen, all of my clients were wealthy businessmen, most of them making well over $100,000 a year. Suddenly I was dealing with

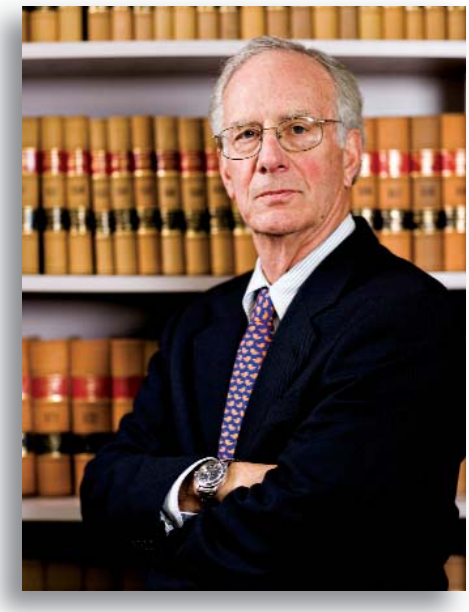


*Photo by Chris Edwards/*Charlotte Magazine

women who were on public assistance and men that were being brought in to pay perhaps $4 or $5 a week for the support of their children. I thought this really is a lot more interesting work than trying to save somebody from having to pay income taxes.

FF: Is there more you can say about what led you to go from the world you just described to working in the trenches with the county?

PG: Well, I think I liked working with people and I thought, here I have a law degree, I think I'd like to get some exposure to what lawyers do. I did, I think, have in the back of my head that I probably wanted to go into business at some point. In fact, I did leave the office for a little bit more than a year. I became a CFO for a land development company. I aspired to be a millionaire by the time I was 35, and I definitely wasn't going to get there working in the court system (chuckles). I

ended up coming back to Charlotte.

FF: What was it like in those days?

PG: You won't remember, but the district court had a district court prosecutor who was in charge of it. The superior court still had the solicitor. One person was not responsible for both the district and superior court. That didn't come in until, I guess, about 1971 when the solicitor took over responsibility for both the superior court and the district court. My predecessor, Tom Moore, had been elected as the solicitor. I'd been working alongside him in the district court. Neither one of us had any jury trial experience. One of the judges that rotated in was W. K. McClain from Buncombe County. He'd been the long-time solicitor up there. I tried cases with him for several years, and I never saw him smile but one time. He used to tell folks that when he would come to town, you'd be able to put a $10 bill down on the square and come back a week later and it'd still be there (laughs). He ran a very tight ship. We were pretty terrified of him. He was an impressive guy. After trying cases with him for four years, I had really evolved and become a relatively competent trial lawyer. But I will tell you, my first year in the superior court I was subject to getting kicked on a daily basis. It's hard to realize how far the court system has come. At that point, the solicitor's office had no independent files whatsoever. The way cases were set, Tom would go down to the clerk's office with a ruler and he would measure out in the drawer of pending cases seven inches of files, which he would set on Monday. He would get six more inches and put them on Tuesday, and six inches on Wednesday, and six inches of depth on Thursday. He'd set those in superior court #1—we were running two superior courts—and then with the other court he'd do the same thing. And because we had no common file, all we had was the clerk's flat file. It would not be unusual that you'd have two co-defendants and one of them would be set on Monday in courtroom #1 and the other would be set on Wednesday in courtroom #2, and we had no way of identifying if we were trying to schedule in the same case for trial in two courts in the same week with the same defendants.

Q: So the administrative issues you confronted to begin with were pretty massive.

PG: They were incredible. You knew nothing about the case, and we didn't issue a subpoena for witnesses, we issued a subpoena for the police officer whose name was on the warrant. That police officer—usually a detective—would get in his car and on the day that the case was set for trial, or the day or so before, he would go out and gather up those people that he thought would be necessary for witnesses and would bring them into court. And whatever interviewing or whatever I knew about the case was what was in the charging document and what questions I could ask those witnesses or the detective. It was a disastrous way to do business, and I was terribly frustrated.

FF: What led to an improvement in this process?

PG: I paid my way to Washington, DC, and called up the US attorney up there who was responsible for the District of Columbia. They were in effect doing the same thing that we would do in a city, and I asked him if I could come up and visit his office and talk to his lawyers about how they did things. I went up there and spent a couple of days and found they had a process where the police officer, if he made an arrest, would bring the charge into the US Attorney's Office and talk to one of the AUSA's, and they would decide whether or not to file charges. They would get copies of the police reports. I came back to Charlotte and told Tom Moore that I thought we needed to do this. Sometime in the early '70s we set up a process where the police would complete their investigative reports, and fill out a separate sheet with the name and address of each witness and what they were going to say. That was the first time we had any files and knew anything about our cases prior to what we learned on the morning of trial from talking to the officer and whoever he brought in.

FF: Did that change in the administrative details alter the results in court?

PG: It dramatically changed the results that I was getting in trial. When we began to get files, we knew something about our cases in advance. We were also able to coordinate multi defendants on the same case and get them together. We had never had much in the way of statistical information on performance, but it sure helped me.

FF: You have been criticized in the local media for dismissing too many cases. What's your view about negotiating pleas, and how's that worked for your office?

PG: I have been really interested in trying to get the best results from the resources available. If you have a man and you could work out a plea arrangement where he pled guilty to one case and would go to prison—where you could resolve the case with a guilty plea on one and dismiss two other cases— the result was that you got a man convicted who needed to be, and you weren't too worried about the numbers. Philosophically I would say that really was more important than having him plead guilty to numbers of cases. The difficult thing though is that the community doesn't understand that.

FF: How has the administration of your office changed over the years and do you see it as being better?

PG: I think it's definitely changed for the better. I think we've got a much more sophisticated group of senior people who are looking at cases and we've got something going on right now that I think is definitely unique for Mecklenburg County. We've got a trial court administrator who is monitoring, with our cooperation, cases moving along, the prosecutor and the defense lawyer meet and determine what in individual felony cases needs to be done for the case to move to the next step. In other words, has discovery been provided, has a plea offer been made, has that information been transmitted to the defendant, has he had the opportunity to consider it, and is he interested in accepting the plea. The whole effort is to try and resolve as many issues as you can without having to schedule it on the trial court and bring the witnesses in. We're seeing a lot more guilty pleas at an early stage. We require the police officer to bring his file over and sit down with us and go over it. We're able to look at cases and at the front end and say you may have made a legal arrest, but the quantity of evidence that you've got or the quality of it will never result in a conviction before the jury and so we end up washing those cases out at an early stage.

FF: Have you faced criticism about this process?

PG: We have had some criticism recently, but we still require any case where an arrest is made to be brought to us, and we review it. Early on we were permitting the police to bring cases to us prior to making an arrest, and we found that some departments had cases that they knew would not be successful, but wanted us to be the one to wash it out rather than them having to bite the bullet and do it. So now I think we're seeing the number of arrests fall off as they recognize that they may have the ability to make an arrest, but the case is not going anywhere. We write down exactly what the reasons are for declining a case for prosecution and file those reasons in the clerk's

office so the news media and anyone else can go over and read exactly why. We had a man one time that was on the local most wanted list and he was arrested. We dismissed the charge and the news media went over, looked it up, and wanted to find out why we dismissed the charge. The reason was the victim looked at the guy and said he's not the one that committed the crime.

FF: What can be done, whether it's by the District Attorney's Office or lawyers in general, to better educate the public with an eye toward raising the level of public trust and confidence in the court system, because that's something all lawyers need to be concerned about.

PG: That's something that I continue to struggle with. We had a citizen's group here in Charlotte—a broad-based group brought together to look at the court system and make recommendations. We—the various professions, police, DAs, defense lawyers—all had opportunities to talk to them, and I think this process was explained in detail. At the last meeting I went to, one of the members said, "I just don't understand why, if the police arrest them, you don't prosecute them." If the police arrest them, why aren't you trying them and convicting them? You realize that there are a lot of reasons for that and I think people struggle to understand it. I wish I knew the answer.

FF: Does the DA's Office have sufficient statistical information and data to track what happens with your cases?

PG: The statistical information that we have available leaves a great deal to be desired. It's hard to tell if we have X number of individuals charged and they end up being convicted, that percentage may be very high although you still may have a substantial percentage of cases that are dismissed. We don't have an information system that tracks what goes on and retains it in the level of detail that's necessary. Our information system that we are using here in Mecklenburg would really just show the last event that occurred in a case. That is one of the things we're struggling with.

FF: How would better availability of information be of significance?

PG: It's a significant issue that the recorded data is not adequate for providing decision makers with the information they need. Let me give you an example: a person comes in and is set for trial and arrives late or does not come in at all and an Order for Arrest is issued. He may show up several days later and that Order for Arrest is stricken. This could happen two or three times in the same case and yet you can't go back and look at the file and see that he's had three Orders for Arrest issued, much less the ability to see that, over a period of time, he's been in and out of court a half dozen times and on each one of those he's failed to show two or three times. Having access to that information would allow a judge to explain to this fella, you will be on time for your next court appearance or you will be sitting in the jail waiting for your trial to come back up. When we're making bond recommendation as a prosecutor, we don't have that, the judge doesn't have it, and probably the defense lawyer doesn't have it. It's just not available for people who need to know that. In the district court, although it's theoretically possible to have a criminal history on anybody that comes in, we are processing cases so fast that you can't get it up before the sentencing judge, for him to know, or for the district attorney to make a decision that this is a case I ought to prosecute. Or that this little old lady is 67 years old, never had a speeding ticket before, why can't I give her a break on her first one.

FF: You have touched on resources, administration, and public confidence. Tell us what you think needs to be done to correct some of the real problems going forward.

PG: I think there are two things that would make a big difference: having an information system, and doing away with the rotation of judges. A superior court judge comes into town and deals with the cases that are set before that judge for that week. In most jurisdictions, judges pick cases on a random basis and have an inventory of cases just like a DA. The judge can bring the parties in and ask, is this one that you are able to work out an agreement on, and if that is not done, are the parties willing to participate in a discussion or do they say, nope, we can't agree on this your honor, we've got to go to trial. The judge, with the agreement of the parties, sets the trial date and that thing is not continued except under very dire circumstances. We see now a tremendous number of continuances that, if there had been judicial involvement and the judge felt a responsibility to keep both of the parties moving forward, we'd get a lot of resolutions sooner. It's also interesting where these things are kept. Inventories on judges are kept and we can see what judges are moving their cases through and which ones aren't.

I have a hard time getting a case started at the end of the week, and I see the criminal courts closed down sometimes Wednesday afternoon, definitely Thursday afternoon. It's not unheard of to start a case one week and finish it the next. We certainly do that in long cases and everybody expects it, but we have a lot of cases that are going to take three days, and if you can't try two three-day cases in a week, there's a lot that doesn't get accomplished toward the end of the week. And I want to say this. I think that the underfunding of the court system has certainly affected the people that we are able to attract to make careers out of public service, on the bench or as prosecutors. I don't know how a judge could afford to send their children to college on the salaries they are being paid. We have instances where starting associates in Mecklenburg County may be making the same salary as the chief justice of North Carolina. I think that's intolerable.

FF: What else would you like the court's information system to provide?

PG: I think the information system should allow, when we have a meeting of the public defender's office, the clerk's office, the DA's office, the trial court administrator, and an administrative criminal judge, for review what has occurred in our administrative settings in the past month. We should be able to identify lawyers that don't show up for court, or identify problems—sometimes ours—where we have been unable to provide discovery, or lawyers who've gotten discovery and not taken it to their clients to discuss it with them. That's one of the things that I think information has done—bringing a judge in to participate in making sure things happen on time.

FF: What do you see with respect to your staff; are the staff resources available to you?

PG: The short answer to that is yes. Mecklenburg County has been very good to me and this community providing additional lawyers and additional support staff and computers and copiers and paper and everything else. If we had not had a county commission that was willing to do that, we would have really been in terrible shape. There was a certain amount of self preservation for the county in that it's awfully expensive to keep people in jail here, and to the extent that our office is more efficient and able to move cases along faster, they really saved money. We've got over 2,400 folks in jail at any given time. It costs about $110 a day, so it's an expensive process holding people, and frankly there's just a

small percentage of people that I'm responsible for trying that are in jail. There are a whole lot more of them that are out on the street than are in there. I think the county's recognized that was a really good investment to put additional money in us over and above what the state was willing to provide or could provide.

FF: Some years ago you initiated a policy for prosecuting what you then called "career criminals." Do you still do that in your office?

PG: We do focus right now on two areas. We've got our superior court lawyers in specialized teams and we have one team that focuses on what the law calls habitual felons. We have a group that looks at every one of the people who qualify under that to determine which ones are still active and which ones are just sort of burn out old folks that just continue to get in trouble. We've got a certain number of people who are drug addicted and they get caught periodically with drugs in their pocket. They really are not worth expending a state prison bed on at the cost. We don't go after them with the habitual felon law. Those ones that fall in the habitual felon category that are still active, yeah, we bear down on them. We have another program with the police department where they have identified certain individuals they think are extremely active, and based on intelligence and other things, they bring those cases to us and we have special prosecutors assigned to deal with those cases. That creates sort of an interesting thing because some of these people are young and active and don't have long criminal histories. So maybe the best thing we do is get a conviction on them, and with the structured sentencing the judge can't give them a long sentence and they have to almost be required to put them on probation. But we're starting to build that criminal history on them so if they come back we can enhance their sentence based on their prior record. Some of them do have substantial criminal records and we strive to get a long sentence on them and to process them quickly.

FF: Now that you are looking back on nearly 35 years of public service, what are you going to take with you as meaningful to you?

PG: I think really the joy of it has been the people that I have gotten to know along the way, particularly the young lawyers who came in here and worked for me. It scares me a little bit when I see the number that came to work for me who are now retired superior court judges. That makes me think I've been here too long. They've gone through the system and completed 24 years of public service and gone out to pasture, and I'm still here. Not all have remained in the practice of law. Some have gone on to be teachers and ministers and other things, but to think that you had the opportunity to touch them in their career has been satisfying.

I'm surprised that sometimes I run into people—victims and even defendants—who come up to me and say, you treated me fairly, or, upon reflecting back, I think you were fair to me or you helped me at a time when I needed some help. I think that's been terribly satisfying. I was in my local fire station that collects aluminum cans and I was dumping a load of cans in this week and a guy drove up in an automobile and asked for directions. He looked at me and I thought he was an old looking guy. He was up in his 40s I guess, and he called me by name. I said, I don't recognize you. He said, the first year you were in office I was in the fourth grade and you came and spoke to my school class. It amazed me, I wonder what in the world I told that kid that he's remembered all these years later. I hope it was something good.

FF: Isn't it also a thankless job in so many ways?

PG: Sometimes it's very thankless, but sometimes it's, like I said, the guy coming up and saying I remember you from the fourth grade. That can be terribly satisfying. Yes, I think part of the job is that there are those constant highs and lows. I think you asked the question early on what I think has been the biggest frustration for me, and that's trying to have the citizenry understand what the limits of the job are and why. I think this is going to be an interesting time. We are getting ready to have a campaign where we are going to have two candidates get out there, and I suspect they are both going to say, I'm going to try the bad guys and I'm going to try them faster. And I chuckle at that. So I'll have great interest in how my successor solves all the problems that I've struggled with.

FF: Recently we've seen a number of charges levied by the State Bar against lawyers who were prosecutors, some of which had to do with the failure to provide exculpatory evidence, including the notorious *Nifong* case. How have those things affected the district attorneys in the state and in your office?

PG: I think the *Nifong* case really was exceptional and blatant. I have sort of followed at a distance, this Greg Butler case that has just come down and I think, I worry about that a lot because I think we've got some very ethical lawyers, and I think there's some expectations of us. Due to the volume of work that we're doing, we are very vulnerable. Any number of my assistant district attorneys have caseloads of 400 felony cases, and we can't turn to a police officer and say, have you given me everything, and rely upon that. In the *Butler* case, it's my understanding that Butler had told the SBI agent who had taken over the investigation to give them everything, and he ultimately did give everything that he had. When he recognized there was something missing, he provided it, but in today's world with discovery, it is incredibly difficult. We've had any number of cases where we're actually in trial and the police officer walks into the district attorney and says, would you like to see a video of the crime being committed that we have found? And you're sitting there saying, Lord, we'd never had to try this case if we had that. We have a process here that once a case gets to the not guilty plea, we have a pre-trial conference and bring the officer in charge of the case over and he sits there with the DA and the defense lawyer and goes through his file page by page by page trying to make sure that we've given him everything. But you never know where there was some other officer who had some part in that case who stuck in his bottom drawer something they were entitled to that just never got into the pipeline.

FF: You could have done many other things with your intellect and your educational background. You could have run for other offices or you could have been on the Supreme Court of our state. Why have you not done that kind of thing?

PG: I have found this job to be terribly satisfying and felt like I was making—whether I was or not—a contribution. That felt like what life is all about. I felt like my time was well spent and I've probably, maybe, been put here for a reason. I think I'm very fortunate. I think anybody who feels good about what they are doing is really lucky.

FF: Is there any thing else you might want to say in the *Journal* readers?

PG: This will be great for insomnia (laughs). So that may be the contribution that this effort makes. I don't know, our justice system depends on the quality of the people who work in it. I think that goes all the way from the lawyers to the judges and the support people. I think we've tried to hire good

folks here and make them understand that they were appreciated for what they contributed. I hope that the two men, at least, who have filed for this office so far, whichever one gets elected will be a good person, do a good job, and the Lord will be with him, you know, for the administration of justice. I think it's important.

An Interview with Ed Grannis

Conducted by Margaret Dickson and Harold "Butch" Pope

Edward Whitaker Grannis Jr. is a native of Fayetteville. He graduated from Wake Forest University and received his Juris Doctor from Wake Forest Law School. He served in the US Army as an airborne ranger with the 173rd Airborne Brigade, serving in Vietnam in 1969-70.

Grannis joined the Cumberland County District Attorney's Office as an assistant in 1970. He was elected district attorney of the 12th Judicial District in 1974, and served in that position until his retirement at the end of 2010. Grannis and Peter Gilchrist, former District Attorney of Mecklenburg County, became ADAs the same year, were elected the same year, and retired the same year, making them the longest serving DAs in recent North Carolina history.

Among the honors he has been given are the Order of the Long Leaf Pine, the Peter S. Gilchrist III Award as the North Carolina Bar Association's Prosecutor of the Year, the Boy Scouts of America Distinguished Citizen Award, and the North Carolina Bar Association Centennial Award. He has served as president of the NC District Attorney's Association and the Conference of Elected District Attorneys.

Grannis is married to the former Winnie McBryde, and they have two adult sons. He is a former member of the North Carolina Board of Transportation representing Division 6.

Margaret Dickson (MD): There are both positive and not so positive aspects of public service. What was good about being district attorney and what was not so good?

Ed Grannis (ED): It is important to differentiate in time. Peter and I both spent over a quarter of a century in public office, and so it is not a constant over that time period. When I started, it was a different era. The senior resident superior court judges were the power. They could, in effect, make things happen in a judicial district, while today, for the most part, they cannot. They are simply administrators for Raleigh in many respects. They may get to preside at a trial, but the ability of a senior resident to change things is no longer there for the most part. But I think those of us who have been fortunate enough to have been elected and to serve in some capacity, whether it is on the town council or statewide, all understand what a challenging experience it is to go through a campaign. No one can understand that unless you are the candidate—when you wake up trying to decide whether or not to spend money on TV, whether you are going to have to pay for all this or raise money. It is quite an experience to go through that. I think the honor, the privilege, the responsibility is really one of the neat things in a democracy. If you have ever had that opportunity, you know what I'm talking about, and if folks have not had it, they really ought to give some thought to achieving it at some level or some brief period, because it is such a unique part of being an American and part of democratic society. It cannot be achieved either by having monetary success or by being appointed to some position. It is when the voters themselves say they want you to be our DA, our senator, or whatever it is. It is quite a unique privilege to serve those folks. That's why I was really very comfortable about the politics of being a DA. Some folks were much more into politics. I really thought you abused the office a little bit when you did that, because the public has this expectation that you've been given really unique powers and responsibilities, and the last thing they need to be worried about is whether or not you are doing it for some political purpose. And so it really becomes very important for folks to realize they are the judge or the DA for the democrats, the republicans, and for those folks who don't care. I think it's really an unfortunate circumstance when people become either judge or DA and have political aspirations beyond that because it is awfully hard, in my mind, to be able to maintain the confidence the public expects if they know that you're really a political fellow either in a partisan way or just trying to advance your own career.

MD: And what is the bad side?

EG: Well, I really, really enjoyed the responsibility, but in many ways I passed on a lot of parental activities I should have participated in. I am very fortunate to have the wife I have. No one knows when they get married

how all this stuff is going to play out, but my wife was very supportive of my being in that position, as were my children, but I missed a lot of soccer games, scouting events, and other things that I should have participated in. If I had it to do over again, the advice I would give my successors today is that there's a clean balance, and if there is a question, you should spend more time at a soccer field than in a courthouse because that courthouse will be there long after those kids have quit playing soccer.

Margaret, you met a guy I tried one time who became quite a bedeviling character. His name was Roger McQueen and I convicted him of murder. My conviction was the only one that stood. He was tried and convicted of several others that did not stand in other places like Missouri. He would send me Christmas cards that said "I hope you and your mother have had a good Christmas while I am doing life for a murder you know I did not commit." He was a real con guy, a very convincing guy…not the sort of fellow you would ever think would be capable of doing that sort of stuff, but he was very capable.

My kids, long before they got their drivers' licenses, the police department gave them classes on how to shoot guns and take whatever action was necessary.

We had one case one time where the police were out at our house to protect us and it was getting dark and the police officer said, "This is where we are going to station everybody around your house." I said, "Oh no. You are going to leave because I want a clear field of fire after dark." That was an

abnormal case.

My favorite story is one time I was in Harris Teeter on a Friday afternoon getting a six pack of beer, getting ready to have a weekend, and a voice behind me said, "Going to have a big weekend, Mr. DA?" I knew by the way he said it that he was somebody I had had some responsibility for, and I said, "Yeah, I hope so. How about you?" He said, "Yeah, I just got out and I am looking forward to a big one." And I said, "How long were you in?" and he said, "I pulled the full seven." I knew then that he had been in for armed robbery because at the time that was the only thing you did the full seven for. And I was sitting there thinking, this job doesn't pay enough (laughing). For the most part, people treated you like royalty, and I wouldn't trade it for anything.

Butch Pope (BP): That's in response to the way you treated them.

EG: We used to have a saying that a particular superior court judge could make defendants angrier by putting them on probation than another judge could by giving them active time, and I think how you treat people is a really big thing in life. Whenever you hire somebody and it turns out you have hired a jerk, the shortest and most direct and quickest thing to do is get rid of them because every day they are going to cause trouble that we're going to have to go back and clean up. It was much simpler to deal with a vacancy in the office. You could do that a whole lot easier than having someone out there antagonizing the public every day. Some people, for whatever reason, just do that. Just the way God made them. When you realize that, you just need to get rid of them as quick as you can. They are going to leave the wrong impression with the public. You never have a clue what is going on and you won't be able to fix it, and the public will have a view of you that is not fair or good.

MD: What was different from the time you started prosecuting in the early 1970s and over your years as district attorney, not so much in the court system, but in the kinds of cases that came to you?

EG: I think it was really two different worlds. When I started with Jack Thompson, there were four assistants and Jack. We did not have an office. The office we had was a district court judges' office, and when he left in the afternoon, Jack got the desk and we each got a drawer. That was it.

Today, these folks have relatively large and affluent staffs of investigators, secretaries, and assistant district attorneys. It's just a different world. There were no computers back then. It was a world in which, for the most part, people relied on standing in front of a judge and telling him something, and that word being accepted and counted on. I think the other thing is—and you've got to be careful, this is an old man's theory—if you go back and look at the people we had on that staff in the early 70s—Wade Byrd, John Dickson, a whole raft of lawyers—they were trial lawyers. They all enjoyed going into the courtroom and kicking some defendant's rear end. They enjoyed the combat of the courtroom. I think for the most part today, these kids have been brought up on computers, smart phones, and the idea of going into a courtroom and doing combat over a case is not something they are prone to do. In every case there are going to be a dozen reasons why I should not try this case, why I have to plead it out, because I am worried that the judge may rule on this, that this witness may not stand up. What you are looking for is a few trial lawyers that you could get your hands on who don't give a…who say I don't have any concern about all those issues. I'm going to try this case right now and I'm going to beat that defense lawyer and I'm going to do it in such a fashion that the appellate courts will let my conviction stand. I'm not afraid of anybody. I think that's really hard to find these days.

BP: And call your next case. Win or lose, move on.

EG: Yes. We used to do that. I mean you would get court all week. I remember finishing one trial and it was an out of town lawyer. I called it up and the guy said, "This is just like a doctor's office. You finish one case and you start another one." That's the way it was back then. You tried a lot of cases. Nobody was concerned about losing. There wasn't that much preparation on all those cases. There was ample room to win and lose in any of them. I think that today we are more concerned about administratively processing paperwork, preparing discovery, checking all the boxes. There's really not near as much adversarial trial work as there may have been in days gone by.

BP: You touched earlier on politics in the DA's office. Do you think the DA's office should be nonpartisan?

EG: I don't think it would make any difference.

BP: What about judges?

EG: I think you want to depoliticize it in whatever way you can. We all know there's a certain amount of politics in getting into office. If it's appointed or if it's elected, there is going to be politics involved in some capacity. But what you do to depoliticize that—both of them—I think it's in the best interest of the public.

BP: Before we go away from that, what do you think makes a good judge?

EG: You know, I don't think there's any one thing. I was baptized under Ed Clark, Giles Clark, Pou Bailey, people like that, and those fellows were as good as God has made, and they were as different as they could possibly be, too. It's hard to define what makes a good judge.

BP: What did you look for when you were interviewing someone for an assistant DA's position?

EG: You really wanted to try to find out who this person was. I think you wanted someone who was sincere. If you find an honest and sincere person, that person will probably do you and the public a good job.

MD: Human nature is what it is and does not change much, but it seems to me that human behavior—the crimes we commit—has changed. Can you talk about that?

EG: I think the worst mistake I ever made was we had an investigative grand jury going in a drug case, and I had a fellow who was a house painter who was allegedly bringing carloads, truckloads of marijuana in here on a constant basis. So we ended up negotiating a deal where his wife was not prosecuted, but he was. Boy, it didn't take me long to realize that I had made a terrible mistake. She was the brains of the outfit, that she was the guy who ran it. I had made a genuinely significant mistake based on my own views of life having grown up in a Southern society, particularly about women.

We were all male chauvinists, which meant that we knew that men were capable of doing very bad things. But it had not sunk in yet that women were capable of doing equally bad things. So historically jails had 90 beds for men and ten beds for women. It didn't take long as you got into this new world in the 80s to realize that you need a whole lot more beds for women than you had. Over time I came to realize that women were perfectly capable of doing the same bad things that men were.

I think one of the worst parts of prosecuting today is dealing with all the child abuse

and sexual assault. What you find is that in many cases the women initially complain about what's happened to their child, but then they realize that if their husband or boyfriend or whatever the other person is gets locked up forever, there goes their support. So their allegiance would change. It would make people so mad in our office they couldn't stand it! I think that's a very real part of where we have all ended up going.

BP: Let me rewind here. Why did you go to law school?

EG: I did not know I was going to practice law. I just thought it was a real good education to get—to be able to think about issues with a legal framework.

BP: Did you want to be a prosecutor?

