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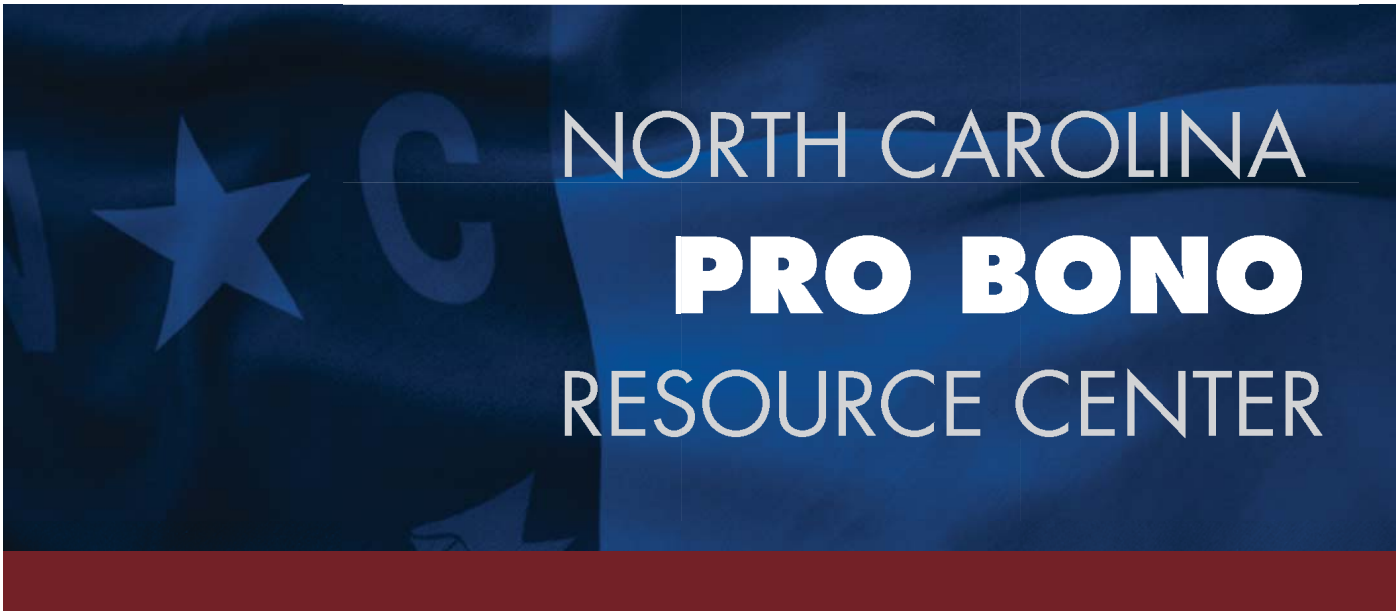

NC PRO BONO REPORTING DEADLINE: MARCH 31, 2018

WHAT SHOULD I REPORT?

The NC Pro Bono Reporting Form collects information about all the activities encouraged in NC Rule of Professional Conduct 6.1: pro bono legal service, legal service at a substantially reduced fee, activity that improves the law, the legal system, or the legal profession, non-legal community service, and financial support of legal service providers.

HOW DO I REPORT?

Visit **ncprobono.org/volunteer/reporting** and provide information about the activities included in NC Rule of Professional Conduct 6.1. You will need basic information about your number of pro bono hours, organizations through which you provided pro bono legal service, and types of pro bono legal services you provided. You will not need specific totals of hours or amounts for the other types of activities included in Rule 6.1. Finally, you will need your NC State Bar ID Number to submit your entry.

WHY SHOULD I REPORT?

There are three major reasons to report your pro bono legal service: (1) it's a way to showcase attorney volunteerism in NC – we want to share the good work being done by the legal profession in our state; (2) it's an opportunity to encourage your peers to grow their pro bono involvement by sharing about your own engagement; and (3) it's an opportunity for recognition – attorneys who report at least 50 hours of pro bono legal service in a year will be inducted into that year's cohort of the NC Pro Bono Honor Society and receive a certificate from the Supreme Court of North Carolina recognizing their achievement.

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The View from Here

By John M. Silverstein

After a nearly 30-year tenure in a suburban office building, three years ago the world headquarters of my law firm, Satisky & Silverstein, LLP, relocated to the top floor of an older two-story building on Hillsborough Street in an area near downtown Raleigh that is transitioning from a quiet neighborhood of small retail and office uses to a prime destination for more intensive mixed-use developments featuring high rise buildings with offices, restaurants, stores, and apartments. Before our move, I argued with Howard Satisky, my partner of more than 40 years, over who would occupy the spacious office with large windows overlooking Raleigh's gateway from the west, Hillsborough Street, and who would be relegated to the smaller office adjacent to venerable, but much sleepier, West Street. I lost; consequently, this article is being written from the large office with the sounds of traffic and train blasts as my inspiration.

One of the disadvantages of occupying a large office is the necessity to cover the extra space on the blank walls with pictures, art, and memorabilia. Like most, my walls feature reminders of people and milestones important to me and my career. One of the smallest, but most significant, is a framed quote which has been in my possession for more than 30 years. It is just one line of print on white paper surrounded by a black background in a slender chrome frame. The quote is by British Prime Minister Benjamin Disraeli, who said in 1851, "Justice is truth in action." But it is not the words that are important to me, it is the circumstances leading to its acquisition that is the reason it remains on my wall.

In December, 1985 I received a call one weekend asking me to come early the next morning to a parking lot adjacent to a state park. A car that belonged to an attorney friend had been discovered abandoned, and a group of his friends was requested to meet there to assist the law enforcement officers who had been called in to investigate. About a dozen of us received instructions from police officers who would first enter the park entrance near the vehicle, and then enlist our assistance in a search if it was needed. We didn't have to wait long. The officers informed us that they found our friend's body at a picnic table a few hundred feet into the park. We shuffled our feet on the cold pavement not wanting to stay or leave as we struggled with our disbelief at what we knew to be true—our friend had committed suicide at the age of 40. I still wish there was something I could have done, and something that could have been done for him.

At his funeral we were advised not to try to understand what led to this act, but to be grateful that we could not understand what he did or why he did it. Those words were helpful, but not comforting. Not long afterwards, my friend's widow cleaned out his law office and gave me a token of remembrance that had been displayed in his office—the framed Disraeli quote. When I look at it now, I still remember the surreal experience of seeing his car, isolated in the parking lot, while waiting for the words we did not want to hear, but knew would come.

Each year the officers and staff representatives of the State Bar visit four district bars to provide an informational overview of the State Bar's structure and activities. The final presentation is always the most interesting and compelling. It is delivered by a NC Lawyer Assistance Program volunteer, and generally includes his or her honest and descriptive details of a difficult journey from personal struggles to a better place through positive changes. It is last on the agenda because the presentation is so powerful that any subject that followed would lose its significance.

It is not the purpose of this article to discuss the litany of issues that impair the well-being of lawyers, nor to address the significant number of practitioners who are directly affected. The impact of that impairment on our profession and the communities in which we practice is well documented. "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," published by the National Task Force on Lawyer Well-Being in August 2017, contains a comprehensive analysis of the challenges we face as a profession and our potential for finding better paths to follow. The report contains specific recommendations and structural, institutional, and suggested rule changes for stakeholders like state bar regulators, CLE, bar associations, law schools, the judiciary, and law firms to help shift the culture of the profession away from stigmatizing help-seeking behavior to creating a professional landscape that encourages lawyers to seek help when they need it. In November 2017 I attended the NCLAP annual meeting, and was impressed by the work of our volunteers and with their commitment to address the challenges identified by the task force. NCLAP Executive Director Robynn Moraites and her staff do an excellent job of interacting with North Carolina lawyers and coordinating our volunteers. Our volunteers are dedicated to helping individuals, secure in the knowledge that guiding them to better paths also helps their families, firms, and communities.

I am hopeful that the publication of the National Task Force on Lawyer Well-Being will both develop greater awareness of the continuing need to provide assistance to impaired lawyers, and prompt key stakeholders identified in the report to implement the

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Saving Paper

By L. Thomas Lunsford II

My wife and I are the authors of what we believe to be the world's longest Christmas letter. This belief, though unsubstantiated by the Guinness Book, is almost certainly shared by most, if not all, of the people who annually receive it. Those lucky few, who constitute our list or "base," would probably assign it other superlatives as well, like: most prolix, least necessary, most politically incorrect, least likely to be completely read, and, of course, most ecologically burdensome—owing to its palpable and "pulpable" contribution to municipal landfills throughout North America each January. Though small in comparison to the holiday avalanche of Amazonian cardboard, our ten-page letters are, when consigned to the dust bin of history, quite impressive additions to the fossil record of which our family can be justifiably proud. And yet, one wonders if there might be a better and more socially responsible way for our words to "echo through eternity"?

All of this is by way of saying that I've been thinking a lot about paper lately—its value, its waste, its retention, and its importance in our personal and professional lives. Now, I understand that the Lunsford Christmas Letter (the "LCL"), though an item of vast cultural significance and near universal appeal, may not be an entirely useful metaphor for consideration of the State Bar and its reliance on paper. But there are commonalities that are compelling and instructive, especially when you compare our merry missive with its regulatory counterpart—the State Bar *Journal*. Although the composition of our mailing lists is different—the *Journal* is sent to every active member of the State Bar and the LCL is mailed only to people who have foolishly expressed an interest in our family—the recipients of both publications are hardy perennials. In each case there are really only two surefire ways to unsubscribe—death and disbarment, and I'm not too sure about death. The publications also share an affinity for tangible media. To be sure, both can be had and enjoyed in an electronic format, but I would contend that the experience of each is diminished by device and digitization. Honestly, who can deny the pleasure and satisfaction of owning a really fine piece of Yuletide correspondence? And who wouldn't rather thumb a glossy magazine than click on a fleeting binary image? And yet, the common wisdom seems to be that most of our readers—who are younger and more hip to technology with each passing year—prefer to consume their media, including holiday greetings and professional periodicals, in cyberspace.

Last fall we decided to test that hypothesis, at least as far as the State Bar *Journal* is concerned, by surveying the lawyers of North Carolina. Among other things, our members were asked in an emailed questionnaire whether they would prefer to receive the *Journal* in an electronic or hard copy format. Participation in the survey was decent, if not overwhelming. About 14% of the membership responded. The majority of those responding—about 56%—expressed a preference for the hard copy, as did 46% of the respondents under the age of 40. Interestingly, about 62% of the younger group said that they would not "opt out" if given the choice to remove themselves from the *Journal's* mailing list. Now, it must be said that these questions were asked in a sort of contextual vacuum. The cost of printing and mailing the magazine was, for instance, not mentioned in the survey. As it happens, we expect to spend something in the neighborhood of $140,000 of your dues money this year to make sure that you receive the thing itself, as opposed to its digital facsimile, which is essentially costless. That's not chicken feed, to be sure, but it's not a terribly significant component of our operational budget of about $9,500,000. And, it's not unmarried to revenue. We annually receive about $40,000 of advertising income that offsets the expense of publication. So, while it isn't cheap to be tangible, it's a luxury we can probably afford for the time being.

We learned a few other things from the survey. When important information regarding the profession is time-sensitive and can't wait to be inked, it's most welcome in the form of email from the State Bar. Although we have been quite diligent in pushing out content through our social media platforms, it appears that nothing beats good old reliable email when it comes to a news flash from Raleigh. Other insights gleaned from your responses were anecdotal rather than quantifiable. It appears that many of you value the magazine as a kind of tangible representation of your affiliation with and connection to the profession through the organized Bar. Whether it's read or not, its presence on the corner of your desk or even in your restroom bespeaks your identification with us all. In a professional world where fragmentation seems to be accelerating, it is a rare shared symbol of what we still have—and hope to have—in common.

Of course, the *Journal* isn't merely decorative. It is reasonably well read, according to your responses. The feature to which most of you turn inevitably—and first—is, naturally, the disciplinary page. Like

wrecks on Interstate 40 and wardrobe malfunctions during the Super Bowl's half-time show, you just can't bear to look away. Now, I must say that the information reported therein, and your Pavlovian response to it, is nothing to be ashamed of. Rather, it mirrors the experience of lawyers throughout the country. Everyone who occupies my office in our sister states reports the same phenomenon. We all want to see who got "stung," and we like to heave that collective sigh of relief in recognition of the fact that it wasn't any of us. That experience of the disciplinary page is, oddly enough, part of what defines and unifies lawyers, not just in North Carolina but across the entire country. It is a good thing.

Although the data is unclear, it appears that an embarrassingly large number of you flee directly from the disciplinary page to the executive director's column. No one knows why this should be so, but some have said that the author's characteristic departure from the norms of good legal writing is perversely appealing, offering thrills of the sort heretofore associated mainly with wrecks and wardrobe malfunctions. Others readily admit that they simply have an unhealthy appetite for irreverence, unsupported assertion, the passive voice, and topics that are presumptively uninteresting. Whatever the cause, the fact that you're guilty of reading this far into my article on the printed page can always be plausibly denied, if necessary. If, however, you arrived at this point by means of your computer, the offending "click" has already been permanently recorded and we "know who you are." You might as well confess.

Actually, confession is more of an issue in regard to the destruction of State Bar publications than their creation or consumption. Recently, our agency—like almost every other organ of state government—became subject to new regulations of byzantine complexity regarding the disposition of public records. It has been ordained that a new "one size fits all" scheme of classifying public records will supplant the old "retention schedules" that were customized over many years to accommodate the vastly different kinds of records generated by agencies as unlike as the State Bar and the Department of Transportation. Although the effort is no doubt well-intentioned and the people in charge are just doing their jobs, our nascent attempt to comply has been inordinately time-consuming and frustrating. Concerned that some of our records don't quite fit within the newly prescribed categories, and that we might "guess wrong" and prematurely destroy records that turn out to have been misclassified, members of our staff have sought small amendments to the new "functional schedules" specific to the State Bar. Few accommodations have as yet been allowed. Instead, the officials in charge have responded by assuring our people that violations of the new law are "only misdemeanors." Small comfort, that.

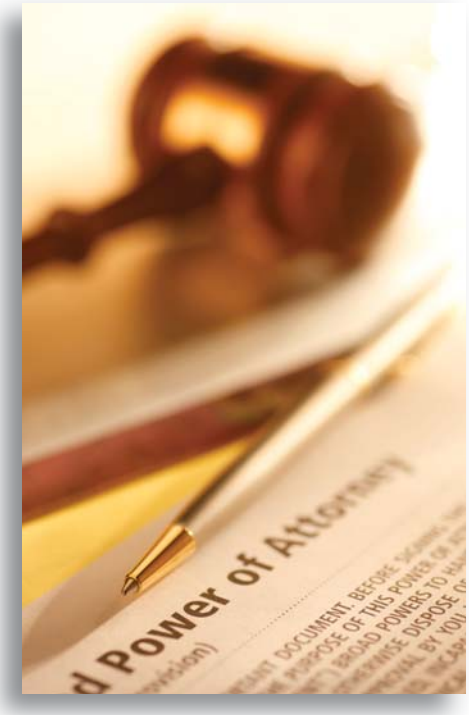
The retention and destruction of public records is serious business. We have an obligation to handle such public property in a responsible and lawful manner. In so doing we must manage an incredible volume of paper, for which space can be reserved indefinitely only at great expense and considerable inconvenience. We need certainty as to how to proceed. We also need rules of reason. In that regard, we were recently advised of the various ways in which public documents that are properly subject to destruction can—and cannot—be lawfully destroyed. Surprisingly, they cannot be simply "thrown away." They must be obliterated. Allowable methods include, we were told, burning, shredding, and immersion in acid vats. Regrettably, we were not advertent to this when we were designing our new building a few years ago. Had we only known, acid vats could have been easily incorporated in our mail room where so much unwanted paper tends to arrive at the State Bar. As I understand it, the regulations requiring such draconian methods were prompted a while back when somebody who had custody of records that were ripe for destruction thought it would be a good idea to just throw the stuff away. As it happened, the material contained confidential information not suitable for those who like to do their reading at the landfill. In order to prevent this sort of thing from happening again, it was decreed that destructive technologies like those listed above would be required in every case as a kind of "Final Solution" to the paper problem. That made good sense in regard to sensitive material not in the public domain. The State Bar's investigative grievance files, for instance, ought never to see the light of day. And no document bearing personal information like social security numbers ought to be risked at the county dump. Still, the bulk of the State Bar's paper is subject to disclosure under the Public Records Act. Whether or not it's in the hands of the public at any given time, it is certainly liable to be and is there for the asking. Why it can't be placed in the "circular file" when it's due for destruction is beyond me. And I don't understand why the lawyers of North Carolina must bear the cost of acid vats and shredders. Thank goodness people can still throw away the Lunsford Christmas letter with a clear conscience. After all, it's only a misdemeanor. ■

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

The North Carolina Uniform Power of Attorney Act: A Practical Introduction for Real Estate Practitioners

By James E. Creekman

Can we all agree that dealing with a power of attorney in North Carolina has long been, at best, a frustrating experience? Well, help is on the way! On July 20, 2017, Governor Cooper signed Senate Bill 569, "An Act to Adopt the Uniform Power of Attorney Act in this State," into law as Session Law 2017-153. It took effect on January 1, 2018, and if you haven't already done so, you need to read it if you practice real estate law or are called upon to consider powers of attorney.



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At the 10,000 foot level, the new law repeals or amends many of the existing statutes dealing with powers of attorney and adopts the Uniform Power of Attorney Act as drafted by the National Conference of Commissioners on Uniform State Laws, albeit with a multitude of tweaks and modifications tailored specifically to our needs in North Carolina.

The effort to get the legislation introduced and passed was admirably undertaken by the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association, which was very careful in its drafting efforts to invite comments, suggestions, and input from a wide variety of interested groups, including the North Carolina Bankers Association, clerks of court, registers of deeds, advocates for the elderly, the North Carolina Department of Justice, and other sections of the North Carolina Bar Association.

Just so we're clear on terminology—for ease of reference in this Article:

- The "Act" refers to the North Carolina Uniform Power of Attorney Act, codified as Chapter 32C of the North Carolina General Statutes.
- A "POA" is a power of attorney—that is, a document signed by the principal that appoints and empowers the attorney-in-fact.
- The "principal" is the individual who grants authority to an attorney-in-fact in a POA.
- The "agent" is the attorney-in-fact named in a POA and authorized by the POA

to act on behalf of the principal. "Agent" is the term used throughout the Act in lieu of "attorney-in-fact."

• The "existing law" refers to statutes currently in effect regarding powers of attorney, many of which are amended or repealed and replaced by the Act.

As happens with many complex pieces of legislation, changes made to a bill during the legislative process can result in minor inconsistencies or incorrect cross-references in the bill as finally enacted. That happened here. As a result, minor technical corrections to the Act will likely be forthcoming, probably during next year's legislative session.

No effort will be made here to provide a detailed analysis of the new law; delve into the rights, duties, and obligations of an agent named in a POA; or identify needed technical corrections. Instead, after a brief overview of the Act, this article focuses on some critical things that you as a real estate practitioner need to know about the Act and its interface with existing law.

A Brief Overview of Organization and Purpose

As a practical matter, existing law provides little more than a template for a North Carolina short form POA, rigid rules regarding durable POAs and an agent's authority to make gifts from the principal's estate, and limited guidance for third parties dealing with an agent.

The Act covers much more territory. It is rationally organized, relatively straight-forward, and divided into four Articles:

• Article 1 contains definitions and general provisions covering the scope of the Act, when a POA is considered durable, the requirements for executing a POA, how the law that governs the meaning and effect of a POA is determined, the relationship between an agent and a court-appointed fiduciary, when a POA becomes effective, how a POA may be terminated, rules relating to the agent, guidance for third parties dealing with agents, and the relationship of the Act to other laws.

• Article 2 sets forth detailed descriptions of an agent's authority relating to specific subjects such as "real property," "tangible personal property," and "banks and other financial institutions." In addition, Article 2 addresses concerns that an agent's authority might be used to dissipate the principal's property or alter the principal's estate plan by listing specific categories of authority that cannot be implied from a grant of general authority—they can only be granted by express language in a POA.

• Article 3 offers three statutory forms: a statutory form POA, an agent's certification, and a limited POA for real property transactions.

• Article 4 clarifies the relationship of the Act to other law and pre-existing powers of attorney.

The Key Things You Need To Know

1. Effective January 1, 2018, the existing law is (mostly) out and the Act is (mostly) in.

While the transition from old to new is fairly smooth, it is not entirely seamless. Residuals of the existing law will continue in effect even after being repealed and replaced.

Chapter 32A of the North Carolina General Statutes is the existing law that governs POAs. Beginning January 1, 2018, only Article 3 (Health Care Powers of Attorney) and Article 4 (Consent to Health Care for Minor) remained in effect—the rest of Chapter 32A was repealed and replaced by the Act. Or so it seems.

According to new § 32C-4-403(a) of the Act:

• The Act applies to a POA created before, on, or after January 1, 2018, unless (i) the POA contains a clear indication of a contrary intent, or (ii) the application of a particular provision of the Act would substantially impair the rights of a party.

• A rule of construction or presumption provided by the Act applies to POAs executed before January 1, 2018, unless (i) the POA contains a clear indication of a contrary intent, or (ii) the application of the rule of construction or presumption would substantially impair the rights of a party created under North Carolina law in effect prior to January 1, 2018, in which case the Act's rule of construction or presumption does not apply and the superseded rule of construction or presumption applies.

In short, the Act (including the presumption of durability discussed below) applies to POAs signed before January 1, 2018. So far, so good.

But there is one glaring exception to this: If you are dealing with a Statutory Short Form POA signed before January 1, 2018, under the authority of existing § 32A-1, then new § 32C-4-403(d) states that the authority of the agent must be determined by reference to the powers described in existing § 32A-2—not the much more broadly defined powers contained in Article 2 of the Act. As a practical matter, this means that when you evaluate the authority of an agent under a Statutory Short Form POA signed before January 1, 2018, § 32A-1 is still alive and well, and you must determine the agent's authority under existing § 32A-2, not Chapter 32C.

2. The rules regarding durability have been greatly refined and turned topsy-turvy.

The Act redefines incapacity and changes the rules regarding the durability of a POA and the requirements for registering a POA.

First a review of existing law:

• An agent cannot act on behalf of a principal after the principal becomes "incapacitated" or "mentally incompetent" unless the POA is a "durable" POA. The terms "incapacitated" and "mentally incompetent" are not defined, and, with one exception, there is no clear mechanism to determine whether a principal has become incapacitated or mentally incompetent. The exception relates to a POA that becomes effective only when the principal becomes incapacitated or mentally incompetent (i.e., it is a "springing" POA triggered by the principal's subsequent incapacity or mental incompetence). In that case, existing § 32A-8 provides that, unless a third person dealing with an agent has actual knowledge to the contrary, the third person can rely on an affidavit executed by the agent setting forth that such condition exists as conclusive proof that the principal is incapacitated or mentally incompetent.

• A POA is not a "durable" POA unless it says it is, either by indicating it has been signed pursuant to Article 2 of Chapter 32A, by including the phrase, "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence," or, "This power of attorney shall become effective after I become incapacitated or mentally incompetent," or by including similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity or mental incompetence.

• Also, there are two separate but related rules under existing law regarding the registration (i.e., recording) of a durable POA in the office of the register of deeds:

• A durable POA can be registered in the register of deeds office before or after the

principal becomes incapacitated or mentally incompetent. However, a durable POA that has not been registered ceases to be valid when the principal becomes incapacitated or mentally incompetent unless (and until) it is duly registered in the appropriate register of deeds office.

• Once a durable POA has been duly registered in the appropriate register of deeds office, then all acts performed thereafter by the agent pursuant to the durable POA during any period of incapacity or mental incompetence of the principal have the same effect as, and are fully binding to the same extent as, would be the case were the principal not incapacitated or mentally incompetent.

The practical implications of these two existing rules are as follows:

• As long as the principal is fully competent to act on the principal's own behalf (i.e., the principal is neither incapacitated nor mentally incompetent), a durable POA does not have to be registered.

