THE NORTH CAROLINA STATE BAR

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IN THIS ISSUE

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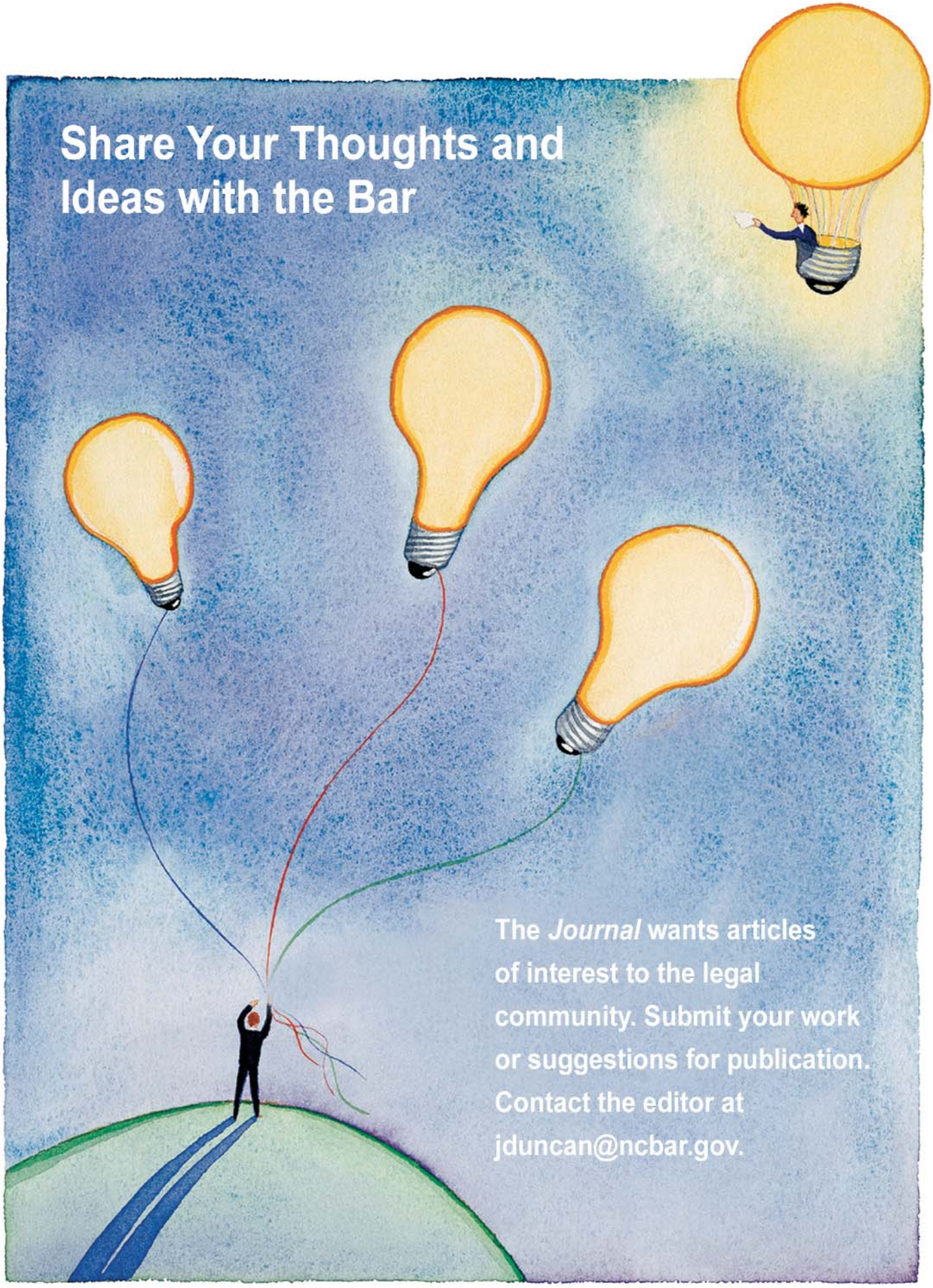

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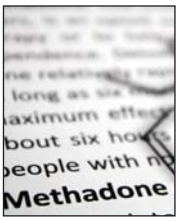
Contents

FEATURES



Correction: In the Spring 2018 edition of the Journal, *Charles Williamson of Greenville was erroneously listed in the "In Memoriam" column.*

Contents

Humble Pie

By John M. Silverstein

A recent survey of readers of this *Journal* revealed the unsurprising result that its most popular feature is "The Disciplinary Department." As with newspaper obituaries, it is the first place we check to see who is listed therein. Executive Director Tom Lunsford's "State Bar Outlook" also ranks high with our readership, as do the articles and department reports. The survey found that most respondents were pleased with the current format of the *Journal*, and they did not recommend major changes. In a nod to the quality of the columns written by my predecessors, the "President's Message" maintains a favorable ranking among the articles enjoying regular readership. I was gratified to receive a few positive comments regarding my previous article highlighting the significance of a nondescript framed quote on the "Memory Wall" in my office, so I will press my luck and return to the wall for inspiration.

The memorabilia on display includes two group photographs that have been incorporated in plaques commemorating special times. One is the El Lobos Fall '87 soccer team featuring 16 ten-year-old girls and their coaches, including Assistant Coach Betsy McCrodden, whose day job was judge on the North Carolina Court of Appeals. It is inscribed: "Coach Silverstein Thanks for your Patience." I had become the coach of the team two years earlier when my law school classmate, Bill Trott, who was then president of the Capitol Area Soccer League, called me one day to say he had noticed my daughter's application to play in the league. When I responded that she was very excited to be able to wear a uniform and enjoy the snacks after games just like her older sister, Bill advised me that I would be coaching the team. I attempted to correct him by stating that my daughter was the only one who had registered, but he informed me that we were a package deal.

I didn't know anything about soccer, and I can't claim credit for developing future Olympians, but I do know that in my three years as a coach, I learned much more from the girls than they did from me. I had to organize practices, make sure every player played at least half the game, and satisfy all the soccer moms and dads. I had to be organized, patient, and passive-aggressive. My favorite lesson occurred during my second year of coaching. We had just played a team loaded (unfairly, of course) with players who were bigger, stronger, and faster (and probably older based on the use of fake birth certificates), but the seriously outmatched El Lobos had only lost 2-1. After the game I made an impassioned speech praising the team for doing a much better job of playing to their potential than their opponents, which was a testament to their hard work and dedication at practices. And I told them that I knew we would be able to build on this strong showing and have an excellent season. At the end of my harangue, one of the girls looked up at me and said, "Hey Coach, who won?" From that point on, the focus shifted to making sure that the girls had fun, and that whoever was responsible for bringing the snacks that week was fully aware of that significant responsibility.

The second picture was taken in 1976 following an argument in the North Carolina Supreme Court. I had been licensed for five years and was working in the North Carolina Attorney General's Office. At that time, the attorneys on the attorney general's staff represented the state in all criminal appeals before the court of appeals and Supreme Court, and I had been assigned a case pending in the Supreme Court involving a conviction in a murder for hire case. The fading decoupage on my wall shows me shaking hands with the attorney for the defendant at a reception hosted by Attorney General Rufus Edmisten following the oral argument. This attorney had recently retired from public office, and he was approaching his 80th birthday. The case on appeal was not significant in North Carolina jurisprudence, but the attorney who represented the appellant was a living legend. He had previously served as an associate justice of the North Carolina Supreme Court, and Attorney General Edmisten was employed by him as deputy chief counsel to the United States Senate Select Committee on Presidential Campaign Activities.

As the time for oral argument approached, the staid Supreme Court chambers began to stir with anticipation. Reporters, photographers, and curiosity-seekers were lined three-deep along the walls to hear the familiar cadence and see the dancing eyebrows that had mesmerized a national television audience during the Watergate hearings in 1973. In our case, former United States Senator Sam J. Ervin Jr. argued that the limitations on the introduction of evidence of recent crimes in a trial of a separate and distinct offense, as enunciated in *State v. McClain*, 240 N.C. 141, 81 S.E. 2d 364 (1954), an opinion he had written for the Court, compelled reversal of his client's conviction. In responding to his argument I stated, "I am in the unusual position of contending that the author of an opinion of this Court is incorrect in his interpretation of that opinion," at which point Senior Associate Justice I. Beverly Lake Sr. leaned over and said, "Don't worry about that a bit,

CONTINUED ON PAGE 14

Courts and the Opioid Crisis

By Judge Julius H. Corpening

The United States is mired in an opioid epidemic. The Center for Disease Control reports that in 2016 more than 63,600 people died from drug overdoses. CBS News reported in October 2017 that approximately three-fourths of all drug overdose deaths are now caused by opioids, including heroin, prescription painkillers, and synthetic versions like fentanyl. As a matter of perspective, the National Archives reports that 58,220 Americans died during the entire Vietnam War.

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This epidemic has engulfed North Carolina. Division of Health and Human Services statistics reflect that 12,000 North Carolina residents died from opioid-related overdoses between 1999-2016. By 2014, death by drug overdose passed death both by motor vehicle and firearm in North Carolina. The Center for Disease Control estimates the cost of unintentional opioid-related overdoses in 2015 at $1.3 billion. In addition, a Castlight Health Study in 2016 placed four North Carolina cities in the top 25 in America for prescription opioid abuse, with Wilmington leading the way at number one, followed by Hickory (fifth), Jacksonville (12th), and Fayetteville (18th).

Our courts are at the epicenter of this crisis, and the ripple effect of this epidemic spreads across our system, through superior courts, district courts, juvenile courts, and special proceedings, and touches the lives of our court employees as well. Ultimate solutions to this crisis can only be found by cooperating across systems, and our courts must provide leadership at the state and local level in bringing change and responding cooperatively with other systems.

Change starts at the top, and in 2017 Chief Justice Mark Martin enrolled North Carolina in the Regional Judicial Opioid Initiative (RJOI). He convened a collaborative group to participate in RJOI, and to work both within the state and across state lines in support of the initiative. The North Carolina workgroup includes representatives from the judiciary, Administrative

Office of the Courts, public health at the state and local level, health, public safety, corrections, and others.

RJOI now consists of eight states: North Carolina, Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and West Virginia. Members of the RJOI are working to provide education, training, and technical assistance across systems regarding the epidemic, and tools to combat it. Members are collecting and sharing data to study trends and to target areas for intervention. Members are working to create pilot programs for evidence based interventions, and programs in targeted multi-state sites, as in cities and counties along state borders.

One of the first directives from the chief justice for the court-related members of this new collaborative was to deliver training on the opioid crisis across the entire judicial branch. This crisis knows no boundaries, and touches families everywhere. It is critically important for employees of the branch to have training that enhances both their personal and professional response to the crisis. Judge Duane Slone from Tennessee, chair of the RJOI, made presentations at the District and Superior Court Judges Fall Conferences in 2017. Corey Ellis, assistant United States attorney for the western district of North Carolina, presented at the Court Managers Fall Educational Conference and the Elected Clerks of Superior Court Fall Educational Conference in 2017. Dr. Blake Fagan of the Mountain Area Health Education Center is slated to speak in 2018 at the Court Managers Spring Educational Conference, the District and Superior Court Judges Summer Conferences, and the Magistrates Fall Conference. Plans are ongoing to ensure that this critical training touches all members of the judicial branch.

The issue of drug treatment courts came up in the conversations of the North Carolina RJOI collaborative. Treatment courts remain one of the most effective tools for the court system to respond to addicts whose lives intersect the criminal justice system; however, since funding for drug treatment courts was eliminated by the General Assembly, treatment courts exist in only 22 out of 44 judicial districts, funded by county governments, grants, and other funding sources. These courts vary widely in purpose, structure, and sustainability. In an attempt to bring consistency across the state, streamline administrative functions, and to be more effective in responding to the needs of those with substance abuse, mental health, or other special needs, the discussions on the need for treatment courts now center on a model known as the Judicially Managed Accountability and Recovery Court (JMARC), developed and modeled by Chief District Court Judge Joe Buckner in Orange County.

In the JMARC model, defendants with either a substance abuse or behavioral health disorder (or both) with an inability to navigate treatment can be referred. Accountability and recovery is built on a community recovery collaborative, taking advantage of partnerships across the community to meet the needs of the participants. Case management and access to medical and behavioral health therapy are the key components to the model. In a recovery court model, the court does not dictate treatment. The court supports the individual's treatment plan as determined by the treatment provider. Most importantly, the model supports providing services to those served by the various treatment court models in North Carolina under one administrative organization, enhances services, and brings consistency in the same structure.

Design work is underway for a comprehensive template for individual jurisdictions to develop a judicially-managed accountability and recovery court. Next steps include developing statewide and community collaborations, and identifying and coordinating statewide and community resources for accountability and recovery. Funding remains an issue and will need to be addressed by the General Assembly.

If ever there was a time to fund treatment courts across the state, the time is now. Judges across the state are fighting for the lives of citizens that appear before them who have substance abuse and mental health issues. The JMARC model offers flexibility and responsiveness to address these issues.

One other point needs to be made about treatment courts and the response of any court to a person suffering from opioid use disorder. One of the conversations that comes up in meetings with representatives from public health and the medical community who specialize in addiction is about Medication Assisted Treatment (MAT). The question that is often asked is "When will judges accept MAT as the most effective response to opioid use disorder?" The bigger questions are, "When will the entire legal community accept MAT as the most effective response to opioid use disorder? And when will society stop stigmatizing those who use these medicines to treat their disorder?" The answer to these questions is found in education and an evolution in thinking. The opioid crisis is different than any other drug crisis we have faced as a society, and requires a different response. A medical provider recently shared that in dealing with opioid use disorder, detox and abstinence has a success rate of about 10%. Patients being treated with methadone and buprenorphine have a success rate of about 60%. The North Carolina Public Health Action Plan on Opioids calls for expanding MAT in response to the opioid epidemic. Some in public health have called MAT the gold standard in responding to opioid use disorder. In a forum at Wake Forest University Medical School last fall, several professors of medicine who are addiction specialists called for the destigmatization of MAT, and for a focus on the individual needs of each patient, which often includes MAT as a response to opioid use disorder.

It is also incumbent on local courts to be proactive in response to the opioid epidemic. A crisis of this proportion calls for new kinds of partnerships, and new ideas in responding to the needs of those we serve. Sometimes this involves judges stepping off the bench and into leadership roles that are a critical part of the response to this crisis. Judges work in the intersection of many systems of care, and are uniquely positioned to bring those systems together to work collaboratively to address issues affecting our litigants, including this epidemic.

An example of a new kind of partnership is a Criminal Justice Advisory Group (CJAG). The New Hanover County CJAG was formed two years ago, and is composed of the city manager, county manager, sheriff, Wilmington chief of police, UNC-Wilmington police chief, Wrightsville Beach police chief, Carolina Beach police chief, Kure Beach police chief, district attorney, clerk of court, senior resident superior court judge, chief district court judge, district manager for probation, chief court counselor, public defender, and the head of New Hanover County Community Justice Services. The group meets every other

month with subcommittees meeting in the off months. Meetings are led by a trained facilitator to develop action plans in each of five areas of focus. The New Hanover County CJAG is currently working on responses to the opioid crisis, gang violence, youth crime and violence, courthouse efficiencies, and sex offenses.

The work of the New Hanover County CJAG on the opioid crisis centers largely on bringing a heightened awareness of the crisis to New Hanover County citizens. The group has partnered with New Hanover County Television to produce five public service announcements about the crisis. These PSAs have aired on local news and New Hanover County TV, and have been distributed on social media for New Hanover County and the North Carolina Judicial Branch. The most recent PSA aired for approximately six weeks in all movie theaters operated by Regal Cinemas and Stone Cinemas in New Hanover County. These PSAs are available on the New Hanover County YouTube site, which can be accessed through the county's website under NHC TV.

Another example of a new kind of partnership is the Community Partners Coalition (CPC) for New Hanover County formed in March 2017 through the leadership of the South East Area Health Education Center (SEAHEC). This coalition is truly a cross system collaboration, and works to improve collaboration and coordination between those who provide care to individuals seeking access to mental health and substance abuse services. The CPC includes representatives from education, public health, health care, mental health and substance abuse, courts, government, housing, first responders, faith based community, business, transportation, and others. The coalition was built using a collective impact model. At this time, action teams are underway in carrying out the action plans.

There have already been two significant outcomes from the work of the Community Partners Coalition. Funding has been secured to form a Quick Response Team to respond to individuals who have had an overdose reversed by the administration of Narcan™. The team includes police, firefighters, and paramedics working together connected by a social worker/case manager. The purpose of the team is to encourage these individuals to seek treatment and to help them access treatment. The second outcome is the pilot of a Law Enforcement Assisted Diversion Program in the Wilmington Police Department, which allows officers to redirect low level offenders engaged in drugs to community based services instead of jail.

Soon after the Community Partners Coalition began to work, it became clear that another partnership needed to be formed. As a result, the Health Leadership Council was formed in September 2017. The council has 17 members, including the mayor, chair of the Board of Commissioners, chief of police, sheriff, chief district court judge, district attorney, chief physician executive at New Hanover Regional Medical Center, the executive director of SEAHEC, DSS director, public health director, the executive officers of several behavioral health and substance abuse treatment agencies, and a member of the clergy. These leaders were chosen by the coalition at large, and will serve as the executive steering committee for the coalition, assisting in policy change, effectively aligning resources, and influencing health improvement in our region. The most important outcome of the work of the Health Leadership Council to date has been to secure a commitment for funding to build a 100 bed "wet drop" treatment facility in Wilmington modeled after Healing Transitions in Wake County.

These three partnerships are examples of how local courts must work collaboratively across systems of care to address the opioid epidemic in creative ways. Our local courts must also be creative in finding new ways to reduce the impact of the opioid epidemic. One example is found in a New Hanover County DSS program called Intensive Reunification. The program was born out of a need to find a better response to addicted moms giving birth to addicted babies. The general course of action used to be for DSS to take legal custody of the child soon after birth, remove the parents from the hospital, offer parents one hour a week of supervised visitation, and set a case plan including substance abuse treatment, mental health treatment, employment, housing, parenting classes, and so forth. These cases stayed open for a year or more, and the chances of success were slim. Moms rarely bonded with their children, and all too often the result was termination of parental rights.

The Intensive Reunification Program is designed to deal with young addicted parents and their babies in a more effective way. The social worker carries a caseload of three to five families as opposed to 20 or more, and serves as the foundation for a team to work with the family. The social worker is the point of contact for the family and their drug treatment provider. An intensive reunification specialist from Methodist Homes for Children is an important part of the team, and assists in expanding opportunities for visitation. A parenting coach provides more intensive learning opportunities than the parenting classes that are usually available. DSS contracts for a mental health therapist to see the parents in order to control both access to services and quality of the services. Intensive in Home Services and Care Coordination for Children (Public Health CC4C) are also involved in the team. The team is able to offer families three to five extended visits each week (sometimes more). The visits happen more quickly in the home because of the specialized nature of the team. A new mom is able to breastfeed and have the regular skin-on-skin contact needed for bonding. Biweekly child and family team meetings are held with the entire team and family to review both progress and any bumps that need to be smoothed. The goal of this intensive level of work is to make a trial home placement within 90 days, and to return custody within six months. The program is now in its third year, and is already achieving placement with parents in four months or less in 70% of the cases. The differences in the attitude of the parents, in the atmosphere in the courtroom, and in the outcomes of the cases are dramatically different. The parents smile, sometimes shed tears of joy, and express their thanks for the ability to participate in the program. They hold their heads high with hope for the future, and work incredibly hard to be successful. The courtroom cheers for these parents when trial home placement is made, or when custody is returned. This is a dramatically different outcome from before.

The Intensive Reunification Program is expensive to operate with small caseloads and contracted services. That said, the long-term savings of reuniting families sooner, and helping them be successful in the long

term, far outweigh these costs. Even though expensive at the front end of a case, this type of response should be defined as reasonable efforts in these situations. The program has attracted enough attention that plans are now underway for a program that will work with an addicted mom through pregnancy, providing services and support, and will provide housing for an extended period of time, all in an effort to avoid separating mom and baby to begin with.

Another example of innovation is a new partnership between courts, DSS, and public health to deliver a Voluntary Long Acting Reversible Contraception (VLARC) Education Class. Modeled after a program that is now statewide in Tennessee, the VLARC classes will be delivered by health educators in the county health departments of New Hanover and Pender Counties. The curriculum has been developed by those educators. Referrals to the class will be made by judges in DSS court, much as a referral is made for parenting classes. Once a participant has completed the class, the decision to choose contraception or not is entirely up to the participant. There is little or no cost for the contraception because there is already a budget that offers the contraception on a sliding scale basis. The Tennessee program that these programs are based upon has been successfully audited under Title 10 for voluntariness. The idea is to educate families that have already had a child removed (more than likely because of substance abuse) about options that are completely reversible, and to provide a chance to get to a better place in their lives before having more children. The two counties in Tennessee that originally piloted this program saw a one-third reduction in the number of neonatal abstinence syndrome births in the first year after offering the classes, just through education and voluntary participation. State public health has vetted the program, and classes will launch in the two counties in April 2018. Why is this type of education important? The number of neonatal abstinence syndrome births in New Hanover County tripled in 2017 from 2016. The costs of these births—including the impact on the babies and the families, and the costs of medical care—are extreme. Tennessee has shown us that a little voluntary planning can mitigate these numbers.

There is much work to be done, and many opportunities exist for innovation and improvement at the state and local level, both within the court system and in our communities by courts partnering across systems to address the crisis. The time to lead is now. ■

This article represents opinions of the author. The author is not a spokesperson for the judicial branch. This article deals only with issues with which the author has experience, and is not an attempt to describe every issue or response in the court system or in communities to the opioid crisis.

Judge J. H. Corpening has served as a district court judge since 1991, and currently serves as the chief district court judge for the 5th Judicial District (New Hanover and Pender Counties). He is active on the bench, in his community, and across the state and country on issues affecting children and their families. He is a member of the Chief Justice's RJOI, and is an active member of the CJAG and Health Leadership Councils in his community, addressing the opioid crisis.

Medically Assisted Treatment for Opioid Dependence in the Criminal Justice System

By Christa Capua

Authors' note: The following article is intended only to discuss the legally protected rights of MAT patients within the judicial system. It does not advocate for one form of treatment over another. The form of treatment chosen is a highly personal one—which only underscores the need to make a variety of treatment options available in our communities, and to not impose our biases on others.

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Outpatient Medically Assisted Treatment (MAT) refers to the use of medications (generally buprenorphine and methadone) in conjunction with therapy in an outpatient setting. Buprenorphine and Methadone are effective at both blocking withdrawal symptoms, as well as the patient's ability to get "high" if they take opiates while on their medication. This form of treatment, which is provided at facilities that have been both federally- and state-licensed, has been validated by years of study showing that it is one of the most effective tools we have to stabilize addiction, reduce crime, and improve public health. Despite the evidence, MAT is often viewed with unwarranted prejudice and mistrust. This can be especially true within the criminal court system.

