Ref.
KFN
7476.5
.A2
A4P3
c.2

THE NORTH CAROLINA STATE BAR

# JOURNAL

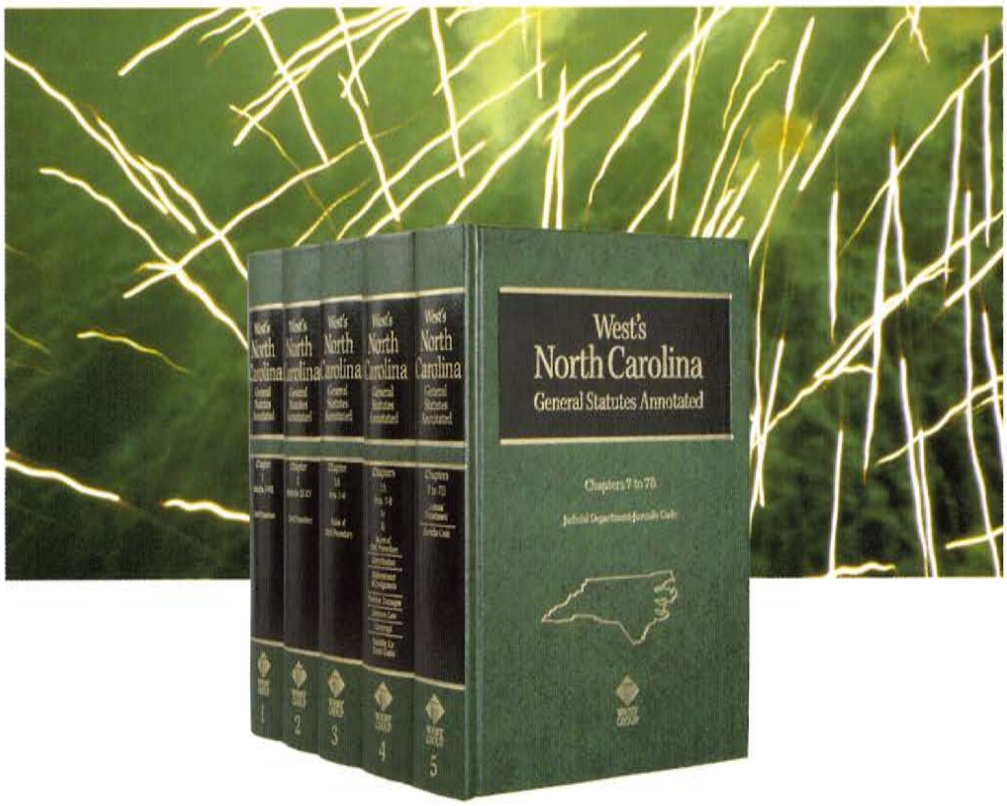
FALL
2000

NORTH CAROLINA
SUPREME COURT LIBRARY
SEP 25 2000

## Multidisciplinary Practice

ALSO IN THIS ISSUE

Multidisciplinary Practice: What if We Do Nothing? *page 10*
Will Attorneys Vote Themselves Out of the Competition? *page 14*
Paper or Plastic—Choose Your Version of the 2001 Lawyer's Handbook *page 21*




# Occasionally a product comes along that deserves a lot of attention.

**PRESENTING**

## *West's North Carolina General Statutes Annotated*

More case summaries and notes of decisions

Unsurpassed indexing using logical and consistent terminology

Exhaustive research and legislative history information

*Available in print, CD-ROM or Westlaw*

**For more information call**

1-800-762-5272

WEST GROUP

© 2000 West Group 2-9510-3/3-00

THE
NORTH CAROLINA
STATE BAR
JOURNAL

**Fall 2000**
*Volume 5, Number 3*

**Editor**
Jennifer R. Chapman

**Publications Committee**
B. Geoffrey Hulse, Chair
J. Michael Booe
Richard V. Bennett
N. Hunter Wyche
Roger W. Smith

© Copyright 2000 by the North Carolina State Bar. All rights reserved. The North Carolina State Bar Journal (ISSN 10928626) is published four times per year in March, June, September, and December under the direction and supervision of the Council of the North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, NC 27601. Member rate of $6.00 per year is included in dues. Nonmember rates $10.60 per year. Single copies $3.18. The Lawyer's Handbook $10.60. Advertising rates available upon request. Direct inquiries to Director of Communications, the North Carolina State Bar, P.O. Box 25908, Raleigh, North Carolina 27611, tel. (919) 828-4620. Periodicals postage paid at Raleigh, NC. Opinions expressed by contributors are not necessarily those of the North Carolina State Bar. POSTMASTER: Send address changes to the North Carolina State Bar Journal, P.O. Box 25908, Raleigh, NC 27611.

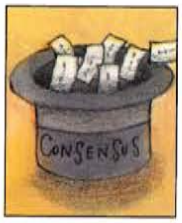
www.ncbar.com

PRINTED ON RECYCLED PAPER

# Contents

FEATURES

**10 Multidisciplinary Practice: What if We Do Nothing?**
*By E. Fitzgerald Parnell*




**14 Will Attorneys Vote Themselves Out of the Competition?**
*By Caryn L. Abramowitz*

**18 Multidisciplinary Practice: Examining the Issues**
*By Laurel S. Terry*

**21 Paper or Plastic—Choose Your Version of the 2001 Lawyer's Handbook**

**24 MDP: One Lawyer's Opinion**
*By Jean Gordon Carter*

**26 Reconsideration of Interlocutory Orders**
*By Thomas L. Fowler & Thomas P. Davis*

**28 New Fee Dispute Resolution Rules: Good-Bye Nonbinding Arbitration**
*By Harry B. Warren*

*Continued on page 4.*

# Contents

*Continued from page 3.*

DEPARTMENTS


**8** The President's Message
**32** Positive Action for Lawyers
**33** FRIENDS
**34** State Bar Outlook
**36** Legal Ethics
**39** Proposed Ethics Opinions
**41** Rule Amendments
**44** The Disciplinary Department
**45** IOLTA
**54** Classified Advertisements


BAR UPDATES


**22** Annual Meeting Notice
**46** Dorsett Nominated as Vice-President
**46** Five New Members Join DHC
**47** Client Security Fund Reimburses Victims
**47** New Staff
**48** State Bar Financial Audits
**53** In Memoriam



THE NORTH CAROLINA STATE BAR DIRECTORY

## Officers

Cressie H. Thigpen Jr., Raleigh
President 1999-2000

M. Ann Reed, Raleigh
President-Elect 1999-2000

L. Thomas Lunsford II, Raleigh
Secretary-Treasurer

E. Fitzgerald Parnell III, Charlotte
Vice-President 1999-2000

Robert C. Sink, Charlotte
Past President 1999-2000

### Councilors

*By Judicial District*

1: Steven D. Michael, Kitty Hawk
2: Charles W. Ogletree, Columbia
3A: Mark W. Owens Jr., Greenville
3B: David A. Stoller, New Bern
4: John R. Parker Jr., Clinton
5: Robert W. Johnson, Wilmington
6A: Cary Whitaker, Roanoke Rapids
6B: William H. Jones Jr., Ahoskie
7: Henry C. Babb Jr., Wilson
8: B. Geoffrey Hulse, Goldsboro
9: Julius E. Banzet III, Warrenton
9A: George B. Daniel, Yanceyville
10. Barbara B. Weyher, Raleigh
James K. Dorsett III, Raleigh
Howard P. Satisky, Raleigh
John B. McMillan, Raleigh
C. Colon Willoughby Jr., Raleigh
N. Hunter Wyche Jr., Raleigh
Maria M. Lynch, Raleigh
11: Robert A. Spence Jr., Smithfield
12: H. Gerald Beaver, Fayetteville
13: H. Clifton Hester, Elizabethtown
14: N. Joanne Foil, Durham
Robert O. Belo, Durham
15A: Charles E. Davis, Mebane
15B: Lunsford Long, Chapel Hill
16A: Daniel B. Dean, Laurinburg
16B: John Breckenridge Regan III, Lumberton
17A: Kenneth D. Knight, Madison
17B: Carroll F. Gardner, Mount Airy
18: Betty J. Pearce, Greensboro
William O. Cooke Jr., Greensboro
Jan H. Samet, High Point
19A: Samuel F. Davis, Concord
19B: Richard G. Roose, Asheboro
19C: John L. Holshouser Jr., Salisbury
20: Fred D. Poisson Sr., Wadesboro
21: Dudley Humphrey, Winston-Salem
Roy G. Hall Jr., Winston-Salem
Richard V. Bennett, Winston-Salem
22: Gary W. Thomas, Statesville
23: Dennis R. Joyce, Wilkesboro
24: Garrett D. Bailey, Burnsville
25: H. Houston Groome Jr., Lenoir
26: J. Michael Booe, Charlotte
Nelson M. Casstevens Jr., Charlotte
Edward T. Hinson Jr., Charlotte
Samuel M. Millette, Charlotte
Calvin E. Murphy, Charlotte
Marylaurel E. Wilks, Charlotte
Irvin W. Hankins III, Charlotte
27A: Jim R. Funderburk, Gastonia
27B: Don E. Pendleton, Lincolnton
28: Sara Davis, Asheville
29: Sharon B. Alexander, Hendersonville
30: Robert F. Siler, Franklin

### Public Members

Aurelia W. Erwin, Charlotte
Hermon F. Fox, Greensboro
Terry E. Garrison, Henderson

### Staff

(Listed Alphabetically)
Carolin D. Bakewell, Counsel & Asst. Dir.
Betsy C. Barham, Receptionist
Kimberly J. Blackburn, Admin. Asst., Investigators
Leonard D. Bogaty, Investigator
LaTonya Brailey, Admin. Asst.
Deanna S. Brocker, Asst. Ethics Counsel
Douglas J. Brocker, Deputy Counsel
W. Donald Carroll Jr., Dir., PALS
Ricki R. Clark, Membership Asst.
Luella C. Crane, Public Liaison
Jennifer R. Chapman, Dir. of Communications
Catherine Lenita Childree, Membership Asst.
Tobia E. Cuney, Legal Secretary
Clayton W. Davidson III, Deputy Counsel
Bruno E. DeMolli, Staff Auditor & Investigator
Sharon K. Denton, Legal Asst.
Connie Duncil, Receptionist
A. Root Edmonson, Deputy Counsel
Ruby T. Edwards, Admin. Asst. to Dir. of Investigations and Fee Arbitration Coordinator
Janel M. Emerick, Accounting Asst.
Larissa Erkman, Deputy Counsel
David J. Frederick, Investigator
Carla F. Gauthier, Accreditations Coordinator, CLE
Patricia A. Gillette, Dir. of Accounting, Office Manager
Robert F. Hartsell, Investigator
Kelly A. Hill, Admin. Asst., Office of Counsel
Debra P. Holland, Legal Asst.
Margie M. Johnson, Compliance Asst., CLE
Donald H. Jones, Investigator
Joyce L. Lindsay, Exec. Asst., Admin. Asst. of Specialization
L. Thomas Lunsford II, Executive Dir.
Dottie K. Miani, Systems & Facilities Manager & Deputy Clerk of DHC
Claire U. Mills, Accounts Manager, IOLTA
Alice Neece Moseley, Asst. Executive Dir., Dir. of CLE & Specialization
Anne M. Parkin, Membership Coordinator
Jane Pratt, Public Liaison
Evelyn Pursley, Executive Dir., IOLTA
Sonja B. Puryear, Admin. Asst., IOLTA
Reginald T. Shaw, Investigator
Fern Gunn Simeon, Deputy Counsel
Pamela L. Smith, Admin. Asst., IOLTA
Karen Spivey, Associate Dir. of CLE
Edmund F. Ward, Director, FRIENDS
Harry B. Warren, Dir. of Investigations, Fee Arbitration Coordinator
Carol L. Weber, Legal Secretary
Emily Welch, Compliance Coordinator, CLE
Bobby White, CAP Director
Edward R. White, Investigator
Mary Ellen Woodlief, Executive Asst.

# LAWYERS MUTUAL
Presents

## Practical Risk Management Seminar
*Improving loss prevention skills*
*Coming soon to a town near you*

### SEMINAR SCHEDULE

| | | |
|---|---|---|
| Sept 29 | 2000 | Raleigh |
| Oct 27 | 2000 | Asheville |
| Nov 10 | 2000 | Fayetteville |
| Dec 8 | 2000 | Charlotte |
| Jan 12 | 2001 | Greenville |
| Feb 2 | 2001 | Wilmington |
| Feb 23 | 2001 | Raleigh |
| Mar 23 | 2001 | Greensboro . |

$75 for lawyers not insured with Lawyers Mutual

$25 for support staff

**TOP TEN MALPRACTICE TRAPS**

**CLIENT RELATIONS**

**CONFLICTS**

**MULTIDISCIPLINARY PRACTICE**

**SATISFIES 3-HOUR ETHICS BLOCK**

Free for Lawyers Mutual Insureds

**All programs 9 - 12:30 A.M.**

### Registration Form

LML Insured ? Yes _____ No _____ State Bar No.: _____

Seminar Date _____ Location: _____

Name: _____

Title: _____

Firm Name: _____

Firm Address: _____

Phone Number: (____) _____ Fax (____) _____

**Questions? LML Risk Management 800/662-8843 or 919/677-8900**

*Please duplicate this form and mail or fax to Lawyers Mutual*

**Mail to:** Lawyers Mutual Liability Insurance Company of NC
P.O. Box 1929
Cary, NC 27512-1929
Attn: Risk Management

**Fax to:** (919) 677-0131

**Practice resources—now priced for the small firm that doesn't think small.**

At LEXIS Publishing,™ we've been listening to small firm attorneys. We know you have unique needs. So we created an affordable pricing program that lets you choose the resources you want. Jurisdictional and federal statutes. Cases. Analysis. Forms. Citations. From the names you trust—LEXIS®-NEXIS,® MICHIE,™ Matthew Bender,® *Shepard's*® and Martindale-Hubbell.® They're now available in a range of options: Custom

LEXIS, NEXIS, *Shepard's* and Martindale-Hubbell are registered trademarks, MICHIE and LEXIS Publishing are trademarks, and *lexis.com* is a service mark of Reed Elsevier Properties Inc., used under license.

Take another look.
Things are quite different around here for small firms.

packages, annual subscriptions, even "by-the-slice" pricing or low fixed-monthly rates through the *lexis.com*℠ service. It's the only site that delivers the best practice materials for your jurisdiction in an easy-to-use format. So take another look at LEXIS Publishing practice resources. For more information, call 800-356-6548 or visit *lexis.com/smallfirms*.

LEXIS Publishing™

LEXIS®-NEXIS® • MARTINDALE-HUBBELL®
MATTHEW BENDER® • MICHIE™ • SHEPARD'S®

Matthew Bender is a registered trademark of Matthew Bender Properties Inc. ©2000 LEXIS-NEXIS Group. All rights reserved.

1443

# We are the Guardians of the Core Values of Our Profession

By Cressie H. Thigpen Jr.

The ABA, at its annual meeting in July of this year, recommended that the sharing of legal fees with nonlawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession. This recommendation culminated several years of debate regarding the issue of multidisciplinary practice.

Multidisciplinary practice, simply put, is lawyers practicing law with nonlawyers in a single, interrelated business entity. The discussion regarding multidisciplinary practice has been precipitated by several factors: First, there has been a movement among the "Big Five" accounting firms to expand the professional services they provide by offering legal services in addition to the traditional services of accounting, auditing, and tax preparation. Second, clients are expressing an interest in "one-stop shopping"—the ability, for example, to transact business with their accountant, their insurance broker, their financial planner, and their attorney in the same entity at the same location. Third, multidisciplinary practice already exists in other countries throughout the world. It exists, in various forms, in France, the United Kingdom, Germany, the Netherlands, Spain, and Switzerland to name a few.

In considering the issue of multidisciplinary practice, the ABA was forced to reexamine our profession's *raison d'etre*. What is it that distinguishes us as a profession? What does it mean to say that we are lawyers?

In reaching its conclusion, the ABA examined our profession and attempted to determine whether our core values could coexist with the values of other professions or trades. The conclusion was that they could not. The values that set us apart from other professions are that we have a duty of undivided loyalty to our clients; we have a duty to exercise independent legal judgment for the benefit of the client; we have a duty to hold client confidences inviolate; and we have a duty to avoid conflicts of interest with the client.

These core values are often diametrically opposed to the values held by some of the other professions. Accountants, for example, have the duty to fully disclose irregularities they may discover in an audit. This value, however, is inconsistent with the lawyer's duty to hold the client's confidences inviolate. Our Rules of Professional Conduct proceed on the assumption that nonlawyers, with the power to do so, could impair a lawyer's freedom to exercise independent professional judgment on a client's behalf. The rules thus bar everyone but lawyers in a firm from owning interests in the firm or having a right to share the firm's fees. The multidisciplinary practice may also potentially create pressure for lawyers to make decisions based on the economic impact to the business entity rather than what is in the best interest of the client. Our rule against conflicts of interest would prohibit such considerations.

The decision whether to allow multidisciplinary practice will ultimately be decided by the states. In North Carolina, whether we allow multidisciplinary practice will be determined by the State Bar's interpretation of Rule 1.6-Confidentiality of Information, Rule 1.7-Conflict of Interest, and Rule 5.4-Professional Independence of a Lawyer. Presently, our Rules of Professional Conduct prohibit revealing confidential information of a client, engaging in conflicts of interest, and sharing fees with nonlawyers. In order for us to allow multidisciplinary practice, we would have to change our rules.

Our world is changing. Information technology is changing the way we communicate and conduct business. Personal computers, the Internet, e-mail, cell phones, and similar technological advances have contributed to the speed of business. Research can be done and vast quantities of data can be retrieved at the office, at home,

or while traveling. Much of the more routine preparation of documents can be accomplished more easily and quickly through forms stored and accessed through personal computers. A great deal of transactional work today is transmitted across state, national, and international borders, reflecting the increasing globalization of business and finance. International agreements such as the General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA) potentially affect the cross-border delivery of legal services.

With the rapid changes in technology and their effect on business and the delivery of services, it is possible that we, as lawyers, may want to consider whether there are more efficient ways of delivering our services to the public. We may further want to consider whether lawyers and nonlawyers joining in various practice arrangements may enhance the delivery of legal services. Regardless, we are the guardians of the core values of our profession.

In the event we consider any changes to our Rules of Professional Conduct that would accommodate business entities such as multidisciplinary practice, we must never forget the principles, duties, and values that are at the very heart of our profession.

We must be ever diligent to ensure that our core values of confidentiality, absence of conflicts of interest, and independent judgment remain the values by which we define our profession.

*Cressie H. Thigpen Jr. is with the Raleigh firm of Thigpen, Blue, Stephens & Fellers.*


## EXPERT TESTIMONY

***"I love my job as a paralegal. I feel challenged every day when I walk through that door because I know that I am going to learn something new by working on different types of cases. I would definitely recommend the Meredith Legal Assistants Program to someone considering paralegal school."***

— Meredith LAP Graduate Charmaine Troy
King & Spalding, Atlanta, GA

**ABA-Approved Paralegal Certificate Program For College Graduates**

One-semester or Two-semester Programs available
*Now accepting applications for the 2000–2001 program*

Legal Assistants Program
MEREDITH
COLLEGE

3800 Hillsborough Street, Raleigh, NC 27607-5298
(919) 760-2855 • paralegal@meredith.edu • www.meredith.edu

***Meredith College Legal Assistants Program admits qualified students without regard to race, creed, national or ethnic origin, gender, age, or disability.***

# LEGAL RESEARCH

**Memoranda ■ Trial Briefs ■ Appellate Briefs ■ Motions ■ Pleadings**
**Demand Letters ■ Telephone Reports ■ Rush Work**

As we have done on over 7,500 cases for more than 2,300 North Carolina Attorneys, we can help you:

- Meet pressing deadlines
- Handle work overloads
- Gain access to the expertise and research materials your cases require
- Find the time to develop your practice or just to take some time off

Our firm of 60 full-time, specialized research attorneys has completed research on more than 120,000 cases and has served more than 40,000 attorneys nationally since our founding in 1969. Use our knowledge to supplement your own whenever the need arises.

We work for you. You establish the criteria for each project. You set the deadline. You control the costs.

Call **1-800-727-6574** to discuss your needs and to obtain a free cost estimate for your case, or write to us at:

**NATIONAL LEGAL RESEARCH GROUP, INC.**
P.O. Box 7187, 2421 Ivy Road • Charlottesville, Virginia 22906
Fax: 804-817-6570

# Multidisciplinary Practice: What if We Do Nothing?

E. Fitzgerald Parnell III

Bruno Budrovic/SIS

A story is told among Presbyterians about a debate that raged in the early part of the last century. The debate, which ultimately reached the General Assembly of the Presbyterian Church, was over whether the souls of unbaptized children do or do not go to heaven. Finally, after much heated discussion, the General Assembly passed a resolution that the unbaptized souls of little children do, in fact, go to heaven.

A hush settled over the multitude when some old craw stood up and said, "Move we make that resolution retroactive."

That elder must have been a lawyer; who else could have so precisely and with so few words summarized the absurdity of the situation? If that elder is looking down on us from the dour, orderly Presbyterian part of heaven, he must be getting a chuckle from the response of the organized bar in the United States to the multidisciplinary practice debate.

## The Debate

The American Bar Association Commission on Multidisciplinary Practice first announced the results of its efforts in June 1999, and two months later recommended to the ABA House of Delegates adoption of amendments to the Model Rules which would, subject to certain restrictions, permit a lawyer to partner with a nonlawyer, even if the activities of the enterprise consist of the practice of law, and to share fees with the nonlawyer. The Commission, after more than 60 hours of public hearing, listening to the testimony of 56 witnesses, and receiving written comments from a wide range of individuals and organizations, concluded that such a change would be in the best interest of the public, would expand the availability of legal services, and would facilitate the development of new business structures, enabling lawyers to reconfigure their practices to assist clients in resolving multidisciplinary problems.[1]

In August 1999, the Commission presented its recommendations to the ABA House of Delegates, but the House failed to adopt the Commission's recommendations, instead adopting the following resolution of the Florida Bar:

> RESOLVED, that the American Bar Association make no change, addition, or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through a multidisciplinary practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients.

In June 2000, after months of additional hearings and consideration, the ABA Commission recommended to the ABA House of Delegates that the Model Rules of Professional Conduct be amended to reflect the following principles:

1. Lawyers should be permitted to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice), *provided that the lawyers have control and authority necessary to assure lawyer independence in the rendering of legal services.* "Nonlawyer professionals" means members of recognized professions or other disciplines that are *governed by ethical standards.* (emphasis added)
2. This Recommendation must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of professional judgment, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and *pro bono publico* obligations.
3. Regulatory authority should enforce existing rules and adopt such additional enforcement procedures as are needed to implement these principles and to protect the public interest.
4. The prohibition on nonlawyers delivering legal services and the obligations of all

lawyers to observe the rules of professional conduct should not be altered.

5. Passive investment in a Multidisciplinary Practice should not be permitted.

Sherwin P. Simmons, chairman of the Commission, announced, when the new report was released, that the MDP Commission had hoped to forestall the entire issue until the ABA mid-year meeting in February 2001 to give state bar organizations further opportunity to complete their study of the issue. However, the New York State Bar committee on the law governing firm structure and operation, chaired by Robert MacCrate, a former president of the American Bar Association, added a last-minute proposal to the ABA annual meeting agenda which could significantly restrict MDP's, forcing consideration this year by the House of Delegates of the MDP issue. The proposal calls upon the ABA to support restrictions on MDP's all across the country in order, according to the New York Bar, to "preserve the core values of the legal profession" under which lawyers would be permitted to share costs with nonlawyers and to participate in parallel legal and nonlegal practices. The New York proposal would ban fee sharing arrangements, investments in law practices by nonlawyers, nonlawyer ownership of law firms, and the inclusion of the names of nonlawyers or nonlegal professional service firms in a law firm name. According to the New York report, "the only substantive difference between this approach and that favored by those who would permit multidisciplinary partnerships, is that this approach does not permit nonlawyers and lawyers to call each other 'partner.'"

## "Nobody Has Called A Timeout"

"While a special commission listens to endless testimony and the state bar groups continue exhaustive studies, Big Five accounting firms and others are marching unfettered into the legal profession,"[2] according to one commentator.

Or, in the words of MDP Commission Chairman Simmons, "Nobody has called a time out."[3]

Consider the following:

- In August 1999, KPMG announced the creation of a strategic alliance with certain law firms that are members of Saltnet, a network of state and local tax lawyers.
- In November 1999, five partners from the Atlanta, Georgia, and Washington, DC, offices of King & Spalding broke away from the firm and formed a separate law firm in Washington, DC. Based on a press release issued by Ernst & Young and articles in the legal press, it appears the law firm has entered into a quite interesting relationship with Ernst & Young which has agreed to furnish the firm a significant amount of startup capital and lease the firm space in a building it owns. In exchange, the law firm has agreed to be known as McKee Nelson Ernst & Young.
- In October 1999, the Boston law firm Bingham Dana, LLP merged its money management practice with Legg Mason, Inc., an investment firm. Their affiliation is believed to be the first partnership between a law firm and an asset management firm in the United States. The new entity has become a registered investment advisor and is intended to be a vehicle for offering wealthy clients more sophisticated investment advice.[4]
- That same month, the ABA Section of Litigation and PricewaterhouseCoopers jointly announced that the Section had selected PwC as its "litigation consulting sponsor," an arrangement by which PwC will provide enhanced benefits and resources to the Section's members.

Outside the United States there has been considerable MDP activity also:

- The Council of the Law Society of England and Wales has begun the process to approve the establishment of MDP's in the United Kingdom.
- The International Practice of Law Committee of the Canadian Bar Association has issued a report on multidisciplinary practice which recommends that lawyers be permitted to enter into partnership with nonlawyers and to share fees with nonlawyers, subject only to the Rules of Professional Conduct which regulate lawyers in traditional practice.
- The National Multidisciplinary Partnerships Committee of the Federation of Law Societies of Canada has recommended that the Rules of Professional Conduct be relaxed to permit MDP organizations.
- In New South Wales, Australia, legislation has been introduced which will permit law firms to share profits with nonlawyers, incorporate, raise capital through passive investment, and float loans on the Australian stock exchange.
- PricewaterhouseCoopers has announced it has selected the name "Landwell" for its worldwide law firms. PwC now employs 1,600 lawyers in 42 countries.
- A survey conducted by London's *Financial Times* of 100 senior executives of large companies and financial institutions which the United States and the United Kingdom showed a willingness by the executives to purchase legal services from MDP's if the organizations were permitted to offer such services.

## Circle The Wagons

At the mid-year meeting of the ABA House of Delegates in Dallas, Texas, in February 2000, the House of Delegates voted 305 to 118 to urge state bar disciplinary organizations to enhance enforcement efforts against the unauthorized practice of law, in what some delegates characterized as a "circle the wagons" effort.

At that meeting, an interesting exchange took place between Cheryl Niro, president of the Illinois State Bar, and Judge Paul Friedman, a member of the United States District Court for the District of Columbia and of the ABA Commission on Multidisciplinary Practice. Ms. Niro, speaking for the majority of a caucus of state bars, told the Commission: "Absent studies that show [accommodating MDP's] could be done without compromising the profession... the majority [of state bars] would still be against MDP's." Judge Friedman answered, "You mean the majority of state bars *refuse to acknowledge that MDP's already exist.*"[5]

The New Jersey State Bar Association Board of Trustees has adopted a resolution calling on the ABA to dissolve the MDP Commission entirely. For its part, the New Jersey Bar has announced increased enforcement of existing regulations prohibiting the unauthorized practice of law. It is expected that the ABA House of Delegates soon will have the opportunity to consider a similar proposal.

## Unauthorized Practice of Law

Like all states, North Carolina has an unlawful practice of law statute. Ours provides, in pertinent part:

[I]t shall be unlawful for any person or association of persons, except active members of the Bar of the State of North

Carolina admitted and licensed to practice as attorneys-at-law, to appear as attorney or counselor at law in any action or proceeding before any judicial body,...to maintain, conduct, or defend the same,... or, by word, sign, letter, or advertisement, to hold out himself, or themselves, as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor-at-law,...and it shall be unlawful [for any such unlicensed person] to give legal advice or counsel, perform for or furnish to another legal services... . G.S. § 84-4.

The UPL statute gives the State Bar and the district attorney the authority to bring actions in the name of the state to enjoin any such persons violating the statute, and further "it shall be the duty of the district attorneys of this State to indict any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of G.S. 84-4 to 84-8."

Those who believe that more vigorous enforcement of unauthorized practice of law statutes is the way to deal with multidisciplinary practice may draw enlightenment from the efforts of the State Bar of Texas which, after an extensive investigation, brought an action against Arthur Andersen in 1998 for alleged unauthorized practice of law. Almost as soon as the lawsuit was filed, it was dismissed. Following that effort, the Texas Bar brought an action against the makers of Quicken Family Lawyer Software, who were enjoined by United States District Judge Barefoot Sanders from distributing the self-help legal guides and documents. Shortly thereafter, the publishers appealed to the Texas Legislature, which promptly passed a bill stating the publication and distribution of self-help legal materials did not constitute the practice of law in the State of Texas.

## Squinting At The Horizon

A lawyer representing the former King & Spalding-Ernst & Young firm said recently, "The consulting firms will lobby at the state level and maybe so will some clients who think this is important or people who hate lawyers, which is a very substantial constituency."[6]

Philip Anderson, a partner in the Little Rock, Arkansas, firm of Williams & Anderson and immediate past president of the ABA, recently said:

> *We have MDP's in the United States now.* Larger accounting firms are performing services that, if performed in law offices, would be considered the practice of law. The only question I see now is this: Will the lawyers who are practicing in accounting firms be held to the same rules of professional conduct that govern lawyers in traditional practice settings?[7]

The Commission on Multidisciplinary Practice received evidence and commentary from various constituencies, including testimony from Theodore Debro Jr., an employee of an organization in Birmingham, Alabama, which provides counseling services to low income persons. Debro posited circumstances under which his clients would benefit from MDP's. For instance, a factory worker injured on the job frequently needs to see a psychologist for emotional problems, an insurance specialist to help file for disability benefits, a social worker who can help his family, and a lawyer, perhaps, if civil actions or disability claims need to be filed. One-stop-shopping, Debro told the Commission, might be particularly helpful to such a person because the poor often do not have the means to visit various professionals and are frequently intimidated by lawyers, but are more apt to see lawyers in a casual, multidisciplinary setting.