• If a durable POA is duly registered in the appropriate register of deeds office before the principal becomes incapacitated or mentally incompetent, the agent can continue to act without interruption after the principal becomes incapacitated or mentally incompetent.

• If the durable POA has not been duly registered in the appropriate register of deeds office before the principal becomes incapacitated or mentally incompetent, the agent cannot act on behalf of the principal after the principal becomes incapacitated or mentally incompetent unless and until the POA is duly registered in the appropriate register of deeds office. Once the POA is duly registered, the agent can resume acting on behalf of the principal. Stated more simply, the authority of the agent to act is automatically suspended when the principal becomes incapacitated or mentally incompetent, but is restored from the date of registration if the durable POA is subsequently properly registered. However, actions taken by the agent during the period of suspension are not validated by the subsequent registration of the POA.

The rules regarding durable POAs are entirely different under the Act, and the Act is much cleaner and clearer in its approach to durability:

• A "durable" POA is defined in § 32C-1-102(2) as one in which the "incapacity of the principal does not terminate" the POA. "Incapacity," in turn, is precisely defined as follows in § 32C-1-102(6):

Incapacity. – The inability of an individual to manage property or business affairs because the individual has any of the following statuses:

1. An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
2. Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return.

• According to § 32C-1-104, a POA is a durable POA unless it "expressly provides that it is terminated by the incapacity of the principal." This is the complete opposite of existing law, which says a POA is not a "durable" POA unless it says it is.

However, as is the case under existing law, it is important to remember that if a POA is NOT a durable POA, the agent's authority to act on the principal's behalf automatically terminates when the principal becomes incapacitated.

• The Act does not require a POA (whether or not it is durable) to be registered (i.e., recorded) in the office of the register of deeds.

However, it is important to remember that existing G.S. 47-28 continues to require a POA involved in a real estate transaction to be registered (i.e., recorded) in the office of the register of deeds, regardless of whether or not it is durable.

• If the POA is what is commonly known as a "springing" or contingent POA—that is, one that becomes effective at a future date or upon the occurrence of a future event or contingency such as the principal's incapacity—new § 32C-1-109(b) permits the principal to authorize the agent or someone else to provide written verification that the event or contingency has occurred.

If the principal's incapacity is the trigger for a springing POA and the principal has not authorized anyone to make that determination or the authorized person is unable or unwilling to make the determination, new § 32C-1-109(c) provides a default mechanism for each category of incapacity to verify the principal's incapacity:

• Incapacity based on the principal's impairment may be verified by two physicians or licensed psychologists after they have personally examined the principal.

• Incapacity based on the principal's unavailability may be verified by an attorney at law, a judge, or an appropriate governmental official (such as an officer acting under the authority of the US Department of State, a military officer, or a sworn federal or state law enforcement officer).

An agent's authority to act on behalf of an incapacitated principal under a springing durable POA does not automatically terminate when the principal regains capacity—the POA and the agent's authority continue in effect until formally terminated.

3. The Act covers more than North Carolina POAs.

The Act is much broader in its scope than existing law—pursuant to § 32C-1-103, the Act covers all POAs (including POAs from other states and foreign countries) except for the following:

• A power to the extent it is coupled with an interest, including a power given to or for the benefit of a creditor in connection with a credit transaction. A "power coupled with an interest" frequently appears in loan agreements, security instruments, and other commercial contracts—these powers are not governed by the Act.

• A power to make health care decisions. An effective health care POA must still comply with Article 3 of Chapter 32A, and an effective consent to provide health care for a minor must still comply with Article 4 of Chapter 32A.

• A proxy or other delegation to exercise voting rights or management rights with respect to an entity. To give a simple example of this exception, assume the president of a corporation signs a general POA authorizing his son to act as the president's agent. While the president can give broad authority to the son to act on behalf of the president as an individual, the president cannot give an agent authority to act on president's behalf as president of the company—only the company can confer that authority. Thus, the Act does not apply to the extent a POA purports to delegate management rights with respect to an entity.

• A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

4. The Act provides clarity regarding the execution and validity of a POA.

Here are the basic rules regarding the execution and validity of a POA according

to new § 32C-1-105 and § 32C-1-106 of the Act:

• A POA signed in North Carolina before January 1, 2018, is valid if its execution complied with the North Carolina law in effect at the time the POA was signed.

• A POA signed in North Carolina on or after January 1, 2018, is valid if it is (i) signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the POA, and (ii) acknowledged (i.e., notarized).

These signing requirements are new and warrant further comment. Without doubt, the principal must be legally competent at the time the POA is signed. So here's the rub: How do you actually have the principal sign the POA and have the principal's signature duly acknowledged when the principal, although mentally competent and not incapacitated, is physically unable to sign his or her name, but can either sign with a "mark" or direct someone to sign the principal's name on the principal's behalf? The answer is embedded in G.S. 10B-20(d) and (e):

> (d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:
>
> (1) The mark is affixed in the presence of the notary;
>
> (2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and
>
> (3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.
>
> (e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:
>
> (1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;
>
> (2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;
>
> (3) Both witnesses sign their own names to the record near the principal's signature;
>
> (4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and
>
> (5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

If the POA will be signed by the principal by using a "mark" or by someone else on behalf of the principal at the principal's direction, you need to pay careful attention to the requirements in G.S. 10B-20. If you don't, you run the risk that the POA will be invalid.

• A POA signed outside North Carolina is valid in North Carolina if, when the POA was executed, the execution complied with either (i) the law of the jurisdiction that determines the "meaning and effect" of the POA (as discussed below), or (ii) the federal requirements for a military POA.

Two final comments regarding these issues are significant. First, a signature on a POA is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgements. Second, unless there is a statute that provides otherwise, a photocopy or electronically transmitted copy of an original POA has the same effect as the original.

5. The Act clarifies which law controls.

According to § 32C-1-107 of the Act, the "meaning and effect" of a POA is determined by (i) the law of the jurisdiction indicated in the POA, or (ii) in the absence of any such indication, the law of the jurisdiction in which the POA was executed. The Official Commentary to the Uniform Power of Attorney Act contains the following observation:

> The phrase, "the law of the jurisdiction indicated in the power of attorney," is intentionally broad, and includes any statement or reference in a power of attorney that indicates the principal's choice of law. Examples of an indication of jurisdiction include a reference to the name of the jurisdiction in the title or body of the power of attorney, citation to the jurisdiction's power of attorney statute, or an explicit statement that the power of attorney is created or executed under the laws of a particular jurisdiction.

The following examples may help illustrate this rule:

• A POA identified as a "North Carolina Statutory Short Form Power of Attorney" is signed by the principal and acknowledged before a notary public. It doesn't matter when or where the POA was signed and acknowledged. The meaning and effect of the POA will be determined by North Carolina law.

• A POA indicates that it is governed by Kansas law. It doesn't matter when or where the POA was signed and acknowledged. The meaning and effect of the POA will be determined by Kansas law.

• A POA makes no mention of any state and is absolutely silent as to what law controls. The meaning and effect of the POA will be determined by the law of the state in which the POA was signed and acknowledged.

6. The Act's rules governing termination of a POA are more comprehensive than in the existing law.

The revocation of a POA under existing law is governed by § 32A-13. The corresponding provision in the Act is § 32C-1-110. Unlike under existing law, the Act draws a clear distinction between the termination of a POA and termination of the agent's authority under the POA.

Under the Act, a POA terminates when any of the following occur:

• The principal dies.

• If the POA is not durable, the principal becomes incapacitated.

• The principal revokes the POA.

• The POA provides that it terminates.

• The purpose of the POA is accomplished.

• The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the POA does not provide for another agent to act under the POA.

• A guardian of the principal's estate or general guardian terminates the POA.

Under the Act, an agent's authority under a POA terminates when any of the following occur:

• The principal revokes the authority in writing.

• The agent dies, becomes incapacitated, resigns, or is removed.

• The court enters a decree of divorce between the principal and the agent, unless the POA provides otherwise.

• The POA terminates.

• A guardian of the principal's estate or general guardian terminates the agent's authority.

There are also several ancillary "rules" in § 32C-1-110 of the Act relating to termination worthy of mention:

• A POA does not become "stale"—unless a POA provides for termination upon a certain date or after the passage of a period of time, lapse of time since execution is irrelevant to the POA's validity. This provision validates old POAs that have not been terminated.

• A new POA doesn't automatically terminate an old POA. To effect a revocation, a subsequently executed POA must expressly revoke a previously executed POA or state that all other POAs are revoked. The requirement for express revocation prevents inadvertent revocation when the principal intends for one agent to have limited authority that overlaps with broader authority held by another agent.

Section 32C-1-110 of the Act has two very important "savings" provisions:

• A termination event is not effective as to the agent or any person dealing with the agent who, without actual knowledge of the termination event, acts in good faith under the POA.

• If the POA is a non-durable POA, the incapacity of the principal is not effective as to the agent or any person dealing with the agent who, without actual knowledge of principal's incapacity, acts in good faith under the POA.

In either case, an act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Section 32C-1-110(g) of the Act also provides specific guidance as to how a principal may revoke a POA:

• If the POA has been registered in an office of the register of deeds, the principal must register an "instrument of revocation" in that office executed and acknowledged by the principal while the principal is not incapacitated, together with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure.

• If the POA has not been registered in an office of the register of deeds, it may be revoked by one of the following methods:

  • A subsequent written revocatory document executed and acknowledged by the principal while the principal is not incapacitated.

  • Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal or by another person in the principal's presence and at the principal's direction, while the principal is not incapacitated.

7. Section 32C-1-111 of the Act addresses coagents and successor agents.

A principal may (i) designate two or more persons in a single POA to act as coagents, (ii) designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is for some reason not qualified to act, or declines to serve, and/or (iii) grant authority to designate one or more successor agents to an agent or other person designated by name, office or functions.

• Unless the POA expressly requires coagents to act jointly, each coagent may exercise the coagents' authority independently without the knowledge, consent, or joinder of any other coagent or coagents.

• Unless the POA provides otherwise, if any one or more coagents resigns, dies, becomes incapacitated, or otherwise fails to act, the remaining agent or coagents may continue to act.

• Unless the POA provides otherwise, a successor agent has the same authority as that granted to the original agent. However, a successor agent may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

8. What are the "safe harbors" you can rely on when presented with a POA, and what can you request from the agent?

Article 5 of existing Chapter 32A (§ 32A-40 through § 32A-43) addresses the frequently encountered problem of persons refusing to accept a POA. These issues are addressed in considerable detail in § 32C-1-119 and § 32C-1-120 of the Act.

Section 32C-1-119(b) and (c) provide two important safe harbor protections for you if you accept a POA:

• If you in good faith accept an acknowledged (i.e., notarized) POA without actual knowledge that the principal's signature is not genuine, you may rely upon the presumption that the principal's signature is genuine. This provision restates the safe harbor that appears in § 32C-1-105 of the Act.

• If you in good faith accept a POA without actual knowledge that the POA is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority, (i) you may rely upon the POA as being valid and still in effect, the agent's authority as being genuine, valid, and still in effect, and the agent as not having exceeded and having properly exercised the agent's authority; and (ii) you will not be responsible for any breach of fiduciary duty by the agent, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by the agent. This safe harbor applies without regard to whether or not you demand or receive a certification from the agent (as discussed below).

When you are asked to accept a POA, existing § 32A-40(b) permits you to require an affidavit from the agent stating that the agent has no actual knowledge of the revocation of the POA or facts that would cause the agent to question the authenticity or validity of the POA—in short, that the POA is valid and in effect according to its terms. You are entitled to rely on that affidavit as long as you are acting in good faith and have no actual knowledge to the contrary.

Section 32C-1-119(d) goes far beyond existing § 32A-40(b). If you are presented with, and asked to accept, a POA, you may request, and, as long as you are acting in good faith and without actual knowledge to the contrary, you may rely without further investigation upon, any one or more of the following:

• A certification executed by the agent to the effect that the agent did not have actual knowledge at the time of the POA is presented to you (i) that the POA is void, invalid, or terminated, (ii) that the agent's authority is void, invalid, or terminated, or (iii) of facts that would cause the agent to question the authenticity or validity of the POA. A certification meeting these requirements is sufficient proof to you that (i) the POA is authentic and valid and has not been terminated, (ii) the agent's authority is valid and has not been terminated, and (iii) other factual matters stated in the certification regarding the principal, agent, or POA are true.

If the exercise of the POA requires execution and delivery of an instrument that is recordable, you may require that the certification be prepared and executed so as to be recordable—i.e., acknowledged or in the form of an affidavit with an appropriate jurat. Section 32C-3-302 provides a statutory form that, if used, satisfies the require-

ments for an agent's certification.

• An English translation of the POA if the POA contains, in whole or in part, language other than English.

• An opinion of counsel as to any matter of law concerning the POA if you provide in a writing or other record the reason for your request. This provision may be particularly useful when a POA is presented to you that is not a standard North Carolina POA. For example, when presented with a POA that appears to be a Kansas POA, you may request an opinion from a Kansas attorney confirming that (i) the POA was validly executed under Kansas law, (ii) the POA has been properly acknowledged, (iii) the POA is a durable POA, and (iv) after describing or identifying the transaction to be undertaken by the agent on the principal's behalf, the agent has appropriate authority under the POA and Kansas law to effect the transaction without exceeding or improperly exercising the agent's powers.

The principal is responsible for the expense of an English translation or an opinion of counsel requested under § 32C-1-120 unless the request is made more than seven business days after the POA is presented for acceptance.

9. When may you be liable for refusing to accept a POA?

As is currently the case under existing § 32A-41, a person who unreasonably refuses to accept a POA is exposed to potential liability under § 32C-1-120(e) of the Act. Patterned in part after existing § 32A-42, new § 32C-1-120 contains a laundry list of statutory exceptions that permit you to refuse to accept a POA without incurring liability.

However, to avoid potential liability, there are some timelines you need to observe carefully when presented with a POA:

• No later than seven business days after being presented with an acknowledged POA and being asked to accept it, you must accept the POA, refuse to accept the POA for one of the reasons discussed below, or request a certification, a translation, or an opinion of counsel from the agent (as discussed in #8 above).

• If you request a certification, a translation, or an opinion of counsel, then within five business days after your receipt of the requested items in reasonably satisfactory form, you must either accept the POA or refuse to accept the POA for one of the reasons discussed below.

In addition, you are not authorized to require an additional or different form of POA if the POA you are presented reasonably appears to authorize the agent to conduct the business the agent desires to conduct.

You are not required to accept a POA if any of the following circumstances exist, and you are not exposed to liability if you refuse to accept it for one of the following reasons:

• The POA has not been duly acknowledged.

• You are not otherwise required to engage in a transaction with the principal in the same circumstances.

• Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with applicable federal law.

• You have actual knowledge of the termination of the agent's authority or of the POA before exercise of the power.

• Your request for a certification, a translation, or an opinion of counsel is refused.

• You did not receive a certification, translation, or opinion of counsel you requested in reasonably satisfactory form within a reasonable period of time.

• You believe in good faith that the POA is not valid or that the agent does not have the authority to perform the act requested, whether or not you have requested or have been provided a certification, a translation, or an opinion of counsel.

• You have reasonable cause to question the authenticity or validity of the POA or the appropriateness of its exercise by the agent.

• The agent or principal has previously breached any agreement with you, whether in an individual or fiduciary capacity.

• You make, or have actual knowledge that another person has made, a report to the local adult protective services office or law enforcement stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

There are three additional grounds for refusing to accept a POA that are specifically intended to protect banks and other financial

institutions, but which may apply to others as well. A person asked to accept a POA is not required to do any of the following:

- Open an account for a principal at the request of an agent if the principal is not currently a customer of the person asked to accept the POA.
- Make a loan to the principal at the request of the agent.
- Permit an agent to conduct business not authorized by the terms of the POA, or otherwise not permitted by applicable statute or regulation.

If you are presented with a POA, you will not be "deemed" to have unreasonably refused to accept the POA solely on the basis of your failure to accept the POA within seven business days or, if you have promptly requested a certification, a translation, or an opinion of counsel, prior to your receipt of requested items in reasonably acceptable form.

10. How does the Act guard against abuse on the part of an agent?

At the outset, it is important to remember that an agent appointed under a POA is a fiduciary. According to § 32C-1-114 of the Act, the agent must always act (i) in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest, (ii) in good faith, (iii) loyally for the principal's benefit, (iv) only within the scope of authority granted in the POA, and (v) in a manner so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

In exchange for mandated acceptance of an agent's authority, the Act does not require persons dealing with an agent to investigate the agent or the agent's actions. However, safeguards against abuse by the agent are provided by creating what is essentially a two-tier system when granting an agent authority. Section 32C-1-201 of the Act draws a sharp distinction between acts that may be performed by an agent under a "general" grant of authority and acts that require a "specific" grant of authority.

General Grant of Authority

Let's talk first about what may be performed by an agent under a "general" grant of authority. As noted earlier, Article 2 of the Act addresses the authority of an agent under a POA. More specifically, § 32C-2-203 addresses general issues relating to authority, while § 32C-2-204 through § 32C-2-217 provide detailed descriptions of general authority relating to specific subjects such as "real property," "tangible personal property," and "banks and other financial institutions."

Pursuant to § 32C-2-202, a principal may incorporate any or all of the powers listed in § 32C-2-204 through § 32C-2-117 in full into the POA either by a reference to the short descriptive term for the subject used in the Act or to the section number. In addition, § 32C-2-202 permits a principal to modify any authority incorporated by reference in a POA. If a POA grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in § 32C-2-204 through § 32C-2-216 (but not § 32C-2-217, which addresses the agent's authority to make gifts on behalf of the principal—as noted below, the authority to make gifts on behalf of the principal requires specific authority).

Specific Grant of Authority

Now let's shift to acts that require a "specific" grant of authority. § 32C-2-201 provides heightened requirements for granting authority for actions that could dissipate the principal's property or alter the principal's estate plan. More specifically, § 32C-2-201(a) lists the following specific categories of authority that cannot be implied from any grant of general authority, but which may be granted only through express language in the POA:

- An agent may not do any of the following on behalf of the principal or with the principal's property unless the POA *expressly* grants the agent that authority:
  - Make a gift. However, even if the agent is expressly authorized to make a gift, that right is limited by § 32C-2-201(b) and (c) and by § 32C-2-217.
  - Create or change rights of survivorship.
  - Create or change a beneficiary designation.
  - Delegate authority granted under the POA.
  - Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
  - Exercise fiduciary powers that the principal has authority to delegate.
  - Renounce or disclaim property, including a power of appointment.
  - Exercise authority over the content of electronic communication, as defined in 18 U.S.C. § 2510(12), sent or received by the principal.
- In matters relating to revocable and irrevocable trusts created by the principal as settlor, an agent may not do either of the following unless the POA or the terms of the trust *expressly* grants the agent that authority:
  - Exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36C-6-602.1.
  - Exercise the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a).

And here's a related, but incredibly important, rule against self-dealing that appears in § 32C-2-201(c): Even if the POA authorizes the agent to do any of the specific actions identified above, unless the POA provides otherwise, the agent may not exercise "general" or "specific" authority under a POA to create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. This rule can be very important in real estate transactions.

So what does all of this mean in practical terms? When trying to determine whether an agent's action will be within the scope of the agent's authority and consistent with the agent's fiduciary duty to the principal, here are questions you need to consider:

- Is the proposed action within the scope of the general authority granted to the agent?
- Is the proposed action one which requires specific authority? If so, does the POA expressly grant that specific authority?
- Will the proposed action create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise? If so, does the POA expressly authorize such self-dealing?
- Even if the proposed action is authorized by the POA, is the proposed action consistent with the agent's fiduciary duty to the principal?

11. So what are the categories of authority listed in Article 2 of the Act?

No attempt will be made here to discuss in detail any of the categories of authority listed in Article 2 of the Act. For our purposes here, a listing of the section titles is sufficient:

§ 32C-2-204. Real property

§ 32C-2-205. Tangible personal property

§ 32C-2-206. Stocks and bonds

§ 32C-2-207. Commodities and options

§ 32C-2-208. Banks and other financial institutions

§ 32C-2-209. Operation of entity

§ 32C-2-210. Insurance and annuities

§ 32C-2-211. Estates, trusts, and other beneficial interests

§ 32C-2-212. Claims and litigation

§ 32C-2-213. Personal and family maintenance

§ 32C-2-214. Benefits from governmental programs or civil or military service

§ 32C-2-215. Retirement plans

§ 32C-2-216. Taxes

§ 32C-2-217. Gifts authorized by general authority

§ 32C-2-218. Gifts authorized by court order

§ 32C-2-219. Certain acts authorized by the court

Real estate practitioners will need to become intimately familiar with the authorities listed in § 32C-2-204 (real property), § 32C-2-205 (tangible personal property), and § 32C-2-208 (banks and other financial institutions).

12. The new statutory short form POA will be very useful.

Article 3 of the Act provides three statutory forms:

1. § 32C-3-301. Statutory form power of attorney

2. § 32C-3-302. Agent's certification

3. § 32C-3-303. Limited power of attorney for real property.

The "North Carolina Statutory Short Form Power of Attorney" in § 32C-3-301 of the Act is the updated counterpart to the existing § 32A-1 statutory short form general POA. It contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent and successor agents and the grant of general and specific authority. In the section of the form addressing general authority, the principal must initial the subjects for which the principal wishes to delegate general authority to the agent. In the section of the form addressing specific authority, certain categories of specific authority are listed, preceded by a warning to the principal about the potential consequences of granting such authority to an agent. The principal is instructed to initial only the specific categories of actions that the principal intends to authorize.

As you review the new North Carolina Statutory Short Form Power of Attorney form, keep in mind that the POA is durable, effective immediately, and does not revoke any existing POAs.

Also, the section of the form addressing specific authority very intentionally does not cover two trust-related matters: whether the agent can exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36-6-602.1, or the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a). The drafters of the legislation properly believed that these trust-related provisions should not be included in a "boiler-plate" statutory form, but rather should be included in a POA only after thoughtful consideration by the trust settlor with the advice of competent counsel.

The introductory language in § 32C-3-301 indicates that the new form is a "nonexclusive method to grant a power of attorney" and that a document "substantially" in the form of the one set forth in § 32C-3-301 "may be used to create a statutory form power of attorney that has the meaning and effect prescribed by [Chapter 32C]." This leaves ample wiggle room for the short form POA to be "tweaked." It is not identical to the statutory short form POA appearing in § 32C-3-301.

13. The "Agent's Certification" should be routinely used in real estate transactions.

The second statutory form, the "Agent's Certification as to the Validity of Power of Attorney and Agent's Authority," appears in § 32C-3-302. This form is patterned after the Affidavit of Attorney-in-Fact set forth in existing § 32A-40(d). According to § 32C-1-119(d)(1), if you are asked to accept a POA, you may rely on the accuracy of the statements contained in the certification without further investigation if you are acting in good faith and have no actual knowledge to the contrary. You should routinely require an Agent's Certification in every real estate transaction.

14. The new "Limited Power of Attorney for Real Property" will prove very useful for real estate attorneys.

The third statutory form, "North Carolina Limited Power of Attorney for Real Property," appears in § 32C-3-303. There is no corresponding statutory form under existing law.

This new form was the product of close collaboration between the Estate Planning and Fiduciary Law Section of the NCBA, the Real Property Section of the NCBA, and the North Carolina Bankers Association to help resolve a persistent problem: whether the authority granted to the agent in a limited POA presented at or immediately before the closing of a real estate transaction is sufficiently specific to the transaction and sufficiently broad in its scope, particularly when financing is involved. The related question is critical: Should the agent be permitted to execute transaction-related documents on the principal's behalf?

The new statutory form will hopefully be used widely as a standard limited POA that provides great flexibility for an agent to handle real estate closings on behalf of the principal. The new form:

- Grants the agent full authority to act on behalf of the principal with respect to certain identified real property, all tangible personal property related to the property, and all financial transactions relating to the property.
- Incorporates by reference the general authority to act with respect to real property as set forth in § 32C-2-204, tangible personal property as set forth in § 32C-2-205, and banks and other financial institutions as set forth in § 32C-2-208.
- Specifically states the authority granted to the agent may be exercised by the agent even though the exercise of that authority may benefit the agent or a person to whom the agent owes an obligation of support, thereby resolving the potential problem of self-dealing.