EG: No. When I came back here (after serving in Vietnam and in the course of a conversation with then county prosecutor Jack Thompson), Jack asked me what I was going to do and I told him I didn't know. He said, why don't you come on down here and prosecute? So I showed up the first week of December 1970 and never left.

BP: As DA, did you have much involvement with the State Bar?

EG: Kind of. I got to where I wouldn't go to Bar meetings anymore because I had so many issues involving folks that I was investigating within the Bar. There was a period there in which it really seemed like there were a lot of folks violating trust rules and taking money, and we ended up prosecuting some of them. But I was always concerned about whether or not the Bar...I felt that there should have been more aggressive prosecution of lawyers who took funds rather than administrative penalties. That's just a prosecutor coming out. I think that's one of the worst trust violations you can have, and I think that there was a time, it seemed to me, that the Bar would not share the information with prosecutors that they had received, and it created a little bit of a rub. I think the biggest problem I had had to do with trying to get those records of folks we knew had taken from clients and we wanted to prosecute them and weren't having much luck getting assistance from the Bar.

BP: The State Bar also interviewed Peter Gilchrist when he retired, and he talked a lot about the change in information and systems. He said when he first started in Mecklenburg County, he had the shucks, no discovery, probably didn't talk to the police officer, but now you've got our long, drawn-out discovery process, which is better in some ways. Do you agree?

EG: You've got so much volume today, you've got to have some kind of almost automated system, because the court system is not designed or equipped to litigate much of it. It almost has to be administratively done in a paperwork fashion, except for a very few exceptional cases.

BP: That's essentially what he said—something like maybe 2% of the cases are actually tried now.

EG: I bet it's less than that.

BP: The good thing is you've got more networking, more information about a particular defendant from other counties and other states that you probably didn't have available to you in the '70s.

EG: It's very clear that today America does not want to come home and have its house broken into, but by the same token, it wants assurance that the criminal justice system works such that those people who end up being convicted are in fact guilty of the offenses that they were involved in. All the discovery that you now have, within a year or two of my leaving the office, I think I had it down so that nobody could monkey with the discovery. It was all being done electronically, transmitted by a machine in the police department to a machine in my office, and some clerical person was then making a copy for the defense counsel to have. There was basically no capability—if you had a rogue assistant in there—to monkey with that process. I remember a long time ago folks had had dinner with another DA, and they basically came back and said this person had spent the last week deciding which pieces of paper in a murder case file to give the defense counsel and which ones not to give. They were having great discussions about whether to give it or not, and for years prior to that, we had just been doing open file based on something I learned from Pou Bailey. In essence, the hell with it—just give them everything and don't worry about it. But we were amazed that somebody would have the belief that they could make those decisions, that this is something that the defense counsel might or might not want. I mean, how could you know how they think or what the defense is going to be? But I know they had spent well over a week and were way past the judge's deadlines. Just a different world, and today you would like to think that it's basically all done electronically.

BP: What were your thoughts on the *Nifong* case that got so much attention?

EG: I didn't know him very well, but I would come home at night and see all the stuff on TV. It made for a very unpleasant evening. We had a meeting of the Conference of Elected DAs that was occurring about that time, and at the end of the meeting, I grabbed a bunch of them by the collar and said, we've got to meet with this guy and talk to him and see, in essence, what the hell is going on, because this is going to be a problem for all of us—the way he is conducting himself. So we all go in there and start talking to this guy. A number of us were trying to say to him, you are really damaging the system. You need to give the case up and let somebody else handle it. Peter Gilchrist looked at him in a very formal way and said to him, I don't know if this is accurate, but it has been said on TV that you have said that you have never interviewed the victim in this case. And he said, no I have not interviewed her. This case had gone worldwide at that point, and Peter looked at him and said, I would fire any assistant in my office that let a case get anywhere close to this far without interviewing the victim. And I thought to myself, we're dealing with a whole different ball of wax here. He sure did a lot of damage.

BP: Do you think that case had an impact on prosecutions throughout the state?

EG: Sure it did. Not really on the prosecution, but on the whole criminal justice system.

BP: What do you think about superior court judges rotating? Should that continue?

EG: Oh, yes. They are all more than ready to get out of town, and we all are more than ready for them to get out of town. I think it's really good for everybody—it really is healthy. If you had the same folks sitting there in perpetuity, that would be a different world than I have ever experienced. I don't think I would be comfortable in that environment. The concept of moving around a little is in everybody's best interest.

MD: Is there any case you tried that keeps you up at night?

EG: The concept of what happened in Luigi's (a Fayetteville restaurant) where you and I are in a nice restaurant and some guy comes in with a gun and starts shooting people is the thing that you and I can relate most easily to, because we've are all been in a nice

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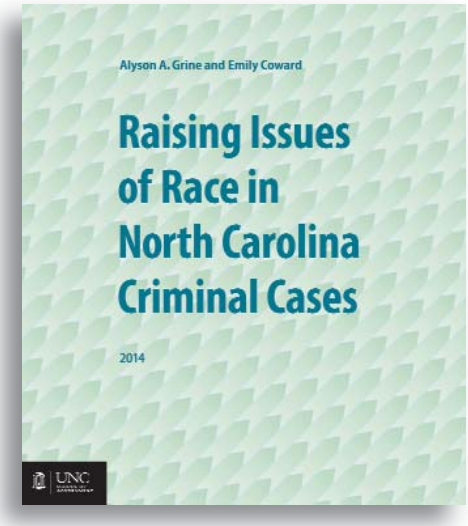
Identifying and Raising Meritorious Claims of Racial Bias—A Manual for Defense Attorneys and Other Court Actors

By Melzer Morgan

Raising Issues of Race in North Carolina Criminal Cases (hereinafter *Raising Issues*) is a comprehensive manual now available from the UNC School of Government on identifying and raising meritorious claims of racial bias. It will be valuable not only to defense lawyers, but also to judges and prosecutors. Chapters include stops, searches, and arrests, eyewitness identification, pretrial release, selective prosecution, composition of grand and trial juries, peremptory challenges, and sentencing.



This reference manual compiles in one resource the legal authority from North Carolina, other states, and the federal courts. For system actors and local leaders, it contains examples of existing collaborative partnerships that seek to enhance confidence and fairness in the criminal justice system. Some of the information, techniques, and resources available in *Raising Issues* are highlighted below.

Implicit Bias - One of the most significant contributions of *Raising Issues* is on implicit bias. Implicit biases are attitudes and stereotypes that people are not aware of, but that can influence their thoughts and behavior.

Raising Issues refers to poverty and race studies showing that raising the subject of race may cause implicit racial biases to recede, while avoiding it may leave racial biases in place. The manual cites a 2012 West Virginia Law Review article that says "by failing to confront the issue of race at trial, criminal defense attorneys risk allowing 'unconscious racial bias [to] act [ ] as an invisible witness against the African American defendant, buttressing the prosecution's claims concerning his incorrigibility and undermining his case..." In cases that run the risk of triggering implicit biases, some judges ask jurors to examine how they would respond if the race of the defendant and/or victim were different, using a model race-switching instruction, described in the manual. A federal judge uses a TV clip, pre-*voir dire* instructions, and individual juror verdict certification to obviate juror biases.

One of the innovative features of the manual is the inclusion of case studies. In

one, a district court judge reflects on implicit bias, including his own in a case in which two young men were accused of attempting to rob a restaurant while wearing *Scream* masks and carrying hand guns. The first juvenile, an African-American, came into the courtroom in an orange jump suit. The other did not appear from the lockup in an orange jump suit, as the judge expected. Instead, the white juvenile was sitting in the courtroom with his family and pastor. There was no difference in the juveniles in terms of their participation. There was a difference in how they had been treated for pretrial release. This experience caused the judge to learn as much as he could about implicit bias and to take steps to overcome his own bias.

Raising Meritorious Claims - *Raising Issues* suggests that there are reasons that race is not raised even though issues of fairness are involved. There is fear of the possible response by prosecutors and judges, there is reluctance to step outside one's comfort zone, or there is lack of awareness that race is an issue, and unfamiliarity with the law and the required factual showings. *Raising Issues* equips defense lawyers and other court actors with exhaustive legal authorities and background materials to address issues of race effectively and overcome these concerns and, in doing so, makes an important contribution to the court system.

Pretrial Release - *Raising Issues* includes studies and authorities that point out that (1) it is unconstitutional to fix excessive bail to assure that a defendant will not gain his freedom, (2) it is improper to set a "cash-only" bond except in limited circumstances, and (3) secured bonds affect racial and ethnic minorities in particular. Incarcerated defendants are more likely to succumb to pressure to plead guilty, to be found guilty if they go to trial, and to receive a sentence of imprisonment if convicted. Additionally, in viewing how pretrial detention and wrongful convictions may be connected, the manual points to the effect of pretrial incarceration on the suspect's ability to assist in the defense. Where the wrong person has been charged, it is precisely there that factual development, alibis, and hard-to-find evidence are the most vital to the case. An accused person on pretrial release in the community is more likely to locate and convince fact witnesses to participate than most lawyers.

Peremptory Challenges - Twenty-five years ago the US Supreme Court debunked the assumption that black jurors are unable to impartially consider the state's case against a black defendant. However, common justifications for exercising a peremptory challenge may still be influenced by bias. Justifications that may not be race neutral include already having a black juror on the panel, residence in a predominately minority neighborhood, age, facial expressions or other nonverbal behavior, clothing or jewelry, not educated enough to serve on a jury, lack of community connection, hairstyles or styles of dress associated with African Americans, and association with black institutions (e.g. historically black colleges, or the NAACP).

Selective Enforcement - Racial profiling— an elusive problem—is defined as decisions by law enforcement that rest on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of other races or ethnicities. For example, a NC highway patrolman said in *State v. Villeda*, 165 N. C. App. 431, 434 (2004), "Hispanics are more prone than other races to get in a car after they have been drinking." A North Carolina study of 13 million traffic stops found that, compared to White motorists, Black and Latino motorists and passengers are almost twice as likely to be searched and twice as likely to be arrested following a traffic stop.

Cross-Racial Identification – Studies note that cross-racial impairment in identification procedures usually does not stem from conscious racial prejudice. *Raising Issues*, in one of many practice notes, observes that perhaps the standard employed by North Carolina courts to determine whether an identification is admissible despite a suggestive pretrial identification procedure is based on a misinterpretation of US Supreme Court case law. Rather than depending on whether the identification has an "independent origin," it is suggested that the applicable standard should be whether the pretrial identification procedure was "unnecessarily suggestive" and, if so, whether the in-court identification is "nevertheless reliable."

Addressing Race at Trial - The manual offers *voir dire* questions useful in eliciting views and reactions about past experiences involving race and addresses how to deal with a juror who admits to racial bias in *voir dire*. For example, counsel can acknowledge: "You have a First Amendment right to express your views openly....I kind of think that view is not so unusual. Does anyone else have similar views?" Sample *voir dire* questions dealing with race are provided as well as various techniques to address issues of race, such as the "show of hands" technique.

Policy Considerations and Beyond Litigation – *Raising Issues* is not a resource

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Racial Equity Network

The School of Government's Indigent Defense Education group has formed the North Carolina Racial Equity Network, a program to provide training and support in this vital area of law.

Supported by a grant from the Z. Smith Reynolds Foundation and as a response to the positive reaction to *Raising Issues of Race in North Carolina Criminal Cases*, the network includes 50 indigent defense attorneys from across North Carolina who are dedicated to addressing issues of racial equity through a combination of individual case work, support and mentorship of fellow indigent defenders, and collaborative efforts with court actors and criminal justice officials. These attorneys were selected from a highly qualified group of applicants.

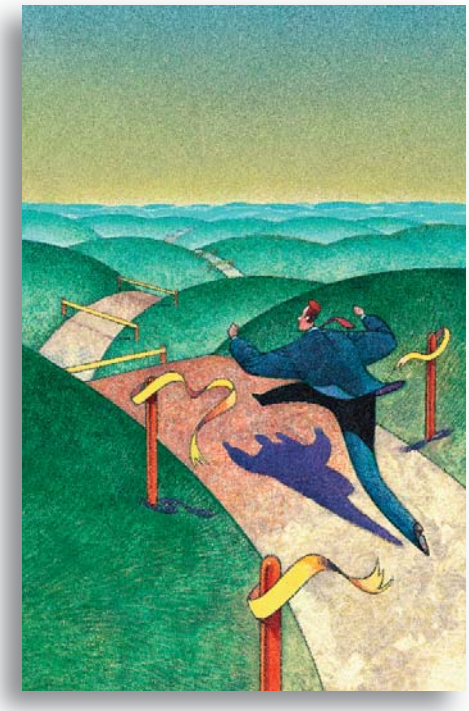
Over the next two years, network attorneys will participate in six one-day training events at the School of Government and receive advising support from SOG faculty and staff.

"This work will not always be easy," said Alyson Grine, one of the authors of *Raising Issues of Race in North Carolina Criminal Cases* and a SOG faculty member. "The network is intended to provide training and also a supportive community where members can share their experiences and resources in addressing issues of race when they arise in criminal cases."

Young Lawyers Start Career Paths by Embracing *Pro Bono*

By Mary Irvine

"When I have a good day with a good result for a *pro bono* client, I know I made a difference in that person's life." "I strongly believe we have the obligation to give back." "You can see it when you help—even with just a phone call or a letter—it can be life-changing." "We have specific training to help meet needs that can only be met by lawyers. With lack of funding for legal aid, it becomes more important for lawyers to volunteer."



These are the words of young North Carolina lawyers, early in their legal careers, describing why they are committed to making *pro bono* part of their practice, and why they encourage others to give back through *pro bono*.

While voluntary, Rule 6.1 of the Rules of Professional Conduct calls on every lawyer to provide legal services to those who are unable to afford them. The rule sets out *pro bono* service not as a suggestion or hope, but as a professional responsibility. This article highlights young lawyers across the state who are taking this responsibility seriously and are making a difference—for clients and communities—through their *pro bono* service.

Teaching *Pro Bono* in Law School

While many of North Carolina's law schools have long emphasized the value of public service throughout their histories, law students today are offered very structured opportunities to do *pro bono* work with institutional support. Last August when students at the seven law schools across the state began their careers in the legal profession, orientation included information about how to get involved in *pro bono* and students could begin signing up for *pro bono* trainings and projects. Many schools track students' *pro bono* hours, and some offer a special recognition for students at graduation who have completed a certain number of hours.

For many school administrators and students, *pro bono* is seen as a critical component of the law school experience. Sylvia Novinsky, assistant dean for public service programs at UNC School of Law, came to UNC in 1996 and worked with students to start the school's *Pro Bono* Program the next year. "When I was in law school, *pro bono* experiences were hard to find. What we're doing now is highlighting unmet legal needs and determining how law students can help address them. As a profession, we are now more aware of how law students can help by using their unique skills and training. I believe it is our ethical responsibility as lawyers—because we have this special skill set—to do *pro bono* service, and students

should begin honoring this commitment to *pro bono* while still in school. Additionally, students learn incredibly valuable skills through their *pro bono* experiences." UNC's *Pro Bono* Program, now in its 18th year, engages hundreds of students annually to complete tens of thousands of *pro bono* hours. Now, more than 75% of each graduating class at UNC amasses over 75 hours of *pro bono* service.

Every year the North Carolina State Bar recognizes a graduating law student from each North Carolina law school with the *Pro Bono* Student Award. The North Carolina Bar Association recognizes the *pro bono* efforts of attorneys and organizations, including a law school *pro bono* project that provides legal assistance to low-income North Carolinians. In 2014, UNC Law and Duke Law shared the honor of winning the North Carolina Bar Association's Law School *Pro Bono* Award for the Cancer Project, a collaboration among the schools, their local cancer hospitals, and private supervising attorneys from the local legal community to provide advance directives to cancer patients.

Alex Selig, a UNC Law student and clinic coordinator for the Cancer Project, says the Cancer Project "serves an unmet need for cancer patients receiving care at the hospital and their families. The hospital is not just a place we set up shop to provide the services, but we have really forged a partnership which now includes Legal Aid of North Carolina to address further needs—including advance directives—as they come up." To date, the project has served 373 patients and prepared 230 documents. The Cancer Project is just one recent example of successful *pro bono* collaboration in practice.

For law students, there are opportunities to do *pro bono* work in nearly every area of law. Possibilities are as varied as researching an innocence claim through one of the North Carolina Center on Actual Innocence law school projects, helping draft a will for an elderly client, and assisting a low-income individual finalize her uncontested divorce. As recent graduates leave law school with this exposure to a vast array of *pro bono* opportunities, they enter practice prepared to continue this commitment.

Leading the Profession through Service

For recent graduates and young attorneys in search of *pro bono* opportunities, the North Carolina Bar Association's Young Lawyers Division provides many outlets in various areas of law. Michael Wells Jr. of Wells Liipfert, PLLC, and current chair of the Young Lawyers Division (YLD) says, "the goal of the division's *pro bono* work is to provide legal services for those who could not otherwise afford them." Continuing projects of the Young Lawyers Division include Wills for Heroes, a clinic providing estate planning documents for first responders which travels to various areas of the state each year, as well as clinics to answer basic legal questions for those in need. The YLD is a place where new lawyers can come together to provide services to those in need while networking and learning in the process. Michael says YLD is seeking to expand their reach, and is constantly considering new projects.

In Charlotte, members of the North Carolina Bar Association's Young Lawyers Division work with Legal Services of Southern Piedmont through the Access to

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Justice *Pro Bono* Partners Program to provide a clinic one Saturday each month to advise individuals in the Mecklenburg area about consumer issues including fraud, unfair and deceptive trade practices, and predatory lending. The project is co-chaired by Tim Lendino, associate at Smith Moore Leatherwood, LLP, and Kat Armstrong of Robinson Elliott & Smith. Tim said private attorney volunteers handle the cases that come in through the clinic entirely from start to finish. In his role as co-chair, Tim helps recruit private attorneys to screen clients at the clinic each month and take cases that warrant extended representation. Katya Riasanovsky, director of *pro bono* services for the Access to Justice *Pro Bono* Partners Program, says, "the real value of the program is that we are able to serve clients with 'car cases,' a type of case we receive quite frequently, but that we do not currently have resources or funding to respond to without the help of the YLD volunteers." The clinic served nearly 50 clients in 2014, and every client with a viable case was referred to a *pro bono* attorney.

Tim describes the *pro bono* work through the clinic as a great hands-on opportunity for young attorneys to get experience. "I have found that the biggest recruiting tool to encourage my peers to participate is that these are cases that can help young attorneys learn. I've developed much faster as a lawyer by working on *pro bono* cases," says Tim. He has litigated numerous cases as part of the clinic—mainly consumer issues arising from used car purchases or repairs gone bad—and now he has litigation experience, which many new lawyers in large law firm settings do not get early in their careers. "With *pro bono* work not only are you providing a service for folks that desperately need help, but it affords attorneys with a sense of purpose. That's what I love about it."

As to the perception that it isn't possible to competently represent a low-income client in an area outside your practice, Tim says that attorneys "can learn how to do this work and do it well to help people." Earlier in the year, legal aid attorneys in Charlotte provided a training to interested volunteers which included the nuts and bolts. Though finding balance with billable clients, *pro bono* cases, and other professional obligations can be difficult, Tim encourages all attorneys to make it a priority. "I am the same exact attorney for a *pro bono* client as for any other client at the firm, and *pro bono* cases are treated with equal importance and significance."

Benefits of *Pro Bono* for Young Lawyers

- Gain skills. Lawyers who are new to practice can more quickly develop as professionals and learn new skills in client communications, case management, litigation, managing client expectations, and running meetings, for example.
- Learn about a new practice area. While some lawyers may be more comfortable with *pro bono* work in an area aligned with their private practice, *pro bono* also allows exploration of other practice areas and fields of law to pursue in the future or that are simply of interest.
- Build relationships with other lawyers. *Pro bono* representation is a surefire way to broaden your networks, meeting legal aid attorneys and other volunteer lawyers from private practice while collaborating on a project or case.
- Get recognition within your firm or organization for your work. *Pro bono* helps young lawyers get noticed for their accomplishments. Legal aid organizations and bar associations often keep *pro bono* "honor rolls" for attorneys who have completed a certain number of *pro bono* hours. They also give awards to attorneys who have excelled in *pro bono* work for helping create a new project, tackling a difficult case, or showing a sustained commitment to *pro bono*.
- Build your reputation in the community. Doing *pro bono* work and doing it well is one way to boost your reputation in your local legal community as someone who gives back and works hard to competently serve all their clients.
- Find new mentors. Often legal aid organizations provide mentorship to attorneys who take cases, or partner newer lawyers with more experienced lawyers on *pro bono* cases.

How to Get Involved

- Connect with your local legal aid office. *Pro bono* coordinators in cities and towns across the state are tasked with recruiting new volunteer attorneys and organizing projects or cases to encourage private attorney involvement. From representing a domestic violence victim at a 50B hearing, to providing advice via phone, to securing status and custody for an abandoned immigrant child, there are many opportunities to get involved.
- Participate in *pro bono* projects of the Young Lawyers Division. Depending on where you live and the time you have to volunteer, various projects of the North Carolina Bar Association's Young Lawyers Division may fit your interests from assisting with a consumer case or writing a will. The North Carolina Bar Association hosts other opportunities for *pro bono* service including 4ALL Statewide Service Day, which was held on March 6, 2015.
- Ask attorneys within your firm about the *pro bono* work they do and how you can get involved. Many firms host particular *pro bono* projects or have committees that organize the firm's *pro bono* work.
- Reach out to your alma mater. As law schools seek to train the next generation of lawyers, they use *pro bono* as a teaching tool. Graduates can assist in a law school *pro bono* project by supervising students during a legal clinic or reviewing student work on a *pro bono* advice case through Lawyer on the Line, for example. UNC Law recently released the Alumni *Pro Bono* Opportunities Portal, which can be used by both alumni and other NC attorneys to find opportunities for *pro bono* service. Find the portal at law.unc.edu/probono/alumni/opportunities/.

Promoting Access to Justice for All

Jillian Brevorka of Brevorka Law Firm joined the Wills for Heroes Committee of the Young Lawyers Division (YLD) shortly after passing the North Carolina bar exam. A natural fit as Jillian's private practice focuses on estate planning, she ran the training for law students and fellow attorneys and later

chaired the committee as it worked to expand the project. Previously focused on serving first responders, Wills for Heroes now also serves military personnel. This year, YLD is again taking the service one step further by offering wills to same sex couples in a new project, Wills for Equality. As Jillian describes, "same sex couples haven't had access to the estate planning tools available to others due to statutory limits, so we have assembled a group of young lawyers interested in addressing their needs who are equipped to help."

Jillian attended Wake Forest School of Law and was placed with the Capital Defenders Office as part of a trial advocacy course. She also volunteered as a *guardian ad litem* and interned with Legal Aid of North Carolina during the summer. "When I went to law school, opportunities to get involved were available, but now there is a real push to get students involved early." In addition to *pro bono* service, Jillian's community service involvement includes volunteering with the Guilford County Democratic Party where she has worked to raise awareness of voting rights and campaign funding issues, and she also serves meals to the homeless with Greensboro's 16 Cents Ministry. "But as lawyers," Jillian says, "we can use specialized skills to help people. *Pro bono* is extremely important because we live in a state with a large number of individuals that need assistance and legal aid and public defenders have experienced great cuts."

Currently, Jillian serves as the secretary on the Board of Directors of the North Carolina American Civil Liberties Union. She also is involved in fundraising and serves on the legal committee. Legal director of the ACLU Christopher Brook describes the need for *pro bono* services from lawyers: "Bottom line: the ACLU of North Carolina and other public interest law organizations could not do the work we do without the *pro bono* assistance of attorneys like Jillian. Through her service, she brings invaluable expertise, perspective, and enthusiasm that helps to guide our investigations and litigation."

Pro bono work has also allowed Jillian to pursue her other interests in the law outside her private practice. "Aside from getting out in the community and giving back, I have been able to explore personal passions of mine like voting rights and other access to justice issues. Realistically, I couldn't practice in that area, but there is still a place for me to contribute to the issue."

Responding to New Needs

Young lawyers are also eager to help respond to the ever-changing legal needs of low-income clients. Justin Puleo, an associate with Smith Moore Leatherwood in Raleigh, found an opportunity to volunteer with Legal Aid of North Carolina as the deadline for obtaining healthcare coverage through the Affordable Care Act's federal exchange neared. Justin describes the important role of health care navigators as "volunteers who inform individual consumers of their health insurance options, which will help them make an informed choice about coverage."

Justin felt *pro bono* work with the Health Care Navigator Project at Legal Aid aligned nicely with his health care practice, which includes counseling employers about the act's employer mandate. Justin says this was one reason he was attracted to the project. "Going through the training required to be a navigator and volunteering as a navigator at enrollment events taught me about the consumer perspective and experience with this new system." During a day-long enroll-a-thon in the spring, Justin assisted a 60 year-old woman who had never been able to afford health insurance. He was able to review available health care coverage options with her and provide information about the subsidies available based on her income. Now she can afford coverage and has access to needed health care. "Even if people we served did not sign up that day, if we are educating them about their options, we are doing our jobs as navigators."

Justin describes his law firm's *pro bono* policy, values, and culture as conducive and supportive to *pro bono* and community service generally. Smith Moore Leatherwood offers a 50-hour offset to their billable hour requirement to attorneys who volunteer their time to provide free legal services. This support from the firm encourages attorneys to meet the aspirations of Rule 6.1 to provide 50 hours of *pro bono* service each year. Other firm support includes an internal *pro bono* committee to consider *pro bono* opportunities and a *pro bono* mentor in each office to assist attorneys and be a liaison to the legal aid organizations in their area. Internal firm *pro bono* awards also recognize attorneys who give of their time.

In addition to volunteering his time through *pro bono*, Justin also has helped raise money for legal aid by coordinating fundraising among associates in his office and assisting with the 7th Annual Bar Awards and Silent Auction, hosted by the Wake County Bar Association as a benefit for Legal Aid of North Carolina.

Through his *pro bono* experiences in law school and as a young lawyer, Justin has found *pro bono* work to be deeply satisfying. Justin says he has "learned that everyone can use help at some point in their lives. A good lawyer at the right time can make all the difference." ■

Mary Irvine is IOLTA's access to justice coordinator.

The Charlotte School of Law—Public and Private Value

By Jay Conison

The March issue of the North Carolina State Bar *Journal* contains an article by Mr. Jerry Hartzell directed against the Charlotte School of Law. Mr. Hartzell's argument is essentially as follows: (a) Charlotte is a for-profit organization, which means it puts dollars above students; (b) it is a large law school, which is bad; (c) it has a high academic attrition rate, which is also bad; and (d) students graduate with unsustainable levels of debt, which is very bad. The implied conclusion, not very far from the surface, is that the Charlotte School of Law delivers little if any value.

This brief article will proceed as follows. First, I will point out the factual errors and incorrect assumptions in the four main steps of Mr. Hartzell's argument. Second, I will describe deeper flaws in the argument, which also get in the way of understanding problems in legal education. Third, I will explain some key elements of Charlotte's mission and provide additional information about how Charlotte delivers private and public value. Finally, I will make concluding comments about Charlotte and about the author's argument and arguments similar to it. (The *Journal* article written by Jerry Hartzell, *Infilaw and Student Debt*, can be viewed online at ncbar.gov/journal/archive/journal_20,1.pdf.)

Mr. Hartzell's Argument

I will review the steps of Mr. Hartzell's argument in reverse order.

First, the claim that Charlotte graduates emerge with unsustainable levels of debt is contradicted by publicly available fact. Each year, the Department of Education publishes the cohort default rate (CDR) for every higher educational institution. The CDR measures the percentage of graduates of the institution who default on federal loans. The most recent national CDR is 13.7%. The most recent CDR for Charlotte is 0.0%.