Such mistrust is simply misplaced. According to the National Institute on Drug Abuse (NIDA) article, *Effective Treatments for Opiate Addiction,* published by the National Institute of Health in November 2016:

> Buprenorphine and methadone are "essential medicines" according to the World Health Organization....MAT decreases opioid use, opioid-related overdose deaths, criminal activity, and infectious disease transmission. After buprenorphine became available in Baltimore, heroin overdose deaths decreased by 37%....MAT increases social functioning and retention in treatment. Patients treated with medication were more likely to remain in therapy compared to patients receiving treatment that did not include medication.

Bias surrounding addiction plays itself out in a variety of ways, including MAT patients being turned away from counseling centers affiliated with the drug court system, as well as unlawfully discriminatory conduct by the courts. Depending on the specific conduct involved, a court's discriminatory conduct can violate the MAT patient's legal and constitutional rights, including, among others: (a) the right to be free from discrimination under Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213; (b) violation of state and federal laws protecting the confidentiality of drug treatment patient records; and (c) violation of the individual's right under the 14th Amendment to Equal Protection of the Law.

In its publication, "Best Practices for North Carolina Treatment Courts," published by the Courts Program Division in August 2010, the North Carolina Administrative Office of the Courts emphasized the importance of MAT in dealing with addicts in the criminal justice system:

> **Use of Medication Assisted Therapies:** In keeping with recommendations for best practice by the SAMHSA (Substance Abuse Mental Health Services Administration) Center for Substance Abuse Treatment, DTC team members should support recommendations made by treatment professionals regarding the prescription of medication-assisted treatment (MAT) for DTC participants. Integration of MAT into the individual's

overall treatment plan necessitates a variety of procedural adjustments including specialized drug testing procedures and careful communication and monitoring between the DTC and prescriber. The drug treatment court should obtain a Release of Information for all physicians and clinicians working with the DTC participant.

Unfortunately, some courts—in North Carolina and nationally—have disregarded the best practices recommended regarding MAT. Some judges, and others in the system ranging from probation officers to contracted drug court treatment providers, have "ordered" patients to cease taking their legally prescribed and potentially lifesaving medication, and they have further taken punitive actions (issuing probation violations, etc.) when patients followed their doctors' orders rather than the courts' (unethical and unlawful) orders.

For example, in 2013 one North Carolina Superior Court judge, among other things: (a) expressed the view that the personnel of the local federally- and state-licensed MAT treatment facilities are the only persons who "believe that these drugs [buprenorphine and methadone] as they are currently being used are helpful to those on probation, who are dealing with addictions to controlled substance"; (b) "ordered" that, "effective immediately, the use of these drugs as treatment for substance abuse addictions will no longer be allowed as part of any probationary sentence in [this] judicial district"; (c) declared that "any individual using the specified drugs for the treatment of addiction when his or her probationary sentence began may be given 90 days to completely detox from these drugs, or face a probation violation"; and (d) ordered that MAT treatment facilities "will no longer be acceptable treatment facilities for those on probation in this district."

Application of the superior court judge's order resulted in violation of several probationers' rights (including the jailing for contempt of one probationer—and the concomitant denial of access to her medication—because she followed her physician's orders rather than "detox" as the judge had "ordered"). Judicial disregard of best practices concerning MAT can have even more dire results:

> When an old offense caught up with 28-year-old Robert Lepolszki last year, he had a full-time job and had kicked heroin. But Frank Gulotta Jr., the Nassau County judge assigned to his case, forced him to end the only treatment that had ever worked: methadone maintenance. Judge Gulotta said that methadone does not enable a defendant "to actually rid him or herself of the addiction." Complete abstinence programs were the only treatments his court allowed. Not long after stopping the medication, Mr. Lepolszki was dead from an overdose.
>
> —Maia Szalavitz, *Every Drug Court Should Allow Methadone Treatment*, New York Times, Op-Ed Section, July 20, 2015.

Only recently, when federal funding was cut to drug courts[1] not following MAT guidelines, has there begun to be a meaningful change in the court systems' treatment of those in these programs.

The fact is, a lot of damage has been done: not just directly by violating the rights of many of those who have had to go through drug court systems that disregarded best practice recommendations, but also by furthering the public's negative perception about addicts and the treatment of addiction.

However, there is hope that with this systemic change finally taking effect, we can begin to repair the damage that an institutionalized bias has had upon our communities.

What Next?

Moving forward, the legal community has an obligation to respect addicted persons' legal rights. Resources useful in working to protect an addicted person's rights include:

- *Know Your Rights: Rights for Individuals on Medication-Assisted Treatment.* This booklet is available online at bit.ly/2HmArYF.
- Another informative SAMHSA publication is *Adult Drug Courts and Medication-Assisted Treatment for Opioid Dependence*, available at bit.ly/2tlHmsn.
- The Legal Action Center (LAC) has a variety of excellent resources, among them:
  - *Medication-Assisted Treatment in Drug Courts: Recommended Strategies*, available at bit.ly/2HNeRJQ.
  - *Training Materials—Attorneys & The Opioid Epidemic: Asserting Your Clients' Right to Medically Assisted Treatment* available at bit.ly/2HhOr1q.
  - *Legality of Denying Access to Medication Assisted Treatment in the Criminal Justice System* available at bit.ly/2tlHmsn.
- The North Carolina Association for the Treatment of Opioid Dependence (NCATOD) has a helpful video about MAT, which can be found at bit.ly/2qLr7SJ. ■

Christa Capua, a licensed clinical addiction specialist and licensed clinical supervisor, graduated in 2005 from Florida International University with an MS in counseling education. Since then she has focused her career primarily on working with and advocating for those affected by the disease of addiction. She can be reached at ccapua@steppingstoneofboone.com. Ms. Capua appreciates the editorial suggestions of David Larry, a member of the North Carolina Bar.

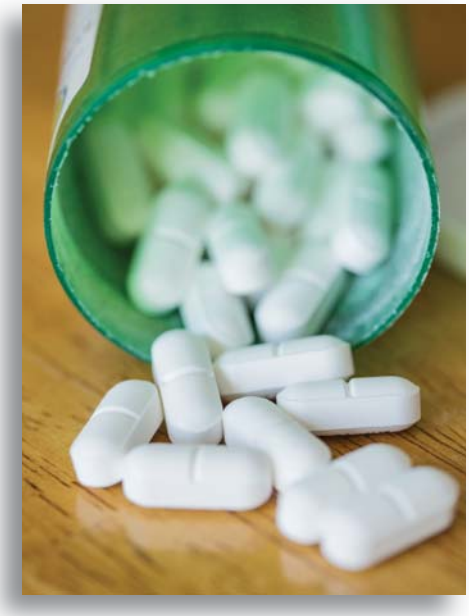
Endnote

1. A. Knopf (2015) *SAMHSA bans drug court grantees from ordering participants off MAT,* Alcoholism and Drug Abuse Weekly, bit.ly/2qKg2Bu.

Medically Assisted Treatment Might Not be the Answer

By Robynn Moraites

A companion article by Christa Capua published in this edition of the *Journal* addresses the use of Medically Assisted Treatment for opioid dependence, holding that drugs such as buprenorphine (Suboxone) and methadone (agonist and partial agonist treatments)[1] help patients achieve "stability and lasting *recovery* (emphasis added) from the disease of addiction." "Medication Assisted Treatment" (MAT), she asserts, "has been validated by years of study showing that it is one of the most effective tools we have to stabilize addiction, reduce crime, and improve public health."



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Stabilizing addiction, reducing crime. and improving public health are worthwhile goals. They should not, however, be confused or interchanged with recovery from addiction (which also reduces crime and improves public health).

MAT, backed by state and federal funding, has become the silver bullet of our time for treating opioid use disorders. With the treatment mandate of the Affordable Care Act in play, there are now billions of dollars at stake for "big pharma." With that backdrop in mind, it is important to look with a critical eye at the purported "years of study" of the efficacy of MAT. While MAT may be necessary to stabilize suffering addicts, long-term use may be detrimental to achieving actual long-term remission and recovery.

There is No Economy in Abstinence

Dr. Al Mooney, an addiction specialist and physician who served for many years on the board of the Lawyer Assistance Program, often observed when giving a CLE presentation, "There is no economy in abstinence." Aside from one Harvard-based academic researcher,[2] no one is interested in researching or studying the effectiveness of abstinence-based programs because there is nothing to sell. At the time he was giving those CLE talks years ago, Dr. Mooney had surveyed the medical literature and could find only one study that used newly sober members of AA and NA as the "control group" against a panel of various pharmaceutical interventions and remedies. The result? The control group out-performed the pharmaceutical remedies at a rate of six to one.

So please take as a baseline premise the fact that the research that does exist on MAT is examining the effectiveness of pharmaceutical intervention without regard for abstinence-based solutions, and is primarily funded by drug companies. In reviewing the literature for this article it is safe to say that, in terms of scientific validity, much of the existing research is suspect or is limited

to short-term outcomes (six to 12 months). To date there are very few studies examining the long-term effectiveness and outcomes of MAT therapies other than methadone.[3] [4] And there is at least one study, supported by the National Institute of Health and the Department of Veterans Affairs, finding that long-term use of Suboxone led to patients lacking in self-awareness of being happy, sad, or anxious compared to the general population.[5]

Integrity of the research aside, it is also important to examine who is citing the research that does exist. Capua provides references and links to the Legal Action Center, a "nonprofit law and policy organization… whose sole mission is to fight discrimination against people with histories of addiction… and to advocate for sound public policies… " The largest donors to this nonprofit organization as shown on their website are not only the global biopharmaceutical companies that manufacture Suboxone (Indivior plc), Vivitrol (Alkermes plc), methadone (Mallinckrodt Pharmaceuticals), and other MAT products, but also the international law firms that represent them.

Opioid use disorder and its treatment remains big business. There is a three-fold market to be exploited: 1) addiction itself (under the guise of pain management), 2) treatment for opioid addiction (MAT), and 3) emergency overdose reversal (Narcan™ "The Opioid Antidote to Save a Life" or the generic naloxone) and side effects (like Movantik for opioid-induced constipation)—each with a billion dollar market.

None of this is new. Throughout the history of opioid use in America, recognizable company names—now giants in the industry—stand out. Merck created morphine as an antidote to opium abuse. Bayer introduced heroin to the world originally as a cough suppressant and later as a way to treat morphine addiction. The American Medical Association gave heroin its stamp of approval in the early 1900s. The World Health Organization, which describes MAT therapies as "essential medicines," is the same group who brought us "Pain" as the fifth vital sign, which is a significant contributing factor in the overprescribing of opioids still seen today. What we are currently experiencing is a variation on a theme, and it is important to hold that frame of reference when examining best practices for treating opioid use disorder.

Efficacy of Treatment

There is a big disconnect between best practices and usual practices in the treatment of opioid use disorders. Particularly in the criminal justice system where resources are sparse, MAT is increasingly being used as a one-size-fits-all solution administered in perpetuity with no supplemental treatment. Agonist MAT therapies like Suboxone are becoming a "treatment of substitution" to quell physical cravings, while no additional treatment support is provided to address the underlying addiction. Overdose deaths from heroin within 24 to 48 hours after running out of agonist MAT therapies are evidence of this problem. Capua's point is well taken that judges do not seem to understand the life-and-death risks associated with ordering probationers off their MAT too soon. The issue, however, is that MAT use in perpetuity is not a best practice.

There is no question that there is an appropriate time and place for MAT. Without strong, resourced relapse prevention and continuing care,[6] opioid use disorders have an 80-90% relapse rate following treatment compared with a 40-60% relapse rate for most other substance use disorders. MAT is particularly effective during detox. However, less than 15% of people detoxing from opioids detox fully before discharge or continue in any form of treatment. In the current system, there are delays and fragmentation in MAT induction. There are also inconsistent monitoring, management, or care standards in using MAT, and ineffective responses to relapse. MAT is also best used in the early stages of recovery, while the recovering person is receiving substantial comprehensive additional treatment.

Treating opioid use disorder is a complex endeavor; treatment must be tailored to the individual. Any one-size-fits-all approach is considered a worst practice. Severity of use, biological effects of long-term opioid use, social determinants, personal motivation, access to long-term treatment, and other considerations all need to be factored into the process to assess the possibilities for moving from stabilization to recovery. Our current system of care for treating individuals in the criminal justice system offers very limited opportunity to help people through the process of remission to recovery. As a result, the criminal justice system has largely adopted a harm-reduction model that does not foster remission and recovery.

When not being used in accordance with best practices, MAT therapies like methadone and Suboxone, agonists and partial agonists, are each subject to abuse. There is ample documentation that these two MAT therapies are diverted and used to get "high" when opioids or heroin are not available.[7] In fact, the Lawyer Assistance Program has helped lawyers addicted to Suboxone and methadone to move into long-term remission and recovery from dependence on these substances. Both methadone and Suboxone, when used improperly, have led to death. Methadone overdose deaths peaked at 5,418 in 2007 and settled to 3,400 in 2014.[8] In 2013, Deborah Sontag wrote an exhaustive wide-ranging two part essay analyzing Suboxone treatment from user and prescriber perspectives.[9] In her article, she noted at least 420 deaths in 2013 listing Suboxone as a contributing factor.

Abstinence is the treatment standard for alcohol dependence. There are currently no validated MAT therapies for stimulants[10] or benzodiazepines,[11] so abstinence remains the standard. Little attention has been given to a class of MAT that are antagonist treatments (i.e. Naltrexone/Vivitrol), which block opiate receptors in the brain. These antagonist MATs help sustain abstinence from opioids as well as alcohol. While Vivitrol is sometimes used to reduce cravings for alcohol during the detox stage and in early recovery, abstinence remains the standard. Currently, antagonist treatments are a hugely underutilized resource that significantly contribute to long-term, abstinence-based recovery from opioid use disorder. Studies are showing that prison inductions (when individuals are abstinent) of Naltrexone prior to release are helping individuals maintain abstinence at a significantly higher level upon return to the community. Use of Naltrexone is also keeping these individuals better engaged in the minimal continuing care treatments that are available.

To illustrate how often addiction and recovery are misunderstood in the general medical and wider community, a LAP volunteer relayed a story wherein he was meeting with a new physician. Upon learning the lawyer was a recovering alcoholic with over 25 years of sobriety (meaning total abstinence), the doctor repeatedly urged the lawyer to begin taking Vivitrol to reduce cravings. The lawyer had to explain to the doctor that he had not had cravings since

the first few months of his recovery journey over 25 years ago. The physician still urged him to consider it "just in case." Unfortunately, this physician's thinking is an example of the kind of approach that increasingly permeates most major public health policy debates.

The treatment field has long had programs in place that effectively treat individuals with substance use disorders. Research has shown that the most effective treatment programs are those that treat professionals, like doctors and airline pilots, with a comprehensive continuum of care from in-patient treatment through relapse prevention and ongoing monitoring for abstinence.[12] McLellan *et al*, conducted a five-year-long study of close to 1,000 physicians enrolled in 16 state physician assistance programs. While alcohol was the primary substance of abuse for 50.3% of participants, opioid abuse occurred in 35.9% of the participants. This study showed that the long-term positive outcomes for participants ranged from 70-96% of participants still abstinent after five years.[13] Pilots' programs show comparable long-term sobriety results with the majority of participants (85-90%) remaining sober longer than two years.[14] These are the highest outcomes in all available treatment literature.[15] What has been the barrier to implementing this successful treatment strategy in drug courts? The answer is a lack of funding and resources.

Professional programs are time intensive, typically two to five years in duration, with consistent monitoring, accountability, and therapy. But the resulting success rates are remarkable. There is real recovery without long-term use of MAT. Participants go on to live healthy, productive lives. To implement similar programs in the criminal justice system would impact taxpayers. To date our criminal justice policies, whether deliberately decided or having evolved by default due to lack of funding and time, have favored the harm reduction model where addiction is stabilized rather than abated. The judges cited in Capua's article, frustrated with this public policy, appear to be trying to remedy it at the individual-user level, an approach which will never succeed.

As the late Supreme Court Justice Louis Brandeis said, "sunlight is said to be the best of disinfectants." Unbiased, full, and complete study on the long-term safety and efficacy of MAT medications needs to be undertaken. At a policy level we should decide whether MAT is intended to be used as a long-term solution for substance use disorders, or whether it is meant to bridge the gap between a life-and-death crisis and real recovery. Is MAT dependence really recovery? Don't our fellow citizens suffering from opioid use disorder deserve better? For their benefit, we must help our courts identify and implement the best solutions. ■

Robynn Moraites is the director of the North Carolina Lawyer Assistance Program.

Endnotes

1. Agonist treatments stimulate opiate receptors in the brain, creating a "high" feeling. There are also antagonist MAT treatments that block opiate receptors in the brain and cause no opioid effect. Each will be discussed in turn.
2. Dr. John F. Kelly is the Elizabeth R. Spallin associate professor of psychiatry in the field of addiction medicine at Harvard Medical School—the first endowed professor in addiction medicine at Harvard. He is the founder and director of the Recovery Research Institute at Massachusetts General Hospital (MGH). The Recovery Research Institute has an entire section dedicated to research on a variety of topics, including abstinence-based programs as well as long-term outcomes of using MAT online at recoveryanswers.org.
3. bit.ly/2EqBXT3 and bit.ly/2BqJn7q.
4. *See, e.g.*, bit.ly/2HezMFa and bit.ly/2IyELQE.
5. Long Term Suboxone Emotional Reactivity, Hill, Dumouchel, Dehak, et al (July 9, 2013).
6. As seen, for example, in professional assistance programs discussed later in this article.
7. The "high" that reportedly is experienced on agonist therapies is typically not long lasting. Good dose management and clinical oversight can better ensure that people only receive what is needed. Buprenorphine/Suboxone has a ceiling effect, so increasing tolerance is not an issue, However, with neuroadaptation the drug tends to serve primarily to prevent withdrawal versus getting high. This of course is one of the core treatment challenges with MAT because people resort to other drugs when not working on recovery.
8. M. Faul, M. Bohm, and C. Alexander, *Methadone Prescribing and Overdose and the Association with Medicaid Preferred Drug List Policies — United States, 2007–2014*. MMWR Morb Mortal Wkly Rep 2017;66:320–323. DOI: bit.ly/2q6XETZ.
9. *Addiction Treatment with a Darkside,* D. Sontag, NY Times, Nov. 13, 2013, nyti.ms/1cX6QBf.
10. Cocaine, Adderall, amphetamines, methamphetamine.
11. Xanax, Valium, Klonopin, Ativan, Librium, Serax.
12. Lawyer Assistance Programs follow this same model and are similarly effective, but outcomes have not been as extensively documented and researched because, unlike physicians and airline pilots programs, a lawyer's participation with a LAP is confidential and is not tied in any way to maintaining continued licensure in the profession.
13. A. T. McLellan, G. S. Skipper, M. Campbell, R. L. DuPont, *Five year outcomes in a cohort study of physicians treated for substance use disorder in the United States.* BMJ. 2008;337:a2038.
14. bit.ly/2qaD8BJ.
15. G. D. Talbott, K. V. Gallegos, P. O. Wilson, T. L. Porter, *The Medical Association of Georgia's Impaired Physicians Program. Review of the first 1,000 physicians: analysis of specialty.* JAMA. 1987;257(21):2927-2930.

President's Message (cont.)

Mr. Silverstein. It happens up here all the time." The rest is a blur.

The argument must have ended because I do recall exiting the courtroom with the masses, and as Senator Ervin moved to one end of the corridor outside the courtroom, the entire retinue followed him. My team, which consisted solely of my supportive wife, went with me to the other end of the hall and watched the spectacle of flashing bulbs, shouted questions, and admiring looks. I thought perhaps someone might want to mosey down and talk to me about the legal issues in the case, or the state's contentions. What hubris! No one was interested in me or the case. I had done absolutely nothing to deserve attention; I had simply been assigned a case in which a true national icon had also been involved.

I now see these events with a perspective afforded by the passage of time, and have a greater appreciation of the opportunity to have had a personal interaction with Senator Ervin at a time when he had transitioned from the limelight of fame to the glow of respect. I know that I was not wise enough to recognize the lasting effect it would have on me then, but I am gratified to better understand today how fortunate I was to participate in an appellate argument with an esteemed "country lawyer" in a case before the Court on which he had served.

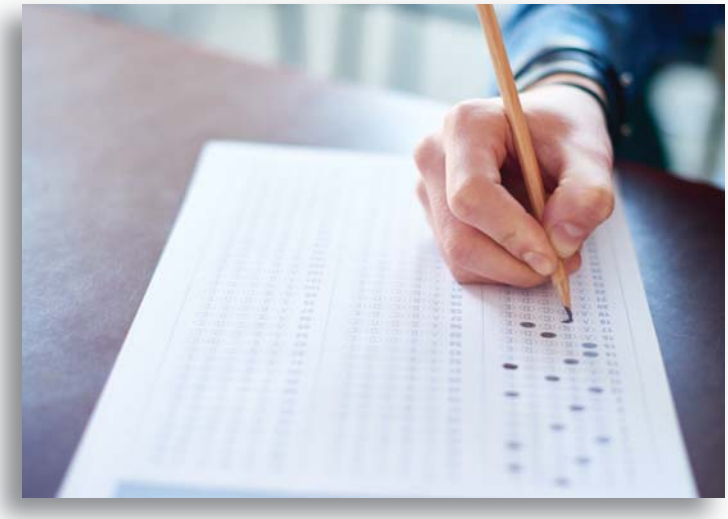
More important, I also better understand how humility can enhance our ability to appreciate opportunities when they arise, and that self-importance is a byproduct of a lack of true understanding, not accomplishment. Humble pie may not be a popular menu selection, but the aftertaste can be very satisfying. ■

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

The Uniform Bar Exam is Coming to North Carolina

By Randel E. Phillips

With our Supreme Court's November 8, 2017, approval of revised Rules Governing Admission to the Practice of Law, the Uniform Bar Exam (UBE) will soon be a reality in North Carolina.



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If my law partners' reactions are any guide, you may be baffled by that first sentence. You may ask, "What on earth is the Uniform Bar Exam?" Simply put, the UBE represents the most significant change in our bar exam since North Carolina cut what was a three-day exam to two days.