Unless an expiration date is specified in the POA, the authority of the agent automatically expires one year from the date of the POA. Actions taken by the agent while the POA remains in effect continue to bind the principal even after the agent's authority expires.

There is one small issue that may require your thoughtful attention. The introductory language in the form's Grant of Authority authorizes the agent to act for the principal with respect to "all financial transactions relating to the Property," and the authority granted expressly includes the authority to act with respect to banks and other financial institutions as set forth in § 32C-2-208.

That section applies only to dealing with banks and other financial institutions.

The unresolved question is this: Is the general language that authorizes the agent to act for the principal with respect to "all financial transactions relating to the Property" sufficient to cover private financing that does not involve a bank or other financial institution?

If private financing is anticipated, you should consider adding appropriate language to the limited POA.

15. On the subject of self-dealing, here's another thing you need to think about.

Let's assume that Ma signs a POA appointing Pa as her agent, granting Pa general authority to do all acts that Ma could do. The POA expressly authorizes Pa to make gifts (including to himself) and to exercise authority that may benefit Pa. It's a very broad POA. Ma is now incapacitated and in a nursing home. Pa wants to borrow money from the bank and use the family home as collateral. In the following scenarios, keep in mind new § 32C-1-114(d):

When exercising a power under the power of attorney, an act by an agent that is in good faith for the best interest of the principal is not voidable and the agent is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

Now consider the following situations: Ma either owns the house or the house is owned by Ma and Pa as tenants by the entirety. Can Pa use the POA to sign Ma's name to a deed of trust encumbering Ma's house to secure his debt to the bank?

Despite § 32C-1-114(d), this should cause you heartburn, particularly if Ma will not derive any apparent benefit from the loan. However, if the purpose of the loan is to fix up the home or to help pay Ma's nursing homes bill, a strong argument can be made that Pa can execute the deed of trust on Ma's behalf as her agent. That argument becomes even stronger if Ma is a co-borrower on the note.

Now let's change the facts a bit. The home is titled in Pa's name, which means that Ma has only an inchoate marital interest in the property. Let's further assume that Ma will not derive any benefit from the proceeds of the loan. Can Pa use the POA to sign Ma's name to a deed of trust encumbering their home when Pa will be the only one signing the promissory note to the bank and will be the only one benefitting from the loan?

Under the Act, the answer is apparently "yes." New § 32C-204(10) was drafted expressly to address this situation: With respect to any real property owned or claimed to be owned by the principal's spouse and in which the principal's only interest is a marital interest, [the agent may] waive, release, or subordinate the principal's inchoate right pursuant to G.S. 29-30 to claim an elective life estate in the real property, regardless of whether the waiver, release, or subordination will benefit the agent or a person to whom the agent owes an obligation of support.

16. Finally, let's talk about "seal."

In years gone by, a deed was not a deed unless it was "executed under seal." While purists may have blanched, others rejoiced when the requirement for a conveyance of real property to be executed under seal was abolished in 1999 with the passage of G.S. 39-6.5.

Unfortunately, G.S. 39-6.5 didn't fully resolve the seal issue, at least insofar as it involved an instrument signed by an agent under the authority of a POA. Existing G.S. 47-43.1 currently provides as follows:

> When an instrument purports to be executed by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or attorney-in-fact signs such instrument either in the name of the principal by the attorney or attorney-in-fact or signs as attorney or attorney-in-fact for the principal; and if such instrument purports to be under seal, the seal of the attorney-in-fact shall be sufficient. For such instrument to be executed under seal, the power of attorney must have been executed under seal. (Emphasis added)

This statute, which is now almost 70 years old, has long harbored risk for real estate practitioners.

Consider, for example, a pre-printed deed or deed of trust form that indicates it is being executed under seal and the word "seal" appears after the grantor's name in the signature block. If the deed or deed of trust says it is being executed under seal (even if it is no longer *required* to be executed under seal), is the signature of the agent on behalf of the principal sufficient if the POA was not executed by the principal under seal? According to G.S. 47-43.1, the authority of the agent signing a deed or deed of trust on behalf of the principal that purports to be under seal is called into question unless the POA was executed by the principal under seal.

Fortunately, SL 2017-153 fully resolves this issue:

- The Act does not require a POA to be executed under seal, and it is worth noting that the statutory POA forms set forth in § 32C-3-301and § 32C-3-303 of the Act do not indicate that they are under seal.
- Section 32C-2-203(3) expressly authorizes an agent to "[e]xecute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction...." (Emphasis added)
- Section 2.3 of SL 2017-153 amends G.S. 47-43.1 by changing the phrase "attorney-in-fact" to "agent" each time it appears and by deleting the last sentence of the statute. Effective January 1, 2018, G.S. 47-43.1 will read as follows:

> § 47-43.1. Execution and acknowledgment of instruments by attorneys or attorneys-in-fact.
>
> When an instrument purports to be executed by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or agent signs such instrument either in the name of the principal by the attorney or agent or signs as attorney or agent for the principal; and if such instrument purports to be under seal, the seal of the agent shall be sufficient.

The elimination of the last sentence of G.S. 47-43.1 permits an agent to sign an instrument under seal on behalf of the principal as of January 1, 2018, regardless of whether the POA was signed by the principal under seal.

A Parting Observation

Dealing with POAs will still be difficult and challenging, particularly in real estate transactions. However, many of the frustrations we have endured in recent years will eventually evaporate, provided we take time to become familiar with the Act and begin using the new statutory forms, particularly the new limited POA for real property transactions. Good luck! ■

Prior to his recent retirement, James E. Creekman was with Ward and Smith, PA, in Raleigh.

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General Assembly Eliminates Access to Civil Justice Act

By Jennifer M. Lechner

Leena and Ryan (names changed) divorced years ago and continued to co-parent their children. But when Ryan began using drugs, his paranoia escalated. He began calling their school—and Leena's home—at all hours, ranting about how the children were being hurt or kidnapped.

Then Leena discovered that during weekend visits Ryan was giving the children knives before they went to sleep to "protect themselves." Leena was determined to keep her kids safe, but couldn't afford an expensive custody battle. She also knew she couldn't navigate the legal system alone.

Leena won sole custody of the children with help from Pisgah Legal Attorney Sara Player. Leena smiles and says, "I loved Sara. She really listened to me and helped me understand exactly what I needed to do."

Losing custody has been an important wake-up call for Ryan. "When I took full custody, he realized that I wasn't playing around." Ryan is now working to stay clean and is getting mental health treatment. Leena is cautiously optimistic and allows him supervised visits with the kids at her home.

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For 27 years the North Carolina Access to Civil Justice Act (ACJA) helped provide access to justice for North Carolina's most vulnerable citizens, including seniors, homeless veterans, domestic violence victims, the poor, and the disabled. This act provided the mechanism for funding from court filing fees to support the three primary civil legal aid providers in North Carolina: Legal Aid of North Carolina, Charlotte Center for Legal Advocacy (formerly Legal Services of Southern Piedmont), and Pisgah Legal Services. These organizations work to bridge the "access to justice gap" for eligible North Carolinians—a lofty charge, given that the most recent report from the Legal Services Corporation on this topic documents that 86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.

Currently, 23% of North Carolinians—2.2 million people—qualify for legal services from these legal aid organizations. This vast amount of need for civil legal aid has grown 30% since 2008, while state funding has consistently decreased over that same time period. At the height of state support, North Carolina directly appropriated or dedicated fees and fines totaling over $6.1 million to support access to justice. In this past legislative session, the North Carolina General Assembly repealed the Access to Civil Act and removed the allocation of $1.50 from civil and criminal fees that fund the act, withdrawing approximately $1.7 million in funding.

The new loss of the Access to Civil Justice Act funds, which constitute over half of the remaining state funding, will result in a significant reduction of service capacity and legal representation for thousands of North Carolinians. This cut not only impacts our citizens, but also impairs judicial system accessibility, effectiveness, and efficiency. To date, no stated policy goal has been articulated for the repeal of the ACJA.

Upon indication that the Access to Civil Justice Act was under threat, the NC Equal Access to Justice Commission unanimously adopted a resolution in support of the act and its funding. The North Carolina Bar Association, the North Carolina Advocates for Justice, and other bar organizations and stakeholder groups advocated against the repeal and elimination of funding. Ultimately, however, the widespread support from our legal profession for this essential core of our justice system did not meet success in the legislative session.

Nevertheless, attorneys continue to respond. *Pro bono* attorneys have stepped in to help meet the needs that will continue to grow as a result of this loss of funding. Still,

CONTINUED ON PAGE 25

On the Way to the Courthouse—The Law of the Letter

By R. Michael Wells Sr.

It was just a letter, after all. But I came to see I had it all wrong.

Years ago as a young lawyer I got a call from an older gentleman who had a problem with a bill he had received. He was shaken that he was getting past-due letters.

I wrote a letter as a courtesy to the service provider to straighten out the facts, and it worked.

A quick conference and quick letter carried the day, and that was that. I brought no special skill or talent to the task. Just my time, and my everyday sorting-out-the-facts experience. The successful result would not get this matter spotlighted in *NC Lawyers Weekly*, but I came to see its success was of a different kind.

My initial too-narrow view of the value I had rendered changed over the next seven days. I received in rapid order a heartfelt voicemail message from the older gentleman, another voicemail message from his only child in Richmond expressing deep thanks for helping his growing-more-disoriented widowed dad, and a following letter from the older gentleman himself in his shaky handwriting. The older gentleman was a product of the Great Depression, and his worry touched the root of one of his bedrock values: you pay your bills, and on time.

I never saw my *pro bono* client again, but I held on to his emotional letter of gratitude for many years. When I braved to clean out my desk's center drawer I would read it again. It served to remind me of the charge—even in my active, swirling days as a busy lawyer—to find and give out the special currency of kindness I carried with me, much like the idle pocket change I carried home, unused, every day. And to appreciate again the power of what I had for so long mistakenly viewed as an ordinary thing.

Sometimes the most ordinary of problems contains any number of possible legal threads. If you slip too far into gauging what you don't know, you miss the chance to solve what you do know: the importance of addressing real problems with real people by simply framing the basic facts and options, and lending them your sorting-out voice of experience. And volunteering to do what many callers would often not know to do on their own: writing a quick letter, making a needed phone call, nudging another party to make a matter right, or making sure a more timid soul is not unfairly disadvantaged.

The solutions are often less about the letter of the law—knowing every little thing about every little part—than about the law of the letter: simply taking the time to offer your experience as a calibrator of facts and options when you allow another's real life dilemma to catch your eye. And you do not have to be a lawyer to do that.

If you are a lawyer, provide any appropriate disclaimers a rough summary of a set of facts may require. Who knows? A years-later answer to a small question penned by the NC Court of Appeals could be an important one. But your most important task now is likely how you answer in the court of life what a Nobel Laureate stated is life's most persistent and urgent question: What are you doing today for others?

What I've learned about life on the way to the courthouse is this: You possess a deep and valuable skill as a problem solver. You do yourself and others a disservice if you do not step out a bit and take more chances on the law of the letter—a chance to help everyday citizens shed the tug and pull of some of life's everyday problems, no matter how ordinary and routine those problems may seem to you. They certainly are not ordinary or routine to them.

The busiest among us, whatever your profession, will tell you a call or letter here and there in a full week of activity is not going impact adversely your ability to get your other tasks done for your family and your organization. And my, my, my, the good you can do.

My sense from this and other experiences is that you have no real idea of the value you can render to others. Wordsworth called these "little unremembered acts of kindness." You won't get your name up in lights, but isn't that the point? While some may not be amazed by your acts of kindness, try surprising them anyway. Because kindness, especially for discerners of facts and solutions, is calibrated in different ways. And sometimes it's sweetly measured out one letter at a time, in the disguise of a seemingly ordinary thing. ■

R. Michael Wells Sr. is a partner with Wells Law, PLLC in Winston-Salem. He is a past member of the State Bar Ethics Committee and past president of the North Carolina Bar Association.

This article is from the blog On the Way to the Courthouse, which can be found online at Tothecourthouseblogspot.com, and is reprinted with permission.

Tying the Knot? Or Just Moving In?

By Robert A. Mason

When a client tells me that he or she is considering a second marriage, for terribly unromantic reasons (I guess I'm the anti-cupid...darn lawyer!) I recommend that the client plan carefully—very carefully—before going into a later-in-life second marriage. The religious prescription not to enter a marriage "unadvisedly or lightly" applies in spades to a later marriage.

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"Bob," a client once asked, "are you suggesting we see an attorney before the preacher?" My answer: "Yes."

Here's why.

Some of the most spectacular legal messes I have had to clean up have been after the death of a second spouse when there had been no (or poor) advance planning.

Adult step-siblings (who may not even know or like each other) can be counted on to be looking out for whatever it is that they believe their natural parents accumulated for them.

Most "planning" I have seen of late-marriers (is that a word?) consists of simple verbal agreements to the effect of "what is yours is yours, and what is mine is mine." Lawyers know that won't cut it. Most of the following difficulties can be addressed with a well-drafted prenuptial agreement.

All couples are different, but here is a partial list of issues that may be important to consider in further detail.

Intestacy and Poorly Planned Testacy

As attorneys we might question the sanity of any couple that enters into a late marriage with no wills. It happens. The North Carolina Intestate Succession Act[1] provides that a surviving spouse is entitled to a share of real and personal property of a deceased spouse depending upon how many children (and other descendants) survive the deceased spouse (and whether any parents survive, but since we're discussing late-in-life second marriages, I'll assume there are no surviving parents).[2] If Dad dies intestate survived by his "precious bride" (Dad's term of endearment) of just a few years, she will take the first $60,000 of his personal property and take either one-half or one-third of everything over $60,000 depending upon whether Dad is survived by just one or more than one child. If Dad had any real property, the "evil witch" (that's according to Dad's surviving relations) will be entitled either to half the real property (if Dad is survived by one child) or to one-third (if Dad is survived by more than one child).

Fortunately, the right to an intestate share is waivable.[3]

But perhaps love truly is blind, and the newlyweds have downloaded snazzy, but simple and inexpensive,[4] "I love you wills" that leave everything to the surviving spouse with the understanding that she or he will "do the right thing." The prior-marriage-children can be your clients if you're a litigator.

Even with wills that leave everything to the children of the deceased spouse, there may be problems with an "elective share" statute.

Elective Share and Year's Allowance Statutes

Like most other states, North Carolina

has an "elective share" scheme.[5] The elective share statute enables a surviving spouse to "elect" to receive a share of the deceased spouse's estate, the size of which depends upon how long the couple was married. A marriage of less than five years entitles the survivor to a total of 15% of the deceased spouse's estate. (For example, if Hilda left Henry $10,000 pursuant to the terms of her will, but had an estate of $1,000,000, Henry could elect another $140,000). After five years, the percentage pops to 25% of the estate, then to 33% after ten years, and to 50% after 15 years.[6]

One interesting South Carolina case made waves a few years ago.[7]

The deceased owner of Hooters (you know, the restaurant famous for...large burgers and chicken wings) left $1 million a year for 20 years to his quite younger surviving spouse. She felt $20 million wasn't enough, so she elected for 1/3 of Mr. Hooter's estate. Mr. Hooter's son (not the widow Hooter's son, by the way) objected and claimed the South Carolina elective share statute (which is similar to North Carolina's) is unconstitutional. Yours truly believes that argument had as much chance as a hoot owl in, well, Horry County. Hooter Jr. and the widow Hooter settled for an undisclosed sum.

Notwithstanding the right of an elective share, a surviving spouse is entitled to a "year's allowance" of $30,000 "off the top" of a deceased spouse's estate.[8] In other words, a surviving spouse is entitled to this subsistence-type allowance before any other creditors or heirs. This right, too, is waivable in a prenuptial agreement.

Powers of Attorney and Health Care Advance Directives

Effective January 1, 2018, North Carolina has a new power of attorney statute.[9] Certain prohibitions on gifting, beneficiary designations, and the like make exceptions for spouses and children. Powers of attorney are not "just forms" (although many tend to treat them as such). In the case of a late marriage, powers of attorney and the powers granted (or withheld) in such an instrument under the new statute should be carefully considered.

The subject of health care decision-making can cause a bit of squirming for the happily engaged couple, especially after I explain the "default rules" that apply in the absence of a valid health care power of attorney.[10] In the absence of a guardian of the person or a valid health care power of attorney, the spouse stands atop the heap of decision-makers, followed by the children of the principal. This may not go over well with Mom's children given that the loser she's marrying has had three earlier wives pass away under less than clear circumstances.

The Family Home

Naturally the newlyweds do not want to see the bride or groom evicted upon the death of the other. On the other hand, children can become quite emotional over what may be perceived as "their home." Chances are, putting the house in both spouse's names is not a good idea. Advise a life estate or, perhaps better, a trust.

Some years ago I met with the children of the recently deceased Mrs. Jones. Mrs. Jones had been living in her home for 45 years, the same home in which she and the late Mr. Jones had raised their children. Mrs. Jones married Burt five or six years prior to my meeting with the children. Shortly after her remarriage, as the children had just discovered, Burt's name "appeared on the deed" (as the children described it). All admitted that, while Mom was a "free spirit," she was perfectly sane up until the fatal stroke. The attorney who had drafted the deed had done an effective job of creating a tenancy by the entireties. It seems, however, the attorney did not get Mrs. Jones to consider the wider ramifications. The children wanted to know what I could do. My answer: "Not much."

Social Security Benefits

Remarriage can affect the Social Security benefits a newlywed had been receiving under a deceased or divorced spouse's account. If you divorce after ten years or more of marriage, you can collect retirement benefits on your former spouse's Social Security record if you are at least age 62 and if your former spouse is entitled to or receiving benefits. If you remarry before age 60, however, you generally cannot collect benefits on your former spouse's record unless your later marriage ends (whether by death, divorce, or annulment).

Annuities and Survivors Pension Payments

Your client might be kissing a hefty survivor's pension (corporate or military) goodbye when he or she kisses a new spouse. Advise checking those out before heading to the altar.

Income and Transfer Taxes

There may be some tax planning advantages to marrying if estate and gift taxes are a concern, because many planning techniques are available to married couples only. On the other hand, if their estates are large enough to pose transfer tax issues after the recently enacted Tax Cuts and Jobs Act ($11.2 million for an individual and $22.4 million for a married couple), any planning should be undertaken by sophisticated trusts and estates counsel.

Income taxes might also drop if one spouse is earning significantly more than his or her new spouse.

Long Term Care (Nursing Home) or Medicaid Planning

This is a big consideration for older people considering remarriage. Medicaid rules and regulations do not recognize any plans or promises a couple has made in a prenuptial agreement when it comes to Medicaid and nursing home benefits. A carefully drafted prenuptial agreement is worthless if these issues arise. All Medicaid programs consider the assets of the couple. While rare, some couples have divorced within a few years of marriage when one spouse in declining health (usually the "poorer" spouse) has entered a nursing home.

It may be sad to see, but some couples are electing to do exactly what they would have DIED seeing their children do 30 years ago... "living in sin." ■

Robert A. ("Bob") Mason, owner of Mason Law, PC, with offices in Asheboro and Charlotte, is a board certified specialist in elder law and serves as Chair of the Board of Legal Specialization.

Endnotes

1. N.C. Gen. Stat. Ch. 29.
2. N.C. Gen. Stat. § 29-14.
3. N.C. Gen. Stat. § 52B-4.
4. Of course, those "inexpensive" wills may turn out to be quite expensive.
5. N.C. Gen. Stat. Ch. 30 Art. 1A.
6. N.C. Gen. Stat. § 30-3.1.
7. Lisa Shidler, "Coby Brooks challenges widow's bid for elective share of Hooters fortune," InvestmentNews, Aug. 13, 2007, bit.ly/2m4ApIh.
8. N.C. Gen. Stat. § 30-15.
9. S.L. 2017-153, codified at N.C. Gen. Stat. Ch. 32C.
10. N.C. Gen. Stat. §90-21.13(c).

To Build a Courthouse

By G. Gray Wilson

This story does not have a happy ending. It is about much that is wrong with local, and perhaps state and national, government in this country. It is not really about party affiliation, political ideology, or demographic classifications, although some speculation in these areas might occur. Nor is it about good versus evil. No, this sad tale is about what happens in a democracy when the people elected to represent us lack the tools to do so competently, resulting in misguided agendas that are driven not by greed or malevolence, but by well-intentioned, yet thoughtless, mediocrity and an utter absence of vision.

Photo courtesy of the North Carolina Judicial Branch

This is a story of what happens, as Reinhold Niebuhr observed in *Leaves from the Notebook of a Tamed Cynic*, because people "seem never to realize how many of the miseries of mankind are due not to malice but to misdirected zeal and unbalanced virtue." It is what happens when public office becomes the refuge of lesser men and women because good and talented (i.e., well qualified) citizens disdain the baggage of the contentious media spotlight and the tedium of mindless, inefficient bureaucracy.

Every county in North Carolina has an unfunded statutory mandate to provide a courthouse for its citizenry. The Hall of Justice in downtown Winston-Salem was designed and constructed in 1975 out of available operating funds in the Forsyth County coffers—a slapdash effort that ended badly. The fortress-like structure reflects the architectural avant-garde of the time, known as "brutalism" (I am not making this up). From the outset, the facility was an eyesore and a functional disaster, but over time it became outdated, overburdened, and woefully inadequate to meet the growing needs of the county to administer justice to all. Today, Forsyth is the only major urban county that lacks a modern, state-of-the-art courthouse facility (Guilford County is a special animal, with two courthouses, but that is another story). All mechanical, plumbing, and electrical structures are crumbling, there is asbestos in the tile flooring, and black mold, cockroaches, and mice are slowly taking over the building. The courthouse has never been compliant with the federal Americans with Disabilities Act, and elevators and restrooms are not wheelchair friend-

ly. A number of services (e.g., Register of Deeds) have been moved to other buildings to accommodate the security stations added to the first two floors, which nevertheless cannot handle the crowds that line the sidewalks waiting to gain entry during high-volume court days.

After 30 years, the county started to consider fixing or replacing a structure that had reached the end of its useful life. But it was 2009 before the county commissioned a "conceptual" study that resulted in a recommendation to renovate the existing courthouse, with the addition of an adjacent tower to accommodate a few new courtrooms, at a price tag under $100 million. The cost and inconvenience of trying to renovate a courthouse while displacing judicial and other functions to modular buildings was never factored in, although the cost alone of such temporary relocation efforts would have been astronomical, not to mention the attendant disruption of judicial and other operations. Incredibly, the prospect of a new courthouse was not even considered. Nor did the county ever seek the advice of an architect or engineer with courthouse expertise. Yet hundreds of thousands of dollars were expended to eyeball this problem and propose "conceptual" solutions.

Six years later in 2015, the county began to make rumblings again, after forty 40, about addressing the courthouse dilemma, but still only with a renovation of the existing structure. The Forsyth County Bar Association, to its credit, mobilized its membership to lobby for a new courthouse, which was received by some of the county commissioners with utter astonishment at first, then outright contempt from a couple of them. The suggestion that people who actually used and worked in the courthouse every day might have some ideas about how to remedy the disaster at hand was simply incomprehensible to several of the county representatives and administrators. The initial response of a minority of commissioners was to ignore the groups advocating for a new courthouse. When attorneys began to attend and monitor every open meeting of the commission, one representative voiced that he felt intimidated by our presence, which is impressive since all we did was sit there and observe.