Second, the number the author asserts to be Charlotte's academic attrition rate—32.1%—is wrong. As the very document he

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cites makes clear, attrition has three components: academic attrition, which results from not meeting the requirements of academic good standing; transfer attrition, which consists of students voluntarily leaving the school for another institution; and other voluntary attrition, which may be for reasons of health, family, change of mind about career, or any of a host of others. For the year in question, Charlotte's academic attrition rate was 18.3%; the remainder (13.8%) was transfer or other attrition. I should also note that, contrary to Mr. Hartzell's assumption, there is no ideal percentage for academic attrition. There can be too little as well as too much. Academic attrition must reflect a balance between making every effort to help students succeed in their academic efforts (lower attrition) and rigorously and honestly ending the enrollment of those who do not have a good chance of success (higher attrition). Every school seeks to find the proper balance, and also to accommodate other relevant, but often competing, factors such as exclusivity and opportunity in the admissions process.

Third, in Fall 2013 there were 23 ABA law schools that had JD enrollment of more than 1,000. They include many schools that by any estimation would be considered elite: Columbia (1,250), Georgetown (1,933), George Washington (1,613), Harvard (1,741), Michigan (1,055), New York University (1,418), and Virginia (1,048). Many are generally considered excellent schools. Contrary to the assumption of the author argument, there is no negative correlation between school size and school quality. Indeed, that assumption flies in the face of schools that have dwindled to small size and are at peril of closing for want of resources.

Fourth, the argument trades on the assumption that because a law school is labeled "for profit," it inevitably cares more about dollars than students. To see the flimsiness of this assumption, ask whether an attorney who is in a for-profit partnership necessarily cares more about dollars than about clients or the public interest. Of course not. Attorneys have double bottom lines: they pursue both financial return and social impact, and no one would think there is any contradiction between these aims. No one would think that an attorney must assume nonprofit status to stay true to professional values. Exactly the same holds for law schools. Every law school—whether it be a public institution, a private 501(c) entity, or a taxable entity—has the concurrent motivations to deliver high-value education and social good, and to generate the resources needed to deliver those benefits. There is no contradiction. In the end, there are only two types of law schools: (a) for profit and (b) for loss. The latter do not last long because they do not have the resources to deliver services and value.

Deeper Flaws

Mr. Hartzell's argument follows a pattern that has been used by others. Start with the premise that Charlotte (or another InfiLaw consortium school) has for-profit tax status. Leap to the claim that the school is only interested in returning profit to investors and not in the value provided students or the public. Select facts that purport to prop up this claim, then dismiss as irrelevant everything else that might present a fuller picture or put the school in a positive light.

This pattern has many flaws, one of which is that it displays confirmation bias. This is selecting evidence and interpreting it to justify an original impression or conclu-

sion. Confirmation bias eliminates complexity and critical thought. It is the foundation of many popular business books, which jump from the fact that a company has been profitable in the recent past, and thus admirable, to the conclusion that selected features of the company are also admirable (and so should be copied by others). The negative version is at work in arguments like the author's. Starting from the (assumedly) negative assessment of the school based on the (assumedly) negative fact that it is a taxable entity, one selects facts about the school that also appear negative and so justify the initial negative impression.

As applied to law schools, this pattern of argument takes an even more doubtful form through the way ostensibly supporting facts are selected. Too often, facts are selected on a closed-box view of law schools. By this I mean the tendency to see a law school as essentially a device for converting certain inputs (for example, LSAT scores) into certain outputs (for example, jobs). On this view, a few inputs and outputs are all one needs to know to judge a school as good or bad. What goes on inside the box is deemed irrelevant. In this way, Mr. Hartzell can dismiss—and indeed show no interest in—"the quality of the education being provided at the Charlotte School of Law."

But law schools are not closed boxes. Inputs and outputs are important, but not the whole story. As the Report of the ABA Task Force on the Future of Legal Education emphasizes, law schools are enterprises that create private and public value. They create private value, for example, through long-term return on investment to graduates or the development of leadership competencies. Law schools create public value, for example, by providing society with persons skilled in problem solving or social ordering, or in legal services to the underserved through clinics and *pro bono* service. To adhere to sweeping conclusions about a school on the basis of a narrow selection of characteristics is logically and conceptually unfounded.

Indeed, it is a disservice not just to the law school in question, but to understanding the current situation in legal education and dealing with current problems. The main concern of the author seems to be debt levels of graduates. He dwells on the average debt of Charlotte graduates. Law school debt is indeed a profound problem. But it is a profound problem not just for one law school; indeed, not just for all law schools, but for our economy and our educational and legal systems as a whole. Charlotte is not alone. To look at a single datum about a single school in isolation ignores the environmental factors that give rise to increasing student debt at any school and to the social, economic, and political ramifications.

To avoid misunderstanding, I am not saying that concrete facts about Charlotte (or any other law school) are irrelevant. For example, Charlotte's first-time bar exam passage rate in North Carolina over the past several years has been uneven, and in some cases disappointing. We are deeply engaged in projects to improve bar passage in both the short and long term. But bar passage rates alone do not demonstrate that Charlotte or any other school fails to deliver private and public value, any more than a high entering LSAT profile automatically shows that a given school does deliver private and public value. In either case, the conclusion follows only by starting with the assumption one is trying to prove.

The Charlotte School of Law and the Delivery of Value

A telling aspect of the author's argument (and similar arguments by others) is the data omitted. One set of omitted data is student body diversity. Charlotte contributes to overall law student diversity at a disproportionately high rate. For example, in the 2013-14 academic year, Charlotte students constituted 28.7% of all JD students in North Carolina law schools, but 39.7% of all diverse JD students in North Carolina. In the same year, at a national level, Charlotte students constituted 1.0% of all JD students, but 1.7% of all diverse JD students. Here is a case where bigger is better—specifically, a bigger social benefit.

Charlotte's diversity is no accident. Charlotte, like its sister schools, was established in large part to build diversity in both law schools and in the legal profession—two domains that have been slow to provide access and opportunity for underrepresented minorities. Of course, there are trade-offs. For example, a high level of student diversity inevitably affects some of the metrics cited in the *Infilaw* article, such as incoming student LSAT profile. Charlotte has chosen to pursue access, opportunity, and diversity rather than bragging rights based on LSAT.

This commitment to diversity is one example of how Charlotte provides private and public value. Here, Charlotte delivers private value by enabling individuals (including ones who might otherwise be shut out) to enter the legal profession, earn a living, and achieve personal goals. And it provides public value, among other ways, by increasing diversity in the legal profession at large.

This example is rooted in mission. Many other examples are based in ongoing programs. One such example of public value is the work of the school's Civil Rights Clinic on the Ban the Box campaign. Ban the Box is a national civil rights project that challenges stereotypes prevalent in the employee hiring process regarding persons who have conviction histories. Part of the project is to bring about change in governmental hiring practices: specifically, to remove the question on employment applications about conviction history, and thus encourage these employers to choose candidates on the basis of skills and qualifications. For its work in bringing about change in Charlotte, the Civil Rights Clinic received the 2014 Clinical Legal Education Association Award for Excellence in a Public Interest Case.

An example of the delivery of private value is the law school's Small Practice Center. The center, the only small firm incubator in North Carolina, provides office space and support for recent graduates who wish to purse solo or small firm practice. Many recent graduates of law schools wish to quickly move into their own solo or small practices, yet this can be difficult and risky. The Small Practice Center provides a safe environment with substantial support to help graduates ease into their desired practice. The center provides administrative support, marketing assistance, and mentoring, for up to two years.

These examples could easily be multiplied. It is regrettable that many of Charlotte's programs and activities are not widely known. This stems in part from the fact that the school underinvests in marketing. Our marketing budget is low so that we can direct more resources to academic programs and key outcomes, in particular, employment, bar passage, and academic support.

Concluding Observations

I do not wish to suggest that the

Charlotte School of Law is perfect or needs no improvement. To the contrary, I know of no educational institution more self-critical or more focused on continuous improvement than Charlotte. We welcome constructive criticism and suggestions for improvement, and thus appreciate Mr. Hartzell's interest in the Charlotte School of Law. We would be happy to provide him with an opportunity to learn more, and go beyond the few data points in his article, so that he can better understand the school as a whole.

Nonetheless, his argument has serious errors of both fact and analysis, and is contradicted by publicly available information. Far more problematic, though, are the underlying errors of assuming what one seeks to prove, and failing to understand the basic purpose of law schools—delivering private and public value. As a consequence, the argument ignores almost everything relevant to meaningfully evaluating Charlotte or, indeed, any other law school.

I have tried in this article to achieve a larger aim than just responding to the *Infilaw* article. Specifically, I have tried to help us break the habit of reflexively making assumptions about a law school and then narrowly selecting facts to support the starting assumption. Law schools are complex. They must be evaluated in light of their purposes. This calls for a more extensive and more nuanced inquiry, to be sure. But it is an inquiry that can pay great benefits in understanding and action, for the legal profession and for the communities law schools and lawyers serve. ■

Jay Conison is dean of the Charlotte School of Law.

Endnotes

1. Jerry Hartzell, *Infilaw and Student Debt*, 21 NC St. Bar Journal, 27 (Spring 2015).
2. ed.gov/offices/OSFAP/defaultmanagement/cdr.html.
3. *Id.* (click on "Search 3-year Database"). The prior CDR for Charlotte was 2.5%.
4. Mr. Hartzell's argument relies on speculation around a single data point, average debt. But average debt alone tells nothing about ability to repay or return on investment. The argument appears to dismiss the important fact that law graduates may repay federal loan obligations through income-based repayment (IBR), in which repayment is based on income level; it is specifically designed to make loan repayment manageable. For a brief overview of IBR, see studentaid.ed.gov/repay-loans/understand/ plans/income-driven. See also nytimes.com/2015/ 01/25/upshot/a-quiet-revolution-in-helping-lift-the-burden-of-student-debt.html?abt=0002&abg=1.
5. abarequireddisclosures.org/. Mr. Hartzell misleadingly calls anyone who falls under any of these categories a "dropout."
6. Contrary to the *Infilaw* author's suggestion that Charlotte academic attrition is the highest in the state, this rate is lower than that of another North Carolina law school.
7. americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_fall_jd_nonjd_enrollment.authcheckdam.pdf.
8. *See, e.g.*, minnpost.com/education/2015/02/why-william-mitchell-and-hamline-law-had-merge; https://www.insidehighered.com/news/2015/04/03/save-itself-some-believe-virginia-law-school-may-move-it-risks-hurting-town-if-it.
9. *See* Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Disguises,* Rev. Gen. Psy., 175 (1998), available at psy2.ucsd.edu/~mckenzie/nickersonConfirmationBias.pdf. The argument pattern also builds on the related halo effect. *See* Phil Rosenzweig, *The Halo Effect and the Eight Other Business Delusions that Deceive Managers,* 50-64 (2007).
10. Rosenzweig at 83-105.
11. Hartzell at 29.
12. *See* Sections II & VII(D). The Report is available at americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.
13. Just as with debt level of Charlotte graduates, bar passage rates of these graduates must be understood in the context of a larger trend in legal education. First-time bar pass rates fell nationally by 4% from 2013 to 2014. *See* ncbex.org/assets/med ia_files/Bar-Examiner/articles/2015/840115-statistics.pdf. This has caused great consternation among law school deans. *See, e.g.*, nytimes.com/2015/03/20/business/dealbook/bar-exam-the-standard-to-become-a-lawyer-comes-under-fire.html?_r=0. None of this is denying that Charlotte (and many other schools) must work to improve bar outcomes. But it is another example of how focusing on a single datum about a particular law school, as if it were unique to that school, can be misleading and can divert attention from larger issues affecting much, if not all, of legal education.
14. abarequireddisclosures.org.
15. abarequireddisclosures.org/; americanbar.org/groups/legal_education/resources/statistics.html (click on First Year and Total JD Minority).
16. Charlotte admits a portion of its class, particularly ones with lower LSAT scores, through a conditional admission program. The program itself consists of two rigorous courses on law school subjects (Fourth Amendment and Negotiable Instruments). If a participant achieves a score on course assessments that (under a model based on historical data) predicts success in law school, the student will be admitted to the JD program.
17. Other examples are rooted in the mission of service to the underserved. For example, to the best of our knowledge, Charlotte remains the only law school in North Carolina that requires *pro bono* legal services by each student for graduation. Charlotte was recently selected to the 2014 President's Higher Education Community Service Honor Roll for Economic Opportunity Community Service. nationalservice.gov/sites/default/files/documents/CNCS_Honor_RollProgram_Economic_508.pdf.

Raising Issues of Race (cont.)

solely for defense lawyers. In five of the nine substantive chapters, there are sections focusing on nonlitigation or policy approaches to problems of selective enforcement in stops, searches, and arrests; pretrial release; selective prosecution; ensuring representative juries; and rethinking the *Batson* standard. Such nonlitigation approaches encourage collaboration among criminal justice system stakeholders. Contact information is provided for groups who can be resources for the legal profession, the law enforcement community, and the general public. For example, the National Consortium on Racial and Ethnic Fairness in the Courts encourages the establishment, in each state, of a commission to examine the treatment accorded minorities in their courts.

Raising Issues is a splendid resource. It is easy to read and use; it is a highly valuable manual that every criminal defense practitioner should consult. Judges and prosecutors will also want to have a copy of the manual on the shelf, as *Raising Issues* can help create a fairer, more just and racially equitable criminal justice system. The manual is available free online or may be purchased in hard-copy form at the School of Government bookstore.

UNC School of Government Defender Educator Alyson Grine is one of the co-authors of *Raising Issues*. Grine received the school's Albert and Gladys Hall Coates Teaching Excellence award for 2013-14. Emily Coward, a research attorney at the school, is the other co-author. Professor John Rubin is the editor of the North Carolina Indigent Defense Series, of which *Raising Issues* is a part. ■

Melzer (Pat) Morgan was a superior court judge from 1981 to 2005. He was a member of the charter class of the National College of Criminal Defense Lawyers and Public Defenders. Before being appointed as a judge, he had a trial and appellate practice for 14 years with the firm of Gwyn, Gwyn and Morgan in Reidsville. He was a member of the Commission on Race Relations in the Legal Profession in the mid-1990s, and also a member of the Indigent Defense Service Commission from 2000-2008.

Ronald Spivey—Life After the Law

By John Gehring

Is there a life after the law? We have seen many of our fellow attorneys step down from successful careers in order to pursue other interests. Examples of this different road followed are John Hart and Walter Bennett, both authors of critically acclaimed books.

An ancillary question arises—is there life after the bench? The perfect opportunity has arisen for me to broach this subject with the retirement of three of our local superior court judges.

My first interview is with Ronald E. Spivey who recently finished a distinguished career beginning as an assistant district attorney, then as a district court judge, and now a superior court judge. We have been friends almost since the beginning of our legal careers and have hopefully been advocates—sometimes as opponents—for the fair administration of justice. My questions for him are many, so here goes...

John Gehring (JG): Please tell us about yourself, your younger years, and what the underlying impetus was for your decision to become a lawyer. What was your first job and how did that come about?

Judge Spivey: I was born and raised in Sanford, NC, where many of the community leaders and elected officials were attorneys. I read about their legal accomplishments in the Sanford *Herald* and admired their contributions to our community. I presumed that there must be something special about being a member of the legal profession—and as it turned out, that presumption was right.

Growing up at that time in Sanford was like life on the *Andy Griffith* show. The sheriff who didn't carry a gun attended our country church. We had one farm family with sons who never spoke that could have been the prototype for the Darlings. My uncle was the town barber, not at Floyd's but Spivey's Barber Shop—right downtown, just a block away from my dad's business, Spivey's Watch Repair. Instead of Wally's filling station we had Grady's Esso. Instead of Weaver's Department Store we had Efird's, Belk, and Penny. We had the Rexall Drug store with a real soda fountain—but unfortunately no Miss Ellie behind the counter that I can recall. We probably even had some fun girls from Mount Pilot or Siler City, but I was too young to know about it.

I rode my bicycle about a mile to my first job at a business on US 1 in Sanford (actually in Tramway) called Miro's Country Ham. I started as their miniature golf course cleaner, moved up to mopping the store and cleaning the restrooms, and eventually got promoted to the ultimate job at the ham house, grinding sausage and taking hams in and out of the smokehouse. Even on the most difficult days in the courtroom, I never came home smelling like smoked ham for two or three days, which gave me one more reason to appreciate the remarkable opportunity I've been given to serve as a judge.

JG: What changes in the practice of law have you seen throughout the years? Have the standards of civility changed? Do dress codes, for both attorneys and clients, adhere to a less strict standard? Has respect for the court changed? Do you see similar changes in the parties in both civil and criminal courts?

Judge Spivey: Civility within our profession is one of the important traits that makes our daily work a profession, and not just a job. I think we've seen a huge erosion of civility in this country in government, politics, sports, and everyday life in general, which is unfortunate in my opinion. Even though I believe that our profession is still exponentially more civil than most others, there seem to be more occasions where a lack of civility or a lack of professional courtesy is displayed. Any decline in civility within our profession is likely directly attributable to greater day-to-day stresses within our profession—greater financial pressures, greater demands and expectations from clients, more attorneys practicing and competing for the available business, and what I perceive as a decline in the status of being an attorney as viewed by society. Not too long ago, when a person introduced themselves as an attorney, there was a noticeable "wow" factor. I don't sense that nearly as much today. The cumulative effect of years of high profile stories that portray our profession in a less than positive light, endless lawyer jokes, and inaccurate impressions about what we all do every day has taken a toll.

JG: We have seen countless hours of "news" on the national and local networks about the grand jury action in both Ferguson, Missouri, and Staten Island, New York. Many North Carolinians, and some of our lawyers, do not understand the purpose of the grand jury or how it operates. Please describe the function of the grand jury in our court system. Also, would you please comment on the new amendment to the North Carolina Constitution relating to trial by judge upon a plea of not guilty in criminal superior court.

Judge Spivey: It was my good fortune to usually have the privilege of empaneling the new grand jury members almost every January and July—and I loved it. Yes, it took a good part of the morning reading that lengthy charge from the pattern jury instructions on the function of the grand jury, but when I read those words from the charge:

> No person is above the law, and no person should be too important to be called upon to answer and brought to trial for his or her crimes; neither should any person be too humble to merit your protection from oppression and malicious prosecution.

I always felt they were so meaningful, and I always felt that our grand jurors sensed the significance and magnitude of the important duties that accompanied their charge and oath. Their work considering bills of indictment usually constitutes 95% of their work, with the remaining 5% composed of checking the local jail facilities and other enumerated duties that arise from time to time. I hope that our North Carolina grand jurors will never become a subject of controversy like those in some recent high profile cases where the public was dissatisfied with their decision regarding bills of indictment. From my experience, the grand jurors are 18 regular folks who come in one or two times each month out of a sense of duty and responsibility to do their best to carry out their oath deciding on bills of indictment and inspecting our jails. I hope and believe that they're giving us their best effort, and are trying to do the right thing in each case they consider.

Regarding the new felony jury trial waiver provisions, Jamie Markum, Jeff Welty, and Komal Patel at the School of Government prepared excellent briefs for the judges on what we might expect. 49 other states have some form of jury trial waiver in felony trials, and between 5%-30% of the defendants who go to trial choose a bench trial—so an average of about 15%. It will be interesting to see how many defendants will want to waive jury trial in North Carolina, and more interesting to me how many judges will routinely consent to the waiver, which is required by the statute.

JG: Who are your personal heroes and why?

Judge Spivey: My father, who was a watch repairman, was a strong influence, teaching me the importance of humility and the importance of appreciating what you have in life. He also taught me how important it is to talk less and listen more—something that I hopefully remembered while presiding. My mother taught me the value of hard work, preparation, and taking pride in my work product.

Judge Bill Freeman in Winston-Salem is my judicial mentor. I studied judicial tall timber in this part of the state—Albright, Rousseau, Seay, Martin, Cornelius, Ross, McHugh, Greeson, Deramus, Wood, and Chief Justice Mitchell just to name a few—and tried to copy their outstanding traits on the bench.

I also greatly admired three men of national stature that I first met while in student government at NC State—President Bill Friday, Governor Jim Hunt, and Attorney General Rufus Edminsten. In these great North Carolinians I saw different yet extremely effective leadership styles—and what a coincidence, they all happened to be attorneys!

JG: What, without mentioning any names, was the most humorous and successful final argument that you have heard during your career on the bench?

Judge Spivey: One of my personal favorites came when I was an assistant district attorney. The allegation was possession of cocaine. As the officer approached, the accused allegedly ran down a path and threw a small glassine bag from his person, which the officer watched land about 20 feet away. The accused was apprehended with substantial US currency, but no drugs. After the chase they went back up the path and there was a dry glassine bag lying in the wet grass about 20 feet off the path—the typical throw down case. The small glassine bag, which was a little larger than a thumbnail, contained about 1/20th of a gram of cocaine. This was a tiny amount of cocaine in an almost weightless glassine bag. The defense hammered away on cross examination of the officer about the weight of the entire exhibit, and how it would be impossible for such a tiny, almost weightless item to be cast some 20 feet away by a fleeing individual. At the end of the trial day, I stayed in the courtroom with the clerk. After everyone left I asked to see the exhibit, and after about 15 attempts, I concluded that the maximum flight for this object was not more than arm's length. It was simply too light to go anywhere. When the officer came in the next morning I told him about my experiment, and my belief that we were going to lose this one. But he reiterated he had no doubt about what he'd seen.

In closing argument, the defense attorney hammered away again on the weight and distance issue. He dramatically went over and retrieved the exhibit from the clerk and said "members of the jury, this tiny, almost weightless bag could not possibly fly 20 feet away—it's impossible." At which time he flung the glassine bag toward the floor. On this remarkable occasion, it responded like a Frisbee and flew all the way across the courtroom, some 25 feet and bounced off of the clerk's desk. The look on his face and the juror's faces was priceless. It was a very successful closing—successful for the other side. That case went from a not guilty to a guilty verdict in a single throw.

JG: What advice do you have for those who are new to the practice of law? How would you advise them concerning law as a profession and law as a business? What do you see as to the future of the practice of law in North Carolina, from a newly minted attorney to a retiring judge of superior court? And speaking of retired lawyers, what does life after the bench hold for you?

Judge Spivey: I don't claim to be a wise oracle, but I would encourage new attorneys to be cognizant of creating a balance between their work/community life and their personal life. It can be so easy to allow the day-to-day demands to consume you and all of your time. I think finding that balance will help make you a better person and a better lawyer.

As for me, life after the bench will hopefully include a second career as a mediator and an arbitrator. I also hope that it will include occasional weeks back in the courtroom as an emergency judge. And so far it has also included a lot of family activities that I never got to routinely do when I was on duty at a courthouse somewhere in North Carolina, and that's been a wonderful experience. I am so thankful that I have had this remarkable opportunity to serve as a district and superior court judge. It gave me the chance to meet so many great people who work in our courthouses, so many great lawyers, so many outstanding jurors and citizens who came to watch court, and I had the chance to get to know so many communities around this state, especially when I had the opportunity to stay there for the court week. I was also privileged to have so many outstanding colleagues on the bench to whom I

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1, 2, 3, 4: Your Digital Security Plan for 2015 by the Numbers

By Joyce Brafford

If you're like most lawyers, you probably have some digital security in place, but you're not entirely sure what it does, how it works, or why you really need it.

We know that security systems are frequently misunderstood in law firms, but the reliability or unreliability of your system can cause you to lose time, data, and money. You may feel that you don't need to fully understand information security because your colleagues are similarly uneducated. Despite the ubiquity of techno-illiterate attorneys, you remain responsible for your clients' data security.

According to the 2014 Legal Technology Survey Report from the ABA, nearly half of the firms surveyed were infected with malware, viruses, or spyware. Yet less than 20% of those firms employed encryption software. This isn't a new trend among lawyers. According to the ABA Tech Report 2013, most lawyers surveyed didn't know if their firm had experienced any type of data breach. Taken as a whole, we see that lawyers in firms, large and small, take for granted that their information is secure, and they are not, as a group, proactive about security. In this context, it's easy to see why law firms are considered the soft underbelly of data security.

As you move through 2015, I urge you to consider where your risks lay, and what you can do to prevent a breach. If you handle real property matters, you should review the ALTA Best Practices Document. The ALTA page should be at the top of your list for resources for improving your security policies. Here are the highlights from the ATLA Report.

1. Create and Maintain Written Procedures for Trust Accounts

Having a written policy on how to handle trust accounts is the first and arguably most vital step in making sure that you're protecting your clients' money and information. Having a standard set of procedures to handle client information and money will help you and your staff avoid serious mistakes. Your policy should include how to handle hard copy documents, where to store information, a system of checks to ensure deposits into your account are accurate, a destruction policy for sensitive material, and a reconciliation plan.

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2. Adopt and Maintain a Written Information Security Policy

Like a written trust account policy, your information security policy can help you avoid damage by giving you step-by-step instructions for handling sensitive data, when and how you manage downloads, and how to respond if there is an information breach in your firm.

As you review your security for 2015, look at the three common weak points in your security plan. These points pose tremendous risks because they can seem innocuous.

A. Your Employees

Your employees can inadvertently cause major security breaches. One of the most common problems for law firms is a data breach stemming from information stored in an insecure way. Whether it be by failing to password protect a document, sharing information on an unsecure server, or accidently allowing access to your information by tracking programs, your employees can do a lot of damage. By changing permissions on your network, you can exercise greater control over what gets in. Require a network password before anything can be downloaded. Only download items from trusted, verified sources. Carry this mantra into your mobile

device policy, too. Require that anyone using a mobile device to access firm information have a security app that monitors updates and downloads.

B. Third Parties

Third party service providers may have a lot of access to your network. Consider every vendor with whom you share drives, to whom you send information, or who has network access. Now consider all the information they have. Do you know what each of your vendor's security plan entails? If not, now is a great time to ask. Even if your firm's data is secure in-house, you continue to be responsible for it after it crosses your digital threshold.

C. Suspicious Mail

While you would never pick up an unmarked or suspicious package at an airport or in a park, you probably do something similar with your email all of the time. We regularly open mail from unknown senders, because that's the way so many of us connect with new people. Think of all the times you've made an email introduction for a person, or sent a document to an opposing party you don't personally know. Even the most suspicious among us have opened email from what looked like our bank, or a car dealership. Predators know that most people have gotten wise to their game, and a lot of effort goes into making malicious email look benign. To that point, you must have antivirus protection that scans attachments and automatically quarantines any malicious code.

While many of the best practices listed require major or time consuming changes to your office's procedures, here are four steps you can implement this week to improve your security:

1. Antivirus Protection

You likely have antivirus protection, but it's important to reiterate how crucial this first line of defense is to your firm. Take just a few moments to review what your antivirus does, and what, if any, important features it is missing. Your antivirus program should include protection from viruses (also worms, trojan horses, rootkits, phishing attacks, and any other malware techies invent in 2015), and spyware. Your protection should run routine and on-demand scans, and it should identify suspicions behavior. If you don't have scans set to run at regular intervals, take a moment to run an on-demand scan now and set up your protection to scan your computer regularly. In addition to scanning for viruses and spyware, you should also receive real-time protection from any malicious code hidden in email attachments or lurking on websites. To reiterate—you should have protection from viruses and spyware, and have real-time protection.