The North Carolina Board of Law Examiners (BOLE) will administer the UBE for the first time at the February 2019 bar exam. A key feature of the UBE is its "portability": "General" applicants (i.e., those who apply to take the bar exam in North Carolina) can use their UBE score to pursue admission in another UBE jurisdiction without having to take another bar exam (if their score satisfies the other state's pass score and subject to time limits specified by each individual state).[1] Similarly, "Transfer" applicants can use a UBE score from another jurisdiction to gain admission in North Carolina (again, assuming the score equals or exceeds our pass score).[2]

The UBE responds to a number of trends in the legal profession, some of which were well underway before the recession of 2008-09, while others emerged or became more urgent because of the recession. These include increasing lawyer mobility (the likelihood that a lawyer will move between jurisdictions over the course of a career); the increasingly multi-jurisdictional nature of law practice for both litigators and business lawyers; greater financial burdens on law school graduates; and the sharp drop in employment opportunities for new lawyers since the recession. (The last put law school graduates in a particular quandary: Sign up for the bar in a particular state, not knowing if a job opportunity will materialize there? Or apply in several states and bear not only the cost of multiple application fees and bar review courses at what may be the most cash-strapped time of their lives, but also the potential delay in gaining admission in the state where employment ultimately materializes, since almost all states give their bar exams on the same dates in February and July.) These trends contributed to a widespread reexamination of the assumption that protecting the public requires that every state administer its own distinctive bar exam.

The movement towards the UBE began in 2002, with the formation of the Joint Working Group on Legal Education and Bar Admissions by the American Bar Association Section of Legal Education and Admissions to the Bar, the Association of American Law Schools, the Conference of Chief Justices, and the National Conference of Bar Examiners (NCBE). What emerged as the UBE was a combination of three existing standardized tests from the NCBE: the Multistate Bar Exam (MBE), a multiple-choice test (a part of the North Carolina bar exam since the 1970s); the Multistate Essay

Examination (MEE), resembling the essay portion of the current North Carolina bar exam; and the Multistate Performance Test (MPT), which simulates actual tasks a starting lawyer might be called on to perform.

In 2010 the Conference of Chief Justices and the ABA Section of Legal Education and Admission to the Bar adopted resolutions urging "bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination"; and Missouri and North Dakota became the first states to adopt the UBE. Five more states followed in 2011, four in 2012, three in 2013, five in 2015 (including New York), and five more states plus the District of Columbia in 2016. A February 2016 Resolution from the ABA House of Delegates urged "bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination." In particular, the move by New York—one of the nation's largest jurisdictions and known for the rigor of its bar examination—caught the attention of the BOLE and agencies in other states. In October 2015 the BOLE appointed a special committee to evaluate the UBE. After 11 months of study, the special committee recommended adopting the UBE. The full board approved the recommendation unanimously on October 26, 2016.

A number of factors led to the board's decision:

1. **The UBE's "portability."** The growing number of UBE jurisdictions meant that offering the UBE here could be a real benefit for prospective lawyers taking the bar exam in North Carolina. Lowering a barrier to lawyer mobility was also seen as a contribution to the chief justice's initiative to expand access to legal services. A collateral benefit of portability is its potential to relieve some of the financial burden on new lawyers by avoiding the expense of multiple bar review courses and travel to multiple examination sites. (Hard-hearted as we may seem, the board worries about the financial straits in which many recent graduates find themselves.)

2. **The superior process for developing UBE test items.** NCBE's process includes the work of NCBE staff and drafting committees composed of law professors, practicing attorneys, and judges; review by outside content experts; and "pretesting" items with recently licensed attorneys across the country. This capacity to develop and vet questions well exceeds the board's resources. This should minimize the incidence of questions that "test" poorly or produce anomalous grades.

3. **NCBE's more reliable process for developing grading guides and "rubrics."** The board's current process for figuring out how to grade a particular question typically starts with a question and sample answer prepared by a member of the board or the board's Special Drafting Committee.[3] From that, there are a number of judgments to be made in arriving at a "pattern" or "rubric," which the board member assigned to grade the question will use to evaluate each applicant's answer and assure consistency from answer to answer: Does the sample answer address all the points that a competent applicant could be expected to raise based on the fact pattern and the question posed? How should the various points be weighed in the overall grade (based both on their significance to legal doctrine and the importance of their being known by a competent entry level)? Such analysis now is typically the responsibility of a single board member. As with the NCBE's drafting and vetting of questions, the NCBE's ability to devote many pairs of knowledgeable eyes to the development of grading rubrics will improve our board's ability to assure a fairly graded exam.

4. **A positive response from our in-state law schools.**

5. **The new tool the MPT offers for assessing readiness to begin practice.** The board has long considered the essay portion of the exam as much more than a test of memory: we try to evaluate essay answers for what they show about applicants' ability to reason and to organize and articulate such reasoning, in a way that confirms an ability to practice law. The board believes the MPT will enhance that effort.

What Will the UBE Mean for North Carolina Lawyers and Law Students?

The most obvious benefits of the UBE will accrue to recent law school graduates. The UBE will enhance the ability of prospective lawyers to qualify for admission in multiple jurisdictions, in response to available or changing employment opportunities. (Perhaps most notably, it opens the door to new lawyers to practice in both Carolinas without taking two bar exams.) It should also lessen the need for multiple bar exam prep courses and bar exam sittings in multiple jurisdictions, with their associated costs.

Much about bar admissions in North Carolina will remain the same, including the application process, and the character and fitness review. Comity will continue as a path to admission for more experienced lawyers. The exam will still be given in the Raleigh area, on the last consecutive Tuesday and Wednesday of February and July. The second day of the exam will still be the multiple-choice MBE, graded by the National Conference of Bar Examiners. (The MBE will now count for 50% of an applicant's grade.) The first day's examination will still be graded by board members. Raw scores from the first day's results will still be "scaled" to generate the composite score that determines bar passage.

In other respects, the first day of the bar exam will differ substantially from what applicants have experienced in the past. In the morning, applicants will take the Multistate Essay Examination (MEE) (counting for 30% of the applicant's score). The MEE resembles the current essay portion of the North Carolina exam, but consists of six essay questions (rather than the 12 questions on the current exam). Each MEE question can be expected to take roughly the same amount of time as one of the board's current essay questions. Each question, however, may pose issues from more than one of the MEE's 12 subject areas (11 of which are the same subjects tested on the current North Carolina essay portion).[4]

Applicants will spend the afternoon of the first day on the Multistate Performance Test (MPT) (counting for 20% of the grade). The MPT requires the applicant to perform two practical exercises, requiring about an hour and a half each: It presents the applicant with hypothetical "files" containing pertinent facts *and law*, and assigns tasks that might be expected of starting attorneys—e.g., preparing a demand letter or an advisory or argumentative memorandum or drafting a pleading. Based on our review of past UBE materials, the board believes the first day will every bit as rigorous as the current exam, if not more so.

The New "State-Specific Component"

The MEE tests applicants' ability to apply "general" principles of state law in the US. It will not, of course, specifically test North Carolina law. This is a significant difference

from the present North Carolina essay portion, though perhaps not as great as some may think. After all, much of the North Carolina law tested by the current essay portion is in line with "general" principles. And, for many years the board's grading philosophy has been to value legal analysis, organization, and clear expression over the mere regurgitation of black letter law, and to give a decent grade to a well-reasoned, articulate answer based on prevailing US law, even though it may have missed a distinctive point of North Carolina law.

Still, the board wanted to find a way to make up for the incentive that a state-specific exam can provide for applicants to immerse themselves in a particular state's law. The NCBE's rules allow, but do not require, UBE states to add a "State-Specific Component" (SSC). SSC's can range from a formal exam to required attendance at a course in state-specific law. Some UBE states have chosen the former. Others have chosen the latter (with some requiring the course before admission, and others after). Some UBE states have decided not to have an SSC. The board decided to create a particular kind of required course—a series of online video presentations that applicants can view at their convenience, with each presentation followed by "hurdle" questions intended to confirm that the applicant paid attention. Successful completion of the SSC will be a prerequisite to licensure in North Carolina.

In selecting the right subjects for the videos, the board had two considerations in mind. First, what subjects in North Carolina are most likely to diverge from "prevailing" or "general" principles of law? Second—bearing in mind that not all newly licensed attorneys will find themselves in a practice setting that provides significant supervision—what topics might a new lawyer expect to encounter in a solo or small office practice? Using those criteria, the board selected six subject areas: real property, estate planning and administration, family law, torts, criminal law, and workers' compensation. That course is on track for viewing starting June 30, thanks to a joint effort by the board and representatives from the private bar and all seven North Carolina law schools. It consists of six one-hour online video presentations. Each video ends with three randomly selected "hurdle" questions. Failure to answer any hurdle question correctly will require the applicant to re-view the video, and to again confront three randomly selected hurdle questions.

In summary, the North Carolina Board of Law Examiners looks forward to a bar exam that will provide (1) better questions and better grading, with a surer-footed indication of ability to practice law, and (2) an exam grade that will be portable to other UBE jurisdictions—coupled with the State-Specific Component's condensed review of distinctive points in North Carolina law for the starting lawyer. Hopefully, this is a win for both bar applicants and the public at large. ■

Randel E. Phillips is a member and past chair of the North Carolina Board of Law Examiners, currently serving on the board's special committee on the Uniform Bar Examination. He practices in Charlotte with Moore & Van Allen, PLLC.

Endnotes

1. Portability deadlines in other UBE states range from two to five years. (North Carolina's is three years.)

CONTINUED ON PAGE 25

Pro Bono for *Pro Se* Litigants

By Judge Richard Dietz

Earlier this year, our state's appellate courts joined a growing list of state and federal courts with programs to assist *pro se* litigants. I'm excited to tell you about our program, but first I have a confession: I don't like the North Carolina Rules of Appellate Procedure. After decades of revisions and changes, the rules have become bloated and needlessly verbose. Don't believe me? Pull out your rulebook and re-read the rules about preparing a record on appeal (that's Rules 9, 10, and 11 if you need a refresher). Even by intention, it would be hard to devise a more incomprehensible set of instructions.

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There's hope on the horizon. When the trial division moves to electronic filing, our state's antiquated practice of having the parties prepare the record on appeal likely will go away; instead, the clerks of superior court could send a digital file containing the trial record to the appellate court, and the parties could submit a joint appendix containing only the key documents referenced in their briefs. This is how the federal courts and most other states do it.

But for now, even skilled lawyers struggle with the complexity of this and many other aspects of our state's appellate rules and practice. Imagine, then, having to confront the appellate process with no legal training at all. It is a challenge faced by a growing number of litigants who find themselves in our justice system without the resources to afford a lawyer. And the unfortunate result is that our appellate courts often cannot even reach the merits of a *pro se* litigant's appeal—for example, because the court did not receive a transcript of the trial proceedings, or because key documents are missing from the appellate record.

Over the last few years, my colleagues and I have been exploring ways for the court of appeals to assist *pro se* litigants appearing before the court. We were always hamstrung by the reality that the court on its own could not offer a reliable fix.

Then, last summer a group of lawyers and judges recognized that there may be a solution to this problem. Among the Bar, there are many lawyers who want to do *pro bono*

work for needy clients, and who want the experience of handling an appeal. If there was a way to connect these lawyers to indigent *pro se* litigants, we could help ensure that everyone who confronts the appellate process has equal access to justice.

What began as a working group ultimately became the Appellate *Pro Bono* Program, a collaboration between our state's appellate courts, the North Carolina Bar Association's Appellate Practice Section, and the North Carolina *Pro Bono* Resource Center.

The program itself is straightforward. When a case is first docketed with the court of appeals or Supreme Court involving a *pro se* litigant who qualifies for *in forma pauperis* status, the court will send the litigant a form that outlines the program. Interested litigants must complete the form, which includes a certification of indigency and other information about the appeal. Once a litigant opts in by returning the form, the court forwards the information to a committee of the Bar Association's Appellate Practice Section. The committee maintains a list of interested attorneys and locates an attorney willing to handle the case free of charge. After both the lawyer and client agree to the representation, the case moves forward in the appellate courts like any other case. The program also encourages the courts to provide an opportunity for oral argument for cases with *pro bono* counsel.

The participation of the Bar Association's appellate experts was a key piece of the puzzle. As I mentioned earlier, even trained lawyers often find appellate practice daunting. So the Appellate Section has developed a training seminar to prepare interested lawyers to handle a *pro bono* appeal. The training, which includes lectures from current and former judges on the court of appeals, is held in the court of appeals courtroom and covers all the nuts and bolts of the appellate process, from filing the record to oral argument. The program also will be available on video through the *Pro Bono* Resource Center.

To ensure that lawyers are ready for appellate work before taking on a case, the training program is a mandatory prerequisite to getting on the Appellate Section's list of *pro bono* attorneys. The Appellate Section also provides mentoring opportunities for lawyers who need help preparing to handle an appeal, and resources on appellate advocacy.

At this point, I hope many of you are as excited as I am about the program and wondering how you can get involved. It's easy. Contact the Bar Association's Appellate Practice Section to express your interest in volunteering and to get information on the next training program. You can contact the section's *pro bono* committee at NCAppellate ProBono@gmail.com.

I'll end with one last pitch for getting involved. In the mid-2000s, I practiced appellate law in what is now known as "the *Viar* days." The name comes from a Supreme Court decision holding that "the North Carolina Rules of Appellate Procedure are mandatory and failure to follow these rules will subject an appeal to dismissal."

In the *Viar* days, lawyers lived in fear that their appeals would be dismissed because they had inadvertently violated our state's complicated appellate rules. The Supreme Court has since relaxed the penalties for appellate rules violations. But the *Viar* days are a reminder of how intimidating appellate practice is for the uninitiated. The Appellate *Pro Bono* Program won't solve the problem of access to justice in our court system; however, I'm confident the program will be life-changing for many litigants whose greatest challenge on appeal is having to confront the process all alone. ■

Richard Dietz is a judge on the North Carolina Court of Appeals and serves on the North Carolina Equal Access to Justice Commission. The Appellate Pro Bono *Program's organizing committee included Judge Dietz, Judge Linda Stephens from Hedrick Gardner, Sylvia Novinsky from the* Pro Bono *Resource Center, Troy Shelton from Ellis & Winters, and Matt Wunsche from the Guardian ad Litem Program.*

Vietnam Revisited

By A. Root Edmonson

In the spring of 1968, just before exams began at UNC-CH in my junior year, I realized that a study binge was not going to help me recover from the lack of serious attention to my coursework. I asked each professor if I could drop each course with no grade. All of my professors agreed. Thinking that I would be in summer school before my draft board knew what I had done, I dropped all classes on a Thursday afternoon just prior to final exams. After spending a party weekend in Chapel Hill, I went home on the following Monday to tell my parents what I had done. My report for physical notice was already at my parent's home.

I volunteered to go to basic training early, and was at Fort Bragg before exams were over. I assumed that the army would use my education for its benefit, and refused to extend my length of service, which would have allowed me to select my advanced training. That assumption was as erroneous as the assumption that enrolling in summer school would help me avoid being drafted. I was sent to Fort Polk, Louisiana, home of "Infantry Training for Vietnam." After nine weeks of hell at Fort Polk, I was sent to Fort Knox, Kentucky, to learn how to drive an armored personnel carrier ("track"). Comparatively, that was a three week vacation. I then got two weeks of leave before I reported to Travis Air Force Base on November 16, 1968, to be transported to Long Binh, Vietnam. At the airport in Oakland, CA, I spotted my best buddy from Polk and Knox, Hamilton "Kip" Ernst. We travelled to Long Binh together and both got assigned to the 2nd Platoon, A Company, 4/31st Infantry, 196th Light Infantry Brigade, American Division. After two more weeks of training about the booby traps and other hazards particular to our area just north and west of Tam Ky, which was about 25 miles south of Da Nang, we were taken by helicopter to our company's forward fire support base, Landing Zone West. From LZ West, they tried twice to deliver us by helicopter to A Company in Antennae Valley. Neither time did the pilot consider it safe to land in the valley. The next day, A Company was taken to a ridge overlooking the valley to dig in to support artillery that was brought to

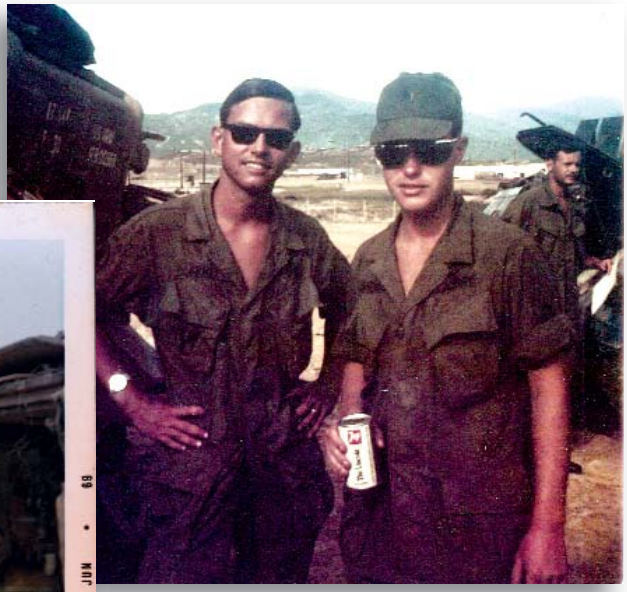
the ridge to support the other companies still fighting in the valley. I spent the entire month of December on that ridge—digging, building, and patrolling without an opportunity to shower. I ate C-rations out of my canteen cup without the opportunity to clean it effectively. At least while on that ridge, I didn't have to shoulder my heavy pack while out on patrol. I only had to take ammo and water.

After the first of the year, A Company went on missions over hills and through valleys, and once through triple canopy jungle, usually while shouldering 60-pound packs. We often trudged through rice paddies and areas covered with elephant grass that had sharp edges, leaving cuts that would quickly become infected. As a result, we had to wear long sleeved shirts even when it was well over 100 degrees. We once traveled down a mountainside infested with leeches. Our biggest risk while out on patrol was random small arms fire and the possibility of booby traps. I never had to experience a full assault by an enemy force.

A member of our platoon had to go to the hospital in Da Nang monthly for hearing tests. He came back to our platoon after one of those trips and told me and Kip that the soldiers in F Troop, 17th Cavalry, who were stationed at our company's rear fire support base, LZ Baldy, had it made. He claimed that they slept inside concertina wire at night on LZ Baldy, didn't carry everything they owned on their backs when they did venture out, and kept beer on their tracks. Kip and I, having been trained as track drivers, applied for a transfer to F Troop. Both applications were quickly granted, which made me believe that my assumption that life was going to get easier was again incorrect. It certainly didn't take long to realize that F Troop did not spend nights on LZ Baldy very often. And we never took beer on our tracks since there was no way to chill it. After one mission with F Troop, I realized that small arms fire was much less risky than the prospect of a mine or a rocket-propelled grenade (RPG). I also concluded that the track driver was the most at risk since he was inside the track rather than riding on top, so when Sergeant Michael Hoffman suggested that I drive his track, I politely declined. He then ordered me to drive. As we crossed the first rice paddy dike—about a three foot tall mound of dirt that held water in the rice paddy—I properly balanced the track on the top of the dike. I was then supposed to ease the track down the far side of the dike. Instead, I let go of the brakes and allowed the track to slam into the rice paddy, propelling Sergeant Hoffman over the barrel of his 50-caliber machine gun into the mud in front of the track. That was the last time I had to serve as his driver. Amazingly, Sergeant Hoffman and I remain close friends today. In June 1969, Kip Ernst's track was hit by an RPG. He was severely wounded and spent five months in an army hospital in Japan. I still keep up with him.

In August 1969, F Troop was ordered into Antennae Valley. We patrolled the valley for a couple of weeks without incident. However, we knew that the Viet Cong (VC) and the North Vietnamese Army (NVA), our main combatants, knew that we only had one way out of the valley—through the pass we had used to enter the valley. The pass road was narrow and elevated along the edge of the mountain. Due to the risk of mines, we were led out by a large D-7 bulldozer that was dragging its blade. The D-7 hit a large mine. Nobody was injured, but it disabled the D-7, which was now blocking our exit from the valley. We put a shaped charge under the D-7, blew it over the edge of the cliff, and watched it tumble into the valley. We were then able to exit the pass without further incident.

Not every day was spent on high alert during my tour of duty. Every combat unit got to "stand down" every three months. Our entire company would go to the American Division's rear area at the Chu Lai Marine Air Base for three days off in a very secure area. We were fed well and drank a lot. Otherwise, we read and relaxed. Late in my tour I got a seven-day R&R leave in Sydney, Australia. The only downside to that trip was the flight on a military transport from Da Nang to Cam Rahn Bay. The C-130 aircraft had been damaged by ground fire in an earlier flight and could not be pressurized. Although the pilot promised to descend slowly, he failed to do so. It was the most painful experience I have ever had in my life—the rapid change in air pressure affected the tiny air bubbles in my teeth. I also got a three-day in-country R&R



Photos—Opposite page: Root seated with Ba Lai (center) and his father, two Viet Cong resistance fighters Root met during his trip to Vietnam. Left: Root photographed while in F Troop. Above: Hamilton "Kip" Ernst (left) and Sergeant Michael Hoffman (right), who both served with Root.

at China Beach in Da Nang that involved less dental pain.

Late last year my wife, Sue, and I talked about taking a Yangtze River cruise in China in the spring. I decided that I didn't want to travel that far around the world without also going back to Vietnam. The cruise tour group could not add a Vietnam trip to its itinerary, but could give us a layover in Hong Kong, allowing us to make our own arrangements to get to Vietnam. A deputy bar counsel in Chicago had once told me that if I ever wanted to return to Vietnam, I should contact a company called Journeys Within. I sent an email to them saying that I didn't want to take a tour and didn't want to go to the major cities in Vietnam, but wanted to know if they would provide me with a guide that would take me to where I had been on the ground during my first experience in Vietnam. They responded that they would be happy to do that. I sent them names of fire support bases and other places, such as Antennae Valley, that I wanted to visit. The company planned a six-day trip for us. Our guide, Hiêú, (he told us to pronounce it "Hugh") and a driver, Tran, picked us up at the Da Nang airport and took us to a nice hotel in Hoi An. We stayed two nights in that historic city visiting sites the company chose. The following day we departed for the Tam Ky area. While travelling down Highway 1, I could spot the hill where LZ Baldy was. Unfortunately, LZ Baldy is now a Vietnamese military base and was off limits to us. Further down Highway 1 I discovered that Tam Ky had grown from a small village to a rather large, industrial city. We found a nice place for lunch before going further south on Highway 1 to Chu Lai and the site of the Marine Air Base. Hiêú's research found that Chu Lai was not a Vietnamese town prior to the arrival of the marines, but that Chu and Lai were the Vietnamese letters for the initials of the first marine commander of that base. All vestiges of the marine base and its army attachments were gone other than the airport's runways. It is now a small airport.