So we took our case to the people. At considerable expense, the bar association created a PowerPoint presentation complete with videos of judicial and other officials pointing out the deficiencies of the existing courthouse and the desirable features and options for a new one. We made our pitch around town and beyond—to civic, nonprofit and business groups—and almost without exception, everyone we spoke to agreed that it was time for a new courthouse. The mayor of Winston-Salem and the Winston-Salem Business Alliance were strong advocates on our behalf. Regrettably, the local chamber of commerce refused to take a stand. The local bar also enlisted the services of an actual courthouse architect, the same one who had designed the new courthouse for Durham County, which is now a showpiece in this state. This architect immediately recognized that the studies undertaken by Forsyth County to date were badly flawed, and that space efficiencies and other design aspects could be easily corrected so that a new facility would cost little more than a renovation. The county refused to consider any suggestions in that regard.

Eventually, after two years of meetings and lobbying efforts, the county suddenly abandoned the renovation option, finally recognizing that the existing courthouse was

an unfixable toilet. But here the story takes a new turn because of an update of the 2009 study in 2016, which now offered two new options in lieu of a renovation. The first was a nine-story, freestanding courthouse with secure parking and access from the county jail through an underground tunnel beneath the intervening street. That design, which the local bar and courthouse personnel had been pushing for a couple of years, carried a projected cost of $146 million. Again, a courthouse architect quickly refigured the cost at no more than $136 million, but the county was not interested in any outside influence. Despairing of the cost of a new freestanding courthouse, one of the commissioners utilized the services of a county construction manager (who has never built a courthouse) to come up with a less expensive model. Voila! The county unfurled yet a second two-building option that would place a short courthouse tower on one side of a downtown street, with a second office building on the other side, joined together by a bridge at the third or fourth floor level, all at a projected cost of only $126 million. Hence, the actual difference between the two new options was only $10 million. There was never any real question that either could be built with existing county funds or by issuance of limited obligation bonds, neither of which would have raised the county's fixed debt ceiling.

You may be wondering how a courthouse could function with judges chambers, the district attorney, public defender, and the clerk of court in an office building, with the courtrooms where all the judicial work has to take place in another building across the street, accessible (without walking outside and crossing the street and entering through security a second time) only through a single gerbil tube several stories up. The challenge of requiring all of the judicial and other courthouse personnel to expend untold man hours every day accessing the courtrooms through a bridge to another building apparently never occurred to anyone planning this abomination, other than to check with a national database to compare this concept to existing courthouses elsewhere—there were none. Anyone wondering why no such courthouse configuration is common in this or other jurisdictions has apparently pondered the empirical database for such a plan better than some of the commissioners. So it was no surprise when, the first time the county sent its posse over to showcase this new two-building option to the courthouse stakeholders (which we were expressly informed did not include the practicing bar), the senior resident superior court judge bravely informed them that if they wanted to pursue that option, not to do anything. To which the county responded that it would just renovate the old courthouse.

To their lasting credit, the chair of the county commissioners and several of his colleagues still voiced their desire for a new freestanding courthouse, not a two-building nightmare, but they were understandably concerned about building one on a 4-3 vote, especially when the allegedly cheaper two-building plan could pass 7-0. But these good men were saddled with a political dilemma with no easy solution, given the obduracy of those commissioners opposed to any semblance of progress. So on August 17, 2017, 42 years later, the county finally voted unanimously to pursue a request for quotation to be submitted to the private sector for bids. Amazingly, the county then passed a second resolution, on a 5-2 vote, to allot only $120 million for the new courthouse, apparently to dispel any notion that public funds would be wasted on a Taj Mahal. That this new two-structure facility will constitute an improvement over the existing courthouse is like saying that a vegemite sandwich is better than dog food, but it still remains a bitter pill to swallow. All is not lost, however, because a real courthouse architect may yet design an overstreet plaza or other configuration that might turn the proverbial sow's ear into a silk purse. In any event, Forsyth County will not be the laughing stock of the state, because it will reside in good company with many others that have similarly promoted expediency over quality and efficiency. It will likely take up to three years at a minimum to finish this new set of buildings. Then the commissioners and bureaucrats who authored them will surely take their bows at a ceremony dedicating this edifice, which, as the Agrarian poet Donald Davidson once observed about the Parthenon replica in Nashville, Tennessee, will stand as a martyr reared in homage to their own ignorance. ■

G. Gray Wilson, president-elect of the State Bar, is a partner with the Winston-Salem firm of Nelson Mullins Riley & Scarborough LLP.

President's Message (cont.)

recommendations. One benefit of doing so is that the confidential services offered to our members by LAP and its volunteers might be more willingly utilized with less fear of stigma. We must all be cognizant of the symptoms of impairment and be prepared to become involved when those symptoms are recognized in a friend or colleague. It is much more satisfying to help a colleague find the right path than to deal with the consequences of being too late. ■

John Silverstein is a partner with the Raleigh firm of Satisky & Silverstein, LLP.

New Pro Bono Regional Councils Convene

By Jared S. Smith

"I do *pro bono* work because I work for a firm where providing public service, including doing *pro bono* legal work, is embedded in the culture. I do it because the people around me whom I admire do it, and I strive to emulate them." With these words, Julian Wright, Robinson Bradshaw attorney and co-chair of the NC Equal Access to Justice Commission's *Pro Bono* Committee, welcomed firm representatives to the inaugural meeting of the Triangle Area *Pro Bono* Regional Council, one of two newly launched councils in the state in 2017. Hosted by the NC *Pro Bono* Resource Center, these *Pro Bono* Regional Councils offer new spaces for private attorneys to come together to discuss challenges, opportunities, incentives, and best practices regarding *pro bono* work at the local level.

North Carolina has a strong tradition of *pro bono* legal service provision. In our Rules of Professional Conduct, adopted in 2010, attorneys are each encouraged to provide at least 50 hours of *pro bono* legal services each year to those unable to pay, without expectation of a fee. *Pro Bono* Regional Councils provide a venue for firms to share how they are meeting needs in their own backyards, and how others may have policies or procedures to share to encourage an increase in that good work. Sylvia Novinsky, director of the NC *Pro Bono* Resource Center, highlighted the need for these local conversations: "When we say '*pro bono* is local,' we mean that developing strong, ongoing community relationships is essential for addressing gaps in access to justice for those around us. These relationships allow us to be responsive as additional needs arise, and to tailor our work to provide services that are both engaging and meaningful for our attorneys."

The first of these conversations took place in Greensboro in mid-September 2017. The Triad Area *Pro Bono* Legal Council saw representatives from Greensboro and Winston-Salem come together to hear former NC Supreme Court Justice and Smith Moore Leatherwood Attorney Bob Edmunds share about the increasing need for *pro bono* legal services, and Afi Johnson-Parris, Ward Black Law attorney and co-chair of the NC Equal Access to Justice Commission's *Pro Bono* Committee, describe her personal commitment to *pro bono* legal service. The group then discussed the history of *pro bono* legal services in the area and opportunities for increasing attorney volunteerism moving forward.

The Triangle Area *Pro Bono* Legal Council came together at the NC State Bar in early November 2017, hearing remarks from Chief Justice Mark Martin on the current state of access to justice in NC, and about the role that the private bar can play in supporting those efforts. The group discussed best practices in managing *pro bono* legal service provision, such as appropriate conflict checks and limiting the scope of services, and shared policies regarding incentives encouraging attorney participation. Both groups also heard about reporting and recognition efforts for *pro bono* legal services provided in 2017, available at ncprobono.org through March 31, 2018.

While initial conversations through these regional councils focus on the current state of *pro bono* legal service at the local level, and on assessing current challenges, opportunities, incentives, and structures for attorney volunteerism, they will expand into venues for collaboration on new *pro bono* initiatives to address unmet legal needs. These councils will also help to inform statewide efforts supporting access to justice for low income North Carolinians.

Additional area meetings are scheduled for 2018, including a Charlotte *Pro Bono* Roundtable (an ongoing initiative from the Charlotte Center for Legal Advocacy) and a Coastal Area *Pro Bono* Regional Council. Additional firm participation is welcome at each of these councils. If you would like your firm to be represented, please contact sylvia@ncprobono.org for more information. ■

Jared Smith is a communications specialist with NC Equal Access to Justice.

Equal Access to Justice Act (cont.)

attorney volunteer efforts, while substantial, cannot replace the loss of core funding to support North Carolina's legal aid providers.

You help bridge the justice gap by volunteering as a *pro bono* attorney, making a financial contribution, or contacting your legislators to voice your support. More information can be found on the NC Equal Access to Justice Commission's website at ncequalaccesstojustice.org.

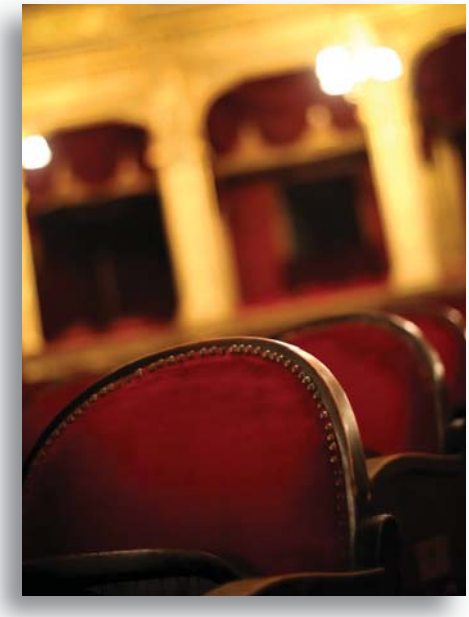
Children are usually assured that the "boogey man" isn't real. But what if your own dad told you instead that someone was coming to get you, and gave you a knife to protect yourself? ■

Jennifer Lechner is the executive director of the North Carolina Equal Access to Justice Commission.

The Criminal Court System is the Theatre of the Real

By John G. Gehring

"Hello, I'm Gary[1] and I hear that you are looking for me." My answer was an emphatic NO, I was not looking for him, but that the United States marshal was seeking to arrest him for his failure to appear in court that morning. This was my introduction to Gary, and my introduction to certain aspects of the practice of law which are not taught in law school. I learned that right may sometimes be wrong, that there are always two or more sides to every case, and that humor and laughter, used properly, can help achieve a favorable judgment in many cases.



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We walked into federal court that afternoon, I dressed in a suit and Gary in his bib overalls with a dirty red cap affixed firmly to his head. The first laughter, which was directed at us by those attending court, was when the bailiff yelled across the courtroom for Gary to remove his cap. Then we were face to face with the Honorable Eugene Gordon, United States District Court judge.

"Where were you at 9 o'clock this morning when your case was called for trial?" said His Honor, to which Gary replied that he was in the field priming tobacco.

"Didn't you get the letter from this court directing you to appear this morning?" was the next question from the judge. Gary told the judge that he only got the letter that morning (although it was postmarked 25 days prior). The court accepted Gary's explanation that he only went to his mailbox once a month when the power bill came, and that was when he found the court letter. This time the laughter from the onlookers was *with* Gary.

A new trial date was set and, before we left the courtroom, Gary said, "It is good to see you again, Your Honor." That statement told me there was more to my new client than met the eye—this case was going to be interesting.

The indictment accused Gary with the production and selling of non-tax paid whiskey, called by many names but most commonly known as "moonshine." Upon talking with Gary, my knowledge of the world of private enterprise increased. I learned that "priming" tobacco was the harvesting of the leaves of the plant, that "homemade" whiskey was much preferred to the store bought type (at least in our small rural county), and that the distribution network for the product extended many miles northward.

The producers were proud of their prod-

uct. Gary was uneducated in the familiar sense of the word, but was wise in the ways of the world; at least his world. My education, however, would continue throughout the trial.

Gary said, "I know that making liquor is against the law, but it is not wrong. My grandfather made liquor, and my father made liquor, and it is not wrong." Wow, what a statement! Law school, and my law life thus far, had instilled in me the understanding that the law is the law and that breaking the law is wrong. A new concept showed its face—the law can be wrong (remember miscegenation laws, school discrimination laws, etc).

"It's all about the money and they (the government) want part of the profits," said Gary. I had never met a "moonshiner" and a "tax protester" before—Gary was the first. I find it funny that some 40 years later, the concept of tax protesting has a huge following.

After the trial and the presentence phase, we were back in Judge Gordon's court for sentencing. After approaching the bench, at Judge Gordon's request, he told me that this was the fourth time that my client had appeared before him on bootlegging charges, and that an active sentence must be handed down this time.

"Please rise Mr. Gary. Do you have anything to say before sentence is pronounced?" asked His Honor. "Yes, Your Honor, it is good to see you again. Since winter is coming on and my firewood supply is low, would you please sentence me to a prison in Florida where I will be warm?" Again the courtroom was full of laughter, and it seemed that everyone was rooting for Gary. Even Judge Gordon was smiling. Gary was sentenced to Elgin Air Force Base in Florida for a term of one year. And this is where the last part of this case begins, and my knowledge of what happened is based solely on hearsay. I do not know if the Elgin Air Force Base narrative is true, but I do not think that Gary made this up.

I was told that the prison administrator, in his wisdom, decided that Gary had a talent for cooking and assigned him to work in the kitchen. Apparently Gary, pursuant to his kitchen duties, decided the best use for the applesauce was to transform it into a new liquid product.

Gary was back in business!

Lessons learned:

1. Humor, if of the heartfelt type, will make everyone laugh. A laugh usually puts most people at ease, even the judge.

2. Never make white liquor unless you have a federal and state license. The government must always get a share of your money.

3. Never hesitate to make your wishes known; it might mean you get to spend the winter in Florida.

4. The law is the law, as they say, but does that mean the law is right? "I know that it is against the law, but it is not wrong," says Gary.

5. Gary has been dead many years and I still miss him. ■

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."

Endnote

1. The client's name has been changed.

Grievance Committee and DHC Actions

Disbarments

Johnny S. Gaskins of Raleigh surrendered his law license and was disbarred by the Wake County Superior Court. Gaskins acknowledged that he forged signatures on the back of a settlement check with the intent to defraud the bank, failed to deposit the check into a trust account, and embezzled the proceeds of the check.

Mital M. Patel of Raleigh surrendered his law license and was disbarred by the council at the October 2017 meeting. He acknowledged that he misappropriated entrusted funds totaling at least $3,300.

Carlos B. Watson of Charlotte embezzled entrusted funds and violated multiple other trust accounting rules. He was disbarred by the Disciplinary Hearing Commission.

Suspensions & Stayed Suspensions

Cowles Liipfert of Winston-Salem willfully failed to file state income tax returns and to timely pay state tax obligations for 2012, 2013, and 2014. The DHC suspended him for two years. The suspension is stayed for two years upon compliance with numerous conditions.

Darin P. Meece of Durham forged the name of a former client to a corrective deed and notarized his forgery of the signature. The DHC concluded that Meece's conduct was dishonest and deceitful but that he acted without a selfish motive. He was suspended for one year.

Darnell Parker of Greenville violated multiple trust accounting rules. The DHC suspended him for two years. The suspension is stayed for two years upon compliance with numerous conditions.

The Lincoln County Superior Court suspended **Blair M. Pettis** of Lincolnton until further order of the court. The court concluded that Pettis did not comply with a Consent Interim Order and Recovery Program.

Judicial Action

Charles R. Gurley of Goldsboro was held in contempt by the Wake County Superior Court for failing to comply with the court's order to deliver trust account records to the State Bar. The court enjoined Gurley from practicing law until he fully complies with all State Bar requests for information.

Interim Suspensions

The chair of the DHC entered an interim suspension of the law license of **Matthew A. Smith** of Raleigh. Smith was convicted in Wake County of taking indecent liberties with a child, a felony, in violation of N.C. Gen. Stat. § 14-202.1.

Reprimands

John Mansfield of Cary was reprimanded by the Grievance Committee. He did not properly safeguard entrusted funds and did not supervise his nonlawyer staff.

Transfers to Disability Inactive Status

The chair of the Grievance Committee transferred **Michael A. Schlosser** of Greensboro to disability inactive status.

Reinstatements

Tracey Cline was the elected district attorney of Durham County until she was removed from office pursuant to N.C. Gen. Stat. § 7A-66. In June 2015, Cline was suspended by the DHC for five years for filing pleadings containing false and outrageous statements about a judge and making false representations in court filings in an attempt to obtain confidential prison visitation records. After she served two years of the suspension, Cline was eligible to petition for a stay of the balance upon demonstrating compliance with enumerated conditions. Cline did not petition for a stay. She petitioned for reinstatement but did not appear at the hearing on that petition. The DHC denied the petition.

Stayed Suspensions Activated

In January 2016 the DHC suspended **Nicholas S. Ackerman** of Greensboro for one year. Ackerman did not communicate with his client, did not respond promptly to the Grievance Committee, and did not participate in mandatory fee dispute resolution. The suspension was stayed for two years. The DHC concluded that Ackerman did not comply with conditions of the stay relating to a practice monitor, CLE requirements, communication with the State Bar, and payment of costs and administrative fees of the disciplinary action. The DHC lifted the stay and activated the suspension. After serving six months of the suspension, Ackerman may apply for a stay of the balance.

In July 2015 the DHC suspended **Robert M. Gallant** of Charlotte for two years because he did not timely file federal and state income tax returns in 2007 through 2013. The suspension was stayed for two years. In October 2017 the DHC concluded that Gallant did not comply with conditions of the stay requiring him to execute releases authorizing the IRS and NC Department of Revenue to communicate with the State Bar, timely file tax returns, pay his 2015 tax liability, comply with treatment recommendations of an evaluating mental health professional, and fulfill State Bar membership and CLE requirements. The DHC lifted the stay and activated Gallant's suspension.

In March 2015 the DHC suspended **David A. Lloyd** of Spindale for three years. Lloyd violated trust accounting rules and did not report misappropriation of entrusted funds by his law practice associate. The suspension was stayed for three years. The DHC concluded that Lloyd did not comply with conditions of the stay requiring him to fulfill CLE requirements, pay costs and administrative fees of the disciplinary action, and engage a CPA to conduct semi-annual audits of his trust account. The DHC lifted the stay and activated the suspension.

In September 2015 the DHC suspended **Jeffrey D. Smith** of Charlotte for two years for violating trust accounting rules. The suspension was stayed for three years. The DHC concluded that Smith violated multiple conditions of the stay, including conditions requiring him to demonstrate proper

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trust accounting procedures. The DHC imposed additional conditions and extended the length of the stay.

In December 2016 the DHC suspended **Michael S. Williamson** of Goldsboro for three years for violating trust accounting rules. The suspension was stayed for three years. The DHC concluded that Williamson violated several conditions of the stay, including requirements that he submit CPA audits of his trust account and pay costs and administrative fees of the disciplinary action. The DHC announced that it will lift the stay and activate the suspension.

Orders of Reciprocal Discipline

The chair of the Grievance Committee issued an order of reciprocal discipline censuring **Kahiel R. Barlow** of Huntsville, Alabama. He was censured by the Board of Professional Responsibility of the Supreme Court of Tennessee in October 2016 for practicing law while he was administratively suspended.

The chair of the Grievance Committee issued an order of reciprocal discipline suspending **Joel M. Bresler** of Lakeland, Florida, for 91 days. The Supreme Court of Florida suspended Bresler for 91 days in January 2015. Bresler was a witness in the federal prosecution of his former employer and was granted immunity. Bresler drafted a false promissory note for the former employer, destroyed his own bank records at the direction of the former employer, and exaggerated to law enforcement the extent of his attorney/client relationship with the former employer.

Notices of Intent to Seek Reinstatement

In the Matter of Theodore G. Hale

Notice is hereby given that Theodore G. Hale of Wilmington intends to file a petition for reinstatement before the Disciplinary Hearing Commission of The North Carolina State Bar. Hale executed an affidavit of tender of surrender of license on October 13, 2004, and he filed said affidavit in the offices of the State Bar on October 14, 2004. Based on the affidavit, the chair found that Hale had misappropriated money from his former law partner, charged and collected money from the parents of a criminal defendant whom he was appointed to represent without telling them that he was obligated to represent their son at State expense due to the court appointment, and represented a woman in a divorce/equitable distribution case and collected and converted to his own use the proceeds of an annuity contract in the amount of $15,287.09, most of which belonged to her. An Order of Disbarment was issued against Hale on October 14, 2004, and was effective immediately.

In the Matter of James E. Ferguson III

Notice is hereby given that James E. Ferguson III intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. On July 28, 2005, Ferguson entered a plea of guilty in US Federal Court to one count of conspiracy to commit securities fraud, mail fraud, and wire fraud. This conviction provided the substance of a grievance filed against Ferguson by the Grievance Committee of the North Carolina State Bar. On or about August 23, 2005, Ferguson tendered an Affidavit of Surrender of his license. On October 21, 2005, the tender of the surrender was accepted by the State Bar and Ferguson was disbarred.

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the North Carolina State Bar, PO Box 25908, Raleigh, NC, 27611, before May 1, 2018 (60 days after publication). ■

Reconciliations and Reviews

By Peter Bolac, Trust Account Compliance Counsel

The following article is excerpted from the North Carolina State Bar's *Trust Account Handbook*. The *Trust Account Handbook* was revised in November 2017 and is available on the State Bar's website, ncbar.gov.

Monthly Reconciliation

Rule 1.15-3(d)(2) requires a very basic monthly reconciliation of each trust account. You cannot do a reconciliation for a month until you are sure you have correct balances in all your client ledgers and in general ledger/checkbook register for the previous month. If you have not recently reconciled your books, or if you are worried that they are wrong, you may want to bring in a bookkeeper to straighten them out before you take on the monthly and quarterly reconciliations yourself.

Once you have correct balances for the previous month, you are ready to reconcile. The steps required for this type of reconciliation are not unlike those necessary to balance a personal checking account.

There are two main steps in reconciling monthly:

1. From the balance shown on the bank statement for the monthly reporting period, subtract all outstanding checks. To this amount, add all deposits that have not cleared the bank. This is the current bank balance.

2. Confirm that the current bank balance equals the total balance for the trust account as shown on the lawyer's records (if using manual accounting, this would include check stubs or the account register).

The cut-off date for the bank statement and the trust account balance must be the same or the two balances may not reconcile. Note that the "Reconciliation Summary" produced by accounting software will typically satisfy the monthly requirement to reconcile the current bank balance to the total trust account balance (a different software report may be necessary for the quarterly reconciliation).

All reconciliations—monthly and quarterly—must be signed and dated by a lawyer. Remember, nonlawyer employees who reconcile the trust account may not be signatories on trust account checks.

A reconciliation form is available in Appendix B13 of the *Trust Account Handbook.*

Quarterly Reconciliation

Rule 1.15-3(d)(1) states that each quarter a report must be prepared that shows all of the following balances and verifies 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.

Quarterly reconciliations promote accurate accounting for client funds by ensuring that the running balances for each client, when totaled, equal the total funds on deposit in the trust account.

Remember that a three-way reconciliation should be conducted every quarter for every client trust account. It is recommended, however, that three-way reconciliations be performed monthly.

When completing the three-way reconciliation, it is a good idea to use an adding machine or other calculator that will produce a printed record of the calculation you performed. That way, if your records do not match, you can easily check to see if the reason is a mathematical mistake made while performing the reconciliation.

Quarterly reconciliations must be signed and dated by a lawyer, and you are required to retain these records and the reconciliation reports for six years to satisfy the recordkeeping requirement in Rule 1.15-3(d).

You are permitted to retain electronic copies of all reconciliation reports, as long as you follow the requirements in Rule 1.15-3(j):

(1) the records otherwise comply with Rule 1.15-3, to wit: electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a "digital signature" as defined in 21 CFR 11.3(b)(5);

(2) printed and electronic copies of the records in industry-standard formats can be made on demand; and

(3) the records are regularly backed up by an appropriate storage device.

It is fine to hire a bookkeeper or the equivalent, but you are still personally responsible for accounting to your clients and to the State Bar for the money in your client trust accounts. Therefore, even if you never intend to do the reconciling, you should understand the process. Even if it is your bookkeeper's mistake, if you bounce a client trust account check, you are the one your client and the State Bar are going to come to for an explanation. Remember, a nonlawyer employee cannot be responsible for reconciling the trust account and be a trust account signatory.

Trust Account Reconciliation Sheet

The State Bar has created a Trust Account Reconciliation Sheet for lawyers to use when reconciling trust accounts. A copy of this sheet can be found in Appendix B13 of the *Trust Account Handbook,* and a fillable form is available on the State Bar website, ncbar.gov.

