THE NORTH CAROLINA STATE BAR

JOURNAL

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DEPARTMENTS

BAR UPDATES

The Fun Comes to a Halt

By Ronald G. Baker Sr.

Prior to June 25 of this year, serving as the president of the North Carolina State Bar had been both enjoyable and relatively pain free except for the amount of time involved. All of that changed, however, at 5:30 PM that day when I received a phone call from State Bar Executive Director Tom Lunsford. During that phone call, Tom advised me that he had just received information from a state senator that House Bill 663 entitled "Commodities Producer Protection," which had crossed over to the Senate back in May 2013, had been stripped of its agricultural content and amended to substantially alter the definition of the practice of law. The purpose of that amendment was clearly to put a legislative stamp of approval on LegalZoom's method of operation in North Carolina and other places. As I mentioned in my first column after becoming president, among other lawsuits the State Bar is involved in, one is a suit brought by LegalZoom which involves, among other issues, the question of whether its activities in North Carolina constitute the unauthorized practice of law. We learned that HB 663 was to come before the Senate's Judiciary 1 Committee at 10:00 AM the following (June 26) morning.

Knowing that the State Bar should be represented at the meeting of the Judiciary Committee, the chair of the Authorized Practice Committee, Mike Robinson, was called around 7:00 PM on the evening of the 25th. Without hesitating, Mike graciously rearranged his schedule and promised to come to Raleigh and appear at the meeting of Senate Judiciary Committee 1 to state the position of the State Bar—that the language of the proposed amendment to the definition of the practice of law was entirely too broad and should not be passed. Mike appeared at the committee meeting and expressed the State Bar's position magnificently. Mr. Robinson told the committee that the State Bar's interest and responsibility in the matter is consumer protection, and that the amendment would likely have serious unintended consequences and should not be the subject of precipitous legislative action. Unfortunately, the amended bill was voted out of the committee with a favorable report. At that point it appeared that the matter would come before the entire Senate with a favorable report of Senate Judiciary Committee 1 on the following Tuesday. Had the Senate adopted HB 663 it would have then returned to the House, where all that would have been needed was concurrence for the amended bill to be enacted.

Following the meeting of Senate Judiciary 1, past State Bar President John McMillan along with his partner, Michelle Frazier, volunteered to help the State Bar figure out how to effectively oppose LegalZoom in the legislature. The first two things that I did as your president were to write all of the members of the State Bar Council and all past presidents of the State Bar to advise them of the amendment to HB 663 and its likely consequences, and to request their assistance in contacting senators and legislators in an attempt to thwart passage of the bill. I also called Senate President Pro Tem Phil Berger to discuss the matter with him directly. Senator Berger graciously returned my call (as well as many others from lawyers and councilors) and discussed the matter with me. This bill had not been on Senator Berger's radar, and he was not aware of its pendency until we spoke with him. He promised to look into the matter and also requested that the State Bar come up with proposed alternate language for the bill that would be acceptable to the State Bar. Throughout the ensuing days Senator Berger was very responsive to the concerns of the State Bar.

Councilors, former State Bar presidents, and lawyers all over the state began calling their senators and representatives, and all of those calls had an effect. The bill was removed from the July 1 Senate calendar and postponed until a later time. Ultimately it was sent to the Senate Rules Committee.

All of this activity in the legislature was taking place against the backdrop of many other factors. As noted above, one was the LegalZoom litigation. The judge assigned to the case had stated to the parties on more than one occasion that ultimately it was the charge of the State Bar to regulate the practice of law in North Carolina, and that it should exercise its authority to come to some resolution in the matter. Of course, the court made very clear that if the State Bar could not resolve the matter, then the court would have to do so. Another complicating factor to the situation that had to be taken into account was the Federal Trade Commission's action against the North Carolina Dental Board when that board attempted to prevent nonlicensed individuals from performing teeth whitening services. Its efforts in doing so seem to be clearly within the purview of the statutory authority granted to it by the legislature. Yet the Federal Trade Commission determined its activities to be anticompetitive and improper, and even ruled that the members of the Dental Board might be subject to personal liability for antitrust violations. The State Bar, of course, also had its own experience with the Federal Trade Commission in dealing with activities surrounding real estate closings back in 2002, and again in 2010-2011 when the matter was revisited by the State Bar. Last, but not least, it was recognized that the chances of LegalZoom and similar providers being ordered to cease operation in this state were virtually nil.

In light of all of the foregoing, the officers, the Special Litigation Committee of the State Bar, and the chair and vice-chair of the Authorized Practice Committee felt that it was necessary and appropriate that an effort be

made to draft alternate language for consideration by the legislature that attempted to satisfy the State Bar's obligation to protect the citizens of North Carolina, yet did not run afoul of federal antitrust law. Such a suggested alternative was drafted by the Office of Counsel of the State Bar and considered by the Officers and Councilors just mentioned. The language was thoroughly vetted and ultimately approved. It was submitted to representatives of LegalZoom. Various counter proposals were received from LegalZoom, none of which were acceptable to the State Bar. Ultimately, LegalZoom's representatives were advised that the language that the State Bar had proposed was final and the State Bar was not prepared to agree to anything else. Following that, a conference was held between State Bar officials and LegalZoom's representatives along with LegalZoom's corporate general counsel for the purposes of explaining the language and the State Bar's reasoning with respect to it. Ultimately, LegalZoom agreed to accept the State Bar's language with two very minor clarifications, which merely better explained the State Bar's intention than the words that had been used. In doing so, LegalZoom agreed to support the substitute language before the legislature, and also agreed to settle the pending lawsuit by agreeing to conform its business practices to the new proposed statutory language. That information was communicated both to the members of the House and Senate and to various bar groups around the state. A copy of the final language of the proposed alternate bill from the State Bar appears at the end of this column. Ultimately, the substitute language was never introduced and the State Bar was advised that no action would be forthcoming from the legislature during this session with respect to the proposed amendments to Chapter 84 of the General Statutes. Thus, at present, matters remain status quo.

The vast majority of comments that the State Bar has received concerning its proposed substitute language to the LegalZoom legislation proposal have been favorable. The notable exception has been the comments from the real estate bar, particularly that portion that deals with residential real estate closings. That group has been rather vocal in its criticism of the State Bar's proposed alternate bill language, and they have accused the State Bar of "caving in" to LegalZoom, of lacking intestinal fortitude (to put things in language that is printable in a publication of general distribution), and of having characteristics that would serve no purpose to repeat here. While the concerns of the real estate bar are understandable, and largely well-founded, the State Bar has to deal with realities. First, LegalZoom has not been enjoined from doing business in any other state in the United States. In fact, it was represented to the legislature by representatives of LegalZoom that their operations have been approved in 49 states and that North Carolina is the lone holdout. Of course, this is not entirely true, but, as noted above, LegalZoom has not been enjoined from doing business anywhere else and is not likely to be enjoined from doing business in North Carolina. Second, there is a recognized scrivener's exception to the definition of the practice of law that has been recognized by courts all over the United States, specifically by the business court in the case of the *North Carolina State Bar v. LienGuard, Inc. and Janis Lundquist*, 2014 NCBC 11. It is clearly legal to sell legal forms in this state and the court seemed to recognize in the *LienGuard* decision that should LienGuard simply present its clients with a "fill in the blanks" form and populate the form with client-supplied information without any change or further manipulation, their method of operation would probably be legal. This is precisely what the State Bar has tried to mandate in the proposed statutory language. Some have urged the State Bar to adopt the settlement that LegalZoom entered into in South Carolina. It is the view of the State Bar that the language proposed in North Carolina is more restrictive than that approved by the South Carolina Supreme Court. It is noteworthy that the South Carolina ruling was not the result of a trial, but merely the approval of a settlement that was negotiated between private parties and LegalZoom, and that LegalZoom paid $500,000 in attorney's fees to the private litigants. There is no question that the North Carolina State Bar will never be able to stop providers from making legal forms available on the internet. The best that the State Bar can hope to do is regulate the practices to the greatest extent possible for the protection of the consuming public. That is what has been attempted by the proposed language. It is understood that the proposed language will not suit everyone, and that reasonable minds can differ as to whether this is the proper way to go. However, under all of the constraints that had to be considered, it was felt by the leadership, the Office of Counsel, and the North Carolina State Bar Council that this was the best way to handle what was a challenging situation.

The officers and staff of the State Bar sincerely appreciate the help and support of the North Carolina Bar Association and its lobbyist Kim Crouch in their efforts with respect to this legislation. The same is true of the Advocates for Justice and its president, Danny Glover. The cooperation of the Republican leadership in the Senate and the lawyer representatives in the House is also appreciated. Finally, there are really not words sufficient to recognize the great debt the State Bar owes to Past President John McMillan and his partner Michelle Frazier for their efforts on behalf of the State Bar and the lawyers of North Carolina in opposing the original amendment. They have spent countless volunteer hours on our behalf. Without them, it is hard to predict where we might be now.

On June 25 being president of the State Bar went from being enjoyable to challenging and difficult. It, however, remained rewarding. This being my last column as president, I would be remiss if I did not recognize and express my thanks for the dedicated effort of all of the officers, committee chairs and vice-chairs, and councilors during my term as president. Anyone who has not served as a councilor has any idea how time consuming such service is. Finally, I want to thank the lawyers of North Carolina for affording me the opportunity to serve as president of the North Carolina State Bar. Certainly when I started practicing law 39 years ago I would never have predicted that I would ever even be a State Bar councilor, much less the president of the North Carolina State Bar. I am deeply honored to have had the opportunity to serve. Thank you.

Proposed Amendment that would Except the Following from the Definition of the Practice of Law

(2) The production, distribution, or sale of materials, provided that:

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

(b) During and after initial contact between the provider and the consumer, the provider's participation in creating or completing any materials must be limited to typing, writing, or reproducing exactly the information provided by the consumer as dictated by the consumer or deleting

content that is visible to the consumer at the instruction of the consumer;

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

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

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

(f) In the case of the sale of materials including information supplied by the consumer through an internet website or otherwise, the consumer is provided a means to see the blank template or the final, completed product before finalizing a purchase of that product;

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

(h) The provider must clearly and conspicuously communicate to the consumer that the materials are not a substitute for the advice or services of an attorney;

(i) The provider discloses its legal name and physical location and address to the consumer;

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

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

For purposes of this subsection, "production" shall mean design, creation, publication, or display, including by means of an internet website; "materials" shall mean legal written materials, books, documents, templates, forms, or computer software; and "provider" shall mean designer, creator, publisher, distributor, displayer, or seller. ■

Ronald G Baker Sr. is a partner with the Kitty Hawk firm of Sharp, Michael, Graham & Baker LLP.

Life After Meth—A Journey of Addiction and Recovery

By Douglas Wilson "Wil" Miller

In the summer of 1997 at the age of 35, I fell in love. That relationship exposed me to many new things. Unfortunately, one of them was methamphetamine.

I didn't know a lot about meth the first time I tried it. It wasn't a common drug where I was from. I knew it was a stimulant and I knew it was illegal. And although I had been employed as a prosecutor in New York City and Seattle for the preceding nine years, I had always been a vocal opponent of the "War on Drugs" and refused to handle drug cases because of it. That left a dangerous void in my knowledge of meth.

From the very first time I tried meth, I loved it. Nothing had ever made me feel as happy or alive or confident as meth did. That's because no natural experience can make your brain produce dopamine like meth can. Dopamine is a neurotransmitter that makes you experience pleasure. Normally there are about 100 units of dopamine in the pleasure centers of your brain; when you have sex, those levels double up to around 200 units. Cocaine can make your dopamine levels go up to 350 units and keep them there for over an hour. That's why cocaine is so addictive. But when you use meth, your dopamine levels shoot up to 1,250 units and you stay high for up to 12 hours. At the same time your dopamine levels are spiking, meth is also reducing blood flow to your frontal lobes, hobbling that section of your brain that helps you make good and responsible decisions. It's a dangerous combination—a perfect storm of addiction.

Photo courtesy of Lara M. Wilson Photography

Barreling Towards Addiction

By the third time I tried meth, I knew I wasn't going to stop, and soon what started as a weekend ritual of getting high quickly snowballed into extended periods of use followed by debilitating periods of withdrawal. Meth withdrawal can leave you feeling impossibly weak, apathetic, and depressed, sometimes for days. You eat and sleep uncontrollably and sometimes experience crying jags or bouts of paranoia for no reason. It can make you feel like you're losing your mind.

By December 1997 I couldn't take it anymore. I became an addicted, daily substance user just to avoid withdrawal. Suddenly, for the first time in my career, I started showing up late to work. I couldn't stay organized anymore. I was losing my temper for no reason and being really rude to some of the defense attorneys.

Many people believe it's easy to figure out when someone is using meth by their violent or erratic behavior, but that's a myth. Like any drug, individual responses to meth vary widely. Just as some alcoholics can maintain the appearance of sobriety with relatively high blood-alcohol levels, many meth addicts can do the same with meth. In many ways, my meth-influenced behavior was not unlike the behavior of many trial attorneys who are short-tempered and stressed out, and for the most part it went unnoticed.

Being a prosecutor certainly made my

addiction much more complicated. I was overwhelmed with feelings of guilt and hypocrisy. And although I knew I desperately needed help, I had no idea where I could get it without losing my job.

And I really didn't want to lose my job. I loved being a trial attorney and a victims' advocate. After graduating from Duke Law in 1988, I started my career in the Brooklyn DA's Office, where I focused on prosecuting sex crimes. Three years later, I took a job as a trial attorney and supervisor in the Special Victims Bureau in the Queens DA's Office. Then in 1995 I moved to Seattle to work for Norm Maleng as a King County deputy prosecutor.

Being a prosecutor was all I had ever done. I was also really good at it. In nine years of trying cases back-to-back, I rarely lost. Trial work felt completely natural to me —like the thing I was born to do.

Caught at the Courthouse

That all ended one day in March 1998, three months into my addiction, when a security guard at the King County Courthouse asked me to open my briefcase, which had just gone through the x-ray machine. It was a common request; I frequently had my briefcase searched when entering the courthouse. Only this time, inside there was an Altoids tin containing drugs and drug paraphernalia—I recognized the Altoids tin. It belonged to me and my significant other. But I had no idea why it was in my briefcase, where it would so obviously be found by security.

In an instant, I saw my life crumble before my eyes. I was about to lose everything: my job, my friends, and my reputation. I denied the drugs were mine, but I knew it didn't matter. The damage was done. A few days later, I resigned my job and a special prosecutor was appointed to handle the investigation.

As I saw it, I had two choices at that point: 1) stop using meth and face reality, or 2) keep using a drug that made me insanely happy, no matter how bad my life became. I knew if I kept using meth there was a good chance it would eventually kill me, but that was no longer a reason *not* to use it. My life already felt like it was over. I wanted it to be over.

But I had a different problem now. Snorting meth no longer put enough of the drug into my bloodstream to make its magic work. I needed to get a lot more in me, a lot faster. So I started injecting it. At $25 a shot, that was expensive, and within a few weeks I was completely broke. Not surprisingly, that's also when my relationship ended. Once my significant other was gone, I felt completely lost.

All my former friends were prosecutors who couldn't have any contact with me. All I had left was meth. However, I was still an experienced criminal attorney—one who now knew dozens of meth addicts, most of whom desperately needed representation from a lawyer they could trust. You're probably thinking, "You were still able to practice? Didn't the Washington Supreme Court suspend you?" No, they didn't. Because I had yet to be charged with any crime.

When word went out among the meth addicts in Seattle that I was going to start practicing criminal law again, they quickly became my client base and my friends. They almost never had money, but they almost always had meth. My addiction found a way to survive.

Propped up by the chemically induced confidence of meth, I walked back into the King County Courthouse in May 1998, three months after resigning my job, and started my career as a criminal defense attorney. Much to my surprise, I loved it just as much as I loved being a prosecutor. That's when I realized I might still have a future. I wanted to live, but only if I could stop using meth.

The Public Learns My Name

So I made a plan: I'd save up enough money to pay for rehab and get my mortgage current, then block out enough time in my schedule to go. It may not have been realistic, but it was a huge improvement over my earlier plan of just using meth until it killed me. Unfortunately, my plan got interrupted when the special prosecutor handling the courthouse incident decided *not* to charge me with drug possession. His decision provoked an angry backlash of editorials and newspaper articles claiming preferential treatment by one prosecutor for another—editorials and articles that named me publicly for the first time as the person involved. I'm not sure why I wasn't charged; in retrospect, I really wish I had been. If I had, my case would likely have gone to drug court, where I would have gotten the kind of life-saving intervention I desperately needed.

That burst of publicity quickly scared off all my paying clients. No one wanted to hire me. Soon I started getting notices from my mortgage lender threatening me with foreclosure, and then my phone and utilities were turned off. Even though I was now no longer facing potential drug charges, my life kept getting worse and worse. That's when I finally gave up trying to save myself.

About a month later, in December 1998—a year into my addiction—my ex started calling me again. He said he needed my help getting some meth for a friend of his. He told me if I could finance the deal, we could split the profit. It didn't take a lot of convincing at that point: I could no longer see any future, and like most meth addicts, it wasn't the first time I had done something like this. My ex set up the initial meeting and I obtained the drugs. Over the course of the next two months, I sold drugs to his friend three times.

On February 16, 1999, the fourth time I was supposed to sell his friend drugs, the friend showed up at my house with a SWAT team, a battering ram, and a KOMO 4 News team to film my arrest live on television. It turned out the "friend" was an undercover cop and my ex was making money setting me up for the police.

Well, that was the luckiest thing that ever happened to me. It was the only intervention I was ever going to get, and it started the chain reaction of events that eventually saved my life. Only it didn't happen quickly. After my arrest, I used my knowledge of the criminal justice system to stall my trial for over a year and a half. I still had my license to practice law, but it was almost impossible for me to concentrate on the little bit of work I had. It was during this time between my arrest and my trial that I made my first serious attempt at drug rehab.

Rehab and Picking Up Where You Left Off

There are two basic schools of drug recovery programs. One is the 12-step approach, which uses a person's faith in God, or a "higher power," to help recover from addiction. The other approach is based on cognitive behavioral therapy—a school of psychology that employs a variety of techniques to help a person understand their addictive behavior and quit using. My first rehab was based exclusively on the 12-step model. I'm a huge fan of the 12-step

"It turns out you don't really need "faith" to benefit from a 12-step meeting. All you really need to do is talk and listen."

program; I've seen it help a lot of people, and I have witnessed firsthand the amazing power of faith.

But I am also a lifelong atheist. So "faith" just isn't one of the tools in my toolbox. At rehab I openly questioned the appropriateness—for me—of a "faith-based" or "spiritual" recovery program. After ten days of arguing, I was told by the facility director that I was in the wrong place and that I needed to leave. I returned to Seattle and stayed clean for a few months, but by late autumn of 1999, I relapsed with a vengeance. It was during that first major relapse that I learned the truth of one of many valuable sayings taught to me by the 12-step program: "You pick up where you left off." What does that mean? That means when you're dealing with addiction, and you stop using your drug of choice for a while, then relapse, you don't get to go back to the feelings you had during the first few fun times you used. The drug won't do that neat little trick for you anymore. Instead, you go right back to the crappy feelings you had just before you quit.

With chronic meth use, you reach a point where the drug no longer makes you feel good, because you have literally worked the dopamine-producing cells in your brain to death. They're gone. The meth still gives you an adrenaline rush, but now the drug starts to make you crazy—paranoid, delusional, or severely ADD. But you know that if you stop using meth, you'll become incredibly weak and depressed. So every day you use, you're choosing between being crazy and being depressed.

When I relapsed, I became really angry, distracted, and convinced everyone was out to get me. My law practice was in shambles. It was impossible for me to be an effective advocate when I couldn't even predict when I'd be awake. Even with planning, alarm clocks, and the best of intentions, I missed court dates and important appointments because I had stayed awake for too many days, run out of meth, and fallen unconscious. The judges and prosecutors were completely fed up with my behavior—and with good reason. It was obvious to everyone I had relapsed and that I should no longer be practicing law.

I continued to use meth right through my trial in July 2000. I wasn't surprised when I got convicted. I expected it. That's when the Washington Supreme Court finally disbarred me.

Even after my conviction, I managed to stay out of custody while my case was on appeal. I was homeless at that point and living on the couches of other drug addicts all over Seattle. That's when I finally hit my rock bottom. I knew that, compared to where I was at that moment, prison was going to be a step up for me—at least in prison I'd have a bed, clean clothes, and regular meals. Only I was determined not to go to prison addicted. So I made a new plan to get clean—a much more realistic plan.

I got myself into a state-funded rehab (this time based on the cognitive behavioral therapy model of recovery), moved into clean and sober housing, and found work as a housekeeper at a Victorian bed and breakfast on Seattle's Capitol Hill. The owners of the B&B were a woman and her elderly mother who had followed my story in the newspapers, felt sorry for me, and miraculously agreed not only to be my employers, but also my surrogate family as I struggled through the first years of my recovery. They were difficult years. I gained 50 pounds. I was often severely depressed. My brain still didn't function well. The cravings for meth were intense. But at least I had some income, a job with lots of leftovers to eat, and the love and support of those two women who owned the B&B. I knew they genuinely wanted to see me succeed and it made all the difference. If it weren't for them, I probably wouldn't have made it.

Serving Time

After successfully completing six months of rehab and staying meth-free for over a year, I knew what had to happen next. In August 2002 I withdrew my case from the Washington State Court of Appeals, and on September 22 I turned myself in to the Department of Corrections to start serving my sentence.

My situation in prison was precarious. After all, I was an openly gay former prosecutor forced to serve my time in the same jurisdiction where I had spent years putting violent felons behind bars. Most of that time I went unrecognized, and I was fine. But there were times when I was recognized by men I had prosecuted for serious violent offenses, and things got dangerous quickly. As a result, I spent more than two months locked up in solitary confinement for my own protection, in a 9 x 6 foot cell with bright fluorescent lights that could never be turned off. There were many days when I thought I would lose my mind.

Despite that, I will always value the time I spent in prison, the vast majority of which was really helpful. In prison I was safe from temptation during the early fragile years of my recovery. I could never have afforded the two-year inpatient drug rehab I needed. Prison served that role in my life. I met hundreds of men whose lives had been destroyed by drugs, especially meth. For many of them, the drug had taken their teeth, destroyed their skin, and left them with horrible burns from meth lab accidents. Some had lost their minds.

In prison I learned that this was the insanity I had helped foster when I got involved with meth, and this is what I would become if I went back to using it. It was a life-changing lesson and an amazing gift. And although I will always do everything I can to keep my clients out of prison, I genuinely feel I was lucky to go...and even luckier to have lived through it.

It was also from prison that I started writing letters to everyone I knew. That's how I finally reconnected with family and friends. When their letters came flooding back in, I realized I was no longer alone in my struggle, and I began to believe that if I could stay clean, I just might be able to get my life back.

Gaining Hope

The Washington Supreme Court

doesn't allow disbarred attorneys to work as paralegals in Washington, but other states don't have that rule. So after my release from prison on September 12, 2004, I moved my parole from Seattle to Wilmington, North Carolina, where I reunited with my family and got a job in a civil litigation firm as a paralegal and office manager. I worked there for the next eight years.

During those eight years, I got involved with the North Carolina State Bar's Lawyer Assistance Program (or LAP, as it's called). LAP trained me to be a volunteer and let me serve as a mentor, monitor, and recovery coach for other drug-addicted lawyers. LAP also got me speaking at CLEs, high schools, and community groups about meth addiction and recovery.