After visiting Chu Lai in the late afternoon, Tran drove us to a dock on the bay and we took a boat to our hotel on an island. It was secluded and very nice. We stayed there for three nights, taking the boat back to our car during the day for excursions. Hiêú had found two valleys that were identified as Antennae Valley. He took me to the first and told me to get out of the car because we were in Antennae Valley. I got out, quickly looked around, and announced that it was not the Antennae Valley I was looking for. We departed to go to the other valley he had identified. On the way there, we went through a pass to get to the valley. Suddenly, I knew exactly where I was, the same place where the D-7 bulldozer had hit the mine. Of course I was curious, and looked over the cliff to see if the D-7 was still there. It was gone, and probably was gone within days after it came to rest in the valley. The valley itself was cleared and cultivated. It was nothing like it had been before. We had lunch in a home that Journeys Within had arranged for us. Our hostess had cooked several regional dishes that were all very delicious. I inspected some elephant grass that was in her side yard, and was not cut.

The next day we went to another home where I was able to sit down to talk with two former Viet Cong resistance fighters. The younger man, Ba Lai, had been captured while attacking LZ West. I told him (with Hiêú interpreting) that I had been stationed on LZ West, and asked when he was captured. He had the date tattooed on his arm. It was a year prior to my arrival. The older man was Ba Lai's father. He said nothing for a long time, but eventually leaned over the coffee table between us, looked me right in the eye, and talked rapidly for quite a few minutes. I looked at Hiêú and jokingly said that I knew he could recall all of what was just said. Hiêú said that Ba Lai's father had said that he owed a deep debt of gratitude to the Americans because, after he was wounded, the Americans patched him up and sent him to an army hospital. After he was rehabilitated, he was released. However, he returned to his resistance of the American cause. After a couple of hours of fascinating conversation about our experiences, I sat with them on the couch and pictures were taken of us sitting together, smiling. Being able to have a friendly conversation with former combatants without even a hint of animosity was the best part of my return trip.

The next day we decided to stay at our island resort. Hiêú came by in the afternoon to suggest that we take a motorbike trip around the island. There was a fishing village on the ocean side of the island. We visited a home where an elderly gentleman was building a round fishing boat in his back yard (the Vietnamese began to build round boats when the French taxed boat bows.) When he saw us Americans, he began to sing loudly. Others helping with the boat building tried to get him to pipe down. Hiêú said that he was singing the South Vietnamese Army's fight song. The others didn't want to offend any of the Vietnamese military that were also present in the town. A younger man came up to me and Sue and began to talk to us in a stern voice, pointing to the ocean. I asked Hiêú if we had done anything to offend him. Hiêú said that the young man was telling us not to call the ocean the South China Sea, but to call it the East Sea. The Chinese Navy will not allow the Vietnamese to fish near the atolls just offshore. Thus, he was speaking of his desire to rename the South China Sea. The next day Sue and I went swimming in the East Sea. We crossed the bay in front of our hotel in kayaks and walked across a small stretch of land to the ocean. Some of the water in the bay was polluted with trash bags and other non-biodegradable floating objects. All of the stretch of land we crossed to the ocean was covered with the same kind of debris. It really bothered Hiêú that his country was not doing enough to clean up the waterways since tourism is one of the country's primary economic engines. Otherwise, Central Vietnam was a beautiful place to visit.

We spent our last night in Vietnam back at the same hotel in Hoi An. We had a final night's dinner with Hiêú. The next morning I asked Tran to take us by China Beach on the way to the airport in Da Nang. He picked us up early enough to do that. When we approached China Beach on the waterfront road, we found one construction fence after another on the beach side of the road. Each fence had a drawing of the high-end resort that was being built there. I sadly realized that neither the average Vietnam citizen nor I would ever be able to return to China Beach. I did see it from the air as we took off for Hong Kong.

I found my return to Vietnam to be like a visit to a totally different place. Most of the area I had patrolled was now cultivated. The people were very welcoming and friendly. The food was wonderful. I had assumed that I would enjoy this trip. That was one assumption that turned out not to be wrong. ■

A. Root Edmonson is a graduate of North Carolina Central University School of Law. He has been with the North Carolina State Bar since 1979, serving as deputy counsel and overseeing the Client Security Fund.

2018 First Quarter Random Audit Report

By Anne Parkin, Staff Auditor

Each quarter two judicial districts are selected for audits. The judicial district selection, as well as the list of lawyers selected in each district, are randomly generated. The findings below are being published to bring awareness to lawyers of the violations found and the pervasiveness of those violations. You should take time to identify violations within your office and correct them immediately.

Quarterly Audit Report - Judicial Districts 2 and 21

Judicial Districts 2 and 21 were randomly selected for audit for the first quarter of 2018.

Lawyers randomly selected for audit are drawn from a list generated from the State Bar's database based upon judicial district membership designations in the database.

District 2, composed of Beaufort, Hyde, Martin, Tyrrell, and Washington Counties, was previously audited in 1991, 1995, 1998, 2003, 2009, and 2012. District 2 has a listing of 84 lawyers. Four audits were conducted collectively representing five lawyers.

District 21, composed of Forsyth County, was previously audited in 1990, 1994, 1997, 2004, and 2013. District 21 has a listing of 1,215 lawyers. Thirty-seven audits were conducted collectively representing 296 lawyers. Three lawyers/firms in the district were exempt from random audit through certification of voluntary audit.

Following are common rule deficiencies discovered during audits in both districts:

1. 56% failed to identify the client and source of funds, if the source was not the client, on the original deposit slip.

2. 54% failed to perform quarterly transaction reviews.

3. 39% failed to sign, date, and/or maintain reconciliation reports.

4. 34% failed to perform three-way reconciliations each quarter.

5. 32% failed to maintain images of cleared checks, or failed to maintain them in the required format.

6. 27% failed to identify the client on confirmations of funds received/disbursed by wire/electronic/online transfers.

7. 24% failed to provide a copy of the Bank Directive regarding checks presented against insufficient funds.

8. 17% failed to:

- perform bank statement reconciliations each month,
- failed to escheat unidentified/abandoned funds as required by GS 116B-53.

9. 15% failed to review bank statements and cancelled checks each month.

10. 12% failed to indicate on the face of each check the client from whose balance the funds were withdrawn.

11. 10% and less failed to:

- provide written accountings to clients at the conclusion of representation or at least annually if funds were held more than twelve months,
- prevent over-disbursing funds from the trust account resulting in negative client balances,
- use business size checks containing the Auxiliary On-Us field,
- properly maintain a ledger for each person or entity from whom or for who trust money was received,
- prevent bank service fees being paid with trust funds,
- properly deposit funds received with a mix of trust and non-trust funds into the trust account,
- take the required one-hour trust account management CLE course.

Areas of consistent rule compliance by the audited firms were as follows:

- properly recorded the bank date of deposit on the client's ledger,
- properly maintained a ledger of lawyer's funds used to offset bank service fees,
- promptly removed earned fees or cost reimbursement,
- promptly remitted to clients funds in possession of the lawyer belonging to the clients, to which the clients are entitled,
- removed signature authority from employee(s) responsible for performing monthly or quarterly reconciliations,
- properly maintained records that are retained only in electronic format.

There were no deficiencies found in four

CONTINUED ON PAGE 27

Grievance Committee and DHC Actions

Disbarments

David H. Caffey of Winston-Salem surrendered his law license and was disbarred by the Wake County Superior Court. Caffey admitted that he misappropriated entrusted funds in an amount in excess of $3,655.

Junius A. Crumpler of Raleigh surrendered his law license and was disbarred by the Wake County Superior Court. Crumpler admitted that he practiced law while his law license was suspended; did not refund an unearned fee; intentionally made false misrepresentations to his client, to a tribunal, and to the Grievance Committee; did not properly maintain entrusted funds; obtained property by false pretenses; and engaged in conduct prejudicial to the administration of justice.

Robert F. Garner of Greensboro surrendered his law license and was disbarred by the Wake County Superior Court. Garner admitted that he misappropriated entrusted funds totaling at least $9,470.70. He also did not properly reconcile his trust account, properly label disbursements, or maintain accurate client ledgers.

James M. Shelton of Burlington surrendered his law license and was disbarred by the State Bar Council. Shelton admitted that he misappropriated entrusted funds in an amount in excess of $4,000 and made material misrepresentations to a client and to the State Bar.

Suspensions & Stayed Suspensions

Amy E. Allred of Sherrill's Ford and formerly of Forsyth County did not comply with a court order requiring her to submit to a psychological evaluation and a substance abuse assessment, filed frivolous lawsuits against numerous judges who played roles in her personal domestic cases, neglected and failed to communicate with clients, and charged clearly excessive fees. She was suspended by the Disciplinary Hearing Commission for two years. The suspension is stayed for two years upon compliance with numerous conditions.

Jesse W. Jones of Lillington yelled and cursed at opposing counsel and opposing parties and was otherwise disruptive on multiple occasions. The DHC suspended him for one year. The suspension is stayed for three years upon compliance with numerous conditions.

Kevin Kennedy of Chapel Hill disbursed more entrusted funds on behalf of a client than he held in trust for the benefit of that client, thereby utilizing other clients' entrusted funds for an unauthorized purpose, did not reconcile his trust account, maintained inaccurate client ledgers, and commingled his personal funds with entrusted funds. The DHC suspended him for two years. The suspension is stayed for three years upon compliance with numerous conditions.

Lisa Page of Charlotte held entrusted funds in an earnest money account that she did not identify or manage as a trust account and violated numerous other trust accounting rules. She was suspended by the DHC for two years. The suspension is stayed for two years upon compliance with numerous conditions.

Bryon M. Smith of Jacksonville violated multiple trust accounting rules. He was suspended by the DHC for two years. The suspension is stayed for two years upon compliance with numerous conditions.

Interim Suspensions

The chair of the DHC entered an interim suspension of the law license of **David R. Payne** of Marshall. Payne pled guilty in federal court to the felony offense of knowingly making false statements for the purpose of influencing a federally insured lending institution in violation of 18 U.S.C. § 1014.

Censures

Harry Marsh of Charlotte was censured by the Grievance Committee. He represented homeowners in a foreclosure proceeding. Marsh caused a business entity he controlled to submit a sham short sale bid to the bank for the purpose of delaying the bank's efforts to foreclose. Neither Marsh nor the business entity ever intended for the short sale bid to be consummated. Marsh engaged in deceitful conduct toward the bank, engaged in conflicts of interest, and made misleading statements to the Grievance Committee.

Scott Shelton of Hendersonville was censured by the Grievance Committee. He did not respond to a client whose home warranty premium was not paid, did not take corrective action when he became aware of the problem, and misrepresented his identity to the client on the telephone.

Reprimands

Todd J. Farlow of Mooresville was reprimanded by the Grievance Committee. Farlow notarized a signature on a deed of trust falsely certifying that the document was signed by a person who appeared before him. Farlow recorded the deed of trust. He pled guilty to misdemeanor common law uttering.

Robert A. Garner IV of Pinehurst was reprimanded by the Grievance Committee. He misrepresented to a magistrate that the prosecutor who dismissed criminal charges brought by his client did not oppose refiling the charges. He also made untruthful statements to the Grievance Committee.

Richard B. Schultz of Gastonia did not respond to questions from trust account compliance counsel after a random audit, did not respond to the Grievance Committee, did not properly reconcile his trust account, and did not promptly remove earned fees from the trust account. He was reprimanded by the DHC.

Jeffrey S. Miller of Jacksonville was reprimanded by the DHC. Miller agreed that his client would not file a Bar grievance against the client's former counsel if the former counsel paid money to settle a dispute.

Transfers to Disability Inactive Status

The chair of the Grievance Committee transferred **Powell W. Glidewell IV** of Newland and **Lorie Cramer** of Denver,

Colorado, to disability inactive status.

Reinstatements from Disability Inactive Status

In March 2008, **Joan Elizabeth Spradlin** of Asheville was transferred to disability inactive status by the chair of the Grievance Committee. She was reinstated to active status by the DHC.

Stays of Existing Suspensions

In April 2016 the DHC suspended the law license of **John M. Holmes** of Raleigh for three years, but stayed the suspension upon compliance with extensive conditions, including participation in real-time alcohol monitoring requiring Holmes to submit to multiple daily breathalyzer tests. The State Bar initiated a show cause proceeding because, during the first three and a half months following entry of the DHC order, Holmes missed at least 45 days of testing. The DHC activated the suspension in January 2017. The order provided that, after serving three months of the active suspension, Holmes could petition for a stay of the balance upon demonstrating compliance with the conditions of the order. The DHC granted his petition for stay.

In November 2016 the DHC suspended **Shaun L. Hayes** of Asheboro. Hayes engaged in dishonest conduct by submitting an agreement bearing a false, handwritten signature in support of his response to a fee dispute petition and denying to the Grievance Committee that he handwrote the signature. He was suspended for two years. After serving one year of the suspension, he was eligible to apply for a stay of the balance upon demonstrating compliance with conditions. Hayes was reinstated by the DHC.

Reinstatements Denied

In October 2016 the DHC suspended **R. Kelly Calloway**, formerly of Connelly Springs, for four years for failing in multiple years to file federal and state tax returns and to pay federal and state taxes. After serving one year of the suspension, Calloway was eligible to petition for a stay of the balance. The DHC denied Calloway's motion for a stay and imposed modified and/or additional conditions he must satisfy to qualify for a stay of the suspension.

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 filed a petition for a stay but did not appear at the hearing on that petition. On the date the DHC denied the first petition, Cline filed a second petition. Cline appeared for the hearing on the second petition. The DHC denied the second petition.

Stayed Suspensions Activated

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. In November 2016, after concluding that Smith was not in compliance with the conditions of the stay, the DHC imposed additional conditions and extended the stay. In March 2018 the DHC concluded that Smith was still not in compliance with the conditions and activated the two year suspension. After he serves one year of active suspension, Smith will be eligible to apply for a stay of the balance upon demonstrating compliance with all conditions.

Orders of Reciprocal Discipline

The chair of the Grievance Committee issued an order of reciprocal discipline disbarring **Philip M. Kleinsmith** of Colorado Springs, Colorado. The Colorado court disbarred Kleinsmith after concluding that he billed for and received payment from a client for title services performed by a third party and knowingly converted the funds to pay other law firm expenses rather than paying the title company.

The chair of the Grievance Committee issued an order of reciprocal discipline suspending **J. Ronald Denman** of Tampa, Florida, for 30 days. The Florida Supreme Court concluded that he engaged in a conflict of interest and committed actions inconsistent with orderly judicial proceedings. The suspension of Denman's North Carolina license was deemed to have run concurrently with the suspension of his Florida license, from November 18 through December 19, 2016.

Notice of Intent to Seek Reinstatement

In the Matter of Joseph Lee Carlton Jr.

Notice is hereby given that Joseph Lee Carlton Jr. of Raleigh intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Carlton was disbarred effective September 24, 2013, and surrendered his license by consent on September 23, 2013, as part of a plea agreement and whereby he pled guilty to a misdemeanor offense of knowingly preparing false HUD-1 Settlement Statements. The statements did not accurately show the disbursements in certain FHA insured real estate transactions, in violation of 18 U.S.C. Section 1012, in the US District Court for the Eastern District of NC on March 6, 2014.

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 August 1, 2018 (60 days after publication). ■

The Uniform Bar Exam (cont.)

There are currently 30 other UBE jurisdictions: Alabama, Alaska, Arizona, Colorado, Connecticut, District of Columbia, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, South Carolina, Tennessee, US Virgin Islands, Utah, Vermont, Washington, West Virginia, and Wyoming.

2. The board will start accepting transfer applications on June 30, 2018.

3. The board is deeply indebted to the Special Drafting Committee—a network of lawyers throughout North Carolina who through the years have kept the board supplied with a "bank" of questions in the 12 subjects we test.

4. Unlike the current North Carolina essay exam, the MEE covers conflicts of law, and does not cover professional responsibility. All applicants will still be required to take separately the Multistate Professional Responsibility Examination, another standardized test developed and graded by the NCBE.

Wellbeing While You Wait

By Laura Mahr

Most of us need more time, not more on our to do list. If increasing your wellbeing feels like another thing to do, it may be helpful to invite wellbeing into mini-moments during your day, such as the moments while you wait. Improving your wellbeing when you're already engaged in a task on your to-do list may make feeling better more realizable. The "mini-moments of wellbeing" approach provides an opportunity to do something that you are already doing, but to do it better. This is done by first paying attention to what you are thinking, and then by consciously "turning your thoughts around" so that your thoughts are working for you and not against you. In this way, you shift your mind away from stress-producing thoughts and toward wellbeing. An easy place to start is by bringing "mini-moments of wellbeing" to times in your day that are already scheduled, but in which nothing specific is being demanded of your mind.

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Try this:

1. Make a list of all of the places/times during your day when you are waiting (e.g., for an appointment or for a meeting to start, for your case to be called in court, at a traffic light, in your child's school pickup line).
2. Think about your current pattern of thinking while you're waiting (e.g., going over what you will say; worrying about "what if" scenarios; ruminating about things that happened in the past).
3. Choose three of the places/times on your list to practice a "mini-moment of wellbeing" in the upcoming week.

Then try "turning your thoughts around" while you are waiting by doing this:

1. Notice (be mindful of) what you are thinking while you wait.
2. Notice your physical sensations (e.g., tight shoulders, sore low back, clenched stomach).
3. Notice your emotions (e.g., fear, worry, overwhelm).
4. Think thoughts that instead help you feel calm and promote a greater sense of wellbeing instead of those that increase your discomfort or stress.
5. If all else fails, focus on your breathing.

Note: As you experiment with this technique, you may notice that the more stressful the circumstance, the less success you have "turning your thoughts around" and the more challenging it is to think of things that promote your wellbeing. You may want to try this technique when you're under less stress. For example, when

you're waiting for a friend for lunch or in the checkout line at the grocery store.

Here's how a young lawyer recently put this technique to work. A few weeks after I shared this concept at a mindfulness and neuroscience CLE I taught in a North Carolina Judicial District, I spoke with one of the attendees. Charles (not his real name) shared that he had been "turning his thoughts around" with great success. With his permission, I share here how Charles shifted his thoughts from those that increase his stress to those that foster calm and confidence, creating a "mini-moment of wellbeing."

Before applying the technique: Charles appears in court frequently. Prior to learning the "turn your thoughts around" technique and using it to create a "mini-moment of wellbeing," his typical pattern was: get to court, meet his client, wait for the judge, worry until the case is called. While he sat with his client waiting for the judge, Charles's mind would start to churn, going over all of the worst-case scenarios that could happen while arguing his case, such as, "The judge may do this...opposing counsel may do that…something unexpected may come up." He reported that his internal dialogue sounded like this, "What if I missed something…what if I forget what I want to say...what if I don't know the answer?" Charles shared that after going through the mental churning process, he felt more stressed and experienced shortness of breath, a tight throat, and less optimism about winning the case than when he was preparing the night before.

While applying the technique: Charles's first step in "turning his thoughts around" was to pay attention to his waiting-for-the-judge pattern. He decided to be "mindful" *(pay attention to what is happening in the present moment without judgment)* of his habit of thinking about all of the unknowns and potential awful scenarios while he waited. He did this by noticing his thoughts *("Wow, I'm completely focused on all of the things that could go wrong.")* Second, he noticed his physical sensations *("When I think about all of the things that could go wrong, I feel increasingly tense, my shoulders get tight, and my heart rate elevates.")* Third, he tuned into his emotions *("I feel dread and then my thoughts begin to scatter; I feel less clear about my arguments.")*

Once he completed this mindful thoughts/physical sensations/emotions inventory, and concluded that his thoughts and the correlating physical sensations were decreasing his feelings of wellbeing, Charles then tried to "turn his thoughts around." He started shifting his thinking from stress-producing thoughts to wellbeing-promoting thoughts *("I know my arguments, I know the facts, I've done what I can do to prepare, and there's nothing more for me to do right now except wait for the judge and breathe.")*.

Results from applying the technique: As Charles "turned his thoughts around," he noticed his breathing slowed and his body felt more relaxed. He also noticed that he felt more focused, clear, and confident when he entered the courtroom.

A coaching client shared with me that she uses the "turn your thoughts around" concept when she walks her dog. The first few times she went for a walk after learning the technique, she focused her attention on what she was thinking as she was walking. She was surprised to notice that she spends the entire walk thinking about her to-do list and how little time she has to do it, resulting in feeling physically "worked out" but mentally exhausted at the end of her walk. Now, to create "mini-moments of wellbeing," she "turns her thoughts around" when walking by focusing on a simple positive phrase, such as, "relax now, do later." She notes that after focusing her mind in this way, she now feels mentally clear and energized after walking, and delightedly more connected to her dog.

If you're interested in research related to the brain and downtime, peruse this article, which links to numerous research studies on the subject: bit.ly/2F06pDV. If you'd like to hear leading-edge neuropsychologist Rick Hanson define wellbeing and explain why cultivating it a few seconds at a time can enable lasting happiness, tune in to this three-minute video: bit.ly/2Hl0Ou0. If it would be helpful to hear a more in-depth explanation of how this technique works, listen to episode 82 of The Resilient Lawyer podcast, in which I am interviewed by Jeena Cho on becoming more resilient through mindfulness and neuroscience: bit.ly/2HMzLZu.

If the "turning your thoughts around" concept doesn't resonate, try something else. For example, create a "mini-moment of wellbeing" by doing a few stretches to release tension in your neck and shoulders while waiting for a meeting to start. Or think of all of the things you're looking forward to doing over the weekend while waiting in line; look at the sky (or something else that lets your mind wander) instead of checking your email when waiting for someone to text you back; recall the best moments in your day when you're waiting to fall asleep. Over time, you may notice that giving yourself "mini-moments of wellbeing" is no longer on your to-do list as it has become the way you live your life—and that life feels all the better because of it. ■

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, 25 years as a student and teacher of mindfulness and yoga, and a love of neuroscience. She is an advisory member of the 28th Judicial District's Wellness Committee and the author of the Mindful Moment column in the North Carolina Lawyer Assistance Program's quarterly newsletter. Find out more about her work at consciouslegalminds.com.

See Laura present "360 Degrees of Connection with Mindfulness" and "Compassion Fatigue and Provider Resilience" at the ABA's National Conference for Lawyer Assistance Programs (CoLAP) in Charleston, SC, on September 27, 2018. To register or for more information, go to bit.ly/2HdE174.

Trust Accounting (cont.)

of the 41 lawyers/firms audited.

Second Quarter Random Audits

Judicial districts randomly selected for audit for the second quarter of 2018 are District 5, composed of New Hanover and Pender Counties, and District 17B, composed of Stokes and Surry Counties.