Similarly, George Abbott of Omaha, Nebraska, and past president of the National Small Business Association, told MDP Commission members that small business organizations often need an informal sounding board where they can discuss business ideas and seek advice from people with greater experience. This type of client might prefer an MDP comprised of accountants and lawyers, as opposed to retaining separate law and accounting firms. Abbott encouraged the bar to understand the demand among small business consumers for "one-stop-shopping" and reminded the Commission members of the Oak Ridge Boys song, "You Can't Look Forward to Tomorrow and Still Hang on to Yesterday."[8]

The Florida Bar MDP Committee made this point: "If the practice of law is to remain a viable profession, then it must 'reinvent' itself or risk being deemed irrelevant in the new economy, in which the Big Five accounting firms are offering an expanding array of legal services." Its report concluded that, "Lawyers are driving down the Information Super Highway into the 21st century at full speed, but with their eyes transfixed on the rear view mirror."[9]

## The North Carolina Response

The North Carolina Bar Association has been studying the multidisciplinary practice issue for more than a year under the able leadership of attorney Jean Gordon Carter of the Wake County Bar. A report from that Committee is expected soon. The North Carolina State Bar similarly has been studying the MDP issue in the context of its regulatory responsibilities. Although the American Bar Association can make revisions to the Model Rules of Professional Conduct, it is only when and if the North Carolina State Bar makes changes to the Revised Rules of Professional Conduct and they are approved by the North Carolina Supreme Court, that the rules governing the practice of law by North Carolina lawyers change.

## The Issue for Decision

It seems to me that we, as an organized bar, need to decide not whether we do or do not want to encourage multidisciplinary practice firms. We should be honest enough with ourselves to admit, as ABA Past President Philip Anderson does, that multidisciplinary practice law firms are already practicing in the United States. The question for us is whether we support regulated MDP's or continue to close our eyes and allow unregulated MDP's to operate without adequate protection of the public and in disregard of the core values of the American legal system.

It is a decision we cannot avoid. ■

*Jerry Parnell is a former councilor from the 26th District and serves as vice-president of the North Carolina State Bar.*

## Endnotes

1. Commission on Multidisciplinary Practice, *"Updated Background and Information Report"* (February 22, 2000).
2. *Legal Times*, February 22, 2000.
3. *Id.*
4. R.A. Shepherd, Law and Finance Under One Roof, *National Law Journal*, November 15, 1999, at A21.
5. *Legal Times*, February 22, 2000.
6. *Legal Times*, February 22, 2000.
7. *Journal of Accountancy*, February 2000.
8. *Texas Lawyer*, February 15, 2000.
9. *Miami Daily Business Review*, February 4, 2000.

# If It Makes Sense To 50,000 Lawyers, It Should Make Sense To You.

We insure a lot of very smart, very successful people. The wisdom of their business decisions to choose CNA Pro lawyers professional liability coverage is clear.

By choosing CNA Pro for your firm's protection, you get coverage underwritten by one of the CNA Insurance Companies, providing professional liability insurance for over 50,000 lawyers in 49 states...

By choosing Asura, you get a professional insurance broker created by the merger of CSC (formerly Crumpton Company) and Associated Insurers of Raleigh. A private company with history which grew out of Durham in 1872.

Now serving North Carolina and South Carolina attorneys, to obtain a complimentary premium indication or for a representative nearest you, please contact:

James Slade Crumpton, Jr., CFP
800.672.1674 or 919.281.4535
LawyersInsurance.com

ASURA
Insurance, Risk and Asset Management

Post Office Box 13941
Research Triangle Park, NC 27709
**www.asuracorp.com**

Raleigh
Durham
Greensboro
Wilmington

**CNA PRO**
**More than insurance. Your best defense.®**

Underwritten by Continental Casualty Company, one of the CNA Insurance Companies.
CNA is a registered service mark of the CNA Financial Corporation, CNA Plaza, Chicago, IL 60685

# Will Attorneys Vote Themselves Out of the Competition?

By Caryn L. Abramowitz

Despite being highly competitive by nature, lawyers may be putting themselves at a distinct competitive disadvantage in the legal marketplace. While bar associations debate the merits and evils of multidisciplinary practices (MDP's), the large accounting firms are developing and expanding their already flourishing MDP's. From a marketing perspective, it looks like law firms need to jump on this bus; indeed, it looks like law firms may be in danger of missing it. But like any good legal issue, this one too has more than one side. Those not in favor of lawyers participating in MDP's implicate codes of professional ethics, tradition, and the "core values of the legal profession."[1] But isn't there a way to compete in the marketplace as it exists today while still maintaining those "core values?" Traditionalists should not forget that law firms are businesses and that sometimes they have to act like them.

Staunchly defending ethical barriers to participating in MDP's, rather than trying to craft more current and flexible ethical canons that allow lawyers to join in the competition so alive in today's legal marketplace, simply does not make sense for the profession. Lawyers are so good at changing laws to better represent what's going on in the world. As technology plays a greater role in society, lawyers play their part in developing new laws and in molding existing laws to accommodate it. When regulations restricting affiliations between certain types of financial institutions became too limiting for these industries in the current economic landscape, lawyers participated in liberating them.[2] Is it because MDP's so intimately affect them that lawyers are taking such a myopic view? Is it

because they fear the increased competition promised by, among others, large accounting firms?

Reasons aside, in August 1998, the American Bar Association (ABA) created a Commission on Multidisciplinary Practice (the Commission) to gather, study, and analyze the issues surrounding MDP's and legal practice. Despite numerous hearings, many interviews with, and communications from anyone even tangentially impacted by MDP's, and a 1999 report by the Commission advising the ABA to change some of the Model Rules of Professional Conduct (the Model Rules),[3] the ABA decided to put off the decision for another year.[4]

But now, the time is approaching for yet another review of this issue. After hearing additional information gathered by the Commission, the ABA House of Delegates is set to vote on whether or not it should change the Model Rules to allow lawyers to share fees and enter into MDP's with nonlawyer professionals.[5] The remainder of this article will discuss concerns about MDP's, the Model Rules implicated, the current legal climate with regard to MDP's, and the reasons why the ABA House of Delegates should vote a wholehearted "yes" to MDP's in the legal profession.

### MDP's – Why Not?

In August 1999, the Commission on Multidisciplinary Practice proposed changes to the Model Rules of Professional Conduct in order to allow for MDP's in the legal profession.[6] The ABA House of Delegates voted not to change the Model Rules. In doing so, the delegates represented the many lawyers and bar associations also hesitant to "whittle away" at the ethical guidelines lawyers have followed for so long. This "delegation" of MDP naysayers cites several Model Rules as the reason for its position.

The Model Rule most impacted by allowing MDP's certainly would be Rule 5.4, Professional Independence of a Lawyer (all states have adopted the Model Rules in one form or another). Allowing MDP's would render obsolete the basic tenet of this rule—"A lawyer or law firm shall not share legal fees with a nonlawyer... ." [7] The essence of most types of MDP's is permissible fee sharing between lawyer and nonlawyer professionals.

But the remaining provisions of Rule 5.4, as well as the accompanying comments to the rule, hint at some of the reasoning behind the basic tenet of the rule. For instance, 5.4(b) says that "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." And 5.4(d) says, "A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if: (1) a nonlawyer owns any interest therein...; (2) a nonlawyer is a corporate director or officer thereof; or (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer."[8]

The Model Rule drafters apparently feared that if a nonlawyer professional—one who does not have to comply with the Model Rules—had any type of financial or business interest or control over a lawyer partner, that lawyer partner could lose his or her independent judgment. It is true that a nonlawyer boss may be bound by a completely different set of ethical standards and interests. And it follows that a nonlawyer boss paying a lawyer's salary may exercise the authority of a boss and may therefore impact a lawyer's judgment. Those opposing MDP's for the legal profession find this obstacle to be unconquerable; exercise of a lawyer's judgment should not be compromised for mere economic or business objectives.[9]

In reality, rather than compromising lawyers' professional judgment, having such close access to nonlawyer professionals could universally enhance lawyers' judgment. For instance, suppose a family lawyer handling a client in a divorce case works in an MDP with a social worker who counsels this same client. Discussing the case with the social worker (with the client's knowledge, of course), accessing the tools of another trade, and learning from the nonlawyer can only assist the lawyer in rendering more appropriate and fully informed advice about the case. Even in a non-case-specific sense, working so closely with another professional only affords lawyers added information and tools to better assist them in zealously advocating for their clients.[10]

Those opposing MDP's also point to Model Rule 5.5 (b) as a deal breaker. It says, "A lawyer shall not . . . (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law."[11] Apparently, those espousing this argument against the use of MDP's believe that allowing lawyers to share fees and business decisions with nonlawyer professionals creates a greater risk that the lawyers will assist those nonlawyer professionals in activities that really constitute practicing law.

This point is amusing in a sense because the inverse of the argument seems more apparent than the argument itself. If lawyers are able to join MDP's and perform legal services for the clients of the MDP's, wouldn't the instances of unauthorized practice of law actually decrease? Currently, MDP's comprised only of nonlawyer professionals frequently are accused of crossing the line into the unauthorized practice of law. Adding lawyers to these MDP's would almost certainly leave the nonlawyer professionals free to do the types of work that more appropriately fall into their realms, leaving the legal work to the lawyers.

Other concerns include the impact of MDP's on attorney-client privilege and confidentiality, increasing instances of conflicts of interest, the duty to provide *pro bono* services, and handling client funds.[12]

For a group of people accustomed to making and overruling rules and laws, taking this position on the unalterable nature of the Model Rules seems strangely incongruous. Opponents basically are saying that MDP's will compromise the Model Rules, as written. Rather than ruling out the idea of MDP's altogether, couldn't lawyers agree to allow MDP's in the legal practice and simply implement new rules to ensure that the moral obligations implicit in the current Model Rules remain intact?

In fact, to some extent the Commission has done exactly that. Recognizing the importance of ensuring independent judgment, for example, but not tied to the present wording and method of ensuring such independent judgment, the Commission recommends requiring the MDP to certify to the State Supreme Court "that it will not interfere with the lawyer's independence of judgment and exercise of professional judgment."[13] Such a rule would, in essence, accomplish the same thing as disallowing the associations all together. The rule also would put MDP's on alert that maintaining lawyers' independence is critical and is something that the State Supreme Court will monitor.

State Supreme Courts should implement similar requirements concerning the unauthorized practice of law. If MDP's certify that the lawyers will not assist the nonlawyers to practice law, it should accomplish the same thing as requiring lawyers themselves not to

assist nonlawyers in practicing law. Again, requiring certification would bring the issue of unauthorized practice of law to the forefront and would encourage MDP's to be diligent in monitoring for violations.

The State Supreme Courts could implement similar rules and regulations to combat issues that arise with regard to handling funds, the attorney/client privilege, and confidentiality. Yes, conflicts of interest may occur with more frequency, but aside from the inconvenience posed by having to be painstakingly attentive to more conflicts, this argument does not offer a reason to disallow MDP's.

Keep in mind that lawyers are not the only profession with a code of ethics. "In fact, virtually every other profession (at least those with which MDP relationships are likely) has its own code, disciplinary system, and traditions. Deceptive advertising, self-dealing, and practicing beyond one's competence are widely condemned; integrity, public service, and continuing education are widely encouraged, if not required."[14] Studies have found that these codes resemble the Model Rules so closely that "the only irreconcilable difference [identified] is the confidentiality obligations of lawyers vs. the public disclosure obligations of auditors."[15] The practical solution for this problem is not a sweeping prohibition of MDP's for lawyers, but rather a narrow limitation disallowing MDP's with both lawyers and auditors for one client.

### MDP's – Why?

The answers to this question should be obvious. Most importantly, clients want it. What consumer wouldn't want the option to have its multiple needs met by one provider? The potential professional combinations are endless.[16] Family lawyers and social workers; environmental lawyers and geologists; business or estate planning lawyers and accountants or financial consultants; antitrust lawyers and economists; medical malpractice litigators and medical illustrators; technology lawyers and information technology consultants or systems analysts; intellectual property lawyers and engineers; health care lawyers and doctors.

The Big Five accounting firms are already offering it, so the consumers must want it. Accounting firms like PriceWaterhouseCoopers and Arthur Andersen have already taken over a good portion of the European legal market, "avidly acquiring law firms in dozens of cities in Europe."[17] And large European legal consumers have given them rave reviews. For instance, one large venture capitalist using an MDP said that he has saved 20% in legal, tax, and audit fees over the course of the six years it has been using the MDP.[18] European clients have cited efficiency and cost savings as the most significant reasons to use MDP's over traditional law firms. Studies have shown that using one MDP for a variety of needs eliminates the "getting to know you" time factor associated with employing a number of different practitioners from a number of different firms. The MDP and all of its professionals will understand the client and its way of doing business. MDP's can therefore provide clients with more seamless service.[19]

The new "hybrid operations" in Europe provide "a broad array of legal services, including counseling on such high-end matters as corporate finance and mergers and acquisitions."[20] They already provide a range of services including employment law audits, training on legal requirements, and "regulatory compliance."[21] The Big Five are slowly slipping their MDP approach into the United States, recruiting lawyers from large US firms. These lawyers officially do not practice law, but ask any tax lawyer where the competition for clients is coming from and one of the answers is sure to be "accounting firms."

But if competition from the Big Five accounting firms is not enough reason to allow lawyers to join MDP's, the potential boost to client service is. As one writer noted, "Governments and corporations often employ lawyers and other professionals under the same roof within the same unit. These organizations have discovered a lesson that is more broadly applicable—that coordination, teamwork, and fully-considered strategic planning are often fostered when professionals from different disciplines work within one service organization for the same clients."[22] Clients will benefit from access to the various disciplines. Their legal problems, once considered in a virtual legal vacuum, can be approached multi-dimensionally, within a fuller context.

What's more is that lawyers and law firms are not popular. The American Association of Retired Persons found in a study that a high percentage of people who could use a lawyer do not consider using one. These people seek out other professionals for the advice they need.[23] Another study indicated that consumers are intimidated by lawyers and worry that they will be taken advantage of and pay for inefficient work. Often, lawyers are used merely as a last resort. This negative public perception and hesitance to engage lawyers results in many missed business opportunities. This same study, conducted by the Consumers Alliance of the Southeast, demonstrated that "MDP's offer an opportunity to re-cast the legal profession as part of a problem-solving team whose primary goal is finding integrated efficient and effective solutions to the everyday problems that confront all consumers... ."[24]


## Free Report Shows Lawyers How to Get More Clients

Calif.—Why do some lawyers get rich while others struggle to pay their bills?

The answer, according to attorney David M. Ward, has nothing to do with talent, education, hard work, or even luck.

"The lawyers who make the big money are not necessarily better lawyers," he says. "They have simply learned how to market their services."

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a referral marketing system he developed six years ago.

"I went from dead broke and drowning in debt to earning $300,000 a year, practically overnight," he says.

Although most lawyers depend on referrals, he notes, not one in 100 uses a referral *system*. "Without a system, referrals are unpredictable. You may get new clients this month, you may not," he says.

A referral system, Ward says, can bring in a steady stream of new clients, month after month, year after year.

"It feels great to come to the office every day knowing the phone will ring and new business will be on the line."

Ward has taught his referral system to over 2,500 lawyers worldwide, and has written a new report, **"How To Get More Clients In A Month Than You Now Get All Year!"** which reveals how any lawyer can use this system to get more clients and increase their income.

North Carolina lawyers can get a **FREE** copy of this report by calling **1-800-562-4627,** a 24-hour free recorded message, or visiting Ward's web site, **http://www.davidward.com**

## Vote "Yes" on MDP's

The MDP debate brings to mind a joke recently told on a television drama. The National Guard issued a flood warning in the area where John Doe lived. John Doe's house was in particular danger and the news recommended that everyone in his area evacuate. He stayed in his house. As the storm began to get serious, the National Guard knocked on his door and told him that he should evacuate. He refused saying, "God will save me." A few hours later, after the flood had become much more serious, the National Guard rowed in a boat to John's door and told him to evacuate. But he said that he would stay because he trusted that "God would save" him. The flood got even worse and the National Guard again tried to save John, this time in a helicopter. He refused once again saying, "I trust God will save me." John drowned. When he went to heaven and met with God he asked, "Why didn't you save me? I put all of my faith in you and you let me drown. What happened?" God said, "I sent you the National Guard, a boat, and a helicopter; what more did you want?"

Here's how the joke relates. Lawyers regulate themselves. They also have the know-how to fashion regulations and rules to best accomplish certain objectives. So they have in their hands the tools necessary to compete in today's marketplace, just like John Doe had the tools to save himself from drowning in the flood. Lawyers cannot hide behind the high ideals of the Model Rules of Professional Conduct and hope that ethics alone will help them survive the competition. They have the tools and now is the time to use them so that the profession can continue to thrive. The ABA House of Delegates should let lawyers use the tools to rework the Model Rules to fit today's legal marketplace—to uphold the underlying ethical canons while at the same time allowing lawyers to compete on new frontiers and against new challengers. In adjusting the Model Rules to allow MDP's, lawyers would not be releasing their professional ethics to other hands; they would be "entrusting those core values to the same people who have always been responsible for their protection: lawyers."[25] ■

*Caryn L. Abramowitz is a non-practicing attorney working as the communications manager in the marketing department of a Center City Philadelphia law firm. She earned a BA in Journalism from Boston University, and her JD from the University of Maryland School of Law.*

### Endnotes:

1. Carol McLean Brewer, Joan Hume, Michael Nachwaiter, and Katherine Silverglate, *Facing The Tide of Change*, 74-Mar Fla. B. J. 13 (2000).
2. Public Law 106-102, 113 Stat. 1338
3. The Report of the Commission on Multidisciplinary Practice to the ABA House of Delegates, reported in the Spring 1999 issue of *The Professional Lawyer*.
4. Nick Badgerow, 69-Mar J. Kan. B. A. 12, 13 (2000).
5. Many state and local bar associations have rejected resolutions proposing permissible MDP's. But just this past month, the Philadelphia Bar Association became the first of the regional bar associations to approve a resolution recommending MDP's. The resolution limits the approval only to lawyer-controlled MDP's. The Pennsylvania Supreme Court must approve the resolution. Washington, DC, is currently the only region that permits MDP's, albeit on a limited basis. *Philly Bar Okays MDP's*, 5/1/00 *Prac. Acct. Mag.* 6.
6. The Report of the Commission on Multidisciplinary Practice to the ABA House of Delegates, reported in the Spring 1999 issue of *The Professional Lawyer*.
7. Model Rules of Professional Conduct 5.4 (1995).
8. *Id.*
9. Nick Badgerow, 69-Mar J. Kan. B. A. 12, 16 (2000).
10. Michael Gerrard, Statement of Position of Multidisciplinary Practice, Executive Committee of the Association of the Bar of the City of New York, 595 PLI/PAT 75, 80 (2000).
11. Model Rules of Professional Conduct 5.5 (1995).
12. Nick Badgerow, 69-Mar J. Kan. B. A. 12, 16 (2000).
13. *Id.* at 15.
14. Michael Gerrard, Statement of Position of Multidisciplinary Practice, Executive Committee of the Association of the Bar of the City of New York, 595 PLI/PAT 75, 87-88 (2000).
15. *Id.*
16. Margaret Jacobs, *Hybrid Law Practices In US Debated*, Wall St. J. Eur., May 31, 2000 at 6.
17. *Id.*
18. *Id.*
19. Abigail Townsend, *Lovells Lures KLegal Director In Shake-Up*, The Lawyer, May 8, 2000 at 1; 2/14/00 Nat'l L.J. A21 (col.5); 12/13/99 N.Y.L.J. 5 (col. 1).
20. Margaret Jacobs, *Hybrid Law Practices In US Debated*, Wall St. J. Eur., May 31, 2000 at 6.
21. Nick Badgerow, 69-Mar J. Kan. B. A. 12, 16 (2000).
22. Michael Gerrard, Statement of Position of Multidisciplinary Practice, Executive Committee of the Association of the Bar of the City of New York, 595 PLI/PAT 75, 80 (2000).
23. Alfred M. Butzbaugh, *On Solos, Small Firms and MDP's*, 79 Mich. B.J. 314 (2000).
24. *Id.*
25. Multidisciplinary Practices: *Smart Marketing Tool or An Ethical Question*, 35 No. 22 Bankr. Ct. Dec. (LRP) 1 (April 18, 2000).

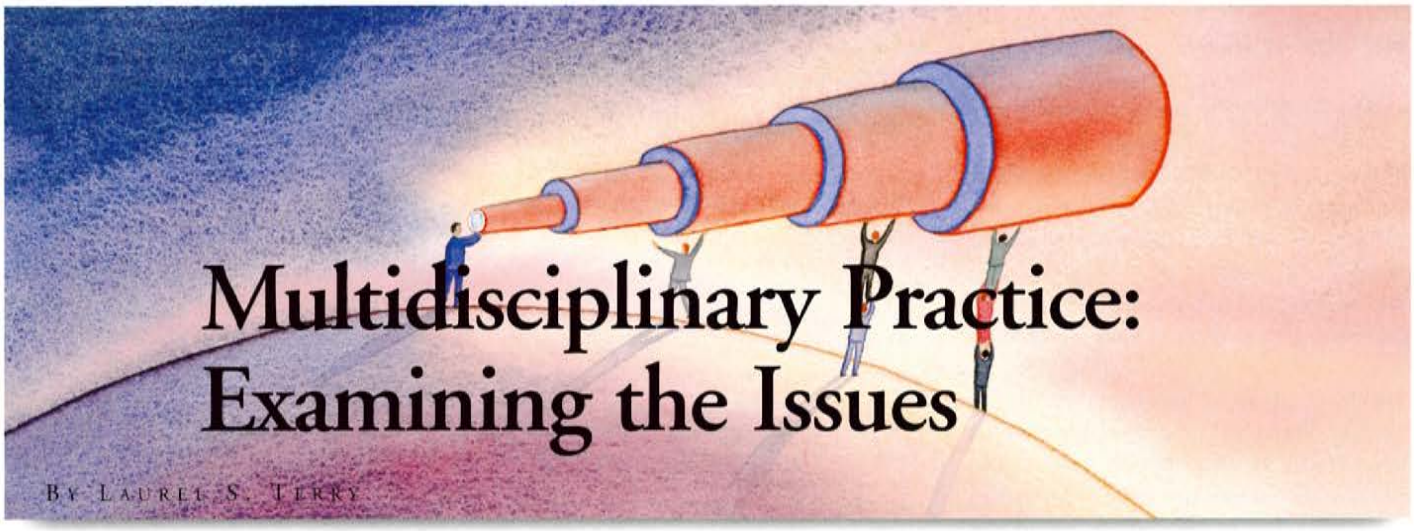
Fidelity National Title
INSURANCE COMPANY

L. Hunter Meacham Jr.
Vice President and Regional Counsel
Charlotte Area

Robert Bruce
Branch Manager and Title Counsel

William B. Pittman
President, North Carolina Division

Toll-Free: 800-432-6268 Local: 704-373-0371 Fax: 800-829-0597



# Multidisciplinary Practice: Examining the Issues

BY LAUREL S. TERRY

*The following article contains reprinted remarks made to an audience that was supplied with conference materials. The materials referred to in this piece are available on the ABA MDP Commission's webpage. There are seven charts that summarize the testimony of all the witnesses before the Commission on Multidisciplinary Practice, an issue checklist, and Ms. Terry's testimony to the Commission on Multidisciplinary Practice. The documents are the last items under Ms. Terry's name, on the website listed below.*

http://www.abanet.org/cpr/multicomsched399.html

Did you know.....

■ That if the Big Five accounting firms were included in the rankings of the largest law firms, they would occupy the third and fourth spots, after Baker & McKenzie and Clifford Chance, and that they would also occupy four of the top 15 spots (and these statistics don't even include Big Five lawyers who exclusively practice tax law)?[1]

■ That the Big Five accounting firms increasingly have been recruiting lawyers and law graduates and that these lawyers appear to be doing not just the traditional tax work, but things that if done in a law firm setting would be considered to be the practice of law?[2]

■ That there is an ABA Commission studying the topic of multidisciplinary practice and this Commission has a mandate to produce a report by the August 1999 ABA Annual Meeting?[3]

■ That Larry Fox, a leading legal ethics commentator and MDP critic, has asked, perhaps not completely rhetorically, why the ABA Ethics 2000 Commission exists since he thinks the ABA Commission on Multidisciplinary Practice is poised to radically revise various Model Rules of Professional Conduct?[4]

■ That entities as diverse as the American Corporate Counsel Association (ACCA) and the ABA General Practice, Solo and Small Firm Section, have endorsed the concept of revising ABA Model Rule 5.4's fee sharing ban?[5]

■ That the new chairperson of Pillsbury, Madison & Sutro reportedly is leading an effort to push the ABA to allow law firms to provide wider professional services and is quoted as saying "I think forward-looking firms will push for [a relaxation of the rules prohibiting MDP's]. It is so obvious that the market wants this."?[6]

■ That MDP's are the subject of intense interest around the world, with studies or new legislation either pending or recently completed in Australia, Canada, the CCBE (the European Union Bar Association), England, France, the International Bar Association, the Netherlands, and the Union d' Avocat Internationale?[7]

■ That the US dialogue about MDP's has occurred, for the most part, without significant input from the professional responsibility community represented at this conference?[8]

The topic of this plenary section is Multidisciplinary Practice. Numerous individuals have called this topic one of the most important issues facing the legal profession, a conclusion with which I agree.[9] This topic potentially has very broad-reaching effects on the law of lawyering. By way of brief example, the panel sessions on CLE, Birbrower, UPL, mandatory malpractice, standards for lawyer sanctions, conflicts and imputation, and the erosion of confidentiality have the potential to be profoundly affected by the MDP phenomenon. Despite the importance and potentially broad impact of these issues, the multidisciplinary practice debate, for the most part, has occurred without the benefit of extensive discussion and debate by the professional responsibility community. Indeed, to my knowledge, I am the only academic who was not a Commission member, who attended all of the Commission's hearings.

Undoubtedly, there are several explanations for the lack of extensive participation and debate on this topic. First, there is the issue of inertia since most people have been actively involved in other issues for years and may find it difficult to suddenly shift gears and focus on this issue. Second, the ABA Commission on Multidisciplinary Practice hearings have not been scheduled so as to make them particularly accessible. Because of the timing of the Commission's creation and appointment (August 1998) and the requirement that it submit a report to the ABA House of Delegates in August 1999 (requiring an almost finished product by June 1999 in order to circulate it to the ABA House of Delegates), the ABA Commission on Multidisciplinary Practice was not able to hold its hearings either in conjunction with this conference or with the ABA Annual Meeting. (This is in contrast, for example, to the ABA Ethics 2000 Commission hearings.) In addition to the difficulties that are always inherent in attending multiple sets of multi-day hearings (and for the professors in the

audience, especially when held during the semester), the ABA Commission on Multidisciplinary Practice hearings held in February 1999 had the added problem that they were scheduled in a time-slot that competed with the ABA Ethics 2000 Commission hearings. Third, there is no simple mechanism for exchanging views on issues related to MDP's. In my view, the ABA Commission on Multidisciplinary Practice's webpage does an excellent job in making the substance of its hearings accessible after the fact. I also think that after the ABA Commission began posting on its webpage the written submissions it receives, the quantity of such submissions increased noticeably. (All submissions to date are from non-academics.).[10] Unlike the ABA Ethics 2000 Commission, however, the ABA Commission on Multidisciplinary Practice does not have a listserv that can be used to facilitate discussion on the difficult issues related to multidisciplinary practice. [11]

In my view, it is critical that such a discussion occur. I know that my own thinking about MDP's has evolved significantly since I wrote my *What If?* article last June. One of the most useful aspects of attending the Commission's hearings was the opportunity to hear 13 very bright, very different people ask challenging questions of the witnesses testifying before the Commission. In my view, my own thinking became much more sophisticated. Moreover, I believe I am not unique in this evolutionary process. Professor John Dzienkowski, for example, testified in February 1999 that he would recommend placing limitations on the individuals with whom a lawyer could join in an MDP. He was questioned extensively on this proposition and in his April 8, 1999, written remarks, he indicated that in view of the questions he received, he had reconsidered his views and now believed that lawyers should be able to form MDP's with anyone they wanted.[12] I also believe that the thinking and questioning of the Commission members themselves became more sophisticated as the hearings progressed. Indeed, the depth and breadth of the witnesses' testimony also seemed to increase, no doubt reflecting the fact that they were able to benefit from the education process that occurred during the prior hearings.[13]

I certainly have opinions on many of the issues related to MDP's. (All of my recommendations are listed on Appendix B-2, which is attached to these materials.) But I believe that all of us will be living with the MDP phenomenon for many years in the future and that it is exceedingly important for this community to exchange ideas and opinions so that all of our thinking becomes more sophisticated concerning these issues. It is against this background that I make my remarks today and submit the attached, rather lengthy materials. It's my hope that these materials will help facilitate discussion within the professional responsibility community so that we all become much more knowledgeable in our thinking about the myriad of issues related to, and raised by, the MDP phenomenon.

In addition to this brief introduction, my materials in your conference book consist of the items I submitted to the ABA Commission on Multidisciplinary Practice.[14] The first item is my testimony before the ABA Commission on Multidisciplinary Practice. This testimony does not attempt to present a comprehensive analysis of the issues related to MDP's. Instead, this testimony introduces the other material and makes ten observations that I found most significant when preparing this material. The second item is an *Issue Checklist* that was Appendix A to my testimony. This *Checklist* identifies approximately 40 issues related to MDP's, grouped into three categories. Under each issue, I have listed alternative answers, including my recommended answer. The third set of items are Appendices B1-B7 to my testimony. These charts attempt to synthesize and organize the witnesses' testimony according to the 40 issues that I identified. These charts should enable those who did not attend the ABA Commission hearings to nevertheless obtain a "snapshot" of what all the witnesses said about particular issues. As footnote 1 to Appendix B-1 observes, these charts undoubtedly contain many errors since many witnesses did not submit written statements, since the charts are based on my handwritten notes from seven full days of hearings, including both witness statements and the question-and-answer sessions (and I don't know shorthand), and since at the time I prepared these charts, I only had access to the Summaries of Oral Testimony from the November 1998 hearings. Despite their inherent weaknesses, I hope these charts will permit those who did not attend the Commission's hearings to feel that they can get "up to speed" on the issues raised by MDP's and participate in the forthcoming debate on these issues.

As the *Issue Checklist* and *Charts B1 - B7* show, I have grouped the issues into three categories:

- *Threshold Issues*;
- *Functional Issues*; and
- *Substantive Ethics Issues*.

In my view, the *Threshold Issues* stage is the point at which one determines whether he or she is willing to consider modifying ABA Model Rule 5.4's ban on fee sharing and partnerships with nonlawyers. The seven threshold issues include questions such as the standards to use when evaluating the MDP issue, core values of the legal profession to protect, whether the same MDP rules should apply to both Main Street and Wall Street clients and lawyers, and the relevance of the MDP issue to both groups, the extent of client demand for MDP's, problems caused by MDP's, the extent to which MDP lawyers and nonlawyers are offering services that would be called legal services if provided in a law firm context, and the issue of who has the burden of proof on these issues.

