

THE NORTH CAROLINA STATE BAR

JOURNAL

SUMMER
2017



IN THIS ISSUE

LegalZoom Litigation and Legislation *page 6*

Fiduciary Access to Digital Assets *page 14*

Juvenile Defenders - 50 Years Since *In Re Gault page 16*

We focus on the details.

Personal *Service*. Excellent *Rates*.

Running a law firm is a business, and protecting yourself and your business from the unexpected is necessary. But finding the right coverage is time consuming and takes away from the practice of law. Let us be your partner. Use our unique expertise for insurance tailored by lawyers to lawyers. We offer the following for you, your employees and your families.

- **HEALTH, DENTAL, DISABILITY and MEDICARE SUPPLEMENT BENEFITS** no matter the size of your practice.
- Protection for your practice from the unexpected with a **BUSINESS OWNERS POLICY, BUSINESS AUTO, and WORKERS COMPENSATION.**
- Expert knowledge in necessary and additional specialty coverage like **COURT & PROBATE BONDS, CYBER LIABILITY, CRIME & FIDELITY, and PROFESSIONAL LIABILITY.**
- Planning for the future with **LONG TERM CARE, RETIREMENT INCOME, and STRUCTURED SETTLEMENTS & TRUST PLANNING.**
- Personal insurance needs including **LIFE INSURANCE, AUTO & HOME, and DISABILITY INCOME.**

PERSONAL SERVICE, TAILORED TO YOU. CALL US TODAY.

Lawyers Insurance: COLLABORATIVE SOLUTIONS

1.800.662.8843 919.677.8900 WWW.LAWYERSINSURANCEAGENCY.COM

THE
NORTH CAROLINA
STATE BAR
JOURNAL

Summer 2017
Volume 22, Number 2

Editor
Jennifer R. Duncan

© Copyright 2017 by the North Carolina State Bar. All rights reserved. Periodicals postage paid at Raleigh, NC, and additional offices. Opinions expressed by contributors are not necessarily those of the North Carolina State Bar. POSTMASTER: Send address changes to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. The *North Carolina Bar Journal* invites the submission of unsolicited, original articles, essays, and book reviews. Submissions may be made by mail or e-mail (ncbar@bell-south.net) to the editor. Publishing and editorial decisions are based on the Publications Committee's and the editor's judgment of the quality of the writing, the timeliness of the article, and the potential interest to the readers of the *Journal*. The *Journal* reserves the right to edit all manuscripts. 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, PO Box 25908, Raleigh, NC 27611. Member rate of \$6.00 per year is included in dues. Nonmember rates \$10.73 per year. Single copies \$5.36. The *Lawyer's Handbook* \$16.09. Advertising rates available upon request. Direct inquiries to Director of Communications, the North Carolina State Bar, PO Box 25908, Raleigh, North Carolina 27611, tel. (919) 828-4620.

ncbar.gov

Follow us at:

Twitter: @NCStateBar

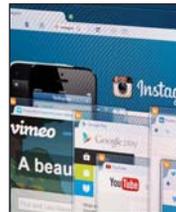
Facebook: [facebook.com/NCStateBar](https://www.facebook.com/NCStateBar)



Contents

FEATURES

- 6 **LegalZoom Litigation and Legislation: Progress or Problem?**
By John N. Fountain
- 10 **Questioning Prospective Jurors about Possible Racial or Ethnic Bias: Lessons from *Pena-Rodriguez v. Colorado***
By Alyson A. Grine
- 14 **New North Carolina Law Allows Fiduciaries Access to Digital Assets (But Only If...)**
By Jean Gordon Carter
- 16 **Juvenile Defenders Reflect on Their Careers and 50 Years Since**
By Eric J. Zogry
- 19 **Lawyers in the Legislature**
By N. Leo Daughtry
- 20 **Honesty is the Only Policy**
By G. Gray Wilson
- 22 **Trial by Nature—Courtroom Lessons to Live By**
By Tricia M. Derr



Contents

DEPARTMENTS

- 5 President's Message
- 25 Trust Accounting
- 26 Profile in Specialization
- 28 Legal Ethics

- 30 The Disciplinary Department
- 32 Lawyer Assistance Program
- 34 IOLTA Update
- 35 Proposed Ethics Opinions
- 35 BOLE Amendments
- 38 Rule Amendments

BAR UPDATES

- 31 In Memoriam
- 51 Client Security Fund
- 52 Law School Briefs
- 53 July Bar Exam Applicants

Officers

Mark W. Merritt, Charlotte/Chapel Hill
President 2016-2017
John M. Silverstein, Raleigh
President-Elect 2016-2017
G. Gray Wilson, Winston-Salem
Vice President 2016-2017
L. Thomas Lunsford II, Raleigh
Secretary-Treasurer
Margaret M. Hunt, Brevard
Past-President 2016-2017

Councilors

By Judicial District

- 1: C. Everett Thompson II, Elizabeth City
- 2: G. Thomas Davis Jr., Swan Quarter
- 3A: Charles R. Hardee, Greenville
- 3B: Debra L. Massie, Beaufort
- 4: Robert W. Detwiler, Jacksonville
- 5: W. Allen Cobb Jr., Wilmington
- 6: W. Rob Lewis II, Ahoskie
- 7: Randall B. Pridgen, Rocky Mount
- 8: C. Branson Vickory III, Goldsboro
- 9: Paul J. Stainback, Henderson
- 9A: Alan S. Hicks, Roxboro
- 10: Heidi C. Bloom, Raleigh
Walter E. Brock Jr., Raleigh
Nicholas J. Dombalis II, Raleigh
Theodore C. Edwards II, Raleigh
Katherine Ann Frye, Raleigh
Donna R. Rascoe, Raleigh
Warren Savage, Raleigh
C. Colon Willoughby Jr., Raleigh
- 11A: Eddie S. Winstead III, Sanford
- 11B: Marcia H. Armstrong, Smithfield

- 12: Lonnie M. Player Jr., Fayetteville
- 13: Michael R. Ramos, Shallotte
- 14: Dorothy Hairston Mitchell, Durham
William S. Mills, Durham
- 15A: Charles E. Davis, Mebane
- 15B: Charles Gordon Brown, Chapel Hill
- 16A: Terry R. Garner, Laurinburg
- 16B: David F. Branch Jr., Lumberton
- 16C: Richard Buckner, Rockingham
- 17A: Matthew W. Smith, Eden
- 17B: Thomas W. Anderson, Pilot Mountain
- 18: Barbara R. Christy, Greensboro
Stephen E. Robertson, Greensboro
- 18H: Richard S. Towers, High Point
- 19A: Herbert White, Concord
- 19B: Clark R. Bell, Asheboro
- 19C: Darrin D. Jordan, Salisbury
- 19D: Richard Costanza, Southern Pines
- 20A: John Webster, Albemarle
- 20B: H. Ligon Bundy, Monroe
- 21: Michael L. Robinson, Winston-Salem
Kevin G. Williams, Winston-Salem
- 22A: Kimberly S. Taylor, Taylorsville
- 22B: Roger S. Tripp, Lexington
- 23: John S. Willardson, Wilkesboro
- 24: Andrea N. Capua, Boone
- 25: M. Alan LeCroy, Morganton
- 26: David N. Allen, Charlotte
Robert C. Bowers, Charlotte
A. Todd Brown, Charlotte
Mark P. Henriques, Charlotte
Dewitt McCarley, Charlotte
Nancy Black Norelli, Charlotte
Eben T. Rawls, Charlotte
- 27A: Sonya Campbell McGraw, Gastonia

- 27B: Rebecca J. Pomeroy, Lincolnton
- 28: Anna Hamrick, Asheville
- 29A: H. Russell Neighbors, Marion
- 29B: Christopher S. Stepp, Hendersonville
- 30: Gerald R. Collins Jr., Murphy

Public Members

Patricia R. Head, Raleigh
Robert C. Sinclair, Raleigh
Emmanuel Wilder, Morrisville

Executive Director

L. Thomas Lunsford II

Assistant Executive Director

Alice Neece Mine

Counsel

Katherine Jean

Editor

Jennifer R. Duncan

Publications Committee

Nancy Black Norelli, Chair
Andrea Capua, Vice Chair
Phillip Bantz (Advisory Member)
Richard G. Buckner
Thomas P. Davis (Advisory Member)
Margaret Dickson (Advisory Member)
John Gehring (Advisory Member)
Darrin D. Jordan
Ashley London (Advisory Member)
Sonya C. McGraw
Stephen E. Robertson
Christopher S. Stepp

NCCALJ Issues Final Report to the Chief Justice

BY MARK W. MERRITT

On March 15, 2017, the North Carolina Commission on the Administration of Law and Justice presented its final report to Chief Justice Mark Martin. The report is entitled "Recommendations for Strengthening the Unified Court System of North Carolina." The report is an important document that represents a comprehensive overview of the court system and how we can improve it. The State Bar monitored the work of the commission, participated in the work of its committees and presenters, and provided two of its members. In this article I will review the history of the commission, its work, and its recommendations.

The History of the Commission

The commission's work does not represent the first time that there has been a comprehensive review of the court system in North Carolina. In the late 1950s, the North Carolina Bar Association took on the task of creating a uniform system of state courts in North Carolina. That work was undertaken by what came to be known as the Bell Commission, which was named after its chair, Judge Spencer Bell. The work of the Bell Commission led to the establishment of the current structure of magistrate, district, and superior courts, and eliminated a hodgepodge of local and municipal courts. The Bell Commission also led to the creation of the North Carolina Court of Appeals and the Administrative Office of the Courts. The implementation of its recommendations occurred over a 15-year period, but the Bell Commission's work transformed our court system.

The next comprehensive review occurred in the 1990s by the Commission on the Future of Justice and the Courts in North Carolina, and it was commonly known as the Futures Commission or Medlin Commission,



after its chair, John Medlin. The Futures Commission recommended sweeping changes to the court system, such as eliminating jurisdictional distinctions between district and superior court, the appointment of judges and clerks, the creation of statewide family courts, and the merging of judicial districts into wider administrative units. The recommendations of the Futures Commission, which were released in 1996, were not implemented, but did lead to pilot programs for family courts and greater emphasis on mediation as a way to resolve disputes.

Chief Justice Martin convened the commission in September 2015 as an independent, multi-disciplinary study group. The commission was charged with undertaking a comprehensive evaluation of the judicial system and making recommendations on how the courts could be strengthened within the existing administrative framework. The commission had 65 members, eight reporters, and numerous ex officio members. It was truly multidisciplinary with members who were judges, lawyers, business leaders, legal educators, public servants, and politicians. The work of the commission was accomplished in its five committees: the Legal Professional Committee, the Technology Committee, the Civil Justice Committee, the Criminal Investigation and Adjudication Committee, and the Public Trust and Confidence Committee. For the better part of a year, the committees collectively met 62 times and heard 102 presenters. During the summer of 2016, the committees issued interim reports and gathered citizen input both online and at public forums. At public forums held in Jamestown, Wilmington, Asheville, and Charlotte, commission members heard comments from 238 citizens.

The State Bar was active in the work of the commission. I had the privilege of serving on

the Legal Professional Committee, and State Bar Councilor Darrin Jordan served on the Criminal Investigation and Adjudication Committee. The State Bar staff presented to the Legal Professionalism Committee on issues related to the regulation of the legal profession and provided statistics on the growth of the Bar and the distribution of lawyers around the State. State Bar staff members and representatives attended and monitored the work of the various committees. Based on our collective, first-hand knowledge, I am confident in stating that the depth of examination that the commission brought to bear was impressive and the resources available for the commission members were extensive.

The Methodology of the Commission

It is challenging in a single article to capture how the commission came to its recommendations when its report is a comprehensive document of close to 300 pages. The key point is that the process was driven by data. At our very first meeting we explored the demographic forces that are profoundly affecting our state. Some portions of North Carolina are among the fastest growing in the country, but other parts are depopulating. We examined the reality of *pro se* litigants who are appearing in our courts in increasing if not alarming numbers. We looked at case filings and workloads and the growing demands placed on all facets of our court system. We learned that the 31 million pieces of paper we filed with our clerks of court in 2016 took up 4.3 miles of shelving. We reviewed surveys on the public's perception of the court system and its fairness. We heard from national experts and thoughtful leaders as to how our court system and professional regulation may need to change to meet the challenges of this rapidly evolving legal landscape.

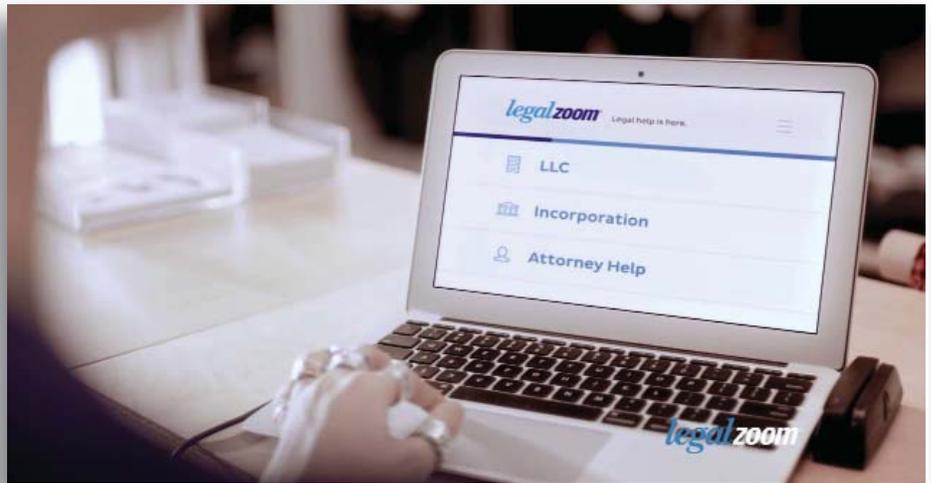
Simply stated, this commission did not

CONTINUED ON PAGE 50

LegalZoom Litigation and Legislation: Progress or Problem?

BY JOHN N. FOUNTAIN

Over the last several years there has been much discussion in the legal community regarding the issues among the State



Bar, LegalZoom, and segments of the attorney community. Sometimes such discussion has generated more heat than light. This article will outline the enforcement structures of the State Bar, the efforts of LegalZoom within those structures, subsequent litigation, and recently adopted legislation. Finally, a few issues related to the broader context will be flagged.

It is helpful to put these issues into perspective in relation to the enforcement structures of the State Bar. First, the two principal enforcement committees of the State Bar are the Grievance Committee—for lawyers—and the Authorized Practice Committee—for nonlawyers. The Bar councilors who are members of the Grievance Committee process about 90 matters each quarter, which may involve attorney malfeasance, avarice, or untreated substance abuse, among other issues. The chair and vice chairs of the Grievance Committee process about

1,000 more routine grievance matters between meetings. The more serious of the matters are routed to the Disciplinary Hearing Commission for hearing. Most lawyers are aware of the Grievance Committee and the grievance process mostly from looking to see if their name is mentioned in this publication.

On the other hand, the Authorized Practice Committee deals with complaints regarding persons or firms who are not licensed North Carolina lawyers, but are alleged to be practicing law without a license.

The Authorized Practice Committee processes about 35 cases each quarter. Some are resolved with warnings, some are concluded by dismissal, and a few result in court actions seeking to enjoin the unauthorized practice. Evidence of violation, evidence of harm, the credibility and availability of witnesses, and the availability of resources all play into such decisions. The number of complaints is rising steadily, and they involve unlicensed and sometimes well-meaning Notarios doing harm to the Hispanic community, debt settlement operations (illegal in NC), peddlers of



Fastest smartest malpractice insurance. Period.

800.906.9654
GilsbarPRO.com

ineffective or harmful trust documents, and out-of-state lawyers or firms seeking to practice in North Carolina without licenses, some through the use of unwitting young lawyers as pawns. Thus, LegalZoom is only one of many matters of concern to the Authorized Practice Committee and the State Bar.

The Authorized Practice Committee also receives quarterly reports regarding the registration of prepaid legal service plans. In 1991, at the State Bar's request, the legislature amended the statute to remove any reference to "approval" of prepaid legal services, and to replace it with a requirement that the State Bar "register" plans. Thereafter, the State Bar Council amended the administrative rules to revoke the approval of any existing plans, and to provide that the State Bar would no longer approve—would instead only register—prepaid legal services plans. Thus, for many years the role of the State Bar Council and staff has been to determine whether a proposed plan was a "prepaid plan" and whether the services proposed were "legal services."

The Authorized Practice Committee has been aware that bookstores, office supply establishments, and others sell legal forms, and that consumers of legal services may

take the do-it-yourself route. Sale of such forms is perfectly lawful. The distinctive feature, for purposes of the Authorized Practice Committee, is whether such forms are made available without legal advice or consultation. As will be mentioned later in this article, much of the discussion about internet providers is the effort to compare a particular online process to sellers of paper legal forms.

LegalZoom and Proceedings within the State Bar

LegalZoom advises that it was formed in the year 2000. Around 2008 the State Bar began receiving complaints that LegalZoom was engaged in the unauthorized practice of law. The concern was whether these were forms purchased by the consumer without legal advice or consultation as to the form used or the clauses included therein. It appeared to some that the computer programs or algorithms employed by LegalZoom—or others dealing in online document preparation—were designed to provide documents based on answers to a series of questions. Then the answers were used by the computer to select the clauses to be con-

tained in the product. The process was thought to be more akin to the information a lawyer would glean in an interview with a client, following which a document would be prepared. The risk in the online system is the absence of follow-up questions or discussion as to whether the client might sustain unintended consequences with this mode of advice, while placing too much faith in the "fit" of the form or content thereof. Soon after the complaints began arriving, the Authorized Practice Committee began reviewing the results of investigations and issuing progressively firmer warning letters. LegalZoom steadfastly responded that its online questionnaire and document creation system did not constitute the practice of law.

LegalZoom's Lawsuits

In September 2011, despite the absence of any direct enforcement action by the State Bar, LegalZoom filed suit alleging that the State Bar was violating the anti-monopoly and equal protection clauses of the North Carolina Constitution, and sought declaratory judgments that LegalZoom was not engaged in the unauthorized practice of law and that in saying otherwise the State Bar

disparaged LegalZoom and exceeded its authority. The State Bar responded with claims seeking to enjoin the unauthorized practice of law by LegalZoom. The case languished for years, principally because the court declined to allow the parties to pursue discovery and because the court repeatedly opined that all parties would be better served by a legislative rather than a judicial solution to the issues.

LegalZoom submitted an application to register a prepaid plan in North Carolina. LegalZoom's application was not accepted for registration. Issues of concern included whether the services were actually "prepaid services" (i.e. akin to insurance where payment is made in advance of any immediate need or use), and whether the services were legal services or not. There was also concern about a forum selection clause which excluded North Carolina. Inasmuch as it appeared the services proposed or made available as part of a bundle would be delivered via the online system about which complaints had been made, and inasmuch as LegalZoom said that its document system did not constitute the delivery of legal services, it appeared LegalZoom was contradicting itself. LegalZoom contended that the State Bar was confusing several different contractual arrangements it might have with a customer.

A hearing was held before the Authorized Practice Committee in April 2015. Counsel for the State Bar and counsel for LegalZoom engaged in oral argument. The committee declined to register the purported prepaid legal plans for the reasons cited by staff. A few weeks later, LegalZoom filed suit against the State Bar and certain individuals in the United States District Court for the Middle District of North Carolina seeking a determination that the actions of the State Bar, the named individuals, or the "unnamed coconspirators" (other members of the State Bar Council) were antitrust violations.

Thus, by June 2015 the State Bar and LegalZoom had litigation pending in both the North Carolina Business Court and the US District Court for the Middle District of North Carolina. Neither was moving rapidly.

Legislative Involvement

In June 2014 LegalZoom commenced legislative endeavors to allow their services in North Carolina. The surprise effort by LegalZoom in the short session was unsuccessful.

The effort resumed in the 2015 long session, by which time the court cases had been resolved, contingent on passage of a bill by the general assembly. By this time the Real Estate Lawyer Association of North Carolina (RELANC), backed by some title insurance companies, became active at the general assembly, thus placing the State Bar in the middle between LegalZoom on the one hand and RELANC on the other. LegalZoom contended that the State Bar was intent on protecting turf for lawyers, while RELANC contended that the State Bar was bent on destroying the livelihood of lawyers involved in real estate matters and will drafting, simultaneously harming the public. The State Bar was dismayed that it had succeeded in making persons and entities of all stripes extremely unhappy despite strenuous efforts in the federal court, the business court, and the general assembly either to enforce the law as it existed or to obtain appropriate modernization by the general assembly.

Draft legislation put together by the State Bar was alternately supported and opposed by LegalZoom. Proposed legislation supported by LegalZoom was opposed by RELANC, and vice-versa. The State Bar Bill became one of the final matters at the end of the long session in September 2015. Ultimately there was not sufficient unanimity among the lawyer members of the state house and senate to get the bill passed. Lawyers in both political parties were divided.

A great deal of additional work was carried out in the short session of 2016. Changes were made to address some of RELANC's concerns and to require numerous consumer protection assurances. The urgency of efforts in the 2016 short session were underscored by the fact that the litigation was settled contingent on passage of an appropriate bill.

Where Are We Now

Ultimately, House Bill 436 from the 2015 session passed in 2016 and became Session Law 2016-60. Briefly stated, the bill:

- 1) Codifies the ability of a real estate broker to prepare offers to purchase and certain lease agreements;
- 2) Codifies the ability of a motor vehicle dealer to complete documents related to the sale or lease of a motor vehicle;
- 3) Exempts from the definition of "the practice of law" the operator of websites utilizing interactive software to generate a legal document, but only if:

- a. the consumer can see the blank document or a final completed document before purchase;
- b. a licensed NC attorney has reviewed each potential part of a completed document;
- c. the provider communicates that the form and templates are not a substitute for advice or services of an attorney;
- d. the provider discloses its name and physical location;
- e. warranties are not disclaimed and liability is not limited;
- f. no consumer is required to submit to any jurisdiction or venue other than North Carolina for resolution of disputes;
- g. the provider must have a consumer satisfaction process;
- h. the jurisdiction of the State Bar to proceed with its enforcement activity is not impacted by any exercise of a private cause of action under G.S. 84-10.1.

Session Law 2016-60, outlined above, mandates further review of the legislation in the general assembly by June 30, 2018. Time will tell if complaints surface and if consumers suffer harm.

Final Thoughts

All the foregoing should be considered in the context of several ongoing realities:

- 1) A significant percentage of the people in North Carolina continue to be unable to access basic legal services due to financial or other reasons;
- 2) efforts of the organized bar over decades to produce *pro bono* involvement continue to fall short of the need;
- 3) the internet is not going away and online document providers may have a role to play;
- 4) there is an ongoing effort, under leadership of the chief justice, to modernize the delivery of legal services so as to reach more persons, utilize more technology, and accommodate *pro se* litigants;
- 5) part of our heritage as attorneys is the obligation to make the legal system, both in and out of the courthouse, meet the needs of all our citizens.

Remember that change is the norm, not the exception. ■

The author has years of service on the Grievance, Authorized Practice, and Legislative Committees of the State Bar. He practices with Young Moore and Henderson, PA, in Raleigh.

If not for the confidential nature of what we do, you'd hear about our success stories all the time.



One of these lawyers contacted LAP for help and today has several years of recovery. Can you tell which one?

Free, confidential assistance is available.
Contact us today: info@nclap.org or WWW.NCLAP.ORG



NCLAP
NORTH CAROLINA
LAWYER ASSISTANCE PROGRAM

Charlotte & West
(704) 910-2310

Piedmont Area:
(919) 719-9290

Raleigh & East:
(919) 719-9267

Questioning Prospective Jurors about Possible Racial or Ethnic Bias: *Lessons from Pena-Rodriguez v. Colorado*

BY ALYSON A. GRINE

Trial lawyers are familiar with the test set out in *Batson v. Kentucky* to prevent another party from seeking to exclude a prospective juror on the basis of race.¹ However, an attorney may be less clear about when he or she has a legal right or obligation to ask prospective



©iStockphoto.com

jurors questions about race during *voir dire*. Do attorneys have a duty to explore racial bias in an effort to protect the Sixth Amendment guarantee of an impartial jury? Is asking about racial bias an effective tactic? Is it likely to expose biased views; or might it backfire, inflaming juror bias and increasing the odds that the verdict will be influenced by prejudice?

In a recent opinion, the United States Supreme Court discussed this issue, but the justices did not all see eye to eye. Part I of this article discusses the groundbreaking opinion from the United States Supreme Court, *Pena-Rodriguez v. Colorado*, decided March 6, 2017.² Part II addresses the role of *voir dire* in revealing bias and protecting defendants' constitutional rights, and includes opposing views from the majority and dis-

senting opinions in *Pena-Rodriguez*. Part III provides a review of case law to help attorneys identify the circumstances that give rise to a right, and possibly an obligation, to ask about racial bias during *voir dire*.

A Juror is Motivated by Ethnic Bias in Voting to Convict

In the recent case of *Pena-Rodriguez v. Colorado*, the United States Supreme Court

addressed a situation in which a juror reportedly stated during deliberations that he was relying on stereotypes about Latinos in voting to convict the defendant. The facts were as follows. Petitioner Pena-Rodriguez was found guilty of unlawful sexual contact and harassment. After the jury was discharged, petitioner's lawyer approached the jurors to see if they would be willing to discuss the case. Two jurors revealed that during deliber-

ations, another juror with the initials H.C. had made a number of disparaging statements about petitioner and his alibi witness. For example, according to the two jurors, H.C. said, “I think [petitioner] did it because he’s Mexican and Mexican men take whatever they want.”³ Defense counsel presented affidavits from the two jurors to the trial judge, and moved for a new trial. However, the judge denied the motion on the ground that “deliberations that occur among the jurors are protected from inquiry under [Colorado Rule of Evidence] 606(b).”⁴

Colorado’s Rule of Evidence 606(b), like its federal counterpart, is a “no-impeachment” rule. Every state has a version of the rule; for example, North Carolina Rule 606(b) provides:

Inquiry into validity of verdict or indictment. – Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon his or any other juror’s mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury’s attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.⁵

Generally speaking, the function of no-impeachment rules is to prevent attorneys from trying to overturn the jury’s verdict by offering testimony from jurors about what was said during deliberations. Such rules protect the finality of jury verdicts and insulate jurors from questions about who said what in the jury room.

In *Pena-Rodriguez*, however, the Court created an exception to the no-impeachment rule. The Court held that the Sixth Amendment right to a fair trial by an impartial jury requires that the trial judge be allowed to consider, post-verdict, a juror’s testimony that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his

or her vote to convict.⁶ If a trial court determines that a defendant was denied his Sixth Amendment right, the court may set aside the verdict and grant a motion for a new trial. The holding was required, in the majority’s view, because allowing a conviction based on racial bias to stand would violate the defendant’s constitutional rights and “risk systemic injury to the administration of justice.”⁷

The Role of *Voir Dire* in Revealing Racial Bias

While the principle holding of *Pena-Rodriguez* establishes an exception to the no-impeachment rule in situations where a juror makes a statement indicating that racial animus was a significant motivating factor in his or her finding of guilt, discussions of *voir dire* in both the majority opinion and the dissent remind practitioners that *voir dire* provides an important opportunity to explore whether potential jurors harbor racial biases.

Courts have recognized *voir dire* as an important mechanism for protecting defendants’ trial rights. “[*Voir dire*] serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges.”⁸ The attorneys’ opportunity to question prospective jurors has been cited in support of closing the door to the jury room and refusing to allow post-verdict challenges to deliberations. Prior to the holding in *Pena-Rodriguez*, the Supreme Court declined to make exceptions to Rule 606(b), indicating that *voir dire* and other safeguards were adequate to protect defendants’ trial rights. For example, in *Tanner v. US*, the Court refused to allow post-verdict inquiry where two jurors revealed after the trial that other jurors were intoxicated during the trial, identifying four existing safeguards that were in place to protect a defendant’s Sixth Amendment rights: 1) jurors can be examined during *voir dire*, 2) jurors can be observed during trial by court actors, 3) jurors can observe each other and report inappropriate behavior to the judge before they render a verdict, and 4) after the trial, counsel may offer evidence of misconduct by jurors, other than through testimony of jurors.⁹

For purposes of considering whether an exception to the no-impeachment rule was required, the Court distinguished *Pena-Rodriguez* on the grounds that Sixth Amendment interests are especially pro-

COURTHOUSE RESEARCHER:

This is a part time position with great potential. Perfect for a paralegal or anyone who visits one or more county courthouses in North Carolina on a regular basis. We need information from probate files. Should take about fifteen minutes if done once a week. Monthly fee plus possible commissions. Reply to info.probateresearch@gmail.com

nounced where racial bias is at play and *voir dire* and the other safeguards identified in *Tanner* might not suffice in such cases. According to the majority, exploring racial bias during *voir dire* may not prove effective in that broad questions regarding attitudes about race might not expose biases, while “more pointed questions could well exacerbate whatever prejudice might exist without substantially aiding in exposing it.”¹⁰ Nevertheless, the Court recognized *voir dire* as an “important mechanism[] for discovering bias.”¹¹

In a dissenting opinion, Justice Alito, joined by Chief Justice Roberts and Justice Thomas, expressed a different view as to the effectiveness of *voir dire* in exposing biases. Justice Alito argued that the safeguards set out in *Tanner* are adequate to protect a defendant’s Sixth Amendment rights, including when a juror is motivated by racial bias. Specifically, *voir dire* serves as an effective mechanism for revealing racial prejudice.

The suggestion that *voir dire* is ineffective in unearthing bias runs counter to decisions of this Court holding that *voir dire* on the subject of race is constitutionally required in some cases, mandated as a matter of federal supervisory authority in others, and typically advisable in any case if a defendant requests it....Thus, while *voir dire* is not a magic cure, there are good reasons to think that it is a valuable tool.¹²

In contrast to the majority’s concern that all approaches to race during jury selection are necessarily problematic, Justice Alito recognized social science research suggesting that, rather than reinforcing prejudice, making race salient may cause bias to recede.¹³ Justice Alito observed that not only do attorneys have tools such as questionnaires and individual questioning, but they can also avail themselves of practice

guides “replete with advice on conducting effective *voir dire* on the subject of race[.]” including a manual specific to North Carolina, *Raising Issues of Race in North Carolina Criminal Cases*.¹⁴

In sum, though there was some disagreement about the effectiveness and strategic desirability of addressing racial issues with potential jurors, both the majority and the dissent in *Pena-Rodriguez* recognize that racial bias is an appropriate area of inquiry during *voir dire* and an important safeguard of the right to a fair trial.¹⁵

When Can, Should, or Must Lawyers Discuss Racial Bias with Potential Jurors During *Voir Dire*?