Trust Account Handbook

A free copy of the *Lawyer's Trust Account Handbook* is available on the State Bar website at ncbar.gov/for-lawyers/trust-accounting. ■

A Defense Attorney's Perspective: Then and Now

By Anonymous

Littile David, with his pitiful slingshot, vs. the mighty Goliath. In a nutshell, that's how it felt to me for much of my career as a public defender. Now, with years of recovery in Al-Anon, I realize that so much of my perception of my role as a defender was tied up in my codependency, my need to rescue, and my need to prove myself worthy. Not all defenders feel as I did and not all defenders choose that line of work for the reasons I did. But for those who have, I hope my story can shed some light on the unconscious motivations some of us experience. I have come to learn that, while the job of defender is unquestionably very stressful and tough emotionally, my unconscious motivations were the deep root of my depression and prolonged suffering.

The role of a defender is unique in that every day somebody's freedom is at stake, and if you slack up, do less than you should, pay less attention, a client will pay. Added on top of that, you work with clients who didn't choose you, and who start the relationship with grave doubts about your ability and your willingness to put up a good fight.

I was a public defender for 20 years. For all of that time, and for years before, I suffered untreated depression. After years in the Lawyer Assistance Program (LAP) and Al-Anon, I can see how this job I loved not only fueled the depression, but also fed my wounded ego in ways that prevented me from asking for help.

The stress of being a defender was exacerbated for me because I held myself accountable for outcomes.

The job of public defender is beset with obstacles. I felt like everyone was against me—prosecutors, judges, and even my clients. There were times I felt I was treated badly by a judge just because I was "on my client's side." Being a public defender and representing underdog clients, who most often already had many social, economic, and racial cards stacked against them, pushed all my buttons. I internalized many of these factors that were out of my control, and they accentuated my pre-existing feelings of not being good enough. As a consequence, I doubled my efforts to achieve successful outcomes for my clients, unconsciously thinking I could prove those judges or whomever wrong about my clients, and about me.

The healthy part of me responded to what I perceived as disparate treatment towards my clients with outrage and a determination to give each client the kind of defense a rich person could buy from a big law firm. The wounded part of me made it my responsibility to fix this broken system, and when I could not, to berate myself as inadequate. I can see now how the frustrations of dealing with a deck stacked so heavily against me and my clients fed my own feelings of powerlessness and my internal drive to make things right for my clients and myself.

Dealing with judges and prosecutors was always hard. But the part of being a defense attorney that really pushed all my "sick buttons" was the relationships with clients. A sad truth about being a public defender is that our clients make it exceptionally hard to assist them. Client mistrust tore at my sense of self-worth. Nobody wants a public defender. You're always seen as second rate, not a real lawyer. Some clients never seemed to understand that I was actually a lawyer, a graduate of a reputable law school, and that I passed a bar exam. Some think that a public defender is a breed apart, or at least that we do this job because we couldn't find any other. Because of this bias by clients and others, I worked endless hours to get the best result—a not guilty verdict, a good plea deal, a great sentence. And when I did the work, and the result was not the one I or the client wanted, I believed it had to be all my fault. Not the client's fault, not the bad facts of the case, but me—I just wasn't good enough. After years of healing, I can see that I never needed to carry that burden. It was never about me or my worth. I was never in control. I just needed to believe I was at that time.

The mystique of being a defense attorney kept me from getting the help I needed.

An equally important insight for me, now that I've been in 12-step recovery all these years, is how my bruised ego fed off the mystique of being a defense attorney. I came to see myself as a trial attorney, and I had confidence in my trial skills. After trying a lot of cases, and feeling that I had earned my stripes, I believed that I could try any case. When I got to a courtroom to start a trial, my feeling was, "Let's go to work." Roll up your shirtsleeves, buckle down, and do what has to be done. I believed myself to be among the warrior elite. That felt really good. Membership in the club of defense attorneys gave me an external affirmation that I was worthy. It also let me deny that I had any kind of emotional problem. In this inner circle, there was nothing wrong with being a workaholic. In fact, it was a badge of honor to put aside your own wishes and desires, to sacrifice for the good of the work. I certainly could not acknowledge that this work ethic was harming me physically, mentally, and emotionally and depriving me of any balance in my life. That way was the way of wimps, and no good trial lawyer wants to think of himself or herself as a wimp.

I do not mean by this article to suggest that now that I have some recovery from my depression and can see these patterns more

CONTINUED ON PAGE 31

IOLTA Begins to Replenish Reserve Fund

Income

Interest income from participating banks that hold lawyers' trust accounts continues to be the primary source of income for the IOLTA program. 2017 participant income increased by 2.8% compared to 2016. Interest income for each of the first three months of 2018 received to date is significantly improved, providing continued hope that we will see more substantial increases in participant income in 2018. The federal funds rate was increased on March 21, 2018, to 1.75. Multiple increases in the federal funds rate are anticipated to occur this year.

This spring IOLTA began the process of reaching out to our banking partners across the state to review their current available products and update their IOLTA compliance certification statement. IOLTA will review submitted materials to ensure banks are providing the highest comparable rate on IOLTA accounts.

Reserve Fund

At the April meeting upon acceptance of the 2017 audit and financials, the IOLTA Board of Trustees approved contribution of $112,000 to the reserve fund from 2017 income. Since 2009 the trustees have drawn from the reserve fund nearly every year to supplement available funds for grantmaking. The reserve fund was established with that exact purpose in mind—to moderate the impacts of drastic declines in income during periods of economic downturn. With this allocation of funds to the reserve, the fund now totals $367,000.

Grants

IOLTA continues to rely on other court awards, in particular funds from the Bank of America settlement, to support grantmaking. As noted in the Spring 2018 *Journal*, 2018 IOLTA grants totaled nearly $1.65 million, with the majority of grant dollars supporting provision of direct civil legal services. Additional funds of $1.25 million from the Bank of America settlement supported a grant to the Home Defense Project Collaborative to provide foreclosure prevention legal services.

State Funds

In addition to its own funds, NC IOLTA continues to administer the state funding for legal aid on behalf of the NC State Bar. To date in 2017-2018, IOLTA has distributed approximately $760,000 in domestic violence state funding and $100,000 for veterans' civil legal services. Following the repeal of the Access to Civil Justice Act, no general funding for civil legal services is provided by the state.

NC Access to Justice Summit

Chief Justice Mark Martin and the NC Equal Access to Justice Commission hosted the Access to Justice Summit on May 8 with special guest Chief Justice Nathan Hecht of the Supreme Court of Texas. Chief Justice Hecht has been a vocal supporter of civil legal aid and shared with leaders of the Bar the success Texas has had in securing additional resources on the state and federal level for legal aid.

Foundation Outreach

In March, IOLTA partnered with the North Carolina Network of Grantmakers, our state's association of foundations and giving programs, to host a session during their annual meeting about the role of civil legal aid in North Carolina. Funders from family foundations, community foundations, health conversion foundations, corporate foundations, and public giving programs attended the session. The goal of the conversation was to identify civil legal aid as a critical part of the solution to a wide array of issues that funders want to impact with their philanthropic investments. One of IOLTA's trustees, Anita Brown-Graham, professor of public law and government at the UNC School of Government, provided an overview of civil legal aid and moderated the panel discussion. This session was organized as part of the Leadership Grant provided to NC IOLTA by the National Association of IOLTA Programs. ■

Leslie Carter Rawls, Board Certified Specialist in Appellate Practice

By Denise Mullen, Assistant Director of Legal Specialization

I recently had an opportunity to talk with Leslie Carter Rawls, a board certified specialist in appellate practice, from Charlotte. Leslie began her education as a Chinese major at Eckerd College in St. Petersburg, Florida, transferring to the University of North Carolina at Chapel Hill to complete a bachelor of arts in international relations. She received her law degree from UNC School of Law as well. While in law school, Leslie served as executive editor of the *UNC Journal of International Law and Commercial Regulation*, confirming her love of writing and setting her on a path that combined writing and the practice of law.


Carter Rawls

Leslie started her career in trial courts and switched to handling appeals exclusively in 1995. Over the years, Leslie's work has been mostly research- and writing-intensive, punctuated by arguing cases in the federal Fourth Circuit Court of Appeals, the North Carolina Court of Appeals, and the North Carolina Supreme Court. When the separate appellate specialty certification was created in 2011, she was one of the first to become board certified. Becoming a specialist provided a way of letting the legal community know that she was dedicated to the practice area and available to assist clients and other lawyers with complex appellate issues. Leslie's comments on her legal career and specialty certification follow below:

Q: What were your favorite things about law school?

I was on staff and, as a 3L, served as executive editor of the *UNC Journal of International Law and Commercial Regulation.* I enjoyed everything about working on the journal. Academically I had two favorite classes—Mr. Aycock's real property class and Dean Broun's evidence class were engaging, amusing, and interesting. Both courses have also been invaluable in my law practice.

Q: Were there any early indications that you would choose a writing-intensive career path?

Writing and editing are important in appellate work and run in my blood. My grandmother emigrated from Wales and taught the King's English in the North Carolina mountains. Much later, my mother attended a law school class with me. I answered a question in contracts that day. When she started taking notes, I imagined she was memorializing my brilliance. After the bell rang, I learned she was memorializing my grammar mistakes—"Loan is a noun, lend is a verb..." (Yes, that's the British rule.)

Q: Why did you pursue board certification with the State Bar?

Appellate attorneys get very little feedback, and sole practitioners like me tend to be somewhat isolated. Our work is mostly research and writing with occasional forays to Raleigh or Richmond for oral argument. I started my career in trial courts and was known by judges, trial lawyers, and courtroom personnel. In 1995 I switched to only appeals and became less known in the community. When the separate appellate specialization was created in 2011, I jumped at the chance. Becoming a specialist was a way of being better known for my work, which helps me be a trusted resource for clients and other lawyers.

Q: How has certification been helpful to your practice?

Other attorneys, clients, and even I have more confidence in my knowledge. More prospective clients and referring attorneys contact me to handle appeals in part because of that confidence. Former clients and other attorneys who know my work have been solid referral sources, and occasionally an opposing party even refers someone to me because of my work on their opponent's behalf.

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

Many! With the support and suggestions of the NC Bar Association's Appellate Practice Section, the appellate courts recently approved a program to provide *pro bono* appellate attorneys to *pro se* indigent civil parties who appear to have a non-frivolous issue. If needed, the program will pair the *pro bono* attorney with a mentor. Appeals are not cheap, and civil litigants are not entitled to appointed counsel. The program will help provide access to justice for *pro se* parties.

In addition, the appellate rules have been amended a lot the past few years, so it's important to be current. The legislature's recent reduction in the court of appeals judges is also likely to have an impact on the judges' workloads as well as the time it takes to resolve an appeal.

Q: What do lawyers who don't handle appeals need to know from an appellate practice specialist?

Always read the *Rules of Appellate Procedure* and be sure it's the current version. When in doubt, ask someone who regularly handles appeals. The appellate practice community is a collegial group. We know quality appellate work benefits everyone.

Q: How do you stay current in your field?

My *Rules of Court* are always within reach, and I refer constantly to the *Rules of Appellate Procedure.* I also participate in the NC Bar Association's annual appellate seminar, scheduled for September 28 this year,

in addition to other CLEs on substantive law, legal writing, and appellate issues. I frequently brainstorm with other appellate attorneys, and I check the state court website and pay particular attention to decisions that hinge on appellate issues.

Q: I understand that you also lead mindfulness meditation seminars as a Dharma teacher. Could you explain what that means?

For almost 30 years, I have been a student of Thich Nhat Hanh, a Vietnamese Zen monk, author, and peace activist. I was also one of his editors in the 1990s and early 2000s. In 2009 he gave me dharma lamp transmission, authorizing me to teach in the Mahayana Buddhist lineage.

Q: How does your focus on mindfulness impact your work as a lawyer?

Mindfulness has the general benefit of reducing stress and promoting calm. One of our former federal judges used to always introduce me as "the most peaceful lawyer in Charlotte." His description was not always accurate, but mindfulness helps me maintain equanimity in my practice. Mindfulness also increases concentration, which is useful in my research and writing.

Q: What are a few things that a lawyer can do to help bring more mindfulness into his or her daily life?

Mindfulness is the practice of being present in this moment, and breath is a good tool to bring us into the now. The mind can travel through space and time though the body never moves. Mindfulness brings mind and body together. We can practice awareness of walking—to the office, the courthouse, our homes. These days, our watches invite us to take a breath and a mindful pause. At stop lights, we can take our hands off the steering wheel and see what's around us. Through this practice, I've discovered the most beautiful three pine trees at one stoplight. This is a short answer. Around ten years ago, I offered a mindfulness CLE to the Mecklenburg County Bar and wrote much more than a paragraph.

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

Certification tells other people you're highly qualified in your practice. It gives you something to reach for. Go for it! ■

For more information on appellate practice specialists or to learn how to become certified, visit our website at nclawspecialists.gov.

LAP (cont.)

clearly that I regret the years I spent defending clients. I am still very proud of the work I did on their behalf. Being a good defense attorney means you go all the way all the time for your clients, within the bounds of the law. I think what I've learned from the healing work of the last years is that I could have done the job at far less cost to myself by realizing that I was just as entitled to my care and concern as anyone on whose behalf I was working.

The real satisfaction that I felt as a public defender was worth some sacrifice, but I am glad I can honestly say now that I paid too high a price. Most of the lawyers I know—defenders or not—have paid a high price for working like I did. We live on adrenaline. Health problems develop from the stress. A personal life, if you have one, suffers. Problems of alcohol and depression are rampant. And sadly, the pride of being among the warrior elite so often keeps us from asking for help.

If I ran the world, I would start training young lawyers—especially young defenders—early on how to protect themselves from the stresses of work by finding balance in their lives, by learning to separate their work from their egos, by practicing meditation or some other form of contemplation. That advice early on in my career as a public defender could have made the burdens of defending against all the odds less difficult to carry.

I wish I had asked for help sooner. When I finally did reach out to LAP and started to get some relief, my work became less about proving myself—I could do a good job and let go of the outcome. For any warrior elite reading this article who may be struggling as I did with depression or codependency, I want to assure you that the only thing you have to lose by calling LAP and asking for help is your misery. Hope and help are available. ■

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.

Who Inspires You?

By Suzanne Lever

Success is not just about what you accomplish in your life; it is about what you inspire others to do.

—Unknown

I have a small mood flipchart on my desk. Each day I use the flipchart to alert (warn) my coworkers of my current mood—from grumpy to giddy to mischievous. Today my flipchart relays that I am "inspired." The source of my inspiration? My recent attendance at the quarterly meeting of the State Bar's Distinguished Service Award (DSA) Committee.

I became involved with the DSA Committee in January 2016 when I took on the role of staff liaison. The committee, however, has been around since 2007. In January 2007, then State Bar Vice President John McMillan presented an idea to the State Bar Issues Committee: Implement a program whereby the State Bar recognizes the positive achievements of lawyers for their profession, community, and state. Mr. McMillan envisioned a lawyer recognition program that would not only focus upon those lawyers with the biggest reputations, but also be for those lawyers who serve with great distinction but without much recognition.

In October 2007 the Issues Committee asked incoming Bar President Hank Hankins to appoint a special committee of the State Bar Council to refine the concept of a State Bar lawyer recognition program. As the criteria for the award began to take shape, the committee decided that award recipients should have a record of service demonstrating commitment to the aspirational goals described in the Preamble to the Rules of Professional Conduct. Carmen H. Bannon, State Bar deputy counsel, served as staff liaison and assisted the committee with the drafting of the following criteria for evaluating nominees:

• Cultivating knowledge of the law beyond its use for clients, employing that knowledge in reform of the law, and working to strengthen legal education.

• Furthering the public's understanding of and confidence in the rule of law and the justice system.

• Devoting professional time and resources and providing civic leadership to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel.

• Aiding the legal profession by helping the Bar regulate itself in the public interest and by seeking to improve the administration of justice and the quality of services rendered by the legal profession.

• Providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, society, the legal system, or the legal profession, and providing financial support for organizations that provide legal services to persons of limited means.

• Treating opposing counsel with courtesy and respect; encouraging and counseling peers by providing advice and mentoring; and fostering civility among members of the Bar.

• Promoting diversity and diverse participation within the legal profession.

The Distinguished Service Award program was approved by the State Bar Council and the first meeting of the Distinguished Service Award Committee took place on April 23, 2008. The award was announced in the *Journal* in the Winter 2008 edition, along with a request for nominations. The first two nominees approved by the committee were Wade Barber and Kenneth Youngblood in January 2009.

In 2010 the award program was named the John B. McMillan Distinguished Service Award in honor of the lawyer who spearheaded the creation of the award and who has devoted much of his time and energy to improving the legal profession in North Carolina.

Since its inception, over 80 lawyers have received the John B. McMillan Distinguished Service Award. I have had the privilege of

Background on John McMillan

John McMillan was elected president of the Wake County/10th District Bar in 1985 and has served continuously on many local bar committees since that time. He was honored by the Wake County Bar as the recipient of its President's Award in 1996 and Joseph Branch Professionalism Award in 2000.

John was a member of the Disciplinary Hearing Commission (DHC) for nine years, including four years as chair of the commission. As a member of the DHC and a State Bar councilor, he participated in committees to rewrite the Rules of Professional Conduct and the rules governing disciplinary procedure. He represented the 10th District on the State Bar Council for nine years and then served as an officer of the State Bar for an additional four years. During his tenure on the council, he chaired the Grievance Committee and the Legislative Committee.

John lent his leadership and expertise to the North Carolina Bar Association as chair of the Legislative Advocacy Working Coalition, chair of the Legislative Advisory Committee, and legislative chair of the 4ALL Task Force. He also served on the Chief Justice's Commission on Professionalism. John served on the North Carolina Equal Access to Justice Commission and received the Champion of Equal Access to Justice Award in 2009. In 2010 John received the UNC School of Law's Distinguished Alumnus Award, and in 2017 its Lifetime Achievement Award. In 2018 John was awarded a Lifetime Champion Award from the NC Justice Center.

attending several award presentations over the past two years. Often these presentations take place at a regularly scheduled local bar function, but other arrangements are sometimes made. Awards have been presented at courthouses, clubhouses, Inns of Court, and even private homes. Although the venues varied, each award presentation I attended left me moved and inspired. (I laughed, I cried, it was better than *Cats*.)

Bar officers who have presented these awards have reported similar emotions. As stated by Past President Mark Merritt:

> The sentiment that I would express is what an honor it has been for me to be part of giving these awards. It has provided me the opportunity to learn more about the outstanding contributions lawyers around the state have made to the profession and their communities. The recipients have a commitment to the profession and their communities that is inspiring, and it reminds each of us how we can up our game and do more. I have greatly enjoyed the opportunity to meet lawyers from around the state when these awards have been given at district bar meetings. On each occasion, the real admiration and affection that lawyers have for our award recipients has been palpable, heartfelt, and meaningful. It shows us at our best when we can acknowledge what is good about our profession by recognizing people who have truly done good things. Our award recipients are doers who have been engaged in the life of the law and their communities, and who build bridges and not barriers. Giving out these awards is one of the best parts of the job.

Current president John Silverstein reports similar warm and fuzzy feelings:

> It is such a pleasure to travel to a district where everyone is excited that a member of their bar, who enjoys universal respect and admiration, is going to receive some well-deserved attention. It is also a real privilege to observe the reactions of the recipients of the John B. McMillan Distinguished Service Award. It clearly means a great deal to them to not only receive the award, but also to be honored in front of their families, friends, and colleagues.

The contributions and accomplishments of the past recipients of the Distinguished Service Award are beyond impressive. Many have served in the military, in state and local government, and also in the judiciary. They have led integration and legal reform movements, founded *pro bono* and public education programs, established bar programs and student loan forgiveness programs. They have aided the legal profession in other countries, founded firm diversity committees, and established Hispanic outreach task forces. They have authored legal treatises, founded high school mock trial programs, and have led our Supreme Court to become the nation's first state appellate court to accept all documents by electronic filing.

As the staff liaison to the DSA Committee, I receive and review the nomination packets. Many of these packets include personal testimonials as to the nominee's character, conduct, and qualifications for the award. These testimonies often reveal, arguably, the most valuable contributions these lawyers have made to our profession. Here are some examples of the praise bestowed upon these lawyers:

> "No man, other than perhaps my father, has had as profound an impact on the direction of my life than [this lawyer]. He taught me, by example, how to be a good citizen-servant, leader, husband, and person. [This lawyer] is the reason I wanted to be and ultimately became a lawyer."
>
> "[This lawyer] is known as being extraordinarily knowledgeable in all aspects of the district court. More importantly, she is also known as a true counselor for those in need, a strong voice for the weak and oppressed, and a great source of principled light for those in need of it."
>
> "I learned from [this lawyer] many years ago the duty of *pro bono* work, and the value it generates—not only to the client, but to the lawyer and the community as well."
>
> "Small towns all over North Carolina have been led by lawyers for hundreds of years. They have served on school boards, hospital boards, and in every leadership position. Unfortunately, lawyers of [this lawyer's] caliber are not often choosing to come to rural North Carolina...But for those who do choose to come, [this lawyer] has and will continue to serve as the example of the kind of lawyer and person all of us should strive to be."
>
> "As a new attorney, in a new town, I was very intimidated and unsure of myself. In this sea of uncertainty was this white-haired, smiling face—a beacon; a man with an incredible reputation, a vast knowledge of the law, and a great attitude—and he welcomed me like no other."
>
> "As a solo practitioner, I had many issues that needed quick and simple resolutions. [This lawyer] has been supportive and encouraging...His willingness to stop whatever he is doing to address a particular issue a colleague has raised has become one of his trademarks."
>
> "I have tried scores of cases with [this lawyer] as opposing counsel. He was always a formidable adversary and bona fide ally. Without exception, he modeled civility, courtesy, and respect for all."
>
> "Those who know the nominee find him wise, courageous, honorable, and most of all dedicated to making the world a better place through unwavering service and kindness."
>
> "[This lawyer] leads the way for us all. She goes above and beyond the call of duty by seizing opportunities to not only improve the administration of justice, but also to promote the best interest of the citizens of this community."
>
> "If I were tasked with the duty of coming up with one word that defines [this lawyer], that word would be 'distinguished.' Merriam-Webster defines distinguished as 'marked by eminence, distinction, or excellence.' Never have these words rang more true than when speaking of [this lawyer]."

Relaying these types of testimonials to the members of the DSA Committee, I cannot help but feel humbled and inspired. I believe that is exactly what the John B. McMillan Distinguished Service Award program is meant to do—recognize the achievements of North Carolina's greatest lawyers, by various definitions, and inspire all North Carolina lawyers to commit to the aspirational goals described in the Preamble to the Rules of Professional Conduct.

"A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." NC Rules of Prof'l Conduct preamble.

