

THE NORTH CAROLINA STATE BAR

# JOURNAL

SUMMER  
2020

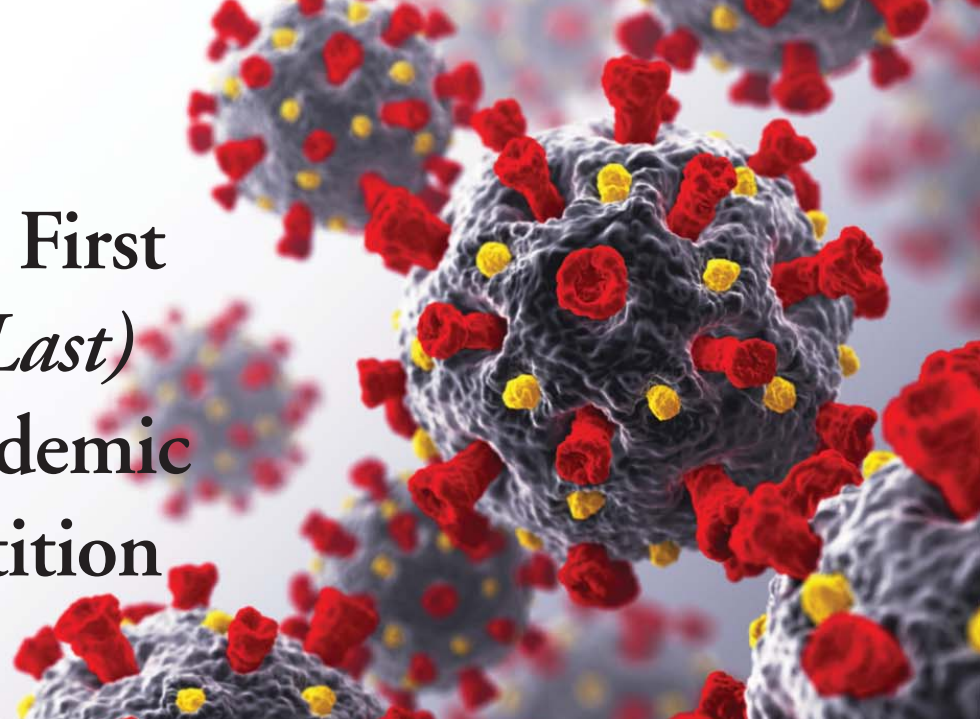


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# Announcing the First (*and Hopefully Last*) COVID-19 Pandemic Writing Competition

The Editorial Board of the *Journal* is hosting its first (and hopefully last) COVID-19 writing competition. We are looking for submissions about inspirational experiences, thoughts, reflections, and lessons learned as they relate to the COVID-19 pandemic. Entries can be fiction or nonfiction, and should be written in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the bar, and to provide an opportunity to reflect on the impact of this unprecedented event on the lives of lawyers. If you have any questions about the contest, please contact Jennifer Duncan, Director of Communications, at [jduncan@ncbar.gov](mailto:jduncan@ncbar.gov), 910-397-0353.

## Rules for the Writing Competition

The following rules will govern the writing competition sponsored by the Editorial Board of the *Journal*:

1. The competition is open to any member in good standing of the North Carolina State Bar, except current members of the Editorial Board, as well as North Carolina State Bar Certified Paralegals. Authors may collaborate, but only one submission from each member will be considered.

2. Subject to the following criteria, *the writing may be fictional or nonfictional, and may be in any form—the subject matter need not be law related*. Among the criteria the board will consider in judging the submissions are: quality of writing; creativity; extent to which the submission comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The board will not consider any submission that, in the sole judgment of the board, contains matter that is libelous or violates

accepted community standards of good taste and decency.

3. All submissions to the competition become property of the North Carolina State Bar and, by submitting the writing, the author warrants that it has not been previously published.

4. *Entries should not be more than 3,500 words in length* and should be submitted in an electronic format as either a text document or a Microsoft Word document.

5. Submissions will be judged without knowledge of the identity of the author's name. Each submission should include the author's State Bar or certified paralegal ID number, placed by itself on a separate cover sheet along with the name of the submission.

6. **All submissions must be received in proper form prior to the close of business on August 31, 2020.** Submissions received after that date and time will not be considered. Please direct all questions and submissions to: Pandemic Writing Competition, Jennifer Duncan, [jduncan@ncbar.gov](mailto:jduncan@ncbar.gov).

7. Depending on the number of submissions, the Editorial Board may elect to solicit outside assistance in reviewing the submissions. The final decision, however, will be made by majority vote of the board. Contestants will be advised of the results of the competition. Honorable mentions may be announced.

8. The winning submission, if any, will be published. The board reserves the right to edit submissions and to select no winner, and to not publish anything if the submissions are deemed by the board not to be of notable quality.

**Deadline is August 31, 2020**

THE  
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**JOURNAL**

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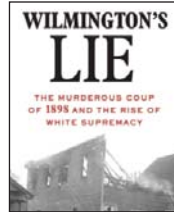
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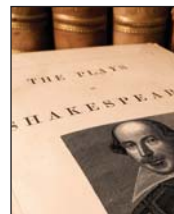


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*Cover photo: ©iStockphoto.com/Kameleon007*

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# The Impacts of the Pandemic on the Practice of Law

BY C. COLON WILLOUGHBY JR.

**T**he last few months brought all of us unique experiences. The onset of a pandemic has irretrievably changed life for each of us.

So many things that we once took for granted we now realize were special gifts, and they have been abruptly taken away. Some may return in time, and some may be changed forever. We, as a community and a profession, will recover and resume our journey with the benefit of experiences we never anticipated.

The pandemic is testing our society, legal system, and courts in new and profound ways. While many among us have been, at times, working remotely and effectively using modern technology to serve clients, some of us were late to the party and have been learning by immersion. We have learned that some of our laws requiring face-to-face interaction to accomplish things are not always well-suited for safe health practices, and some have not kept up with technological advances. This pandemic will propel many changes in both our customs and laws, and result in improvements to our practices and habits.

Our court system is being tested daily. The safety of our community and court employees has been pitted against the rights of individuals to have their grievances heard in open courts without undue delay. Around the state, thousands of court officials at all levels of our system have continued to provide order and justice during a scary and uncertain time. Clerks' offices remain open to allow filing of pleadings, and many prosecutors' offices have begun working in shifts

to limit employees' exposure and risk. Judges have continued to preside over necessary hearings and provided order in an otherwise chaotic time. Divergent interest groups have worked together with judges and trial court administrators to find new and better ways to accommodate civil and criminal matters.



Many lawyers have been called on to assist clients during a time of great anxiety and crisis for lawyers and clients alike. Some lawyers are handling normal commercial transactions, while other lawyers are helping clients who are dealing with special problems arising from the dangers and impact of COVID-19. The signing and witnessing of legally enforceable documents in a manner in conformity with mandated safety requirements has presented challenges. Proper execution of documents by seemingly healthy persons has been difficult, but meeting the needs and desires of some infirm clients for health-care directives and last wills has been beyond our reach.

This crisis has demonstrated the need for embracing technology to meet the needs of our clients and accomplish their goals. It has also demonstrated the limits of the knowledge and skills many of us possess to use the tools that are available. Many have quickly adapted to using readily available technology and have lost their apprehension of new applications. The new Bar rules requiring technological competence and CLE training were implemented just in the nick of time.

The importance of that technology and those rules cannot be overestimated. But for

many employees in our court system, technology has not been readily available. Laptops and tablets that can easily be transported for remote work are in limited supply and not available to all. This has hampered many dedicated employees from performing to their capabilities. This pandemic has prompted us to explore ways to use technology to improve productivity and efficiency in our court system. The private sector has been moving in that direction for some time, and government will have to follow suit and benefit from the private sector's experience.

One of the more comforting things about our current situation is how well the various bar organizations work together. The Bar Association, the Advocates for Justice, the civil and criminal defense bars, the Board of Law Examiners, the State Bar, our law schools, and many other important groups in our legal community have been supportive of each other.

During the early stages of the pandemic and the crafting of executive orders and safety guidelines, lawyers around the state anticipated the critical need for legal services during this emergency. All recognized the unique situation in which we found ourselves and knew that access to essential legal services was necessary to protect the well-being of the public. Together, we were able to articulate the specialized legal needs during this crisis and effectively explain the benefits of keeping that service available to the public.

Various groups within our bar organizations have recognized statutory limitations to effectively serving clients interests and are seeking legislative action to improve our system. This is in keeping with our duty from

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# The Education of an Executive Director: Excerpts from a Journal (During the Time of COVID-19)

BY ALICE NEECE MINE

**January 1, 2020:** Happy New Year! Looking forward to an unexciting second year as ED. Ransomware attack on the State Bar computer network last October was all the challenge to my nascent management skills that I need for a while.

**January 4, 2020:** Something in the news today about pneumonia-like illness people picked up at a live animal market in Wuhan, China. Glad we don't have those markets here. NASTY!

**January 23, 2020:** Looks like the virus in China spreads between humans. China locking down everything in Wuhan. Setting up temporary hospitals. Closing off travel in and out of the province. News reporter saying it doesn't matter, people will find a way out, possibly spreading the virus. Apparently, it's like a bad flu, nothing as serious as Ebola, thank goodness. Creepy pictures on the news of empty streets in Wuhan.

**January 30, 2020:** This coronavirus will probably be like SARS and MERS and get under control soon. Feel bad for the folks in Wuhan.

**February 5, 2020:** American cruise ship has outbreak of the coronavirus and they've quarantined the ship off the coast of Yokohama, Japan, where our friends the Ogowas live. Wonder if the virus will affect our vacation this fall to Japan?

**February 14-19, 2020:** Great trip to California for friends' daughter's wedding. Went to lots of nice restaurants in LA; Mark went to a pro golf tournament. Lots of folks from all over the world (groom is from Wales) at the wedding. Lots of dancing with

guests really mixing it up. During the reception, Dr. Dave, who flew in for the wedding from Hawaii, mentioned that he is concerned there won't be enough ventilators on the islands if some coronavirus cases show up there because of all the international travel. Why are ventilators so important?



**February 28, 2020:** Minority Outreach Conference presented by the State Bar's Lawyer's Assistance Program in Durham was a HUGE success again this year. Probably over 400 minority lawyers from across the state in attendance. Biggest room in the convention hall and it was still packed. Everyone was hugging and kissing. Took a break to have a lovely lunch with son-in-law, Eric. When I mentioned the virus and my concern about children, especially my grandchildren, he laughed and said it's old people who are most at risk. Then he gave me a meaningful look. Disconcerting.

**March 3, 2020:** Hearing more and more in the news about coronavirus. I never know whether to use the generic "coronavirus" or specific "COVID-19"? Need to read more about this. Easier to type "coronavirus" than use all caps. Going to the UNC v. Wake game tonight over stepdaughter's objections. But it's Senior Night and the ACC Tournament is just around the corner. Go Heels! Hope they play better tonight, otherwise they may not have much of a season left.

**March 5-6, 2020:** Drove with Past-President John Silverstein to Whiteville for the 15th Judicial District Bar meeting and State Bar presentation. It was SRO, with

probably 50 people packed into a small, storefront restaurant called "The Chef and the Frog." The Frog is the French husband of the chef. Ha-Ha! I kept shaking everyone's hand even though I've heard that the virus spreads that way. Did the forearm "bump" with a couple of people. Seems weird to do. Need to be better about washing my hands. Buffet was great.

**March 9, 2020:** Hearing more and more about the need to wash our hands and to practice "social distancing" by staying three feet away from people you don't live with. May need to have some employees work from home to keep down the number of people coming into the building. I'm hopeful this will blow over soon but, just in case, I held a "Business Continuity Planning (BCP) Meeting" today of key management employees to talk about planning for potential remote work and what we should be doing in a building with 80-plus employees. HR staff is going to study the CDC and NC Department of Health and Human Services recommendations. Posting signs in the bathrooms and kitchens to remind people to "stay calm and wash your hands." Feeling good about my insight to plan ahead and especially about the cool name for the meeting. I'm rockin' this ED thing!

**March 10, 2020:** ABA cancelled the Bar Leadership Institute in Chicago scheduled for Thursday and Friday this week. Too many attendees told the ABA they weren't coming. I was game to attend with our new Vice-President, Darrin Jordan, who also wanted to go. I'm not too worried about getting the virus; when I get sick, I bounce back. I know they say it is worse for older folks, but that seems to mean anyone over 65 and I'm not there yet! Book club meeting at my house tonight. Just about everyone in book

club is over 60...

**Afternoon:** Governor just entered an order declaring a state of emergency. NCDHHS recommends using teleworking technologies to the greatest extent possible. NC Office of Human Resources is recommending that all state government employees in the Triangle area telework “to the greatest extent possible” starting tomorrow. So much for planning ahead.

Called another BCP meeting. Will ask all employees who can work from home to do so starting tomorrow. I will continue to come to the office. Notified the officers of this decision.

**March 11, 2020:** The lightbulb just clicked on: this coronavirus stuff is serious. Riding the bus to the office this morning, I read *Coronavirus: Why You Must Act Now* by Tomas Pueyo. The subtitle is *Politicians, Community Leaders, and Business Leaders: What Should You Do and When?* (bit.ly/ThomasPueyo). It contains lots of charts and models of what will happen if we don’t stop interacting with other people immediately. If the illness spreads exponentially, thousands will be sick at the same time, overwhelming the health care system, and then we will all be at risk if we need medical care. It’s not the individual concern that I might get sick that’s important, but the overarching concerns that we won’t be able to take care of those who are sick and our health care system will collapse. Collective action is needed.

Now I must ride the bus home. Lots of surfaces! Lots of unknown people! Why am I still riding the bus???

**March 12, 2020:** Drove to work from Chapel Hill to Raleigh on an eerily vacant Highway 40 (f/k/a “the parking lot”). Our building feels deserted, but still at least ten people working on my floor. Hard to maintain social distance of now-recommended six feet. Hard to remember to disinfect surfaces.

ACC Tournament—cancelled. One Day University lectures for Saturday morning—cancelled. Playmakers Repertory Theater Saturday night performance—cancelled. 40th Judicial District Bar meeting and State Bar presentation in Asheville—cancelled. Easter weekend in NYC with grandkids—cancelled. Trip to Japan—cancelled.

Emergency conference call with Chief Justice to ask for our assistance in notifying the members of the bar of her impending

order on the closure of the courts. Took the call on my drive home by pulling off at the exit for the PNC arena. Here is the weird thing: hundreds of teens and young people streaming by me to attend a Billie Eilish concert. What’s wrong with this picture?

**March 15, 2020:** Mother-in-law’s 99th birthday celebrated by waving at her through the glass door of her skilled nursing facility. Happy Birthday, Eileen!

**March 16-20, 2020:** Governor’s orders closed public schools, restaurants, and bars.

On Thursday decided, with ABA staff, that the National Conference on Professional Responsibility in late May in New Orleans must be cancelled. The right decision, but a hard one: I spent the last six months chairing the planning committee for the two-day conference. We plan, God laughs.

Another killer: March Madness—cancelled. (Perhaps a good ending for the Heels’ season?)

And still another: With the officers’ approval, the April Quarterly Meeting of the State Bar Council, scheduled for April 14-17, 2020, in Raleigh, changed to three days of videoconferencing of the “essential” committees and the final meeting of the council. A small blessing is that the meeting hotel cancelled without charge. Being ribbed about the Ethics Committee not being “essential.” Okay, I get it, but there was nothing of urgency on its agenda for this meeting.

By the end of the week, it seemed clear that we might soon need to move all employees to remote work, even if some of the employees cannot fully do their jobs at home. Stuffed a banker’s box to carry home for the weekend and possibly longer.

**March 22, 2020:** Email to entire staff Sunday, 11PM:

*After a great deal of thoughtful consideration of the local, state, and federal orders and directives relative to the steps we must take societally to limit the further spread of the virus, and in light of additional concern about protecting the staff, and their family members, from infection, I have decided that the State Bar should reduce its in-office staff to the bare minimum. Effective as of tomorrow...all employees who are able to do so will be working remotely; all other employees will be instructed not to come to the office...all employees will be paid as usual. I know that all of you would continue to work, at the office or at home, had we the technology for you to do so. I also know that when we do need you to work, you will be there*

*for the State Bar.*

Executive directoring is hard. But I’m blessed to have a great staff that is totally dedicated to their work and that I don’t have to furlough anyone.

**March 23-27, 2020:** Set up home office. Communicating via email and cell phone. Not so bad. Weird to have the husband downstairs. Taking morning and evening walks with Mark to stretch my legs and my head. Maybe this is a taste of retirement?

Received emails from my bank, my pharmacy, my dentist, my state and national professional organizations, my yoga studio, my gym, my Talbots, informing me that my “health and wellbeing” are their “highest priority” and they are “committed to helping [me] navigate” these “unprecedented times.” Nice to know that Talbots really cares. Think I will order some clothes online.

On Wednesday, Peter Bolac, assistant director and indispensable co-worker, set up a Zoom videoconference for all employees to participate voluntarily. It was mostly for Peter to practice managing a large Zoom event in preparation for the multiple meetings necessary for the April Quarterly Meeting, but it was a lot of fun. Over 70 employees participated. Many pets and small children made appearances. Lots of waving and joking about pants (or the lack thereof) and whether Peter invented Zoom over the weekend. The advice from the professional organizations is right: staying connected is more important than ever. Sent an email to the entire staff to show my support and notify them that we would continue to work from home.

On Friday, Governor Cooper issued a statewide stay-at-home order. Notably, at the urging of State Bar President Colon Willoughby and NC Bar Association President LeAnn Nease Brown, the governor declared legal services to be “essential.” This will help the public, but also a lot of lawyers. Closing the courts has really impacted solo

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Leonard T. Jernigan, Jr. is pleased to announce that his 2019 - 2020 supplement to Jernigan's *North Carolina Workers' Compensation: Law and Practice* (5th Edition) is now available from Thomson Reuters (1-800-328-9352).

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News from Italy is very bad. This disease kills people, and not just the old and infirm. Without a respirator, it sounds like you suffocate to death...and without family or friends with you in the hospital. A terrible death. We must flatten the curve.

**Groundhog Day #8 (March 30, 2020):** Every day is a barrage of lobbying emails back over the net. Another voluntary Zoom meeting with the staff. So good to see the faces of my people. Everyone in good spirits.

**Groundhog Day #12 (April 3, 2020):** Is it April already? Watching the trees turn green and fill out from my home office window is a real treat. Sent another Friday email to the entire staff to stay connected:

*Thank you for all that each of you is doing to advance the work of the State Bar, no matter how difficult that is from a remote work place, and to help our community collectively to lower the curve and save lives, possibly our own. It is hard to be patient when we want our lives—at work and at home—to return to normal. To help me cope, I'm trying to practice a little Zen and live in the moment. After all, God willing,*

*there will come a day when I am again cursing the traffic on 40.*

**Groundhog Week #3 (April 6-12, 2020):** Preparing materials for the quarterly meetings by Zoom next week. It will be an adventure. Asked an employee to share her thoughts in my weekly email to all employees:

*While working remotely can be frustrating at times, I have really enjoyed the casual attire and not spending so much time commuting from Fuquay. I'm afraid my dogs will be quite sad when things go back to normal. I have had more time to "smell the flowers" and have really enjoyed watching everything bloom. I have quite the obsession with clematis vines and have got blooms on several right now. So far I'd say my experience has been positive. I realize how blessed we are to still have jobs and income coming in when so many others don't.*

**Groundhog Week #4 (April 13-19, 2020):** Council meetings via Zoom were amazing! Staff support for the councilors during the meetings was exceptional. The councilors and public members all took to the format with relatively few technical diffi-

culties. The work of the committees and of the council got done! Could this signal a real sea-change in how we work and meet going forward?

Another Friday message to the staff:

*This has been an amazing week. I am still in a daze over the fact that we actually pulled it off: a State Bar quarterly meeting held remotely. I never doubted that our talented team would be able to get the job done. But I am extraordinarily proud that we did it with nary a glitch or a hiccup. (Well, there was that small problem of Zoom locking me out of the Executive Committee meeting. Peter says it was not his fault.) The officers were effusive in expressing their thanks to the staff for our work this week.*

**Groundhog Week #5 (April 20-26, 2020):** Experiencing Zoom fatigue. During a videoconference, I can't seem to stop looking at my own image, instead of the other meeting participants—especially that line where my hair changes from one color to another.