As a general matter, criminal defendants have a constitutional right to *voir dire* jurors adequately. “[P]art of the guarantee of a defendant’s right to an impartial jury is an adequate *voir dire* to identify unqualified jurors.”¹⁶ Further, undue restriction of the right to *voir dire* is error.¹⁷ In certain circumstances, a defendant has a constitutional right to ask questions about race on *voir dire*. In *Pena-Rodriguez*, the Court stated: “In an effort to ensure that individuals who sit on juries are free of racial bias, [the US Supreme] Court has held that the Constitution at times demands that defendants be permitted to ask questions about racial bias during *voir dire*.”¹⁸

The US Supreme Court has found the refusal to permit inquiry into racial attitudes a reversible error in a few different contexts.¹⁹ In *Ham v. South Carolina*, the Court held that a black defendant, who was a civil rights activist and whose defense was that he was selectively prosecuted for marijuana possession because of his civil rights activity, was entitled to *voir dire* jurors about racial bias.²⁰ In *Ristaino v. Ross*, the Court held that the Due Process Clause does not create a general right in non-capital cases to *voir dire* jurors about racial prejudice, but such questions are constitutionally protected when cases involve “special factors,” such as those presented in *Ham*.²¹ In a plurality opinion in *Rosales-Lopez v. United States*, some members of the Court suggested that trial courts must allow *voir dire* questions concerning possible racial prejudice against a defendant when the defendant is charged with a violent crime and the defendant and victim are of different racial or ethnic groups.²² Additionally,

in a plurality opinion in *Turner v. Murray*, the Court found that defendants in capital cases involving interracial crime have a constitutional right to *voir dire* jurors about racial biases.²³ Broadly speaking, courts have stated that a trial judge must allow a defendant’s request to examine jurors regarding bias “when there is a showing of a ‘likelihood’ that racial or ethnic prejudice may affect the jurors.”²⁴

The North Carolina Supreme Court has recognized that *voir dire* questions aimed at ensuring that “racially biased jurors [will] not be seated on the jury” are proper.²⁵ As early as 1870, the North Carolina Supreme Court found error where the court refused to allow a preliminary question regarding racial bias: “Suppose the question had been allowed, and the juror had answered, that the state of his feelings towards [African American people] was such that he could not show equal and impartial justice between the State and the prisoner, especially in charges of this character: it is at once seen that he would have been grossly unfit to sit in the jury box.”²⁶ However, the North Carolina Supreme Court held in another case that whether to allow questions about racial and ethnic attitudes and biases is within the discretion of the trial judge.²⁷ In *State v. Robinson*, the North Carolina Supreme Court held that where the trial judge allowed the defendant to question prospective jurors about whether racial prejudice would affect their ability to be fair and impartial and to ask questions of prospective white jurors about their associations with black people, the trial judge did not abuse his discretion in sustaining prosecutor’s objection to other questions, such as “Do you belong to any social club or political organization or church in which there are no black members?” and “Do you feel like the presence of blacks in your neighborhood has lowered the value of your property...?”²⁸

Typically, in cases in which the courts have found that inquiry into racial bias was mandated, the issue was whether the trial judge erred in allowing or disallowing such questions. Does it follow that trial attorneys who are conducting *voir dire* have an affirmative duty to inquire into racial bias in order to protect their client’s right to an impartial jury? Is failure to do so constitutionally deficient? Courts have been reluctant to find that failure to inquire into racial

bias constitutes ineffectiveness of counsel. Such a determination would require a showing that a different result would have occurred at trial had counsel inquired into bias, a high hurdle.²⁹ Additionally, courts have been deferential to trial attorneys in light of the strategy judgments they must make in the heat of trial.³⁰ In particular, courts have been reluctant to find that counsel was deficient where the evidence did not explicitly pertain to racial issues.³¹ However, ineffectiveness claims based on the failure to guard against a violation of a client’s Sixth Amendment right when counsel fails to inquire into racial bias may be an emerging area of law.³² In *Pena-Rodriguez*, the court’s description of jury selection suggests that defense counsel failed to thoroughly explore issues of racial bias during *voir dire*. Instead, the defense attorney relied on general questions about potential jurors’ ability to be fair. Justice Alito’s dissent suggests that attorneys should probe more deeply to guard against the influence of bias, and identifies resources that may enable attorneys to do so capably.³³

Conclusion

Precedent from the US Supreme Court supports that there is a constitutional right to inquire into racial bias during *voir dire* where the defendant has been charged with an interracial crime of violence or is raising a claim that he or she was subjected to selective enforcement or selective prosecution on account of his or her race or ethnicity. The right may also exist where racial issues are “inextricably bound up with the conduct of the trial[.]”³⁴ as where the theory of defense involves consideration of racial issues such as cross-racial misidentification, use of racial epithets, or racial biases of a witness. States may choose to offer greater protections than those recognized by the US Supreme Court.

To date, courts have been reluctant to find that failure to explore issues of racial bias during *voir dire* constitutes ineffectiveness of counsel. However, this may be an emerging area of law. Support exists for the proposition that inquiry into bias during *voir dire* is a best practice. For example, Justice Alito noted in *Pena-Rodriguez* that *voir dire* on race is “typically advisable in any case if a defendant requests it,”³⁵ and the US Supreme Court observed in *Ristaino* that “the wiser course generally is to pro-

pound appropriate questions designed to identify racial prejudice if requested by the defendant.”³⁶

Juror bias may be present even in a case in which it is not readily apparent that race is at issue, and it may be both appropriate and advisable for attorneys to inquire into such issues during *voir dire*. In fact, experts have suggested that “juror racial bias is most likely to occur in run-of-the-mill trials without blatantly racial issues,” as jurors are less likely to guard against the influence of prejudice in such cases.³⁷ As Justice Alito observed in *Pena-Rodriguez*, by raising race during *voir dire*, attorneys bring concerns about bias to the jurors’ awareness, which may cause them to correct for implicit racial biases.³⁸ Fortunately, a number of resources are available to assist attorneys in addressing the sensitive topic of racial bias during jury selection.³⁹ *Pena-Rodriguez* and scholarship cited therein indicate that in order to insulate jury deliberations from racial bias, it is advisable for attorneys to become proficient in exploring racial attitudes during *voir dire*.⁴⁰ ■

Alyson A. Grine is an assistant professor at North Carolina Central University School of Law. Previously, Grine served as the defender educator at the UNC School of Government from 2006 until August 2016 focusing on criminal law and procedure and indigent defense education. She continues to work for the School of Government on the Racial Equity Network, a training program for indigent defense lawyers on issues of race and criminal justice.

Endnotes

1. *Batson v. Kentucky*, 476 US 79, 89 (1986).
2. *Pena-Rodriguez v. Colorado*, 580 US ___, 2017 WL 855760 (2017).
3. *Id.*, slip op. at 4.
4. *Id.*
5. NC Gen. Stat. § 8C-1, Rule 606(b).
6. *Pena-Rodriguez*, slip. op. at 2.
7. *Id.*, slip op. at 15-16.
8. *Mu'Min v. Virginia*, 500 US 415, 431, (1991). *See also State v. Conner*, 335 NC 618, 629 (1994) (stating that the purpose of *voir dire* examination “is to eliminate extremes of partiality and to assure both the defendant and the State that the persons chosen to decide the guilt or innocence of the accused will reach that decision solely upon the evidence produced at trial.” (internal quotation marks omitted)).
9. *Tanner v. US*, 483 US 107 (1987). *See also Warger v. Shauers*, 574 US ___, 135 S. Ct. 521 (2014) (finding that even where jurors lie during *voir dire*, the right to

an impartial jury can still be protected via *Tanner* safeguards 3) and 4)).

10. *Pena-Rodriguez*, slip op. at 16 (internal citations and quotation marks omitted).
11. *Id.*, slip op. at 16.
12. *Id.*, Alito, J., dissenting, slip op. at 13-14.
13. *Id.*, Alito, J., dissenting, slip op. at 13 n.9 (citing authorities).
14. *Id.*, Alito, J., dissenting, slip op. at 12 (In footnote 8, Justice Alito identifies *Raising Issues of Race in North Carolina Criminal Cases* as an example of a manual that provides *voir dire* strategies and sample questions; he cites the manual and quotes from it as follows: A. Grine & E. Coward, *Raising Issues of Race in North Carolina Criminal Cases*, p. 8-14 (2014) (suggesting that attorneys “share a brief example about a judgment shaped by a racial stereotype” to make it easier for jurors to share their own biased views), unc.live/2nLgqNI (as last visited Mar. 3, 2017); *id.*, at 8-15 to 8-17 (suggesting additional strategies and providing sample questions)).

Additional resources include: Jeff Robinson, *Jury Selection and Race: Discovering the Good, the Bad, and the Ugly* (unpublished materials from a joint presentation on race and jury selection) (on file with author), bit.ly/2oJOMkR; Cynthia Lee, *A New Approach to Voir Dire on Racial Bias*, 5 UC IRVINE L. REV. 843, 847 (2015) (In this article, Law Professor Cynthia Lee argues “that in light of the social science research on implicit bias and race salience, it is best for an attorney concerned about racial bias to confront the issue of race head on during jury selection.”), bit.ly/2oE3YTq; Jeff Adachi, Motion to Allow Reasonable & Effective *Voir Dire* on Issues of Race, Implicit Bias & Attitudes, Experiences and Biases Concerning African Americans (sample motion), bit.ly/2nc5E6z.

15. *Pena-Rodriguez*, Alito, J., dissenting, slip op. at 13-14.
16. *Morgan v. Illinois*, 504 US 719, 729-30 (1992) (holding that capital defendant constitutionally entitled to ask specific “life qualifying” questions to the jury); *see also Rosales-Lopez v. United States*, 451 US 182, 188 (1981) (plurality opinion) (“Without an adequate *voir dire* the trial judge’s responsibility to remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence cannot be fulfilled.”). *But cf. Mu’Min v. Virginia*, 500 US 415, 425 (1991) (emphasizing extent of trial judge’s discretion in controlling *voir dire* and holding that *voir dire* questions about the content of pretrial publicity to which jurors might have been exposed are not constitutionally required). North Carolina statutes likewise give the parties the right to “personally question prospective jurors individually concerning their fitness and competency to serve as jurors in the case to determine whether there is a basis for a challenge for cause or whether to exercise a peremptory challenge.” G.S. 15A-1214(c); *see also* G.S. 15A-1212(9) (recognizing right to challenge for cause an individual juror who is unable to render a fair and impartial verdict). For a further discussion of *voir dire*, *see* 2 Julie Ramseur Lewis & John Rubin, North Carolina Defender Manual § 25.3 (*Voir Dire*) (2d ed. 2012).
17. *See State v. Conner*, 335 NC 618, 629 (1994) (holding that pretrial order limiting right to *voir dire* to questions not asked by court was error).
18. *Pena-Rodriguez*, slip op. at 14 (citing *Ham v. South Carolina*, 409 US 524 (1973); *Rosales-Lopez v. US*, 451 US 182 (1981); *Turner v. Murray*, 476 US 28 (1986)).

NORTH CAROLINA
COMMUNITY FOUNDATION





We add value to your practice by extending your expertise and helping your clients reach their philanthropic goals.

CALL 800.532.1349
NCCOMMUNITYFOUNDATION.ORG

19. These cases are discussed at greater length in Cynthia Lee, *A New Approach to Voir Dire on Racial Bias*, 5 UC Irvine L. Rev. 843, 852-59 (2015), bit.ly/2p2cfcg.
20. 409 US 524 (1973).
21. 424 US 589 (1976).
22. 451 US 182 (1981). *See also Aldridge v. United States*, 283 US 308 (1931) (reversing black defendant’s conviction for murder of a white policeman where trial court refused to ask prospective jurors whether they held racial prejudices).
23. 476 US 28 (1986).
24. *Turner*, 476 US at 40 (Brennan, J., concurring in part and dissenting in part) (stating that the court had declared this principle in *Rosales-Lopez*, 451 US at 190).
25. *State v. Williams*, 339 NC 1, 18 (1994) (holding there was no error in a capital case involving a black defendant and a white victim, when, during jury selection,

CONTINUED ON PAGE 27

New North Carolina Law Allows Fiduciaries Access to Digital Assets (But Only If...)

BY JEAN GORDON CARTER

If someone dies or becomes incompetent, what happens to their digital assets? Who can legally access their email and handle it properly? Do their social media accounts remain forever open accepting content and sending cheery messages about the decedent? How does an executor identify digital assets, value them, pay taxes on them, and ultimately distribute them to the rightful heirs?

Until recently there were no easy or practical answers to these questions. Digital assets are controlled by their terms of service—the original contracts created when someone set up their digital accounts—the contracts they seldom read, but simply clicked, “I accept.” Those contracts generally protect privacy by not allowing legal access to others, and not dealing with death or other life events preventing an individual from controlling his own digital assets. Let’s face it, when Facebook was originally set up, it is unlikely anyone focused on the users eventually dying.

For years the fate of digital assets has remained in limbo. First no one recognized the problem. Next there were a few inadequate laws. Eventually life took over—people died—and many people recognized the problem, but reaching a way to deal with the issues, considering both the providers and legal representatives, took time. Finally in 2015 all parties at the table agreed on a compromise.

In 2016 North Carolina joined the majority of the states considering this problem and enacted the Revised Uniform Fiduciary Access to Digital Assets Act (Session Law 2016-53)



(RUFADAA) allowing North Carolinians to determine who can, or cannot, access their digital assets. Based on the individual’s decisions, fiduciaries can now access digital assets to handle them appropriately. Those fiduciaries include executors, agents, trustees, and guardians.

Specifically, North Carolinians can provide directions in their wills, powers of attorney, trusts, or other records telling digital asset custodians to disclose (or not disclose) their digital assets to their fiduciaries. Importantly, individuals can use online tools for each of their digital assets, where available, to direct their digital asset custodians on handling their digital assets under various circumstances, such as death, or designating who has various powers over their digital assets, known as a designated

recipient. Under the new law, those online tools actually take precedence over instructions in a will, power of attorney, or other such legal document or record.

If an individual has not specifically consented to allow his fiduciaries to access his digital assets, then his fiduciaries may still be able to access the catalogue for them—for example the “to/from” lines on emails, though this access may require additional information, and even court findings. Access to the content (substance) of digital assets is more difficult and is allowed only if the individual consented in an online tool, will, or other legal document. Even then the custodian may require further evidence and court findings before granting access. With proper evidence, fiduciaries can also terminate digital accounts.

Once the fiduciary provides the required information, the custodian has 60 days to give access, can provide access in various ways—actual access or a “data dump”—and may charge for this service. Custodians do not need to disclose digital assets deleted by the actual user. And this law does not apply to “employee” digital assets.

This new law puts the burden on individuals to direct who can access their digital assets, either using an online tool or in their legal documents. As a compromise between estate planners who wanted automatic access to all digital assets and the digital providers requiring more privacy safeguards (and arguably protection for themselves), the law is not a complete cure for the problems with digital assets. Still, this new law greatly improves the situation surrounding digital assets and fiduciaries needing access to them.

The most important point of this new law is that people need to use online tools, which digital custodians are increasingly providing, to give directions on how they want their digital assets handled, overcoming those original terms of service no one reads. Further, people should consider complementing those online tools with instructions in legal documents, including their wills, powers of attorney, and other documents saying how to handle digital assets after death or incompetency, including designating who receives those digital assets and can handle them.

Many practitioners are now using a stand-alone form for digital asset consent much like the HIPAA Consent many estate planners use. An example of language for a stand-alone consent follows. The original of this language began with a form prepared by James D. Lamm, an attorney in Minnesota, who has been very active in digital asset law development. It is used/adapted with his consent.

Digital Assets—Authorization and Consent for Release

I hereby specifically authorize and direct any custodian, person, or entity that possesses, custodies, or controls any electronically stored information or digital assets of mine (including jointly owed with me) or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to my then-acting fiduciaries at any time: (1) any electronically stored information of mine; (2) the contents of

any communication that is in electronic storage by that service or that is carried or maintained on that service; (3) any record or other information pertaining to me with respect to that service; (4) any digital asset of mine; (5) any user account of mine; (6) any electronic communication of mine; (7) any computing device of mine; (8) any data storage device or medium of mine; (9) any record or other information pertaining to me with respect to such items; and (10) any assets similar to the preceding as currently exist or may exist as technology develops, including both the catalogue and content of each of the preceding items.

The term “fiduciaries” includes an attorney-in-fact or agent acting under a power of attorney document signed by me, a guardian appointed for me, a trustee of my revocable trust, and a personal representative (executor or administrator) of my estate. Other terms used in this authorization are as defined in Chapter 36F of the General Statutes of North Carolina. The terms used in this authorization are to be construed as broadly as possible.

This authorization is to be construed to be my lawful consent under all applicable laws, including but not limited to, Chapter 36F of the General Statutes of North Carolina; the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; and any other applicable federal or state data privacy law or criminal law. This authorization is effective immediately. Unless this authorization is revoked by me in writing while I am competent, this authorization continues to be effective during any period that I am incapacitated and continues to be effective after my death. Unless a custodian, individual, or entity has received actual notice that this authorization has been validly revoked by me, that custodian, individual, or entity receiving this authorization may act on the presumption that it is valid and unrevoked. A custodian, person, or entity may accept a copy or facsimile of this original authorization as though it were an original document.

This _____ day of _____, 20____.

[NOTARY FORM]

If this stand-alone consent is used it might be complemented by language in the will, power of attorney, etc.—or at least a short version of it, such as the following:

If at the time of my death I am a user of an account or otherwise have digital assets, then pursuant to the North Carolina Revised Uniform Fiduciary Access to Digital Assets Act, I hereby expressly consent to the disclosure to my executor of any or all of my digital assets, including their content and catalogue. Such disclosure shall be presumed to be reasonably necessary for the administration of my estate. My executor may exercise all powers that an absolute owner would have and any other powers appropriate to access, manage, control, value, distribute, and delete the items referenced above, including employing any consultants or agents to assist in accessing, decrypting and handling them.

Whether or not an individual has used online tools, or provided for digital assets in his documents, the time will come for some fiduciary to handle those assets. A fiduciary facing that situation needs to do as fiduciaries have always done—look for clues on what digital assets the individual has, and act to handle them. This work is easier if the decedent has provided for digital assets up front—including an inventory of digital assets—but in any event, the fiduciary has to act in a prudent manner to protect the value of the digital assets, report them as required by law, and convey them to the rightful heirs. Also, the fiduciary might want to terminate accounts to avoid embarrassment or even identity theft. A fiduciary cannot hide behind a lack of knowledge of digital assets, and should get appropriate professional help as needed.

Unfortunately, RUFADAA will not help fiduciaries handle digital assets in all cases, but it will help in some cases, particularly if the person provided for his own digital assets.

Digital assets live forever. People don't. This new North Carolina law helps solve this problem, but only if people take advantage of it. ■

Jean Gordon Carter is a partner in the Raleigh office of McGuireWoods LLP.

This article originally appeared in the February 2017 edition of “The Will & The Way,” the newsletter of the North Carolina Bar Association’s Estate Planning & Fiduciary Law Section.

Juvenile Defenders Reflect on Their Careers and 50 Years Since

BY ERIC J. ZOGRY

This year marks the 50th anniversary of the United States Supreme Court decision *In re Gault*. Gerald Gault was a 16-year-old adjudicated and confined for making an illicit phone call to an elderly neighbor.

Gerald was given no notice of the charges, no attorney, no opportunity to cross examine witnesses, and not informed of his right to remain silent when speaking to authorities. The Supreme Court determined these rights apply in juvenile delinquency court, firmly establishing the rule of law and due process.

To commemorate this anniversary, the Office of the Juvenile Defender interviewed several juvenile defense counsel from around the state to tell their story of how they became defenders, what inspires their practice, and their reflections on the 50th anniversary of the *Gault* decision.

Q: How did you first become involved in the practice of delinquency law?

Barbara Fedders, assistant professor at UNC School of Law, director of Youth Justice Clinic: I was aware from my early 20s that my younger brother, but for his race (white), class (middle), and location of our birth (suburban) would have been involved in the juvenile and likely criminal systems. The galling inequality of class and race priv-

ilege that animates our systems was an early source of motivation for me. Once I went to law school, I took a clinic with Randy Hertz and was hooked—here was an opportunity to work for racial justice and also be a litigator. I love criminal procedure and love being an advocate.

Mary Stansell, juvenile chief, Wake County Public Defender Office: I have always worked with at-risk kids. With a BA in psychology, I spent my first life as a youth counselor at a Boys & Girls Club and the Iowa State Training School, and then I was a child protective service investigator/social worker for Lee County Department of Social Services. That drove me to law school in my 30s with intentions of hanging out a shingle as

a guardian *ad litem* lawyer to protect kids. I ended up in the district attorney's office for ten years working on family crimes (domestic violence, child abuse, sex crimes, etc.) and in juvenile court. So I naturally jumped at the opportunity to do nothing but juvenile defense. I believe my whole life has prepared me for this job.

Sabrina Leshore, attorney at Leshore Law Firm, PLLC, and executive director of CROSSED, Lumberton: My initial involvement with the practice of juvenile law was during my first year of law school. I interned with NC Child, formerly known as Action for Children, NC. During the internship I learned about the different policies and shortcomings involved in juvenile law.



©Stockphoto.com

Starr Ward, juvenile defender in Guilford County: I have practiced criminal law for over 12 years as both a public defender and as a private attorney on the court-appointed list. Over the years I have handled every type of criminal case ranging from speeding tickets to first-degree murder. After leaving the public defender's office six years ago, I was approved to be on the juvenile appointed list.

Mitchell Feld, director of Children's Defense at the Council for Children's Rights, Charlotte: I interned with the council in the summer of 2007. It was an amazing experience working with and learning from a group of experienced attorneys that had a passion for working with children. I was able to handle cases in court, develop rapport with children that I saw multiple times during the summer, and learn a tremendous amount about criminal and juvenile law. After that summer I made it my mission to return to practicing in this area after passing the bar exam.

Q: Is there anyone who has influenced your practice? If so, how?

Barbara Fedders: Randy Hertz and Bernardine Dohrn—amazing mentors, brilliant lawyers. Bryan Stevenson because of his passion and commitment. James Bell because of his insistence on speaking truth about white supremacy and the juvenile court.

Mary Stansell: A defense attorney in Harnett County when I was prosecuting was a wonderful mentor in the law practice. He taught me to "ALWAYS do the right thing" (then you don't have to worry about your Bar license). I believe that it helped me to see just how powerful the prosecutor's position is and to not abuse my power as an ADA. He also taught me the importance of being more compassionate with our clients (whatever side you work on, people in court are in crisis), and not to get so complacent in what, to me, is just another day in court, but to whomever I am representing is a rare, crisis situation.

I have too many mentors to name, because I believe that when we quit learning, we start to die.

Scott Dennis, associate at Bringewatt & Snover, PLLC, Lexington: Jerry Stainback, who approaches a case with the tenacity and stamina of a boxer, has an ability to tap into the reasonableness of a community, and has class towards the other side.

Sabrina Leshore: There are many people who have influenced me to practice juvenile law. First, Brandy Bynum inspired me to pursue a career as a juvenile justice advocate as I

helped with the 2011 grassroots NC Raise the Age campaign. Following my interactions with Brandy, I interned with Mary Stansell at the Wake County Public Defenders' Office, Juvenile Unit, where I learned how to use legal strategy and passion to effectively represent youth. Finally, I interned at the NC Office of the Juvenile Defender with Eric Zogry who helped me to feel comfortable and confident in my skills and ability to effectively act as a juvenile justice leader in North Carolina.

Starr Ward: I really look up to my parents. They have been a tremendous influence in my life and they continue to support me daily. During my formative years, my parents constantly pushed me to succeed academically and provided opportunities for me that shaped me into the person I am today. In the juvenile court system, some families need additional support and I try to find resources that can help fill gaps in the child's life. I am hopeful that, with the support of the juvenile court system, these children can have someone advocating for them like my parents have done and continue to do so for me.

Q: What do you find most rewarding about practicing in juvenile court? What do you like least about practicing in juvenile court?

Barbara Fedders: I like forming relationships with kids. The lawyer-client relationship is unique and special. What I like least is how little impact court involvement has on a kid, how meaningless the court proceedings typically are to kids.

Mary Stansell: Definitely the most rewarding part of my practice is the kids that I am actually able to connect with and counsel into a better life.

Scott Dennis: Most rewarding? I generally just enjoy working with children. Each client has a tremendous capacity for good, and they need you to believe in them. I generally believe that people become what they are told they are. It is your job to advocate for that child and to let them know how important he or she is.

Like least about practicing? I'll keep this simple. All clients can be frustrating from time to time.

Sabrina Leshore: The most rewarding component of practicing in juvenile court is having the privilege to speak with the youth and deposit seeds of hope into them. When I interact with the juveniles, I am afforded the opportunity to share the similarities that I observe between myself and the young per-

son. This interaction provides them with the ability to see past their dismal situations and look towards a brighter future. I also enjoy advocating for them in open court to illustrate that someone is fighting for their rights.

What I like least about practicing in juvenile court is the stigma that other stakeholders place on the juveniles. Instead of promoting hope and a second chance, juvenile court seems to sometimes promote hopelessness and a disregard for rehabilitation.

Yolanda Fair, assistant public defender, Buncombe County: I like to see when clients are successful on probation and are "publically celebrated" in the courtroom. One of the biggest challenges is the concept of "reasonable doubt" and that one is "innocent until proven guilty." This is especially difficult when, during the intake process, information gets revealed when it wouldn't be in the adult criminal process.

Mitchell Feld: The children who I represent every day are the most rewarding part of practicing in juvenile court. They make it fun, worthwhile, and provide so much meaning to doing this work every day.

The part I like least about practicing in juvenile court is that while we have made progress on a number of issues to improve outcomes, we still have a long way to go.

Q: How has the *Gault* decision impacted your daily practice or philosophy of practice?

Barbara Fedders: *Gault* made clear that parents and probation officers, no matter how well intentioned, cannot protect a child's legal interests. That part of the holding is critical because it belies the misguided notion that the juvenile court's supposedly rehabilitative mission means that adversarial proceedings with zealous defense counsel are not essential.

Mary Stansell: It gives legal mandate to my plea to make children's rights actually matter, to insist that judges do their job and weigh legal issues (rather than find them guilty simply because "we are just here to get them help").

Sabrina Leshore: The *Gault* decision helped to solidify the notion that juveniles facing an adjudication of delinquency and incarceration are entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment. Because of this decision, I make sure that I zealously advocate for my juvenile clients through preparation and communication with each one of the juveniles I represent.

Starr Ward: The *Gault* decision gave juve-

niles the right to the assistance of counsel in all court proceedings. The ability to have quality legal representation without regard to financial ability is the cornerstone of my practice and why I do public defense work. Juvenile defendants are real people and their cases have real consequences on their lives. It is essential that they have an advocate to lead them through the system, explain their rights, and counsel them on the impacts of their decisions. The right to effective legal representation is not limited to the elite few with large disposable incomes. The children we see in juvenile court are the future, and our society bears a collective responsibility to reach these children and to attempt rehabilitation so these kids can avoid becoming part of the adult prison system.

Mitchell Feld: The *Gault* decision has increased my passion to tell others that children have the same rights as adults do. People tend to be very quick to say “well, it’s just a child” or “they’re a child so they won’t know what to decide.” Minimizing children and treating them like second-class citizens causes me to fight even harder for them to be treated like anyone else.

Q: What is the most important lesson that you learned while practicing in juvenile court?

Barbara Fedders: “I am only one, But still I am one. I cannot do everything, But still I can do something; And because I cannot do everything, I will not refuse to do the something that I can do.” (Edward Everett Hale)

Mary Stansell: The resiliency of children’s hearts. That I must keep a hopeful and encouraging attitude with each and every child I work with because I never know which ones will “make it” and which ones won’t. And it’s not for me to decide that by giving up on any one of them.

Scott Dennis: There are so many. 1) Get your client on your side early and often. There are layers of distrust within the system: of publicly appointed lawyers, of court counselors, and through cultural disconnects. This starts in the secured custody hearings. They need to see you fighting as soon as you have enough information to be competent to do so. 2) If you are able, get your client out of secured custody as fast as you can. The more exposed they are to children in crises, the more negative lessons they learn. Also, I generally believe that the longer children become accustomed to secured custody, the more comfortable they become with the idea of returning. 3) Take

time with your client. Use the performance guidelines in the *Juvenile Defender Manual* and educate them about the process and the consequences. Tell them what you are going to tell them, tell them again, and then tell them what you told them. Have them repeat some of the information back. Know also that many of our children have learning disabilities. 4) Learn about the resources that your community offers. This will help scale back over-the-top proposals by district attorneys and court counselors, and, if your client admits or is adjudicated, you will be able to propose something positive that your client can reasonably accomplish.

Sabrina Leshore: I cannot allow the opinions of others in the courtroom sway how I make legal decisions for my client. Although others may look at my strategies as overly zealous or overly ambitious, I must continue to have the courage to stand up against adversity in the courtroom because my job is to help my client fight through the chatter of the adverse parties and advocate on their behalf.

Starr Ward: Patience. Because the juvenile system closely monitors the children on probation, juveniles who have serious issues at home and school are likely to violate their probation. As anyone with children of their own will understand, juveniles do not always get it right on the first try.

It is important to keep looking for resources and additional ways to help your juvenile client. Unlike adult work, even when one charge is disposed of, generally the same attorney is appointed for violations or new charges. It is imperative to get to know your juvenile client on a personal level and to build a relationship with their guardians and support system. I strive to never give up on my kids and to always look for additional options.

Yolanda Fair: I learned that you can’t make assumptions about the child’s ability to manage probation. Different things motivate different kids. And you can’t predict success—those clients that you think will struggle often succeed, and those who seem destined for success struggle.

Mitchell Feld: Be grateful. Be humble. Be simple. The children we help every day have lived difficult lives, experienced situations none of us can imagine, and try to make the most out of any situation. It is very easy in our technology-driven world to have unreasonable expectations of others, forget the meaning of personal interaction, and always want more. We need to meet our clients where they are,

understand where they came from, and help them get to where they want to be.

Q: What would you tell the next generation of defenders?

Mary Stansell: Being a part of saving a kid contributes to all of humanity because they are our future. It can be very emotionally empowering work (when you get through to a kid), but it can also be VERY depressing on a day-to-day basis having to watch “the system” grind kids up and destroy their hope and futures. But I would also stress the importance of keeping your perspective and balance in life. You can’t save every starfish in the sea. Put in the long hours, go the extra mile, but also go home and appreciate your own family.

Scott Dennis: You are the bridge between your clients’ worst moments and their way out. They need you to believe in them, and they need to know that they are worth fighting for, no matter how many hard-headed comments they make, and no matter how many barriers of trust exist.

Sabrina Leshore: Don’t be surprised if a juvenile recidivates. Use each interaction as an opportunity to sow another seed of hope. Continue to fight just as hard as you did the first time you were retained or appointed to represent them.

Starr Ward: I would tell the next generation of public defenders that while this job is stressful, it is all worth it. I think often of the parable where a boy walks along the shoreline and tosses a starfish back into the ocean after it has been washed ashore. A man asks the boy why does he bother as there are many beached starfish and he cannot possibly help them all. The boy replies, but for that one starfish, I made a difference. While every case may not go the way you want it to go, and not every juvenile client becomes a success story, doing this type of work allows you the opportunity to truly change the course of a young child’s life.

Yolanda Fair: Don’t be afraid to challenge the status quo. Don’t accept when the court treats different clients with the same conditions—make sure to advocate for your client’s specific needs. This court is not “kiddie court” or “criminal court lite”; the penalties and punishments can have real consequences and impacts.

Mitchell Feld: Be creative. We will only raise the bar on juvenile court if we continue to push the limits. It will be easier to raise the

CONTINUED ON PAGE 25

Lawyers in the Legislature

BY N. LEO DAUGHTRY

From the beginning of our state, lawyers have played a critical role in the North Carolina General Assembly. Citizens have depended on lawyers to take on the responsibility to lead the legislative branch of government. The statistics bear out how lawyers have served. Currently there are 21 attorneys in the house (17.5% of the members) and 11 in the senate (22% of the members). Over the years, the numbers have certainly declined. In 1971 there were 46 lawyers in the house (38%) and 22 in the senate (44%). Even though there has been a marked decrease in the number of attorneys serving, the predominance of lawyers in the state legislature remains; and lawyers therefore assume a major responsibility for both the successes and failures of the legislative branch.

There was a time when North Carolina was essentially a one-party state. Once a candidate was selected by the party, he or she had essentially no opposition. Judicial candidates were basically selected by the bar in their respective judicial districts. The judges then ran statewide, generally unopposed, enabling them to be independent.