Monthly Review

Rule 1.15-3(i)(1) requires lawyers to review

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2017 Legislative Year in Review

By Peter Bolac, Legislative Liaison

The Legislative Update column is launching in this edition of the Journal *at the request of North Carolina attorneys. In late 2017, the North Carolina State Bar conducted a survey asking its members how they would like the State Bar to communicate with them, and what content would be of interest. Several respondents expressed an interest in being informed about legislative issues that affect the practice of law and the Bar.*

The following list contains new laws and bills of interest to the legal profession that were introduced in or considered by the General Assembly in 2017. The information is provided for informational purposes only, is not exhaustive, and does not constitute endorsement of or opposition to any particular item. To find the full text of each law, search by Session Law at ncleg.net. To find the full text of a bill, use the Bill Look-Up function at ncleg.net/gascripts/BillLookUp/BillLookUp.pl.

2017-2018 Budget

Appropriations Act of 2017 – S.L. 2017-57

Budget Technical Corrections – S.L. 2017-197

Provides funding for the Judicial Department (P.330), including the funding of additional assistant district attorney positions and judicial department pay raises across the state. The Appropriations Act also provided funding for the Juvenile Justice Reinvestment Act ("Raise the Age"), and eliminated "Access to Civil Justice" funding. The governor's veto of the budget was overridden.

Additional Bills that Became Law

Uniform Power of Attorney Act - S.L. 2017-153 adopts the North Carolina Uniform Power of Attorney Act (UPAA), largely replacing existing law governing the creation, interpretation, and application of powers of attorney. For a more detailed explanation of the UPAA provided by the NC Bar Association, go to bit.ly/2nCAFy4.

Restore Partisan Elections - S.L. 2017-3 provides that elections of superior court and district court judges are to be conducted in a partisan manner. The governor's veto was overridden.

Reduce Court of Appeals to 12 Judges – S.L. 2017-7 reduces the court of appeals from 15 to 12 judges by abolishing the first three seats that become vacant on or after January 1, 2017, prior to expiration of the incumbent's term. Provides an appeal of right directly to the North Carolina Supreme Court from orders regarding class action certification and orders terminating parental rights or denying a motion or petition to terminate parental rights. Permits review by the North Carolina Supreme Court before determination by the court of appeals when the subject matter is important in overseeing the jurisdiction and integrity of the court system. The governor's veto was overridden.

Criminal Law Changes – S.L. 2017-176 makes various changes in the law relating to motions for appropriate relief under Chapter 15A of the General Statutes, and makes clarifying and technical changes to G.S. 7A-451 regarding the entitlement of an indigent person to services of counsel. The law makes clarifications to the habitual felon statutes, habitual impaired driving statutes, and habitual breaking and entering statutes. The law also addresses fingerprinting defendants, Citizen's Warrants, and the Sheriff's Supplemental Pension Fund.

Electoral Freedom Act of 2017 – Among other electoral changes, S.L. 2017-214 eliminates primary elections for all justices and judges of the courts in 2018. The governor's veto was overridden.

Workers' Comp/Disputed Legal Fees – Among other changes, S.L. 2017-124 requires the Industrial Commission to provide notice to an injured worker's current and previous attorneys of record if there is a dispute over the division of the fee between the attorneys.

NCAOC Omnibus Bill - S.L. 2017-158 makes numerous changes to law governing the administration of the general courts of justice.

Various Clarifying Changes – Among other changes, S.L. 2017-206 prohibits a lawyer who serves as a trustee from representing noteholders or borrowers while initiating a foreclosure proceeding. The governor's veto (unrelated to this section) was overridden.

Expungement Process Modifications - S.L. 2017-195 makes modifications to the various expunction statutes.

Bills Eligible for Consideration in the 2018 "Short Session"

Note: These bills are eligible for consideration in the 2018 short session. Inclusion on this list does not imply that a bill will be considered.

Judicial Redistricting and Investment Act (H717) – Passed House. The bill is currently under consideration in the Joint Select Committee on Judicial Reform and Redistricting. H717 would revise judicial districts as shown in maps provided at ncleg.net/Sessions/2017/h717maps/h717maps.html.

NOTE: The most recent judicial redistricting proposal from the Joint Select Committee on Judicial Reform and Redistricting can be found on the committee's website: ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=376

Increase Voter Accountability of Judges (S698) – An act to amend the constitution to create two-year terms of office for all justices and judges.

Forfeiture of Retirement Benefits (H160) – Prohibits retirement benefits for judges who have been impeached and convicted or removed from office.

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Board of Legal Specialization Launches A New Specialty in 2018

By Denise Mullen, Assistant Director of Legal Specialization


Cordell


Johnson


McGinnis


Standley


Wall

The Privacy and Information Security Law Specialty Committee of the State Bar Board of Legal Specialization is at the cutting edge of a rapidly changing legal landscape. Committee members (see sidebar) are set to launch the new specialty certification in 2018, building upon an existing national certificate offered by the International Association of Privacy Professionals (IAPP). IAPP offers a Certified Information Privacy Professional-US (CIIP/US) training program and exam to applicants throughout the United States and beyond. The North Carolina specialty will utilize the IAPP certificate to qualify applicants for a short exam that will focus on state as well as the interpretation of federal and international law.

Rapidly evolving technologies affect many NC companies, particularly those in specialized fields like pharmaceuticals and sustainable energy. As technology further advances, these companies face big challenges in protecting their corporate and employee data. We have all seen the effects of massive data breaches over the last several years. Privacy lawyers handle those unfortunate situations as well as many other corporate technological and security issues on a daily basis. Lawyers who are able to assist clients in successfully navigating these fast moving business and legal waters are in high demand. This new specialty certification will help clients locate qualified counsel, and also provide all North Carolina lawyers with referral options when the need arises.

The committee members were asked to share their experience and perspectives on practicing privacy and information security law, and on how the new certification can benefit lawyers throughout the state.

Q: What sets this practice area apart?

Privacy law is a cutting edge area. It is constantly evolving and it impacts almost every aspect of our lives. Every time we pick up our smart phone we are implicating some aspect of privacy law. —F. Marshall Wall

Q; Did your interest in privacy law begin in law school?

My interest actually began with pre-law school employment in financial services where data privacy was engrained in the business model. I learned that I really enjoyed helping clients with cutting edge issues in a rapidly evolving topic area. —Nathan Standley

Q: Have you already attained the IAPP CIPP/US certification? If so, why did you pursue that?

I became IAPP CIPP/US certified in 2015 because I had been actively practicing privacy and information security law and I hoped that the CIPP/US certification would help demonstrate to clients and prospective clients that I was knowledgeable in the law, in technology, and in customs relevant to privacy and information security. At the time, neither the ABA nor any state bar recognized a specialization in privacy or information security law, and there was not any other widely-recognized, credible certification authority. —Matthew Cordell

Q: Describe a typical client or client situation.

The situations that our clients face vary significantly. Currently we are seeing a fair number of clients with business email compromise (BEC) or "spoofing" issues. Data incidents involving the insertion of malware into a client's system to scrape personal data and data incidents involving employee error (such as a lost laptop) are not uncommon. But privacy and information security is much more than just cybersecurity and data breaches. Clients face privacy issues in dealing with employee and customer personal information, monitoring others, recording calls, sending documents containing social security numbers, conducting background checks and drug testing, designing legally adequate data security plans, and providing adequate notice to consumers of collection and use of their personal data. GDPR (the EU General Data

Privacy and Information Security Specialty Committee

Matthew A. Cordell, Chair
Elizabeth H. Johnson, Vice Chair
Alicia A. Gilleski
Karin M. McGinnis
Elizabeth E. Spainhour
Nathan E. Standley
F. Marshall Wall
Clark C. Walton

Protection Regulation, which will be enforced beginning May 25, 2018) is a priority for many companies right now. —Karin McGinnis

Q: What's the most interesting/difficult/challenging information security legal issue you have handled?

The large-scale data security incident responses that I have worked on over the years have consistently been the most challenging, because there are so many applicable laws, regulatory bodies, contract and insurance requirements, law enforcement concerns, and reputational risks, all of which must be handled in a very compressed timeframe. —Matthew Cordell

Q: How has the practice changed in the past five years?

The biggest challenges in this practice are keeping up with developments and conforming my advice to the needs of dynamic, fast-paced situations. When I started, my firm had just handed out Blackberries for the first time, MySpace was making more news than Facebook, and there were relatively few privacy laws. The practice changes weekly, not yearly, in terms of new technology, emerging security threats, new case law, and new or amended statutes and regulations. To be successful in this practice, you must be willing to devote substantial time to maintaining expertise because, even though the area is maturing, it will never be static. On this point, having a team of devoted practitioners is a significant advantage.

Clients' sophistication and knowledge of the subject matter also has increased significantly in the last five years. What has not changed, and likely will never change, is their expectation that our advice will be clear, practical, responsive, and actionable. In this practice, when applicable laws may be out of date with technology or must be applied to unanticipated situations, a depth and variety of experience is really critical to meet client needs and expectations, more so now than five or ten years ago. —Elizabeth H. Johnson

Q: What gives you the most satisfaction about practicing privacy and information security law?

I enjoy helping clients through what can be an extremely stressful and difficult time, for example when a data breach hits and the client needs quick and clear guidance on how to proceed. It is satisfying to see clients gain more confidence that the situation can be resolved and that there is a team I can bring to the table to help the current situation and help minimize the risk of future incidents. I also enjoy the challenge of staying on top of changes in the law and practicing in an area where the new legal theories are being developed and tested, such as legal claims by consumers for data breach violations. It is never boring or routine. —Karin McGinnis

Q: Does a lawyer need to be technologically proficient to practice in this specialty area?

Not necessarily as there are numerous aspects to this practice area that do not involve technology; however, technology prowess is always beneficial. —Nathan Standley

Q: How do you keep up with the changes in technology that affect your clients?

I subscribe to a number of blogs and email updates, follow industry leaders on social media, and am a member of several technology associations that send updates about the industry. —F. Marshall Wall

When I come across a technology I don't understand, I set aside some time to dig into the topic and educate myself about it—sometimes by simply Googling it and reading for an hour or two. One of the benefits of being an in-house lawyer at a large company with hundreds of technology professionals is that I can call in one of my (internal) clients who has some level of expertise in the technology and ask them to explain it to me until I'm confident that I understand the terminology, mechanics, and applications of the technology. —Matthew Cordell

Q: How do you envision the NC certification affecting your practice or career?

Certification should help differentiate those who have knowledge and experience in this area, which is very specialized and becoming more so. I am excited to be one of those folks. —F. Marshall Wall

Q: What would you say to encourage other lawyers to become board certified specialists in this field?

One of my mentors told me many years ago that in order to be a great lawyer, you must love the law. I would say that if you want to be a great privacy and data security lawyer, you need to love both the law and computer technology. —Matthew Cordell

For more information on specialty certification in Privacy and Information Security Law visit us online at nclawspecialists.gov/for-lawyers/certification-standards/privacy-and-information-security-law. Application deadline: July 2, 2018. ■

A Kick in the Ass

By Anonymous

You don't have to live under a bridge to need some help. Sadly, some people have to lose enough to qualify to live under a bridge before they ask for help. That does not have to be you.

I've been a lawyer for a decade and a half, though I am sometimes reminded that I've been on this earth a lot longer. For better or worse, becoming a lawyer and practicing as a lawyer taught me some bad habits that affected my ability to make healthy decisions.

When I was a kid, it seemed pretty natural to ask for help when I needed it. Admittedly, I was a stubborn kid, and quite often you would hear me say, "No, no, I got it." Of course, most of the time I had no problem asking someone "bigger" than me to help me out. That's what adults are for, right?

I'm not entirely sure when I stopped thinking I could ask for help. Maybe it was in law school where competition made the perception of weakness something worth avoiding. Maybe it was in the practice of law where my clients looked to me to be strong and completely self-sufficient. Maybe it was in trial, where saying, "I don't know" did not seem like an option. Whatever it was and however it happened, I stopped asking for help.

A wise friend once pointed out to me that refusing to ask for help was the height of arrogance and ego. When I responded that my lack of asking for help might actually stem from low self-esteem or fear of being perceived as weak, he flatly said, "Isn't worrying about what other people think the height of selfishness and ego?" Touché my friend, touché.

By this point, most readers may have thought of someone they know who obviously needs help. Possibly, that person is the reader, but probably not. We think of the person who is in obvious pain or obvious dysfunction—the lawyer who has "started to lose it." But every lawyer currently riding the "lost it" bus stood in the line for that bus for a long time, procrastinating about getting some help.

Let's face it, most lawyers are procrastinators. We have too much to do so we make daily triage decisions. Triage is healthy, but when we get to the point that our triage criteria is based upon our *fear*, then we are not making healthy decisions, especially if our fear is not based in facts but in emotions. What do I mean by that? Missing a looming statute of limitations is a fact-based fear. Avoiding speaking to a client because we have not completed promised work is a fact and an emotion-based fear. Not talking to anyone is a fear born from emotions and internal conflict. It is not healthy.

I'm not a big fan of the word "blame," but recognize that at the heart of many lawyers' practices is assigning responsibility for harms and seeking redress for those harms. It is natural for lawyers to seek out the "causation" of our issues and possibly assign "blame." If we procrastinate getting help for ourselves, it may well stem from the fact that we self-impose unrealistic expectations on ourselves. We can't make mistakes, we can't admit weaknesses, and we simply don't have the time to deal with issues outside of our practices. There is just not enough time for "us." Does that ring true?

Whether we like it or not, ignoring our personal issues won't make them go away. Typically, they just get worse. What starts out as a temporary coping mechanism can quickly become a deep-seated instinct or addiction. If we do not take the time to address our issues now, it is quite likely our problems will rise up and strike back without asking our permission to do so.

Early in my career I encountered a perfect storm of bad news. My employer, without notice, dissolved the law practice and I found myself without a job or financial resources. There were problems with my parents and family. My law school loans were oppressive and I had no real savings. I was in a panic and yet I found myself having trouble making decisions. Auto-pilot had kicked in, but I was flying an empty airplane with no flight plan, no destination in sight, and low fuel.

Essentially, I froze with indecision because all of the personal choices I had to make seemed too overwhelming for me. For example, I was

not answering my phone. I could not bring myself to talk to people. I'd return their calls but sometimes it would take days. Opening the mail became torture. I felt like every letter would hold bad news. I had to force myself to get the mail open. When there was no bad news, I started thinking that bad news was just going to arrive the next day. I would write a letter three times, unable to decide on the content. I would excruciate over legal pleadings, certain that I had forgotten some "magic word," my case would be thrown out, and I would get sued by my client and be humiliated. Everything felt urgent, yet somehow I was immobile. Of course, I didn't sit completely still, but "reorganizing my sock drawer"(my term for any seemingly helpful task that is not addressing the real problem) was not providing much forward momentum.

Had you known all of these things and asked me how I was doing, I would have told you, "I'm fine. I got it."

I was fortunate that while I was perfectly willing to BS myself into thinking that things were "ok," some people I loved were not willing to let me. They told me, "You are depressed. You need to talk to someone."

In that pivotal moment in my life, I was willing to try something new. Not only something new, but something that scared me and certainly threatened my idea of who I was.

Therapy was an amazing and positive experience. I wholeheartedly recommend it to anyone. I learned that my "immobility" was a result of moderate depression brought on by some difficult circumstances. Not a big surprise. I also learned that I had a lot of coping mechanisms from my life before law and my formative years that were not serving me well anymore. These coping mechanisms were deeply ingrained because they were originally developed as survival mechanisms. I learned that those survival mechanisms were not only not helpful to me anymore, they were hurtful and counterproductive. The good news was that I didn't need them anymore. Therapy helped me let go of those outdated instincts and substitute healthy instincts.

If I had been left on my own, I'm sure I would have survived that difficult time in my life, but I also know I would not have improved my inner-life. I would have simply "managed." Managing is not a really good life plan. And for me, long-term "managing" always resulted in bad side effects when my outmoded survival instincts kicked in.

My doctor prescribed antidepressants for a while. I really did not want to take them. Not my style, I would have said. My doctor said, "If I told you you were a diabetic and needed insulin, would you tell me it's 'not your style'?" Touché doctor, touché.

The antidepressants kicked in after a few weeks. I didn't feel elated. I didn't have a smile on my face all the time. In fact, I hardly felt all that "up." But what I did notice was that decisions that had seemed overwhelming to me a few weeks earlier suddenly became less "life or death" for me. I started sleeping better and I was able to wake up and actually look forward to the day.

I had been wrong about the antidepressants. I had thought they would "boost" my mood. But what I came to realize was that depression had been hampering me, adding a lot of unnecessary weight to my backpack of real life issues. Once the medication became effective, the extra "rocks" of depression were taken out of my backpack and I could march forward, stronger and better. Antidepressants and therapy did not change who I was; they simply returned me to what I could be.

I'm still on my journey of being me. Each day holds new challenges, but I have a firm foundation upon which I can act. My career has been incredibly fulfilling since I came out of that dark place so many years ago.

I count myself as very lucky that I got help early. Other than a few irritated clients, there were no long-term negative consequences to my career because of my depression. I don't know if I would have sought help on my own. I needed a kick in the ass. I'm just glad it came before I started losing people and things I held dear. I never had to live under that bridge, and I don't regret that for a moment.

Not everyone has someone who will reach out and encourage them to talk or get help. If you don't have that person and you can identify with any of the feelings in this article, please consider this your kick in the ass. It is done with kindness and love because you deserve to live a fulfilling life. It can get better. ■

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 (western areas of the state) at 704-910-2310, or Nicole Ellington (for eastern areas of the state) at 919-719-9267.

Trust Accounting (cont.)

check images and bank statements for all trust accounts and fiduciary accounts on a monthly basis. This review requirement cannot be delegated, so lawyers must make sure to look at bank statements and corresponding check images each month. Lawyers must certify monthly that they have reviewed these documents.

The reason for a monthly review of check images is so that the lawyer might see a check made out to an improper payee such as an employee. If the lawyer never reviews cancelled check images, then the lawyer may not know if someone has been stealing funds from the trust account by voiding legitimate checks and writing checks to themselves for the same amount.

Quarterly Review

Rule 1.15-3(j)(2) requires lawyers to review 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 satisfies this requirement, but a larger sample may be advisable.

To perform a proper quarterly review, the lawyer must select the random transactions and conduct the review herself. This review requirement cannot be delegated to a nonlawyer.

The lawyer must examine each transaction's source documents (settlement statement, closing document, etc.), client ledger, and cancelled checks to ensure that the amount and payee for each check was correct and that the check actually cleared the account.

After conducting the review on at least three transactions, the lawyer must sign a report indicating that the review was completed and attach the supporting documents to the report.

The State Bar has developed a form to help lawyers complete this process, available in Appendix B14 of the *Trust Account Handbook* or online at ncbar.gov. ■

Welcome to Our Newest Column Focused on Lawyer Wellbeing

By Laura Mahr

Pathways to Wellbeing is launching this year at the request of North Carolina attorneys. This column is the first of its kind to be published in the *Journal*. In late 2017, the North Carolina State Bar conducted a survey asking its members how they would like the State Bar to communicate with them, and what content would be of interest. Numerous lawyers who responded to the survey shared that they would like to read articles about how to manage the stress of working in the legal profession, how to better deal with difficult situations, and how to achieve a better work/life balance.

I was delighted when Jennifer Duncan, the *Journal's* editor, invited me to write an ongoing column on attorney wellbeing. As a resilience coach and a burnout prevention consultant and trainer at Conscious Legal Minds LLC, I work across the state and around the country educating lawyers about wellbeing. I hear first-hand from attorneys and judges about the impact that the stresses of law have on their physical, emotional, mental, and spiritual wellbeing. In this column, I am eager to share the practical tips and applicable tools I teach in trainings and utilize with my private clients. My hope is that the suggestions offered in this column support individual lawyers and judges in upgrading their personal wellbeing, and add momentum to the wellness efforts of law firms and professional organizations statewide, creating a ripple effect that results in a more resilient Bar.

The stressors of legal practice are nothing new—we are well aware of the demands inherent in litigation, the challenges of dealing with clients and difficult cases, the pressures of being a new lawyer, the responsibility of presiding over a courtroom, the burdens associated with running a law firm, and the concerns about prospering financially, to name a few. The impact of lawyers' professional stress, however, is just recently being evaluated. In 2016 the *Journal of Addiction Medicine* published a landmark study (bit.ly/2GhpjI9) conducted by the ABA Commission on Lawyer Assistance Programs and the Betty Hazelden Ford Foundation. The study found that lawyers have significantly elevated levels of mental health distress including anxiety, depression, and chronic stress, as well as comparatively higher rates of alcohol use disorders than other professions, including physicians. Similarly distressing findings were reported about law school student wellbeing in an article published in 2016 in the *Journal of Legal Education* (bit.ly/2DBlf3H).

In response to these eye-opening reports, the ABA's National Task Force on Lawyer Well-Being published "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change" in August 2017 (bit.ly/2i0KGW0), authored by a broad range of stakeholders, including peer review by North Carolina State Bar Lawyer Assistance Program Director Robynn Moraites. Even if you are not a lawyer wellness aficionado, this 73-page report is a must-read; it is chock-full of constructive and feasible recommendations that numerous stakeholders—including legal employers and bar associations—can take to promote wellbeing in our profession. The authors focus on five

main themes: (1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence, (4) educating lawyers, judges, and law students on lawyer wellbeing issues, and (5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater wellbeing in the profession.

Even before the publication of the ABA Task Force's report, the North Carolina State Bar demonstrated leadership in issues related to lawyer wellbeing. The State Bar's Lawyer Assistance Program (LAP) is well-respected nationally for the depth and breadth of the services provided, its robust volunteer network, its support group offerings around the state, and for the scope of CLE topics offered related to wellbeing. The State Bar lead the way in creating awareness about lawyer mental health when years ago it adopted a Rule requiring a mental health CLE credit hour every three years. Recognizing the important and emerging field of lawyer wellness, the State Bar CLE Board approved the first six-week Mindfulness for Building Resilience to Stress CLE course last March; I was honored to create and teach this course for the 28th Judicial District. The article about the course published in the *Journal* (bit.ly/2rEas3z) sparked interest in law firms, judicial districts, and bar practice groups across the state. Since then, Conscious Legal Minds and LAP have partnered to bring similar mindfulness CLEs to other judicial districts around the state. In addition, LAP's quarterly *Sidebar* newsletter launched a new column I author entitled "Mindful Moments" this past summer (bit.ly/2FhvmLB). The inception of "Pathways to Wellbeing" in the Bar's *Journal*—and soon a page on the Bar's website where attorneys can easily access each quarter's "Pathways to Wellbeing" column (look for it in the "For Lawyers" section)—is yet another concrete way the State Bar is promoting lawyer wellbeing, in alignment with the ABA Task Force's recommendation to emphasize wellbeing and eliminate the stigma associated with help-seeking.

This column will take the recommendations of the ABA Task Force one step further and address specific things that we, as individuals, can do during the workday to cultivate our own wellbeing. I will share real-life examples of attorney stressors, and offer resilience-building tips and mindfulness and neuroscience-based tools that can be used to alleviate stress and foster greater wellbeing.

For example: Adley and Blaine have both been feeling overwhelmed as they juggle client case work, run their small firm, and take time for themselves. Adley skims this article, tosses it in the recycling, and goes back to work. Blaine reads this article and takes a moment to write down a definition of wellbeing that resonates, then makes a list of five small things that cultivate wellbeing. Blaine then puts each of the five things on the calendar for the week and sends an invite to either a colleague, friend, or family member to join in for each. One of the things Blaine calendars is a walk with Luca. When Luca and Blaine are walking, Luca suggests an app that Blaine can use to fax and scan documents on a smartphone, which will save Blaine time and money. Blaine leaves the walk feeling happy to have connected with Luca, invigorated from physical exercise, more relaxed having left the office for an hour, and inspired by the efficiency the new app will offer. Blaine goes back to the office, cheerfully greets the law office support staff, and is relaxed and clear-headed in afternoon meetings with clients. When Blaine checks in with Adley at the end of the day, Adley is exhausted and frustrated, saying nothing got accomplished all day.