On Tuesday, called the first meeting of the Planning Re-entry to the Workplace Committee (the PREW Committee). No kudos for me for doing the obvious: It is going to take a lot more planning, timing, coordination, and education to orchestrate re-entry, which may be in stages for over a year. Who would have predicted when I took this job that one day I would consider whether to require employees to wear face masks to work?

Executive directoring is hard and, on my watch, there is never a dull moment. But I'm still rockin' the committee naming thing.

Friday message to staff:

*When I asked a few of your co-workers to share their reflections on their lives over the past five weeks (is it really that long?), their responses contained a common theme: finding silver linings to the clouds we now find ourselves in. Gratitude for the opportunity to watch a newborn master new skills, to slow down, to be thankful for our blessings and find ways to help others, these are the things they mentioned. My silver lining is having the opportunity to really observe the spring unfolding, each day bringing more green into the view from my home office window and into my twice daily walks. It has been a beautiful spring—one for the record books, indeed. ■*

*Alice Neece Mine is the executive director of the North Carolina State Bar.*



# The Vital Role Law Schools Play in Providing Legal Services to Those in Need

BY ASHLEY H. CAMPBELL

Almost one hundred years ago, Dean Justin Miller recruited John S. Bradway to Duke Law School for a very specific purpose. Bradway was a vocal advocate of experiential education, having authored several influential articles between 1928 and 1930 advocating for a transformation in legal education.<sup>1</sup> Bradway believed that legal education for lawyers should include a clinical component, similar to the clinical experience doctors receive in their medical school training.

In 1928, Bradway laid out a five-point plan for clinical legal practice. First, the student would be supervised by an experienced lawyer “of irreproachable good standing.”<sup>2</sup> Second, the student would be exposed to a diverse caseload to allow the student to obtain “a broad practical understanding of the relation between human and legal problems.”<sup>3</sup> Third, there would be a plan to

continue the representation of the client if the student was not able to do so during the student’s time in the clinic. Fourth, there would need to be rules ensuring attendance in the clinic.<sup>4</sup> And finally, the student would need to have “real responsibility” in handling his or her cases.<sup>5</sup>

In October 1931, Bradway’s concept became a reality when Duke Law School

opened the first student-staffed legal clinic in the country, the Duke Legal Aid Clinic. It continued to operate for more than 25 years under Bradway’s leadership.

Bradway’s vision of clinical legal education really took off in the 1950s and 1960s when attorney William Pincus used his considerable influence as vice-president of the Ford Foundation’s Anti-Poverty pro-



*Left to right: Clinic Director Ashley Campbell, client James Ivy, Law Students Evans Haile, and Melissa Wilkinson with StepUp Ministry at Mr. Ivy’s driver’s license hearing in Wake County.*



*Left: Ashley Campbell with Evan Crossgrove, certified legal intern, following a hearing for a domestic violence protective order in Wake County. Below: The Blanchard Community Law Clinic at Campbell Law School directed by Professor Ashley Campbell is one block from the North Carolina State Bar. Since 2016, certified student interns have provided direct legal services to over 300 low income clients at the clinic.*



and State Bar staff members. The committee ultimately proposed a revision to the Practical Training Rules, which proposal was adopted by the Council of the North Carolina State Bar on July 19, 2019, and approved by Chief Justice Cheri Beasley on September 25, 2019. Below is an explanation of the most significant rule changes.<sup>9</sup>

### **Law Students May Provide Legal Services to Clients in Essentially Three Ways**

The revised Practical Training Rules explicitly define a “clinical legal education program.” Such a program is meant to “engage students in ‘real world’ legal matters...[u]nder the supervision of a faculty member or site supervisor” so that students may “assume the role of a lawyer either as a protégé, lead counsel, or a member of the lawyer team.”<sup>10</sup> Students working in a law school legal clinic are not intended to be mere research assistants or play a supportive role. They should represent actual clients or perform lawyering roles.<sup>11</sup> These students should attain certification from the NC State Bar to provide these legal services.<sup>12</sup>

Students may also perform legal services for clients under the supervision of a lawyer in a “field placement.”<sup>13</sup> A field placement is different from a law school legal clinic. In a field placement, students practice in settings that are outside the law school, e.g., in a district attorney or public defender’s office. Supervising attorneys must be licensed in North Carolina or another appropriate jurisdiction and have practiced law full time for at least two years.<sup>14</sup>

Finally, law students may also provide legal services through a *pro bono* project that is facilitated by the law school.<sup>15</sup> Such projects must now fall under the auspices of a law school clinical legal education program.<sup>16</sup> Students providing legal assistance to clients through a *pro bono* project typically will not need to be certified, but there are exceptions. Directors of law school *pro bono* programs should carefully review the new rules to ensure that all programs are compliant and that certification is obtained if required.<sup>17</sup>

### **The Three Semester Requirement for Law Student Practice has been Abolished**

The Practical Training Rules used to require that a law student complete three

grams to convince the foundation to invest in clinical education.<sup>6</sup> Thereafter, Ford formed the Counsel on Legal Education for Professional Responsibility, headed by Pincus, to invest millions in clinical education, thus transforming the legal education experience.<sup>7</sup>

Today, Duke Law School has ten legal clinics and 25 clinical faculty. The five other North Carolina law schools have 35 additional legal clinics between them—Campbell, 5; Elon, 5; NCCU, 9; UNC, 11; and Wake Forest, 6.

In order for law students to practice law in the manner envisioned by Bradway and his ideological successors, state bars would need to carve out an exception to the prohibition on corporate practice, as law schools are expressly prohibited from practicing law.<sup>8</sup> And the North Carolina State Bar did so by adopting rules codified at 27

N.C.A.C. Chapter 1C, Section .0200 *et seq.* (hereinafter referred to as “Practical Training Rules”).

In 2018, the State Bar, then under the leadership of President John Silverstein, formed the Special Committee to Study Rules Governing the Practical Training of Law Students, staffed by now State Bar Executive Director Alice Mine. The Bar recognized that such a committee was needed because the rules governing clinical practice had not substantially changed in many years (although there were modest amendments in 2002 and 2008) despite extraordinary innovations in the law and in legal education. Silverstein believed a full-scale review of the rules was in order.

The Special Committee was comprised of State Bar councilors, law school clinical faculty, law school faculty and staff involved in the administration of *pro bono* projects,

semesters of law school before becoming certified to practice under the supervision of a lawyer. Such law students were often said to be practicing under the “3L Practice Rule.”<sup>18</sup> This semester requirement has now been abolished.

Law students seeking to practice under the supervision of a lawyer must be (1) enrolled as a JD or LLM student, (2) be of good character, and (3) have the requisite legal education and ability to perform the legal work.<sup>19</sup> A representative of the law school must certify that these conditions are satisfied before student practice certification can be obtained from the State Bar.<sup>20</sup>

### Law Students Practicing under the State Bar Certification May Only Represent Low Income Clients

Law students practicing under the State Bar certification may not be compensated *by the client* for the work that the student performs.<sup>21</sup> However, a law student may be compensated by an employer in the same manner that a paralegal or other employee of a law firm may be compensated.<sup>22</sup>

Students may only represent clients and organizations that are financially unable to pay for legal services.<sup>23</sup> This is an important distinction for supervising lawyers to understand. A student may not appear in court under the State Bar certification for a client who can afford to pay a private attorney for that appearance.<sup>24</sup>

### There are Clarifying Rules for Supervising Lawyers as Well

The revised Practical Training Rules provide guidance to lawyers supervising law students. Law school clinical faculty may supervise an unlimited number of legal interns so long as the faculty member ensures that each client is well-represented and the student is receiving effective training.<sup>25</sup> But, a supervising lawyer in a field placement is limited to two legal interns, unless the faculty supervisor (typically an externship coordinator employed by the law school) determines that the supervising attorney is able to supervise more students.<sup>26</sup>

Supervising attorneys are encouraged to carefully read the new rules to ensure compliance. The field placement rule is entirely new and provides further guidance on student certification requirements.<sup>27</sup>

### There are New Rules to Provide Guidance when a Clinic Closes

The closure of the Charlotte School of Law raised a vexing question for the law school and the State Bar—what would happen to all of the active client cases and files when the law school closed? An entirely new rule on this subject answers this question.

Client files are to be maintained by the law school legal clinic in accordance with the Rules of Professional Conduct.<sup>28</sup> If the legal clinic closes, the supervising attorney must preserve the status quo of all legal matters consistent with the rules. The attorney must then take steps to return all client files, withdraw from all cases in accordance with Rule 1.16, and may transfer the files to new counsel.<sup>29</sup>

Ninety-one years after Bradway laid out his five-point plan for clinical legal practice, we continue to refine the questions he identified as being of greatest importance to student practice. The revised Practical Training Rules provide greater clarity for supervising attorneys, law students, and law schools, and ease the administrative burden to obtaining certification. Most importantly, the rules provide the flexibility needed to ensure that law schools play a significant role in the provision of legal services to those in greatest need in North Carolina. ■

*Ashley Campbell is the director of the Blanchard Community Law Clinic at Campbell Law School. She is an experienced trial lawyer who continues to manage complex corporate and real estate litigation for her clients at Ragsdale Liggett PLLC, in addition to her work at Campbell. Ashley is the past-president of the Wake County Bar Association & Tenth Judicial District Bar. She earned both her undergraduate and law degrees from the University of North Carolina at Chapel Hill.*

### Endnotes

1. See, e.g., John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. Cal. L. Rev. 320 (1930); John S. Bradway, *New Developments in the Legal Clinic Field*, 13 St. Louis L. Rev. 122 (1928); John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. Cal. L. Rev. 252 (1929).
2. Bradway, *New Developments in the Legal Clinic Field*, 13 St. Louis L. Rev. 122.
3. *Id.*
4. *Id.*
5. *Id.*

6. See Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 Fordham L. Rev. 1929 (2002). Available at: [bit.ly/3bzIQmf](http://bit.ly/3bzIQmf).
7. *Id.*
8. See, e.g., N.C. Gen. Stat. 84-2 (stating “a nonprofit corporation, tax exempt under 26 U.S.C. § 501(c)(3), organized or authorized under Chapter 55A of the General Statutes of North Carolina and operating as a public interest law firm as defined by the applicable Internal Revenue Service guidelines or for the primary purpose of rendering indigent legal services, may render such services provided by attorneys duly licensed to practice law in North Carolina, for the purposes for which the nonprofit corporation was organized. The nonprofit corporation must have a governing structure that does not permit an individual or group of individuals other than an attorney duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered and must continually satisfy the criteria established by the Internal Revenue Service for 26 U.S.C. § 501(c)(3) status, whether or not any action has been taken to revoke that status.” North Carolina law schools, whether for profit or non-profit, did not fit into the limited exception to this rule.
9. You may review the new rules in their entirety on the North Carolina State Bar website at [bit.ly/2QD4r55](http://bit.ly/2QD4r55). 27 N.C.A.C. Chapter 1C, Rule .0200.
10. N.C.A.C. Chapter 1C, Rule .0201(a).
11. See N.C.A.C. Chapter 1C, Rule .0201(f).
12. See, generally, N.C.A.C. Chapter 1C, Rules .0203, .0204, and .0205.
13. See N.C.A.C. Chapter 1C, Rule .0201(c) and N.C.A.C. Chapter 1C, Rule .0208.
14. N.C.A.C. Chapter 1C, Rule .0201(l).
15. N.C.A.C. Chapter 1C, Rule .0210.
16. *Id.*
17. See N.C.A.C. Chapter 1C, Rule .0210.
18. This was always a misnomer. A law student who has completed three semesters is typically a 2L, meaning that the law student could previously have attained the certification during the second semester of the student’s second year in law school, assuming the student met all other requirements.
19. See N.C.A.C. Chapter 1C, Rule .0203.
20. *Id.*
21. N.C.A.C. Chapter 1C, Rule .0203.
22. *Id.*
23. N.C.A.C. Chapter 1C, Rule .0202(b) (defining “Eligible persons” as “[p]ersons who are unable financially to pay for legal advice or services as determined by a standard established by a judge of the General Court of Justice, a legal services organization, government entity, or a clinical legal education program. “Eligible persons” may include minors who are not financially independent; students enrolled in secondary and higher education schools who are not financially independent; non-profit organizations serving low-income communities; and other organizations financially unable to pay for legal advice or services.”)
24. *Id.*
25. See N.C.A.C. Chapter 1C, Rule .0205.
26. N.C.A.C. Chapter 1C, Rule .0205(a)(2).
27. See N.C.A.C. Chapter 1C, Rule .0208.
28. N.C.A.C. Chapter 1C, Rule .0209(d).
29. N.C.A.C. Chapter 1C, Rule .0209(g).



# How White Supremacists Won North Carolina

BY JEFFREY C. BILLMAN

*A Pulitzer Prize Winner's New Book Explores the Wilmington Coup of 1898 and Why It Still Matters*

*The following article originally appeared in INDY Week and is reprinted with permission.*

On Thursday, November 10, 1898, more than 2,000 armed white men, backed by a white-supremacist state militia, effected the only successful coup d'état in American history. They swarmed the city of Wilmington, murdered at least 60 African Americans, forced more than 2,100 black residents to flee, ordered the city's multiracial government and other public officials to resign, more or less at gunpoint, then replaced them with white rulers. No one tried to stop them, and no one was ever held responsible.

This insurrection was preceded by a months-long campaign of political violence intended to scare black voters from the ballot box in Wilmington and elsewhere. It worked; two days earlier, the white-supremacist Democratic Party had reclaimed the legislature from the Fusionists after four years out of power, thanks to intimidation and outright fraud. The newly re-empowered whites soon passed a constitutional amendment that restricted black access to the polls, and then enacted a series of Jim Crow laws that lived on for decades.

Chances are, you've heard something about the Wilmington coup, though it's possible you haven't. For such a momentous event in North Carolina history, it's seldom gotten its historical due. For most of the 20th

century, when it was taught in schools, it was taught as a "race riot"—blacks rioted and whites restored order. That's how the white insurrectionists framed the day's events, and that's how white newspapermen recorded it at the time.

That story is a lie: Blacks didn't riot; if anything, the opposite is true. Even the word "riot" deceptively conveys spontaneity. What happened was not spontaneous; it was planned months in advance.

In 1951, the white narrative was first challenged in a thesis by Helen Edwards, a black scholar at NC Central. Calling her a "negress," Wilmington officials decried her work as "distorted and sensational." Efforts to revisit the white narrative resurfaced around the coup's centennial in 1998.

Two years later, the General Assembly created a commission to what happened at Wilmington.

In 2006, the commission published its 480-page report, showing that the coup was not a "race riot" but a "documented conspiracy" to overthrow a legitimate government. On November 8, 2008—110 years after the stolen election—Wilmington installed a memorial a block from where the coup's first

victims were killed.

It reads: "Wilmington's 1898 racial violence was not accidental. It began a successful statewide Democratic campaign to regain control of state government, disenfranchise African-Americans, and create a system of local segregation which persisted into the second half of the 20th century."

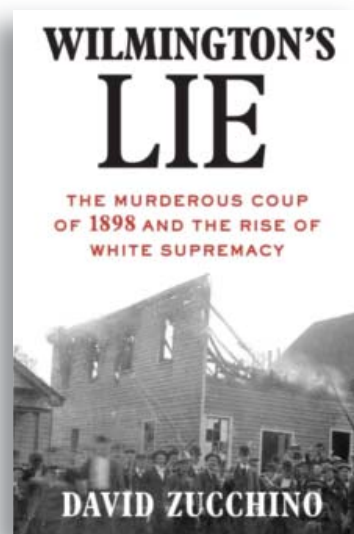
Such an extraordinary event, with such far-reaching consequences, deserves more than a government report. It deserves an extraordinarily compelling exploration.

With *Wilmington's Lie: The Murderous Coup of 1898 and the Rise of White Supremacy*, that's

what Pulitzer Prize-winning journalist David Zucchino has provided.

Zucchino, a product of Terry Sanford High School and UNC-Chapel Hill, has reported all over the globe over the last four decades—from apartheid South Africa in the 1980s to inner-city Philadelphia, from Lebanon to Iraq. Now a contributing writer for *The New York Times*, he spent three years digging into the story of Wilmington. The result is a work that not only details the brutality of the coup itself, but also the context in which it took place.

Last week I spoke with Zucchino about



*Wilmington's Lie* and why what happened 121 years ago—and how we talk about it—still matters.

This interview has been edited for space and clarity.

**Q: What drew your interest to Wilmington in 1898?**

It's this hidden story that's been covered up and mischaracterized for more than a century—a forgotten chapter of not just North Carolina history, but our nation's history. Even a lot of people in North Carolina don't know about this. It wasn't taught in the schools, and if it was taught, it was taught as a response to a black race riot, where whites restored order from a corrupt black government. I thought it was remarkable that something like this could happen in the United States. I went to high school and college in North Carolina, and I never heard of it—it was never taught in any history class I ever took. That made me even more determined to bring this to national attention.

**Q: Before I read *Wilmington's Lie*, I was familiar with the basics of the story. But I didn't know about its place in the larger narrative of North Carolina history. Tell us why this insurrection still matters.**

What the white-supremacy campaign of 1898 tried to do was to rob blacks of the vote—and not only the vote, but the right to hold appointed or political office. They were amazingly successful. This was a huge point in racial history for African Americans in North Carolina and throughout the South. After Reconstruction, blacks had the vote, and there were blacks in Congress, blacks voted openly. Then by 1898, through intimidation, through killing—some 60 blacks in Wilmington—they kept blacks in North Carolina from voting in any significant numbers from 1898 up until the mid-'60s. In 1896, there were 126,000 registered black voters in North Carolina. By 1902, just six years later, there were 6,000. They ended black participation in politics in North Carolina for 70-some years.

This spread throughout the South; it wasn't just happening in North Carolina. This event really inspired white supremacy all across the South.

What was really significant was that right after the riot, after white supremacists had stolen the 1898 election through fraud, ballot stuffing, and the intimidation of black voters, they passed a law in 1900—the Suffrage Amendment—that basically legally

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took the vote away from African-American citizens by saying that any person whose grandfather or whose descendent had voted before 1867—which, conveniently, was the year that blacks got the vote in North Carolina—was not subject to literacy tests and could vote without the literacy test or the poll tax. And that, of course, disenfranchised just about every black person in North Carolina.

**Q: By the late 1890s, there was a Fusionist governor and General Assembly and a black member of Congress from North Carolina as well as a few black legislators. Blacks were gaining some political power.**

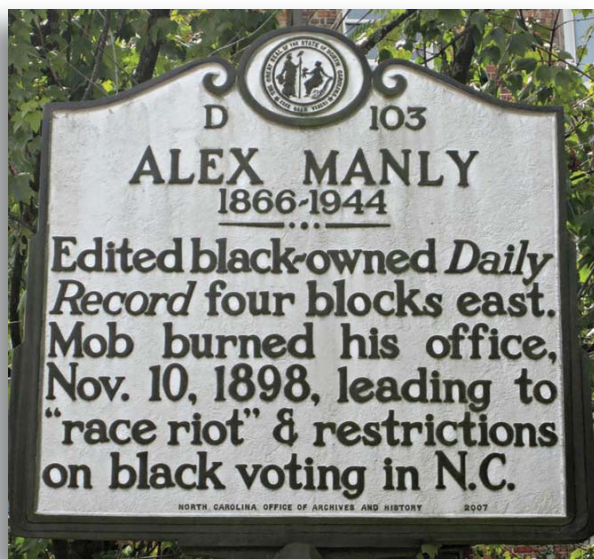
This whole situation just antagonized white supremacists because, through the Redeemer movement right at the end of Reconstruction [in 1876] and up until 1894 in North Carolina, they ran the state government, and white supremacy was official state policy. But the Democratic Party lost control of the state legislature in 1894 because white populists had been so enraged by how it had been taken over by the banks and the railroads and big-money interests that they rebelled and combined with Republicans, both black and white, to form Fusion, and that put blacks in positions of power not only in the state legislature, but specifically in Wilmington.