I subdivided the *Functional Issues* into three subgroups.[15] I describe the first of these subgroups as *Forms of Association* issues. These issues include questions such as who may join the MDP, whether the MDP should be limited to providing legal services, as in Washington, DC,[16] the MDP name, passive investment, transparency requirements (*i.e.* disclosure), and any ownership or control requirements (*e.g.* whether *ABA Commission Model 4 or 5* is permitted.) The second subgroup is *Scope of Practice Issues*, including whether there should be any limitations on an MDP lawyers' scope of practice and whether it is realistic to expect UPL provisions to be used against lawyers and nonlawyers working in MDP's. Witnesses Terry, Verhoeven, and others, for example, recommend that an MDP not be permitted to provide audit and legal services for the same client. Witness Dzienkowski suggested that MDP lawyers not be permitted to provide litigation services. The third subgroup was *Functional Ethics Issues*, including whether an MDP lawyer must obey legal ethics rules, whether an MDP nonlawyer must obey legal ethics rules, what to do when different professions' ethics rules clash, malpractice implications, and whether a new mega-regulator for the MDP is necessary or desirable.

I labeled the third major set of issues *Substantive Ethics Issues*. These issues in turn are divided into two subgroups: one attempts

to identify various underlying premises that would affect the MDP analysis and the other focuses on specific ABA Model Rules of Professional Conduct. The charts conclude with a *Miscellaneous* section and a section containing the witnesses' *Bottom Line Advice to the ABA Commission.*

In my view, the points listed below were incontrovertibly established during the ABA Commission's hearings. Thus, the debate about whether and how to amend ABA Model Rule 5.4 should be made against the backdrop of these facts:

- there is virtually unanimous agreement that the only legitimate grounds for regulation are client protection and public interest (although the witnesses disagree about what those terms encompass);
- there is at least some client and lawyer demand for MDP's (with some witnesses saying the need is overwhelming and some saying the demand is minimal, and is being driven mostly by the suppliers);
- the MDP phenomenon is occurring in the US (by MDP phenomenon I mean that there are now a significant number of lawyers working in entities that have non-lawyers and who are offering services that if offered in a traditional law firm would be called legal services);
- lawyers participating in the MDP phenomenon, for the most part, have been pulled out of the legal profession's regulatory and discipline system because they are in a posture where they have to say they are not practicing law or else they could be charged with MRPC 5.4 violations; and
- there are lots of uncertainties about MDP issues, how lawyer-MDP's will work, and what pressures they would create. Even in Europe and Australia, which have had MDP's much longer than in the US, these issues are very much in flux and not resolved.

In other words, the world is changing before our eyes and we don't know what is going to happen and whether it is going to be good or bad. The only certain thing is that debate is healthy. I encourage you to engage in a vigorous debate on these issues. ■

*Laurel S. Terry is a professor at Penn State's Dickinson School of Law.*

*Reprinted with permission from the Temple Law Review and the ABA Center of Professional Responsibility.*

## Endnotes

1. *See, e.g., The Global 50*, Am. Law. 45, 46-47 ( Nov. 1998); *see also* Laurel S. Terry, *What If?... The Consequences of Court Invalidation of Lawyer-Accountant Multidisciplinary Partnership Bans*, Ch. 9, Private Investments Abroad—Problems and Solutions in International Business in 1998 (Matthew Bender 199) at nn. 13-14 and accompanying text [hereafter Terry, *What If?*]
2. *See, e.g.*, Testimony of Abbie F. Willard, Assistant Dean of Career Services, Georgetown University Law Center, before the ABA Commission on Multidisciplinary Practice, http://www.abanet.org/ cpr/willard1.html (visited April 23, 1999)(discussing Big Five recruiting practices at Georgetown and other US law schools); Appendices B1-7 to Testimony of Professor Laurel S. Terry before the ABA Commission on Multidisciplinary Practice, at Threshold Issues, Item G, (included with the conference materials; these should soon be available as a link from http://www.abanet.org/cpr/multicomsched399.html (visited April 23, 1999)(summarizing testimony before the ABA MDP Commission on the activities of lawyers practicing in Big Five firms); Terry, *What If?*, *supra* note 1, at n. 5 and accompanying text.
3. This Commission has an excellent webpage that includes background information about the Commission, its mandate and its members, a bibliography, a *Background Paper on Multidisciplinary Practice: Issues and Developments; Hypotheticals and Models*; and copies of the written remarks and summaries of the oral testimony of the witnesses at the three sets of public hearings. *See* http://www.abanet/org/cpr/multicom.html (visited April 23, 1999). This webpage is linked to the ABA homepage and the ABA Center for Professional Responsibility homepage. *See* http://www.abanet.org/home/html (visited April 23, 1999) and http://www.abanet.org/cpr/home.html (visited April 23, 1999).
4. *See* Oral Testimony of Lawrence J. Fox before the ABA Commission on Multidisciplinary Practice, (not yet online, but should soon be a link from http://www.abanet.org/cpr/multicomsched299 .html) (Visited April 23, 1999); *see also* Written Comments of Lawrence J. Fox, http://www.abanet.org/cpr/fox2.html (visited April 23, 1999)(attaching the latest version of the ABA Ethics 2000 Commission's work, and comparing the Commission's conclusions to the comments of Ernst & Young, Deloitte & Touch, and PricewaterhouseCoopers representatives).
5. *See* Oral Remarks of Larry Ramirez before the ABA Commission on Multidisciplinary practice http://www.abanet.org/cpr/ramirez1.html (visited April 23, 1999)(Chair, ABA General Practice, Solo and Small Firm Section); ACCA Supports Multidisciplinary Practice (Feb. 19, 1999) and ACCA Policy Statement on Multidisciplinary Practice, adopted by ACCA's Board of Directors on February 6, 1999, (on file with author) and reported at http:www.lawmoney.com/public/news/hotnews/news9902.2html (visited March 25, 1999).
6. *See Inside: New Pillsbury Madison chair aims for MDP*, Int. Fin. L. Rev. 4 (Feb. 1999).
7. *See* Appendix B1 to Testimony of Professor Laurel S. Terry before the ABA Commission on Multidisciplinary Practice (attached; should be a link from http://www.abanet.org/cpr/multicomshed399.html (visited April 23, 1999)(summarizing testimony before the ABA MDP Commission concerning all of these entities). This testimony is linked to the webpages for each of the three sets of ABA Commission on Multidisciplinary Practice hearings. These schedules can be reached from the Commission homepage. *See* http://www.abanet.org/ cpr/multicom/home. html (visited April 23, 1999).
8. Five academics testified before the ABA Commission. These included Professor Linda Galler, Hofstra (November hearings); Professor Harold Levinson, Vanderbilt (November hearings); Professor John Dzienkowski, Texas (February hearings); Professor Bernard Wolfman, Harvard (March hearings); and Professor Laurel Terry, Dickinson (March hearings). *See* ABA Commission on Multidisciplinary Practice webpage, http://www. abanet.org/cpr/multicomsched.html; http:www.abanet.org/cpr/multicomsched299.html and http://www.abanet.org/cpr/multicomsched399.html (all visited April 22, 1999)[hereafter *Hotlinks to Witness Testimony*].

   Although there has been discussion of ABA Model Rule 5.4 by legal academics for a number of years, in my view the academic discussion has not kept pace with current events. Despite having been somewhat slow to notice and respond to the MDP phenomenon, US lawyers, once they noticed, have focused rather intensively on this issue, devoting many resources and conference panels to this issue. In contrast, the professional responsibility academic community has not particularly focused on the Multidisciplinary Practice issue. (This is in contrast, for example, to the interest given to the ABA Ethics 2000 Commission.) *See generally* ABA Commission on Multidisciplinary Practice Bibliography, http://www.abanet.org/cpr/ multicombiblio.html (visited April 23, 1999); Terry, *What If?*, *supra* note 1, at n.7 (listing various conferences addressing the MDP topic).

   In addition to these academics, the ABA Commission also various discipline and ethics committee members and from lawyers who defend lawyers. For example, Lynda Shely, of the Arizona State Bar Ethics Committee, testified about the number requests she has received from Arizona lawyers who would like to form an MDP. Susan Gilbert, from the DC Bar, testified about the operation of DC's ancillary business rule and the lack of complaints. M. Peter Moser, from the ABA Standing Committee on Ethics and Professional Responsibility, provided background information. William Freivogel, of ALAS (Attorney Liability Assurance Society), and Joseph F. McMonigle, who is Chair of the ABA Standing Committee on Lawyers Professional Liability, both testified concerning malpractice issues that would be raised if the ethics rules banning MDP's were modified. *See, e.g.*, Appendix B4 and B7 to Terry Testimony, *supra note* 2 and Hotlinks to Witness Testimony, *supra*. As of April 23, 1999, the Commission had not yet posted summaries of Ms. Shely or Mr McMonigle's testimony. In the future, these should be available as a link from the ABA Commission's website, http://www.abanet.org /cpr/multicomsched299.html (visited April 23, 1999)(Shely) and http://www.abanet.org/cpr/multicomsched399.html (visited April 23, 1999) (McMonigle).

   The New York State Bar also has been actively interested in these issues. It has issued a report, which can be accessed as a link from the ABA Commission Homepage. *See* http://www.abanet.org/cpr/home/html (visited April 23, 1999).
9. *See generally* Terry Testimony Appendices B1-B7, *supra* note 2 and Hotlinks to Witness Testimony,

pAper or plastic?
Go online to the Member Access section to make your choice. Let us know if you want to receive a paper 2001 Lawyer's Handbook, the Lawyer's Handbook CD-ROM, or opt not to receive a Handbook. If you do not select a Handbook format, you will be sent a paper Handbook.
mEmbership updates online
Have you moved, changed firms? Now you can update your membership information online
@ www.ncbar.com
dissatisfied with the membErship directory?
Are you frustrated with the lack of information available in the membership directory? Well, we are too! So do your part to improve it. Log on to www.ncbar.com and update your membership record by adding phone, fax, and e-mail info.
http://www.ncbar.com

# State Bar Annual Meeting

The Annual Meeting of the North Carolina State Bar will be held October 17-20, 2000. The Council's Annual Meeting will be held on Friday at 9:00 a.m. in the Old House Chamber in the State Capitol building. An election of the State Bar's officers for 2000-2001 will be held at a special session of the council on Wednesday, October 18, at 9:45 a.m. at the Sheraton Capital Center Hotel. All North Carolina lawyers are invited to attend these meetings.

The speaker at the Annual Dinner on Thursday, October 19, will be The Honorable Diana Gribbon Motz, Judge of the United States Court of Appeals for the Fourth Circuit, from Baltimore, Maryland.

For additional information regarding the Annual Meeting, contact Mary Ellen Woodlief at 919.828.4620.

*supra* note 8.

10. See Written Comments to the ABA Commission on Multidisciplinary Practice, http://www.abanet.org/cpr/multicomcomments.html (visited April 23, 1999).

11. I am a member of a Listserv intended to focus on MDP's that is hosted by Lex Mundi, but there has been no discussion whatsoever on this list. (One can sign up for the list from Lex Mundi's webpage. *See* http://.hg.org/multi.html (visited April 23, 1999). At one point, I signed up again just to make sure I was registered. I received an e-mail message back that I was already a member of the list, but there was no traffic. *See* October 14, 1998, E-mail Message from Majordomo@hg.org to Lterry@psu.edu (on file with author). Although I "unsubscribed" from the legal ethics listserv before I left for my 1998-99 sabbatical, there had been no substantial discussion of MDP's on this list before my departure and I have been told there has been very little discussion of this topic during academic year 1998-99.

12. *See* April 8, 1999, statement of Professor John Dzienkowski, University of Texas School of Law, to ABA Commission on Multidisciplinary Practice, http://www.abanet.org/cpr/dzienkowski2.html (visited April 21, 1999).

13. I hope that this is the explanation why my charts in Appendices B1-B7 got increasingly longer and that I did not simply become more long-winded.

14. I presented three types of items to the ABA Commission on Multidisciplinary Practice at its March 1999 hearings: 1) Written Testimony; 2) Appendix A, which was an Issue Checklist; and 3) Appendices B1-B5, which are charts summarizing the testimony from the November 1998 and February 1999 hearings. Appendix Items B6 & B7, which summarize the testimony from the March 1999 hearings, were prepared for this conference and submitted to the Commission on April 26, 1999. My Written Testimony found in these conference materials and on the Commission's website is slightly different than the testimony I presented to the Commission in Washington, DC, on March 12, 1999. In late March, when I had full access to those research materials available to me in Germany, I submitted a corrected copy of my testimony, which revised the discussion of *Jefri v. KPMG* and the British limited liability proposal. The Commission website version and this conference version of Chart 4 also differs slightly from the version of Chart 4 that I presented to the Commission at its March hearings; I modified three entries in order to conform them to the Summary of Oral Testimony I received. It should be noted that given the deadline for this Conference, I did not modify Professor Dzienkowski's entries in order to reflect his April 8, 1999, Written Statement.

15. This organization follows the organization I have used when discussing cross-border legal practice schemes such as the European Union's Directives, GATS, NAFTA, and the ABA and IBA Foreign Legal Consultant Rules. *See* Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 Fordham Int'l l. J. 1382 (1998).

16. *See* Washington D.C. Rules of Professional Conduct, Rule 5.4.


WAKE FOREST UNIVERSITY SCHOOL OF LAW

**Wake Forest University School of Law**
**Continuing Legal Education**
**Fall 2000 Schedule**

20TH ANNUAL REVIEW NORTH CAROLINA
12 MCLE HRS. ( 2 EC)
September 8-9 - Raleigh (Live) McKimmon Center
September 28-29 - Charlotte (Video) Four Points Hotel
October 6-7 - Asheville (Live) Grove Park Inn
November 17-18 - Winston-Salem (Live) Benton Conv. Ctr.
December 7-8 - Murphy (Video) Tri County C. C.

REAL PROPERTY - 6 MCLE HRS. (1 EC)
September 22 - Raleigh (Live) McKimmon Center
September 29- Winston-Salem (Video) Holiday Inn Select
October 20 - Charlotte (Video) Four Points Hotel
November 10 - Asheville (Video) Grove Park Inn
December 1 - Fayetteville (Video) Radisson Prince Charles

EQUITABLE DISTRIBUTION - 12 MCLE HRS. (2 EC)
October 12-13 - Raleigh (Live) McKimmon Center
October 26-27 - Winston-Salem (Video) Holiday Inn Select
November 9-10 - Wilmington (Video) Hilton Inn
November 30 - December 1 - Charlotte (Video) Four Points Hotel
December 14-15 - Asheville (Video) Grove Park Inn

GENERAL PRACTICE SYPOSIUM - 12 MCLE HRS. (2 EC)
November 2-3 - Raleigh (Live) McKimmon Center
January 11-12 - Charlotte (Video) Four Points Hotel
January 18-19 - Winston-Salem (Video) Holiday Inn Select
February 1-2 - Asheville (Video) Grove Park Inn
February 22-23 - Greenville (Video) Ramada Plaza Hotel

PERSONNEL LAW SYMPOSIUM - 12 MCLE HRS. (1 EC)
September 28-29 - Washington, DC (Live) Loews L'Enfant Plaza Hotel
October 12-13 - Santa Fe, NM (Live) LaPosada de Santa Fe
November 2-3 - Chicago (Live) Sheraton Chicago Hotel & Towers
December 14-15 - Atlanta (Live) Swissotel Atlanta

**For further information, please contact WFU-CLE at (336) 758-4550/4551 or visit our Website at: www.law.wfu.edu/cle**

*You can never have too many*

# pals friends

*For 20 years you have had PALS...*

**to help lawyers who have problems with alcohol or other drugs.**

*Now you also have FRIENDS...*

**to help lawyers who suffer from depression or other mental conditions.**

The North Carolina State Bar's Lawyer Assistance Program and its PALS and FRIENDS programs, offer *confidentia* assistance to lawyers and judges in North Carolina

PALS

**1.800.720.PALS**

FRIENDS

**1.877.627.3743**

# MDP: One Lawyer's Opinion

By Jean Gordon Carter

For the last several months, I have struggled with 40 of the most prominent lawyers and other professionals in North Carolina as we sought first to understand and then to make recommendations concerning the MDP issues. This Task Force should present its report to the North Carolina Bar Association Board of Governors at its October meeting. Our report will address demand for MDP's, changes permitting proper forms of MDP's, and enforcement against the unauthorized practice of law.

As chair of this Task Force, I have tried to remain neutral and I will support fully and advocate the position adopted by the Task Force and NCBA Board of Governors. North Carolina cannot reach a better conclusion than that adopted by this thoughtful group of professionals.

Still, I believe one issue needs to be underscored: Lawyers must focus on survival in this changing professional environment. Awareness of the MDP issue by all attorneys is critical. While survival of the legal profession may sound self-serving, I do believe that the public benefits from a legal profession guided by the core values of independence, confidentiality, client loyalty, and competence. Anything less and the public loses.

What follows is my opinion and nothing more than my opinion. It was in part my April 15, 2000, Report to the NCBA Board of Governors.

There has been a lot of rhetoric about MDP—multidisciplinary practice—and I have been as guilty as the rest. At its essence, MDP is two basic issues: What should be done about unauthorized and unethical practice of law; and in what business form should lawyers be allowed to deliver legal services? These simply stated questions have created debate across the country and around the world.

First, there are many situations where people are delivering what is broadly recognized as legal services without being licensed attorneys in the applicable jurisdiction. The excuses are that the particular activity is not legal services or is "tax" exempt from the real definition of legal services. The reason for this "unauthorized" practice, as stated, is public demand for one-stop-shopping, though the ultimate reason is likely profits. Provision of these legal-type services does generate substantial fees.

While the state bars know some of this activity exists they are not in a position realistically to deal with these matters. They lack the resources to take on an international firm and stop it from practicing this quasi law. In addition to resources, the state bars understand the limits on pursuing unauthorized practice. The definition of "practice of law" is not clear, making criminal enforcement difficult. Further, enforcement will be viewed favorably only if it is aimed at preventing harm to the public. Regulation of any unauthorized practice of law that is not hurting the public will likely be viewed as turf protection by lawyers and thus may lead to changes by the legislatures.

Beyond unauthorized practice, there are people who are licensed lawyers delivering legal services without complying with the Rules of Professional Conduct which govern

all practicing lawyers. These lawyers also excuse this behavior saying they are not practicing law, but their activities are the same as those of other practicing lawyers. The state bars need to consider this individual activity to make sure all practicing lawyers comply with the Rules of Professional Conduct. In the end, perhaps, some of those Rules will change, but as of now they represent the best wisdom for proper practice of law.

Ultimately, what does this issue of unauthorized and unethical practice of law mean to lawyers? It means the market for the provision of legal services is changing. While lawyers can point out the advantages of proper practice and should work to enhance the public understanding of the advantages of hiring lawyers, the forces sweeping through the market may be such that lawyers will not be able to stop them. Arguably some of the forces are ones that should not be stopped.

Lawyers must be aware of these market forces and develop strategies to deal with them. Some of those strategies involve marketing to point out the advantages of hiring a lawyer: attorney/client privilege, loyalty, independence, and competence. These core values of the legal profession are the most important reasons why clients are often best served by hiring a lawyer rather than hiring another professional. Other ways of competing in this changing market may involve new, ancillary legal services or other creative business arrangements.

Lawyers need to recognize that this issue affects all of us. It is not just an issue for large Hunton & Williams in Raleigh, but also equally an issue for the solo practitioner in Monroe. As the walls come down and other professionals are able to deliver traditional legal services, local CPA's, financial planners, banks, title companies, and others will be tooling up to deliver these legal services. Even the internet is becoming a competitor by providing legal information. Every lawyer will feel the impact of these new competitors.

At this point I am not describing core values or professionalism, but I am describing deliberate marketing and business planning for lawyers to survive in this new environment. If I have any other message, the most important is that professional associations, such as the North Carolina Bar Association, must help its lawyer members survive in this new world.

Part of the survival in this new environment brings us to the second question: in what forms should lawyers be allowed to deliver legal services. The forms of practice should not handicap lawyers from competing in the new business environment. That means some of the traditional business models may need to be overhauled. Within limits and with proper safeguards, some of the Rules of Professional Conduct may need to be changed. Lawyers may need to be able to offer ancillary services and be in a position to offer legal services with others, some of whom may not be attorneys. These other professionals will want to share in the profits and should share in the risk. Thus, perhaps the fee splitting prohibition of Rule 5.4 should be changed and the Rules of Professional Conduct should permit ancillary services. The District of Columbia already allows such fee splitting arrangements so long as the lawyers control. While the DC Model may not be the perfect answer, it is a starting point to begin restructuring the legal profession to survive.

Any changes to the Rules of Professional Conduct must provide for protection of the public, though. My own belief is that allowing fee splitting in practices where the attorneys are the dominant partners does protect the public while letting lawyers have some flexibility to survive. I also believe properly controlled ancillary services may benefit the public and professionals without harm. In the end, these first steps towards MDP's may not be enough, and market forces may drive our profession to fully integrated MDP's. Still, I think this intermediate approach represents the best balancing of the competing forces.

All of this returns us to MDP's. The ABA Multidisciplinary Practice Commission originally recommended fully integrated MDP's, in part because that was their approach to solving both the unauthorized practice and fee splitting issues at once. In the end I do not believe that will work. This is my opinion, but few of the many North Carolina lawyers with whom I have spoken support the ABA MDP Commission's original recommendation. The MDP created will likely be unable or unwilling to comply fully with the Rules of Professional Conduct for attorneys. This is not intended as a criticism, but rather a statement of my belief that only attorneys trained as attorneys will fully appreciate the ramifications of those Rules and thus follow them properly. Following the ABA MDP Commission's original approach I believe we would have fully integrated MDP's with limited public safeguards and little change in the current unauthorized and unethical practice of law issues. In other words, both the public and the profession would lose. I do not believe a fully integrated MDP is the answer.

Ultimately, even the ABA MDP Commission seems to be deciding on another course. In its recent draft report the Commission supported MDP's only where the lawyers have sufficient control to assure lawyer independence. This is not exactly the DC Model and I think this is still somewhat in front of where most members of the bar would go, but it is closer. The MDP Commission, too, is seeking a middle ground, balancing the competing tensions.

The market is changing and practicing lawyers must adapt to this new world, but as they adapt they cannot lose what has made the legal profession a vital part of our society for hundreds of years—adherence to core values and professionalism.

I often hear lawyer jokes, but when clients need help they come to the lawyer. In the end, I believe the public respects lawyers. As the market continues its whirlwind of change we cannot let the best of having, and being, a lawyer disappear. ■

*Jean Gordon Carter is a partner with the Raleigh firm of Hunton & Williams. She serves as chair of the North Carolina Bar Association's Multidisciplinary Practice Task Force.*

*Thanks to Our Sponsor*

*Fidelity National Title Insurance Company*

**The North Carolina State Bar wishes to thank Fidelity National Title Insurance Company for sponsoring the Councilors' Reception at the July Council Meeting. We greatly appreciate their continued support.**

# Reconsideration of Interlocutory Orders

By Thomas L. Fowler & Thomas P. Davis

## May a second superior court judge, presiding at a later stage of the same proceeding, consider a party's renewed motion for summary judgment that had previously been denied?

US Court of Appeals Judge Learned Hand answered this question "yes." In *Dictophone Products Company v. Sonotone Corporation*,[1] Judge Hand considered whether the denial of the motion had become "law of the case," so that it must be accepted thereafter without re-examination. Judge Hand noted that the denial of the motion for summary judgment was not immediately appealable and that the consequence of forbidding reconsideration was that, if the denial was in error, the parties "would be compelled to suffer the loss of time and money involved in a trial that from the outset was unnecessary." Judge Hand held that the successor judge had the discretion to reconsider and grant the renewed motion for summary judgment.[2]

The North Carolina Court of Appeals, however, has answered "no." The blanket prohibition was first raised in *Biddix v. Construction Corp.*,[3] where the court stated that it was improper for the second judge to consider subsequent motions for summary judgment because "no appeal lies from one superior court judge to another, and ordinarily one superior court judge may not modify, overrule, or change the judgment of another superior court judge made in the same action." In *Carr v. Great Lakes Carbon Corp.*,[4] the court noted the rules that a subsequent judge may not entertain a renewal except on intervening events amounting to changed conditions,[5] and that an order made as a matter of law finally determines the rights of the parties unless reversed upon appellate review.[6] A later case sets out the rationale even more explicitly: "Although the denial of a motion for summary judgment is an interlocutory order, it is not a discretionary order so as to give a second judge the power to modify or change it even where there has been a change of circumstances."[7] Both *Biddix* and *Carr*, and a long line of subsequent cases, cite a North Carolina Supreme Court case, *Calloway v. Ford Motor Co.*,[8] as the basis of this prohibition.[9]

Strong policy arguments can be made against this strict jurisdictional bar that prevents reconsideration of interlocutory orders by successor judges presiding at different stages of the same proceeding.[10] In particular, the inability to reconsider matters of law during the trial stage may cause illogical, inefficient, and erroneous proceedings.[11] On the other hand, such a rule limits the opportunity for and appearance of judge shopping, promotes civility and comity among North Carolina's rotating superior court judges,[12] and avoids the appearance of the usurpation of the appellate process by the trial judges.[13] Additionally, in the view of the Court of Appeals, *Calloway* seems to require such a rule. But this reading of *Calloway* is, at least, a proper subject of debate.

Narrowly read, *Calloway* holds that changed conditions allowed a successor judge to hear the renewal of a motion to amend that had been denied by an earlier judge in the exercise of his discretion. While *Calloway's* complicated rationale might be interpreted to *require* changed conditions before consideration of renewals addressed to the court's discretion, and to *prohibit* renewals of motions presenting questions of law,[14] the actual holding was not inconsistent with the law of North Carolina that had been settled for more than a century.[15]

The pertinent rules in North Carolina prior to *Calloway* were, first, that a successor judge in the same proceeding had the inherent power to reconsider any interlocutory order even on substantially similar facts (unless the prior order had been immediately appealable),[16] and second, that a judge properly considered a motion, even where a prior judge had ruled on a similar motion, provided that changed conditions sufficiently differentiated the legal issues presented by the motions.[17] To put the matter conversely, on changed conditions no prior order would block the consideration of a renewed motion, while on substantially similar facts only a small class of orders was prohibited from reconsideration—those orders, which were immediately appealable because they were made as a matter of law affecting a substantial right.

Insofar as these were the established relevant rules and that *Calloway* did not change them, as we defend at length elsewhere,[18] North Carolina law arguably should not prohibit consideration by a successor judge in the same proceeding of a second motion for summary judgment where changed conditions are shown. Such conditions would include a change in applicable law or a change in the forecast of evidence that was not merely redundant. Furthermore, even on the same conditions, a subsequent judge should have the authority to entertain a renewal, since denials of motions for summary judgment do not affect a substantial right[19] and are therefore not immediately appealable.

A majority of jurisdictions follow the traditional rule that North Carolina followed before *Calloway*,[20] and allow reconsideration. On balance, policy considerations, we believe, also make the majority rule preferable.[21] Finally, it is arguable that the precedents of the North Carolina Supreme Court do not require the minority rule that the Court of Appeals has developed. For these reasons, if the opportunity presents, the Supreme Court should review and reconsider the long line of cases interpreting *Calloway* as requiring the jurisdictional prohibition of reconsideration.[22] The Court should affirm or return to the traditional rule that on changed conditions no bar should prevent a successor judge from hearing a renewed motion—rather, it should be her duty to hear the motion where it presents a legally distinct issue. And while a number of factors may cause a successor judge to hesitate[23] to reconsider an interlocutory order on substantially similar facts, with the immediate appealability of the order of a predecessor judge being a strong factor in favor of declining to reconsider,[24] even here the judge should have the

discretionary power to reconsider if, in the judge's opinion, justice requires such reconsideration. ■

*Tom Fowler is the director of the Judges' Legal Research Program, Administrative Office of the Courts. He earned his JD in 1980 from UNC at Chapel Hill.*

*Tom Davis is the librarian of the North Carolina Supreme Court Library. He earned his MLS in 1988 from Syracuse University and his JD from Duke University in 1992.*

## Endnotes

1. 230 F.2d 131 (1956).
2. This is consistent with the rule followed in most jurisdictions. *See infra* note 20. As stated in one popular encyclopedia: "A trial court has discretionary power by leave of court to allow renewal of a motion, to allow successive motions, and to permit a motion which has been denied to be revived and reconsidered. When a motion is before the court pursuant to permission to renew after a previous denial, the court's power to weight the conflicting affidavits is the same as on the first consideration thereof, and it has the power to re-examine the evidence and arrive at a different conclusion if it thinks the ends of justice will be best served thereby." 56 Am. Jur.2d, *Motions, Rules, and Orders*, section 28, at 22-23.
3. 32 N.C. App. 120, 124 (1977).
4. 49 N.C. App. 631, 633 (1980), *disc. rev. denied*, 302 N.C. 217 (1981).
5. *Id.*
6. *Id. See also* McArdle Corp. v. Patterson, 115 N.C. App. 528, 532 (1994) ("[W]here a judge rules as a matter of law, as on a motion for summary judgment, the rights of the parties are finally determined, subject only to reversal on appeal."); Whitley's Elec. Serv. v. Walston, 105 N.C. App. 609, 611 (1992) ("Even though it is interlocutory in terms of appealability, a ruling on a motion for summary judgment involves an issue of law, not discretion. . . . Where a judge rules as a matter of law, the rights of the parties are finally determined, subject only to reversal on appeal.").
7. Iverson v. TM One, Inc. 92 N.C. App. 161, 164 (1988).
8. 281 N.C. 496 (1972).
9. This prohibition does not apply to a subsequent motion for summary judgment that presents a different legal issue than raised by the prior denied motion. Where a different legal issue is presented, the second judge is not being asked to reconsider the order of his predecessor. Thus, the court may consider several motions for summary judgment in a single case so long as each presents a different legal issue. *See Carr*, 49 N.C. App. at 635; Asheville Contracting Co. v. City of Wilson, 62 N.C. App. 329, 331 (1983) (stating that where one judge ruled on defendant's summary judgment motion only as to plaintiffs' contract claim and specifically declined to rule on plaintiffs' tort claim, it was proper for a second judge thereafter to rule on defendant's motion for summary judgment as to the tort claim); *c.f.* Urbano v. Days Inn, 58 N.C. App. 795, 799 (1982) (noting that where the first judge denied franchisor's motion for summary judgment, it is not error for a second judge to grant operator's motion for summary judgment, regardless of apparent logical inconsistency and identity of legal issue, as "each defendant was entitled to have its motion considered and ruled upon separately"). *But see* American Travel Corp. v. Central Carolina Bank, 57 N.C. App. 437 (1982) ("We believe that both the language and the policy behind N.C. R. Civ. P. 56 contemplate a single hearing on a motion for summary judgment involving the same case on the same legal issues . . . . Generally, motions for summary judgment should not be decided until all parties are prepared to present their contentions on all the issues raised and determinable under Rule 56. Piecemeal litigation of motions for summary judgment is to be avoided.").