2. System Updates

The programs that run on your computer will sometimes require updating. You'll see pop-ups that prompt you to either download an update, or require you to restart to finish installing a backup. It's entirely probable that you will be in the middle of something very important when you get that message. I want to strongly encourage you to keep all of your programs up to date. If you can not run the update immediately, put a note on your calendar to run it either at the end of the day or first thing in the morning. Updates improve a variety of metrics including performance, responsiveness, compatibility, and of course security.

3. Password Protection

You know that passwords matter. They make getting into your computer, phone, or network more difficult, and provide a lot of security with very little work on your part. You should have a password for every computer you use in your professional life. This includes your tablet, phone, and laptop. On your mobile devices you should have a 4-digit passcode, at least. It's strongly recommended that you have an actual password. Passwords matter for your applications, too. Because so much of what you do is probably stored on a third party server, (email, banking, document storage) strong passwords are an essential part of your security plan. Try not to replicate passwords. Use words or phrases in conjunction with symbols. If, however, you're like most people and don't have the capacity to remember 30 different complex passwords, consider a service like LastPass. LastPass and other password services will generate strong passwords for you, auto-populate password fields, and they will do those things while requiring you to remember only one master password.

4. Backups

There are a myriad of ways to back up your data. If you're storing documents on a third party server, there's a good chance that your vendor has server redundancy—meaning there are multiple backups across the country. The data you store locally, however, is likely less secure. It's important to back up your data for that worst case scenario of natural disaster or hacking. You can make a copy of your machine onto a terabyte hard disk that sits on your desk, or you can store that same information offsite with companies like Carbonite or SpiderOak. Both of these companies will help you recover your lost data quickly and easily. The advantages to storing locally on your backup hard drive are that it is cheaper and you retain full control of the data. The advantages to backing up remotely are that your data is stored in a very secure way, and if a natural disaster hits, your information will be out of harm's way.

Improving your security doesn't have to be a complicated, opaque process. You can control who has permission to access your firm's computers, and you have the power to stop most cyber attacks. You are the responsible party, and you must take notice of what information comes in and what is leaking out. But with a few simple steps, and making smart choices about who has access to your firm's data, you can have a secure 2015. ■

Joyce Brafford is the practice management advisor for the North Carolina Bar Association.

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Meet the Federal Judges: Judge William L. Osteen Jr.

By Michelle Rippon

In the winter of 1993 the State Bar *Journal* (then known as the *State Bar Quarterly*) published a profile of William L. Osteen Sr., federal district judge for the Middle District of North Carolina. Among his many achievements, it turns out that he raised a remarkable son.

William L. Osteen Jr. was nominated on January 9, 2007, to the seat vacated by his father upon his retirement, and received his commission the following September.

The extraordinary relationship between father and son is one that defies yet exemplifies the influence the one had over the other. To begin with, there are certain obvious connections with the law and the federal court which could only help influence the relationship between the two. These connections actually began with Osteen's grandfather who was the chief probation officer for the Middle District of North Carolina. Father and son also shared important values—the importance of hard work and a deep and genuine belief in the goodness of people.

Osteen describes his childhood as pretty much perfect: "I was given every opportunity." As a young teen, he was given the chance to spend his summers living and working with a family on a farm, waking early, milking cows, and heading off at the end of the day to fish or hunt—something he still enjoys. These were "good, solid, hard-working people" whose influence he still feels.

The Osteen family lived within walking distance of their schools. Osteen and his two brothers would come home for lunch. His mother made a career of raising her boys. "She was always there for us—kind of a *Leave it to Beaver*[1] feeling."

Far from seeing himself as a federal district judge, Osteen's first career choice was to become a farmer so he could spend his time hunting and fishing. Then in junior high and high school his interests turned to athletics—primarily baseball and wrestling. While sports continued to be an interest, Osteen's career plans hadn't really become focused when he began college at UNC Chapel Hill. He began with a somewhat unusual major in math and English. He enjoyed science and so moved on to environmental science and

engineering, and then graduated with a degree in Public Health.

While law school began to appear somewhere on the horizon, Osteen decided to work for a year. He unloaded vans for United Van Lines; he landed a job drawing blood at Moses Cone Hospital; and he finally worked as a technician at GuilfordLabs, a privately owned lab, performing chemical testing on water and wastewater. He enjoyed this job and considered postgraduate work in analytical chemistry or engineering. The choice between a career in science or law was difficult. Ultimately, however, he chose to attend law school in Chapel Hill. Needless to say, the transition from science to law, from "the concrete to the Socratic" was an interesting challenge.

In keeping with his nontraditional path, Osteen worked in construction after his first year of law school. At the end of his second year he worked on maintenance and property management tasks for a friend, Joe Buckner. Buckner was a law clerk for a Chapel Hill firm, Epting and Hackney. As a result of their friendship, Osteen continued his property work, but also became a law clerk with that firm and gained valuable legal research experience. As Osteen reflects, "There was no straight line for me." Buckner, now a judge in Orange County, remains a great friend.

Osteen had always thought he would enjoy practicing environmental law. However, he was ultimately drawn to criminal law, and following graduation from law school he considered applying for a job as an assistant public defender or as an assistant district attorney.

So where was dad in all of this? Osteen will tell you that as a child and even as a young man he never paid much attention to what his dad was doing at the office. "I know now that Dad was busy, but at the time we just didn't know it." To make his point, Osteen relates an incident that occurred when he was in the eighth grade and on the varsity wrestling team. In his first match, right after school at 3:30, he was pinned in 30 seconds. He was upset. His dad was at the match and commented that "It can only get better." In his next and second wrestling match, also at 3:30 in the afternoon, he was pinned in 40 seconds. His dad was again at the match and this time his dad said, "I told you it could only get better and it did." Osteen's point in this story was not so much his dad's words, it was that his dad was always there for every game and for every match no matter the day or time.

The second aspect of this relationship was also telling. While he was aware that his dad practiced law, in his mind "Dad just went to work." And, given Osteen's somewhat meandering path to what has become a wonderfully successful career, it shouldn't come as a surprise that Osteen Sr. put no pressure on his boys to do anything other than what would make them happy: "You just need to do what you love to do," he would say. And that included where Osteen would begin his legal career. It was not necessarily that young Osteen wanted to make his own mark, or simply wanted to avoid working in his father's shadow. He just never considered practicing law with his father. However, as fate, or luck, or more likely just a kernel of an idea would have it, Osteen actually began practicing in a law firm with four great lawyers—Bill Osteen Sr., Pat Adams, Ralph Walker, and N. Carleton "Woody" Tilley. It was Tilley who planted the idea one day when he asked Osteen to meet and talk about his future as law school came to an end. Tilley counseled, "You can do what you want, but your dad is one of the finest trial lawyers in the state. Don't miss out. You have an incredible opportunity to practice law with your dad. There's no telling how long the firm will be here, and you may not have this opportunity again." His advice was wise and compelling and Osteen made the decision to join the practice. He was the only young lawyer among "great teachers." Looking back, he remembers the first case he worked on with his father. He was assigned the job of examining a character witness. He prepared for three days and asked three questions.

As if Tilley had presaged what was to come, it wasn't long before things changed at the firm. Tilley was appointed to the federal bench and Walker went to the North Carolina Court of Appeals. Osteen, Adams, and Osteen continued. As Adams practiced primarily in the area of real estate, the two Osteens kept up with a thriving federal criminal and state civil practice. "Like magic," smiles Osteen, "I suddenly realized that dad was an extraordinary talent in the courtroom. Tilley was right, I would never have known what an amazing opportunity I would have missed."

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It was during this time that Osteen married. His wife, Elizabeth, had also attended Page High School in Greensboro and Osteen had known her family. The Osteens have two children. Anne Bennett, a sophomore in college, and Bill III, a sophomore in high school, are undoubtedly two to be proud of. Osteen describes both as far better students, athletes, and individuals than he ever was. While Osteen admits that parenting is "an experiment filled with a lot of trial and error," he is quick to credit his wife for her leadership and their many neighbors and good friends who are interested in and support the Osteen children as if they were their own.

As a visitor to his office, the first thing to notice is that it is neat, organized, and relaxing. Osteen depends heavily on Frances Cable, his judicial assistant, for her great ability and experience, and his law clerks for a variety of research and discovery projects. In addition to looking for students with high academic achievement and law review experience, he leans toward students with some academic or work experience before law school. "I try to find not only one individual with whom it will be good to work, but also two individuals whose strengths complement each other and whose personal qualities will allow them to work well together." For the most part whether in drafting memos or preparing for trial, the work is the result of a collaborative effort.

Osteen's insights into the practice of law and the workings of the courtroom are instructive. "My job," he says, "is often shaped by how prepared the lawyers are—their fine work is an integral part in guiding me to a fair and just decision." He observes that "lawyers live with their cases," often becoming so completely immersed in the cause of their client that they may sometimes have trouble narrowing the issues. As

a result, "meritorious arguments can easily get lost." Attorneys should also remember that one reason the process is impartial is because judges "just see a snapshot of the case without the emotional investment that comes from living with the case from beginning to end." From his own experience, Osteen does understand that for attorneys there is always the difficult balance between being prepared, yet at the same time meeting office demands and charging their clients fairly. He supports the mediation process, but he cautions attorneys to find a mediator who is willing to provide a realistic assessment of the case to both sides. Osteen will also hold a settlement conference if requested. He strongly suggests, however, that attorneys not wait until after the jury is picked to settle a case.

Judge Osteen has been told that he is a stickler under the rules. Indeed, he feels strongly that rules are to be respected, and he is likely to try to follow statutory language carefully. He advises attorneys to use the *Rules of Evidence* and the *Rules of Civil Procedure* at trial not just for reference, but as "guides to the effective presentation of the case." Quoting his grandfather, his bottom line advice is, "do right," and respect the process: the adversary, the rules, and the court.

While Osteen misses a lot of the relationships that the practice of law afforded him, he also sees one pleasant advantage to sitting on the bench. It's his father's reminder that when practicing law, "it's always great to win and difficult to lose." As a judge, he now enjoys a comfortable middle position without the swings.

Looking back on Judge Osteen's many and diverse interests—academically, athletically, and personally—the role of judge very well suits his love for challenge and variety. While he laughingly refers to himself as "a jack of all trades, and master of none," this comment speaks loudly of a man who accepts his many achievements with grace and humility. ■

Michelle Rippon is of counsel with Constangy Brooks & Smith in Asheville. She is also an adjunct professor in the Business Management Department at UNC-Asheville.

Endnote

1. For our younger readers, this television series of the 1950s did portray the idyllic family.

Gilchrist and Grannis (cont.)

restaurant before. It dawns on you that what if somebody comes in here with a gun. That guy (Kenneth French) did things like—he thought there was a gay couple there, two men, and were on top of each other. It was a father trying to protect this son, and the father was shot and killed. One of the disillusioning things when I started in this game of justice was that bad cases were supposed to get the death penalty. After a while it becomes very clear that it is a very inexact system. While the death penalty needs to remain and be a viable possibility in the worst of situations, the fact that last year (2013) there was one in North Carolina tells you all you need to know about it. We as a corporate community no longer really use that tool anymore. After a while, when you have so many homicides you are sitting there thinking that the best thing I can do for most of these people is give them life without parole as quickly as I can and avoid these lengthy delays, or the two and three and four years from the point at which the event occurs until the trial begins. I think the one thing North Carolina should try to do is figure out how to expedite the process.

BP: The DA should look at each case individually, even though they are all first degree murder and they are all different, and some going capital and are worse than others. It is ultimately the DA's decision.

EG: It is really important if you have this public responsibility that you define the timeframe within which justice ought to be delivered in your district. The possibility of your getting the death penalty is greater legally than it is realistically, so you've really got to take the bull by the horns and say, I can only really try three or four of these cases a year and still process the rest of my stuff. You need to be able to say to your constituents, I may not get every disposition you want, but I am going to try to have it done while it is still meaningful.

BP: Do you want to say anything about the Racial Justice Act?

EG: I don't think it was necessary. There are very few folks who get into an elected position that I have met who gave any outward appearance of racist propensities. I thought there were a number of Constitutional safeguards already in place. I really and truly felt that it was simply a very ingenious way to do away with the death penalty. I would have been very comfortable with folks just saying as a society, we are not going to have the death penalty anymore. That would have been a political decision the state of North Carolina could have made, but…we couldn't figure out what it meant, how we were supposed to deal with it. People mean well, but I wish it had been a more forthright statement and people just simply said that, for whatever reasons, we don't want to proceed with the death penalty anymore.

BP: What advice did you give Billy West? (West, a longtime senior ADA, succeeded Grannis as elected DA).

EG: He was there for about ten years, but even being a senior assistant is not quite the same as being the elected DA. Even those senior assistants who have been in the office for a while, once they become the elected DA realize there's a whole different level of responsibility and public accountability. There is an incredible amount of stress.

MD: Did you understand that when you started as well as you did when you left?

EG: I don't think I understood that until after I left.

BP: Speaking of stress, our State Bar works hard with lawyers with depression, alcoholism, and drug problems. Knowing what a difficult profession we are in, what do you tell the young guy who says, "Mr. Grannis, I am thinking of going to law school?"

EG: There are way too many lawyers out there for the economic opportunities. I try to be very careful. I've had kids who come to me owing more than $100,000, and I am giving them a $40,000 job. There is no way those numbers work. Now it has become a business. We've got big law schools with big payrolls, and it is very important that they keep "X" number of kids in school generating the revenue it takes to fund all that. We are no longer dealing with whether society needs this many lawyers. I think that is a recipe for a bad situation.

BP: Good to see you, and thank you.

EG: The only thing you didn't ask me is, "Do you miss it?"

BP: Do you miss it?

EG: It's really interesting. You miss people some, but when you are finally able to get away from it, it's like that old Martin Luther King Jr. line, "Free at last, free at last." It was something. ■

The All-Time Absolutely, Positively Ten Best Lawyer Films

By Lawrence T. "Rusty" Hammond Jr.

Digging out the ten best movies about lawyers is a problem of exclusion. I have at least 20 that could make the cut. But herewith is one man's opinion of the hallowed list.

10. ***Witness For The Prosecution*** (1957) Well, if you've ever practiced law at all, you have been "had" by a client. In this classic British film, Charles Laughton takes on the defense of Tyrone Power (his last role), accused of murdering a rich widow who had become enamored with him. The accused's wife Christine (legendary Marlene Dietrich) testifies for the prosecution when it appears she isn't legally married to the defendant. Then a mysterious bunch of letters to Christine fall into the defense's hands, discrediting her testimony, and the jury acquits the accused. His lawyer is skeptical and finds out he has been completely fooled by his client and Christine. The ending of the movie asks viewers not to divulge the ending, so I won't.

9. ***Anatomy Of A Murder*** (1959) This film is a prime example of a smart lawyer making lemonade out of lemons. It is adapted from a novel by a Michigan Supreme Court justice taking the pen name of Robert Traver. Ben Gazzara plays the defendant, accused of murdering a bartender. He says the man raped his wife and his action in response was unavoidable. Attorney James Stewart, on the rebound from losing an election as prosecutor, tries the case on the unheard of basis of "irresistible impulse," a bizarre branch of temporary insanity. A fun trivia item is that the trial judge is played by real-life lawyer Joseph Welch of Army-McCarthy hearing fame. Remember "at long last, Senator, have you no shame?" That was him!

8. ***The Verdict*** (1982) features one of the late great Paul Newman's best parts. He is an alcoholic, down-on-his luck lawyer. A slam-dunk malpractice case falls into his lap. Everyone—insurance lawyers, the judge, the doctors, even his client—wants to settle. But he senses they all want him to sell out too easily, so he rolls the dice and tries it out. What happened? Watch and see.

7. ***Amistad*** (1997) is frankly fairly boring in some parts, but is a wonderful endorsement of attorneys representing unpopular causes. Matthew McConahughey is Roger Sherman Baldwin, defending mutinous slaves and putting the whole issue of slavery at issue.

6. ***A Time To Kill*** (1996) is the legal version of *Rudy* or *Miracle on Ice*. It is based on John Grisham's first (and one of his best) novels. When a black girl is raped and it looks as if the obviously guilty white perpetrators will walk, her father takes matters into his own hands and mows them down. His trial is undertaken by local (this is Mississippi) attorney Matthew McConaughey (without his patented smirk). The Klan threatens his family and burns down his house, but he perseveres. His jury argument is a real humdinger!

5. ***A Civil Action*** (1998) stars John Travolta (of all people) as a hot-shot Boston personal injury attorney who brings a class action against some really nasty water polluting corporations. But he doesn't see the forest for the trees and carries the case beyond all reasonable limits. The big boys grind down his small firm, and there's no happy ending here. except that the EPA socked these bad guys with big fines, basing their evidence mainly on what the lost civil action attorneys did.

4. ***Philadelphia*** (1993) highlights the best and worst of our profession. Tom Hanks (who won the Oscar for best actor for this role) is a good attorney in a big firm who contracts AIDS. He is summarily fired and can't find anyone but semi-sleazy billboard attorney Denzel Washington to take his wrongful dismissal case. Who won? Hey, this is Hollywood!

3. ***My Cousin Vinny*** (1992) is not a true picture of our profession, but is so damn funny I just love it. Joe Pesci is the awful attorney from Hell misrepresenting his slacker nephew and friend in Judge Fred Gwynn's court. His appearance in a pink tuxedo is a highlight of this laugh riot, and he only makes things worse and worse for the "yutes" he is defending.

2. ***Inherit The Wind*** (1960) Talk about a heavyweight fight! Here we have Spencer Tracy as Henry Drummond (really Clarence Darrow) and Frederick March as Matthew Harrison Brady (really William Jennings Bryan) toe-to-toe in a trial about the right to teach evolution. Tracy realizes he can only win a moral victory, so he has a grand-old-time (as do we) doing so. Interesting that this movie settled the question forever, isn't it?

1. ***To Kill A Mockingbird*** (1962) Okay, you saw this coming. So what? You walk out of the theater thinking, "Wow, I'm a lawyer, too!" Gregory Peck undertakes the hopeless defense of a black man in Mississippi for the rape of a white woman. He is innocent; she is a slut; there's no chance at all for the defense. But this movie absolutely ennobles every attorney on the planet. "Stand up, Jean Louise, your Daddy is passing by," intones the black minister from the colored balcony.

Honorable mention to: *The Caine Mutiny*, *A Few Good Men*, *I Am Sam*, *The Lincoln Lawyer*, *The Accused*, and *Presumed Innocent*. ■

Rusty Hammond has been writing a movie column called Mr. Movie since 1996 and is an emergency district judge. Visit his blog at hammondmrmovie.blogspot.com.

Profiles in Specialization—Kimberly R. Coward

By Denise Mullen, Assistant Director of Legal Specialization

I recently had an opportunity to talk with Kimberly R. Coward, a board certified specialist in residential real property law, who practices in Cashiers. Kim grew up in Iowa and attended Iowa State University, earning an undergraduate degree in political science. A last-minute decision to consider law school led her to the University of North Carolina at Chapel Hill. She received her law degree in 1988 and, shortly after, married a fellow student, William H. Coward (Bill). Bill now serves as resident superior court judge in the Judicial District 30A. Kim joined the firm of Coward, Hicks and Siler, PA, working almost exclusively in real property law in the Cashiers office. The firm has two other office locations, in Franklin and Sylva. Kim became board certified in residential real property law in 2006. Following are some of her comments about the specialization program and the impact it has had on her career.


Coward

Q: Why did you pursue certification?

Two of the lawyers with whom I worked closely at the time were board certified, Tom Crawford and Monty Beck. They spoke highly of the program and I thought that becoming certified would provide a good tagline to follow my name, and may also make me a better lawyer as well. I've always believed that if you are going to do something, you should work to be the best. I felt like I'd been in boot camp since beginning my work as a lawyer. I worked long hours in a demanding environment, learning all that I could about real property law. By the time I applied to take the certification exam, I felt that I was a specialist and that receiving the certification would validate that.

Q: How did you prepare for the examination?

I had a pretty serious schedule to prepare for the exam. I read through three years of continuing legal education (CLE) publications from the NC Bar Association's Real Property Section. I read the *Hornbook on the Law of Property* from cover to cover, including the statute citations. I focused some additional study time on the practice routines that I didn't see much in my daily work. I studied leases and some of the other real property forms. I studied something each day for about three months. I felt prepared to take the exam when the time came.

Q: Was that process valuable to you in any way?

Yes, the process of studying for the exam confirmed for me what I already knew. Studying allowed me to hone my skills and improve on the things I didn't know.

Q: Has certification been helpful to your career?

Becoming a board certified specialist has certainly had a positive impact on my career. Many clients see it as a source of comfort, knowing that they are in good hands. For many years Cashiers and the Highlands have been known as a summer vacation playground for the wealthy. The clients that I work with are very sophisticated consumers who have high expectations. My certification helps them to understand my dedication to this practice area as well as my level of expertise. I work with great clients and my goal is always to provide a very high level of service to them.

I have also been blessed with opportunities to become deeply involved in my community. I served on the founding board of the Summit Charter School, launching the first charter school in our area. Currently I serve on the Highlands Cashiers Hospital Board with a diverse and accomplished panel of mostly retired executives from all over the country. I truly enjoy my work and treasure the role that specialty certification has played.

Q: Who are your best referral sources?

I receive many referrals from local real estate brokers and also from former satisfied clients. We have a small number of lawyers here in Cashiers and I think I may be the only board certified specialist in real property law west of Asheville.* I have many professional contacts and a strong determination to prove that I am the best lawyer I can be.

Q: Are there any hot topics in your specialty area right now?

All real property lawyers are still working to incorporate directives from the Consumer Financial Protection Bureau (CFPB) into our practices. In 2013 the CFPB implemented a process by which third party providers must be "vetted" in order to handle residential loan transactions, which vetting includes satisfactorily meeting "Seven Pillars of a Sound Practice." These new regulations have made us all take a very close look at our policies and procedures to make any necessary changes. The goal is a better client experience, and in my opinion it's better to comply early.

Q: Does your certification relate to that in any way?

It gave me the confidence to know that I could deal with new regulations. I do have the skills necessary to review the requirements and incorporate changes into my practice. At this point, I'm the only lawyer in the Cashiers office, working with a staff of nine dedicated employees. It's up to me to set the tone and provide the leadership to my staff. My recognition as a specialist bolsters that confidence and assists me to lead effectively.

Q: How do you stay current in your field?

I attend CLE programs in real property law through the NC Bar Foundation as well as through other entities offering continuing legal education. I read as often as I can and I stay connected to the other real property specialists. I have excellent law partners as resources and I never feel that I'm on my own. I know when to reach out and seek guidance from those I trust.

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Lawyers Receive Professional Discipline

Disbarments

Reid James of Gastonia neglected his clients, did not properly wind down his practice after he was suspended by the DHC, and did not respond to the State Bar. He was disbarred by the DHC.

David Kirkbride of Raleigh pledged the funds in his trust account to a casino to secure his gambling debts. He surrendered his license and was disbarred by the DHC.

Edward L. McVey III of Greensboro surrendered his license and was disbarred by the Wake County Superior Court. Between 2010 and 2014, McVey intentionally falsified documents purporting to show that he maintained legal malpractice insurance. McVey had actually not maintained such insurance for at least 15 years. He provided the false information to at least one mortgage lender to satisfy the lender's requirements that approved closing lawyers must maintain malpractice insurance.

Matthew J. Ragaller of Greensboro, formerly of Nags Head, surrendered his license and was disbarred by the Wake County Superior Court. Ragaller misappropriated approximately $21,500 he held in trust for an estate and filed two false accountings.

In March 2013 the DHC concluded that High Point lawyer **Wilbur Linton** did not properly manage his trust account. The DHC entered an order suspending Linton's law license but stayed the suspension on numerous conditions. The DHC activated the suspension in October 2013 because Linton did not comply with the conditions of the stay. Linton neglected and ultimately abandoned his clients during the stayed suspension and did not respond to the State Bar. He surrendered his license and was disbarred by the State Bar Council.

Thomas F. Foster of High Point acknowledged that he misappropriated entrusted funds and did not pay income taxes. He surrendered his license and was disbarred by the State Bar Council.

Suspensions & Stayed Suspensions

Robert Gray Austin III of Indian Trail violated numerous rules, including failing to properly reconcile his trust account, failing to keep client ledgers, and failing to promptly remove earned fees. The DHC suspended his license for two years. The suspension is stayed for two years upon Austin's compliance with numerous conditions.

Keith Henry of Asheville was affiliated with a business that purported to offer estate and tax planning services and was closed when its principal was indicted for operating a Ponzi scheme. Henry shared fees with a nonlawyer, had a conflict of interest, and facilitated the unauthorized practice of law. The DHC suspended him for two years.

Paul Jackson, an assistant district attorney in Johnston County, made inaccurate statements of material fact to the court that he had contacted the SBI Lab to obtain results of DNA testing. As a result, a criminal defendant did not receive timely disclosure of exculpatory evidence and spent over 500 days in custody before charges against him were dismissed. The DHC suspended Jackson for one year. The suspension is stayed for two years upon his compliance with enumerated conditions.

David Lloyd of Spindale used entrusted funds for his own benefit and for the benefit of third parties without authorization to do so, did not report to the State Bar misappropriation of entrusted funds by his law partner, who has since been disbarred, commingled personal and entrusted funds, and did not safeguard entrusted funds. The DHC suspended him for three years. The suspension is stayed for three years upon Lloyd's compliance with numerous conditions.

James Thompson of Morehead City violated several trust account rules and did not properly supervise nonlawyer assistants in connection with real estate closings. The DHC suspended him for three years. The suspension is stayed for three years upon Thompson's compliance with numerous conditions.

James Garfield Williams of Archdale self-reported employee theft from his trust account. He had not properly supervised his employee, reconciled the trust account, ensured that reconciliations were performed, or kept appropriate client ledgers. The DHC suspended him for two years. The suspension is stayed for two years upon Williams' compliance with numerous conditions.

Clarke Wittstruck of Asheville neglected and/or did not communicate with clients in 13 cases, did not timely respond to the State Bar, did not deposit entrusted funds in a trust account, and did not participate in the State Bar's mandatory fee dispute resolution process. The DHC suspended Wittstruck for five years. After serving three years of the suspension, Wittstruck may petition for a stay of the balance upon showing compliance with numerous conditions.

Censures

Cynthia Mills of Greenville was censured by the Grievance Committee for failing to appear at a court conference, filing a frivolous and misleading motion to recuse a judge, abandoning a client's case, and failing to communicate to the client her intent not to continue the representation.

Reprimands

Eric Ellison of Winston-Salem was reprimanded by the Grievance Committee. The committee found that Ellison did not appear in court on behalf of his client, did not adequately communicate with his client, violated several advertising rules, and did not respond promptly to the State Bar.

S. Wayne Patterson of Winston-Salem was reprimanded by the Grievance Committee. Patterson is licensed to practice law in Georgia but not in North Carolina. In an action before the US Equal Opportunity Commission, Patterson held himself out as being able to practice law in North Carolina. Patterson also used a misleading firm name.

Maynard Harrell of Plymouth was reprimanded by the Grievance Committee. Harrell did not timely deliver a client file. The committee found that Harrell's failure to turn

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Getting Lost in Our Own Lives

By Robynn Moraites

Lawyers are especially adept at maintaining a façade. "Never let 'em see ya sweat" is wonderful advice for entering into a tough mediation, negotiation, or lengthy trial. The problem arises when we take an adage like that to heart so strongly that we completely disconnect from our authentic internal experience.

Most lawyers we see at the North Carolina Lawyer Assistance Program who struggle with debilitating depression got there through decades of dishonoring, disconnecting from, or ignoring and pushing down their true internal emotional experience. How do we do this so effectively for so long? Part of the answer lies in something called the "False Self Syndrome."