Wilmington was a rarity at that time. It was a black-majority city. There weren't that many in the South. And it had a multiracial

government, which was very unusual, and it had a real thriving black middle class, and black doctors and lawyers and black policemen and magistrates. This was a primal threat to white supremacy. The whites of North Carolina, specifically of Wilmington, were determined that they weren't going to go back. They were going to retake the city.

What is unusual about Wilmington versus other so-called race riots is that it wasn't spontaneous. It was premeditated over a period of months. And not only was it premeditated, but they announced what they intended to do. They were going to win by the ballot or the bullet. They said they were going to overthrow the so-called Negro rule. And they did it. Amazingly, they got away with it. No one was ever prosecuted, no one was ever convicted. Sixty people were just killed, 60 American citizens killed in broad daylight. And the federal government did nothing.

When I started researching this book, I had no idea just how meticulous they were, how they planned everything. One example is that they planted all these phony newspaper stories that said blacks were going to riot during and after the election, they were going to rise up, they were stockpiling weapons. They fed these stories to the white reporters coming down from the major newspapers. That became the narrative when, in fact, it was the whites who were stockpiling weapons and who carefully planned this for a specific day, two days



after the election.

Another example of just how orchestrated this thing was: The editor of the *Record*, the daily black newspaper in Wilmington, had written an editorial in August 1898, well before the November election, where he scandalized whites by suggesting that cases where black men had been lynched for allegedly raping white women were, in many cases, actually consensual affairs. The so-called Red Shirts, which was basically the militia of the white-supremacy movement, wanted to lynch Alex Manly right away. And the leaders of the movement said, “No, this is not the time. We will have much more impact if we wait until after the election.”

At the same time, they had this whole campaign of stump speakers who would go out and really just enrage white audiences with all these tales of black men coming to steal their jobs, black men coming to steal their women, black-beast rapists, Negro rule and how it was incompetent and criminal. It built to a crescendo, planned up until the day of the election. They sent Red Shirts out as nightriders into black areas to beat and whip black men and threaten them if they even registered to vote. It really tamped down the black vote and allowed them to win the election. Once they won the election, they were in a position of power to easily overthrow the [Wilmington] government, just as they had announced they would.

**Q: You talked about Alex Manly’s editorial. It’s not the only time in the book where this sort of racial-sexual dynamic hits a nerve among whites.**

The reason blacks voting, blacks holding

public office was such a threat—it was political power, but it went much deeper. It really pierced the sexual insecurities of white men in the South, who absolutely feared black men becoming equal on any footing, whether it was social, economic, or political. Because if a black man rose to power, to equal status to that of a white man, he would be competition for the affections of white women.

That’s why they created this campaign of the so-called black-beast rapists and warning white voters that blacks were coming not only for their women, but for their jobs. That was a real force in motivating these men.

**Q: There was a Republican presidential administration in 1898, and there was a Fusionist governor who was elected with black votes, both of whom were in a position to help. The white supremacists telegraphed their intentions for months, but no one did anything. How should history look at those who failed to intervene?**

That’s an important aspect of this book. I’ll start at the state level. Governor Daniel Russell was from Wilmington. He came from a slaveholding family. So he shared a lot of the racial prejudices of the white-supremacy movement. But he was a Republican, and by the standards of the day, he was fairly moderate, and he was a pretty calculating politician. He realized that blacks had the power through the vote to put him in office.

But then, when the white-supremacy campaign started, he was completely intimidated by the white-supremacy leaders and backed down at every opportunity to stand up for blacks. He realized that his life was in danger. He had been threatened with assassination. He had been threatened with impeachment. He was terrified, and he rolled over. He saw the whole thing coming and realized very clearly what was going to happen, yet he essentially authorized the killing of black men by giving the white-supremacist leaders the power to pull out the state militia in Wilmington—and this was a completely white-supremacist militia, even though it was supposed to be a state militia.

At the national level, President [William] McKinley was an abolitionist. Yet I could find no record that he uttered one word in public about the killings and the coup; he remained silent even though he had been warned in the months leading up to it many times by America’s only black congressman, who was from North Carolina. He did nothing. He did not send troops, as blacks wanted, because Governor Russell was too afraid of antagonizing white supremacists by asking for federal troops.

[McKinley] was preoccupied with the aftermath of the Spanish-American War; I think that played into it. He had also campaigned on binding the nation’s wounds from the Civil War; he wanted to bring the country together. He saw the Spanish-American War as actually bringing together Americans from the North and the South who, for the first time since the Civil War, were fighting on the same side. So I think, for all those reasons, he decided that politically that it was not expedient to get involved.

**Q: Bringing the nation together meant letting the white supremacists have their way.**

Basically, it’s what it amounted to, yeah. Also, like any president, he needed the folks in the South. He was going to run for election [in 1900].

**Q: You covered apartheid South Africa. The white supremacists in Wilmington—this was a movement that brought its own form of apartheid in the US for almost 70 years. What parallels did you see?**

There were a couple of things that I saw in South Africa that happened in 1898 in North Carolina. One was the demonizing by race, the belittling, the racial scapegoating and stereotyping by white rulers, courts, white citizens of the country, and just day by day turning [whites] against the black population as a menace, as incompetent, as inferior and incapable of equality and citizenship. Both the apartheid movement and the white-supremacy movement really hit on all these elements. The sexual threat of the so-called black-beast rapists in 1898 was repeated under National Party rule when apartheid was coming into play in the early or middle parts of the 20th century, and it was the same playbook. Politically, [South Africa] used apartheid laws to deny blacks equal rights, and, of course, after the coup,

CONTINUED ON PAGE 16



# Elon Law Students Contribute to “People Not Property” Project

BY ERIC TOWNSEND

*They often have no name, but instead a general description of physical traits. Age? Family? Place of birth? Forget it. What do they all have in common? Each carries a price tag.*

For nearly a year, Elon Law students have spent dozens of hours transcribing pre-Civil War bills of sale from the Guilford County Register of Deeds Office as part of a larger effort to build a searchable database of digitized records tied to North Carolina’s history of slavery.

The “People Not Property” Project is a collaborative endeavor between the University of North Carolina-Greensboro University Libraries, the North Carolina Division of Archives and Records, and several local registers of deeds, among others. UNCG received a grant of nearly \$300,000 from the National Historical Publications and Records Commission to digitize thousands of slave deeds and bills of sale with help from more than two dozen North Carolina counties participating in the program.

In Guilford County, efforts to transcribe records are being led by Register of Deeds Jeff Thigpen with assistance from Elon Law. And the process is slow. Legibility is a big obstacle. So are particular phrases and terms that take time to decipher.

Then you have the sheer volume of deeds in Guilford County. Only a quarter of deeds



already identified in records have been transcribed—sales that involved upward of 600 people treated not as individuals, but as commodities.

And there are still records of sale turning up inside the Register of Deeds Office. There’s no estimate on how long the process will take at Elon Law, let alone elsewhere in the state.

“To literally see a price point on peoples’ lives was shocking. It’s inspired me to work for people who don’t have voices, or power, or influence,” said Andrew Parks Carter, a first year Elon Law student who grew up in Guilford County and a volunteer with the *pro bono* program at the law school. “To me, not hiding our history is important. These are public records. I’ve lived here most of my life and I never knew these records were here.”

Julianna Kober, the Elon Law student project manager for People Not Property, finds inspiration in her work from her family history. The Maryland native lost a dozen ancestors in the Holocaust. The only record proving that her relatives ever existed is a cherished family photograph that survived World War II.

“There’s a generational aspect to this project,” Kober said. “This history has been in the back of my mind. How can we give others the same kind of connection I’ve been fortunate to have?”

Other students who volunteer for People Not Property offer similar motivations. Much of Noah Trotter’s extended family lineage in South Carolina can only be traced to the Civil War. Records of her ancestors stop there.



Trotter's mother's last name is "German." The first year Elon Law student said her family assumes that at some point, when an ancestor was purchased, his name was listed as "German" in property records because his owner was of German descent.

"I've considered this to be a nice break from classes and studying. I did seven of them as breaks from studying for finals," Trotter said. "It can be frustrating to translate things, but seeing the open exchange or how they sold people, it's a great reminder of how far we've come."

The number of students involved in the project—15 have transcribed at least one deed—exceeds the expectations of the Elon Law professor who initiated the work. Associate Professor Andy Haile said it's been particularly meaningful for students to see and touch the documents that literally transferred the ownership of a human from one person to another.



That brings home the disgraceful reality of slavery and the legal system's role in facilitating the "peculiar institution."

"It reminds us, as participants in the legal system, that we have a duty to ensure that the law is used to improve peoples' lives," Haile

said. "Unless we keep in mind the goal of equal justice for all, the legal system can be used for harmful purposes." ■

*Eric Townsend is the director of communications for Elon University School of Law.*

## White Supremacists (cont.)

[North Carolina] passed the Suffrage Amendment.

**Q:** A federal judge recently struck down North Carolina's voter ID law, citing the state's "sordid history" with voter suppression, so this racial history still seems relevant. I wonder what lessons you see from Wilmington that resonate with you.

I see white political conservatives still

finding ways to disenfranchise black voters or limit their access to the polls. Whether it's pure racism today, as it was in 1898, I can't say. It could be just political opportunism. But regardless of the intent, the effect is to restrict the voting rights of African Americans, and the voter ID law [in 2013] was a perfect example. The federal courts ruled that it targeted blacks with, quote, "surgical precision." After the [ruling], they

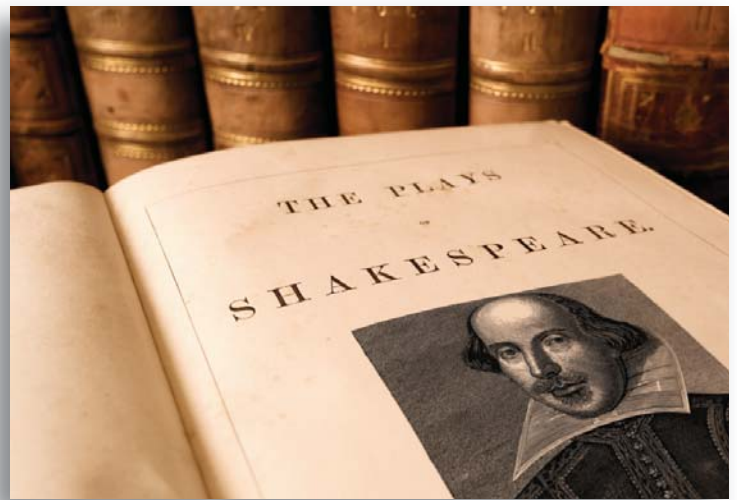
came up with an amendment that did pass [in 2018], and that reminded me so much of the attempt in 1900, successfully, to pass the Suffrage Amendment, which had the same effect of almost cutting off access to the voting booth to black citizens. So this is happening again and again. ■

*Jeffrey Billman is editor in chief at INDY Week.*

# Let's Kill All the Lawyers— *Shakespeare [Might Have] Meant It*

BY GERALD T. BENNETT

In the article, “The First Thing We Do, Let’s Get Shakespeare Right!”<sup>1</sup> J.B. Hopkins concludes that Shakespeare’s line, “Let’s kill all the lawyers,” is, contrary to its facial meaning, a statement in praise of lawyers, not in derogation of them. In so doing, he per-



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petuates a political although professionally flattering, deconstructive interpretation, one that, I believe, goes beyond valid inference.

It is with deep trepidation and reluctance that I enter this dispute of literary interpretation as devil’s advocate, taking issue with those who would praise lawyers, not bury them.<sup>2</sup> Having drunk a little of Pope’s Pierian Spring,<sup>3</sup> and finding only that, the more I learn, the less I know. Nonetheless, since, as most of my acquaintances and all of my former students are well aware, I am apparently endowed with the temerity of fools rather than the perspicacious reluctance of angels,<sup>4</sup> let’s begin....

The line, “The first thing we do, let’s kill all the lawyers,” appears in the play *King Henry the Sixth*, Part II. In the play, a rebellion has broken out under the leadership of one Jack Cade. The rebels have marched from Canterbury to London and are

encamped in London. Cade’s second-in-command, Dick the Butcher, utters the line. Simply stated, the argument that the line is meant to praise lawyers is that the sentence was uttered by a thoroughgoing blackguard, a “riotous anarchist whose intent was to overthrow the lawful government of England.” Shakespeare knew that such anarchy could only succeed if lawyers were eliminated. The interpretation was initially advanced in 1985 by Justice John Paul Stevens in his dissenting opinion in *Walters v. National Ass’n of Radiation Survivors*.<sup>5</sup> Although it is an interpretation that has often been used in recent years to praise lawyers,<sup>6</sup> the evidence supporting the interpretation is unfortunately less than compelling.

First of all, Shakespeare, whoever he was,<sup>7</sup>

was a poet and dramatist, not a political philosopher or social critic, however much political philosophy and social criticism are evident in his works. His work embodies various kinds of drama, ranging from the comedies to the tragedies to the histories. *Henry VI*, Part II is—first, foremost, and always—a historical drama, emphasis on the word drama. It was meant to be performed on the stage, captivate an audience, and, not inconsequentially according to some Shakespearean scholars, earn a bit of praise and favor from the reigning monarch.

## A Little Revolting History...

In the later Middle Ages, two revolts took place in England within a fairly short span of time: the Jack Cade Revolt during the reign



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of Henry VI (1421-1471) and another which had taken place 69 years earlier, the Peasants' Revolt under Wat Tyler in June of 1381. Shakespeare combines both rebellions to create the scenes in *Henry VI*.

The historical Jack Cade's revolt—the one that actually did take place in the reign of Henry VI—was not a revolt of peasants, but rather of substantial, involved citizens.<sup>8</sup> The demands they made of the king were primarily monetary, related to the abatement of taxes and the dismissal of corrupt public officials.<sup>9</sup> In the actual Cade's revolt there were no complaints or demands from the rebels regarding lawyers, laws, or unjust oppression.<sup>10</sup> The revolt began in Kent, and swept through the countryside to London, where it was eventually repressed with the rebels then retreating back toward the Kentish coast.

The earlier Peasants' Revolt under Wat Tyler actually took place during the reign of Richard II. Unlike the Cade revolt, this rebellion was directed against lawyers and against what the revolutionaries considered unjust laws and oppressively harsh legal enforcement of those laws. The peasants revolted against the legal slavery imposed on them by law and their consequent lack

of political and legal rights. The peasants viewed lawyers not as defenders of liberty, but as the instruments of slavery and oppression.

Like Jack Cade's later rebellion, the Peasants' Revolt began in Kent. The rebels then marched to London, killing whatever unfortunate lawyers happened to be near.

At the same time, peasant spokesmen swore to kill "all lawyers and servants of the King they could find." Short of the king, their imagined champion, all officialdom was their foe...but most especially men of the law *because the law was the villeins' prison*. Not accidentally, the chief justice of England, Sir John Cavendish, was among their first victims, along with many clerks and jurors. Every attorney's house on the line of march reportedly was destroyed.<sup>11</sup>

The peasant rebels under Wat Tyler arrived in London, camped at Smithfield, gained control of London Bridge, and burned the Savoy, the home of the Duke of Lancaster. They also destroyed the Temple, the center of the law. Tyler gained possession of the Tower of London, and murdered Archbishop Sudbury and Sir Robert Hailles. The revolt was put down when the king rode out to meet the rebels and promised to meet

all their demands, pardoning those who had participated in the revolt.<sup>12</sup>

### The Revolting Scenes in Shakespeare's *Play...*<sup>13</sup>

Shakespeare introduces Jack Cade in Act IV, Scene I, where Cade is also referred to as Mortimer, and shows him as the instigator of a rebellion. Shakespeare immediately conflates the two historical rebellions. The progress of the stage Cade Rebellion does not so much follow the historical facts of that rebellion as it does the historical facts of the earlier Peasants' Revolt. The stage rebels camp at Smithfield, take the Tower of London, and destroy the Savoy—all historical incidents of the Peasants' Revolt, not of Jack Cade's.

Shakespeare then has Dick the Butcher utter the lines at issue, lines which reflect the sentiments of the Peasants' Revolt rather than Jack Cade's Rebellion: "The first thing we do, let's kill all the lawyers."

It is the paragraph that follows that is most interesting. Cade replies:

Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment, being scribbled o'er,

*should undo a man.* Some say the bee stings; but I say, 'tis the bee's wax; for I did but seal once to a thing, I *was never mine own man since...* [Emphasis added].

In plainer words, it is Cade's view that the language of lawyers (words written on parchment) enslaves; it is not his view that it liberates. It is lawyers' language that takes away liberty; it does not protect liberty. It is the lawyers themselves who are instruments of the oppressors, not the defenders of liberty. Later, in Scene VII, Cade levels charges against Lord Say, charges that again indicate that lawyers and judges are the oppressors, not the protectors of liberty:

...Thou hast appointed justices of peace, to call poor men before them about matters they were not able to answer. Moreover, thou hast put them in prison; and because they could not read, thou hast hanged them...

There are at least four different ways in which the passages portraying Cade's Rebellion can be read.

First, they can be read at face value. Shakespeare meant what he said. Lawyers are oppressors, they need to be eradicated, let's kill them all. A thorough discussion of the possibility of this reading would require a far more extensive review of Shakespeare's contacts with law and lawyers than the space in this publication permits, because we know that Shakespeare's contacts with law and litigation were extensive and long lasting. One commentator puts it this way, "Shakespeare was a lawyer's dream, a walking litigation factory."<sup>14</sup> His father was also quite litigious, and was involved in one case, *Shakespeare v. Lambert*, that lasted for over 20 years and resulted in a significant loss of property to the Shakespeares, a loss which, not incidentally, adversely affected William's inheritance.<sup>15</sup> This case would have been in progress at the time that *King Henry VI, Part II* was written. It is quite possible that a young man disillusioned by litigation meant exactly what he said.

Second, the passage can be read, as it was by Justice Stevens, to praise lawyers as defenders of liberty. The argument in support of the interpretation that Shakespeare's language is truly a misunderstood paean of praise for lawyers is based on the fact that both Cade and Dick the Butcher are revolutionaries. The argument is that, since it is those who would destroy the liberty of citizens who utter these phrases, it must mean

that they recognized that lawyers were the defenders of the liberties they would destroy: therefore, before one can successfully abrogate the liberty of the populace, one must destroy the defenders of that liberty—the lawyers.

Some tangential inferences can be drawn from the text to support this argument. For instance, Shakespeare portrays Cade and Dick the Butcher not as principle-driven revolutionaries, but as thoroughgoing villains. Shortly after uttering the line about killing lawyers, Cade has a clerk executed merely for the offense of being able to read. Jack Cade and Dick the Butcher stand for "rampant ignorance, anarchy, chaos, and disorder, coupled with the blood lust of the mob."<sup>16</sup> The fact that Dick is called "the Butcher" may enhance the impression of the rebels as bloodthirsty villains.<sup>17</sup>

Third, the passage may, strangely enough, be comic relief, at least in part. It may be a blatant Elizabethan "lawyer joke."<sup>18</sup> Shakespeare places comic characters in many of his works, generally to provide a break in the more serious action. Assuming an audience made up of lawyers, judges, and others acquainted with the judicial process, all of them on a night out and ready to be entertained, such a line might have drawn snickers and chuckles both from them and from other members of the audience who knew they were in attendance. In parts of the scene obviously intended to be comic, Cade begins to show himself a pompous fool in talking of himself as the fount of English law, while Dick fawningly supports him by saying, "the laws of England may come out of your mouth." The comic aspects of this scene are enhanced by three stage whisper asides from other players. One says, "T will be sore law." Another adds, "It will be stinking law." And a third concludes, "Then we are like to have biting statutes unless his teeth be pulled out."<sup>19</sup>

To construct inferential meaning on a foundation of inferential meaning, it is even possible that Shakespeare was using comedy as a mechanism for social criticism. Kornstein makes the argument:

Using comedy as a mask for serious social commentary may be the only way to make such criticism under a regime of censorship, such as existed for Shakespeare. A government functionary called the master of the revels and his staff strictly scrutinized and carefully reviewed

the texts of Elizabethan plays to make sure they were in accord with law, order, and current government attitudes. When authorities act as censors, as they did in Shakespeare's time, a playwright with a critical bent will search for a way to get his message across without it being gelded by the bureaucrats; the creator will make an end run around the censors.<sup>20</sup>

A fourth interpretation is the most probable. The passage is the dramatization of a historical event without any intention of either praising or vilifying lawyers. We know that Shakespeare was writing a play. We know that it was one of his earlier efforts, written before he became well-established. We know that the play was a historical drama. We know that, in order to heighten the interest of his audience, he took extensive liberty with actual historical fact, combining the historical rebellions of Jack Cade and Wat Tyler into a single stage event in order to construct a more powerful dramatic conflict, and perhaps used them as comic foils as well. We know that the historical rebels involved in the Wat Tyler rebellion did indeed view lawyers as oppressors, not as protectors of liberty, that they did, indeed, attempt to "kill all the lawyers," and that Shakespeare was reflecting their view in his play in order to increase dramatic conflict. Shakespeare intended neither to praise nor to condemn lawyers. He intended to reproduce, for his audience, a historically documented rebellion, and he conflated historical accounts of Tyler's and Cade's rebellions for dramatic effect. Beyond that, the assertion that Shakespeare intended either to praise or to condemn lawyers is a deconstructed conclusion based on idiosyncratic, political interpretation. To read more into the line is to engraft on it our own political predilections, not to extract the meanings put there by William Shakespeare.