   A forecast of additional evidence on renewed motion for summary judgment that nevertheless merely supplements an earlier forecast may not present a different legal issue. *See* Hastings v. Seegars Fence Co., 128 N.C. App. 166, 168-69 (1997) (stating that the first judge's denial of defendant's motion for summary judgment precluded a second judge from thereafter entering summary judgment in favor of defendant, although the second judge considered depositions which had not been before the first judge, where the legal issues raised by the pleadings remained the same); Vandervoort v. McKenzie, 105 N.C. App. 297, 302 (1992) (stating that it was error for a judge to determine defendant's second motion for summary judgment where another judge had denied a prior motion for summary judgment on identical issues by the same defendant even though materials presented to the court on the second motion were different from those at the hearing on the first motion.); Metts v. Piver, 102 N.C. App. 98, 101-02 (1991) (holding that an additional forecast of evidence does not entitle a party to a second chance at summary judgment on the same issues and rejecting defendants' claim that their second summary judgment motion addressed new issues) (arguing in the concurrence that there were new issues). *But see* Furr v. Carmichael, 82 N.C. App. 634, 636-37 (1986) (holding that issues are identical, and reconsideration not allowed, where "no new affidavit or evidence based on discovery was filed or presented by either party at the hearing on defendants' motion for summary judgment that was not before the trial court at the hearing on plaintiffs' motion for summary judgment").

   Another line of cases addresses whether a "different legal issue" is raised when the motions are grounded on different rules of civil procedure. For instance, a motion for summary judgment has been held to present a different legal question than is raised by subsequent motions for directed verdict or judgment notwithstanding the verdict, or prior motion for dismissal. *See* Whittaker Gen. Med. Corp. v. Daniel, 87 N.C. App. 659, 664 (1987) (subsequent grant of a directed verdict or a judgment notwithstanding the verdict based on the evidence actually presented at trial); Pleasant Valley Promenade v. Lechmere, Inc., 120 N.C. App. 650, 660-61 (1995) (subsequent order analogous to directed verdict); Alltop v. Penney Co., 10 N.C. App. 692, 694 (1971) (prior denial of a motion to dismiss for failure to state a claim does not prevent a second judge from granting a motion for summary judgment because the tests for each motion are different). In these cases, the subsequent judge is not overruling an order of his predecessor and the question of law presented may be addressed without violating the jurisdictional prohibition against reconsidering matters of law. Furthermore, where the legal question presented by both motions is the jurisdiction of the trial court, the Court of Appeals has not applied the rule that one judge may not overrule another even though the same legal question seems to be presented. *See* McAllister v. Cone Mills Corp., 88 N.C. App. 577 (1988) (prior denial of Rule 12(b)(6) motion based on bar does not prevent a subsequent judge from granting summary judgment on the same jurisdictional ground); Barbour v. Little, 37 N.C. App. 686, 692 (1978) (prior denial of a 12(b)(6) motion for failure to state a claim on which relief may be granted does not block subsequent grant of summary judgment on same ground). The court has also decided that where a grant of a summary judgment is based on the same legal question addressed by a prior denied motion, the jurisdictional prohibition applies, and the second judge has improperly overruled his predecessor. *See* Pittman v. Pittman, 73 N.C. App. 584, 588-89 (1985) (the second judge could not grant a motion for summary judgment on the apparent basis of laches where the initial denial of a 12(b)(6) motion was accompanied by the statement that the plaintiff "has not been guilty of laches"); Estrada v. Jaques, 70 N.C. App. 627 (1984) (where the grant of summary judgment was based on a ruling that an amendment did not relate back, the grant effectively overruled the prior grant of a motion to amend). Finally, the court has held that motions ostensibly brought under different rules of civil procedure may present the same legal question. *See* Iverson v. TM One, Inc., 92 N.C. App. 161, 165 (1988) (prior denial of motion for summary judgment blocks later motion that was in effect a motion for summary judgment); Madry v. Madry, 106 N.C. App. 34, 37-38 (1992) (prior denial of a 12(b)(6) motion blocked a subsequent judge from granting a motion for summary judgment that was in effect a 12(b)(6)).
10. Regarding discretionary orders, which unlike orders entered as a matter of law can be reconsidered if there has been a substantial change of circumstance, the struggle has been with defining what constitutes a substantial change of circumstance. *E.g.*, Atkinson v. Atkinson, 350 N.C. 590 (1999) (the trial court found specific "intervening circumstances" that justified reconsideration; the Court of Appeals, without discussion or analysis, held that the changed circumstances were not sufficient; and the Supreme Court reversed the Court of Appeals in a *per curium* opinion). *Compare* State v. Duvall, 304 N.C. 557, 562 (1981); Dublin v. UCR, Inc., 115 N.C. App. 209 (1994); Sims v. Ritter Construction, Inc., 62 N.C. App. 52 (1983).
11. E.g., Smithwick v. Crutchfield, 87 N.C. App. 374 (1987) (plaintiff's success in overturning the successor judge's granting of a previously denied motion to dismiss was only "chimerical" because the defendants had properly appealed the first judge's denial of the motion allowing the Court of Appeals to reverse the first judge's order—and thereby constructively to affirm the second judge's order, at least in substance); Graham v. Mid-State Oil Co., 79 N.C. App. 716 (1986) (failure to dismiss the claim would result in the parties proceeding to trial on an unfair trade practice issue when the basis for this claim, the conversion, had already been found not to exist; but dismissing the claim would require the second judge to, in essence, grant the motion for summary judgment that the first judge had previously denied); Urbano v. Days Inn, 58 N.C. App. 795 (1982) (plaintiff sued both franchisor and franchisee; first judge granted franchisee's motion for summary judgment and second judge denied franchisor's similar motion; the court stated: "Although it may appear logically inconsistent for one trial judge to keep the non-operating franchisor in the case and another to let the operator-franchisee out, each defendant was entitled to have its motion considered and ruled upon separately.").
12. *See* State v. Evans, 74 N.C. 324, 325 (1876) ("So we have the conflicting rulings . . . in the very same case - in fact, one Judge reverses the decision of the other Judge. How is this unseemly conflict of decision to be prevented? It can only be done by enforcing the rule, *res*

*(Continued on page 31)*

# New Fee Dispute Resolution Rules: Good-bye Nonbinding Arbitration

By Harry B. Warren

Mandatory nonbinding fee arbitration is dead. May it rest in peace. On May 4, 2000, the North Carolina Supreme Court approved amendments to the Rules and Regulations of the North Carolina State Bar concerning fee dispute resolution. Essentially, the amended rules substitute a two-step mediation process for the old nonbinding arbitration procedures. The frustrations associated with nonbinding arbitration reached the point where some committee members declined to serve on hearing panels. In the majority of nonbinding arbitrations, the losing party failed to abide by the decision of the panel. Usually it was the client. In the six years the program was in existence, we found that many clients used fee arbitration as a delaying tactic to avoid paying a legitimate bill. Some client petitions were simply absurd. One such case in particular comes to mind wherein a woman retained the services of an attorney to protect her rights after her husband of approximately 30 years had left her. Her husband, who was an endodontist, made approximately $450,000 a year. At the time of separation, the client and her husband had one child who was about to graduate from high school. The attorney negotiated temporary post separation support for the client in the amount of $10,000 per month and $1,500 per month in child support. The client's husband agreed to continue to maintain health insurance, pay the client's and his daughter's automobile insurance, and his daughter's clothing and educational expenses. The lawyer also was able to obtain for the client an interim distribution of marital assets in the amount of $180,250. In addition, the client remained in the marital home. The client disputed the $7,000 fee charged by the lawyer because she did not think the settlement was good enough. In her affidavit of financial standing the client listed, inter-alia, the following monthly expenses for her and her daughter: $1,300 for groceries and household goods, $1,200 for grooming (hair, etc.), $400 for entertainment and recreation, $400 for meals out, and $750 for vacations. Her petition was summarily dismissed by the Client Assistance Committee.

Another petition became known in the Client Assistance Program as the case of the "enlarged breasts." The lawyer collected a $2,500 retainer to represent a client in a domestic matter. She subsequently refunded the sum of $500 because the client indicated that she desperately needed money to pay her rent. The lawyer even went to the client's hairdresser's shop instead of the lawyer's regular hairdresser, because the lawyer thought her client needed the money more than her regular hairdresser. During the representation, the lawyer learned that the client had misrepresented her financial situation. The lawyer discovered that the client had been receiving child support from her husband from the very beginning of their separation, although the client had indicated to the lawyer that she was receiving nothing. The lawyer was informed by the client that she had gone on food stamps, while, in fact, the client was spending thousands of dollars to get her breasts enlarged. Finally, after a lengthy court hearing, the court granted the client post-separation support, which was soon thereafter terminated because she and her minor children began cohabiting with the client's male friend. The lawyer later learned that the client had purchased a 1992 Ford Bronco for her friend during the time that she was claiming that she had no money to feed her children or to pay any further money to the lawyer. After being confronted with these misrepresentations, the client made a quick exit, and retained another attorney. She subsequently disputed the fee paid to her first attorney, but her petition for fee arbitration with the State Bar was dismissed.

In contrast to nonbinding arbitrations, mediations have been highly successful with both parties walking away satisfied with the process. In one such case, the lawyer had fee arbitration petitions filed against him by 16 clients. The total amount in dispute came to $20,852. Most of these clients paid flat fees for work to be performed, and the monies collected were not deposited in the trust account. The lawyer failed to satisfactorily perform the services contracted for, and he agreed to an appropriate refund to 15 of these clients. However, since he had already spent the money, he had to borrow the funds to make the payments.

In another case, the client hired the attorney to represent her in a domestic matter. She signed a written fee agreement which called for an "advance payment" of attorney fees in the amount of $12,000, against which he applied his hourly rate as he performed the work. The attorney's written fee contract did not meet the definition of a true nonrefundable retainer. According to the client, the lawyer became unavailable to her and when she made appointments to see him she would have to wait from one and a half to four hours. In performing the work, the lawyer did not want to comply with the client's desires on reaching a settlement with her husband. She ultimately terminated his services. However, the lawyer continued to perform work without her authorization. At the time of termination, the client had a credit balance of $6,824. At first the attorney did not want to refund any money to the client. Later he made offers of $750 and $3100 to settle; however, the client refused those offers. The lawyer ultimately agreed that the $6,824 credit balance belonged to the client, and he agreed to refund that amount.

Under the new rules, a lawyer must still make reasonable efforts to advise his or her client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee. In addition, the lawyer must participate in good faith in the fee dispute resolution process if the client

submits a proper request. When a petition for fee dispute resolution is received by the State Bar, it is handled by members of the Client Assistance Program: Bobby White, Luella Crane, and yours truly. Bobby White and Luella Crane are both certified mediators. Although I am not, I have mediated cases for the past six years. During the past 12 months, the State Bar staff has successfully resolved 89% of the cases filed, either by recommending dismissal or mediating a resolution.

Petitions are screened to determine if a fee dispute truly exists. If it is determined that the request is frivolous, there is a lack of jurisdiction, or the facts support the conclusion that the lawyer clearly earned the fee, the staff recommends dismissal to the chair of the Client Assistance Committee. The staff attempts informal mediation on all petitions that are deemed suitable for fee dispute resolution. This is done by telephone and correspondence. If informal mediation fails, the case is referred to the Mediation Network of North Carolina for formal face-to-face mediation. The network is headquartered in Carrboro and has 26 offices throughout the state. These offices are located within a one and a half hour drive of any place in the state. The mediators come to the area where the dispute has arisen to conduct the formal mediation. If formal mediation fails, the parties may seek a judicial remedy.

It is no longer mandatory that district bars have their own fee dispute resolution program. If a district bar opts in, it must adopt a fee dispute resolution program, subject to approval by the council, which is not inconsistent with the State Bar plan. District bars may handle both stages of mediation and may offer consensual binding arbitration if formal mediation fails. The program must be offered at no cost to members of the public or the bar.

The officers and staff of the State Bar believe the new program of fee dispute resolution will be superior to the old program of nonbinding arbitration. We hope that it will be a significant benefit to both attorneys and clients. The amended rules and regulations and a sample letter a lawyer may use to notify the client of fee dispute resolution follow this article. If you have any questions please do not hesitate to contact Bobby White, Luella Crane, or me. ■

*Harry B. Warren is the director of investigations and head of the fee dispute resolution program.*

**Acceptable Form Letter for Notifying Client of Fee Dispute Resolution**
**{Complies with Rule 1.5 (f)}**

[Client Name and Address]
RE: [Description of Representation]

Dear [Client]:

This letter is to notify you that [I, this firm] intend[s] to initiate legal action to collect the unpaid [fee/fees and expenses] owed this firm in connection with the above described representation. Pursuant to the North Carolina State Bar's Rules of Professional Conduct, I must advise you of the existence of the State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings.

Should you dispute the fees or expenses, you may request resolution of the dispute by contacting the Fee Dispute Resolution Coordinator at the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The telephone number for the State Bar is (919)828-4620. The State Bar can provide you with more information about the fee dispute resolution program and a petition for requesting resolution. Participation by an attorney in fee dispute resolution proceedings requested by the client is mandatory.

If you have not filed a petition for fee dispute resolution with the State Bar within 30 days of the date of this letter, I will proceed with legal action to resolve this matter. In the meantime, please do not hesitate to call me if you have any questions, or if you wish to discuss this matter further.

Sincerely,
[Attorney]

*Following are the sections of Revised Rule 1.5 as it was amended on May 4, 2000.*

## Rule 1.5 Fees

...

(f) Any lawyer having a dispute with a client regarding a fee for legal services must:

(1) make reasonable efforts to advise his or her client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee; and

(2) participate in good faith in the fee dispute resolution process if the client submits a proper request.

## Comment

*Disputes over Fees and Expenses*

[6] Participation in the fee dispute resolution program of the North Carolina State Bar is mandatory when a client requests resolution of a disputed fee. Before filing an action to collect a disputed fee, the client must be advised of the fee dispute resolution program. Notification must occur not only when there is a specific issue in dispute, but also when the client simply fails to pay. However, when the client expressly acknowledges liability for the specific amount of the bill and states that he or she cannot presently pay the bill, the fee is not disputed and notification of the client is not required. In making reasonable efforts to advise the client of the existence of the fee dispute resolution program, it is preferable to address a written communication to the client at the client's last known address. If the address of the client is unknown, the lawyer should use reasonable efforts to acquire the current address of the client. Notification is not required in those instances where the State Bar does not have jurisdiction over the fee dispute as set forth in 27 N.C.A.C. 1D, .0702.

[7] If fee dispute resolution is requested by a client, the lawyer must participate in the resolution process in good faith. The State Bar program of fee dispute resolution uses mediation to resolve fee disputes as an alternative to litigation. The lawyer must cooperate with the person who is charged with investigating the dispute and with the person(s) appointed to mediate the dispute. Further information on the fee dispute resolution program can be found at 27 N.C.A.C. 1D, .0700, et. seq. The lawyer should fully set forth his or her position and support that position by appropriate documentation.

## SUBCHAPTER D Rules of the Standing Committees of the North Carolina State Bar

### Section .0700 Procedures for Fee Dispute Resolution

**.0701 Purpose and Implementation**

The purpose of the Fee Dispute Resolution Program shall be to determine the appropriate fee for legal services rendered. The State Bar shall implement a fee dispute resolution program under the auspices of the Client Assistance Committee (the committee), which shall be offered to clients and their lawyers at no cost.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended February 3, 2000
Amended May 4, 2000

**.0702 Jurisdiction**

The committee shall have jurisdiction over all disagreements concerning the fees and expenses charged or incurred for legal services provided by an attorney licensed to practice law in North Carolina arising out of a client-lawyer relationship. Jurisdiction shall also extend to any person, other than the client, who pays the fee of such an attorney.

The committee shall not have jurisdiction over the following:

1. disputes concerning fees or expenses established by a court, federal or state administrative agency, or federal or state official;

2. disputes involving services that are the subject of a pending grievance complaint alleging the violation of the Revised Rules of Professional Conduct;

3. fee disputes that are or were the subject of litigation;

4. fee disputes between lawyers and service providers, such as court reporters and expert witnesses;

5. fee disputes between lawyers and individuals with whom the lawyer had no client-lawyer relationship, except in those case where the fee has been paid by a person other than the client; and

6. disputes concerning fees charged for ancillary services provided by the lawyer not involving the practice of law.

The committee shall encourage mediated settlement of fee disputes falling within its jurisdiction pursuant to Rule .0706 of this subchapter.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended May 4, 2000

**.0703 Coordinator of Fee Dispute Resolution**

The secretary-treasurer of the North Carolina State Bar shall designate a member of the staff to serve as coordinator of the fee dispute program. The coordinator shall develop forms, maintain records, and provide statistics on the fee dispute resolution program. The coordinator shall also assist the chairperson of the committee in developing an annual report to the council.

History Note: Statutory Authority G.S. 84-23
Readopted Effective December 8, 1994
Amended May 4, 2000

**.0704 Reserved**

**.0705 Selection of Mediators**

The State Bar will select a pool of qualified mediators. Selected mediators shall be certified by the North Carolina Dispute Resolution Commission or have a minimum of three (3) years experience as a mediator.

History Note: Statutory Authority G.S. 84-23
Adopted May 4, 2000

**.0706 Processing Requests for Fee Dispute Resolution**

(a) Requests for fee dispute resolution shall be timely submitted in writing to the coordinator of fee dispute resolution addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The attorney must allow at least 30 days after the client shall have received written notice of the fee dispute resolution program before filing a lawsuit. An attorney may file a lawsuit prior to expiration of the required 30-day notice period or after the petition is filed by the client if such is necessary to preserve a claim. However, the attorney must not take any further steps to pursue the litigation until he/she complies with the provision of the fee dispute resolution rules. Clients may request fee dispute resolution at any time prior to the filing of a lawsuit. No filing fee shall be required. The request should state with clarity and brevity the facts of the fee dispute and the names and addresses of the parties. It should also state that, prior to requesting fee dispute resolution, a reasonable attempt was made to resolve the dispute by agreement, the matter has not been adjudicated, and the matter is not presently the subject of litigation.

(b) The coordinator of fee dispute resolution or his/her designee shall investigate the request to determine its suitability for fee dispute resolution. If it is determined that the matter is not suitable for fee dispute resolution, the coordinator shall prepare a brief written report setting forth the facts and a recommendation for dismissal. Grounds for dismissal include, but are not limited to, the following:

(1) the request is frivolous or moot;

(2) the absence of jurisdiction; or

(3) the facts as stated support the conclusion that the fee was earned and is not excessive.

The report shall be forwarded to the chairperson of the committee. If the chairperson of the Client Assistance Committee of the State Bar concurs with the recommendation, the matter shall be dismissed and the parties notified.

(c) If the chairperson disagrees with the recommendation for dismissal, or the fee dispute coordinator concludes that a matter is suitable for fee dispute resolution, an attempt will be made through informal means to resolve the issue. If informal methods are not successful, the parties will be notified and the case scheduled for mediation.

History Note: Statutory Authority G.S. 84-23
Adopted May 4, 2000

**.0707 Mediation Proceedings**

(a) The coordinator shall assign the case to a mediator who shall conduct a mediated settlement conference. The fee dispute coordinator or mediator shall be responsible for reserving a place and making arrangements for the conference at a time and place convenient to all parties.

(b) The attorney against whom a request for fee arbitration is filed must attend the mediated settlement conference in person and may not send another representative of his or her law firm. If a party fails to attend a mediated settlement conference without good cause, the mediator may either reschedule the conference or recommend dismissal.

(c) The mediator shall at all times be in control of the conference and the procedures to be followed. The mediator may communicate privately with any participant prior to and during the conference. Any private communication with a participant shall be dis-

closed to all other participants at the beginning of the conference. The mediator shall define and describe the following at the beginning of the conference:

(1) the process of mediation;

(2) the differences between mediation and other forms of conflict resolution;

(3) that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;

(4) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

(5) Whether and under what conditions communications with the mediator will be held in confidence during the conference;

(6) The duties and responsibilities of the mediator and the participants; and

(7) That any agreement reached will be reached by mutual consent, reduced to writing and signed by all parties.

The mediator has a duty to be impartial and advise all participants of any circumstance bearing on possible bias, prejudice, or partiality. It is the duty of the mediator timely to determine and declare that an impasse exists and that the conference should end.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

**.0708 Finalizing the Agreement**

If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel, if any, prior to leaving the conference.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

**.0709 Record Keeping**

The coordinator of fee dispute resolution shall keep a record of each request for fee dispute resolution. The record must contain the following information:

(1) the client's name;

(2) date of the request;

(3) the lawyer's name;

(4) the district in which the lawyer resides or maintains a place of business;

(5) how the dispute was resolved (dismissed for non-merit, mediated agreement, arbitration, etc.); and

(6) the time necessary to resolve the dispute.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

**.0710 District Bar Fee Dispute Resolution**

For the purpose of resolving disputes involving attorneys residing or doing business in the district, any district bar may adopt a fee dispute resolution program, subject to the approval of the council, which shall operate in lieu of the program described herein. Although such programs may be tailored to accommodate local conditions, they must be offered without cost, comply with the jurisdictional restrictions set forth in Rule .0702 of this subchapter, and be consistent with the provisions of Rules .0706 and .0707.

History Note: Statutory Authority G.S. 84-23

Adopted May 4, 2000

# *Reconsideration of Interlocutory Orders*

*(Continued from page 27)*

*adjudicata.*").

13. *See,* e.g., State v. Stokes, 308 N.C. 634, 642 (1983) ("To permit one superior court judge to overrule the final order or judgment of another would result in the disruption of the orderly process of a trial and the usurpation of the reviewing function of appellate courts.").

14. This is the rule that has been adopted by the Court of Appeals: a trial judge has the power to overrule or modify an interlocutory order only when: (1) the order was discretionary; and (2) there has been a change of circumstances. *See* Madry v. Madry, 106 N.C. App. 34, 38 (1992); Whitley's Electric Service v. Walston, 105 N.C. App. 609, 611 (1992); Iverson v. TM One, Inc., 92 N.C. App. 161, 164 (1988); Stone v. Martin, 69 N.C. App. 650, 652 (1984).

15. Allison v. Whittier, 101 N.C. 490 (1888); Welch v. Kingsland, 89 N.C. 179, 181 (1883); Love & Co. v. Young et al., 69 N.C. 65, 66 (1873).

16. *See, e.g.*, Bland v. Faulkner, 194 N.C. 427, 429 (1927) ("The principle that no appeal lies from one judge of the Superior Court to another . . . has no application to a mere interlocutory order."); Sanderson v. Daily, 83 N.C. 67, 69-70 (1880) (dictum) ("Motions made in the progress of a cause to facilitate the trial, but which involve no substantial right and the decision of which is not subject to appeal to this court, may be renewed as subsequent events require, and are not obstructed by the former action of the court. But if the decision does affect a substantial right and may be reviewed and corrected on appeal, and the complaining party acquiesces, we see no reason why the decision should not be as conclusive of the matters decided as the determination of the action itself would be of the whole controversy.").

17. *See, e.g.*, Baker v. Garris, 108 N.C. 219, 227 (1891) ("In these cases certain interlocutory orders—such as the appointment of receivers, motions to vacate attachments, orders of arrest, and the like—were held to be *res judicata* unless affidavits were presented showing additional facts subsequently transpiring.").

18. For a detailed analysis of these rules, see Thomas L. Fowler & Thomas P. Davis, *Reconsideration of Interlocutory Orders: A Critical Reassessment of* Calloway v. Motor Co. *and Whether One Judge May Overrule Another,* 78 N.C. L. Rev. ___ (No. 6; Sept. 2000).

19. North Carolina Farm Bureau Mut. v. Wingler, 110 N.C. App. 397, 405 (1993) (the denial of a motion for summary judgment is an interlocutory and non-appealable order); Whitley's Electric Service v. Walston, 105 N.C. App. 609, 611 (1992) (denial of summary judgment is "interlocutory in terms of appealability").

20. *See generally* Annotation, *Interlocutory Ruling or Order of One Judge as Binding on Another in the Same Case,* 132 A.L.R. 14, 15 (1941); John A. Glenn, Annotation, *Propriety of Federal District Judge's Overruling or Reconsidering Decision or Order Previously Made in Same Case by Another District Judge,* 20 A.L.R. Fed. 13 (1974); WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, section 4478, at 789 (1981) ("Although courts are often eager to avoid reconsideration of questions once decided in the same proceeding, it is clear that all federal courts retain power to reconsider if they wish.").

21. "A wide degree of freedom is often appropriate when the same question is presented to different judges of a single district court. To be sure, unfettered reexamination would unduly encourage efforts to shop rulings from one judge to another, and might seem an undesirable denial of comity between colleagues. Substantial freedom is desirable nonetheless, particularly since continued proceedings may often provide a much improved foundation for deciding the same issue." WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE, section 4478, at 794 (1981).

22. As of summer 2000, more than 40 cases cite *Calloway.*

23. Such "hesitation" is often cited as a part of the rule. *See, e.g.*, Annotation, *Interlocutory Ruling or Order of One Judge as Binding on Another in the Same Case,* 132 A.L.R. 14, 15 (1941) ("[Although] ordinarily a judge should hesitate to vacate, modify, or depart from the interlocutory order or ruling of another in the same case ... [t]he general rule is that a judgment which is merely interlocutory may be set aside or modified even at a term subsequent to that at which it was rendered . . . ."); Peterson v. Hopson, 29 N.E.2d 140, 145 (Mass. 1940) ("A judge should hesitate to undo his own work. ... Still more should he hesitate to undo the work of another judge. ... But until the final judgment or decree there is no lack of power, and occasionally the power may properly be exercised.").

24. One case has listed some of the factors the court may consider in determining the propriety of reconsidering a prior ruling: (1) the matter is presented in a "different light;" (2) there has been a change in the governing law; (3) a party offers new evidence; (4) "manifest injustice" will result if the court does not reconsider its prior ruling; (5) a court needs to correct its own errors; and (6) an issue was inadequately briefed when first contemplated by the court. Trembly v. Mrs. Fields Cookies, 884 P.2d 1306, 1311 (Utah 1994).

# Reducing Stress with Alcohol

By Don Carroll

*"Speak no more of her. Give me a bowl of wine. In this I bury all unkindness. . ."*
Julius Caesar *(Act IV, Scene III)*

Speaking to groups of lawyers I have often asked the question: Why do we drink? The consensus answer is always: We drink because it works. Well what exactly works and how does it work?

What is working is the relationship between alcohol and the emotional experience of stress. For hundreds of years, as the Shakespeare quote suggests, people have observed a relationship between alcohol consumption and stress. Our common cultural belief is that both social and problem drinkers reduce stress by drinking. The most common non-verbal cue in movies for the need of stress reduction is the pouring of a drink. Researchers believe that alcohol's anticipated stress-relieving effect is a primary motivation for many people to consume alcohol, despite the often harmful consequences of drinking. Our own experience and our cultural messages all tell us the same thing—that drinking will alter our mood in a way that will make our mood less stressful and more pleasurable.

The question then is—if this is what we believe happens, does it in fact happen? The answer is not as simple as we would like it to be. First, there is substantial evidence to support our personal experience and the cultural message that alcohol consumption *can* reduce the magnitude of a person's response to stress. But research has shown, to the surprise of many investigators, that the relationship between alcohol and stress reduction is inconsistent. In some studies, alcohol use reduced stress; however, in others it had no effect on stress responses, and in still others it exacerbated stress responses.

There are complex variables that condition the effect of alcohol on stress among lawyers. A key factor that applies to lawyers, and everyone else, is family history. We know that children of alcoholics are at heightened risk of becoming problem drinkers compared with children of non-alcoholics. Some research suggests that alcohol consumption may enhance the dampening of the stress response among people at risk for alcoholism. In other words, people who are predisposed to alcoholism may, because of the way their brains handles alcohol, experience greater stress dampening response, even before there is any indication that such persons have a problem with alcohol or have become alcoholic.

Although the research on enhanced stress-response dampening from drinking is far from clear, it suggests that, if drinking brings a lawyer a greater level of stress reduction than others under similar stress, this might be a clue that alcoholism could be, or will become, a potential problem. We know that after a lawyer becomes alcoholic, over time he or she gradually loses the emotional lift from drinking and is eventually drinking just to feel normal again.

Another theory that has particular meaning for lawyers, and that is the subject of research, postulates that people who are highly self-conscious are more likely to experience alcohol's stress-response dampening and to get a subtle reinforcing message to drink because of the extent of that dampening. According to this theory, people who are self aware often internally evaluate their own performance and may experience stress if the result of that self-evaluation is negative. Alcohol consumption impairs the drinker's ability to process information from the environment with respect to him or her self. Thus the use of alcohol by the self aware person has a stress-response dampening effect whether or not there is stress coming from the outside environment. For the lawyer who goes around with a self-critical voice in his head, the use of alcohol may be the easiest and most effective way to quiet that voice. This stress reduction has a reinforcing effect, thereby increasing the probability of further drinking.

Another factor affecting whether or not drinking reduces stress is where the drinking occurs. A lawyer who goes out after work and drinks with people who talk about sports and not about law practice is more likely to experience positive stress reduction. If, on the other hand, the lawyer goes home and drinks alone, a stress-dampening response from drinking is unlikely, and stress may even increase because the drinker's attention may remain focused on the then salient stressor. Of course, if a lawyer has developed dependency on alcohol, then repetitious drinking is going to occur whether or not it produces a reduction in the emotional experience of stress.

So what are the red flags raised by the relationship between alcohol use and stress dampening? First, if you are alcohol dependent, the ability of alcohol to reduce stress has already begun to fade and will continue to fade over time. Second, if you are not alcohol dependent but your experience in drinking seems to be that alcohol relieves stress for you more than other "normal" drinkers, this suggests that you may have, or are at greater probability to have, a problem with drinking that results in alcoholism. Third, alcohol is perhaps at its best as a stress reducer when used as a part of other pleasurable activities, such as watching or talking about sports. If, however, the use of alcohol becomes the principal reason for engaging in certain activities, then the use of alcohol has already become problematic. Fourth, if you usually drink in isolation (or drink with the same person and complain about the same problems), chances are that your drinking will not reduce your stress level, but actually make it worse which in turn becomes a good motivation to drink more. Fifth, if you generate some of your own stress internally, by your own self awareness, by perfectionism, by always striving to do a great job for your clients, then it is possible that you will be more likely to drink in a manner that reinforces the use of alcohol and leads to alcoholism.

