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Health and Medical Research Resources for NC Lawyers

By Molly Brownfield

In today's world of complex litigation and layered case subject matter, practicing attorneys may find themselves faced with research questions that go beyond strictly legal boundaries. The areas of health law, medical malpractice, workers' compensation, patents and intellectual property, and product liability (to name just a few) present an intersection between legal and medical information universes. For many lawyers whose research training focused on finding cases, statutes, and other legal resources, the unfamiliar terrain of medical research can be daunting. But fear not, North Carolina lawyers! A plethora of free and user-friendly electronic health and medical resources—both at the state and federal level—are available for such research.

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This article provides an introduction to several of these resources, focusing on the resources that are freely available with an internet connection, and then briefly commenting on select subscription-based resources for those able to procure access. As

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in all areas of research, the researcher must take care to evaluate all resources to ensure that the information is current, reliable, and objective. Good sources to consult in this regard include the National Human Genome Research Institute's webpage on "Finding Reliable Health Information Online"[1] and a 2000 article titled *Guidelines for Medical and Health Information Sites on the Internet: Principles Governing AMA Websites.*[2]

North Carolina

North Carolina provides ample access to general and state-specific health and medical information—most notably via the University of North Carolina's Health Sciences Library website[3] and their sponsored NC Health Information website.[4] NC Health Information provides a user-friendly search interface that allows researchers to search for information about a wide variety of diseases and mental health conditions, as well as healthcare and other medical and health-related topics both within and beyond North Carolina. Many resources on NC Health Information—the "Local Services" tab in particular, which provides dual drop-down menus for health topics and for NC locations—could prove useful for counseling clients in need of particular medical services or accommodations.

In this age of increasing digital interaction, it is important not to overlook invaluable "people" resources. The medical librarians at the University of North Carolina's Health Sciences Library will search available resources to find relevant information in response to inquiries from the public, and will even send that information to the inquirer via email or US Mail.[5] Librarians at the Duke University Medical Center Library have created a website of health and medical resources by topic[6] to help point researchers to relevant resources. Librarians, generally, are excellent points of contact to suggest appropriate sources, search terms, and otherwise help increase research efficiency.

Federal

MedlinePlus,[7] a service of the US National Library of Medicine, provides an ideal starting point for the researcher seeking basic information about disease symptoms and treatments, basic drug information, and medical definitions. For example, a family law attorney looking for general information about autism could start with MedlinePlus, click on the prominently featured "Health Topics" link, and go to "A" to locate the link for Autism. The page is structured with an initial definition of the condition, followed by links to resources arranged by category including sources providing overviews, diagnosis/symptom information, treatments, clinical trials, etc.

For researchers seeking drug-related information, whether it entails approvals, labeling requirements, or regulatory updates, the US Food and Drug Administration's website[8] offers an array of resources. The home page features a series of main tabs, including one for "Drugs" and one for "Medical Devices," which can help the researcher narrow the search accordingly. For example, a lawyer researching recent labeling changes to the oral contraceptive popularly known as "Yaz" could start at the FDA website, select the "Drugs" tab, and then click on the link for "Drugs@FDA" to get to a page where

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he or she can search or browse for drugs by name. Browsing the "Ys" brings the researcher to the link for "Yaz," which offers access to current and past labels, approval history and letters, and more. The "Clinical Trials" link, under "Science & Research" on the FDA home page presents another useful portal. This one directs the researcher to information on clinical trial guidelines, relevant regulations, and information on compliance and enforcement. For those specifically interested in current or upcoming medical clinical trials, the US National Institute of Health's ClinicalTrials website[9] allows researchers to procure information on thousands of clinical trials being conducted in the US and worldwide for a multitude of medical conditions.

Fee-based Sources

Those with subscriptions or access to funds for research can consider a variety of fee-for-service sources for health and medical research. One of these is the US National Library of Medicine's PubMed, which is the freely available search engine for biomedical journal citations to literature in the subscription-based MEDLINE[10] and other life science journals. PubMed has a sophisticated array of search options, entailing use of MeSH (Medical Subject Headings) indexing terms. Bearing that in mind, the researcher may wish to first consult a guide on PubMed, such as UNC Health Sciences Library's guide,[11] Duke University Medical Center Library's portal[12] to PubMed tutorials and user guides, or PubMed's own Quick Start guide.[13] All of these guides and tutorials provide a variety of hints and tips to make searching PubMed more effective. Researchers should take note that while many medically oriented law reviews are available on MEDLINE via PubMed, the same full-text content can often be found for free on the journal's own website or on SSRN, and researchers can use PubMed alone for free to obtain a list of citations on their topic.[14]

Lexis and Westlaw, despite their traditional affiliation with legal research context, can also provide useful information for attorneys (who have subscriptions) conducting health and medical research. There are several ways to access health and medical information, but a good default search rule is to utilize the relevant subject area databases. In Lexis, the researcher should select the "Area of Law – By Topic" option from the main page, where he or she can then choose from relevant topics including "Personal Injury," "Medical Malpractice," or "Workers' Compensation." Using this feature allows the researcher to quickly gain access to a variety of materials (cases, statutes, practice-oriented materials) that are subject-appropriate.

In Westlaw, the researcher should select the "Directory" option, and then click on "Topical Practice Areas." From there, one may select the "Health and Medicine" database, which will link the researcher to multi-state healthcare legislation materials, health trial motions and filings, state and federal case databases focused on health and medical issues, and more. "Elder Law," "Products Liability," "Professional Malpractice," and "Workers' Compensation" may also prove relevant subject area databases. Researchers should bear in mind that these search strategies may become obsolete as Westlaw transitions to the WestlawNext interface,[15] but changes in features, availability, and content is the inevitable reality of all resources.

The sources outlined here merely scratch the surface of the expanding universe of health and medical research resources. In addition to a wide variety of additional information available via the web and in print, any of the included sources will serve as gateways to lead the researcher to other resources for exploration and evaluation. Finally, researchers may wish to utilize freely available, regularly updated online research guides such as Georgetown Law Library's Health Law Research Guide,[16] or professional organizational sites like the ABA's Health Law Section[17] to help keep current with this area and the relevant research topics and resources. ■

Molly Brownfield is head of Reference Services at the J. Michael Goodson Law Library at Duke University School of Law and teaches an advanced research course titled "Health and Medical Research for Lawyers."

Endnotes

1. www.genome.gov/11008303.
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3. www.hsl.unc.edu.
4. www.nchealthinfo.org.
5. www.hsl.unc.edu/Services/Public/index.cfm.
6. www.mclibrary.duke.edu/subject.
7. www.nlm.nih.gov/medlineplus.
8. www.fda.gov.
9. www.clinicaltrials.gov.
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14. Social Science Research Network available at: www.ssrn.com.
15. See west.thomson.com/westlawnext/default.aspx for more information about WestlawNext.
16. www.ll.georgetown.edu/guides/health.cfm.
17. www.abanet.org/health.

Keeping Up with Legal Technology: Five Easy Places

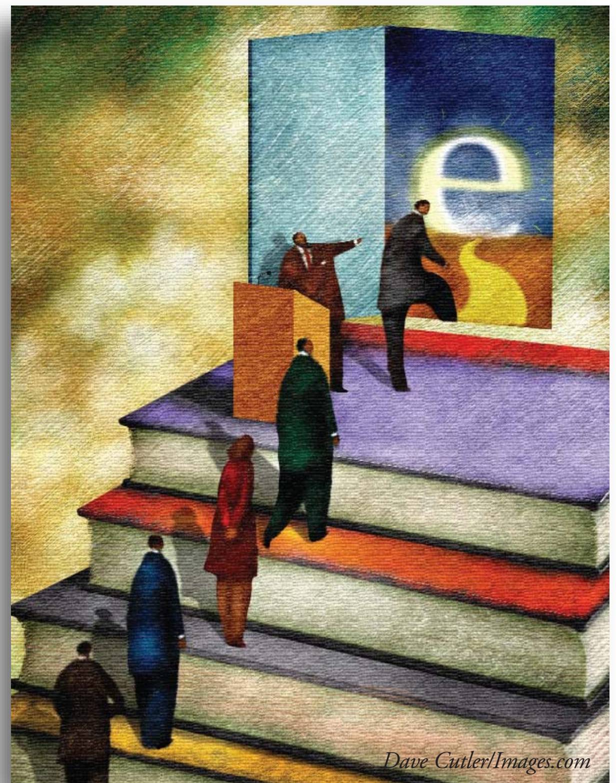
BY JENNIFER L. BEHRENS

"Time is the lawyer's capital. Every lawyer has just so many more years in which to practice law. Every day, every hour, he has that much less [. . .] A lawyer must make the most of every hour and every minute. One effective step in this direction is to make his law office as efficient as possible."[1]

While this 1956 law office handbook went on to describe a complex paper-based bookkeeping and filing system for improving law office efficiency, the author's message remains the same in today's age of case management software and electronic dockets. More than a half-century later, time is still a lawyer's most precious commodity. Automation, personal computers, and the growth of the world wide web have changed the methods, but not the mission: saving time with technology can ultimately improve a lawyer's output.

But as another, more recent, law practice guidebook noted: "[T]echnology, properly understood, properly selected, and properly implemented, is merely an enabler."[2] The converse of this statement, of course, is that poorly-implemented, poorly selected, and/or poorly understood technology can ultimately *cost* a lawyer or law firm exponentially more time than it saves. It is vital, then, for modern lawyers to become conversant in the basics of their law office's technology, and to also retain some handy reference sources in the event that more research is needed into a particular technology.

There are numerous reasons why an attorney might need a crash course in specific legal technologies. You might be frustrated by a recent "upgrade" to your preferred word-processing program, which has completely changed the way you've grown accustomed to creating and editing documents. You may be a solo or small-firm practitioner without the benefit of an in-house IT army, investigating a "cloud computing" approach to data storage (where services are provided and hosted on the web). Or you could be drafted for service on a larger firm's technology committee, finding yourself unexpectedly responsible for evaluating policies and recommending large-scale equipment purchases.



Dave Cutler/Images.com

If you're like most attorneys, the thought of learning about technology may leave you feeling a little intimidated. Few law schools offer substantive classes in law practice technology,[3] and many practicing lawyers report limited opportunities for in-house training.[4] No matter the firm size, the most common method used by lawyers to find information about legal technology is to turn to their favorite search engine and hope for a reliable, authoritative result.[5] But there are a variety of excellent sources for attorneys to take a more proactive, ongoing approach to learning about legal technology; many are available for free on the web or as a benefit of bar association membership. The remainder of this article will highlight some of the very best.

North Carolina State Bar & North Carolina Bar Association

Members of the **North Carolina State Bar** (www.ncbar.gov) can take advantage of opportunities for continuing legal education (www.nccle.org/), a popular way for lawyers to keep up with the latest technology developments while simultaneously fulfilling professional requirements. The consolidated, searchable online calendar links to local and national CLE opportunities, including a selection of web-based courses. Relevant course topics, offered on a rotating calendar, include "Essential Technology for the Small Law Office;" "Ethics of Email and Other Technology;" and "Litigating More Effectively Using Technology."

Browsers of the separate **North Carolina Bar Association** website (www.ncbar.org)

may also find its **Center for Practice Management** (www.cpm.ncbar.org) to be a helpful starting place—literally. The center's video series on "Starting a Law Firm" includes a 20-minute overview of "Essential Technology" from IT consultant (and Campbell Law instructor) Lee Cumbie. Although aimed at the new law office, its content remains a useful refresher to well-established practices. The center's "Tech and Practice Management" link consolidates practical articles and popular websites, which are supplemented by the thrice-yearly **e-Tech** newsletter and the **Law Practice Matters** blog (www.lawpracticematters.com/). While your research will likely not end at these home-grown sites (particularly if you are searching for in-depth product reviews or comparisons), they are worthy additions to a novice NC techie's bookmark list.

American Bar Association

The ABA has long been a trusted source for lawyers who wish to learn more about legal technology: an annual survey of practicing attorneys consistently ranks the American Bar Association's *ABA Journal*, website, and print publications among the most popular sources for law technology information.[6] It's easy to see why at the **Legal Technology Resource Center** (www.abanet.org/tech/ltrc/home.html), a clearinghouse of free technology information. The link to "FYIs: Technology Overviews" includes product reviews, how-to guides, and comparison charts for a variety of law practice hardware and software categories. The center also links to discounted products for ABA members, reprints technology-related articles from legal publications, and connects users to relevant newsletters, blogs, and e-mail discussion lists. Whether you are a seasoned IT professional or a confused tech newbie, the Legal Technology Resource Center ranks high for content and usefulness.

The ABA site also showcases the **Law Practice Management Section** (www.abanet.org/lpm/home.shtml), which includes technology as one of its core elements for successful law practice. Key LPM section publications include:

• ***Law Practice*** magazine contains articles and columns devoted to the latest technology developments and best practices. The print source is supplemented by a free monthly webzine, ***Law Practice Today*** (www.abanet.org/lpm/lpt).

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• Affordable print guides (most under $100) containing opinionated recommendations on current products. Must-have titles for your practice library include Dennis Kennedy & Tom Mighell's ***The Lawyer's Guide to Collaboration Tools and Technologies: Smart Ways to Work Together*** (2008), as well as program-specific handbooks (such as last year's ***The Lawyer's Guide to Microsoft Excel 2007*** and ***The Lawyer's Guide to Practice Management Systems Software***), which highlight key features as well as hidden tips and tricks for increasing law firm productivity with these programs.