### **The Revolting Conclusion—Look to Your Own House...**<sup>21</sup>

That multiple layers of interpretation exist in truly great literature is not merely possible, it is a certainty, and the works of Shakespeare are universally recognized as great literature. Shakespeare was anything but unidimensional in his portrayal of human beings and human events. However, any conclusion that he intended something other than the dramatic portrayal of a historical event in the scenes from *King Henry VI*

has no hard evidence to support it, although it is a possible interpretation certainly for modern readers. What did Shakespeare really mean? We do not know, and the truth is that it really does not matter. It is the potential for a variety of interpretations that speaks to Shakespeare's greatness and his ability to address us all down through the ages. It is not what he put into it that is important, it is what we take out of it. I prefer to draw a different lesson from the passage, one more in tune with historical accuracy. Law is a potent force which can be used either to protect liberty or to oppress. Lawyers have not always been viewed as the protectors of liberty. We have all too frequently been viewed as using the law to cheat and to oppress. Rather than being a paean of praise to lawyers through the ages, one which permits us to sit back in smug self-satisfaction, the line is a warning to all of us to examine our own profession so that we who are entrusted with the law ensure that it functions to protect liberty and not as an instrument of oppression. Perhaps Shakespeare was simply telling lawyers through the ages to look carefully at their own house. ■

*Gerald T. Bennett was emeritus professor of law at the University of Florida. Before entering the world of law, he spent some of his otherwise*

*misspent youth obtaining a graduate degree in English literature, with little to show for it other than an appreciation for the paradox so much a feature of Victorian essayists.*

*This article was originally published in the December 1998 edition of the Florida Bar Journal and is reprinted with permission.*

## Endnotes

- 72 FLA. B.J. 9 (Apr. 1998).
- Of course, the alert reader will have noted the subtle reference to Mark Antony's "Lend me your ears" funeral oration in Shakespeare's *Julius Caesar*, Act III, Scene I.
- Not to be confused with the martinis mentioned *infra*, note 4.
- Also, since it is a warm Sunday afternoon, since I have already visited the driving range with no appreciable improvement to a persistent slice, and since I have already had my second martini of the day, I have nothing better to do.
- "That function was, however, well understood by Jack Cade and his followers, characters who are often forgotten and whose most famous line is often misunderstood. Dick's statement ("The first thing we do, let's kill all the lawyers") was spoken by a rebel, not a friend of liberty. See W. Shakespeare, *King Henry VI*, Part II, Act IV, scene 2, line 72. As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government." 473 U.S. 305, 371, n.24 (1985).
- See, e.g., *President's Page: Lawyers and Public Image: Time for Damage Control*, Trial (Feb. 1993).
- I shall make no attempt whatsoever to enter the debate about whether the author of the works attributed to Shakespeare was the citizen of Stratford-upon-Avon or

was really the Earl of Oxford. Forests have already been destroyed in the battle between the opposing forces in this debate and I shall bypass it here. For the purposes of this article, I shall assume that the author of Shakespeare's works was William Shakespeare of Stratford-upon-Avon.

- Cade himself is believed by some to be John Mortimer, a relative of the Duke of York. He was known to use the name "Mortimer" as well as the name "Amendalle."
- In the demands made by the rebels on the king, there is no mention of lawyers or legal oppression, but rather of treason and of financial matters.
- For a full analysis of the rebellion, see I.M.W. Harvey, *Jack Cade's Rebellion of 1450* (1991).
- Barbara Tuchman, *A Distant Mirror*, 392 (1978).
- Of course, the pardons were revoked as soon as the rebellion was over.
- Most of Act IV is concerned with the Cade Rebellion.
- Daniel J. Kornstein, *Kill All the Lawyers? Shakespeare's Legal Appeal* (1994).
- Id.* at 17.
- Id.* at 29.
- On the other hand, Dick the Butcher was a historical personage. On July 9, as Cade was retreating from London, he attacked Queenborough Castle in Dartford. The attack failed. Sir Roger Chamberlain received a reward for the defense of the castle. At the same time, Sir Roger is noted as having captured some of Cade's associates, one of whom went by the name "The Captain's Butcher." Shakespeare used the title because it was, in fact, the name of Cade's historical accomplice.
- For a more extensive discussion of this issue, see Kornstein, *supra* note 14, at 30, 31.
- Act IV, Scene VII.
- Kornstein, *supra* note 14, at 31.
- Obviously, at this point, one may wish to characterize the piece as the Revolting Article, and its author as r...Nah, that's too easy!

## President's Message (cont.)

the Preamble of the Rules of Professional Conduct "...to seek improvement of the law, access to the legal system, the administration of justice, and the quality of service rendered by the legal profession." Additionally, lawyers around the state have provided tremendous help to a host of *pro bono* clients, including individuals, non-profits, charities, and businesses. We should take pride in the way our profession has responded selflessly.

The ability to offer the North Carolina bar exam at its traditionally scheduled time in late July is uncertain. It is dependent on multiple factors that are beyond our control. Both the national bar examiners organization's requirements, and the governor's orders regarding public gatherings will

determine the feasibility. We are all hopeful that things will go off without a hitch. Our Board of Law Examiners has been carefully monitoring the situation and preparing for a host of possibilities. Thanks to them for their vision and their tremendous service in quickly grading the exams of our new lawyers. By the time this is published, we may know whether a July bar exam will be possible.

Although we don't know when it will happen, our courts will again be fully reopened, and we will have an abundance of matters to resolve. Court employees will be challenged to handle a backlog of cases and address the current ones. Some clients will be anxious to have their matters resolved expeditiously. It will be a time when professionalism, and patience, will be needed and easy to recognize. We should all remember

that the practice of law is a marathon, not a sprint. Relationships and collegiality will be even more important than usual.

The lawyers with whom we have worked and interacted for years will be the ones we will interact with again. Some of them may have had especially difficult times personally and in their practices. Some may have endured losses. The pandemic will impact each of us differently. Some practices may be damaged and others may flourish. The impacts are not likely to be fair or even-handed. All of us are dealing with issues and circumstances we have never imagined. Let's remember what attracted us to this profession. Let's hold ourselves and each other to those ideals. ■

*C. Colon Willoughby Jr. is a partner with the Raleigh firm McGuire Woods.*



# Hitting the Proverbial Home Run—How Community Service Can Enhance the Practice of Law

BY A. DOYLE EARLY JR.

When I started practicing law in 1967, our senior partner, Frank Wyatt, made it very clear that there were other priorities for us

to consider besides the practice of law. These were family, faith, and



*High Point's BB&T Point Ballpark*

community service. I took Frank's advice seriously and began by getting involved in the High Point Chamber of Commerce, which has now

become Business High Point, Inc.

By 1983, I had become chair of the Chamber of Commerce Board, and during my year as chair, one of our primary projects was to begin organizing a High Point Convention and Visitors Bureau. I chaired that organization for several years and am now serving as chair emeritus. I have also had the privilege of serving on the High Point Economic Development Commission.

The concept of a catalyst project to promote economic development in the downtown area was conceived by the city council in late 2015. In early 2016, the High Point Convention and Visitors Bureau determined

that a multi-use downtown stadium would be a perfect venture, and the city council agreed. A public-private organization, Forward High Point, Inc., was then organized to study and implement the project, and I had the honor of chairing that organization for the last three years. Our stated mission was to "transform downtown High Point into an extraordinary and vibrant place to live, work, play, and study."

One of the first things we did was to solicit the assistance of Dr. Nido Qubein, president of High Point University, to assist with the purchase of an Atlantic League Professional

Baseball team and to obtain a commitment for the naming rights of the stadium. As usual, Dr. Qubein came through in an extraordinary way. He not only raised the funds for the team and the naming rights, he also secured donations for an additional convention and events center near the stadium and the Nido and Mariana Qubein Children's Museum, which will be under construction soon. Over \$65 million has been raised by Dr. Qubein to date.

Forward High Point, Inc., recommended, and the city of High Point retained, Elliott Sidewalk Communities from Baltimore,



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Maryland, to be the master developer around the stadium. They have committed to investing over \$82 million in five new buildings, including a 120 room hotel, two mixed use buildings (including 275 North Elm, that has broken ground and will include a food hall with eight to ten local vendors), and two residential buildings with a parking deck, all adjacent to the BB&T Stadium. We brought Dr. Lenny Peters onto the Forward High Point, Inc. Board, and Peters Development Company has now committed to build multi-million dollar condominiums and a multi-use building next to the BB&T Stadium. Furthermore, Business High Point and the chamber of commerce have teamed with the Congdon Family Foundation to acquire and develop Plant 7 and The Factory on English Drive, and add a convention and event center, resulting in an investment of \$25-30 million adjacent to the stadium. It is now apparent to everyone that the downtown multi-use stadium has become the economic redevelopment catalyst project that will change downtown High Point forever.

The High Point Rockers are members of the Atlantic League of Professional Baseball, and they are the only professional baseball team in the United States to be owned by a nonprofit. The Rockers' quality of baseball is superior to any in our area. Several of our cur-

rent players have Major League Baseball experience. We had a great season and the Rockers were the first Atlantic League team to make the playoffs in their inaugural year. We average over 2,000 patrons per game with over 1,000 season tickets, and all suites are sold out for five years. The naming rights are for 15 years for \$500,000 per year, and I was able to convince the High Point Convention and Visitors Bureau to contribute \$5 million to help pay the \$35 million cost of "BB&T Point," which was voted the best stadium in the Atlantic League. The increase in tax revenues in the 639 acres around the stadium will help pay for the stadium...with no tax increase! This is a great example of tax increment financing.

In our original concept of this multi-use stadium, it is built as a baseball stadium that can be converted to a soccer stadium in a matter of hours. As a result, we are negotiating and anticipate having a professional soccer team playing in our stadium by 2021.

Another example of the multi-use capabilities of the stadium is that it will become a major venue for outdoor concerts. Until the High Point Furniture Market bi-annual show was cancelled in the spring, they had scheduled a major musical entertainment group to perform for not only Furniture Market attendees, but also open to the citizens of High Point.

In retrospect, our law firm has benefitted substantially over the years from our involvement in civic activities and organizations. For example, we either helped organize or do the legal work for the High Point Convention and Visitors Bureau, Business High Point, Inc., Forward High Point, Inc., High Point Baseball, Inc., Peters Development Company, the Congdon Events Center, Inc., and Forward High Point Foundation, Inc. In addition, our firm handled the real estate acquisitions of more than 28 separate properties where the stadium is located. We also assisted in acquiring properties along Main Street that are part of Main Street Station, a future mixed use economic development project of Forward High Point, Inc., with at least 130 apartments.

The bottom line is that I had the privilege and pleasure of practicing law in High Point for 52 years, and during that time I was blessed to have the opportunity to be involved in the community and in public service. Frank Wyatt was right—giving back to your community in public service is part of our obligation to the people and community in which we practice law. And who knows, you might even hit a home run. ■

*A. Doyle Early Jr. is a partner with the High Point firm of Wyatt Early Harris Wheeler.*

# Trust Accounting Deposits and Coronavirus—Considering What is Remotely Possible

BY LEANOR BAILEY HODGE, TRUST ACCOUNT COMPLIANCE COUNSEL

In the past quarter, the world learned its capacity to shelter in place and subsist virtually as it battled the war against coronavirus (COVID-19), which continues to spread across the globe. Initially, coronavirus was seemingly foreign, distant, and some other country's problem. However, the virus swiftly made its way to America and began to alter almost every facet of life here. In the span of a few months, coronavirus changed the way many Americans live, learn, work, travel, shop, and consume. No segment of society has been immune to these changes, including the practice of law. In the litigation context, some motions are being held by videoconferencing platforms instead of in-person in the courtroom. As local jurisdictions across several states, including North Carolina, began issuing shelter-in-place orders, lawyers also began conducting client meetings by videoconference, even for those clients who were geographically close. To help lawyers ethically traverse this new landscape, the State Bar issued an ethics advisory addressing practice concerns for real property closings and notarization of documents in the wake of COVID-19. Also, the Ethics Department gave guidance about navigation of ethical issues during a pandemic in an article published on the State Bar's website titled, "Professional Responsibility in a Pandemic" ([bit.ly/3axhfb5](https://bit.ly/3axhfb5)). In a span of time that felt like overnight, the coronavirus thrust almost everyone in society into an analysis of what could be done remotely rather than in-person—this included lawyers who sought to determine how societal changes resulting from the coronavirus might impact trust account management.

In the past, much attention has been given to the question of disbursement of entrusted funds remotely—that is, without either party having to physically appear at a

bank to facilitate such disbursement. The discussion of electronic transfer of funds has been the subject of many articles and is always included on the list of topics in trust account management continuing legal education presentations. This might suggest that when the coronavirus hit, as pertains to remote transactions in lawyers' trust accounts, practitioners were ahead of the curve. However, it did not take long to realize that, though the matter of electronic disbursement of funds from the trust account had been considered and discussed by many, little thought had been previously given to the other side of moving money through the trust account—making deposits. Like many other aspects of daily life, routine trips to the bank to make deposits into the trust account had become a rote performance for many law practices. In some instances, in addition to being viewed as a task one was merely required to perform, depositing funds into the trust account was a job to be enjoyed because it afforded an opportunity to go for a short walk, soak up the sun, and get some fresh air. Now, the societal changes that were ushered in alongside the coronavirus have shown that, like many other habits, the ability to make deposits in-person at a bank branch may, at least for a period, be a luxury the community cannot afford. The regulations that have ensued as coronavirus made its way to the United States have required lawyers to question whether there is another permissible way to handle deposits of entrusted funds after many banks began closing in-person service at their branches. Lawyers questioned: "Can I ethically make trust account deposits remotely?"

Rule of Professional Conduct 1.15 speaks to trust account deposits in Rules 1.15-2 and 1.15-3. Rule 1.15-2(b) instructs lawyers on when and where deposits of entrusted funds

must be made. It provides in pertinent part: "[a]ll trust funds received by or placed under the control of a lawyer shall be promptly deposited in either a general trust account or

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# Grievance Committee and DHC Actions

*NOTE: More than 29,000 people are licensed to practice law in North Carolina. Some share the same or similar names. All discipline reports may be checked on the State Bar's website at [ncbar.gov/dhccorders](http://ncbar.gov/dhccorders).*

## Disbarments

**Parker Russell Himes** of Chicago, Illinois, formerly of Charlotte, pled guilty to numerous drug felony offenses of obtaining or attempting to obtain controlled substances by fraud. He also provided the State Bar a letter bearing a forged signature. He surrendered his license to the DHC and was disbarred.

**Bradley R. Lamb**, formerly of Pittsboro, was disbarred by the DHC. He was convicted in Florida of the criminal offenses of promoting the sexual performance of a child by transmitting child pornography over the internet, engaging in sexual acts over the internet with reason to believe he was being viewed by a minor, and solicitation of a person believed to be a child over the internet. An order of interim suspension of his law license was entered in November 2007 and remained in effect until the order of disbarment was entered after his release from prison.

**Joseph Lee Levinson** of Benson pled guilty to the felony offense of conspiracy to obtain money in the custody of a bank by false pretenses by, among other devices, misrepresenting to lenders that his client was purchasing houses as rental property when his client was actually purchasing them as marijuana grow houses for a large-scale drug trafficking operation. In January 2016, the chair of the DHC entered an order of interim suspension of his law license. In February 2020, Levinson surrendered his license and was disbarred by the DHC.

## Suspensions & Stayed Suspensions

**Brandon Graham** of Gaston County possessed heroin, methamphetamine, and drug paraphernalia and made a misleading statement to police during a traffic stop. The chair of the DHC entered an order suspending his

## Wire Fraud Alert

In 2015, the State Bar began receiving reports of criminals hacking into the email accounts of lawyers and real estate brokers to alter wiring instructions, thereby stealing disbursements from real estate and other transactions. The State Bar has written and spoken extensively about this danger in its *Journal*, on social media, and in continuing legal education programs. Lawyers Mutual Insurance Company and title insurance companies have broadcast warnings and educational information about these scams. The Grievance Committee opened numerous grievance files to investigate allegations that respondent lawyers did not take appropriate precautions to protect entrusted funds. Initially, the committee issued dismissals accompanied by letters of warning, emphasizing to respondent lawyers their professional obligation to protect entrusted funds. After extensive education, members of the State Bar should now be fully aware of the danger posed by these fraudulent schemes. Accordingly, at its July 2019 meeting, for the first time, the Grievance Committee issued permanent discipline to three lawyers who did not adequately protect entrusted funds from email scams. The com-

mittee issued one admonition, which is private discipline, and two reprimands, which are public discipline. At its October 2019 meeting, the committee issued one reprimand and three admonitions. At its January 2020 meeting, the committee referred one lawyer to the Disciplinary Hearing Commission for trial and dismissed one file with a letter of caution. At its April 2020 meeting, the committee issued one admonition and one dismissal with letter of warning. When lawyers participate in transactions in which entrusted funds are to be wired, they must proceed with caution, explain the dangers to their clients, and verify any purported changes in wiring instructions. Please contact the State Bar with any questions. The following links contain important information about handling entrusted funds in light of these dangers:

[bit.ly/WireFraud1](http://bit.ly/WireFraud1)

[bit.ly/WireFraud2](http://bit.ly/WireFraud2)

[bit.ly/WireFraud3](http://bit.ly/WireFraud3)

[bit.ly/WireFraud4](http://bit.ly/WireFraud4)

[bit.ly/WireFraud5](http://bit.ly/WireFraud5)

license on an interim basis. The DHC ultimately suspended his license for five years. After serving one year of active suspension, Graham may apply for a stay of the balance upon showing compliance with numerous conditions. He received credit toward the period of active suspension for the time his license was subject to interim suspension.

**David B. Hefferon** of Charlotte provided legal services to a client who was homeless, vulnerable, and at risk of losing custody of her child. Hefferon paid for hotel rooms before the client's court dates and, on at least one occasion, visited her in the hotel room bring-

ing alcohol for them to share. Hefferon admitted that he kissed the client and touched her breast. The DHC suspended Hefferon's license for one year. The suspension is stayed for two years upon compliance with conditions designed to protect the public and ensure adequate boundaries with female clients.

**Andrew LeLiever** of Sanford did not adequately communicate with clients, did not act with diligence in representing clients, entered into an employment agreement with a client without documenting the terms of the agreement in writing, advising his client

of the desirability of seeking the advice of independent counsel, and obtaining his client's informed, written consent to the essential terms of the agreement, did not participate in the State Bar's fee dispute resolution program, and did not timely respond to the Grievance Committee. The DHC suspended LeLiever's license for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

**Ada L. Mason** of Newton Grove committed drug offenses. Her law license was suspended by the Wayne County Superior Court in 2013. She successfully completed probation and the charges were dismissed. In March 2020, the court rescinded the order suspending her license subject to resolution of a disciplinary action in the DHC. The DHC suspended her license for three years. The suspension is stayed for five years upon her compliance with numerous conditions.