It was through LAP that I started going to lunches for lawyers in recovery. The lunches were like 12-step meetings just for attorneys. I went reluctantly at first, but after going for a while I came to understand why 12-steppers are so passionate about their program. It was in those meetings that I learned just how much shame I was still carrying around with me about the things I had done to other people while using meth—things like worrying my family and friends, embarrassing my co-workers, disappointing my clients, and worst of all, enabling the addictions of other addicts. Those lunch meetings gave me a safe place to talk about my guilt and remorse, and the lawyers there helped me find a way to live with those feelings. I had recovered from meth addiction long before I ever went to my first LAP lawyer lunch, but the things that happened to me at those meetings finally made me feel like I was healed.

It turns out you don't really need "faith" to benefit from a 12-step meeting. All you really need to do is talk and listen. And it was also at those lunches that the other lawyers convinced me to try and get my law license back in Washington. I knew with four felony convictions the chances were slim, but they had faith I could pull it off.

Reinstatement

It took me almost a year to get ready for my hearing before the WSBA Character and Fitness Board in 2009. I was still a total control freak about all things resembling trials. I represented myself. The hearing lasted over seven hours. After a lot of testimony, a lot of argument, and quite a bit of deliberation, the Board voted to reinstate me.

After retaking the bar exam, I was officially reinstated as a lawyer in Washington in June 2010. Although my original plan was to then get admitted to the bar in North Carolina, part of me never gave up on the idea of moving back to Seattle. As fate would have it, after 12 years of being single, I ended up getting married just a few months before Washington passed marriage equality by popular vote. I took that as a sign. So a year ago in June, my husband and I packed the car and headed west.

I'll always miss North Carolina, but Seattle feels like home. It feels like where I belong. And it feels like the place where my personal history and skill set can do the

METH BY THE NUMBERS

Usage Rate

According to a 2012 National Survey on Drug Use and Health, funded by an agency of the U.S. Department of Health and Human Services and administered by Research Triangle Institute, approximately 1.2 million people in the United States reported using meth.

Environmental Impact

• Areas where meth-making poisonous by-products are dumped or "dead zones" can contaminate the environment and cost thousands to clean up.

• A small dead zone cleanup can cost $40,000.

• Much of meth waste is highly flammable and explosive, which makes it a danger for the summer forest fire season.

• Meth waste leaches moisture from whatever it touches, so it is very harmful to the surrounding environment, whether discarded indoors or outdoors.

Impact on Economy

• The RAND Corporation released a study stating that meth use costs the United States between $16.2 and $48.3 billion per year.

• The annual cost of drug-related crimes in the United States is over $61 billion, according to the US Department of Justice's National Drug Intelligence Center (justice.gov/archive/ndic/pubs44/44731/44731p.pdf).

• A 2010 National Drug Threat Study found that meth and cocaine cause a majority of drug-related crimes.

Drug Abuse by Attorneys

• The ABA estimates nearly 20 percent of lawyers suffer from alcohol and substance abuse.

• The national heavy drinkers rate is 26.2 percent of people aged 18 or older, according to the NIH. Attorneys with heavy drinking problems are twice the national rate, according to the ABA's Commission on Lawyer Assistance Programs. (niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics; americanbar.org/groups/lawyer_assistance/resources/alcohol_abuse_dependence.html)

most good for other people struggling with addiction. But I realize I can't be a proper role model for recovery if the people who need me most can't see me. So I make sure I'm visible to them by representing them and telling them my story. Not surprisingly, many of my criminal and family law cases involve issues of addiction.

Recovery from meth is not impossible or uncommon. In my experience, it often takes a lot of external support to get through those first crucial years of recovery. The reason my addiction blew up in such a spectacular way had a lot to do with how isolated I became from my sober family and friends, and even more to do with my false belief that recovery from meth addiction was not possible. People have recovered from meth addiction, but the stigma makes it very hard to identify themselves publicly. If recovered meth addicts don't start coming out of the shadows and showing their recovery to the world, the lie that you can't recover from meth addiction will continue and be a huge obstacle for those trying to quit.

Getting Help

If you have a problem with addiction, the NC Lawyer Assistance Program is ready to provide confidential help. You can meet with a LAP counselor personally, or LAP can set you up with a peer counselor (a fellow attorney) who can speak to you about your options. Best of all, anything you tell your peer counselor is confidential pursuant to Rule 1.6(c). Don't be afraid to ask for help and don't be afraid to accept help when it's offered.

But what if the problem isn't with you? What if someone you care about or work with is struggling with addiction? What can you do to help? Those are really difficult situations, often complicated by a host of other issues. All I can say for certain is that it's important that you don't enable them. Don't give them opportunities, or excuses, or resources that make it easier for them to continue using. But don't give up on them, either. Don't stop caring about them. Tell them their substance abuse is scaring you. Tell them you want them to stop. And remind them that when they're ready to stop, you'll still be there for them, because you care about them.

It can make all the difference. ■

Douglas Wilson "Wil" Miller is a litigator in Seattle with a private practice focused on criminal defense, family law, and personal injury. Miller devotes much of his spare time to providing pro bono *legal services to the survivors of domestic violence, and serving as a recovery coach to meth-addicted lawyers throughout the country. He volunteers with the WSBA Lawyers Assistance Program. He can be reached at wil@wilmiller.com.*

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Robynn Moraites (for Raleigh and down east) at 704-892-5699.

The Washington State Bar Association grants authorization to the NC State Bar to reprint "Life After Meth" by Douglas Wilson "Wil" Miller, which appeared in the June 2014 issue of NWLawyer.

Informing the Public in Upcoming Judicial Elections

By Ashley M. London

A record number of attorneys across North Carolina carved time out of hectic schedules to complete the Judicial Performance Evaluation (JPE) surveys conducted by the North Carolina Bar Association—and the process will continue to create a more informed electorate.

All candidates for the trial bench in 2014 were evaluated. The JPE Survey Phase I was conducted in November 2013, covering superior and district court judges whose terms will expire in 2014. Phase II was conducted at the end of the February 2014 filing period, covering newly installed judges and nonincumbent candidates.[1] The combined results for all contested judicial seats are currently available for public review in advance of the general election on November 4, 2014, at ElectNCJudges.org. The nonincumbent survey is the only one of its kind in the US.

The state of North Carolina has elected its judges for more than a century. But if one asks just about any person on the street the merits of one judicial candidate over another, the answers will vary dramatically in degree of knowledge or ignorance. Judicial election candidates receive little consideration by the general voting public—despite the critical jobs performed by members of the bench—because of a previous dearth of knowledge available for review before ballots are cast. The North Carolina Bar Association has sought to fill that knowledge gap. Its efforts have met with widespread success, thanks to the input of thousands of attorney participants.

"Phase I of the JPE survey harvested 31,000 individual responses, and Phase II (covering the challengers) 7,298 individual evaluations, which is a magnificent response," says Nancy Black Norelli, immediate past chair of the JPE committee.

The large response enabled the North Carolina Bar Association to provide extensive information for voters on nine superior and district court races that appeared on the primary ballot on May 6.

The results from the JPE survey are easily accessible to the public through the website ElectNCJudges.org. A voter simply clicks on the county of residence, and all contested trial court seats on his or her ballot appear in PDF format, printable and accessible on handheld electronic devices. Thirty-seven counties are represented. The 2014 election cycle will mark the second time members of the public will have access to the survey results.

Each active North Carolina attorney was encouraged to evaluate each judicial candidate with whom the attorney has had a level of professional contact in six categories: Integrity & Impartiality, Legal Ability, Professionalism, Communication, Administrative Skills, and Overall Performance. To preserve the integrity of the feedback, the names and responses from participating attorneys were kept confidential, with an outside accounting firm hired to conduct the surveys.

"We are grateful to the lawyers across the state for their participation in both phases of the survey for the 2014 election cycle," Norelli says. "Voters, as we learned during the last election, are grateful to have access to this information before they go to the polls."

The goal for the JPE Committee moving forward is to make sure that members of the public are aware of this exceptional resource. The NCBA will market the website throughout the election season in print and online publications, and will also be conducting a social media campaign to promote the survey.

"We are encouraging members of the NCBA to talk about the website and the survey, both at work and in their broader communities," said Matt Sawchak, the current chair of the JPE Committee. "It's important to remember how the results of judicial elections have a far-reaching impact on the lives of all North Carolinians. Helping alert the public to these survey results is a great way to serve our fellow North Carolinians and promote an impartial judiciary."

This project was made possible by a grant from the NCBA Foundation Endowment. It is another example of how North Carolina lawyers serve the public and our judicial system. ■

Ms. London, a former professional journalist and 2011 graduate of Charlotte School of Law, is a member of the faculty at Charlotte School of Law.

Endnote

1. Complete survey information can be found in two separate reports posted on the NCBA website, ncba.org, under the headings, "JPE Survey - Phase I Results" and "JPE Survey - Phase II Results." Results for judges who are not seeking election are not reported.

If it Feels Like Technology is Moving Faster, It's Not Just You

By Erik Mazzone

I spent my mom's recent 75th birthday with her helping her use the Netflix and HBOGo apps on her iPad. Not earthshaking; there are lots of 70 year olds toting iPads these days. But then I recalled that when I first started working at the North Carolina Bar Association—February of 2008, which doesn't seem so long ago to me – Apple had not invented the App Store yet. Apps wouldn't become a part of our lives for another five months, and now they are part of our cultural landscape.

Dave Cutler/Illustration Source

The past six years have been an incredibly vibrant time for technology. The stew of smart phones, cloud-based software, and ubiquitous internet connections—along with investments from venture capitalists—have produced a torrent of products and services that have transformed the way virtually all of us use technology in our personal and professional lives. At the Bar Center during breaks in CLE programs, you'd be hard pressed to find a lawyer not hunched over a smart phone, pecking out emails and putting out fires.

These technological advancements do come with a cost: they sometimes provide services that bump uncomfortably into our ethics rules. Because our ethics rules (of necessity) lag the pace of technological innovation, it can be frustrating to embrace new services without knowing whether they will eventually pass ethical muster. That said, the business justification for embracing these new technologies is so persuasive that it remains worth figuring out how and what to incorporate into your practice.

In this article, I'll address two of the most significant technology trends that have marked the last year or two and which I believe are likely to impact the next couple of years as well. These are not companies, services, or apps; they are meta-trends in the technology world that will have a profound impact on us as technology users. The two trends are the sharing economy and the evolution of cloud-based software.

The Sharing Economy

The phrase "sharing economy" might be new to you, but it's based on an old idea: that borrowing something expensive (say, a pick-up truck) from a friend is more efficient than buying one of your own if you only need it once in a while.

The sharing economy refers to this old idea of sharing expensive goods and services, but puts a new wrapper around it. There is a burgeoning posse of companies, services, and apps dedicated to using technology to help make the sharing of these big ticket items more frictionless.

It's easiest to think about it as a time share condo. Time share condos became popular because even if you could not afford to purchase a vacation home in a resort area for sev-

eral hundred thousand dollars, most people could afford to purchase the right to use a vacation condo a single week each year as a time share. Along with 51 other purchasers, they share the costs of the condo.

In the way time shares make vacation condos more affordable, the sharing economy makes virtually everything more affordable: Relay Rides enables the sharing of cars, AirBnB enables the sharing of spare rooms and entire residences, and so on.

These examples are consumer-focused, but the sharing economy is reaching into services used by law firms as well. Ruby Receptionists is a phone answering service that law firms pay for a certain number of minutes of phone answering per month. Speak Write is a web-based typing service that allows users to purchase just the portion of transcription support needed, paying by the word. Lawyers have been sharing real estate for a long time, but in recent years the rise of executive suite services like Regus has formalized these arrangements and reduced costs and increased flexibility for countless firms across North Carolina. The business justification for these sharing economy services is easy to see: it reduces large capital expenditures, allows the flexible increase or decrease of services as needed, and prevents paying for more support than one needs.

As these sharing economy services become more popular, ethics guidance has begun to surface. 2012 FEO 6 (use of time-shared office address on letterhead and advertising) cautions that use of a time-shared address in advertising or letterhead can't be misleading, such as implying a deeper connection between law firm and community than actually exists. 2011 FEO 14 (outsourcing administrative tasks) requires that a lawyer must obtain written consent from her client before outsourcing tasks such as transcription to a foreign jurisdiction.

The upshot is that for staffing support, real estate, and virtually any other expensive purchase a lawyer needs to make, it is worth looking to see if the sharing economy has provided a more affordable option. If you do find some shared resources that work, re-read the Formal Ethics Opinions and see if you need to update your client agreements.

The Evolution of Cloud-Based Software

When use of cloud-based software was ratified for lawyer use (subject to a reasonable care standard) by 2011 FEO 6, it drew an invisible line among the practicing bar. Lawyers quietly sorted themselves into those willing to let their clients' confidential information be stored on computers outside their office walls and those who would not. Three years into the evolution of cloud-based software, it has become harder than ever for the latter group to maintain their prohibition.

While it's pretty straightforward to avoid the use of obvious cloud-based applications like Dropbox, Gmail, and Clio practice management software, it's not always so easy to spot software that relies on cloud technology in one fashion or another. Smartphones and tablet computers have quietly opened the backdoor to use of cloud software in two key ways. First, messaging apps, including text messages, have begun to supplant email as the primary method of sending text messages, especially among younger users. Messaging apps across all major mobile platforms tend to rely heavily on cloud-based software. Lawyers who eschew storing client data in cloud-based services like Dropbox often think nothing of exchanging text messages laden with confidential information to the same ethical effect.

Additionally, as functionality has expanded for tablet computers, much of it has ridden on an infrastructure of cloud-based software. iPad users cheered when Microsoft finally made its Office suite available for iPads earlier this year. It instantly improved the use of iPads for document creation and editing. Use of those apps (as well as countless others used for document creation and editing) is diminished if not made virtually unusable without connecting them to an online storage service like Dropbox or Windows OneDrive.

It never feels particularly like you are using the cloud; it just creeps in to help make the tablet and apps work more seamlessly together. We should expect it to get harder to avoid cloud-based software in the future, both because it will mean forgoing services that will allow us to serve clients more efficiently, and because it will be harder to tell when we're actually using the cloud.

The takeaway here is that if you are dead set against using the cloud in any capacity for your professional life, you will need to exercise great diligence to make sure you aren't inadvertently relying on a cloud service.

Summary

Things are happening fast in this zone. The sharing economy and the evolution of cloud-based software will continue to shape the landscape for advances that allow us to practice more efficiently and serve our clients better. Understanding these trends enables lawyers to understand the ethical implications of using the services and apps that rely on them.

It's been a remarkable six years. Who can possibly imagine what the next six will bring? ■

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

Washington State LLLT Program: Improving Access to Justice

By Thea Jennings

At the request of State Bar President Ron Baker, the Board of Paralegal Certification has been monitoring efforts in other states to permit limited licensing of nonlawyers to provide discrete legal services to the public, targeting litigants of modest means. The recent "legal technician" initiative in Washington State has prompted several other jurisdictions to consider expanding the scope of legal services to be offered by qualified legal technicians as a form of authorized practice. While the Washington program was just launched this year, the Board will follow its progress to determine whether it increases access to justice while protecting the public. The program is explained below.

Washington State is leading the nation in licensing nonlawyers to practice law on a limited basis with its Limited License Legal Technician (LLLT) Program. As the first state to implement such a program, Washington breaks new ground and serves as the model for other states that seem well poised to take the leap, including California and New York.

Ron L. Wheeler/Illustration Source

History and Creation of the LLLT Rule

The genesis of this effort arose in part from alarming statistics regarding the need for access to legal services among Washington's moderate to low income citizens. According to a 2003 Civil Legal Needs Study, nearly 88% of low income Washington residents face their legal problems alone, without the assistance of an attorney. Often these legal problems relate to family law, housing, consumer law, and other basic needs. The LLLT Program seeks to provide competent, reduced cost legal services to this underserved population.

In response to the Civil Legal Needs Study and concerns regarding the unauthorized practice of law, the Washington Supreme Court took the monumental step of adopting the LLLT Rule—a rule that would for the first time provide a regulatory framework for educated and experienced paralegals to obtain a limited license to practice law in approved practice areas. In its order adopting Admission to Practice Rule (APR) 28, the Washington Supreme Court stated "[w]e have a duty to ensure the public can access affordable legal and law related services, and that they are not left to fall prey to perils of the unregulated market place."(Order at 5-6). With the adoption of APR 28 in June 2012, the Washington Supreme Court created a new legal professional—the Limited License Legal Technician (LLLT).

The LLLT Board

The Washington Supreme Court created the LLLT Board (board) to govern the LLLT Program and to ensure LLLTs are well-trained in ways that protect the public from the unauthorized and unregulated practice of law and increase access to justice. The board is staffed and the program is administered by the

Washington State Bar Association (WSBA).

The board began its work in January 2013. As one of its first actions, the board recommended domestic relations as the first practice area in which to license LLLTs, which the Washington Supreme Court unanimously approved in March 2013. APR 28 contemplates that the Rule would be applied to other practice areas. Consideration of additional practice areas will be undertaken during 2014.

The board is acutely aware of its duty to protect the public and increase access to justice. For its first year, the board spent long hours defining the LLLT family law scope of practice and qualifications for the LLLT license.

Scope of Practice for LLLTs

Self-represented litigants are frequently unprepared to advocate for their interests in court or against an opposing party, oftentimes to devastating effects. The role of the LLLT is to help these litigants navigate the legal process and to arm them with the tools they need to adequately represent themselves. The limited scope of legal services the LLLTs may provide to *pro se* clients includes:

- informing clients of procedures and the course of legal proceedings,
- providing approved and lawyer prepared self-help materials,
- reviewing documents and exhibits from the opposing party and explaining them to clients,
- selecting, completing, filing, and serving approved and lawyer prepared forms and advising of their relevance,
- advising clients of necessary documents and explaining their relevance, and
- assisting clients in obtaining necessary documents.

There are specific actions LLLTs may not engage in, such as representing a client in a court proceeding, negotiating a client's legal rights, and discussing a client's position with another person or conveying the position of another party to a client. LLLTs must advise clients to seek the advice of an attorney for matters outside the scope of their authority.

Qualifications

During 2013, the board worked conscientiously to develop LLLT qualifications that guarantee both the protection of the public, and that LLLTs possess the knowledge and skills to practice in their field. LLLTs will be well educated, trained, and tested before licensure.

Education

Of great importance to the board is establishing the credibility of the program by requiring a rigorous course of study that will guarantee the competence of legal technicians coming into the profession. LLLTs must have:

(1) a minimum associate level degree,

(2) 45 credit hours of core curriculum in legal studies from an ABA approved program, and

(3) attended practice area courses developed by or in conjunction with an ABA approved law school.

Unanticipated partnerships have developed between the board and Washington's higher learning institutions, which is sure to contribute to the success and integrity of the program. Both Washington's community colleges and law schools have combined forces with the board to further the goal of making the education affordable, accessible, and academically rigorous.

Representatives from each of the Washington law schools assisted the board with developing the domestic relations practice area courses. What has resulted is a technologically innovative and collaborative approach to offering the courses. The 15-credit hour, three-quarter class will be webcast, meaning students can attend in real time from any location nationwide. The University of Washington's School of Law began offering the series of courses for the first time in Winter Quarter 2014 for a fraction of the cost of law school. Professors from all three Washington law schools will assist in the delivery of the education.

Recognizing that many competent and experienced paralegals currently in the workforce may not have completed the LLLT education, the board approved a limited time waiver, or grandfathering provision, that seeks to balance the need to protect the public with the great need for access to justice in our state. The waiver qualifies these individuals for licensure without completing the required associate degree or core education. The waiver applies to those who have:

(1) passed NALA's Certified Paralegal Exam,

(2) active certification as a certified paralegal, and

(3) 10 years of substantive law related work experience supervised by an attorney.

The waiver is not a license to practice as an LLLT, nor does it waive the practice area education. The short term waiver period ends December 31, 2016.

Exam

After completing the LLLT education, there are two exams to pass: the core education and the practice area exams. Given that LLLTs will advise clients on their legal rights and responsibilities, the examination will test on not only general coursework, but also on the ability to assess a client's case and recommend an appropriate course of action.

Experience

Given that the LLLTs may set up their own firms without the supervision of an attorney, experience ensures LLLTs have the tools and expertise to provide competent legal services autonomously. Before entering the profession, LLLTs must have completed at least 3,000 hours (18 months full time) of substantive law related work experience supervised by a lawyer. The experience must be gained three years before or after passing the exam.

Next Steps

The board continues to create the operational details of the LLLT Program, including drafting the Rules of Professional Conduct (RPC) for LLLTs, which are the ethical rules LLLTs must abide by. Among the many ethical situations the board must grapple with are the types of business relationships LLLTs may form, the results of which may well change the landscape of legal service providers in our state. The board is also hard at work developing the domestic relations practice area examination, which will include multiple choice, essay, and practice exercise sections. If all goes according to projected timelines, the first LLLT examination will be held in March 2015, with the first LLLT licenses issued by early Spring 2015. ■

Reprinted with permission of NALA, The National Association of Legal Assistants/ Paralegals, and by Thea Jennings. This article originally appeared in the January/February 2014 Facts & Findings*, NALA's bi-monthly magazine for paralegals. The article is reprinted here in its entirety. For further information, contact NALA at nala.org or (918) 587-6828.*

The Bottom Line—Legal Services is a Good Investment

By Mary Irvine

Public support of civil legal services for the poor is money well spent. A recent report found that advocacy boosted the state's economy by nearly $49 million in a single year. The study, conducted by the UNC Center on Poverty, Work, and Opportunity in partnership with the North Carolina Equal Access to Justice Commission, used data from Legal Aid of North Carolina, Legal Services of Southern Piedmont, and Pisgah Legal Services from cases closed in 2012 to analyze the organizations' collective economic impact. The bottom line is quite simple—investment in legal services benefits the entire state.

Despite an increasing need for free civil legal services, legal services providers have experienced cuts to every traditional funding source, both private and public. Since 2008, state funding has decreased by 40% in North Carolina, and United Way and IOLTA grants have dropped by 32% and 30%, respectively. Further, increased scrutiny facing non-profits across the country is putting pressure on all to demonstrate the value of their work, putting more emphasis on measuring outcomes and requiring frequent reporting on progress.

As a result, legal services providers nationwide have turned to economic impact studies to build the case for investment in their programs. Economic impact research provides insight into the specific impact on a particular geographic area due to a change in the economy. In the legal services industry, this research measures the value of advocacy that brings new direct benefits into the state—usually federal dollars—which then stimulate the economy, resulting in additional indirect economic impacts.

The findings? Civil legal service providers undoubtedly spur local economic growth and save the state money. For every dollar spent by the state on legal aid, nearly $10 flows into the economy for the residents of North Carolina—a 108% return on the state's investment in legal services.

The need for legal services far surpasses available resources of legal services providers to represent all eligible clients. "While resources to support legal services have decreased, the need for legal assistance is greater than ever," said George Hausen, executive director of Legal Aid of North Carolina, "and our goal is to ensure the basic needs of people are met, including access to food, shelter, safety, and healthcare." Further investment will result in justice for those in need of legal assistance and economic benefit for all North Carolinians.

The North Carolina Economic Impact Study

Released in January, the study "A 108% Return on Investment: The Economic Impact to the State of North Carolina of Civil Legal Services in 2012" found that legal representation helped North Carolinians gain access to $9.2 million dollars in new federal benefits, including food stamps, disability, other cash assistance programs for low-income families, and federal tax refunds. Without the help of a free attorney, the benefits likely would not have been secured by clients working on their own. The study also found an additional $8.8 million was awarded to low-income clients in child support and housing cases. This includes awards of monthly child support payments and past due support for struggling single-parent families. Housing awards include protection of housing benefits, rent abatements due to problems with the condition of the housing unit, return of a client's security deposit, or avoidance of unreasonable charges by the landlord.

"This report quantifies what we knew anecdotally," said Jennifer Lechner, executive director of the North Carolina Equal Access

to Justice Commission. "Legal aid is good for North Carolina—not just for their provision of legal services to those who would otherwise be unable to access the justice system, but also through the economic benefit these services bring to the state as individuals spend money at businesses in their communities."