• Also available in the LPM bookstore is the annual ***Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple***. As the title implies, the chapters in this handbook provide an accessible overview of common law office hardware (computers, printers, servers, etc.) and software (word processing, timekeeping, billing, and so on), along with candid recommendations for specific products. Although the editors (a team of attorneys and technology consultants) caution that their perspective is exclusively intended for small firms and solo practitioners, the authors' thoughtful comparisons and recommendations, the predictions from the "Tomorrow in Legal Tech" section, and a glossary of key IT terminology could help attorneys at even large firms who wish to "speak geek" with their IT staff.

Readers of the solo and small firm technology guide may also benefit from ***GPSOLO***, a magazine from the ABA's General Practice, Solo and Small Firm Division. GPSOLO's biennial **Technology and Practice Guide** special issue (published in June and December) contains even timelier product reviews and recommendations, aimed at the smaller law office.

Other Recommended Websites

The American Bar Association is an undeniable powerhouse in legal technology publications. Still, a number of smaller websites and newsletters also merit your attention. The largest of these is undoubtedly the **FindLaw Legal Technology Center** (http://technology.findlaw.com/), a subsection of the popular free web portal for legal links. The FindLaw center

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Law.com, another well-known legal web portal, offers **Law Technology News** (www.law.com/jsp/lawtechnologynews/index.jsp). This multi-purpose site features original technology news and product reviews, featured postings from other websites and blogs, and even an LTN Resource Guide vendor directory. Don't miss the hidden trove of white papers, program downloads, and informative videos underneath the "Resources" link on the left-hand navigation menu. Note that some portions of this site require free registration.

The **TechnoLawyer Community** (www.technolawyer.com/) also requires free registration, but at least one of its eight unique e-mail newsletters will be worth the trouble of creating yet another username and password. From small-firm focus to biglaw perspectives, each newsletter offers something a little different. Still reluctant to give up your e-mail address? Test-drive TechnoLawyer content at their well-regarded and frequently-updated blog (blog.technolawyer.com), which does not require registration.

Speaking of Blogs...

For truly cutting-edge commentary on law office technology, blogs are your best bet. The best legal blogs (also known as "blawgs") contain up-to-the-minute news and analysis from well-respected experts. In addition to the ABA, NCBA, and other blogs already mentioned above, recommended law technology blogs include:

- **DennisKennedy.com** (www.denniskennedy.com/blog) includes news and commentary from Dennis Kennedy, a renowned legal technology expert from St. Louis. Kennedy also co-hosts a biweekly audio podcast of technology topics, **The Kennedy-Mighell Report** (www.legaltalknetwork.com/podcasts/kennedy-mighell-report).
- **Jim Calloway's Law Practice Tips Blog** (www.jimcalloway.typepad.com/lawpracticetips) features frequent analysis of legal technology from Oklahoma Bar Association program director Jim Calloway. While some posts focus heavily on the Oklahoma/Plains/Midwest regions (particularly when highlighting conferences or other events), the technology commentary is valuable even to those outside the Central time zone.
- **Slaw** (www.slaw.ca) is a Canadian law blog which publishes frequently on the topic of legal technology. As with the Calloway blog, readers in the tarheel state may find themselves skipping over region-specific entries, but there is enough general tech commentary to merit an addition to your RSS reader.

These recommendations represent just a fraction of the vast legal "blogosphere." To find law blogs with a narrower focus (such as the recent spate of new blogs devoted to legal applications for Apple's iPad), improve your results by starting with a specialized search engine or law-blog directory, like **Justia Blawgsearch** (blawgsearch.justia.com) or the ***ABA Journal* Blawg Directory** (www.abajournal.com/blawgs). Don't be surprised if many of your search results demonstrate all the longevity of a fruit fly; nearly 95% of indexed blogs have not been updated in more than four months.[7]

For Popular Audiences

While the majority of listed resources so

far have focused on legal or law office technology, resources aimed at a consumer audience can also be helpful for lawyers who wish to keep watch on the horizon. Law is a notoriously conservative profession, and today's popular technology news and trends will likely take months, if not years, to fully impact the law office.

Wired (www.wired.com) is a great starting place for general-interest technology news, whether you're reading the long-running print magazine or browsing its home on the web. The online version includes a full-text article archive dating back to the magazine's 1993 inception, and categorized product reviews.

A similar popular publication, ***PCMag*** (www.pcmag.com), moved to an online-only format after ceasing print operations in 2008. Like *Wired, PCMag's* online home includes categorized product reviews and recommendations, as well as detailed buyer guides ("How to Buy a Laptop" may be of particular interest to solo practitioners or small-firm lawyers).

Blogs may also be a valuable source of consumer-focused technology news. To locate product reviews and other techie postings from the likes of **Engadget** (www.engadget.com) or **CNET** (www.cnet.com), try the general blog search engine **Technorati** (www.technorati.com).

Conclusion

Keeping up with legal technology can be as challenging to the modern attorney as maintaining clear and consistent client files likely was to the readers of the 1956 law office manual. But as that bygone author noted: "Better service to clients is what brings them back, brings in more clients, and makes them more willing to pay for legal services. To give better service to clients, a lawyer must have an efficient office."[8] Technology (when used appropriately) is now the backbone of a smoothly-run, modern law practice. The attorney who invests some time becoming familiar with the latest developments today will likely reap the rewards of increased efficiency well into the future. ■

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Endnote

1. Arch M. Cantrall, *A Law Office System, The Practical Lawyer's Law Office Manual* 1, 1 (Paul A. Wolkin ed., 1956).
2. Russ L. Kodner, Introduction, *The 2009 Solo and Small Firm Technology Guide: Critical Decisions Made Simple* xxi, xxvi (Sharon D. Nelson, John W. Simek, & Michael C. Maschke, eds., 2009).
3. For insight into the development of one such law school course, see Kenneth J. Hirsh & Wayne Miller, *Law School Education in the 21st Century: Adding Information Technology Instruction to the Curriculum*, 12 WM. & Mary Bill of Rights J. 873 (2004).
4. Amer. Bar Assoc., I *Legal Technology Survey Report* xii-xiii (2009) (finding than more than 25% of overall survey respondents reported a complete lack of available technology training; this figure represented nearly half of all solo practitioner responses and almost 40% of small-firm attorneys).
5. *Id.* at I-27.
6. I 2009 *Legal Technology Survey Report*, *supra* note 4, at xiv-xv.
7. *See* Douglas Quenqua, *Blogs Falling in an Empty Forest*, NY Times, June 5, 2009, at E1.
8. Cantrall, *supra* note 1, at 2.

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The Buck Stops with You: Protecting Attorney Trust

By Nancy Short Ferguson, Lisa Stewart, and Andrea Davis

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A new proposition for 2010: Attorneys can and should promote to clients that they are taking top notch steps to protect client funds entrusted to them. As lawyers, we were trained to research, analyze, and apply the law to clients' situations. Law school did not and does not train us to be money managers—for ourselves or for our clients. The last few years have shown the strain of that deficit, in many areas of practice, in every state.

So why does the honest lawyer need to care about trust account management? Following are a few real stories, none of which is unique because the same story is repeated in multiple cases in different states, at different times, with horrifying consequences to those directly involved and to the public image of the honest lawyer.

• A 70-year-old attorney is now spending his "golden years" working as hard as ever to pay back over $750,000 stolen from his clients and friends by the too-trusted, long-time, experienced employee he had not diligently supervised.

• A small law firm's remaining partners, clients, and business associates are entangled in a court battle with the family of a former partner-turned-thief on how to allocate the remainder of assets bought with stolen trust account funds.

• An honest attorney is covering his client's entrusted funds, is covering the shortage from having unfortunately accepted another attorney's trust account check, and is the last one standing (financially) when that other attorney turned out to be a thief.

• A transaction did not quite close, but the payoff was not held back in time, or it was simply sent by miscommunication, and is locked in perpetual "lost" state with the unintended payee.

• A small firm practitioner has remortgaged every personal asset to cover the significant theft by her former employee.

• A client's 1031 and other trust funds are missing, despite the attorney decimating the family trust to cover shortages.

• A disabled client is financially devastated when his/her attorney forged a check and the settlement agreement.

• A law firm's partners cover the substantial losses of a client when a former partner steals, lies, or goes missing.

• A naïve attorney is not adequately cautious and circumspect about the activities of questionable clients—multiple settlement statements, repeat clients buying "primary residences," payments for undetermined "ser-

vices." (*See* Jean, Katherine, "How to Initiate Foreclosure of A Law License," North Carolina State Bar *Journal*, Spring 2009.)

• Funds are diverted despite the law firm retaining an outside reconciler who did not understand the State Bar rules or the three-way audit procedures, missing red flags such as checks to cash, inappropriate signature authority, appropriate payees, and delayed payments.

• Headlines: "Lawyer convicted …" or "Attorney lied …" or "Attorney sentenced …" or "Attorney faces string of charges; embezzlement…" are all too real.

What do these events have in common? They are extremely rare. They are absolutely devastating. *And many may be preventable.*

Who are the actual thieves? They are men and women. They are well-liked pillars of the community and isolated unknown solo practitioners. They are all races and religions. They are old and young. In short, they can be potentially *everyone* if the appropriate risk management controls are not in place.

Risk management professionals will point to the classic triangle:

(1) Justification: The disgruntled employee or attorney believes they are underpaid for the services they provide or are not properly recognized. Or perhaps they do not know how to audit a trust account, are too busy to learn, are too busy to train the personnel using the trust account, and/or do not have the money available to pay a qualified third party to help right now. It is just not a priority.

(2) External stresses: They have kids in college, lack of business, medical bills, substance abuse problems, or addictions.

(3) Opportunity: No authority is present to assure regular oversight and reconciliation.

The classic example in any industry is a trusted employee where the firm has no regular third party oversight or separation of case management and financial controls.

North Carolina has always been a leader in taking a positive, proactive, professional approach to maintaining the highest caliber of attorneys—from the Attorney-Client Assistance Program, Fee Dispute Resolution, the LAP programs, mandatory CLE, excellent law schools, and, relevant to this article, the random audit program, the *Trust Accounting Handbook*, and Bruno Demolli's regular "Tip Top Trust Accounting" tips. And yet our profession and the clients of North Carolina lawyers have suffered significant and very public losses across the state from just these types of activities in the last few years. Our North Carolina State Bar, to its great credit, has taken new action—implementing the new "Boot Camp" program for new lawyers, requesting the Board of Law Examiners to include a trust accounting question on the bar exam, adopting 2008 FEO 13, and it is considering other progressive strategies focused on education and support of practitioners, and disciplinary enforcement when necessary.

Hopefully we all agree that the availability of quality legal services to the public should not be conditioned on money management skills or financial strength of the attorney. "If, however, I were pressed to identify the three most common reasons lawyers get disciplined, they would be the abuse of trust or escrow money, neglect of client matters, and conviction of serious crimes." *(Regulation of the Legal Profession: The Essentials*, 1st edition, Stephen Gillers, Emily Kempin Professor of Law, New York University School of Law, 2009 Aspen Publishers pp. 393).

What do the state bars (or equivalent disciplinary authorities) of various states do to try to assist lawyers in preventing thefts by attorneys or staff? What do other industries impose for financial accountability? The combination of approaches is as varied as the practice of law in each state. Like snowflakes, no two are exactly alike. For example, in states where attorneys are not allowed to handle real estate funds (such as Pennsylvania or those west of the Mississippi River), controls are focused on litigation or fiduciary defalcations and oversight of real estate funds is by insurance regulatory authorities (even for attorney-agents). There are, however, examples of recurring themes.

Client Protection

The ABA Standing Committee on Client Protection, created in 1984, has published Model Rules on Financial Recordkeeping, Trust Account Overdraft Notification, and Random Audit of Lawyer Trust Accounts. According to the ABA report, as of December 10, 2009, 12 states had implemented random audits of trust accounts, 41 states had some form of overdraft notification, and 14 had payee notification requirements, and all states have some form of client protection fund. (Directories and information are online: www.abanet.org/cpr/clientpro/home.html.) The manner of this participation differs widely, with some states requiring that all licensed attorneys be assessed, while others only assess those who will be handling client funds. Some states assess attorneys yearly, and others end the assessment once a certain amount is reached or maintained. The maximum amount per client or per claim may differ, but these caps are rarely sufficient to *fully* compensate a significant loss, especially for a personal injury, medical malpractice, or even most real estate transactions.

Random Audits of Trust Accounts

Currently, 12 states have random audits of attorney trust accounts, most under some version of Rule 1.15 of the Rules of Professional Conduct. The ABA recommends that all states institute a program of random auditing and has provided a model rule for trust account auditing at www.abanet.org/cpr/clientpro/apreface.html. States vary, however, based on type of audit, records reviewed, auditor (state employee versus independent CPA), frequency, and who pays (state disciplinary authority, law firm, or separate Client Protection Fund), with some interesting distinctions. In Delaware, the Lawyers' Fund for Client Protection, Rule 9, mandates random audits by an independent CPA to determine that those attorneys or firms chosen for the year's random audit are in compliance with Delaware recordkeeping rules (www.courts.delaware.gov/forms/download.aspx?id=32698). In most states, in the event the trust account is not in substantial compliance with the rules, or if significant violations or defalcations are identified, the attorney or law firm is charged with all costs of the audit. In Iowa, unannounced compliance audits are authorized with the goal being at least every three to four years of each lawyer trust account, with special audits on an as-needed basis.