**Yuan Yue Mu** of Cary did not promptly deposit entrusted funds, did not adequately supervise an assistant, disbursed funds from his trust account for clients in excess of any funds held for the clients, did not promptly reimburse the resulting deficiencies to the trust account, and did not conduct monthly and quarterly trust account reviews and reconciliations. The DHC suspended him for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

**Emily Moore Tyler** of Raleigh altered a notary acknowledgment on a filed pleading and was dishonest to judges about it. She was suspended by the DHC for five years.

**Louis P. Woodruff** of Raleigh did not supervise his spouse/office manager, who misappropriated funds from Woodruff's trust account. He was suspended for two years. The suspension is stayed for two years upon Woodruff's compliance with numerous conditions.

### Completed Motions to Show Cause

The Wake County Superior Court entered an order enjoining **Douglas P. Connor** of Mount Olive from handling entrusted funds and from serving in any fiduciary capacity. Connor was then serving as trustee of a testamentary trust and did not resign when the injunction was entered. The court ordered Connor to show cause why he should not be held in civil contempt for violating the injunction. After hearing, the court found that Connor's lack of compli-

ance was not willful and directed him to resign from the trusteeship within ten days. Connor did not resign. He finally resigned after the court entered another order for Connor to show cause why he should not be held in contempt.

### Completed Grievance Noncompliance Actions before the DHC

The chair of the DHC ordered **Harold R. Crews** of Walkertown to show cause why his law license should not be suspended pursuant to 27 N.C. Admin. Code 1B § .0135 for failure to provide information and trust account records to the Grievance Committee. Crews did not respond to the show cause order. He was suspended by the DHC and will not be eligible for reinstatement until he provides the requested information and records.

### Censures

**James Armstrong** of Concord was censured by the Grievance Committee. He engaged in the unauthorized practice of law while administratively suspended by preparing a deed for his church and by holding himself out as "Attorney at Law."

**Jack Kaplan** of High Point was censured by the Grievance Committee. He did not appear at a small claims hearing on behalf of his client and misrepresented the truth to his client about the disposition of the small claims case. Kaplan misrepresented to his client that the client had been cheated and that the opposing counsel had the small claims judgment changed from dismissal without prejudice to dismissal with prejudice. The Grievance Committee found that Kaplan knew he had no proof to support those statements, and that those misrepresentations were made to defend his inaction in the case.

### Reprimands

The Grievance Committee reprimanded **Brian Dunaway** of Charlotte. While working for Kealy Law Center, an out-of-state law firm based in Colorado, Dunaway aided in the unauthorized practice of law, collected an improper fee, and did not supervise his out-of-state nonlawyer assistants in their provision of legal services to his clients and in their handling of his clients' entrusted funds.

### Transfers to Disability Inactive Status

**Michael H. Griffin**, formerly of Shelby and now of Florida, was transferred to disabili-

ty inactive status by the DHC.

**Bradley S. Moree** of New Hanover County was transferred to disability inactive status by the chair of the Grievance Committee.

### Notice of Intent to Seek Reinstatement

#### In the Matter of Ertle Knox Chavis

Notice is hereby given that Ertle Knox Chavis of Lumberton intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Chavis misappropriated entrusted client funds and engaged in a conflict of interest. An Order of Disbarment was issued against Chavis on January 23, 2015.

Individuals who wish to note their concurrence with or opposition to this petition for reinstatement should file written notice with the secretary of the North Carolina State Bar, PO Box 25908, Raleigh, NC, 27611, before August 1, 2020 (60 days after publication). ■

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# Vernon Sumwalt, Board Certified Specialist in Workers' Compensation Law and Appellate Practice

BY SHEILA SAUCIER, CERTIFICATION COORDINATOR

Recently, I had an opportunity to talk with Vernon Sumwalt, a board certified specialist in both workers' compensation law and appellate practice. Vernon graduated from the University of Miami in 1994 and the University of South Carolina School of Law in 1998. He and his wife, Christa, are the owners of the firm The Sumwalt Group, practicing in Charlotte. Vernon is currently the president of the North Carolina Advocates for Justice (formerly the North Carolina Academy of Trial Lawyers), and has taught almost 140 state and national classes for lawyers and other professionals. He has also written over 45 books, chapters, and other articles on different aspects of workers' compensation and trial law.

**Q: In 2011 you were selected to receive the James E. Cross Jr. Leadership Award. What did that award convey to you about your achievements in practicing law?**

"Wow! They got the wrong person!" was my first thought. Then it sunk in that maybe someone noticed that I was having a lot of fun doing what I do.

I'm scared to collect this fun under the word "achievements." I don't practice law to see how many certificates I can get framed on my office walls. (In case you were wondering, there are no certificates on my walls. Just pictures that my three kids painted for me.) People run into difficult situations. Sometimes, people get hurt. Some reach out to lawyers when someone else breaks the safety rules and puts them at risk. I'm just happy to have a skill set that, I think, fits their need for someone to walk them through the process to get back on their feet again. To get a remedy that our Constitution and Seventh Amendment guarantees.



Sumwalt

Of course, it is fun for others to see this happening. When I found out about the James E. Cross Jr. Leadership Award, it was a surprise. But it was a good surprise. And it made me want to keep up what I was doing.

**Q: Why did you pursue certification in both workers' compensation law and in appellate law?**

Being an appellate lawyer was never on my radar. If you're on appeal, you either won at trial and are fighting to keep the result you got, or you lost at trial and are, unfortunately, trying to get a different result. Neither puts me in my happy place.

My true love is trying cases—telling the stories of how my clients ended up at the mercy of our courts. Most of what I do is workers' compensation and third-party actions coming from unsafe work conditions, because those are the clients who found their way to my door over the years. I went for the workers' compensation specialist certification just to say, hey, I know this area of law. I've been there before. This level of experience comes from trying a lot of cases and telling the stories of an awful lot of clients who trusted me to bring closure for them. Along the way, I hope I've also taught them a little about our Constitution and our justice system.

The more cases you try, the more often you find yourself in an appeal. Funny how that happens. So, I counted from 25 appeals to 50, and the number just kept growing. Of course, some cases settle after the notice of appeal is filed. Others fly all the way to the Supreme Court. This past January I argued a case before our Supreme Court. It was the 100th appeal I've worked on, by my count. I know there are other appellate lawyers with a lot more to their credit. I still have a hard

time believing I've reached 100.

So, in 2014 I took the appellate specialization exam. I took it for the same reasons I once took the workers' compensation exam—to say, hey, I've done appeals before. I've been there. As luck would have it, I passed.

**Q: How did you prepare for the exams?**

In very different ways. For the workers' compensation exam in 2005, I didn't really do anything that I wasn't already doing in my daily grind, at least in terms of academic preparation. I've always been one of those geeks who tries to look at every possible facet of an issue before I go try it. That means I read a lot on the front end, to see how other folks have tried issues, and I've organized my research meticulously since I was a baby lawyer. At the same time, I wrote a lot and taught a lot of CLEs. I felt these efforts were a good foundation for the workers' compensation exam.

My preparation for the appellate exam in 2014 took a different approach. Again, being an appellate lawyer wasn't my aspiration, and I felt out of place thinking I could pass a test like this. It tested some areas—for example, federal appeals—in which I had very little experience. I had enough appeals and oral arguments. I just needed to pass. So, I studied hard. I studied areas that my day-to-day practice didn't touch. The exam was still one of the hardest tests I've taken.

**Q: Was it easier taking the exam for appellate after having already taken the workers' compensation exam?**

No! After passing the workers' compensation exam, everyone would know if I didn't pass the appellate practice exam. That's a lot of pressure!

As I mentioned earlier, they were two different tests. The workers' compensation exam tested things I worked on every day at work. The appellate practice exam tested things I



worked on most days, but not daily, and things I've never seen in my practice. I expected it to test issues unique to appellate practice, as opposed to the run-of-the-mill issues that I did every week in my own cases. This required a different preparation than my approach to the workers' compensation exam.

**Q: Tell me your biggest success story related to your workers' compensation or appellate law practice.**

Every new client is the biggest honor. I don't advertise like many of my friends in the plaintiffs' bar do. Instead, all of my clients come to me by word of mouth. When someone calls or reaches out to me for help in their case, even if it's a case I decide not to get involved in or one that's outside my wheelhouse, I realize that this person is calling because a friend or family member told them about me and they thought I could help.

That means I made someone happy with the help I gave them, and they thought highly enough about it to tell another person to come to me. That's the biggest "thank you" a trial lawyer can get because it validates my efforts to walk them through some of the toughest times of their lives.

**Q: What career accomplishment makes you most proud?**

This past year I served as president of the North Carolina Advocates for Justice. It's an honor to lead my colleagues whom I've looked up to since I was a baby lawyer, just taking my first steps in our profession. It's given me the chance to meet a lot of great people. It also encourages me about the future of trial lawyers, because we have so much talent here in North Carolina and so much to offer to improve safety in our community.

**Q: What piece of art (book, music, movie, etc.) most influenced who you are today?**

A college friend, who is a well-known drummer in a band you would recognize, asked me what being a lawyer was like the last time we had dinner. "It's like being a musician," I said. "Same science. Different art."

One of my college majors was music. For a while, it was studio music and jazz, until I changed from performance to a more academic tract. My music education taught me more about trial lawyering than law school did. No matter if it's how to improvise on your feet, the importance of getting along with everyone, the value of brushing up your chops until you can play something effortlessly, the truth of "just keep playing," the bottom line is that it's just another performance.

Professional performers study, train, and rehearse to perfect their skills. Trial lawyers do the same thing. It's all the same.

So, there's not a single piece I can point to as an influence. Rather, the whole experience of music makes me who I am.

**Q: What is the single best piece of advice you ever received?**

Do not be afraid of who you are.

**Q: Who is your hero and why?**

My wife, Christa, is my favorite person on Earth. I wish I could be more like her.

We met in the same small section our first year of law school and, somehow, we survived those three years and she's tolerated me for 25 years now. Christa is infinitely patient, kind, selfless, authentic—all the things I struggle to be. All the qualities that great lawyers have, she's got. Christa treasures experiences over things, and inspires me, as a parent of three active kids—yes, we play zone defense now—to bring our "A game" every day and every time. Last year she finished her first full Ironman competition after doing a dozen of the half ones, and she keeps challenging herself. She's always doing things for other people. I still don't know how she does it all and stays so balanced and inspirational.

Oh, and did I mention she's a great lawyer, too? She's got well over 125 jury trials under her belt.

One day, I'll be able to make it all look easy. Until then, she's the bomb.

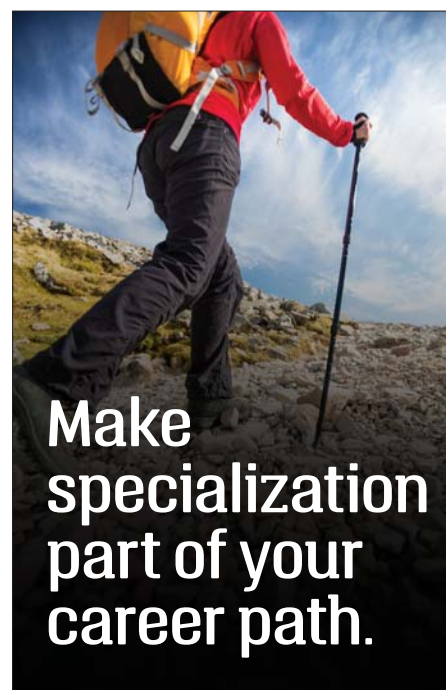
**Q: Has certification been helpful to your practice?**

Yes. Certification validates our experience and knowledge in the areas in which we practice. More now than ever, potential clients are comparing us and our qualifications online, because the information is public and available. Certification is high on their list. Certification also signals to our professional colleagues—at least the ones we haven't met before—that we're not "newer" kids on the block, that we've been around, and we know better ways of bringing closure for our clients. In the end, it's all about better serving our communities and our clients, and certification pushes this forward.

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

Be yourself. Do it, but only if you love it. Study hard. Work hard. Prepare. Always prepare. And, best of luck! ■

*For more information on board certification for lawyers, visit us online at [nclawspecialists.gov](http://nclawspecialists.gov).*



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NORTH CAROLINA STATE BAR

# Responding to Civil Legal Needs During the Pandemic and its Aftermath

COVID-19 has impacted lives globally in unprecedented ways. North Carolina schools and businesses have closed their doors, leaving many unemployed and uncertain of when they can return to work. Governor Roy Cooper's March 27, 2020, Executive Order further directed non-essential businesses to temporarily cease in-person operations and ordered residents to stay home for all but truly necessary activities. While the restrictions implemented in response to the pandemic have impacted individuals and businesses across all income levels, the disruption to income and access to childcare and other needed services disproportionately affects those already struggling to meet their basic needs.

As low-income individuals and small business owners work to secure economic relief and keep themselves healthy during this challenging time, civil legal aid becomes even more vital. Between March 15 and May 7, 2020, more than 1 million North Carolinians filed for unemployment insurance and more applications are received each day. Domestic violence reports have also seen a dramatic increase. Charlotte-Mecklenburg police have received 389 more domestic violence calls this March compared to last March, and domestic violence calls in Guilford County saw an increase of 30% over the previous year. Civil legal needs will continue to rise for protection from domestic violence, prevention of evictions and foreclosures, and issues related to employment. As the long-term effects of COVID-19 continue to evolve, the threat to North Carolina and our state's most vulnerable residents goes beyond the pandemic.

## Here to Help

In the wake of a disaster, legal aid attorneys are a vital part of recovery by removing barriers to critically needed support. Civil legal aid providers, including many organizations that receive funding from NC

IOLTA, are committed to proactively protect the rights of all North Carolinians in times of crisis and to work to provide immediate services for North Carolina's most vulnerable populations to maintain access to housing, food, and other basic needs. Legal aid organizations have responded to emerging issues with independent and collaborative efforts to ensure protection of rights for low-wage workers, the incarcerated, individuals with disabilities, the elderly, and other at-risk populations. Jim Barrett, executive director of Pisgah Legal Services, addressed the need for civil legal aid stating, "Pisgah Legal Services continues to serve clients while working remotely and communicating via phone and email. In this time of uncertainty, many more people will have legal needs related to housing, health, safety from abuse, and economic security. We are committed to meeting those needs." Presently, legal aid organizations are working to identify and address immediate legal needs, such as obtaining access to medical insurance, completing small business loan applications, negotiating rent for subsidized housing, and making referrals for community services.

As civil legal aid organizations continue to provide much-needed relief to those affected by unexpected changes in employment and income, it is unclear when the disaster relief period will end, much less when those affected will begin to overcome the broader financial hurdles they are facing. Long after the immediate crisis period, civil legal aid organizations will be called on to address legal needs such as foreclosure and bankruptcy assistance, mortgage renegotiations, consumer scams and disputes, modification of parenting orders based on the new educational environment, and civil and disability rights. Viruses can be treated and spread can be limited with thoughtful public health measures. To address the growing civil legal needs of North Carolina's vulnerable

## IOLTA Update

- On March 16, 2020, the Federal Funds Target Rate was cut to 0.00 – 0.25. The rate cut coupled with economic impacts of the coronavirus pandemic are expected to significantly decrease IOLTA revenue in 2020.

- As the rate environment changes, NC IOLTA is communicating with a number of financial institutions that hold IOLTA accounts for North Carolina lawyers. Many banks are in the process of changing their rates and are also considering changes to IOLTA products. IOLTA encourages banks to communicate with our office regarding proposed changes to ensure continued compliance with the State Bar rules regarding IOLTA. Information about the rules and eligible financial institutions can be found at [nciolta.org](http://nciolta.org).

populations, unfettered access to the justice system is the cure.

## Path to Recovery

At a time when the need for civil legal aid reaches its height, support for the nonprofit sector as a whole may take a hit. Nonprofit fundraisers have been canceled and, due to economic conditions, available income from individual donors has likely decreased. Nonprofits across the state, including the community of civil legal aid providers, need additional resources and support to meet the rising demands. North Carolina State Bar President Colon Willoughby wrote to Governor Cooper regarding the pressing need for legal services to be considered "essential" during this time, stating, "In times of crisis and uncertainty, lawyers play a vital role in the preservation of society. We stand ready to fulfill our professional responsibilities on behalf of the citizens of our great

state.” Mr. Willoughby further addressed attorneys saying, “While it may be exceedingly difficult at a time when you are faced with so many competing obligations, I encourage you to increase your *pro bono* efforts during this period of crisis.”

For attorneys who seek to serve the legal needs of the public during this time, consider a donation to a civil legal aid organization or make a commitment to provide *pro bono* legal services. The NC Pro Bono Resource Center serves as a resource to connect attorneys with available opportunities. Visit [ncprobono.org/disaster](http://ncprobono.org/disaster) to learn more about how you can help respond to the need.

### Impact on IOLTA Revenue

In the Winter 2019 State Bar *Journal*, an article written by NC IOLTA Executive Director Mary Irvine addressed the future of IOLTA given changes in the banking industry and the legal profession. It was unknown at the time the article was written that the onset of the COVID-19 pandemic would

jumpstart a turn to a low interest rate environment. Changes to interest rates and effects on the economy overall will undoubtedly impact the program’s income. However, NC IOLTA, with the steadfast leadership of the Board of Trustees, has taken steps to ensure sustainability of the program and continued support for IOLTA grantees amidst times of crisis. Because grants awarded through NC IOLTA are funded with prior year’s income, any slow in the economy in 2020 will not impact IOLTA’s ability to meet grant commitments as awarded in 2020. In recent years, IOLTA has also prioritized the rebuilding of the reserve fund that was largely depleted following the Great Recession. In 2019 alone, the IOLTA Board designated that \$1.25 million dollars of IOLTA income be added to the reserve fund. Further, strategic support grants awarded by NC IOLTA for 2020 contributed to technology and infrastructure improvements of civil legal aid providers, projects which improve the capacity of providers to work remotely and to con-

tinue serving low-income clients in need. While both the short-term and long-term effects of the pandemic on IOLTA program revenue are still uncertain, the IOLTA staff and board remain focused on maximizing available funding and supporting the critical needs of civil legal aid and administration of justice efforts.

### Looking Forward

With the lives and livelihoods of so many on the line and much uncertainty still ahead for us all, the picture of our post-pandemic state remains fuzzy. The way we operate has been upended, and, as a result, businesses and organizations have created innovative methods to conduct business, provide services, stay connected to our communities, and collaborate with one another. With the support of members of the State Bar, North Carolina and the legal sector in particular can recover from this crisis through innovation and with a reaffirmed commitment to civil legal aid and access to justice for all. ■

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## Trust Accounting (cont.)

a dedicated trust account of the lawyer.” Rule 1.15-3(b)(1) tells lawyers what deposit records must be maintained and what information must be recorded on such records. It states that documentation for trust account deposits must list the source and date of receipt of any funds deposited, and in the case of a general trust account, the name of the client or other person to whom the funds belong. Rule of Prof’l Conduct 1.15-3(b)(1)(2020). The Rules of Professional Conduct do not expressly prohibit deposits through remote means. In fact, real estate lawyers often receive deposits into the trust account by wire transfer, and these deposits have been deemed ethical when they meet the requirements imposed by Rule 1.15. Additionally, three comments to Rule 1.15, comments [19], [20], and [21], indicate that remote deposits by ACH are also permissible under certain circumstances. These types of deposits generally answer the question of whether there are ways to replace a trip to the local bank branch office with a remote deposit. However, they do not solve

the problem likely created by coronavirus—how to remotely deposit entrusted funds received in office by the lawyer from a client or third-party.

These days, many banks tout the benefits of mobile banking, which often include the ability to deposit checks without visiting a branch. Although banks have differing policies and processes for mobile banking, the mobile banking deposit process usually includes the depositor taking a picture of the item to be deposited on his or her own device to facilitate deposit of the item through an online platform maintained by the bank. Because the Rules of Professional Conduct do not specify how trust account deposits must be made (just where and when), like the other forms of remote deposit, it appears that the mobile deposit is not prohibited. However, like other types of trust account deposits, the record for each mobile deposit must contain the source, date of receipt, amount of funds deposited, and in the case of the general trust account, identification of the client to whom the funds belong. Although records for mobile deposits must contain the same information required for other types of trust account deposits, the mobile banking deposit raises concerns that

other remote deposits do not. These concerns include determination of how to ethically dispose of the physical item which was deposited (normally the check which is deposited is taken and disposed of by the bank) and the security of the technical platform and devices used to facilitate the deposit. The answers to these questions will not be the same for all situations. Therefore, whether this type of remote deposit is an option for a particular lawyer may require consultation with the State Bar’s Ethics Department.