Who has inspired you to be a better representative of clients, officer of the court, and public citizen? Members of the Bar are encouraged to nominate colleagues who have

CONTINUED ON PAGE 48

Social Media: The Flaunting of UPL

By Jacqueline King

Paralegals work side by side with attorneys in the trenches of the legal field. Those of us who have been doing this long enough can give some attorneys a run for their money. (When is the next flight to Vegas from RDU? I'll bet on that any day.) However, most have made a conscious decision, for one reason or another, not to attend law school. That decision does not make one any less of a professional. Most attorneys will openly tell their clients that we keep them in line and are just as knowledgeable. Could our attorneys' offices run without us? I'm pretty sure we all know the answer to that question. But, just because we know the answer, or how to provide the service the attorney provides, does not mean we can or we should. As paralegals we must be careful that what we do does not cross the line to that dreaded term, unauthorized practice of law, or UPL.

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Sadly, it is becoming a common occurrence to witness paralegals offering their skills and knowledge to friends, family, and the public through social media. The other day I was on one of many Facebook paralegal sites, lurking. (What can I say? I'm good at it.) The thing about these public paralegal groups is you never know what you are going to get. Sometimes you get a professional discussion. Other times you are in the *Hunger Games* arena trying to get to the Cornucopia. As I was being completely nosey and practicing my Invisible Man skills, I noticed a post asking for someone to review a motion they had prepared for a friend. This paralegal needed someone to assist with revising it. Immediately several paralegals linked arms and began to sing kumbaya (a.k.a. gave their email address out) to help this fellow paralegal. Others, such as I, stepped out and stated what most were thinking, "This is the unauthorized practice of law. We cannot help. You shouldn't either."

UPL and the Guidelines

What is the unauthorized practice of law? North Carolina Gen. Stat. § 84-2.1 defines the practice of law as "performing any legal service...with or without compensation...assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm, or corporation..." Any paralegal that completes these tasks is committing the unauthorized practice of law. Assisting the Facebook paralegal with revisions to the motion would be the unauthorized practice of law. Personally, I would love nothing more than to be able to help each person that approaches me. Professionally, I just cannot. It is unethical, and as a North Carolina State Bar Certified Paralegal, I absolutely cannot cross that line. I will not cross that line—for anyone. I respect my profession and the paralegals before me who paved the road so that I could be viewed as the professional I am.

On July 23, 2010, the NC State Bar helped pave that road when the Guidelines for Use of Paralegals in Rendering Legal Services were approved. The goal behind this, and the certification of paralegals, was to allow paralegals to assist attorneys in providing outstanding legal services to the public at a reasonable price, while also giving paralegals the platform to be viewed as professionals. These guidelines sync with the American Bar Association guidelines, and were put in place to hold paralegals to professional and ethical standards.

Two guidelines that I see consistently broken on social media are Guidelines 2

and 3. Guideline 2 states that "[a] lawyer shall not permit a paralegal to engage in the practice of law. To this end, a lawyer may not delegate the following responsibilities or activities to a paralegal: establishing a client-lawyer relationship and the terms of the relationship; giving oral or written legal advice or a legal opinion to a client; interpretation of legal documents for a client; or appearance in any court proceeding unless authorized by law." The takeaway from this guideline is simple—our attorneys can delegate a lot of work to us, and they do on a daily basis—sometimes to the brink of insanity. But, a paralegal can never give legal advice. Ever.

Guideline 3 states that "[a] supervising lawyer is responsible for work product and for providing appropriate and active supervision to a paralegal." Simply put, a paralegal is never to perform a service without the supervision of an attorney. These guidelines are specific on the role of a paralegal. Yet, all the guidelines in the world do not seem to stop some paralegals from flaunting what they know, and, in the process, breaching their ethical and professional duties.

The Flaunting on Social Media

In a world where more than 175 million people log on to Facebook every day, you are bound to see people on all degrees of the spectrum. Thanks to social media outlets such as Facebook, we meet people we normally would not. This can be and often is a networking goldmine. However, it is becoming increasingly difficult to turn a blind eye to the paralegals who breach these ethical lines, and openly flaunt the breach in the public forums. The "seasoned" paralegals are the most difficult to comprehend. Again, I'm lurking on Facebook (Starting to see a pattern? Always feel like someone is watching? They totally are.) where I saw yet another "seasoned" paralegal clearly stepping outside the role of a paralegal. (Although, I must give credit where credit is due—I have yet to witness a North Carolina paralegal do so.)

The "seasoned" paralegal was clearly violating North Carolina's Guidelines 2 and 3, and most likely the ABA Model Guidelines. The paralegal had created a form book and was selling the books to *pro se* "clients." But wait! For the low monthly price of $19.99 not only do you get access to forms created by the paralegal, but you also receive one-on-one help with understanding the forms. This is not the unauthorized practice of law at all said no paralegal—*ever*.

It really is quite simple—if you draft and prepare a form, without a supervising attorney, it is the unauthorized practice of law. If you then assist someone with understanding the form, tailor it to their situation, and an attorney is never involved, it is the unauthorized practice of law. Remember Guidelines 2 and 3 above? You must do all of this under the direction of an attorney. The newest paralegal inductees see these paralegals flaunt on Facebook and think it is okay. One recent paralegal inductee even said that, if what I said was true, then hundreds of paralegals commit UPL daily. C'mon man (in my best Cris Carter voice)! We are better than this. We know better than this. We must lead by example, not be the examples.

Standing up against UPL

Look, I know—family and friends always call us for legal advice. Heaven forbid we tell them we cannot answer and they need to talk to an attorney. They will not understand how you most likely know the answer, but you just cannot and will not provide it to them. To me it is easy. *Can they pay my bills, pay my telephone bills?* (Sorry, I am a song junkie.) No, friends and family are not going to pay my bills if I lose my job—or certification—for giving out legal advice or committing UPL.

It is not about just paying our bills either. It is about integrity and professionalism. We want to be viewed as equal professionals in the legal arena. We fight for our right to be professionals, and by doing so we cannot break the very rules that are established in order for us to be considered professionals. We must show restraint and a passion for this field—while following the guidelines and rules implemented by the North Carolina State Bar—if we want to be viewed as the professionals we so desperately seek to be.

So, next time you are on Facebook, Twitter, or any other social media platform, and you witness a paralegal flaunting the unauthorized practice of law, do not keep scrolling. Be polite. Use your manners. Do not become confrontational. Stand up, and speak out. Explain why their actions are unethical. Why? "One person can make a difference and every person should try."—John F. Kennedy

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Committee Provides Guidance on Accessing the Social Media Posts of Represented and Unrepresented Persons

Council Actions

At its meeting on April 20, 2018, the State Bar Council adopted the ethics opinion summarized below:

2018 Formal Ethics Opinion 4

Offering Clients On-site Access to Financial Brokerage Company for Legal Fee Financing

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.

Ethics Committee Actions

At its meeting on April 19, 2018, the Ethics Committee agreed to take no action on proposed 2017 Formal Ethics Opinion 6, Participation in Platform for Finding and Employing a Lawyer, until the Authorized Practice Committee issues an advisory opinion on the unauthorized practice of law question raised in the proposed opinion. The committee also took no action on proposed 2016 Formal Ethics Opinion 1, Contesting Opposing Counsel's Fee Request to Industrial Commission, which will continue to be tabled pending the conclusion of appellate action in a case that is relevant to the proposed opinion. The committee voted to re-publish three opinions after revision by the committee and approved two new opinions for publication. All of the proposed opinions appear below.

Proposed 2018 Formal Ethics Opinion 1
Participation in Website Directories and Rating Systems that Include Third Party Reviews
April 19, 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. Further, the standards for the rating system must be disclosed to the public at a location on the website that a user of the website can readily find.

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.

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" or "the best"?

Opinion #4:

Yes, the lawyer is professionally responsible for statements or claims made about the lawyer or the lawyer's services and may not participate in any communication 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." Characterizing lawyers listed in a website directory as "top rated" or "the best" is a comparison of the participating lawyers' services with those of other lawyers. A lawyer may not

participate in such a directory unless objective, verifiable standards for participation, as required by 2007 FEO 14, Advertising Inclusion in List in North Carolina Super Lawyers and Other Similar Publications, are applied and disclosed by the website.

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

Opinion #5:

Yes, as long as there is no quid pro quo. 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 seek the removal of any review that does not meet this standard?

Opinion #6:

Yes. 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.

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

In Memoriam

Edmund Ivan Adams
Sparta, NC

Guy F. Brown
Phoenix, AZ

Forrest E. Campbell
Greensboro, NC

Jack Franklin Canady
Winston-Salem, NC

Robert Morris Clay
Raleigh, NC

O. Lloyd Darter Jr.
Durham, NC

Robert Allan Emken Jr.
Winston-Salem, NC

Thomas McLean Faw
Mount Airy, NC

Konrad Karl Fish
Greensboro, NC

C. Douglas Fisher
Durham, NC

George Larry Fletcher
Wilmington, NC

William Evan Hall
Mocksville, NC

Roy G. Hall Jr.
Pfafftown, NC

Allan Bruce Head
Raleigh, NC

Russell Houston III
Grifton, NC

John Robert Ingle
Charlotte, NC

Albert William Kennon
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Robert W. Kilroy
Hampstead, NC

Roddey Miller Ligon Jr.
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Robert Marcus Lodge
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George Wilson Martin
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Thomas Giles Meacham Jr.
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Joseph William Moss
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Robert Henry Sapp
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Peter Joseph Sarda
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Norman Lee Sloan
Clemmons, NC

Douglas M. Strout
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Raymond Mason Taylor
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Gerald Franklin White
Elizabeth City, NC

Thomas Wayne White
Elizabethtown, NC

Lonnie Boyd Williams
Wilmington, NC

Robert Preston Worth
Greensboro, NC

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. 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 and an explanation of the "Pro" designation appears in a prominent location beside or near the designation wherever the designation appears on the lawyer's profile or webpages. In the absence of the explanation that the designation indicates that the lawyer paid for enhanced services, the designation implies that lawyers without the designation are not professional or "Pro." This is a comparison of the lawyer's services with the services of other lawyers that cannot be factually substantiated in violation of Rule 7.1(a)(3). If the website does not post the explanation, the lawyer must do so or must discontinue the premium service.

In addition, 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.

Proposed 2018 Formal Ethics Opinion 2
Duty to Disclose Adverse Legal Authority
April 19, 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."

Does the duty of disclosure set out in Rule 3.3(a)(2) require a lawyer to inform the tribunal of rulings entered in lateral and lower courts?

Opinion:

Pursuant to Rule 3.3(a)(2), the lawyer's duty is to disclose to the tribunal legal authority that is controlling as to that tribunal. The lawyer must make a legal determination as to the legal authority that is controlling for the particular tribunal.

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. The disclosure duty covers not only court decisions, but also statutes and regulations adverse to a client's position. A lawyer is not required to inform the tribunal of authority that is not controlling.

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
April 19, 2018

Proposed opinion rules that the name of a lawyer who is under an active disciplinary suspension must be removed from 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. A suspended lawyer may not be associated with her former firm during the suspension period. The Regulations for Professional Corporations and Professional Limited Liability Companies Practicing Law state that if a shareholder in a professional corporation or member of a professional limited liability company becomes legally disqualified to render professional services in North Carolina, the name of the professional corporation or professional limited liability company shall be promptly changed to eliminate the name of such shareholder or member, and such shareholder or member shall promptly dispose of her shares of stock in the corporation or interest in the professional limited liability company. 27 N.C. Admin. Code 1E, Rule .0102. In addition, Rule 5.5(b) of the Rules of Professional Conduct prohibits a lawyer who is not admitted to practice law in North Carolina from holding out to the public or otherwise representing that the lawyer is admitted to practice law in this jurisdiction.

Therefore, within a reasonable timeframe from the effective date of the active disciplinary suspension not to exceed three months and 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. The law firm is reminded to amend the articles of incorporation with the North Carolina secretary of state and, if the suspended lawyer's name is contained in the firm's website URL, to change or redirect the URL to a URL that does not contain the suspended lawyer's name. (If a URL with appropriate is not available, the law firm may adopt a trade name for its URL provided the URL is registered with and approved by the North Carolina State Bar. 2005 FEO 8.)

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. 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 not to exceed three months from the effective date of the administrative suspension, 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.

Proposed 2018 Formal Ethics Opinion 5
Accessing Social Network Presence of Represented or Unrepresented Persons
April 19, 2018

Proposed opinion reviews a lawyer's professional responsibilities when seeking access to a person's profile, pages, and posts on a social network to investigate a client's legal matter.

Introduction:

Social networks are internet-based communities that individuals use to communicate with each other and to view and exchange information, including photographs, digital recordings, and files. Examples of currently popular social networks include Facebook, Twitter, Myspace, Instagram, and LinkedIn. On some forms of social media, such as Facebook, users create a profile page with personal information that other users may access online. Websites that host the social networks often allow the user to establish the level of privacy for the profile page and postings thereon, and to limit those who may view the profile page and postings to "friends"—those who have specifically sent a computerized request to view the profile page which the user has accepted. NYCBA Formal Op. 2010-2 (September 2010).

Lawyers increasingly access social networks to prepare or to investigate a client's matter. However, the use of social networks has ethical implications. Several rules restrict a lawyer's communications with people involved in a client's matter. Rule 4.2 restricts a lawyer's communications with persons represented by counsel. Rule 4.3 restricts a lawyer's communications with unrepresented persons. Furthermore, all communications by a lawyer are subject to Rule 4.1's prohibition on knowingly making a false statement of material fact or law to a third person and to Rule 8.4(c)'s prohibition on conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer.

The technology and features of social networks are constantly changing. It is impossible to address every aspect of a lawyer's ethical obligations when utilizing a social network to prepare or to investigate a client's legal matter.

Every lawyer is required by the duty of competence to keep abreast of the benefits and risks associated with the technology relevant to the lawyer's practice, including social networks. Rule 1.1, cmt. [8]. Further, when using a social network as an investigative tool, a lawyer's professional conduct must be guided by the Rules of Professional Conduct.

This opinion will address ethical issues that arise when lawyers—either directly or indirectly—seek access to social network profiles, pages, and posts (collectively referred to as "social network presence") belonging to another person. Throughout the opinion "person" refers to opposing parties and to witnesses.

This opinion does not obviate comment [1] to Rule 8.4. The comment explains that the prohibition in Rule 8.4(a) against knowingly assisting another to violate the Rules of Professional Conduct or violating the Rules of Professional Conduct through the acts of another does not prohibit a lawyer from advising a client or, in the case of a government lawyer, investigatory personnel, of action the client, or such investigatory personnel, is lawfully entitled to take. *See* 2014 FEO 9 (use of tester in investigation that serves a public interest).

For guidance on communicating with a judge on a social network, *see* 2014 FEO 8. For the restrictions on communicating with a juror or a member of the jury *venire*, *see* Rule 3.5.

Inquiry #1:

Regardless of the privacy setting established by a user, some social network sites allow public access to certain limited user information. May a lawyer representing a client in a matter view the public portion of a person's social network presence?

Opinion #1:

Yes. The public portion of a person's social network presence refers to any information or posting that is viewable by anyone using the internet or anyone who is a member of the social network. Such information is no different than other information that is publicly available. Nothing in the Rules of Professional Conduct prohibits a lawyer from accessing publicly available information.

As noted by the Colorado Bar Association, "[a] lawyer's conduct in viewing [the public portion of a person's social media profile or any public posting made by an individual] does not implicate any of the restrictions upon communications between a lawyer and certain others involved in the legal system." Colorado Formal Op. 127 (September 2015).

Some social networks automatically notify a person when his or her presence has been viewed. The person whose presence is viewed may receive information about the individual who viewed the presence. Under these circumstances, when a lawyer views a person's public social network presence, it is the social network sending a communication, not the lawyer. Therefore, the notification generated by the social network is not a prohibited communication by the lawyer. *See, e.g.* ABA Formal Op. 466 (2014) (communication generated because of technical feature of electronic social media service is communication by the service, not the lawyer). However, a lawyer who engages in repetitive viewing of a person's social network presence so as to generate multiple notifications from the network may be in violation of Rule 4.4(a). That rule prohibits a lawyer from using means that have no substantial purpose other than to embarrass, delay, or burden a third person, and from using methods of obtaining evidence that violate the legal rights of such a person.

Lawyers may view the public portion of a person's social network presence. However, the lawyer may not engage in repetitive viewing of a person's social network presence if doing so would violate Rule 4.4(a).

Inquiry #2:

May a lawyer use deception to access a restricted portion of a person's social network presence?

Opinion #2:

No. Lawyers must never use deception, dishonesty, or pretext to gain access to a person's restricted social network presence. Rules 4.1 and 8.4(c). When seeking access to a person's restricted social network presence, a lawyer must not state or imply that he is someone other than who he is or that he is disinterested. Furthermore, lawyers may not instruct a third party to use deception.

Inquiry #3:

May a lawyer, using his true identity, request access to the restricted portions of an unrepresented person's social network presence?

Opinion #3:

Yes. Generally, viewing the restricted portion of a person's social network presence will require some form of communication. The person seeking access communicates a request such as a "friend request." The request can be accepted, rejected, or ignored. A lawyer may send a request to view an unrepresented person's restricted social network presence if the lawyer complies with the duty of honesty in Rule 4.1 and the disclosure requirements of Rule 4.3(b).

When a lawyer has properly obtained access to the social network presence of an unrepresented person who is involved in a legal matter with the lawyer's client, the lawyer may post communications to the person's social network presence provided the following conditions are satisfied: the content of the posts is not false, deceitful, or misleading; the lawyer explains his role in the legal matter; and the lawyer does not provide the person with legal advice except the advice to obtain legal counsel. Rules 4.3 and 8.4(c).

Inquiry #4:

May a lawyer, using his true identity, request access to the restricted portions of a represented person's social network presence?

Opinion #4:

Yes, such a request does not violate Rule 4.2. Rule 4.2 restricts communications between a lawyer and represented person. The purposes of Rule 4.2 are to prevent overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship, and the uncounseled disclosure of information relating to the representation. Rule 4.2, cmt. [1].

As noted by Robert Keeling, Tami Weerasingha-Cote, and John Paul Schnapper-Casteras in an article in the *Cornell Journal of Law and Public Policy*:

> Rule 4.2 is largely focused on preventing lawyers from eliciting information from a represented person. In the social media context, no information is being elicited. Rather, the lawyer is merely asking to view information that the represented person chooses to post at her own initiative for her audience to view, regardless of the lawyer's ability to access this information. Such passive observation is not the type of

conduct the rule is aimed at preventing; only active engagement with the represented person triggers the operation of Rule 4.2.

Robert Keeling, Tami Weerasingha-Cote, and John Paul Schnapper-Casteras (2014), "Neither Friend nor Follower: Ethical Boundaries on the Lawyer's Use of Social Media," *Cornell Journal of Law and Public Policy,* Vol. 24: Iss. 1.

Requesting access to restricted social network presence is not a prohibited communication as contemplated by Rule 4.2. If the lawyer's request for access is accepted, the lawyer may view the information posted without seeking consent from the represented person's lawyer.

Inquiry #5:

If the lawyer's request for access to view restricted pages of a represented person's social network presence is accepted, may the lawyer post communications to the person's social network presence?

Opinion #5:

Posts that engage the represented person and prompt the person to post information she otherwise would not post but for the lawyer's communication are prohibited by Rule 4.2. Therefore, if the lawyer's posts are intended to elicit information about the subject of the representation, the lawyer must first obtain consent from the person's lawyer. Rule 4.2. If consent to post communications to the person's social network presence is granted, the content of the lawyer's posts must not be false, deceitful, or misleading. Rule 8.4(c). The same restrictions apply when the lawyer and the represented person are part of the same social network site at the time that the legal matter commences.

Not all posts are prohibited. Lawyers may post communications provided such posts are not related to the subject of the representation or intended to elicit information about the subject of the representation.

Inquiry #6:

May a lawyer request or accept information from a third party with access to restricted portions of a person's social network presence?

Opinion #6:

Nothing in the Rules of Professional Conduct prevents a lawyer from engaging in lawful and ethical informal discovery such as communicating with third party witnesses to collect information and evidence to benefit a client. Witnesses who have obtained information from the restricted portions of a person's (represented or unrepresented) social network presence are no different in this regard than any other witness with information relevant to a client's matter. Therefore, when a lawyer is informed that a third party has access to restricted portions of a person's social network presence and can provide helpful information to the lawyer's client, the lawyer is not prohibited from requesting such information from the third party or accepting information volunteered by the third party. Similarly, a lawyer may accept information from a client who has access to the opposing party's or a witness's restricted social network presence.

However, the lawyer may not direct or encourage a third party or a client to use deception or misrepresentation when communicating with a person on a social network site. *See* Opinion #2.

Inquiry #7:

May a lawyer direct a third party to request access to restricted portions of a represented person's social network presence? If so, may the lawyer direct the third party to communicate with the represented person and post to the person's social network presence?

Opinion #7:

As stated in Opinion #4, requesting access is not prohibited by Rule 4.2. Therefore, lawyers may direct a third party to request access to restricted portions of a person's social network presence. However, if the lawyer knows or reasonably should know that the third party used deception, misrepresentation, or engaged in illegal activity to gain access to restricted portions of the person's social network presence, the lawyer may not use the information unless the lawyer complies with the requirements of 2003 FEO 4 (lawyer may not proffer evidence gained during a private investigator's verbal communication with opposing party known to be represented by legal counsel unless lawyer discloses source of evidence to opposing lawyer and to court prior to proffer).

The lawyer may not direct the third party to communicate with the represented person and post to the represented person's social network presence if the posts are intended to elicit information about the subject of the representation. *See* Opinion #5.

Proposed 2018 Formal Ethics Opinion 6
Shifting Cost of Litigation Cost Protection Insurance to Client
April 19, 2018

Proposed opinion rules that, with certain conditions, a lawyer may include in a client's fee agreement a provision allowing the lawyer's purchase of litigation cost protection insurance and requiring reimbursement of the insurance premium from the client's funds in the event of a settlement or favorable trial verdict.

Inquiry:

Lawyer would like to purchase "litigation cost protection" insurance for matters he handles on a contingency fee basis. The insurance is purchased by a lawyer on a case-by-case basis for a one-time premium payment. The insurance is available for purchase up until 90 days after the initial complaint has been served upon the defendant(s). The insurance reimburses a lawyer for litigation costs advanced by the lawyer only in the event of a trial loss.

Inquiry #1:

Do the Rules of Professional Conduct prohibit a lawyer from purchasing litigation cost protection insurance for his contingency fee cases?

Opinion #1:

No. A lawyer has a duty to avoid conflicts of interest with his client. According to Rule 1.7(a), a lawyer has a conflict of interest if the representation of a client will be materially limited by a personal interest of the lawyer. The purpose of the insurance policy is to protect the lawyer's investment in the costs and expenses of litigation. However, the insurance reimburses the lawyer only in the event of a trial loss. The lawyer and the client may have different cost-benefit calculations. Therefore, the terms of the policy incentivize going to trial in certain scenarios, which raises the possibility of a conflict of interests between the lawyer and the client.