Flowing from the direct economic benefits, the study also found an indirect impact of nearly $13.9 million. The indirect impact provides an estimate of the changes in the local and state economies when new federal revenue enters the market and additional spending occurs. The estimate includes increases in employment, wages, and business outputs. While only an estimate of increased economic activity, the number captures the benefit to the community as a whole of providing legal services to those who could not otherwise afford an attorney.

The report also found that the efforts of legal services providers to prevent domestic violence, eviction, and foreclosure generate cost savings for the state of $17.1 million. Cost savings represent the amount saved by the state and local communities in emergency medical services, mental health treatment, public health, court costs, unpaid property taxes, police and fire services, social services, and other public services. For example, by preventing 488 foreclosures, legal services kept many families who were the victims of mortgage scams in their homes and reduced local government expenditures to secure vacant, foreclosed properties.

"Poverty is the greatest challenge facing the people of North Carolina," said Gene Nichol, director of the Poverty Center. "By advocating for the rights of the poor, the work of legal services lawyers brings us closer to equal justice under the law. It also generates an economic benefit to the state worth millions."

Access to Justice Makes Dollars and Sense

In addition to depriving North Carolina families of much needed access to the justice system, lack of civil legal representation leaves money on the table that could have boosted the overall economic outlook of the state. This study, not unlike scores of others done in states across the country, suggests further economic gains with increased funding for legal services given the inadequate capacity of providers to serve all those who are eligible.

The primary focus of civil legal service providers is to ensure access to the civil legal system for all, regardless of ability to pay. "The financial benefits do not begin to measure the full value of this work," said Ken Schorr, executive director of Legal Services of Southern Piedmont and member of the NC Equal Access to Justice Commission. "Protecting women and children from violence, keeping families from being separated or homeless, helping elderly and disabled people stay in control of their lives, and other life-changing benefits cannot be measured in terms of dollars."

However, in working to meet clients' legal needs, legal services organizations gain immense benefits for the state, reaching far beyond the individual clients and families served.

To read the study, visit the North Carolina Equal Access to Justice Commission, ncequalaccesstojustice.org. ■

Mary Irvine is IOLTA's access to justice coordinator.

"Living with Blindness Has Given Me a Broader Perspective..."—*An Interview with Attorney Jamie Dean*

By John Gehring

When Gray Wilson asked me to interview Jamie Dean, an attorney with the Womble Carlyle firm in Winston-Salem, I wondered where the point of interest was. Dean graduated Summa Cum Laude from Wake Forest University and then from the Wake Forest School of Law, Magna Cum Laude, and also received a Master's in Business Administration. Along the way, during his student years, he was inducted in both Phi Beta Kappa and the Mortarboard National Honor Society. Further, he was a silver medalist in adaptive rowing in the 2008 games in Beijing. The major law firms in the United States look to hire, and do hire, the academically elite, so why is the story of Jamie Dean any different from the other honors graduates? All of his accolades are set forth in his Womble Carlyle profile, with one omission! Until you meet him you would not know that Jamie Dean has a disability, one that he describes as both beneficial to him and also as an inconvenience. I met with Jamie and Priscilla (his four-legged co-counsel), and we talked about his life. You see, Jamie is blind. Thus this interview...

John Ghering (JG): Have you been blind from birth? What sports have drawn your interest, and are these sports activities correctly called "adaptive"? Your sport in the 2008 Paralympic games in Beijing was "adaptive rowing". You stated that you do not consider yourself to be an adaptive person. How so? What does that mean?

Jamie Dean (JD): I was legally blind from birth due to a disease called retinitis pigmentosa ("RP"). RP didn't affect my visual acuity so much as it reduced my visual field. I've heard people compare my condition to trying to look at an elephant from six

inches away: the image is clear, but you just can't see the whole picture. When I was a child, my vision did not have a great impact on my life. I could read, write, ride a bike, and do most things other kids could do. As I neared middle school age, my visual field took its most significant decrease, and that process continued gradually throughout high school. By the end of high school, I was relying on my first seeing eye dog and using adaptive technologies like a talking computer and recorded books. At present, my vision is pretty much limited to distinguishing between light and dark.

Sports have been an integral part of my life since a pretty young age, due mainly to the persistent prompting of my dad. He saw that I needed something from which to draw confidence and to keep me connected to other kids my age, so he really pushed me to try new things and to stay the course when my athletic endeavors were not going my way (which was frequent).

I've done a mix of "adaptive" (sports created or adapted for people with disabilities) and mainstream sports, but I've spent most time in mainstream competition. When I came to Wake Forest, I joined the rowing club, because rowing seemed like one of the few sports for which sight was not a prerequisite and because the club's leadership didn't seem as daunted as some other clubs about the prospect of having a blind member.

As for "adaptive" sports, I had never heard of "adaptive rowing" until my very last college race. At that race, a former national team coach spotted me using a white cane while still in my spandex unisuit (the most significant drawback to rowing), put two and two together, and introduced me to the current national adaptive team director. The next spring, I was invited to try out for the national adaptive team and, over the next three years, I was honored to compete for Team USA in the United States, Canada, Germany, England, and, in 2008, the Paralympic Games in Beijing, China.

"Adaptive" rowing really is no different from any other form of rowing, except that all participants have physical disabilities. There is no difference in the stroke, equipment, or technical aspects of the sport. The main distinctions between my adaptive races and my college races before them were that (1) in my adaptive races, my crew was comprised of two men and two women, which is not done in any other collegiate or Olympic rowing event and (2) our "adaptive" races were only 1,000 meters long instead of the 2,000 meter length used in other collegiate and Olympic races.

I am extremely proud to call myself a Paralympian. However, before joining the national team, I never would have considered myself an "adaptive" athlete as much as an "adapted" athlete. In other words, I had been able to compete in the mainstream despite my blindness. The same is true of my everyday life. Blindness is the undercurrent that informs how I go about accomplishing my daily tasks, but it's not the driving force behind what I do or why I do it. I do not define myself by my lack of sight, and my hope is that others see past the seeing eye dog and cool adaptive technologies to the father, husband, and lawyer behind them, as well.

JG: You have said that being blind has benefitted you and that most of the time this disability is just an inconvenience, sometimes a major inconvenience. Please describe the benefits and inconveniences.

JD: The most valuable benefit of blindness is perspective. I often tell people that, if you think I am cocky now, imagine how insufferable I would be if I could see. That is more truth than gest. Blindness has forced me to see the importance of reliance on other people and not being too proud to ask for help. In our hyper-independent culture, this adjusted perspective keeps me grounded and, in my better moments, gives me a greater appreciation for the people around me.

To jump back to your earlier question, athletics bore out another of the great benefits of blindness. When I started rowing, to put it bluntly, I was abysmal. I mean, my performance was shameful. At the first team time-trial, I was the slowest man, by far, and slower than two or three of the women. However, one thing blindness taught me is that sometimes, to get what you want, you have to work harder and put in more time than everyone else. That was the approach I took. I lifted weights, gained muscle, did extra workouts, and so on until I caught up with the others on my team, and eventually worked my way into the stroke seat of the varsity men's lightweight crew. That is where I remained for my sophomore, junior, and senior years. I think the perseverance that fueled my transition was something that developed in me as a result of my blindness, not an intrinsic character trait.

As for inconveniences, the two things that get under my skin more than any others are not being able to drive and not being able to read print. There are ways to get around both of those things, but they are decidedly annoying to someone like me who likes to get out and about and to get lost in books.

JG: As for your rowing for the national team, just how did you fit this extracurricular activity into your academic schedule? Also, speaking of schedules, how have you fit your current community efforts with your "lawyer" schedule? And what are your community activities?

JD: I was blessed with gracious law and business school faculty and administrators and a gracious employer. I'm sure this grace was strained on occasion, like the time the US Anti-Doping Agency showed up to administer my random drug test while I was in class, and the deans had to allow their conference room to be commandeered as a temporary urine analysis lab. Wake Forest's faculty and administrators were also extremely generous in allowing me to miss classes at the beginning of my 1L and 2L years so that I could compete in the annual world championships that are the qualifying events for the Paralympics, and they helped me arrange my course load so that I could essentially miss half of the first semester of my 3L year to participate in the Paralympics. Womble was also very kind in allowing me to miss many Fridays during my summer clerkship so that I could travel to spend weekends training with my team in Philadelphia and DC. My wife showed the greatest grace and patience by permitting us to postpone our honeymoon so that I could train, and in allowing me to use the second bedroom in our apartment as a home gym. It truly took a coordinated effort to get me to Beijing, and I am very grateful for everyone who helped along the way.

As for community activities, I don't think I am any more involved than most attorneys, particularly since becoming a father. I am a deacon at my church and a volunteer for the Forsyth County Jail and Prison ministry, where I play guitar for chapel services every few months. I am also a board member for a young non-profit that my friends started to do economic development work in Uganda. This year I also started teaching pre-trial practice and procedure at Wake Forest, which has been a privilege and also a

Dean with his teammates on the podium at the 2008 Paralympic Games in Beijing, China.

lot of fun. By limiting my community activities to things I really care about, I have found that making time has never been a major problem.

JG: Preparing for trial is exhausting and the trial of a case even more so! I cannot imagine doing all this without the benefit of sight.

How do you locate a case or exhibit in court; how do you pick a jury and how to you talk to the jury in a "face to face" matter?

JD: As for any lawyer, the key for me is careful and deliberate preparation. I use technology to its fullest when I'm arguing a motion or trying a case. My computer has special software that can read documents to me, so I make sure I have all cases, exhibits, outlines, etc. saved on my laptop whenever I go to court. I use an earphone so I can read my notes without my computer reading to the whole court room. The same computer software makes online legal research fully accessible, so I can use Lexis and Westlaw just like anyone else. With the proliferation of wireless internet access, including in many court houses, there is very little I cannot access from my laptop.

Jury interactions are a different animal and something I am still figuring out. I think walking in with a cute dog is a good start. I also think that blindness can be a humanizing factor that differentiates me from the other blue and gray suit clad stiffs and helps the jury see me as a real person. Rather than hide my blindness, I have tried to address it in a light hearted way at the outset of my trials to put the jury at ease and eliminate distractions as we move on to what really matters. For example, at the beginning of voir dire in one trial, I reminded the jury that "Y'all have seen my four-legged co-counsel, so you know that raising your hand and waiting for me to call on you isn't going to do any of us much good." That elicited a chuckle, accomplished the more important objective of securing the jury's cooperation during the voir dire process, and broke the ice so that the jurors could get past my blindness and my dog and focus on the case. Preparation also helps, particularly in orienting myself to the courtroom, witness stand, and jury box so that, even if people are silent, I can fake eye contact well enough to keep things from becoming too awkward.

This is not to say there have never been any mishaps. In the above-referenced trial, for example, I was pretty embarrassed at the close of voir dire by a Batson challenge that I did not anticipate. I realized, only after the opposing counsel stood up and began passionately arguing his motion, that I had no idea what the racial composition of my jury pool even was, including those who had been excluded. That was a mistake that mostly resulted from being a rookie, but blindness certainly did not help. In another trial, one of my colleagues walked an exhibit up to the witness stand while I was cross-examining an expert. After what I thought was a pretty effective cross based on the exhibit, I confidently instructed my colleague that he could step down, only to realize when he put his hand on my shoulder a second later that he had quietly returned to our table some minutes earlier. Fortunately, another thing blindness has taught me is that, sometimes, the only thing to do is enjoy a laugh at your own expense (which is what I did along with the rest of the courtroom).

JG: Modern day computer science must be a great help (necessity?) to you, but it takes more than a computer to try a case. Exactly how does the computer work for you? What are the computer programs which allow you "to see" what you are doing?

JD: The main computer program I use is called JAWS. In essence, it speaks everything that is written on the screen, including documents, websites, email, etc. It enables me to perform legal research and draft documents the same way any other lawyer would. Another crucial asset I've been fortunate to have is an excellent support staff, including the assistants I've worked with and our firm's team of word processors. Together, they scan and convert paper documents or electronic documents that JAWS can't read into accessible formats, so that I can read every part of the case file. The other piece of technology that I've become dependent upon, like many others, is my iPhone and its built-in accessibility software. I use my phone for everything from emails to reading to looking up cases and rules in court. More than a cool gadget, the iPhone has actually been a great equalizer in access to information for the blind.

JG: Part of the Christian faith requires the faithful to care for the "widows and orphans". You and your wife adopted two children from Ethiopia and now are expecting a biological child. Before the adoption of the children, did you have any special ties to Ethiopia? Please tell us about fatherhood and your family life.

JD: My wife and I felt called to adoption before we knew one another, and we discussed adoption early on in our relationship. Within our first year of marriage, we decided to adopt first and try for biological children later, which we thought would enable us and our extended families to focus on connecting

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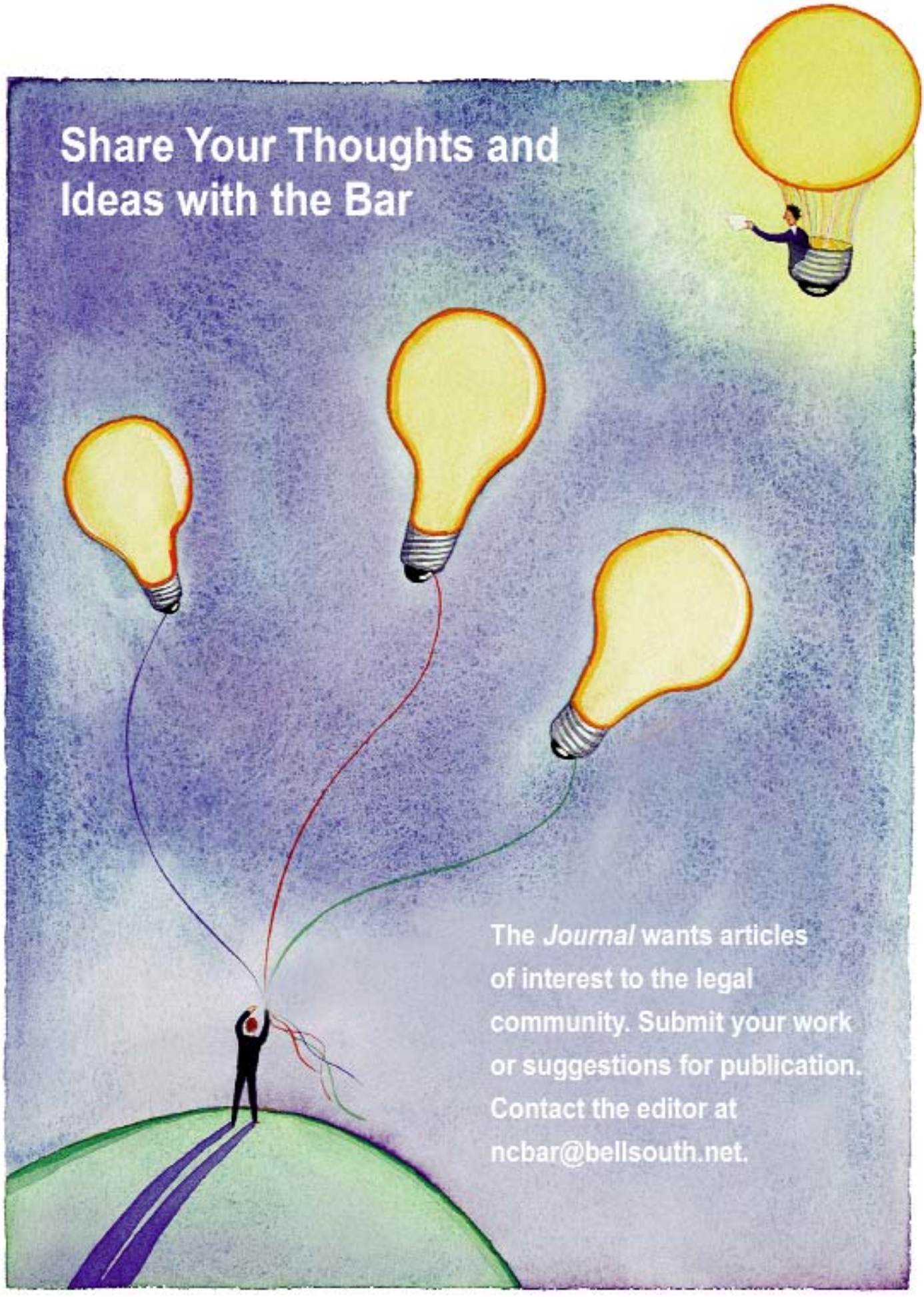

Share Your Thoughts and Ideas with the Bar
The *Journal* wants articles of interest to the legal community. Submit your work or suggestions for publication. Contact the editor at ncbar@bellsouth.net.

Seven Room Barn

By P. Richard Wilkinson

The rusty neglected hinges made a squeal as Frankie yanked open the sagging roughboard rectangle that served as a door into Uncle Otha's seven room barn. You had to squat and kinda crabwalk to get into the opening of any tobacco barn, and this one was especially low. The smaller and lower the door, the less heat you'll lose, and this tall of a barn needed all the heat it could hold. Frankie stepped sideways over the high sill and ducked into the barn.

His steps caused dust to rise from the floor of tobacco talcum, making the air rich with the intoxicating smell of flue-cured tobacco. Dust particles hung suspended in the shafts of sunlight leaking through the chinks in the walls, narrow strips of visibility crisscrossing the shadows up high in the barn, making a ladder of light that funhouse mirrored the set timbers used to hang the sewn sticks of just-picked tobacco; they too laddered above across the vast empty space created by four simple and tall log walls. Frankie breathed a big gulp of dust, aroma, and nostalgia.

This was Uncle Otha's barn, once considered not only the biggest tobacco barn in all of Wake County, but at the time also one of its tallest structures as well. From the vent window at the very top, you could see both the Knightdale fire lookout tower—looking like a project from Frankie's brother's Erector set—and the new Holiday Inn high-rise in Raleigh, which was shaped like a mailing tube with balconies and supposedly copied a famous building in Hollywood. More impressively, from those two buildings you could unmistakably see the shiny top of Uncle Otha's barn. Frankie used to brag about that at school when he was younger, and actually saw it was true once when he visited Raleigh with his pa. They had taken the elevator in the hotel to the top floor and looked out a hallway window. Way in the distance was Otha's flashy tin roof.

While all of the Piedmont's tobacco farms were dotted with log curing barns, the usual barn was only about two stories tall. Conventional wisdom held that the dry heat from the flues—literally greenwood fires in ground level hearths before the gas company set up in Wendell—would lessen by the time it rose much higher, hence failing to dry or "cure" the tobacco hung at the higher levels. Barns were about 16 by 16, and were divided into four parallel "rooms." Frankie was confused when he was little because these "rooms" don't have walls and as such aren't really rooms at all. Each room was defined by the ladder of eight timbers crossing from one side of the barn to the other, each timber about 30 inches directly above the one below it and spaced about four feet apart from side to side. Each level of cross timbers would support the ends of the long, roughhewn tobacco sticks laden with sticky, heavy, ripe green-gold leaves—the leaves tied on by hand when Frankie was little, but he remembered the carnival atmosphere the day his pa and uncle came home pulling a brand spanking new Holland stitching machine, an immensely labor saving machine part conveyor belt, part industrial seamstress, and part magic to Frankie. The loaded sticks would travel on the conveyor through the stooped door to the floor man inside, usually both tall and strong and frequently also the crew boss, who then handed up one end of the heavy tobacco stick—reaching as high as he could—to one of the hangers clambering above. The hangers were agile and strong teenagers who flew monkeylike up and down the wide-spaced ladder of crosslogs, filling the top tier in the first room by squeezing as many fat, loaded sticks as they could, side-by-side on each level. Good hangers would flatten themselves against the wall to force in a few more sticks, cramming the space with as much tobacco as possible. Then they would move down a level and start to fill the next tier. Once that room was jammed full all the way to the bottom rung, the process would start again at the top in the next room.

Sometimes a barn monkey would lose his grip and drop a loaded stick, making the floor man dodge, curse, and threaten. They were heavy enough to cause serious injury, especially when dropped from on high. Frankie's pa once said he thought you could kill a man if you dropped a stick on him from the top tier of Otha's barn.

For although you might see a rare six room barn, proudly built eight feet wider but no taller by some proud, successful (and some unsuccessful yet still proud), scratch-dirt farmer—usually placed right by the road so everyone would see and hopefully draw the right conclusions of prosperity and ambition—Otha's barn was a very unique "seven rooms," almost twice as high as any other. Oh, the Broadwells claimed an "eight room barn," but everybody knew it was really only two four room barns built side-by-side, sharing a common wall. And instead of roadside, Otha built his barn tucked back into the trees behind his house, ostensibly to use the natural shade for his barn workers, but having the subsidiary effect of making his barn look even taller as its sheet metal roof tow-

The Results Are In!

This year the Publications Committee of the State Bar sponsored its 11th Annual Fiction Writing Competition. Fifteen submissions were received and judged by the committee members. The submission that earned first prize is published in this edition of the *Journal*.

ered over the pines. Like the six room farmers, Otha enjoyed all the envy of his peers, but in the trees he was free from their sins of obvious pride and showmanship.

Otha had hit upon the idea of a taller barn when we first got LP gas for the barns. Ignoring the local naysayers—including two professors from NC State who came out at the request of "concerned neighbors"—Frankie's uncle dropped a bunch of tall straight pines one winter and started building his barn the next. (*"Goddam engineers,"* muttered Uncle Otha.) Using woodstove pipe, he built tall chimneys that rose beside and anchored to the walls, and that carried heat almost all the way to the top. And though technically it still only had four "rooms," they were very tall. Otha's barn was exactly three-quarters taller than most so, as he figured it, the barn held seven rooms worth of tobacco. Instead of eight hanger levels, there were 14.

Frankie looked up again at the ladder of cross timbers and he remembered attempting to climb it while neglected one hot afternoon when he was just six. Using the gaps in the log walls as toeholds, he made it all the way to the second level before falling and breaking his arm, landing on one of the sheet metal covered gas burners installed on the dirt floor of the barn. He tasted some bitterness now at that memory, as he not only broke his arm, but he also got a whipping for wandering away, and even worse, his pa never let him work in the barns when he got older. Instead, he was a field worker—he spent all day every day but Sunday out in the hot North Carolina sun all summer long.

Frankie was adept at the manual field work: the plugging and planting; the hoeing and weeding; laying endless rows of irrigation pipe; breaking out the flowering tops and suckers that would limit broadleaf growth; and "priming," the term used for harvesting the leaves by hand when they were at their prime. Yet he wasn't very adept at much else. His pa's attempts to teach him to operate the tractor were disastrous—he still couldn't drive. Although an enthusiastic reader, he did poorly in school and was slow to pick up on things in general. Mostly ignored in school—by teachers and peers—he had never held any job but farming right here, and he still lived at home with his ma and uncle. He knew he was different and it had made him shy and friendless. It was the main reason why he spent so much time alone in the barns now that they weren't used.

Despite banishment to the field, that's not to say the young Frankie never went to the barns when they were used. For 16 years he would accompany his pa in the evenings after supper to check on the barns, making sure the burners were all lit and adjusting the heat to maximize the curing process. On crisp fall dawns he would help load the cured tobacco onto a flatbed trailer, the humidity just right for keeping the leaf in "order"—meaning supple and not brittle—so it could be handled. Oftentimes the field hands would ride in on the last trailer of primed tobacco, and hang out in the shade while the barn hands would sew and load the last of the sticks. His first (and only) kiss was in this tobacco barn, the lucky girl the skinny 15 year old sister of the barn crew boss. Otha's barn was where Frankie came to hide when he wanted to be alone; it's where he came to cry when his brother died, and when his pa died. He had lots of memories of this barn.