Try it for yourself: What does the term "wellbeing" mean to you?

Does this definition of "lawyer wellbeing" that the ABA Task Force uses in its report resonate with you: "a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections with others"? If there's a definition that would land more than this one, take a moment now to write down a more meaningful definition. Then read the definition slowly, imagining upgrading your own wellbeing as you think about the definition. *Note: Neuroscience research shows that our brains retain information that is personally meaningful. Using a definition of wellbeing that is meaningful to you will make information on the subject more engaging for you.*

Now try this: Five Small Things

1. Make a list of five to ten small things you can do to cultivate wellbeing this week.
2. Read your list aloud a few times.
3. Notice which ones you feel the most inspired to do.
4. Circle your top five.
5. Calendar them (yes, right now!); invite along someone you'd like to connect with, if appropriate.
6. Enjoy doing each of your five small things.

Note: While the impact of doing one small thing (or applying any mindfulness tip or tool) may not feel entirely effectual in a highly stressful moment, over time each small step creates a cumulatively larger ripple in our lives toward greater satisfaction and wellbeing, and may also extend into the lives of our friends, families, and colleagues.

The timely concurrence of North Carolina lawyers saying "we need help" when research statistics are saying "you need help," and the ABA Task Force is saying, "please get help," bodes well for the wellbeing trajectory of our state's lawyers. It inspires me that so many North Carolina lawyers requested to read articles about how to better cope with stress and how to improve work/life balance. What if North Carolina lawyers could lead the way toward new pathways to wellbeing for colleagues in this state and across the nation? It is my hope that this column ignites conversations among attorneys, law schools, law firms, judicial districts, legal bars, within the courts—and among lawyers and their families and friends—about the topic of lawyer wellbeing. I aspire for the tips and tools that I share to make a difference in your life. Take what inspires and motivates you to live the life you want to live. Put the rest in the recycling. But most importantly, put one foot in front of the other on your personal pathway to wellbeing. ■

Laura Mahr is a NC lawyer and the founder of Conscious Legal Minds LLC, providing mindfulness-based coaching, training, and consulting for attorneys and law offices nationwide. Laura's cutting edge work to build resilience to burnout, stress, and vicarious trauma in the practice of law is informed by 11 years of practice as a civil sexual assault attorney, two decades of experience as an educator and professional trainer, and 25 years as a student and teacher of mindfulness and yoga, and a love of neuroscience. She is an advisory member of the newly formed 28th Judicial District's Wellness Committee and a provider on the North Carolina Bar Association BarCARES panel. Find out more about her work at consciouslegalminds.com.

Despite Stagnant Income, IOLTA Awards $2.9 Million in Grants

Income

All 2017 IOLTA income from participating banks that hold IOLTA accounts will not be received and entered until the end of January. Participant income through November 2017 was up by 2% compared to the same period in 2016. With the recent and anticipated increases in the target range for the federal funds rate, we eagerly await interest rate increases and associated increases in income.

Grants

Over the last nine years, IOLTA has consistently relied on cy pres and other court awards to support grantmaking during the economic downturn. Further, available grant funds have been buoyed by reserve funds in five grant cycles since 2009. In 2018 the IOLTA trustees will continue to make use of monies from the Bank of America settlement received in 2015 and 2016 to support regular IOLTA grants.

At the November 30 grantmaking meeting, the IOLTA trustees approved 2018 IOLTA grant awards. Regular 2018 IOLTA grants totaled nearly $1.65 million: $1,272,875 to support providers of direct civil legal services, $279,930 to volunteer lawyer programs, and $97,185 to projects to improve the administration of justice. An additional grant of $1,251,500 was made to the Home Defense Project Collaborative to support foreclosure prevention legal services provided by six organizations across the state. This grant was made with funds from the national Bank of America settlement.

As year-end income allows, the IOLTA trustees also committed to begin replenishing the reserve fund which is now at a low of $250,000 after many years of decreasing IOLTA revenues. Established in 1996, the reserve fund has allowed for a more gradual decrease in grant funding during the economic downturn than would have been possible otherwise.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. During 2016-2017, $1.65 million in general legal services funding under the Access to Civil Justice Act and nearly $1 million in domestic violence funding under the Domestic Violence Victim Assistance Act was distributed. An additional $100,000 was distributed for veterans' legal services.

Grantee Spotlight: Custody Advocacy Program

Council for Children's Rights (CFCR) stands up for every child's right to be safe, healthy, and well-educated. Located in Charlotte, CFCR seeks to improve the lives of children in Mecklenburg County ages 0-18. CFCR was formed in 2006 upon the merger of the Council for Children (founded in 1979) and the Children's Law Center (founded in 1987). The unified agency offers a comprehensive array of legal and advocacy services.

Conflict within the home is one of the top predictors of a child's emotional wellbeing. Challenging, contentious custody battles can potentially have a long-term adverse impact for the children who are caught in the middle. CFCR's Custody Advocacy Program (CAP), supported by a grant from NC IOLTA, seeks to protect the best interests of children in custody disputes.

CAP is appointed by Mecklenburg County Family Court judges to represent children whose parents are engaged in a highly contested custody case. Family Court judges assess and label cases as "high conflict" where parental alienation, substance abuse, physical and emotional abuse, mental health issues, incarcerated parties, improper living conditions, and/or parental neglect are involved.

Each case that CAP handles is assigned to a team that includes a staff attorney, a volunteer attorney, and a lay custody advocate.

This team works together to investigate the facts of the case and make recommendations to the court.

Last year the CAP team represented 273 children in high conflict custody cases. 36% of contested cases settled outside of trial. In cases that went to trial, recommendations of the CAP team were either fully or partially accepted by the court in 93% of cases. In addition to custody placement and visitation recommendations, the CAP team may recommend court-ordered assessments and therapy for children, parents, or both, rules pertaining to parental communication and access to records, and instructions related to education.

The Custody Advocacy Program engages both volunteer attorneys and lay advocates in their cases. Lay advocates interview clients and witnesses, conduct home visits, and gather information. Volunteer attorneys conduct settlement conferences, attend depositions, draft motions, and prepare for and take cases to trial if necessary. Last year CAP trained more than 40 new volunteer attorneys and advocates adding to its ranks of

more than 300 volunteers. In the same year, the volunteer attorneys contributed 1,960 hours on custody cases, time valued at more than $300,000.

Here are a few stories of the children who have a voice in court as a result of the advocacy of their CAP teams:

• Siblings Ellie and Trey were caught in the middle of a custody dispute. The children lived with their mother from birth, although custody was never formally determined. Last year Ellie alleged abuse by her mother's husband, resulting in a temporary custody placement with her father. The CAP team was appointed to represent the children. After several months of investigation, the allegations did not add up. Ellie later admitted to her team that their father had encouraged them to tell the court that they wanted to live with him, and she actually wanted to go back to her mother's home. Ellie and Trey again live primarily with their mother, but their custody order includes generous visitation with their father.

• Allison and Daisy, ages 7 and 5, lived with their mother until a few years ago. Their mother struggles with a mental health issue and poor relationship choices. She called their father to take the children after a series of dangerous incidents in her home. The children moved to live with their father in Texas and were thriving in his care. Their mother later filed for custody in NC and both parents prepared for a court battle. CAP was appointed and learned that, as much as the mother loved her daughters, she left her mental health condition untreated. CAP also learned about the care the children were receiving with their dad in a safer, more stable household. Prior to trial, CAP recommended that the father maintain custody with visitation for the mother and they were able to negotiate a settlement to avoid trial.

• Alex was 11 when his parents divorced. He wanted to be with his mother, but was left with his father who would become angry and hit Alex. The roof of the home leaked, cockroaches were everywhere, and the trash piled up. CAP got involved and emergency custody was granted to Alex's mother. His father fought to get visitation. The CAP team sought an evaluation for the father who was determined to have ADHD. After months of continued monitoring, the father decided to move home with his family and start over. The court saw a difference in him and he was awarded visitation. ■

Legislative Update (cont.)

GA Appoint for District Court Vacancies (H240) – Shifts the authority to fill district court vacancies from the governor to the General Assembly.

GA Appoint for Special Superior Court Judges (H241) – Shifts the authority to appoint special superior court judges from the governor to the General Assembly.

Vacancies/NC Sup Ct/ Ct of App/ Superior Ct/DAs (H335) – Clarifies the manner in which vacancies are filled for Supreme Court justices, judges of the court of appeals and superior court, and district attorneys.

Amend who can serve on a three judge panel (H677) – Provides that district court judges may be appointed to serve on three-judge panels for actions challenging the validity of acts of the General Assembly.

Landlord/Tenant – Alias & Pluries Summary Ejectment (H706)

Amend Arson Law (H325)

Bills Introduced but that Did Not Pass Either Body ("Did Not Cross Over")

Note: These bills are not eligible for consideration in the 2018 short session; however, the substance of any of these bills could be inserted into a bill that is eligible for consideration during the short session.

S605 – Attorney Options/ IOLTA Funds

S633 – Reduce Annual State Bar Fees

S250 – Judicial Standards Commission

S617 – Eliminate Emergency Recall Judges (Addressed in Budget)

S636 – Increase Judicial Pay 20%

S433 – Limit who may advertise/Adoption Laws

S457 – Amend Deferred Prosecution Statute

S613 – Attorney's Fees and Costs/State Prevails

H126 – Conduct and Discipline for Magistrates

H674 – Independent Redistricting Commission

H675 – Clerk of Court notifies AOC if court ends early

H676 – Special Superior Court Judge Assignments

H122 – Discovery Not Disseminated to Defendant

H124 - Courts Commission Study Judicial Districts

H129 – NC LEAF Funds

H645 – Legal Services Rendered for Nonprofits

H918 – Post Crime on Social Media/ Enhanced Sentence ■

Risk Management and Disaster Planning: Tips for Making Survival of Your Law Practice More Likely

By Samantha Cruff

The news images are shocking. Whether it is tornado damage in the Midwest or flooding after a hurricane in eastern North Carolina, disasters can strike at any time and can come in many different forms. Hurricanes come with advanced warning allowing time to prepare; other disasters happen so quickly they are over before you have time to think. No matter what type of disaster you face, careful planning can make surviving more likely.

Proper leadership makes surviving a disaster easier. Avoiding or reducing the severity of disasters begins with assessing the risks associated with location, and office procedures. Once risks are assessed, the disaster recovery plan can be developed so that processes for minimizing damage and recovering afterwards can be established.

Tips for Recovery

After the dust has settled, it's time to get to work putting the pieces back together. This is the time when the emergency leader takes charge and puts your plan into action. Having the channels of communication pre-planned and direction for how things should be handled helps prevent mass panic because certain steps will be taken to reorganize the office.

Regrouping

The basic starting point is assembling your staff to begin working again as quickly as possible. Establish a phone tree to contact employees. If it is necessary to operate from another location due to building damage, your disaster plan leader will make the arrangements and pass along the information. To speed up the process of choosing alternate operating locations, select a few options before disaster strikes and keep the information with your disaster kit. Emergency locations can be outside the box, such as a townhouse complex that might have more availability options upon short term notice.

Once available staff members come together, hold a debriefing meeting. The purpose is to give staff a clear picture of the state of affairs for the firm. This will prevent some watercooler gossip and help establish the operational procedures should there be differences due to changes in circumstances. Teamwork and communication should be prominent topics.

Part of regrouping is helping staff recover from the disaster. Some will cope better than others. For large scale events, consider offering therapy sessions to alleviate post-traumatic stress disorder. Regardless of size, be aware that any major event can cause some personality types great distress and affect their work habits.

Client communication should also be a top priority at this stage. Make every attempt possible to contact your clients as soon as you have reestablished operations to let them know you are available. If they have been affected by the disaster, this is one less worry they have to deal with. If the disaster was not widespread, such as a fire in your building, they will be relieved that their cases have not been thrown off track by events.

Returning to Normalcy

Although it will seem impossible when disaster strikes, a well prepared firm will eventually return to normal operations. Files will be recreated from the electronic documents stored in computers. Your calendar will once again require a map to navigate for the untrained eye. Normalcy, however, may not equal the same as it was before. Changes in surroundings may require changes in procedures. Necessity may present a better way of doing things. Avoid the "this is the way it has always been done" mentality if reasonable alternatives present themselves.

Evaluating the Disaster Response

Once things have settled down, review the disaster response to determine the effectiveness of your strategy. Were there situations you overlooked? Did certain strategies prove ineffective and other methods have to be used?

When going over the disaster response, be sure to give praise for the things that went according to plan and were executed properly. Letting the team know they did their part to keep the ball rolling boosts office morale. Having an office luncheon to celebrate surviving the disaster is another option. Have an open discussion with employees about what may have gone astray during implementation of the disaster plan. Determine if anyone felt unsure of their instructions or if something was unclear to them. This is also the time to find out if part of the procedure seemed to be problematic and could have been done better.

Review the suggested improvements to your disaster plan. Include anything you've noted that should be added or changed. Make the necessary changes as soon as possible. Make any other needed changes to your disaster recovery kit. If another event should come your way, you'll be even better prepared the next time around. ■

The preceeding is an excerpt from Disaster Planning and Recovery*, a handout from North Carolina Lawyers Mutual that can be viewed online at bit.ly/2Fvyxj2. This handout contains information about how to develop a plan and recover from disaster, and includes a disaster recovery checklist and additional helpful resources.*

Samantha Cruff is the marketing communications coordinator for Lawyers Mutual. She can be reached at samantha@lawyersmutualnc.com or 800-662-8843.

Committee Publishes Proposed Opinion on Participation in Online Directories and Rating Systems

Council Actions

No ethics opinions were adopted by the State Bar Council this quarter.

Ethics Committee Actions

At its meeting on January 25, 2018, the Ethics Committee voted to return proposed 2017 Formal Ethics Opinion 6, Participation in Platform for Finding and Employing a Lawyer, to a subcommittee for further study. Proposed 2016 Formal Ethics Opinion 1, Contesting Opposing Counsel's Fee Request to Industrial Commission, continues to be tabled pending the conclusion of appellate action in a case that is relevant to the proposed opinion. Four new proposed opinions were approved for publication and appear below.

Proposed 2018 Formal Ethics Opinion 1
Participation in Website Directories and Rating Systems that Include Third Party Reviews
January 25, 2018

Proposed opinion explains when a lawyer may participate in an online rating system, and a lawyer's professional responsibility for the content posted on a profile on a website directory.

Inquiry #1:

May a lawyer "claim her profile" or set up a profile on a website directory or business listing service such as Google's My Business, LinkedIn, or Avvo and provide information for inclusion in the profile?

Opinion #1:

Yes, if the information provided by the lawyer and as presented in the profile is truthful and not misleading. Rule 7.1(a).

Inquiry #2:

May a lawyer pay to be included in a website directory of lawyers?

Opinion #2:

Yes. A lawyer may pay the reasonable costs of advertisements. Rule 7.2(b).

Inquiry #3:

May a lawyer provide profile information to a website that will use the information to rate the lawyer in an online lawyer rating system?

Opinion #3:

Yes, if the information provided by the lawyer is truthful and not misleading. Rule 7.1(a). In addition, no money may be paid by the lawyer for a rating and, before voluntarily providing information to a rating system, the lawyer must determine that the rating system uses objective standards that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for evaluating the lawyer's services. *See, e.g.*, 2003 FEO 3 and 2007 FEO 14.

Inquiry #4:

If a lawyer participates in a website directory, is the lawyer professionally responsible for claims on the website about participating lawyers such as statements that the participating lawyers are "top rated," "excellent," or "the best"?

Opinion #4:

The lawyer is professionally responsible for statements or claims made specifically about the lawyer or the lawyer's services and may not participate in any communication specifically about the lawyer that is false or misleading in violation of Rule 7.1.

Pursuant to Rule 7.1(a)(3), a communication is false or misleading if it "compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated." Further explanation of this prohibition is set out in comment [3] to Rule 7.1, which states that "[a]n unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated."

In this instance, the website is describing all of the lawyers who participate in the directory in these superlative terms without specifically referencing any one lawyer. It is reasonable to conclude that online consumers understand that the use of such superlatives is a subjective characterization made for advertising purposes. Moreover, the superlatives are not presented with such specificity as to lead a reasonable consumer to conclude that the comparison can be factually substantiated. Therefore, a participating lawyer is not professionally responsible for such claims or characterizations by the website and is not prohibited from participation on this basis alone. To the extent RPC 135 (1992) is inconsistent with this opinion, it is overruled.

Inquiry #5:

A website directory that permits lawyers to "claim their profiles" also allows consumers—usually present and former clients—to post "reviews" of a lawyer on the lawyer's profile page. May a lawyer ask pres-

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.

ent or former clients to post reviews on her profile page?

Opinion #5:

Yes, as long as there is no quid pro quo, and the lawyer does nothing more than ask the client to post an honest review of her abilities and services. Rule 7.2(b) (a lawyer shall not give anything of value to a person for recommending the lawyer's services). Under no circumstances may a lawyer solicit, encourage, or assist in the posting of fake, false, or misleading reviews. Rule 8.4(c).

Inquiry #6:

When a client is pleased with the lawyer and her services, the client's posted review on the lawyer's profile or webpage may contain hyperbolic accolades such as the lawyer was "the best," "awesome," "the smartest," "the toughest," etc. Rule 7.1(a)(2) and (3) prohibit a lawyer from engaging in misleading communications that create unjustified expectations or that compare a lawyer's services with the services of other lawyers unless the comparison can be factually substantiated. Is a lawyer required to monitor the content of third party reviews on a website profile or listing that the lawyer has claimed and to seek the removal of any review that does not meet this standard?

Opinion #6:

Most users of the Internet understand that reviews by third parties generally contain statements of opinion, not fact. To the extent that a third party review is a statement of opinion about the lawyer or her services, the lawyer is not professionally responsible for the statement and does not have to disclaim the review or take action to have the review removed or redacted from the lawyer's profile or webpage. If a review contains a material misstatement of objective fact, however, the lawyer must take action to have the review removed or edited to delete the misstatement, or to post a disclaimer. For example, the lawyer must take action to remove, redact, or disclaim a review that falsely states that the lawyer obtained a million dollar settlement for the reviewer.

Inquiry #7:

Lawyer A, at the urging of a marketing firm, initially claimed her website profile or set up business pages on a number of websites like Facebook. However, she tired of posting to the profiles and pages, and soon ceased to visit the majority of them altogether. Most of the profiles and website pages allow for third party reviews that Lawyer A no longer reads.

Is Lawyer A responsible for the content of the reviews posted on these website profiles and pages?

Opinion #7:

No, a lawyer is professionally responsible only for third-party content about the lawyer of which the lawyer is aware or reasonably should be aware. The lawyer is not required to monitor online profiles or pages if the lawyer does not visit the website, post to that website, or otherwise actively participate in the website. If a lawyer has abandoned a profile or webpage and the lawyer is unaware of the content of the reviews posted on the profile or webpage, the lawyer has no professional responsibility relative to that content.

In Memoriam

Robert Lars Andersen
Charlotte, NC

Kenneth Furman Antley
Atlanta, GA

Maurice Alvin Cawn
Greensboro, NC

Barbara Ann Davis
Asheville, NC

Michael James Denny
Charlotte, NC

Farris Allen Duncan
Goldsboro, NC

Geoffrey E. Gledhill
Hillsborough, NC

John Brent Godwin
Selma, NC

Marvin Kenneth Gray
Charlotte, NC

Randolph James Hill
Raleigh, NC

Robert Layne Hillman
Raleigh, NC

Barbara Dale Hollingsworth
Harrisburg, NC

Charles Edward Hubbard
Roxboro, NC

Bynum M. Hunter
Greensboro, NC

Michael David Lea
Thomasville, NC

Robert Dobbins Lewis
Asheville, NC

John Alexander MacKethan III
Raleigh, NC

Bobby Gray Martin
Winston-Salem, NC

Glenn M. Mattei
Lutherville, MD

Henri Ronald Mazzoli
Greensboro, NC

James Radcliffe Melvin
Elizabethtown, NC

Wendell Clay Moseley
Roanoke Rapids, NC

Josiah S. Murray III
Durham, NC

Rebecca Ann Phillips
Greensboro, NC

Walter Rand III
Garner, NC

Jeffrey Neil Robinson
Waxhaw, NC

Robert Worthington Spearman
Chapel Hill, NC

William Lindsey Stafford Jr.
Salisbury, NC

Daniel Wayne Sweat
Greenville, NC

Rufus F. Walker Jr.
Hickory, NC

Charles M. Williamson
Greenville, NC

Arnold Terry Wood
Greensboro, NC

James Fredrick Wood III
Charlotte, NC

However, if the lawyer becomes aware, or reasonably should be aware, that material misstatements of fact are included in reviews posted on her profile or webpage, the lawyer is professionally responsible and must take action to have the offensive content removed or an explanatory disclaimer posted.

Inquiry #8:

A lawyer determines that third-party generated content on her profile on an online directory contains material misstatements of fact and that she is professionally responsible for seeking to remove or disclaim the misstatements. When she asks the website to remove the content or post an explanatory disclaimer, the website refuses to do so. What should the lawyer do?

Opinion #8:

The lawyer must withdraw from participation in the website and seek to have the lawyer's profile or page on the website removed.

Inquiry #9:

Is a lawyer required to seek the removal of negative reviews that the lawyer perceives to be false or misleading?

Opinion #9:

Because there is no risk of creating unjustified expectations, there is no duty to correct or seek removal of a negative review posted on a lawyer's profile or website page. Nevertheless, the lawyer may seek removal of negative reviews to protect the lawyer's reputation. Lawyers are cautioned to avoid disclosing confidential client information when responding to a negative review. *See* Rule 1.6(a).

Inquiry #10:

For a monthly fee, a website offers a premium service called "Pro" that is promoted as enabling a lawyer to "upgrade" the lawyer's profile on the website. This service provides the following benefits according to the website: no competitive ads will be shown on the lawyer's profile page; the lawyer's contact information is shown in a search result; the lawyer can see who is contacting her by phone, email, or on her website; the lawyer can select the best reviews and promote them at the top of the profile page; and the lawyer can write her own headline at the top of her profile. In addition, under the lawyer's photo, whether it appears on the lawyer's profile page or in a search result, the word "Pro" appears. On search results, a sidebar states that "Pro" indicates that information is "verified." May a lawyer subscribe to this service?

Opinion #10:

Yes, if the information on the profile page continues to be truthful and not misleading. To avoid misleading users, if only selected reviews can be read by a user, there must be an explanation that the lawyer has selected the best reviews to promote. If there is an implication that the selected reviews are the only reviews that the lawyer has received or, if the lawyer has received unfavorable reviews and the profile page falsely implies that the "promoted reviews" are typical, there must be an explanation.

If it is clear from the context that the "Pro" designation appears under the lawyer's photo because the lawyer has purchased the premium service, the placement of this word under the lawyer's photo is not misleading. If it is not clear from the context, use of the designation implies that lawyers in the directory who have not purchased the service are not "Pros." This is a comparison of the lawyer's services with the services of other lawyers that cannot be factually substantiated. An explanation posted by the participating lawyer or by the website is required.

Proposed 2018 Formal Ethics Opinion 2
Duty to Disclose Adverse Legal Authority
January 25, 2018

Proposed opinion rules that a lawyer has a duty to disclose to a tribunal adverse legal authority that is controlling as to that tribunal if the legal authority is known to the lawyer and is not disclosed by opposing counsel.

Inquiry:

Rule 3.3(a)(2) provides that a lawyer shall not knowingly "fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."

Is the duty of disclosure set out in Rule 3.3(a)(2) limited to appellate court decisions in the relevant jurisdiction, or is a lawyer also required to inform the tribunal of rulings entered in lateral and lower courts?