To reach the Lawyer Assistance Program call Don Carroll at 1-800-720-PALS, or Ed Ward at 1-877-627-3743, or visit our website at www.nclap.org. ■

# Lawyer Suicide

By Don Carroll and Ed Ward

Society puts the burden of coming to grips with homicide on lawyers and the justice system. It is a lawyer's job to prosecute the accused, try the case, and defend the accused. Yet, more people in America die of suicide than from homicide. Unlike the elaborate justice system, with its guaranteed right of appeal for the defendant and a public process for reconciling the societal effects of homicide, there is no system in place to prevent, understand, and reconcile suicide.

Of course, this is not just a problem of the legal profession, but statistical data suggests that lawyers are more at risk for suicide than any other profession or vocation. In recent years, one North Carolina district bar experienced eight suicides in nine years. As a profession, we must take suicide as seriously as our profession takes homicide—more lives are lost and the cost to the survivors very high. Suicide is a phenomena that tends to perpetuate itself in families. Once a family member commits suicide there is a much greater risk that other family members will follow. The highest rates of suicide are for single or widowed men over 55.

According to the National Institute of Mental Health, substance abuse and depression are the two underlying conditions most likely to lead a person to commit suicide. Both of these underlying conditions can either be prevented or mitigated by timely intervention and treatment to prevent a suicide from occurring. We as lawyers need to know how to recognize and get help for the conditions that make lawyer suicide a frequent outcome if the underlying conditions are not treated.

## Understanding Depression

Depression is a brain disease. Somehow the process by which normal "feel good" chemicals are generated and interact in the brain becomes impaired for a period of time. The predisposition to clinical depression often runs in families. Whether there is or is not a family history, depression can be triggered by many different kinds of events such as illness, death or separation from a loved one, or an accident. These types of events may trigger deep emotional issues which may lead to depression; however, just simply failing to address underlying emotional issues may also cause depression. Because lawyers are involved in helping others, they often have little awareness of their own needs and emotional issues. Often the depressed lawyer, like the alcoholic, has no awareness that he or she has an illness. Over time, a depressed state of being becomes the norm. The depressed lawyer is unable to face his normal routine tasks at work. The depressed lawyer's view of the world becomes increasingly narrow, negative, and limited.

## Understanding Alcoholism

Addiction to alcohol is a brain disease. Predisposition to alcoholism often runs in families. The continuous use of alcohol by the alcoholic causes the shut down of those parts of the brain that create the normal "feel good" neurotransmitters. While most everyone drinks to experience an elevation in mood, the alcoholic is ingesting alcohol to not feel so bad, to feel normal. The alcoholic's use of alcohol to create a feeling of normalcy becomes more and more illusive as alcoholism progresses. Alcohol itself is a central nervous system depressant. In addition to the skewed brain chemistry caused by alcoholism, the alcoholic experiences tremendous guilt and remorse as he is no longer able to function normally and as his behavior again and again disappoints himself and others. The normal state for an alcoholic is depression fueled by fear, guilt, and anger. Depression makes suicidal thoughts common. As alcoholism progresses, the alcoholic loses meaningful relations with his family, social relations, and finally his job. By the time the lawyer is down to just a job, there is not much left of value for which to live. Among alcoholic lawyers who commit suicide, a major factor is often public disclosure of their disease, wrongs they committed while intoxicated, and/or disbarment.

## Signs of Alcoholism and Depression

Although there are certain specific symptoms for each, many of the outward signs of alcoholism and depression are similar. They include:

- feeling depressed, sad, or anxious most of the day
- neglecting one's family and losing interest in activities once enjoyed
- losing or gaining weight
- changes in sleep pattern
- feeling drained of energy
- financial difficulties
- increase in health problems
- feelings of worthlessness and guilt
- isolation from friends
- reduced ability or inability to concentrate

## Treatment Works

The good news is that treatment is available for both alcoholism and depression. Like all diseases, the longer they go untreated, the greater the likelihood of the development of other concurrent problems and also the greater the likelihood of suicide. Because depression and alcoholism are both chronic, long-term diseases, there is a need for ongoing support that focuses on preventing isolation and increasing: a) physical activity to increase endorphins; b) intellectual activity; c) social activity; and, d) spiritual activity.

## What To Do When A Lawyer Needs Help

Lawyers most often do not know how, and feel uncomfortable trying, to help another lawyer, even one they know well, who may suffer from a danger of suicide. You may not know how to help directly, but your duty to your professional colleague is simply to bring *confidential* help to bear. We can help you. Simply call, toll free, the Lawyer Assistance Program: Don Carroll at 1-800-720-PALS, or Ed Ward at 1-877-627-3743, or visit our website at www.nclap.org. ■

# If You Knew Bruno Like I Know Bruno

By L. Thomas Lunsford II

Not long after Bobby White accepted a position on our staff as director of the Client Assistance Program, he attended a meeting of the bar in the district where he resides. Because he had worked in academia prior to joining the State Bar staff and had not been engaged in the practice of law, he was relatively unknown in the local legal community. On the evening in question, he was introduced to the group as a member of the State Bar's legal staff and then largely ignored. But as the gathering was breaking up, one of the local lawyers noticed him at a table by himself and fired a conversational shot in the dark. He asked the simple question, "Do you know Bruno?" Instantly, the entire room fell silent as the remaining lawyers strained to hear the answer. "Why yes, I do," Bobby responded, "I had lunch with him just yesterday." Immensely gratified by that answer, the lawyer roughly embraced Bobby. "Hey everybody," he shouted, "He knows Bruno!" and ordered a round for the house.

Bruno DeMolli is the State Bar's only celebrity. Like Cher, Madonna, and the members of the Brazilian National Soccer team, he is known universally by a single, wonderfully evocative name: "Bruno." The usages are familiar to virtually everyone with a law license. "Bruno's coming!" "Bruno was here." "Bruno's in town." "I think we can do it, but we'd better ask Bruno." In his role as the State Bar's auditor, Bruno DeMolli has become a modern-day Kilroy. He is everywhere, monitoring compliance with the trust account rules in, it seems, a thousand places at once, covering the State like a spectral Italian blanket. Indeed, lawyers have, on occasion, reported seeing his towering figure and great white hair in law offices 400 miles apart on the same afternoon. But for all this ubiquity, his presence is abiding and beneficent wherever he happens to be. Simply by showing up, he personifies the State Bar and raises the standard of fiduciary practice. We suppose that the very idea of Bruno has dissuaded some lawyers from stealing from their clients.

On April 16 of this year, six lawyers submitted affidavits of resignation admitting the misappropriation of trust funds and tendered the surrender of their law licenses to the State Bar Council. Orders of disbarment were summarily entered. The same procedures were followed regarding two other lawyers at the council's July meeting. Since the surrender of a law license is relatively uncommon, this rash of resignations was rather alarming to the State Bar's officers and to many members of the council. There was considerable concern that stealing might be on the rise, and that additional or different regulation might be warranted. In the wake of these confessed misappropriations, the disciplinary staff was asked for statistical information relating to the State Bar's identification and prosecution of financial theft.

The figures, it turns out, are inconclusive. Despite the recent spate of resignations, the average number of embezzlement cases resolved annually by the State Bar has remained fairly constant over the last several years. And although the amounts involved have varied substantially from year to year, there is no discernible upward trend.

While there is certainly some comfort to be taken from the realization that embezzlement does not appear to be a more serious problem now than it was ten years ago, questions are begged. How much embezzlement is acceptable, from a regulatory point of view, that is? Are we at a level which represents a sort of irreducible minimum? Is there a significant amount of theft or specific kinds of theft that are going undetected? Can we, with just a bit more effort, significantly reduce the amount of theft? Are we at a place on the regulatory continuum where each additional unit of regulation yields diminishing returns? Or, is it possible that the only sort of regulatory enhancement that would be truly effective would also be politically unacceptable?

Perhaps it would be useful at this juncture to review the State Bar's existing regulatory scheme regarding the handling of trust funds in the context of a law practice. First, of course, are the trust accounting rules in the Revised Rules of Professional Conduct. As most lawyers well know, there are several provisions in Rule 1.15 which govern how trust funds are to be held, where they are to be deposited, how they are to be handled, and what records are to be maintained as to their stewardship. These rules are fairly specific and well understood. These qualities, along with the considerable emphasis the rules have received in CLE programs over the last 12 years, have just about eliminated ignorance as a credible excuse. There are also provisions that are designed to alert the State Bar to possible irregularities. Chief among these is Rule 1.15-2(k), which requires lawyers to direct their banks to notify the State Bar whenever an instrument is presented against insufficient funds. Since it is a rare case of embezzlement that does not at some point involve the issuance of a bad check, the provision has quite frequently led to the discovery of misappropriation. There is also a very specific provision requiring lawyers to report situations in which trust funds have been withdrawn without authority. This provision, Rule 1.15-2(o), makes it clear as a matter of professional responsibility that a lawyer, having discovered the defalcation of her partner, has an absolute duty to bring that matter to the attention of the State Bar, even if the information is arguably a client confidence. Unfortunately, there is no good way of finding out to what extent such discoveries are, in the context of law firms, being disclosed in accordance with the rule.

The State Bar also receives on a fairly regular basis copies of orders requiring lawyer fiduciaries to show cause why they have failed to file timely accountings. Such reports, which can result in the issuance of subpoenas for cause audits, have occasionally led to discoveries of defalcation.

The State Bar's rules also provide for the issuance of investigative subpoenas in those cases where the chairperson of the Grievance Committee finds reasonable cause to believe that trust funds have been or are being mis-

handled. "Cause audits" performed pursuant to such authority occupy most of the time of four of the State Bar's six investigators. Although these audits are vital to the proof or disproof of suspected irregularities, including misappropriation, they can occur only after some specific circumstance constituting "reasonable cause" comes to the attention of the Bar. They are not available on any other basis. The State Bar cannot employ this powerful tool to verify hunches or to monitor the trust accounting practices of lawyers who are believed to be dishonest.

By far the most visible of the State Bar's efforts to improve trust accounting practice and deter malfeasance is the random audit program. It was to implement this program, which became operational in 1984, that the aforementioned Bruno DeMolli was employed. During the past 16 years little about the program has changed. Each quarter two judicial districts are randomly selected from among the total of 39. Forty lawyers are then selected randomly from the two districts, the number selected from each being roughly proportional to the size of the lawyer populations of the respective districts. After culling those lawyers who are not in private practice or who do not maintain, use, or have access to trust accounts, appointments are made by telephone several days in advance and subpoenas are issued. Since Bruno is obliged to inspect every trust account to which the chosen lawyer has access, and most firms maintain common trust accounts, he is often, in effect, reviewing the trust accounting practices of all members of the firm. This effectively multiplies the number of lawyers being "audited" manyfold.

When Bruno arrives he reviews the trust account records and performs what is known as a "limited procedural audit" to verify compliance with Rule 1.15. He is particularly interested in determining whether the minimum recordkeeping requirements set forth in Rule 1.15-3 have been satisfied. The entire onsite procedure usually takes less than half a day. If technical deficiencies are noted, corrective measures are discussed and there is follow-up to assure compliance. In such cases, cooperative attorneys are not reported to the Grievance Committee. However, when serious violations are noted, particularly where dishonesty is apparently involved, there is an immediate referral of the matter to the Office of Counsel.

The random audit program was designed to serve several purposes. First and foremost, it is an educational initiative. It was intended to raise the standard of trust accounting practice in North Carolina by inducing self-study, motivating, voluntary compliance and providing authoritative feedback. I believe that the program has been quite successful in this regard. When Bruno DeMolli is known to be visiting the district, there is reportedly a marked increase in fiduciary consciousness. There are requests for additional copies of the State Bar Lawyer's Handbook. Accounts that have not been reconciled in months are brought current. Efforts are made to determine the beneficial owner of the small "mystery" balance which has been carried for several years without attribution. And resolutions are made never again to let the trust account get out of whack. This kind of activity "in contemplation of" audit is quite salutary in that it fosters the kind of care and precision that the handling of other peoples' money requires. The resulting improvements greatly lessen the likelihood that trust funds will be inadvertently mishandled and compromised. These benefits are usually compounded for those lawyers who actually receive a visit from Bruno. As those who have had the experience almost universally attest, Bruno is a tremendous source of information and advice and he can generally be counted upon to assist lawyers and their bookkeepers in improving their procedures.

Unfortunately, improved procedures are not proof against stealing. It does appear likely, however, that the random audit program is effective as a deterrent. Certainly, that was the hope of those who founded the program, and is the reason many State Bar leaders continue to support it. Of course, it is very difficult to establish what may have prevented a tempted lawyer from stealing. But it does seem fair to suppose that the same "concern" which compels the honest lawyer to go to heroic lengths to prepare for an audit might also figure in a dishonest lawyer's decision to resist temptation.

Another purpose served by the random audit program is theft detection. Experience has shown that the embezzling lawyer, though often quite clever in the practice of her profession, is generally a mediocre crook. This is perhaps because most thefts are initially rationalized as "borrowings." The typical light-fingered lawyer, finding herself in the throes of a temporary cash-flow crisis and knowing that a big personal injury case will settle next week, simply borrows from Peter to pay Paul and gives little or no thought to disguising the transaction. This is, it seems, most likely to happen in the context of solo practices when no one else is looking. Inevitably, the PI settlement falls through, necessitating additional "borrowing" from the trust account. Sooner or later, the lawyer is so far "out of trust" that a simple comparison of the books with the latest bank statement fairly screams misappropriation. Imagine her dismay when Bruno calls for an appointment. Although his methodology is not that of a full financial audit, he is always advertent to irregularities that are in plain view. Perhaps not surprisingly, a couple of lawyers have fully confessed on the telephone as Bruno was trying to schedule his visit.

The State Bar's Client Assistance Committee is presently studying the misappropriation problem to see whether there is anything further the State Bar ought to be doing to prevent stealing. This is a very important exercise. Not only are there significant client interests at stake, but so also is the credibility of the profession. If it is perceived that money cannot be confidently entrusted to lawyers, the wheels of commerce will almost certainly seize, at least for a time. If this happens, however, some means of doing business without lawyers will probably be discovered.

The credibility of the State Bar as a regulatory agency is also in play. Credibility is, after all, purely a matter of perception, and it is remarkable how differently the State Bar is perceived by large elements of its two main constituencies, the lawyers and the public. A great many lawyers suppose that the State Bar is a Gestapo-like organization determined to repossess as many law licenses as possible. Any bold initiative designed to catch more dishonest lawyers, such as a decision to target financial audits by using statistically valid embezzler "profiles," would probably reinforce this unfortunate misunderstanding. Likewise, an ineffectual response to the problem would likely confirm the widely held, but mistaken, belief among the laity that we are primarily concerned with taking care of our own.

It may be, of course, that we are doing all that we should. As was mentioned above, there is no evidence that the problem is quantitatively different now than ten years ago. Still, we cannot afford to be complacent. At the very least, we need to continue doing

*(Continued on page 43)*

# How the State Bar Rules on Questions of Legal Ethics

BY ALICE NEECE MOSELEY

*Any member of the North Carolina State Bar (the "Bar") may request a ruling from the Bar on the actual or contemplated professional conduct of a member of the Bar. Unfortunately, the process used by the Bar to respond to ethics inquiries is unknown or unclear to many lawyers. The following series of questions and answers are designed to provide guidance to lawyers who are unfamiliar with or mystified by the procedure for ruling on questions of legal ethics.*

### What is the Ethics Committee of the State Bar?

The Ethics Committee is a standing committee of the Council of the State Bar. It meets on a quarterly basis in conjunction with the Council's quarterly meetings. The meetings are open to the public. The current chairman of the committee is Dudley Humphrey, councilor from the 21st Judicial District in Winston-Salem. In addition to the 17 members of the State Bar Council who serve on the committee, there are ten advisory members appointed to the committee. The advisory members are lawyers from the general membership of the Bar and include a law professor from each of the law schools in North Carolina. All members of the committee are eligible to vote on any issue coming before the committee. The president of the State Bar annually appoints the members of the Ethics Committee to terms of one year. There is no limitation on the number of terms a committee member may serve.

The assistant executive director of the State Bar, Alice Neece Moseley, is the legal counsel to the Ethics Committee and provides legal advice and administrative support to the committee. Assistant ethics counsel Deanna Brocker also supports the committee. Neither Ms. Moseley nor Ms. Brocker is a voting member of the committee.

The primary purpose of the Ethics Committee is to provide advice to the members of the State Bar relative to their own ethical dilemmas. In so doing, the committee applies the provisions of the North Carolina Revised Rules of Professional Conduct (the "Rules") to facts presented by inquiring lawyers.

### What kinds of opinions does the Ethics Committee issue?

Three kinds of written opinions are issued by the Ethics Committee: published opinions, known as "Formal Ethics Opinions," which appear in each issue of the *State Bar Journal* where they are identified as proposed opinions with respect to which comment is solicited; unpublished opinions, known as "ethics decisions," which are privately transmitted to inquiring lawyers and concern matters that are not thought to be of interest or concern to the broader membership of the bar; and "ethics advisories," which are opinions offered by designated staff counsel of the State Bar to inquiring lawyers who seek advice about their own contemplated conduct. Informal oral opinions that concern a lawyer's own actual or contemplated conduct also may be obtained from the legal staff of the State Bar.

### How do I get an opinion on an ethics question?

You may call or write to the State Bar. You also may make an appointment to discuss your question in person with an appropriate member of the State Bar staff. Telephone calls and appointments may be made during the hours of nine a.m. to five p.m. Monday through Friday.

If you call the State Bar, you should tell the receptionist that you have an ethics question. Your call will be directed to the assistant executive director or the assistant ethics counsel. If the assistant executive director is not available, your call may be directed to the executive director. The telephone number of the Bar is listed at the end of this article along with the names of the ethics lawyers at the State Bar.

If you write to the State Bar, your inquiry may become part of the records of the Ethics Committee of the State Bar. The records of the Ethics Committee are public. Therefore, you may want to express your ethics question in a hypothetical format. Also, your letter should indicate that you have provided a copy to all persons who you believe will be substantially affected by the question advanced in the letter. It is particularly important that you provide a copy of your inquiry to any lawyer whose conduct may be at issue in your inquiry. If you have not done so, the assistant director will contact you and ask you to provide a copy to the affected lawyer. This is done to give the lawyer an opportunity to comment on the inquiry.

### Are there any limitations on the inquiries addressed by the Bar?

Yes. Opinions will not be provided if the

material facts of the inquiry are in dispute or the inquiry requires an interpretation of law rather than legal ethics. Written inquiries that disclose a possible violation of the Revised Rules of Professional Conduct may be referred to the Grievance Committee of the State Bar for investigation. If a verbal inquiry discloses a possible violation of the Rules, the caller may be encouraged to file a formal report with the State Bar. An inquiry regarding a conflict of interest that is the subject of a pending motion to disqualify counsel will not be answered unless the tribunal requests that the opinion of the State Bar be obtained. In these instances, the Ethics Committee defers to the concurrent jurisdiction of the court to rule on questions of professional conduct.

If you telephone or visit the State Bar, you will receive an oral response to an inquiry that involves your own actual or contemplated conduct. Your oral inquiry is confidential. If your inquiry involves the conduct of another lawyer, you will be asked to put your inquiry in a letter to the State Bar. As previously stated, a copy of the letter must be mailed to the lawyer whose conduct is in issue and who may be affected by the opinion rendered in response to the inquiry. Written inquiries are not confidential.

Verbal inquiries that involve novel questions that are not clearly answered by the Rules or by prior published ethics opinions will not be answered over the phone or in a conference. The caller will be asked to put the question in writing for submission to the Ethics Committee.

### May I rely on the verbal advice I receive in response to a telephone ethics inquiry?

Yes. Oral ethics opinions (given by phone or in person) are intended to provide feedback and guidance to lawyers who are trying to deal with difficult ethical dilemmas. Although an oral opinion is not a formal ethics ruling because it cannot be reviewed and approved by the Ethics Committee, you may rely upon the advice that you receive over the phone or in person. If a grievance is subsequently filed against you, the fact that you sought and followed the advice of the staff of the State Bar will be the best evidence of your good faith effort to comply with the Rules.

### Will the Bar staff review a legal advertisement before it is published or broadcast?

Yes. Although prior review of an advertisement is not required by the Rules, the ethics staff of the Bar will provide an advance informal oral opinion on whether an advertisement complies with Rule 7.1 of the Revised Rules of Professional Conduct. Rule 7.1 prohibits false and misleading communications about a lawyer's services. The advertisement may be submitted in the form of written copy, tape recording, or, if it is a television advertisement, video. Frequently, the staff will recommend changes to the advertisement to help the lawyer avoid statements that, although not clearly misleading, may have a tendency to mislead. Like other verbal, informal ethics opinions, an opinion of the Bar staff on a legal advertisement is not binding upon the Grievance Committee of the Bar if a grievance is subsequently filed. Nevertheless, compliance with the advice of the staff is evidence of a lawyer's good faith and carries substantial weight with the Grievance Committee.

### When is an ethics advisory issued?

In her capacity as legal counsel to the Ethics Committee, the assistant executive director initially reviews written inquiries sent to the State Bar. She determines whether the inquiry can be answered immediately with an ethics advisory or should be referred to the Ethics Committee for initial consideration.

If the written inquiry involves a routine matter, either of the ethics staff lawyers may issue an ethics advisory. An ethics advisory is a written ruling on a question of legal ethics, which is transmitted in a letter format to the lawyer making the inquiry. Ethics advisories are designated by the letters "EA" and are consecutively numbered. A copy of each ethics advisory is kept on file at the Bar's headquarters. Ethics advisories are sent by the staff without the prior review of the Ethics Committee. However, all ethics advisories sent during a quarter are included in the agenda for the quarterly meeting of the Ethics Committee and are reviewed and discussed by the committee at the quarterly meeting. A lawyer who receives an ethics advisory prior to its review by the Ethics Committee may rely upon the advice contained in the advisory unless and until he or she is notified that the advisory has been modified. If the committee determines that an ethics advisory should be modified, the committee may issue a revision of the ethics advisory and the inquiring lawyer is informed and asked to comply. The inquiring lawyer is held blameless for conduct undertaken in good faith reliance upon the ethics advisory prior to its modification. The committee may also determine that the inquiry raises a question of legal ethics that is important to the general membership of the Bar and withdraw the advisory to publish a proposed formal ethics opinion.

### When is an ethics decision or a formal ethics opinion issued?

If the assistant director determines that an ethics inquiry cannot be answered with an ethics advisory because the inquiry involves a matter of first impression, relates to the conduct of someone other than the inquiring lawyer, or involves an issue that may be of concern to the general membership of the Bar, an ethics advisory will not be issued. Instead, the written inquiry will be presented to the Ethics Committee for consideration at its next quarterly meeting. The committee will discuss the inquiry and decide on the appropriate response. The committee will also decide whether the proposed opinion should be issued as an unpublished ethics decision that is privately transmitted to the inquiring lawyer or published as a proposed formal ethics opinion. A proposed opinion will generally be published if the committee believes that it will be of interest to the members of the Bar at large. Proposed opinions are published in the *Journal* under the section captioned "Proposed Ethics Opinions" and on the State Bar's website, www.ncbar.com. Regardless of the significance of the opinion, the committee generally respects a request from the inquirer that an opinion not be published.

A copy of the proposed ethics decision or formal ethics opinion is provided to the inquiring lawyer as well as all other interested persons, including any other lawyer whose conduct may be in issue, and anyone who submitted written comments or addressed the Ethics Committee about the proposed opinion.

### When do proposed ethics decisions and formal ethics opinions become final ethics opinions of the State Bar?

Proposed formal ethics opinions are pub-

lished in the *State Bar Journal* and on the State Bar's website (www.ncbar.com) with a notice that any interested person or group may submit a written comment or request to be heard concerning a proposed opinion. If written comments or requests to be heard are received about a proposed formal ethics opinion, it is reconsidered by the Ethics Committee at its next quarterly meeting after publication. Written comments or remarks are carefully considered and debated. As a result of this reconsideration process, the Ethics Committee may decide to amend the proposed opinion and republish it in the *Journal* and website for further comment. Alternatively, the committee may decide that the proposed opinion is the proper response to the inquiry and request that the council approve the proposed opinion as published. A proposed formal ethics opinion may, on occasion, go through the reconsideration process several times. (If a proposed opinion is revised, it will be noted in the caption of the opinion in the *Journal*.) On occasion, as a part of the reconsideration process, difficult or controversial proposed opinions are submitted to a subcommittee of the Ethics Committee for closer scrutiny. The subcommittee will meet between quarterly meetings to discuss the inquiry and will make a recommendation to the full committee at the next quarterly meeting.

Proposed formal ethics opinions and ethics decisions are not final until they are considered and approved by the Council of the State Bar, typically upon motion made by the Ethics Committee, at the quarterly meeting immediately following the publication or transmission of the opinions in question. Of course, if a proposed formal opinion is reconsidered and revised, it will be republished and will not be submitted to the council for final approval until the Ethics Committee determines that no further revisions should be made to the opinion. At the meeting of the council at which a proposed ethics decision or formal ethics opinion is scheduled for final approval, any interested person or group may request to be heard before the council's vote on the proposed decision or opinion. The council may, in its discretion, allow or deny such a request.

### Where are adopted formal ethics opinions published?

Adopted formal ethics opinions are not republished in the *Journal*. Therefore, it is important to read the introduction that precedes the "Proposed Opinions" section of the *Journal*. The introduction explains which opinions published in the last edition of the *Journal* were finally approved by the council at its most recent meeting.

All formal ethics opinions are published on the State Bar's website (www.ncbar.com) which is updated after every quarterly meeting. Also, the annual edition of the *Lawyer's Handbook*, sent to all active members of the Bar each spring, contains all formal ethics opinions through the date of publication. The CD version of the *Handbook* used on your computer can be updated quarterly from the website.

### What are "RPC's" and where do I find them?

In 1997, the North Carolina Supreme Court repealed the Rules of Professional Conduct originally adopted in 1985 and adopted the Revised Rules of Professional Conduct. When the 1985 Rules were in effect, the formal opinions issued by the Ethics Committee were designated "RPC's." The acronym corresponds to the name of the Rules under which the opinions were issued. Although the RPC's were adopted under the superseded (1985) Rules, they still provide guidance on issues of professional conduct except to the extent that a particular opinion is overruled by a subsequent opinion or by a provision of the Revised Rules of Professional Conduct. The complete RPC's are published in the *Lawyer's Handbook* (both the paper and CD versions) and on the website. Before relying on an RPC, be sure to check the text of the Revised Rules as well as the index to be sure that all subsequent history is considered.

The ethics opinions that were issued under the Code of Professional Responsibility, in effect from 1973 through 1985, are called "CPR's." They are referenced infrequently in the RPC's and the formal ethics opinions. You may obtain a copy of a CPR by calling the Bar.

### What can I do to facilitate the processing of my ethics inquiry?

Learn the procedures for ruling on questions of legal ethics. Remember that informal oral ethics opinions and written ethics advisories are provided only if the inquiry involves your own actual or contemplated conduct. If your inquiry involves the conduct of another lawyer, it must be in writing and your letter to the Bar should indicate that a copy was mailed to the lawyer whose conduct is in issue. Remember that no opinion will be given if the facts are in dispute, the inquiry involves an interpretation of the law, or the inquiry involves past conduct that may be a violation of the Revised Rules of Professional Conduct. In written and oral inquiries, state the facts clearly and succinctly. Do not send copies of pleadings, documents, and correspondence that must be waded through to determine the facts or the ethics dilemma at issue. Clarify whether you are asking about your own conduct or the conduct of another lawyer. Be sure to ask a specific question and all pertinent collateral questions.

Please call or write as soon as it is clear that you have an ethics question. Some questions require research or consultation. Because the Ethics Committee meets only four times a year, questions that are referred to the committee may not receive a responsive opinion for several months. The sooner the matter is placed on the committee's agenda, the earlier you can expect a response.

### Who do I talk to at the State Bar about a question of legal ethics?

All of the lawyers on staff at the State Bar are experienced and knowledgeable about legal ethics. However, the assistant director and the assistant ethics counsel are primarily responsible for responding to questions of legal ethics. Please contact us if you have an ethics problem. We are here to help: L. Thomas Lunsford II, Executive Director; Alice Neece Moseley, Assistant Director; and Deanna Brocker, Assistant Ethics Counsel.

### What is the contact information for the State Bar?

Telephone: 919.828.4620
Address: PO Box 25909, Raleigh, North Carolina 27611-5908
Web Address: www.ncbar.com ■

*Alice Neece Moseley is the assistant director of the North Carolina State Bar. In that capacity, she serves as counsel to the ethics and administrative committees, and is director of the CLE and specialization programs.*

# Charging a Legal Fee for Participating in Fee Dispute Resolution Program Prohibited

## *Rules, Procedure, Comments*

The Revised Rules of Professional Conduct took effect on July 24, 1997, and superseded the Rules of Professional Conduct (adopted in 1985). All opinions of the Ethics Committee are predicated upon the Revised Rules of Professional Conduct. 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 such request should be directed to the Ethics Committee at PO Box 25908, Raleigh, NC 27611, prior to the next meeting of the committee in October 2000.

### Council Actions

At its meeting on July 21, 2000, the council adopted the opinions summarized below upon the recommendation of the Ethics Committee.

**Revised 99 Formal Ethics Opinion 10—** ***Communicating with Employee of Adverse Organization in a Criminal Investigation***

Opinion rules that a government lawyer working on a fraud investigation may instruct an investigator to interview employees of the target organization provided the investigator does not interview an employee who participates in the legal representation of the organization or an officer or manager of the organization who has the authority to speak for and bind the organization.

**Revised 99 Formal Ethics Opinion 13—** ***Supervision of Paralegal Closing a Residential Real Estate Transaction***

Opinion rules that competent practice requires the presence of the closing lawyer at a residential real estate closing conference to explain the documents being executed, answer questions, and advocate for the client or clients. A nonlawyer may oversee the execution of documents outside the presence of the lawyer provided the closing lawyer provides adequate supervision and is present at the closing conference to complete the transaction.

**2000 Formal Ethics Opinion 3—** ***Responding to Inquiries Posted on a Message Board on the Web***

Opinion rules that a lawyer may respond to an inquiry posted on a web page message board provided there are certain disclosures.

**2000 Formal Ethics Opinion 5—** ***Nonrefundable Advance Fees***

Opinion rules that a lawyer may not tell a client that any fee paid prior to the rendition of legal services is "nonrefundable" although, by agreement with the client, a lawyer may collect a flat fee for legal services to be rendered in the future and treat the fee as earned immediately upon receipt subject to certain conditions.