The False Self Syndrome

The term "false self" was originally identified and named by child psychologists who studied the socialization stages of children. We all have our default instinctual drives and desires. As children, for example, we do not want to share our toys, be potty trained, or eat with utensils. Yet society expects and demands these behaviors of us. We adapt because it is more important for us to have acceptance, love, approval, and affirmation from our caregivers than to firmly hold on to our toys (well, sometimes). We continue to adapt throughout life, adjusting and modifying our behavior to varying degrees in order to meet social norms and expectations. This process is a normal, natural one that helps to foster healthy ego development.

The False Self Syndrome, however, distorts this normal, healthy process. When the False Self Syndrome has taken effect in our young adult or even later adult years, we overly identify with the behaviors and image we have created. This process is an unconscious one we have learned by habit and conditioning because it rewards us handsomely at first: academically, emotionally, financially, and socially. The problem is that it eventually boomerangs on us. As we become increasingly preoccupied with the trappings of success and approval, such as looking good, always appearing to be on top of everything, and so forth, we concurrently abandon our "true selves" in the process. The true self can be thought of as our deeper, more eternal self—a self that is less reactive to life and less concerned with what other people think.

It is understandable that we might be trapped in the False Self Syndrome and its ensuing misery because most lawyers by nature are highly adept at adaptation by the time they reach law school. If not, law school surely is a boot camp that firmly establishes this unhealthy pattern in lawyers-in-training (a topic for another article). And finally, there are aspects of the legal profession itself that reinforce a false self in us.

Zealous Advocacy

Zealous advocacy is revered as the cornerstone of our profession. But no one in law school explains that we will be representing causes, conditions, institutions, or people that we disrespect, don't like, or even despise. No one tells us or teaches us how to hold and manage that tension. We have to pocket those feelings and stuff them down, put on the false self persona, and march forward as a zealous advocate.

Instead of holding the tension, it is easier to act like we actually agree or support the position we represent. Of course we have to do that. We can't go into court, a mediation, or a negotiation really in touch with feeling frustrated (or even disgusted) by our client's position. We'd never be able to do our jobs if we did. So we split off from ourselves, disconnect the head from the heart, and go to battle. Over time, this suppression takes a big emotional toll on us if we are not consciously aware of what is happening. It can make a significant difference to simply be able to articulate—to ourselves or to a trusted friend—that we don't agree with the position that, as a client's attorney, we are required to advocate.

Always the Helper

Lawyers tend to be of a personality type that operates as a hero/rescuer. We solve other people's problems. We take pride in that role. There is nothing wrong with it, except when we overly identify with it. We get into trouble when we don't recognize that we need to hit the brakes. We get a lot of narcissistic perks for never saying no. We may get so identified with the rescuer role that we don't—or can't—admit to ourselves when we are in need of help. Feelings of vulnerability do not mesh with the view we have of ourselves as always being the helper.

Ignoring Boundaries

Speaking of never saying no...a career practicing law teaches us to ignore or abolish boundaries. We have been trained to devise strategic ways to overcome boundaries and to ignore limits. Our profession greatly rewards us for not having certain kinds of boundaries, and reinforces processes and patterns that disconnect us from our true self: always working late and on weekends, never firing a bad client, taking verbal abuse from senior partners—you can name others. These kinds of internal emotional boundaries, however, are really important for good mental health. We need to first recognize and then honor our own emotional and endurance limits. We also need to learn how to say no—to certain

clients, to certain jobs or practice areas, and especially to our own internal voice that commands us to ignore what is really going on inside of us.

The Pressure of Confidentiality

As lawyers, we can't talk about the moral complexities of the work we are doing, especially when we are zealously advocating for a position we do not personally support. We have no viable outlets for processing our emotional responses to our clients' positions. So we ignore them, disconnect, and move on.

Success Can Be the Most Dangerous Trap

That success can reinforce the false self may be a bit counterintuitive, and yet it is probably the most important trap to understand. With constant success, we start to believe the persona is all there is. There is nothing deeper to connect to or hold us when things don't go our way—we believe we really are in control, a master of the universe.

A few years ago there was a very successful lawyer who was famous for never losing a case. Then he lost a big case and committed suicide the next day. He had lost sight of the fact that sometimes we just get bad facts. This is a true story and may seem extreme, but it is illustrative of the idea that success can become one's image of self. What happens if suddenly that success is not there? If we don't have something deeper, more eternal, and more authentic to ground us, we can get lost in the false image.

There is something to be said about failing once in awhile. Failure connects us to a sense of humility and humanity. Humility and a sense of one's own humanity are not traits that are valued in the legal profession, but they are essential for a rewarding quality of life and sustainable mental health.

Reconnecting with the True Self

We attain a major milestone when we recognize the inherent pitfalls of law practice and how the practice itself reinforces the false self. That recognition alone is often enough to help a lawyer struggling with depression and anxiety wake up to his or her true self. Reconnecting with our true self is very empowering. A world of choices opens up for us.

The encouraging news is that more lawyers than you might imagine have traveled this journey of awakening and have found deep fulfillment in a legal career established on a different, healthier, and more consciously awake footing. You can, too. ■

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 impair 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 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

This article was originally published in the ABA's Tort Trial & Insurance Practice Section's TortSource*, Summer 2015.*

Specialization Profile (cont.)

Q: Is certification important in your practice area?

Certification is absolutely important in real property law. Unfortunately, there are still lawyers who don't understand the depth of knowledge required in real estate law and don't realize that mistakes aren't easily corrected. You can't amend a deed. It's important for consumers to be able to locate a qualified attorney, and the specialization directory is one good resource for them to use.

Q: How does certification benefit the profession?

I think that the more educated a lawyer is, the more confident he/she will be. The practice of law is becoming more and more specialized. It's too vast to handle all client needs anymore. It's important for lawyers to focus their practice and become deeply knowledgeable about one area.

Q: How do you see the future of specialization?

I think that lawyers will begin to focus their practices earlier, so that when they graduate from law school they will know that they are going to specialize in a specific area. Law school teaches you to think, how to identify issues. In order to be good at something, you have to make that choice and work toward your goal of providing excellent legal service.

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

I would tell them to just do it! If you've dedicated your career to a practice area, and know it well, then you are a specialist. The certification is the recognition of what already exists. Achieving it is an enriching reward! ■

**Specialization staff checked the records and confirmed that Kim is the only board certified specialist in real property west of Asheville.*

For more information on the State Bar's specialization programs, visit us online at nclawspecialists.gov.

CPR—RPC—FEO—WTH?

By Suzanne Lever

The Ethics Committee recently received an inquiry from a lawyer referencing a CPR from 1981. The lawyer's inquiry led to a general discussion at the quarterly meeting of the different titles found on our ethics opinions and a suggestion that I write an article explaining the mystery behind the ethics opinions' nomenclature. Easier said than done.

Let's start with the basics. Chronologically, there have been three designations for the ethics opinions formally adopted by the State Bar Council: CPR, RPC, and FEO. With the exception of "FEO," the acronyms correspond to the code of conduct that the opinions interpret.

CPRs

CPR stands for Code of Professional Responsibility. CPR opinions are ethics opinions that were issued under the Code of Professional Responsibility which was in effect from April 30, 1973, until January 1, 1986. Each CPR bears the identifying number assigned to it at the time of its initial publication in the State Bar's quarterly publication at that time. CPR 1 is dated January 18, 1974.

CPRs are not included in the *Lawyer's Handbook,* and only a select few are included on the State Bar's website. Why? Take a look at the following CPR opinions (printed in their entirety):

CPR 33
(January 17, 1975)
Inquiry: Is it ethical for a lawyer to have his name printed on personal checks (as distinguished from his law office checks) followed by the words "Attorney" or "Attorney at Law"?
Opinion: Yes.

CPR 37
(January 17, 1975)
Inquiry: May a lawyer ethically charge interest on delinquent bills?
Opinion: Yes.

CPR 110
(April 15, 1977)
Inquiry: The question is whether or not a member of the Bar may ethically advise his client to seek a Dominican divorce knowing that the client will return immediately and continue his North Carolina residence.
Opinion: No.

The CPR opinions tend to be short and not particularly informative. More importantly, many provisions in the superseded Code and most of the interpretations of the Code found in the CPRs are simply no longer consistent with the current Rules of Professional Conduct. In the extreme, Code provisions violate constitutional law (think advertising). However, if you believe that a particular CPR opinion may be helpful to you, you may request a copy from the ethics department at the State Bar. The ethics department will tell you whether to consider the CPR to be consistent with the current Rules and still good guidance for lawyers.

RPCs

RPC stands for Rules of Professional Conduct. RPC opinions are ethics opinions promulgated under the Rules of Professional Conduct that were in effect from January 1, 1986, until July 23, 1997. Each RPC bears the identifying number assigned to it at the time of its initial publication in the State Bar's quarterly publication at the time. RPC 1 is dated January 17, 1986.

RPCs are included on the State Bar website and in the annual *Lawyer's Handbook.* That is because many of the provisions of the superceded 1985 Rules remain consistent with the current Rules and, with some exceptions, the RPCs continue to provide excellent guidance to lawyers.

FEOs

The most recent ethics opinions are titled "FEO" opinions. FEO stands for Formal Ethics Opinion. Formal Ethics Opinions are the ethics opinions adopted under our current Rules of Professional Conduct which were effective July 24, 1997, and were comprehensively revised in 2003 (effective February 27, 2003). To distinguish the 1985 Rules from the Rules adopted in 1997, this code is sometimes referred to as the "Revised Rules of Professional Conduct." Formal Ethics Opinions are identified by the last two digits of the year of initial publication in the State Bar *Journal* and are numbered serially. The first Formal Ethics Opinion is 97 FEO 1 and is dated October 24, 1997.

Now that we have deciphered the acronyms of the three designations for ethics opinions, let's look at the paramount distinction between them. Each of the three categories of ethics opinions rely on a different set of ethics rules for their authority: either the superseded Code of Professional Responsibility, the superseded North Carolina Rules of Professional Conduct (1985), or the Revised Rules of Profession Conduct (1997/2003).

To illustrate this distinction, consider these ethics opinions dealing with the exceptions to a lawyer's duty not to disclose confidential client information.

The CPR opinions cite Ethical Considerations and Disciplinary Rules from the superseded 1973 Code of Professional Responsibility. For example, when discussing the duty of confidentiality owed to a former client, CPR 300 (1981) states: "DR 4-101(b)(1) forbids a lawyer to knowingly reveal a confidence or secret of his client **except [when permitted under DR 4-101 (C)]**."

The RPC opinions contain citations to the superseded 1985 Rules of Professional Conduct. RPC 206 (1995), addressing the duty of confidentiality owed to a deceased client, provides: "A lawyer may only reveal confidential information of a deceased client if disclosure is permitted by the **exceptions to the duty of confidentiality set forth in Rule 4(c).**"

The FEO opinions cite to the Revised Rules of Professional Conduct (1997/2003). For example, 98 FEO 18, which relies on the 1997 Rules when discussing the duty of con-

fidentiality owed to a minor client, provides: "[A] lawyer owes the duty of confidentiality to a minor client and may not disclose confidential information to minor's parents unless there is an applicable **exception in Rule 1.6(d)** permitting disclosure." This demonstrates one of the important distinctions between the 1985 Rules and the 1997/2003 Revised Rules: the 1997/2003 Rules track the numbering of the rules in the ABA Model Rules of Professional Conduct. This change was made to facilitate research and to help lawyers moving between jurisdictions to identify and understand their professional responsibilities in each jurisdiction.

2009 FEO 1 relies on the Rules as amended in 2003 when discussing a lawyer's duty to use reasonable care to prevent the disclosure of confidential client information hidden in metadata. The opinion states: "Rule 1.6(a) of the Rules of Professional Conduct prohibits a lawyer from revealing information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized to carry out the representation, or disclosure is permitted by one of the **exceptions to the duty of confidentiality set forth in [Rule 1.6(b)]**."

Each of the four opinions cites a different rule (or rule paragraph) when referencing the exceptions to a lawyer's general duty of confidentiality.

While citations in the ethics opinions to the Ethical Considerations and Disciplinary Rules from the superseded 1973 Code of Professional Responsibility are easy to distinguish, the citations to the various versions of the Rules of Professional Conduct can cause confusion. Here's an example:

RPC 39 (1988) deals with communication with an adverse party's insurer. The opinion provides that "Rule 7.4(a) prohibits a lawyer from communicating regarding the subject of representation with a party the lawyer knows to be represented by another lawyer in the matter." If you go to Rule 7.4(a) of current Rules of Professional Conduct (1997/2003), you will see that it deals with communication of fields of practice and specialization. Because the numbers for the 1985 Rules may be different from comparable rules in the 1997/2003 Revised Rules, correlation tables[1] are included in the *Lawyer's Handbook* and online. These tables cross-reference the 2003 and 1997 versions of the Revised Rules with the comparable provisions of the superseded 1985 Rules of Professional Conduct and 1973 Code of Professional Conduct. In the current example, if you consult the appropriate correlation table, you will see that Rule 7.4(1985) is now Rule 4.2 (2003), *Communication with Person Represented by Counsel*.

The CPRs, RPCs, and FEOs still provide guidance on issues of professional conduct except to the extent that a particular opinion is overruled by a subsequent opinion or by a provision of the current Rules of Professional Conduct. Lawyers should check the text of the current rules as well as the ethics opinion index in the *Handbook* and online to be sure that all subsequent history is considered.

Navigating the various opinions, rules, and correlation tables can be tricky. If you are unsure whether an ethics opinion or ethics rule is still good authority, you may contact the ethics department at the State Bar for assistance (ethicsadvice@ncbar.gov). ■

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

Endnote

1. Correlation Table 1: Revised Rules of Professional Conduct and Superseded NC Rules of Professional Conduct (1985)

   Correlation Table 2: Superseded NC Rules of Professional Conduct, Revised Rules of Professional Conduct, and Superseded Code of Professional Responsibility

Disciplinary Actions (cont.)

over the file was potentially prejudicial to the client and to the administration of justice.

Transfers to Disability Inactive Status

Reid G. Hinson of Charlotte was transferred to disability inactive status by the chair of the Grievance Committee.

Robert Bell of Fayetteville was transferred to disability inactive status by the chair of the Grievance Committee.

Jesse B. Rouse III of Fayetteville was transferred to disability inactive status by the Chair of the Grievance Committee.

In 2011 the DHC suspended **Laura G. Johnson** of Fayetteville for two years for mishandling client funds and for trust account mismanagement. The suspension was stayed for three years upon Johnson's compliance with numerous conditions. The State Bar filed a motion alleging that Johnson violated the conditions and requiring Johnson to show cause why the stay should not be lifted and the suspension activated. Upon investigation, it was established that Johnson is disabled. The DHC transferred her to disability inactive status.

Reinstatements

In 2009 the DHC suspended **Robert Brown** of Durham for five years for sexually harassing his former employees at the Durham County Public Defender's Office. The DHC reinstated him on February 5.

In November 2007 **Ralph Bryant** of Newport surrendered his law license and was disbarred by the DHC for misappropriating entrusted funds totaling $64,847. In August 2014 the DHC recommended that his petition for reinstatement be denied. The DHC found that Bryant had reformed but that his reinstatement would be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public's interest. Bryant appealed to the council. The council reinstated Bryant.

In February 2014 the DHC suspended **Allan De Laine** of Clayton for two years. De Laine forged a client's name on a civil complaint, dismissed the action without the client's knowledge or authorization, and neglected the cases of two clients, causing their civil claims to be time-barred. After serving one year active, he was eligible to petition for a stay of the balance upon showing compliance with numerous conditions. He was reinstated by the Secretary on April 6.

In 2012 the DHC suspended **Gary Kivett** of Spruce Pine for four years after concluding that he had and attempted to have sex with several clients. The order of discipline permits Kivett to apply for a stay after serving one year active. In June 2013 Kivett's first petition for a stay was denied. On March 13 the DHC reinstated Kivett after a hearing on his second petition. ■

Top Tips: Proposed Amendments to Prevent and Detect Internal Theft

By Peter Bolac, Trust Account Compliance Counsel

At the State Bar's April quarterly meeting, the council voted to revise and republish for comment proposed amendments to Rule 1.15 of the Rules of Professional Conduct. The amendments were proposed to facilitate the prevention and early detection of employee theft from a trust account. Minor revisions were made in response to the public comments received after the January quarterly meeting; most revisions relate to the distinction between trust accounts and fiduciary accounts. The full text of the revised proposed amendments is available on page 48 of this Journal.

The Bar only received three written comments following the publication of the proposed rule amendments in the last edition of the *Journal*, but there has been a fair amount of "chatter" about whether the proposed changes are overly burdensome on a lawyer's practice. While there are other substantive proposed changes to Rule 1.15 (e.g., allowing the use of credit unions, explaining the self-reporting requirement, requiring lawyers to sign reconciliations), this article focuses on three proposed changes: 1) monthly and quarterly reviews, 2) restriction of signature authority, and 3) trust account oversight officers (TAOOs).

John Smith is a small-town lawyer with a general practice. He focuses mainly on litigation and tax matters, but also maintains an active real estate practice. He is well regarded in his community and has no prior disciplinary issues. Mr. Smith, a solo practitioner, has always relied on the help of his staff, under his supervision, to complete real estate closings and maintain the trust account. He trusts his staff completely. Mr. Smith knows he has to supervise his staff's handling of the trust account because Bruno made that very clear during a harrowing visit in the late '90s. During the early '00s, the real estate market begins to boom and Mr. Smith's real estate practice increases exponentially. He no longer has time to oversee every aspect of the closing process, and relies solely on his staff to handle the day-to-day deposits, disbursements, and reconciliations. He still signs most trust account checks, but has given signatory authority to one of his employees for situations when he is not in the office. The bank statement appears to balance with the trust account balance whenever Mr. Smith asks to see a reconciliation. Everything seems to be going well until title insurance companies begin asking why premiums have not been paid, and Mr. Smith is selected for random audit by the State Bar. Upon looking at his trust account, Mr. Smith notices that trust account checks have been paid out to employees and relatives of employees, title insurance checks have never been mailed, and the trust account is thousands of dollars short. Mr. Smith is forced to borrow money to replenish the deficit, and his law practice and license are in jeopardy.

This is a true story.

Had John Smith regularly reviewed the images of cleared checks and a random sample of transactions, he would have noticed that checks were made out to his employees and title insurance checks were never mailed. Further, if he was the only person in the firm with signature authority, he would have seen that the checks were made payable to improper payees. What is even more likely, however, is that if John Smith regularly reviewed images of cleared checks and a random sample of transactions, his employees would never have stolen from the trust account. A lawyer's regular review of the trust account serves as the single greatest deterrent to employee embezzlement. The embezzling employee in the above story said, when interviewed by the district attorney, that she knew Mr. Smith wasn't looking at the trust account records and "he won't know if I take it or if I put it back."

Monthly and Quarterly Reviews

The proposed amendments to Rule 1.15 include the addition of monthly and quarterly trust account reviews. The monthly review requires lawyers to "review the bank statement and cancelled checks for the month covered by the bank statement." Most lawyers already perform this task during their monthly balance of the bank statement with the trust account records. The monthly review will disclose: a) forged signatures, b) improper payees or checks to cash, and c) unexplained gaps in check numbers indicating checks may have gone missing. The lawyer can verify that checks from the general trust account properly identify on the face of the check the client from whose balance the check is drawn. The lawyer can also examine the back of cleared checks to ensure proper endorsements were made.

The quarterly review requires the lawyer to "review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made." The revisions made this quarter add that, "[T]he transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph." Sampling three transactions satisfies the requirement, but a larger sample may be advisable. Random review of ledgers and settlement statements helps to ensure that the ledgers and statements accurately reflect the transaction. This type of review can uncover improper disbursements, incorrect deposits, and substituted or unissued checks. The review can be performed as an additional step in the quarterly reconcilia-

tion and, if the Rule revisions are adopted, the Bar will provide a sample form to use when reviewing transactions. While the random review requirement may not uncover any improper activity, it will most definitely act as a deterrent to employee malfeasance.

Restriction of Signature Authority

The proposed amendments will limit signature authority to a) a lawyer or b) a nonlawyer employee supervised by the lawyer who is not responsible for performing reconciliations. Every signatory—lawyer or nonlawyer—must take a one-hour trust account continuing education course (CLE) prior to exercising the signatory authority. The rule amendments will ensure that: 1) a nonlawyer employee is educated about trust account rules and 2) the employee cannot issue checks without any oversight because, at a minimum, someone else is reconciling the account. The State Bar has found that limiting signature authority to lawyers is a significant barrier against employee embezzlement. The Subcommittee on Accountability for Trust Account Management initially considered whether only lawyers should be permitted to sign trust account checks, but understood that such a rule would create difficulties for many lawyers and decided to give lawyers the option of having a nonlawyer signatory. The proposed amendment should not overly burden small firm or solo attorneys because a lawyer can opt to be the only signatory and allow a nonlawyer employee to conduct the required reconciliations for the review and signature of the lawyer.

Jane Doe is a lawyer at a highly reputable and distinguished big-city firm. Jane, a new partner, has signature authority on the trust account, but isn't involved in any of the day-to-day trust account maintenance. Ms. Doe assumes that the other partners are reviewing the trust account. The only time trust accounts are mentioned at the monthly partnership meeting is when a trusted employee tells the partners that the accounts reconcile. Then trust account checks start to bounce. It quickly becomes apparent that an employee has been stealing from the trust account. The State Bar investigates and requests the firm's trust account records. Each partner at the firm had assumed that another partner was actively supervising the account. In fact, no one was. The State Bar opens disciplinary files against every partner.

This is a true story.

Trust Account Oversight Officer (TAOO)

The proposed amendments to Rule 1.15 include the addition of a new subsection, Rule 1.15-4, *Trust Account Oversight Officer*. This rule allows, but does not require, a multi-member firm to designate, annually and in writing, one or more partners as oversight officers for any general trust account. The rule helps a firm ensure that it is properly maintaining its trust and fiduciary accounts, and avoid reliance on an assumption that trust accounts are being maintained by someone else in the firm. Designation as the TAOO requires the lawyer to complete a certain amount of training to gain proficiency in the trust accounting rules and the firm's accounting system, and requires the firm to adopt a written policy detailing the firm's trust account management procedures. Again, this rule is optional for multi-member firms that want to add an *extra* level of oversight to their firm's trust account management.

Conclusion

Feeling overburdened by new oversight responsibilities is understandable. However, the additional reviews and requirements in the proposed rule amendments are not overwhelming and will go a long way to deter and detect theft from lawyer trust accounts. Safeguarding client property is your professional responsibility as a lawyer. Some additional time per quarter overseeing your trust accounts is worthwhile if it helps you to avoid becoming another cautionary tale.

You are encouraged to read the full text of the proposed rule amendments on page 48 and submit your comments to the North Carolina State Bar. The council considers all comments—negative and positive—before any action is taken.

Random Audits

Lawyers randomly selected for audit are drawn from a list generated from the State Bar's database based upon judicial district membership designations in the database. The randomly selected judicial districts used to generate the list for the 2nd quarter of 2015 were District 3B (Carteret, Craven, and Pamlico Counties) and District 27A (Gaston County). ■

Are Your Trust Accounts in Accordance with Rule 1.15?

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Judge Spivey (cont.)

will always be indebted for their counsel and support. It was an honor and a privilege to serve the members of the bar and the citizens of this state in courtrooms around North Carolina.

JG: Thank you for taking your time to talk with me about your life and, hopefully, a successful life after the law. ■

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

IOLTA Income Still Depressed, but Some Good News Arrives

Income

All IOLTA income earned in 2014 has now been received and recorded. Unfortunately, we must report that the income from IOLTA accounts continued to decrease as many banks are recertifying their comparability rates at lower levels. Income from IOLTA accounts decreased by 5%. Unfortunately, we did not receive any significant funds from court awards designated to legal aid for 2014 as we had in the previous two years. Our total income, therefore, was under $2 million.

We do have some good news to report for 2015. The funding for IOLTA programs included in the settlement with Bank of America announced by the Department of Justice in August will be distributed this year. Of the $7 billion allocated to consumer relief in the settlement, a minimum of $30 million is allocated to IOLTA programs for the provision of foreclosure prevention and community redevelopment legal services. Each program (54 jurisdictions) is allocated $200,000, and the remainder of the $30 million will be distributed based on poverty population (as federal Legal Services Corporation funds are distributed). Bank of America has notified NC IOLTA that our program will receive $842,896.15.

Email Fraud Alert

To: All Members of the North Carolina State Bar
From: Peter Bolac, Trust Account Compliance Counsel

In recent weeks the Bar has received multiple reports of fraudulent activity relating to wired funds in real estate transactions, with losses as high as $200,000. Here is a redacted sample of what we have received:

> On a closing that took place on Friday morning, before we disbursed, we received an email and a phone call from a lady purporting to be our out-of-state seller asking us to wire funds to her bank account. On Monday we learned that the seller's email was compromised and bad actors had inserted themselves in her place. We attempted to retract the wire and we learned late yesterday that the bank did not retract the wire and will not communicate further without a subpoena.

This firm had two-level authentication practices in place to protect against fraudulent wires, but the hackers emailed and called the firm to confirm the wiring instructions as was required. The hackers gained access to the email account of one of the parties to the transaction and learned the information necessary to assume the identity of one of the parties and initiate the fraudulent transaction. Another defrauded firm noticed after the fact that the email address of the hacker was different from the actual seller's email address by one letter.

One way to protect against this fraud is for the lawyer to initiate the phone call to confirm the emailed wiring instructions, calling only the number in the client file even if a different number is provided via email.

Please be vigilant when communicating over email and consider whether your firm's wiring procedures are strong enough to detect and prevent these fraud attempts. If your firm has been the subject of an attempted or successful fraud, please contact me at the State Bar at pbolac@ncbar.gov or (919) 828-4620.

Grants

Beginning with 2010 grants, we have limited our grant-making to a core group of (mainly) legal aid providers. Even with that restriction and using almost $3 million in reserve funds over five years, grants had dramatically decreased (by over 40%). For three years, from 2012 through 2014, we were able to keep grants steady at ~$2.3 million using funds from reserve and from court awards designated for civil legal aid. For 2015, the trustees had to reduce grants further (by 19%) to ~$1.9 million. We will use two thirds of our remaining reserve to make those grants, leaving approximately $245,000 in reserve.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state funding distributed for the 2013-14 fiscal year was $3.5 million. The state budget adjustments for 2014-15 eliminated the appropriation for legal aid work (currently $671,250). Though the proposed Senate budget had also eliminated the Access to Civil Justice funding from court fees (~$1.8 million), that funding was continued in the final budget, with significant additional reporting requirements for Legal Aid of NC. The Equal Access to Justice Commission and the NCBA continue to work to sustain and improve the funding for legal aid. ■

Amendments Approved by the Supreme Court

On March 5, 2015, 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 2014 and Winter 2014 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 change the name of the Trust Accounting Supervisory Program to the Trust Account Compliance Program.

Amendments to the Rules Governing the Board of Law Examiners

27 N.C.A.C. 1C, Section .0100, Board of Law Examiners

The amendments will allow graduates of law schools that are not accredited by the American Bar Association to qualify for admission to the North Carolina State Bar under certain circumstances.

Amendments to the Rules Governing the Administration of the CLE Program

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

The amendments change the name of the mandatory CLE program for new lawyers from "Professionalism for New Admittees" to "Professionalism for New Attorneys" (PNA Program) and permit the Board of Continuing Education to approve alternative timeframes for the PNA Program, thereby giving CLE providers more flexibility to be creative in their presentations of the program.