Opinion:

Rule 3.3, Candor Toward the Tribunal, sets forth the duties of lawyers as officers of the court "to avoid conduct that undermines the integrity of the adjudicative process." Rule 3.3, cmt. [2]. Preserving the integrity of the adjudicative process is consistent with the principle of *stare decisis*.

As an officer of the court, a lawyer has a duty to assist the tribunal in fulfilling its duty to apply the law fairly and properly. Therefore, a lawyer must not allow the tribunal to be misled by false statements of law and "must recognize the existence of pertinent legal authorities." Rule 3.3, cmt. [4]. As explained in Rule 3.3, cmt. [4], the "underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case."

The comments to Rule 3.3 reference "pertinent legal authorities" and "legal premises properly applicable" to the case. These phrases indicate that the lawyer's duty is to disclose to the tribunal legal authority that is controlling as to that tribunal. Controlling legal authority may be statutory or prior judicial precedent.

Therefore, pursuant to Rule 3.3(a)(2), a lawyer has a duty to disclose to a tribunal considering a matter legal authority that is controlling as to the tribunal if the authority is directly adverse to the position of the lawyer's client, is known to the lawyer, and is not disclosed by opposing counsel. The lawyer's knowledge of the adverse authority may be inferred from the circumstances. *See* Rule 1.0(g).

Proposed 2018 Formal Ethics Opinion 3
Use of Suspended Lawyer's Name in Law Firm Name
January 25, 2018

Proposed opinion rules that it is false and misleading for the name of a lawyer who is under an active disciplinary suspension to remain in the firm name.

Inquiry #1:

Lawyer is a named partner in a law firm. Pursuant to an order issued by the Disciplinary Hearing Commission, Lawyer is actively suspended from the practice of law. Must Lawyer's name be removed from the law firm name during the suspension period?

Opinion #1:

Yes.

Pursuant to Rule 7.5, a law firm "shall not use a firm name, letterhead, or other professional designation" that is false or misleading. A firm name is misleading if it contains a material misrepresentation of fact or omits a fact necessary to make the firm name considered as a whole not materially misleading. Rule 7.1(a).

The inclusion of the suspended lawyer's name in the firm name materially misrepresents the lawyer's status with the law firm. The presence of the suspended lawyer's name suggests to the public that the lawyer is authorized to practice law with the firm.

A suspended lawyer may not be associated with her former firm during the suspension period. The Discipline and Disability of Attorneys Rules of the State Bar require a suspended lawyer to withdraw from all pending matters before the effective date of the suspension. 27 N.C. Admin. Code 1B, Rule .0128(b). Moreover, Rule 5.5(g) prohibits a lawyer from employing a suspended lawyer as a law clerk or legal assistant if that individual was associated with the law firm at any time on or after the date of the misconduct that resulted in suspension. *See also* Rule 5.5(b) (a lawyer who is not admitted to practice law in North Carolina is not permitted to "hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction").

It is false and misleading for a suspended lawyer to be held out as authorized to practice law during a period of active suspension. Therefore, from the effective date of the active disciplinary suspension until the active suspension ends, the suspended lawyer's name must be removed from the firm name, firm signage, letterhead, all forms of advertisement, and the firm website.

Inquiry #2:

Does the answer to Inquiry #1 change if Lawyer is under a stayed disciplinary suspension?

Opinion #2:

Yes. If Lawyer's disciplinary suspension is stayed, she is permitted to practice law. Therefore, inclusion of Lawyer's name in the firm name, firm signage, letterhead, all forms of advertisement, and the firm website is not false or misleading in violation of Rule 7.1, and does not violate other State Bar rules.

Should the suspension become active and Lawyer is no longer permitted to practice law, Lawyer's name must be removed from the firm name, firm signage, letterhead, all forms of advertisement, and the firm website. *See* Opinion #1.

Inquiry #3:

Lawyer is administratively suspended for failure to pay State Bar membership dues and/or failure to satisfy the continuing legal education (CLE) requirements of State Bar membership. Must Lawyer's name be removed from the firm name?

Opinion #3:

Yes, if the administrative suspension continues for more than 45 days.

Whenever a member of the North Carolina State Bar fails to fulfill an administrative obligation of membership in the State Bar, the member is subject to administrative suspension. 27 N.C. Admin. Code 1D, Rule .0903. However, unlike a disciplinary suspension, administrative suspensions can be cured within a relatively short period of time. See 27 N.C. Admin. Code 1D, Rule .0904(f) (reinstatement by Secretary of the State Bar). As noted in the Scope section, the Rules of Professional Conduct are rules of reason. Rule 0.2, Scope. It would be impractical and expensive for a firm to remove a lawyer's name from the firm name, firm signage, letterhead, all forms of advertisement, and the firm website if the administrative suspension is of limited duration. Therefore, provided Lawyer is reinstated to active status within a reasonable period of time, it is not a violation of Rule 7.1 or Rule 7.5 for Lawyer's name to remain in the firm name, firm signage, letterhead, all forms of advertisement, and the firm website. It is presumed that a reasonable period of time, for the purposes of seeking and obtaining reinstatement from administrative suspension, is 45 days or less.

Proposed 2018 Formal Ethics Opinion 4
Offering Clients On-site Access to Financial Brokerage Company for Legal Fee Financing
January 25, 2018

Proposed opinion rules that a lawyer may offer clients on-site access to a financial brokerage company as a payment option for legal fees so long as the lawyer is satisfied that the financial arrangements offered by the company are legal, the lawyer receives no consideration from the company, and the lawyer does not recommend one payment option over another.

Inquiry:

Lawyer would like to associate with a financial brokerage company (Company) that would assist clients in obtaining legal fee financing. Company is not a lending institution. Company would act as a broker to find lenders willing to finance the client's legal fees. Company charges Lawyer an initial setup fee of $1,500 and a monthly fee of $99 for maintaining the payment webpage and administration. Lawyer also pays a merchant fee of 4.99 % on the amount of the financed legal fee. The loan brokerage service would be explained to clients as a "payment option" along with any other options such as credit card, check, cash, etc.

Company provides a loan application for clients who wish to pursue a loan for legal fees. Approved clients receive offers from competing banks, and are free to pick the offer that works best for them, or to decline all offers. If the client accepts an offer, the loan amount is paid from a third-party lender directly to the client. The client pays the fees to Lawyer in accordance with the fee agreement.

The company maintains that the program helps lawyers get paid and also removes the cost barrier for clients who are seeking legal representation.

May Lawyer associate with Company under the proposed arrangement?

Opinion:

Yes, under certain circumstances. Many law firms currently accept credit card payments for legal fees or offer in-house payment plans. In 2000 FEO 4, the Ethics Committee concluded that a lawyer may refer a client in need of money for living expenses to a finance company if the lawyer is satisfied that the company's financing arrangement is legal, the lawyer receives no consideration from the financing company for making the referral, and, in the lawyer's opinion, the referral is in the best interest of

CONTINUED ON PAGE 50

Amendments Approved by the Supreme Court

On November 8, 2017, and December 7, 2017, the North Carolina Supreme Court approved the following amendments.

Amendments to the Rules Governing Admission to the Practice of Law

The comprehensive rewrite by the Board of Law Examiners of the Rules Governing the Admission to the Practice of Law includes amendments expressly adopting the Uniform Bar Examination as the official bar examination for general applicants to the North Carolina bar. (For the complete text see the Summer 2017 edition of the *Journal*, or visit the State Bar website.)

Amendment to The Plan for Certification of Paralegals

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

A new rule creates a retired status for certified paralegals subject to certain conditions. (For the complete text see the Spring 2017 edition of the *Journal*, or visit the State Bar website.)

Highlights

· The CLE Board proposes the addition of an hour of technology training to the annual CLE requirements.
· Proposed amendments to Rule of Professional Conduct 5.4, which would add an additional exemption to the prohibition on fee-splitting, continues to be studied by the Ethics Committee.

Amendments Pending Supreme Court Approval

At its meetings on October 27, 2017, and January 26, 2018, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval. (For the complete text of the proposed rule amendments, see the Fall 2017 and Winter 2017 editions of the *Journal*, except as specifically noted, or visit the State Bar website.)

Proposed Amendments to the Rules on Meetings of the North Carolina State Bar

27 N.C.A.C. 1A, Section .0500, Meetings of the North Carolina State Bar

The proposed amendments revamp the manner and method of giving notice of the annual meeting of the State Bar. The proposed amendments also clarify the manner and method for calling a special meeting of the State Bar.

Proposed Amendments to the Rules on Meetings of the State Bar Council

27 N.C.A.C. 1A, Section .0600, Meetings of the Council

The proposed amendments revamp the manner and method for giving notice of regular meetings of the State Bar Council. They also clarify the manner and method for calling a special meeting of the council, including allowing notice to be given by email or other electronic means. The proposed amendments allow members to participate in special meetings by audio or video conferencing or other electronic method, and give the president authority to allow attendance at regular meetings by audio or video conferencing on a discretionary basis.

Proposed Amendments to the Rule on Standing Committees of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The proposed amendments eliminate the Technology and Social Media Committee and establish the Communications Committee as a standing committee of the State Bar Council. The proposed amendments also eliminate a provision in the rule defining the authority of the Administrative Committee relative to a "Publications Board." The State Bar's publications will function under the auspices of the Communications Committee going forward.

Proposed Amendments to the Rules and Regulations Governing the Continuing Legal Education Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; and Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments replace the designation "accredited sponsor," a designation that is potentially misleading as to the extent to which such sponsors are vetted by the Board of Continuing Legal Education, with the designation "registered sponsor" and reconcile the requirements for designation as a registered CLE sponsor with current practice.

Proposed Amendments to the Rules for the Specialization Program

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization; and Section .2300, Certification Standards for the Estate Planning and Probate Law Specialty

A number of amendments are proposed to The Plan of Legal Specialization. Proposed amendments to the rule on mandatory revocation and suspension of certification due to professional discipline will provide for the auto-

matic revocation of specialty certification if any part of a disciplinary suspension is active; if the entire disciplinary suspension is stayed, certification is suspended and shall not be reinstated until the completion of the entire stayed disciplinary suspension. For specialty certification to be reinstated, the specialist must apply for and satisfy all requirements for recertification.

Proposed amendments to the rule on areas of practice add specialties recently approved by the Supreme Court to the list of recognized specialties and correct an oversight in the list relative to the criminal law specialty.

Proposed amendments to the standards for the estate planning and probate law specialty allow service as a trust officer, gift planning officer, or other employment that's outside private practice to satisfy the substantial involvement standard for recertification, provided the specialist's work duties are primarily in the area of estate planning or trust administration.

Proposed Amendments to the Plan for Certification of Paralegals

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

The proposed amendments to the Plan for Certification of Paralegals allow applicants for paralegal certification who hold national certifications from qualified national paralegal organizations (including the CLA/CP certification from the National Association of Paralegals and the PACE-Registered Paralegal Certification from the National Federation of Paralegal Associations) to sit for the certification exam although the applicants have not satisfied the educational requirement for certification. The proposed amendments also delete a provision that allowed alternative qualifications for certification during the first two years of the program. Another proposed amendment requires certain qualified paralegal studies programs to include the equivalent of one semester's credit in legal ethics.

Proposed Amendments to the Rules of Professional Conduct

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

Proposed amendments to Rule 1.15, Safekeeping Property, and its subparts specify that certain restrictions on the authority to sign trust account checks also apply to the initiation of electronic transfers from trust accounts. The proposed amendments define "electronic transfer" and make clear that lawyers are permitted to sign trust account checks using a "digital signature" as defined in the Code of Federal Regulations. Further proposed amendments to Rule 1.15 reduce the number of quarterly reviews of fiduciary accounts that must be performed by lawyers who manage more than ten fiduciary accounts on the assumption that the accounts are managed in the same manner and reviews of a random sample of the accounts is sufficient to facilitate the early detection of internal theft and correction of errors.

A proposed comprehensive revision of Rule 3.5, Impartiality and Decorum of the Tribunal, improves the clarity of the rule overall and provides better guidance on the prohibition on *ex parte* communications with a judge.

Proposed Amendments

At its meeting on January 26, 2018, the council voted to publish the following proposed amendments to the governing rules of the State Bar for comment from the members of the Bar:

Proposed Amendments to the Requirements for Reinstatement from Inactive Status and Administrative Suspension

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

The proposed amendments require a lawyer petitioning for reinstatement to complete the mandatory CLE hours for the year in which the lawyer went inactive or was administratively suspended if inactive or suspended status was granted on or after July 1.

.0902 Reinstatement from Inactive Status

(a) Eligibility to Apply for Reinstatement ...

(c) Requirements for Reinstatement

(1) Completion of Petition ...

(2) CLE Requirements ~~for Calendar Year~~ Before Inactive

Unless the member was exempt from such requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (c)(5) of this rule, the member must satisfy the minimum continuing legal education requirements, as set forth in Rule .1518 of this subchapter, for the calendar year ~~immediately preceding the calendar year~~ in which the member was transferred to inactive status (the "subject year") **if such transfer occurred on or after July 1 of the subject year,** including any deficit from a prior calendar year that was carried forward and recorded in the member's CLE record for the subject year.

(3) Character and Fitness to Practice ...

(4) Additional CLE Requirements.

If more than 1 year has elapsed between the date of the entry of the order transferring the member to inactive status and the date that the petition is filed, the member must complete 12 hours of approved CLE for each year that the member was inactive up to a maximum of 7 years. The CLE hours must be completed within 2 years prior to filing the petition. For each 12-hour increment, 6 hours may be taken online and 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the 2 years prior to filing the petition.

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

(d) Service of Reinstatement Petition ...

.0904 Reinstatement from Suspension

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

(d) Requirements for Reinstatement

(1) Completion of Petition...

(2) CLE Requirements ~~for Calendar Years~~ Before Suspended

Unless the member was exempt from such

requirements pursuant to Rule .1517 of this subchapter or is subject to the requirements in paragraph (d)(4) of this rule, the member must satisfy the minimum continuing legal education (CLE) requirements, as set forth in Rule .1518 of this subchapter, for the calendar year ~~immediately preceding the year~~ in which the member was suspended (the "subject year") **if such transfer occurred on or after July 1 of the subject year,** including any deficit from a prior year that was carried forward and recorded in the member's CLE record for the subject year. The member shall also sign and file any delinquent CLE annual report form.

(3) Additional CLE Requirements

If more than 1 year has elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, the member must complete 12 hours of approved CLE for each year that the member was suspended up to a maximum of 7 years. The CLE must be completed within 2 years prior to filing the petition. For each 12-hour increment, 6 hours may be taken online and 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of suspension the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the 2 years prior to filing the petition.

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

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

Proposed Amendments to the Annual CLE Requirements

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; and Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments provide a definition of "technology training" and add one credit hour in technology training to the annual CLE requirements. If adopted, the requirement will go into effect in 2019. To improve consistency, proposed amendments also substitute the word "program" for other descriptors such as CLE "course" or "activity."

.1501, Scope, Purpose, and Definitions

(a) ...

(c) Definitions:

(1) ...

(17) **"Technology training" shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. §143B-1320(a)(11), or successor statutory provision, for a definition of "information technology"), including education on an information technology product, device, platform, application, or other tool, process, or methodology. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 of this subchapter: specifically, the primary objective of the program must be to increase the participant's professional competence and proficiency as a lawyer. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool process or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; and g) practice management software. See Rule .1602 of this subchapter for additional information on accreditation of technology training programs.**

(18) ~~(17)~~ ...

.1518, Continuing Legal Education

(a) Annual Requirement. Each active member subject to these rules shall complete 12 hours of approved continuing legal education during each calendar year beginning January 1, 1988, as provided by these rules and the regulations adopted thereunder.

Of the 12 hours:

(1) at least 2 hours shall be devoted to the areas of professional responsibility or professionalism or any combination thereof; ~~and~~

(2) **at least 1 hour shall be devoted to technology training as defined in Rule .1501(c)(17) of this subchapter, and further explained in Rule .1602(e) of this subchapter; and**

(3) ~~(2)~~ effective January 1, 2002, at least once every three calendar years, each member shall complete an hour of continuing legal education instruction on substance abuse and debilitating mental conditions as defined in Rule .1602 (a). This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.

(b) Carryover ...

.1602, Course Content Requirements

(a) ...

(c) Law Practice Management ~~Courses~~ **Programs** - A CLE accredited ~~course~~ **program** on law practice management must satisfy the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The subject matter presented in an accredited ~~course~~ **pro-**

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.

The Process

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

gram on law practice management shall bear a direct relationship to either substantive legal issues in managing a law practice or a lawyer's professional responsibilities, including avoidance of conflicts of interest, protecting confidential client information, supervising subordinate lawyers and nonlawyers, fee arrangements, managing a trust account, ethical legal advertising, and malpractice avoidance. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: employment law relating to lawyers and law practice; business law relating to the formation and operation of a law firm; calendars, dockets and tickler systems; conflict screening and avoidance systems; law office disaster planning; handling of client files; communicating with clients; and trust accounting. If appropriate, a law practice management course program may qualify for professional responsibility (ethics) CLE credit. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: marketing; networking/rainmaking; client cultivation; increasing productivity; developing a business plan; improving the profitability of a law practice; selling a law practice; and purchasing office equipment (including computer and accounting systems).

(d) Skills and Training Courses Programs - A course program that teaches a skill specific to the practice of law may be accredited for CLE if it satisfies the accreditation standards set forth in Rule .1519 of this subchapter with the primary objective of increasing the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of subject matter that may earn CLE credit: legal writing; oral argument; courtroom presentation; and legal research. A course program that provides general instruction in non-legal skills shall NOT be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: learning to use software for an application that is not specific to the practice of law (e.g. word processing); learning to use office equipment (except as permitted by paragraph (e) of this rule); public speaking; speed reading; efficiency training; personal money management or investing; career building; marketing; and general office management techniques.

(e) Technology Training Courses Programs – A course on a specific information technology product, device, platform, application, or other technology solution (IT solution) may be accredited for CLE if the course satisfies the accreditation standards in Rule .1519 of this subchapter; specifically, the primary objective of the course must be to increase the participant's professional competence and proficiency as a lawyer. The following are illustrative, non-exclusive examples of courses that may earn CLE credit: electronic discovery software for litigation; document automation/assembly software; document management software; practice management software; digital forensics for litigation; and digital security. A course program on the selection of an IT solution information technology (IT) product, device, platform, application, web-based technology, or other technology tool, process, or methodology, or the use of an IT solution tool, process, or methodology to enhance a lawyer's proficiency as a lawyer or to improve law office management may be accredited as technology training if the requirements of paragraphs (c) and (d) of this rule are satisfied. A course program that provides general instruction on an IT solution tool, process, or methodology but does not include instruction on the practical application of the IT solution tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training courses on Microsoft Office, Excel, Access, Word, Adobe, etc., programs; and instruction in the use of a particular desktop or mobile operating system. No credit will be given to a course program that is sponsored by a manufacturer, distributor, broker, or merchandiser of the an IT solution tool, process, or methodology unless the course is solely about using the IT solution tool, process, or methodology to perform tasks necessary or uniquely suited to the practice of law and information about purchase arrangements is not included in the accredited segment of the program. A sponsor may not accept compensation from a manufacturer, distributor, broker, or merchandiser of an IT solution tool, process, or methodology in return for presenting a CLE program about the an IT solution tool, process, or methodology. Presenters may include representatives of a manufacturer, distributor, broker, or merchandiser of the IT solution but they may not be the only presenters at the course and they may not determine the content of the course.

(f) ...

Proposed Amendments to the Rules Governing the Administration of the Continuing Legal Education Program

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

Proposed amendments to Rule .1522 will specify that members may file their annual report forms online and will allow the State Bar to email notice to the membership that the forms have been posted to members' online records in lieu of mailing the forms.

.1522 Annual Report and Compliance Period

(a) Annual Written Report. Commencing in 1989, each active member of the North Carolina State Bar shall provide an annual written report to the North Carolina State Bar in such form as the board shall prescribe by regulation concerning compliance with the continuing legal education program for the preceding year or declaring an exemption under Rule .1517 of this subchapter. The annual report form shall be corrected, if necessary, signed by the member, and promptly returned to the State Bar via mail or online filing. Upon receipt via mail or online filing of a signed annual report form, appropriate adjustments shall be made to the member's continuing legal education record with the State Bar...

(b) Compliance Period ...

(c) Report. Prior to January 31 of each year, the prescribed report form concerning compliance with the continuing legal education program for the preceding year shall be

Lawyer's Handbook Preorder

You can order a hard copy by submitting an order form (found on the State Bar's website at bit.ly/2ejzJwD) by March 21, 2018. The digital version will still be available for download and is free of charge.

available on the State Bar's CLE website and a notice of its posting shall be mailed **or emailed** to all active members of the North Carolina State Bar.

(d) Late Filing Penalty ...

Proposed Amendments to Rules for the Paralegal Certification Program

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

Proposed amendments to The Plan for Certification of Paralegals allow an additional one-year term for service as the chair of the certification committee and establish a vice chair position for the committee. In addition, proposed amendments to Rule .0122 eliminate the rights of an applicant to review a failed examination and to request a review by the board of a failed examination.

.0118 Certification Committee

(a) The board shall establish a separate certification committee. The certification committee shall be composed of seven members appointed by the board~~, one of whom shall be designated annually by the chairperson of the board as chairperson of the certification committee~~. At least two members of the committee shall be lawyers, licensed and currently in good standing to practice law in this state, and two members of the committee shall be certified paralegals. The remaining members of the committee shall be either lawyers, licensed and currently in good standing to practice law in this state, or certified paralegals. The paralegals appointed to the inaugural committee shall be exempt from the certification requirement during their initial term but each such member shall be eligible, during the shorter of such initial term or the alternative qualification period, for certification by the board upon the board's determination that the committee member meets the requirements for certification in [now repealed] Rule .0119(b). [Note that proposed amendments to Rule .0119 now pending the approval of the Supreme Court delete paragraph (b).]

(b) The chair of the Board of Paralegal Certification shall appoint one member of the committee to serve for a one-year term as chair of the committee and one member of the committee to serve for a one-year term as vice chair of the committee. The chair and vice chair may be reappointed to multiple terms in these positions.

~~(b)~~ (c) Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated...

~~(c)~~ (d) ...

.0122 Right To Review And Appeal To Council

(a) Lapsed Certification ...

~~(c) Failure of Written Examination. Within 30 days of the mailing of the notice from the board's executive director that an individual has failed the written examination, the individual may review his or her examination upon the condition that the individual will not take the examination again until such time as the entire content of the examination has been replaced. Review of the examination shall be at the office of the board at a time designated by the executive director. The individual shall be allowed not more than three hours for such review and shall not remove the examination from the board's office or make photocopies of any part of the examination.~~

~~(1) Request for Review by the Board. Within 30 days of individual's review of his or her examination, the individual may request review by the board pursuant to the procedures set forth in paragraph (c) of this rule. The request should set out in detail the area or areas which, in the opinion of the individual, have been incorrectly graded. Supporting information may be filed to substantiate the individual's claim.~~

Proposed Amendments to the Rules Governing the Admission to the Practice of Law in North Carolina

NC Board of Law Examiners, Section .0500, Requirements for Applicants

The Board of Law Examiners has proposed an amendment to its rules that would provide a time period within which a general applicant would be required to successfully complete the state-specific component of the Uniform Bar Examination. See sidebar for further explanation.

.0501 Requirements for General Applicants

As a prerequisite to being licensed by the Board to practice law in the State of North Carolina, a general applicant shall:

(1) possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter at the time the license is issued;

(2) possess the legal educational qualifications as prescribed in Section .0700 of this Chapter;

(3) be at least eighteen (18) years of age;

(4) have filed formal application as a general applicant in accordance with Section .0400 of this Chapter;

(5) pass the written bar examination prescribed in Section .0900 of this Chapter, provided that an applicant who has failed to achieve licensure for any reason within three years after the date of the written bar examination in which the applicant received a passing score will be required to take and pass the examination again before being admitted as a general applicant;

(6) have taken and passed the Multistate Professional Responsibility Examination within the twenty-four (24) month period next preceding the beginning day of the written bar examination which applicant passes as prescribed above, or shall take and pass the Multistate Professional Responsibility Examination within the twelve (12) month period thereafter; the time limits are tolled for a period not exceeding four (4) years for any applicant who is a service member as defined in the Service Members Civil Relief Act, 50 U.S.C. Appx. § 511, while engaged in active service as defined in 10 U.S.C. § 101, and who provides a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents attendance for the examination, stating that military leave is not authorized for the service member at the time of the letter, and stating when the service member would be authorized military leave to take the examination.