In recent years we have increasingly become a two-party state. Although this is a positive development, it has had serious repercussions for the judicial branch. Judicial candidates must mount vigorous campaigns for election and have gotten caught up in partisan politics, which creates a great danger for the judicial branch. A good example is *Stephenson v. Bartlett*, the redistricting case that ended up in the Supreme Court. The decision was 5-4, a split right down party lines. Because of this decision, funding to the Courts was sharply curtailed. Since then things have not gotten any better with the emphasis remaining on controversial social issues. We need lawyers in the legislature to prevent the infection of par-

tisanship in the judiciary by educating non-lawyers on the best way to make the judiciary function as it should—as independent and as free of politics as it can be.

When our government was formed, the judicial branch was the weakest of the three. The legislative branch controlled the purse strings and the executive branch controlled the sword. The judiciary was left with the responsibility of its courageous judges making difficult decisions. That is why our wise forefathers made sure judges—at least on the federal level—were appointed for life.

It is up to the lawyers in the legislature to ensure that the judiciary has enough funding to remain a strong and viable third branch of government. Furthermore, lawyers are uniquely advantaged to understand the judicial system and to craft and advocate for laws to protect its independence. Lawyers play a vital role with skills and knowledge only they can offer.

We need lawyers in the general assembly who can spot subtle issues that may, in the long run, adversely affect our citizens. Lawyers are taught to identify issues. Lawyers are trained to be skeptics, to look at all sides of an issue, and, in order to protect clients, identify the worst possible construction and outcome of any proposal. Lawyers have a unique skill that allows them to see the unexpected consequences of a well-intentioned bill. Those who practice law understand how a few word choices can lead to results never intended. In addition, we need lawyers in the general assembly who have practiced law and understand the intricacies of family law, corporations, criminal law, taxation, and many other areas that may benefit special interest groups who often work through their lobbyists to influence legislation to suit their needs. And, their needs may not be the best for the state.

Lawyers interact with all segments of society while providing legal services. Their work

makes them acutely aware of the ways in which a law impacts the lives of all citizens. Lawyers have an understanding deeper than that provided by the news media or those who have the loudest voices. A good example of this is the strong desire for tort reform. Most members of the general assembly believe there are too many lawsuits, too many runaway juries, and too many trial lawyers that manipulate the system for their own personal gain. We need lawyers in the general assembly to explain that our courts must be able to redress the wrongful acts and the individuals who commit them. The high profile cases generally have facts that support their results—facts that are not explained or understood. Lawyers help educate other members of the general assembly.

Governing ourselves is a high calling, but most difficult. Lawyers have been taught to vigorously advocate for their position, but to do so in a manner that is respectful and cordial. Lawyers have been trained to look at all sides of an issue, understanding that there can exist two competing, good reasons for a decision. Because of this training, they can more easily respect an opposing argument—even while disagreeing with it. We need this in the general assembly. We need lawyers who know how to mediate, how to compromise, and how to come up with a negotiated solution that may not be their ideal but nonetheless is workable and prevents stalemate. If we are to effectively govern ourselves, we need lawyers in the general assembly now more than ever. We need you. ■

In 1969 Leo Daughtry founded Daughtry, Woodard, Laurence, & Starling in Smithfield, North Carolina, as a sole practitioner. He became active in politics in 1976 and was elected to the NC Senate in 1989. His political career has expanded to both the NC Senate and the NC House of Representatives.

Honesty is the Only Policy

BY G. GRAY WILSON

While caught in the throes of a nine-week jury trial last year, I read with interest the latest “vanishing

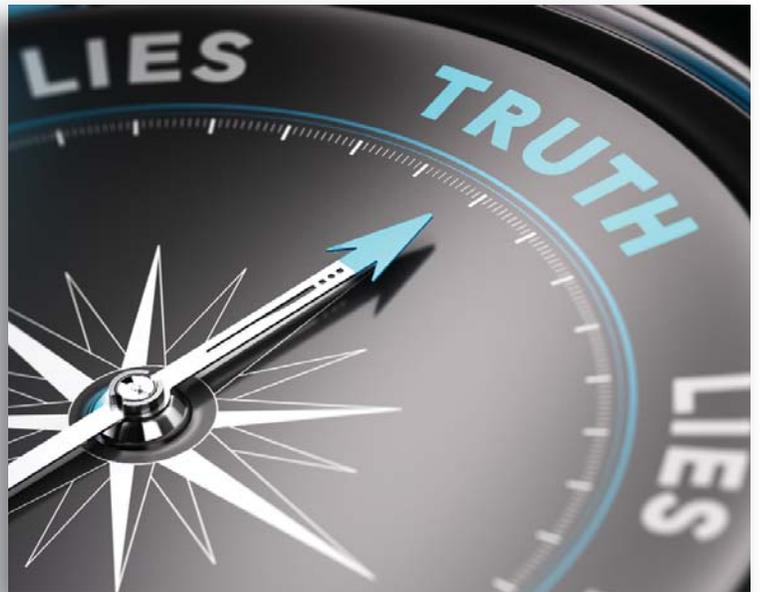
jury” op-ed in the *Texas Bar Journal* (March 2016) entitled “Honesty is the Best Policy.” As with other professional lamentations over the alleged “near extinction of the jury trial,” this piece

proposes, “It’s time to disclose lack of jury trial experience.” The authors (one a law school professor, the other an AUSA) opine that a litigator can hardly evaluate or settle, much less try, a case without the gold standard of courtroom experience with a venire. They appropriately recommend that an attorney has an ethical obligation to inform a client of a lack of jury trial competency (“Honesty is a virtue easy to extol, easy to rationalize, and hard to practice.”), but candor in the attorney-client relationship makes eminent good sense, and last time I checked, the North Carolina State Bar Rules of Professional Conduct require that lawyers not undertake matters they are not qualified to handle.¹

But while seconding the laudable position that an attorney must own up to the client when the skill set is simply lacking, I have to exude just a little *schadenfreude* by noting that nothing pleases me more than to have a litigator (as opposed to a trial lawyer)

oppose me in court when the clerk starts seating jurors in the box. No trial lawyer worth his or her salt has not experienced the relief of facing an arrogant opponent, who has wreaked havoc in pleadings, pretrial motions, and discovery, only to show up in

front of a jury with no earthly idea about how to try a case. If that sounds familiar, then the Texas authors have a very good point. As “Dirty Harry” Callahan expressed in the movie *Magnum Force*, “A man’s got to know his limitations.”



©iStockphoto.com

But even before getting to the courtroom for trial, the litigator is at a disadvantage against a seasoned trial attorney. Without jury experience, a litigator is at a loss to know what discovery to pursue and how, for the purpose of marshalling the evidence for a jury. Similarly, a litigator may lack the ability to assess a case objectively for settlement value for the same reason. The Texas article makes both of these points more eloquently, but the bottom line is, why would anyone ever settle a case with an opponent who cannot sell it to a jury?

The specter of lawyers bungling jury trials is hardly a recent phenomenon. The more intriguing question is whether the premise of the Texas article is sound. The opinion opens: "The days of the trial lawyer are essentially gone...Trials themselves are essentially gone as well." Pointing to a number of factors that have contributed to the demise of this institution and its legal cowboys, the authors posit alternative dispute resolution as the wave of the future. They may well be correct, but trial lawyers are not quite dead yet in North Carolina, and I suspect that is the case in many other pockets of resistance around the country where high-stakes disputes are still settled the old-fashioned way.

For example, in this jurisdiction, a jury trial is still mandatory in certain instances. Will caveats require that a jury pass on the validity of certain testamentary instruments, and the caveat procedure (if not the decedent) is alive and well here.² The clerk of court may also require that 12 citizens pass on whether or not to send Uncle Ernie to the funny farm in incompetency proceedings.³ And until recently, all felony cases in the criminal arena had to be tried to a jury. Predictably, since that statute was amended in 2014 to permit such trials to occur before the bench (except where a death sentence may be sought),⁴ there have not been many takers from the ranks of the accused. Motor vehicle personal injury and medical malpractice cases still command the bulk of the jury docket in civil court, with the stakes ranging from \$25,000 to \$25 million. Certainly the number of jury trials has shrunk dramatically over the past generation, but in response so has the roster of trial attorneys. Hence, I occasionally get asked to go try a case before a jury on as little as two to six weeks' notice by some law firms that lack trial lawyers in their own ranks.

It has been said that when a case is tried to a jury (or any other fact-finder for that mat-

ter), it means that one side or the other has miscalculated (i.e., usually the attorney of record). That may be true, but juries also make mistakes, and to that extent remain unpredictable even to the most intuitive of counsel, not to mention the jury consultants hired to do the background work. The recent prime-time drama *Bull* may offer great entertainment in this regard, but as the title suggests, the premise of the series is equal parts psychobabble and fiction. And yes, psychopaths can end up on juries also, not to mention the more harmless but otherwise emotionally unstable (I mean, there are only so many challenges in this world), and trials can be sheer sport for the mentally deranged or just plain malevolent personalities. My nine-weeker ended with a hung jury, 11-1 in my favor, hardly something to write home about, but I will take a mistrial over a clean kill any day. The holdout was a sleeper, a rogue juror no combination of technology and empirical savvy could divine before both sides passed on that one. Who can really say that one juror dines on cornbread and buttermilk, while the other prefers a diet of Lorazepam and Zoloft?

So juries can go off half-cocked on matters no one ever contemplated for reasons unrelated to the evidence (e.g., the color of the socks or tie a male attorney sports, stiletto heels on a woman attorney, whether the judge twirls his hair while listening to the case, how the bailiff interacts with jurors outside the immediate courtroom, what anyone had for lunch, an uncomfortable chair, etc.), but that is part of the package. A mediated settlement conference can end with both sides unhappy over the result, avoiding jury roulette, but not all cases are designed for such Solomonic resolution. Sometimes corporate fraud, government corruption, and individual skullduggery need to be addressed by more than a brokered pay-off, i.e., justice should be more than just the price of doing business. Juries can demonstrate amazing collective wisdom and human decency on occasion; not all of them board a runaway train.

So, they usually get it right, if the lawyers are competent and play it straight and the judge is capable and fair. Having tried close to 300 cases in my career, I have seen only a handful of genuine miscarriages, perhaps one or two rivalling the Stalin show trials of the 30s. This database is a testament to the value of a trial by one's peers (or at least a sampling of humanity drawn from the local communi-

ty). As I wrote back in 1989:

The decision to opt for a jury trial must be made during the pleading stage of a case. The skilled practitioner must consider a variety of factors, including the nature of the suit, the complexity of the legal and factual issues involved, the demographics of the forum county, and the tenor of the local judiciary. Judges are often reluctant fact finders, and many do not relish the role of trier of fact that is sometimes thrust upon them. The lay notion that a bench trial lacks the unfairness, unpredictability, and confusion of a jury trial is not borne out by experience. History teaches that a jury can best settle factual controversies, and a jury should therefore not be dispensed with lightly. When any doubt exists, the better practice is to demand a jury.⁵

The only remaining unanswered question is, of course, how one develops the skill to be a trial lawyer in this age of diminishing opportunity. Many law schools offer trial advocacy courses with mock jury trials, often pulling practitioners from the local bar to serve as adjunct professors in this regard. I have also participated in some of the national programs that offer instruction in trial advocacy. I confess that these can be poor substitutes for the real deal, but they may be a good start. I was thrown into the fray early on when fender benders could be tried to a jury in a day, and the stakes were often under five figures. But I also did a lot of second-chair work watching some of the legendary trial lawyers in this state strut their stuff in the courtroom. Great mentors make great trial attorneys, and I am indebted to those who took the time to teach me their craft. I may never be their equal, but I will always be up for the challenge. ■

G. Gray Wilson is a senior partner with the law firm of Wilson & Helms LLP in Winston-Salem, and is currently the vice president of the North Carolina State Bar.

This article originally appeared in the Spring 2017 edition of the Journal of the American College of Trial Lawyers.

Endnotes

1. NC Rules Prof'l. Conduct Rule 1.1 (2003).
2. N.C.G.S. § 31-33(a).
3. N.C.G.S. § 35A-1110.
4. See N.C.G.S. § 15A-1201 (2014).
5. G. Wilson, *NC Civ. Proc.* (1st ed. 1989).

Trial by Nature—Courtroom Lessons to Live By

BY TRICIA M. DERR

David Attenborough's voice is more distinguishable than his name or appearance. Writer and narrator of wildlife documentaries such as *The Blue Planet* and *Planet Earth*, Attenborough is considered the “father of the modern nature documentary.”

Attenborough films display and explain the natural behavior patterns of the animal kingdom. Breathtaking scenes are interposed with Attenborough's buttery-sage British commentary.

The prosaic message is larger than life. Existentially, you realize “survival of the fittest” does not only apply in the wild. After all, humans are animals too. The courtroom is simply another iteration of habitat. The laws of Mother Nature supersede the laws of man. Mother Nature doesn't care if you are on the African plain or in Courtroom #6150.

Smart trial lawyers are well-versed in the laws of man. Brilliance in the courtroom, however, demands appreciation of the laws of man and the rules of Mother Nature. Over the years, I've collected a few examples of Mother Nature's lessons worthy of courtroom consideration. Here are my top ten.

Lesson #10: When Danger Calls, Face It with an Attitude

The frilled-neck lizard of Australia appears to be ordinary—until you scare it. When threatened, this lizard raises up on its hind legs and fans a bright red frill around its neck, velociraptor style. The display is spectacular enough to frighten a wild dog into a tail-tucked retreat. It has no venom or sharp teeth; it just acts like it does.

I first saw the “frilled lizard technique” in



©iStockphoto.com

the courtroom while trying a case against a highly reputable attorney (“Famous Lawyer”). Knowing who we were up against, we worked tirelessly to prepare our star expert for what would certainly be a brutal cross-examination.

At trial, our expert killed it. He was incredible. He handled Famous Lawyer beautifully. It took every bit of restraint not to stand up and holler, “BOO-yah!”

Glancing away from our expert over to the jury box, I realized the jurors didn't share my enthusiasm. We thought our expert was awesome, but the jury didn't look the least bit entertained. They just sat there looking not at our expert, but at Famous Lawyer!

It was the “frilled lizard technique.” Famous Lawyer knew he was getting crushed. Yet, instead of retreating, he puffed his chest and raised his bright frill. Smiling and nodding along with the expert, he acted like he was winning. His confidence was palpable. I honestly don't know whether the jury thought Famous Lawyer annihilated our expert or, worse

yet, if our expert was actually his witness. Either way, Famous Lawyer scored points that day, and I learned a valuable lesson.

Lesson #9: Display Matters

The phrase “odd bird” doesn't come close to describing the bird-of-paradise. It looks like a little black bird most of the time. However, during mating season, the male bird puts on a dazzling display of color, sound, and dance in his effort to find a mate.

He prepares his stage with diligence. “Everything must be spic and span,” Attenborough recounts. The bird clears debris and meticulously places foliage for maximum effect.

When a female nears, the performance begins. He bobs and clicks. He serenades and struts, displaying abundant color and personal style. She observes, deciding if she is “in the mood” or not. The show means everything for his legacy.

As trial lawyers, we know exhibits are

important, but what about the rest? Your stage and your stage presence are as important as the display.

The superb bird-of-paradise gives us solid pointers on theatrics:

- Keep your area crisp and clean. Counsel tables are “on stage” too. Clutter sends a message of disorganization.

- Know your setup. Sit in the juror seats in advance to view your exhibits to be sure they are readable. Don't forget the judge.

- The bigger the better. Tiny highlighted words on an overhead projector are not as compelling as graphic illustrations with large font callouts.

- Color matters. Bright colors are easier to read and can convey the importance of key wording and images.

- Practice, preparation, and presence are essential.

- Honest drama works. Believe in your case and be genuine. Fake tears are a turnoff.

- Being different captures attention. Innovative presentations are rarely forgettable.

- Integrate sound, body language, and visuals. A great graphic is no good if the narrator mumbles. A concise explanation is less impactful when presented with reclusive body language.

The survival of the superb bird-of-paradise relies on the success of the male bird's display. Don't get me wrong, facts matter. However, never underestimate the importance of theatrics. Your legacy might depend on it.

Lesson #8: Stereotypes Are Dangerous

Elephants can swim—even the really big ones. Weighing up to 24,000 pounds, these magnificent animals are impressive in the water. The trunk becomes a snorkel. Huge feet transform into diving fins. While they lumber awkwardly on land, they glide effortlessly in water.

I've been lucky enough to meet and to observe many fantastic trial lawyers. Some have big personalities and extroverted style. Others can barely carry on a social conversation (or prefer not to).

Great trial lawyers do not have defined characteristics or specific traits. You don't have to look a certain way or have a certain personality to be effective. You don't even have to have good grades in law school or graduate from a specific program. You have to be honest, genuine, deliberate, and prepared.

On the other side, when sizing up your

competition, never ever assume your opponent won't be good in the courtroom because of your own biased viewpoint. Don't assume a young lawyer won't be a worthy opponent, or a senior lawyer won't have the stamina for a long case. Never prejudge the man as the attorney and the woman as the secretary, or expect the minority attorney to be defending the criminal case rather than prosecuting it.

Prejudging risks underestimation. Being underestimated provides a potent advantage. Adept counsel focus on the facts and not the opposition. Exceptional lawyers expect Famous Lawyer to show up every time.

Undoubtedly, you have heard “elephants never forget.” Along those lines, lawyers should never forget that elephants can swim, even if they don't look much like fish. In litigation, preconceived notions are often illusory and generally destructive.

Lesson #7: Save Your Bait and Invest Wisely

Green herons have been observed collecting and saving “bait” such as small scraps of bread. Rather than eating it themselves, the heron sprinkles the bread into the water to attract fish. It waits patiently while fish assemble, then chooses the fattest one for dinner because a big fresh fish is a larger, more satisfying meal than a crumb.

I've seen many attorneys who cannot resist the scrap. They cannot wait for the big fish. However, for those who wait, the reward is often worth the investment. Concede the facts that do not matter and focus on the significant elements of your theory.

I once cross-examined an expert witness with an established, peer-reviewed journal article contradicting her opinions. Rather than conceding differences of opinion and focusing on her own, she wasted precious time attacking the methodology of the opposing study. All she had to do was agree to the substance of the article and explain the inapplicability based on the unique facts of this case. Instead, her combative responses were defensive and unrealistic. In the end nobody cared what she said.

Likewise, think twice before cross-examining a witness over inconsequential issues. Beating up an adverse (but objective) bystander witness over a DUI conviction nine years ago can make you look desperate.

As a general rule, you should pick a handful of facts and objectives to accomplish with each witness—save the breadcrumbs and

catch the bigger fish.

Lesson #6: Pin 'em Down Carefully

Humpback whales circle schools of krill, blowing giant bubbles. The krill will not swim through bubbles, so the “bubble wall” conveniently cages the krill and the whales expend minimal energy for their meal.

Like the krill, your adverse witness must be “caged” in his or her testimony before you impeach. Too many lawyers head in for “the kill” without eliminating all exit routes.

I once saw a perfect Perry Mason moment ruined in a medical malpractice case because the plaintiff's counsel failed to create his “bubble wall.” The case involved failure to diagnose and treat stroke. At deposition, the defendant admitted the standard of care was governed by a professional organization. The organization maintained extensive publications on stroke. Plaintiff's counsel identified guidelines completely contrary to the treatment the defendant provided. The attorney planned to use those guidelines as the “gotcha” moment. However, because the plaintiff's attorney failed to pin the defendant down on the application of the guidelines to the particular type of stroke involved, the defendant had an easy out. “Those guidelines,” the defendant smirked, “apply to ischemic stroke and this was embolic.” The defendant then proceeded to give the jury an impressive lecture on embolic stroke while the plaintiff's counsel wilted with embarrassment.

When developing impeachment, don't forget your “bubble wall.” Wall off all exit points and secure them well in advance, or you might be the one getting “schooled.”

Lesson #5: It Isn't About You

Dingoes are dogs with serious organizational talent that employ strategic teamwork to catch prey. In one hunting technique, some serve as “chasers.” The chasers startle prey to incite widespread panic. They drive the herd towards other team members who serve as “hidiers.” Hidiers conceal themselves in the brush, waiting for the prey. Surprising the prey, the hidiers initiate the debilitating bite, and the pack swoops in to support the kill. The entire team shares the feast.

These pups have some good trial reminders. For one, “the kill” isn't possible without a team. Planning and organization in advance contribute to the success of the team. Each member is cognizant of their role and mindful of the big picture.

Like the Dingo, great trial teams identify, cultivate, and potentiate individual talent. Each member is aware of, and accountable for, their own responsibilities. Strategy is well-planned and practiced. These elements are undeniable predicates to long-term success.

The most critical component of the sustained prosperity of the Dingo pack is *every team member* participates in the reward of a productive hunt—not just the pack leader. Recognition of each team member generates incentive, pride in the team, and a feeling of personal achievement.

You may be the pack leader in your firm. You might be the most talented lawyer ever. I'm sure you are really great. Whatever. Like it or not, here's the real truth—no matter how essential you are, I promise you didn't get there alone. In fact, I swear it.

There is little more valuable in the courtroom than an energetic, motivated team supporting your client's cause. Never forget to recognize all involved in a good result. When it is always about the "pack leader" and not the pack itself, the prophecy is self-fulfilling—the "pack leader" becomes a lone wolf.

Lesson #4: Sometimes It's Better to Stay in the Background

Camouflage is an art as much as it is a form of survival in the wild. It is a skill equally utilized by predator and prey.

The octopus is a master manipulator of camouflage. It can change color and texture in less than a second. They have advanced eyesight. They are limber enough to fit into the smallest crevices. Best of all, they are super smart and keenly intuitive.

Unlike the wily octopus, trial lawyers often have the instinct to be seen. We often fail to analyze the power of subterfuge or selective presence. This is a mistake. At times, listening can be more valuable than being heard. Being seen can attract unwarranted attention. While "the squeaky wheel gets the oil," sometimes "the nail that sticks out gets hammered."

If you are counsel for one of several defendants, contemplate your role. Is your client the target? Would it be better to blend into the background? Will blending in help your case or hurt it? What is the likelihood the other side intends to lure you into complacency? Measured visibility can be an appreciable asset.

Consider texture. How do you want to "show up" in the case? In some cases, an empathetic style might be more persuasive. In

others, righteous indignation might be appropriate. How do you want your client to appear? The texture of each case will be different. The clever octopus must be versatile enough to change course in an instant.

Lesson #3: Know When to Play Possum

Hognose snakes cannot be beat at "playing possum." This reptile is so theatrical, it will literally stage its own murder by spewing blood and smelly fluid from its mouth and anus while writhing in feigned painful last breaths. Apparently, its predators are often more interested in killing it than eating it.

To the point, my recommendation relating to the hognose snake is "playing possum" isn't always a bad idea. It bleeds (no pun intended) over into the camouflage octopus and swimming elephant theories. If you aren't seen, respected, or appreciated as a contender, you may be holding a distinct advantage.

In some cases, it may be productive to let your opponent speculate over your intentions. Never be dishonest, of course, but do be conscientious in your communication with the other side. Is opposing counsel convinced you will settle at the courthouse? Are you being underestimated? Are there essential facts the other side missed? If so, perhaps you play dead for now and spit blood later.

Lesson #2: Timing is Everything

A study conducted by a postdoctoral student at Brown University documented acceleration of the chameleon tongue at speeds of 0 to 60 mph in 1/100th of a second. The chameleon expends tremendous energy to strike. Missing a strike means the chameleon has less energy for the next try. In other words, missing can be costly.

In the courtroom, timing is everything. Any "miss" is a costly one. Timing requires cadence. Execution of timing is one trial skill firmly rooted in pure experience. Perfect timing combines build-up, precision, and intimate familiarity with the Rules of Evidence.

The build-up is the equivalent of evidentiary foundation. Build-up is selectively working through your expert's stellar CV before delving into opinion testimony. It is highlighting the credibility of a fact witness by displaying measures of objectivity and personal knowledge. It's identifying the bloody knife slowly and methodically so the jurors sit on the edge of their seats waiting for the big reveal.

The attendant risks of build-up include both overdevelopment and underdevelopment. Swing the pendulum either way and your timing is off. Like the chameleon, you are left looking for the next meal with depleted energy and wasted time.

If you spend too much time qualifying your witness, your jury is bored and tuned out. Too little time, and you risk losing the chance to solidify your expert and your key points. The same is true with exhibits. Overselling the "bloody knife" when it is just a butter knife with a red speck can destroy trust. Underselling crime scene photos can leave an opportunity on the table. Finding a perfect balance can be difficult. Here are a few suggestions.

- What are the three to five most important facts in your case? Identify and cultivate them. Resist the temptation to throw it all out there at one time. Some authorities advocate unveiling your entire case in opening. Having sprung a few traps too early, I tend to be more cautious. Keep in mind your best evidence might be contingent on your opponent's case-in-chief. Anything purely intended for impeachment or rebuttal should be held until foundation is established. Don't strike too early!

- Relaxed flies are easier to catch. Induce relaxation. Does your opponent really think she "got away with murder" during jury selection by going a little too far into the facts of the case? Perhaps you are better off sitting tight and waiting for your turn (and equal latitude). Besides, unnecessary objections are tiresome and irritating. Make your record if necessary, but do keep timing in mind when making objections. Use them judiciously.

- When considering witness foundation, the jury is only interested in the basis of the testimony. Nothing more, nothing less. Who is this? What relevant knowledge do they possess? How did they obtain this information? If your biomedical engineer was an eagle scout 38 years ago, trust me, nobody cares.

Lesson #1: Guard Your Egg

Male emperor penguins are "stay-at-home-dads." Once the female lays the couple's single egg, she goes off on a "girls weekend" for two months. While she stuffs her belly full of fish, the male penguin braves temperatures of up to -76° F, keeping the egg warm by holding it on top of his feet. The males huddle together for

CONTINUED ON PAGE 29

The New Reconciliation Report Form

BY ANNE PARKIN, FIELD AUDITOR

I never thought I could be so excited about revising an audit form, but I am—and I think you will be, too.

The new *Reconciliation Report* can be used for both the monthly and quarterly reconciliations. Yes, there are TWO reconciliation requirements (Rule 1.15-3(d)). A monthly reconciliation is done to verify that the balance shown in your check register/general ledger agrees with the ending balance shown on your bank statement (after making adjustments for any outstanding items). A quarterly reconciliation is done to *additionally* verify that the total positive client ledger balances agree with the check register/general ledger balance and ending balance on the bank statement. Note: it is crucial to balance these amounts at the same time and as of the ending date on the bank statement.

Prior to the approval of amendments to Rule 1.15 last June, the State Bar provided only the Trust Account Reconciliation Sheet.

This form could be used for both monthly and quarterly reconciliations; however, it didn't address important requirements in the rule amendments. In view of this, the State Bar developed an additional reconciliation form, the Monthly Trust Account Report. The language in this form addressed the requirements missing from the other form, and provided a way for lawyers and nonlawyers who perform the monthly reconciliation to document and attest that the reconciliation is in compliance. But this form alone could not be used when a quarterly reconciliation was performed.

When I began auditing in July last year, I found that many lawyers/firms were not using the forms correctly; most were only using the Monthly Trust Account Report form. As a result, documentation of the quarterly reconciliation was not in compliance, or (gasp) the quarterly reconciliation was not being done at all. I soon realized the benefits of combining the two forms, and the new form was created.

It is easier to read, more concise in its format, guides you through performing both types of reconciliations, and lists exactly the documents needed to complete a reconciliation.

The Reconciliation Report is not a mandatory form under the recordkeeping requirements, but is *highly recommended*, and its use is requested whenever there is follow-up to a random audit. If the form is used correctly and in its entirety, there is little room left for error and non-compliance. It gives you one less thing to worry about if you are selected for a trust account random audit. Who doesn't want that? The new form is available to download now on the State Bar's website: ncbar.org/for-lawyers/forms.

I'll end with one of my top tips: perform *both* reconciliations each month (complete all of the steps shown on the form)—don't wait 90 days to verify that your client balances agree with your check register/general ledger balance and bank balance. ■

Juvenile Defenders (cont.)

bar the more creative we are with court recommendations that are based on a researched understanding of our clients.

Q: On the hard days—on the days when you're not able to achieve the outcomes that you know your client needs—what sustains you about the practice? What keeps you coming back?

Barbara Fedders: At a visceral level, I like fighting for the underdog. I like holding the state to its burden. I like insisting that court officials see the humanity in my clients.

Mary Stansell: The simple fact that I love what I do.

Scott Dennis: I continue to educate myself and know that I can always improve. I search for positive people who can help me renew my sense of self.

Sabrina Leshore: On the days I leave

court feeling defeated, I remind myself that practicing delinquency law is a calling placed on my life. I am encouraged by the reaffirming thought that I have been privileged to be able to stand in the gap and help advocate for juveniles.

Starr Ward: I know that I fought for my client and exhausted every possible resource available to help them become a productive member of society. I treat my clients as if they were my own children as I am always advocating for them. While I cannot always fix everything, I try to always listen and serve as an effective advocate for their needs.

Yolanda Fair: I really enjoy seeing former clients in the community and how far they've come since their time in court. I also feel supported by those judges who understand my role and are complimentary and encouraging.

Mitchell Feld: The success stories keep you coming back. Every day is not easy in

juvenile court. You may not always get the outcome that you want and your clients do not always listen to your advice (or at least, not at first). However, you need to give it your all, keep fighting, and relish the success stories. These stories do not happen in as great of numbers as we hope. However, when they do happen, they make you realize that juvenile court does work. ■

Eric J. Zogry has been the North Carolina state juvenile defender since 2005. The Office of the Juvenile Defender provides services and support to defense attorneys, evaluates the current system of representation and makes recommendations as needed, elevates the stature of juvenile delinquency representation, and works with other juvenile justice actors to promote positive change in the juvenile justice system. For more information, see ncjuveniledefender.wordpress.com.

Profiles in Specialization

EDITED BY DENISE MULLEN, ASSISTANT DIRECTOR OF LEGAL SPECIALIZATION

In this article, Triangle area board certified trademark specialists share tips for North Carolina lawyers who encounter trademark-related questions or concerns from their clients.

Trademarks: an Introduction – Edward L. Timberlake Jr., Forest Firm, Chapel Hill

Trademarks are all about being different—they help you stand out in a crowd. While it's not necessary to apply to register trademarks in order to use and benefit from them, a registration from the [US Patent &] Trademark Office affords significant advantages. The key to getting the Trademark Office to register your trademark is to make it different, unusual, or distinctive. Assessing whether a trademark is different requires an awareness of what other trademarks are out there. Of course, you won't know what's out there until you look. As the overriding concern with trademarks is differentiation, it's never too soon to start strategizing how to use trademarks to distinguish yourself from competitors—to stand out in the marketplace. Ideally, efforts to distinguish yourself from competitors should begin before purchasing a domain name, setting up social media accounts, designing signs, etc. Similarly, it's never too soon to start researching what other trademarks are used (as well as those that have been registered) in a particular commercial context.

Here's one way to think about the process: First, try to come up with something that will set you apart. Second, research what other trademarks are used in your space. Third, repeat step one in light of what you discover in step two. Fourth, endeavor to create something that will both be different than other trademarks, and also will fit you and what



Timberlake

you're doing. Finally, repeat all steps as many times as necessary to arrive at a solution that will distinguish you in the marketplace and be a good candidate for registration.