The council also voted to withdraw an adopted opinion, 2000 Formal Ethics Opinion 2, Representation of Remaining Spouse after Filing Joint Chapter 13 Bankruptcy Petition, upon the recommendation of the Ethics Committee. The withdrawn opinion considered whether a lawyer who represented a husband and wife on a joint Chapter 13 bankruptcy petition may represent only one of the spouses after the other spouse disappears or becomes unresponsive. This issue will be sent to a subcommittee for reconsideration.

### Ethics Committee Actions

At its meeting on July 19, 2000, the Ethics Committee voted to withdraw proposed 2000 Formal Ethics Opinion 4, Acknowledging a Finance Company's Interest in a Client's Recovery. A subcommittee will be appointed to study the proposed opinion. The committee also agreed to revise and republish Proposed 99 Formal Ethics Opinion 15 which originally appeared in the *Journal*, Volume 4, Number 4, and to publish two new proposed opinions. These opinions appear below. The comments of readers are welcomed.

---

### Revised Proposed 99 Formal Ethics Opinion 15
### July 19, 2000
### Disclosure of Fraud of Former Bankruptcy Client

*Proposed opinion rules that a lawyer with knowledge that a former client is defrauding a bankruptcy court may reveal the confidences of the former client to rectify the fraud if required by law or if necessary to rectify the fraud.*

#### Inquiry:

Client seeks advice from Attorney A on filing bankruptcy under either Chapter 7 or 13 of the bankruptcy code. During the course of the initial meeting, it becomes apparent to Attorney A that Client has substantial problems (e.g., preferential payments to friends or relatives, excessive equity in property, co-signed loans) that either preclude the filing of a Chapter 7 bankruptcy or significantly raise Client's anticipated monthly Chapter 13 payment. Attorney A describes in detail the problems Client's case

## *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.

presents. Client thanks Attorney A for his time and leaves his office.

Several weeks later, at the Section 341 First Meeting of Creditors, Attorney A learns that Client retained Attorney B to represent him and has filed a bankruptcy petition. Attorney A recalls that he previously determined that there were a number of obstacles to filing bankruptcy for Client. Attorney A believes that Client intentionally failed to reveal these problems to Attorney B.

What is Attorney A's obligation under these circumstances?

**Opinion:**

The information that Attorney A learned during his conference with Client is confidential client information that Attorney A may not disclose to third parties, including bankruptcy officials and Client's current lawyer, unless one of the exceptions to the duty of confidentiality found in Rule 1.6 of the Revised Rules of Professional Conduct applies. Two exceptions to the duty of confidentiality are relevant.

Rule 1.6(d)(3) permits Attorney A to reveal Client's confidences if required to do so by law. A number of bankruptcy statutes require disclosure of debtor's assets and liabilities and other financial information. 18 U.S.C. §152, a federal criminal statute, imposes criminal penalties on "a person who knowingly and fraudulently conceals...any property belonging to the estate of a debtor...." Rule 1.6(d)(3) merely determines whether a lawyer is permitted to disclose confidential information, not whether the lawyer is compelled to do so by law. Whether a lawyer has a duty to disclose confidential information under the circumstances described above is a matter to be determined under 18 U.S.C. §152 and other relevant law. The determination of that legal issue is beyond the scope of this opinion. *See* 98 Formal Ethics Opinion 20.

Rule 1.6(d)(5) permits a lawyer to reveal confidential information of a client to the extent that the lawyer reasonably believes necessary to rectify the consequences of a client's criminal or fraudulent act "in the commission of which the lawyer's services were used." Mere suspicion that Client is committing a fraud on the court is not sufficient to trigger this exception to the duty of confidentiality. However, if Attorney A knows that Client is committing a fraud on the court and that his services were used to perpetrate the fraud, he may reveal confidential information of his former client as necessary to rectify the fraud.

If Attorney A knows that the bankruptcy petition is fraudulent and he decides to take action to rectify the fraud, Attorney should reveal confidential information of Client only to the extent necessary. The first step is a letter to his former client requesting that Client take action to rectify the fraud. If this is unsuccessful, disclosure to Client's current lawyer is permitted under Rule 1.6(d)(5). Attorney A should inform Attorney B that he will notify the bankruptcy administrator if no action is taken to rectify the fraud or he does not receive a response from Attorney B. If Attorney B fails to respond or fails to alleviate Attorney A's concerns, Attorney A may notify the bankruptcy administrator.

---

## Proposed 2000 Formal Ethics Opinion 6
## July 19, 2000
## Implying Early Settlement in Television Advertisement

*Proposed opinion rules that a television advertisement for legal services that implies that an insurance company will settle a claim more quickly because the advertised lawyer represents the claimant is misleading.*

**Inquiry:**

Lawyer A desires to air an advertisement on television. In the advertisement, two individuals who appear to be defense counsel for an insurance company, are seated at a table, having the following conversation:

Senior Lawyer: How do you suggest we handle this claim?

(Disclaimer appears on screen: Dramatization by actors. No specific results implied.)

Junior Lawyer: It's a large claim, serious auto accident. We could try to deny it or delay to see if they'll crack.

Senior Lawyer: Who's the lawyer representing the victim?

Junior Lawyer: Lawyer A.

(Metallic sound effect; logo of Lawyer A's firm appears.)

Senior Lawyer: Lawyer A? Let's settle this one.

Voice over by actor: North Carolina insurance companies know the name Lawyer A. If you've been injured in an auto accident...tell them you mean business.

### *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.

Does the advertisement comply with the Revised Rules of Professional Conduct? Is the advertisement misleading?

**Opinion:**

Rule 7.1, Communications Concerning a Lawyer's Services, sets forth the essential requirement for all advertising by lawyers. The rule states:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or

(c) Compares the lawyer's services with other lawyers' services unless the comparison can be factually substantiated.

The advertisement in this inquiry intentionally creates the impression that the insurance company, and its lawyers, are anxious to settle a claim brought by Lawyer A solely because of his reputation. It implies that the decision to settle the claim is based upon the representation of the claimant by Lawyer A without regard for the strength of the claim or the evidence. Thus, the commercial is likely to create an unjustified expectation about results that the lawyer can achieve. Also, it misrepresents the importance of the myriad of factors that are taken into consideration by an insurance

CONTINUED ON PAGE 43

# Amendments Approved by the North Carolina Supreme Court

At its conference on May 4, 2000, the North Carolina Supreme Court approved the following amendments:

**Amendments to the Trust Accounting Rules**

27 N.C.A.C. Chap. 2, Revised Rules of Professional Conduct, Rule 1.15, Preserving the Property of Others

These amendments substantially revise the trust accounting rules (Rule 1.15-1, 1.15-2, and 1.15-3) in the Revised Rules of Professional Conduct. The revisions accomplish the following: (1) improve the organization and clarity of the rules; (2) clarify that accounts managed by a lawyer as a fiduciary (trustee, personal representative, guardian, etc.) are subject to the rules if the lawyer is compensated for his or her service; (3) specify that a fiduciary account (as opposed to a lawyer's trust account) may be maintained at an institution other than a bank (and thereby earn greater interest); and (4) clarify and minimize the record keeping required for fiduciary accounts.

**Amendments to the Fee Dispute Resolution Rules**

27 N.C.A.C. 1D, Sections .0700 and .0800, 27 N.C.A.C. 2, Revised Rules of Professional Conduct, Rule 1.5(f)

To encourage the resolution of fee disputes without litigation and without resort to the disciplinary process, these amendments eliminate non-binding arbitration in favor of mediation of fee disputes by members of the State Bar staff and, if a local bar so chooses, by a local bar.

**Amendments to the Rules for the Appointment of Counsel for Indigent Criminal Defendants**

27 N.C.A.C. 1D, Rule .0406 and Rule .0503

The amendments clarify that the rules do not prohibit payment of interim fees pending final determination of an appeal. The amendments also make certain references in the rules consistent with the Structured Sentencing Act.

**Standards for the Workers' Compensation Law Specialty**

27 N.C.A.C. 1D, Section .2700

The standards establish the requirements for certification as a specialist in workers' compensation law. In addition to substantial involvement in the practice of workers' compensation law, an applicant must satisfied CLE and peer review requirements, and pass an examination in the practice area.

## *The Process*

Proposed amendments to the Rules and Regulations 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.**

# Amendments for Which Supreme Court Approval is Pending

At its meeting on July 21, 2000, the council voted to adopt amendments to various sections of the rules of the State Bar. The following amendments are now pending before the North Carolina Supreme Court for approval:

**Reinstatement of Suspended Lawyers**

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys, Rule .0125

The amendments provide a more workable timetable for the reinstatement of lawyers whose licenses are suspended for disciplinary offenses. A lawyer who is suspended for 120 days or less is eligible for reinstatement at the end of the suspension period, or ten days from the filing of a reinstatement petition, whichever is later. A lawyer who is suspended for a period of more than 120 days is eligible for reinstatement at the end of the suspension period or 30 days from the filing of the reinstatement petition, whichever is later.

**Amendments to the IOLTA Rule**

27 N.C.A.C. 2, Revised Rules of Professional Conduct, Rule 1.15-4, Interest On Lawyers' Trust Accounts

The revisions to the IOLTA (Interest on Lawyers Trust Accounts) rule in the Revised Rules of Professional Conduct make the rule consistent with the amendments to the other trust account rules (Rules 1.15-1, 1.15-2, and 1.15-3) approved by the Supreme Court this quarter.

## *Comments*

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

# Proposed Amendments

## Proposed Amendments to Discipline and Disability Rules

Amendments to Permit Referral to Lawyer Assistance Program

27 N.C.A.C. 1B, Section .0100

These proposed amendments to the Discipline and Disability Rules allow the Grievance Committee to refer a matter to the Lawyer Assistance Program (LAP) if the Grievance Committee determines that the alleged misconduct is primarily attributable to a problem with substance abuse. A version of this proposed rule was adopted by the council in April and sent to the Supreme Court for its approval. The Court requested the addition of language describing the effect of a respondent's successful completion of a rehabilitation program. The proposal is amended in accordance with the Supreme Court's recommendation. In addition, at the request of the Lawyer Assistance Program Board, the rule is further revised to allow a referral to LAP if the committee determines the alleged misconduct may be attributable to the respondent's mental health problem.

Amendments to Rule .0106 are republished at this time although the council approved the amendments on July 21, 2000. The amendments to Rule .0106 will be sent to the Supreme Court for approval together with the amendments to Rule .0112 because of the cross-references in the rules.

**Rule .0112 Investigations: Initial Determination**

...

(j) 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 substance abuse or mental health problem, the Committee may refer the matter to the Lawyer Assistance Program Board. The respondent must consent to the referral and must waive any right of confidentiality that the respondent might otherwise have had regarding communications with persons acting under the supervision of the Lawyer Assistance Program Board.

If the respondent successfully completes the rehabilitation program, the Grievance Committee can consider that as a mitigating factor and may, for good cause shown, dismiss the grievance. If the respondent fails to complete the rehabilitation program or fails to cooperate with the Lawyer Assistance Program Board, the failure will be reported to the chairperson of the Grievance Committee and the investigation of the grievance will resume.

**Rule .0106, Grievance Committee Powers and Duties**

The Grievance Committee will have the power and duty

...

(11) in its discretion, to refer grievances primarily attributable to unsound law office management to ~~the Board of Continuing Legal Education~~ an approved law management assistance program in accordance with Rule .0112(h) of this subchapter.

(12) in its discretion, to refer grievances primarily attributable to the respondent's substance abuse or mental health problem to the Lawyer's Assistance Program in accordance with Rule .0112(k) of this subchapter.

## Amendments to Permit District Bar Grievance Committees to Recommend Referral to Lawyers Assistance Program

This proposed amendment authorizes district bar grievance committees to recommend that the Grievance Committee refer appropriate matters to the State Bar's Lawyer Assistance Program pursuant to proposed Rule .0112 (j) (see above).

27 N.C.A.C. 1B, Section .0200

**Rule .0202 Jurisdiction & Authority of District Grievance Committees**

...

(e) Authority of District Grievance Committees - The district grievance committee shall have authority to

...

(4) find facts and recommend whether or not the State Bar's Grievance Committee should find that there is probable cause to believe that the respondent has violated one or more provisions of the Revised Rules of Professional Conduct. The district grievance committee may also make a recommendation to the State Bar regarding the appropriate disposition of the case, including referral to the Lawyer Assistance Program pursuant to Rule .0112(j) or to a program of law office management training approved by the State Bar;

## Proposed Rules To Make the Collection of Judicial District Bar Membership Fees Consistent with State Bar Procedures

In the last edition of the *Journal*, new rules regulating the collection of annual membership fees by local judicial district bars were published for comment. Several district bars commented that the proposed rules would be financially burdensome. In response, the proposed rules were amended. These amendments appear in bold below; however, the rules are being proposed for adoption in their entirety. Among other things, the proposed rules require district bars that collect annual dues to do the following: establish a fiscal year that is not a calendar year; adopt a date 90 days from the date of first bill as the date upon which the dues will be deemed delinquent if not paid; if a district chooses to assess a late fee, limit the late fee to no more than $30 if dues are not paid by the delinquency date; report any delinquent lawyers to the State Bar; provide an accounting for the funds collected; limit the assessment of dues from lawyers who move from one judicial district bar to another; and prohibit hardship waivers of dues payments or penalties unless the State Bar has previously granted a waiver.

27 N.C.A.C. Chapter 1A

**Section .0900 Organization of the Judicial District Bars**

**Rule .0902 Annual Membership Fee**

If a judicial district bar elects to assess an annual membership fee from its active members pursuant to N.C.G.S. §84-18.1(b), the following procedures shall apply:

(a) Notice to State Bar. The judicial district bar shall notify the North Carolina State Bar of its election to assess an annual membership fee each year at least 30 days prior to mailing to its members the first invoice therefore, specifying the amount of the annual membership fee, the date after which payment will be delinquent, and the amount of any late fee for delinquent payment.

(b) Accounting to State Bar. No later

than 30 days after the end of the judicial district bar's fiscal year, the judicial district bar shall provide the North Carolina State Bar with an accounting of the annual membership fees it collected during such judicial district bar's fiscal year.

(c) Delinquency Date. The date upon which the annual membership fee shall be delinquent if not paid shall be not later than 90 days after, and not sooner than 30 days after, the date of the first invoice for the annual membership fee. The delinquency date shall be stated on the invoice and the invoice shall advise each member that failure to pay the annual membership fee must be reported to the North Carolina State Bar and may result in suspension of the member's license to practice law.

(d) Late Fee. Each judicial district bar may **impose**, but shall not be required, to impose a late fee of any amount not to exceed thirty dollars ($30.00) for non-payment of the annual membership fee on or before the stated delinquency date.

(e) Members Subject to Assessment. Only those lawyers who are active members of ~~the~~ a judicial district bar ~~on the first day of the judicial district bar's fiscal year~~ may be assessed an annual membership fee. ~~Any~~ A lawyer who joins ~~the~~ a judicial district bar ~~during~~ **after the beginning of** its fiscal year shall be exempt from the obligation to pay the annual membership fee for that fiscal year **only if the lawyer can demonstrate that he or she previously paid an annual membership fee to another judicial district bar with a fiscal year that runs coterminously, for a period of three (3) months or more, with the fiscal year of the lawyer's new judicial district bar**.

(f) Hardship Waivers. A judicial district bar may not grant any waiver from the obligation to pay the judicial district bar's annual membership fee or any late fee unless the lawyer requesting the waiver is granted a waiver of the lawyer's annual membership fee to the North Carolina State Bar for the comparable period.

(g) Reporting Delinquent Members to State Bar. Twelve months after the ~~delinquency date for payment of~~ **date of the first invoice for** the annual membership fee, the judicial district bar shall report to the North Carolina State Bar all of its members who have not paid the annual membership fee or any late fee.

**.0903 Fiscal Period**

To avoid conflict with the assessment of the membership fees for the North Carolina State Bar, each judicial district bar that assesses a membership fee shall adopt a fiscal year that is not a calendar year. ■

# *Proposed Ethics Opinions*

CONTINUED FROM PAGE 40

company, or its lawyers, when deciding whether and for how much a claim should be settled. Therefore, the advertisement does not comply with the Revised Rules of Professional Conduct.

**Proposed 2000 Formal Ethics Opinion 7**
**July 16, 2000**
**Charging a Legal Fee for Participation in the Fee Dispute Resolution Program**

*Proposed opinion rules that a lawyer may not charge the client a legal fee for the time required to participate in the State Bar's fee dispute resolution program.*

**Inquiry:**

Rule 1.5(f) of the Revised Rules of Professional Conduct requires a lawyer with a fee dispute with a client to participate in the North Carolina State Bar's program of fee dispute resolution. The rule provides as follows:

(f) Any lawyer having a dispute with a client regarding any fee for legal services must: (1) make reasonable efforts to advise his or her client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee; and (2) participate in good faith in the fee dispute resolution process if the client submits a proper request.

Client filed a fee dispute petition with the State Bar. Client's lawyer, Attorney A, sent his written response to the State Bar. Attorney A also added $1,150 to Client's bill for the time and expense associated with drafting the response to the fee dispute petition. May Attorney A charge Client for the time expended in preparing a response to a fee dispute petition or otherwise participating in the fee resolution program of the State Bar?

**Opinion:**

No. Participation in the fee dispute resolution program is not a legal service that the lawyer provides to the client. Rather, Rule 1.5(f) mandates participation in the program if requested by a client. Moreover, the rule mandates that a lawyer participate in good faith. The program minimizes the adverse effects of fee disputes with clients and helps to prevent the filing of grievances against lawyers. Participation is a professional responsibility that advances the interests of the public and the Bar, and it is improper for a lawyer to charge a client for the time expended to participate. *See also* 27 N.C.A.C 1D, Section .0702 ("The State Bar shall implement a fee dispute resolution program....which shall be offered to clients and their lawyers at no cost"). ■

# *If You Knew Bruno*

*(Continued from page 35)*

what we are already doing well. We need to keep Bruno, who is approaching retirement, in the ballgame for as long as we can. We might also want to hire one or more additional Brunos. That sounds like a good idea, of course, but I doubt that it will be possible. Brunos are mighty rare. In that regard I am reminded of a story told by Coach Dean Smith at an alumni gathering shortly after the Tar Heels won the national championship in 1982. As I recall, he said that he happened to be standing among a large group of people at another social function earlier in the week and had overheard one Carolina fan commiserating with another regarding the then recent decision of star forward James Worthy to forego his last year of eligibility and jump to the NBA. The gentleman was heard to say, "Don't worry. Ol' Dean will just go out and get himself another Worthy." After recounting this conversational fragment, Coach Smith sighed audibly, shook his head and said, "That fellow couldn't have been more wrong. Ol' Dean will never find another Worthy."

In much the same vein I'm here to tell you that I doubt we will ever find another Bruno. ■

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

# Five Attorneys Disbarred

## Disbarments

Former Wilson attorney **Reginald Scott** surrendered his license to the DHC and was disbarred pursuant to a consent order dated May 25, 2000. Scott misappropriated client funds.

**Garry D. Owens** of Currituck County surrendered his license to the DHC and was disbarred pursuant to a consent order dated June 5, 2000. The order found that Owens abandoned his trust account responsibilities.

Two lawyers surrendered their law licenses to the Council of the North Carolina State Bar and were disbarred on July 21, 2000. **William G. Ijames Jr.** of Lexington and **Robert B. Herbert Jr.** of Raleigh each admitted misappropriating fiduciary or client funds.

On July 21, 2000, a Stanly County Superior Court Judge disbarred Albemarle attorney **Richard Lane Brown III** after Brown pled guilty to perjury, obtaining property by false pretenses, and numerous counts of embezzlement.

## Suspensions

Pursuant to a consent order entered in June 2000, the Disciplinary Hearing Commission found that Fayetteville attorney **Leon Lee** failed to file timely tax returns. Lee, who had been suspended from the practice of law following a 1997 disciplinary hearing and who had not yet been reinstated, was suspended from the practice of law for five years for the violations found in the June 2000 order. The DHC's current order of suspension was made effective November 5, 1999, the first day on which Lee would have been eligible for reinstatement from the 1997 order, had he complied with all terms of that order.

## Stayed Suspensions

Following a two-day hearing in April 2000, the Disciplinary Hearing Commission suspended the law license of High Point attorney **J. Brooks Reitzel** for three years. The suspension was stayed for three years, upon a variety of conditions. The DHC found that Reitzel engaged in a conflict of interest in a bankruptcy case, failed to make required disclosures to the bankruptcy court, and failed to withdraw when required by the Rules of Professional Conduct to do so.

**Robert W. Adams**, who practices in Hickory, was disciplined by the DHC following a hearing on April 14, 2000. The DHC suspended Adams' law license for three years, but stayed all but nine months of the suspension on various conditions. The Commission found that Adams failed to file individual state income tax returns for 1994-1996.

**John Harmon** of New Bern was tried before the DHC on May 25, 2000. The Commission suspended Harmon's law license for five years, and stayed the suspension for five years, on various conditions. The order found that Harmon neglected two matters, caused significant prejudice to his clients, and recklessly made false representations to the State Bar Grievance Committee.

Greensboro lawyer **Walter T. Johnson Jr.** was suspended from the practice of law for six months, and the suspension was stayed for one year on various conditions pursuant to a consent order dated July 25, 2000. The order found that Johnson neglected client matters and failed to keep clients informed of the status of their cases.

**Kenneth N. Barnes** of Raleigh received a six month suspension, which was stayed for three years pursuant to a consent order entered on June 23, 2000. The order found that Barnes filed frivolous claims, neglected client matters, and made reckless misrepresentations to a court.

**Fred J. Williams** of Durham was disciplined by the DHC on July 14, following Williams' plea of guilty to felonious possession of cocaine. The Commission suspended Williams' law license for three years, and stayed all but six months, on various conditions. The suspension was made effective retroactively to the date on which Williams ceased practicing law pursuant to an interim suspension order.

## Censures & Reprimands

Charlotte attorney **Sharon Jumper** was reprimanded by the Grievance Committee on January 20, 2000. The committee found that Jumper failed to respond in a timely fashion to letters of notices sent to her by the State Bar in four matters.

Hendersonville attorney **William C. Shumway** was reprimanded by the Grievance Committee on January 20, 2000, for failing to respond in a timely fashion to a letter of notice from the State Bar.

**T. O. Stokes III** of Greensboro was reprimanded by the Grievance Committee on January 20, 2000. The committee found that Stokes negotiated a settlement check without having first complied with the insurance company-payor's conditions of settlement.

Two Greensboro attorneys were reprimanded on April 13, 2000, for misconduct arising out of the same domestic case. The Grievance Committee found that **Jodi A. Ernest** and **Angela C. Foster** of Greensboro undertook the case without adequate preparation and failed to make the extent of their representation clear to the client.

**Romallus O. Murphy** of Greensboro was reprimanded by the Grievance Committee on April 13, 2000. The committee found that Murphy failed to explain proceedings in a case to his client so that the client could understand the proceedings and make an informed decision about her legal matter.

## Notice of Intent to Seek Reinstatement

Individuals who wish to note their concurrence with or opposition to the Petition should file written notice with the Secretary of the State Bar, PO Box 25908, Raleigh, NC 27611, before November 1, 2000.

*(Continued on page 54)*

# IOLTA Update

### Financial

As reported earlier, income for 1999 ($3.1 million) was significantly lower than income for 1998 ($3.9 million) but was a slight increase over the 1997 total when we exceeded $3 million for the first time. IOLTA programs nationwide have reported declining income over the last year due to decreased interest rates, increased bank service charges, and decreased account activity. In North Carolina, income for the first quarter of 2000 continued to decline, though income improved in the second quarter in what we hope is a reversal of the downward trend. IOLTA programs around the country are continuing to monitor this situation and to work to find ways to enhance IOLTA income. For example, in North Carolina we are approaching a number of major banks to encourage establishment of a tiered interest rate structure that would give higher interest rates to accounts with higher average daily balances. One bank has established such a structure.

### Grants

With carryover from our extraordinary previous year, we had approximately the same amount of funding available for making our grants for 2000. IOLTA is administering $3.1 million in year 2000 grants (compared to just over $3 million in 1999 grants). Grant applications for 2001 are now available with an October 2 deadline. Grant decisions will be made by the IOLTA Board in early December and announced before the end of the year.

### IOLTA Litigation Update

We continue to monitor the progress of two cases involving challenges to IOLTA programs:

Texas. As reported earlier, in January the federal district court for the Western District of Texas in Austin dismissed with prejudice all claims against the mandatory Texas IOLTA program. The opinion reviewed and dismissed both the First Amendment and the Fifth Amendment taking challenges. This decision is being appealed to the Fifth Circuit.

Washington. In the case from the state of Washington, the mandatory IOLTA program for LPO's (Limited Practice Officers authorized to handle real estate transactions) is being challenged. The district court had granted summary judgment in favor of the Legal Foundation of Washington (Washington state's IOLTA program), and the case is on appeal to the Ninth Circuit. Oral argument was held February 9, 2000. Both the NC IOLTA program and the NC Bar Association signed an amicus brief in support of the Washington program.

The IOLTA Board continues to monitor further developments in these cases. We will keep you informed as this litigation progresses.

### Long Range Plans

At its fall meetings the IOLTA Board continues to do long range strategic planning. The board has reviewed its operations policies and is now reviewing grantmaking policies in an effort to make the most effective use of our grant funds. ■

# *New Participants*

IOLTA is a non-profit organization created by the State Bar and approved by the North Carolina Supreme Court. IOLTA works with lawyers and banks across the state to coordinate income generated from participating lawyers' pooled trust accounts for the purpose of funding grants to providers of civil legal services for the indigent and to further the administration of justice. Currently, 60% of all eligible North Carolina attorneys participate in IOLTA. We also have the participation of a majority of all North Carolina banks, including the state's largest bank.

Participation in IOLTA does not affect a lawyer's trust account practices and never affects the principal balance of the account. The participating bank calculates and remits all accumulated interest, less service charges, directly to IOLTA. Lawyers still retain complete discretion to determine whether a trust deposit is of sufficient size or duration to justify placement in a separate interest bearing account for a client.

To learn more about the IOLTA program or to become a participant, please call the IOLTA office at 919/828-0477.

The following law firms have joined the IOLTA Program since March 2000.

*Baity Jr., Bill J.; Statesville*
*Balsamo, Salvatore; Charlotte*
*Bogle, Ronald Edward; Raleigh*
*Borhanian, Shahin S.; Chapel Hill*
*Bowen; Heather J.; Mount Airy*
*Boyce, Stephen A.; Winston-Salem*
*Brenner, Lawrence H.; Carrboro*
*Briggs, Charles R.; Elkin*
*Byrne, Michael C.; Brevard*
*Cardwell, Vernon E.; Madison*
*Clark, Newton & Evans; Wilmington*
*Craige, Lawrence S.; Wilmington*
*Crawford, Kristi L.; Durham*
*Davis, Wright, Tremiane; Charlotte*
*Dyson, Bradford & Kilbourne; Raleigh*
*Earls, Thomas A.; Cary*
*Faison, Deloris J.; Jacksonville*
*Ferris Jr., David J.; Raleigh*
*Fortner, Dionne Loy; Clayton*
*Fox, Jennifer; Pinehurst*
*Friedrich, Alfred A.; Raleigh*
*Glidewell IV, Powell W.; Reidsville*
*Hartley, David V.; Lillington*
*Hensley Jr., Robert Edward; Asheville*
*Hodgdon Law Offices; Raleigh*
*Johnson Law Firm; Greenville*
*Kinlaw, Vance E.; Greensboro*
*Krusch, Alan R.; Charlotte*
*Lea III, James W.; Wilmington*
*Leath, William P.; Charlotte*
*Little & Associates; Chapel Hill*
*Long Jr., C.R.; Winston-Salem*
*Lugbill, Ron G.; Cullowhee*
*McGee, Michael H.; Charlotte*

*(Continued on page 54)*

Dorsett

# Dorsett Nominated as Vice-President

Raleigh attorney **James K. Dorsett III** was selected by the Nominating Committee 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.

A partner with Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, Dorsett practices in the area of civil litigation with a concentration in business and commercial cases, products liability, and personal injury matters. After earning his undergraduate degree from Davidson, he graduated from Wake Forest University School of Law in 1977 and was admitted to the practice of law that same year.

Dorsett has been a State Bar Councilor representing the Tenth Judicial District since 1991 and currently serves as chairman of the Grievance Committee. In the past he has chaired both the Publications and Professional Organizations Committees and been vice-chair of the Paralegal Committee. Additionally, Dorsett has served on the Executive, Administrative, Policies and Procedures, and Consumer Protection Committees.

Long active in the legal community, Dorsett served two terms as a director of the Wake County Bar Association and as chairman of its Scholarship and Endowment Committee and on the Lawyers' Support Committee. He has also served on the boards of East Central Community Legal Services, the WCBA Volunteer Lawyers Program, and Legal Services of North Carolina. In 1996 Dorsett was statewide co-chair for LSNC's record Access to Justice Campaign. Recently, he was elected to the Board of Directors of both the American Counsel Association and the International Society of Barristers. Dorsett is also a member of the North Carolina Bar Association, North Carolina Association of Defense Attorneys and American Bar Association. In 1997 he was elected to membership in the American Board of Trial Advocates (ABOTA).

In addition to work with other civic organizations, Dorsett has been a volunteer "Big Buddy" and fundraiser with the Loaves & Fishes Ministry, and served on the Board of Directors for Wake Up For Children. He is also a member of White Memorial Presbyterian Church.

Dorsett has remained an avid tennis player since playing varsity tennis for Davidson. He especially enjoys family activities, sports and travel, as well as classical music and reading historical novels, biographies, and fiction. Jim, his wife, Wynn, and their four children, Elise (12), Rush (10), James (8), and Grace (3) make their home in Raleigh. ■

Allen

Barnes

Messick

Poole

Stephens

# *Five New Members Join the DHC*

Greensboro attorney **William Steven Allen Sr.** is a graduate of NC A&T State University. Allen earned his JD from UNC-Chapel Hill in 1978 and was admitted to the practice of law in 1979. He was a Superior Court Judge for the 18th Judicial District from 1989-1996, and has worked as a solo practitioner since 1997. Allen is a member of the Greensboro Bar Association, NC Association of Black Lawyers, and the Guilford County Association of Black Lawyers (where he served as vice-president). Allen is also a former vice-president of the NC Bar Association.

**Charles Ernest Barnes** is a resident of Raleigh and a graduate of North Carolina A&T University in Greensboro. He is a retired account executive with Levi Strauss and Company. Currently, he owns and operates Barnes' Consulting which specializes in small business management. Barnes received numerous achievement awards in the field of business management.

Attorney **T. Paul Messick Jr.**, a Burlington resident, earned undergraduate degrees from UNC-Chapel Hill and Universite de Lyon in Lyon, France. In 1974 he graduated from the law school at UNC-Chapel Hill, was admitted to the practice of law, and began practice with the firm of Messick, Messick & Messick. From 1990-1998, Messick served the State Bar as a councilor for Judicial District 15-A. He is also a member of the NC Bar Association, NC Academy of Trial Lawyers, and Alamance County Bar Association.