He had not always lived at his uncle's. Although the brothers farmed together, Frankie's immediate family used to live on the adjoining farm, but they had lost it during the estate battle after his grandpa on his mother's side died and his ma's sister forced the sale of everything. (*"Goddam lawyers!"* cursed Uncle Otha.) They had lived and farmed with his father's brother ever since. Frankie knew nothing but farm life: wide open spaces, trees, animals, and tobacco. He couldn't imagine living anywhere else. The farm was his sanctuary, the barn his solitude. He always came here when he was upset, so it felt right to come for one last visit.

The burners were all gone now, scavenged for scrap metal or used to turn old cut up fuel tanks into pig cookers. The log barn had set empty for years, and Frankie suspected he was the only one who went inside anymore. The barns were no longer used because Otha had switched to metal automated curing sheds in the 80s, a necessary evolution needed to use the automated tobacco harvester. The harvester eliminated the need for field laborers, who had gotten harder and harder to find each year. Frankie remembered the various groups of workers from over the years: when he was a child they had always been black (*"We're supposed to call them Negros,"* sneered Uncle Otha); when he was a young teen the blacks didn't want to farm anymore so his pa hired a bunch of teenagers from the nearby trailer park (*"Watch out for the white trash stealin' from us,"* growled Uncle Otha); and then when the trailer park crew grew up and drifted away, the farm hired migrant workers from Mexico. *("And when the crop is in, they'll go back to where they're from!"* predicted a smiling Uncle Otha.)

Frankie's pa had never warmed to his brother's tall barn theories, and usage proved his caution well placed. It used more gas than two four room barns would, and even then getting a uniform cure was challenging. Most days during harvest they would fill two barns with fat loaded sticks. Eight rooms of tobacco was plenty of work for one day, especially when you were pacing yourself for eight weeks of that work at six days a week. So in theory a seven room day should be shorter, but it wasn't. The extra height meant an extra barn monkey was needed, which meant one less primer in the field. Fewer primers slowed the picking; climbing up and down the tall ladders with heavy loads slowed the barning. Frankie's ma would sometimes call the great old barn Otha's Folly or the Terrible Tobacco Tower, but Frankie noticed she never did when Otha was around.

Sadly, this great old barn—in fact the whole farm—would soon be history. The location of the new outer bypass around Raleigh was announced and it was coming right through Otha's house. (*"Goddam bureaucrats!"* roared Uncle Otha.) Frankie was visiting the barn one last time as he, his ma, and Uncle Otha cleaned and sorted and readied to move to some house in a subdivision with a tiny yard. No one was excited or happy about the move, least of all Frankie. Everything was packed. Today was the last day any of his kin would live on this spot. The loss left him feeling worse than anything before. The farm was always the one constant he could count on, even when other stuff let him down or left him bewildered. Now it would be gone.

Frankie felt truly lost and aimless. His feelings of grief and despair had grown over the last years, the bad events coming one after the other, no gap in between long enough to have mourned and evolved, but instead each tragedy overlaying the last until assimilating all into a single giant chest-pressing weight he never seemed to shake. Losing the farm wasn't just the proverbial last straw, but instead was like being crushed by a giant bale of hay dropped from a plane. He didn't know what to do.

His ma tried hard to convince Frankie to use this opportunity to start a new life, to strike out on his own. He needed to find a job. He needed to stop depending on her; she could already see her next few years would be spent caring for the aging Otha. (*"No goddam drool-chinned nursing home!"* raged Uncle Otha.) Even the pastor at church had pulled him aside to urge Frankie to let go of the past and move into the future. Assuming he could and assuming he wanted to, Frankie wasn't even sure how. Where does one start when starting over?

Frankie looked up at the cross timbers. Now that he was grown, the first beams were head high, causing him to duck as he moved around. He tugged on one, feeling its strength, and made a decision. Maybe here is where you start over. Today would be very different, and not just because he was moving. Today he would have the courage to do what escaped him many times since the broken arm. Today he would climb to the top of the seven room barn.

The first tier was easy. It was no higher than standing on the back deck of the house, and it took little effort to kick off the floor and wall and scramble up. He stood on the beam with one hand holding to a knot in the wall. He realized now that even grown he would have to climb to the upper room the same way he had as a child—working his way up a wall, digging his toes into the chinks between the logs, while pulling up on the beam of the next tier above.

The second level was where Frankie had fallen as a child, breaking his arm and ruining his chances of working in the shade. It didn't look that tall at all. He was sure he could just jump down from here if he wanted. This was also the log Jeanie sat on when she would sneak a cigarette, since she was too young to smoke. She would climb up and sit bent-kneed on the second, with her feet on the first, leaning against the wall, wrongly believing her brother the barn boss was oblivious. Frankie would just as sneakily follow her and stand looking up at her as she smoked. She wore cutoff jeans—the kids called them Daisy Dukes—and he tried not to stare at her legs. They hardly ever said anything, instead sharing a quiet moment in the shade, each wondering what the other was wondering. On the last day of harvest of the last season he would ever see her or her brother, she tossed her butt down into the dirt as always, but when she hopped down Jeanie had walked right up to Frankie and kissed him hard, and had then ducked out through the door. He could still feel the warmth of her lips, the mash of his lips against his teeth, and the complete vacuum that immediately followed. He looked up into the shadows and dust for a moment longer than the kiss, and then scrambled up to the third beam and kept climbing.

Otha had fallen from about the fifth level when Frankie was 16, the suspected cause the drinking of "apple cider" that Otha kept in a big barrel hidden in the loft of the regular barn. He broke both wrists, just before harvest, so he was completely useless when they needed him the most. (*"Come here and help me, Frankie! I can't even wipe my own damn ass!"* bellowed the double-casted Otha.)

Frankie climbed up onto the seventh level of cross beams. Now he was nervous, for it seemed a long way down. He rested here for a while at the halfway point, looking up and looking down. He was being flooded with memories and emotions, all of it making him shaky. He had never climbed this high anywhere, much less in the barns—he was always too scared. Heck, he didn't even like the second floor balcony at North Hills Mall. He took a big deep breath and started to climb up to the next logs.

The tenth row of beams held a good memory for him. It was from here that his older brother pissed down on top of the head of one of the trailer park boys, a troublemaking bully called "Rooftop" because of the stiff shingle of hair that stuck straight out from his forehead. He had cornered a young Frankie in the barn and was teasing and pushing him around, unaware the brother was hanging out up high. *"Francis, Francis,"* he had sing-songed until he felt the first splash and unwittingly looked straight up into the yellow stream. Rooftop ran from the barn cursing and crying. He never came back. The good memory faded though, since Frankie's brother died some years later in Iraq. (*"Goddam politicians!"* wailed Uncle Otha.) Frankie missed his brother something fierce.

The memory of Rooftop brought a flood of others. If Frankie had ever had any "friends," it was a handful of the dozens of field workers who had come and gone over the years. Like DJ, the big black kid who didn't talk like any of the others—black or white—but instead sounded like the books Frankie liked to read. DJ would tell Frankie he could be whatever he wanted when he grew up. DJ planned on going to college and being a lawyer. Or Michael and Billy, the two cut-ups from the trailer park who would pull pranks like putting garter snakes in the bacca trailer to scare the girls at the barn, or would offer Frankie a dollar to eat a fat, juicy tobacco worm. Or Miguel, the migrant worker who had claimed to not speak or understand any English until the day Frankie's pa came by with an old TV in the back of the truck. He was giving the migrants the set to put in the ancient tenant farmer's shack where they all lived. Miguel had taken one look at the TV and blurted out, *"Is it color?"* This had caused Frankie to fall down laughing, which made the other workers laugh too. After that, he and Miguel always primed side-by-side rows, and Miguel would tell him stories of life in Mexico.

There had been a few others like the Wilson boys and the Baker brothers, maybe not friends but at least friendly. However, none of the former workers had ever stopped by the farm over the years, and after the switch to automation, there were no more crews. After graduation from high school, Frankie knew not much more than the isolation of the farm, except for sporadic trips to the First Baptist Church with his ma and the Wendell tobacco warehouse with his uncle.

Frankie resumed moving slowly up the wall. He didn't pause anymore for fear he would lose his will to rise any further. He pulled and reached and climbed, and finally kicked up onto the last timber. This was the 14th tier, but technically the first to be filled with tobacco. Even though it was a nice day, the top of the barn was sermon hot and stuffy. Being above the trees meant no shade. The sun would bear down on the metal roof, super-heating the upper barn in the summer. It supplemented Otha's chimneys, but was almost unbearable to the hangers laboring in it. Here, from the side, the barn monkey could get some fresh air by opening a small wooden vent built into the wall—you lifted a swinging hook from a bent nail and pushed the door outward. Except the door had swelled eons ago and was always stuck, so you had to beat it open using your fist like a hammer. Holding on tightly with one arm, he banged open the vent.

He blinked in the sudden blinding flood of sunlight. Through the opening, Frankie could see out over the trees, just as Uncle Otha had planned. He could see part of the

old farmhouse where six generations of his father's family had lived. The view had changed over the years, with the fire tower now long gone and Raleigh full of tall, generally square-cornered buildings. Most of the neighboring tobacco fields and log barns were also gone, they and the forests buried under cookie-cutter subdivisions. Yet, even with farms turning into neighborhoods, and crossroads country stores lost to bigger IGAs or even bigger Kroger shopping centers, it still was a vast vista of trees and open space. The bypass would change that, for good or ill.

For Frankie, though he had never been here, the top of the seven room barn was the place that had affected his life the most. Frankie's father fell from right here, opening this stupid little door, losing his balance while banging on it with his fist. He cracked his skull on one of those stupid little gas burners at the bottom. He last saw his father in the Intensive Care Unit at Wake Memorial, his head completely wrapped in gauze, a stupid little tube leading from one corner of his mouth, a trickle of blood dribbling from the other. (*"Goddam doctors,"* sobbed Uncle Otha.) Nothing had ever been the same again.

Frankie had never imagined being this far off the ground. The floor, even without the old jets, looked deadly simply because it was so far down. Sliding his hands out onto the log and pushing off the barn wall with his feet, he edged out onto the beam that once held hundreds of pounds of ripe, fat tobacco, letting it settle into his armpits as his torso hung half off half on and his legs dangled below.

Frankie hung there using his muscles and body weight to achieve a state of suspended animation. It took little effort to remain in balance. It felt like floating. He turned his head and looked out of the little window over the trees and let his memories float as well: he thought of his ma and his pa and his Uncle Otha; the loss of one brother and not one but two farms; the smell of cured tobacco and unwashed workers; the long, hot summers and long tanned legs; loud music and loud auctioneers. He could hear the singing of the field crews working their way down the long rows, the steady rumble of the tractor and trailer slowly keeping pace beside them. He felt for a moment the peace that he always felt during the morning and afternoon breaks, sitting in the shade, listening to birds chirp and twitter over the silenced tractor, drinking deeply from an ice-cold Pepsi. (*"Off your ass and on your feet; out of the shade and into the heat!"* roared Uncle Otha.) He could feel the scratch of burlap, the sticky of tobacco resin, the pain in his bent lowered back. He could taste the sting of sprayed chemicals, of sweat pouring down his face, of cold chicken soup eaten directly from the can at the store during lunch when all the farmers would congregate for 30 minutes repeating the same tired phrases about the heat, the humidity, the crop, and the prices. He could sense the buzz of nicotine seeping into his pores from the black gum staining his forearms after a long day of priming. He thought of highways and houses, families and funerals, the things he would never have and the things he would never have again. Loss, longing, helplessness, aimlessness, despair, and bittersweet nostalgia washed over Frankie, just like the acrid papery smell of decades of cured tobacco. He now had no past and he could see no future.

Frankie thought of all of these things as he swayed on the log and floated in the warm still air. He suddenly and sharply realized, maybe with a clarity of reason he had never experienced, that he did indeed carry an awful heavy burden with him, a burden that prevented him from moving forward, from being happy. And dammit! he was tired of feeling that way. He looked down at the shadowy dirt floor. He looked at the rough log walls. He looked out the window at bright sunshine and what would be no more. He even looked up at the underside of the tin roof, never shiny underneath but not on top anymore either, noting the small pinholes and spreading stains of rust. Frankie looked at everything and nothing, felt everything and nothing, tasted and heard and smelled everything and nothing. He was being crushed by his feelings, His Feelings, HIS FEELINGS. Something drastic had to change, and then Frankie decided that the best way for him to get on with life was to simply let it all go. And so he did.

Frankie let go. ■

P. Richard Wilkinson closed his law practice in 1998 to take a two year travel sabbatical. He has since roamed the American West fighting wildfire, rafting Class V rivers, climbing 10,000'+ mountains, and skiing big lines. He will begin his return home to NC in 2015, projecting the journey will take 12 to 18 months (depending on Alaska).

Poetic Justice

The following poems are excerpts from the book Poetic Justice, a collection of vignettes from life in the practice of law rendered as humorous poems, written by Charlotte attorney James DuPuy and award-winning writer and editor ML Philpott. A portion of the proceeds from the sale of the book go to benefit WomensLaw.org. For more information, see poeticjusticethebook.com.

The Call Not Taken

With a wink in Robert Frost's direction

Two lines diverged on a Mylar plat,
And to one call I could not commit,
And being new here, sweating I sat,
And wondered just how it could be that
A single line could seemingly split.
One line was an easement of some sort,
But which was which? I was doomed to fail.
The clock was ticking, time had grown short,
And as my guts started to contort,
I sat alone and chewed my thumbnail.
Being young and scared, I dared not ask
My cruel senior partner for his take,
For fear of catching merciless flack,
Or being the victim of a wisecrack,
When he realized I was a fake.
So I chose the one that I thought right,
With anxiety and doubts acute.
Two lines diverged on a plat and I,
I called the one less traveled by,
And that led to my malpractice suit.

Ode to the Rainmaker

With thanks for the inspiration to Elizabeth Barrett Browning

How do I love thee? Let me count the ways.
You reek of charm, the genetically blessed,
And while I spend my hours in this office,
You're on some golf course or other most days.
Your intellect is at best rather base,
Your work product is far below the rest,
Your attitude is I-couldn't-care-less,
When I clean up your mess, you get the praise.
Family connections and a silver spoon,
Like a nephew in the mob you're plugged in.
What's to love, then? It's simple. Selfish, too:
I like having a job, money to spend.
And as little true law work as you do,
You've the golden touch at bringing it in. ■

Profiles in Specialization—Robert C. Kemp III

By Denise Mullen, Assistant Director of Legal Specialization

I recently had an opportunity to talk with Robert (Bert) C. Kemp III, a board certified specialist in state criminal law practicing in Pitt County. Bert attended the University of North Carolina at Chapel Hill, earning an undergraduate degree in economics, and subsequently received his law degree from Wake Forest University. Following graduation he spent several years practicing both general litigation and criminal defense before accepting a position as an assistant public defender in Pitt County. He was appointed chief public defender in June 2007 and currently supervises 13 attorneys in that office. Bert is also a judge advocate, holding the rank of lieutenant colonel in the NC National Guard. Bert became a board certified specialist in 2005, and was appointed to the Criminal Law Specialty Committee in 2013. His comments about the specialization program and its impact on his career follow.


Kemp

Q: Why did you pursue certification?

I had been in private practice as a criminal defense attorney when I accepted the position of assistant public defender in Pitt County. At the time, several of my clients viewed that change as a demotion, akin to a resident doctor or some kind of training position. They expressed concern for me and were hopeful that I would get myself out of trouble and back to being a "real" lawyer. I had to explain that I was a "real" lawyer and that I took this position very seriously. I wanted to prove to clients, colleagues, and mainly to myself that I could accomplish this goal. I also knew it would be a good opportunity to refresh my knowledge about criminal law as well.

Q: How did you prepare for the examination?

I read Chapters 14, 15, 15A, and 20 of the North Carolina General Statutes. I also reviewed materials from several continuing legal education courses. The School of Government has a wealth of outstanding information available online, and I certainly took advantage of those resources. As an assistant public defender I worked mainly on high-level felonies, including robberies and sex offense cases. I viewed having to study as a great opportunity to re-learn some items I had forgotten. I especially reviewed recent case law and spent time examining subjects I did not routinely encounter in my daily work.

Q: Has certification been helpful to your practice?

The certification has shown others that this is a target that can be achieved. One of my personal goals moving forward is to promote certification within the public service arena. I believe that it is critical to our judicial system to retain qualified lawyers in both public defender and prosecutorial positions, as well as those working for Legal Aid. Many of the lawyers that I work with are [*de facto*] specialists in their area and deserve, not only a monetary raise, but a high level of recognition for their dedication. Board certification is one way to provide this recognition, and hopefully to encourage and inspire them to continue their public service.

I am so pleased to learn that the Board of Legal Specialization recently launched a new program with NC LEAF [Lawyers Education Assistance Foundation, ncleaf.org] to provide financial scholarships to cover the certification application fees for state prosecutors, public defenders, and non-profit public service attorneys. I think this type of program and the John R. Justice program [ncleaf.org/content/john-r-justice-jrj-program-summary] are critical components to retaining quality public defenders and prosecutors. For the past few years, pay increases have been few and far between for these lawyers. Therefore, every little bit helps to recognize their dedication.

Q: How does certification benefit your clients?

Few ways exist to distinguish yourself as a dedicated and competent lawyer. Certification is one way that I can demonstrate to my clients what this practice means to me, and give them the comfort that they have been assigned a "real" lawyer. As the public defender for Pitt County, I have built an office of good and knowledgeable employees who have a calling for this work. I want all of our clients to recognize the quality and commitment of their attorneys.

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

One of the biggest issues in criminal law right now involves the collateral consequences associated with a conviction, such as in domestic violence cases, DWIs, and sex offenses. Our work as public defenders encompasses all of these areas. DWI law has become so complicated—with the consequences for clients being so serious—that it really takes a specialist's depth of knowledge and experience to be able to understand and properly manage all of the issues involved. Other hot topics include immigration ramifications and the possible upcoming change in juvenile delinquency laws. If the juvenile age is indeed raised in certain cases, more proceedings will be handled in juvenile court, which will significantly increase the demand for specialists in juvenile delinquency law.

Q: Is certification important in your practice area?

Certification is extremely important in criminal law. The more information made available to the public, the better. In general, clients today have greater access to information, thereby enabling them to make informed choices. However, I, as a public defender, am appointed to represent my

Resolution of Appreciation for Jeri L. Whitfield

WHEREAS, the North Carolina State Bar Board of Legal Specialization desires to recognize the services of JERI L. WHITFIELD and her contribution to the specialization program of the North Carolina State Bar; and

WHEREAS, Jeri's exemplary statewide reputation as a workers' compensation defense lawyer led to her appointment by the board to the initial Workers' Compensation Law Specialty Committee where she served for six years; the committee was charged with the development of the standards for the specialty and the drafting of the first workers' compensation law specialty examination; and, although specialty certification in this practice area may appear to be more advantageous to plaintiffs' lawyers than to defense lawyers, Jeri became a champion for board certification, recognizing the significance of a workers' compensation law specialty to the public and to the professional development of all workers' compensation lawyers; and

WHEREAS, Jeri became one of the first board certified specialists in workers' compensation law in 1997; and

WHEREAS, as a member of the Board of Legal Specialization from 2006 to 2014, Jeri gave unselfishly of her time and talent—over the course of nine years, missing only one board meeting; Jeri's personal experience with certification helped the board to make informed policy decisions about the certification and recertification of lawyers, the allocation of resources, the employment of the board's first psychometrician, and the development of new areas of specialty, including elder law; and

WHEREAS, as a member of numerous board committees and review panels, Jeri heard complex appeals from denials of certification and recertification, and, as a consequence of her experience with difficult appeals, she was appointed to chair a committee that studied and then overhauled the board's hearing and appeal rules, thereby increasing the clarity, transparency, and fairness of the process; and

WHEREAS, as chair of the board from 2011 to 2014, Jeri led the development of new and unique specialties in practice areas that are important to the consuming public; to wit: appellate practice—for which she enlisted the support of law partner, former Chief Justice James Exum—juvenile delinquency law, and trademark law; and she oversaw the twenty-fifth anniversary of the North Carolina State Bar's specialization program; and

WHEREAS, Jeri's consummate professionalism, thoughtful and diplomatic approach to difficult issues, championship of the specialization staff, and unwavering support of board certification for lawyers as the hallmark of professionalism, will be missed by the members of the board, by the specialization staff, and by the members of the bar;

NOW, THEREFORE, BE IT RESOLVED BY THE NORTH CAROLINA BOARD OF LEGAL SPECIALIZATION:

That the members of the board hereby express their appreciation and gratitude to JERI L. WHITFIELD for her outstanding devotion and service on the North Carolina State Bar Board of Legal Specialization.

client. Therefore, the client has no choice in their attorney, which makes certification even more important in developing a high level of trust and comfort between the attorney and client.

Q: How does certification benefit the profession?

Certification builds trust and credibility with the clients, which in turn benefits the profession. It also creates a collegiality among peers, including adversaries, as it promotes a focus on professional practice rather than monetary gain. Anything we can do as lawyers to further our knowledge and hone our skills will also improve the practice of criminal law for all involved.

Q: How do you see the future of specialization?

I think the program will continue to expand as more attorneys will see it becoming almost a necessity. Providing a legal specialty certification program is one way that the State Bar shows the public that it is making an investment in the continuing education and growth of attorneys. ■

For more information on the State Bar's specialization program, visit us online at nclawspecialists.gov. To donate to the NC Leaf Scholarship Fund, please send a check to: NC LEAF - Specialization Scholarship, 217 E. Edenton Street, Raleigh, NC 27601.

NO MORE THAN 24!

Please return every phone call, email or other form of communication from a client within 24 hours. The number one complaint against lawyers each year at the NC State Bar is, "my lawyer will not return my phone calls or communications." We can end these complaints—it will just take a little effort.

—Mel Wright
Executive Director, The Chief Justice's Commission on Professionalism

The Price We Pay as Professional Problem Solvers

By Robynn Moraites

Most of us decided to go to law school because we had a passion for justice and helping people. While we may not think of the legal profession as a traditional helping profession like we typically think of social work, the reality is that we serve in a primary helping capacity. Clients are in distress, enough so that they have elected to pay someone (a lawyer) to help them fix the problem or help them achieve the best (or more often, the least bad) outcome.

When we help a client fix a problem or reach a desired outcome, we often feel a strong sense of personal and professional achievement and satisfaction. Researchers call that experience "compassion satisfaction." Compassion satisfaction is crucially important because it sustains us through the bad days—the days when we don't achieve the desired outcome or when a client has no viable good options. For many of us, much of our career is spent assisting people in terribly difficult situations, and our ability to effect real change or outcomes is far more limited than we ever imagined it would be.

With the ever increasing specialization of the profession, today most lawyers deal with a very high volume of the same kind of client distress day in and day out. It is not uncommon, for example, for a workers' comp lawyer to have anywhere from 250-400 open cases at one time. With a high case load and nonstop exposure to the same type of client distress, over the course of a career the bad days can begin to outweigh the good ones. When that happens, we may develop a condition known as compassion fatigue. If left unaddressed, compassion fatigue can lead to secondary trauma and burn out.