Hopefully, by the time this article is published, society will have begun the arduous task of determining how we will function now that coronavirus is here. I think life post-coronavirus will include widespread use of face masks, continued admonitions to keep our distance, and lots of testing. In the trust account management context, one of the mainstays of COVID-19 will certainly be continued discussion and analysis of whether mobile deposits are fitting and thus should become a generally acceptable method to deposit entrusted funds. Living and working remotely in new ways will be lasting effects of coronavirus defining a new American normal. ■



# Keeping Your Sanity While Staying Sanitary

BY ROBYNN MORAITES AND DR. ANTOINETTE GIEDZINSKA

As lawyers across the state navigate how to keep the doors open and continue billing while homeschooling full-time, we at LAP have been rapidly converting a solely meet-in-person (individually or in groups) department into a virtual one. District bars and specialty practice groups are already asking for articles and CLE<sup>1</sup> about lawyer mental health in the age of COVID-19, while I have only just mastered video conferencing software and figured out an internal system to ensure our support group meetings and client appointments do not overlap using the software. And while lawyers are now being bombarded with CLE offerings on how the coronavirus affects every conceivable aspect of life, legal practice area, and the business of law, we at LAP have been bombarded with tools-to-help-you-help-your-client's-mental-well-being emails, webinars, and video based recovery meetings.<sup>2</sup> One of those articles is reprinted with permission below.

While LAP is often perceived as helping lawyers and judges who don't know how to effectively cope, what most folks don't realize is that as soon as LAP participants begin actively using recovery tools, they become incredibly resilient and actually cope better than most, especially in situations that parallel the COVID-19 pandemic. By that, I mean situations steeped in uncertainty (economic, personal, professional, social, familial) and situations where there is a sense of loss of control, not only to shape outcomes (as we like to think we do as lawyers), but loss of control over the process. This is where people in long-term recovery shine. In good news, these recovery tools are available to everyone.

The reason I chose this article to reprint is because it is relatable to everyone, not just those recovering from depression, anxiety, or a substance use disorder. And when the author speaks to our human inclination to predict or control, please remember that lawyers engage in these activities for a living. So, the loss of the ability to predict and to maintain a sense of perceived control can be

especially distressing. I say "perceived control" because no matter how successful we are as attorneys, we never are *actually* in control of anything other than our choice of attitude and how we respond to a situation. Sometimes it takes a situation like the coronavirus (or our own depression or substance use disorder) to realize how very little we actually control.

While this article might not provide "new information" per se, it is a good reminder of emotional resilience tools we all can use. Resilience is not an innate quality or trait; rather, it is a set of skills that we can use. I like that the article is taken from cancer quality of life literature. The article references many of the tools we emphasize and practice in recovery circles, but frames them in a slightly different way. My editorialized comments will appear in brackets. I hope you find something helpful here. Let me now turn the mic over to Dr. Giedzinska.

## Coping with Uncertainty in Uncertain Times

Let's face it; right now in our world things are rather chaotic with the coronavirus. We are bombarded by news, websites, social media, and even our own family's take on current events, facts, fears, and conspiracy theories. There's a lot of information to manage: What to keep? What to accept? What to toss? What to downright ignore?

Even though many of us enjoy spontaneity from time-to-time, most of us prefer to know that the foundation of our lives is safely cemented in some form of structure and predictability (having this base actually allows for natural spontaneity to occur!). The recent health events have shaken many of our personal foundations because the greater social structure on which we depend is no longer safely cemented. What does this mean? It means we are currently living in uncertain times. Times are uncertain because we can't do what we humans love to do, and that is to predict.

When we feel we can predict, we feel



more in control. The ability to predict is ingrained in our psyche. For instance, "If I study really hard tonight, then I'll get a good grade on the test tomorrow." Or, "I'm headed to the grocery store and will pick up dinner, toothpaste, dog food, and toilet paper." See where this is going? Your grocery list is a prediction/expectation list. Right now in April [and May...maybe June] 2020, we can't predict what will or won't be in our local grocery store. Therefore, life is unsettling because it is uncertain, and it is uncertain because we don't know what to expect, and therefore can no longer predict with certainty.

How do we cope with this? How do we cope in uncertain times? There is a small body of literature that we can draw from to help us with this. It comes from the cancer quality of life literature, because many cancer patients live with uncertainty, and psycho-oncologists have a pretty good handle on how to help those folks traverse through the cancer journey with better coping skills. And we can borrow from that, because we are currently traversing through an uncertain journey in our world.

Coping strategies can be categorized in several ways. One of the ways to categorize them is in two groups: "problem-focused" coping and "emotion-focused" coping. Problem-focused coping strategies are usually

solutions oriented (i.e., feeling flu-like symptoms and deciding whether to go to urgent care or take pain relief medicine and take a nap, or calling the neighbor to ask if she can share with childcare duties this week). [Problem-focused skills and coping mechanisms are lawyers' stock-in-trade.] Emotion-focused coping strategies often embody more of an inward consideration and reflection (i.e., accepting the fact that there is no toilet paper left on the shelves, and realizing (or accepting) there is nothing you can really do about it). Emotion-focused coping can also be active, such as processing your frustrations about the toilet paper issue with a friend. You can't change the situation, but you can at least talk about it.

When the situation you are in has certainty to it or is predictable in some way, then the best strategy to cope, and to reduce anxiety and stress, is to be problem-focused. When you are actively involved in solving a problem, you are quite literally reducing your stress levels because you are taking charge of the situation, or at least contributing to its solution. In the cancer literature, problem-focused coping is helpful when patients have to choose between two really good treatments with similar outcomes and side effects. They become "active" in researching the treatments, gaining as much information as possible, weighing the treatment options against their quality of life, etc. The stress of having cancer at this point in time is reduced due to the patient actively participating in the solution. Problem-focused coping is oriented to changing the situation.

When the situation you are in does not have certainty or is not predictable, then the best strategy to reduce anxiety and stress is to be emotion focused. The reason why emotion-focused coping works in uncertain situations is because it is the opposite of problem-focused coping. Problem-focused coping requires energy. It is the "fight" in the fight/flight/freeze expression. It's getting things done because there is a problem to solve. But if you don't know the problem, or the problem is elusive, or the problem is a viral outbreak that governments are struggling with, then all that energy to solve the problem exponentially adds to stress and anxiety, it does NOT reduce it! Think of the idiom, "banging your head against a wall." The wall isn't moving, there is nothing you can do to break the wall, but you bang your head anyway because you are trying to solve the

Problem-Focused Coping	Emotion-Focused Coping
Best for situations that can be CHANGED	Best for situations that CANNOT be changed
Examples	
Decision making	Acceptance
Solving problems	Changing the way you think (reframing)
Conflict resolution	Exercising
Seeking advice	Spiritual prayer or meditation
Gathering information	Entertainment
Gathering supplies	Engaging in social media
Social planning	Social visits
Characteristics	
Expelling energy	Conserving energy
Goal oriented	Process oriented
Courage to change the things I can	Accept the things I cannot change
<i>And the wisdom to know the difference!</i>	

problem. All you get is frustration and a headache [and you feel exhausted because you have expended all your energy trying to fix/change/solve something you cannot change].

Once cancer patients have chosen their cancer treatment, they are often advised to "accept" the treatment process and ride its wave, trusting in their medical team. Emotion-focused coping is oriented to not changing the situation, but adjusting yourself to fit the situation. There is no problem to solve anymore; what's required of patients at this point is that they allow the medicine to treat their disease without fighting the process. The energy needed now is to nurture the self. Let's be clear: Emotion-focused coping isn't "passive coping" like we might think of one "curling up in a ball" or "sticking one's head in the sand" to avoid a situation. Emotion-focused coping is healthy and adaptive coping in times of uncertainty, thus allowing the current situation to unfold without fighting it along the way. It's about conserving energy. It's acknowledging that the situation cannot be changed, no matter how much you want it to change. Acceptance. There is an expression in Chinese referred to as "Wu Wei" meaning "effortless action," or, for us Westerners, going with the flow.

With our current climate, how might you discern your energy? What are you doing to actively engage in problem solving, to reduce stress only in those situations over which you have control? What are you doing to accept those situations in which you have no control? Are you fighting uncontrollable situations and creating more unnecessary stress? What flow can you go with to conserve your precious energy, and thus nurture yourself during this unsettling time? In the graphic is a table of takeaways. ■

*Dr. Antoinette Giedzinska is the director of applied neuroscience & outcomes at Sierra Tucson. Sierra Tucson is a treatment center in Arizona that specializes in treating lawyers and other professionals for mood disorders, substance use disorders, and other behavioral health issues. This article was reprinted with permission.*

## Endnotes

1. At the time of this printing, we will have already hosted our first CLE: "Calm in the Storm – Tools for Keeping Cool in the Corona Crisis," a free, one-hour mental health webinar with Laura Mahr, cosponsored by NCLAP, LAP Foundation of NC, Inc., BarCARES, and NC Bar Foundation. We will be hosting another one in the coming months. Look for the email and please join us.
2. Thankfully because we don't have the time to create a bunch of new content from scratch.

# A Resilient Mindset: Take Stock of What You Lost and What You Gained to Move Forward

BY LAURA MAHR

## What is a Resilient Mindset?

I don't know of a single person in our profession who has not dealt with a personal or professional setback. While most of us have honed a few coping skills for trying times, many of us are finding our skills are falling short during the pandemic and its aftermath—the unknowns are too vast and the tragedy too great. As we move forward, a resilient mindset may be the thing that allows us to stay afloat mentally, emotionally, and financially in these rocky waters. Ultimately, a resilient mindset may mean the difference between holding steady with an anchor and being tossed around in the waves.

Resilience is our ability to bounce back from a setback and adapt when things don't go as planned. It arises through a process of understanding our emotional response to the setback and by making meaning of what we learn while recovering. Our mindset is a compilation of our beliefs, attitudes, and mental states that orient us to what is going on and what we should do (or not do) about a given situation. A resilient mindset allows us to adapt our beliefs, attitudes, and mental states such that we can bounce back from setbacks and unanticipated changes. A resilient mindset is one that both allows space for “what is real” in the moment—including difficult emotions such as fear, sadness, and loneliness—and space for something new and improved to emerge.

No one yet knows what the full impact of the coronavirus and its aftermath will be; however, our mindset will determine how we remember and talk about what happened, and will determine what we make of our lives now. If we strive to have a resilient mindset, we will be able to adapt and bounce back from all we have lost and make the most of what we have gained in the past few months.

During the peak of the pandemic, I received an email from a client, Jessica Yañez,

a North Carolina attorney and owner of Yañez Immigration Law in Greensboro. Her email so clearly illustrates the power of employing a resilient mindset during challenging times, that I asked her for permission to excerpt from it here.

“Hi Laura,” her email began, “I wanted to share some of my personal thoughts about the current coronavirus situation. We are definitely in unprecedented times, and lots of people are suffering. There was one day that I worried myself sick and ended up having a good, long cry because I just felt so bad for all of the people suffering and my fear of the unknown.”

As I read the opening lines of Jessica's email, I could feel her distress and concern due to the trauma and uncertainty of the times. And yet, when I read her next sentence, I started to smile: “Once I got past that day, things have been so much better.” As I continued to read her email, it was apparent that Jessica had adopted a “resilient mindset” to help her and her family cope with pandemic-related setbacks. Her email went on to exemplify ways she and her family were adapting both their attitudes and their lives in resilient ways.

“I am embracing the unknown and enjoying so many new things,” she wrote. “I always said I wanted to work less and spend more time with my kids. Now I am staying home two days a week with them and spending so much quality time with them. I am embracing technology and all of the things it has to offer. I did a paint class online Friday evening; I started having the kids do photography scavenger hunts. Our son turned 12 at the end of



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March and finally learned to ride the bike we got him when he was six years old! He learned to mow the lawn too. My daughter is doing an online art class and we do free online lessons through scholastic and cosmic kids yoga together. I also signed them up for a book club called Literati and a cooking club called Kidstir. We made a home gym in the garage and work out together. It's like we are finally able to do all the things I've always wanted to do, but was too tired or too stressed to do.”

Embracing the unknown is a useful approach to cultivating a resilient mindset, and oftentimes creativity emerges as a result, just as Jessica and her family discovered. A resilient mindset can also open us up to deepening our relationships with ourselves and those we love. Jessica's email continued: “I gardened for the first time and even got a bike myself! I've connected more with my husband and we have taken time to talk about things that really matter to us.”

Cultivation of a resilient mindset can be done at both work and home: When we foster a resilient mindset toward our homelife, it crosses over into our work, and vice versa. The adage, “the way you do anything is the way you do everything” applies to our mindset,



and we can reap the benefits of resilience in both places, as Jessica's email illustrates.

"As for the firm, we are still steady, and we now have time to do everything we wanted to, but didn't have the time. At the end of this month we are going to do a complete file review for every case in the office. We will reach out to everyone with a pending case to say hello and check in. We will use the time after that to get ahead on every case."

Most importantly, a resilient mindset makes meaning out of what we lost and connects it with what we gained. The closing lines of Jessica's email illustrate that she was doing that.

"I know everyone processes this differently, but this has been a blessing in disguise for me. Some people may feel overwhelmed and not want to be given a laundry list of things to do, but I feel like now the world has given us the much needed gift of slowing things down and letting us take time to rest and do things we always wanted to."

I was touched to read Jessica's email and felt proud of her for investing her time in cultivating a resilient mindset long prior to the pandemic. It was clear she had "done her homework," and her resilience kicked into gear when she needed it. If you would like to begin cultivating a resilient mindset right now, try this.\*

#### **Step One: Account for What You Lost—**

As you process your experience with COVID-19, take a moment to acknowledge how it set you back and what you lost. Perhaps professionally you lost something that gave you security—like your job or your firm, or the benefits you receive from full-time work, or your confidence in being able to run a business. Maybe you lost something that gave you satisfaction or joy—like having a routine, writing a brief, going to court, or winning a case. Perhaps the biggest thing you lost was your face-to-face connection to your colleagues, your clients, or the people you saw in court. You may even have experienced a loss of identity as a professional as your work calendar cleared and clients stopped calling.

There may also be numerous personal losses to account for as well. You may have lost someone you know to COVID-19, or suffered another loss, like being able to attend your child's graduation, a family celebration, or your own retirement party. Or perhaps you missed out on a vacation or travel for spring break. It's ok to account for smaller daily losses too, like the loss of freedom to travel, leave

your home, grocery shop with ease, get a haircut, etc.

Note that you also may be experiencing "anticipatory grief"—fear of the loss of things to come. If that is the case, account also for what you're afraid you may lose in the future.

Make a list now of your losses/setbacks.

**Step Two: Make it Manageable—**Choose one of the losses from your list and focus on that as you go through the next steps in this process. You can do steps two through five for each item on your list if you'd like. Part of having a resilient mindset is giving yourself the opportunity to digest and process your setbacks in small chunks so you don't feel overwhelmed.

**Step Three: Acknowledge Your Feelings—**Acknowledge the feelings that came up when you experienced the loss, and may still be coming up now as you account for what you lost (or what you fear losing in the future). For example, "I feel doubt, fear, sadness, confusion, disillusionment, and/or shock because when I got furloughed I lost my confidence, security, peace, sense of accomplishment and control, and I felt alone." As challenging as it can be to feel the uncomfortable feelings that accompany your loss, doing so is a key step to being able to process your emotions and move through the grief that arises from the loss.

**Step Four: Give Yourself Support—**This is one of the most important steps, even though it can be the most difficult for us as lawyers and judges to seek and receive support. (See last quarter's column on seeking help at [bit.ly/34LI6YE](https://bit.ly/34LI6YE).) Giving yourself support can be as simple as saying something kind and understanding to yourself like, "Ouch. That hurt. Of course I feel all of those feelings because that was a big loss and it set me back." Taking a deep breath, sighing, or going outside may also help. You may want to find additional support by talking to a friend, colleague, or loved one about what you've lost and the feelings that come up when you think about it. If you feel inconsolable after trying a few different avenues for self-support, reach out to a mental health care provider and/or the North Carolina Lawyer Assistance Program ([nclap.org](https://nclap.org)) or the North Carolina Bar Association BarCARES Program ([nccbar.org/members/barcares](https://nccbar.org/members/barcares)) for professional support.

**Step Five: Reflect on What You Gained and Make Meaningful Connections Between What You Lost and What You**

**Gained—**This is the pinnacle step in creating a resilient mindset. To bounce back from a setback better than you were before it occurred, make a connection between what you lost and a skill, belief, attitude, or mental state you gained as a result of what you lost. For example, "I lost the ease of going to work and seeing clients in person, but I figured out how to work from home and use video conferencing to connect with clients in a new way." Or, "I lost the financial security I got from my job, but I found out I can budget and cut back when I need to." Or, "Because I live alone, I lost my normal sense of connection with my friends, but I feel like I know myself better now, and I made new connections with my neighbors and learned to cook." Or, "I lost someone I love during COVID, but gained a greater understanding of how to cope with loss by reaching out to a therapist virtually for support." If you can, see if you can feel gratitude or appreciation for what you've gained. Don't push it though: If feelings of gratitude and appreciation don't naturally arise, it's ok. You may be too close to the loss and setback right now to feel much appreciation. In that case, just stick with what you gained and its meaning for you.

As you rebuild over the next few months and find yourself looking for an anchor, check in with your mindset. Try on a resilient mindset for an hour, or a day, or a week and see if employing it calms the waters and improves your perspective, well-being, and productivity. If you like how it feels, keep at it. The more you practice, the easier cultivating a resilient mindset becomes and the sooner it turns into a habit that improves your whole outlook on life's setbacks. ■

*Thank you to Jessica Yañez and her family for their willingness to share their experiences with the Pathways to Well-Being readership.*

*Laura Mahr is a NC lawyer and the founder of Conscious Legal Minds LLC, providing mindfulness based wellness coaching, training, and consulting for attorneys and law offices nationwide. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a student and teacher of mindfulness and yoga, a love of neurobiology and neuropsychology, and a passion for resilience. Find out more about Laura's work at [consciouslegalminds.com](https://consciouslegalminds.com). If you would like to bring Laura to your firm or event to conduct a cutting-edge resilience-building training, contact her at [info@consciouslegalminds.com](mailto:info@consciouslegalminds.com).*

# Professional Responsibility in a Pandemic

BY SUZANNE LEVER AND BRIAN OTEN

As health concerns mandate social distancing and other precautions due to the COVID-19 (coronavirus) outbreak, many lawyers and their staff will find themselves working from home. The necessity to work remotely brings new challenges for lawyers as they continue to be governed by the Rules of Professional Conduct. However, despite the changes in the world around us, the Rules of Professional Conduct have not changed. Lawyers must continue to pursue their clients' matters "despite opposition, obstruction, or personal inconvenience to the lawyer," Rule 1.3, cmt. 1, and must otherwise strive to maintain as normal of a lawyer-client relationship as possible. This article examines professional responsibilities that demand special consideration during this unprecedented time. Lawyers may contact the State Bar's Ethics Staff for further guidance, if needed, by emailing [ethicsadvice@ncbar.gov](mailto:ethicsadvice@ncbar.gov).

## Diligence

Although legal services were deemed an essential business by Governor Cooper's Executive Order 121 (March 27, 2020) and law firms are permitted to remain open, lawyers may choose to reduce in-person legal activities without violating the Rules of Professional Conduct. Under the present circumstances, lawyers should weigh public health considerations when exercising their professional judgment to determine the scope of services the lawyer is comfortable offering to clients and requiring of staff.