However, there are inherent conflicts of interests present in every case taken on a contingency basis. A lawyer may prefer that his client accept a low settlement offer to ensure

that the lawyer receives his fee, while the client wants to reject a settlement offer and take his chances at trial. In either event, the client has the ultimate authority regarding settlement of the client's matter. Rule 1.2(a)(1). The presence or absence of a litigation cost protection insurance policy does not alter this dynamic of the client-lawyer relationship.

Lawyer may purchase litigation cost protection insurance so long as Lawyer does not allow the terms of the coverage to adversely affect Lawyer's independent professional judgment, the client-lawyer relationship (including the client's ultimate authority as to settlement), or the client's continuing best interests.

Inquiry #2:

If Lawyer recovers funds for the client through a settlement or favorable trial verdict, Lawyer proposes to be reimbursed for the insurance premium from the judgment or settlement funds. Lawyer intends to disclose the cost of the insurance to the client as part of the representation agreement.

May Lawyer include in a client's fee agreement a provision allowing Lawyer's purchase of litigation cost protection insurance and requiring reimbursement of the insurance premium from the client's funds in the event of a settlement or favorable trial verdict?

Opinion #2:

Yes. A provision in a fee agreement requiring client reimbursement of a particular expense implicates a lawyer's professional duties under Rule 1.5. Rule 1.5(a) provides that a lawyer shall not charge an illegal or clearly excessive fee or charge or collect a clearly excessive amount for expenses. Rule 1.5(b) requires a lawyer who has not regularly represented a client to communicate to the client the basis of the fee and expenses for which the client will be responsible. Specifically as to contingency fees, Rule 1.5(c) provides:

> A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; *litigation and other expenses to be deducted from the recovery*; and whether such expenses are to be deducted before or after the contingent fee is calculated [emphasis added]. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party....

The premium for the insurance is an "other expense" that Lawyer intends to deduct from any recovery. Therefore, the amount of the insurance premium must not be clearly excessive, and the circumstances under which the client is responsible for reimbursement of the premium must be clearly communicated to the client and clearly set out in the written fee agreement. Lawyer must describe with specificity what the insurance is and why Lawyer believes a litigation cost protection policy will serve the client's best interests. Lawyer must also inform the client that other lawyers may choose not to purchase or to charge the client for the cost of a litigation cost protection policy. Finally, Lawyer must provide the client with the opportunity to review the insurance policy.

The Florida Bar determined that litigation cost protection insurance is "part of a business agreement, albeit with a third party rather than with the client, creating circumstances resembling the conflicts of interest that can arise, and be cured, pursuant to [Rule 1.8(a)]." Florida Bar Staff Opinion 37289 (Revised 2018). Florida's version of Modal Rule 1.8(a) (which is substantially the same as NC Rule 1.8(a)) provides that a lawyer may enter into a business transaction with a client or acquire a pecuniary interest directly adverse to a client if: (1) the transaction and terms are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction.

The Florida Bar concluded that in each instance in which a lawyer wishes to purchase litigation cost protection insurance and shift the cost to the client, the lawyer must consider the ethics concerns set out in Rule 1.8(a). Florida Bar Staff Opinion 37289 (Revised 2018). The Florida Bar also concluded that, prior to seeking the client's informed consent, the lawyer must make "an objectively reasonable determination" that purchasing the insurance benefits the client prior to seeking the client's informed consent. *Id.*

Similarly, a North Carolina lawyer must satisfy these professional responsibilities, in addition to those implicated by Rule 1.5, when the lawyer intends to be reimbursed for the insurance premium from the judgment or settlement proceeds. The lawyer may include in a client's fee agreement a provision allowing the lawyer's purchase of litigation cost protection insurance and requiring reimbursement of the insurance premium from the client's funds in the event of a settlement or favorable trial verdict upon satisfying the following conditions:

(1) the amount to be charged to the client is not clearly excessive under the guidelines set out in Rule 1.5;

(2) the circumstances under which the client is responsible for reimbursement of the insurance premium are clearly communicated to the client and clearly set out in the written fee agreement;

(3) the lawyer fully explains to the client what litigation cost protection insurance is, why the lawyer believes a litigation cost protection policy will serve the client's best interests, and that other lawyers may advance the client's costs without charging the client the cost of a litigation cost protection policy;

(4) the lawyer provides the client with the opportunity to review the litigation cost protection policy;

(5) the transaction and terms are fair and reasonable to the client pursuant to the guidelines set out in Rule 1.8(a);

(6) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel regarding the arrangement;

(7) the lawyer obtains the client's informed consent in writing at the beginning of the representation; prior to seeking the required informed consent, the lawyer has to make an objectively reasonable determination that purchasing the insurance benefits the client; and

(8) the lawyer does not allow the terms or availability of coverage under the insurance policy to adversely affect the lawyer's independent professional judgment, the client-lawyer relationship (including the client's ultimate authority as to settlement), or the client's continuing best interests. ■

Amendments Approved by the Supreme Court

On April 5, 2018, the North Carolina Supreme Court approved the following amendments.

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 amendments revamp and clarify the manner and method of giving notice of annual and special meetings of the State Bar.

Amendments to the Rules on Meetings of the State Bar Council

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

The amendments revamp the manner and method for giving notice of regular and special meetings of the State Bar Council, including allowing notice of special meetings to be given by email or other electronic means. The 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.

Amendments to the Rule on Standing Committees of the Council

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

The amendments eliminate the Technology and Social Media Committee and establish the Communications Committee as a standing committee of the State Bar Council.

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 amendments replace the designation "accredited sponsor" with the designation "registered sponsor," and reconcile the requirements for designation as a registered CLE sponsor with current practice.

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

Amendments to The Plan of Legal Specialization provide for automatic revocation of specialty certification if any part of a disciplinary suspension is active; if the entire disciplinary suspension is stayed, certification is suspended until the completion of the entire stayed disciplinary suspension. Amendments to the standards for the estate planning and probate law specialty allow certain employment outside of private practice to satisfy the substantial involvement standard for recertification.

Amendments to the Plan for Certification of Paralegals

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

The amendments to The Plan for Certification of Paralegals allow applicants for paralegal certification who hold national certifications from qualified paralegal organizations to sit for the certification exam although the applicants have not satisfied the educational requirement for certification. Another amendment requires qualified paralegal studies programs to include the equivalent of one semester's credit in legal ethics.

Highlights

· The Supreme Court approves amendments to Rule of Professional Conduct 3.5 that clarify the prohibition on *ex parte* communications with a judge.

· Council adopts proposed rule amendments mandating that one of the 12 hours of approved CLE required annually must be devoted to technology training.

Amendments to the Rules of Professional Conduct

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

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 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 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 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.

Amendments Pending Supreme Court Approval

At its meeting on April 20, 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 Spring 2018 edition of the *Journal* or visit the State Bar website.)

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 ordered on or after July 1.

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 mandate that one of the 12 hours of approved CLE required annually must be devoted to technology training.

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 specify that members may file their annual report forms online and 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.

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. Other proposed amendments eliminate the rights of an applicant to review a failed examination and to request a review by the board of a failed examination.

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

Proposed amendments to the rules of the Board of Law Examiners provide a time period within which a general applicant is required to successfully complete the state-specific component of the Uniform Bar Examination.

Proposed Amendments

At its meeting on April 20 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 Rules on Election, Succession, and Duties of Officers

27 N.C.A.C. 1A, Section .0400, Organization of the North Carolina State Bar

A new rule is proposed that will specify what occurs when any of the State Bar's officers become temporarily unable to perform the duties of office. The complete replacement of the existing, less comprehensive rule is proposed.

The proposed new rule appears below. The paragraphs that will be replaced appear, with overstrikes, below the new rule.

.0406 Vacancies and Succession [NEW RULE]

(a) Succession Upon Mid-term Vacancy in Office. Officer vacancies shall be filled as follows:

(1) A vacancy in the office of president shall be filled by the president-elect, who shall serve as president for the unexpired term and for the next term.

(2) A vacancy in the office of president-elect shall be filled by the vice-president, who shall serve as president-elect for the unexpired term. At the end of the unexpired term, the office of president-elect will become vacant and the council shall elect a president-elect in accordance with Rule .0404 of this subchapter. A former vice-president who served an unexpired term as president-elect pursuant to this subsection will be eligible to stand for election as president-elect.

(3) The council shall elect a person to fill the unexpired term created by any vacancy in the office of vice-president or secretary. The election shall occur at a special meeting of the council or at the next regularly scheduled meeting of the council.

(4) If there is a vacancy in the office of president or president-elect and there is no available successor under these provisions, the council shall elect a person to fill the unexpired term created by such vacancy. The election shall occur at a special meeting of the council or at the next regularly scheduled meeting of the council.

(b) Temporary Inability to Preside at Meetings. If the president is absent or is otherwise unable to preside at any meeting of the

North Carolina State Bar or the council, the president-elect shall preside. If the president-elect is absent or is otherwise unable to preside, then the vice-president shall preside. If none of the president, president-elect, or vice-president are present and able to preside, then the council shall elect a member to preside during the meeting.

(c) Temporary Inability to Perform Duties. If the president is absent or is otherwise temporarily unable to perform the duties of office, the president-elect shall perform those duties until the president returns or becomes able to resume the duties. If the president-elect is absent or is otherwise temporarily unable to perform the duties of the president, then the council shall select one of its members to perform those duties for the period of the president's absence or inability.

(d) Temporary Inability of Secretary to Perform Duties. If the secretary is absent or is otherwise temporarily unable to perform the duties of office, the assistant director and director for management, finance, and communications shall perform those duties until the secretary returns or becomes able to resume the duties. If the assistant director and director for management, finance, and communications is absent or is otherwise unable to perform those duties, the counsel of the State Bar shall perform those duties until the secretary returns or becomes able to resume the duties. If neither the assistant director and director for management, finance, and communications nor the counsel are able to perform those duties, then the president may select a member of the State Bar staff to perform those duties for the period of the secretary's absence or inability.

~~(a) If the office of president becomes vacant for any reason, including resignation, death, disqualification, or permanent inability, the president-elect shall become president for the unexpired term and the next term. If the office of the president-elect becomes vacant because the president-elect must assume the presidency under the foregoing provision of this section, then the vice-president shall become the president-elect for the unexpired term and at the end of the unexpired term to which the vice-president ascended the office will become vacant and an election held in accordance with Rule .0304 of this subchapter; if the office of president-elect becomes vacant for any other reason, the vice-president shall become the president-elect for the unexpired term following which said officer shall assume the presidency as if elected president-elect. If the office of vice-president or secretary becomes vacant for any reason, including resignation, death, disqualification, or permanent inability, or if the office of president or president-elect becomes vacant without an available successor under these provisions then the office will be filled by election by the council at a special meeting of the council with such notice as required by Rule .0602 of this subchapter or at the next regularly scheduled meeting of the council.~~

~~(b) If the president is absent or unable to preside at any meeting of the North Carolina State Bar or the council, the president-elect shall preside, or if the president-elect is unavailable, then the vice-president shall preside. If none are available, then the council shall elect a member to preside during the meeting.~~

~~(c) If the president is absent from the state or for any reason is temporarily unable to perform the duties of office, the president-elect shall assume those duties until the president returns or becomes able to resume the duties. If the president-elect is unable to perform the duties, then the council may select one of its members to assume the duties for the period of inability.~~

Proposed Amendments to the State Bar Council's Rulemaking Procedures

27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures

Proposed amendments to Rule .1401 allow future proposed amendments to be published for comment in a digital version of the *Journal*, the State Bar's official publication. The proposed amendments are necessary to accommodate those members who elect to receive the electronic version of the *Journal* exclusively.

Proposed amendments to Rule .1403 specify when a proposed rule amendment or proposed rule takes effect.

.1401 Publication for Comment

(a) As a condition precedent to adoption, a proposed rule or amendment to a rule must be published for comment as provided in subsection (c).

(b) A proposed rule or amendment to a rule must be presented to the Executive Committee and the council prior to publication for comment, and specifically approved for publication by both.

(c) A proposed rule or amendment to a rule must be published for comment in an official printed **or digital** publication of the North Carolina State Bar that is mailed **or emailed** to the membership at least 30 days in advance of its final consideration by the council. The publication of any such proposal must be accompanied by a prominent statement inviting all interested parties to submit comment to the North Carolina State Bar at a specified postal or e-mail address prior to the next meeting of the Executive Committee, the date of which shall be set forth.

.1403 Action by the Council and Review by the North Carolina Supreme Court

(a) Whenever the Executive Committee recommends adoption of any proposed rule or amendment to a rule in accordance with the procedure set forth in Rule .1402 above, the council at its next regular business meeting shall consider the proposal, the Executive Committee's recommendation, and any comment received from interested parties, and:

(1) decide whether to adopt the proposed rule or amendment, subject to the approval of the North Carolina Supreme Court as described in G.S. 84-21;

(2) reject the proposed rule or amendment; or

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.**

(3) refer the matter back to the Executive Committee for reconsideration.

(b) Any proposed rule or amendment to a rule adopted by the council shall be transmitted by the secretary to the North Carolina Supreme Court for its review on a schedule approved by the Court, but in no event later than 120 days following the council's adoption of the proposed rule or amendment.

(c) ~~No~~ **A** proposed rule or amendment to a rule adopted by the council shall take effect ~~unless and until~~ **when** it is ~~approved by order~~ **entered upon the minutes** of the North Carolina Supreme Court.

(d) ...

Proposed Amendments to the Certification Standards for the Elder Law Specialty

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

The proposed amendments clarify what constitutes elder law CLE for the purpose of satisfying the CLE standards for certification and for continued certification in elder law.

.2905 Standards for Certification as a Specialist in Elder Law

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

(a) Licensure and Practice...

(c) Substantial Involvement Experience Requirements - In addition to the showing required by Rule .2905(b), an applicant shall show substantial involvement in elder law by providing information regarding the applicant's participation, during the five years immediately preceding the date of the application, in at least sixty (60) elder law matters in the categories set forth in Rule .2905(c)(3) below...

(3) Experience Categories:

(A) health and personal care planning including giving advice regarding, and preparing, advance medical directives (medical powers of attorney, living wills, and health care declarations) and counseling older persons, attorneys-in-fact, and families about medical and life-sustaining choices, and related personal life choices.

(B) pre-mortem legal planning including giving advice and preparing documents regarding wills, trusts, durable general or financial powers of attorney, real estate, gifting, and the financial and tax implications of any proposed action.

(C) fiduciary representation including seeking the appointment of, giving advice to, representing, or serving as executor, personal representative, attorney-in-fact, trustee, guardian, conservator, representative payee, or other formal or informal fiduciary.

(D) legal capacity counseling including advising how capacity is determined and the level of capacity required for various legal activities, and representing those who are or may be the subject of guardianship/conservatorship proceedings or other protective arrangements.

(E) public benefits advice including planning for and assisting in obtaining Medicaid, supplemental security income, and veterans benefits.

(F) special needs counseling, including the planning, drafting, and administration of special/supplemental needs trusts, housing, employment, education, and related issues.

(G) advice on insurance matters including analyzing and explaining the types of insurance available, such as health, life, long term care, home care, COBRA, medigap, long term disability, dread disease, and burial/funeral policies.

(H) resident rights advocacy including advising patients and residents of hospitals, nursing facilities, continuing care retirement communities, assisted living facilities, adult care facilities, and those cared for in their homes of their rights and appropriate remedies in matters such as admission, transfer and discharge policies, quality of care, and related issues.

(I) housing counseling including reviewing the options available and the financing of those options such as: mortgage alternatives, renovation loan programs, life care contracts, and home equity conversion.

(J) employment and retirement advice including pensions, retiree health benefits, unemployment benefits, and other benefits.

(K) counseling with regard to age and/or disability discrimination in employment and housing.

(L) litigation and administrative advocacy in connection with any of the above matters, including will contests, contested capacity issues, elder abuse (including financial or consumer fraud), fiduciary administration, public benefits, nursing home torts, and discrimination.

(d) Continuing Legal Education - An applicant must earn forty-five (45) hours of accredited continuing legal education (CLE) ~~credits~~ in elder law ~~and related fields, as specified in this rule~~, during the three full calendar years preceding application and the year of application, with not less than nine (9) credits earned in any of the three calendar years. ~~Of the 45 CLE credits, at least ten (10) credits must be earned attending elder law specific CLE programs.~~ **Elder law CLE is any accredited program on a subject identified in the experience categories described in subparagraph (c)(3) of this rule.** ~~Related fields shall include the following: estate planning and administration, trust law, health and long-term care planning, public benefits, veterans' benefits, surrogate decision-making, older persons' legal capacity, social security disability, Medicaid/Medicare claims, special needs planning, and taxation. No more than twenty (20) credits may be earned in the related fields of estate taxation or estate administration.~~

(e) Peer Review - ...

.2906 Standards for Continued Certification as a Specialist in Elder Law

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .2906(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - ...

(b) Continuing Legal Education - The specialist must earn seventy-five (75) hours of accredited continuing legal education (CLE) credits in elder law ~~or related fields~~ during the five calendar years preceding application, with not less than ten (10) credits earned in any calendar year. **Elder law CLE is any accredited program on a subject identified in the experience categories described in Rule**

CONTINUED ON PAGE 54

Client Security Fund Reimburses Victims

At its April 18, 2018, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $238,262.64 to 17 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $3,800 to a former client of Dee W. Bray Jr. of Fayetteville,. The board determined that Bray was retained to represent a client on felony B&E and other criminal offenses. The client made payments towards the fee until paid in full. However, Bray failed to provide any meaningful legal services to the client for the fee paid prior to being placed on disability inactive status by the senior resident judge. Bray was placed on disability inactive status on February 2, 2017. The board previously reimbursed 17 other Bray clients a total of $111,950.

2. An award of $5,000 to a former client who suffered a loss because of Dee W. Bray Jr. The board determined that Bray was retained to represent the client on felony drug and other criminal offenses. The applicant made payments towards the quoted fee until paid in full. Bray failed to provide any meaningful legal services to the client for the fee paid.

3. An award of $30,000 to an applicant who suffered a loss because of Dee W. Bray Jr. The board determined that Bray was retained to represent the applicant on serious sex offenses. Bray failed to provide any meaningful legal services for the fee paid prior to being placed on disability inactive status.

4. An award of $9,500 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client on serious felony charges. The client 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 $39,096.48 to a former client of Paige C. Cabe of Sanford. The board determined that Cabe's client delivered a cashier's check to her to be used to purchase the client's mother's house and close her mother's estate. Cabe deposited the funds in her trust account and made three disbursements to family members of the client, but embezzled the remaining funds. The board previously reimbursed two other Cabe clients a total of $1,950.

6. An award of $1,250 to a former client of Wayne E. Crumwell of Reidsville. The board determined that Crumwell was retained to help a client regain custody of her child. The client paid Crumwell's quoted fee in two installments. Crumwell failed to provide any meaningful legal services for the fee paid. Crumwell died on November 6, 2016. The board previously reimbursed four other Crumwell clients a total of $10,445.

7. An award of $4,700 to an applicant who suffered a loss because of Wayne E. Crumwell. The board determined that Crumwell was retained by the applicant to represent her son on multiple criminal charges. The applicant paid Crumwell's quoted fee in two installments. Crumwell failed to provide any meaningful legal services for the fee paid.

8. An award of $5,000 to an applicant who suffered a loss because of Wayne E. Crumwell. The board determined that the applicant retained Crumwell to file a motion for appropriate relief for her son who was convicted of sex abuse charges in Pennsylvania. Crumwell accepted the fee knowing he was not authorized to practice in Pennsylvania. Crumwell failed to do anything on the applicant's son's behalf in the year prior to his death.

9. An award of $4,250 to former client of Wayne E. Crumwell. The board determined that the client initially retained Crumwell to respond to a demand letter from her step-father's daughter demanding property from the client's mother's home. Crumwell wrote the letter, but advised the client to pay another fee to file an incompetency petition on her mother's behalf. The client paid the additional fee, but Crumwell failed to provide any meaningful legal services for the fee paid.

10. An award of $7,400 to a former client of Wayne E. Crumwell. The board determined that after discharging his previous attorney, the client retained Crumwell to finish his domestic matter. As a result of a motion he filed, Crumwell received a $15,000 distribution check from the client's ex. Crumwell was entitled to 20% of the distribution. The client endorsed the check and left it with Crumwell. Crumwell had no trust account in which to deposit the check. Crumwell later gave the client a certified check for $5,000. Crumwell made no other disbursement to or on behalf of the client. The client also paid Crumwell $400 to represent the client on a traffic ticket. Crumwell failed to provide any meaningful legal services on that matter.

11. An award of $147.92 to a former client of Michael S. Eldredge, formerly of Lexington. The board determined that Eldredge was retained to represent a client in a personal injury claim stemming from an auto accident. Eldredge settled the matter, but failed to make all the proper disbursements to the medical providers. Due to misappropriation, Eldredge's trust account balance was insufficient to pay all his client obligations. Eldredge was disbarred on August 17, 2017. The board previously reimbursed five other Eldredge clients a total of $75,090.

12. An award of $6,000 to a former client of Clifton J. Gray III of Lucama. The board determined that Gray was retained as lead counsel after the client's attorney said the client needed a more experienced attorney for representation on his serious charges of sex offenses with a minor. Gray provided no meaningful legal services for the fee paid. Gray was suspended on December 15, 2016. The board previously reimbursed five other Gray clients a total of $33,200.

13. An award of $1,500 to a former client of Clifton J. Gray III. The board determined that Gray was retained to handle a client's charge of possession of drug paraphernalia. Gray failed to appear when the client's case came up in court. Gray failed to provide any meaningful legal services for the fee paid.

14. An award of $300 to a former client of Charles K. Hubbard of Gastonia. The board determined that Hubbard was retained to rep-

resent a client on a DWI and other offenses. The client made payments towards Hubbard's fee. Hubbard failed to provide any meaningful legal services for the fee paid. Hubbard died on March 10, 2017.

15. An award of $100,000 to a former client of Joe S. Major III of Charlotte. The board determined that a client signed a general POA naming Major as her attorney-in-fact. After discovering that Major had made unauthorized disbursements to himself from the client's funds, she revoked Major's powers on December 28, 2015. Major continued to write unauthorized checks to himself from the client's funds even after he knew his powers had been revoked. Major misappropriated over $100,000 of his client's funds. Major's disciplinary hearing is currently stayed.

16. An award of $300 to a former client of Elisabeth Murray-Obertein of Hendersonville. The board determined that Murray-Obertein was retained to handle a client's traffic ticket. Murray-Obertein became disabled before she provided any meaningful legal services for the fee paid. Murray-Obertein was placed on disability inactive status on June 29, 2017.