Most states require annual certification that their trust accounts are maintained in compliance with the applicable trust accounting rules. New Hampshire's annual compliance certification requires a statement that the attorney is willing to submit to a spot compliance audit to his or her trust accounts *at his own expense*. In addition, financial penalties immediately attach if the certification is not filed timely (by August 1). And if the attorney has not complied by December 1, the accounts probably will be audited, with an initiation of proceedings and suspension based upon the findings.

Under the Vermont Rules of Professional Conduct, Rule 1.15A, the Vermont Professional Responsibility Program picks the firms that will be audited and sends the information to an independent CPA who reports to

the Professional Conduct Board (www.law.cornell.edu/ethics/vt/code/VT_CODE.HTM).

The penalty for being uncooperative? Arizona's Rule 43, 17A A.R.S. Sup. Ct. Rules, adds a rebuttable presumption that if an attorney fails to maintain the required records or fails to provide the required records for an audit then they have failed in safeguarding client property.

However, in comparison to other industries addressing financial accountability and traditional risk management approaches, these procedural audits are still troublesome. A true 3-way audit would include file sampling to verify documentation, accounts paid, and consistent reliable client ledgers, among other things.

Exemption from Random Audit

The typical exemption from the random audit would be if the firm provided a certification from an independent CPA that they had completed a trust account audit of the firm and that it was in compliance with the state bar's rules. To address this, as an example, Delaware's rules allow law firms to have a CPA certify or pre-certify their compliance by applying the audit program contained in the Lawyer's Fund for Client Protection (LFCP) rules and at the Delaware Supreme Court website. Firms need to send their pre-certification to the LFCP so that it can take this into account when drawing up annual random audits for the year.

What Triggers a "For-Cause" Audit in Different States?

Most commonly, not sending in the annual certificate of compliance is an automatic invitation for an audit. Florida's Rule 5.1-2 provides that failure to file this certificate will result in an audit, as well as a more detailed list including, "the return of a trust account check for insufficient funds unless there was bank error [see Overdraft Notification below], filing of a petition for creditor relief on behalf of an attorney [i.e., bankruptcy, which is not "reasonable cause" in North Carolina], filing of felony charges against an attorney, a finding of insanity or hospitalization of an attorney under the Florida Mental Health Act, filing of a claim against an attorney with the Clients' Security Fund, when requested by the grievance committee or the board of governors, or upon court order."

In North Carolina, a "for-cause" audit would typically be triggered by "reasonable cause," including a grievance (or failure to respond to one), significant violations found in a random audit, failure to file a return for or pay any federal, state, or local tax obligation, or "any finding of probable cause, indictment, or conviction relative to a criminal charge involving moral turpitude." 27 N.C.A.C. 1B.0128(a).

Overdraft Notification (NSF Reporting) by Banks

Two basic paradigms exist: The ABA bank-to-bar type versus the North Carolina attorney responsibility type. This is probably the most common way for the bar to become informed of a theft at an early stage. Many thefts are identified precisely because of this notification to the state bar (rather than just the attorney).

As stated in the ABA Model Rules for Trust Account Overdraft Notification Preface, "By requiring financial institutions which maintain lawyer trust accounts to notify the highest court or lawyer disciplinary agency of overdrafts, the appropriate disciplinary authorities are able to intervene before major losses occur and significant numbers of clients are harmed. The rule also enables authorities to counsel errant lawyers to take corrective action before the lawyer's misconduct becomes so egregious as to mandate serious sanction. Participation by financial institutions is a prerequisite to their continued eligibility to hold lawyer trust accounts." And under Rule 4, "Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule."

As an interesting example, the Idaho State Bar has mandatory overdraft notification agreements directly with the approved financial institutions, ARTAO (Automatic Reporting of Trust Account Overdrafts), including a link to that list of institutions on their website, which states, "I.B.C.R. 302 provides that attorney trust accounts may only be kept in financial institutions that have agreed to automatically provide the Idaho State Bar with notification of any trust account overdraft." (The approved financial institutions list should coincide with the list maintained for IOLTA in states with IOLTA.) In Georgia, when an instrument is presented against a trust account where there are insufficient funds and that instrument is not honored within three days, the institution has 15 days to notify the State Bar, even if the instrument is honored after the three days expire.

By contrast, some State Bar rules, like the North Carolina Revised Rules of Professional Conduct, Rule 1.15, make notifying the bank of the reporting obligation a professional responsibility of the *lawyer* since the State Bar's authority is limited to the regulation of lawyers. If a lawyer has filed the required notice with the bank, and the bank fails to report that lawyer's trust account overdraft, the failure to report would not be a violation of the rule. If the lawyer knows that the bank is ignoring the requirement, the lawyer would have a professional responsibility to change banks—highly unlikely if the lawyer is herself the bad actor. Also, if IOLTA is aware that a bank routinely fails to comply, IOLTA might choose not to maintain it on the eligible bank list; that might be an additional criterion for eligibility. However, it is unclear if this information routinely gets reported to IOLTA or if IOLTA tracks this information.

Payee Notification

The ABA Model rule would allow insurers to notify the payee-client and attorney when sending an insurance settlement check in amounts in excess of $5,000 to the attorney, since such checks are usually payable to the attorney and client, and are used to pay expenses including attorney's fees with balance to the client. "If the dishonest conduct involves the claimant's lawyer, instances of lawyer misconduct can include the unauthorized settlement of the client's claim with the defendant's insurer, forgery of the claimant's signature on a stipulation of settlement or other legal document that may be required to complete the settlement, forgery of the claimant's endorsement on the settlement draft itself, or misappropriation of the claimant's share of the proceeds." So this type of protection can be effective in this limited segment of cases. However, this does not work in real estate transactions, or estate, trust, 1031, or other fiduciary-type account situations, for example.

Mandatory CLE, Free Training, Detailed Instructional Materials, and Assistance (LOMAP)

States have adopted varying combinations of mandatory education requirements regarding trust accounting—law school, bar exam preparation, boot camp programs for new

lawyers (just adopted in North Carolina), specialized ethics or practical skills type presentations, specific CLE, or even as a disciplinary requirement in the event of a trust account noncompliance issue. Many states provide these programs free of charge, in combination with other disciplinary programs or even online, and most states even have substantial materials available—for free or online—with detailed instructions, forms, and visual aids to assist lawyers and their bankers in assuring compliance. These are often provided as cooperative efforts between the State Bar, client protection fund, IOLTA fund, malpractice carriers, title insurers, other state agencies (such as insurance departments), and other interested groups.

Wisconsin provides regular annual 3.5-hour Trust Account Management Seminars and may mandate attorney attendance in the event of trust accounting errors. Minnesota has combined this disciplinary program with an education program. The Idaho State Bar requires mandatory practical skills training as well as CLE as part of their trust account requirements.

The Massachusetts State Bar offers free trust account training to lawyers.

In addition, in several states, those accounts which hold real estate related client funds are subject to statutory regulation applicable to insurers mandating continuing education, detailed regulation, and routine audits by the title insurance underwriters for which these attorneys act as agents, such as Massachusetts, New Jersey, and South Carolina.

Since 1987, the New Jersey Supreme Court has mandated that every newly admitted attorney take a three-hour course on trust and business accounting procedures, given three to four times a year by the Institute for Continuing Legal Education. The Institute also publishes a book, *Trust and Business Accounting for Attorneys*, which has been adopted by several other states, including Tennessee, and has provided a basis for the handbooks of other statutes, such as California's creation of its own *Handbook on Client Trust Accounting for California Attorneys.*

The manual *Client Trust Account Principles & Management for Kentucky Lawyers, Second Edition*, 2010, was produced in cooperation with Lawyers Mutual and includes over 50 pages of detailed instructions, examples, copies, and checklists.

The Vermont Professional Responsibility Program has adopted a relatively new two-hour professionalism CLE requirement (as distinguished from ethics) and issues a manual to help attorneys comply with trust regulations and understand the audit process—*Managing Client Trust Accounts: Rules, Regulations, and Tips*, Vermont Bar Foundation, last revised January 6, 2010.

The Kansas Bar Foundation, a division of the Kansas State Bar, published a handbook titled *Money of Others: Accounting for Lawyer Trust Accounts* in September 2007. Although not intended to be an authoritative guide, the handbook gives a number of guidelines including sample trust account records and sample ledgers that will be helpful in keeping attorneys from making procedural errors.

South Dakota, Iowa, and Washington have similarly detailed information books, available online, as guides for both new and experienced attorneys.

Paul H. Wiek II of the of the Iowa Office of Professional Regulation published a comprehensive guide concerning trust accounts including examples of accounting methods, technology-based accounting, and check recording in September 2008 as a guide for both new and experienced attorneys (www.iowacourts.gov/wfdata/frame8703-1608/TrustOutline.pdf).

The Washington State Bar goes even further, offering not just a detailed manual *Managing Client Trust Accounts, Rules Regulations, and Common Sense*, REV June 2010, but also online New Lawyer Education videos and even personalized confidential assistance to lawyers through their Law Office Management Assistance Program (LOMAP).

Mandatory Reporting by Other Attorney of Known Violations

Consistent with NC Rule 1.15-2(o) of the Revised Rules of Professional Conduct, most states mandate reporting, to wit, "A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the North Carolina State Bar."

Expedited Grievance Procedures

North Carolina, like many proactive states, appears to have implemented a more expedited initiation of grievance and disciplinary procedure in trust account defalcation cases. Hopefully this will minimize the loss before it escalates.

Other Alternatives Considered or in Effect Regarding Trust and Fiduciary Funds, Generally

Other options regarding financial accountability that may apply in analogous industries, particular settings, or are used in other areas include:

- Third-party disbursing agents, whether another independent attorney (Connecticut) or another entity (such as title insurers on real estate transactions) or even the lenders themselves (New York).
- Surety and fidelity bonds.
- Mandatory disclosure of who holds funds and applicable surety or fidelity coverage (if any).
- Strict coverage limits on attorney-payees before payors would deliver payment (whether insurance companies or banks).
- Verification mechanisms, requiring proof of payment and post-transaction accounting (such as receipts for applicable invoices, satisfactions of mortgages, etc.).

Conclusion

There is no magic bullet to prevent attorney and staff theft of client funds. A myriad of alternatives—some by state bars, and some from other industries—are being tested and finessed. Each attorney or practice will have to decide whether to go above and beyond the protections that the minimum standards of the State Bar and training offer. There are many risk management options to add protection against trust account mismanagement. Performing a basic risk management internal audit can determine where the strengths and weaknesses are in your financial management process. The strongest deterrents involve pursuit of professionalism of the bar as whole, support by individual attorneys and the State Bar, making education and information freely available, and, in the end, making it clear to those few who might waiver that noncompliance will not be tolerated. ■

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Lisa Stewart, of the Stewart Law Firm in High Point, was a participant in the UNC School of Law Professional Experience Program for Alumni in 2009.

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Malpractice Traps and Tips

By Warren Savage and Mark Scruggs

Nothing keeps a lawyer up at night like thinking about a case in trouble. Solo and small-firm attorneys are particularly vulnerable to client grievances and charges of legal malpractice. According to the American Bar Association, most malpractice lawsuits are filed against lawyers in firms with one to five attorneys. Without the information technology departments, big administrative budgets, and large support staffs that large firms may have at their disposal, solo and small firms must be proactive in avoiding common malpractice traps. We will review some of the more common legal malpractice traps that we at Lawyers Mutual encounter in our handling of claims.

Bruno Budrovic/Images.com

Litigation – Missed Deadlines

Litigation errors consistently show up among the top causes of malpractice claims reported to Lawyers Mutual each year. In 2009, errors arising out of litigation accounted for 23% of all claims reported. In the vast majority of cases, the statute of limitations on the client's case expired and there was nothing left to do but assess the damages. Here's a look at a few of the common problems and suggestions to make your office safer.

1) Failing to Maintain a Comprehensive Calendaring/Docket Control System

Lawyers miss deadlines for a variety of reasons, but the most common is the lack of a good calendaring and docket control system. The brand of case management and calendaring system is not as important as assuring that the necessary events are entered and executed. The basis of a well-designed docket system is the use of a central system, i.e., one controlled by someone who is not the person responsible for meeting the deadlines. There is double security when responsibility for compliance rests with both the lawyer or staff person responsible for meeting time limitations *and* with the person responsible for the central system. Having the person responsible for the central system verify compliance is critical in achieving a well-designed system. Both the person responsible for the central system and the person responsible for meeting the deadline should verify compli-

ance with important deadlines. Every year numerous claims result from missed deadlines caused by the one person in charge of docket control being sick or otherwise away from the office when the deadline passes. Make sure this important responsibility is delegated to a back-up person for emergency situations.

2) Waiting Until the Last Minute to File the Complaint

One of the biggest mistakes we see is the lawyer filing complaints at the eleventh hour—on the eve of the statute of limitations deadline. Although the lawyer believes he is within the "safety zone" because the limitation period has not yet expired, filing at the last minute is often a risky practice. In many cases, the plaintiff's lawyer may be unable to perfect service of the summons and must file an alias and pluries summons to keep the action alive. Sometimes the lawyer and/or his support staff forget to calendar the date the original summons expires. As a result, the action is barred because the statute of limitations expires before the summons is renewed.