Amendments to The Plan of Legal Specialization

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

The amendments eliminate the possibility that one person can serve as board chair for an excessive period of time and enable a logical succession of the chairmanship among the members of the board.

Amendments to the Standards for Certification as a Specialist

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty, and Section .2700, Certification Standards for Workers' Compensation Law Specialty

The amendments to the criminal law standards reduce the number of practice hours required to meet the substantial involvement standard for the juvenile delinquency subspecialty and allow for additional forms of practice equivalents for the subspecialty. In the standards for the workers' compensation specialty, the amendments add insurance as a related field in which a lawyer may earn CLE credits for certification and recertification.

Amendments to the Standards for Certification of Paralegals

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

The amendments permit a degree from a foreign educational institution to satisfy part of the educational requirements for certification if the foreign degree is evaluated by a qualified credential evaluation service and found to be equivalent to an associate or bachelor's degree from an accredited US institution.

Amendments to the Rules of Professional Conduct to Address Bullying and Intimidation

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

The amendment to Rule 1.0, *Terminology*, clarifies that the term "tribunal" encompasses any proceeding of a court including a deposition. The amendments to the comments to Rule 3.5, *Impartiality and Decorum of the Tribunal*, Rule 4.4 *Respect for Rights of Third Persons*, and Rule 8.4, *Misconduct*, confirm that conduct that constitutes bullying and attempts to intimidate are prohibited by existing provisions of these Rules of Professional Conduct.

Amendments to the Rules of the Board of Law Examiners

Rules Governing Admission to the Practice of Law in the State of North Carolina, Section .0100, Organization

The amendments change the street and mailing address listed for the offices of the Board of Law Examiners to reflect the board's move to a new location.

Amendments Pending Approval of the Supreme Court

At its meeting on April 17, 2015, the council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text of all proposed rule amendments see the Spring 2015 edition of the *Journal* unless otherwise indicated):

Proposed Amendments to the Rule on *Pro Bono* Practice by Out-of-State Lawyers

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

The proposed amendments allow an out-of-state lawyer employed by a nonprofit corporation rendering legal services to indigent persons to obtain *pro bono* practice status during the pendency of the lawyer's application for admission to the North Carolina State Bar. In addition, the proposed amendments clarify that an out-of-state lawyer employed as in-house counsel for a business organization with offices in North Carolina may petition and qualify for *pro bono* practice status.

Proposed Amendments to the Hearing and Appeal Rules of the Board of Legal Specialization

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization

The proposed amendments explain that an "incomplete application" does not include an application with respect to which fewer than five completed peer review forms have been timely filed with the Board of Legal Specialization

Proposed Amendments to the Rules of Professional Conduct

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

In the Spring 2014 edition of the *Journal*, proposed amendments to several Rules of Professional Conduct were published for comment. The amendments were proposed after study of the ABA Ethics 20/20 Commission's recommended amendments to the ABA Model Rules of Professional Conduct in response to changes in technology and globalization. The proposed amendments to the North Carolina Rules included amendments to the titles of three rules. Unfortunately, the title amendments were not forwarded to the Supreme Court when the proposed rule amendments were sent to the Court for approval. The amendments to the text of the rules were approved by the Court on October 2, 2014. The following amendments to rule titles are now pending approval of the Court:

Rule 5.3, *Responsibilities Regarding Nonlawyer ~~Assistants~~* ***Assistance***

Rule 5.5, *Unauthorized Practice of Law;* ***Multijurisdictional Practice of Law***

Rule 7.3, ~~*Direct Contact with Potential*~~ ***Solicitation of*** *Clients*

For the complete text of the amendments to the Rules of Professional Conduct, see the Spring 2014 edition of the *Journal* or visit the State Bar website.

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.**

Proposed Amendments

At its meeting on April 17, 2015, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to Create a Procedure for Permanent Relinquishment of Membership in the State Bar

27 N.C.A.C. 1A, Section .0300, Election and Succession of Officers, and Section .0400, Duties of Officers

Presently, there are only two classes of membership in the State Bar, active and inactive, and there is no procedure for resigning from—i.e., relinquishing membership in—the State Bar. The proposed amendments create such a procedure. To permit the inclusion of the relinquishment rules in an appropriate location within Subchapter 1A of the State Bar rules, it is proposed that the rules currently in Section .0300, *Election and Succession of Officers*, be moved to the beginning of Section .0400, *Duties of Officers*, and that Section .0400 be renamed "*Election, Succession, and Duties of Officers*." Section .0300 will be renamed and devoted to proposed rules on permanent relinquishment of membership in the State Bar.

All proposed rules under Section .0300 are new. Therefore, bold, underlined print is not used below to indicate proposed additions other than to the titles to Section .0300 and Section .0400. Rules .0401 to .0407 will contain the rules (currently Rule .0301 through Rule .0307) being relocated, unchanged, from Section .0300 and are not printed below.

Section .0300 ~~Election and Succession of Officers~~ Permanent Relinquishment of Membership in the State Bar

[All rules currently in this section withdrawn and relocated, in their entirety, to the beginning of Section .0400.]

.0301 Effect of Relinquishment.

(a) Order of Relinquishment. Pursuant to the authority of the council to resolve questions pertaining to membership status as specified in N.C. Gen. Stat. 84-23, the council may allow a member of the State Bar to relinquish his or her membership in the State Bar subject to the conditions set forth in this section. Upon the satisfaction of those conditions, the council may enter an order declaring that the individual is no longer a member of the State Bar and no longer has the privileges of membership set forth in N.C. Gen. Stat. 84-16 and in the rules of the State Bar.

(b) Requirements to Return to Practice of Law. If an individual who has been granted relinquishment of membership desires to return to the practice of law in the state of North Carolina, he or she must apply to the North Carolina Board of Law Examiners and satisfy all of the requirements to obtain a license to practice law in the state of North Carolina as if for the first time.

(c) Prohibition on Representations. Effective upon the date of the order of relinquishment, the former licensee is prohibited from representing that he or she is

(1) a lawyer in North Carolina,

(2) licensed to practice law in North Carolina,

(3) able to provide legal services in North Carolina, or

(4) a member of the North Carolina State Bar.

.0302 Conditions for Relinquishment

A member of the State Bar may petition the council to enter an order of relinquishment. An order of relinquishment shall be granted if the petition demonstrates that the following conditions have been satisfied:

(a) Unresolved Complaints. No open,

unresolved allegations of professional misconduct are pending against the petitioner in any jurisdiction.

(b) No Financial Obligation to State Bar. The petitioner has paid all membership fees, Client Security Fund assessments, late fees, and costs assessed by the North Carolina State Bar or the Disciplinary Hearing Commission, and all fees, fines, and penalties owed to the Board of Continuing Legal Education.

(c) Wind Down of Law Practice. The petitioner has completed the wind down of his or her law practice in compliance with the procedure for winding down the law practice of a suspended or disbarred lawyer set forth in paragraphs (a), (b), and (e) of Rule .0124 of Subchapter 1B and with any other condition on the wind down of a law practice imposed by state, federal, and administrative law. The petition must describe the wind down of the law practice with specificity.

(d) Acknowledgment. The petitioner acknowledges the following: the State Bar's authority to take the actions described in Rule .0303 of this section; that the sole mechanism for regaining active membership status with the State Bar is to apply to the North Carolina Board of Law Examiners for admission and to satisfy all of the requirements to obtain a license to practice law in the state of North Carolina as if for the first time; and that he or she is not entitled to confidentiality under Rule .0129 of Subchapter 1B of any information relating to professional misconduct received by the State Bar after the date of the entry of the order of relinquishment.

(e) Address. The petition includes a physical address at which the State Bar can communicate with the petitioner.

(f) Notarized Petition. The petition is signed in the presence of a notary and notarized.

.0303 Allegations of Misconduct Received by the State Bar On or After the Date of Relinquishment

(a) Post Relinquishment Action by State Bar. Relinquishment is not a bar to the initiation or investigation of allegations of professional misconduct and shall not prevent the State Bar from prosecuting a disciplinary action against the former licensee for any violation of the Rules of Professional Conduct that occurred prior to the date of the order of relinquishment.

(b) Procedure for Investigation. Allegations of misconduct shall be investigated pursuant to the procedures set forth in Section .0100 of Subchapter 1B.

(c) Release of Information from Investigation. Information from the investigation of allegations of misconduct shall be retained in the State Bar's records and may be released by the State Bar as required by law or as necessary to protect the interests of the public. Release may be made to, but is not limited to, the North Carolina Board of Law Examiners, any professional licensing authority, or any law enforcement or regulatory body investigating the former licensee.

Section .0400 Election, Succession, and Duties of Officers

.0401 Officers

[Relocated Rule .0301 from Subchapter 1A, Section .0300]

.0402 Eligibility for Office

[Relocated Rule .0302 from Subchapter 1A, Section .0300]

.0403 Term of Office

[Relocated Rule .0303 from Subchapter 1A, Section .0300]

.0404 Elections

[Relocated Rule .0304 from Subchapter 1A, Section .0300]

.0405 Nominating Committee

[Relocated Rule .0305 from Subchapter 1A, Section .0300]

.0406 Vacancies and Succession

[Relocated Rule .0306 from Subchapter 1A, Section .0300]

.0407 Removal from Office

[Relocated Rule .0307 from Subchapter 1A, Section .0300]

~~.0401~~ .0408 Compensation of Officers

…

[Re-numbering remaining rules.]

Proposed Amendments to the Rules Governing the Training of Law Students

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

The proposed rule amendments eliminate the requirement that supervising lawyers in a law school clinic must be full-time faculty members. This will allow law schools to employ, on a part-time basis, adjunct faculty to supervise students in a clinic. The rule amendments will give law schools more flexibility in designing and implementing new clinical programs.

Comments

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

.0205 Supervision

(a) A supervising attorney shall

(1) be an active member of the North Carolina State Bar who has practiced law as a full-time occupation for at least two years;

(2) supervise no more than two legal interns concurrently, provided, however, there is no limit on the number of legal interns who may be supervised concurrently by an attorney who is a full **or part**-time member of a law school's faculty or staff whose primary responsibility **as a faculty member** is supervising legal interns in a legal aid clinic and, further provided, that an attorney who supervises legal interns through an externship or outplacement program of a law school legal aid clinic may supervise up to five legal interns;

(3) assume personal professional responsibility for any work undertaken by a legal intern while under his or her supervision;

(4) ...

Proposed Amendments to the Specialization Hearing and Appeal Rules

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization

The proposed amendments increase the time an applicant has to review a failed examination after receiving notice of failure and shorten the time an applicant has to file a petition for grade review.

.1803 Reconsideration of Failed Examination

(a) Review of Examination. Within ~~30~~ 45 days of the date of the notice from the board's executive director that the applicant has failed the written examination, the applicant may review his or her examination at the office of the board at a time designated by the

executive director...

(b) Petition for Grade Review. If, after reviewing the examination, the applicant feels an error or errors were made in the grading, the applicant may file with the executive director a petition for grade review. The petition must be filed within ~~45~~ **30** days ~~of the date of the notice of failure~~ **after the last day of the exam review period** and should set out in detail the examination questions and answers which, in the opinion of the applicant, have been incorrectly graded...

(c) ...

Proposed Amendments to the Specialization Rules on CLE

27 N.C.A.C. 1D, Section .1900, Rules Concerning the Accreditation of Continuing Legal Education for the Purposes of the Board of Legal Specialization

The proposed rule amendments make the specialization rules on CLE consistent with the general CLE accreditation rules by allowing an applicant for specialty certification or recertification to satisfy the CLE requirements by attending prerecorded, simultaneously broadcast, and online programs.

.1903 Accreditation Standards for Lecture-Type CLE Activities

(a) ...

(b) ...

(c) The CLE activity may be **live; prerecorded in audio or video format; simultaneously broadcast by telephone, satellite, live web streaming (webcasting), or video conferencing; or online.** ~~presented by either live instruction or mechanical or electronically recorded or reproduced material. If electronic transmission is used, an instructor should be present for comment or to answer questions. The board may reduce the hours of credit for electronic transmission when no instructor is present.~~ **A prerecorded audio or video CLE activity must comply with the minimum registration and verification of attendance requirements in Rule .1604(d) of this chapter.**

(d) ...

Proposed Amendments to the Rules on Trust Accounting in the Rules of Professional Conduct

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

In the Spring 2015 edition of the *Journal*, proposed amendments to Rule 1.15, *Safekeeping Property* (and its subparts, Rule 1.15-1, Rule 1.15-2, and Rule 1.15-3), and to Rule 8.5, *Misconduct,* were published. The amendments were proposed primarily to add requirements that will facilitate the early detection of internal theft and errors. A new subpart, Rule 1.15-4, *Trust Account Management in Multiple-Lawyer Firm*, was proposed to create a procedure whereby a firm with two or more lawyers may designate a firm principal to serve as the "trust account oversight officer" to oversee the administration of the firm's general trust accounts in conformity with the requirements of Rule 1.15.

In response to comments received after publication, additional amendments are proposed. These additional amendments better distinguish fiduciary accounts and general trust accounts and the duties relative to these accounts; explain what is intended by a "representative transaction" in Rule 1.15-3(i); and distinguish professional fiduciary services from legal services.

The additional amendments are shown below in red text. Rule 1.15-4 is an entirely new rule and, therefore, only the revisions since last published appear in bold, underlined print. No comments were received on the proposed amendments to the official comments to Rule 1.15 and Rule 8.3, *Reporting Professional Misconduct.* Therefore, the proposed amendments to the comments are not republished.

Rule 1.15 Safekeeping Property

This rule has ~~three~~ **four** subparts: Rule 1.15-1, Definitions; Rule 1.15-2, General Rules; ~~and~~ Rule 1.15-3, Records and Accountings; **and Rule 1.15-4, Trust Account Management in Multiple-Lawyer Firm**. The subparts set forth the requirements for preserving client property, including the requirements for preserving client property in a lawyer's trust account. The comment for all ~~three~~ **four** subparts as well as the annotations appear after the text for Rule ~~1.15-3~~ 1.15-4.

Rule 1.15-1 Definitions

For purposes of this Rule 1.15, the following definitions apply:

(a) "Bank" denotes a bank**,** ~~or~~ savings and loan association**, or credit union** chartered under North Carolina or federal law.

(b) ...

(k) "Legal services" denotes services **(other than professional fiduciary services)** rendered by a lawyer in a client-lawyer relationship.

Rule 1.15-2 General Rules

(a) Entrusted Property.

...

(f) ~~Segregation of Lawyer's Funds~~. **Funds in ~~Trust~~ Accounts. A trust or fiduciary account may only hold ~~trust funds~~ entrusted property. Third party funds that are not received by or placed under the control of the lawyer in connection with the performance of legal services or professional fiduciary services may not be deposited or maintained in a trust or fiduciary account. Additionally, ~~No~~ no** funds belonging to a lawyer shall be deposited **or maintained** in a trust account or fiduciary account of the lawyer except:

(1) funds sufficient to open or maintain an account, pay any bank service charges, or pay any tax levied on the account; or

(2) funds belonging in part to a client or other third party and in part currently or conditionally to the lawyer.

(g) Mixed Funds Deposited Intact. When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer ~~may~~ **shall** withdraw the amounts to which the lawyer is or becomes entitled. If the lawyer's entitlement is disputed, the disputed amounts shall remain in the trust account or fiduciary account until the dispute is resolved.

(h) Items Payable to Lawyer. Any item drawn on a trust account or fiduciary account for the payment of the lawyer's fees or expenses shall be made payable to the lawyer and shall indicate on the item **by client name, file number, or other identifying information** the client **from whose** balance ~~on which~~ the item is drawn. Any item that does not **include** ~~capture~~ this information may not be used to withdraw funds from a trust account or a fiduciary account for payment of the lawyer's fees or expenses.

(i) No Bearer Items. No item shall be drawn on a trust account or fiduciary account made payable to cash or bearer and no cash shall be withdrawn from a trust

account or fiduciary account by any means ~~of a debit card~~.

(j) **Debit Cards Prohibited. Use of a debit card to withdraw funds from a general or dedicated trust account or a fiduciary account is prohibited.**

~~(j)~~ (k) No ~~Personal~~ Benefit **to Lawyer or Third Party**. A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

~~(k)~~ (l) Bank Directive.

...

[Re-lettering intervening paragraphs.]

~~(o)~~ (p) Duty to Report Misappropriation. A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the **trust account compliance counsel (TACC) in the** North Carolina State Bar **Office of Counsel. Discovery of intentional theft or fraud must be reported to the TACC immediately. When an accounting or bank error results in an unintentional and inadvertent use of one client's trust funds to pay the obligations of another client, the event must be reported unless the misapplication is discovered and rectified on or before the next quarterly reconciliation required by Rule 1.15-3(d)(1). This rule requires disclosure of information otherwise protected by Rule 1.6 if necessary to report the misappropriation or misapplication.**

~~(p)~~ (q) Interest on Deposited Funds.

...

~~(q)~~ (r) Abandoned Property.

...

(s) Signature on Trust Checks.

(1) Checks drawn on a trust account must be signed by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer. Prior to exercising signature authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature authority.

(2) Trust account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures.

Rule 1.15-3 Records and Accountings

(a) Check Format...

(b) Minimum Records for Accounts at Banks. The minimum records required for general trust accounts, dedicated trust accounts, and fiduciary accounts maintained at a bank shall consist of the following:

(1) ...;

(2) all canceled checks or other items drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the **client name, file number, or other identifying information of the client from whose** ~~client~~ balance ~~against which~~ each item is drawn, provided, that:...

...

(d) Reconciliations of General Trust Accounts.

(1) Quarterly Reconciliations. ~~At least quarterly, the individual client balances shown on the ledger of a general trust account must be totaled and reconciled with the current bank statement balance for the trust account as a whole~~. **For each general trust account, a printed reconciliation report shall be prepared at least quarterly. Each reconciliation report shall show all of the following balances and verify that they are identical:**

(A) The balance that appears in the general ledger as of the reporting date;

(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and

(C) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.

(2) Monthly Reconciliations. Each month, the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance for the trust account.

(3) The lawyer shall **review, sign, date, and** retain a **printed** copy of the reconciliations of the general trust account for a period of six years in accordance with Rule 1.15-3(g).

(e) Accountings for Trust Funds.

...

(i) Reviews.

(1) Each month, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.

(2) Each quarter, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.

(3) The lawyer shall take the necessary steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.

(4) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a printed copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(j) Retention of Records in Electronic Format. Any printed or paper report required by this rule may be saved, for the required period, in an electronic format provided the original paper report was signed and dated at the time of preparation and the electronic copy is retained in a format that cannot be electronically manipulated, such as PDF.

Rule 1.15-4, Trust Account Management in Multiple-Lawyer Firm

(a) Trust Account Oversight Officer (TAOO).

Lawyers in a law firm of two or more lawyers may designate a partner in the firm to

serve as the trust account oversight officer (TAOO) for any general trust account into which more than one firm lawyer deposits ~~fiduciary~~ trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), shall agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4. More than one partner may be designated as a TAOO for a law firm.

(b) Limitations on Delegation.

Designation of a TAOO does not relieve any lawyer in the law firm of responsibility for the following:

(1) oversight of the administration of any dedicated trust account or fiduciary account that is associated with a legal matter for which the lawyer is primary legal counsel or with the lawyer's performance of professional fiduciary services; and

(2) review of the disbursement sheets or statements of costs and receipts, client ledgers, and trust account balances for those legal matters for which the lawyer is primary legal counsel.

(c) Training of the TAOO.

(1) Within the six months prior to beginning service as a TAOO, a lawyer shall,

(A) read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar *Trust Account Handbook*;

(B) complete one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;

(C) complete two hours of training (live, online, or self-guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics; and

(D) become familiar with the law firm's accounting system for trust accounts.

(2) During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph (c)(1)(C).

(d) Designation and Annual Certification.

The written agreement designating a lawyer as the TAOO described in paragraph (a) shall contain the following:

(1) A statement by the TAOO that the TAOO agrees to oversee the operation of the firm's general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in paragraph (e) of this rule;

(2) Identification of the trust accounts that the TAOO will oversee;

(3) An acknowledgement that the TAOO has completed the training described in paragraph (c)(1) and a description of that training;

(4) A statement certifying that the TAOO understands the law firm's accounting system for trust accounts; and

(5) An acknowledgement that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

Each year on the anniversary of the execution of the agreement, the TAOO and the managing lawyers shall execute a statement confirming the continuing designation of the lawyer as the TAOO, certifying compliance with the requirements of this rule, describing the training undertaken by the TAOO as required by paragraph (c)(2), and reciting the statements required by subparagraphs (d)(1), (2), (4), and (5). During the lawyer's tenure as TAOO and for six years thereafter, the agreement and all subsequent annual statements shall be maintained with the trust account records (*see* Rule 1.15-3(g)).

(e) Mandatory Oversight Measures.

In addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm's trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).

Proposed Amendment to Rule 5.6 of The Rules of Professional Conduct

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

The proposed amendments to Rule 5.6, *Restrictions on Right to Practice*, clarify that the prohibition on participation in a settlement agreement that restricts a lawyer's right to practice applies to settlement agreements between private parties and the government, not just agreements between private parties. The proposed amendment to the official comment explains that the prohibition does not apply to a plea agreement or other settlement of a criminal matter or to a disciplinary case in which the accused is a lawyer.

Rule 5.6 ***Restrictions on Right to Practice***

A lawyer shall not participate in offering or making:

(a) …; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy ~~between private parties~~.

Comment

[1] ….

[3] This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17. **The Rule also does not prohibit restrictions on a lawyer's right to practice that are included in a plea agreement or other settlement of a criminal matter or the resolution of a disciplinary proceeding where the accused is a lawyer.** ■

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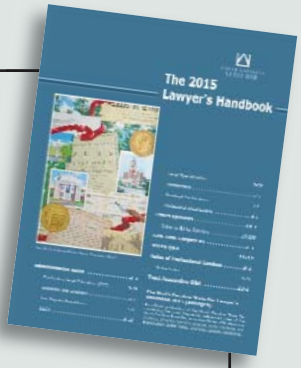

The digital version of the 2015 *Lawyer's Handbook* is now available for download and is free of charge. Visit the State Bar's website at ncbar.gov/handbook.asp.

Committee Opines on When a Lawyer Must Disclose Potential Malpractice to a Client

Council Actions

At its meeting on April 17, 2015, the State Bar Council adopted the ethics opinions summarized below:

2015 Formal Ethics Opinion 1

Preparing Pleadings and Other Filings for an Unrepresented Opposing Party

Opinion rules that a lawyer may not prepare pleadings and other filings for an unrepresented opposing party in a civil proceeding currently pending before a tribunal if doing so is tantamount to giving legal advice to that person.

2015 Formal Ethics Opinion 2

Preparing Waiver of Right to Notice of Foreclosure for Unrepresented Borrower

Opinion rules that when the original debt is $100,000 or more, a lawyer for a lender may prepare and provide to an unrepresented borrower, owner, or guarantor a waiver of the right to notice of foreclosure and the right to a foreclosure hearing pursuant to N.C.G.S. § 45-21.16(f) if the lawyer explains the lawyer's role and does not give legal advice to any unrepresented person. However, a lawyer may not prepare such a waiver if the waiver is a part of a loan modification package for a mortgage secured by the borrower's primary residence.

2015 Formal Ethics Opinion 3

Offering Prospective Client a Computer Tablet in Direct Mail Solicitation

Opinion rules that a lawyer may not offer a computer tablet to a prospective client in a direct mail solicitation letter.

Ethics Committee Actions

At its meeting on April 16, 2015, the Ethics Committee voted to publish a substitute opinion for 2014 FEO 5 (7/25/14), *Advising a Client About Social Media*, but deferred voting on whether to withdraw the existing opinion to permit consideration of comment on the proposed substitute opinion received after publication. The substitute opinion appears at the end of this article. The committee also voted to revise and republish three proposed opinions (Proposed 2014 FEO 1; Proposed 2014 FEO 9; and Proposed 2014 FEO 11) and to publish one new proposed opinion.

The comments of readers on the proposed opinions are welcomed. Comments received before July 16, 2015, will be considered at the next meeting of the Ethics Committee. Comments may be emailed to ethicsadvice@ncbar.gov.

Proposed 2014 Formal Ethics Opinion 1
Protecting Confidential Client Information When Mentoring
April 16, 2015

Proposed opinion encourages lawyers to become mentors to law students and new lawyers ("protégés") who are not employees of the mentor's firm, and examines the application of the duty of confidentiality to client communications to which a protégé may be privy.

Note:

This opinion does not apply to law students certified pursuant to the Rules Governing the Practical Training of Law Students (27 N.C.A.C 1C, Section .0200) or to lawyers, employees, or law clerks (paid or volunteer) being mentored or supervised by a lawyer *within the same firm*. This opinion addresses issues pertaining to informal mentoring relationships between lawyers, or between a lawyer and a law student, as well as to established bar and/or law school mentoring programs. Mentoring relationships between a lawyer and a college or a high school student are not addressed by this opinion because such relationships require more restrictive measures due to these students' presumed inexperience and lack of understanding of a lawyer's professional responsibilities, particularly the professional duty of confidentiality.

Inquiry #1:

May a lawyer who is mentoring a law student ("protégé") allow the student to observe confidential client consultations between the lawyer and the lawyer's client?

Opinion #1:

Yes, if the client gives informed consent.

The duty of confidentiality is set forth in Rule 1.6. It provides that all communications relative to a client's matter are confidential and cannot be disclosed unless the client consents, the client's consent is implied as necessary to carry out the representation, or one of the specific exceptions to the duty of confidentiality in Rule 1.6(b) applies. If a law student/protégé is not an agent of the lawyer for the purpose of representing the client, there is no implied client consent to disclosure of the client's confidential information to the student. Moreover, none of the specific exceptions to the duty of confidentiality apply in this situation. Only the express informed consent of the client will permit disclosure of confidential client information to a law student/protégé.

"Informed consent," as defined in Rule 1.0, *Terminology*, "denotes the agreement by the person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate under the circumstances." Rule 1.0(f). Informed consent must be given in writing by the client or confirmed in writing by the lawyer. *See* Rule 1.0(c). In the mentoring situation, obtaining the client's informed consent requires the lawyer to explain the risks to the representation of the client that will be presented by the law student's knowledge of client confidential information and the law student's presence during client consultations.

One such risk is the possibility that the law student, who is not subject to the Rules of Professional Conduct, will intentionally or unintentionally reveal the client's confiden-

tial information to unauthorized persons. To minimize this risk, it is recommended that the law student be required to sign a confidentiality agreement that emphasizes the duty not to disclose any client confidential information unless the client and the lawyer give express consent.

The lawyer should also explain to the client any risk that the attorney-client privilege[1] will not attach to client communications with the lawyer because of the presence of the law student during the lawyer's consultation with the client. If the lawyer concludes that the student's presence will jeopardize the attachment of the privilege and the resulting harm to the client's interests is substantial, the lawyer should consider carefully whether it is appropriate to ask the client to consent to the student's presence during the consultation.

Inquiry #2:

A lawyer wants to be a mentor to a new lawyer ("protégé") who is not employed by or affiliated with the lawyer/mentor's law firm. The lawyer/mentor wants to allow the new lawyer to observe his consultations with clients, and he also wants to observe the new lawyer's consultations with the new lawyer's clients in order to critique and advise the new lawyer.

May the lawyer/mentor allow the lawyer/protégé to observe confidential client consultations between the lawyer/mentor and his client? May the lawyer/protégé allow the lawyer/mentor to observe confidential client consultations between the lawyer/protégé and his client?