Software Trademarks - Pamela S. Chestek, Chestek Legal, Raleigh

In the technology sector, the internet has changed the approach to picking and clearing trademarks for software. Back in pre-internet days, naming software and clearing the names was like any other industry. At the time of its adoption, "Windows" was arguably a generic name (it referred to the windows in a graphic interface, as compared to text-based software that previously existed). Now, though, everyone wants a domain name that matches the name of the software, so the internet has accomplished what trademark lawyers have been trying to convince people to do from time immemorial—make something up. Time will tell: with all the new top level domain names (.cloud, .computer, etc.), the pendulum may be swinging back.

Trademark lawyers used to be satisfied with searching the trademark registers and other databases, like phone listings, to clear a trademark. Nowadays, every good trademark clearance will include scouring the internet for other similar unregistered uses. So the internet is a blessing and a curse for trademark lawyers working in the software industry.

Another way the internet has changed trademark practice in software is that the product is often immediately available around the world. This means that clearing a new proposed name has to be international in scope from the beginning. But international clearance can be expensive, so it becomes a matter of



Chestek

balancing the cost against the risk.

The good news is, if something goes wrong, a name change may be accomplished more easily in the software industry than in other industries. The goods and their marketing are just code, so the change can be effected fairly quickly.

Pharmaceutical Trademarks – Maury M. Tepper III, Tepper & Eyster, Raleigh

In the pharmaceutical sector, trademarks play an important role and also face unique challenges. By their nature, trademarks serve as unique and recognizable brand identifiers that support the consumer's selection of the correct product. This role is critical when it comes to receiving a prescription medication, as the consequences of taking the wrong drug can be significant. For this reason, a pharmaceutical trademark needs to be as distinctive and as easy to identify as possible. At the same time, the environment in which prescription medications are prescribed and dispensed presents its own challenges for trademarks. Unlike the selection of a product in traditional channels, the choice of a prescription medication is not made by the patient, but instead by the prescribing physician. The order for the medication is then sent to a pharmacist, often by a handwritten prescription, to be dispensed to the patient. Most patients accept whatever the pharmacist hands them without question, meaning that the prescribing physician and the pharmacist will often pay more attention to the trademark than the ultimate consumer. Because the pharmacist interprets the written prescription, a pharmaceutical trademark must be recognizable even when presented in handwriting. Anyone who has



Tepper III

viewed the “chicken scratch” penmanship of his doctor will appreciate the difficulty of predicting the different ways that a drug name might be interpreted. This, however, is precisely what pharmaceutical trademark attorneys must do.

In addition to assessing “traditional” trademark similarity, a pharmaceutical trademark attorney must consider potential handwriting similarity. For example, not many people would consider the trademarks AVANDIA and COUMADIN to be similar to one another, but take a look at the following prescription for AVANDIA (a medication for diabetes) and see if you can understand why the pharmacist incorrectly gave the patient COUMADIN (a blood thinner).



The challenges to a pharmaceutical trademark do not end with handwriting. The trademark attorney must also consider phonetic similarity (for telephone orders), and must be aware of medical abbreviations that should not appear in a trademark. For example, when a doctor intends for the patient to take a medication twice a day, the doctor will write the abbreviation “BID” on the prescription, as a short-hand way of telling the pharmacist how the medication should be taken. Therefore, the name of a drug should not end in “BID” in order to avoid potential misunderstanding. By the

time a trademark attorney has considered all of these issues, many candidates are eliminated. In a typical name creation exercise, a drug company might go through 350 – 500 candidates in order to arrive at five to ten potentially acceptable trademarks for a new medicine.

In addition to the Patent & Trademark Office, any pharmaceutical trademark must be reviewed and approved by the FDA prior to being used in the US. Regulatory authorities in other territories, including the EU and Canada, also conduct reviews of any proposed pharmaceutical trademark, and typically reject 30–50% of the candidates they review. The next time you wonder where the name of that new medication came from, be sure to thank the trademark attorney.

Consumer Entertainment Product Trademarks – Christopher S. Thomas, Parker Poe, Raleigh

Developing a strong brand can be very expensive. A trademark, more than anything else, represents the goodwill—both as that term is used colloquially and as an accounting term of art—of the mark owner. It follows that trademarks for consumer entertainment products, especially those that are sold under well-known brands, are extremely valuable to their own-



Thomas

ers. Because of that, and because customers and fans of such products often feel a strong affinity with those brands, the owners of such marks must protect them.

Brand owners must protect their marks from those who seek to unlawfully divert customers by falsely representing that products or services emanate from, or have been approved by, the brand owner. Protecting trademark rights from this sort of infringement is often called “policing.” But brand owners also need to protect their marks and goodwill from misguided policing efforts (sometimes the result of over-zealous trademark enforcement) that can do more damage than good to the brand in the eyes of the public. This is especially true now that the recipient of an inelegant demand letter may publish it to the world using social media. Savvy brand owners and their trademark lawyers understand this.

Trademark practice involves assisting clients with the creation, clearance, adoption, and registration of brands. That part of the practice can be immensely rewarding and fun, especially seeing a new mark in use on a successful product. After a mark is registered, much of the work is in protecting the mark. It is in formulating a measured enforcement strategy—one that is consistent with the values of the brand owner and what the brand symbolizes—where a trademark lawyer can provide the most value to his or her client and their brands. ■

For more information on trademark law specialists or to learn how to become certified, visit our website at: nclawspecialists.gov.

Questioning Prospective Jurors (cont.)

the prosecutor asked whether the jurors could “put the issue of race completely out of [their minds].”

26. *State v. McAfee*, 64 NC 339, 340 (1870).
27. *See State v. Robinson*, 330 NC 1, 12–13 (1991).
28. *State v. Robinson*, 330 NC 1, 12–13 (1991).
29. *Catlin v. Henry*, 76 Fed. Appx. 818 (9th Cir. 2003) (unpublished) (holding that defense counsel did not render ineffective assistance of counsel in failing to *voir dire* potential jurors about racial bias where there was no showing of actual bias by jury and no showing that different result would have occurred if counsel would have questioned jury about bias).
30. *United States ex rel. Preston v. Ellsworth*, 408 F.

- Supp. 568 (D. Del. 1975) (holding that defense counsel’s refusal, despite a request by the black defendant, to ask *voir dire* questions of the jury panel concerning racial prejudice was not ineffective where counsel justified his refusal on the partial ground that prejudice was not involved in the case because two of the state’s three key witnesses were black). *See also State v. Sanders*, 750 N.E.2d 90 (Ohio 2001) (holding defense attorneys’ failure to inquire into racial and religious attitudes at *voir dire* was not ineffective assistance of counsel, although defendant was an African American Muslim charged with murdering a white person, as trial lawyers were in the best position to determine whether such *voir dire* was needed).
31. *See, e.g., State v. Hale*, 892 N.E.2d 864 (Ohio 2008) (holding defense counsel did not perform deficiently in failing to *voir dire* prospective jurors on racial prejudice where case did not involve an interracial murder and evidence did not raise any racial issues).

32. *Cf. Padilla v. Kentucky*, 559 US 356 (2010) (recognizing for the first time that the Sixth Amendment guarantee of effective assistance of counsel requires attorneys to inform clients whether a plea carries a risk of deportation in light of the seriousness of potential consequences).
33. *Pena-Rodriguez*, Alito, J., dissenting, slip op. at 11-14.
34. *Ristaino*, 424 US at 597.
35. *Pena-Rodriguez*, Alito, J., dissenting, slip op. at 13-14.
36. *Ristaino*, 424 US at 597 n.9.
37. Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. Personality & Soc. Psychol. 597, 601 (2006).
38. *Pena-Rodriguez*, Alito, J., dissenting, slip op. at 13 n.9.
39. *See supra note xiv*.
40. *Id.*

Breaking Up Is Hard to Do

BY SUZANNE LEVER

In today's competitive legal market, it seems counterintuitive for a lawyer to want to drop a client. However, circumstances may arise that make disengagement necessary, or at least preferable, for the lawyer or the client. The client has a right to discharge the lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. However, the lawyer's right to terminate the attorney-client relationship is restricted by Rule 1.16 of the Rules of Professional Conduct.

Rule 1.16(a) addresses mandatory withdrawal. Under Rule 1.16(a), a lawyer must withdraw from a representation when the lawyer is discharged or the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. In addition, the lawyer must withdraw if continued representation will result in a violation of the law or the Rules of Professional Conduct. For example, Rule 1.16(a) is triggered when a client requests a lawyer to take an action that would violate Rule 3.3 (Candor Toward the Tribunal). A lawyer is also required to withdraw if continued representation would violate Rule 1.7 (Conflict of Interest) or Rule 3.7 (Lawyer as Witness).

Rule 1.16(b) lists nine scenarios where a lawyer has the discretion—but is not required—to withdraw from representing a client. The first scenario set out in Rule 1.16(b) is interesting. Under 1.16(b)(1) a lawyer does not have to give a specific reason for terminating the representation, but may withdraw so long as the “withdrawal can be accomplished without material adverse effect on the interests of the client.” The comments to Rule 1.16 provide little guidance on this provision, stating only that, “[f]orfeiture by the client of a substantial financial investment in the representation may have such effect on the client's interests.” This subsection seems to permit a lawyer to withdraw from representation of a client for any reason or even no reason at all.

However, a lawyer should proceed under Rule 1.16(b)(1) with caution. It is hard to

imagine that the lawyer's withdrawal will not have some adverse effect on the client, even if the lawyer does not consider it material. Also, comment [1] to Rule 1.16 emphasizes that a lawyer “should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest, and to completion.” That being said, if the representation is fairly new and there are no upcoming deadlines, the lawyer may probably withdraw without any material adverse effect on the client. A quick consult with a lawyer for a malpractice insurance company provided this response:

The main issue we emphasize is that any termination by the attorney should be done sooner rather than later. It is a fool's errand to wait and hope that some unreasonably difficult client situation will resolve itself or get better with time. The longer you wait to terminate, the more likely it is that the client will be prejudiced by the withdrawal.

The remaining scenarios listed under Rule 1.16(b) permit the lawyer to withdraw even if there *will* be a material adverse effect on the client. For example, Rule 1.16(b)(3) and (5) allow a lawyer to withdraw when the client pursues an action that the lawyer believes is criminal or fraudulent, or when the client has used the lawyer's services to perpetrate a crime or fraud. Rule 1.16(b)(4) permits withdrawal when the client insists on conduct that is repugnant to the lawyer or action that is contrary to the advice and judgment of the lawyer.

Rule 1.16(b)(6) and (7) pertain to contractual issues relative to the attorney-client relationship. Rule 1.16(b)(6) permits withdrawal if the client refuses to fulfill his obligations regarding the lawyer's services. Rule 1.16(b)(7) permits withdrawal if the representation imposes an unreasonable financial burden on the lawyer. The most common basis for withdrawal under these subsections is the client's failure to pay legal fees. It is important to note that before a lawyer may withdraw due to a client's failure to pay, Rule 1.16(b)(6) requires that the client

be given “reasonable warning that the lawyer will withdraw unless the obligation is fulfilled.” Also, a lawyer may not withhold services to coerce payment in this scenario.

Rule 1.16(b)(9) is a “catchall” that permits withdrawal for “other good cause.” For instance, if a client files a grievance against a lawyer during ongoing representation, the lawyer may file a motion to withdraw under Rule 1.16(b)(9). However, withdrawal is not mandatory. The lawyer should consider whether she reasonably believes she can continue to provide competent and diligent representation to the client despite the grievance and whether the client wants the lawyer to continue the representation. If the answer to both of these questions is “yes,” the lawyer should ask the client to confirm his consent to the continued representation in writing. (Note that if the probity of the lawyer's own conduct in the matter is in serious question, the lawyer may have a conflict under Rule 1.7 that would necessitate withdrawal.)

It is important to note that all of the subsections in Rule 1.16(a) and (b) are subject to the requirements of Rule 1.16(c) and (d). In matters pending before a tribunal, Rule 1.16(c) requires a lawyer to obtain the court's permission to withdraw from the representation. The court has the discretion to deny a request to withdraw, regardless of the grounds for the withdrawal motion. If withdrawal is denied, the lawyer must continue the representation with no reduction in responsibilities to the client. This scenario may, unfortunately, require a lawyer to perform legal services without expectation of payment. Rule 1.16(c) also provides that, “[w]hen ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.” The denial of a motion to withdraw can result in some difficult situations for the lawyer and the client. The lawyer should have the motion to withdraw and the court's denial memorialized in the court record. Other than that, the lawyer will have to continue the representation to the

best of her ability under the circumstances.

Rule 1.16(d) requires that the withdrawing lawyer take steps to protect the client's interest, including giving reasonable notice, allowing time for the client to engage other counsel, surrendering papers and property to which the client is entitled, and refunding any unearned fees. When the lawyer files a motion to withdraw and there are impending discovery deadlines, deposition notices, or hearing and trial dates, the lawyer should file a motion to continue in conjunction with the motion to withdraw.

What should the lawyer include in the motion to withdraw? Lawyers should craft withdrawal motions carefully to avoid disclosing confidential client information or disparaging the client. The motion needs to be vague, but effective. Comment [3] to Rule 1.16 provides:

Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. *The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.* Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

(Emphasis added).

I recommend that the lawyer cite the applicable subsection of Rule 1.16, without including the text of the particular provision. A lawyer may want to contact the risk management department of her insurance carrier for advice in how to draft the motion. Although a lawyer should be wary of including too much detail in the motion, the lawyer should be prepared to provide more information upon the judge's request.

There are certain special considerations a lawyer may need to take into account when considering withdrawal. Comment [6] to Rule 1.16 addresses clients with diminished capacity and provides:

If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

The better course of action may be for the lawyer to continue the representation and seek protective action.

What about missing clients? There is an excellent article on this particular issue written by a noted legal scholar (okay, it was written by me) located on the State Bar's website. The article, "Where's Waldo? (Journal 16,4 -

December 2011), provides that where a lawyer has not heard from his client in over a year, the client's failure to contact the lawyer is considered a "constructive discharge," and the lawyer must file a motion to withdraw pursuant to Rule 1.16(a)(3). (But you really should read the whole awesome article.)

Once the motion to withdraw is granted, the lawyer should follow up with a letter of disengagement to the client. The letter should affirm the current status of the case and remind the client of any pending deadlines. However, the lawyer should be careful with statements about exact dates or deadlines because a misstatement can expose the lawyer to a malpractice claim. The letter should also summarize the status of any fees and costs collected and outstanding, explain any remaining charges for legal fees, and include arrangements for the transfer of any unearned funds remaining in the lawyer's trust account. Finally, the letter should include arrangements for transfer of the client's file.

Just remember before you agree to take on any representation:

Comma, comma, down dooby doo down down

Breaking up is hard to do.

—Neil Sedaka "Breaking Up is Hard to Do" (RCA Records 1962 & Rocket Records 1975) ■

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

Trial by Nature (cont.)

warmth. If an egg is dropped or inadequately warmed, it will quickly perish.

When mom returns, she cares for the chick while dad goes hunting. When he returns, they switch off again. Emperor penguins continue to co-parent until the chick is ready to go out on its own. Family bonds are strong and the flock works together to protect the young from the elements and predators. Penguin culture is robust and supportive.

As a Bar, we need to look after our flock. Like the penguins taking turns standing on the cold perimeter of the flock, we must all contribute to the greater good of our community. Dedication to *pro bono* work, Bar programs, teaching opportunities, and professionalism is a shared responsibility. This collaboration ensures the practice of law will persevere as a pro-

fession rather than a mere occupation.

We are responsible for ensuring the survival of our young lawyers. I cannot name one successful trial lawyer who did not receive coaching and mentoring from a more seasoned veteran. If you are one of the successful attorneys, by all means, "pay it forward." Professional courtesy, courtroom decorum, and ethical behavior are contagious among lawyers. Spread it freely.

Don't forget about your flock at home. Trial lawyers display profound passion for their clients. Being engrossed in measured bursts can be an asset. However, being consistently consumed is neither sustainable nor healthy. You might be the best lawyer in the whole wide world, but if you are not mentally and physically fit, you will never be your personal best. Your clients deserve nothing less.

Take care of yourselves and your family.

Stick together through difficult times, and never forget to guard your egg, lest it crack.

Conclusion

Mother Nature teaches us survival skills. Anthropologists, biologists, and naturalists like David Attenborough have studied animals in their natural environments for many years. There is vast knowledge in their work, worthy of application in the courtroom. Hunting skills, survival tactics, and pure logic prevail in Mother Nature's kingdom. The courtroom is no different. Trial by nature persists and endures. We stand to learn a lot by studying natural animal behavior patterns. After all, lawyers are animals too. ■

Tricia Derr received her undergraduate and law degree from UNC-Chapel Hill, and practices with Lincoln Derr PLLC in Charlotte.

Grievance Committee and DHC Actions

Disbarments

Adam Loren Baker of Raleigh surrendered his license and was disbarred by the Wake County Superior Court. He acknowledged that he misappropriated entrusted funds exceeding \$27,000 and that he concealed from his employer law firm more than \$66,000 he collected from clients for legal fees and for the payment of costs and fines and appropriated those funds to his own benefit.

Paul Blake of Wilson misappropriated estate funds in excess of \$400,000. He was disbarred by the Disciplinary Hearing Commission.

William E. Brown of Fayetteville was convicted of failing to file a federal income tax return. At the time of his disciplinary hearing, Brown was already serving two active disciplinary suspensions imposed by the DHC in prior cases. He was disbarred by the DHC.

Gregory Perry of Roanoke Rapids tried to acquire drugs from a client he was representing on drug-related charges, falsely represented to jail authorities that he represented his girlfriend in order to gain access to her in jail, and was convicted of two counts of contempt of court for failing to appear on behalf of clients. He was disbarred by the DHC.

Lennard D. Tucker of Winston-Salem misappropriated entrusted funds in an amount exceeding \$12,000. He was disbarred by the DHC.

Suspensions & Stayed Suspensions

Greensboro lawyer **Alvaro De La Calle** failed to supervise a paralegal in his office, collected a fee for legal services that were not provided by an attorney, aided another in the unauthorized practice of law, and made false representations to the Grievance Committee. He was suspended by the DHC for five years.

Cornelius lawyer **Derek Fletcher** took fees for work he did not perform, received one of the fees while he was administratively suspended, did not participate in mandatory fee dispute resolution, and did not respond to the Grievance Committee. He was suspended by the DHC for one year. The suspension is

stayed for three years upon his compliance with numerous conditions.

Stephanie L. Villaver of Jacksonville did not supervise assistants, one to whom she delegated trust account management and reconciliation duties and one to whom she delegated client communication and case negotiation duties. She thus enabled her assistants to misappropriate entrusted funds over several years, settle cases without client consent, and engage in the unauthorized practice of law. She was suspended by the DHC for five years. The suspension is stayed for five years upon her compliance with numerous conditions.

While dealing with a series of tragic circumstances in her personal life, **Marjorie Mann** of Asheville forged signatures on a real estate deed and directed her paralegal to notarize them. She was suspended by the DHC for four years. The suspension is stayed for four years upon her compliance with numerous conditions.

Lawrence D'Amelio of Greensboro aided multiple out-of-state businesses in the unauthorized practice of law. He was suspended by the DHC for three years. The suspension is stayed for three years upon his compliance with numerous conditions.

Ronald Tyson Ferrell of Wilkesboro was suspended by the Wilkes County Superior Court. Ferrell did not supervise his employees, enabling them to steal over \$100,000 in entrusted funds. Ferrell also neglected his practice and did not file tax returns. The court suspended Ferrell for five years. Ferrell will be eligible to apply for a stay of the final three years upon demonstrating compliance with numerous conditions.

Interim Suspension

In February 2017, Concord lawyer **Fletcher Hartsell** pled guilty to the federal felony offenses of mail fraud and filing false tax returns. The Chair of the DHC suspended his license pending disposition of disciplinary proceedings.

Censures

Bruce E. Kinnaman of Hillsville, Virginia,

was censured by the Grievance Committee. Kinnaman engaged in an intimate romantic relationship with a domestic client in an attempt to have sexual relations with her.

Reprimands

The Grievance Committee reprimanded **Bernell Daniel-Weeks** of Durham. Weeks undertook to represent a client in a personal injury case but did not communicate with the client's insurance company, did not respond to the client's requests for information, did not deliver the file to the client's new attorney, and did not respond to the State Bar.

The Grievance Committee reprimanded **Lawrence S. Maitin** of Raleigh. In a real estate closing, Maitin did not inform his client about an outstanding judgment because he concluded that the judgment did not attach to the property. The client learned about the judgment when the judgment creditor sought to sell the property. Maitin entered into an agreement to pay the judgment creditor. Maitin did not advise the client of the desirability of seeking independent legal counsel before entering into an agreement to resolve the issue of his potential liability.

The Grievance Committee reprimanded Greensboro lawyer **Eddie Lamar Meeks** for his conduct in three cases. In one case, Meeks accidentally filed a motion to withdraw after assuring the client he would be available to handle the client's case. He did not handle the case and did not refund the unearned fee. Meeks did not explain to a second client that he was withdrawing and did not respond to further inquiries from the client. When a third client's case was postponed, Meeks made no effort to determine the client's next court date, did not tell the client he was withdrawing from the representation, and did not refund the unearned fee.

Pamela Newell of Dallas, Texas was reprimanded by the Grievance Committee. Newell continued to hold herself out as an active member of the North Carolina State Bar on her website and engaged in the unauthorized

practice of law after she was administratively suspended for failing to comply with mandatory CLE requirements.

William Vasquez of Smithfield was reprimanded by the Grievance Committee. Vasquez did not promptly turn over client files to the new lawyer for three former clients. Vasquez's fee agreement contained improper provisions about his obligations to retain or dispose of client files and purported to assert a lien against future recovery.

The Grievance Committee reprimanded **Rufus Lytch** of Dunn. Lytch neglected his client's case, misrepresented the status of the case to the client, did not respond to the client's inquiries, did not give the complete file to the client and did not fully respond to the Grievance Committee. The Grievance Committee found as a mitigating factor that Lytch experienced significant personal and health issues during the representation.

Japheth Matemu, an immigration lawyer licensed in New York but not in North Carolina, was reprimanded by the Grievance Committee. Matemu's fee contract purported to assert an attorney's lien, purported to require the client to pay for reproduction of the client file, and purported to obligate North Carolina clients to submit to arbitration in New York and to participate in a New York fee dispute program.

The Grievance Committee reprimanded **Brandi Jones Bullock** of Durham. Bullock provided legal services to North Carolina residents as a local associate attorney of "Brownstone, P.A.," an out-of-state law firm not authorized to provide legal services in North Carolina. Bullock assisted others in the unauthorized practice of law and made false or misleading statements about her services.

Transfers to Disability Inactive Status

Dee W. Bray, Jr. of Fayetteville was transferred to disability inactive status by the Cumberland County Superior Court.

H. Monroe Whitesides, Jr. of Charlotte was transferred to disability inactive status by the Chair of the Grievance Committee. Mr. Whitesides died on April 11, 2017.

Reinstatements

William I. Belk, a former district court judge from Charlotte, was removed from office by the Supreme Court for giving false testimony in proceedings before the Judicial Standards Commission. The DHC suspended him for three years in December 2013. He

was reinstated by the Secretary on March 30, 2017.

Robert J. Burford of Raleigh falsely inflated his litigation expenses for multiple clients in Vioxx class action litigation. The DHC imposed a two year stayed suspension in January 2012. The stay was subsequently lifted, and the suspension activated, effective November 23, 2012. He was reinstated by the DHC on February 10, 2017.

Stays of Existing Suspensions

In February 2016, **Michelle Hickerson Caron Gay** of Chapel Hill was suspended by the DHC for five years. The DHC concluded that Hickerson gave false testimony in a deposition and made false representations in a pleading filed in court. After serving one year of the suspension, Hickerson was eligible to petition for a stay of the balance. The DHC granted her petition for a stay on March 20, 2017.

Other

In re: Colleen Janssen (Wake County

Superior Court). The Wake County Superior Court commenced a disciplinary action against former Wake County assistant district attorney Colleen Janssen. The court concluded that, while prosecuting an alleged home invasion case, Janssen did not conduct a reasonably diligent investigation into all information in the possession of the government relating to drug activities by the alleged victim, Smith, and did not timely and fully disclose such information to the defendants. The defendants contended that the alleged home invasion was actually a drug transaction between them and Smith. Janssen asked law enforcement officers not to bring criminal charges against Smith, who was the subject of an ongoing investigation and was believed by law enforcement officers to be a major drug dealer, until after the home invasion case was completed. She did not permit the federal prosecutor to inform her of the status of the Smith investigation and provided her supervisor inaccurate and incomplete

CONTINUED ON PAGE 34

In Memoriam

J. Allen Adams
Raleigh, NC

Wallace Ashley Jr.
Smithfield, NC

William Ashe Bason
Raleigh, NC

Claudia Watkins Belk
Charlotte, NC

Marilyn R. Bissell
Charlotte, NC

Porter B. Byrum
Charlotte, NC

Robert Leland Cecil
High Point, NC

John Bernard Clayton
Pinehurst, NC

Robert C. Cone
Greensboro, NC

Russell W. DeMent Jr.
Knightdale, NC

Daniel Alan Devay
Raleigh, NC

Lois Josephs Ely
Charlotte, NC

Edmund Louis Gaines
Statesville, NC

Edward R. Green
Winston-Salem, NC

Charles Kenyon Hubbard
Gastonia, NC

Isham Barney Hudson Jr.
Raleigh, NC

Noland Randolph Mattocks Jr.
Advance, NC

Judith Ann Minnes McLeod
Matthews, NC

Thomas Walter Moore Jr.
Roaring Gap, NC

James R. Rogers III
Raleigh, NC

Elizabeth Meachum Stanaland
Greensboro, NC

Henry Monroe Whitesides Jr.
Charlotte, NC

What's Mindfulness Got to Do with It?

BY LAURA MAHR

After six weeks of Mindfulness Meditation for Building Resilience to Stress, lawyers from the 28th Judicial District Bar have the answer...

There are few things we lawyers love more than our brains. Which is why, when our brains tell us we are tired, most of us lawyers tell our brains to keep going. The last thing we give ourselves permission to do is to slow down and meditate. The latest neuroscience research, however, tells us that the very best thing to do to refuel our brains is to slow down, be mindful of what we are experiencing, and take a few minutes to reset the brain through meditation. For six weeks, lawyers from the 28th Judicial District Bar got the chance to do just that.

In order to support local attorneys in reducing their levels of stress, the 28th Judicial District Bar decided to try something never before done in the state: offer a Mindfulness Meditation for Building Resilience to Stress course in partnership with my business, Conscious Legal Minds. When registration opened for the six weeks of CLE classes, we didn't know how many—or if any—lawyers would sign up. However, within a few weeks not only were all of the spaces filled, there was a waiting list. The class was diverse, filled with newer and more experienced attorneys, men and women, those who had never meditated and those who had meditated for years.

While some might envision a mindfulness meditation CLE to be a group of lawyers sitting in a yoga pose chanting “ohhhmmm,” this course took a different approach. The classes were offered every Friday at noon in a boardroom provided by Robert & Stevens, PA. We sat in comfortable chairs around the boardroom table. Each class covered neuroscience, mindfulness theory, and practical tools that lawyers can use at work or home to train their brains to stay relaxed and be less reactive to stress. My favorite part of the course was each week's rich discussion

about how participants were integrating the tools into their legal practice.

Margie Huggins, a consumer lawyer and avid *pro bono* attorney, was a frequent contributor to these in-class discussions. Margie signed up for the course because she was curious about how mindfulness relates to the practice of law. Margie said what she loved most about the CLE was that she “learned the science behind how our minds work, and learned very useful skills for how to keep our lawyer brains from running wild.” Margie did not have a meditation practice before the course started, but found that after just six weeks of classes the new tools “honestly greatly improved the quality of my life in all areas—professional and otherwise.”

Margie wasn't the only one whose life changed for the better as a result of the course. Based on the results from a comparative pre- and post-test, approximately 85% of the lawyers who attended the classes reported a reduction in their stress level at work or outside of work when the course was complete. At the end of the course, 100% of the attorneys reported that they were practicing mindfulness tools during their work day at least 5-10 times a week, and many as often as 20-40 times a week. These are very impressive results for six hours of class, especially given how challenging it is to move the dial on practicing lawyers' stress levels. Margie explained how she personalized the tools she learned and used them to improve her work day. “The course offered so many different meditation and mindfulness techniques,” she said. “I discovered several techniques that worked for me. It's not about sitting in a yoga pose for an hour. I now meditate 20 or 30 times a day for just a minute to two. It's so easy to weave these



techniques into the work day.”

An unexpected benefit of the course was the sense of community that was fostered. One attorney shared what he enjoyed most about the course was “connecting in a new and better way with colleagues.” Another participant, immigration attorney Dr. George D. Pappas, expressed, “Finally, a space where my mind could embrace positive thoughts, positive people, and positive results. I can't express in words just how much my life has already changed using the methods Laura introduced in the mindfulness CLE. Even better, I was not alone in this experience—I was in a group that truly was in sync with positive energy. I look forward to using the tools I learned to maintain a healthy mind and body.”

I was inspired to create the Mindfulness Meditation to Build Resilience to Stress curriculum for lawyers after using mindfulness and neuroscience tools to bring myself back from the edge of professional burnout. In 2015, after almost ten years of practicing law as a sexual violence attorney, I sensed that I needed a break. At the time, I was baffled why—despite all of the meditation, yoga, eating well, and exercising I did—I felt chronically tired. After addressing my internal resistance to taking a sabbatical from practicing law—including grappling with fears that I would lose my professional

identity and value in the world—I decided to take a year off. I used the year to research and practice the most cutting edge tools for building resilience, including experimenting with the practical applications of modern neuroscience research. Neuroscience focuses on the brain and nervous system and how they impact our behavior and cognitive functioning. Discovering the practical applications of neuroscience was like finding the missing piece of a puzzle. Delving into neuroscience opened my eyes to understanding that how our brains are wired impacts the way we experience the world, AND that we have control over the way our brains are wired.

The work of neuropsychologist Dr. Rick Hanson captured my attention immediately. In his book, *Hardwiring Your Brain for Happiness: The New Brain Science of Contentment, Calm and Confidence*, Hanson explains that our brains have two different operating modes: reactive and responsive. When our brains are in reactive mode, they are less effective—we think less clearly and our cognitive functioning is diminished. When our brains are in responsive mode, we feel “in the flow,” resulting in greater productivity and increased satisfaction in our lives. While evolution has thus far wired our brains to experience the world in reactive mode, we have the ability to rewire our brains and experience life “in flow.”

When I began experimenting with neuroscience tools, I found that mindfulness and mindfulness meditation supported the rewiring of my brain. Mindfulness is the practice of paying attention to whatever is happening in the present moment. For lawyers, there is often an overwhelming amount occurring in any given moment. While we are dealing with copious external pressures, multitasking on every front, we rarely pay attention to what is going on internally, such as how we are breathing, or how we are feeling emotionally or physically. Mindfulness helps us to practice having dual awareness: doing what we are doing while at the same time tracking what is going on inside our bodies and minds. Once we are aware of what is going on inside, neuroscience tools—such as focusing on and enhancing the feeling of being safe or satisfied—can be used to bring into balance anything that feels out of balance in our internal world. Moment by moment, we can switch the brain out of reactive mode and into responsive mode,

allowing us to do things like think better on our feet or process information quickly, and a host of other cognitive functioning we lawyers rely on.

For example, by paying attention to your body, mind, or emotions, you may notice you are feeling anxious, frustrated, or stuck, or that you are holding your breath, having heart palpitations, or have sweaty palms. These are all cues that you are likely in reactive mode. Once you notice these cues, you can use mindful breathing or focus on feeling safe to calm your brain and coax yourself back into responsive mode. Once our bodies and brains experience and take in what it feels like to be in responsive mode (a practice Dr. Hanson calls Taking in the Good), we are more apt to stay in this “flow state,” even when encountering stressful situations. In this way, we literally rewire our brains to live life from a responsive vs. reactive state, resulting in feeling more calm and having a greater ability to enjoy life.