Other times, the lawyer inadvertently names the wrong defendant, and the opposing party files a motion to dismiss on that basis. If the complaint is filed at the last minute, the lawyer has little or no time left to investigate and determine the name of the proper party before the deadline passes. For these reasons, we strongly encourage plaintiffs' attorneys to file the complaint well in advance of the statute of limitations deadline. Filing early will give you more time to fix mistakes such as improper service or naming the wrong party. Hopefully, this extra time will give you an opportunity to correct mistakes before a malpractice claim develops.[1]

3) Failing to Know the Correct Statute of Limitation

Sometimes, even with proper docket control systems, the lawyer fails to determine the correct statute of limitation applicable to the case. For example, the limitation period in North Carolina for bringing an action for personal injuries resulting from an automobile accident is three years, but the limitation period is shorter in other jurisdictions. You should always verify the statute applicable to such actions, especially those that arise outside of North Carolina.[2]

Real Property Errors

Real property errors breed the largest number of malpractice claims reported to Lawyers Mutual. In 2009, real property claims comprised about 49% of all claims reported.

1) Failure to Properly Cancel an Equity Line of Credit

The most common preventable real estate error we see involves the failure to properly cancel an equity line of credit after a house has been sold. For example, in many cases the buyer purchases a home that is subject to an equity line of credit that was acquired by the seller. The closing attorney presents a pay-off check to the lender with oral instructions to cancel the equity line of credit and the deed of trust. In some cases the lender fails to cancel the deed of trust per the attorney's instructions, and the seller continues to use the line of credit attached to the home he sold. The innocent buyer and his lender, who thought they had a first lien mortgage, are eventually threatened with foreclosure proceedings when the seller fails to make the payments on the equity loan. *See, e.g., Raintree Realty and Constr., Inc. v. Kasey*, 116 N.C. App. 340, 447 S.E.2d 823 (1994), aff'd, 341 N.C. 195, 459 S.E.2d 273 (1995). The equity line lender is not required to cancel the deed of trust securing the line of credit unless (1) the balance of all outstanding amounts secured by the mortgage or deed of trust is zero, *and* (2) the borrower (seller) has made a request that the lender cancel the deed of trust by means of "written entry upon the security instrument showing payment and satisfaction." *Id.* at 342, 447 S.E.2d at 825. In the absence of *written notice* from the seller to the seller's lender, there is no tangible evidence that such a request was ever made. The buyer, buyer's lender, or the title insurer will look to the closing attorney to cover the loss.

It is the responsibility of the closing attorney to obtain a letter from the seller requesting that all deeds of trust be cancelled at the time of closing.

Recently, we have seen situations in which attorneys hand-deliver pay-off checks to the local branch of the lender (usually to a bank teller rather than the loan department) without providing a cancellation letter. A cancellation letter should be presented to the lender along with the check. In addition, because a cancellation letter can disappear from the lender's file, *we suggest taking two copies of the letter to the lender and asking the party receiving the check to sign one copy for the attorney's file.*

2) Disbursement of Uncollected Funds

Attorneys who conduct real estate closings must be extremely cautious when disbursing the proceeds of a real estate transaction from funds deposited in the attorney's trust account. The Good Funds Settlement Act, Chapter 45A of the North Carolina General Statutes, states the general rule that the closing attorney is prohibited from disbursing funds deposited in the attorney's trust account until those funds have been collected. *See* N.C. Gen. Stat. § 45A-4 (1999). Notwithstanding the general rule, the Act sets out certain exceptions under which the attorney may disburse uncollected funds in reliance upon the deposit of provisionally credited funds. For example, the Act permits the disbursement of uncollected funds if the check is drawn on the escrow account of a licensed real estate broker or is issued by a lender who is approved by the US Department of Housing and Urban Development ("HUD").

In ethics opinion RPC 191, the North Carolina State Bar concludes that failure to comply with the Good Funds Settlement Act constitutes professional misconduct, whether or not the funds are eventually collected. The real danger arises in those cases where the closing attorney disburses in reliance on provisional credit in compliance with The Good Funds Settlement Act, and later learns that the lender has stopped payment on the check or the check has been dishonored.

For example, some years ago Lawyers Mutual received reports that Island Mortgage Company, a HUD-approved lender, had stopped payment on a mortgage check after it had been deposited in the attorney's trust account. Unfortunately, the closing attorney had already disbursed the funds as allowed by the Good Funds Settlement Act. The State Bar mandates that under these circumstances the closing attorney must personally pay the amount of the failed deposit by either using personal funds or by obtaining sufficient credit to cover the shortfall in the trust account. The attorney may not use the trust account funds of other clients to cover the deposit. Failure to cover the lost funds constitutes professional misconduct.

It is the position of Lawyers Mutual that a closing attorney should never disburse uncollected funds, even if it is permissible under The Good Funds Settlement Act. The attorney

should demand wired funds or a cashier's check prior to making any disbursements from the trust account.

3) Failure to Comply with Lien Waiver Requirements

Lawyers Mutual has received several claims involving real estate attorneys who failed to comply with lien waiver and affidavit requirements imposed by title insurance companies. Recently, several title companies changed their standard lien waiver provisions to require a "long form" lien waiver and affidavit (including certifications by all suppliers of materials or services to the property) instead of the "short form" lien waiver commonly used in the past.

Where a long form lien waiver is required by the title insurance commitment but not executed at closing, the final title policy will include an exception stating that the title company assumes no liability for unfiled mechanic's or materialmen's liens. Title insurance companies have also revised the terms of their Insured Closing Protection Letter (ICL) to reflect this new lien waiver requirement. The ICL may now include an exclusion relieving the title company of any liability for losses arising out of mechanics' or materialmen's liens unless coverage is also provided under the title policy. Although the ICL generally provides coverage to owners and lenders for errors made by the attorney in connection with closing, if the attorney's error is a failure to submit the proper lien waiver and affidavit, there will be no coverage under the title policy or the ICL. If claims of lien are later filed against the property and not covered by the title insurance policy, the owner and lender may look to the closing attorney to resolve these claims.

A closing attorney should carefully review the terms of the title insurance commitment regarding lien waiver requirements and should confirm that the proper form is used.[3]

Poor Client Relations

The attorney-client relationship is the most important aspect of any engagement. Unfortunately, this is probably one of the areas most ignored by attorneys and staff. Maintaining good attorney-client relations can help prevent malpractice claims. A client who feels satisfied that you have used your best efforts will be more understanding and willing to forgive if you commit an error.

Dissatisfied clients complain that their lawyer never explained the legal process or billing system, did not return phone calls, did not attend to their case in a timely manner, failed to keep them informed, and failed to involve them in important decisions affecting their case. Unhappy clients are most likely to blame their lawyer when the case turns out badly. Listen to your clients. Strive to make them feel comfortable and important. Never be condescending. A lawyer with a good "bedside manner" is much less likely to be sued than a curt, discourteous, or distant one. It is expensive, time consuming, and stressful to defend a malpractice suit—even if it has no merit.

Foster good client relations by putting the terms of your employment agreement in writing. Define carefully the scope of engagement. If you are handling only a part of the whole case, state specifically what obligations you are undertaking, and even more importantly what obligations you are not undertaking. Many claims are filed every year in which the client contends the lawyer failed to do this or that and the lawyer's defense is that he was not engaged to do this or that.

The above discussion begs the question whether a lawyer should undertake only one piece of the legal pie. We call this the "unbundling of legal services." This has become increasingly popular in recent years and many commentators applaud the practice. One cannot deny, however, that the risk of being the target of a legal malpractice claim increases if you choose to assume responsibility for only a part of the case and lose control over other matters that, if done incorrectly or untimely, can be fatal to the case. That is, unless the lawyer is careful to outline in writing what he is assuming responsibility for and what he is not.

In addition to outlining the scope of the representation, describe to your client the objectives and risks involved in pursuing the matter. If the result is not what you and your client had hoped for, it will be helpful to be able to show that you explained the risks of an adverse result early on.

Have your client sign the engagement letter. Give the client time to review the terms of the engagement and explain anything the client does not understand. You do not want to hear later that the client did not understand what he was signing, or was rushed into signing it.

Don't ever lie to a client for any reason. You will have no credibility if a claim is ever brought against you.

Be careful not to create unrealistic expectations for the client. Legal malpractice claims inevitably result from actions that were not initially successful in the eyes of the client. Optimistic lawyers often invite the potential for legal malpractice claims. This frequently occurs during the initial client intake consultation. During client intake, the lawyer's desire to get the business leads him to opine optimistically as to the value of the case in terms that the client wants to hear. This can come back to haunt even the most experienced lawyer. Lawyers are advised to respond to the frequently asked question, "What's the case worth?" with nothing but the most conservative estimate, all the while couching that estimate in the reality that all cases proceed differently and anything can happen.

Keep the client informed of the status of his case by showering him with paperwork. Send the client a copy of all meaningful correspondence, including memoranda, pleadings, and briefs. If the case is dormant, send the client a letter explaining why there is no activity. Return all phone calls promptly, at least within 24 hours. Be on time for meetings and keep a neat office environment. Protect client confidentiality and train your staff to do the same.

Don't procrastinate. Delay is usually found in every legal malpractice claim. Moreover, while it sounds simplistic and perhaps unattainable, do not leave any file in your office unattended. It is the neglected file, more than any other, that probably needs your attention and that may result in a subsequent legal malpractice claim.

Above all else, choose your clients wisely. Lawyers should look at their client-screening policies and decide if they need to say "no" more often to potential clients. According to the ABA, ineffective client screening is one of the major causes of legal malpractice claims. By declining to represent a "high-risk client"—one who is most likely to sue you and will never be satisfied with your hard work and effort—you could be avoiding a potential lawsuit in the future. "Red flags" to look for are clients who have been rejected by other lawyers or who have fired other lawyers in the case; clients who have unrealistic expectations; uncontrollable anger; or clients who have made claims against prior

attorneys or other professionals. The general background of the client, financial condition, history of personal legal problems, and business background of the client may also be relevant areas of inquiry when evaluating a potential client. Learn to trust your gut about potential clients.

Sometimes good client relations involve knowing when to terminate the attorney-client relationship. Lawyers sometimes think they are not free to fire a client. A wise lawyer once said, "Unless he had missed something, the practice of law is not involuntary servitude." Indeed, it is not. If the representation is becoming unsatisfactory for either party, consider terminating the representation. You may have to seek permission from the court if you are the attorney of record in the case, and you cannot prejudice your client by abandoning him, but in many cases, ending the attorney-client relationship is the thing to do to avoid a claim down the road. Just remember to do it courteously and document the withdrawal properly. Another wise lawyer once said, "The happiest day of my life was when I learned how to fire a client." If your client requests their file or documents in their file, give it to him, but do not forget to keep a copy for yourself. At Lawyers Mutual, we occasionally have to request a copy of our insured's file from the plaintiff because our insured has simply turned over his file to the client without keeping a copy. Finally, when you provide your client with his file, get a receipt noting the date and time it was transferred to the client along with a disengagement letter stating that no further action will be taken by the lawyer on behalf of the client in the case.[4]

After instituting appropriate risk management practices and procedures, even the most competent, diligent attorneys may still make a mistake. Fortunately, most attorney mistakes are minor, resulting in little consequence to the client. There also may be ways to remedy the mistake before the client is adversely affected. However, when a material mistake does occur, many attorneys make matters worse by mishandling the matter with their client or their professional liability insurer. What should an attorney do after discovering that a mistake may adversely affect a client?

Call Your Insurer Promptly and Report a Potential Claim

You purchased legal malpractice insurance to protect yourself from personal monetary liability for your mistakes. Make sure that you do not jeopardize your coverage by failing to give prompt notice of a claim to your legal malpractice insurer. By trying to hide a mistake or just hoping that it will magically go away, you may jeopardize your coverage for an otherwise covered claim under your policy.

Promptly reporting mistakes to your professional liability insurer will avoid any uncertainty about timeliness of the claim under your policy. Prompt reporting to your insurer may also result in a claims repair opportunity that remedies the situation before a malpractice claim is made by the client. Remember that the insurer's claims attorneys and the outside counsel that it employs have extensive experience in claims repairs that fix attorney errors and mitigate damages to the client from those mistakes.

Cooperate in Your Defense and Be a Good Client

After you have reported a claim, it is likely that you will be asked to provide a written narrative that summarizes the nature of your representation of the client and the circumstances of the mistake. More than likely, you will also be asked to provide a complete copy of your file. It is important for you to provide the information and materials requested in a prompt manner so that your insurer may determine as soon as possible whether there is a chance for a successful claims repair or mitigation of damages that might be lost after a delay.

Providing the necessary information quickly also allows your insurer to evaluate claims and determine whether there is a good prospect for settling the matter earlier and before incurring defense costs. If the claims attorneys cannot adequately investigate and evaluate the claim due to an attorney's delay in providing the requested file, the likelihood that the case will settle before a malpractice suit is filed is greatly diminished.

Should your insurer retain defense counsel to defend you against a legal malpractice action, please remember that you are a client of that attorney, and treat him or her as you would want to be treated by your clients. You best assist in your defense by fully disclosing all available information to your defense counsel and promptly responding to his requests. As a lawyer, you know what makes a good client and what makes a difficult client, so act accordingly.

Also, the lawyer-defendant usually knows the former client better than claims staff or defense counsel and may also have expertise in the area of law for which he or she is being sued. Your insight into the substance of the claim against you may be very helpful in reaching a determination of the validity and value of a claim.