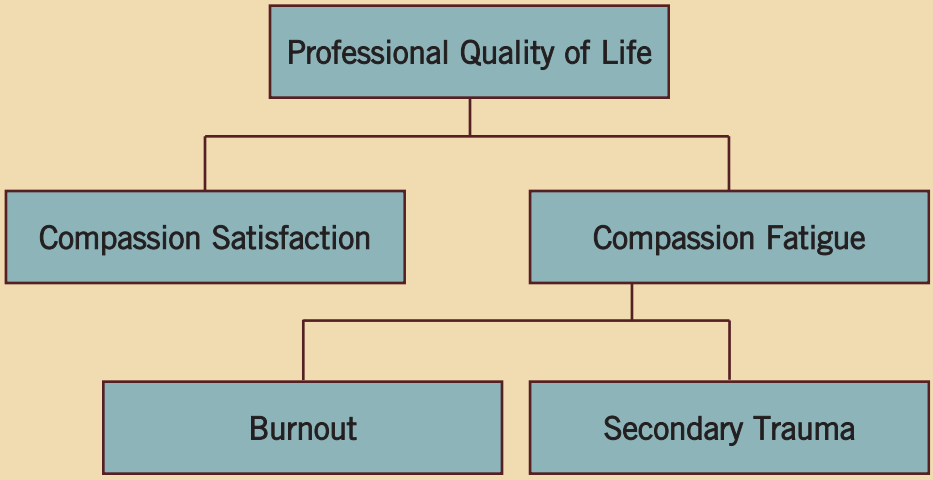
Compassion fatigue is defined as the cumulative physical/emotional/psychological effects of continual exposure to traumatic or distressing stories/events when working in a helping capacity where demands outweigh resources. The two largest factors that contribute to developing compassion fatigue are 1) high volume of workload and 2) exposure to client distress and trauma. Unfortunately, all the best legal training in the world cannot turn off our mirror neurons, which exist in that highly-evolved part of our brain that responds neurologically/emotionally to other people's distress as an involuntary response (even when we might not have any conscious awareness of an emotional response). The symptoms of compassion fatigue can often mimic those of depression or anxiety, but there are a few key differences (and depression and anxiety are often symptoms of compassion fatigue).

Behavioral symptoms:

- absenteeism from work
- anger and irritability with coworkers, clients, opposing counsel, judges, family, and friends
- indecisiveness; an impaired ability to make decisions
- avoidance of clients in general or certain clients
- lack of diligence in work performed
- no longer finding enjoyment in hobbies and activities that used to be pleasurable
- avoidant behavior at home (e.g. watching too much TV, reading, online gaming, and not interacting with family or friends).

Psychological symptoms:

- emotional exhaustion
- intrusive thoughts (like flashbacks to evidence in an old case when one is at home, or a sense of dread of something bad happening to one's family or children)
- heighted sense of anxiety and fear
- sleep disturbance at night and fatigue during the day
- loss of appetite
- cynicism (loss of empathy; loss of faith in humanity)



By Beth Hudnall Stamm PhD, et. al.

• sense of isolation or alienation from others (for example, either intentionally distancing from friends and family or simply feeling isolated in a group—"When I get home, I feel like I am from another planet because of what I saw today at work.")

• physical complaints (headaches, stomach problems, TMJ, back problems, etc.)

• helplessness

• dread of seeing certain clients.

When one moves beyond compassion fatigue into secondary trauma and burnout, symptoms are more severe. In secondary trauma, the lawyer or judge has developed a post-traumatic stress disorder (PTSD) response to the day-to-day activities needed in his or her job and in life. The PTSD response results not from some personal trauma the lawyer once suffered, but from the vicarious trauma he or she is exposed to when helping clients.

Judges in particular are at risk for developing compassion fatigue, especially district court judges. And lawyers in these practice areas are considered particularly at risk for developing compassion fatigue:

• criminal law

• family law

• personal injury and workers' comp law

• medical malpractice law

• personal bankruptcy

• wills, trusts, and estates.

In good news, compassion fatigue can often be treated largely through awareness and lifestyle choices. The problem, of course, is that many of us are entrenched in how we operate on a day-to-day basis, and some of these lifestyle suggestions seem unattainable. The LAP has helped so many lawyers bring their lives back into balance who are suffering from compassion fatigue.

Listed below are some suggestions that at first blush might seem minor, but have the greatest impact.

• ***Rigorous exercise three to four times a week.*** Our bodies and brains store a great deal of pent-up energy from the stresses we encounter in work and life. Regular exercise does more than release endorphins, although that is a great benefit. I am a big advocate of hot yoga. As one client reports, "It takes all the fight right out of you." Another client who was suffering from compassion fatigue reported, "If I hit two hot yoga classes a week I seem to be fine. When I skip a week I start to derail pretty quickly." Running, long distance cycling, swimming, triathlons, vinyasa (power) yoga or hot yoga, Zumba, or other aerobic classes are all viable options. Anything that moves your heart rate into a 65-85% of max range will work—it needn't be a high impact activity.

• ***Finding ways to laugh and have real fun and connection.*** Our emotional balance in life depends in part on the stimulus hitting our mirror neurons. When you recall times you felt really connected to someone or a group of people, there was something very positive happening in your brain. That felt sense of connection is an important tool for emotional resilience. Sometimes a belly laugh that brings tears to our eyes is more restorative than two years of talk therapy. So find people who make you laugh and to whom you feel a deep sense of connection and spend time with them.

• ***Resume or develop hobbies.*** Usually as work and time demands increase, the first thing we abandon are hobbies and activities that seemingly serve no useful purpose. These activities are precisely the kinds of things that restore emotional resilience. Doing something you enjoy simply because you enjoy it balances the chemistry in your brain and goes a long way toward balancing our perspective when faced with difficulties. Find those things you abandoned—or those things you've always wanted to do but have never gotten around to doing—and begin to incorporate them into your life.

• ***Begin to develop some form of a mindfulness or meditation practice.*** These practices help foster big-picture perspective and separate us, just a little bit, from our emotional reactions to situations. As we get more skilled in learning to step back emotionally and noticing our reactions, those reactions have less power to dictate our behavior. We learn to pause when agitated or doubtful instead of reacting to the agitation or doubt.

Compassion fatigue symptoms are normal displays of stress resulting from the problem solving and caregiving work we perform on a regular basis. While the symptoms can be at first subtle if not addressed, they can eventually become disruptive to both our work and home life. An awareness of the symptoms and their negative effects can lead to positive change, personal transformation, and a new emotional resilience. Reaching a point where we each realize we have control over our own life choices takes some time, dedication, and hard work. There is no magic involved. There is only a commitment to make our lives the best they can be. ■

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

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Robynn Moraites (for Raleigh and down east) at 704-892-5699.

Celebrating Certified Paralegals

By Joy Belk

On May 2, 2014, the North Carolina State Bar Board of Paralegal Certification held an event to honor North Carolina certified paralegals (CPs) and to express appreciation to CPs for their contributions to the new North Carolina State Bar headquarters. The event was held at the new headquarters and consisted of a free three-hour continuing paralegal education (CPE) program followed by a catered reception. Over 200 guests attended the event.

NC State Bar Foundation Chair John McMillan and NC State Bar Board of Paralegal Certification Chair G. Gray Wilson.

Shelby Benton of Benton Family Law, a NC State Bar councilor from the 8th Judicial District and current member of the Board of Paralegal Certification, presented at the CPE program. Ms. Benton, a certified family law specialist who practices in Wayne County, provided an overview of social media and how it can be used by paralegals to help lawyers investigate cases, discover electronic evidence, and better represent their clients. Attorney Ketan P. Soni provided materials for the presentation.

Patricia F. Clapper, ACP, NCCP, made a presentation on "Patti's Wonderful Websites for Paralegals." Ms. Clapper is a paralegal for Levine & Stewart in Chapel Hill and currently serves on the Board of Paralegal Certification. She is also the current president of the North Carolina Paralegal Association and an adjacent professor for the paralegal certificate program at Central Piedmont Carolina Community College.

Alice Neece Mine presented the ethics portion of the CPE program. Ms. Mine is the assistant executive director of the North Carolina State Bar. In this capacity she is staff counsel to the Ethics Committee and director of the Board of Paralegal Certification.

After the CPE presentations, board chair Gray Wilson welcomed the certified paralegals and recognized NC State Bar officers, former and present members of the Board of Paralegal Certification, members of the Paralegal Certification Committee,

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Income Outlook Remains Bleak for Near Future

Income

Unfortunately, we must report that the income from IOLTA accounts continues to decrease as many banks are recertifying their comparability rates at lower levels. In 2013, income from IOLTA accounts declined by 9% and was under $2 million for the second year in a row, which had not previously happened since 1994. However, our total income, which received a boost from two cy pres awards during 2013 totaling over $650,000, was $2.4 million. Income from participant accounts through the first quarter of 2014 decreased by another 5%.

Though in difficult times, NC IOLTA reaches its 30th year in 2014. NC State Bar officers and IOLTA trustees recognized the milestone at the April board dinner. Edward C. Winslow III, John B. McMillan, Janice M. Cole, Michael A. Colombo (chair), Freeman Edward Broadwell Jr., (vice-chair), Hope H. Connell, Charles E. Burgin, E. Fitzgerald Parnell, and Linda M. McGee.

Grants

Current Grants. Beginning with 2010 grants, we have limited our grant making to a core group of (mainly) legal aid providers. Even with that restriction and using over $2.5 million in reserve funds, grants have dramatically decreased (by over 40%). For 2013, we were able to keep grants steady at the 2012 level of $2.3 million without using any additional funds from reserve because of a large cy pres award received in 2012. We were also able to add funds to our reserve, bringing it to just under $1 million. The reserve funds and the additional income from cy pres awards received in 2013 allowed the trustees to keep grants steady at $2.3 million again for 2014, although we are taking $215,000 from reserve for that purpose.

Grant Software. For the 2015 grant cycle we will implement new grant software that is already in use in three large IOLTA programs in other states. The new software will allow applicants to apply online and submit all necessary documents through the system, and allow staff and trustees to review applications through the system. Further, all narrative and statistical reporting and tracking of grantee outcomes will occur within the system, allowing staff to generate reports on program impacts efficiently. The initial $16,000 cost of purchasing and implementing the software is being supported by two grants totaling $9,000 from the Chief Justice's Commission on Professionalism and the NC Equal Access to Justice Commission.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state funding distributed for the 2013 calendar year was $3.5 million, decreased from just under $6 million in 2008 due to reductions to both the appropriated funds and the filing fee allocations. The state budget adjustments for 2014-15 eliminated the appropriation for legal aid work (currently $671,250). Though the proposed Senate budget had also eliminated the Access to Civil Justice funding from court fees (~$1.8 million), that funding was continued in the final budget, with significant additional reporting requirements for Legal Aid of NC. The Equal Access to Justice Commission and the NCBA continue to work to sustain and improve the funding for legal aid.

IOLTA Leadership

The State Bar Council appointed Ed Broadwell and Charles Burgin as chair and vice-chair of the NC IOLTA Board of Trustees for 2014-15. Broadwell is retired chairman and CEO of Home Trust Bank in Asheville, and has served on the board of the American Bankers Association (2007-09) and the NC Bankers Association (1976-78 and 1980-82), including serving in 1980-81 as chair. Burgin, a former NC Bar Association president, is retired from private practice in Marion. Both have served as NC IOLTA trustees for a number of years, and their continuity and knowledge of the NC IOLTA program and its grantees will be particularly valuable

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Lawyers Receive Professional Discipline

Disbarments

Donald Lively of Raleigh surrendered his law license and was disbarred by the State Bar Council. Lively was administratively suspended in 2010 for failing to attend mandatory continuing legal education. During the suspension he practiced law, collected fees, and misrepresented his professional status to the court, other attorneys, his clients, and third parties.

Susan E. Mako, formerly of Wilmington, was disbarred by the DHC. The DHC concluded that Mako misappropriated and grossly mishandled entrusted funds, did not pay taxes, and abandoned her law practice.

Richard Z. Polidi of Raleigh surrendered his law license and was disbarred by the Wake County Superior Court. Polidi received approximately $16,000 in settlement for a client. Although Polidi knew his client had assigned the right to those funds to a third party, he used the entrusted funds for his own benefit and for the benefit of the client without the third party's authorization.

Suspensions & Stayed Suspensions

The DHC suspended **William T. Batchelor** of Wilmington for three years. The DHC found that Batchelor charged and collected a clearly excessive amount for expenses and mismanaged his trust account in a variety of ways. After serving one year of the suspension, Batchelor may apply for a stay of the balance upon compliance with numerous conditions.

George Rexford (Rex) Gore of Shallotte is a former elected district attorney. Gore agreed to increase an assistant district attorney's compensation by approving false travel reimbursement claims the ADA submitted to the Administrative Office of the Courts. He approved 63 travel claims totaling over $14,000 for mileage the ADA did not incur. Gore pled guilty to the misdemeanor offense of Willful Failure to Discharge Duties. The DHC suspended Gore for four years. Gore received credit toward the satisfaction of the four-year suspension for the time since the court suspended his law license in August 2013. After serving two years of the suspension, Gore may apply for a stay of the balance upon compliance with numerous conditions.

In 2012, **Roydera Hackworth** of Greensboro was suspended by the DHC. Before she was suspended, Hackworth engaged in the unauthorized practice of law by representing her nephew in a personal injury case in Alabama, where she was not licensed. After she was suspended by the DHC, Hackworth continued representing her nephew. She also made misrepresentations to the Grievance Committee. The DHC suspended Hackworth for five years. The suspension runs concurrently with the suspension imposed in 12 DHC 3.

Mary Susan Phillips of Wallace neglected numerous clients and did not respond to notices from the clerk of court to file estate accountings. The DHC suspended her for three years. After serving nine months of the suspension, Phillips may apply for a stay of the balance upon compliance with numerous conditions.

Asheville attorney **Julia Leigh Sitton** pled guilty to misdemeanor obstruction of justice. Sitton was an employee of the Bev Perdue campaign. Sitton agreed that a campaign contributor could pay her an extra $2,000 per month through a purported consulting contract under which Sitton did not actually provide any consulting services to the contributor. This arrangement allowed the contributor to exceed the limit on allowable campaign contributions under N.C. Gen. Stat. § 163-278.13 and allowed the campaign to avoid reporting the payments on campaign finance reports required by N.C. Gen. Stat. § 163-278.8 and § 163-278.11. The DHC suspended Sitton's law license for three years. After serving one year of the suspension, Sitton may apply for a stay of the balance upon compliance with enumerated conditions. Sitton received credit for the time she voluntarily abstained from the practice of law following her conviction.

Censures

Ronald E. Cooley of Hillsborough was censured by the Grievance Committee. Cooley failed to attend a deposition for his client, did not communicate with his client about discovery requests, did not comply with discovery obligations, did not ensure proper service on an opposing party, and made false statements to his client.

The Rowan County District Court censured **Tiffany Dawn Russell** of Durham. The court concluded that Russell engaged in unprofessional behavior and willfully failed to

comply with Rule 12 of the General Rules of Practice for the Superior and District Courts. Russell gave notice of appeal.

Reprimands

Thomas D. Blue Jr. of Raleigh was reprimanded by the Grievance Committee. Blue was assigned by his law firm to supervise a nonattorney assistant's trust account record keeping. Because Blue failed to ensure the assistant was conducting proper reconciliations, the firm did not discover an error on a client ledger that occurred in November 2010. As a result of the undiscovered error, the firm over disbursed to the client 14 months later. The firm finally discovered the original error and the overdisbursement in August 2013. The Grievance Committee recognized several mitigating factors.

The Grievance Committee reprimanded **Kristen Comerford**, formerly of Winston-Salem. Comerford made false entries in document review software and a timekeeping system to exaggerate her billable hours.

Mark Jetton of Raleigh was reprimanded by the Grievance Committee. Jetton's direct solicitation letters contained false and misleading statements, promised results that could not be guaranteed, and compared his services to those of other lawyers.

The Grievance Committee reprimanded **Christopher Lane** of Clemmons. Lane agreed to serve as "Of Counsel" to a foreign law firm and facilitated the firm's unauthorized practice of law in North Carolina. Lane also made false or misleading statements to a client of the foreign firm.

The Grievance Committee reprimanded Raleigh lawyer **W. Andrew LeLiever**. LeLiever did not timely comply with bankruptcy court orders, did not appear at court hearings regarding his noncompliance, and told the bankruptcy trustee that he would not pay over funds in his possession that belonged to the bankruptcy estate without a court order. LeLiever also committed a number of trust account violations, including failing to reconcile his trust account quarterly, failing to maintain client ledgers, commingling his own funds with entrusted funds, and using improper methods to disburse funds from his trust account.

Jennifer Moore of Asheville was reprimanded by the Grievance Committee. Moore made misleading statements to the State Bar, neglected her client's interests, and did not take appropriate steps to protect the client's interests when she withdrew from representation.

The Grievance Committee reprimanded **Claire J. Samuels** of Charlotte, who argued the merits of her client's case in emails to the judge and her clerk.

Antoinette Van-Riel of Winston-Salem was reprimanded by the Grievance Committee. Van-Riel charged clearly excessive fees, did not communicate with her client, did not participate in the State Bar's mandatory fee dispute resolution program, and did not respond to the Grievance Committee.

Karen Wright of Shelby was reprimanded by the Grievance Committee. Wright neglected her duty to settle the estates of her clients' parents, did not keep the beneficiaries reasonably informed about the statuses of the estates, and did not promptly comply with the beneficiaries' reasonable requests for information.

Reinstatements

Douglas T. Simons of Durham surrendered his law license and was disbarred by the State Bar Council on April 15, 2005. Simons admitted that he misappropriated at least $300,000. On March 27, 2014, a panel of the DHC recommended that his petition for reinstatement be denied. Simons' appeal to the State Bar Council is pending.

In November 2007, **Ralph T. Bryant** of Newport surrendered his law license and was disbarred by the DHC for misappropriating entrusted funds totaling $64,847. Bryant petitioned for reinstatement. On June 12, 2014, a panel of the DHC announced its finding that Bryant had reformed, but that his reinstatement would be detrimental to the integrity and standing of the bar, the administration of justice, or to the public's interest and recommended that his petition for reinstatement be denied. An order has not yet been entered. ■

Paralegals (cont.)

and members of the Item Writers Committee in attendance. He also recognized John McMillan, chair of the North Carolina State Bar Foundation, and other members of the foundation in attendance. Prior to the construction of the new State Bar headquarters, the foundation was created to receive donations of funds for the enhancement of the new building. That initiative was kickstarted in 2009 when the Board of Paralegal Certification, upon the recommendation of the paralegal members of the board, gave half a million dollars for the construction of the building.

Mr. McMillan presented Mr. Wilson and the Paralegal Certification Program with a beautiful memory book that chronicles the construction of the new headquarters. Champagne glasses were passed and a toast was made in appreciation of certified paralegals for their dedication to and financial support of the State Bar.

After the toast, everyone was treated to a catered reception. The decorations and food were provided by Savory Fare of Durham. Guests were given tours of the new building and art collection. The tour ended with a visit to the first floor "Members Suite" where a plaque commemorating the contribution to the building hangs. The reception provided the opportunity for seasoned and newly certified paralegals to network and visit with old and new friends. It was a memorable and successful event. ■

Joy Belk is the assistant director of the Paralegal Certification Program.

Top Tips on Trust Accounting: Trust Account Reconciliation Sheet & Instructions

By Peter Bolac

On the next page you will find a Trust Account Reconciliation Sheet, which was designed to assist lawyers with their quarterly three-way reconciliations. Rule 1.15-3(d)(1) requires that lawyers complete a three-way reconciliation at least quarterly; however, the State Bar recommends that lawyers perform this task on a monthly basis. We have designed these instructions to make it as simple and clear as possible to complete your reconciliation. The numbers and sections in these instructions correspond to the numbers and sections on the reconciliation sheet.

Instructions

General Information

You will note that you must complete a separate form for each trust account. Many lawyers encounter problems because they try to combine all entrusted funds into one reconciliation regardless of whether they are held in separate accounts. You must also attach the listed documents in order for this to be a proper three-way reconciliation.

Reconciliation of Lawyer's Trust Account Records

1. Enter the total of positive client ledger balances as of the cut-off date on the bank statement. This includes any administrative funds ledger or firm funds ledger that you maintain to service the account. Do not include balances that are negative. If a client ledger shows a negative balance, check the box. On another page, explain the reason for the negative balance and show your corrective action.

2. List the balance shown on your general ledger/checkbook register as of the cut-off date on the bank statement. Using the same cut-off date on all documents is imperative to avoid mismatched numbers.

Bank Statement Reconciliation

3. List the ending balance as shown on the bank statement. On the next line list the deposits that have yet to appear on the bank statement (probably because they were made at the end of the month). You should provide a list of these outstanding deposits and note the number of these deposits in the provided line. Do the same for outstanding/uncleared checks. Take this time to examine the list of outstanding checks and to investigate why those checks have not cleared.

4. Add the outstanding deposits to the ending balance and subtract the outstanding checks to find your Subtotal.

5. This section is provided for lawyers to explain any necessary adjustments to their reconciliation. Adjustments might be required if, for example, you identify bank errors in your review of the bank statement. Adjustments that are made to balances must be explained with documentation.

6. Your Adjusted Trust Account Bank Balance is your Subtotal plus or minus any necessary adjustments listed in Section 5.

7. The balances listed in Sections 1, 2, and 6 should all agree. If they are different, attach an explanation and show how this imbalance has been corrected. The person who completed the reconciliation should sign the form, as well as the lawyer who reviewed the reconciliation and supporting documents. Save this reconciliation for six years as required in Rule 1.15-3.

If you have any questions about this form (or would like a PDF copy) or any other trust accounting issue, please contact Peter Bolac at (919) 450-7860 or Pbolac@ncbar.gov. Follow Peter on Twitter @TrustAccountNC for alerts on trust account scams.

Random Audits

Districts randomly selected for audit in the 3rd quarter are District 15A (Alamance County) and District 23 (Alleghany, Ashe, Wilkes, and Yadkin Counties). ■

Peter Bolac is the State Bar's district bar liaison and trust account compliance counsel.

IOLTA Update (cont.)

in these roles.

The council also appointed three trustees. John McMillan was reappointed to a second three-year term, and Betty Quick and Sid Eagles were appointed as new trustees replacing outgoing trustees Linda M. McGee and Hope H. Connell.

• John B. McMillan is in private practice in Raleigh. He currently serves on the Equal Access to Justice Commission. During his service as NC State Bar president in 2008-2009, he made it a priority to increase IOLTA income by implementing comparability, and he had earlier supported moving NC IOLTA to a mandatory program as a NCSB officer and councilor. His knowledge of the State Bar, the IOLTA program, and the legal aid community is extremely valuable to our program.

• Elizabeth L. Quick is in private practice in Winston-Salem. Through her work with a number of charitable organizations and foundations, she has strong knowledge of and interest in philanthropy. She is a past-president of the North Carolina Bar Association, 1997-98.

• Sidney S. Eagles Jr. is in private practice in Raleigh. From 1983 to 2004 he served first as a judge and later as chief judge of the North Carolina Court of Appeals. He has also served as counsel to the speaker of the house and as a special deputy attorney general. He will bring valuable judicial perspective to the board. ■

North Carolina State Bar REPORT DATE: _____ 20____

Trust Account Reconciliation Sheet

GENERAL INFORMATION

- Complete one form for *each* trust account
- Attach the following: list of clients with corresponding balances, copy of general ledger/checkbook register, list of outstanding deposits, list of outstanding checks, corresponding bank statement

Reconciliation of Lawyer's Trust Account Records

1. Total of positive client ledger balances as of _____ ..... $_____
   (Attach a list of clients with corresponding balances)

   Do any clients show a negative balance? ☐ *Yes* ☐ *No* If yes, attach explanation and corrective action.

2. General ledger/checkbook register balance as of _____ ..... $_____
   (Attach copy of general ledger/checkbook register)

Bank Statement Reconciliation

3. Account Balance as of _____ (per appended bank statement)..... . $_____

   Plus: Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) ..... +_____

   Number of deposits in transit ..... _____
   (attach list of outstanding deposits)

   Less: Outstanding (uncleared) checks (checks issued through end of month not reflected in bank statement)..... -_____

   Number of outstanding checks ..... _____
   (attach list of outstanding checks)

4. *Subtotal* ..... _____

5. *Other Adjustments (describe and attach supporting documentation)*
   _____
   _____ _____

6. *Adjusted Trust Account Bank Balance* (as of end of report month)..... $_____

7. The balance on line #6 ☐ *agreed* ☐ *did not agree* with the balances reflected in lines #1 and #2. If different, attach explanation and corrective action.