One of the most satisfying things to hear from lawyers in class was how the course supported them in their daily lives. Barbara Davis, a mediator and collaborative law lawyer, said that she used the meditation techniques she learned in class to slow her heart rate. “This week,” she shared, “my heart was racing. I measured my heart rate at 114 beats per minute (BPM). After ten minutes of meditation, my rate was 90 BPM!” Margie shared, “I use my new tools to go to sleep or get back to sleep if I wake up in the middle of the night.” Another attorney shared how mindful listening helped him to better handle a distressed client. Yet another lawyer shared how she used the tools to help calm herself in a tense courtroom.

Having the tools to better enjoy our profession and our lives while improving our effectiveness as lawyers is what the mindfulness course is all about. I often wonder if I had learned neuroscience-specific skills in law school or earlier in my legal career if I would have needed to take a break from practicing law. And yet, to “take in the good” of my experience, I feel more energized and have greater meaning in my life as I’ve recently returned to working at the Victim Rights Law Center as a contract attorney and, through Conscious Legal Minds, am helping other attorneys build resilience to stress. It brings me great joy to hear Margie say, “For all of the CLEs we are required to take year after year, this one ranks at the very top; I

hope it will be available, somehow, to every lawyer.” I wholeheartedly support Margie’s vision and am grateful to the pioneering lawyers who made the first mindfulness meditation CLE series in the state a success. I look forward to sharing this curriculum with many, many others.

Interested in Having This Program in Your District?

The Lawyer Assistance Program will be working with local district bars across the state to bring this program to as many lawyers as possible. If you are interested in offering this program to lawyers in your district, please contact Robynn Moraites, director of the Lawyer Assistance Program. ■

Laura Mahr is a contract attorney at the Victim Rights Law Center, and a resilience coach and workplace consultant at her business, Conscious Legal Minds. She works with individual clients and workplaces around the country to build resilience to stress, address secondary trauma, foster work-life balance, and prevent professional burnout. Contact Laura at laura@consciouslegalminds.com; find out more about her practice at consciouslegalminds.com.

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer’s ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

Thank You to Our Meeting Sponsors

Thank you to these companies for sponsoring the State Bar’s quarterly meeting:

Lawyers Mutual Liability
Insurance Company

Old Republic Title Co.

NC IOLTA Maintains Grant Making

Income

All IOLTA income earned in 2016 has now been received, and income from IOLTA accounts totaled \$1.7 million. We can report that IOLTA income appears fairly flat. Though 2016 showed a slight decrease (4%) from 2015, it was not as significant as those posted since the 2008 downturn that have brought annual income to less than 50% of our highest income of over \$5 million recorded in 2008.

We remain hopeful that raised interest rates and perhaps further funds from other sources will bring income levels from accounts back to normal levels. We will be working with banks more proactively as the interest rate climate changes.

Grants

As previously reported, the IOLTA trustees dramatically reduced the number of grants beginning in 2010 as we dealt with a significantly changed income environment due to the economic downturn, which has seen unprecedented low interest rates being paid on lower principal balances in the accounts. The trustees decided to focus grant-making on organizations providing core legal aid services. Even with that change, IOLTA grants have dramatically decreased by over 50% from their highest level of just over \$4 million in 2008 and 2009. During this downturn in income from IOLTA accounts, we have relied heav-

ily on cy pres and other court awards designated for the provision of civil legal aid to the poor.

Receiving our portion of the first funding distribution for IOLTA programs included in the settlement with Bank of America (\$842,896) was crucial to our ability to make grants for both 2016 and 2017. The IOLTA trustees decided to use half of the Bank of America settlement funds for 2016 grants, leaving half to remain invested to use in 2017, as otherwise our reserve was just under \$250,000. We were able to make just over a 3% increase in the individual grants and to bring total grants back to \$2 million for 2016. In 2017, grantees will receive at least a 4% increase in funding.

These funds are in addition to the funds granted in a separate grant cycle (October 2016-September 2017) using some of the funds from the second distribution of Bank of America settlement funds (\$12 million) received in 2016. Total grants of ~\$5.7 million over three years were made. That total includes a grant award of \$750,000 made to the legal aid collaborative working on foreclosure prevention for 2016-17, and just under \$5 million in funds allocated for new and creative multi-year community re-development projects. Given the large amount of funds received in the second BoA settlement distribution and the time required for some community redevelopment projects, it is expected that these restricted funds will be

granted over a number of years.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state funding distributed for the 2013-14 fiscal year was \$3.5 million. The state budget adjustments beginning in 2014-15 eliminated the appropriation for legal aid work (\$671,250 at that time). Total state funding distributed for the 2014-15 fiscal year from filing fees alone was just under \$2.8 million for that year and just over \$2.7 million for 2015-16. For 2016-17, the General Assembly did make a non-recurring appropriation of \$100,000 to Pisgah Legal Services in Asheville to support civil legal representation of veterans. The Equal Access to Justice Commission and the NC Bar Association continue to work to sustain and improve the funding for legal aid. ■

Disciplinary Department (cont.)

information about the Smith investigation. The court concluded that the results of the Smith investigation were imputed to Janssen, including the fact that a search of Smith's stash house yielded 150 pounds of marijuana. Janssen did not correct Smith's false testimony that he had not sold drugs since 2005. After the home invasion case was completed, Smith was convicted in federal court of conspiracy to possess and distribute marijuana. The court concluded that Janssen's conduct was prejudicial to the administration of justice. The court found multiple mitigating factors, including the mental trauma, anxiety and stress Janssen experienced as the result of the kidnapping and torture of her father on instructions from a gang member she had prosecuted. The court ordered that, for two years, Janssen cannot practice law as a prosecutor or in any position in which she would provide legal advice or assistance to law enforcement officers or agencies. ■



FOLLOW THE STATE BAR

Follow us on  twitter.com/NCStateBar

Like us on  facebook.com/NCStateBar

Committee Provides Guidance on Maintaining Fiduciary Accounts

Council Actions

At its meeting on April 21, 2017, the State Bar Council adopted the ethics opinion summarized below:

2017 Formal Ethics Opinion 1

Text Message Advertising

Opinion rules that lawyers may advertise through a text message service that allows the user to initiate live telephone communication.

Ethics Committee Actions

At its meeting on April 20, 2017, the Ethics Committee voted to continue to table Proposed 2016 Formal Ethics Opinion 1, Contesting Opposing Counsel's Fee Request to Industrial Commission, pending the conclusion of appellate action on cases relevant to the proposed opinion. The committee also voted to publish the three new proposed opinions that appear below.

The comments of readers on proposed opinions are welcomed. Comments received by July 14, 2017, will be considered at the next meeting of the Ethics Committee. Comments may be emailed to ethicsadvice@ncbar.gov.

Proposed 2017 Formal Ethics Opinion 2 Maintaining Fiduciary Account in Accordance with Rule 1.15 April 20, 2017

Proposed opinion rules that a lawyer representing an estate must maintain the checking account for the estate in accordance with Rule 1.15 if the lawyer has control over the account.

Background:

On June 9, 2016, the North Carolina Supreme Court approved amendments to Rule 1.15, Safekeeping Property, and its subparts (frequently referred to as the "trust accounting rules"). The following opinion concerns a lawyer's obligations with respect to a fiduciary account, such as an estate account. Inquiries are answered based upon

the rule as amended.

Inquiry #1:

A's will names Lawyer as executor. After A dies, Lawyer opens a client file for the estate in his law office and begins serving as the personal representative for the estate. Lawyer intends to seek compensation for his services. Lawyer opens a checking account for the estate, makes himself the signatory on the account, and manages the checking account throughout the administration of the estate. What are Lawyer's management obligations for the account under Rule 1.15?

Opinion #1:

The checking account must be established as a lawyer's fiduciary account and managed in accordance with the provisions of Rule 1.15 and its subparts.

As the personal representative for the estate, Lawyer will serve in the role of a fiduciary and provide professional fiduciary services. The phrase "professional fiduciary services" is defined and explained in Rule 1.15-1(l) and cmt. [6] as service by a lawyer in any one of the various fiduciary roles undertaken by a lawyer that is not, of itself, the practice of law, but is frequently undertaken in conjunction with the practice of law. This includes service as a trustee, guardian, personal representative of an estate, attorney-in-fact, and escrow agent, as well as service in other fiduciary roles "customary to the practice of law." Rule 1.15, cmt. [6].

The funds Lawyer receives for the benefit of the estate are fiduciary funds and must be deposited in a fiduciary account. Fiduciary funds, another term defined in Rule 1.15-1, denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services. Rule 1.15-1(g). A "fiduciary account," also defined in Rule 1.15-1, is "an account, designated as such, maintained by a

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.

lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity." Rule 1.15-1(f).

Any property belonging to the estate received by or placed under the control of the lawyer in connection with the lawyer's furnishing of legal services or professional fiduciary services must be handled and maintained in accordance with all of the applicable provisions of Rule 1.15, including but not limited to:

- Rule 1.15-2: General Rules
- Rule 1.15-3(a): Check Format
- Rule 1.15-3(b) or (c)(as appropriate): Minimum Records
- Rule 1.15-3(f): Accountings for Fiduciary Property
- Rule 1.15-3(g): Minimum Record Keeping Period
- Rule 1.15-3(i): Reviews

See Rule 1.15, cmts. [2], [6]-[9].

These duties include promptly depositing all fiduciary funds received by or placed under the control of the lawyer in a fiduciary account. Rule 1.15-2(c). They also include (1) review of the monthly bank statements and canceled checks for the account each month (the "monthly review"); (2) for each quarter, review of the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions

completed during the quarter (the “quarterly review”); (3) resolution within 10 days of any discrepancies found during the monthly or quarterly reviews; and (4) preparation of a signed and dated report on each monthly and quarterly review. Rule 1.15-3(i). This list is not exhaustive and Lawyer is obligated to review Rules 1.15-2 and 1.15-3 to ensure compliance with the rules.

Inquiry #2:

Lawyer represents Estate of B and the personal representative of Estate of B in her official capacity. *See* RPC 137. Lawyer opens a checking account for the estate and designates the personal representative as the signatory on the account. Lawyer intends to manage the estate account and retain possession of the checkbook, preparing checks for the personal representative’s signature as needed and depositing estate funds into the account when obtained. What are Lawyer’s obligations for the account under Rule 1.15?

Opinion #2:

The requirements of Rule 1.15-2 and 1.15-3 apply when a lawyer has control over the estate account. A lawyer has control over an estate account when he has signatory authority for the checking account. In the instant inquiry, Lawyer has possession of the checkbook, but does not have signatory authority. Therefore, Lawyer does not have control over the estate account and is not obligated to follow the requirements of Rule 1.15 and its subparts.

Nevertheless, Lawyer represents the estate and the personal representative in her official capacity. Therefore, Lawyer has a duty to provide competent and diligent representation. Rule 1.1 and Rule 1.3. Competent and diligent representation requires Lawyer to advise the personal representative of her fiduciary responsibilities relative to the safekeeping of the funds of the estate and her duty to administer the estate in compliance with the law. *See generally* 2002 FEO 3 (lawyer for estate may seek removal of personal representative if the personal representative’s breach of fiduciary duties constitutes grounds for removal under the law).

Inquiry #3:

Lawyer represents Estate of C and the personal representative of Estate of C in her official capacity. The personal representative opens the checking account for the estate and

manages the account, including the preparation of checks at Lawyer’s direction. What are Lawyer’s obligations for the account under Rule 1.15?

Opinion #3:

Lawyer is not obligated to follow Rule 1.15. *See* Opinion #2.

Inquiry #4:

Lawyer represents Estate of C and the personal representative of Estate of C in her official capacity. The personal representative opens a checking account for the estate and manages the account, including receipt of the bank statements and the preparation of checks. The personal representative, however, asks Lawyer’s paralegal to take possession of the checkbook. Each month, the personal representative goes to Lawyer’s law firm, writes checks, and gives the bills and the checks to paralegal. Paralegal then mails out the checks. What are Lawyer’s obligations to the estate account under these circumstances?

Opinion #4:

See Opinion #2.

Inquiry #5:

Did the June 2016 amendments to Rule 1.15 change or add to the obligations of a lawyer with respect to a fiduciary account, or otherwise change the answers to Inquiries #1 and #2 above?

Opinion #5:

Yes. The 2016 amendments found in Rule 1.15-3(i) now require monthly and quarterly reviews for fiduciary accounts as well as general trust accounts.

Inquiry #6:

In the representations described in Inquiries #1 and #2 above, may Lawyer delegate the management of the fiduciary account to a nonlawyer assistant?

Opinion #6:

Day-to-day management of the account may be delegated to a nonlawyer assistant. However, the responsibility for conducting the monthly and quarterly reviews required by Rule 1.15-3(i) may not be delegated. The rule specifies that “the lawyer” shall review the records. To fulfill the intended purpose of this provision, the lawyer, rather than an assistant, must conduct these reviews. Lawyer must

periodically review underlying bank records, independently of any records prepared or provided by the assistant, to ensure that the non-lawyer’s conduct is compatible with the professional obligations of the lawyer. As explained in comment [23] to Rule 1.15:

The mandatory monthly and quarterly reviews and oversight measures in Rule 1.15-3(i) facilitate early detection of internal theft and early detection and correction of errors. They are minimum fraud prevention measures necessary for the protection of funds on deposit in a firm trust or fiduciary account from theft by any person with access to the account. Internal theft from trust accounts by insiders at a law firm can only be timely detected if the records of the firm’s trust accounts are routinely reviewed. For this reason, Rule 1.15-3(i)(1) requires monthly reviews of the bank statements and cancelled checks for all general, dedicated, and fiduciary accounts.

Although Lawyer may delegate day-to-day management of the account to a nonlawyer assistant, Lawyer remains professionally responsible for compliance with the requirements of Rule 1.15 and its subparts. Therefore, the assistant must be appropriately instructed, trained, and supervised concerning the requirements of the rule. Rule 5.3.

Inquiry #7:

If Lawyer delegates the day-to-day management of a fiduciary account to a nonlawyer assistant, may that assistant be a signatory on the account?

Opinion #7:

The trust accounting rules do not prohibit this. However, the practice increases the risk of internal fraud. *See, e.g.*, Rule 1.15-2(s) (prohibiting an assistant responsible for reconciling a trust account from being a signatory on the account). A lawyer should not permit an assistant to be a signatory on a fiduciary account unless the lawyer or law firm has established fraud prevention procedures that will protect the fiduciary funds from internal theft. *See* Rule 1.15, cmt. [25].

Proposed 2017 Formal Ethics

Opinion 3

Advertisement with URL and No Other Identifying Information

April 20, 2017

Proposed opinion rules that a billboard

advertisement need not contain the lawyer's name, firm name, or the firm's office address if the URL address on the advertisement lands on the lawyer's website where such information can be easily found.

Editor's Note: The opinion is not limited to billboard advertisements; it applies to all forms of legal advertisement.

Inquiry:

Law Firm owns numerous Uniform Resource Locators (URLs) such as www.ABCtowndwi.com. Each of the URLs is a "landing page" for Law Firm's website. Law Firm's website includes Law Firm's full name, the names of the individual lawyers in Law Firm, and Law Firm's office address.

Law Firm would like to start a billboard advertising campaign. Law firm does not want to include Law Firm's full name, the names of the individual lawyers in Law Firm, or Law Firm's office address in the advertisement, but does intend to include one of the URLs.

Is the proposed billboard campaign permissible under the Rules of Professional Conduct?

Opinion:

Yes. Rule 7.1 requires all communications about a lawyer and the lawyer's services to be truthful and not misleading. Rule 7.2(c) requires any communication about a lawyer or a lawyer's services to include the name and office address of at least one lawyer or law firm responsible for its content.

Traditionally, Rule 7.2(c) has been applied so as to require all forms of print and media legal advertising to include the listed information to avoid misleading the public about the identity of the responsible lawyer or firm and the location of the firm. However, the Rules of Professional Conduct are rules of reason to be applied in a reasonable manner under the circumstances. *See* Rule 0.2, Scope, cmt. [1]. For example, in 2012 FEO 6, the Ethics Committee determined that a law firm may use a leased time-shared office address or a post office address to satisfy the address disclosure requirement for advertising communications in Rule 7.2(c). In 2005 FEO 14, the Ethics Committee concluded that, "as long as a URL of a law firm is not otherwise misleading or false and the homepage of the website identifies the sponsoring law firm or lawyer, the URL does not have to contain language specifically identifying the website as one belonging to a law firm." Similarly, 2017 FEO

1 holds that a text message advertisement that does not include the lawyer's office address but does include the lawyer's website address, where the office address can be found, satisfies the requirements of Rule 7.2(c).

A law firm's website will generally contain more than enough information to satisfy the requirements of Rule 7.2(c) and avoid misleading the public. Utilizing a website address in an advertisement actually provides a consumer with the ability to access more information about the lawyer or law firm than an advertisement that contains only the lawyer's or the firm's name and office address. Therefore, an advertisement that includes a URL for a law firm's website complies with Rule 7.2(c) so long as the law firm's website contains the law firm's official name or trade name, or the name of a responsible lawyer, and the firm's office address. The firm name, trade name, or the name of the lawyer must appear on the website homepage. The firm's office address need not appear on the homepage provided it can be easily found on the website.

Proposed 2017 Formal Ethics Opinion 4 Settlement Funds Subject to Statutory Lien April 20, 2017

Proposed opinion rules that a lawyer is prohibited from disbursing settlement funds pursuant to the client's directive if the funds are subject to a perfected lien.

Inquiry:

Client was injured in a vehicular collision. Client was not at fault for the collision. Client incurred various medical expenses as a result of the collision. Lawyer represents Client in her personal injury case against the driver who caused the collision. All medical providers perfected liens on Client's anticipated recovery pursuant to the requirements for perfection of a medical lien on a personal injury settlement set forth in N.C. Gen. Stat. § 44-49. With Client's consent, Lawyer settled the matter. Lawyer received and deposited Client's settlement proceeds in his trust account. The settlement proceeds do not cover the entirety of Client's medical expenses, so Lawyer prepared a proposed *pro rata* disbursement plan, consistent with N.C. Gen. Stat. §44-50 (lien "shall in no case, exclusive of attorney's fees, exceed 50% of the amount of damages recovered"), and submits

the proposal to Client for approval.

Client disapproves of the proposed disbursement, explaining that she does not want one particular medical provider (Provider A) to receive any funds from the settlement. Lawyer advises Client of Provider A's perfected lien, but Client instructs Lawyer not to pay Provider A.

May Lawyer disburse Client's settlement proceeds in accordance with Client's instructions not to pay Provider A such that the funds designated for Provider A are disbursed to Client instead?

Opinion:

No, if the lien is perfected. Generally, a lawyer must follow a client's directives as to the disbursement of settlement proceeds. Rule 1.15-2(n) provides that a lawyer "shall promptly pay or deliver to the client, or to third persons as directed by the client, any entrusted property belonging to the client and to which the client is currently entitled." However, Provider A has perfected a lien against the settlement proceeds pursuant to N.C. Gen. Stat. § 44-49. The perfected lien creates a question as to whether Client is "currently entitled" to the share of the settlement proceeds designated for Provider A.

Comment [15] to Rule 1.15 recognizes that a third party may have a lawful claim (such as a medical provider lien) against specific funds in a lawyer's custody, and a lawyer "may have a duty under applicable law to protect such third-party claims against wrongful interference by the client."

The applicable law provides that a lien exists upon any sums recovered as damages for personal injury in any civil action. N.C. Gen. Stat. § 44-49(a). The lien is in favor of any provider to whom the injured person may be indebted for any medical attention rendered in connection with the injury. *Id.* The lien attaches to all funds paid to a lawyer in compensation for or settlement of the personal injury claim. To perfect the lien, the medical provider must furnish an itemized statement, hospital record or medical report, without charge, for the lawyer to use in the resolution of the personal injury claim and give written notice to the lawyer of the lien claim. N.C. Gen. Stat. § 44-49(b).

Before disbursing settlement proceeds subject to a perfected lien, N.C. Gen. Stat. § 44-50 provides that the lawyer "shall retain out of

CONTINUED ON PAGE 47

Board of Law Examiners Proposes Amendments to Enable the Administration of the Uniform Bar Exam

The North Carolina Board of Law Examiners (the Board) has proposed revisions to the Rules Governing Admission to the Practice of Law in the State of North Carolina, for approval by the Council of the North Carolina State Bar. The revisions would adopt the Uniform Bar Exam (UBE), developed by the National Conference of Bar Examiners (NCBE), in place of the current North Carolina bar exam.

A key feature of the UBE is its “portability:” applicants who take the UBE in North Carolina would be able to use their UBE score to secure admission in another UBE state without having to take another bar exam. Likewise, applicants who have taken the UBE elsewhere would be able to use that score to gain admission in North Carolina (assuming the score satisfies our cut score). The UBE has been adopted in 27 jurisdictions¹ and is reportedly being considered in at least two other states.

The UBE consists of three components:

1. The Multistate Bar Examination (MBE), the multiple-choice standardized test currently used as the first day of the North Carolina bar exam and graded by the NCBE. (Under the UBE, the MBE would count for 50% of the applicant’s grade, rather than the current 40% weight it has been assigned in North Carolina.)

2. The half-day Multistate Essay Examination (MEE), counting for 30% of the applicant’s grade. The MEE resembles the current essay portion of the North Carolina exam, but tests the ability to apply “general” principles of state law in the US. The MEE consists of six essay questions drawn from 12 subject areas. Each question may pose issues from more than one of the subject areas, 11 of which are the same as subjects tested on the current North Carolina essay portion of the exam. Unlike the current North Carolina essay exam, the MEE subjects include “conflicts of law,” but do not include professional responsibility. Under the UBE, however, the

Board of Law Examiners of The State of North Carolina

WHEREAS, the Board of Law Examiners of the State of North Carolina held a meeting in Charleston, South Carolina, on March 20, 2017; and

WHEREAS, at this meeting, the board considered the amendment of the Rules Governing Admission to the Practice of Law in the State of North Carolina (Rules); and

WHEREAS, on motion duly made and seconded, it was RESOLVED that the Rules be amended as reflected on the attached document and that these amendments be presented to the council for the North Carolina State Bar for approval; and

NOW, THEREFORE, BE IT RESOLVED by vote of the Board of Law Examiners of the State of North Carolina that the Rules Governing Admission to the Practice of Law in the State of North Carolina be amended as reflected on the attached document; and that the action of this Board be certified to the council of the North Carolina State Bar and North Carolina Supreme Court for approval.

Adopted at meeting of the Board of Law Examiners of the State of North Carolina on March 20, 2017.

Given over my hand and seal of the Board of Law Examiners on this 20th day of March, 2017.

Jaye P. Meyer, Chair

board would continue to require all applicants to take separately the Multistate Professional Responsibility Examination (MPRE), another standardized test developed and graded by the NCBE.

3. The half-day Multistate Performance Test (MPT), counting for 20% of the grade. The MPT requires the applicant to perform two practical exercises: It presents the applicant with a hypothetical “file” containing pertinent facts and law, and assigns tasks that might be expected of starting attorneys—e.g., preparing a demand letter, an advisory, or an argumentative memorandum, or drafting a pleading.

There are two other significant aspects to the proposed changeover to the UBE. First, while the board would be responsible for grading the MEE and MPT, it would be relying on resources developed by the NCBE to insure a level of consistency between UBE jurisdictions. These include special training and grading materials developed by the

NCBE, rather than by the local jurisdictions. Second, the NCBE’s rules allow, but do not require, participating states to add a State Specific Component (SSC) aimed at insuring a level of competence in state-specific law. SSCs can range from a formal “mini-exam” to required attendance at a course in state-specific law. The board has decided on a version of the latter. It would consist of a series of online video presentations that applicants would view at their convenience. The presentations would focus on topics where North Carolina law differs from the “general” law tested on the MEE, and would be interspersed with “hurdle questions” designed to confirm that the applicant paid attention to the presentation. The board believes the State Specific Component would compensate for the loss of one benefit of the current testing regime, which is the incentive it has given applicants to study—through a bar review course or otherwise—specific topics in North

Carolina law.

Otherwise, adoption of the UBE would leave the existing bar admission process intact. The board would still be responsible for evaluating the character and fitness of all applicants for admission, applying the same standards as at present. The board would still set the passing score for the exam. The board would still administer the exam in the Raleigh area, on the same two dates in February and July. The first day of the exam will still consist of the MBE, graded, as now, by the National Conference of Bar Examiners; and board members would still be responsible for grading the second day of the exam.

A number of factors weighed in favor of the board's unanimous decision to recommend adopting the UBE:

- First and foremost, the UBE's "portability" feature. Lawyer mobility is an increasing reality. Lowering unnecessary barriers to mobility is in line with the chief justice's current initiative to expand the availability of legal services. In today's harsh job market, it also lessens the plight of new law school graduates who must choose a particular bar to apply for without necessarily having a job in that state. It may also relieve some applicants from the need to take multiple bar review courses at what may be the most cash-strapped time of their lives.

- Superior questions and grading materials. The NCBE's capacity to develop and vet questions and grading materials for the MEE and the MPT (including practice testing) far exceeds the board's resources. This should minimize the incidence of questions that "test" poorly or produce anomalous grades.

- Enhanced emphasis on assuring applicants' readiness to begin practice. The board has long considered the essay portion of the exam as much more than a test of memory or ability to regurgitate black-letter law. The board has strived to evaluate essay answers for what they show about an applicant's ability to reason and to articulate his or her reasoning in a way consistent with the ability to practice law. However, the board believes making the Multistate Performance Test part of North Carolina's exam would better achieve this goal.

- The apparent accelerating trend towards the UBE across the United States.

- By addressing real problems at the state level, adoption of the UBE would relieve what might otherwise be pressure toward a national bar admission process.

By Randel E. Phillips is a member of the Board of Law Examiners who practices with Moore and Van Allen in Charlotte.

Endnote

1. Alabama, Alaska, Arizona, Colorado, Connecticut, District of Columbia, Idaho, Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, South Carolina, Utah, Vermont, Washington, West Virginia, and Wyoming.

Executive Summary

This is a summary of proposed changes to the Rules Governing Admission to the Practice of Law in the State of North Carolina approved for submission to the council by the board at its March 20, 2017, meeting. The main purpose of the revisions is to enable the board to begin administering the Uniform Bar Exam (UBE) in time for the February 2019 bar exam. In the course of drafting the changes needed to make the UBE a reality in North Carolina, the board noted that other changes in the Rules appeared advisable.

UBE-Related Revisions

The principal changes appear in Sections .0902 to .0904, which expressly adopt the UBE as the official "bar exam" for "General Applicants" in North Carolina, and Section .0504, recognizing a new applicant category, "Transfer Applicants," for those who seek admission here based on a UBE score in another jurisdiction. Other UBE-related changes appear in .0202, .0203, and .0802, (rules of general application revised to note the new Transfer Applicant category); .0300 (effective date); .0404(1) (increasing fees for General Applicants in response to the cost increase associated with the UBE); .0501(8) (requiring General Applicants, like Transfer Applicants, to complete the State Specific Component in North Carolina Law, as permitted under the UBE); and .1001 to .1003 (conforming review procedure to UBE requirements).

Other Revisions

The reasons for the changes will hopefully be obvious from the text. Among others, these include:

- Replacement or deletion of obsolete or archaic language (e.g., "executive director" instead of "secretary," "chair" instead of "chairman," and to "take" instead of "stand

an exam).

- To put existing provisions in more logical order (e.g., moving the "Definitions" section from .0202 to .0101, so defined terms can be used in Section .0100; moving the provision on judicial review venue from .1404 to .1401; and relocating a requirement for familiarity with the state's Rules of Professional Conduct from .0502(1)(a) to (3)).

- To correct obvious oversights (e.g., changing the heading to .1301 so it doesn't appear that the board only issues licenses to General Applicants; deleting "and received by" from .0403(1), so as not to contradict the purpose behind the exception in .0101 (4), which treats an application as "filed" so long as it is postmarked by the filing date; references to the "Military Spouse Comity" category that should have been inserted in .0202 and .0802 when that category was added several years ago).

- To state certain provisions more clearly (e.g., .0402(2), .0404, .0502).

Revisions in the "Other" category are not intended as material changes to the existing Rules or in the practices of the board under those Rules, except:

- Revised .0502(5) would require a general applicant who fails to complete all other requirements for licensure within three years after getting a passing score on the UBE to retake the bar exam. (Similar to the three-year limit on portability of a passing UBE score for Transfer Applicants.)

- Revised .0203 would expand the list of bar exam applicants published in the State Bar *Journal* to include pending applications for admission by comity, military spouse comity, or transfer.

Proposed Amendments

Section .0100 – Organization

~~.0101 Website~~

~~The Board of Law Examiners of the State of North Carolina shall maintain a public website that shall publish the location of its offices, its mailing address, office hours, telephone number, fax number, e-mail address and such other information as the Board may direct.~~

~~.0102 Purpose~~

~~The Board of Law Examiners of the State of North Carolina was created for the purpose of examining applicants and providing rules and regulations for admission to the bar, including the issuance of licenses therefor.~~

~~.0103 Membership~~

~~The Board of Law Examiners of the State of North Carolina consists of eleven members of the N.C. Bar elected by the council of the North Carolina State Bar. One member of said Board is elected by the Board to serve as chairman for such period as the Board may determine. The Board also employs an executive director to enable the Board to perform its duties promptly and properly. The executive director, in addition to performing the administrative functions of the positions, may act as attorney for the Board.~~

~~Section .0200 – General Provisions~~

~~.0201 Compliance~~

~~No person shall be admitted to the practice of law in North Carolina unless that person has complied with these rules and the laws of the state.~~

~~.0202 .0101 Definitions~~

For purposes of this Chapter, the following shall apply:

(1) “Chapter” or “Rules” refers to the “Rules Governing Admission to the Practice of Law in the State of North Carolina.”

(2) “Board” refers to the “Board of Law Examiners of the State of North Carolina.” A majority of the members of the Board shall constitute a quorum, and the action of a majority of a quorum, present and voting, shall constitute the action of the Board.

(3) “Executive Director” refers to the “Executive Director of the Board of Law Examiners of the State of North Carolina.”

(4) “Filing” or “filed” shall mean received in the office of the Board of Law Examiners. Except that applications placed in the United States mail properly addressed to the Board of Law Examiners and bearing sufficient first class postage and postmarked by the United States Postal Service or date-stamped by any recognized delivery service on or before a deadline date will be considered as having been timely filed if all required fees are included in the mailing. Mailings which are postmarked after a deadline or which, if postmarked on or before a deadline ~~and~~, do not include required fees or which include a check in payment of required fees which is ~~not honored due to dishonored because of~~ insufficient funds will not be considered as ~~timely~~ filed. Applications which are not properly signed and notarized; or which do not include the

properly executed Authorization and Release forms; or which are illegible; or ~~which with incomplete~~ answers to the questions ~~are not complete~~ will not be considered filed and will be returned.

(5) Any reference to a “state” shall mean one of the United States, and any reference to a “territory” shall mean a United States territory.

(6) “Panel” means one or more members of the Board specially designated to conduct hearings provided for in these Rules.

.0102 Website

The Board shall maintain a public website that shall publish the location of its offices, its mailing address, office hours, telephone number, fax number, e-mail address and such other information as the Board may direct.

.0103 Purpose

The Board was created for the purpose of examining applicants and providing rules and regulations for admission to the bar, including the issuance of licenses therefor.