Opinion #2:

Yes, these observations are allowed with the client's informed consent. *See* Opinion #1. The observing lawyer should sign an agreement to maintain the confidentiality of the information of the other lawyer's client, in accordance with Rule 1.6, and to avoid representations adverse to the client in accordance with Rule 1.7 and Rule 1.9.

Both the lawyer/protégé and the lawyer/mentor should avoid the creation of a conflict of interest with any existing or former clients by virtue of the mentoring relationship. For example, the lawyer/protégé should not consult with a lawyer he knows has represented the opposing party in the past without first ascertaining that the matters are not substantially related and that the opposing party is not represented in the current matter by the lawyer/mentor. Similarly, the lawyer/mentor should obtain information sufficient to determine that the lawyer/protégé's matter is not one affecting the interests of an existing or former client. Rule 1.7 and Rule 1.9.

Inquiry #3:

When a lawyer seeks advice from a lawyer/mentor, what actions should be taken to protect confidential client information?

Opinion #3:

If possible, the lawyer/protégé should try to obtain guidance from the lawyer/mentor without disclosing identifying client information. This can often be done by using a hypothetical. If the consultation is general and does not involve the disclosure of identifying client information, client consent is unnecessary.

If the consultation is intended to help the lawyer/protégé comply with the ethics rules, client consent is not required because Rule 1.6(b)(5) allows a lawyer to reveal protected client information to the extent that the lawyer reasonably believes necessary "to secure legal advice about the lawyer's compliance with [the Rules of Professional Conduct]." Pursuant to comment [10] to Rule 1.6:

> A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with [the Rules of Professional Conduct.] In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

If the consultation does not involve advice about the lawyer's compliance with the Rules of Professional Conduct, a hypothetical is not practical, or making the inquiry risks disclosure of information relating to the representation, the lawyer/protégé must obtain client consent. *See* Opinion #2.

Under all circumstances, the lawyer/protégé and the lawyer/mentor should avoid the creation of a conflict of interest with any existing or former clients by virtue of the mentoring relationship. *See* Opinion #2; Rule 1.7 and Rule 1.9.

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.

Endnote

1. The attorney-client evidentiary privilege to avoid compelled testimony applies to client communications with a lawyer if (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated, and (5) the client has not waived the privilege. *State v. McIntosh*, 336 N.C. 517, 444 S.E.2d 438 (1994).

Proposed 2014 Formal Ethics Opinion 9
Use of Tester in an Investigation that Serves a Public Interest
April 16, 2015

Proposed opinion rules that a private lawyer may supervise an investigation involving misrepresentation if done in pursuit of a public interest and certain conditions are satisfied.

Note:

This opinion does not apply to the conduct of a government lawyer. As explained in comment [1] to Rule 8.4, the prohibition in Rule 8.4(a) against knowingly assisting another to violate the Rules of Professional Conduct or violating the Rules of Professional Conduct through the acts of another does not prohibit a government lawyer from providing legal advice to investigatory personnel relative to any action such investigatory personnel are lawfully entitled to take.

In addition, this opinion is limited to private lawyers who advise, direct, or supervise conduct involving dishonesty, deceit, or misrepresentation as opposed to a lawyer who personally participates in such conduct.

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by June 30, 2015.

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.

Inquiry:

Attorney A was retained by Client C to investigate and, if appropriate, file a lawsuit against Client C's former employer, E. Employer E employed Client C as a janitor and required him to work 60 hours per week. E paid Client C a salary of $400 per week. Attorney A believes that because his client's employment was a "non-exempt position" under the North Carolina Wage and Hour Act, the payment method used by E was unlawful. Instead, E should have paid Client C at least $7.25 (minimum wage) per hour for each of the first 40 hours Client C worked per week, and at least $10.88 (time and a half) for each hour in excess of 40 (overtime) that Client C worked per week.

Prior to filing a lawsuit, Attorney A wants to retain a private investigator to investigate E's wage payment practices. The private investigator suggests using lawful, but misleading or deceptive tactics, to obtain the information Attorney A seeks. For example, the private investigator may pose as a person interested in being hired by E in the same capacity as Client C to see if E violates the North Carolina Wage and Hour Act when compensating the investigator.

Prior to filing a lawsuit, may Attorney A retain a private investigator who will misrepresent his identity and purpose when conducting an investigation into E's wage payment practices?

Opinion:

The Rules of Professional Conduct are rules of reason and there are instances when the use of misrepresentation does not violate Rule 8.4(a)'s prohibition on the use of third parties to engage in conduct involving misrepresentation. *See* Rule 0.2, *Scope*, and Rule 8.4(a) and (c).

Other jurisdictions have interpreted their Rules of Professional Conduct to permit lawyer supervision of investigations involving misrepresentation in circumstances similar to that set out in the instant inquiry. For example, the bars of Arizona and Maryland permit lawyers to use "testers" who employ misrepresentation to collect evidence of discriminatory practices. Ariz. State Bar Comm. on the Rules of Prof'l Conduct, Op. 99-11 (1999); Maryland Bar Ass'n, Op. 2006-02 (2005). These ethics opinions conclude that testers are necessary to prove discriminatory practices and, therefore, serve an important public policy. The State Bar of Arizona opined that it would be inconsistent with the intent of the Rules of Professional Conduct to interpret the rules to prohibit a lawyer from supervising the activity of testers. Ariz. State Bar Comm. on the Rules of Prof'l Conduct, Op. 99-11 (1999).

The objective of Rule 8.4 is set out in comment [3] to the rule: "The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts, and the legal profession." The challenge is to balance the public's interest in having unlawful activity fully investigated and possibly thereby stopped, with the public's and the profession's interest in ensuring that lawyers conduct themselves with integrity and honesty. In an attempt to balance these two important interests, we conclude that a lawyer may advise, direct, or supervise an investigation involving pretext under certain limited circumstances.

In the pursuit of a legitimate public interest such as in investigations of discrimination in housing, employment and accommodations, patent and intellectual property infringement, and the production and sale of contaminated and harmful products, a lawyer may advise, direct, and supervise the use of misrepresentation (1) in lawful efforts to obtain information on actionable violations of criminal law, civil law, or constitutional rights; (2) if the lawyer's conduct is otherwise in compliance with the Rules of Professional Conduct;[1] (3) the lawyer has a good faith belief that there is a reasonable possibility that a violation of criminal law, civil law, or constitutional rights has taken place, is taking place, or will take place in the foreseeable future;[2] (4) misrepresentations are limited to identity or purpose; and (5) the evidence sought is not reasonably available through other means. A lawyer may not advise, direct, or supervise the use of misrepresentation to pursue the purely personal interests of the lawyer's client, where there is no public policy purpose, such as the interests of the principal in a family law matter.

If Attorney A concludes that each of the above conditions is satisfied, he may retain a private investigator to look into E's wage payment practices, which investigation may include misrepresentations as to identity and purpose.

Endnotes

1. Rule 4.2(a) prohibits a lawyer from communicating about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the other lawyer consents or the communication is authorized by law or court order. A lawyer may not violate this rule through the acts of another, including an investigator. Rule 8.4(a).
2. Government evidence or data that supports the conclusion that random testing will uncover illegal discriminatory conduct is a sufficient basis for a lawyer's "good faith belief" under this condition. For example, federal funding and contracts for Legal Aid of North Carolina, Inc.'s (LANC) Fair Housing Project require the performance of systematic fair housing testing to uncover patterns, practices, barriers, and other more subtle forms of unlawful housing discrimination in North Carolina. Studies and evidence developed by US Department of Housing and Urban Development confirm that systematic fair housing testing is an important tool to detect housing discrimination. A LANC lawyer may rely on such evidence to form a good faith belief that there is a reasonable possibility that a violation of fair housing law has, is, or will take place and that random audits by "testers" supervised by the lawyer will uncover such conduct.

Proposed 2014 Formal Ethics Opinion 11
Notice to Parents Prior to Seeking Nonsecure Custody Order
April 16, 2015

Proposed opinion rules that a DSS lawyer must follow legal notice requirements when filing a petition alleging abuse, neglect, or dependency and must comply with Rule 3.5 regarding ex parte *motions for nonsecure custody.*

Facts:

In cases when immediate removal of a child is deemed necessary, the County Department of Social Services (DSS) must file a petition alleging abuse, neglect, or dependency, and obtain a nonsecure custody order.

The petition alleging abuse, neglect, or dependency must be filed prior to the request for a nonsecure custody order. The parties to the action are DSS as petitioner, the respondent parents, the child (who is appointed a guardian ad litem), and, depending upon the facts, a legal guardian, legal custodian, or adult caretaker of the child. N.C. Gen. Stat. § 7B-401.1 (2013). Upon the filing of the petition, respondent parents are each appointed provisional counsel by the clerk. The provisional counsel remain appointed to each parent unless the parent does not appear at the hearing, the court finds that the parent is not indigent, the parent retains his/her own counsel, or the parent waives his/her right to counsel. N.C. Gen. Stat. § 7B-602 (2013). Very specific criteria for nonsecure custody are set out in N.C. Gen. Stat. § 7B-503 (2011). Pursuant to N.C. Gen. Stat. § 7B-506 (2013), if nonsecure custody is needed for more than seven calendar days, there must be a hearing on the merits within that time.

The instant inquiry involves a family where there is a pending DSS action and each parent has been appointed counsel. The children have been adjudicated abused, neglected, and/or dependent, and the case is in the permanency planning and review stage.

The respondent mother is pregnant (it is unknown whether the father is same father as in the underlying abuse, neglect, or dependency action). Upon the birth of the infant, DSS intends to file a petition alleging abuse, neglect, or dependency and to file an *ex parte* motion for nonsecure custody as to the newborn child.

Inquiry #1:

Is the lawyer for DSS required to notify the respondent parents' lawyers prior to or at the time of filing the new petition alleging abuse, neglect, or dependency as to the newborn child?

Opinion #1:

The issue of notice is a legal question not governed by the Rules of Professional Conduct. The DSS lawyer must follow the legal guidelines established as to the notice or service required prior to or at the time of filing the petition alleging abuse, neglect, or dependency.

If the law does not require such notice, it would be consistent with the Rules of Professional Conduct for the DSS lawyer to provide the parents' lawyers with notice prior to or at the time of the filing, particularly when the parents' lawyers have requested such notice as to the unborn child. Rule 1.2(a)(2) provides:

> A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel that do not prejudice the rights of a client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

Inquiry #2:

Rule 3.5 prohibits *ex parte* communication with a judge except in certain limited situations. Does Rule 3.5 apply to the filing of the *ex parte* motion for nonsecure custody as to the newborn child?

Opinion #2:

Yes. Rule 3.5 governs a lawyer's communication with a judge about a pending matter. Rule 3.5(a)(3) provides that a lawyer shall not communicate *ex parte* with a judge or other official except in the course of official proceedings, in writing, if a copy is furnished simultaneously to the opposing party, orally, upon adequate notice to the opposing party, or "as otherwise permitted by law."

The lawyer for DSS must comply with Rule 3.5(a)(3) as to any *ex parte* communications with a judge following the filing of the petition relative to the newborn child. Whether an *ex parte* motion for nonsecure custody is specifically authorized by law is a legal question beyond the purview of the Ethics Committee. For this exception to apply, however, there must be "a statute or case law specifically and clearly authorizing such communication. Such authorization may not be inferred by the absence in the statute or case law of a specific statement requiring notice to the adverse party or counsel prior to the *ex parte* communication." 2001 FEO 15.

Proposed 2015 Formal Ethics Opinion 4
Disclosing Potential Malpractice to a Client
April 16, 2015

Introduction

Lawyers will, inevitably, make errors, mistakes, and omissions (referred to herein as an "error" or "errors") when representing clients. Such errors may constitute professional malpractice, but are not necessarily professional misconduct. This distinction between professional or legal negligence and professional misconduct is explained in comment [9] to Rule 1.1, *Competence*:

> An error by a lawyer may constitute professional malpractice under the applicable standard of care and subject the lawyer to civil liability. However, conduct that constitutes a breach of the civil standard of care owed to a client giving rise to liability for professional malpractice does not necessarily constitute a violation of the ethical duty to represent a client competently. A lawyer who makes a good-faith effort to be prepared and to be thorough will not generally be subject to professional discipline, although he or she may be subject to a claim for malpractice. For example, a single error or omission made in good faith, absent aggravating circumstances, such as an error while performing a public records search, is not usually indicative of a violation of the duty to represent a client competently.

Although an error during the representation of a client may not constitute professional misconduct, the actions that the lawyer takes following the realization that she has committed an error should be guided by the requirements of the Rules of Professional Conduct. This opinion explains a lawyer's professional responsibilities when the lawyer has committed what she believes may be legal malpractice.

This opinion does not address requirements under a lawyer's malpractice insurance policy to give the insurer notice or to report a potential claim. Lawyers are encouraged to read their policies. This opinion also does not address settlement of a malpractice claim. Lawyers are reminded that Rule 1.8(h)(2) prohibits settlement of a malpractice claim with an unrepresented client or former client unless the person is advised in writing of the desirability of seeking and given a reasonable opportunity to seek the advice of independent legal counsel.

Inquiry #1:

When the lawyer determines that an error that may constitute legal malpractice has occurred, is the lawyer required to disclose the error to the client?

Opinion #1:

Disclosure of an error to a client falls within the duty of communication. Rule 1.4(a)(3) requires a lawyer to "keep the client reasonably informed about the status of the matter," while paragraph (b) of the rule requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Comment [3] to the rule explains that paragraph (a)(3) requires that the lawyer keep the client reasonably informed about "significant developments affecting the timing or the substance of the representation." Comment [7] to Rule 1.4 adds that "[a] lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person."

In the spectrum of possible errors,[1] material errors that prejudice the client's rights or claims are at one end. These include errors that effectively undermine the achievement of the client's primary objective for the representation, such as failing to file the complaint before the statute of limitations runs. At the other end of the spectrum are minor, harmless errors that do not prejudice the client's rights or interests. These include nonsubstantive typographical errors in a pleading or a contract or missing a deadline that causes nothing more than delay. Between the two ends of the spectrum are a range of errors that may or may not materially prejudice the client's interests.

Whether the lawyer must disclose an error to a client depends upon where the error falls on the spectrum and the circumstances at the time that the error is discovered. The New York State Bar Association, in a formal opinion, described the duty as follows:

> [W]hether an attorney has an obligation to disclose a mistake to a client will depend on the nature of the lawyer's possible error or omission, whether it is possible to correct it in the present proceeding, the extent of the harm resulting from the possible error or omission, and the likelihood that the lawyer's conduct would be deemed unreasonable and therefore give rise to a colorable malpractice claim.

N.Y. State Bar Ass'n Comm. Prof'l Ethics, Op. 734 (2000). Under this analysis, it is clear that material errors that prejudice the client's rights or interests as well as errors that clearly give rise to a malpractice claim must always be reported to the client. Conversely, if the error is easily corrected or negligible and will not materially prejudice the client's rights or interests, the error does not have to be disclosed to the client.

Errors that fall between the two extremes of the spectrum must be analyzed under the duty to keep the client reasonably informed about his legal matter. If the error will result in financial loss to the client, substantial delay in achieving the client's objectives for the representation, or material disadvantage to the client's legal position, the error must be disclosed to the client. Similarly, if disclosure of the error is necessary for the client to make an informed decision about the representation or for the lawyer to advise the client of significant changes in strategy, timing, or direction of the representation, the lawyer may not withhold information about the error. Rule 1.4. When a lawyer does not know whether disclosure is required, the lawyer should err on the side of disclosure or should seek the advice of outside counsel, the State Bar's ethics counsel, or the lawyer's malpractice carrier.[2]

Inquiry #2:

Applying the analysis in Opinion #1, the lawyer has determined that her error must be disclosed to the client. Is the lawyer also required to withdraw from the representation?

Opinion #2:

No, unless the conditions in Rule 1.7, *Conflict of Interest: Current Clients*, that allow a representation burdened with a conflict to proceed cannot be satisfied.

Rule 1.7(a)(2) states that a lawyer may not represent a client if the representation of a client may be materially limited by a personal interest of the lawyer. When a lawyer realizes that she made an error that may give rise to a malpractice claim against her, the lawyer's personal interest in avoiding liability may materially impair her professional judgment. Specifically, she may take actions that are contrary to the interests of the client to protect herself from liability. This is the essence of a conflict of interest.

Nevertheless, in many instances the lawyer may reasonably believe that she can mitigate or avoid any loss to the client by taking corrective action.[3] For example, an error made in a title search may be readily repaired or a motion *in limine* may prevent the use of privileged communications that were improperly produced in discovery. It is often in the best interest of both the lawyer and the client for the lawyer to attempt such repair. When the interests of the lawyer and the client are aligned in this way, withdrawal is not required if the conditions for consent in Rule 1.7(b) are satisfied.

Rule 1.7(b) allows a lawyer to proceed with a representation burdened by a conflict if the lawyer reasonably believes that she will be able to provide competent and diligent representation to the client and the client gives informed consent, confirmed in writing. If the lawyer reasonably concludes that she is still able to provide the client with competent and diligent representation—that she can exercise independent professional judgment to advance the interests of the client and not solely her own interests—the lawyer may seek the informed consent of the client to continue the representation.

Of course, when an error is such that the client's objective can no longer be achieved, as when a claim can no longer be filed because the statute of limitations has passed, the lawyer must disclose the error to the client and terminate the representation.

Inquiry #3:

If an error must be disclosed to a client, what must the lawyer tell the client?

Opinion #3:

The lawyer must candidly disclose the

material facts surrounding the error, including the nature of the error and its effect on the lawyer's continued representation. If the lawyer believes that she can take steps to remedy the situation or mitigate or avoid a loss, the lawyer should discuss these with the client while informing the client that the client has the right to terminate the representation and seek other counsel. Rule 1.4.

Whether a lawyer must inform the client that the client may have a malpractice action against the lawyer was addressed in Colorado Formal Ethics Opinion 113. The opinion states that

> The lawyer need not advise the client about whether a claim for malpractice exists, and indeed the lawyer's conflicting interest in avoiding liability makes it improper for the lawyer to do so. The lawyer need not, and should not, make an admission of liability. What must be disclosed are the facts that surround the error, and the lawyer should inform the client that it may be advisable to consult with an independent lawyer with respect to the potential impact of the error on the client's rights or claims.

Co. Formal Ethics Op. 113 (November 19, 2005). The Colorado approach appropriately limits the possibility that a lawyer will attempt to give legal advice to a client about a potential malpractice claim against the lawyer. To do so would place the lawyer squarely in a nonconsentable conflict between the client's interest and the lawyer's personal interest. However, the lawyer is required to tell the client the operative facts about the error and to recommend that the client seeking independent legal advice about the consequences of the error.

Under this approach, the lawyer is not required to inform the client of the statute of limitations applicable to legal malpractice actions, nor is she required to give the client information about the lawyer's malpractice insurance carrier or information about how to file a claim with the carrier. Nevertheless, the lawyer should seek the advice of her malpractice insurance carrier prior to disclosing the error to the client, and should discuss with the carrier what information, if any, should be provided to the client about the lawyer's malpractice coverage or how to file a claim.

Inquiry #4:

Is there any information that the lawyer should not provide to the client when disclosing her error to the client?

Opinion #4:

The lawyer should not disclose to the client whether a claim for malpractice exists or provide legal advice about legal malpractice. *See* Opinion #3.

Inquiry #5:

When is the lawyer required to inform the client of the error?

Opinion #5:

The error should be disclosed to the client as soon as possible after the lawyer determines that disclosure of the error to the client is required. *See* Rule 1.4(a)(1) (lawyer shall promptly inform the client of any decision requiring consent).

Inquiry #6:

Is filing a motion to undo the error based upon excusable neglect sufficient disclosure to the client if the client is copied with the motion? May the lawyer wait until the court has ruled on the motion to send a copy of the motion and order to the client?

Opinion #6:

As noted above, comment [3] to Rule 1.4 explains that a lawyer must keep the client reasonably informed about "significant developments affecting the timing or the substance of the representation." If the client will lose a significant right or interest if the motion fails, the client is entitled to know about the error in order to determine whether the client is willing to allow the lawyer to attempt to correct the error or would prefer that the motion be handled by another lawyer. The client must be advised of the error prior to filing the motion to allow the client to make an informed decision about the representation. Rule 1.4(b).

Inquiry #7:

When disclosing the error to the client, may the lawyer refer the client to another lawyer for advice?

Opinion #7:

Yes, if the lawyer concludes that she can exercise impartial, independent professional judgment in recommending other counsel to the client. *See* Opinion #2.

Inquiry #8:

If the client has paid legal fees to the lawyer, is the lawyer required to return some or all of the fees that she received?

Opinion #8:

Rule 1.5(a) prohibits a lawyer from collecting a clearly excessive fee. As stated in 2000 FEO 5,

> there is always a possibility that a lawyer will have to refund some or all of any type of advance fee, if the client-lawyer relationship ends before the contemplated services are rendered. At the conclusion of the representation, the lawyer must review the entire representation and determine whether, in light of the circumstances, a refund is necessary to avoid a clearly excessive fee.

Therefore, the lawyer must determine whether, in light of the lawyer's error and its consequences for the client's interests and legal representation, a refund is necessary to avoid a clearly excessive fee. In addition, the lawyer should never charge or collect legal fees for any legal work or expenses necessitated by the lawyer's attempts to mitigate the consequences of the lawyer's error.

Endnotes

1. The "spectrum" concept of legal errors is borrowed from Colorado Formal Ethics Op. 113 (November 19, 2005).
2. Rule 1.6(b)(5) allows a lawyer to disclose confidential client information to secure legal advice about the lawyer's compliance with the Rules of Professional Conduct.
3. Insurance carriers are experienced at repairing malpractice. A lawyer should seek the advice and assistance of her carrier.

Proposed Substitute for 2014 Formal Ethics Opinion 5 (Adopted 7/25/14) Advising a Civil Litigation Client about Social Media
April 16, 2015

Proposed opinion rules a lawyer must advise a civil litigation client about the legal ramifications of the client's postings on social media as necessary to represent the client competently. The lawyer may advise the client to remove postings on social media if the removal is done in compliance with the rules and law on preservation and spoliation of evidence.

Inquiry #1:

A client's postings and other information that the client has placed on a social media[1] website (referred to collectively as "postings")

are relevant to the issues in the client's legal matter and, if the matter is litigated, might be used to impeach the client. The client's lawyer does not use social media and is unfamiliar with how social media functions.

What is the lawyer's duty to be knowledgeable of social media and to advise the client about the effect of the postings on the client's legal matter?

Opinion #1:

Rule 1.1 requires lawyers to provide competent representation to clients. Comment [8] to the rule specifically states that a lawyer "should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice." "Relevant technology" includes social media. As stated in an opinion of the New Hampshire Bar Association, N. H. Bar Ass'n Op. 2012-13/05, "counsel has a general duty to be aware of social media as a source of potentially useful information in litigation, to be competent to obtain that information directly or through an agent, and to know how to make effective use of that information in litigation."

If the client's postings could be relevant and material to the client's legal matter, competent representation includes advising the client of the legal ramifications of existing postings, future postings, and third party comments.

Inquiry #2:

The client's legal matter will probably be litigated, although a law suit has not been filed. May the lawyer instruct the client to remove postings on social media?

Opinion #2:

A lawyer may not counsel a client or assist a client to engage in conduct the lawyer knows is criminal or fraudulent. Rule 1.2(d). In addition, a lawyer may not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. Rule 3.4(a). The lawyer, therefore, should examine the law on preservation of information, spoliation[2] of evidence, and obstruction of justice to determine whether removing existing postings would be a violation of the law.

If removing postings does not constitute spoliation and is not otherwise illegal, or the removal is done in compliance with the rules and law on preservation and spoliation of evidence, the lawyer may instruct the client to remove existing postings on social media. The lawyer may take possession of printed or digital images of the client's postings made for purposes of preservation. *See* N.Y. State Bar, Ethics Op. 745 (2013)(lawyer may advise a client about the removal of postings if the lawyer complies with the rules and law on preservation and spoliation of evidence).

Inquiry #3:

May the lawyer instruct the client to change the security and privacy settings on social media pages to the highest level of restricted access?

Opinion #3:

Yes, if doing so is not a violation of law or court order.

Endnotes

1. "Social media" is defined as "forms of electronic communication ([such] as Websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content ([such] as videos)." Social Media, Merriam-Webster, merriam-webster.com/dictionaty/social%20 media (last visited Jan. 20, 2015).
2. *Black's Law Dictionary* 1437 (8th ed. 2004) defines spoliation as the intentional concealment, destruction, alteration or mutilation of evidence, usually documents, thereby making them unusable or invalid. The doctrine of spoliation of evidence holds that when "a party fails to introduce in evidence documents that are relevant to the matter in question and within his control...there is a presumption, or at least an inference that the evidence withheld, if forthcoming, would injure his case." *Jones v. GMRI, Inc.*, 144 N.C. App. 558, 565, 551 S.E.2d 867, 872(2001) (quoting *Yarborough v. Hughes*, 139 N.C. 199, 209, 51 S.E. 904, 907-08 (1905)).

■

In Memoriam

Cade Lee Austin
Charlotte, NC

Mark Richard Bernstein
Charlotte, NC

Joe Oliver Brewer
Wilkesboro, NC

Don R. Castleman
Winston-Salem, NC

David Lee Credle
Elizabeth City, NC

Charles Lemuel Cromer
Apex, NC

Roy W. Davis Jr.
Asheville, NC

Robert Harrison Gourley Sr.
Statesville, NC

Ann Elizabeth Hanks
High Point, NC

Grover Prevatte Hopkins
Tarboro, NC

Frederick Strickland Hutchins Jr.
Clemmons, NC

Pamela Lee Kopp
Charlottesville, VA

D. Marsh McLelland
Burlington, NC

Philip Hodgin Modlin
Jamestown, NC

John Knox Patterson
Burlington, NC

Hugh H. Peoples
Mount Airy, NC

John Oliver Pollard
Charlotte, NC

Elton Claude Pridgen
Smithfield, NC

Daniel Reid Simpson
Morganton, NC

Keith McLendon Stroud
Charlotte, NC

Thomas Spruill Thornton Jr.
Greensboro, NC

Joseph VonKallist
Charlotte, NC

George Edward Weaver II
Asheville, NC

Walter Frederick Williams Sr.
Greensboro, NC

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

Campbell Law wins South Texas Mock Trial Challenge—Campbell Law student advocates collected the national championship at the prestigious South Texas Mock Trial Challenge for the second time in three years. Third-year students Terry Brown Jr., Lauren Fussell, and Kaitlin Rothecker won every single trial in all seven rounds of the competition en route to the title. Rothecker picked up a handful of individual awards as well, including the Williams Kherkher Trophy as the most professional advocate from a field of more than 140 competitors and the Laminack, Pirtle & Martines Trophy as the best advocate in the championship final round.

Campbell Law ranked second nationally for best bar exam prep—Campbell Law School has been named the second best law school in the country for bar exam preparation by *The National Jurist*. Of the 50 schools included on the list, Campbell Law is the only North Carolina law school selected for inclusion. Over the course of the past 25 years, 90.89% of Campbell Law graduates have passed the July North Carolina bar exam on their first try, tops among the seven North Carolina law schools

Campbell Law named one of the best law schools for practical training—Campbell Law School has been selected as one of the top law schools in the country for practical training by *The National Jurist*. Campbell Law also received the highest rating of any North Carolina law school.