Reconciliation prepared by: _____ _____
Name and Position Signature

Reconciliation reviewed by: _____ _____
Lawyer Name Signature

Amendments Pending Approval of the Supreme Court

At its meetings on April 25, 2014, and July 25, 2014, the council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text see the Spring 2014 and Summer 2014 editions of the *Journal* or visit the State Bar website):

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

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

The proposed amendments eliminate the three different CLE requirements for reinstatement from inactive status and administrative suspension in favor of one standard that applies to all petitioners for reinstatement without regard to when the petitioner was transferred to inactive or suspended status; make March 10, 2011, the effective date for the requirement of passage of the bar exam if a petitioner was administratively suspended for seven years or more; and permit a member to take up to 6.0 CLE credits per year online to satisfy the requirements for reinstatement from inactive status and administrative suspension.

Proposed Amendment to the Rules Governing the Administration of the CLE Program

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

The proposed amendment requires a lawyer to be a nonresident for at least six consecutive months in a given year to qualify for the nonresident exemption from mandatory CLE.

Proposed Amendments to the Standards for Certification as a Specialist

27 N.C.A.C. 1D, Section .2500, Certification Standards for the Criminal Law Specialty, and 27 N.C.A.C. 1D, Section .2600, Certification Standards for the Immigration Law Specialty

The proposed amendments to the standards for the criminal law specialty reduce the number of opposing counsel and judges that must be listed as peer references on an application for certification in criminal law.

The proposed amendments to the standards for the immigration law specialty clarify that CLE courses on topics related to immigration law may be used to satisfy the CLE requirements for certification and recertification, and require four peer references to be from lawyers or judges who have substantial experience in immigration law.

Proposed Amendments to the Rules of Professional Conduct

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

In 2012 and 2013 the American Bar Association (ABA) amended the ABA Model Rules of Professional Conduct to address issues relative to outsourcing, lawyer mobility, and advances in technology. Following study by a special committee of the State Bar Council, similar proposed amendments to 13 of the North Carolina Rules of Professional Conduct (the NC Rules) were approved for publication by the council on January 24, 2014. An executive summary and the proposed rule amendments can be viewed in the Spring 2014 edition of the *Journal* and on the State Bar website (ncbar.gov/PDFs/Ethics_20-20.pdf).

Previously, at a meeting on October 25, 2013, the council voted to adopt amendments to Rule 1.17 and Rule 7.3 of the NC Rules, unrelated to the ABA amendments, for transmission to the North Carolina Supreme Court for approval (see the Fall 2013 edition of the *Journal* or visit the State Bar website). However, at its meeting on January 24, 2014, the council decided that all pending proposed amendments to the NC Rules should be submitted to the Supreme Court at one time. Therefore, proposed amendments to the following North Carolina Rules of Professional Conduct have been approved for transmission to the Supreme Court (proposed amendments to the title of a rule are noted):

Rule 1.0, *Terminology*
Rule 1.1, *Competence*
Rule 1.4, *Communication*
Rule 1.6, *Confidentiality of Information*
Rule 1.17, *Sale of a Law Practice*
Rule 1.18, *Duties to Prospective Client*
Rule 4.4, *Respect for Rights of Third Persons*
Rule 5.3, *Responsibilities Regarding Nonlawyer* ~~*Assistants*~~ ***Assistance***
Rule 5.5, *Unauthorized Practice of Law;* ***Multijurisdictional Practice of Law***
Rule 7.1, *Communications Concerning a Lawyer's Services*
Rule 7.2, *Advertising*
Rule 7.3, ~~*Direct Contact with Potential*~~ ***Solicitation of*** *Clients*
Rule 8.3, *Disciplinary Authority; Choice of Law*

Proposed Amendments to the Rules of the Board of Law Examiners

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

Proposed amendments to Rules Governing Admission to the Practice of Law change the street and mailing address listed for the offices of the Board of Law Examiners to reflect the board's recent move to a new location.

The Process

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

Proposed Amendments

At its meeting on July 25, 2014, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Discipline and Disability Rules

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

To better identify the program's purpose, the proposed amendments change the name of the Trust Accounting Supervisory Program to the Trust Account Compliance Program. There are no changes to the substance of the rule other than the name change.

.0112 Investigations: Initial Determination; Notice and Response; Committee Referrals

(a) Investigation Authority

...

(k) Referral to Trust Account~~ing Supervisory~~ **Compliance** Program

(1) If, at any time before a finding of probable cause, the Grievance Committee determines that the alleged misconduct is primarily attributable to the respondent's failure to employ sound trust accounting techniques, the committee may offer the respondent an opportunity to voluntarily participate in the State Bar's ~~t~~**T**rust ~~a~~**A**ccount ~~supervisory~~ **Compliance** ~~p~~**P**rogram for up to two years before the committee considers discipline.

If the respondent accepts the committee's offer to participate in the ~~supervisory~~ **compliance** program, the respondent must fully cooperate with the Trust Account Compliance Counsel….

(2) Completion of Trust Account ~~Supervisory~~ **Compliance** Program

...

(3) The committee will not refer to the program any case involving possible misappropriation of entrusted funds, criminal conduct, dishonesty, fraud, misrepresentation, or deceit, or any other case the committee deems inappropriate for referral...Referral to the Trust Account~~ing~~ ~~Supervisory~~ **Compliance** Program is not a defense to allegations that a lawyer misappropriated entrusted funds, engaged in criminal conduct, or engaged in conduct involving dishonesty, fraud, misrepresentation, or deceit, and it does not immunize a lawyer from the disciplinary consequences of such conduct.

Proposed Amendments to the Rules Governing the Administration of the CLE Program

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

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

.1518 Continuing Legal Education Program

(a) Annual Requirement

...

(c) Professionalism Requirement for New Members.

Except as provided in paragraph (d)(1), each active member admitted to the North Carolina State Bar after January 1, 2011, must complete the North Carolina State Bar Professionalism for New ~~Admittees~~ **Attorneys** Program (PNA Program) in the year the member is first required to meet the continuing legal education requirements as set forth in Rule .1526(b) and (c) of this subchapter. CLE credit for the PNA Program shall be applied to the annual mandatory continuing legal education requirements set forth in paragraph (a) above.

(1) Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State

...

(2) Evaluation ...

(3) ~~Format~~ **Timetable** and Partial Credit. The PNA Program shall be presented in two six-hour blocks (with appropriate breaks) over two days. The six-hour blocks do not have to be attended on consecutive days or taken from the same provider; however, no partial credit shall be awarded for attending less than an entire six-hour block unless a special circumstances exemption is granted by the board. **The board may approve an alternative timetable for a PNA program upon demonstration by the provider that the alternative timetable will provide an enhanced learning experience or for other good cause; however, no partial credit shall be awarded for attending less than the entire 12-hour program unless a special circumstances exemption is granted by the board.**

(4) Online and Prerecorded Programs. The PNA Program may be distributed over the Internet by live web streaming (webcasting) but no part of the program may be taken online (via the Internet) on demand…

(d) Exemptions from Professionalism Requirement for New Members.

...

Proposed Amendments to Certification Standards for the Juvenile Delinquency Subspecialty

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

The proposed amendments reduce the number of practice hours required to meet the "substantial involvement" criterion for the juvenile delinquency subspecialty and allow for additional forms of "practice equivalents." This will reflect more realistically the practice experience of qualified

juvenile delinquency practitioners, particularly in rural communities.

.2508 Standards for Certification as a Specialist in Juvenile Delinquency Law

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

(a) Licensure and Practice ...

(b) Substantial Involvement - An applicant shall affirm to the board that the applicant has experience through substantial involvement in the practice of juvenile delinquency law.

(1) Substantial involvement shall mean during the five years immediately preceding the application, the applicant devoted an average of at least ~~500~~ **400** hours a year to the practice of juvenile delinquency law, but not less than ~~400~~ **100** hours in any one year. "Practice" shall mean substantive legal work, specifically including representation of juveniles or the state in juvenile delinquency court, done primarily for the purpose of providing legal advice or representation, or a practice equivalent.

(2) "Practice equivalent" shall mean:

(A) ...

(B) ...

(C) Service as a law professor in a juvenile delinquency legal clinic at an accredited law school may be used to meet the requirement set forth in Rule .2508(b)(1).

(D) The practice of state criminal law may be used to meet the requirement set forth in Rule .2508(b)(1) but not to exceed 100 hours for any year during the five years. "Practice of state criminal law" shall mean substantive legal work representing adults or the state in the state's criminal district and superior courts

(3) ...

(b) Continuing Legal Education

...

Proposed Amendments to the Standards for Certification of Paralegals

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

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

.0119 Standards for Certification of Paralegals

(a) To qualify for certification as a paralegal, an applicant must pay any required fee, and comply with the following standards:

(1) Education. The applicant must have earned one of the following:

(A) an associate's, bachelor's, or master's degree from a qualified paralegal studies program;

(B) **a certificate from a qualified paralegal studies program and** an associate's or bachelor's degree in any discipline from any institution of post-secondary education that is accredited by an accrediting body recognized by the United States Department of Education **(an accredited US institution) or an equivalent degree from a foreign educational institution if the degree is determined to be equivalent to a degree from an accredited US institution by a organization that is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credentials Evaluators (AICE)** ~~and a certificate from a qualified paralegal studies program~~; or

(C) a juris doctorate degree from a law school accredited by the American Bar Association.

(2) Examination.

... ■

In Memoriam

Douglas E. Canders
Fayetteville, NC

John Fleming Carter III
Wilmington, NC

Leonor Ortiz Childers
Durham, NC

David McKenzie Clark
Greensboro, NC

William C. Connor
Greensboro, NC

John Wyatt Dickson
Fayetteville, NC

Wiley Edwin Gavin
Asheboro, NC

William Campbell Gray Jr.
Wilkesboro, NC

Fred A. Gregory
Durham, NC

Charles Franklin Griffin
Charlotte, NC

Robert Curtis Gunst Sr.
Waxhaw, NC

Alton Myles Haynes Jr.
Pineville, NC

Margaret McLean Faw Fonvielle Heyward
Wilmington, NC

Clark Mason Holt
Reidsville, NC

William Horace Lewis Jr.
Farmville, NC

William F. Marshall Jr.
Danbury, NC

Thomas Hill Matthews
Rocky Mount, NC

Christy Eve Reid
Charlotte, NC

Archie Leak Smith
Asheboro, NC

Dow M. Spaulding
Greensboro, NC

Daniel Thomas Tillman
Wadesboro, NC

David H. Wagner Jr.
Winston-Salem, NC

Harold L. Waters
Jacksonville, NC

Laura Kay Zhao
Charlotte, NC

Committee Revisits Sending a NC Subpoena to a Records Custodian in Another Jurisdiction

Council Actions

At its meeting on July 25, 2014, the State Bar Council adopted the ethics opinions summarized below:

2013 Formal Ethics Opinion 8

Responding to the Mental Impairment of Firm Lawyer

Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.

2013 Formal Ethics Opinion 12

Disclosure of Settlement Terms to Former Lawyer Asserting a Claim for Fee Division

Opinion rules that, in a workers' compensation case, when a client terminates representation, pursuant to an applicable exception to the duty of confidentiality, the subsequently hired lawyer may disclose the settlement terms to the former lawyer to resolve a pre-litigation claim for fee division.

2014 Formal Ethics Opinion 4

Serving Subpoenas on Health Care Providers Covered by HIPAA

Opinion rules that a lawyer may send a subpoena for medical records to an entity covered by HIPAA without providing the assurances necessary for the entity to comply with the subpoena as set out in 45 C.F.R. § 164.512(e)(ii).

2014 Formal Ethics Opinion 5

Advising a Civil Litigation Client About Social Media

Opinion rules a lawyer must advise a client about information on social media if information and postings on social media are relevant and material to the client's representation. The lawyer may advise a client to remove information on social media if not spoliation or otherwise illegal.

2014 Formal Ethics Opinion 6

Duty to Avoid Conflicts When Advising Members of Nonprofit Organization

Opinion rules that a lawyer who provides free brief consultations to members of a nonprofit organization must still screen for conflicts prior to conducting a consultation.

Ethics Committee Actions

At its meeting on July 24, 2014, the Ethics Committee voted to send the following proposed opinion to a subcommittee for continued study: Proposed 2013 FEO 14, *Representation of Parties to a Commercial Real Estate Loan Closing*. The committee also voted to publish a proposed substitute opinion for 2013 FEO 2, *Providing Defendant with Discovery During Representation*, an opinion that was adopted by the State Bar Council on January 24, 2014. Although the committee declined to recommend withdrawal of the existing opinion at this time, it is publishing the proposed substitute opinion to garner comment from members of the bar. On page 46 the Legal Ethics column considers the competing concerns addressed in the adopted opinion and the proposed substitute opinion which are printed, in their entirety, after the article. The Ethics Committee also voted to publish a revised version of one proposed opinion and three new proposed opinions. The comments of readers on the proposed opinions are welcomed.

Proposed 2014 Formal Ethics Opinion 1
Protecting Confidential Client Information When Mentoring
July 24, 2014

Proposed opinion examines issues relative to confidentiality and the attorney-client privilege when mentoring law students and lawyers.

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

Inquiry #1:

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

Opinion #1:

Yes. The lawyer may allow the law student to observe the consultation so long as the student signs a confidentiality agreement and the lawyer's client gives his or her informed consent, *confirmed in writing*.

Rule 1.6(a) of the Rules of Professional Conduct provides that a lawyer shall not reveal information acquired during the professional relationship with a client unless (1) the client gives informed consent; (2) the disclosure is impliedly authorized; or (3) one of the exceptions set out in Rule 1.6(b) applies. "Informed consent" is defined by Rule 1.0(f) as denoting "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances."

Relevant to mentoring scenarios is the potential waiver of the attorney-client privilege that can occur when communications between the lawyer and the client take place in the presence of a third party. The attorney-client privilege prohibits a lawyer from testifying as to confidential communications between the lawyer and the client for the purpose of legal representation. *State v. McIntosh*, 336 NC 517, 523, 444 S.E.2d 438, 441 (1994).

It is important to note the distinction between the duty of confidentiality set out in Rule 1.6 of the Rules of Professional Conduct

and the attorney-client privilege. Although the concepts of confidentiality and attorney-client privilege are often used interchangeably, privilege applies to a much narrower category of client information. A privilege exists if (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated, and (5) the client has not waived the privilege. *McIntosh*, 336 NC at 523-24, 444 S.E.2d at 442. Because the representation of a client typically includes many activities that are not confidential communications between a client and a lawyer, there are many opportunities for a mentee to observe a lawyer/mentor without implicating the attorney-client privilege. (Examples include: real estate closings, court proceedings, witness interviews, etc.)

The privilege is fundamental to the client-lawyer relationship and the trust that underpins that relationship. To seek the client's informed consent, the lawyer must research the law relating to the attorney-client privilege and explain to the client what effect the law student's presence during the consultation may have on the attorney-client privilege including a potential waiver of the privilege. The lawyer must also explain any other adverse effect on the client's interests. ABA Standing Comm. on Ethics and Prof'l Resp., Formal Op. 98-411(1988). The lawyer must not ask for consent unless, in his professional opinion, either the attorney-client privilege will not be waived by the presence of the law student or a potential waiver of the attorney-client privilege will cause minimal, or no, detriment to the client's interests such that to ask for consent is reasonable.

Pursuant to Rule 1.0(c), "confirmed in writing" in this context "denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent."

The issues addressed in this opinion as to the potential waiver of the privilege are limited to mentoring scenarios where a law student/new lawyer/mentee is *observing* a communication between the lawyer and the lawyer's client but is not participating in the representation as co-counsel or as an agent of the representing lawyer.

Inquiry #2:

If a lawyer is mentored by a lawyer in a different law firm, do the requirements in Opinion #1 apply when the lawyer-mentee observes a client consultation between the lawyer-mentor and a client or when the lawyer-mentor observes the lawyer-mentee conducting such a consultation with his client?

Opinion #2:

Yes. The lawyer conducting the consultation must evaluate the effect of the observing lawyer's presence on the attorney-client privilege. If the lawyer concludes that, in his professional opinion, either the attorney-client privilege will not be waived by the presence of the other lawyer, or a potential waiver of the attorney-client privilege will cause minimal or no detriment to the client's interests such that to ask for consent is reasonable, the lawyer may ask the client to consent to the observation. The lawyer must obtain the client's informed consent *confirmed in writing*.

The lawyer conducting the consultation must also obtain an agreement from the observing lawyer to maintain the confidentiality of the information as well as an agreement that the observing lawyer will not engage in adverse representations. Rule 1.7 and Rule 1.9.

Both lawyers should check for conflicts of interest in advance of the consultation. Rule 1.7 and Rule 1.9.

Inquiry #3:

When a lawyer seeks advice from a lawyer-mentor on the representation of a client of the lawyer, what actions should be taken to protect confidential client information?

Opinion #3:

If possible, the lawyer should try to obtain guidance without disclosing identifying client information, which can be done by using a hypothetical. If the consultation is general and does not involve the disclosure of identifying client information, no client consent is necessary and the lawyers do not have to comply with the requirements set out in Opinion #2.

If the consultation is intended to help the lawyer-mentee comply with the ethics rules, no client consent is necessary and the lawyers do not have to comply with the requirements set out in Opinion #2. Rule 1.6(b)(5) provides that a lawyer may reveal protected client information to the extent the lawyer reasonably believes necessary "to secure legal advice about the lawyer's compliance with [the Rules of Professional Conduct]." Pursuant to Comment [10] to Rule 1.6:

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

Public Information

The Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

Citation

To foster consistency in citation to the North Carolina Rules of Professional Conduct and the formal ethics opinions adopted by the North Carolina State Bar Council, the following formats are recommended:

· To cite a North Carolina Rule of Professional Conduct: NC Rules of Prof'l Conduct Rule 1.1 (2003)

· To cite a North Carolina formal ethics opinion: NC State Bar Formal Op. 1 (2011)

Note that the current, informal method of citation used within the formal ethics opinions themselves and in this *Journal* article will continue for a transitional period.

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the Rules of Professional Conduct as revised effective March 1, 2003, and thereafter amended, and referred to herein as the Rules of Professional Conduct (2003). The proposed opinions are issued pursuant to the "Procedures for Ruling on Questions of Legal Ethics." 27 N.C.A.C. ID, Sect .0100. Any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. Any comment or request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by September 30, 2014.

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

(b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

If the consultation does not involve advice about the lawyer's compliance with the Rules of Professional Conduct, a hypothetical is not practical, or making the inquiry risks disclosure of information relating to the representation, the lawyer-mentee must comply with the requirements set out in Opinion #2.

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

Proposed 2014 Formal Ethics Opinion 7
Use of North Carolina Subpoena to Obtain Documents from Foreign Entity or Individual
July 24, 2014

Proposed opinion rules that a lawyer may provide a foreign entity or individual with a North Carolina subpoena accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction, the recipient is not required to comply with the subpoena, and the subpoena is being provided solely for the recipient's records.

Editor's note: This opinion supplements and clarifies 2010 FEO 2, *Obtaining Medical Records from Out of State Health Care Providers.*

Inquiry #1:

In a state legal matter, a lawyer wishes to obtain documents from a medical provider or other entity that is not located in North Carolina and does not have a registered agent in the state (foreign entity). The lawyer contacts the foreign entity and requests the documents. The lawyer informs the foreign entity that the subpoena power set out in N.C. R. Civ. P. 45 does not extend to the foreign jurisdiction. The foreign entity indicates that it will comply with the request for documents upon the receipt of a North Carolina subpoena "for its records."

May the lawyer provide the foreign entity with a North Carolina subpoena accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction and is provided to the entity solely for the entity's records?

Opinion #1:

Yes. Rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 236 provides that it is false and deceptive for a lawyer to use the subpoena process to mislead the custodian of documentary evidence as to the lawyer's authority to require the production of such documents. 2010 FEO 2 prohibits a lawyer's use of a subpoena to request medical records under the authority of Rule 45 knowing that the North Carolina subpoena is unenforceable. 2010 FEO 2 explains that if "the North Carolina subpoena is not enforceable out of state, the lawyer may not misrepresent to the out of state health care provider that it must comply with the subpoena."

RPC 236 and 2010 FEO 2 prohibit a lawyer from making misrepresentations to the subpoena recipient that the lawyer has the legal authority to issue the subpoena under Rule 45 or *misleading* the recipient as to whether compliance with the subpoena is required by law.

If the subpoena is accompanied by a statement/letter explaining that the subpoena is not enforceable in the foreign jurisdiction, the recipient is not required to comply with the subpoena, and the subpoena is being provided solely for the entity's records, the lawyer has not made misrepresentations to, nor misled, the subpoena recipient. The subpoena recipient is aware that it cannot be compelled to comply with the subpoena and may determine whether to provide the requested documents voluntarily.

Inquiry #2:

Would the answer differ if the lawyer wishes to obtain the appearance and testimony of an individual over which the North Carolina court does not have *in personam* jurisdiction?

Opinion #2:

No. If an individual requests a North Carolina subpoena, knowing that the North Carolina court lacks *in personam* jurisdiction over the individual and the subpoena will not be enforceable, the lawyer may provide the individual with the subpoena, accompanied by a statement/letter explaining that the subpoena is not enforceable as to the individual and is being provided solely at the individual's request.

Proposed 2014 Formal Ethics Opinion 8
Accepting an Invitation from a Judge to Connect on LinkedIn
July 24, 2014

Proposed opinion rules that a lawyer may accept an invitation from a judge to be a "con-

nection" on a professional networking website, and may endorse a judge. However, a lawyer may not accept a legal skill or expertise endorsement or recommendation from a judge.

Facts:

Lawyer has a profile listing on LinkedIn, a social networking website for people in professional occupations. The website allows registered users ("members") to maintain a list of contact details on their LinkedIn pages for people with whom they have some level of relationship via the website. These contacts are called "connections." Members can invite anyone (whether a site user or not) to become a connection.

LinkedIn can be used to list jobs and search for job candidates, to find employment, and to seek out business opportunities. Members can view the connections of other members, post their photographs, and view the photos of other members. Members can post comments on another member's profile page. Members can also endorse or write recommendations for other members. Such endorsements or recommendations, if accepted by the recipient, are posted on the recipient's profile listing.

Inquiry #1:

May a lawyer with a professional profile on LinkedIn accept an invitation to connect from a judge?

Opinion #1:

Yes. Interactions with judges using social media are evaluated in the same manner as personal interactions with a judge, such as an invitation to dinner. In certain scenarios, a lawyer may accept a judge's dinner invitation. Similarly, in certain scenarios a lawyer may accept a LinkedIn invitation to connect from a judge. However, if a lawyer represents clients in proceedings before a judge, the lawyer is subject to the following duties: to avoid conduct prejudicial to the administration of justice; to not state or imply an ability to influence improperly a government agency or official; and to avoid *ex parte* communications with a judge regarding a legal matter or issue the judge is considering. *See* Rule 3.5 and Rule 8.4. These duties may require the lawyer to decline a judge's invitation to connect on LinkedIn.

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." Rule 8.4(e) provides that it is professional misconduct for a lawyer to "state or imply an ability to influence improperly a government agency or official." Lawyers have an obligation to protect the integrity of the judicial system and to avoid creating an appearance of judicial partiality. *See* 2005 FEO 1.

If a lawyer receives an invitation to connect from a judge during the pendency of a matter before the judge, and the lawyer concludes that accepting the invitation will impair the lawyer's compliance with these duties, the lawyer should not accept the judge's invitation to connect until the matter is concluded. The lawyer may communicate to the judge the reason the lawyer did not accept the judge's invitation. Such a communication with the judge is not a prohibited *ex parte* communication provided the communication does not include a discussion of the underlying legal matter.