Conclusion

If you ask our claims attorneys about their favorite part of the job, they will say helping a fellow attorney solve a potential problem. Our claims attorneys achieve a high rate of success in our claim repair efforts. If you have questions for our claims attorneys, call us at 800-662-8843. At Lawyers Mutual we live our motto, "Lawyers helping lawyers." ■

Warren Savage received his JD magna cum laude from Campbell University School of Law in 1996 where he served as managing editor of the Campbell Law Review.

Mark Scruggs is a 1986 cum laude graduate of Campbell University School of Law and has over 14 years' experience as a trial attorney concentrating in insurance defense litigation. He is a past chair of the Law Practice Management section of the North Carolina Bar Association.

Endnotes

1. For additional information on setting up a calendaring and docketing system, visit the Lawyers Mutual website at www.lawyersmutualnc.com and click on "Risk Management Handouts."
2. You will find a North Carolina Statute of Limitation Index on the Lawyers Mutual website.
3. Visit our website at www.lawyersmutualnc.com to read the May newsletter article "Failure to Comply with Lien Waiver Requirements."
4. For more information on unbundling legal services and client relations, visit our website, www.lawyersmutualnc.com, and click on "Risk Management Handouts."

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North Carolina's Legal Characters—Frank Patton "Pat" Cooke

By Judge Jesse B. Caldwell III

In the movie *The Right Stuff*, there is a scene where a reporter asks Mercury astronaut Gordon Cooper, "Who is the best test pilot you have ever seen?" Cooper pauses, then begins a rambling, contemplative answer. If the similar question was put to me, "Who is the best lawyer you have ever seen?" I would not have to reflect for even a nanosecond in order to give my answer: Pat Cooke. In my nearly 37 years of being in court almost daily as a trial lawyer and Superior Court Judge, Frank Patton "Pat" Cooke was the best lawyer I have ever seen. Hands down, the best I have ever seen.

Born on January 17, 1921, in Floyd County, Georgia, the son of Caric Moore and Florence Hearn Cooke, his family moved to the Gaston County textile town of Cramerton when he was a boy. Pat was a smart student who quickly caught the eyes of his teachers. He excelled in school. At an early age, Pat developed a keen interest in baseball, and as a teen became one of the outstanding catchers of the ball teams of his county. His love of the sport was lifelong, and one of his great passions as an adult was attending the World Series every chance he got with Solicitor Grady Stott.

Pat Cooke loved to have fun. While a teenager, he and my uncle once staged a midnight wreck in front of the home of the biggest gossip in Cramerton to see how exaggerated the tale would get. They screeched the brakes of my grandfather's car, threw a sheet of glass on the street, and with a blood curdling scream tossed a rolled up carpet onto the curb. The next day, it was all over town how the old man had seen the hit-and-run, and how the lawless fiends had thrown the body into the Southfork River behind his house.

Pat graduated from Emory University and the law school at the University of North Carolina at Chapel Hill. After successfully passing the North Carolina bar exam in 1948, Pat, his wife Dorothy, and their young daughter Ann moved back to Gaston County, where Pat began the practice of law in Gastonia with classmate Max Childers. One of their earliest cases involved trying to execute on a claim and delivery. They learned early on that the practice of law could be a challenge when the surly owner of the property advised these two young whippersnapper lawyers that he was not about to surrender what was rightfully his. He proceeded to pick up Pat, who was about 5 feet, 3 inches tall, by the seat of the pants and throw him off the front porch. Pat's law school hero, Professor Albert Coates, had not prepared him for what to do when lying face down in the petunias.

After Max decided to open an office in nearby Mount Holly, Pat maintained a solo law practice in Gastonia. Soon afterwards he formed a highly distinguished and successful law firm with attorneys James "Moon" Mullen and Mac Holland. After a number of years, however, Pat went back to practicing in his own firm. Pat quickly developed a reputation as an indefatigable worker of boundless energy, with a phenomenal memory, who was meticulously prepared for his cases. He was extremely flamboyant, with his withering cross examinations, powerful jury arguments, and engaging asides. During one case I tried against Pat, he shouted at my client on the witness stand, "How long had you been brandishing that gun around?" When I strenuously objected to the word "brandish," without missing a beat, Pat said, "It's a good English word and I'll use it!"

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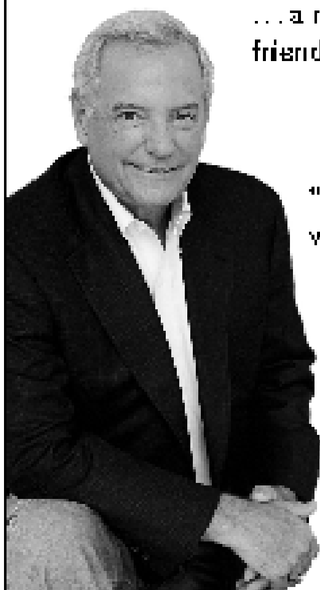

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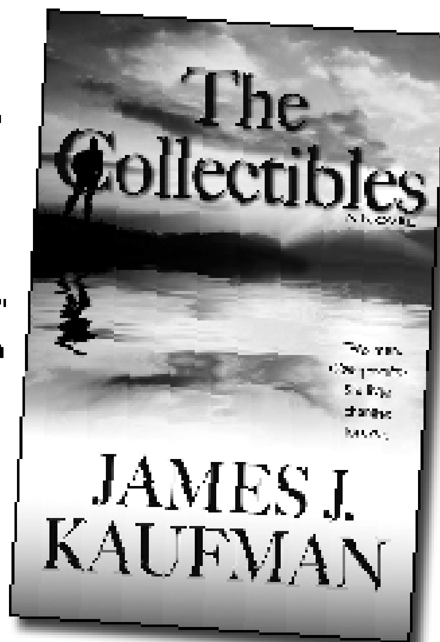

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changed
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the human personality, and ability to charm even the most jaded judge and jury, Pat was the "thirteenth juror" in the cases he tried. Long before lawyers were learning at seminars that they needed a "theme" for their cases, Pat was not only creating themes, he was painting them for the jury. Some lawyers are inductive in their reasoning to the jury, and others are deductive. Pat was "abductive," to use Leonard Sweet's term, in that he "abducted" and sucked the jury right into the case. I will never forget his questioning of one witness about the night of a crime. He set the scene by eliciting testimony about chirping crickets and the twinkling stars that dazzled like small diamond chips peppered against a black velvet backdrop on a cold, clear night. You didn't just see the night, you were there, shivering in it.

Pat Cooke knew how to reach a jury. He would have to, in order to gain a self-defense acquittal of a woman who shot her daughter's abusive husband in the back as the victim was being led away by police for assaulting her daughter. Or successfully trying the murder case of the doctor whom the jury found acted in self-defense when, after receiving a threatening call from the husband of a patient, got in his car, drove across town, and proceeded to stab the man.

Along the way, Pat and Dot Cooke had three more children: Sarah, Patti, and Frank Jr. He loved his family, and he loved people, too. Pat's love of people, public service, and his desire to help the working-class men and women of Gaston County helped send him to the North Carolina State Senate for three terms, from 1955-1960. All the while, he maintained a vigorous practice of law.

Pat's hallmark was that he would fight for his clients. His zeal was without limit, his passion ferocious. Pat was famous for moving for a mistrial at least once in every lawsuit. Once, when Superior Court Judge Sam Ervin III ruled against Pat on an objection, he stood up and in his fiery fashion shouted, "Your Honor, we move for a mistrial!" throwing down his glasses in disgust. It was great theatre. A sly smile came upon Judge Ervin's face as he invited counsel to the bench. "Mr. Cooke," he said, "I am seriously considering granting your motion," whereupon Pat pleaded, "Oh, Lord, Judge, don't do that!" His clients may have loved the hellfire and brimstone, but retrying a three-day case was the last thing Pat wanted.

Pat was on the cutting edge of the practice of law. He maintained an extensive library with a wide array of resources rarely found outside the office of a large firm. He drilled into his law clerks and associates, "You ought not go to bed at night until you have read the advance sheets." He was the first lawyer in our community to hire a full-time private detective to investigate his civil and criminal cases. He created his own darkroom at the office to develop full-blown color photographs for trial exhibits. He had a passion for hiring law students and young lawyers, and trained several generations of some of our state's best trial attorneys.

Pat Cooke's jury arguments were mesmerizing. When he argued to the jury, other lawyers filed in to watch and take notes. Of course, he didn't have any notes. He would pace up and down in front of the jury box like a banty rooster in righteous indignation, his face crimson red like the scarlet thread of justice he said was woven into the fabric of our justice system. He had a basic framework for every criminal jury argument, which

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began by tracing our freedoms as Americans back to the Magna Carta, where the people forced the king to address their grievances "on the fields of Runnymede." Pat's "Road to Runnymede" speech brought a chill to your spine and tears to your eyes, as he serenaded all present about how the presumption of innocence and burden of proof with the state are the very bedrock cornerstones of our system of criminal jurisprudence. It was unbelievable. It was beautiful.

This silver-tongued orator was never at a loss for words, except once. He and I were defending clients who had a duel with pistols on the streets of Cherryville over who would win his client's wife, with whom my client had been engaged in a torrid affair. They were only ten feet from each other when they fired their guns, but because they were so drunk, their bullets missed each other. The district attorney was sticking it to both of us, and Pat was sticking it to my client. When it came time to argue, Judge Ronald Howell asked which lawyer would argue first. "You go first," Pat said with a crafty smile, knowing that this would give him the opportunity to demolish everything I said in my argument.

I then proceeded to get up and give Pat Cooke's "Road to Runnymede" jury argument, which I had heard dozens of times before. When it came his turn to argue, he became frustrated and flustered. As he would begin to discuss some aspect of our criminal justice system, he would say, "Well, Mr. Caldwell has already talked about that. I guess we'll have to move onto something else." This happened about five times. About halfway through, he whirled around in exasperation to the court, pointed to me and said, "Your Honor, I move that you hold Mr. Caldwell in contempt of court. That little so-and-so has stolen my jury argument!"

Life was not all work for Pat Cooke. He loved his friends and he loved to travel. Once in the late 1950s he was in the Bahamas with attorney Robert Gaines (who later became a superior court judge), who at that time was an assistant district attorney for Gaston County. While lounging at the pool, Pat paid a young waiter to walk around the pool area calling out, "Long distance telephone call for Senator Cooke." As much whispering commenced, he made his dramatic way to the telephone, all eyes on him. Shortly thereafter, Pat and Robert were invited by a bellman to the private party given by the owner of the hotel complex and casino. They mistook Pat for a United States senator, and Gaston County Assistant District Attorney Robert Gaines for the North Carolina Attorney General. After a sumptuous banquet of the finest food and drink, they began to lobby Pat about what he could do in Washington to promote the tourist industry of Bahamian resorts. Pat faithfully promised to follow through with the appropriate committee upon his return.

Pat Cooke was one of those lawyers who are exceedingly rare nowadays (except for perhaps Sam J. Ervin IV, court of appeals judge) who can quote not only any case, but also the citation from memory at the drop of a hat. Pat knew the law and he was eloquent when he argued it. He had very little patience for judges who were not as familiar with the law as he. I remember seeing him on a number of occasions citing the law, only to have a skeptical judge express reservation that the law was as Pat represented it to be. He would invariably ask for a recess, come back with an armload of North Carolina Supreme Court Reports, and review each case to the court in painstaking detail. Usually about halfway through, the judge would say something like, "Alright, Mr. Cooke, that's enough, I know the law when I see it." Without missing a beat, Pat's response would be a line he borrowed from one of his mentors, Ernest Warren, and retort, "Well it sure was a stranger to you ten minutes ago!"

Pat also knew what to do whenever he crossed a line in his zeal. He was the master of the abject apology. As he figuratively donned sackcloth and doused himself with ashes, he could beg the court's forgiveness of his transgression with language that would make Shakespeare jealous. Attorney Pat Cooke was also the quintessential master of pleading someone guilty. In our day of negotiated pleas and sentences, this is a rapidly disappearing art. No matter how long it took, Pat would paint the most wonderful portrait of the defendant, about her love of family and love of the Lord, and speak at great length about the mental anguish the impending charge had brought to his client. No one could convey their client's remorse and regret better than Pat Cooke. Whenever he finished pleading a client guilty, that client and everyone present knew that Pat had earned his fee.

Pat Cooke was admired, revered, and respected by all at the Gaston County Bar, who honored him by electing him as the State Bar Councilor for many terms. Pat Cooke encountered a number of health problems in his later years, causing him to slow down his practice. He was retired for several years before his death on December 9, 1997. He has been gone now 13 years, but it doesn't matter how many years, I am never removed from Pat Cooke's glory days. No matter how long I am watching lawyers, the greatest lawyer I will ever have seen was Pat Cooke.

We miss you, Pat. And we love you. ■

Judge Caldwell has been a superior court judge for 17 years. Prior to that, he spent 20 years in private practice and working as a public defender in Gaston County.

State of Innocence: An Introduction to North Carolina's Innocence Organizations

By Theresa A. Newman

North Carolina is a national leader in the commitment to identify and remedy wrongful convictions. About ten years ago, law schools in the state were among the first in the country to establish projects dedicated to investigating claims of actual innocence. Today, the state has an impressive array of organizations dedicated to that effort, ranging from volunteer programs at law schools to The North Carolina Center on Actual Innocence, a nonprofit organization, and The North Carolina Innocence Inquiry Commission, a state agency.