Raleigh attorney **Carlyn Poole** graduated from Texas Tech University and earned her JD from UNC-Chapel Hill in 1979. That same year she was admitted to the practice of law and joined the firm of Tharrington Smith, where she has practiced ever since. Poole is a board certified specialist in family law, and a member of the Wake County Bar Association (president 1991), NC Bar Association (vice-president from 1992-94), and American Academy of Matrimonial Lawyers.

**Lorraine Stephens** is a Raleigh resident and graduate of St. Augustines College. She is a 23-year veteran of IBM who, for the past eight years, has been the president of L. Stephens & Associates, Inc., which offers training on how to effectively use computers to increase productivity. ■

# Client Security Fund Reimburses Victims

At its July 19, 2000 meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of approximately $65,000.00 to eight clients who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $6,800.00 to a former client of William Gerald who previously practiced law in Raleigh, NC. The board found that the client retained Gerald to represent him in a criminal matter and that Gerald failed to do any work that benefited the client. Gerald was disbarred on December 11, 1998.

2. An award of $2,500.00 to the medical providers of a former client of Gary D. Henderson of Kernersville, NC. The board found that the client retained Henderson to represent him in a personal injury matter and failed to pay the medical providers from the insurance settlement. Henderson was disbarred on April 4, 1997.

3. An award of $425.00 and $24,334.59 to the buyer and seller, respectively, in a real estate transaction handled by Alton G. Murchsion III of Charlotte, NC. The board found that Murchsion was retained to handle a loan closing for a church and failed to pay the seller the entire amount owed from the loan proceeds. The board also found that Murchison failed to pay a $425.00 title insurance premium on behalf of the buyer. Murchison was disbarred on April 14, 2000.

4. An award of $1,586.16 to a former client of Reginald Scott of Wilson, NC. The board found that Scott was retained to handle a personal injury matter and failed to pay the medical providers. The board voted to reimburse the medical providers on a pro rata basis and reimburse the client for the medical providers she had already paid. Scott was disbarred on May 25, 2000.

5. An award of $6,326.85 to a former client of John C. Stiles of Cary, NC. The board found that Stiles was retained to handle a personal injury matter and failed to pay the client's medical providers. Stiles was disbarred on April 14, 2000.

6. An award of $65.50 and $734.17 to the buyer and seller, respectively, in a real estate transaction handled by J. Edward Welborn of Greensboro, NC. The board found that Welborn failed to pay the title insurance premium and the property taxes. Welborn was disbarred on January 21, 2000.

7. An award of $8,378.27 to a former client of J. Edward Welborn. The board found that Welborn was the closing attorney for a loan refinance and failed to pay several creditors from the loan proceeds.

8. An award of $14,312.51 to a former client of J. Edward Welborn. The board found that Welborn was retained to handle a loan refinance and failed to pay creditors, the title insurance premium, and the property taxes from the loan proceeds. ■

# *State Bar Welcomes New Staff*

Blackburn

Childree

Cuney

Weber

The new assistant to the financial investigators is **Kimberly Blackburn**. Blackburn has four years of prior experience as an administrative assistant.

**Lenita Childree** joined the State Bar staff as an assistant in the membership department. Childree, who moved to North Carolina from Georgia in 1983, has 23 years of prior experience.

**Ashley Council** (not pictured) is the State Bar's summer clerk. Council earned an Associate of Arts Degree from Peace College in 1993 and a BA in History from UNC-Chapel Hill in 1995. She worked as a paralegal for three years in Wilmington for Stephen E. Culbreth, Attorney at Law. This fall Council will enter her final year of law school at Campbell University.

**Tobia E. Cuney** has joined the State Bar as a legal secretary in the office of counsel. Cuney attended Los Angeles City College and has over 15 years experience with administrative support in the corporate and private sectors.

The newest member of the State Bar's IOLTA staff is **Pamela L. Smith** (not pictured). Smith, who is currently attending UNC-Chapel Hill, joins the Bar as an administrative assistant.

The State Bar welcomes **Carol Weber** who joins the office of counsel as a legal secretary. Weber earned an AAS in Accounting from Wm. Rainey Harper in Algonquin, Illinois. She has numerous years of experience including work as a legal secretary. ■

# Audit

# North Carolina State Bar

### Independent Auditors' Report

We have audited the accompanying balance sheets of The North Carolina State Bar as of December 31, 1999 and 1998, and the related statements of revenues, expenses and fund balance, changes in fund balance, and cash flows for the years then ended. These financial statements are the responsibility of The North Carolina State Bar's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The North Carolina State Bar as of December 31, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Raleigh, North Carolina
January 26, 2000

### Balance Sheets

| | December 31, 1999 | 1998 |
|---|---|---|
| **Assets** | | |
| Current Assets: | | |
| Cash and cash equivalents | $3,230,784 | $4,023,247 |
| Receivable from Continuing Legal Education | 1,229 | 1,124 |
| Receivable from Client Security Fund | 56 | 424 |
| Receivable from IOLTA | 121 | 254 |
| Other receivables | 40,223 | 48,750 |
| Prepaid expenses | 5,408 | 15,842 |
| **Total Current Assets** | 3,277,821 | 4,089,641 |
| **Property and Equipment, at cost** | | |
| Land | 185,500 | 185,500 |
| Building | 838,039 | 838,039 |
| Computer equipment and software | 329,411 | 223,232 |
| Furniture and office equipment | 368,158 | 251,606 |
| Automobiles | 46,336 | 46,336 |
| Construction in progress | 1,273,123 | 491,440 |
| | 3,040,567 | 2,036,153 |
| Accumulated depreciation | (1,280,362) | (1,164,319) |
| | 1,760,205 | 871,834 |
| Investments, at amortized cost | 15,536 | 20,860 |
| Financing Costs, net of accumulated amortization of $1,572 and $579 in 1999 and 1998, respectively | 13,328 | 14,321 |
| **Total Assets** | $5,066,890 | $4,996,656 |
| Liabilities and Fund Balance | | |
| Current Liabilities | | |
| Accounts payable | $45,504 | $148,725 |
| Pension contribution payable | 163,770 | 141,554 |
| Dues collected in advance | 1,007,475 | 1,085,030 |
| Unexpended grant | 33,174 | 29,536 |
| Accrued vacation | 60,308 | 49,801 |
| Other accrued expenses | 17,504 | 12,369 |
| Current portion of long-term debt | 53,926 | 50,983 |
| **Total Current Liabilities** | 1,381,661 | 1,517,998 |
| Long-Term Debt, less current portion | 1,025,102 | 1,079,028 |
| Fund Balance | | |
| Operating | 2,660,127 | 2,399,630 |
| | 2,660,127 | 2,399,630 |
| **Total Liabilities and Fund Balance** | $5,066,890 | $4,996,656 |

### Statements of Revenues, Expenses and Fund Balance

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Revenues | | |
| Dues | $2,978,419 | $2,871,515 |
| Penalty fees | 21,665 | 20,175 |
| Bar magazine income | 53,845 | 54,711 |
| Professional corporations | 28,254 | 28,690 |
| Interest income | 190,625 | 166,022 |
| Rental income | 15,975 | 28,477 |
| Other | 133,507 | 155,680 |
| Support from Continuing Legal Education | 148,352 | 57,920 |
| **Total Revenues** | 3,570,642 | 3,383,190 |
| Expenses | | |
| Salaries and wages | 1,611,688 | 1,380,575 |
| Employee benefits, including pension plan contributions and payroll taxes | 376,845 | 310,207 |
| Death benefit | 6,000 | 6,000 |
| Council and committee meetings, including officers' travel | 294,081 | 278,411 |
| Lawyers' Assistance Program expenses | 183,939 | 185,135 |
| Publications, postage, printing, and office supplies | 336,796 | 409,613 |
| Equipment rental and maintenance | 149,668 | 48,203 |
| Telephone | 36,318 | 29,921 |
| Insurance and bond | 12,760 | 12,262 |
| Professional fees | 10,853 | 9,344 |
| Depreciation | 119,548 | 101,083 |
| Building maintenance | 32,290 | 21,170 |
| Utilities | 36,314 | 39,550 |
| Other building expenses | 4,271 | 2,101 |
| Disciplinary proceedings | 55,436 | 57,148 |
| Travel and automobile | 43,338 | 37,870 |
| **Total Expenses** | 3,310,145 | 2,928,593 |
| Excess of Revenues over Expenses | 260,497 | 454,597 |
| Fund balance at beginning of year | 2,399,630 | 1,945,033 |
| Fund Balance at End of Year | $2,660,127 | $2,399,630 |

### Statements of Cash Flows

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Operating Activities | | |
| Excess of revenues over expenses | $260,497 | $454,597 |
| Adjustments to reconcile excess of revenues over expenses to net cash provided by operating activities: | | |
| Depreciation | 119,548 | 101,083 |
| Amortization of financing costs | 993 | 579 |
| Gain on sale of fixed assets | (1,726) | (5,193) |
| Loss of deposit on software purchase contract | 0 | 16,707 |
| Changes in operating assets and liabilities: | | |
| Receivables | 8,923 | (1,379) |
| Prepaid expenses | 10,434 | (11,683) |
| Accounts payable | (103,221) | 108,453 |
| Pension contribution payable | 22,216 | 14,970 |
| Dues collected in advance | (77,555) | (27,070) |
| Unexpended grant | 3,638 | (2,973) |
| Accrued vacation | 10,507 | 1,778 |
| Other accrued expenses | 5,135 | 8,080 |
| Net Cash Provided by Operating Activities | 259,389 | 657,949 |
| Investing Activities | | |
| Purchases of property and equipment | (267,421) | (22,746) |
| Costs incurred for construction in progress | (740,498) | (484,171) |
| Proceeds from maturity of investments | 5,324 | 10,935 |
| Proceeds from sale of fixed assets | 1,726 | 7,032 |
| Net Cash Used in Investing Activities | (1,000,869) | (488,950) |
| Financing Activities | | |
| Proceeds from debt issuance | 0 | 1,150,000 |
| Payments of principal | (50,983) | (19,989) |
| Financing costs of debt issuance | 0 | (14,900) |
| Net Cash (Used in) Provided by Financing Activities | (50,983) | 1,115,111 |
| Net Change in Cash and Cash Equivalents | (792,463) | 1,284,110 |
| Cash and cash equivalents at beginning of year | 4,023,247 | 2,739,137 |
| **Cash and Cash Equivalents at End of Year** | $3,230,784 | $4,023,247 |
| Supplemental Cash Flow Information | | |
| Interest paid | $63,594 | $39,065 |
| Agency transactions (pass-through of funds) | 2,250,000 | 2,210,000 |

### Statements of Changes in Fund Balance

Years Ended December 31, 1999 and 1998

| | Operating | Building Maintenance and Improvement | Total |
|---|---|---|---|
| Fund Balance at December 31, 1997 | $1,910,538 | $34,495 | $1,945,033 |
| Excess of revenues over expenses | 454,597 | 0 | 454,597 |
| Transfers from building maintenance and improvement fund for building renovations | 70,495 | (70,495) | 0 |
| Transfers to building maintenance and improvement fund | (36,000) | 36,000 | 0 |
| Fund Balance at December 31, 1998 | 2,399,630 | 0 | 2,399,630 |
| Excess of revenues over expenses | 260,497 | 0 | 260,497 |
| **Fund Balance at December 31, 1999** | $2,660,127 | $0 | $2,660,127 |

### Notes to Financial Statements

Years Ended December 31, 1999 and 1998

**Note A—The Organization and Significant Accounting Policies**

*The Organization*: The North Carolina State Bar (the "Bar") was created by the direction of the North Carolina Legislature in 1933. All attorneys licensed to practice in North Carolina must become members of the Bar. The Bar is affiliated with The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts ("IOLTA"), The North Carolina State Bar Board of Legal Specialization ("Legal Specialization"), The North Carolina State Bar Board of Client Security Fund ("Client Security Fund"), and The North Carolina State Bar Board of Continuing Legal Education ("Continuing Legal Education") as further discussed in Note G.

*Basis of Accounting*: The financial statements of the Bar are presented on the accrual basis of accounting.

*Cash and Cash Equivalents*: The Bar considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist of the following:

| | December 31, 1999 | 1998 |
|---|---|---|
| Checking account | $117,433 | $45,175 |
| STIF account (with State Treasurer) | 3,113,351 | 3,978,072 |
| | $3,230,784 | $4,023,247 |

*Investments*: Marketable debt securities are carried at amortized cost.

*Property and Equipment*: All acquisitions of property and equipment in excess of $500 and the expenditures for repairs, maintenance, renewals and betterments that materially prolong the useful lives of assets are capitalized. Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Amounts included in construction in progress are not yet eligible for depreciation. Costs of approximately $34,000 were incurred in 1999 solely for purposes of Year 2000 compliance. These costs were charged to expense as incurred.

*Dues Collected in Advance*: Dues notices are mailed prior to January 1 of the year for which they are due. Amounts collected prior to January 1 represent unearned revenues at December 31.

*Unemployment Compensation*: The Bar recognizes its self-insured obligation for unemployment compensation in the period of the related employee termination.

*Designated Fund Balance*: In January 1983, the Council established a Building Maintenance and Improvement Fund as a designated portion of the total fund balance to make major repairs and improvements to the building, as well as to plan for future building maintenance needs. At that time, $108,000 of fund balance was designated, and an additional $36,000 was designated from the Operating Fund annually through 1998. Due to the building renovation in progress, all available funds from the Building Maintenance and Improvement Fund were transferred to the Operating Fund in 1998.

The Operating Fund and the Building Maintenance and Improvement Fund are considered unrestricted for financial reporting purposes.

*Income Taxes*: The Bar is a governmental organization whose income is excludable from income taxes under Internal Revenue Code Section 115.

*Use of Estimates*: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**Note B—Investments**

The investments of the Bar are stated at amortized cost and are comprised of the following:

| | Maturity Date | December 31, 1999 | 1998 |
|---|---|---|---|
| GNMA Pool #9752 | 9/15/2006 | $4,461 | $6,331 |
| GNMA Pool #11535 | 8/15/2006 | 8,673 | 11,910 |
| GNMA Pool #12682 | 10/15/2006 | 2,402 | 2,619 |
| | | $15,536 | $20,860 |

The above mortgage-backed securities receive principal payments as the underlying mortgages are paid off. The maturity dates listed are based on the mortgages remaining outstanding for the full thirty-year term. These mortgages may be paid off earlier than scheduled. It is management's intent to hold all mortgage-backed securities to maturity. The fair value of these investments at December 31, 1999 and 1998 approximated the amortized cost.

**Note C—Long-Term Debt**

Long-term debt consists of the following:

| | December 31, 1999 | 1998 |
|---|---|---|
| Mortgage Note, Series 1998, payable to a bank, requiring 180 monthly payments of $9,562, including interest at 5.77%, commencing August 1, 1998. This non-recourse obligation is secured by certain land, building, and building contents. (Refer also to Note I.) | $1,079,028 | $1,130,011 |
| Less current portion | (53,926) | (50,983) |
| | $ 1,025,102 | $1,079,028 |

Following are scheduled maturities of long-term debt at December 31, 1999:

| Years Ending December 31 | |
|---|---|
| 2000 | $53,926 |
| 2001 | 57,121 |
| 2002 | 60,505 |
| 2003 | 64,090 |
| 2004 | 67,888 |
| Thereafter | 721,572 |
| | $1,025,102 |

*Non-Arbitrage Obligation*: Under existing law, interest on the aforementioned mortgage note is exempt from Federal and State of North Carolina income taxes. The Bar was allowed to spend the proceeds of the debt issuance only for the specified purpose of building renovations and within the following timeframe:

| Minimum % of Expended Proceeds | Due Date |
|---|---|
| 15% | November 30, 1998 (six months from issuance) |
| 60% | May 31, 1999 (twelve months from issuance) |
| 100% | November 30, 1999 (eighteen months from issuance) |

These conditions were satisfied; therefore, the Bar has recorded no obligation at December 31, 1999, with regard to rebates of any arbitrage profits from the investment of debt proceeds.

*Mandatory Prepayment*: The aforementioned mortgage note must be prepaid without premium in part within sixty days after the receipt by the Bar of an appraisal requested by the bank, if such appraisal shows that the value of the property subject to the Deed of Trust is less than the principal amount outstanding on the mortgage note. Such mandatory prepayment will be in a principal amount at least equal to the difference between the current outstanding principal amount of the mortgage note and the value shown in such appraisal plus the accrued interest thereon. Management is aware of no such appraisals being obtained.

*Imposition of Tax*: In the event of changes in law that cause the interest on the aforementioned mortgage note to be subject to taxation, the Bar will pay any such tax on behalf of the bank.

*Interest on Long-term Debt*: Interest costs charged to operations consist of the following:

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Interest costs incurred | $63,594 | $39,065 |
| Decrease as a result of interest earned on deposited proceeds of mortgage note | (22,411) | (36,126) |
| Decrease as a result of capitalizing interest as a cost of building renovations | (41,183) | (2,939) |
| Interest charged to operations | $0 | $0 |

**Note D—Pension Plan and Death Benefit**

The Bar has a money purchase pension plan covering substantially all employees. Total pension costs under this plan were $163,770 and $141,554 for the years ended December 31, 1999 and 1998, respectively. Under the provisions of the plan, the Bar contributes an amount equal to 10% of each participating employee's annual compensation to the plan.

Under agreement with a former secretary, the Bar is required to pay a death benefit of $500 per month to his widow over her lifetime. Payments of $6,000 were made in 1999 and 1998. The Bar recognizes the expense in the period paid which approximates generally accepted accounting principles.

**Note E—Lawyers' Assistance Program**

Lawyers' Assistance Program (LAP) is a program sponsored by the Bar that provides assistance to lawyers in need. LAP program expenses of $183,939 and $185,135 are reported in the accompanying financial statements of the Bar for 1999 and 1998, respectively. The majority of program expenses pertain to salaries and wages. Program expenses also include travel, computer support, and other administrative costs. Programs supported by LAP include the Positive Action for Lawyers' (PALS) program and FRIENDS.

In 1992, a one-time grant of $25,000 was awarded PALS by IOLTA for the purpose of establishing a revolving loan fund for indigent attorneys who have substance abuse problems. The funds are to be used only to assist impaired lawyers with counseling, rehabilitation and treatment for officers of the court. Support from this grant will be recognized in the periods in which any outstanding loans are deemed uncollectible. Unexpended funds are held in an interest-bearing account, with interest earned being added to the funds available for loan. Interest of $1,893 and $2,124 was earned in 1999 and 1998, respectively. New loans were processed in 1999 and 1998 of $0 and $4,929, respectively. One loan, extended in 1994, has an outstanding balance of approximately $1,800 at December 31, 1999.

**Note F—Leases**

*Lessee*: The Bar leases certain copiers under operating leases expiring in 1999 and 2001. Minimum lease payments due at December 31, 1999 are as follows:

| Years Ending December 31 | |
|---|---|
| 2000 | $6,180 |
| 2001 | 2,060 |
| | $8,240 |

Lease expense, including additional copy charges, totaled $30,170 and $36,636 in 1999 and 1998, respectively.

*Lessor*: The Bar leases office space to other tax-exempt organizations associated with the legal profession. These leases operate on a month-to-month basis. Rental income totaled $15,975 and $28,477 in 1999 and 1998, respectively. (See also Note G.)

**Note G—Related Party Transactions**

*IOLTA*: The IOLTA program was approved by the N.C. Supreme Court in June 1983, and implemented by The North Carolina State Bar in January 1984. Participating attorneys allow interest earned on certain trust accounts to be transferred to IOLTA. The funds are administered by a separate Board of Trustees and are not included in this report. The purpose of IOLTA is to fund programs concerned with improvements of the administration of justice. IOLTA leases office space in the Bar's building. Rent totaled $7,500 in 1999 and 1998. The Bar provides various support services to IOLTA including use of a postage meter and copy machine. IOLTA reimburses the Bar for such services. At December 31, 1999 and 1998, IOLTA owed the Bar $121 and $254, respectively, for support services provided by the Bar.

*Legal Specialization*: The Legal Specialization program was established in 1987 to certify attorneys as legal specialists. These funds are administered by a separate Board and are not included in this report. The Bar provides various support services to Legal Specialization including staffing and use of the Bar's computer, postage meter, copy machine, and fax machine. Legal Specialization reimburses the Bar for such services. There were no amounts due for such services at December 31, 1999 and 1998.

*Client Security Fund*: Beginning in 1985, annual dues from attorneys may include an assessment for a Client Security Fund. These funds are deposited in a separate bank account and are used to reimburse clients who have been embezzled of their monies by their attorneys. These funds are administered by a separate Board of Trustees and are not included in this report. At December 31, 1999 and 1998, no amounts were due the Client Security Fund for assessments collected by the Bar. The Bar provides various support services to Client Security Fund including staffing and use of the Bar's computer, postage meter, copy machine, and fax machine. Client Security Fund reimburses the Bar for such services. The amounts receivable from Client Security Fund of $56 and $424 at December 31, 1999 and 1998, respectively, relate to support services provided by the Bar.

*Continuing Legal Education*: Continuing Legal Education was established by the North Carolina Supreme Court on October 7, 1987, to establish regulations governing a continuing legal education program for attorneys licensed to practice law in North Carolina. Fees charged for educational programs are deposited into a separate bank account. These funds are administered by a separate Board of Trustees and are not included in this report. The Bar provides various support services to Continuing Legal Education including staffing and use of the Bar's computer, postage meter, copy machine, and fax machine.

Continuing Legal Education reimburses the Bar for such services. At December 31, 1999 and 1998, Continuing Legal Education owed the Bar $1,229 and $1,124, respectively, for support services provided by the Bar. Continuing Legal Education also leases office space in the Bar's building. Rent revenue for both 1999 and 1998 totaled $8,475.

In April 1998, Continuing Legal Education's Board resolved that, retroactive to January 1, 1998, $150,000 or fifty percent of the total budgeted expenses for the current year, whichever amount is greater, shall be held by the Continuing Legal Education Board in a reserve fund and that the surplus shall be given to the Council of the State Bar to be used for lawyer competency programs. The State Bar recognized related support from Continuing Legal Education of $148,352 in 1999.

**Note H—Agency Transactions**

Each year the Bar receives and disburses certain cash awards on behalf of the State of North Carolina. These funds are not available for use by the Bar, but instead are forwarded to the State-designated organizations upon receipt. Management is not aware of any State audit or monitoring requirements associated with these agency transactions. Awards received and disbursed by the Bar, acting as an agent of the State, are as follows:

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Legal Services of North Carolina | $1,660,000 | $1,640,000 |
| Center for Death Penalty Litigation | 590,000 | 570,000 |
| | $2,250,000 | $2,210,000 |

**Note I—Commitments and Contigencies**

*Building Renovations*: During 1998, the Council approved a building renovation project, the cost of which is expected to approximate $1,500,000. The project entails the following: (1) correcting building code deficiencies identified late in 1998, (2) improving and upgrading the entire building based on ten-year growth projections for Bar staff, (3) improving mechanical systems, and (4) enhancing the aesthetic appearance of the exterior of the building.

In June 1998, the Bar borrowed $1,150,000 from a bank to assist in financing the renovation project. (Refer also to Note C.) Costs incurred-to-date of approximately $1,273,123 are included in construction in progress at December 31, 1999.

*Contingencies*: The Bar is one of several state agencies named as a defendant in a case which challenges the use of fines and penalties income. At this time, the outcome of the case is not predictable. However, management has been advised by counsel that the ruling should have no retroactive implications as to fines and penalties collected by the Bar. No amounts have been billed or accrued through December 31, 1999 for services provided by the legal counsel in this case.

# *Audit*

# Continuing Legal Education

### Independent Auditors' Report

We have audited the accompanying balance sheets of The North Carolina State Bar Board of Continuing Legal Education as of December 31, 1999 and 1998, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of The North Carolina State Bar Board of Continuing Legal Education's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The North Carolina State Bar Board of Continuing Legal Education as of December 31, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Raleigh, North Carolina
June 8, 2000

### Balance Sheets

| | December 31, 1999 | 1998 |
|---|---|---|
| **Assets** | | |
| Current Assets: | | |
| Cash and cash equivalents | $285,969 | $307,430 |
| Fees receivable | 166,637 | 91,687 |
| Interest receivable | 1,294 | 1,333 |
| **Total Current Assets** | **453,900** | **400,450** |
| Fixed Assets: | | |
| Office equipment | 79,340 | 69,122 |
| Furniture and fixtures | 23,490 | 20,280 |
| Software | 21,754 | 21,754 |
| Auto | 14,863 | 14,863 |
| | 139,447 | 126,019 |
| Accumulated depreciation | (108,841) | (93,513) |
| | 30,606 | 32,506 |
| Deposit on Software | 8,353 | 8,353 |
| **Total Assets** | **$492,859** | **$441,309** |
| **Liabilities and Fund Balance** | | |
| Current Liabilities: | | |
| Accounts payable | $1,229 | $1,124 |
| Other payables | 3,703 | 3,941 |
| Pension contribution payable | 14,459 | 14,363 |
| Total Current Liabilities | 19,391 | 19,428 |
| Fund Balance | 473,468 | 421,881 |
| **Total Liabilities and Fund Balance** | **$492,859** | **$441,309** |

### Statements of Revenues, Expenses and Changes in Fund Balance

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| **Revenues:** | | |
| Sponsor and attendee fees | $370,037 | $278,522 |
| Penalty income | 73,720 | 54,713 |
| Interest income | 17,057 | 16,371 |
| Total Revenues | 460,814 | 349,606 |
| **Expenses:** | | |
| Salaries | 148,541 | 150,337 |
| Payroll taxes | 10,819 | 11,060 |
| Pension contributions | 14,459 | 14,363 |
| Hospitalization insurance | 13,584 | 12,823 |
| Life and disability insurance | 1,206 | 1,017 |
| Parking | 4,183 | 4,094 |
| Staff travel | 2,439 | 2,319 |
| Council meetings | 3,651 | 3,422 |
| Depreciation | 15,328 | 13,422 |
| Office supplies | 823 | 849 |
| Copying | 1,533 | 911 |
| Postage | 5,698 | 3,728 |
| Bulk mailing | 9,893 | 10,473 |
| Printing | 5,602 | 4,831 |
| Telephone | 2,835 | 2,992 |
| Insurance | 500 | 329 |
| Audit | 4,000 | 3,880 |
| Computer use charges | 3,250 | 3,250 |
| Rent | 9,182 | 8,475 |
| Computer support | 1,765 | 4,208 |
| Dues and subscriptions | 40 | 40 |
| Miscellaneous | 1,544 | 7,253 |
| Support provided The NC State Bar | 148,352 | 57,920 |
| **Total Expenses** | **409,227** | **321,996** |
| Excess of Revenues over Expenses | 51,587 | 27,610 |
| Fund balance at beginning of year | 421,881 | 394,271 |
| **Fund Balance at End of Year** | **$473,468** | **$421,881** |

### Statements of Cash Flows

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Operating Activities: | | |
| Excess of revenues over expenses | $51,587 | $27,610 |
| Adjustments to reconcile excess of revenues over expenses to net cash (used in) provided by operating activities: | | |
| Depreciation | 15,328 | 13,422 |
| Changes in operating assets and liabilities: | | |
| Fees receivable | (74,950) | (5,317) |
| Interest receivable | 39 | (210) |
| Accounts payable | 105 | (10,885) |
| Other payables | (238) | 3,923 |
| Pension contribution payable | 96 | (7,857) |
| **Net Cash (Used in) Provided by Operating Activities** | **(8,033)** | **20,686** |
| **Investing Activities** | | |
| Purchases of fixed assets | (13,428) | 0 |
| Net Cash Used in Investing Activities | (13,428) | 0 |
| Net (Decrease) Increase in Cash and Cash Equivalents | (21,461) | 20,686 |
| Cash and cash equivalents at beginning of year | 307,430 | 286,744 |
| **Cash and Cash Equivalents at End of Year** | **$285,969** | **$307,430** |
| **Supplemental Cash Flow Information** | | |
| Interest paid | $0 | $0 |

### Notes to Financial Statements

Years Ended December 31, 1999 and 1998

**Note A—The Organization and Significant Accounting Policies**

*The Organization:* The North Carolina State Bar Board of Continuing Legal Education ("Continuing Legal Education") was established by order of the North Carolina Supreme Court on October 7, 1987. Continuing Legal Education is a standing committee of the Council of The North Carolina State Bar ("the Bar") which is an agency of the State of North Carolina. Continuing Legal Education began operations on January 1, 1988 and was given the responsibility for administering the continuing legal education program for attorneys licensed to practice law in North Carolina.

*Basis of Accounting:* The financial statements of Continuing Legal Education are presented on the accrual basis of accounting.

Cash and Cash Equivalents: Continuing Legal Education considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist of the following at December 31.

| | December 31, 1999 | 1998 |
|---|---|---|
| Checking account | $19,645 | $44,924 |
| STIF account (with State Treasurer) | 266,324 | 262,506 |
| | $285,969 | $307,430 |

*Fees Receivable:* Continuing Legal Education provides for uncollectible accounts using the direct write-off method which approximates generally accepted accounting principles. Receivables are unsecured.

As of January 1, 1999, the Continuing Legal Education program accessed an additional $1 per CLE credit hour (for a total of $2.25 per credit hour) to provide financial support to the Chief Justice's Commission on Professionalism. The increase between 1998 and 1999 fees receivable is due to this $1 increase.

*Fixed Assets:* All acquisitions of fixed assets in excess of $500 and the expenditures for repairs, maintenance, renewals and betterments that materially prolong the useful lives of assets are capitalized. Fixed assets are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Costs of approximately $1,765 were incurred in 1999 solely for purposes of Year 2000 compliance. These costs were charged to expense as incurred.

*Revenue Recognition:* Revenue consists primarily of fees from attorneys or providers for each approved credit hour of continuing education. Penalties are charged for late filing and late compliance. Providers of programs held within the State of North Carolina are required to remit fees within thirty days after the program is held. Attorneys attending approved out-of-state programs submit fees annually. Sponsor and attendee fees are recognized in the period in which the related programs are held. Income from penalties is recognized in the period of collection.

*Income Taxes:* Continuing Legal Education is a governmental organization whose income is excludable from federal income taxes under the Internal Revenue Code Section 115.

*Use of Estimates:* The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Note B—Pension Plan**

Substantially all of the employees of Continuing Legal Education are covered under the Bar's money purchase pension plan. Total pension costs under this plan were $14,459 and $14,363 for the years ended December 31, 1999 and 1998, respectively. Under the provisions of the plan, Continuing Legal Education contributes 10% of each participating employee's compensation to the plan.