17. An award of $20,018.24 to a former client of R. Alfred Patrick of Greenville. The board determined that Patrick was retained to represent a client and her two minor children in personal injury claims resulting from an automobile accident in which they were injured. Patrick received and deposited multiple med-pay checks on behalf of the clients, then settled the clients' personal injury claims for $28,000. The insurance company paid the Division of Medical Assistance $129.55 for each of the two children and the remaining funds were deposited into Patrick's trust account. Patrick misappropriated the med-pay funds plus the remainder of the clients' settlement proceeds other than his fee and expenses. Patrick was disbarred on January 28, 2017. The board previously reimbursed three other Patrick clients a total of $65,771.21. ■

Who Inspires You? (cont.)

demonstrated outstanding service to the profession. As noted by Mr. McMillan, the award is meant not only for those lawyers with the biggest reputations, but also for those lawyers who serve with great distinction but without much recognition.

As aptly stated by one nominator, "Honorable and steadfast service, when given freely, we often take for granted. At some point if God be willing, we ought to pause and say, 'Thank you.'" The John B. McMillan Distinguished Service Award is a chance for the North Carolina State Bar to say "thank you" to lawyers who have made positive contributions to the legal profession. The nomination form is available at bit.ly/2I2jI9Q.

Past recipients of the John B. McMillan Distinguished Service Award:

2017
- Charles M. Davis – Louisburg
- Judge Paul L. Jones – Kinston
- M. Keith Kapp – Raleigh
- Judge Gary Lynn Locklear – Pembroke
- Joseph G. Maddrey – Eden
- Judge Howard Manning Jr. – Raleigh
- Rudolph G. Singleton – Fayetteville
- Gary Tash – Winston-Salem
- Justice Patricia Timmons-Goodson – Fayetteville
- Melvin F. Wright – Raleigh/Winston-Salem

2016
- Robert C. Cone – Greensboro
- Leo Daughtry – Smithfield
- Howard L. Gum – Asheville
- William O. King – Durham
- Sarah Parker – Raleigh
- Christie Speir Cameron Roeder – Raleigh
- Alex Warlick Jr. – Jacksonville
- Willis P. Whichard – Chapel Hill
- Cecil L. Whitley – Salisbury

2015
- Charles E. Burgin – Marion
- Sidney S. Eagles Jr. – Raleigh
- James E. Ferguson II – Charlotte
- Theodore O. Fillette – Charlotte
- Allan B. Head – Cary
- Lillian B. Jordan – Randleman
- Richard M. Lewis Jr. – Fayetteville
- A. Elizabeth Keever – Fayetteville
- Samuel O. Southern – Raleigh

2014
- John Quincy Beard – Raleigh
- R. Lee Farmer – Yanceyville
- K. Edward Greene – Chapel Hill
- Leonard T. Jernigan Jr. – Raleigh
- James M. Long – Yanceyville
- James B. Maxwell – Durham
- Joseph B. Roberts III – Gastonia
- Sally H. Scherer – Raleigh
- Horace E. Stacy – Lumberton
- Sharon A. Thompson – Durham
- M. Gordon Widenhouse – Chapel Hill

2013
- Jules Banzet – Warrenton
- Roy W. Davis Jr. – Asheville
- Wright T. Dixon Jr. – Raleigh
- Tommy W. Jarrett – Goldsboro
- James "Jimbo" S. Perry – Kinston
- Roger W. Smith Jr. – Raleigh
- Wade M. Smith – Raleigh
- Samuel S. Woodley Jr. – Rocky Mount

2012
- J. Allen Adams – Raleigh
- H. Grady Barnhill Jr. – Winston-Salem
- Rhoda B. Billings – Lewisville
- Daniel T. Blue Jr. – Raleigh
- Kenneth S. Broun – Chapel Hill
- William K. Davis – Winston- Salem
- L.P. "Tony" Hornthal Jr. – Elizabeth City
- Richard S. Jones Jr. – Franklin
- Maria M. Lynch – Raleigh
- Harry C. Martin – Asheville
- Norwood Robinson – Winston-Salem
- James T. Williams Jr. – Greensboro

2011
- Robert L. McMillan Jr. – Raleigh
- George Rountree – Wilmington
- Richard Tuggle – Greensboro

2010
- Charles Becton – Durham
- Bruce T. Cunningham Jr. – Southern Pines
- Peter S. Gilchrist III – Charlotte
- James E. Holshouser Jr. – Pinehurst
- Edwin Lynn Johnson – Fayetteville
- William D. Kenerly – Salisbury
- John B. McMillan – Raleigh
- Robert W. Simmons – Charlotte
- John Drew Warlick Jr. – Jacksonville

2009
- Wade Barber – Pittsboro
- Janet Ward Black – Greensboro
- James M. Deal Jr. – Boone
- William A. Johnson – Lillington
- Annie Brown Kennedy – Winston-Salem
- Jim M. Kimzey – Brevard
- Luke Largess – Charlotte
- Jim F. Morgan – High Point
- Thomas C. Morphis Sr. – Hickory
- Carlyn G. Poole – Raleigh
- Gerald F. White – Elizabeth City
- Kenneth R. Youngblood – Hendersonville ■

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

Law School Briefs

Campbell University School of Law

Campbell Law ranks 15th nationally for ultimate bar passage per ABA—New data released by the American Bar Association shows that Campbell Law School ranks 15th nationally on ultimate bar passage, which indicates bar exam passage within two years of graduation. Of the 140 Campbell Law graduates from the class of 2015 who have sat for the bar exam, 97.86% (137 graduates) have successfully passed. Campbell Law's ultimate bar passage rate for the class of 2015 is the highest of all North Carolina law schools.

Campbell Law among best schools for practical training per* preLaw *magazine—Campbell Law School has been selected as one of the best schools in the country for practical training by *preLaw* magazine. Ranked inside the top 38 nationally, Campbell Law graded out at an A- for the second consecutive year.

Student advocates grab another national title—Campbell Law student advocates stole the show during the school's first ever appearance at the Capitol City Challenge National Invitational Mock Trial Competition this past weekend, bringing home a national title and the award for best advocate in the finals. The group marks the first all-female group of student advocates to win a national title at Campbell Law.

Professor Pryor receives Fulbright US Scholar Award to India—Campbell Law Professor Scott Pryor has received a Fulbright US Scholar Program award from The US Department of State and the J. William Fulbright Foreign Scholarship Board. Beginning in January 2019, Pryor will spend five months in India studying the implementation of the new Indian Insolvency and Bankruptcy Code, 2016, with a view toward publishing an article comparing selected aspects of Indian and US business bankruptcy law. The award marks Pryor's second Fulbright Award, having previously lectured and co-taught in Jodhpur, Rajasthan, in 2009.

Duke Law School

Abrams selected as 15th dean of Duke Law School—Karen L. Abrams, the vice provost for faculty affairs and professor of law at the University of Virginia, has been selected as the 15th dean of Duke Law School following a national search. She will succeed David F. Levi as the James B. Duke and Benjamin N. Duke dean of the school of law on July 1. Her primary teaching and research interests are in the areas of citizenship law, immigration law, constitutional law, legal history, family law, and gender law. Her scholarship has explored the intersection of immigration law and family law, the history of immigration law, and the marriage equality movement.

A Stanford Law School graduate, Abrams clerked for Judge Stanwood R. Duval Jr. of the US District Court for the Eastern District of Louisiana, and practiced litigation at Patterson, Belknap, Webb & Tyler in New York before entering the legal academy. She joined the UVA law faculty in 2005.

$10 M gift endows judicial institute—A $10 million gift from alumnus Carl Bolch Jr. and his wife, Susan Bass Bolch, will endow a new institute at Duke Law School dedicated to bettering the human condition through studying and promoting the rule of law. Matching gifts from Duke University and other donors will bring the Carl and Susan Bolch Judicial Institute's endowment to $20 million. David F. Levi, a former federal judge, will become the institute's director when he steps down as dean on June 30.

The institute's mission focuses on advancing the importance of rule-of-law principles and a fair and independent judiciary, and raising public awareness during lapses or failures in the rule of law. It will support teaching, research, and scholarship, award an annual prize recognizing distinguished achievements in rule-of-law preservation or advancement, provide education for US and international judges, and develop public education programs.

Elon University School of Law

Legal giants headline leadership speaker lineup—Two legal legends will visit Greensboro as part of an Elon Law speaker series showcasing the role of lawyers in shaping American society. Alan Dershowitz, an influential Harvard Law School professor emeritus and one of the most visible legal commentators in American media, will deliver remarks September 13 at 6:30 PM in the Elon Law Library as the first guest of the 2018-19 Distinguished Leadership Lecture Series presented by The Joseph M. Bryan Foundation. Loretta Lynch, the first African-American woman to serve as attorney general of the United States and a distinguished former federal prosecutor, visits the law school February 28, 2019, at 6:30 PM. Ticket information will be publicized at law.elon.edu/dlls in August.

Elon Law students selected for prestigious NCBA internship program—Three Elon Law students were selected for premiere internship opportunities this summer through a North Carolina Bar Association program that fosters an increased presence of minorities in the legal profession. Ahmed Mohamed, Chris Tarpley, and Tyrra Walker will participate in the NCBA's Minorities in the Profession 1L Summer Associate Program, coordinated through the association's Minorities in the Profession Committee. It is the second year in a row that three Elon Law students have secured program placements.

Elon Law alumni named to leadership program—An NCBA program that prepares young lawyers for leadership roles in the profession and their communities welcomed five Elon Law alumni into its class of 2018. The Leadership Academy aims to increase personal self-awareness, inspire confidence, enhance communication and team performance, and assist participants in creating a "clear and compelling vision." Tiffany Atkins L'11, Melissa Duncan L'09, Nicole Patino L'15, Courtney Roller L'13, and Grant Sigmon L'11 are part of the academy's class of 2018.

North Carolina Central School of Law

On March 20, 2018, the North Carolina Court of Appeals heard oral arguments in the Moot Court Room. The panel of judges included Rick Elmore, Wanda Bryant, and John Tyson. Judge Elmore and Judge Bryant are both 1982 graduates of NCCU Law. The case heard was *DTH Corp. et al v. Folt*, COA17-871, concerning the appeal of a 2017 decision in a public-records lawsuit brought against UNC by *The Daily Tar Heel* in conjunction with other local media organizations. The visit from this court of appeals panel was notable for the NCCU Law family. It is likely the last case to be heard by Judge Elmore at the law school, as he is set to retire this year.

On April 25, 2018, an alleged wrongful death arbitration was heard in the NCCU School of Law Moot Court Room. The case, *Burch v. Anson Health,* allowed participants to witness the fascinating practice of arbitration. The panel took questions at the end of each day. The panel included Judge William A. Webb, a certified federal mediator in all three federal districts in North Carolina, a certified North Carolina superior court mediator, and chair of the North Carolina Dispute Resolution Commission; Shirley Pruitt, partner of the law firm Yates, McLamb & Weyher, LLP, also a NCDRC superior court mediator; and Chrystal Redding, formerly deputy commissioner with the North Carolina Industrial Commission for 20 years.

On April 7, 2018, NCCU School of Law hosted the ABA JusticeHack. Between 2016 and 2017, the law school hosted a three-part dialogue series called "Unity in the Community" with a panel of leaders in law enforcement, information technology experts, programmers, and the community-at-large. The ABA JusticeHack was a continuation of this thought-provoking dialogue. Over 100 participants were in attendance.

University of North Carolina School of Law

3L class reaches 100%* pro bono *participation—For the first time in the UNC School of Law *Pro Bono* Program's 20-year history, all 219 third-year students—100% of the graduating class of 2018—has participated in a *pro bono* project. "Our goal is to instill lifelong commitment to public service in our graduates," says Allison Standard '09, director of *pro bono* initiatives.

Cass R. Sunstein delivers 2018 Murphy Lecture on impeachment—Cass R. Sunstein, Robert Walmsley University professor at Harvard Law School, discussed the origins of the impeachment clause and its intimate connection with the American Revolution. Sunstein also explored the American style of impeachment by analyzing the United States' commitments to self-government and equal dignity of human beings.

1L Research, Reasoning, Writing, and Advocacy Program ranked 12th in the nation—Carolina Law's RRWA program rose six spots this year, to be ranked 12th in the country by *US News & World Report*. The year-long program's dedicated faculty and staff aim to help 1L students develop and practice legal research, writing, and oral communication skills.

UNC School of Law launches Prosecutors and Politics Project—Carissa Byrne Hessick, the Ransdell Distinguished Professor of Law, will serve as director of the project, which focuses on researching the campaign contributions that prosecutors receive when they run for office. Funded by a generous $90,000 gift from the Vital Projects Fund, Inc., the project will compile election data from state and local governments across the country into a publicly accessible database, and publish academic studies about prosecutor campaign contributions. Hessick is working with ten student research associates to collect and analyze the data.

Wake Forest School of Law

Imagine members of the Wake Forest University football team playing against each other for the national championship title. But in this case the field was a federal courtroom, judges and attorneys were the referees, and it was final arguments instead of touchdowns that decided who was the best in the country. That's what happened on April 8, 2018, when the Wake Forest School of Law National Trial Team competitors and coaches continued their record-breaking streak by winning a historic national Trial Team championship at the TYLA National Trial Competition (NTC) in Austin, Texas, with not one, but two teams competing in the final round. This championship is Wake Forest's first in the National Trial Team Competition. The win also makes Wake Forest the only US law school to win the national TYLA competition, the national AAJ Student Trial Advocacy Competition, and the National Moot Court Competition in consecutive years. Only one other law school has won all three titles in the history of all three competitions.

"The TYLA is the most prestigious competition in the country," explains Coach Mark Boynton (JD '97), an attorney with Kilpatrick Townsend & Stockton LLP. "No other law school in our region put both teams in the finals. There is not a way to express the depth and scope of that feat except through the precise execution, sheer force of will, and some good old-fashioned luck that has to come together to pull it off. Winning the national championship is hard enough, but to have both teams go to the finals...it's breathtaking."

Out of the 300 teams that began this process at regionals, the two teams from Wake Forest ended up as number 1 and number 2 in the nation, beating out two former national champions, Kentucky and Michigan law schools.

"As everyone at the championship round acknowledged, the winning team was...Wake Forest," says Dean Suzanne Reynolds (JD '77). "We believe that only four other times in the 42-year history of the National Trial Team Competition have two teams from the same school faced each other in the finals." ■

Classified Advertising

July 2018 Bar Exam Applicants

The July 2018 Bar Examination will be held in Raleigh on July 24 and 25, 2018. Published below are the names of the applicants whose applications were received on or before April 30, 2018. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

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Boca Raton, FL
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Durham, NC
Zachary Anstett
Raleigh, NC
Audrey Anthony
Greenville, NC
Zeliha Arslan
Jacksonville, FL
Raven Ash
Winston-Salem, NC
Tomomi Atamas
Apex, NC
Alexander Auriti
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Taimoor Aziz
Bunnlevel, NC
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Catherine Bamba
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Hope Mills, NC
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Athens, GA
Jordan Barnette
Piney Flats, TN
Ashley Barton
Winston-Salem, NC
Jenna Bass
Fuquay Varina, NC
Hoi Baxter
Sylva, NC
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Norman, OK
Ryan Benninger
Smithfield, PA
Campbell Bentson
Raleigh, NC
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Durham, NC
Kimerly Beyer
Glenville, NC
Michael Birney
Chapel Hill, NC
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Raleigh, NC
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Matthews, NC
Kevin Bowie
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Malcolm Boyd
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Cody Boykin
Wilson, NC
Michael Boykin
Raleigh, NC
Jacky Brammer
Eden, NC
Katrina Braun
Cambridge, MA
Austin Braxton
Carrboro, NC
Joseph Brennan
Marvin, NC
Joseph Brewer
Raleigh, NC
Ashley Brisbon
Charlotte, NC
Megan Broad
Morrisville, NC
Robin Bronson
Huntersville, NC
Joseph Brook
Chapel Hill, NC
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sarah freeman
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Matthew Lancaster
Raleigh, NC
Robert Lane
Clayton, NC
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Chapel Hill, NC
Benjamin Leach
Raleigh, NC
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Benson, NC
Kelsey Lee
Concord, NC
Daniel Leef
Raleigh, NC
Kirsten Leloudis
Carrboro, NC
William Leopard
Chapel Hill, NC
Sarah Link
Skippers, VA
Guangya Liu
Apex, NC
Sara Locklear
Raleigh, NC
Lauren Logsdon
Flat Rock, NC

Timothy Longest
Chapel Hill, NC
Saverio Longobardo
Mooresville, NC
Jordan Luebkemann
Chapel Hill, NC
Sloan Lyndon
Raleigh, NC
Erin Mack
Durham, NC
Jordan Mackey
Raleigh, NC
Martin Maloney
Chapel Hill, NC
Kendall Manning
Lexington, VA
Nicholas Marais
Atlanta, GA
Hannah Maroney
Wesley Chapel, FL
Alexandria Mashburn
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Thomas Mason
Decatur, GA
LaDeidre Matthews
Durham, NC
Hillary May
Roanoke, VA
Morgan Mayes
Winston-Salem, NC
Zachary McCamey
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Daniel McClurg
Clemmons, NC
Kyle McConnell
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John McCool
Winston-Salem, NC
Amber McCoy
Matewan, WV
Tammy McCrae-Coley
Greensboro, NC
Morris McCrary
Lynchburg, VA
Alexis McGee
Carrboro, NC
Hannah McGee
Winston-Salem, NC
Kayla McGee
Greensboro, NC
Courtney McGinness
Wilmington, NC
Andrew McGlothlin
Charlottesville, VA
Kimberly McKenzie
Raleigh, NC
Donald McLamb
Raleigh, NC
Benjamin McLawhorn
Winterville, NC
Robert McNeal
New Orleans, LA
Ka-dijah McNeill
Raleigh, NC
Destiny Meads
Garner, NC
Leah Meares
Havelock, NC
Charles Melcombe
Calabasas, CA
Justin Mikell
Providence Forge, VA
Peyton Miller
Chapel Hill, NC
Sara Miller
Williamsburg, VA
Justin Mims
Chapel Hill, NC
Tara Mochrie
Cary, NC
Selam Mogos
Raleigh, NC
David Mohrmann
Raleigh, NC
Katherine Moles
Roanoke, VA
Thomas Molineaux
Clayton, NC
Kelsey Monk
Nashville, TN
Lishele Monroe
Greensboro, NC
Christopher Moore
Raleigh, NC
Timothy Moore
Durham, NC
Jessica Moreau
Raleigh, NC
Graham Morgan
Burnsville, NC
Seth Morris
Chapel Hill, NC
Thomas Morris
Lynchburg, VA
Ryan Mumper
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Gilbert Munoz-Cornejo
Fuquay Varina, NC
John Murphy
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Sammy Naji
Cary, NC
Kelly Nash
Schenectady, NY
Barbara Nelson
Goldsboro, NC
Terrie Nelson
Goldsboro, NC
Jordan Timothy Nitz
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John Nobles
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Winston-Salem, NC
Stephanie Norris
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Carrboro, NC
Tyler Nullmeyer
St. Louis, MO
Erick Odom
Raleigh, NC
Laura O'Grady
Fayetteville, NC
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Raleigh, NC
Allison Olderman
Raleigh, NC
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Brandy Price
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Sonravea Privette
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Cary, NC
William Ramos
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Stacy Reid Monroe
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Jacqueline Reitz
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Maria Rengifo
Greenville, NC
Akysia Resper
Durham, NC
Julie Reynolds-Engel
Asheville, NC
Katherine Rippey
Arden, NC
Katherine Ririe
Winston-Salem, NC
Lisa Roach
Charlotte, NC
William Robertson
Charlotte, NC
Avery Rogers
Salisbury, NC
Christina Rogers
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Kaitlin Romanelli Myers
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Ryan Rones
Ann Arbor, MI
Lee Royster
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Anna Stearns
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Dale Stephenson
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Happy Stewart
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Carborro, NC
Curtis Strubinger

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Samuel Sue
Greensboro, NC
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John Talton
Chapel Hill, NC
Edward Tarantino
Mount Pleasant, SC
Mark Taylor
Chapel Hill, NC
William Taylor
Albemarle, NC
Alexander Teixeira
Durham, NC
Ashley Terrazas
Austin, TX
Frederick Terrell
Hamlet, NC
Kayedion Terry
Raleigh, NC
Cynthia Thaxton
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Adam Thomason
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Madison Thompson
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Andrew Wagner
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Heather Werner
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Luke West
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Spencer Wiles
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Ellen Williams
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Proposed Amendments (cont.)

.2905(c)(3) of this subchapter. ~~Related fields shall include the following: estate planning and administration, trust law, health and long term care planning, public benefits, surrogate decision-making, older persons' legal capacity, social security disability, Medicaid/Medicare claims and taxation. No more than forty (40) credits may be earned in the related fields of estate taxation or estate administration.~~

(c) Peer Review - ….

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

NC Board of Law Examiners, Section .0600, Moral Character and General Fitness; and Section .1200, Board Hearings

The Board of Law Examiners proposes amendments to its rules that will require transfer applicants as well as general applicants to appear before bar candidate committees.

.0604 Bar Candidate Committee

Every **General Applicant and Transfer** **A**~~a~~pplicant shall appear before a bar candidate committee, appointed by the Board Chair, in the judicial district in which the applicant resides, or in such other judicial districts as the Board in its sole discretion may designate to the applicant, to be examined about any matter pertaining to the applicant's moral character and general fitness to practice law. An applicant who has appeared before a hearing Panel may, in the Board's discretion, be excused from making a subsequent appearance before a bar candidate committee. The Board Chair may delegate to the Executive Director the authority to exercise such discretion. The applicant shall give such information as may be required on such forms provided by the Board. A bar candidate committee may require the applicant to make more than one appearance before the committee and to furnish to the committee ~~the~~ such information and documents as it may reasonably require pertaining to the moral character and general fitness of the applicant to be licensed to practice law in North Carolina. Each applicant will be advised when to appear before the bar candidate committee. There can be no changes once the initial assignment is made.

.1201 Nature of Hearings

(1) **Any** applicant~~s~~ may be required to appear before the Board or a hearing Panel at a hearing to answer inquiry about any matter under these rules. In the event a hearing for an applicant for admission by examination is not held before the written examination, the applicant shall be permitted to take the written examination.

(2) ~~Each~~ **All** comity~~,~~ **and** military spouse comity~~, or transfer~~ applicant**s** shall appear before the Board or a Panel**, either in person or by electronic means as directed by the Board,** to satisfy the Board that he or she has met all the requirements of Rule .0502~~,~~ **or** Rule .0503 ~~or Rule.0504~~. ■

The North Carolina State Bar
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