All of these organizations work to further the common goals of identifying cases in which innocent people have been wrongfully convicted and rectifying such miscarriages of justice. Some also pursue the more general goal of identifying the causes of wrongful convictions and preventing future miscarriages of justice. This article is a brief introduction to the principal organizations involved in these efforts and the work they do.

The Early Development

The national Innocence Project, which is headquartered in New York, is the organization that started it all. Lawyers Barry Scheck and Peter Neufeld founded the project in 1992 to use DNA testing to identify innocent prisoners and secure their freedom. After its initial success, the project was inundated with thousands of letters from prisoners claiming innocence but whose cases did not involve the biological evidence necessary for DNA exonerations. To get others to help with those cases, the project called on the nation's law schools for help. Duke and UNC-CH responded, sending several faculty and students to New York for the introductory meeting and training in how to investigate claims of innocence, in both DNA and non-DNA cases.

Once back in North Carolina, the Duke and UNC-CH students and faculty established student-led Innocence Projects at their respective schools. The projects quickly developed eligibility criteria and investigative proto-

cols, and began accepting requests for assistance from North Carolina inmates. Pete Weitzel, the former managing editor of the *Miami Herald* who moved to North Carolina after retiring, volunteered to help the projects and soon realized that inmates had written to both Projects and, in some cases, students at the two schools were investigating the same claims. Weitzel proposed the creation of an independent non-profit organization to screen the cases, then distribute those considered viable to the projects for investigation. That was the genesis of the North Carolina Center on Actual Innocence.

North Carolina Center on Actual Innocence

The NC Center has grown impressively over the last ten years. Led by Executive Director Christine Mumma, the center now screens hundreds of cases from inmates every year; independently investigates and litigates innocence cases; oversees the innocence work of law student projects at Campbell, Charlotte, Elon, NCCU, and UNC-CH; and advocates for measures to prevent wrongful convictions and more generally to improve the performance of the criminal justice system.

North Carolina Chief Justice's Commission on Actual Innocence

As reports of wrongful convictions grew in number and frequency, then-Chief Justice I. Beverly Lake Jr. grew concerned about the impact these cases were having on the public's confidence in the justice system. In 2002, Chief Justice Lake responded by calling together 30 key members of the state's criminal justice community—the attorney general, judges, law enforcement officers, prosecutors, criminal defense lawyers, a victim's advocate, and others—to form the Commission on Actual Innocence, the first of its kind in the nation and a model that other states have since replicated. The commission met regularly for a number of years to study the causes and prevention of wrongful convictions. In its first formal act, the commission proposed new scientifically tested procedures for eyewitness identification, which have been adopted for statewide use. The most significant contribution made by the Commission was the proposal that led to the creation of the North Carolina Innocence Inquiry Commission, an independent governmental agency, with subpoena power, dedicated solely to the review of innocence claims.

North Carolina Innocence Inquiry Commission

In 2006, the NC Legislature created the Innocence Inquiry Commission, which provides a new forum and process for investigating and hearing claims of innocence—beginning with a full investigation of the claim by commission staff, moving to a review of the developed claim by the eight-member commission (including a superior court judge, a prosecuting attorney, a victim's advocate, a criminal defense lawyer, a public member, a sheriff), and, upon the vote of five members of the commission, to a *de novo* review of the claim by a specially appointed three-judge panel. If the judges vote unanimously that the inmate is innocent, then all charges are dismissed and the person is freed. If the vote is not unanimous, relief is denied; however, inmates whose claims are heard by the commission are not barred from pursuing other avenues of relief, such as post-conviction motions for appropriate relief. The executive director of the Innocence Inquiry Commission is Kendra Montgomery Blinn, who, while in law school, was student director of the Duke Innocence Project.

Duke Law Center for Criminal Justice and Professional Responsibility

Duke Law School has maintained an Innocence Project and offered a course in wrongful convictions since the trip to the Innocence Project in New York. Two years ago, Duke University provided the start-up funding for the law school to establish the Center for Criminal Justice and Professional Responsibility, which is led by faculty members James Coleman and Theresa Newman. Among its principal programs, the Center has a Wrongful Convictions Clinic, in which students work under the supervision of Coleman and Newman to identify, investigate, and litigate claims of actual innocence; a research component that works with faculty at Duke and other research universities in disciplines other than law to study ways to prevent wrongful convictions; and the original student-led Innocence Project, which now conducts preliminary investigations of innocence claims, assists with full investigations, helps exonerated prisoners to make the transition from prison to the community, and engages in community outreach efforts.

Wake Forest Law School's Innocence and Justice Clinic

The newest innocence organization in the state is Wake Forest Law School's Innocence and Justice Clinic, led by faculty members Carol Turowski and Mark Rabil. Students in the clinic work on claims of innocence and other miscarriages of justice while learning about the criminal justice system generally, including the causes and remedies of wrongful convictions. The clinic also sponsors educational programs and other events to promote public awareness. In September 2010, for example, the clinic hosted a presentation by author John Grisham.

Darryl Hunt Project for Freedom and Justice

The Project for Freedom and Justice is a nonprofit organization based in Winston-Salem. The project was founded by Darryl Hunt after his exoneration by DNA. Among other things, the project helps inmates wrongfully incarcerated, advocates for reforms to the criminal justice system, and assists ex-offenders in gaining the skills they need to successfully reenter society. Hunt, who spent more than 18 years in prison before his exoneration, is a popular speaker at law schools and other forums.

Compared to other states, North Carolina has an abundance of riches devoted to the cause of wrongful convictions. But even here, the resources do not begin to meet the need. Most cases handled by these organizations do not involve DNA and require many hundreds of hours of investigation and, if necessary, litigation. Although several organizations are available to do the work, their staffs are fairly small, with most having to rely on supervised voluntary student effort. Yet, even with their strained and limited resources, these organizations are playing an important role in the criminal justice system, providing a painstakingly close and careful review of cases in which credible claims of innocence have been raised. We have reason to be proud of all that these organizations are doing, but we cannot rest on our laurels. Much more still needs to be done. ■

Theresa A. Newman is clinical professor of law at Duke University, where she also codirects the Wrongful Convictions Clinic (with Professor James Coleman) and serves as associate director of the Center for Criminal Justice and Professional Responsibility. She is also on the board of the Innocence Network (comprised of more than 60 innocence organizations in the US and around the world) and served on the NC Chief Justice's Commission on Actual Innocence.

Clientele

BY BRIAN ERNST

It was well after midnight when Mr. Fritz welcomed his visitor into a small, unassuming office tucked neatly away in a strip mall on Glenwood Avenue. It was December, and this year's holiday season had been especially frigid. Though winter gales sliced cruelly through the city's corridors, Mr. Fritz's guest looked none the worse for wear. Indeed, Arthur was the type who never seemed even slightly disturbed by the world's indignities.

The room into which Arthur entered was modest in nearly every regard. Sickly phosphorescent light soaked unremarkable art adorning the walls, causing the interior to seem more like a low-end hotel room rather than the home of a legal professional. The space's sole interesting feature was the single individual seated behind a mahogany desk in the far corner of the office. Mr. Fritz smiled warmly as he stood to great an old friend.

"Thanks for coming, Arthur. I'm sorry about the lateness of everything. You know I wouldn't have called you here at this hour unless I had something urgent to discuss. Please, have a seat."

Mr. Fritz sat down at his desk while his colleague found a plush chair in the opposite corner of the room. Arthur leaned back into it but remained silent, patiently waiting for his attorney to make the first move.

"I don't know how else to tell you this, Arthur, so I'm just going to come right out with it. I… I can't be your lawyer anymore. In fact, I can't be anyone's lawyer anymore. I'm leaving the practice and the profession, effectively immediately."

Mr. Fritz sighed and stared down at his hands. They were trembling so much that he dared not raise them from under the desk and into view. He took a deep breath and continued.

"My heart just isn't in it. I can't be a good advocate anymore. I can't be *your* advocate anymore. You were my first client and, if I'm being honest, you remain my favorite one. That's why I wanted you to know immediately."

The attorney appended his statement quickly, so as to leave no room for interjection.

"I've already made all the necessary arrangements. We'll prepare your file and ship it to any lawyer of your choice. Of course, I'll be happy to provide recommendations if you'd like them. There's an excellent attorney on Boylan, very near here, who I think would be a great lawyer for you. I'm… I'm truly sorry, Arthur. I know it's late and this must come as no small surprise. But this is something I have to do. "

Arthur leaned back in his chair and stared uncomfortably across the room at his host. Mr. Fritz did his best to return eye contact, though Arthur's gaze pinned him to his chair with the force of a rollercoaster. The lawyer had no idea how much time passed in utter silence, but the duration was more than sufficient for his client to make his point: Arthur was, as expected, shocked and gravely disappointed. Yet there was no hiding the slight upturn of the corner of his upper lip, the possible genesis of a wry smile that might help deflate the unbearable tension.

"Mr. Fritz," the client began, "I hope you're not billing me for this."

The lawyer chuckled and rubbed his ruddy face with a sweaty palm. That could have gone much worse.

"No, of course not. Don't worry, friend – we'll work out the fee arrangement with whatever attorney you decide to hire. I assure that you'll know exactly how much-"

"Mr. Fritz," Arthur interrupted, "why couldn't you tell me this over the phone?"

The comment caught Fritz off guard. Feeling as if the inquiry warranted an immediate response, the lawyer stumbled around several phrases before settling on a vaguely coherent response.

The Results Are In!

This year the Publications Committee of the State Bar sponsored its Seventh Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of six committee members. The submission that earned second prize is published in this edition of the *Journal*.

"Well, I figured - you know, since we've known each other for so long, and you've been such a great client - plus it was so sudden, and I thought the phone would be too impersonal…" Fritz waited for a lifeline that never came.

Arthur scratched his head and leaned forward, never letting his eyes settle anywhere but upon his unfortunate conversation partner.

"Mr. Fritz, have you been drinking?" The words were spoken frankly, but with legitimate apprehension.

Fritz inadvertently glanced down to the bottom-right corner of his desk before looking back at his client. It was a brief glimpse, yet somehow he knew that it betrayed the presence of the half-empty bottle of Dalwhinnie scotch stashed away in a drawer at that location. The accuracy of Arthur's guess, combined with the resulting embarrassment to the guilty party, prompted an overly defensive reaction from Fritz.

"It's really no concern of yours. I've made my decision. This is the first step to winding up my affairs. Please don't make this any more difficult for me."

Arthur stiffened at this remark. "A man who has dedicated his life to serving the desperate and needy should know better than to call this a difficulty," noted the client. "I've paid you enough to believe that you're not

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quite yet in financial ruin. Truth be told, sir, it sounds like you're just throwing in the towel."

"It's not that I don't enjoy my work anymore," came the reply. "I simply don't enjoy the business. Do you recall President Harding's famous quote - that the business of America is business? Well, that's exactly how I've come to regard the practice of law. Every year, the amount of time I dedicate to actually helping people goes down while the time I spend running a business goes up. There are more lawyers than ever out there now. I can't compete with them without raising rates beyond what my clients can afford. Yet I have neither the time nor the resources to recruit new clients. Of course, I could simply join another practice… except that no one's hiring these days, and job security is at an all-time low. I'll let you in on a little secret, friend – the legal profession is in shambles right now, and I don't know if it will ever return to being what it used to be."

As Fritz spoke, Arthur reclined in his chair and waited patiently for the man across the room to finish. When all was silent, he stood up and slowly paced the room, digesting all that his longtime acquaintance had just told him.

"Well, no one said being a lawyer was easy," began Arthur. "I've dealt with lawyers from all walks of life and I can distinguish between the good ones and the bad. And you, Mr. Fritz, are undoubtedly one of the best. You work hard, you care about your clients, and you're motivated by goals more noble than money. True, law may not be as satisfying as it used to be. But I don't see how losing a good lawyer helps improve the state of things."

The attorney looked downwards at his desk, pondering Arthur's words. His eyes settled on a bust of Cicero he acquired early in his career. He silently traced a finger over the Latin inscription running below the famed Roman statesman. *Salus Populi Est Suprema Lex*. He looked back up at the figure opposite him.

"When I first started on this track," Arthur began, "I felt like I was following in the footsteps of great men. Cicero. Gandhi. Lincoln. Atticus Finch."

"Atticus Finch isn't real," Arthur quipped.

"The idea of him was as real as you sitting before me."

Arthur stayed silent. He had clearly touched a nerve. Fritz's apparent insobriety wasn't helping matters.

"These were the men I wanted to be," continued Fritz. "Their efforts changed the course of history. They showed that law was about more than billing hours and scrambling for ad space. They didn't fritter away the years by helping companies with tons of money make a little more money. On the contrary, they changed lives."

"I don't doubt what you say, Mr. Fritz, but the three actual men you named all paid the ultimate sacrifice for their efforts. Let me ask you this: would the world have been better off if they had quit because they had trouble making ends meet? With all due respect, Fritz, it seems like you're just sitting here, waiting for the echoes of greatness to descend upon the four walls of this office. I don't think it works that way - and even if it did, all of your heroes understood the importance of patience."

Both Arthur and Fritz sat back down as the latter weighed the former's words. Fritz tapped his fingers absentmindedly on his desk before offering a response.

"You know, at first I thought I had just made a bunch of mistakes along the way. Maybe I should've worked through a few more happy hours. Maybe I should've paid more attention in evidence class. Maybe I should've chosen a different subject for that book report in sixth grade. When you're second-guessing yourself, there's no such thing as the distant past.