(7) if the applicant is or has been a licensed attorney, be in good standing in each state, territory of the United Sates, or the District of Columbia, in which the applicant is or has been licensed to practice law and not under any charges of misconduct while the application is ending before the Board.

(a) For purposes of this rule, an applicant is "in good standing" in a jurisdiction if:

(i) the applicant is an active member of the bar of the jurisdiction and the jurisdiction issues a certificate attesting to the applicant's good standing therein; or

(ii) the applicant was formerly a member of the jurisdiction and the jurisdiction certifies the applicant was in good standing at the time that the applicant ceased to be a member; and

NCBLE Proposed Amendment to Rule .0501 of the Rules Governing Admission to the Practice of Law in North Carolina - Executive Summary

Proposed revisions to §.0501(8) of the Rules Governing Admission to the Practice of Law in North Carolina were approved by the Board of Law Examiners at its October 2017 meeting. Correcting an omission in the recent Rules revision, the proposed change specifies a time frame for General Applicants to successfully complete the new "State-Specific Component," which was added as a licensure requirement in the recently approved revision to the Rules adopting the Uniform Bar Exam. ("General Applicants" are those applicants who seek admission to practice in North Carolina by taking the bar exam here, rather than by comity or by transferring a UBE score obtained in another jurisdiction.)

The State-Specific Component is a course of online instruction covering specific areas of North Carolina law which differ from the "general" law tested on the UBE. It addresses the likelihood that applicants will not have studied North Carolina-specific law in preparing to take the UBE. Applicants will view six separate training modules, dealing with six distinct areas of North Carolina law. At the end of each module, they will have to answer—correctly—several "hurdle" questions, designed to confirm that the applicant paid attention to the content they were exposed to. For the State-Specific Component to serve its intended function of helping prepare applicants to practice in North Carolina, it is important that the course content be reasonably fresh in the applicant's mind at the time of licensure.

To accomplish this, the board adopted the same procedure used in the existing licensing requirement for General Applicants regarding the Multistate Professional Responsibility Exam (MPRE). General Applicants have been required to pass the MPRE within the 24 months preceding their passage of the North Carolina bar exam or within 12 months thereafter. The 24-month period accommodates the possibility that, while applicants will likely have taken the MPRE before sitting for our bar exam, they may not pass our exam on their first try. The 12-month period gives someone who has passed our bar exam, but not yet taken and passed the MPRE, a reasonable opportunity after passing our bar exam to pass the MPRE. The proposed amendment would similarly require General Applicants to successfully complete the State-Specific Component within 24 months before passing the UBE in our jurisdiction, or within 12 months thereafter. The proposed new language tracks the language in §.0501 (6) regarding the MPRE.

(b) if the jurisdiction in which the applicant is inactive or was formerly a member will not certify the applicant's good standing solely because of the non-payment of dues, the Board, in its discretion, may waive such certification from that jurisdiction.

(8) have successfully completed the State-Specific Component, consisting of the course in North Carolina law prescribed by the Board**-, within the twenty-four (24) month period next preceding the beginning day of the written bar examination which applicant passes as prescribed above, or within the twelve (12) month period thereafter; the time limits are tolled for a period not exceeding four (4) years for any applicant who is a service member as defined in the Service Members Civil Relief Act, 50 U.S.C. Appx. § 511, while engaged in active service as defined in 10 U.S.C. § 101, and who provides a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents the service member from completing the State-Specific Component within the 24 month period next preceding the beginning day of the written bar examination which applicant passes as prescribed above, or within the 12 month period thereafter.**

Proposed Amendments to the Rules of Professional Conduct Retained by Ethics Committee for Further Study

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

In the Fall 2017 edition of the *Journal*, a proposed new comment to Rule 1.15, Safekeeping Property, was published. The new comment would explain the due diligence required if a lawyer uses an intermediary (such as a bank, credit card processor, or litigation funding entity) to collect a fee. Also published for comment in the Fall *Journal* were proposed amendments to Rule 5.4, Professional Independence of Lawyer. These proposed amendments add an exception to the prohibition on fee-sharing that allows a lawyer to pay a portion of a legal fee to a credit card processor, group advertising provider, or online platform for hiring a lawyer if the business relationship will not interfere with the lawyer's professional judgment. At the October 26, 2017, meeting of the Executive Committee of the council, it was determined that both proposed rule amendments should be returned to the Ethics Committee for further study. The Ethics Committee continues to study the proposed rule amendments. ■

Proposed Opinions (cont.)

the client. The lawyer may not allow his own financial interests to interfere with his duty to act in the best interests of his client. Rule 1.7(a) (concurrent conflict exists if representation of client is materially limited by personal interest of lawyer). For example, in 2006 FEO 2, the Ethics Committee concluded that a lawyer may not refer a client to a company that pays a cash lump sum to a client in exchange for the client's interest in a structured settlement merely as a means of paying the lawyer for his legal services.

A lawyer does not put his own financial interests ahead of those of his client by providing payment options to a client who requires financial assistance in paying the lawyer's legal fees. However, given the lawyer's self interest in being paid in full for his services, the lawyer may not recommend one payment option over another. Therefore, Lawyer may offer clients on-site access to Company as a payment option for Lawyer's legal fees—along with any other potential payment options—so long as Lawyer is satisfied that the financial arrangements offered by Company are legal, Lawyer receives no consideration from Company, and Lawyer does not recommend one payment option over another. ■

Client Security Fund Reimburses Victims

At its January 25, 2018, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $308,795.48 to 16 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $840 to a former client of Gary M. Ballance of Warrenton. The board determined that Ballance was retained in 2012 to dispose of several outstanding 2009 traffic tickets in several counties for a client. Ballance handled some of the cases in 2012 and attempted to refer the client to attorneys in the other counties for the others. The client sought Ballance's help with handling the remaining tickets in 2015. The client paid Ballance for those services in 2016 after his disbarment. Ballance failed to provide, and could not provide, any valuable legal services for the fee paid. Ballance was disbarred on November 13, 2015. The board previously reimbursed 13 other Ballance clients a total of $19,806.

2. An award of $46,500 to an applicant who suffered a loss because of Dee W. Bray Jr. of Fayetteville. The board determined that Bray was retained to represent the applicant's son who was charged with first degree murder and other serious felonies. The applicant made payments towards the quoted $45,000 flat fee, knowing the fee would go up to $70,000 if the charge became a capital crime. When the DA advised Bray that the murder charge would be a capital case, Bray demanded full payment of the non-capital fee plus payments on the capital fee. The client paid Bray $46,500. Bray was placed on disability inactive status by the senior resident judge prior to performing any meaningful legal services for the applicant's son. Bray was placed on disability inactive status on February 2, 2017. The board previously reimbursed ten other applicants a total of $53,600.

3. An award of $6,400 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client on a firearm felony charge, a misdemeanor offense, a DWI, a DWLR, and other related charges. The client made payments towards the $8,500 quoted fee. Because the client was indicted in federal court on the firearm felony, the state dropped the state charges against him. Bray provided no meaningful services on the state charges that were dropped or the federal charge prior to being placed on disability inactive status.

4. An award of $25,500 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client charged with murder and other serious felonies. The client's brother made payments towards Bray's quoted fee. Bray failed to provide any meaningful legal services for the client prior to being placed on disability inactive status.

5. An award of $17,500 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to defend a client charged with serious felonies. The client made payment towards the quoted fee. Bray was placed on disability inactive status without providing any meaningful legal services on the client's behalf.

6. An award of $4,500 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to defend a client charged with first degree murder and another felony. The client's family made payments towards Bray's quoted fee. Bray failed to provide any meaningful legal services for the client prior to being placed on disability inactive status.

7. An award of $10,000 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client on serious criminal charges. The client paid the entire fee quoted. Bray was placed on disability inactive status prior to performing any meaningful legal services on the client's behalf.

8. An award of $1,550 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client on drug felonies. The client made payments towards the $7,500 quoted fee. Bray failed to provide any meaningful services for the client prior to being placed on disability inactive status.

9. An award of $1,675 to former client of Paige C. Cabe of Sanford. The board determined that Cabe was retained to represent a client in obtaining full custody of her grandson and in obtaining a passport for her grandson. The client paid Cabe's $1,500 fee plus $175 in costs. Cabe failed to provide any meaningful legal services and failed to file anything on the client's behalf. The board previously reimbursed one other Cabe client a total of $275.

10. An award of $1,000 to a former client of Michael S. Eldredge formerly of Lexington. The board determined that Eldredge was retained to represent a client in a custody/domestic violence matter and later also retained to handle the client's traffic citation. Eldredge provided no meaningful legal services for the client prior to being disbarred. Eldredge was disbarred August 17, 2017. The board previously reimbursed three other Eldredge clients a total of $69,090.

11. An award of $5,000 to a former client of Michael S. Eldredge. The board determined that Eldredge was retained to represent a client's son's estate in recovering damages for his fatal injuries sustained in an accident. Eldredge received a settlement check from the insurance company, forged the client's signature as personal representative on the check, and deposited the funds into his trust account. Eldredge failed to pay any of the funds to the estate. Due to misappropriation, Eldredge's trust account balance is insufficient to cover his client obligations.

12. An award of $100,000 to an applicant who suffered a loss caused by H. Trade Elkins of Hendersonville. The board determined that the applicant filed a partition proceeding against her brother to sell property they inherited. The parties agreed to sell the property at public auction and Elkins was the appointed commissioner. The applicant's brother was the highest bidder and paid his half of the sale price plus half of the expenses of the sale to Elkins. Elkins failed to distribute to the applicant her share of the sale proceeds. Due to misappropriation, Elkins' trust account balance was insufficient to pay all his client obligations.

13. An award of $65,271.60 to an applicant who suffered a loss caused by H. Trade Elkins. The board determined that the applicant and his sister sold property they inherited at public

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John B. McMillan Distinguished Service Award

Judge Gary Lynn Locklear

Judge Gary Lynn Locklear was presented with the John B. McMillan Distinguished Service Award at the Annual Buck Harris Dinner on December 8, 2017. The award was presented by North Carolina State Bar President John Silverstein.

Judge Locklear received his undergraduate degree from the University of North Carolina at Pembroke and his master's in business and economics from Appalachian State University. He graduated from UNC Law School in 1979.

Upon graduation, Judge Locklear returned to Robeson County and worked for the District Attorney's Office for three years. He left the DA's Office and worked in private practice for six years before becoming a district court judge in 1988. During his tenure on the district court bench he served as chief district court judge for five years. In 2002 he was appointed to the superior court bench and remained there until he retired in 2009.

Judge Locklear has served as the chief justice of the Lumbee Tribe, and he currently serves as the town attorney for the town of Pembroke.

Especially noteworthy among Judge Locklear's accomplishments during his professional life is the implementation of and emphasis placed upon Law Day and Law Day activities for the Robeson County Bar. Since 2000 the Robeson Bar, under the leadership and guidance of Judge Locklear, has performed service projects each and every Law Day. As a part of the Law Day activities, Judge Locklear enlisted the assistance of the local probation and parole office, the sheriff's department, the police department, and the local state highway patrol in order to send a message that the judicial system and all the law enforcement agencies deeply care about the welfare of those in the community. Judge Locklear's visionary leadership greatly improved the working relationship among all of these entities that are vital to the judicial system, and greatly enhanced race relations in the Robeson County community.

Judge Locklear's contributions to the local bar, the legal profession, and the community as a whole make him a most worthy recipient of the Johns B. McMillan Distinguished Service Award.

Joseph G. Maddrey

Attorney Joseph G. Maddrey received the John B. McMillan Distinguished Service Award on Thursday December 7, 2017, at the Pennrose Country Club in Reidsville, NC. The award was presented by North Carolina State Bar President John Silverstein.

Mr. Maddrey graduated from Wake Forest University in 1964 with a degree in history and political science. He received his JD from Wake Forest Law School in 1967. His legal career was put on hold while he served in the United States Army in Vietnam. Upon returning to North Carolina in 1969, Mr. Maddrey joined the Secretary of State's Office under Thad Eure. He later moved to Eden, NC, to begin his private practice, and ultimately became a certified specialist in the area of residential real property.

Mr. Maddrey has devoted many hours of service to the North Carolina State Bar. He served as the State Bar councilor for Judicial District 17A for five terms. He also served as a member of the State Bar's Disciplinary Hearing Commission for six years. Mr. Maddrey also serves on numerous boards in his community and generously donates his legal services to Habitat for Humanity, the Eden Chamber of Commerce, and many churches and nonprofits.

Mr. Maddrey has contributed greatly to his country, his colleagues, his profession, and his community. He is a most deserving recipient of the John B. McMillan Distinguished Service Award.

Nominations Sought

Members of the Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, ncbar.gov. Please direct questions to Suzanne Lever, SLever@ncbar.gov. ■

Client Security Fund (cont.)

auction in a partition proceeding. Elkins was the appointed commissioner. The applicant was the highest bidder and paid his half of the sale price plus half of the expenses of the sale to Elkins. After taking his commissioner fee, Elkins failed to distribute the remaining sale proceeds as shown on the final report of the sale. Elkins gambled away the sale proceeds. The court entered an order disgorging Elkins' commission. The applicant's reimbursement will be distributed to the recipients listed in the report of sale and the order of disgorgement.

14. An award of $20,233.88 to a former client of Johnny S. Gaskins of Raleigh. The board determined that Gaskins was retained to handle a client's personal injury claim. Gaskins settled the client's matter without his knowledge or consent, forged his client's signature on the settlement check, and embezzled the funds. Gaskins pled guilty to forgery and embezzlement and was ordered to pay criminal restitution. Gaskins was disbarred on December 2, 2017. Steps will be taken to ensure that the client's restitution will be redirected to the Client Security Fund.

15. An award of $1,500 to a former client of Christopher E. Greene of Charlotte. The board determined that Greene was retained to handle a client's immigration matter. Before the client could finish making payments towards the retainer and provide the necessary information to get a deportation waiver, Greene surrendered his law license. Greene was disbarred on February 11, 2017. The board previously reimbursed five other Greene clients a total of $12,810.

16. An award of $1,325.00 to a former client of Christopher E. Greene. The board determined that Greene was retained to get a client a new visa before hers expired. The client paid Greene's fee plus the visa application filing fee. Greene failed to file the application or provide any meaningful legal services for the fee paid. ■

Law School Briefs

Campbell University School of Law

Campbell Law student advocates take moot court regional title—A trio of Campbell Law student advocates collected the championship title at the National Moot Court Competition Fourth Circuit Regional. Chris Moore, Morgan Pierce, and Ellen Williams won in the finals, punching their ticket to the national finals in New York City in late January. The team also received the award for best brief.

Campbell Law professors named to Business NC Legal Elite—Assistant Clinical Professor Allegra Collins and Practitioner in Residence Matt Sawchak have been named to Business North Carolina's 2018 Legal Elite. The annual list is composed from a poll of North Carolina attorneys. Collins and Sawchak were both honored in the Appellate category.

Campbell Law admissions dean named to SAPLA Board—Assistant Dean of Admissions Dexter Smith has been appointed to the Southern Association of Pre-Law Advisors Board of Directors. Smith, who will serve a two-year term, will stand as one of four law school representatives on the board.

Campbell Law registrar named to AACRAO committee—Registrar Dr. Connie Shipman has been elected to serve on a committee within the American Association of Collegiate Registrars & Admissions Officers. Shipman will stand as vice chair elect on the 2018-19 nominations and elections committee.

Campbell Law Review ***hosted spring symposium on February 2***—Campbell Law Review hosted its spring symposium on February 2, ten years after the Supreme Court's landmark but controversial decision in *District of Columbia v. Heller*, which recognized that the Second Amendment protects an individual's right to keep and bear arms for self-defense. "*Heller* After Ten Years" will examine a wide range of issues facing the lower courts since *Heller*.

Duke Law School

The Duke Endowment establishes distinguished dean's chair at Duke Law—A $5 million grant from The Duke Endowment has established a named chair for the dean's position at Duke Law School. The first James B. Duke and Benjamin N. Duke Dean of the School of Law is David F. Levi, who has served as Duke Law's dean and a professor of law since 2007. Levi plans to step down as dean on June 30 and the university is conducting a search for his successor, who will subsequently occupy the endowed chair. The chair honors Duke University Founder James B. Duke, whose indenture created The Duke Endowment, and his brother, Benjamin N. Duke, the primary benefactor of the university and its predecessor, Trinity College.

Duke announces new summer institute in The Hague—Duke Law School is partnering with Leiden University in the Netherlands on a new four-week residential summer program in The Hague, a center of international law and home to the International Criminal Court, the Permanent Court of Arbitration, and the international organization that regulates chemical weapons. The Duke-Leiden Institute in Global and Transnational Law will run from June 17 to July 17 at Leiden's campus in The Hague, with students living in hotel-style accommodations nearby. The program, featuring courses on such matters as trade, criminal law, and human rights, is open to applicants from any country who have completed at least one year of legal education, including JD students from US law schools, prospective LLM students with prior law degrees from foreign institutions, and working lawyers, and is required for students pursuing Duke's dual JD/LLM in international and comparative law. Curtis Bradley, the William Van Alstyne Professor of Law and Professor of Public Policy Studies and co-director of Duke Law's Center for International and Comparative Law, directs the institute.

Elon University School of Law

Chief Justice Mark Martin addresses graduates at first Elon Law December graduation—Elon Law marked a milestone when it graduated the Class of December 2017, the first 111 students to complete a new curriculum that emphasizes practical training in a seven-trimester, 2.5-year program. The commencement on December 16, 2017, was the first time a North Carolina Supreme Court chief justice addressed an Elon Law graduating class, which was notable in another regard: Nearly a quarter of graduates were African-American and, when combined with others in the class who identify as racial minorities, represent the most diverse class in the history of the school.

Elon Law Review ***symposium explores many roles of mediation***—More than 90 people registered in October for an *Elon Law Review* symposium that provided an update on recent case law and advisory opinions in mediation and arbitration. With a theme of "Alternative Dispute Resolution," the 2017 symposium offered cutting-edge discussions on mediator ethics and standards across all areas and practices of law. It also featured insights into the way clients make decisions and how a greater understanding of that process can be beneficial to attorneys.

Elon Law scholar elected to American Law Institute—An Elon Law professor with a distinguished history of First Amendment scholarship has been elected to a highly selective national organization that supports legal research with the potential of reshaping the practice of law. Enrique Armijo, associate dean for academic affairs and an associate professor of law, formally joined the The American Law Institute following an October vote by its governing council. Armijo is the fourth Elon Law faculty member elected to the ALI, a list that includes Dean Luke Bierman, Associate Dean Steve Friedland, and Professor Henry Gabriel.

North Carolina Central School of Law

On October 18, 2017, North Carolina Central University School of Law's (NCCU) Intellectual Property Law Institute (IPLI) launched the Post Grant *Pro Bono* Project. The project purpose is to provide minority law students with immersive, hands-on training in prosecuting post grant matters. This first-of-its-kind program was created to encourage true innovation, support a more diverse bar, and provide minority law students with valuable skills that have broad applicability for today's employers.

Experienced post-grant practitioners from Fish, Jones Day, and SAS shared their in-depth experience with NCCU law students and provided direct training in post-grant proceedings before the Patent Trial and Appeals Board (PTAB) during the "Post-Grant Clinic and Practice" course. Members of NCCU's Board of Trustees and alumni supporters were present.

On November 4, 2017, The Intellectual Property Law Institute hosted a mini-conference for lawyers, professionals, entrepreneurs, inventors, students, artists, and writers. The workshop featured seminars on all things intellectual property. The Copyright Law for Artists, Writers, Musicians, & Performers lecturers provided a detailed explanation of the parameters of copyright law, including the rights of a copyright, length of protection, types of copyrightable works, and infringement. Lecturers provided a detailed explanation of the parameters of copyright law, including the rights of a copyright, length of protection, types of copyrightable works, and infringement. The presenters were: Shaunette Stokes, managing martner, Stokes Law Group; and Edward L. Timberlake Jr., trademark and copyright lawyer, Forrest Firm, PC. The moderator was: Marcus Shields, assistant public defender for the state of North Carolina.

Other session topics included: cryptocurrency and cybersecurity; inventorship and patent requirements for science and technology; trademarks and branding for business owners; start-ups in the trenches: funding and commercializing your business; monetizing your copyright: music and art licensing; and patents, innovation & entrepreneurship. The conference included a variety of cutting edge artist, and performances from talented entertainers.

University of North Carolina School of Law

Earn CLE credit at The ABCs of Banking Law, Charlotte, March 21; The Banking Institute, Charlotte, March 22-23; and J. Nelson Young Tax Institute, Chapel Hill, April 26-27. Visit law.unc.edu/cle.

Students succeed in moot court team competitions—With the end of the Fall 2017 competition season, UNC School of Law's Holderness Moot Court continued to represent the school with the same types of success that it marked in the Fall of 2016:

• Finalist Award and Second Place Overall at the 10th annual National Latino Law Student Association Moot Court Competition by the Hispanic Latino/Latina Law School Association Appellate Advocacy Team, composed of Taylor Festa 3L and Martin Hodgins 3L.

• Sweet Sixteen Appearance at Emory University's National Civil Rights and Civil Liberties Moot Court Competition by one of Holderness' Julius Chambers Civil Rights Appellate Advocacy Teams, composed of Austin Braxton 3L, Matthew Taylor 3L and Alexandra Snow 3L.

• Final Four Appearance and 3rd Place Overall at the William & Mary Negotiations Competition by one of Holderness' 2L Negotiation Teams, composed of Braxton Reyna 2L and Jasmine Plott 2L.

• Elite Eight Appearance at the NYCBA National Moot Court Regional Competition at the Fourth Circuit Court of Appeals by one of Holderness' National Appellate Advocacy Teams, composed of Rachel Rice 3L, Rachel VanCamp 3L and Peter Kelly 3L.

• First Place in Preliminary Rounds, Final Four Appearance and 4th Place Overall at the ABA Arbitration Competition by Holderness' newest team, the Arbitration Team, composed of Blake Benson 2L, Sheri Dickson 2L, Nicolas Eason 2L, and Rebecca Floyd 2L.

Carolina Law's competitive squads were coached and advised by more than four dozen faculty members, practicing attorneys, and fellow students.

Wake Forest School of Law

Wake Forest School of Law has announced it will accept the Graduate Record Exam (GRE), the most widely used graduate school exam, as an alternative to the LSAT for its JD admissions process beginning Fall 2018.

It is the first and only law school in the Carolinas to accept the LSAT.

The decision to accept the GRE as an additional valid and reliable admission test in the JD admissions process follows Wake Forest School of Law's role as one of the first three law schools in the nation—along with the University of Arizona James E. Rogers College of Law and the University of Hawaii's Richardson Law School—to have started a validation study of the GRE test in collaboration with Educational Testing Service (ETS). The Wake Forest School of Law study revealed that GRE scores were predictive of first-year law school grades, which correlate to students' overall success in law school.

The next generation of physician assistants (PAs) now have the ability to earn a competitive edge through a new partnership—the first of its kind in the US—established by Wake Forest University's School of Law online master of studies in law (MSL) program and School of Medicine Physician Assistant (PA) Program.

The new cross-disciplinary initiative is designed to develop PA leaders who are prepared to transform the delivery of healthcare while navigating a complex legal marketplace.

The Emerging Leaders Program in Law (ELP-Law) graduates will earn a master of studies in law (MSL) and master of medical science (MMS) in physician assistant studies.

The 36-month sequential degree program begins accepting applications in April 2018; accepted ELP-Law students begin their first year in May 2019 with online MSL coursework, moving to their PA studies in May 2020. ■

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