Rule 3.5 prohibits lawyers from engaging in *ex parte* communications with a judge. Because connected members can post comments on each other's profile pages, the connection between a judge and a lawyer appearing in a matter before the judge could lead to improper *ex parte* communications. Therefore, while the lawyer has a matter pending before a judge, the lawyer may not use LinkedIn or any other form of social media to communicate with the judge about the pending matter.

Rule 8.4(f) provides that it is professional misconduct for a lawyer to "knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law." To the extent that a judge is prohibited by the North Carolina Code of Judicial Conduct from participating in LinkedIn, or from sending invitations to connect to lawyers, a lawyer may not assist the judge in violating such prohibitions.

Inquiry #2:

May the lawyer send an invitation to connect to a judge?

Opinion #2:

Yes, subject to the limitations described in Opinion #1.

Inquiry #3:

A LinkedIn member has the option of displaying a "skills & expertise" section within his profile. A member can add items to the "skills & expertise" section of his profile page. In addition, some connections can add a new item to another member's "skills & expertise" section, can "endorse" a skill or expertise already listed for the member, or write a recommendation for the member. A member who is being endorsed by another member will receive a notification containing the identity of the endorser and the specific skill or expertise that is being endorsed. The member may decline the endorsement entirely or choose the specific endorsements to be displayed. The endorsed member may also subsequently edit the "skills & expertise" section to "hide" selected endorsements. If a member endorses another member, and the endorsement is not declined by the recipient, the endorser's name and profile picture will appear next to the skill on the endorsed member's profile.

A recommendation is a comment written by a LinkedIn member to recognize or commend another member. When someone recommends a member, the recommended member will receive a message in the recommended member's LinkedIn inbox and a notification on the member's "Manage Recommendations" page. Recommendations are only visible to connections. A member can choose to hide a recommendation from the member's profile, but cannot delete it. Recommendations written for others can be withdrawn or revised.

May a lawyer endorse a judge's legal skills or expertise, or write a recommendation on the judge's profile page?

Opinion #3:

Yes, subject to the limitations explained in Opinion #1.

Inquiry #4:

May a lawyer accept an endorsement or recommendation from a judge and display the endorsement or recommendation on his profile page?

Opinion #4:

No. Displaying an endorsement or recommendation from a judge on a lawyer's profile page would create the appearance of judicial partiality and the lawyer must decline. *See* Rule 8.4(e).

Inquiry #5:

May a lawyer accept and post endorsements and recommendations on his

LinkedIn profile page from persons other than judges?

Opinion #5:

Lawyers are professionally obligated to ensure that communications about the lawyer or the lawyer's services are not false or misleading. *See* Rule 7.1(a). Provided that the content of the endorsement or recommendation is truthful and not misleading in compliance with the requirements of Rule 7.1, the lawyer may post endorsements and recommendations from persons other than judges on the lawyer's LinkedIn profile page. *See* 2012 FEO 8.

Inquiry #6:

A lawyer previously accepted and displayed on his LinkedIn profile page an endorsement or recommendation from a lawyer who subsequently became a judge. Is the lawyer required to remove the endorsement or recommendation from the lawyer's profile?

Opinion #6:

Yes. *See* Opinion #4.

Inquiry #7:

Do the holdings in this opinion apply to other social media applications such as Facebook, Twitter, Google+, Instagram, and Myspace?

Opinion #7:

The holdings apply to any social media application that allows public display of connections, endorsements, or recommendations between lawyers and judges.

Proposed 2014 Formal Ethics Opinion 9
Private Lawyer Supervision of Investigation Involving Misrepresentation
July 24, 2014

Proposed opinion rules that a private lawyer may supervise an investigation involving misrepresentation if certain conditions are satisfied.

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

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

Inquiry:

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

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

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

Opinion:

Rule 8.4(c) provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." This prohibition is extended to third parties acting at the direction of a lawyer by Rule 8.4(a). However, the Rules of Professional Conduct are rules of reason. Rule 0.2, Scope. Therefore, not every act of dishonesty, deceit, or misrepresentation constitutes professional misconduct.

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

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

A lawyer may advise, direct, or supervise the use of misrepresentation (1) in lawful efforts to obtain information on unlawful activity; (2) in the investigation of violations of criminal law, civil law, or constitutional rights; (3) if the lawyer's conduct is otherwise in compliance with the Rules of Professional Conduct; (4) the lawyer has a good faith belief that there is a reasonable possibility that a violation of criminal law, civil law, or constitutional rights has taken place, is taking place, or will take place in the foreseeable future; (5) misrepresentations are limited to identity or purpose; and (6) the evidence sought is not reasonably and readily available through other means.

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

Grappling with the Duty to Inform When a Client is Incarcerated

By Suzanne Lever

Imagine that you have been wrongly accused of a crime that is punishable by death. Because you are incarcerated, you have been forced to close down your law practice. With no income, you are unable to retain a private defense lawyer. Therefore, you are being defended by a court-appointed lawyer. Eager to learn what evidence the state has against you, you ask to see the discovery. Your lawyer reviews the discovery and provides you with his summary of the relevant discovery materials. Anxious and unsatisfied, you request the opportunity to review the complete discovery file. Do the Rules of Professional Conduct require your lawyer to comply with your request?

Now imagine that you have been court-appointed to represent a defendant in a capital case. While awaiting trial, the incarcerated defendant has had several amorous telephone conversations with his girlfriend, all of which have been recorded per prison regulations. The recordings are included in the discovery materials provided to you by the state. Your paralegal reviews the 17 plus hours of recordings and determines that they contain no information relevant to your client's legal defense. After providing the defendant with your summary of the relevant discovery materials, the defendant requests the opportunity to personally review all of the discovery, including the recordings of the telephone conversations. It is not permissible to leave the discovery with the defendant in the jail. Therefore, one of your staff members will have to travel to the jail and sit with the defendant while he reviews the written discovery and listens to the recordings. Do the Rules of Professional Conduct require you to comply with the defendant's request?

Rule 1.4 provides that a lawyer shall keep a client *reasonably informed* about the status of a matter and promptly comply with reasonable requests for information. The two scenarios above demonstrate that what is "reasonable" may be in the eyes of the beholder.

A recently adopted ethics opinion attempts to give guidance to lawyers faced with such discovery review requests. Pursuant to 2013 FEO 2 (adopted 1/24/2014), if, *after* providing a criminal client with a summary of the discovery materials, the client requests access to the entire discovery file, the lawyer must afford the client the opportunity to review all of the "relevant" discovery materials unless the lawyer believes it is not in the best interest of the client's legal defense to comply with the request. In determining what discovery materials are relevant, and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his independent professional judgment.

The content of 2013 FEO 2 was, and continues to be, hotly debated. Some lawyers believe a criminal defense client is absolutely entitled to review everything in the client's file. Other lawyers argue that a criminal defense lawyer has absolute discretion to determine what file materials to disclose to a criminal client. Rule 1.2 discusses the general allocation of authority between the lawyer and the client. The rule provides that a lawyer must abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. Comment [2] to Rule 1.2 notes that clients "normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal, and tactical matters."

Query: Is a criminal defense lawyer's decision on whether to provide a client with unlimited access to discovery materials a matter of trial strategy and judgment that ultimately lies within the lawyer's discretion?

There are genuine concerns underlying the continuing discussion: the limited resources available to represent indigent defendants; the practical difficulties in providing discovery review to an incarcerated defendant; the sheer volume of discovery produced pursuant to open discovery laws; and the desire to provide equal access to justice to all criminal defendants.

2013 FEO 2 attempts to address these sometimes competing concerns in the context of a lawyer's duties under the Rules of Professional Conduct. Of paramount importance in the drafting was the desire to craft an ethics opinion that did not differentiate a lawyer's professional responsibilities to clients based on the client's location or ability to pay for the lawyer's services.

The Ethics Committee continued to debate 2013 FEO 2 even after its adoption. Given the importance of the issues addressed in the opinion, as well as the necessity for immediate guidance for criminal defense lawyers, the Ethics Committee took an unusual step at its meeting on July 24, 2014, by voting to publish for comment an alternative version of the opinion.

Without substantially changing the conclusions in 2013 FEO 2, the alternative proposed opinion emphasizes that, in determining what discovery materials are relevant and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his or her independent professional judgment in the context of the critical decisions that are exclusively those of the criminal defendant. Under Rule 1.2(a)(1), the client in a criminal case has the authority to decide the "plea to be entered, whether to waive a jury trial, and whether [to] testify." The opinion draws the connection between these decisions and the duty to keep the client reasonably informed and to respond

to requests for information. The alternative proposed opinion states that a criminal defense lawyer complies with the requirement of Rule 1.4 to keep a client "reasonably informed" by providing the client with information sufficient to make these important decisions.

The two opinions also differ slightly as to the criteria for withholding relevant discovery from a criminal defense client. The adopted opinion provides that a lawyer may withhold relevant discovery if withholding the information is in the best interest of the client's legal defense. The adopted opinion adds that the defense lawyer may redact information that would endanger the safety and welfare of the client or others, violate a court rule or order, or is subject to a protective order or nondisclosure agreement. The acceptable justifications for withholding relevant discovery in the alternative opinion are expanded to include discovery agreements and time constraints due to the volume of discovery and deadlines for trial or pleas.

Query: Does the adopted opinion allow more discretion to the lawyer because it does not specify the conditions under which a lawyer may withhold review of discovery from an incarcerated client, or is more specific guidance, as provided in the alternative opinion, preferable?

Comments on the adopted opinion as well as the alternative draft will be considered at the October ethics meeting.

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

Providing Discovery to an Incarcerated Client

At its meeting on July 24, 2014, the Ethics Committee considered a motion to recommend that the State Bar Council withdraw existing ethics opinion 2013 FEO 4, which was adopted by the Council in January of this year, and to publish a proposed substitute opinion. The motion failed but a second motion, to publish the proposed substitute opinion for comment, passed. It was agreed that the existing opinion would be published together with the substitute so that members of the bar could compare and offer comment on whether the substitute, by providing additional or different guidance, should supersede the existing opinion. Comments are strongly encouraged and should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, by September 30, 2014.

2013 FEO 2
Providing Defendant with Discovery During Representation

January 24, 2014

Opinion rules that if, after providing a criminal client with a summary/explanation of the discovery materials in the client's file, the client requests access to the entire file, the lawyer must afford the client the opportunity to meaningfully review all of the relevant discovery materials unless the lawyer believes it is in the best interest of the client's legal defense not to do so.

Inquiry #1:

Lawyer represents Defendant in a criminal case. The state has provided Lawyer with discovery as PDF files. The state has also provided Lawyer DVDs containing copies of the video recordings of interrogations of Defendant and a codefendant; surveillance videotapes; and audio recordings of calls made by Defendant and the codefendant from the jail.

Lawyer reviewed the discovery and provided Defendant with a summary of the evidence. Defendant demands that he be provided a copy of the entire 1,200 pages of discovery and be allowed to view/listen to the 17 hours of video and audio recordings.

Does Lawyer have an ethical duty to comply with the client's demand?

Opinion #1:

As a matter of professional responsibility, Rule 1.4 requires a lawyer to "keep a client reasonably informed about the status of a matter" and "promptly comply with reasonable requests for information." As stated in comment [5] to Rule 1.4:

> The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued...The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

The duties set out in Rule 1.4 are similar to those found in ABA Standards for Criminal Justice, Defense Functions, Standard 4-3.8 (3d ed. 1993) which provides:

> (a) Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information.
>
> (b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

During the course of the representation, the lawyer complies with the requirements of Rule 1.4 by providing the client with a summary of the discovery materials and consulting with the client as to the relevance of the materials to the client's case. However, if the lawyer has provided the client with a summary/explanation of the discovery materials and the client, nonetheless, requests copies of any of the file materials, the lawyer must afford the client the opportunity to meaningfully review all of the relevant discovery material unless the lawyer believes it is in the best interest of the client's legal defense to deny the request. The lawyer is not required to provide the client with a physical copy of the discovery materials during the course of the representation.

In determining what discovery materials are relevant, and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his or her independent professional judgment. As stated in comment [5] to Rule 1.4: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." However, as stated in comment [7] to Rule 1.4, a lawyer "may not withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person." Therefore, the lawyer may not deny the request due to issues of expense or inconvenience.

Inquiry #2:

If Lawyer provides Defendant with a copy of, or access to, discovery materials, may Lawyer redact or otherwise remove

private information of a third person, such as the address of a witness or pictures of an alleged rape victim?

Opinion #2:

The lawyer may redact or otherwise remove information that the lawyer determines, in his professional discretion, should not be disclosed to the client, including information that would endanger the safety and welfare of the client or others, violate a court rule or order, or is subject to any protective order or nondisclosure agreement. *See* Rule 1.4, cmt. [7].

Proposed Substitute for 2013 Formal Ethics Opinion 2
Providing Incarcerated Defendant with Opportunity to Review Discovery Materials

July 24, 2014

Proposed substitute opinion rules that if, after providing an incarcerated criminal client with a summary/explanation of the discovery materials in the client's file, the client requests access to any of the discovery materials, the lawyer must afford the client the opportunity to meaningfully review relevant discovery materials unless certain conditions exist.

Inquiry #1:

Lawyer represents Defendant in a criminal case. The state has provided Lawyer with discovery as PDF files. The state has also given Lawyer DVDs containing copies of the video recordings of interrogations of Defendant and a codefendant; surveillance videotapes; and audio recordings of calls made by Defendant and the codefendant from the jail.

Lawyer reviewed the discovery and provided Defendant with a summary of the evidence. Defendant demands that he be provided a copy of the entire 1,200 pages of discovery and be allowed to view/listen to the 17 hours of video and audio recordings.

Does Lawyer have an ethical duty to comply with the client's demand?

Opinion #1:

As a matter of professional responsibility, Rule 1.4 requires a lawyer to "keep a client reasonably informed about the status of a matter" and "promptly comply with reasonable requests for information." As stated in comment [5] to Rule 1.4:

> The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued...The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

The duties set out in Rule 1.4 are similar to those found in ABA Standards for Criminal Justice, Defense Functions, Standard 4-3.8 (3d ed. 1993) which provides:

> (a) Defense counsel should keep the client informed of the developments in the case and the progress of preparing the defense and should promptly comply with reasonable requests for information.
>
> (b) Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Under Rule 1.2(a)(1), the client in a criminal case has the authority to decide, "after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify." During the course of the representation, a criminal defense lawyer complies with the requirements of Rule 1.4 to keep a client "reasonably informed" by providing the client with sufficient information to make informed decisions about these important issues. This obligation is fulfilled by providing the client with a summary of the discovery materials and consulting with the client as to the relevance of the materials to the client's case. If the lawyer has provided the client with a summary/explanation of the discovery materials and the client, nonetheless, requests copies of or asks to review any of the file materials, the duty to comply with reasonable requests for information requires the lawyer to afford the client the opportunity to meaningfully review relevant discovery material unless one or more of the following conditions exist: (1) the lawyer believes it is in the best interest of the client's legal defense to deny the request; (2) a protective order or court rule limiting the discovery materials that may be shown to the defendant or taken to a jail or prison is in effect; (3) such review is prohibited by the specific terms of a discovery agreement[1] between the prosecution and the defense lawyer; (4) because of circumstances beyond the defense counsel's control, such review is not feasible in light of the volume of discovery materials and the time remaining before trial or before a decision must be made by the client on a plea offer; or (5) disclosure of the discovery materials will endanger the safety or welfare of the client or others.

In determining what discovery materials are relevant, and what disclosure is in the best interest of the client's legal defense, the lawyer must exercise his or her independent professional judgment in the context of the decisions that the defendant must make about what plea to enter, whether to waive jury trial, and whether to testify. *See* Rule 1.2(a)(1). As noted above: "The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Rule 1.4, cmt. [5]. However, as stated in comment [7] to Rule 1.4, a lawyer "may not withhold information to serve the lawyer's own interest or convenience or the interest or convenience of another person." Therefore, the lawyer may not deny the request due to issues of expense or inconvenience.

Regardless of whether the lawyer determines that the client should have an opportunity to review some or all of the discovery materials, the lawyer is not required to provide the client with a physical copy of the discovery materials during the course of the representation.

Inquiry #2:

If Lawyer provides Defendant with a copy of, or access to, discovery materials, may Lawyer redact or otherwise remove private information of a third person, such as the address of a witness or pictures of an alleged rape victim?

Opinion #2:

The lawyer may redact or otherwise remove information that the lawyer determines, in his professional judgment, should not be disclosed to the client, including information that would endanger the safety and welfare of the client or is subject to a protective order, court rule, or agreement prohibiting disclosure. *See* Rule 1.4, cmt. [7]. ■

Endnote

1. Discovery agreements between the prosecution and the defense may present other ethical concerns not addressed in this opinion.

Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Campbell University School of Law

Campbell Law Confers 150 Degrees at 2014 Graduation—Campbell Law School conferred 150 Juris Doctor degrees at its 36th annual hooding and graduation ceremony on May 9 at Meymandi Concert Hall at the Duke Energy Center for the Performing Arts. Red Hat President and Chief Executive Officer Jim Whitehurst delivered the commencement address.

The National Jurist *Names Campbell Law to List of Top Private Law Schools for Best Value*—Campbell Law School has been named to a list of the top 22 private law schools in the country for best value by *The National Jurist*. In selecting institutions for inclusion, the publication considered a number of academic and financial variables, including price of tuition, student debt accumulation, employment success, bar passage, and cost of living figures.

Campbell Law Invited to Participate in NITA Tournament of Champions—Campbell Law School has received an invitation to the prestigious National Institute of Trial Advocacy's Tournament of Championships mock trial competition. One of the premier mock trial competitions in the country, only 16 law schools are invited to the Tournament of Champions.

Campbell Law Students Awarded WCBA Scholarships—Campbell Law School students Amanda Brookie and Emily Pappas have been awarded Wake County Bar Association Memorial Scholarships for the upcoming academic year. Brookie, a rising second year student, and Pappas, a rising third year, formally received their $5,000 scholarships during a presentation at a recent WCBA luncheon on June 3 at the Women's Club of Raleigh.

Benton named NCBA President-Elect—Shelby Duffy Benton, a 1985 Campbell Law graduate, has been named president-elect of the North Carolina Bar Association. She is the first Campbell Law graduate to serve the NCBA in this capacity.

Charlotte School of Law

Student Success Program—Charlotte School of Law's mission is to provide leadership in meeting the evolving needs of the profession and in unlocking the potential of students. To further those commitments, Charlotte will launch this fall its Student Success Program, a comprehensive addition to its program of education that is unique to American legal education. The purpose of the program is to systematically develop key competencies vital to success in law school, on the bar exam, in job search and career development, and in professional endeavor. Initially the program will focus on the competency clusters of grit, professionalism, and emotional intelligence (self-awareness and relationship building). The competencies will be developed through integration into the pedagogy of small classes, a graduation requirement that calls on students to complete activities or assessments throughout the three years, and training law school staff to support and reinforce development of these competencies.

Partnership with Yingke Law Firm—Charlotte has entered into a partnership with the Yingke Law Firm for the law school to provide training programs to lawyers in the firm. Yingke is the largest law firm in the Asian-Pacific region with 2,400 lawyers in 40 offices in major commercial regions around the world. The educational programs will provide lawyers based in China with substantive training in US business law and other areas important to the work of Yingke lawyers.

Ms. JD Fellowship—Charlotte student Lexi Andresen has been selected as one of 15 recipients of the Ms. JD Fellowship. The fellowship, awarded in partnership with the ABA Commission on Women in the Profession, recognizes academic performance, leadership, and dedication to advancing the status of women in the profession. Fellows are provided with a mentor who has been a winner of the ABA Brent Award. Andresen is the first fellowship recipient from a North Carolina law school.

Duke Law School

New Civil Justice Clinic Focuses on Civil Litigation Assistance for Low-Income Clients—Duke Law School has launched the Civil Justice Clinic, the school's tenth clinical program. A partnership between Duke Law and Legal Aid of North Carolina (LANC), the clinic has the dual focus of providing substantive legal assistance to low-income clients who have little access to civil justice, as well as facilitating students' development of practical litigation skills that are readily translatable to a wide variety of cases and practice areas. For students, the clinic includes a substantive weekly seminar, direct client representation, and individual supervision and instruction from Duke faculty and LANC attorneys.

The clinic, which is based out of the Durham LANC office, is directed by Charles R. Holton, a partner at Womble Carlyle Sandridge & Rice in Research Triangle Park who currently chairs the LANC Board of Directors. He is a longstanding member of the local advisory committee for LANC's Durham office and was named *Pro Bono* Attorney of the Year for 2013 by the North Carolina Bar Association.

Student-Run Cancer* Pro Bono *Project Honored by NCBA—The Duke-UNC Cancer *Pro Bono* Project was honored in June with the North Carolina Bar Association's 2014 Law Student Group *Pro Bono* Award. The project represents a partnership between Duke Law School, UNC School of Law, and the Duke and UNC Cancer Centers. Under the supervision of volunteer attorneys, law students hold advanced directive clinics at each cancer center twice each month, where they interview patients to assess their legal needs and educate them on matters related to advanced directives. They draft the relevant documents for their clients and, with their supervisors, facilitate their review and execution by the patient-clients.

Elon University School of Law

National Symposium Advances Experiential

Education in Law—A June 13-15 national symposium at Elon Law featured research findings about the educational value of immersive and recurring legal practice experiences for law students. Elon welcomed more than 150 participants from the US and Canada including members of the legal academy and profession, and representatives from other disciplines including architecture, business, and medicine.

"This is not just about clinical legal education," said Luke Bierman, dean and professor of law at Elon. "This is not just about externships. It's not just about simulations in classrooms. It's about how to move all these things in a particular way, and how to think about how it fits into the enterprise of legal education and the goals we have for our students."

ABA President-Elect William C. Hubbard called for innovators in law and legal education to shape the future of justice by creating more efficient and effective models for the delivery of legal services. Prominent law scholar William Henderson presented research indicating that Northeastern's Cooperative Legal Education Program (co-op) accelerates more self-aware and deliberate career planning by students, enabled by insights they gain during nearly a year of full-time legal experience through the program. NCBA President Alan Duncan highlighted NCBA programs including the Center for Practice Management, providing two full-time staff devoted to assisting attorneys with law firm start up, technology, and practice management questions.

Other highlights included:

• practitioners and teachers in medical, architectural, and business sectors presented insights about experiential education components in their fields

• law school leaders presented innovative experiential education programs established since 2012

• panelists presented research in areas such as cost and sustainability measures for experiential legal education and the regulatory landscape at national and state levels surrounding pedagogical change in law schools.

Visit the symposium website for details: law.elon.edu/aell.

North Carolina Central University School of Law

Wallace to Lead NCCU Dispute Resolution Institute—NCCU Law Professor Kathleen Wallace was named director of the school's Dispute Resolution Institute (DRI) beginning July 2014. Wallace takes the reins from outgoing director Mark Morris.

NCCU has led the state in developing expertise in the growing field of conflict resolution with the creation of its Alternative Dispute Resolution (ADR) Clinic in 2000 and the DRI in 2006.

The practice of alternative dispute resolution seeks to avoid the typical adversarial approach of litigation in order to better preserve the relationship between those in conflict. This is particularly important in cases involving divorcing parents, family members, business partners, and neighbors—anyone who anticipates ongoing interaction.

At NCCU's Dispute Resolution Institute, those seeking a certificate complete three core courses—Negotiation, Mediation, and Arbitration—and select from among a dozen others in ADR processes and practice to total ten credit hours.

One popular elective is the ADR Clinic. NCCU Law has partnered with the Elna B. Spaulding Conflict Resolution Center to mediate cases presented at the center and in district court in Durham. Each Friday the students gain hands-on experience mediating community disputes, Medicare/Medicaid appeals, and misdemeanor offences involving property damage and simple assaults.