Notwithstanding government mandates and altered life circumstances, lawyers must continue to be diligent during this pandemic. Rule 1.3 requires lawyers to act with "reasonable diligence and promptness in representing a client." The Judicial Branch is continually monitoring the COVID-19 situation throughout the state, and has taken substantial steps on both a local and statewide level to protect the public welfare and accommodate lawyers, clients, and other parties by re-

ducing staff in the courthouse, continuing cases, and extending deadlines. The constant changes to court schedules require lawyers to be vigilant about maintaining and updating client files and calendars. Lawyers should make it a habit to review the updated information from the Judicial Branch on its website, [nccourts.gov](http://nccourts.gov).

Regardless of the various extensions and continuances ordered across the state, a lawyer should continue to pursue a client's case to the extent reasonably possible under these unique circumstances. Lawyers can continue to prepare documents, respond to discovery, or even settle matters while working remotely. Of course, just as one lawyer can continue pursuing a particular case, so too can opposing counsel; lawyers should put a plan into place for someone at the law office to occasionally check the office's delivered mail. Again, the Rules require "reasonable diligence and promptness in representing a client"—it's reasonable to expect that the ongoing public health crisis may delay, stall, or otherwise impact the representation of a client depending on the case and the relevant circumstances, but it's also reasonable to expect a lawyer to continue pursuing a client's case when possible.

## Communication

The duty to communicate with a client is more important now than ever. Rule 1.4 recognizes that effective lawyer-client communication is a two-way street: the rule requires lawyers to keep their clients "reasonably informed" about the status of their matter, and the rule anticipates client inquiries by requiring lawyers to "promptly comply with reasonable requests for information" from their clients. Clients should have the ability to communicate with their lawyer during this unique time in history, so basic updates to the law office's contact information are important. Lawyers should update their outward-facing communications—including their firm's web-

site and voicemail—with information detailing how a client can reach someone at the law office and/or how often mail or voicemails are checked.

The duty to communicate during the COVID-19 crisis also encompasses the lawyer's responsibility to explain to clients how current events may affect their case and detailing ways in which the lawyer is responding to these events. Clients need to be advised of any changes to office hours, court closings, and scheduled court appearances. Even if there is nothing pressing in a client's case, lawyers should consider sending a brief message to reassure clients that, despite this crisis, their matters are important and are not being neglected.

Similarly, communication with opposing counsel and third parties is crucial not just for the lawyer's representation of a client, but for purposes of professionalism. Communicating expectations or delays during these difficult times helps ensure all involved are on the same page, and potentially prevents frustration or future disputes over deadlines.

## Confidentiality

Technology enables lawyers to work remotely in a more productive and smoother manner than ever before. However, along with the ease of bringing the entire case file/client database/law firm home comes the increased vulnerability to the precious data that makes up a client's case and the lawyer's practice. Lawyers working remotely continue to have the duty to protect confidential client information. Rule 1.6(c) states that "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Additionally, as a part of maintaining a lawyer's competency, comment 8 to Rule 1.1 states that "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the

lawyer's practice[.]” Simply put, if a lawyer is going to utilize technology to work remotely, the lawyer needs to have a basic understanding of the technology used to ensure that the lawyer complies with his or her professional obligations. *See also* 2011 FEO 6 (Subscribing to Software as a Service While Fulfilling the Duties of Confidentiality and Preservation of Client Property) and 2005 FEO 10 (Virtual Law Practice and Unbundled Legal Services). Lawyers should consider the following when assessing the vulnerabilities of confidential information while working from home:

- Home network security – Lawyers put a great deal of effort into making their law office a secure environment, and for good reason. When working with and transmitting confidential client information from home, a lawyer must similarly take steps to ensure the confidential information on the home network is protected. At the very least, lawyers should ensure that the network has been updated with the latest security patches and is password protected. The same goes for all devices that are connecting to the home network—they should be kept updated, and at least password protect any device on your home network that you use to access confidential information. Lawyers who have questions about the security of their home network should contact a network security professional.

- Discussing confidential information at home – Lawyers should set up a reasonably private workspace while working from home. When taking a call with a client, lawyers should close the door or step into another room if sensitive information is discussed. Additionally, much has been reported and debated over the past few years about the security concerns surrounding voice assistants like Google Assistant, Amazon Echo, or Apple HomePod. These devices listen to conversations heard within range of the device; while they may not “turn on” unless the activation word is spoken, the device is nevertheless listening for that activation word (and what is heard may be processed and reviewed by a computer or even a person somewhere else). Lawyers should avoid discussing confidential information within earshot of such listening devices.

- Utilizing online software and services – Services like cloud storage, online case management/databases, and video conferencing are proving to be necessities in practicing law remotely. These services offer remarkable accessibility and facilitate efficient practice and

communication like never before. However, as impressive as these services are, they nevertheless suffer from significant security vulnerabilities if mishandled. It is not a lawyer's duty to know the intricacies of security protocols employed by the services they utilize, but it is a lawyer's duty to take reasonable care in selecting and vetting a particular service to determine if confidential client information will be protected while using the service, what vulnerabilities might exist, and how the lawyer can best protect against those vulnerabilities. 2011 FEO 6 states, “[W]hile the duty of confidentiality applies to lawyers who choose to use technology to communicate, this obligation does not require that a lawyer use only infallibly secure methods of communication. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information and the lawyer must advise effected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality.” (internal citations omitted). This duty of reasonable care continues beyond initial selection of a service and extends during the lawyer's use of the service. Lawyers should continuously educate themselves on the ever-evolving state of technology and the services they employ to facilitate their practices, and make necessary adjustments (including abandonment, if necessary) when discoveries are made that call into question services previously thought to be secure.

All that is to say, lawyers can use online services in their respective practices; but at a minimum, lawyers should spend some time researching the online services they intend to use. Lawyers should review the company's information on security, and search for third party reports about the services. Doing so may reveal past breaches and recent security concerns—as well as the company's response to those events—that can inform their selection.

Once a lawyer has made their selection, when accessing any online service to practice law and handling confidential information, they should at least use a secure network and use strong passwords that are regularly changed to access your accounts.

Lastly on confidentiality, it is inevitable that a lawyer or someone the lawyer interacts with will test positive for COVID-19. A lawyer who is questioned by public health or medical officials about the lawyer's recent con-

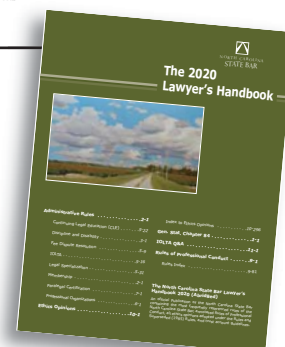
tacts due to the lawyer's exposure to COVID-19 may be asked to disclose her client's identity and contact information, which is confidential information pursuant to Rule 1.6. In such circumstances, pursuant to Rule 1.6(b)(3), the lawyer may disclose such confidential information “to the extent the lawyer reasonably believes necessary...to prevent reasonably certain death or bodily harm[.]” *See also* Rule 1.6, cmt. 6 (“Rule 1.6(b)(3) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm.”). A lawyer who is exposed to COVID-19 may disclose confidential client information to medical officials to the extent the lawyer reasonably believes necessary to prevent the spread of the virus. Additionally, if a client is incapacitated due to COVID-19, Rule 1.14 requires a lawyer to “as far as reasonably possible, maintain a normal client-lawyer relationship with the client.” Rule 1.14(a). If the client is unable to protect his or her own interests, the lawyer should consult Rule 1.14(b) and (c) for guidance on what a lawyer may do to facilitate the representation including what information the lawyer may reveal to third parties when seeking assistance and whether to seek the appointment of a guardian or other legal representative for the client.

## Video Conferences

Video conferences are the hot trend in doing business remotely during this unique time, and for good reason—advances made in camera technology, processing power, and internet speed make real-time video conversations a viable, effective option

## The 2020 Lawyer's Handbook

In early June, the digital version of the 2020 *Lawyer's Handbook* will be available for download, free of charge, from the State Bar's website: [ncbar.gov/news-publications/lawyers-handbook](http://ncbar.gov/news-publications/lawyers-handbook).





for both tech-savvy and tech-challenged users. The Rules of Professional Conduct do not prohibit a lawyer's use of video conferences to speak with clients, attend mediations, or even participate in remote hearings (as permitted by the courts). However, in addition to the considerations mentioned above about vetting online services, lawyers should be mindful of three considerations when using video conferences to speak with clients. First, is the video conference secure? Lawyers should take the appropriate steps to ensure each video conference session is private, including employing unique password protection, when possible, to prevent uninvited third parties from accessing the video conference as has been recently reported. Given the general vulnerabilities of electronic communications, lawyers should consider sending the video conference link or meeting ID separate from the password needed to access the conference (e.g. send the meeting ID via email, and the password via text message). Second, is the conversation taking place actually confidential? Unless the client is using headphones, the conversation via video conference will be heard by physically present third parties. Lawyers may want to ask the client to pan the camera around the room to demonstrate and ensure that the conversation will be protected, and lawyers should watch to see if the client's behavior indicates another person has joined the room and/or is exerting undue influence. Third, is a video conference appropriate for the purpose of the communication? A video conference can be an effective tool to speak with a new client about potential representation, but may not be sufficient if attempting to determine whether a client has capacity to make decisions about his or her affairs. Such situations will need to be assessed on a case-by-case basis by the lawyer exercising his or her professional judgment.

### Succession

Lawyers should plan now for the possibility that they may suddenly become incapacitated. In the face of increased risk of serious illness, lawyers should have a ready succession plan for other lawyers to be available to assume responsibility for legal representations. At the very least, lawyers should have a plan that enables a court-appointed trustee for the law practice to access the necessary client files, trust account records, and other vital information that would enable clients to move to subsequent counsel. Assuring the continuity

of representation can be difficult for solo practitioners. Comment [5] to Rule 1.3 provides that "to prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan...that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action." Lawyers should be mindful that the ultimate decision to transfer the file to new counsel remains with the client. Rule 1.2.

### Staff

As lawyers and law offices embrace the reality of working remotely amidst a global pandemic, principals in a law firm and lawyers with managerial authority must make reasonable efforts to ensure the law office has measures in effect giving reasonable assurance that both lawyers and nonlawyers associated with the firm conform to the Rules of Professional Conduct. See Rules 5.1 and 5.3. Now is the time for lawyers to update office procedures (or FINALLY write them down) that clearly state professional expectations and empower employees to ensure their conduct is compatible with the Rules of Professional Conduct. The law firm's malpractice insurance carrier can offer advice and resources to solo practitioners and law firms on the topics of succession planning, remote work, and cybersecurity.

### Professionalism

This is a stressful time for everyone. We need to take care of ourselves and each other. Recently, US District Judge Amy Totenberg of the Northern District of Georgia issued an order to every case on her docket outlining new procedures and extended deadlines following the pandemic. Judge Totenberg's order contained the following words of advice:

Be kind to one another in this most stressful of times. Remember to maintain your perspective about legal disputes, given the larger life challenges now besetting our communities and world. Good luck to one and all.

Lawyers are allowed to be kind. Rule 1.2(a)(2) encourages lawyers to accede to reasonable requests of opposing counsel that do not prejudice the rights of a client, avoid offensive tactics, and to treat all persons involved in the legal process with courtesy and consideration. Rule 1.2(a)(3) further allows a lawyer

to "exercise his or her professional judgment to waive or fail to assert a right or position of the client." In sum, Rule 1.2 allows a lawyer to be gracious—to check with opposing counsel about a missed deadline, rather than file for sanctions at the first opportunity; or to pick up the phone and offer an extension to opposing counsel who is also dealing with the difficulties of the present crisis. Now is the time to be kind and considerate with each other. Now is the time to demonstrate your professionalism. ■

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

*Brian Oten is ethics counsel for the North Carolina State Bar, as well as the director of the Legal Specialization and Paralegal Certifications Programs.*

## Upcoming Appointments to Commissions and Boards

Anyone interested in being appointed to serve on any of the State Bar's boards, commissions, or committees should email Lanice Heidbrink at [lheidbrink@ncbar.gov](mailto:lheidbrink@ncbar.gov) and express that interest, being sure to attach a current resume. The council will make the following appointments at its meeting in July 2020:

**Board of Legal Specialization** (three-year terms) – There are three appointments to be made. Laura V. Hudson (public member), Nancy Ray (public member), and Jan E. Pritchett are eligible for reappointment.

**IOLTA Board of Trustees** (three-year terms) – There are three appointments to be made. Elizabeth Quick and Sidney Eagles are not eligible to be reappointed. Anita Brown-Graham is eligible for reappointment.

**NC Dispute Resolution Commission** (three-year terms) – There is one appointment to be made. Charlot Wood is eligible for reappointment.

# No Committee Action This Quarter, Comments Welcomed on Proposed Opinion on Responding to Negative Online Reviews

## Council Actions

The State Bar Council did not adopt any ethics opinions this quarter.

## Ethics Committee Actions

The Ethics Committee did not meet during the State Bar Council's April 2020 remote quarterly meeting. Four inquiries remain before the committee. Two inquiries are being studied by subcommittee, including an inquiry addressing the permissibility of certain communications with judges and an inquiry concerning whether the Rules of Professional Conduct permit a lawyer to advance a client's portion of settlement proceeds. One inquiry that was previously approved by the committee as an ethics advisory will be studied by the committee as a new formal inquiry at its next quarterly meeting; the inquiry addresses whether a lawyer is prohibited from representing his solo practice in litigation where the lawyer is likely to be a necessary witness in the dispute. Lastly, after the January 2020 meeting, the committee approved for publication a proposed opinion on a lawyer's professional responsibility in responding to negative online reviews. As this opinion was not resolved by the Ethics Committee and State Bar Council during the April 2020 meeting, the committee continues to welcome comments on the opinion, which appears below.

## Proposed 2020 Formal Ethics Opinion 1 Responding to Negative Online Reviews January 23, 2020

*Proposed opinion rules that a lawyer may post a proportional and restrained response to a negative online review, but may not disclose confidential client information.*

## Inquiry:

Lawyer's former client posted a negative review of Lawyer's representation on a consumer rating website. Lawyer believes that the former client's comments are false. Lawyer believes that certain information in Lawyer's possession about the representation would rebut the negative allegations. The information in question constitutes confidential information as defined by Rule 1.6(a).

In what manner may Lawyer publicly respond to the former client's negative online review?

## Opinion:

In response to the former client's negative online review, Lawyer may post a proportional and restrained response that does not reveal any confidential information. The protection of client confidences is one of the most significant responsibilities imposed on a lawyer. Rule 1.6(a) of the Rules of Professional Conduct provides that a lawyer may not reveal information acquired during the professional relationship with a client unless (1) the client gives informed consent, (2) the disclosure is impliedly authorized, or (3) one of the exceptions set out in Rule 1.6(b) applies. Rule 1.6(a) applies to all information acquired during the representation. Under Rule 1.9(c), a lawyer is generally prohibited from using or revealing confidential information of a former client. Therefore, Lawyer may not reveal confidential information in response to the negative online review unless the former client consents or an exception set out in Rule 1.6(b) applies. See 2018 FEO 1 (lawyers are cautioned to avoid disclosing confidential client information when responding to a negative review).

No exception in Rule 1.6(b) allows

## Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment – including comments in support of or against the proposed opinion – or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at the next quarterly meeting. Any comment or request should be directed to the Ethics Committee c/o Lanice Heidbrink at [lheidbrink@ncbar.gov](mailto:lheidbrink@ncbar.gov) no later than June 15, 2020.

## 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 to reveal confidential information in response to a former client's negative review. The only exception potentially applicable to the facts presented is the "self-defense excep-

tion” set out in Rule 1.6(b)(6). Rule 1.6(b)(6) permits a lawyer to reveal information to the extent the lawyer reasonably believes necessary:

[T]o establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client; to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved; or to respond to allegations in any proceeding concerning the lawyer’s representation of the client.

Comment [11] to Rule 1.6 provides guidance as to the application of the self-defense exception. Pursuant to comment [11]:

Where a *legal claim or disciplinary charge* alleges complicity of the lawyer in a client’s conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. *Such a charge can arise in a civil, criminal, disciplinary, or other proceeding* and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer’s right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

Rule 1.6, [cmt] 11 (emphasis added). Thus, the self-defense exception applies to legal claims and disciplinary charges arising in civil, criminal, disciplinary, or other proceedings. A negative online review does not fall within these categories and, therefore, does not trigger the self-defense exception.

This conclusion is consistent with other jurisdictions that have opined on this issue. In Penn. Bar Ass’n Ethics Comm. Op. 2014-200, the Pennsylvania Ethics Committee concluded that “[w]hile there are certain cir-

cumstances that would allow a lawyer to reveal confidential client information, a negative online client review is not a circumstance that invokes the self-defense exception.” The committee stated:

A disagreement as to the quality of a lawyer’s services might qualify as a “controversy.” However, such a broad interpretation is problematic for two reasons. First, it would mean that any time a lawyer and a client disagree about the quality of the representation, the lawyer may publicly divulge confidential information. Second, [comment [11]] makes clear that a lawyer’s disclosure of confidential information to “establish a claim or defense” only arises in the context of a civil, criminal, disciplinary or other proceeding.

*Id.* Likewise, the Texas Bar determined that the self-defense exception “cannot reasonably be interpreted to allow public disclosure of a former client’s confidences just because a former client has chosen to make negative comments about the lawyer on the internet.” Texas Center for Legal Ethics Op. 662 (2016). Similarly, the Nassau County Bar stated that the exception does not apply to “informal complaints such as posting criticisms on the Internet.” Bar Ass’n of Nassau County Comm. on Prof’l Ethics Op. 2016-1. Also, the New York State Bar opined that, “the mere fact that a former client has posted critical commentary on a website is insufficient to permit a lawyer to respond to the commentary with disclosure of the former client’s confidential information.... Unflattering but less formal comments on the skills of lawyers, whether in hallway chatter, a newspaper account, or a website, are an inevitable incident of the practice of a public profession.” New York State Bar Ass’n Comm. on Prof’l Ethics Op. 1032 (2014). The Restatement of the Law Governing Lawyers similarly states that the self-defense exception to the duty of confidentiality is limited to “charges that imminently threaten the lawyer or the lawyer’s associate or agent with serious consequences, including criminal charges, claims of legal malpractice, and other civil actions such as suits to recover overpayment of fees, complaints in disciplinary proceedings, and the threat of disqualification[.]” Restatement (Third) of the Law Governing Lawyers § 64, cmt. c. (Am. Law Inst. 2000).<sup>1</sup>

An online negative review is not a legal claim or disciplinary charge arising in a civil,

criminal, disciplinary, or other proceeding.

We note that comment [11] to Rule 1.6 provides that a lawyer does not have to “await the commencement” of an action or proceeding to rely on the self-defense exception. Nonetheless, there must be an action or proceeding in contemplation for the exception to apply. Penn. Bar Ass’n Ethics Comm. Op. 2014-200. The restatement provides that, in the absence of the filing of a charge, there must be “the manifestation of intent to initiate such proceedings by persons in an apparent position to do so, such as a prosecutor or aggrieved potential litigant.” The Restatement (Third) of the Law Governing Lawyers § 64. It is the “manifestation of intent” that makes the disclosure of confidential client information “reasonably necessary.” As noted in the restatement:

Use or disclosure of confidential client information...is warranted only if and to the extent that the disclosing lawyer reasonably believes necessary. The concept of necessity precludes disclosure in responding to casual charges, such as comments not likely to be taken seriously by others. The disclosure is warranted only when it constitutes a proportionate and restrained response to the charges. The lawyer must believe that options short of use or disclosure have been exhausted or will be unavailing or that invoking them would substantially prejudice the lawyer’s position in the controversy.

*Id.* The posting of negative comments about a lawyer on the internet does not amount to the requisite “manifestation of intent” to initiate proceedings against the lawyer as contemplated by the restatement or comment [11] to Rule 1.6.

While Lawyer is not permitted to reveal confidential information in a response to the negative review, Lawyer is not barred from responding. Any response should be “proportional and restrained.” Penn. Bar Ass’n Ethics Comm. Op. 2014-200. The Pennsylvania State Bar Ethics Committee proposes the following generic response to a negative online review:

A lawyer’s duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not

CONTINUED ON PAGE 43



# Amendments Approved by the Supreme Court

At a conference on February 26, 2020, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar:

## Amendment to the Rules Governing the Administrative Committee

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

The amendment allows service of a notice to show cause via publication in the *State Bar Journal* when the State Bar is unable to serve a member using other authorized methods.