"But just the other day, I met a group of my attorney friends for lunch at Mellow Mushroom. The first thing I noticed is that all of them looked just as tired and miserable as I do. Do you know how wretched you have to be to look that ragged at a Mellow Mushroom?"

"They should've ordered the Hawaiian," Arthur offered, attempting to lighten the mood. If his comment had any effect at all, it went unnoticed. In fact, Arthur did not disagree with the sentiment. Having known many lawyers over his lifetime, he was well aware of the profession's physical toll on the practitioner. He often joked – well out of Fritz's earshot, naturally - that this effect served to prevent the more arrogant lawyers from becoming even more narcissistic.

"My point," continued Fritz, "is that we're all feeling the same pressures. It's no surprise that the profession is suffering. What's remarkable is how little we're doing to address it."

The client leaned further back in his seat as the lawyer continued to dissect the irony of law's injustices against itself. Arthur had on several occasions shared drinks with Fritz and knew full well how alcohol elicited these kinds of verbose ramblings from his colleague. Still, Arthur noted, the attorney made valid points. Despite the obvious gloss of sentimentality provided by the scotch, it pained Arthur to see his good friend so profoundly unhappy. He began to tune out Fritz's rants in order to determine how to best transform the conversation into something beneficial.

"It's not just the lawyers that are hurting," Arthur retorted. "Clients are suffering, too. The truth of the matter is that good lawyers like you are needed now more than ever. Mr. Fritz, I don't claim to know when things are going to turn around for you. But I do know that you've helped an awful lot of people during your career. You've made friends that won't give up on you, even if you give up on them. I'm one of them.

"Of course, I won't stand in your way if you're truly unhappy and need a change in your life. The most important client is yourself, after all. I just hate to see you go out on a bad note. I suppose it goes without saying that the best way of ensuring that something won't ever improve is to quit it."

Mr. Fritz placed his head in his hands and carefully considered these words. Perhaps, he thought, his idea of heroes had been misguided. Cicero? An ancient memory. The world had had enough of Lincoln and Gandhi. As for Atticus Finch, the mere mention of the name today was enough to prompt sarcastic derision. Those men, Arthur now understood, were less defined by the enormity of their success than by their resistance to colossal adversity. How

CONTINUED ON PAGE 54

An Interview with New President Anthony S. di Santi

Q: What can you tell us about your roots?

I was born in Hendersonville, North Carolina. My mother's family has lived in the North Carolina mountains for generations. In fact, one of my forebears was Cherokee Indian. My father was from Philadelphia, Pennsylvania. My great-grandfather and grandmother emigrated to the United States from Italy. My mother and father met in St. Petersburg, Florida, during World War II. My father was a career soldier, and as a result, I have lived in Philadelphia, California, Texas, and New York. However, my mother and father divorced when I was relatively young, and I was raised by my single mother with lots of help from our North Carolina family. I have four wonderful sisters, three of whom live in western North Carolina, and one who lives in Cincinnati, Ohio.

Q: When and how did you decide to become a lawyer?

I cannot state that I had an "ah-ha" moment when I suddenly realized that I wanted to be a lawyer. In high school, I enjoyed civics, government, and history courses. I attended UNC for one year, but my family did not have the money to pay for my college, so I decided to go into the army to take advantage of the GI Bill. I recall sitting on my tank in Vietnam one night, thinking about what I would do when I got out of the army. I remembered a time in my youth when I went with my mother to a lawyer's office. She did not tell me why we were there, but I surmised she needed assistance in getting child support from my father. After the meeting with the lawyer, I could tell my mother's stress was greatly reduced. It was that night in Vietnam that I decided that I would use the GI Bill to return to Carolina to get my undergraduate degree, and hopefully be able to afford to go to law school. As a result of being wounded in Vietnam, I qualified for another veterans program that not only enabled me to get my degree from Carolina, it also enabled me to attend Wake Forest University School of Law. So, it was late at night when I was pulling guard duty on my tank in Vietnam that I made the decision of what I hoped I could become—a lawyer so that I could help people in their time of need.

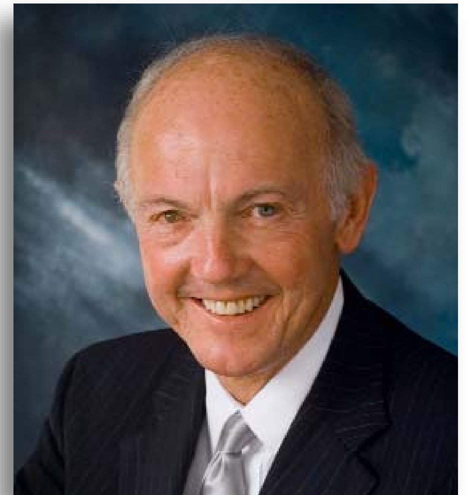
Q: You are a decorated veteran of the Vietnam War. How were you changed personally by your experience in the military? How do you think the experience has affected your legal career?

Serving in the military caused me to become more focused in my life, and taught me organizational skills that serve me well today. It also gave me confidence to know that I can respond in stressful situations. I was only 19 years of age when I went into the army, and 20 years of age when I became a tank commander and was later wounded in Vietnam. When I have to appear in court for a trial or other forum while representing a client in a stressful situation, I know that nothing I will face in the court or forum can be as stressful as what I experienced in combat in Vietnam. My service in the military probably gave me more confidence in my ability to react to the unknown than I may have had if I had not served in the United States Army.

Q: What is your practice like now and how did it evolve?

My practice today is very similar to my practice when I started in Boone in 1975. It was a general practice in 1975, and remains a general practice today. When I started in 1975, there were three attorneys in our firm. Today, there are five attorneys in our firm. We have a general practice that includes the day-to-day issues that most of the small town general practitioners encounter each day. I do enjoy the general practice of law, as I find that after 36 years of practice, I still encounter new issues that create a learning experience for me that makes it enjoyable to go to the office each day.

Q: What's it like to practice in Boone?



Boone is a wonderful place to practice law, to live, and to raise a family. I actually live in Blowing Rock, but it is only ten miles from Boone. Both communities are involved in the travel and tourism industry and, frankly, it is fun to live in a place where people want to go for their vacation. Boone is one of the top ten communities in the country associated with outdoor recreation. In addition, Boone is the home of Appalachian State University, which has become one of the major universities in the Southeast. Living in a community with a major university provides numerous educational, cultural, and athletic opportunities. Boone is progressive and diverse, yet retains its small town appeal.

Q: If you had not chosen to become a lawyer, what do you think you would have done for a living?

Before I was wounded in Vietnam, I considered a career in the military, and considered applying for an appointment to the US Military Academy at West Point. My injuries precluded that possibility. I also considered the US Foreign Service, as I enjoyed travel both in my early years when my father was in the military, and later when I was in the army having

served in Germany as well as Southeast Asia. During law school, I had a great job with the Internal Revenue Service, where I worked during the summers full-time and part-time during the academic year. I was offered a job at a starting salary more than what I was offered when I started in Boone, but I ultimately remembered how the lawyer in Hendersonville had helped my mother and decided to pursue a general practice in a small town, albeit, a great small town. It is interesting for me to note that if I had chosen or been able to pursue any of those three careers, I would likely be retired now. However, I have no second thoughts, as I have truly enjoyed my career as a small town practitioner. Furthermore, if I had not chosen to practice in Boone, I would not have met Debbie Winters, who graduated from Appalachian State University and has been the love of my life, and we would have not had our one child, Erin, who has been an inspiration to me. Lastly, if I had chosen one of those career paths, I would likely not have been elected to serve as a councilor from the 24th Judicial District and elected to serve our bar as its president. As I stated in my remarks when I was installed as president, in my opinion, there is no higher calling within our profession than serving as a councilor on the NC State Bar. It is the most professionally rewarding experience of my career.

Q: How and why did you become involved in State Bar work?

In November 1999 the North Carolina State Bar sent a notice to the members of the 24th Judicial District that it was necessary for the district to meet and elect a councilor to represent the district. Upon receiving the notice, a number of attorneys in Boone approached me and asked if I would consider representing the district. I was flattered by their request, stated that I would, and I was elected to represent the 24th Judicial District at a special meeting in December 1999. After being elected, I realized that I did not know to what I had agreed on behalf of the 24th Judicial District, as frankly, I did not know what a councilor did. I called a former councilor from our district, Stacy Eggers, who is the father of the current councilor, Becca Eggers-Gryder. Upon asking Mr. Eggers what I could expect as the new councilor, he stated in his inimitable mountain style, "You read a lot, you go to Raleigh a lot, and you do not get paid." I soon learned that Mr. Eggers was correct. However, as I previously stated, it is the most professionally rewarding experience of my career.

Q: What has your experience on the Bar Council been like and how has it differed from what you anticipated?

As I did not know what to expect when I was elected as a councilor, I did not have an anticipation of the work of the council. However, aside from the rewarding experience I have had, the aspect of the council which has most impressed me is the serious dedication that each councilor brings to the council. The work of the council is serious business as we endeavor to protect the public, which is the charge of the council, and protect the privilege of self-regulation of our profession. I wish each lawyer who practices law in North Carolina could have the experience of serving as a councilor, as it would enable our bar to understand how dedicated the council and the staff of the North Carolina State Bar is in fulfilling our charge of protecting the citizens of our state and protecting our privilege of the self-regulation of our profession.

Q: Can you tell us about the most difficult issue you've faced as a member of the Bar Council?

There are two issues which were equally difficult for me. The *Gell* case, in which prosecutors were reprimanded for their conduct relative to the disclosure of evidence in a capital case, and the *Nifong* case, in which the council had to decide whether to intercede in the process,. In *Gell*, the media criticized the decision of the council as being too lenient. While it was an emotional case with a lot of publicity, in my opinion, the council made the correct decision. The confidentiality of our grievance process precluded the council from completely informing the public about the basis of its decision. Regarding the *Nifong* case, the council generally would not intercede in a pending case, but based on the information provided to the council, we determined it was necessary. Ironically, the media coverage the council received from the two cases was polar opposite, very uncomplimentary in the *Gell* case, and very complimentary in the *Nifong* case. However, I believe the decisions in both cases were correct.

Q: During your tenure on the council, women and minorities have always been underrepresented. Your predecessor as president, Bonnie Weyher, made increasing diversity a primary goal of her administration. Do you share her concern and, if so, what do you intend to do to further the cause?

I do share her concern, and I made a commitment to her to continue the process when I assumed the office of president. Creating diversity on the council is difficult, as councilors are elected from their districts, not appointed. Therefore, it is necessary to get lawyers, especially women and minorities, interested in bar leadership early in their careers. One thing I will do next year that is relatively simple is to reduce the time a councilor must be away from the councilor's practice and family. By scheduling meetings to start as late as possible on Wednesday afternoon, I hope that most councilors will have another day at home to work at their practices and be with their families. This is possible because of the extensive work the Program Evaluation Committee accomplished the last two years to improve our procedures and reduce the number of committees. At the October council meeting, Bonnie and I asked the council to approve the concept of law students from North Carolina's law schools attending our summer council meeting as "interns." When they return to school in the fall, the officers and staff will go to the law schools to help the students present programs similar to what we present to the judicial districts during the year. By doing so, we hope that our younger lawyers, especially women and minorities, will become interested in bar leadership at an early stage of their careers.

Q: When you took office you expressed concern about the fact that many young lawyers these days are starting out in practice without access to good professional mentors. Why is that a problem and what do you think ought to be done to address the situation?

As a result of today's economy, many lawyers are graduating from our law schools with enormous debt and with no possibility of obtaining the jobs that may have been available to them when they started law school three years ago. As a result, they are starting their own practices without the resource of more experienced lawyers to guide them in the practical, day-to-day issues that they will encounter in the practice of law. I hope that a mentoring program, whether mandatory or voluntary, will make a difference in these young lawyers' careers in the law. This is an issue that Gene Pridgen and Martin Brinkley, the president and vice-president of the NC Bar Association, wish to address this year. We look forward to working with the Bar Association on this issue.

Q: You also indicated that you intend to investigate the performance of lay persons who are involved in the closing of real estate transactions, and possibly reassess the State Bar's position in regard to that practice. What is the

source of your concern and what do you think might be done to protect consumers?

For the past two years, the citizens of our state, and the members of our bar, have endured difficult economic times. As a result, there have been an unprecedented number of foreclosures of homes, which has also revealed significant incidences of mortgage fraud. I am going to ask the Issues Committee to review Authorized Practice Advisory Opinion 2002-1 to determine if allowing unsupervised nonlawyers to conduct real estate closings has contributed to this harm to the citizens of our state. We will have had eight years of experience with the issue. If the review of the issue determines that this practice has contributed to this harm, I will ask the council to change the opinion so that we uphold our charge of protecting the citizens of our state.

Q: You live in a small town and practice with a small firm. Do you think you can understand and empathize with those lawyers who live and work in the urban areas of the state?

I do. One of the great aspects of our council is that the councilors come from the four corners of our beautiful state. Many of our councilors come from the urban areas of our state. When the council debates an issue, the perspective of our diverse practices across the state are expressed. It has been said we are the last great debating society. I can attest that I believe that we are the last great *civil* debating society. Therefore, I believe I can relate to the perspective of the lawyers from the urban areas of the state.