According to Wallace, "Our students can easily parlay these negotiation and conflict management skills in almost any professional capacity."

She should know. Since 2004 Wallace has also served as a mediator for the US Olympic Committee. As a crisis intervention specialist and legal counsel for the US Paralympic Team, Wallace attended the Paralympic Games in Sochi, Russia, where she managed disputes regarding rule interpretation, disqualifications, and athletes' rights.

Wallace intends to use her tenure as director to increase students' engagement in the community. "I'd like to see more work with youth in conflict management and with families in crisis regarding decisions about elder care," said Wallace.

University of North Carolina School of Law

Dean Boger Announces Plan to Return to Teaching—John Charles "Jack" Boger '74 announced that he will conclude his role as dean of the law school in July 2015 to return to the law school faculty. He will have served as dean for nine years, and as a member of the UNC faculty for 25 years. Boger was named the law school's 13th dean in 2006 after serving as deputy director of the UNC Center for Civil Rights. He holds the Wade Edwards Distinguished Chair. Boger will continue to lead the law school until his successor is named and assumes the leadership role in the summer of 2015.

New Associate Dean for Student Affairs—The law school welcomes Paul Rollins to its staff, starting in August as its new associate dean for student affairs. Rollins, a native of South Carolina, received his BA degree from the University of South Carolina and his JD degree from Yale Law School. He joins UNC from UGA's law school, where he served as associate dean for administration and student affairs. In his role at UNC he will oversee the admissions, student services, and career development offices.

Faculty Corporate Law Treatise Quoted by SCOTUS—In the recently decided *Hobby Lobby* case, both the majority and the dissenting opinions of the Supreme Court cited propositions from *Treatise on the Law of Corporations*, a book co-authored by Tom Hazen, the Cary C. Boshamer Distinguished Professor of Law at UNC School of Law, and James Cox, a law professor at Duke. The Supreme Court previously has cited Hazen's work in securities law, but the opinions in the *Hobby Lobby* case represent the first time that both the majority and dissent cited his work in the same case.

Wake Forest University School of Law

Interim Dean Named—Wake Forest University School of Law Executive Associate Dean for Academic Affairs Suzanne Reynolds ('77) has been named interim dean of the law school effective September 1, following the announcement that Dean Blake D. Morant has accepted an offer to become dean at George Washington Law School.

Reynolds has served as Wake Forest Law's executive associate dean for academic affairs for the past four years. She is the first woman to serve as dean of Wake Forest Law.

Needham Yancy Gulley Professor of Criminal Law Ron Wright, who served as executive associate dean for academic affairs at the law school for three years prior to Reynolds, will step back into his former role.

Both appointments are for the 2014-2015 academic year, according to WFU Provost Rogan Kersh. A national search for Dean

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John B. McMillan Distinguished Service Award

James B. Maxwell is a recipient of the John B. McMillan Distinguished Service Award. A Virginia native, Mr. Maxwell earned his undergraduate degree from the Randolph-Macon College in 1963, and his law degree from Duke University in 1966. Mr. Maxwell currently practices at the law firm of Maxwell, Freeman & Bowman, PA in Durham. Throughout his distinguished career, Mr. Maxwell has established himself as an outstanding attorney, mentor, community servant, coach, and leader. Among countless endeavors, Mr. Maxwell was the first lawyer to serve both as president of the NC Academy of Trial Lawyers and as president of the North Carolina Bar Association. In addition, Mr. Maxwell has coached the Duke University Law School National Moot Court Team since 2002, has been chair of the Legal Aid Board of Directors, and chair of the Lawyers Mutual Claims Committee. He has been listed in the Best Lawyers in America since 1987. He has spoken at dozens of CLEs and written numerous articles relating to both litigation and professional ethics. A man of character who has dedicated his life to serving the legal community and the public, James B. Maxwell is a deserving recipient of the John B. McMillan Distinguished Service Award.

Sharon A. Thompson is a recipient of the John B. McMillan Distinguished Service Award. Ms. Thompson began practicing law in 1976 in Raleigh. In 1979 she became a member of Thompson & McAllaster, where she remained until starting the Sharon Thompson Law Group in 1991. Ms. Thompson currently concentrates in family law but has previously practiced in a wide range of areas. Ms. Thompson served two terms in the NC House of Representatives from 1987-1990. She was also an adjunct professor at NC Central University Law School. A pioneer, Ms. Thompson was a cofounder of the NC Association of Women Attorneys (NCAWA), and founding member and first president of the NC Gay and Lesbian Attorneys (NC GALA). In 1987 Ms. Thompson was granted the annual award from the NCAWA for promoting the participation of women in the legal profession and the rights of women under the law. She was a member of the Board of Governors of the NC Academy of Trial Lawyers, and in 2007 she was inducted into the NC Bar Association's General Practice Hall of Fame. She has spoken at numerous CLEs and published many articles focusing on family law issues for LGBT clients. An excellent lawyer and civil rights advocate, Sharon A. Thompson is a deserving recipient of the John B. McMillan Distinguished Service Award.

M. Gordon Widenhouse is a recipient of the John B. McMillan Distinguished Service Award. Mr. Widenhouse received his undergraduate degree from Davidson College in 1976, his Master of Arts from UNC-Greensboro in 1978, and his JD from Wake Forest University Law School in 1982. Following law school, Mr. Widenhouse clerked in the United States District Court, and then for Justice James Exum in the North Carolina Supreme Court. After a time as an assistant appellate defender and assistant federal public defender, Mr. Widenhouse has focused his career on appellate litigation and criminal defense with the firm of Rudolf, Widenhouse & Filako in Chapel Hill. Mr. Widenhouse has been an adjunct professor at NC Central University Law School, where he was awarded a Charles L. Becton Teaching Award in 2013. In addition to teaching law students, Mr. Widenhouse has devoted time to assisting high school students in North Carolina with a better understanding of the legal system and the legal profession as one of the founders of the Wade Edwards High School Mock Trial Program for the NCAJ. The award for the best overall competitor at the competition is named after Mr. Widenhouse. He has spoken at numerous CLEs, published numerous articles, and is considered a mentor to many lawyers. Listed in NC Super Lawyers since 2007 and Best Lawyers in America since 2002, Mr. Widenhouse has had a career of service to the bar and to the public, and is a deserving recipient of the John B. McMillan Distinguished Service Award.

Seeking Award Nominations

The John B. McMillan Distinguished Service Award honors current and retired members of the North Carolina State Bar who have demonstrated exemplary service to the legal profession. Awards will be presented in recipients' districts, with the State Bar councilor from the recipient's district introducing the recipient and presenting the certificate. Recipients will also be recognized in the *Journal* and honored at the State Bar's annual meeting in Raleigh.

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

Law School Briefs (cont.)

Morant's successor will begin in September.

Reynolds is widely respected for her scholarship and teaching about family law, and for her public service. She was a principal drafter of statutes that modernized the law of both alimony and of adoption, and she co-founded a domestic violence program that received national recognition by the American Bar. Reynolds authored a three-volume treatise on North Carolina family law that has become the authoritative source for law students, lawyers, and judges.

Wright is one of the nation's best known criminal justice scholars. He is the co-author of two casebooks in criminal procedure and sentencing; his empirical research concentrates on the work of criminal prosecutors. He is a board member of the Prosecution and Racial Justice Project of the Vera Institute of Justice, and has been an adviser or board member for Families Against Mandatory Minimum Sentences (FAMM), North Carolina Prisoner Legal Services, Inc., and the Winston-Salem Citizens' Police Review Board. Prior to joining the faculty, he was a trial attorney with the US Department of Justice. ■

Client Security Fund Reimburses Victims

At its July 24, 2014, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $250,137.86 to 11 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $22,880.95 to a former client of William S. Britt of Lumberton. The board determined that Britt was retained to handle a negligence claim against a nursing home that resulted in the client's husband's death and personal injury claims for the client and her two sons. Britt settled the matters and deposited the settlement proceeds into his trust account, but failed to disburse some of the funds prior to his trust account being frozen by the State Bar. Due to misappropriation, Britt's trust account balance is insufficient to cover all of his clients' obligations. Although Britt had deposited funds in his lawyer's trust account to cover the expected shortage, he agreed that his client should be reimbursed by the board and be subrogated to the funds in his lawyer's trust account. Britt was disbarred on June 12, 2014.

2. An award of $72,576.08 to two former clients of Sue E. Mako of Wilmington. The board determined that Mako was retained to handle the clients' personal injury claims. Mako settled the matters and deposited the settlement proceeds into her trust account. At the time of the deposits, Mako knew that her trust account was short due to an unrelated scam. Mako failed to make any disbursements from the proceeds for the benefit of the clients prior to the State Bar freezing Mako's trust account. Due to the shortage in her account caused by Mako's disbursement against uncollected funds related to the scam, and her dishonest act of failing to return missing funds to the trust account from money she earned after the scam, Mako's trust account balance is insufficient to cover all her clients' obligations. Mako's disbarment will be effective on August 20, 2014.

3. An award of $3,366.53 to a former client of Nicholas A. Stratas of Raleigh. The board determined that Stratas was retained to handle a client's personal injury claim. Stratas settled the matter and retained a portion of the settlement proceeds to resolve a subrogation lien. Stratas failed to resolve the lien prior to being disbarred. Due to misappropriation, Stratas' trust account balance was insufficient to pay all his clients' obligations. Stratas was disbarred on February 1, 2013. The board previously reimbursed ten other Stratas clients a total of $152,215.78.

4. An award of $11,696.10 to a former client of Daniel L. Taylor of Troutman. The board determined that Taylor was retained to prepare estate planning documents for a client's father. Taylor suffered a stroke shortly after meeting with the client and prior to the client signing a "nonrefundable" fee agreement and paying the legal fee. Taylor failed to provide any valuable legal services for the fee paid. Taylor died on December 25, 2013.

5. An award of $11,746.10 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare estate planning documents and provide asset protection services for the client and his wife. The client signed two "nonrefundable" fee agreements and paid the combined fee in full because time was of the essence to get his wife's assets protected due to her declining health. Despite being paid and having all the necessary information to prepare the documents, Taylor failed to produce any documents for the client's wife prior to her death. Taylor failed to provide any valuable legal services for the fees paid.

6. An award of $5,000 to former clients of Daniel L. Taylor. The board determined that Taylor was retained to handle the client's son's petition for a contested case hearing before the Office of Administrative Hearings (OAH). Taylor faxed the client's handwritten petition, rather than one he was retained to prepare, to OAH a day after the filing deadline. Taylor failed to provide any valuable legal service for the clients.

7. An award of $6,000 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to prepare estate planning documents and represent a client in a petition for guardianship over her husband. The client signed Taylor's "nonrefundable" fee agreement and paid the fees for the estate planning documents and representation in the guardianship proceeding. After preparing the estate planning documents, filing the guardianship petition, and participating in the guardianship proceeding, Taylor requested an additional $6,000 fee to complete the guardianship. The client paid the additional fee, but Taylor failed to complete the guardianship. Taylor failed to provide any valuable legal services for the additional fee paid.

8. An award of $11,696.10 to a former client of Daniel L. Taylor. The board determined that Taylor was retained to apply for Medicaid benefits and provide asset planning services for the client's father. The client signed a "nonrefundable" retainer agreement and paid the fees quoted. Taylor never prepared any estate planning documents and failed to provide any other valuable legal services for the fee paid.

9. An award of $3,500 to a former client of Clyde Gary Triggs of Hildebran. The board determined that Triggs was retained to handle a client's domestic matter. Triggs failed to provide any valuable legal services to the client prior to being disbarred. Triggs was disbarred on January 31, 2013.

10. An award of $1,266 to a former client of David A. Vesel of Raleigh. The board determined that Vesel was retained to handle a client's real estate closing. Vesel failed to deliver two disbursement checks on the client's behalf prior to his trust account being frozen by the State Bar. Due to misappropriation, Vesel's trust account balance was insufficient to pay all his clients' obligations. Vesel was disbarred on July 5, 2013. The board previously paid one other Vesel client a total of $5,914.

11. An award of $100,000 to a former client of W. Darrell Whitley of Lexington. The board determined that Whitley was retained to create and administer a trust for a client. Within two weeks of the client's funds being deposited into his trust account, Whitley misappropriated virtually all of the funds. Due to misappropriation, Whitley's trust account was insufficient to pay all of his clients' obligations. Whitley died on December 6, 2011. The board previously reimbursed several other Whitley clients and applicants a total of $664,096.74. ■

Living with Blindness (cont.)

a multi-national, multi-racial family. We did not have any ties to Ethiopia, but we both had friends and experiences that drew us to Africa, generally. We also had friends who went through the Ethiopian adoption process before us, so that encouraged us to go that route. Thus, in May of 2012 we brought home our daughter Kalkidan (then age four) and our son Rebuma (then 18 months old).

Fatherhood has been a blast. My children really help to keep me humble. They don't care where I work or who I represent, but are just impressed that I have a job where there is a candy dish and a soda fountain and where I get to talk on a phone that actually has a cord, as opposed to the ubiquitous smart phones that are all they've ever known. Coming home to fans who don't keep track of wins and losses or count billable hours is the best part of every day.

I will say that fatherhood is one of the few areas where I've found blindness to be frustrating. There are things I'd like to be able to do as a dad—see my son's goofy facial expressions, watch my daughter dance and play soccer, or play catch—that I can't do, and not being able to do things isn't something I am very accustomed to. I guess I am still learning what it means to be blind in a new stage of life.

JG: In describing your disability, you used the phrase that sight for you is like "looking at an elephant from six inches away". In many ways, this describes some sighted persons and how they pass their lives with blinders on. How have you handled the elephant?

JD: That is a lesson I am still learning. Like most people, I sometimes struggle to see what really matters beyond the court deadlines, case outcomes, and career goals that require so much daily energy. As I mentioned before, though, living with blindness has given me a broader perspective about the inter-connectedness of people and the importance of relationships. That perspective has not always made me a more sanguine or compassionate person, but, as I've grown up, started a family and a career, I have been able to see and appreciate just how many people contributed to getting me to where I am in life: a dad who encouraged me to work hard and compete; a mom who, many nights, came home from work only to spend several hours reading textbooks to me when my high-school couldn't provide them in accessible formats; teachers and coaches who worked creatively to teach me their subjects and sports; friends who rowed and trained with me to prepare me for the Paralympics, though there was no potential for personal glory for them; colleagues who took the risk of hiring a blind person and who provide the support needed to enable me to do my job; and a wife and kids who love and encourage me without regard to personal or professional successes. Understanding how much I have benefited from the generosity of other people inspires both confidence and humility, and for me has been the best medicine against the self-absorption that can be so alluring. ■

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

Merritt Nominated as Vice-President

Charlotte attorney Mark Merritt was selected by the State Bar's Nominating Committee to stand for election to the office of vice-president of the North Carolina State Bar. The election will take place in October at the State Bar's annual meeting.

Merritt is a graduate of the University of North Carolina where he was a Morehead Scholar and a member of Phi Beta Kappa. He earned his law degree in 1982 from the University of Virginia and served as editor in chief of the *Virginia Law Review*. After law school he clerked on the Fifth Circuit Court of Appeals for Judge John M. Wisdom. He returned to Charlotte and has practiced law at Robinson Bradshaw & Hinson since 1983.

His professional activities include serving as treasurer and president of the Mecklenburg County Bar, serving on the Board of Directors and as president of Legal Services of Southern Piedmont, and serving as chair of the North Carolina Bar Association Antitrust Section Counsel. While a State Bar councilor he has served as chair of the Ethics Committee and of the Lawyers Assistance Program. He has served as a member of the Facilities, Grievance, Issues, and Authorized Practice Committees. He also served as chair of the Special Committee on Ethics 2020.

Mark is a member of the American College of Trial Lawyers and the International Society of Barristers.

He is married to Lindsay Merritt and has three children, Alex, Elizabeth, and Jay. ■

The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar

	2013	2012
Assets		
Cash and cash equivalents	$6,548,412	$7,156,681
Property and equipment, net	17,691,016	13,791,676
Other assets	329,470	300,252
	$24,568,898	$21,248,609
Liabilities and Fund Equity		
Current liabilities	$4,843,760	$4,754,581
Long-term debt	11,545,979	8,613,737
	16,389,739	13,368,318
Fund equity-retained earnings	8,179,159	7,880,291
	$24,568,898	$21,248,609
Revenues and Expenses		
Dues	$7,631,961	$7,399,734
Other operating revenues	909,935	753,104
Total operating revenues	8,541,896	8,152,838
Operating expenses	(8,027,353)	(7,166,301)
Non-operating revenues	(30,175)	837,569
Net income	$484,368	$1,824,106

The NC State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)

	2013	2012
Assets		
Cash and cash equivalents	$2,971,291	$3,191,810
Interest receivable	223,659	234,406
Other assets	216,498	199,541
	$3,411,448	$3,625,757
Liabilities and Fund Equity		
Grants approved but unpaid	$2,330,755	$2,345,755
Other liabilities	239,932	226,949
	2,570,687	2,572,704
Fund equity-retained earnings	840,761	1,053,053
	$3,411,448	$3,625,757
Revenues and Expenses		
Interest from IOLTA participants, net	$1,812,929	$1,990,393
Other operating revenues	657,282	1,286,473
Total operating revenues	2,470,211	3,276,866
Operating expenses	(2,691,021)	(2,711,263)
Non-operating revenues	8,518	9,568
Net income (loss)	$(212,292)	$575,171

Board of Client Security Fund

	2013	2012
Assets		
Cash and cash equivalents	$1,390,739	$1,668,369
Other assets	(790)	(446)
	$1,389,949	$1,667,923
Liabilities and Fund Equity		
Current liabilities	$20,269	$17,662
Fund equity-retained earnings	1,370,018	1,650,261
	$1,390,287	$1,667,923
Revenues and Expenses		
Operating revenues	$728,173	$741,424
Operating expenses	(1,009,786)	(783,750)
Non-operating revenues	1,370	3,098
Net loss	$(280,243)	$(39,228)

Board of Continuing Legal Education

	2013	2012
Assets		
Cash and cash equivalents	$287,066	$243,708
Other assets	173,802	191,853
	$460,868	$435,561
Liabilities and Fund Equity		
Current liabilities	116,822	69,520
Fund equity-retained earnings	344,046	366,041
	$460,868	$435,561
Revenues and Expenses		
Operating revenues	$664,397	$646,041
Operating expenses	(686,423)	(652,845)
Non-operating revenues	31	(400)
Net loss	$(21,995)	$(7,204)

Board of Legal Specialization

	2013	2012
Assets		
Cash and cash equivalents	$191,899	$180,394
Other assets	-	728
	$191,899	$181,122
Liabilities and Fund Equity		
Current liabilities	15,059	8,162
Fund equity-retained earnings	176,840	172,960
	$191,899	$181,122
Revenues and Expenses		
Operating revenues-specialization fees	$136,050	$134,018
Operating expenses	(132,164)	(129,244)
Non-operating revenues	(6)	89
Net income	$3,880	$4,863

The Chief Justice's Commission on Professionalism

	2013	2012
Assets		
Cash and cash equivalents	$221,068	$196,053
Other assets	100,762	100,527
	$321,830	$296,580
Liabilities and Fund Equity		
Current liabilities	522	90
Fund equity-retained earnings	321,308	296,490
	$321,830	$296,580
Revenues and Expenses		
Operating revenues-fees	$327,547	$328,321
Operating expenses	(302,761)	(292,266)
Non-operating revenues	32	63
Net income	$24,818	$36,118

Board of Paralegal Certification

	2013	2012
Assets		
Cash and cash equivalents	$402,611	$348,099
Other assets	7,050	-
	$409,661	$348,099
Liabilities and Fund Equity		
Current liabilities - accounts payable	7,275	7,193
Fund equity-retained earnings	402,386	340,906
	$409,661	$348,099
Revenues and Expenses		
Operating revenues-fees	$245,575	$257,130
Operating expenses	(184,083)	(205,688)
Non-operating revenues	(12)	155
Net income (loss)	$61,480	$51,597

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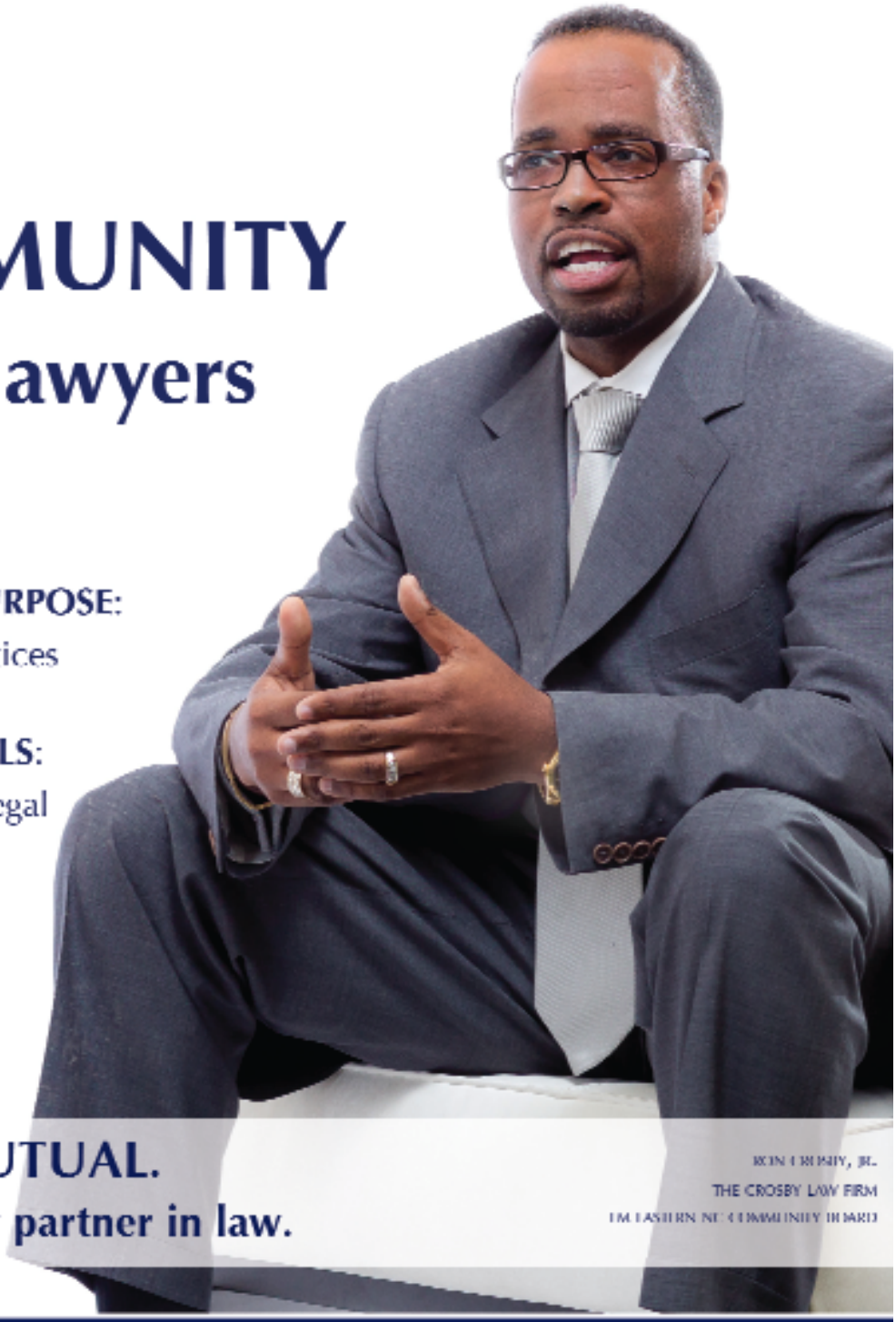

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