.0104 Membership

The Board consists of eleven members of the North Carolina State Bar elected by the council of the North Carolina State Bar. One member of the Board is elected by the Board to serve as its Chair for such period as the Board may determine. The Board also employs an Executive Director to enable the Board to perform its duties promptly and properly. The Executive Director, in addition to performing the administrative functions of the position, may act as the Board’s attorney.

Section .0200 - General Provisions

.0201 Compliance

No person shall be admitted to the practice of law in North Carolina unless that person has complied with these Rules.

~~.0203 .0202 Applicants~~

~~For the purpose of these rules purposes of this Chapter, applicants are classified either as “general applicants,” or as “comity applicants,” “military spouse comity applicants,” or “transfer applicants.” To be classified as a “general applicant” and certified as such for admission to practice law, an applicant must satisfy the requirements of Rule~~

~~.0501 of this Chapter. To be classified as a “comity applicant” and certified as such for admission to practice law, a person shall an applicant must satisfy the requirements of Rule .0502 of this Chapter. To be classified as a “military spouse comity applicant” and certified as such for admission to practice law, an applicant must satisfy the requirements of Rule .0503 of this Chapter. To be classified as a “transfer applicant” and certified as such for admission to practice law, an applicant must satisfy the requirements of Rule .0504 of this Chapter.~~

~~.0204 .0203 List~~

~~As soon as possible after each filing late-filing deadline for general applications, the Executive Director shall prepare and maintain a list of general applicants for the ensuing examination, and all comity, military spouse comity, and transfer applicants whose applications are then pending, for publication in the North Carolina State Bar Journal.~~

~~.0205 .0204 Hearings~~

~~Every applicant may be required to appear before the Board to be examined about any matters pertaining to the applicant’s moral character and general fitness, educational background or any other matters set out in Section .0500 of this Chapter.~~

~~.0206 .0205 Nonpayment of Fees~~

~~Failure to pay the No application will be deemed to have been filed until the applicant has paid the fees required by these rules shall cause the application not to be deemed filed. If the check payable for the application fee is not honored upon presentment for any reason other than error of the bank, the application will be deemed not timely to have been filed and will have to be refiled. All such checks payable to the Board for any fees which are not honored upon presentment shall be returned to the applicant, who shall pay to the Board in cash, cashier’s check, certified check or money order any fees payable to the Board including a fee for processing that check.~~

Section .0300 - Effective Date

These Revised Rules shall apply to all applications for admission to practice law in North Carolina submitted on or after June 30, 2018.

Section .0400 - Applications of General Applicants

.0401 How to Apply

Applications for admission must be made upon forms supplied by the Board and must be complete in every detail. Every supporting document required by the application form must be submitted with each application. The application form may be obtained by submitting a written request to the Board or by accessing the application via the Board's website: www.ncble.org.

.0402 Application Form

(1) The Application for Admission to Take the North Carolina Bar Examination ~~form~~ requires an applicant to supply full and complete information relating to the applicant's background, including family history, past and current residences, education, military service, past and present employment, credit status, involvement in disciplinary, civil or criminal proceedings, substance abuse, current mental and emotional impairment, and bar admission and discipline history. Applicants must list references and submit as part of the application:

- Certificates of Moral Character from four (4) individuals who know the applicant;
- A recent photograph;
- Two (2) sets of clear fingerprints;
- Two executed informational Authorization and Release forms;
- A birth certificate;
- Transcripts from the applicant's undergraduate and graduate schools;
- A copy of all applications for admission to the practice of law that the applicant has filed with any state, territory, or the District of Columbia;
- A certificate from the proper court or agency of every jurisdiction in which the applicant is or has been licensed, that the applicant is in good standing, or the applicant must otherwise satisfy the Board that the applicant falls within the exception provided in Rule .0501(7)(b), and is not under pending charge of misconduct;
- Copies of any legal proceedings in which the applicant has been a party.

The application must be filed in duplicate. The duplicate may be a photocopy of the original.

(2) An applicant who ~~has~~ aptly filed a complete Application for Admission to Take the North Carolina Bar Examination for a

~~particular the February or July bar examination may, after failing or withdrawing from that particular examination, file a Supplemental Application on forms supplied by the board, along, with the applicable fee, for the next subsequent bar examination. An applicant who has filed, on forms supplied by the Board, and may continue to file a Supplemental Application as provided by this rule immediately preceding the filing deadline specified in Rule .0403 of this chapter may file a subsequent Supplemental Application along, with the applicable fees for the next fee, for each subsequent examination. The until successful. Each Supplemental Application will must update the any information previously submitted to the Board by the applicant. Said SUPPLEMENTAL APPLICATION Each Supplemental Application must be filed by the deadline set out in Rule .0403 of this Chapter. An applicant who withdraws from or fails any particular administration of the bar examination and does not file a Supplemental Application for the next bar examination will be required to file a new general application before taking the written examination again.~~

.0403 Filing Deadlines

(1) Applications shall be filed ~~and received by~~ with the Executive Director at the offices of the Board on or before the first Tuesday in January immediately preceding the date of the July written bar examination and on or before the first Tuesday in October immediately preceding the date of the February written bar examination.

(2) Upon payment of a late filing fee of \$250 (in addition to all other fees required by these rules), an applicant may file a late application with the Board on or before the first Tuesday in March immediately preceding the July written bar examination and on or before the first Tuesday in November immediately preceding the February written bar examination.

(3) Applicants who fail to timely file their application will not be allowed to take the Bar Examination designated on the application.

~~(4) Any applicant who has aptly filed a General Application for the February or July written bar examination may make application to take the next immediately following bar examination by filing General Applicants may file a Supplemental Application with the Executive Director of the Board at the offices of the Board on or before the following dates:~~

(a) If the applicant aptly filed a General Application ~~for the, or a previous Supplemental Application, for the~~ February bar examination, the Supplemental Application for the following July bar examination must be filed on or before the first Tuesday in May immediately preceding the July examination; and

(b) If the applicant aptly filed a General Application, or a previous Supplemental Application, for the July bar examination, the Supplemental Application for the following February bar examination must be filed on or before the first Tuesday in October immediately preceding the February examination.

.0404 Fees for General Applicants

~~Every application by an applicant who-~~

~~(1) is not a licensed attorney in any other jurisdiction shall be accompanied by a fee of \$700.00;~~

~~(2) is or has been a licensed attorney in any other jurisdiction shall be accompanied by a fee of \$1,500.00;~~

~~(3) is filing to take the North Carolina Bar Examination using a Supplemental Application shall be accompanied by a fee of \$400.00;~~

~~(4) (1) The application specified in .0402 (1) shall be accompanied by a fee of \$850.00, if the applicant is not, and has not been, a licensed attorney in any other jurisdiction, or by a fee of \$1,650.00, if the applicant is or has been a licensed attorney in any other jurisdiction; provided that if the applicant is filing after the deadline set out in Rule .0403(1), but before the deadline set forth in Rule .0403(2), the application shall also be accompanied by a late fee of \$250.00 in addition to all other fees required by these rules.~~

~~(2) A Supplemental Application shall be accompanied by a fee of \$400.00.~~

.0405 Refund of Fees

Except as herein provided, no part of the fee required by Rule .0404(1), ~~or (2), or (3)~~ of this Chapter shall be refunded to the applicant unless the applicant shall file with the Executive Director a written request to withdraw as an applicant, not later than the 15th day of June preceding the July written bar examination and not later than the 15th day of January preceding the February written bar examination, in which event not more than one-half of the applicable fee may be refunded to the applicant at the discretion of the Board.

No portion of any late fee will be refunded.

However, when an application for admission by examination is received from an applicant who, in the opinion of the Executive Director after consultation with the Board Chair, is not eligible for consideration under the Rules, the applicant shall be so advised by written notice. Upon receipt of such notice, the applicant may elect in writing to withdraw the application; and, provided the written election is received by the Board within twenty (20) days from the date of the Board's written notice to the applicant, receive a refund of all fees paid.

Section .0500 - Requirements for Applicants

.0501 Requirements for General Applicants

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

(1) possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter ~~both at the time the license is issued and at the time of standing and passing a written bar examination as prescribed in Section .0900 of this Chapter;~~

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

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

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

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

(6) have ~~stood taken~~ and passed the Multistate Professional Responsibility Examination ~~approved by the Board~~ within the twenty-four (24) month period next preceding the beginning day of the written bar examination which applicant passes as prescribed by Section .0900 of this Chapter which the applicant applies to take above, or

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

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

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

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

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

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

(8) have successfully completed the State Specific Component, consisting of the course in North Carolina law prescribed by the Board.

.0502 Requirements for Comity Applicants

The Board in its discretion shall determine whether ~~attorneys~~ an attorney duly licensed to practice law in any state, or territory of the United States, or the District of Columbia, may be licensed to practice law in the State of

North Carolina without written examination, other than the Multistate Professional Responsibility Examination; provided that such attorney's jurisdiction of licensure qualifies as a jurisdiction in comity with North Carolina, in that the conditions required by ~~the such~~ state, or territory of the United States or the District of Columbia, for North Carolina attorneys to be licensed to practice law in that jurisdiction without written examination are not considered by the Board to be unduly or materially greater than the conditions required by the State of North Carolina for licensure to practice law without written examination in this State. A list of "approved jurisdictions," as determined by the Board pursuant to this rule, shall be available upon request.

Any attorney at law duly admitted to practice in another state, or territory of the United States, or the District of Columbia, upon written application may, in the discretion of the Board, be licensed to practice law in the State of North Carolina without written examination provided each such applicant shall:

(1) File with the Executive Director, upon such forms as may be supplied by the Board, a typed application in duplicate which will be considered by the Board after at least six (6) months from the date of filing; ~~the~~ Such application ~~requires~~ shall require:

(a) That an applicant supply full and complete information in regard to his background, including family, past residences, education, military, employment, credit status, whether he has been a party to any disciplinary or legal proceedings, whether currently mentally or emotionally impaired, references, and the nature of the applicant's practice of law, ~~and familiarity with the code of Professional Responsibility as promulgated by the North Carolina State Bar.~~

(b) That the applicant furnishes the following documentation:

(i) Certificates of Moral Character from four (4) individuals who know the applicant;

(ii) A recent photograph;

(iii) Two (2) sets of clear fingerprints;

(iv) A certification of the Court of Last Resort from the jurisdiction from which the applicant is applying; that:

-the applicant is currently licensed in the jurisdiction;

-the date of the applicant's licensure

in the jurisdiction;
-the applicant was of good moral character when licensed by the jurisdiction; and
-the jurisdiction allows North Carolina attorneys to be admitted without examination;

(v) Transcripts from the applicant's undergraduate and graduate schools;

(vi) A copy of all applications for admission to the practice of law that the applicant has filed with any state, territory, or the District of Columbia;

(vii) A certificate of admission to the bar of any state, territory, or the District of Columbia;

(viii) A certificate from the proper court of every jurisdiction in which the applicant is licensed ~~therein~~ that he is in good standing, or that the applicant otherwise satisfy the Board that the applicant falls within the exception provided in Rule .0501(7)(b), and not under pending charges of misconduct;

(2) Pay to the Board with each ~~typewritten~~ application, a fee of \$2,000.00, no part of which may be refunded to:

(a) an applicant whose application is denied; or (b) an applicant who withdraws, unless the ~~withdrawing~~ applicant has filed with the Board a written request to withdraw, in which event, the Board in its discretion may refund no more than one-half of the fee to the withdrawing applicant. However, when an application for admission by comity is received from an applicant who, in the opinion of the Executive Director after consideration with the Board Chair, is not eligible for consideration under the Rules, the applicant shall be so advised by written notice. Upon receipt of such notice, the applicant may elect in writing to withdraw the application, and, provided the written election is received by the Board within twenty (20) days from the date of the Board's written notice to the applicant, receive a refund of all fees paid.

(3) Prove to the satisfaction of the Board that the applicant is duly licensed to practice law in one or more jurisdictions ~~relied upon by the applicant for admission to practice law in North Carolina, that each jurisdiction relied upon by the applicant has been or should be approved by the Board, pursuant to this rule, for admission to practice law in North Carolina, and which are on the list of~~

"approved jurisdictions," or should be on such list, as a comity jurisdiction within the language of the first paragraph of this Rule .0502; that the applicant has been, for at least four out of the ~~last~~ six years; immediately preceding the filing of this application with the Executive Director, actively and substantially engaged in the ~~full-time~~ practice of law pursuant to the license to practice law from one or more jurisdictions relied upon by the applicant; and that the applicant has read the Rules of Professional Conduct promulgated by the North Carolina State Bar. Practice of law for the purposes of this rule when conducted pursuant to a license granted by another jurisdiction shall include the following activities, if performed in a jurisdiction in which the applicant is admitted to practice law, or if performed in a jurisdiction that permits such activity by a licensed attorney not admitted to practice in that jurisdiction:

(a) The practice of law as defined by G.S. 84-2.1; or

(b) Activities which would constitute the practice of law if done for the general public; or

(c) Legal service as house counsel for a person or other entity engaged in business; or (d) Judicial service, service as a judicial law clerk, or other legal service in a court of record or other legal service with any local or state government or with the federal government; or

(e) Legal ~~Service~~ service with the United States, a state or federal territory, or any local governmental bodies or agencies, including military service; or

(f) A full time faculty member in a law school approved by the Council of the North Carolina State Bar.

For purposes of this rule, the active practice of law shall not include (a) work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which any person receiving the unauthorized service was located, or (b) the practice of law in any additional jurisdiction, pursuant to a license to practice law in that additional jurisdiction, and that additional jurisdiction is not an "approved jurisdiction" as determined by the Board pursuant to this rule.

(4) Be in good standing in ~~every jurisdiction within~~ each State, territory of the United States, or the District of Columbia; in which the applicant is or has been licensed to practice law and not under any charges of misconduct

while the application is pending before the Board.

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

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

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

(b) if the jurisdiction in which the applicant is inactive or was formerly a member will not certify the applicant's good standing solely because of the non-payment of dues, the Board, in its discretion, may waive such certification from that jurisdiction; however, the applicant must not only be in good standing, but also must be an active member of each jurisdiction upon which the applicant relies for admission by comity.

(5) Be of good moral character and have satisfied the requirements of Section .0600 of this Chapter;

(6) Meet the educational requirements of Section .0700 of this Chapter as hereinafter set out if first licensed to practice law after August, 1971;

(7) Not have taken and failed the written North Carolina Bar Examination within five (5) years prior to the date of filing the applicant's comity application;

(8) Have ~~stood and~~ passed the Multistate Professional Responsibility Examination ~~approved by the Board.~~

.0503 Requirements for Military Spouse Comity Applicants

A Military Spouse Comity Applicant, upon written application may, in the discretion of the Board, be granted a license to practice law in the State of North Carolina without written examination provided that:

(1) The Applicant fulfills all of the requirements of Rule .0502, except that:

(a) in lieu of the requirements of paragraph (3) of Rule .0502, a Military Spouse Comity Applicant shall certify that said applicant has read the Rules of Professional Conduct promulgated by the North Carolina State Bar and shall prove to the satisfaction of the Board that the Military Spouse Comity Applicant is duly licensed to practice law in a state, or

territory of the United States, or the District of Columbia, and that the Military Spouse Comity Applicant has been for at least four out of the last eight years immediately preceding the filing of this application with the Executive Director, actively and substantially engaged in the ~~full-time~~ practice of law. Practice of law for the purposes of this rule shall be defined as it would be defined for any other comity applicant; and (b) Paragraph (4) of Rule .0502 shall not apply to a Military Spouse Comity Applicant.

(2) **Military Spouse Comity Applicant defined Defined.** A Military Spouse Comity Applicant is any person who is

- (a) An attorney at law duly admitted to practice in another state or territory of the United States, or the District of Columbia; and
- (b) Identified by the Department of Defense (or, for the ~~east~~ Coast Guard when it is not operating as a service in the Navy, by the Department of Homeland Security) as the spouse of a ~~servicemember~~ service member of the United States Uniformed Services; and
- (c) Is residing, or intends within the next six months, to be residing, in North Carolina due to the ~~servicemember's~~ service member's military orders for a permanent change of station to the State of North Carolina.

(3) **Procedure.** In addition to the documentation required by paragraph (1) of Rule .0502, a Military Spouse Comity Applicant must file with the Board the following:

- (a) A copy of the ~~servicemember's~~ service member's military orders reflecting a permanent change of station to a military installation in North Carolina; and
- (b) A military identification card which lists the Military Spouse Applicant as the spouse of the ~~servicemember~~ service member.

(4) **Fee.** A Military Spouse Comity Applicant shall pay a fee of \$1,500.00 in lieu of the fee required in paragraph (2) of Rule .0502. This fee shall be non-refundable.

.0504 Requirements for Transfer Applicants

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

- (1) possess the qualifications of character

and general fitness requisite for an attorney and counselor-at-law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter;

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

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

(4) have filed with the Executive Director, upon such forms as may be supplied by the Board, a typed application in duplicate, containing the same information and documentation required of general applicants under Rule .0402(1);

(5) have paid with the application an application fee of \$1,500.00, if the applicant is licensed in any other jurisdiction, or \$1,275.00 if the applicant is not licensed in any other jurisdiction, no part of which may be refunded to an applicant whose application is denied or to an applicant who withdraws, unless the withdrawing applicant filed with the Board a written request to withdraw, in which event, the Board in its discretion may refund no more than one-half of the fee to the withdrawing applicant. However, when an application for admission by transfer is received from an applicant who, in the opinion of the Executive Director, after consultation with the Board Chair, is not eligible for consideration under the Rules, the applicant shall be so advised by written notice. Upon receipt of such notice, the applicant may elect in writing to withdraw the application, and, provided the written election is received by the Board within twenty (20) days from the date of the Board's written notice to the applicant, receive a refund of all fees paid.

(6) have, within the three-year period preceding the filing date of the application, taken the Uniform Bar Examination and achieved a scaled score on such exam that is equal to or greater than the passing score established by the Board for the UBE as of the administration of the exam immediately preceding the filing date;

(7) have passed the Multistate Professional Responsibility Examination.

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

while the application is pending before the Board.

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

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

or

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

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

(9) have successfully completed the State-Specific Component, consisting of the course in North Carolina law prescribed by the Board.

Section .0600 - Moral Character and General Fitness

.0601 Burden of Proof

Every applicant shall have the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law and is possessed of good moral character and is entitled to the high regard and confidence of the public.

.0602 Permanent Record

All information furnished to the Board by an applicant shall be deemed material, and all such information shall be and become a permanent record of the Board.

.0603 Failure to Disclose

No one shall be licensed to practice law by ~~examination or comity or be allowed to take the bar examination~~ in this state:

(1) who fails to disclose fully to the Board, whether requested to do so or not, the facts relating to any disciplinary proceedings or charges as to the applicant's professional conduct, whether same have been terminated or not, in this or any other state, or any federal court or other jurisdiction, or

(2) who fails to disclose fully to the Board, whether requested to do so or not, any and all facts relating to any civil or crim-

inal proceedings, charges or investigations involving the applicant; (unless expunged under applicable state law), whether the same have been terminated or not in this or any other state or in any of the federal courts or other jurisdictions.

.0604 Bar Candidate Committee

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

.0605 Denial; Re-Application

No new application or petition for reconsideration of a previous application from an applicant who has either been denied permission to take the bar examination or has been denied a license to practice law on the grounds set forth in Section .0600 shall be considered by the Board within a period of three (3) years next after the date of such denial unless, for good cause shown, permission for re-application or petition for a reconsideration is granted by the Board.

Section .0700 - Educational Requirements

.0701 General Education

Each applicant must have satisfactorily completed the academic work required for admission to a law school approved by the Council of the North Carolina State Bar.

.0702 Legal Education

Every applicant applying for admission to practice law in the State of North Carolina, before being granted a license to practice law, shall prove to the satisfaction of the Board that said applicant has graduated from a law school approved by the Council of The North Carolina State Bar or that said applicant will graduate within thirty (30) days after the date of the written bar examination from a law school approved by the Council of the North Carolina State Bar. There shall be filed with the Executive Director a certificate of the dean, or other proper official of said law school, certifying the date of the applicant's graduation. A list of the approved law schools is available in the office of the Executive Director.

Section .0800 - Protest

.0801 Nature of Protest

Any person may protest the application of any applicant to be admitted to the practice of law ~~either by examination or by comity~~.

.0802 Format

A protest shall be made in writing, signed by the person making the protest and bearing the person's home and business address, and shall be filed with the Executive Director

- (a) if a general applicant, before the date the applicant is scheduled to be examined; or
- (b) if a comity, military spouse comity, or transfer applicant, before the date of the applicant's final appearance before a Panel.

.0803 Notification; Right to Withdraw

The Executive Director shall notify immediately the applicant of the protest and of the charges therein made; and the applicant thereupon may file with the Executive Director a written withdrawal as a candidate for admission.

.0804 Hearing

In case the applicant does not withdraw as a candidate for admission to the practice of law, the person or persons making the protest and the applicant in question shall appear before a Panel or the Board at a time and place to be designated by the Board Chair. If the applicant is an applicant for admission by examination and a hearing on the protest is not held before the written examination, the applicant may take the written examination.

.0805 Refusal to License

Nothing herein contained shall prevent the Board on its own motion from refusing to issue a license to practice law until the Board has been fully satisfied as to the moral character and general fitness of the applicant as provided by Section .0600 of this Chapter.

Section .0900 - Examinations

.0901 Written Examination

Two written bar examinations shall be held each year for ~~those applying to be admitted to the practice of law in North Carolina~~ **general applicants**.

.0902 Dates

The written bar examinations shall be held in ~~the City of Raleigh, Wake County or adjoining counties~~ in the months of February and July on ~~such the dates as the Board may set from year to year~~ prescribed by the National Conference of Bar Examiners.

.0903 Subject Matter

~~The examination may deal with the following subjects: Business Association (including agency, corporations, and partnerships), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Legal Ethics, Real Property, Secured Transactions including The Uniform Commercial Code, Taxation, Torts, Trusts, Wills, Decedents' Estates and Equity.~~

The examination shall be the Uniform Bar Examination (UBE) prepared by the National Conference of Bar Examiners and comprising six (6) Multistate Essay Examination (MEE) questions, two (2) Multistate Performance Test (MPT) items, and the Multistate Bar Examination (MBE). Applicants may be tested on any subject matter listed by the National Conference of Bar Examiners as areas of law to be tested on the UBE. Questions will be unlabeled and not necessarily limited to one subject matter.

.0904 Grading and Scoring.

Grading of the MEE and MPT answers shall be strictly anonymous. The MEE and MPT raw scores shall be combined and converted to the MBE scale to calculate written scaled scores according to the method used by the National Conference of Bar Examiners for jurisdictions that administer the UBE.

.0904 .0905 Passing Score

The Board shall determine what shall constitute the passing of an examination UBE score for admission in North Carolina. The UBE passing score shall only be increased on one year's public notice.

Section .1000 - Review of Written Bar Examination

.1001 Review

An applicant for admission by After release of the results of the written bar examination, a general applicant who has failed the written examination may, in the Board's offices, examine review the MEE questions and MPT items on the written examination and the applicant's answers to the essay portion of the examination and such other thereto, along with selected answers as by other applicants which the Board determines will be of assistance to the applicant. may be useful to unsuccessful applicants.

.1002 Fees

The Board will also furnish an unsuccessful applicant a copy of the applicant's essay examination at a cost to be determined by the Executive Director, not to exceed an amount determined by hard copies of any or all of these materials, upon payment of the reasonable cost of such copies, as determined by the Board. No copies of the Board's grading guide will be made or furnished to the applicant. MEE or MPT grading materials prepared by the National Conference of Bar Examiners will be shown or provided to the applicant unless authorized by the National Conference of Bar Examiners.

.1003 .1002 Multistate Bar Examination

There is no provision for review of the Multistate Bar Examination. Applicants may, however, request the National Conference of Bar Examiners to hand score their MBE answers.

.1004 .1003 Release of Scores

(1) Upon written request, the The Board will not release to an unsuccessful applicant the applicant's UBE scores on to the bar examination public.

(2) The Board will inform each applicant in writing of the applicant's scaled score on the UBE. Scores will be shared with the applicant's law school only with the applicant's consent.

(3) Upon written request of an unsuccessful applicant, the Board will furnish the

following information about the applicant's score to the applicant: the applicant's raw scores on the MEE questions and MPT items; the applicant's scaled combined MEE and MPT score; the applicant's scaled MBE score; and the applicant's scaled UBE score.

(2)(4) Upon written request of an applicant, the Board will furnish the Multistate Bar Examination score of said applicant to another jurisdiction's board of bar examiners; or like organization that administers the admission of attorneys into for that jurisdiction.

.1005 .1004 Board Representative

The Executive Director of the Board serves as the Board's representative of the Board during this for purposes of any review of the written bar examination by an unsuccessful applicant. The Secretary Executive Director is not authorized to discuss any specific questions and answers on the bar examination.

.1005 Re-Grading

Examination answers cannot be re-graded once UBE scores have been released.

Section .1100 - Reserved for Future Use

Section .1200 - Board Hearings

.1201 Nature of Hearings

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

(2) Each comity, military spouse comity, or transfer applicant shall appear before the Board or Panel to satisfy the Board that he or she has met all the requirements of Rule .0502, Rule .0503 or Rule .0504.

.1202 Notice of Hearing

The Chairman Board Chair will schedule the hearings before the Board or Panel, and such hearings will be scheduled by the issuance of a notice of hearing mailed to the applicant or the applicant's attorney within a reasonable time before the date of the hearing.

.1203 Conduct of Hearings

(1) All hearings shall be heard by the Board except that the Chairman Board Chair may designate two or more members or Emeritus

Members (as that term is defined by the Policy of the North Carolina recommended by the Board and approved by the State Bar Council creating Emeritus Members to) to serve as a Panel to conduct the hearings.

(2) The Panel will make a determination as to the applicant's eligibility for admission to practice law in North Carolina. The Panel may grant the application, deny the application, or refer it to the Board for a de novo hearing. The applicant will be notified in writing of the Panel's determination. In the event of an adverse determination by the Panel, the applicant may request a hearing de novo before the Board by giving written notice to the Executive Director at the offices of the Board within ten (10) days following receipt of the hearing Panel's determination. Failure to file such notice in the manner and within the time stated shall operate as a waiver of the right of the applicant to request a hearing de novo before the Board.

(3) The Board or a Panel may require an applicant to make more than one appearance before the Board or a hearing Panel, to furnish information and documents as it may reasonably require, and to submit to reasonable physical or mental examinations, pertaining to the moral character or general fitness of the applicant to be licensed to practice law in North Carolina.

(4) The Board or a Panel of the Board may allow an applicant to take the bar examination while the Board or a Panel makes a final determination that the applicant possesses the qualifications and general fitness requisite for an attorney and counselor at law, is possessed of good moral character, and is entitled to the confidence of the public.

.1204 Continuances, Motions for Such

Continuances will be granted to a party only in compelling circumstances, especially when one such disposition has been previously requested by and granted to that party. Motions for continuances should be made to the Executive Director and will be granted or denied by the Board Chair or by a Panel designated for the applicant's hearing.

.1205 Subpoenas

(1) The Board Chair, or the Board Chair's designee, shall have the power to subpoena and to summon and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the hearing as set forth in

G.S. 84-24.

(2) The Executive Director is delegated the power to issue subpoenas in the Board's name.

.1206 Depositions and Discovery Evidence That May Be Received By the Board

(1) ~~A In addition to live testimony, a~~ deposition may be used in evidence when taken in compliance with the N.C. Rules of Civil Procedure, G.S. 1A-1.

(2) A Panel or the Board may consider sworn affidavits as evidence in a hearing. The Board will take under consideration sworn affidavits presented to the Board by persons desiring to protest an applicant's admission to the North Carolina Bar.

(3) **The Board may receive other evidence in its discretion.**

.1207 Reopening of a Case

After a final decision has been reached by the Board in any matter, a party may petition the Board to reopen or reconsider a case. Petitions will not be granted except when petitioner can show that the reasons for reopening or reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or unavoidable circumstances and that fairness and justice require reopening or reconsidering the case. The Petition must be made within a reasonable time and not more than ninety days after the decision of the Board has been entered.

Section .1300 - Licenses

~~**.1302 Licenses for General Applicants**~~

.1301 Issuance

Upon compliance with the rules of the Board, and all orders of the Board, the Executive Director, upon order of the Board, shall issue a license to practice law in North Carolina to each applicant as may be designated by the Board in the form and manner as may be prescribed by the Board, and at such times as prescribed by the Board.

Section .1400 - Judicial Review

.1401 Appeals

An applicant may appeal from an adverse ruling or determination by the Board as to the applicant's eligibility for admission to practice law in North Carolina. **Such appeal shall lie to the Superior Court of Wake County.**

.1402 Notice of Appeal

Notice of Appeal shall be provided, in

writing, within twenty (20) days after notice of such ruling or determination. This Notice shall contain written exceptions to the ruling or determination and shall be filed with **the** Superior Court for Wake County, North Carolina. A filed copy of said Notice shall be given to the Executive Director. Failure to file such notice of appeal in the manner and within the time stated shall operate as a waiver of the right to appeal and shall result in the decision of the Board becoming final.

.1403 Record to be Filed

Within sixty (60) days after receipt of the notice of appeal, and after the applicant has paid the cost of preparing the record, the Executive Director shall prepare, certify, and file with the Clerk of the Superior Court of Wake County the record of the case, comprising:

(1) the application and supporting documents or papers filed by the applicant with the Board;

(2) a complete transcription of the testimony ~~when~~ taken at ~~the~~ **any** hearing;

(3) copies of all pertinent documents and other written evidence introduced at the hearing;

(4) a copy of the decision of the Board; and

(5) a copy of the notice of appeal containing the exceptions filed to the decision.

With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

.1404 Proceedings on Review in Wake County Superior Court

~~Such~~ **The** appeal shall ~~lie to the Superior Court of Wake County and shall~~ be heard by the presiding judge or resident judge, without a jury, who may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The findings of fact by the Board, when supported by competent evidence, shall be conclusive and binding upon the court. The court may affirm, reverse, or remand the case for further proceedings. If the

court reverses or remands for further proceedings the decision of the Board, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or remand.

~~**.1405 North Carolina Supreme Court Further Appeal**~~

Any party to the review proceeding, including the Board, may appeal to the Supreme Court from the decision of the Superior Court. No appeal bond shall be required of the Board. ■

Proposed Opinions (cont.)

any recovery or any compensation so received a sufficient amount to pay the just and bona fide claims." Section 44-50 further states that a client's instructions for the disbursement of settlement proceeds are "not binding on the disbursing attorney" to the extent that the instructions conflict with the requirements of the medical lien statutes. However, when the client disputes the amount of the claim, N.C. Gen. Stat. § 44-51 provides that payment of the claim is not compelled until the claim is "fully established and determined, in the manner provided by law." Comment [15] to Rule 1.15 provides that when a third-party claim "is not frivolous under applicable law, the lawyer *must refuse* to surrender the property to the client until the claim is resolved" (emphasis added). Therefore, when a statute requires a lawyer not to disburse settlement funds to a client, the lawyer must comply with the law regardless of any instructions by the client to the contrary.

Lawyer must determine whether Provider A's lien is perfected. If so, Lawyer must segregate and retain the funds in question in Lawyer's trust account and inform Client that, absent a prompt resolution of Provider A's claim that is satisfactory to both parties, Lawyer will eventually be obligated to deposit the funds into the court for disposition. In the interim, if a final judgment is entered on Provider A's claim such that the claim is no longer in dispute, pursuant to N.C. Gen. Stat. § 44-50, Lawyer must pay Provider A over the client's objections.