Q: You served on the State Bar's Grievance Committee for many years, and was a vice-chairman at one point. What do you think about the disciplinary system? Is it working? Are we doing a good job? Where can we improve?

I did. In fact, while I was a vice-chairman, we did an analysis of our procedures and made changes to the process to assure that we were timely addressing the issues that came before the Grievance Committee, and that the decisions made by the Grievance Committee were consistent and fair. As I noted earlier, our reputation can be sullied by a very small percentage of our lawyers. One issue that we continually encounter are the lawyers who repeatedly come before the council. We refer to them as "frequent fliers" because of our familiarity with them. We attempted to address these repeat offenders with a "three strikes" concept to the decision process, but our attempt was not approved by the Supreme Court. We will continue to address this issue through the disciplinary process. Although I am very confident that our staff and council does an excellent job in the grievance process, in any institution, there is room for improvement. We will continue to self-analyze and respond to what our analysis reveals. Not only for the grievance process, but for all the issues that come before the State Bar, we need to respond as if we are a business that wants to stay in business.

Q: Recently the State Bar adopted a controversial amendment to the Preamble to the Rules of Professional Conduct declaring that lawyers "should not discriminate on the basis of a person's race, gender, national origin, religion, age, disability, sexual orientation, or gender identity." Did you support the amendment? Why?

I did support the amendment. It will be difficult to answer this question succinctly, considering the extensive debate that transpired with the issue. However, the most important aspect is that it is an aspirational goal and not a rule that will engender discipline if an individual lawyer does not share in the aspiration. In fact, the rules specifically provide that a lawyer should not represent a client if the lawyer cannot do so zealously. If a lawyer cannot represent a client based upon any of a myriad of grounds—religious, moral, social, or even prejudicial—the lawyer should not assume the representation of the client. The amendment does not preclude a lawyer's right of free speech to advocate an issue of importance to the lawyer. Last year we adopted an aspirational goal regarding *pro bono* representation for which a lawyer will not be disciplined if the lawyer does not achieve the aspirational goal. However, the message that is sent by the adoption of the amendment is that the North Carolina State Bar aspires to ensure that each citizen of our state has a fundamental right of access to the courts and legal representation on a fair and impartial basis. It creates a perception of the fairness of our legal system, and perceptions are equally as important, and possibly more so, than mandates that the State Bar can create by the adoption of rules requiring certain actions.

Q: Can you tell us where we are in regard to the planning for the State Bar's new headquarters?

The process has been challenging, enlightening, and at times, frustrating. However, with the superb leadership of our Facilities Committee Chair, Keith Kapp, who is now our vice-president, we are making progress, and I anticipate that we will begin actual construction of the building next spring or summer. Despite the responsibilities of his new office, Keith has agreed to continue as chair of the Facilities Committee next year and work with the vice-chair, John Silverstein, to make sure the progress we have finally achieved continues. Initially, we had to overcome some issues with the State Construction Office, but in doing so, we believe we have achieved a better building, and we have a commitment from the State Construction Office to see that the building is completed. It will be a building that will provide the newest technology and work environment for the dedicated people who work for the North Carolina State Bar. It will be a significant building that will enhance the architecture of the city of Raleigh, and it will portray the North Carolina State Bar as an important participant of our government for the protection of the public. I am pleased that past presidents John McMillan and Hank Hankins, who were instrumental in starting the process for the new building, will continue to serve on the Facilities Committee.

Q: Is there anything else would you like to accomplish during your year as president?

While attending the Southern Conference of Bar Presidents meeting in October, a program was presented regarding what happens when a totally unexpected issue arises during your term in office. The examples presented were the incident in Texas where the state

CONTINUED ON PAGE 67

North Carolina Lawyer Assistance Program ("LAP") Seeks Director

The LAP Director manages and directs the outreaches of the LAP and liaisons with the State Bar Officers, Bar Council, and LAP Board to keep them apprised of the status of the program. The director manages the educational outreach of the LAP to all members of the Bench and Bar to promote a greater awareness of addiction and mental health issues and of the resources available for lawyers to address these issues and is responsible for the training and coordinating of the over 200 peer volunteers who assist lawyers that need the help of the LAP.

For a more information please go to:
nclap.org/directorsjobposition
or ncabr.gov

MENT FOR LEGAL SERVICES" (the advertising notice) subject to the following requirements:

(1) Written Communications. Written communications shall be mailed in an envelope. The advertising notice shall be printed on the front of the envelope, in **a** font that is as large as any other printing on the envelope. The front of the envelope shall contain no printing other than the name of the lawyer or law firm and return address, the name and address of the recipient, and the advertising notice. The advertising notice shall also be printed at the beginning of the body of the letter in **a** font as large **as** or larger than **any other printing contained in the communication** ~~the lawyer's or law firm's name in the letterhead or masthead~~.

(2) Electronic Communications. The advertising notice shall appear in the "in reference" block of the address section of the communication. No other statement shall appear in this block. The advertising notice shall also appear at the beginning and ending of the electronic communication, in a font as large **as** or larger than **any other printing** ~~the lawyer's or law firm's name~~ in the **body of the** **of the communication or** in any masthead on the communication.

(3) Recorded Communications. The advertising notice shall be clearly articulated at the beginning and ending of the recorded communication.

(d) ….

Comment

[1]….

[7] Paragraph (c) of this rule requires that all direct mail solicitations of potential clients must be mailed in an envelope on which the statement, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES," appears in capital letters….The advertising notice must also appear at the beginning of an enclosed letter or electronic communication in a font that is at least as large as the font used ~~for the lawyer's or law firm's name in the letterhead or masthead~~ **for any other printing in the letter or communication. As explained in 2007 Formal Ethics Opinion 15, the font size requirement does not apply to an insignia or border used in connection with a law firm's name if the insignia or border is used consistently by the firm in official communications on behalf of the firm**. **The advertising notice** ~~It~~ must also appear in the "in reference to" section of an email communication…. ■

Clientele (cont.)

could he justify surrendering to a circumstance that was trivial by comparison?

"Right now, the most important difference between your heroes and you is that you're alive and they're not," added Arthur, as if following Fritz's chain of thought. "Besides, true heroes are those whose suffering goes unnoticed."

Fritz sighed deeply and reached across his desk to tap a miniature scales of justice, which at present were being used to determine how many M&M's could equal the weight of a single Reese's cup. The common ornament no longer seemed like a token monument to law's affectation. Instead, it now reminded him that, in the end, things have a way of evening out.

As he stared broodingly at the scales, he noticed that he had difficulty focusing on them. Maybe the scotch was taking effect. Maybe he was becoming emotional. Most likely, it was a combination of both. Either way, he didn't want Arthur seeing him like this. He slowly arose from his chair, his head reeling as blood raced through his body.

"Arthur, I'd like to be your attorney a little while longer, if you'll have me."

"I wouldn't have it any other way."

"You'll forgive me if I ask you to take your leave while I take some time to process everything."

"Of course."

"I appreciate you coming out tonight."

"Normally it's the client calling the lawyer with a crisis. It's nice to be on the other side for once. But I'll call you next week to see how you're doing. I trust you won't bill me for that."

Fritz returned a smile. "Only one way to find out."

The lawyer slowly shuffled to the opposite corner of the room to see off his guest. Arthur was now standing as well, and stretched his arms as if preparing to shake. His stature seemed confident yet inviting. In a moment, Fritz understood the gesture as it was meant to be. It wasn't a stretch at all. It was a benediction. He reached out to accept his friend's gesture.

Instead, his hand brushed against a pane of polished glass.

Startled, the attorney stepped backwards, inadvertently knocking a pile of paperwork off his desk. He froze completely, reflecting for a time on what had happened, and now realized the full extent of his insobriety. He looked all around the office. Except for his stumbling form, the room was empty.

He looked down at the papers scattered around his feet. He quietly gathered them and placed them neatly in their original position. Tonight's work would have to wait until tomorrow. He had more important priorities.

The first item of business was to get his affairs in order. He grasped the bottle of scotch from his desk and went to the bathroom to drain it.

Arthur closed the door behind him as he exited. Inside, the lamplight from the desk reflected into the corner mirror, illuminating the cozy office. The light shone brightest on the glass pane of the door, revealing a message broadcast to all who entered:

Arthur Fritz, Attorney At Law. ■

Brian Ernst is a contract attorney based in Raleigh. He dedicates this piece to his grandparents, Sallie Moore and Lawrence Ernst, and to all those in need of redemption.

Thank You to Our Meeting Sponsors

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Lawyers Mutual Liability Insurance Company Inc. *for sponsoring the Councilors' Dinner*

LexisNexis *for sponsoring the Annual Reception and Dinner*

assistance given and a positive result achieved for the lawyer. This category also includes (1) cases where an investigation was made, or the client contacted and offered assistance, with the result that it was determined that no further action was needed on the client's behalf; and (2) cases that were investigated, the investigation was inconclusive as to the need for assistance, and the case was closed after two years when there did not appear any new information that help was needed. The success category does not include lawyers who died, went on disability status, were disbarred, or moved out of state. Although these categories reflect elimination of potential harm to the public, they do not show that a lawyer was actually helped. We regard outcomes as unsuccessful where a contract was entered into and the client failed in his or her efforts to achieve recovery; where a client went to treatment, left treatment, and did not pursue recovery; and cases where it was unsuitable for the LAP to provide assistance.

The LAP is currently handling 699 files. There are 307 PALS and 392 FRIENDS files.

PALS Referrals:	FRIENDS Referrals:
Other Lawyer 82	Other Lawyer 77
Bar Staff 13	Bar Staff 37
Self 111	Self 208
Physician 1	Physician 1
Local Bar 1	Local Bar 3
Judge 18	Judge 9
Grievance 12	Grievance 16
Nonlawyer 5	Nonlawyer 6
Firm 17	Firm 13
Family 17	Family 5
DHC 2	DHC 4
DA 3	DA 0
Law Examiner 13	Law Examiner 0
Bar Examiner 1	Bar Examiner 1
EAP 0	EAP 1
Investigator 0	Investigator 2
Another LAP 3	Another LAP 3
Therapist 3	Therapist 1
Law School 1	Law School 0
Employee 0	Employee 2
Unknown 4	Unknown 3

Governance

Under the rules of the NC State Bar Council, the LAP is governed by a nine-member board. The NC State Bar Council appoints the members of the Lawyer Assistance Program Board in three different groups: Three councilors of the NC State Bar; three persons with experience and training in the fields of mental health, substance abuse, and addiction; and three Bar members who currently serve as volunteers to the LAP. In order to avoid any perception that the LAP is not entirely separate from the disciplinary functions of the State Bar, no member of the Grievance Committee may serve on the LAP Board.

The current members of the LAP Board are: Mark W. Merritt, chair and a councilor; Fred F. Williams, vice-chair, LAP and volunteer; Sheryl T. Friedrichs, volunteer; Paul A. Kohut, volunteer; David W. Long, councilor; and Margaret J. McCreary, councilor. Burley B. Mitchell Jr., Dr. Al Mooney, and Professor Barbara Scarboro serve in the three expertise seats.

Staff

There were no changes in the LAP's professional or support staff during the year: Don Carroll, Director; Ed Ward, Assistant Director; Towanda Garner, Piedmont Coordinator.

2011 LAP Board Meetings Schedule

The LAP Board meets quarterly during the time of the council meetings except in the fall, when the LAP Board meets, if necessary, at the time of the Annual PALS Meeting and Workshop.

LAP Board meetings are usually scheduled for lunchtime on Wednesday of the week the council meets. The 2011 schedule for the council is listed below:

January 18-21, 2011
Marriott Raleigh City Center, Raleigh
April 19-22, 2011
Marriott Raleigh City Center, Raleigh
July 12-21, 2011
Carolina Hotel, Pinehurst, NC ■

di Santi Interview (cont.)

removed many children from their families based upon allegations of abuse, the Nifong matter in North Carolina, and the perjury allegations against a prominent attorney in Alabama. Those issues created a large demand upon the bars of each state. It is my hope that we are able to continue the work of the State Bar without the incursion of an issue that would divert our resources from the day-to-day operations, which are very demanding. However, if it does, I am confident that the councilors and staff of the State Bar are prepared to respond as necessary.

Q: Tell us a little about your family.

I am married to the former Deborah Lynn Winters of Morganton, North Carolina, and have been for 28 years. Debbie graduated from Appalachian State, and returned to Boone a few years after experiencing the big city life of Raleigh and Charlotte. We met through a mutual interest in running. Our first date, which was May 19, 1982, was for a four-mile run through Moses Cone National Park, which is near our home. On July 4, 1982, we became engaged, and we were married on October 16, 1982. We had a whirlwind romance, and I can truthfully say we still have a whirlwind romance today. We have one daughter, Erin, who graduated from Carolina and now lives in Steamboat Springs, Colorado, with her new husband, Eli.

Q: What do you enjoy doing when you're not practicing law or working for the State Bar?

Living in Blowing Rock, we have grown to love the outdoors, hiking, biking, and skiing, and are big sports fans of both Carolina and Appalachian State. We travelled extensively when Erin was growing up, and we continue to enjoy travelling, which is a good thing considering my travel responsibilities on behalf of the State Bar.

Q: How would you like for your administration to be remembered when the history of the State Bar is finally written?

I was asked a question similar to this once about how I would like to be remembered as a person. My answer was that I would like to be remembered as a good husband and a good father. My answer to this is similar. I would like to be remembered as being a good president, upholding the long tradition of the many good presidents that have served before me. ■