**Note C—Relationship with the North Carolina State Bar**

In April 1998, Continuing Legal Education's Board resolved that, retroactive to January 1, 1998, $150,000 or fifty percent of the total budgeted expenses for the current year, whichever amount is greater, shall be held by the Continuing Legal Education Board in a reserve fund and that the surplus shall be given to the Council of The North Carolina State Bar to be used for lawyer competency programs. Continuing Legal Education recognized related support provided the Bar of $148,352 in 1999. Support of $120,133 was recognized subsequently upon approval of the 2000 budget for Continuing Legal Education.

The Bar provides various support to Continuing Legal Education including staff time, use of the Bar's computer, postage meter, copy machine, and fax machine. Also, on various occasions throughout the year, the Bar employees work overtime for Continuing Legal Education. The Bar submits a monthly bill for various services to Continuing Legal Education. Continuing Legal Education owed the Bar $1,229 and $1,124 at December 31, 1999 and 1998, respectively, for support services.

In addition, Continuing Legal Education rents office space in the Bar headquarters. Rent expense was $8,475 for each of the years ended December 31, 1999 and 1998.

# Audit

## Client Security Fund

### Independent Auditors' Report

We have audited the accompanying balance sheets of The North Carolina State Bar Board of Client Security Fund as of December 31, 1999 and 1998, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of The North Carolina State Bar Board of Client Security Fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The North Carolina State Bar Board of Client Security Fund as of December 31, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Raleigh, North Carolina
January 26, 2000

### Balance Sheets

| | December 31, 1999 | 1998 |
|---|---|---|
| **Assets** | | |
| Current Assets: | | |
| Cash and cash equivalents | $1,390,345 | $975,492 |
| Interest receivable | 6,339 | 4,007 |
| **Total Current Assets** | **1,396,684** | **979,499** |
| Property and Equipment, at cost | | |
| Automobile | 10,984 | 10,984 |
| Office equipment | 26,111 | 26,111 |
| | 37,095 | 37,095 |
| Accumulated depreciation | (36,867) | (36,220) |
| | 228 | 875 |
| **Total Assets** | **$1,396,912** | **$980,374** |
| **Liabilities and Fund Balance** | | |
| Current Liabilities | | |
| Accounts payable | $56 | $424 |
| Pension contribution payable | 9,142 | 8,756 |
| Accrued vacation | 2,561 | 0 |
| Assessments collected in advance | 115,140 | 308,250 |
| Total Current Liabilities | 126,899 | 317,430 |
| Fund Balance | 1,270,013 | 662,944 |
| **Total Liabilities and Fund Balance** | **$1,396,912** | **$980,374** |

### Statements of Revenues, Expenses and Changes in Fund Balance

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| **Revenues** | | |
| Assessments | $846,280 | $445 |
| Interest | 77,054 | 84,139 |
| Reimbursements of claim awards | 27,669 | 37,833 |
| **Total Revenues** | **951,003** | **122,417** |
| **Expenses** | | |
| Claim awards | 218,136 | 658,790 |
| Salaries | 93,984 | 87,454 |
| Pension contributions | 9,142 | 8,756 |
| Employee benefits | 4,749 | 5,904 |
| Payroll taxes | 6,777 | 6,500 |
| Travel | 876 | 657 |
| Board meetings | 4,212 | 2,974 |
| Investigation | 481 | 888 |
| Office supplies | 183 | 75 |
| Parking | 1,672 | 1,596 |
| Professional fees | 958 | 832 |
| Depreciation | 647 | 408 |
| Insurance | 200 | 181 |
| Postage and copying | 1,557 | 3,046 |
| Miscellaneous | 360 | 483 |
| **Total Expenses** | 343,934 | 778,544 |
| Excess (Deficiency) of Revenues over Expenses | 607,069 | (656,127) |
| Fund balance at beginning of year | 662,944 | 1,319,071 |
| **Fund Balance at End of Year** | **$1,270,013** | **$662,944** |

### Statements of Cash Flows

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| **Operating Activities** | | |
| Excess (deficiency) of revenues over expenses | $607,069 | $(656,127) |
| Adjustments to reconcile excess (deficiency) of revenues over expenses to net cash provided by (used in) operating activities: | | |
| Depreciation 647 | 408 | |
| Changes in operating assets and liabilities: | | |
| Interest receivable | (2,332) | 2,958 |
| Accounts payable | (368) | (7,390) |
| Accrued vacation | 2,561 | |
| Pension contribution payable | 386 | 362 |
| Assessments collected in advance | (193,110) | 308,250 |
| Net Cash Provided by (Used in) Operating Activities | 414,853 | (351,539) |
| Cash and cash equivalents at beginning of year | 975,492 | 1,327,031 |
| Cash and Cash Equivalents at End of Year | $1,390,345 | $975,492 |
| **Supplemental Cash Flow Information** | | |
| Interest paid | $0 | $0 |

### Notes to Financial Statements

Years Ended December 31, 1999 and 1998

**Note A—The Organization and Significant Accounting Policies**

*The Organization*: The North Carolina State Bar Board of Client Security Fund ("Client Security Fund") was created by direction of the North Carolina Supreme Court in 1984 and became operational on January 1, 1985. The Client Security Board is a standing committee of the Council of The North Carolina State Bar (the "Bar") which is an agency of the State of North Carolina. These funds are segregated and are used to reimburse clients who have been embezzled of their monies by their attorneys.

*Basis of Accounting*: The financial statements of Client Security Fund are presented on the accrual basis of accounting.

*Fund Balance*: Fund balance is unrestricted and, as such, is available for the general operating purposes of the Client Security Fund.

*Revenue Recognition*: Annual assessments to attorneys are made when the Board determines the reserves are low. Revenues are recognized upon the later of receipt or the period for which the assessments are due which approximates generally accepted accounting principles. There were no assessments for 1998. Due to a trend in higher claims, the North Carolina Supreme Court ordered an assessment of $50 per attorney to support the Client Security Fund for 1999. Dues collected in 1998 under that assessment are recorded as liabilities at December 31, 1998. An assessment of $20 per attorney was ordered for 2000. Dues collected in 1999 under that assessment are recorded as liabilities at December 31, 1999.

*Claim Awards*: Claim awards are recognized upon authorization by the Client Security Board. Effective June 2, 1994, the North Carolina Supreme Court limited all Client Security Fund claim awards to $60,000 per individual or $100,000 per attorney. Effective March 6, 1997, the North Carolina Supreme Court eliminated the per lawyer cap and increased the per claim cap to $100,000.

*Reimbursements of Claim Awards:* The Client Security Fund may be entitled to reimbursements from malpractice insurance carriers or named attorneys to the extent of claims awarded. These reimbursements are typically recognized upon receipt or upon completion of the appeals process.

*Cash and Cash Equivalents*: The Client Security Fund considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist of the following:

| | December 31, 1999 | 1998 |
|---|---|---|
| Checking account | $3,668 | $2,779 |
| STIF account (with State Treasurer) | 1,386,677 | 972,713 |
| | $1,390,345 | $975,492 |

*Property and Equipment*: All acquisitions of property and equipment in excess of $500 and all expenditures for repairs, maintenance, renewals, and betterments that materially prolong the useful lives of the assets are capitalized. Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets.

*Income Taxes*: The Client Security Fund is a governmental organization whose income is excludable from federal income taxes under Internal Revenue Code Section 115.

*Use of Estimates*: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**Note B—Pension Plan**

Client Security Fund employees who have completed one Year of Service and attained age twenty-one are covered under the Bar's money purchase pension plan. Under the provisions of the plan, the Client Security Fund contributes 10% of each participating employee's compensation to the plan. Total pension costs under this plan were $9,142 and $8,756 for the years ended December 31, 1999 and 1998, respectively.

**Note C—Related Party Transactions**

The Bar also provides various support to the Client Security Fund including staffing and use of the Bar's computer, postage meter, copy machine, and fax machine. The Bar submits a monthly bill for various services to the Client Security Fund. The Client Security Fund owed the Bar $56 and $424 for support services and other charges at December 31, 1999 and 1998, respectively.

# Audit

## IOLTA

### Independent Auditors' Report

We have audited the accompanying balance sheets of The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts as of December 31, 1999 and 1998, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of the management of The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts as of December 31, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Raleigh, North Carolina
February 9, 2000

### Balance Sheets

| | December 31, 1999 | 1998 |
|---|---|---|
| **Assets** | | |
| Current Assets: | | |
| Cash and cash equivalents | $4,241,705 | $4,176,077 |
| Interest receivable | 287,214 | 416,604 |
| Other current assets | 929 | 1,702 |
| **Total Current Assets** | **4,529,848** | **4,594,383** |
| Furniture and Equipment, at cost | | |

| | | |
|---|---|---|
| Furniture and equipment | 67,498 | 62,037 |
| Accumulated depreciation | (50,955) | (44,976) |
| | 16,543 | 17,061 |
| Notes Receivable | 181,250 | 181,250 |
| **Total Assets** | **$4,727,641** | **$4,792,694** |
| **Liabilities and Fund Balance** | | |
| Current Liabilities | | |
| Accounts payable | $1,343 | $7,047 |
| Payable to NC State Bar | 121 | 254 |
| Pension payable | 11,381 | 10,491 |
| Grants approved but unpaid | 3,105,001 | 2,811,112 |
| Total Current Liabilities | 3,117,846 | 2,828,904 |
| **Fund Balance** | | |
| Operating | 386,610 | 904,714 |
| Reserved | 1,223,185 | 1,059,076 |
| | 1,609,795 | 1,963,790 |
| **Total Liabilities and Fund Balance** | **$4,727,641** | **$4,792,694** |

## Statements of Revenues, Expenses and Changes in Fund Balance

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| **Revenues** | | |
| Interest from IOLTA participants, net | $2,919,466 | $3,752,075 |
| Interest from invested cash and cash equivalents | 229,179 | 188,069 |
| Other | 22 | 5,376 |
| **Total Revenues** | **3,148,667** | **3,945,520** |
| **Expenses** | | |
| Grants | 3,283,415 | 2,830,141 |
| Salaries and wages | 125,213 | 111,825 |
| Employee benefits | 8,755 | 8,088 |
| Pension plan contributions | 11,381 | 10,491 |
| Payroll taxes | 9,026 | 8,008 |
| Rent | 7,500 | 7,500 |
| Marketing | 74 | 508 |
| Travel | 8,748 | 10,482 |
| Board meetings | 10,994 | 16,863 |
| Office supplies, postage and printing | 5,357 | 4,958 |
| Telephone | 5,182 | 5,028 |
| Software license fees and programming | 9,995 | 10,110 |
| Professional fees | 5,381 | 4,774 |
| Depreciation | 5,979 | 4,654 |
| Equipment maintenance | 1,520 | 1,430 |
| Miscellaneous | 4,142 | 5,329 |
| **Total Expenses** | **3,502,662** | **3,040,189** |
| (Deficiency) Excess of Revenues over Expense | (353,995) | 905,331 |
| Fund balance at beginning of year | 1,963,790 | 1,058,459 |
| **Fund Balance of End of Year** | **$1,609,795** | **$1,963,790** |

## Statements of Cash Flows

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Operating Activities | | |
| (Deficiency) excess of revenues over expenses | $(353,995) | $905,331 |
| Adjustments to reconcile (deficiency) excess of revenues over expenses to net cash provided by operating activities: | | |
| Depreciation | 5,979 | 4,654 |
| Changes in operating assets and liabilities: | | |
| Interest receivable | 129,390 | (75,820) |
| Other assets | 773 | (854) |
| Accounts payable | (5,704) | 4,475 |
| Accrued payroll taxes and withholdings | 0 | (2,815) |
| Payable to NC State Bar | (133) | (646) |
| Pension payable | 890 | 5,364 |
| Grants approved but unpaid | 293,889 | 259,050 |
| Net Cash Provided by Operating Activities | 71,089 | 1,098,739 |
| **Investing Activities** | | |
| Purchases of fixed assets | (5,461) | (5,802) |
| Net Cash Used in Investing Activities | (5,461) | (5,802) |
| **Financing Activities** | | |
| Loans to tax-exempt organizations | 0 | (75,000) |
| Loan repayments | 0 | 110,000 |
| Net Cash Provided by Financing Activities | 0 | 35,000 |
| Net Increase in Cash and Cash Equivalents | 65,628 | 1,127,937 |
| Cash and cash equivalents at beginning of year | 4,176,077 | 3,048,140 |
| Cash and Cash Equivalents at End of Year | $4,241,705 | $4,176,077 |
| **Supplemental Cash Flow Information** | | |
| Interest paid | $0 | $0 |

## Notes to Financial Statements

Years Ended December 31, 1999 and 1998

**Note A—The Organization and Significant Accounting Policies**

*The Organization*: The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA) was approved by the North Carolina Supreme Court on June 23, 1983, and was implemented by the North Carolina State Bar (the "Bar") in January 1984. Participating attorneys allow interest earned, net of service charges, on certain trust accounts to be transferred to the IOLTA program. The funds received are used for programs concerned with the improvement of the administration of justice.

The Board of Trustees of IOLTA was created as a standing committee by the North Carolina State Bar Council pursuant to Chapter 84 of the North Carolina General Statutes for the disposition of funds received by the North Carolina State Bar from interest on trust accounts.

*Basis of Accounting*: The financial statements of IOLTA are presented on the accrual basis of accounting.

*Fund Balance*: Fund balance is unrestricted and, as such, is available for the general operating purposes of IOLTA or as otherwise designated by its Board. The Board designated the following amounts to be reserved for future program awards:

| During the Years Ended December 31 | Designations | Earnings | Total |
|---|---|---|---|
| 1995 | $100,000 | $0 | $100,000 |
| 1996 | 150,000 | 7,950 | 157,950 |
| 1997 | 250,000 | 20,737 | 270,737 |
| 1998 | 500,000 | 30,389 | 530,389 |
| 1999 | 100,000 | 64,109 | 164,109 |
| Reserved Fund Balance, December 31, 1999 | | | $1,223,185 |

The reserved fund balance may be made available for general operations with the Board's consent.

*Grants*: Grants are awarded by the Board to organizations that carry out programs concerned with the improvement of the administration of justice. These programs may consist of:

a. Providing civil legal services for indigents;

b. Enhancement and improvement of grievance and disciplinary procedures to protect the public more fully from incompetent or unethical attorneys;

c. Development and maintenance of a fund for student loans to enable meritorious persons to obtain a legal education when otherwise they would not have adequate funds for this purpose; and,

d. Such other programs designed to improve the administration of justice as may from time to time be proposed by the Board of Trustees and approved by the Supreme Court of North Carolina.

Unconditional grant awards are recognized as expense in the period of award. Conditional grant awards are recognized when the conditions on which they depend are substantially met. Grants approved but unpaid at December 31, 1999 and 1998 includes unconditional grant awards, all of which are expected to be funded in the year subsequent thereto.

*Cash and Cash Equivalents*: IOLTA considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

Cash and cash equivalents consist of the following:

| | December 31, 1999 | 1998 |
|---|---|---|
| Checking account | $742,323 | $727,487 |
| STIF account (with State Treasurer) | 3,499,382 | 3,448,590 |
| | **$ 4,241,705** | **$ 4,176,077** |

Deposits in Excess of Federally Insured Limits: IOLTA had deposits in excess of federally insured limits of approximately $686,000 at December 31, 1999, though no losses have resulted from such.

*Furniture and Equipment*: All acquisitions of furniture and equipment in excess of $500 and the expenditures for repairs, maintenance, renewals, and betterments that materially prolong the useful lives of assets are capitalized. Furniture and equipment are carried at cost or, if donated, at the approximate fair value at the date of donation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets.

*Income Taxes*: IOLTA is a governmental organization whose income is excludable from federal income taxes under Internal Revenue Code Section 115.

*Use of Estimates*: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**Note B—Interest from IOLTA Participants**

IOLTA management is responsible for negotiating service charges assessed by financial institutions in connection with IOLTA participants' trust accounts. Certain service charges are based on a flat fee per account, while others are dependent upon the activity in the accounts. IOLTA, by law, is entitled only to the interest earned on participants' accounts net of service charges. Interest income from IOLTA participants in 1999 and 1998 is reported net of reported service charges of approximately $741,000 and $765,000, respectively.

**Note C—Notes Receivable**

In September 1996, IOLTA agreed to loan Carolina Legal Assistance, Inc. (CLA) $110,000 to support CLA's charitable activities. Disbursements of $95,000 were made prior to December 31, 1996, with $15,000 disbursed in April 1997. On April 14, 1998, the Board granted an extension of the June 30, 1998 maturity date to no later than June 30, 1999. During September 1998, CLA repaid the no-interest loan in full.

In 1996, IOLTA entered into an agreement with Legal Services of the Southern Piedmont (LSSP) and the North Carolina Justice and Community Development Center (NCJCDC) for the purpose of ensuring the continued representation of class counsel in a civil case filed in U.S. District Court. Under the agreement, IOLTA agreed to advance NCJCDC a total of $181,250 to be disbursed as follows: $31,250 in October 1996; $75,000 in June 1997; and $75,000 in January 1998. IOLTA has been assigned a percentage of the fees, if any, awarded LSSP and NCJCDC from this case, not to exceed amounts advanced. The court has awarded certain attorneys' fees in the civil case; however, this award is subject to further review. Based on the facts and circumstances of the case, management believes it is probable that amounts advanced NCJCDC are fully recoverable. Advances outstanding at December 31, 1999, are not expected to be repaid in 2000. Advances under this note agreement bear no interest and are unsecured.

**Note D—Software License Fees**

IOLTA incurred software license fees of $7,800 and $6,000 in 1999 and 1998, respectively. The license agreement is subject to cancellation upon 30 days' written notice by IOLTA or upon 90 days' written notice by the licensor.

**Note E—Pension Plan**

IOLTA employees who have completed a Year of Service and attained age twenty-one are covered under the Bar's money purchase pension plan. Under the provisions of the plan, IOLTA contributes 10% of each participating employee's compensation to the plan. Total pension costs under this plan totaled $11,381 and $10,491 for the years ended December 31, 1999 and 1998, respectively.

**Note F—Related Party Transactions**

IOLTA leases office space in the Bar's building. The lease is dated January 1, 1986, and is renewable annually. Rent expense for both 1999 and 1998 totaled $7,500. Additionally, the Bar provides various support services to IOLTA including copying and postage. The Bar submits a monthly bill for services provided to IOLTA. IOLTA owed the Bar $121 and $254 for support services and other charges at December 31, 1999 and 1998, respectively.

**Note G—Contigency**

Certain mandatory IOLTA programs in other states are involved in litigation that could result in the denial of those programs' rights to benefit from interest earned on lawyers' trust accounts. The impact of this litigation, if any, on other IOLTA programs is, at this time, uncertain. However, management does not expect the prospective application of an adverse decision in the litigation to significantly impact the obligations of The North Carolina State Bar's IOLTA program for 2000.

# *Audit*

## Specialization

Independent Auditors' Report

We have audited the accompanying balance sheets of The North Carolina State Bar Board of Legal Specialization as of December 31, 1999 and 1998, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of The North Carolina State Bar Board of Legal Specialization's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of The North Carolina State Bar Board of Legal Specialization as of December 31, 1999 and 1998, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

Raleigh, North Carolina
January 26, 2000

**Balance Sheet**

| | December 31, 1999 | 1998 |
|---|---|---|
| **Assets** | | |
| Cash and cash equivalents | $40,883 | $30,229 |
| **Total Assets** | **$40,883** | **$30,229** |
| **Liabilities and Fund Balance** | | |
| Current Liabilities | | |
| Pension contribution payable | $560 | $536 |
| Accrued vacation | 80 | 651 |
| Other payables | 7 | 109 |
| **Total Current Liabilities** | **647** | **1,296** |
| Fund Balance | 40,236 | 28,933 |
| **Total Liabilities and Fund Balance** | **$40,883** | **$30,229** |

**Statements of Revenues, Expenses and Changes in Fund Balance**

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Revenues | | |
| Specialization fees | $44,949 | $35,910 |
| Interest | 2,313 | 1,613 |
| **Total Revenues** | **47,262** | **37,523** |
| **Expenses** | | |
| Salaries | 5,009 | 6,007 |
| Pension contributions | 560 | 536 |
| Employee benefits | 668 | 541 |
| Payroll taxes | 423 | 404 |
| Staff travel | 3,165 | 1,038 |
| Board meetings | 4,301 | 3,875 |
| Specialty committee expense | 1,045 | 3,167 |
| Chairman's travel | 2,087 | 1,557 |
| Educational expense | 8,000 | 8,659 |
| Office supplies | 42 | 113 |
| Postage and printing | 5,827 | 3,036 |
| Copying | 638 | 701 |
| Telephone | 265 | 122 |
| Internet | 2,500 | 0 |
| Professional fees | 958 | 833 |
| Test site rental board | 450 | 370 |
| Other | 21 | 0 |
| **Total Expenses** | **35,959** | **30,959** |
| Excess of Revenues over Expenses | 11,303 | 6,564 |
| Fund balance at beginning of year | 28,933 | 22,369 |
| **Fund Balance at End of Year** | **$40,236** | **$28,933** |

**Statements of Cash Flows**

| | Years Ended December 31, 1999 | 1998 |
|---|---|---|
| Operating Activities | | |
| Excess of revenues over expenses | $11,303 | $6,564 |
| Adjustments to reconcile excess of revenues over expenses to net cash provided by operating activities: | | |
| Changes in operating assets and liabilities: | | |
| Pension contribution payable | 24 | 23 |
| Accrued vacation | (571) | 651 |
| Other payables | (102) | 100 |
| Net Cash Provided by Operating Activities | 10,654 | 7,338 |
| Cash and cash equivalents at beginning of year | 30,229 | 22,891 |
| **Cash and Cash Equivalents at End of Year** | **$40,883** | **$30,229** |
| **Supplemental Cash Flow Information** | | |
| Interest paid | $0 | $0 |

**Notes to Financial Statements**

Years Ended December 31, 1999 and 1998

**Note A—The Organization and Significant Accounting Policies**

*The Organization*: The North Carolina State Bar Board of Legal Specialization ("Legal Specialization") was established in 1987 as a separate program to certify attorneys as legal specialists. Legal Specialization is a standing committee of the Council of The North Carolina State Bar (the "Bar") which is an agency of the State of North Carolina.

*Basis of Accounting*: The financial statements of Legal Specialization are presented on the accrual basis of accounting.

*Fund Balance*: Fund balance is unrestricted and, as such, is available for general operating purposes.

*Cash Equivalents*: All highly liquid investments with a maturity of three months or less are considered to be cash equivalents.

*Revenue Recognition*: Specialization fees are recognized in the period of receipt which approximates generally accepted accounting principles.

*Income Taxes*: Legal Specialization is a governmental organization whose income is excludable from federal income taxes under Internal Revenue Code Section 115.

*Use of Estimates*: The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**Note B—Pension Plan**

Legal Specialization employees who have completed one Year of Service and attained age twenty-one are covered under the Bar's money purchase pension plan. Under the provisions of the plan, Legal Specialization contributes 10% of each participating employee's compensation to the plan. Total pension costs under this plan were $560 and $536 for the years ended December 31, 1999 and 1998, respectively.

**Note C—Relationship with the North Carolina State Bar**

The Bar provides various support to Legal Specialization including staffing and use of the Bar's computer, postage meter, copy machine, and fax machine. The Bar submits a monthly bill for various services to Legal Specialization. Legal Specialization did not owe the Bar for any services as of December 31, 1999 and 1998.

## In Memoriam

**Paul T. Canady**
St. Pauls (1927-2000)

**Lonnie T. Dark Jr.**
Siler City (1921-2000)

**Lee J. Greer Sr.**
Whiteville (1910-2000)

**Claude V. Jones Sr.**
Durham (1903-2000)

**Edward N. Post**
High Point (1929-2000)

**Edwin T. Pullen III**
Winston-Salem (1932-2000)

**Frank Battley Rankin**
Mt. Holly (1916-2000)

**David W. Sapp**
Kenansville (1949-2000)

**W. Dennie Spry**
Winston-Salem (1912-2000)

**Curtiss Todd**
Winston-Salem (1908-2000)


## Don't Forget!

Choose your version of the 2001 Lawyer's Handbook, CD-ROM or paper, in the Member Access section of the State Bar's website.

If you do not select a Handbook format, you will be shipped a paper Handbook.

**www.ncbar.com**

# Classified Advertising

### Positions Available

*Attorney Jobs:* The nation's #1 job-hunting bulletin for attorneys is now exclusively online at: AttorneyJobsOnline.com. Subscribe online or call us at 1-800-296-9611. Extensive website provides thousands of attorney and law-related jobs nationwide and abroad at all levels of experience in public (Federal, state, and local), private, and nonprofit sectors, plus legal career transition advice and information in our content-rich Legal Career Center. Quality Counts. Sponsored by West Group.

*Attorney Positions*—Permanent and temporary opportunities throughout North and South Carolina with great law firms and legal departments. Carolina Legal Staffing, 301 S. College Street, Charlotte, NC 28202, Phone (704) 343-4822; Fax (704) 714-6222 or visit our website www.carolinalegal.com.

*International Legal Reform*—The American Bar Association Central and East European Law Initiative (CEELI) seeks experienced attorneys to work on criminal, environmental, commercial, and/or civil law reform projects in Central and Eastern Europe and the former Soviet Union. Support includes all housing, transportation, and living expenses. Call 1-800-982-3354 or visit www.abnet.org/ceeli for an application.

### Miscellaneous

*Free Referrals*—Legal Club of America seeks qualified attorneys to receive new clients. Must be licensed and maintain liability insurance. There is no cost to participate; however, attorneys must abide by a discounted fee schedule. All law areas needed. Not an insurance program. Call (888) 299-5262, e-mail carmen@legalclub.com, Fax (954) 377-0248, or visit www.legalclub.com for more information.

*Questioned Document Examiner*—Complete forensic laboratory for handwriting, typewriting, altered documents and related examinations. 32 years' experience. Qualified in all courts. Diplomate—American Board of Forensic Document Examiners. Certified—British Forensic Science Society. Member—American Society of Questioned Documents Examiners; International Association for Identification; National Association of Criminal Defense Lawyers. Retired Chief Document Analyst. USA Criminal Investigation Laboratories. Resume and Fee Schedule upon request. Hans Mayer Gidion. 218 Merrymont Dr., Augusta, GA 30907. 706-860-4267.

## Advertising Rates

If you would like to advertise in the State Bar *Journal*, please send your advertisement to the director of communications, the North Carolina State Bar, P.O. Box 25908, Raleigh, NC 27611, telephone 919-828-4620. The cost of advertising is $40.00 for up to 35 words and $.50 for each additional word. Ads for the Winter (December), 2000, issue must be received by October 15, 2000. If you would like information about display advertising, please contact the State Bar at the address above for a media kit.

*Was Your Client Injured or Arrested in Las Vegas?* Call Craig P. Kenny & Associates. A law firm committed to the client, practices primarily in the areas of Personal Injury, Workers' Compensation, Medical Malpractice, and Criminal Defense. Experienced trial attorneys. Call Craig toll free 1-888-275-3369 or www.CPKLAW.com.

## *New IOLTA Participants*

*(Continued from page 45)*

*Murphy, Michael P.; Rocky Mount*
*Nance, John R.; Concord*
*Nixon, Park & Gronquist; Charlotte*
*Nunn, Erika H.; Liberty*
*Osho, Lucky T.; Charlotte*
*Perry, Cedric; Rocky Mount*
*Privette, Jodi V.; Fayetteville*
*Purrington, Nick & Associates; Greensboro*
*Redfern & Barnhill; Havelock*
*Resnick & Abraham; Raleigh*
*Rhodes & Mason; Greensboro*
*Rivenbark, Nancy M.; Banner Elk*
*Rivera-Carretero, Armando A.; Maron*
*Rogers, Mary Leazer; Charlotte*
*Schweizer, Matthew A.; Cary*
*Shepherd, Michelle T.; Jefferson*
*Simpson, Travis H.; Winston-Salem*
*Stewart, Heidi H.; Asheville*
*Swerdlick, David S.; Chapel Hill*
*Taylor, Ollie H.; Raleigh*
*Terrell, Mark T.; Wilmington*
*Thompson, Miriam M.; Wilmington*
*Tin, Noell P.; Charlotte*
*Turner, Stephen Anthony; Raleigh*
*Umerah, Chukwudi; Fayetteville*
*Webb Jr., Fred D.; Sanford*
*Whitley, Crumley, DeMayo; Greensboro*

## *The Disciplinary Department*

*(Continued from page 44)*

### In the Matter of Julius Jennings Wade Jr.

Notice is hereby given that Julius Jennings Wade Jr. intends to file a Petition for Reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Mr. Wade was disbarred effective April 27, 1994, for misappropriation of clients' funds. Full restitution has been made. ■

# *Just when you thought it couldn't get any better. . .*

## Revised Survey Coverage Without A New Survey

Investors Title is now offering **two** opportunities for lenders to obtain a mortgagee policy with full survey coverage without the expense and delay of obtaining a current survey:

**SINCE 1993**

Loan policies up to $1 Million:

- residential and commercial loans
- purchases, refinances, equity loans, or construction loans
- an ALTA 9 and CLTA 100 can be obtained with this Survey Coverage without a new Survey

**EFFECTIVE MARCH 2000**

Loan policies up to $5 Million:

- residential and commercial loans
- refinance transactions
- for purchases, coverage is available if a copy of the prior survey (no older than 10 years) is obtained with affidavit that no changes have been made since
- an ALTA 9 and CLTA 100 can be obtained with this Survey Coverage without a New Survey

**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

P.O. Drawer 2687 Chapel Hill, NC 27515-2687
(800) 326-4842 Fax: (919) 968-2223
Email: corporate@invtitle.com
NASDAQ Symbol: ITIC

Address Correction Requested Return To:
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611

Periodicals
Postage
Paid
at Raleigh, NC

www.clt-nc.com

The Attorney's Title Company

# Are Financial Institutions and Real Estate Companies *feeding off your services?*

*Remember the gingerbread man who teased the wolf into thinking he couldn't be eaten? Eventually, the wolf tricked the little cookie man and the rest is history. Now we find real estate brokers and bankers are trying to innocently take a nibble from the title insurance business you consider your area of expertise. Don't be tricked into thinking they will stop at a mere nibble. When the cookies are gone, so will the title exams, deeds and closings. At Commonwealth Land Title Company, we're happy to continue doing business to ensure only professionals handle the work you were trained to perform. Commonwealth Land Title, your partner in the approved attorney system.*

COMMONWEALTH
LAND TITLE COMPANY OF NORTH CAROLINA

8521 Six Forks Road • Suite 100 • Raleigh, NC 27615-2998 • Phone: 800-662-7108 • Fax: 800-717-0140