To the extent that RPC 69 and RPC 125 conflict with this opinion, they are overruled. ■

Amendments Approved by the Supreme Court

On March 16, 2017, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar (for the complete text see the Fall and Winter 2016 editions of the *Journal* or visit the State Bar website):

Amendments to the Rule on Judicial District Bar Dues

27 N.C.A.C. 1A, Section .0900, Organization of the Judicial District Bars

The amendments shorten the time that district bars have to report delinquent district bar dues from 12 months to six months after the delinquency date.

Amendments to the Rule on Formal Hearings Before the Disciplinary Hearing Commission (DHC)

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

These amendments allow media coverage of DHC hearings subject to the following conditions: absent a showing of good cause, the media are permitted to broadcast and photograph formal DHC hearings; the chair of a hearing panel who denies a request for such access must make findings of fact supporting that decision; a request for media access must be filed no less than 48 hours before the hearing is scheduled to begin; the chair of the hearing panel must rule on such motion no less than 24 hours before the hearing is scheduled to begin; and, except as set forth in the rule, Rule 15 of the General Rules of practice for the Superior and District Courts will apply to electronic

media coverage of DHC hearings.

Amendment to the Certification Standards for the Criminal Law Specialty

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

This amendment to the standards for board certification in criminal law changes the requirements relative to peer review from opposing counsel and judges in cases recently tried by the applicant.

Amendments to the Regulations for PCs and PLLCs

27 N.C.A.C. 1E, Section .0100, Regulations for Organizations Practicing Law

The amendments eliminate the requirement that a notice to show cause be issued to a professional corporation (PC) or professional limited liability company (PLLC) for failure to apply for renewal of a certificate of registration.

Amendments to the Rules of Professional Conduct

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

Amendments to the Rules of Professional Conduct require a prosecutor or a lawyer to disclose post-conviction information or evidence that may exonerate a convicted defendant. The amendments to Rule 3.8, Special Responsibilities of a Prosecutor, set forth specific disclosure requirements for a prosecutor who comes into possession of new, credible

Highlights

· NC Supreme Court approves amendments to the Rules of Professional Conduct specifying a lawyer's duties when in receipt of information about a wrongful conviction.

The Process

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

information or evidence creating a reasonable likelihood that a defendant was wrongfully convicted. New Rule 8.6, Information About a Possible Wrongful Conviction, sets forth comparable requirements for all other members of the Bar. In addition, the comment to Rule 1.6, Confidentiality, was amended to add a cross-reference to new Rule 8.6.

Amendments Pending Approval by the Supreme Court

At its meeting on April 21, 2017, the State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text of the proposed rule amendments see the Spring 2017 edition of the

Journal or visit the State Bar website):

Proposed Amendments to the Rule on Prehearing Procedure in Proceedings Before the DHC

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

Discipline and Disability of Attorneys

The proposed amendments require a settlement conference with the parties before a DHC panel may reject a proposed settlement agreement.

Comments

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

Conduct

Proposed amendments to Rule 1.3, Diligence, and Rule 8.4, Misconduct, of the Rules of Professional Conduct clarify the standards for imposition of professional discipline under each rule. The proposed amendments to Rule 7.2, Advertising, and Rule 7.3, Direct Contact with Potential Clients, explain the terms “electronic communication(s)” and “real-time electronic contact” as used in the rules and alert lawyers to state and federal regulations on electronic communications.

Proposed Amendment to IOLTA's Fiscal Responsibility Rule

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts (IOLTA)

The proposed amendment clarifies that the funds of IOLTA may only be used for the purposes specified in the IOLTA rules.

Proposed Amendment to the Rule on Uses of the Client Security Fund

27 N.C.A.C. 1D, Section .1400, Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar

The proposed amendment clarifies that the Client Security Fund may only be used for the purposes specified in the Client Security Fund rules.

Proposed New Inactive Status Rule in The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization

The proposed new rule enables certified specialists with special circumstances to be

placed on inactive status for a period of time and to regain their status as certified specialists upon satisfying certain conditions.

Proposed Standards for New Specialty in Privacy and Information Security Law

27 N.C.A.C. 1D, Section .3300, Certification Standards for the Privacy and Information Security Law Specialty

The proposed new section of the specialization rules creates a specialty in privacy and information security law and establishes the standards for certification in that specialty.

Proposed New Retired Status Rule in The Plan for Certification of Paralegals

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

The proposed new rule creates a retired status for certified paralegals subject to certain conditions.

Proposed Amendments to the Rules of Professional Conduct

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

Proposed Amendments

At its meeting on April 21, 2017, the council voted to publish proposed amendments to the North Carolina Board of Law Examiners' Rules Governing Admission to the Practice of Law. The amendments were proposed by the board to enable the adoption of the Uniform Bar Exam (UBE). The proposed amendments, together with an executive summary of the amendments and an article explaining the board's actions, appear on page 38 of this *Journal*.

At the April 21, 2017, meeting, the council also voted to publish the following proposed amendments to the governing rules of the State Bar for comment from the members of the Bar:

Proposed Amendments to The Plan of Legal Specialization

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization

The proposed amendments change the date for the annual meeting of the board to the date of the board's spring retreat to reflect

current practice.

.1714 Meetings

The annual meeting of the board shall be held in ~~the spring~~ ~~October~~ of each year ~~in connection with the annual meeting of the North Carolina State Bar~~. The board by resolution may set the annual meeting date and regular meeting dates and places. Special meetings of the board may be called at any time upon notice given by the chairperson, the vice-chairperson or any two members of the board. Notice of meeting shall be given at least two days prior to the meeting by mail, telegram, facsimile transmission, or telephone. A quorum of the board for conducting its official business shall be four or more of the members serving at the time of the meeting.

Proposed Amendments to the Rules of Professional Conduct

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

The proposed amendments reduce the number of quarterly reviews of fiduciary accounts that must be performed by lawyers who manage more than ten fiduciary accounts on the assumption that all accounts are managed in the same manner and reviews of a random sample of the accounts are sufficient to facilitate the early detection of internal theft and correction of errors.

Rule 1.15-3 Records and Accountings

(a) Check Format.

...

(i) Reviews.

(1) Each month, for each general trust account, and dedicated trust account, ~~and fiduciary account~~, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.

(2) Each quarter, for each general trust account, and dedicated trust account, ~~and fiduciary account~~, the lawyer shall

review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transac-

tions shall satisfy this requirement, but a larger sample may be advisable.

(3) Each quarter, for each fiduciary account, the lawyer shall engage in a review as described in Rule 1.15-3(i)(2); however, if the lawyer manages more than ten fiduciary accounts, the lawyer may perform reviews on a random sample of at least ten fiduciary accounts in lieu of performing reviews on all such accounts.

~~(3)~~ (4) The lawyer shall take the necessary

steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.

~~(4)~~ (5) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g). ■

President's Message (cont.)

work from preconceptions, it worked from a wealth of information and with the benefit of diverse viewpoints. Its recommendations, although each makes sense in isolation, form a framework that shows how the administration of justice can be improved in North Carolina.

Core Values and Recommendations

The work of the commission focused on improving operations within the existing administrative framework, not on measures that would require constitutional or major structural changes for the courts. The work did focus on several core values that are identified in the Commission Report: that the court system should have the trust and confidence of the people that it serves; that the courts exist solely to uphold the rule of law for the people that the courts serve; and that court proceedings should be fair, accessible, and effectively managed. Commission Report, P. 4. The recommendations of the commission align with the work of its committees. I will not summarize all of those recommendations here, but will highlight recommendations that rose to the top of list from the work of the committees.

The Criminal Investigation and Adjudication Committee focused on the fact that North Carolina was one of two states that treats 16- and 17-year olds as adult criminal offenders and not as juveniles. It is noteworthy that since the Commission's Report was issued, North Carolina became the only state that treats 16- and 17-year olds as adult offenders given that the only other state that did so—New York—has since raised the age of when someone is treated as an adult to the

age of 18. The research and data that the Criminal Investigation and Adjudication Committee examined on crime statistics, brain development, and economic effects all showed the wisdom of raising the age of when someone is treated as an adult in our criminal justice system to 18. The only exception to the recommendation was for traffic offenses and serious felonies that involve violence. If the General Assembly adopts the "raise the age" proposal, North Carolina will no longer be the only state that imposes the life-long stigma of being convicted as an adult offender on its 16- and 17-year olds.

Another recommendation that cut across the work of the committees was better utilization of technology. There was an abundance of evidence that our court system has labored under the burden of outdated technology. The commission recognized that better technology is an integral part of better case management, more efficient deployment of resources, and better access to the courts. The commission recommends the implementation of statewide, mandatory electronic filing of court documents as an important step to improve court efficiency and to provide data that will allow the movement to an integrated case management system and higher level enterprise management systems. The Commission's Report has a detailed blueprint for the technological innovation that is needed.

Other recommendations include the need to move back to a uniform court system with respect to our forms, rules, and processes. With the increase in *pro se* litigants, it is difficult to provide them guidance on websites, in forms, or at courthouse kiosks when processes vary among judicial districts or even among judges within judicial districts. The commis-

sion also emphasizes the need to have metrics for how the system is performing and to commit to constant reexamination on how the system is performing.

Conclusion

Article 1, Section 35 of the North Carolina Constitution provides that, "A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." The Commission's Report allows lawyers to examine how our court system is performing with respect to certain "fundamental principles." But the preservation of the "blessings of liberty" envisioned in the Constitution requires that these recommendations be put into action with appropriate financial support by our General Assembly. In their role as "public citizens," lawyers are advised to "seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the profession." RPC 0.1, A Lawyer's Professional Responsibility. The Commission's Report and recommendations provide the substance of how we can go about making those improvements. I would encourage all lawyers to read the report in its entirety and to make their views on its recommendations known to their legislators. This is a good opportunity to meet a constitutional imperative and an ethical obligation. The report is available online at NCCALJ.org. ■

Mark W. Merritt began serving as vice chancellor and general counsel at UNC-Chapel Hill in September 2016. Prior to that time, he practiced law in Charlotte as a litigator at Robinson Bradshaw. He is an alumnus of UNC-Chapel Hill and the University of Virginia School of Law.

Client Security Fund Reimburses Victims

At its April 20, 2017, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$175,344.11 to 12 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$66,027.18 to an applicant who suffered a financial loss due to the conduct of Paul N. Blake III of Wilson. The board determined that Blake was appointed co-executor of an estate. Blake violated his fiduciary duty to the estate in the nature of embezzlement by taking funds from it without being able to document any valid purpose for the amounts disbursed. Blake was disbarred on April 7, 2017.

2. An award of \$3,220.22 to a former client of Robert M. Chandler Jr. of Rocky Mount. The board determined that Chandler was retained to handle both the client's and her daughter's personal injury claims stemming from a traffic accident. Chandler handled the client's daughter's claim properly, but after settling the client's claim, Chandler failed to make all the proper disbursements from the settlement proceeds. Due to misappropriation, Chandler's trust account balance is insufficient to pay all of his client obligations. Chandler was disbarred on July 11, 2016. The board previously reimbursed another Chandler client \$810.39.

3. An award of \$40,000 to a former client of Michael S. Eldredge of Lexington. The board determined that a client's personal injury claim was referred to Eldredge from a SC attorney because the incident occurred in NC rather than SC. The client rejected a settlement offer, but Eldredge went ahead and settled the client's claim without the client's consent. Eldredge embezzled the funds for his own use without making any disbursement to the client or any medical providers. Due to misappropriation, Eldredge's trust account balance is insufficient to pay all of his client obligations.

4. An award of \$26,910 to a former

client of Michael S. Eldredge. The board determined that a client and her daughter's personal injury claims were referred to Eldredge from a SC attorney because the incident occurred in NC rather than SC. Eldredge settled the claims against two insurance companies and received the settlement proceeds, which he deposited into his trust account. Eldredge took a fee from both settlements, paid the client a portion of the proceeds, and retained funds to pay medical providers. Eldredge failed to pay any medical providers and, due to misappropriation, Eldredge's trust account balance is insufficient to pay all of his client obligations.

5. An award of \$7,900 to a former client of Clifton J. Gray III of Lucama. The board determined that Gray was retained to represent a client on criminal charges. Gray failed to provide any valuable legal services for the fee paid. Gray was suspended on December 15, 2016. The board previously reimbursed four other Gray clients a total of \$25,300.

6. An award of \$2,500 to a former client of Steven Troy Harris of Durham. The board determined that Harris was retained to handle a client's domestic matter. Although he provided some legal services for the initial retainer paid by the client, Harris knew or should have known that his license was administratively suspended prior to accepting the fee to handle a separate matter for the client. Harris was suspended on November 12, 2015.

7. An award of \$1,500 to a former client of Steven Troy Harris. The board determined Harris was retained to prepare wills for a client and his wife. Harris never prepared the wills, and took the client's funds after he knew or should have known that his license was suspended.

8. An award of \$5,000 to a former client of Steven Troy Harris. The board determined that Harris was retained to handle a civil suit filed against his client. The client paid Harris' \$10,000 fee in two installments of \$5,000. Harris accepted the client's sec-

ond \$5,000 payment under false pretenses as he knew or should have known that his license was administratively suspended.

9. An award of \$2,684.46 to a former client of Gary S. Leigh of Hickory. The board determined that Leigh was retained to handle a client's personal injury claim for injuries sustained in an auto accident. Leigh settled the claim, but failed to make all of the proper disbursements prior to his trust account being garnished by the IRS for his failure to pay his taxes owed.

10. An award of \$3,014.91 to a former client of Gary S. Leigh. The board determined that Leigh was retained to handle a client's personal injury claim for injuries sustained in an auto accident. Leigh settled the claim but failed to make all the proper disbursements prior to his trust account being garnished by the IRS for his failure to pay his taxes owed.

11. An award of \$7,054 to a former client of R. Alfred Patrick of Winterville. The board determined that Patrick was retained to handle a client's personal injury claim for injuries sustained in an auto accident. Patrick settled the matter, but failed to make all of the proper disbursements from the settlement proceeds. Due to misappropriation, Patrick's trust account balance is insufficient to pay all of his client obligations. Patrick was disbarred on January 28, 2017. The board previously reimbursed two other Patrick clients a total of \$58,717.21.

12. An award of \$10,533.34 to a former client of Devin F. Thomas of Winston-Salem. The board determined that Thomas was retained to handle a client's personal injury claim for injuries sustained in an accident. Thomas settled the matter, but failed to pay all of the client's medical providers from the settlement proceeds. When his trust account was frozen by the State Bar due to misappropriation, Thomas' trust account balance was insufficient to cover all of his client obligations. Thomas was disbarred on April 20, 2016. The board previously reimbursed five other Thomas clients a total of \$92,805.17. ■

Law School Briefs

Campbell University School of Law

Advocacy program named 21st-best by US News—US News & World Report has high praise for Campbell Law School's advocacy program, tapping it as tied for 21st-best in the country. Not only is Campbell Law the lone North Carolina law school on the list, it's the only law school located in the mid-South region.

Campbell Law, Nottingham (UK) announce LLM degree partnership—Campbell Law School and Nottingham Law School in the United Kingdom have announced a joint partnership to offer an LLM degree in legal practice to American law students. Students enrolled in the program will complete a dissertation under the guidance of a Nottingham professor, have the ability to utilize Nottingham's robust online resources, and travel abroad and meet face-to-face with faculty and fellow students.

Campbell Law, NC State Poole College launch JD/MAC dual degree program—Campbell Law School and the NC State University Poole College of Management have announced the formation of a second dual degree program between the two institutions. The new program, which will begin with the fall 2017 semester, allows students to pursue and obtain a juris doctor at Campbell Law and a master of accounting at NC State Poole College simultaneously. The JD/MAC marks Campbell Law's seventh dual degree offering.

NC Attorney General Stein gives commencement address—NC Attorney General Josh Stein delivered the commencement address at Campbell Law School's 39th annual hooding and graduation ceremony on Friday, May 12. The celebration took place at Memorial Auditorium at the Duke Energy Center for the Performing Arts in downtown Raleigh. In prior years Stein has served as an adjunct faculty member at Campbell Law, teaching courses in election law, consumer protection, and state legislative policymaking.

Charlotte School of Law

CharlotteLaw hosted the American Bar

Association (ABA) Regional Client Counseling Competition, an annual event sponsored by the ABA Law Student Division, on February 11, 2017. Twelve teams from schools in North Carolina, South Carolina, and Tennessee attended. The topic for this year's competition was Privacy Law. The winning team hailed from UNC-Chapel Hill School of Law.

Professor Mindy Sanchez took a group of CharlotteLaw students once again to compete in the fifth annual Estrella Trial Advocacy Competition (ETAC) in San Juan, Puerto Rico, on April 1-2, 2017. The competition, sponsored by the law firm of Estrella LLC and The George Washington University Law School, is capped at 14 teams and is the only federal civil mock trial competition in Puerto Rico. Last year, newcomer CharlotteLaw was victorious and won the competition following in the footsteps of American University, the inaugural winner in 2013, followed by UCLA in 2014, and UC Berkeley in 2015. The competition uses a complex civil case as the basis for its problem. While this year's trial team did not advance to the final round, Chelsea Bauer, Angela Avent, and William Myers represented CharlotteLaw well.

Duke Law School

Duke Law scholars and clinics have released several new books and reports. These are:

Theft! A History of Music (Center for the Study of the Public Domain, 2017), by Professor James Boyle and Clinical Professor Jennifer Jenkins, a graphic novel laying out a 2,000 year long history of music borrowing from Plato to rap, and an examination of the effect of copyright's current "permissions culture" on creativity in music;

Free Speech Beyond Words: The Surprising Reach of the First Amendment (New York University Press, 2017), by Professor Joseph Blocher, with Mark Tushnet and Alan Chen, which probes the legal justifications for extending First Amendment coverage to speech without words or clear meaning, such as abstract art, instrumental music, and nonsense;

The World Blind Union Guide to the

Marrakesh Treaty: Facilitating Access to Books for Print Disabled Individuals, (Oxford University Press, 2017), a comprehensive framework for interpreting a watershed international agreement situated at the intersection of intellectual property and human rights law, by Duke Law Professors Laurence Helfer and Jerome Reichman, with Molly Land and Ruth Okediji;

School Vouchers in North Carolina: The First Three Years, a report authored by Clinical Professor Jane Wettach, director of the Children's Law Clinic, finds that the program's accountability measures are among the weakest in the country, with no need for schools to be accredited, adhere to state curricular or graduation standards, employ licensed teachers, or administer state end-of-grade tests; and

Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security, a report analyzing how countering terrorism financing rules introduced in the aftermath of 9/11 impact women's rights organizing, women's rights organizations, and gender equality in conflict areas, co-authored by the International Human Rights Clinic at Duke Law and the Women's Peacemakers Program in the Hague, the Netherlands.

Elon University School of Law

Pro Bono Board honored for Country Conditions Project—The North Carolina Bar Association has honored Elon Law with an annual award that recognizes student *pro bono* projects benefiting low-income residents throughout the state. The school's *Pro Bono* Board, in coordination with Elon Law's Humanitarian Immigration Law Clinic, received the bar association's 2017 Law Student Group *Pro Bono* Award for a program to help lawyers representing clients seeking asylum before the US Department of Homeland Security. Their reports aid attorneys and organizations seeking to secure the protection of asylum for clients who would otherwise be harmed or killed if required to return to their home countries.

Joining forces with Family Justice

Centers—A prominent Greensboro attorney who specializes in family law has joined the Elon Law staff to coordinate legal services for crime victims seeking help from local government agencies. Margaret A. Dudley is the first supervising attorney for the Emergency Legal Services Program that Elon Law is managing in conjunction with the Family Justice Centers of Guilford and Alamance counties. The program is funded by a \$1.3 million grant from the North Carolina Governor's Crime Commission.

Elon Law's 10th anniversary—Supporters of Elon Law gathered March 17 for a special luncheon to recognize the collective efforts of community, civic, and philanthropic leaders who helped launch “a law school with a difference” when Elon Law first opened in 2006. Hosted at the Proximity Hotel in Greensboro, the program included a moment of silence for three members of the Elon Law community who have died over the past year: Eugenia Leggett-Frank, founding associate dean of development; Michael L. Rich, associate professor of law and Elon Law's Jennings Emerging Scholar; and Juma Jackson, a member of the Class of December 2017.

North Carolina Central School of Law

On March 31, 2017, The Biotechnology and Pharmaceutical Law Review hosted its 10th Annual Symposium at the North Carolina Biotech Center. The theme was ethical issues affecting the biotechnology and pharmaceutical industries. The topics were: Biomedical Research Involving Healthy Volunteers, featuring Dr. David Resnik, a bioethicist at the National Institute of Environmental Services; Ethical Issues Involving Personalized Medical Approaches, featuring David Bradin, attorney with Andrews, Kurth, Kenyon, LLP; and The State of Opioids in North Carolina, featuring Tessie Castillo, advocacy and communication coordinator, North Carolina Harm Reduction Coalition.

The 2017 Charles Hamilton Houston (CHH) Civil and Human Rights Issues Forum took place on April 7, 2017. The first panel, “Advancing Voting Rights in an Era of Repression,” featured Professor Barbara Arnwine, NCCU School of Law's 2016-2017 CHH endowed chair; Professor Melissa Harris-Perry, Wake Forest University; Professor Irving L. Joyner, NCCU School of Law; and moderator Jasmine Brunson,

NCCU law student and member of the NCCU School of Law Civil Rights Society. The second panel, “Human Rights Challenges in 2017,” featured Janaye Ingram, executive director of the National Action Network; Professor James Steele, North Carolina Agricultural and Technical State University; Professor Emmanuel Oritsejafor, chair of the Public Administration Program at NCCU; and moderator Aviance Brown, NCCU law student and member of the NCCU School of Law Civil Rights Society. The keynote speaker was Professor Kimberlé Crenshaw, civil rights advocate and professor at the University of California Los Angeles and Columbia School of Law.

The NCCU Law Review sponsored its annual symposium on April 7, 2017. The symposium panels focused on President Donald Trump's impact on constitutional rights, including voting rights, women's rights, LGBT rights, and Second Amendment rights. Featured panelists and speakers included attorneys John Burris and Chris Brooks, and Professors Irving Joyner and Barbara Arnwine.

University of North Carolina School of Law

Rachel High Jennings 3L and Joelle Portzer 3L chosen for international ethics program—Jennings and Portzer are among 12 law students selected from around the country by the Fellowships at Auschwitz for the Study of Professional Ethics (FASPE) to participate in a two-week program in Germany and Poland this summer, which uses the conduct of lawyers and judges in Nazi-occupied Europe as a way to reflect on ethics in the legal profession today. The duo joined a group of 63 FASPE fellows across five areas of study in May.

Brittany Brattain 3L receives UNC Robert E. Bryan Public Service Award for Pro Bono Cancer Project work—Brattain received the graduate and professional student award for her work with the UNC Cancer Pro Bono Project. In her role as special projects coordinator, Brattain recruited student and attorney volunteers to serve at clinics, developed training protocol for student volunteers, created client files for clinics, and developed an institutionalized and automated system that will ensure the longevity of the project.

Carolina Law names Deirdre Gordon as associate dean for advancement—Gordon will manage a team of ten and be responsible for meeting the school's annual and campaign

goals, ensuring that Carolina Law secures the funding needed to support the people and programs necessary to train the next generation of lawyers.

Speakers of note—Judge Reena Raggi, circuit judge of the US Court of Appeals for the Second Circuit, delivered the 2017 William P. Murphy Distinguished Lecture on “Free Speech and Offensive Expression on University Campuses” in March. Vice Admiral James W. Crawford III (Class of 1983), judge advocate general of the US Navy, delivered the 2017 commencement address in May.

Wake Forest University School of Law

Wake Forest Law's moot court and trial teams are celebrating their best collective year ever starting with the 1L Trial Team—Virginia Stanton, Tim Day, Ashley Collette, Stephanie Johnson, and Ashley DiMuzio, who, for the first time, beat out 33 other teams from North Carolina law schools to win the University of North Carolina at Chapel Hill's (UNC) 2017 Kilpatrick Townsend 1L Mock Trial Competition in January. The next month, the Wake Forest Law National Moot Court Team made up of 3Ls Matt Cloutier, Mia Falzarano, and Blake Stafford won the National Moot Court Competition, one of the oldest, most prestigious law school competitions, in New York City following a November sweep at regionals. Professor John Korzen, director of the law school's Appellate Advocacy Clinic, is the team's coach. After winning regionals year after year under Professor Korzen's coaching, this year marks the first time in 36 years that Wake Forest Law has held the title. Wake Forest Law's BLSA Mock Trial Team, National Trial Team, and AAJ Trial Teams all advanced to nationals after winning their respective regional competitions. It was the third consecutive year that the National Trial Team won the regional TYLA National Trial Competition thanks in no small part to Coaches Mark Boynton and Stephanie Reese and team members 3Ls Daniel Stratton and Sophia Vazquez and 2L Joe Karam. And for the third time in as many years, the AAJ Trial Team won the regional championship. What made this particular competition unusual is that for the second year in a row, it was an all Wake Forest final round. Coach Matt Breeding led the winning team of 3Ls, Drew Culler, Mia Falzarano, Cheslie Kryst, and Ethan White, on to win the 2017 AAJ National Championship—another first for Wake Forest Law. ■

July 2017 Bar Exam Applicants

The July 2017 Bar Examination will be held in Raleigh on July 25 and 26, 2017. Published below are the names of the applicants whose applications were received on or before April 28, 2017. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

Hannah Abernethy Carrboro, NC	Fairmont, NC	Lia Bies Elkhorn, NE	Goldsboro, NC	Pardis Camarda Wurtsboro, NY
Ragini Acharya Denver, CO	Daniel Ball Raleigh, NC	Peter Bigelow Falls Church, VA	Ashley Brisbon Charlotte, NC	Rachel Cane Durham, NC
Courtney Achee Chapel Hill, NC	Meredith Ballard Raleigh, NC	Anthony Biraglia Winston-Salem, NC	Leah Britt Lumberton, NC	Natashia Cannedy Kings Mountain, NC
Chavez Adams Silver Spring, MD	Christina Banfield Winston-Salem, NC	Michael Birney Chapel Hill, NC	Hailey Brock Durham, NC	Habekah Cannon Dudley, NC
Hunter Adams Washington, DC	Chelsea Banister Chapel Hill, NC	Leland Black Chapel Hill, NC	Laura Browder Winston-Salem, NC	Sarah Cansler Durham, NC
Paul Adams Virginia Beach, VA	Katherine Barkley Winston-Salem, NC	Alycia Blackwell Pittman Chapel Hill, NC	Alesha Brown Durham, NC	James Capps Greensboro, NC
Samuel Adams Tuscaloosa, AL	Jackson Barnes Greensboro, NC	Arthur Blanton Virginia Beach, VA	Andrew Brown Mooresville, NC	Charles Carpenter Charlotte, NC
Kelvin Allen Durham, NC	Jenny Barnes Durham, NC	Ethan Bloodworth Burnsville, NC	Angele Brown Charlotte, NC	Caroline Casello McLeansville, NC
Markea Allen Charlotte, NC	Sontina Barnes Raleigh, NC	Jeffrey Bloomfield Winston-Salem, NC	Carmen Brown Hickory, NC	Claudine Chalfant Concord, NC
Paul Allen Apex, NC	Sarah Barnett Richmond, VA	Danielle Boaz Charlotte, NC	Christopher Brown Raleigh, NC	Kent Chalmers Rock Hill, SC
Kendra Alleyne Raleigh, NC	Haley Bastian Columbia, SC	Parris Booker Winston-Salem, NC	Christopher Brown Chapel Hill, NC	Jacob Charles Morrisville, NC
Toya Allison Fayetteville, NC	Chelsea Bauer Lake Wylie, SC	Bethany Boring Chapel Hill, NC	Maya Brown Winston-Salem, NC	Yeama Charley Charlotte, NC
Zachary Allred Greensboro, NC	Taylor Beamon Raleigh, NC	Kevin Boston Durham, NC	Michael Brown Lexington, NC	Gary Chavis Durham, NC
Jonathan Altstadter Bellmore, NY	Nanette Becerra Apex, NC	Carlton Bowers Mount Pleasant, SC	Shelia Brown Raleigh, NC	Benjamin Chernow Nashville, TN
Maggie Amos Charlotte, NC	Brenton Begley Greensboro, NC	Sarah Bowman Lillington, NC	Jennifer Bryan Bladenboro, NC	Jason Chestnut Raleigh, NC
Riley Andrews Raleigh, NC	Suad Bektic Richmond, VA	Charles Bowyer Durham, NC	Elitsa Bryant Cambridge, MA	Jocelyn Chidsey Franklinton, NC
Allain Andry Davidson, NC	Latasha Bembury Durham, NC	Kathryn Boyd Durham, NC	Brianna Buchanan Durham, NC	Naomy Chimenge Durham, NC
Douglas Arborio Charlotte, NC	Marcus Benning Durham, NC	Philip Boyers High Point, NC	Rachel Buck Overland Park, KS	Daniel Choyce Winston-Salem, NC
John Armour Raleigh, NC	Daniela Benton Raleigh, NC	Dorothy Brackett Pittsboro, NC	Bret Buckler Chapel Hill, NC	Jongwoo Chung Rockville, MD
Ryan Arnold Mebane, NC	Michael Berry Durham, NC	Justin Bradley Erwin, NC	Brian Buckley Durham, NC	Kayla Churchill Charlotte, NC
Juan Arreola Durham, NC	Monica Berry Winston-Salem, NC	Kelyn Brame Charlotte, NC	Alejandro BuenRostro Rocky Mount, NC	Ethan Clark Winston-Salem, NC
Christopher Ashley Durham, NC	Jessica Bertovich Wilmington, NC	Joshua Brasch Charlotte, NC	Tiffany Burba Nashville, TN	Nicholas Clark Virginia Beach, VA
Julia Atchison Grundy, VA	Andre Best Houston, TX	Daniel Braswell Durham, NC	Kathleen Bure Columbia, SC	Ronnie Clark Whitakers, NC
Kristin Athens Apex, NC	Daniel Bethea Chapel Hill, NC	Brittany Brattain Chapel Hill, NC	Matthew Burke Carrboro, NC	Joshua Clarkson Lexington, NC
Reagan Bailey Pfafftown, NC	Morgan Bethea Charlotte, NC	Jonathan Braverman Durham, NC	Jonathan Burns Durham, NC	Megan Clemency Columbia, SC
Elizabeth Bakale-Wise Pittsboro, NC	Madison Beveridge Chapel Hill, NC	Joseph Brennan Marvin, NC	David Busch Charlotte, NC	Cassidy Cloninger Raleigh, NC
Carly Baker Jacksonville, NC	Kimberley Beyer Glenville, NC	Brittany Bridges Raleigh, NC	Donald Butler Monroe, NC	Monica Cloud Silver Spring, MD
Tameka Baldwin	Konark Bhasin Annandale, VA	Aries Brinson	Dominique Caldwell Lewisville, NC	Matthew Cloutier