Jones, Miller elected to chair alumni association board—Todd Jones (L '98) and Kimberly Miller (L '07) have been elected to chair the newly-launched Campbell Law Alumni Association Board of Directors. The pair was elected by the alumni association board in February. Jones will serve as chair of the alumni association board, while Miller will act as vice-chair. Both will serve three-year terms.

Charlotte School of Law

New leadership—Chidi Ogene, previously interim dean at Florida Coastal School of Law, was appointed as Charlotte School of Law's third president. Ogene will succeed President Don Lively, who is leaving to become the president of Arizona Summit School of Law. Through this appointment, Ogene will be the first African-American to serve as president at CharlotteLaw and only one of 10% in the United States to lead a law school.

Partnership with Haitian Foundation—CharlotteLaw has entered into a cooperative agreement with a renowned Haitian Foundation in an effort to increase access to justice for Haitian citizens. The partnership with Institut Dwa Tout Moun ("Institute for Rights of All People") will pave the way for *pro bono*, externship, and law clinic opportunities in Haiti. The Institute for Rights for All People was founded by Maitre Jean Henry Céant and projects the emergence of a united vision of respect for human rights in Haiti. The foundation focuses primarily on the dissemination of information on laws, prioritizing the formation of new citizens placing the general interest above special interests and complete dedication to the service of the Haitian nation. This mission is accomplished through information, training, and education, for the emergence of new fully imbued citizens of their rights and duties.

CharlotteLaw student recognized by ABA Student Division—Maritza Adonis was awarded the American Bar Association (ABA) Student Division Silver Key Award for Leadership on Saturday, March 14, 2015, at the ABA Board of Governors meeting in Las Vegas, NV. The Silver Key is the highest recognition given by the American Bar Association Law Student Division annually. Adonis has served as Fourth Circuit governor for the past year, which consists of serving as a regional representative for 17 law schools from four states and sits on a national ABA board.

Duke Law School

New dual-degree program combines law, bioethics, and science policy—A new dual-degree program enables Duke Law students to combine a JD with a master's focused on the interrelationships between science, law, ethics, and policy—and complete them both in just three years.

Students pursuing the JD/MA in Bioethics and Science Policy are required to complete 36 additional credits to earn the master's degree, which involves other Duke schools, departments, and programs. The law school will accept 12 of those credits towards the JD to make it possible to complete both sets of requirements in six semesters and one summer. The program's capstone requirement is satisfied through a practicum completed during a full summer in Washington, DC, or other externship locations after the 1L year.

Wrongful Convictions Clinic gains support—A $1 million commitment to the Duke Wrongful Convictions Clinic from William Louis-Dreyfus '57 has the potential to change clients' lives by supporting the work of students and faculty to investigate and litigate claims of actual innocence. Louis-Dreyfus's pledge will fund activities essential to the clinic's teaching and service mission: investigative research and travel; retaining expert witnesses; developing legal strategies; making legal filings; and purchasing transcripts, to name a few.

3L receives EJI Legal Fellowship—Judea Davis '15 has been awarded a two-year post-graduate fellowship with the Equal Justice Initiative in Montgomery, AL. The EJI Legal Fellowship promises to engage Davis in an examination of the legal history of racial subordination, exclusion, and segregation as part of a new initiative on race and poverty.

The Equal Justice Initiative is a nonprofit law and human rights organization that provides legal assistance to condemned prisoners, children in the criminal justice system, people wrongfully convicted or sentenced, and people facing imprisonment.

Elon University School of Law

Luke Bierman proposes four steps to reinvent legal education—In the *ABA Journal's* "The New Normal" series (April 15), Elon Law Dean Luke Bierman calls for "better training in writing, business skills, project management, technology, data analytics, leadership development, and communication" enabling "lawyers to blossom from narrow technicians into strategic thinkers, deal makers, problem solvers, and community leaders."

Bierman calls for "full-time, course-connected legal residencies to become a staple of the law school experience," and urges law schools both to become more affordable and to build stronger connections with practicing attorneys.

"Elon Law has adopted a new curriculum that addresses each and every one of the elements discussed above," Bierman writes. "We redesigned the law school experience for the 21st century, providing logically sequenced instruction, full-time experience, highly integrated student engagement with the practicing bar, and great value all in a 2½ year experience with a 20% reduction in cost."

***Elon Law featured in* U.S. News & World Report**—Elon Law's new curriculum is featured in a *U.S News & World Report* article (March 11) as one of the most far-reaching innovations in American legal education this year. Introducing Elon, the article notes that some law schools have "borrowed a page from medicine to incorporate clinical rotations or 'residencies.'"

"In one of the most radical reforms, Elon University School of Law in North Carolina will introduce a complete overhaul of its curriculum this year," the article states. "The program will shift to trimesters so students graduate in two and a half years and can prep for the February bar exam and enter the job market in the spring. The new curriculum is much more intentionally sequenced; shadowing a litigator leads to participation in moot court and then to a residency with a trial and appellate practice firm, for example."

North Carolina Central University School of Law

NCCU's courthouse presence—As a leader in clinical legal education and service to the community, NCCU Law provides free legal services in the Community Agencies Suite at Durham County Courthouse. Three hours a day, four days a week, the public can have their questions answered at no cost as they navigate the court system. Although three of the school's 13 clinics regularly staff the community suite, one of the most consistent is the Family Law Clinic under the supervision of Senior Clinical Professor Nakia Davis.

Davis described a case in which a mother was frantic to have the Durham court award her custody of her three children, despite the fact that the court order she held in her hand was issued in Wisconsin. Davis was able to help her regain the care of her three daughters after several years of separation. "After a very long journey, we were able to get her children back," said Davis.

Separation, divorce, and child custody may not rise to the level of seriousness to warrant time-strapped Legal Aid's attention, but these issues can be of overwhelming importance to families who might otherwise never set foot inside a courtroom. To help bridge this gap in service, the Family Law Clinic created the File it Yourself packet of the documents necessary to file a *pro se* custody action. Offered at cost ($20), packets have been made available through NCCU's File it Yourself workshops, at the law school, and the courthouse. Family Law Clinic students will complete the packets for a nominal $50 through its bundled services program. "The cost to draft these documents privately could be $400," said Davis.

"If our clinic operations worked on a for-profit basis, last year the value of the services we provided to the community would be nearly $2 million," said Dean Phyliss Craig-Taylor.

University of North Carolina School of Law

Speakers of note—Jenny Rivera, a judge on the New York State Court of Appeals, delivered the commencement address for UNC School of Law on May 9. Rivera, who clerked for the Honorable Sonia Sotomayor, has spent her career in public service and civil rights. Thokozile Masipa, a judge at the Johannesburg Division for the Gauteng High Court in South Africa, delivered the 2015 William P. Murphy Distinguished Lecture at UNC School of Law on April 6. Masipa was the presiding judge in the high-profile murder trial of Olympic runner Oscar Pistorius.

Banking Institute—During the 19th annual Banking Institute held March 26-27 in Charlotte, the UNC Center for Banking and Finance honored Anthony "Tony" Gaeta Jr. with a Leadership Award given for just the fifth time in center history. Gaeta, who practices with Wyrick Robbins Yates & Ponton LLP in Raleigh, has served on the Board of Advisors of the Banking Institute since its inception and has been a guiding force in ensuring its success.

Distinguished Alumni Awards—UNC School of Law celebrated its distinguished alumni award winners at the annual Law Alumni Weekend Leadership and Awards Dinner on May 1. The Lifetime Achievement Award was presented to the Honorable Sarah E. Parker '69, retired chief justice of the NC Supreme Court. The Distinguished Alumni Award was presented to John Charles "Jack" Boger '74 for his service as dean of UNC School of Law. The school presented its Outstanding Recent Graduate Award to Christopher Brook '05, legal director of the ACLU of North Carolina.

Wake Forest University School of Law

Two-year JD for international lawyers—Beginning in August 2015 Wake Forest Law will offer an American Bar Association-approved Two-Year Juris Doctor (JD) for International Lawyers. Wake Forest is the first law school in North Carolina to offer this degree, which is specifically designed for lawyers educated outside of the United States who are interested in gaining expertise in American law. Graduates are eligible to take any state bar exam along with all other JD graduates. Admitted foreign law graduates receive one year of law school credit based on their legal education in their home countries.

Business Law Program—Also in Fall 2015 Wake Forest Law will introduce its new Business Law Program, which is designed to expand student opportunities that strengthen knowledge of business law concepts as well as develop skills to assist professional development and readiness for practice. The program targets four core areas: academic enrichment, professional development and ethics, experiential learning, and joint degrees. Professor Omari Simmons, who teaches Contracts, Business Associations, and Corporate Governance among other courses, has been named the inaugural director

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Client Security Fund Reimburses Victims

At its April 16, 2015, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $183,774.03 to ten applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $76,666.66 to a former client of Donald Bumgardner of Gastonia. The board determined that Bumgardner was retained to handle a client's workers' compensation and personal injury claims. Bumgardner settled the claims but failed to make all the proper disbursements from the settlement proceeds. Bumgardner misappropriated the amount that should have been held to pay the client's subrogation lien from the workers' comp case.

2. An award $1,133.35 to a former client of Christopher Harper of Durham. The board determined that Harper was retained to handle a client's personal injury matter. Harper wrote seven trust account checks to himself out of the client's portion of the settlement that were negotiated for cash. Although Harper contended that he gave the cash to his client, the client disputed receiving more than $200 in cash from Harper. Harper failed to get receipts or otherwise document that his client received the benefit of checks payable to Harper that were negotiated for cash. Harper was disbarred on December 26, 2014.

3. An award of $51,654.34 to a former client of L. Pendleton Hayes of Pinehurst. The board determined that Hayes was retained to probate a client's mother's estate and to represent the client in the sale of her parents' home. Hayes deposited the home sale proceeds check from the closing attorney into her trust account, but failed to make all the proper disbursements from those proceeds prior to her trust account being frozen by the State Bar due to misappropriation. Hayes' trust account balance was insufficient to satisfy all of her client obligations. Hayes was disbarred on November 21, 2014. The board previously reimbursed four other Hayes clients a total of $8,654.23.

4. An award $25,000 to a former client of Freddie Lane Jr. of Fayetteville. The board determined that Lane was retained to negotiate a reduction in a medical lien from a client's personal injury action. Lane deposited the settlement check into his trust account, but failed to negotiate the lien and misappropriated the funds. Lane was disbarred on November 20, 2014.

5. An award of $1,312.50 to a former client of Elesha Smith of Raleigh. The board determined that Smith was retained by a client to investigate a possible wrongful death claim. In addition to paying for the initial consultation, the client paid an advance for fees Smith would earn in the future. Smith was placed on disability inactive status. Smith's trust account balance was insufficient to satisfy all of her client obligations, including the unearned fee for this client. Smith was placed on disability inactive status on January 15, 2015.

6. An award of $14,250 to a former client of Daniel L. Taylor of Troutman. The board determined that the client attempted to retain Taylor to amend his living trust. The client met with Taylor's wife who prepared a retainer agreement that included services that the client didn't need. The client paid the fee called for in the agreement with the intent of discussing a refund for the unneeded documents with Taylor. Taylor had suffered a stroke and was never able to resume the practice of law. Taylor's wife knew, or should have known, that Taylor would not be able to provide the legal services for which the client paid. Taylor died on December 25, 2014. The board previously reimbursed eight other Taylor clients a total of $59,484.40.

7. An award of $5,100 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare a client's estate planning documents. Although he prepared some of the documents, Taylor failed to prepare the most important and time sensitive document months prior to Taylor having a stroke.

8. An award of $8,032.18 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare a client's estate planning documents, an asset protection plan, and a Medicaid application for the client's mother. Taylor prepared a number of the documents, but failed to provide the asset protection plan or prepare the Medicaid application during the 15 months prior to his death.

9. An award of $300 to a former client of Christopher Vaughan of Raeford. The board determined that Vaughan was retained to handle a client's speeding ticket. Vaughan failed to provide any valuable legal services for the client once his fee was paid. Vaughan was disbarred on August 15, 2014.

10. An award of $325 to a former client of Christopher Vaughan. The board determined that Vaughan was retained to handle a client's speeding ticket. Vaughan failed to provide any valuable legal services for the client once his fee was paid. ■

Law School Briefs (cont.)

of the program.

Juris Doctor and Master of Arts in Sustainability (JD/MASus)—Wake Forest Law and Wake Forest University's Center for Energy, Environment, and Sustainability (CEES) are partnering to offer a dual Juris Doctor and Master of Arts in Sustainability (JD/MASus) degree. Students will be able to complete the degree in three years, including a summer internship or research. Interim Dean Suzanne Reynolds ('77) says the dual degree will facilitate interdisciplinary learning, perspectives, and interaction among students and faculty in both the JD and MASus programs, and provide students pathways for developing skills and acquiring competencies necessary for succeeding in professional roles where the law intersects with sustainability. ■

July 2015 Bar Exam Applicants

The July 2015 Bar Examination will be held in Raleigh on July 28 and 29, 2015. Published below are the names of the applicants whose applications were received on or before April 30, 2015. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

Jamie Abbondanza
Waxhaw, NC
Meghan Abernathy
Charlotte, NC
Candace Abreu
Asheville, NC
Joshua Adams
Winston-Salem, NC
Matthew Adams
Nashville, NC
Randi Adkins-Warren
Atlanta, GA
Jada Akers
Raleigh, NC
Angela Alcala
Durham, NC
Danielle Aldrich
Raleigh, NC
John Aldridge
Garner, NC
James Alexander
Charlotte, NC
Justin Allen
Carrboro, NC
Noah Allen
Columbia, SC
Ryan Ames
Charlotte, NC
Nicole Amos-Jeffers
Lansing, MI
Ashley Anderson
Wendell, NC
James Anderson
Chapel Hill, NC
Lucy Anderson
New Orleans, LA
Scott Anderson
Durham, NC
Alexandria Andresen
Charlotte, NC
Scott Andron
Ft. Lauderdale, FL
Erika Angles
Raleigh, NC
Christie Anthony
Raleigh, NC
Brianne Appnel
Charlotte, NC
Kimberly Arch
Raleigh, NC
Chad Archer
Greensboro, NC
Tricia Argentine
Durham, NC
Marcia Armstrong
Four Oaks, NC
Leah Arnold
Chapel Hill, NC
Jason Arter
Charlotte, NC
Max Ashworth
Fuquay-Varina, NC
Meghan Ashworth
Astoria, NY
Justin Atkinson
New Hartford, NY
Vera Attaway
Raleigh, NC
Lauren Atwater
Washington, DC
Brandon Atwood
Raleigh, NC
Elizabeth Austin
Raleigh, NC
James Austin
Taylorsville, NC
James Azarelo
Morrisville, NC
Jeremy Babb
Rock Hill, SC
Ariston Bailey
Raleigh, NC
Candra Baizan
Chapel Hill, NC
Eric Baker
High Point, NC
Jessica Baldwin
New Kent, VA
Tameka Baldwin
Durham, NC
Courtney Ballard
Charlotte, NC
LaTasha Banks
Macon, NC
Jonathan Barber
Concord, NC
Rebecca Barbour
Clayton, NC
Robert Barickman
Champaign, IL
Truman Barker
Thomasville, NC
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Apex, NC
Sontina Barnes
Ypsilanti, MI
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Raleigh, NC
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Winston-Salem, NC
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Durham, NC
Sarah Beamer
Charlotte, NC
Zachary Beasley
Currituck, NC
Daniel Beaulieu
Durham, NC
John Beck
Charlotte, NC
Michael Becker
Charlotte, NC
Joshua Bell
Dallas, NC
Alice Bennett
Durham, NC
Leslie Bennett
Taylors, SC
Daniel Bensley
Raleigh, NC
Frederick Benz
Durham, NC
Ashley Berger
Cary, NC
Adam Berkland
Durham, NC
Caitlin Bernstein
Carrboro, NC
Karen Bestman
Durham, NC
Jennifer Biggerstaff
Greensboro, NC
Ian Biggs
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Charlotte, NC
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Winston-Salem, NC
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Philadelphia, PA
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Winston-Salem, NC
William Blackton
Cary, NC
Zachary Blackwell
Durham, NC
Hilary Blackwood
Boston, MA
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Archdale, NC
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Nicole Bleuer
Holly Springs, NC
Glen Blumhardt
Chapel Hill, NC
Kerry Boehm
Carrboro, NC
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Nicholas Boggs
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Mebane, NC
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Charlotte, NC
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Cary, NC
Shytise Bowser
Charlotte, NC
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Charlotte, NC
Chadwick Boykin
Raleigh, NC
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Columbia, SC
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Dylan Buffum
Durham, NC
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Durham, NC
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Raleigh, NC
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Chapel Hill, NC
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Dorian Burton
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Durham, NC
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Durham, NC
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Fayetteville, NC
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Kelly Campbell
High Point, NC
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Sanford, NC
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Dylan Castellino
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Davidson, NC
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Wilmington, NC
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Ikee Gardner
Durham, NC
Tracie Gardner
Winterville, NC
Tyler Gardner

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Draper, UT
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Chapel Hill, NC
Robert Gibson
Salisbury, NC
Kennedy Gilly
Raleigh, NC
Emily Gladden
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Washington, DC
Aaron Goforth
Raleigh, NC
Caitlin Goforth
Raleigh, NC
Jack Goins
Philadelphia, PA
Lorie Goins
Raleigh, NC
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Chapel Hill, NC
Lindsay Goldsmith
Charlotte, NC
Scott Goldsmith
Charlotte, NC
Airrelle Gonzalez
Wheaton, MD
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Charlotte, NC
Cynthia Gonzalez
State Road, NC
Sherita Gooding
Durham, NC
Molly-Catherine Goodson
Lynchburg, VA
Kristin Gordon
Farmville, NC
Katherine Graham
Chapel Hill, NC
Sean Graham
Mint Hill, NC
Alexander Graziano
Raleigh, NC
Jonathan Green
Birmingham, AL
Megan Greene
Raleigh, NC
Shalondra Greenlee
Durham, NC
Leah Gregoire
Candler, NC
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Chapel Hill, NC
Christopher Grice
Durham, NC
Ray Griffis
Durham, NC
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Woodbridge, VA
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Charlotte, NC
Nathan Gudeman
Raleigh, NC
Ashley Guerra
Raleigh, NC
Hannah Guerrier
Washington, DC
Katherine Hagen
State College, PA
Charles Hagerman
Charlotte, NC
Rhonda Halas
Charlotte, NC
Caitlin Hale
Winston-Salem, NC
Carla Halle
Washington, DC
Stephen Hampsey
Apex, NC
Jacqueline Handel
Wake Forest, NC
Charleka Hannon
Charlotte, NC
Ioannis Haralambous
Raleigh, NC
Maren Hardin
Hillsborough, NC
Bradley Harper
Lumberton, NC
David Harper
Chapel Hill, NC
Jessica Harrington
Columbia, SC
William Harrington
Marshville, NC
John Harris
Chapel Hill, NC
Meredith Harris
Greensboro, NC
Nathaniel Harris
Summerfield, NC
Shontay Harris
Charlotte, NC
Parker Harroff
Fort Mill, SC
Andrew Harrris
Charleston, SC
Alexandria Hartill
Knoxville, TN
Samuel Hartzell
Raleigh, NC
Kia Harvey
Winston-Salem, NC
Kristopher Hawkins
Raleigh, NC
Tyler Hawn
Charlotte, NC
Ronald Haynes Jr
Durham, NC
Teresa Heath
Chapel Hill, NC
Christopher Heller
Winnabow, NC
Daniel Hemme
Chapel Hill, NC
Christie Henderson
Sneads Ferry, NC
Kelsey Hendrickson
Chapel Hill, NC
Mary Hendrix
Mocksville, NC
Simeon Henkle
Greensboro, NC
Andrew Henson
Chapel Hill, NC
Robert Herford
Charleston, SC
Clay Hester
Chapel Hill, NC
Kimberly Hicks
Lynchburg, VA
Konner Higgins
Charlotte, NC
Heather Hillaker
Carrboro, NC
Anthony Hinman
Holly Springs, NC
Matthew Hinson
Tobaccoville, NC
Benjamin Hintze
Winston-Salem, NC
Tyler Hite
Deep Gap, NC
Ariel Hodge
Greensboro, NC
Christopher Hodgson
Chapel Hill, NC
John Hodnette
Winston-Salem, NC
Madeleine Hogue
Hillsbrough, NC
Kelly Holder
Winston-Salem, NC
Brooke Holliday
Columbia, SC
Daniel Hollis
Apex, NC
Rebecca Holljes
Raleigh, NC
Daniel Holt
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Charlotte, NC
Stephen Hopkins
Charlotte, NC
Dana Horlick
Greensboro, NC
Katelyn Horne
Charlotte, NC
Dianna Houenou
Durham, NC
Alecia Houston
Apex, NC
Christine Houston
Charlotte, NC
Brett Hubler
Charlotte, NC
Lauren Huddleston
Jonesborough, TN
Valerie Hughes
Chapel Hill, NC
Christian Hunt
Charlotte, NC
Julia Hurley
Chapel Hill, NC
Taylor Hutchens
Raleigh, NC
Rhea Hutton
Charlotte, NC
Thomas Hutton
Panama City Beach, FL
Bryan Huxhold
Mint Hill, NC
Lauren Ikpe
Raleigh, NC
Neal Inman
Holly Springs, NC
Michelle Iqbal
Charlotte, NC
Lucy Ireland
Chapel Hill, NC
Ryan Ivey
Winston-Salem, NC
Teta Jackson
Durham, NC
Trevoria Jackson
Charlotte, NC
Jaweria Jamal
Durham, NC
Morgan James
Matthews, NC
Karmyn Janes
Raleigh, NC
Amanda Jay
Richmond, VA
Phillip Jefferson
Raleigh, NC
Taylor Jenkins
Nashville, TN
Emily Jernigan
Fayetteville, NC
Katie Jervis
Charlotte, NC
Linda Jochim
Charlotte, NC
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Durham, NC
Chase Johnson
Cary, NC
Devon Johnson
Greensboro, NC
Jamihlia Johnson
Durham, NC
Jared Johnson
Westfield, NJ
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Decatur, GA
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Decatur, GA
Taylor Johnson
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Cecelia Jones
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Jason Jones
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James Jordan
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Charlotte, NC
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Gastonia, NC
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Raleigh, NC
Kristen Kenley
Carrboro, NC
Katelin Kennedy
Clemmons, NC
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Greensboro, NC
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Reidsville, NC
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Roanoke, VA
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Winston-Salem, NC
Adam Kindley
Greensboro, NC
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Fayetteville, TN
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Williamsburg, VA
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Charlotte, NC
Solita King
Charlotte, NC
Jonathan Kinny
Chapel Hill, NC
Winston Kirby
Raleigh, NC
Andrea Kirksey
Myrtle Beach, SC
Julian Kisner
Winston-Salem, NC
Walter Kistler
Charlotte, NC
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Raleigh, NC
Lorna Knick
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Mercedes Knight
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Morrisville, NC
Brandon Kohr
Fort Mill, SC
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East Lansing, MI
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Durham, NC
Gintaras Krulikas
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Raleigh, NC
Brian Kuhl
Huntersville, NC
Kathleen Kurdys
Raleigh, NC
Gabriel Kussin
Chapel Hill, NC
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Saint Petersburg, FL
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Virginia Beach, VA
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Fayetteville, NC
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Carrboro, NC
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Robbins, NC
Katherine Lamberth
Charlotte, NC
Todd Landreth

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Jeffrey Lane
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Karrah Leary
Signal Mountain, TN
Colin Ledoux
Waxhaw, NC
Mao Lee
Riverview, FL
Pedra Lee
Cary, NC
Sanghyun Lee
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Columbia, SC
Woo-Il Lee
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Sylva, NC
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Fatina Lorick
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Joshua Lucas
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Craig Martin
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Cramerton, NC
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Mebane, NC
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Cary, NC
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Charlotte, NC
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Chapel Hill, NC
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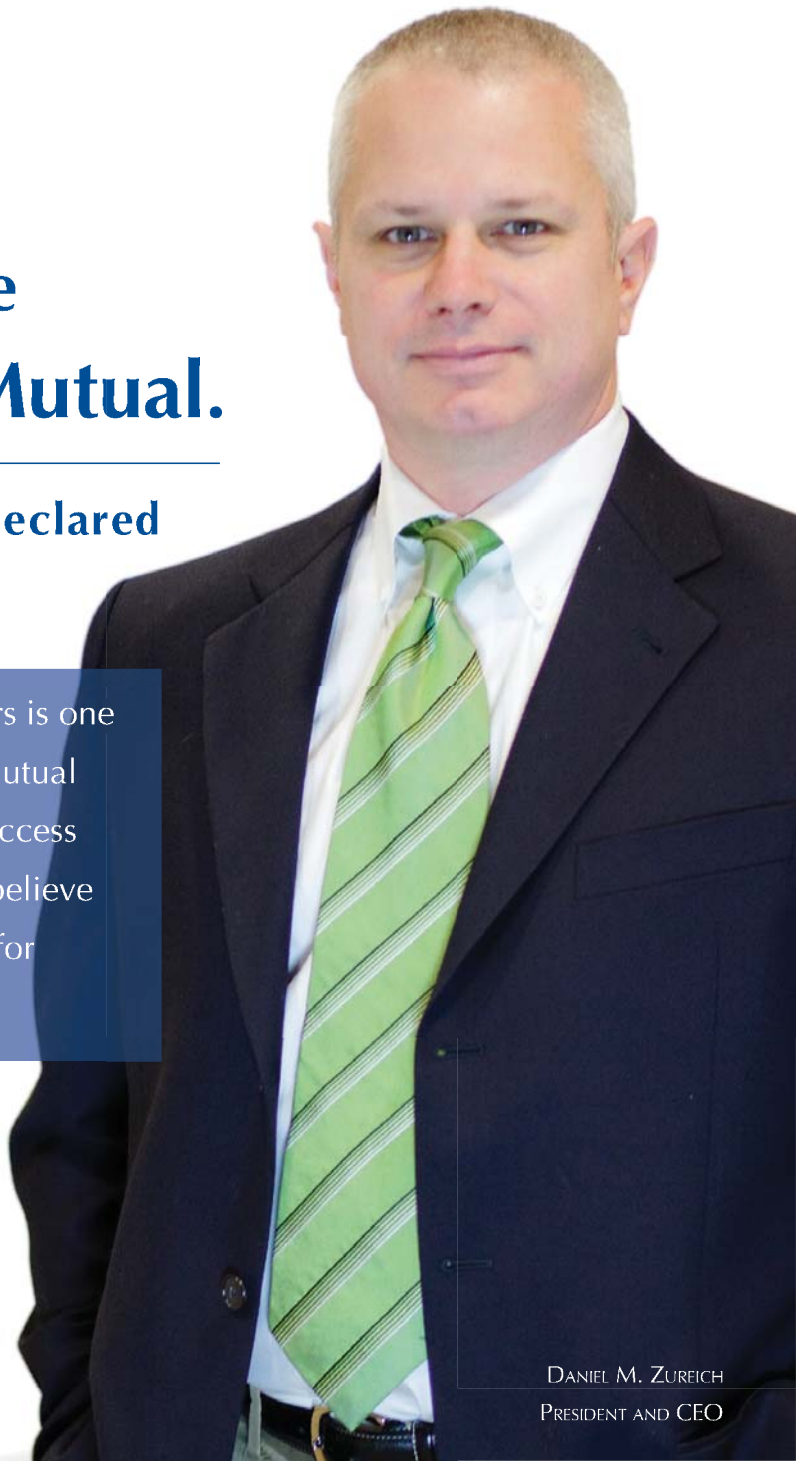

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