Winston-Salem, NC
Raemi Cobb
Durham, NC
Joshua Coffey
Raleigh, NC
Jennifer Coleman
Charlotte, NC
Michael Coleman
Kernersville, NC
Phoenix Coleman
Raleigh, NC
Adam College
Raleigh, NC
Margaret Collins
Wake Forest, NC
Maria Collins
Winston-Salem, NC
Lisa Colon
Youngsville, NC
Daniel Colston
Chapel Hill, NC
Hannah Combs
Chapel Hill, NC
Roger Condrey
Concord, NC
Cynthia Cook
Mint Hill, NC
Nathaniel Cook
Greensboro, NC
William Cooke
Greensboro, NC
Katashia Cooper
Rocky Mount, NC
Lindsey Cooper
Raleigh, NC
Elizabeth Corbett
Raleigh, NC
Adam Coto
Vale, NC
William Cox
Chapel Hill, NC
Allie Craver
Mebane, NC
Brooke Crump
Mount Gilead, NC
Trisha Crutchfield
Chapel Hill, NC
Drew Culler
Winston-Salem, NC
Reko Currie
Greensboro, NC
Rebecca Daddino
Winston-Salem, NC
Kristy D'Ambrosio
Summerfield, NC
Clifton Dandison
Baton Rouge, LA
Jason Dangler
Charlotte, NC
Rebecca Darchuk
Asheville, NC
Monica DaSilva
Raleigh, NC
Skylar Davenport
Raleigh, NC
Christopher Davidson
Goldsboro, NC
Shane Davidson
Cary, NC
Clinton Davis
Raleigh, NC
Emily Davis
Pittsburgh, PA

Garrett Davis
Durham, NC
Matthew Davis
Charlotte, NC
Nicole Davis
Carrboro, NC
Rachel Davis
Charlotte, NC
Robert Davis
Greensboro, NC
Jarryd de Boer
Hickory, NC
Benjamin DeCelle
Concord, NC
Marcus Deel
Cary, NC
Elizabeth DeFrance
Asheboro, NC
Conor Degnan
Winston-Salem, NC
Michael DeLuca
Chicago, IL
Christopher Dempsey
Washington, DC
Jessica Dentzer
Charlotte, NC
Andrew Deschler
Raleigh, NC
Taylor Dewberry
Winston-Salem, NC
Iris DeWitt
Charlotte, NC
Candice Diah
Winston-Salem, NC
Andrew Dickerhoff
Raleigh, NC
Brenna Dickson
Winston-Salem, NC
Rylee Dillard
Columbia, SC
Sarah Dillard
Raleigh, NC
Elizabeth Dils
Raleigh, NC
Garrett Dimond
Raleigh, NC
Adam Doane
Charlotte, NC
James Doermann
Charlotte, NC
Ryan Donovan
Winston-Salem, NC
Christopher Dorsey
Lynchburg, VA
Melvin Dove
Raleigh, NC
Matthew Doyle
Charlotte, NC
Lisbeth Driskill
Charlotte, NC
Jennifer Dumont
Raleigh, NC
Casey Duncan
Raleigh, NC
Samatha Duncan
Raleigh, NC
Kevin Edwards
Gainesville, FL
Kimberly Edwards
Cary, NC

Chet Effler
Old Fort, NC
Paul Ehlinger
Austin, TX
Samuel Ehrlich
Columbia, SC
Andrew Eichen
Chapel Hill, NC
Alexandra Elbeery
Chapel Hill, NC
Maria Eldidy
Charlotte, NC
Casey Elliott
Saratoga, NC
Benjamin Ellis
Wilson, NC
Caitlin Emmons
Richlands, NC
Amanda Ennis
Four Oaks, NC
Austin Entwistle
Raleigh, NC
Jennifer Eppick
Columbus, OH
Annemarie Ernst
Chapel Hill, NC
Zachary Ernst
Cocoa Beach, FL
Raymond Escobar
Lexington, VA
James Eubanks
Chapel Hill, NC
Jonathan Eure
Raleigh, NC
Sarah Eysen
Charlotte, NC
Christopher Faircloth
Raleigh, NC
Phillip Fajgenbaum
Raleigh, NC
Amanda Fannin
Durham, NC
Alexia Faraguna
Southampton, NY
Robert Farias
Newport, NC
Joshua Farkas
Davie, FL
Caitlin Farmer
Raleigh, NC
John Feasel
Raleigh, NC
Kyleigh Feehs
Winston-Salem, NC
Casey Fidler
Huntersville, NC
Joshua Finney
Huntersville, NC
Nicholas Fisher
Raleigh, NC
Alexa Flores
Columbia, SC
George Flowers
Raleigh, NC
Shenna Fortner
Blountville, TN
Ashley Foster
Durham, NC
Daniel Fox
Surfside, FL
Jacob Franchek
Arnold, MO

Lauren Freedman
Greensboro, NC
Montre Freeman
Roanoke Rapids, NC
Alexander French
Chapel Hill, NC
Katherine French
Apex, NC
Kyle Frizzelle
Raleigh, NC
Heather Fuller
Charlotte, NC
Agnes Gambill
Wilkesboro, NC
Kirstin Gardner
Chapel Hill, NC
Danielle Garon
Charlotte, NC
Noah Garrett
Greenville, SC
Josiah Garton
Decatur, GA
Denisha Gatling
Durham, NC
Shaquansia Gay
Durham, NC
Matthew Geiger
Raleigh, NC
Alexandra Giordanela
Greensboro, NC
Jacob Glass
Athens, GA
Jerrold Godwin
Dunn, NC
Abigail Golden
Charlottesville, VA
Michelle Gonzalez
Durham, NC
Tara Gore
Whiteville, NC
Austin Grabowski
Raleigh, NC
Christopher Graham
Knoxville, TN
Mark Gray
Summerfield, NC
LeShon Grayson
Charlotte, NC
Kirstin Greene
Charlotte, NC
Shalondra Greenlee
Durham, NC
John Gregg
La Canada, CA
Adam Gregory
Angier, NC
Grace Gregson
Chapel Hill, NC
Maxwell Gregson
Chapel Hill, NC
Whitney Griffin
Durham, NC
Sara Guerra
Raleigh, NC
Emily Gunner
Raleigh, NC
Khalil Haddad
Wake Forest, NC
Emma Haddock
Winston-Salem, NC
Bethel Hailu
Washington, DC
Jessica Hajjar
Winston-Salem, NC

James Halstead
Charlotte, NC
Minard Halverson
Fayetteville, NC
Amir Hamdoun
Belmont, MA
Nathaniel Hamilton
Greensboro, NC
Chenae Hammond
Pennsauken, NJ
Jonathan Hammond
Charlotte, NC
Racheal Hammond
Durham, NC
Charles Hands
Durham, NC
Molly Hanes
Raleigh, NC
Alia Haque
Mint Hill, NC
Kaitlyn Haran
Raleigh, NC
Andrew Hardee
Charlotte, NC
Michelle Hardin
Miami, FL
Mallory Harper
Opelika, AL
Matthew Harris
Greenville, MS
Phillip Harris
Chapel Hill, NC
Shontay Harris
Charlotte, NC
Steven Harris
Winston-Salem, NC
Weston Harty
Winston-Salem, NC
Jacob Harwood
Marshall, NC
Robert Hash
Chapel Hill, NC
Patrick Haynes
Columbia, SC
Katelyn Heath
Salisbury, NC
Edward Hedrick
Carrboro, NC
Shilpa Hegde
Raleigh, NC
Holly Hege
Raleigh, NC
Samuel Helton
Cary, NC
Steven Hemric
Winston-Salem, NC
Abigail Henderson
Chapel Hill, NC
Lauren Henderson
Winston-Salem, NC
Nicole Henderson
Mooresville, NC
Shiekel Hendricks
Durham, NC
Edward Hennelly
Charlotte, NC
Alexander Hentschel
Garner, NC
Kylie Herring
Raleigh, NC
Kathryn Hesman
Chapel Hill, NC

Erica Hicks
 Nashville, TN
Kimberly Hicks
 Seaboard, NC
Brooklyn Hildebrandt
 Hampton, VA
Alexandra Hilditch
 Raleigh, NC
Brittany Hill
 Greensboro, NC
Caitlin Hill
 Athens, GA
Jordan Hilton
 Durham, NC
Samuel Hipps
 Chapel Hill, NC
Michael Hirsch
 Fort Mill, SC
Dexter Hobbs
 Chapel Hill, NC
Ann Marie Holder
 Greenville, NC
Alisha Holland
 Midland, NC
Aranda Holley
 Durham, NC
Miranda Holley
 Durham, NC
Nicholas Holloman
 Roxboro, NC
Darrion Holloway
 Durham, NC
Jonathan Holt
 Clemmons, NC
Craig Horsman
 Mooresville, NC
Daniel Horwitz
 Chapel Hill, NC
Dorwin Howard
 Oxford, NC
Peter Hronis
 Easton, PA
Hugh Hudson
 Durham, NC
Karlie Hudson
 Newton Grove, NC
Jenica Hughes
 Chapel Hill, NC
Lauren Hunstad
 Chapel Hill, NC
Alexandra Hunt
 Raleigh, NC
Eric Hunt
 Madison, WI
Jasmine Hunt
 Durham, NC
Christopher Hurley
 Hyattsville, MD
Emily Hurtt
 Cold Spring, KY
Elizabeth Hutchens
 Cary, NC
John Hutchens
 Raleigh, NC
Lex-Jordan Ibegbu
 Raleigh, NC
Zachary Infinger
 Raleigh, NC
Michael Ingersoll
 Charlotte, NC
Max Isaacson
 Raleigh, NC
Volha Ivanushko
 Raleigh, NC
Dondrea Jackson
 Durham, NC
Jennifer Jackson
 Raleigh, NC
Jonathan Jakubowski
 Pittsboro, NC
Matthew James
 Littleton, CO
Laura Janke
 Winston-Salem, NC
Kyle Jensen
 Vermillion, SD
Emily Jeske
 Clemmons, NC
Josue Jimenez
 Charlotte, NC
Eunji Jo
 Tuscaloosa, AL
Cameron Joe
 Bloomington, IN
Ashley Johnson
 Charlotte, NC
Charlene Johnson
 Clayton, NC
Erika Johnson
 Roxboro, NC
Ivy Johnson
 Carrboro, NC
Jeffrey Johnson
 Essex, MD
Ellison Johnstone
 Greenville, SC
April Jones
 Charlotte, NC
Brian Jones
 Midland, MI
Dax Jones
 Greensboro, NC
Eric Jones
 Greensboro, NC
Henry Jones
 Raleigh, NC
Keren Jones
 Greensboro, NC
Sa'Metria Jones
 Duham, NC
Tiffany Jones
 Durham, NC
Travis Joyce
 Winston-Salem, NC
Michael Justice
 Jacksonville, NC
Whitney Kamerzel
 Marathon, FL
Elizabeth Kapopoulos
 Chapel Hill, NC
Marko Karadzic
 Bethesda, MD
Kyle Karnes
 Bakersfield, CA
Laronda Kelley
 Charlotte, NC
Stacy Kelly
 Chapel Hill, NC
Aaron Kennedy
 Nashville, TN
Correll Kennedy
 Winston-Salem, NC
Kenneth Kennedy
 Los Angeles, CA
Sara Kidd
 Raleigh, NC
James King
 Chapel Hill, NC
Melody King
 DeLeon Springs, FL
William King
 Wilson, NC
Emily Kingston
 Lillington, NC
Andrew Kirby
 Sacramento, CA
Andrew Kite
 Athens, GA
Natalie Klemann
 Apex, NC
Samuel Knisley
 Siler City, NC
Margaret Kocaj
 Charlotte, NC
Brandon Konecny
 Knightdale, NC
Christina Koscianski
 Raleigh, NC
Alison Kralick
 Fuquay-Varina, NC
Spencer Krantz
 Winston-Salem, NC
Cheslie Kryst
 Winston-Salem, NC
Brian Kuppelweiser
 Greensboro, NC
Travis LaFay
 Raleigh, NC
Kelly LaForge
 Louisville, KY
Elizabeth Lamb
 High Point, NC
Patrick Lambert
 Cherokee, NC
Charles Langhorne
 Mount Pleasant, SC
Tara Lay
 Charlotte, NC
Ryan Layton
 Mebane, NC
Olivia League
 Columbia, SC
Wayne Lear
 Harrisburg, NC
Ian Leavengood
 St. Petersburg, FL
Evan Lee
 Raleigh, NC
Parker Lee
 Raleigh, NC
Preston Lesley
 Mount Olive, NC
Michelle Liguori
 Raleigh, NC
Rashawn Linton
 Charlotte, NC
Michael Litrenta
 Belmont, NC
Nicole Little
 Durham, NC
Zishuang Liu
 Decatur, GA
Lydia Locklear
 Lumberton, NC
Andrew Loge
 Columbus, OH
Michael Loiacono
 Lake Lure, NC
Justin Long
 Greensboro, NC
Erica Long-Ellis
 Raleigh, NC
Stephanie Lopez
 Durham, NC
Maria Lopez Delgado
 Elizabeth, NJ
Laura Love
 Raleigh, NC
Destiny Lowder
 Greensboro, NC
Jamey Lowdermill
 Carrboro, NC
Amelia Lowe
 Charlotte, NC
Rashanda Lowery
 Greensboro, NC
Leo Lucisano
 Cary, NC
Jeanette Lueftner
 Concord, NC
Benjamin Lumpkins
 Oxford, NC
Christopher Lusby
 Kenly, NC
James Lynch
 New York, NY
Kathleen Lynch
 Greensboro, NC
Alexandra Maccioli
 Raleigh, NC
Steven Maddox
 Arlington, VA
Uzoamaka Maduabuchukwu
 Zebulon, NC
Quisha Mallette
 Chapel Hill, NC
Emily Maloney
 McLean, VA
Christopher Manchik
 Charlotte, NC
Michael Marcela
 Vilas, NC
Chanda Marlowe
 Chapel Hill, NC
Jeremy Marlowe
 Denver, NC
Carson Martin
 Durham, NC
Jestyne Martin
 Sanford, NC
Kyle Martin
 Winston-Salem, NC
Madeline Martin
 Raleigh, NC
Randall Martin-Franks
 Roanoke Rapids, NC
Joshua Martinkovic
 Chapel Hill, NC
Emily Massey
 Raleigh, NC
Clint Mast
 Mocksville, NC
Sara Matecun
 Chapel Hill, NC
Mary Matney
 Raleigh, NC
Rachel Matthews
 Raleigh, NC
Todd Maultsby
 Mount Holly, NC
LaTasha May
 Walkertown, NC
Philip Mayer
 Chapel Hill, NC
Rhian Mayhew
 Raleigh, NC
Richard McAuliffe
 Raleigh, NC
Rebecca McBurney
 Durham, NC
Patrick McConnell
 Charlottesville, VA
Christian McCullen
 Clayton, NC
Ian McDonald
 Durham, NC
Paige McElravy
 Hartsville, SC
Wallis McElroy
 Saint Louis, MO
Vanessa McGalliard
 Raleigh, NC
Cory McInnis
 Charlotte, NC
Ian McIntyre
 Rock Hill, SC
Cory McKenna
 Chapel Hill, NC
Stephanie McKeon
 Murphy, NC
Paula McKissick Staley
 Rutherfordton, NC
Dorian McKoy
 Raleigh, NC
Lauren McKoy
 Broadway, NC
Molly McLawhorn
 Raleigh, NC
British McLean
 Winston-Salem, NC
Sean McLeod
 Greensboro, NC
Joseph McManus
 Archdale, NC
Jon-Michael McNew
 Orangeburg, SC
Alfred McQueen
 Winston-Salem, NC
Blake Meadows
 Peachtree City, GA
Maryam Mehrabani
 Raleigh, NC
Jessica Melton
 Gainesville, FL
Emily Mennel
 Charlotte, NC
Aria Merle
 Raleigh, NC
Michael Mestre
 St. Petersburg, FL
Russell Michalec
 Salisbury, NC
Sara Middleton
 Columbia, SC
Laura Milloway
 Greensboro, NC
James Mills
 Chapel Hill, NC
Claudia Minoiu
 Durham, NC
Ruthanne Minoru
 New York, NY
Angelica Mitchell
 Durham, NC
Catherine Mitchell

Durham, NC
Whitney Mitchell
Durham, NC
Brittany Mixon
Durham, NC
Golnar Mohajerdoost
Charlotte, NC
Kayla Mohr
Greensboro, NC
Jessica Molina
Gainesville, FL
Brian Momeyer
San Diego, CA
Amber Monroe
Durham, NC
Sondra Monroe
Huntersville, NC
Amelia Montgomery
Nashville, TN
Shana Moore
Raleigh, NC
Tirrill Moore
Washington, DC
Elizabeth Moose
Florence, SC
Brittney Morgan
Carrboro, NC
Ashley Morris
Durham, NC
Glenn Morrison
Raleigh, NC
JaNa Morrison
Charlotte, NC
Rebekah Morrison
Chapel Hill, NC
Jacob Morse
Mooresville, NC
Tempestt Morton
Morrisville, NC
Keir Morton Manley
Raleigh, NC
Timberley Motsinger
Greensboro, NC
Abby Moua
Durham, NC
Jeremy Mozingo
Goldsboro, NC
Claudia Mundy
Raleigh, NC
Hannah Munn
Durham, NC
Meredith Murchison
Raleigh, NC
Hannah Murphy
Raleigh, NC
Sean Murphy
Durham, NC
Caroline Muse
Charlotte, NC
Seth Muse
Charlotte, NC
Zachary Musick
Charlotte, NC
William Myers
Charlotte, NC
Tagreed Nafisi
Washington, DC
Johnathon Naylor
Raleigh, NC
Talicia Neal
Raleigh, NC
Tenika Neely
Winston-Salem, NC

Barbara Nelson
Goldsboro, NC
Mark Nesdill
Saint Louis, MO
Mary Newton
Rae ford, NC
Jamie Nichols
E. Lansing, MI
Annelise Nininger-Finch
Long Island City, NY
Danielle Nix
Madeira Beach, FL
William Norrell
Elizabeth City, NC
Stephanie Northcott
Raleigh, NC
Robert Northington
Greensboro, NC
Melissa O'Daine
Durham, NC
Laura O'Grady
Winston-Salem, NC
Ebunoluwa Olaleye
Wake Forest, NC
Molly O'Neil
Carrboro, NC
Shannon O'Neil
Chapel Hill, NC
Yoko Onishi
Yokohama, Japan
Rachel Oplinger
Winston-Salem, NC
Alexander Ortiz
Chapel Hill, NC
Amanda Owens
New Bern, NC
Mark Owens
Greenville, NC
Sarah Owens
Decatur, GA
Tyler Owens
Carrboro, NC
Meredith Pace
Winston-Salem, NC
Emily Page
Durham, NC
Whitney Pakalka
Winston-Salem, NC
Dylan Paradis
Raleigh, NC
Chelsea Parish
Chapel Hill, NC
Jane Park
Raleigh, NC
Ryan Park
Arlington, VA
Julie Parker
Kinston, NC
Meredith Parker
Garner, NC
William Parra
Durham, NC
Alexander Paschall
Garner, NC
David Pasley
Carrboro, NC
Kathleen Pasquarella
Statesville, NC
Khusbu Patel
Monroe, NC
Kushal Patel
Concord, NC
Jakeana Paul

Morrisville, NC
Brian Payne
Coatesville, PA
Casey Peaden
Williamston, NC
Molly Pearce
Winston-Salem, NC
Melodie Pellor-Hernandez
Durham, NC
Nathaniel Pencook
Cary, NC
Kathleen Perkins
Durham, NC
Margaret Petersen
Chapel Hill, NC
Benjamin Pettito
Nashville, TN
Stephanie Petrich
Pfafftown, NC
Andreu Phillip
Charlotte, NC
Anderson Phillips
Durham, NC
Carrie Pickett
Raleigh, NC
James Pierce
Rock Hill, SC
James Piland
Raleigh, NC
Suzanne Plunket
Cary, NC
Louise Pocock
Rock Hill, SC
Emily Poindexter
Raleigh, NC
Emily Polanco-Barahona
Durham, NC
Elizabeth Ponder
Attleboro, MA
Jillian Pope
Gastonia, NC
Alexandra Portaro
Chapel Hill, NC
James Porter
Raleigh, NC
Joelle Portzer
Durham, NC
James Powers
Charlotte, NC
Michelle Prendergast
Williamsburg, VA
Nicholas Presentato
Winston-Salem, NC
Jessica Price
Knightdale, NC
Samuel Price
Warrensville, NC
Ashley Prince
Raleigh, NC
Michael Provencher
Henrico, VA
William Pruden
Raleigh, NC
Jason Pruett
Whitsett, NC
Joseph Quinn
Raleigh, NC
Jennifer Quirk
Lansing, MI
Michael Rafetto
Raleigh, NC
Cedric Rainey
Winston-Salem, NC

Hailey Reall
Jacksonville, NC
William Reaves
Raleigh, NC
Dillon Redding
Fuquay-Varina, NC
Sarah Reddy
Charlotte, NC
Mark Regan
Charlotte, NC
Tara Regimand
Raleigh, NC
Nicole Regna
Winston-Salem, NC
Cecilia Reyna
Fuquay Varina, NC
Tyler Rhoades
Charlotte, NC
Emily Rhodes
Winston-Salem, NC
Morgan Rich
Linden, NC
Amanda Richardson
Wilkesboro, NC
Zachary Richardson
Fayetteville, NC
George Ricks
Charlotte, NC
Erin Riddick
Raleigh, NC
Ragan Riddle
Burlington, NC
Alyssa Riggins
Raleigh, NC
Jessica Rigsbee
Virginia Beach, VA
Radhika Rivera
Burlington, NC
Ana Rivero-Alexander
Chapel Hill, NC
Lisa Roach
Charlotte, NC
Adam Roberts
Greensboro, NC
Peter Robinson
Durham, NC
Tracey Robinson
Charlotte, NC
William Robinson
Durham, NC
James Rodgers
Tuscaloosa, AL
Justin Rogers
Durham, NC
Preston Rollero
Winston-Salem, NC
Melissa Roque
Miami, FL
Kiara Ross
Durham, NC
Kevin Rothenberg
Winston-Salem, NC
Marquitta Rouse
Hope Mills, NC
Joshua Rowland
Durham, NC
Heather Rubinstein
Raleigh, NC
Kayla Rudisel
Matthews, NC
Regina Rudisill
Baton Rouge, LA
Ricky Ruffin

Cornelius, NC
Daniel Ruffy
Charlotte, NC
Sarah Saint
Winston-Salem, NC
Mihai Salagean
Jamestown, NC
Kaylyn Sands
Fort Wayne, IN
John Sauve
Tryon, NC
Lauren Saville-Amtower
Weaverville, NC
Jordan Sawyer
New Bern, NC
Sarah Sawyer
Chapel Hill, NC
David Sayers
Huntersville, NC
Nicole Scallon
Greensboro, NC
Tara Scanlon
Greensboro, NC
Trisha Schell
Williamsburg, VA
Sheldon Schenck
Chapel Hill, NC
Zachary Schilawski
Carrboro, NC
Frederic Schilling
Ponte Vedra Beach, FL
Mollie Schrull
Greensboro, NC
Amanda Scott
Columbia, SC
William Sefcik
Dunedin, FL
Matthew Sellers
Chapel Hill, NC
Gregory Seraydarian
Bloomfield Hills, MI
Jillian Sewell
Wilmington, NC
Deondra Sexton
Charlotte, NC
John Sexton
Tripoli, IA
Abigail Seymour
Greensboro, NC
Zainah Shafi
Raleigh, NC
Sara Shariff
Charlotte, NC
India Shaw
Morrisville, NC
Angela Sheets
Winston-Salem, NC
Jared Simmons
Raleigh, NC
Michael Simmons
Fayetteville, NC
Micah Simonsen
Raleigh, NC
Kevin Sisson
Raleigh, NC
David Sloan
South Royalton, VT
John Sloan
Fayetteville, NC
Cordon Smart
Chapel Hill, NC
Andrea Smaxwell
Greensboro, NC

Brittany Smiley
 Holly Ridge, NC
Charles Smith
 Chapel Hill, NC
David Smith
 Davidson, NC
Jenna Smith
 Raleigh, NC
Meghan Smith
 Greensboro, NC
Nicholas Smith
 Columbia, SC
Shelby Smith
 Arlington, VA
Shelby Smith
 Memphis, TN
William Smith
 Raleigh, NC
Willis Smith
 Raleigh, NC
Emily Smith Peacock
 Raleigh, NC
George Smith III
 Raleigh, NC
Gabriel Snyder
 Greensboro, NC
Sallie Snyder
 Mount Pleasant, SC
Alexandra Southerland
 Raleigh, NC
Candace Speller
 Chapel Hill, NC
Jasmine Spence
 Durham, NC
Sheila Spence
 Lillington, NC
Frank Spencer
 Charlotte, NC
Alton Stainback
 Henderson, NC
Amber Staples
 Durham, NC
Kendra Stark
 Winston-Salem, NC
Malaika Staten
 Charlotte, NC
Christopher Stella
 Greensboro, NC
Holly Stephens
 Raleigh, NC
Deirdre Stephenson
 Sanford, NC
Christopher Stevens
 Chapel Hill, NC
Rashida Stevens
 Raleigh, NC
Christopher Stipes
 Sacramento, CA
Stratton Stokes
 Magnolia, NC
Caitlin Stone
 Winston-Salem, NC
Jessica Story
 Cartersville, GA
Lauren Stovall
 Jekyll Island, GA
Joseph Strader
 Chapel Hill, NC
Daniel Stratton
 Winston-Salem, NC
James Strickland
 Raleigh, NC
Demetria Stuart
 Winston-Salem, NC
Jordan Styles
 Charlotte, NC
David Swenton
 Winston-Salem, NC
Khadija Swims
 Lansing, MI
Nadira Swinton
 Charlotte, NC
Jesse Swords
 Asheville, NC
Grace Sykes
 Durham, NC
Heather Tabor
 Taylorsville, NC
James Taylor
 Charlotte, NC
Olivia Taylor
 Washington, NC
Rebecca Taylor-Parker
 Athens, GA
Samuel Thomas
 Raleigh, NC
Jovon Thompson
 Cary, NC
Shemik Thompson
 Charlotte, NC
Russell Thornton
 Benson, NC
Elizabeth Thueme
 Raleigh, NC
Kaitlyn Tickle
 Louisburg, NC
Aaron Tierney
 Concord, NC
Jessica Timmons
 Durham, NC
James Todd
 Cary, NC
Brittany Tomkies
 Chicago, IL
Elliott Tomlinson
 Raleigh, NC
Matthew Tomsic
 Chapel Hill, NC
Katherine Torrance
 Greensboro, NC
Kai Toshumba
 Charlotte, NC
Amy Totten
 Snoqualmie, WA
Erin Trabookis
 Charlotte, NC
Daphne Trevathan
 Rocky Mount, NC
Robert Trimble
 Greensboro, NC
Caitlin Truelove
 Greensboro, NC
Po Yun Tung
 Chapel Hill, NC
Joshua Twitty
 Charlotte, NC
LaQuanda Tysinger
 Burlington, NC
Crystal Uhlenhake
 Fletcher, NC
Samantha Unmann
 Charlotte, NC
Victor Unnone
 Williamsburg, VA
Adriana Urtubey
 Mississauga, Ontario
Sean Valle
 Durham, NC
Landon Van Winkle
 Cary, NC
Elizabeth Vanek
 Raleigh, NC
Paige Vankooten
 Greensboro, NC
Stephen Vaughan
 Chapel Hill, NC
David Vaught
 Raleigh, NC
Sergey Vdovin
 Mooresville, NC
Jenney Villalobos
 Fayetteville, NC
Gabriell Vires
 Durham, NC
Alex Visser
 Williamsburg, VA
Elsbeth Visser
 Williamsburg, VA
Karen Wahle
 Raleigh, NC
Kasi Wahlers
 Hillsborough, NC
Caroline Wahoff
 Raleigh, NC
Ashley Waid
 Durham, NC
Jerrika Walker
 New Bern, NC
Kelly Walker
 Greensboro, NC
Brandon Wallace
 Memphis, TN
Grace Wallace
 Durham, NC
Kyrstin Wallach
 Washington, DC
Brianna Walther
 Raleigh, NC
Ashwini Kumar Wankhede
 Greensboro, NC
Rachael Warden
 Chapel Hill, NC
Lindsey Ware
 Washington, DC
Scott Warnick
 Charlotte, NC
Spencer Warren
 Greensboro, NC
Candace Washington
 Hope Mills, NC
Erica Washington
 New York, NY
Tamikiyo Watters
 Durham, NC
Peter Webb
 Raleigh, NC
Nathan Weeks
 Charlotte, NC
Karen Wellington
 Wilson, NC
John Wheatley
 Charlotte, NC
Sarah Wheaton
 Raleigh, NC
Brandon Wheeler
 Henderson, NC
Chimeaka White
 Greensboro, NC
Ethan White
 Winston-Salem, NC
Jaynell White
 Winston-Salem, NC
Nicholas White
 Raleigh, NC
Kristen Whitt
 Charlotte, NC
Amanda Whorton
 Winston-Salem, NC
Randi Wilde
 Mount Holly, NC
Linder Willeford
 Durham, NC
William Willett
 Knoxville, TN
Benjamin Williams
 Durham, NC
Marion Williams
 Greensboro, NC
Matthew Williams
 N. Wilkesboro, NC
Tatjana Williams
 Aberdeen, NC
Mackenzie Willow-Johnson
 Chapel Hill, NC
Kristen Willis
 Elizabeth City, NC
Jessica Willson
 Durham, NC
Yvette Wiltshire
 Charlotte, NC
Joshua Winks
 Winston-Salem, NC
Miranda Wodarski
 Chapel Hill, NC
John Wolf
 Chapel Hill, NC
Kaitlin Wolf
 Chapel Hill, NC
Beth Wolfe
 Raleigh, NC
Thomas Wolff
 Morrisville, NC
Morgan Woods
 Waxhaw, NC
Brian Wooten
 Pfafftown, NC
Ashley Wright
 Whitsett, NC
Charles Wright
 Whispering Pines, NC
Gabriel Wright
 Durham, NC
John Wright
 Philadelphia, PA
Laura Wright
 Stafford, VA
David Wyatt
 Greenville, NC
Doaw Xiong
 Durham, NC
Farrah Yaghi
 Wilson, NC
James Yandle
 Charlotte, NC
Chi Yang
 Morganton, NC
Tiffany Yates
 Chapel Hill, NC
Gbiamango Yewawa
 Durham, NC
Yishi Yin
 Carrboro, NC
Hyun Yu
 Raleigh, NC
Audrey Zopp
 Raleigh, NC

Classified Advertising

Practice Purchase or Merger—Established Georgia law firm is seeking to acquire or merge with a practice in the areas of Corporate/Business Law, Healthcare, Employment and Estate Planning. For inquiries, please contact Stuart Oberman at (404)630-4879 or sjo@obermanlaw.com.

Strong's NC Index 4th Edition Full Set (missing volume 10) updated through 2012. Includes Index Archives Set Volumes 2-14. Asking price \$2500 or best offer. Contact dmorgan@mcnair.net with inquiries.

CLE Speakers Needed—Law to the People, LLC is a fully accredited NC CLE company hosting live webinars and in-person sessions. Contact Attorney Timothy Peterkin at timothy@lawtothepeople.com or call (919) 633-7529. CLE teaching credit provided.

“We continuously watch for new risks our insureds might face in the future. When we identify these new risks, we respond with alerts, articles and Continuing Education warning our insureds about these dangers.”

– CAMILLE STELL, VICE PRESIDENT CLIENT SERVICES



LAWYERS MUTUAL: **THINKING FORWARD**

Claims Repair ■ Claims Counsel ■ CLE
Risk Management Resources ■ PRACTICAL TOOLS

919.677.8900 800.662.8843

www.lawyersmutualinc.com

Summer 2017

Stand Out From The Crowd.



It's Time to Accept the Challenge of Specialty Certification.

Appellate Practice • Bankruptcy • Criminal (Including Juvenile Delinquency)
Elder • Estate Planning & Probate • Family • Immigration • Real Property
Social Security Disability • Trademark • Utilities • Workers' Compensation

Apply now! Accepting applications until June 30.

919.828.4620 • www.nclawspecialists.gov



BOARD CERTIFIED SPECIALIST
NORTH CAROLINA STATE BAR