## Amendment to The Plan of Legal Specialization

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

The amendment clarifies the prohibition on waiving the minimum years of practice requirement for specialty certification.

## Amendment to Immigration Law Specialty Standards

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

The amendment permits the Board of Legal Specialization to offer the immigration law specialty exam either annually or every other year.

## Amendments to The Plan for Certification of Paralegals

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

The amendments eliminate the educa-

## Highlights

- Proposed amendments to the rule on collection of membership fees will delay imposition of the \$30 late fee until September 1, 2020, for the 2020 calendar year only.

tional prerequisite for paralegal certification for applicants who satisfy work experience requirements. To be certified, applicants who satisfy the work experience requirements must pass the certification examination.

# Amendments Pending Supreme Court Approval

At its meeting, April 17, 2020, 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 2020 edition of the *Journal* or visit the State Bar website.)

## Proposed Amendments to the Rules Governing the Administrative Committee

27 N.C.A.C. 1D, Section .0900,

Procedures for the Administrative Committee

The proposed amendments replace the current \$125 fee for reinstatement from inactive status and administrative suspension with a reinstatement fee “in an amount to be determined by the council.”

## Proposed Amendments to Regulations for Organizations Practicing Law

N.C.A.C. 1E, Section .0100, Regulations

for Professional Corporations and Professional Limited Liability Companies Practicing Law; Section .0200, Registration of Interstate and International Law Firms

The proposed amendments replace specified filing and registration fees with fees “in an amount to be determined by the council.”

# Proposed Amendments

At its meeting on January 24, 2020, the council voted to publish proposed amendments to the rules for prepaid legal service plans, 27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans. The

proposed comprehensive amendments to the rules include the following: incorporating the registration, renewal, and amendment forms in the rules; eliminating the requirement that the State Bar review plan documents to deter-

mine whether representations made in the registration, renewal, and amendment forms are true; and specifying that registration and renewal fees shall be in amounts to be determined by the State Bar Council. During the

publication period following the January meeting, comment on the proposed amendments to the rules on prepaid plans was received. At its meeting on April 17, 2020, the council deferred action on the proposed amendments until the July quarterly meeting of the council to allow time to study and respond to the comments.

Also at its April 17, 2020, meeting, the council voted to publish for comment the following proposed rule amendments:

### Proposed Amendments to the Rules on Membership Fees

27 N.C.A.C. 1A, Section .0200, Membership—Annual Membership Fee

The proposed rule amendments make the language of Rule .0203 consistent with that of the authorizing statute, N.C. Gen. Stat. §84-34, and delay imposition of the \$30 late fee for the delinquent payment of membership fees until September 1, 2020, for the 2020 calendar year only.

#### .0203 Annual Membership Fees; When Due

##### (a) Amount and Due Date

The annual membership fee shall be in the amount determined by the council as provided by law and shall be due and payable to the secretary of the North Carolina State Bar on January 1 of each year. The annual membership fee shall be and the same shall become delinquent if not paid by the last day of June before July 1 of each year. For calendar year 2020 only, the annual membership fee shall be delinquent if not paid by August 31, 2020.

##### (b) Late Fee

Any attorney who fails to pay the entire annual membership fee in the amount determined by the council as provided by law and the annual Client Security Fund assessment approved by the North Carolina Supreme Court by the last day of June before July 1 of each year shall also pay a late fee of \$30. For calendar year 2020 only, any attorney who fails to pay the entire annual membership fee in the amount determined by the council as provided by law and the annual Client Security Fund assessment approved by the North Carolina Supreme Court by August 31, 2020, shall also pay a late fee of \$30.

##### (c) Waiver of All or Part of Dues

No part of the annual membership fee or Client Security Fund assessment shall be prorated or apportioned to fractional parts of the

year, and no part of the membership fee or Client Security Fund assessment shall be waived or rebated for any reason with the following exceptions:

(1) ...

### Proposed Amendments to the Rules on Discipline and Disability

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

The proposed amendments eliminate the requirement that letters of warning, admonitions, reprimands, and censures issued by the Grievance Committee be served by certified mail or personal service when valid service on the respondent was previously accomplished by certified mail, personal service, publication, or acceptance of service. The proposed amendments also modernize language in the existing rule.

#### .0113 Proceedings before the Grievance Committee

(a) ...

(j) Letters of Warning

...

(3)

(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning may be served upon the respondent by mailing a copy of the letter of warning to the respondent's last known address on file with the State Bar. Service shall be deemed complete upon deposit of the letter of warning in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the letter of warning shall be served upon the respondent by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the letter of warning shall be deemed served by mailing a copy of the letter of warning to the respondent's last known address on file with

the State Bar. Service shall be deemed complete upon deposit of the letter of warning in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. A copy of the letter of warning will be served upon the respondent in person or by certified mail. A respondent who cannot, with due diligence, be served by certified mail or personal service shall be deemed served by the mailing of a copy of the letter of warning to the respondent's last known address on file with the NC State Bar. Service shall be deemed complete upon deposit of the letter of warning in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Within 15 days after service, the respondent may refuse the letter of warning and request a hearing before the commission to determine whether the respondent violated a violation of the Rules of Professional Conduct has occurred. Such refusal and request will be in writing, addressed to the Grievance Committee, and served on the secretary by certified mail, return receipt requested. The refusal will state that the letter of warning is refused. If the respondent does not serve a refusal and request are not served within 15 days after service upon the respondent of the letter of warning, the letter of warning will be deemed accepted by the respondent. An extension of time may be granted by the chairperson of the Grievance Committee for good cause shown.

(4) ...

(l) Procedures for Admonitions, ~~and~~ Reprimands, and Censures

...

(2)

(A) If valid service upon the respondent has previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel, a copy of the admonition, reprimand, or censure may be served upon the respondent by mailing a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the State Bar. Service shall be

deemed complete upon deposit of the admonition, reprimand, or censure in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(B) If valid service upon the respondent has not previously been accomplished by certified mail, personal service, publication, or acceptance of service by the respondent or the respondent's counsel,

A a copy of the admonition, reprimand, or censure shall will be served upon the respondent in person or by certified mail or personal service. If diligent efforts to serve the respondent by certified mail and by personal service are unsuccessful, the respondent shall be served A respondent who cannot, with due diligence, be served by certified mail or personal service shall be deemed served by the mailing of a copy of the admonition, reprimand, or censure to the respondent's last known address on file with the NC State Bar. Service shall be deemed complete upon deposit of the admonition, reprimand, or censure in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.

(3) ...

### **Proposed Amendments to the Rules on Reinstatement from Inactive Status and Administrative Suspension**

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

The proposed amendments eliminate the six-hour cap on online CLE when fulfilling the requirements for reinstatement from inactive status and from administrative suspension. This is consistent with the elimination of the cap on online CLE that went into effect on January 1, 2020.

#### **.0902 Reinstatement From Inactive Status**

(a) Eligibility to Apply for Reinstatement

...

(c) Requirements for Reinstatement

(1) Completion of Petition.

...

(4) Additional CLE Requirements

If more than 1 year has elapsed between the date of the entry of the order transferring the member to inactive status and the

date that the petition is filed, the member must complete 12 hours of approved CLE for each year that the member was inactive up to a maximum of 7 years. The CLE hours must be completed within 2 years prior to filing the petition. For each 12-hour increment, ~~6 hours may be taken online and~~ 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of inactivity the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the 2 years prior to filing the petition.

...

#### **.0904 Reinstatement From Suspension**

(a) Compliance Within 30 Days of Service of Suspension Order.

...

(d) Requirements for Reinstatement

(1) Completion of Petition

...

(3) Additional CLE Requirements

If more than 1 year has elapsed between the effective date of the suspension order and the date upon which the reinstatement petition is filed, the member must complete 12 hours of approved CLE for each year that the member was suspended up to a maximum of 7 years. The CLE must be completed within 2 years prior to filing the petition. For each 12-hour increment, ~~6 hours may be taken online and~~ 2 hours must be earned by attending courses in the areas of professional responsibility and/or professionalism. If during the period of suspension the member complied with mandatory CLE requirements of another state where the member is licensed, those CLE credit hours may be applied to the requirements under this provision without regard to whether they were taken during the 2 years prior to filing the petition.

### **Proposed Amendments to the Immigration Law Specialty Standards**

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

The proposed amendments update and clarify the requirements for substantial

involvement for certification as a specialist in the field of immigration law based on the recommendation of the Immigration Law Specialty Committee.

#### **.2605 Standards for Certification as a Specialist in Immigration Law**

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

...

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

(1) An applicant shall affirm that during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of immigration law, but not less than 400 hours in any one year. Service as a law professor concentrating in the teaching of immigration law for two semesters may be substituted for one year of experience to meet the five-year requirement.

(2) An applicant shall show substantial involvement in immigration law for the required period by providing such information as may be required by the board regarding the applicant's participation in at least ~~five~~four of the seven categories of activities listed below during the five years immediately preceding the date of application. For the purposes of this section, "representation" means the entry as the attorney of record and/or having primary responsibility of preparation of the case for presentation before the appropriate adjudicatory agency or tribunal.

(A) Family Immigration. Representation of clients before ~~the U.S. Immigration and Naturalization Service and the United States Citizenship and Immigration Services ("USCIS")~~ or the State Department in ~~the filing of petitions and family-based applications, including the Violence Against Women Act ("VAWA").~~

(B) Employment-Related Immigration. Representation of employers and/or aliens before ~~at least one of the following: the N.C. Employment Security Commission, the U.S. Department of Labor ("DOL"), U.S. Immigration and Naturalization~~



Service USCIS, Immigration and Customs Enforcement ("ICE") (including I-9 reviews in anticipation of ICE audits), or the U.S. Department of State in employment-related immigration matters and filings or U.S. Information Agency.

(C) Naturalization and Citizenship. Representation of clients before the U.S. Immigration and Naturalization Service and judicial courts USCIS in naturalization and citizenship matters.

(D) Administrative Hearings and Appeals. Representation of clients before immigration judges in deportation, exclusion removal, bond redetermination, and other administrative matters; and the representation of clients in appeals taken before the Board of Immigration Appeals and the Attorney General, the Administrative Appeals Unit Office, the Board of Alien Labor Certification Appeals and DOL, Regional Commissioners, Commissioner, Attorney General, Department of State Board of Appellate Review, and or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OCAHO).

(E) Administrative Proceedings and Review in Judicial Courts Federal litigation. Representation of clients in judicial matters such as applications for before Article III courts in habeas corpus petitions, mandamus or Administrative Procedures Act complaints and declaratory judgments, criminal prosecution of violations of matters involving immigration law, district court naturalization and denaturalization proceedings, or petitions for review or certiorari in judicial courts, and ancillary proceedings in judicial courts.

(F) Asylum and Refugee Status. Representation of clients in these matters before USCIS or immigration judges in applications for asylum, withholding of removal, protection under the Convention Against Torture, or adjustment of status for refugees or asylees.

(G) Employer Verification, Sanctions, Document Fraud, Bond and Custody, Rescission, Registry, and Fine Proceedings. Representation of clients in these matters. Applications for Temporary or Humanitarian Protection. Representation of clients before USCIS, ICE, immigration judges, or the Department of

State in applications for Temporary Protected Status, Deferred Action for Childhood Arrivals (DACA), Nicaraguan Adjustment and Central American Relief Act (NACARA), parole in place, humanitarian parole, deferred action, orders of supervision, U and T visas, or other similar protections and benefits.

### **Proposed Amendments to the Rules Governing Admission to the Practice of Law**

Section .0500, Requirements for Applicants; Section .0600, Moral Character and General Fitness; Section .1200, Board Hearings

The North Carolina Board of Law Examiners has proposed amendments to its admission rules that will streamline the processing of comity, military-spouse comity, and transfer applications that do not present character and fitness issues.

#### **.0502 Requirements for Comity Applicants**

The Board in its discretion shall determine whether 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 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.~~ Such application 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.

(b) That the applicant furnishes the following documentation:

...

#### **.0604 Bar Candidate Committee**

Every General Applicant and UBE Transfer Applicant not licensed in another jurisdiction shall appear before a bar candidate committee, appointed by the Board Chair, in the judicial district in which the applicant resides, or in such other judicial districts as the Board in its sole discretion may designate to the applicant, to be examined about any matter pertaining to the applicant's moral character and general fitness to practice law. An applicant who has appeared before a hearing Panel may, in the Board's discretion, be excused from making a subsequent appearance before a bar candidate committee. The Board Chair may delegate to the Executive Director the authority to exercise such discretion. The applicant shall give such information as may be required on such forms provided by the Board. A bar candidate committee may require the applicant to make more than one appearance before the committee and to furnish to the committee such information and documents as it may reasonably require pertaining to the moral character and general fitness of the applicant to be licensed to practice law in North Carolina. Each applicant will be advised when to appear before the bar candidate committee. There can be no changes once the initial assignment is made.

#### **.1201 Nature of Hearings**

(1) Any ~~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. ■~~

## Proposed Opinions (cont.)

believe that the post presents a fair and accurate picture of the events.

*Id.* Similarly, the San Francisco Bar opined that if the client's matter has ended, a simple response that denies the veracity or merit of the former client's assertions would not violate the duty of loyalty that lawyers owe to former clients. San Francisco Bar Ass'n Op. 2014-1. *See also* Los Angeles County Ethics Op. 525 (2012) (lawyer may make a "proportionate and restrained" response to his former client's negative review, but may not reveal confidential information or damage the former client in relation to the representation); Texas State Bar Opinion 662 (2016) (lawyer may post a proportional and restrained response that does not reveal any confidential information or otherwise violate the rules of ethics).

Accordingly, Lawyer may post an online response to the former client's negative online review provided the response is proportional and restrained and does not contain any confidential client information. ■

## Endnote

1. While the California Rules of Professional Conduct do not contain a "self-defense" exception to the duty of confidentiality, the California Evidence Code contains a self-defense exception to the attorney-client privilege. Cal. Code Evid. § 958 (no privilege as to a communication relevant to an issue of breach by lawyer of duty arising out of lawyer-client relationship). Two ethics opinions from local California bar associations interpreting the exception conclude that a lawyer may not rely on the exception to disclose confidential information in response to a negative online review. San Francisco Bar Ass'n Legal Ethics Comm. Op. 2014-1; Los Angeles County Op. 525 (2012).

## In Memoriam

**Franklin Vernon Adams**  
Raleigh, NC

**Jonathan Vann Bridgers**  
Greenville, NC

**Jo Ann J. Brighton**  
Huntersville, NC

**Calvin Lee Brown Sr.**  
Charlotte, NC

**Thomas Walter Brown**  
Greensboro, NC

**Jesse Lewis Butler Jr.**  
Clinton, NC

**Jones Pharr Byrd**  
Asheville, NC

**John C. Collins**  
Wilmington, NC

**W. Russell Congleton**  
Durham, NC

**William T. Cozart**  
Wilson, NC

**Barrett L. Crawford**  
Asheville, NC

**Fred G. Crumpler**  
Germanton, NC

**Herbert Owen Davis**  
Greensboro, NC

**William Franklin Drew Jr.**  
North Myrtle Beach, SC

**Lawrence Egerton Jr.**  
Greensboro, NC

**Elmer Ray Etheridge**  
Shawboro, NC

**Harry E. Fisher**  
Troy, NC

**Patricia Maria Fitch**  
Wilson, NC

**John S. Fletcher II**  
Ocracoke, NC

**Mark E. Fogel**  
Durham, NC

**Grover Aubret Gore Sr.**  
Banner Elk, NC

**Frances Hunt Hall**  
Southern Pines, NC

**John M. Harrington**  
Charlotte, NC

**Max E. Justice**  
Charlotte, NC

**William H. Kirkman Jr.**  
Colorado Springs, CO

**Ann F. Loflin**  
Durham, NC

**Lacy Lee Lucas Jr.**  
Greensboro, NC

**Jonathan Wilson Moody**  
Shallotte, NC

**James Edgar Moore**  
Rocky Mount, NC

**Carl F. Parrish**  
Winston-Salem, NC

**John Carl Russell**  
Greensboro, NC

**John Thomas Stewart**  
Chapel Hill, NC

**Michael Wayne Strickland**  
Fayetteville, NC

**William Little Tankersley III**  
Greensboro, NC

**Lisa Dam Thacker**  
Polkton, NC

**Philip Marshall Van Hoy**  
Charlotte, NC

**John Gary Vannoy Sr.**  
North Wilkesboro, NC

**Michael Gregory Walsh**  
Carthage, NC

**Robert W. Warren**  
Black Mountain, NC

**Paul Alexander Weinman**  
Advance, NC

**David C. Worth Jr.**  
Raleigh, NC

## Client Security Fund Reimburses Victims

At its April 16, 2020, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$105,811.37 to 27 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The board approved payments of \$75,240 to 21 clients of Bruce T. Cunningham Jr. of Southern Pines who died unexpectedly in July 2019. These clients had initially paid Cunningham a fee to review their files to determine whether they may have potential for a Motion for Appropriate Relief (MAR) or other form of relief from criminal convictions that left them incarcerated. After his initial review, if it was determined that Cunningham might be able to assist the client further, the client then paid Cunningham an additional fee to engage him to file an MAR or seek other specific relief (engagement fee). Cunningham deposited the engagement fees into his trust account initially, then routinely transferred funds from his trust account to his general operating account as he saw fit. The trustee appointed to wind down Cunningham's practice refunded to each client any fees

found to remain in Cunningham's trust account for that particular client. Where Cunningham had not filed an MAR or any other form of relief for a client who had paid such an engagement fee, the board reimbursed the engagement fee less the amount returned by the trustee.

The board approved payments of \$23,161.37 to three clients of W. Darryl Whitley of Lexington. All three of these claims had been approved for payment in 2013 subject to payment of any existing liens. Prior to resolution of the liens, contact with the applicants was lost. The authorizations to reimburse these claimants were rescinded in April 2018. The trustee who wound down Whitley's practice recently located the applicants. The liens were resolved and will be paid from the reimbursements.

Other payments authorized were:

1. An award of \$3,500 to a former client of Susan R. Franklin of Chapel Hill. The board determined that Franklin was retained to represent a client in a divorce action. Franklin failed to provide any meaningful legal services for the client for the fee paid

prior to going on Disability Inactive Status and then passing away. Franklin died on October 20, 2018. The board previously paid one other Franklin client a total of \$5,000.

2. An award of \$2,000 to an applicant who suffered a financial loss due to the dishonest conduct of John Hanzel of Cornelius. The board determined that Hanzel was retained to handle a real estate closing. Hanzel overstated the seller's closing costs and misappropriated funds that should have been refunded to the seller. Hanzel was disbarred effective on October 16, 2019.

3. An award of \$1,910 to a former client of Katherine H. Pekman of Hickory. The board determined that Pekman was retained to seek modification of an existing custody order for a client. Communication with Pekman failed after the client received a text from Pekman and a ledger showing the balance of funds remaining in her trust account for the client. Pekman failed to make a refund and failed to provide meaningful legal services for the balance of the fee paid. Pekman was suspended on April 15, 2019. The board previously reimbursed two other Pekman clients a total of \$3,822. ■

## Law School Briefs

### Campbell University School of Law

Campbell Law School's trial advocacy program is tied for 15th best in the nation, according to *U.S. News & World Report's* latest ranking. The ranking marks Campbell Law's second appearance on the list. In 2017, the law school's advocacy program tied for 21st best. "Advocacy is our hallmark, and I am delighted to have our accomplishments recognized," said Dean J. Rich Leonard. Campbell Law is tied with Drexel and Syracuse

Universities and the University of California at Berkeley. It is the lone North Carolina school in the top 20 of the ranking.

Campbell Law revealed the newest pieces of public art from world renowned sculptor and artist Thomas Sayre on March 21. Entitled "Preponderance," the sculptures were commissioned as part of the celebration of the 40th anniversary of the law school's first graduating class and the 10th anniversary of the law school's groundbreaking move from Buies Creek to downtown Raleigh. The installation

was the brainchild of Sayre along with Dean Leonard and art aficionado Kathy Creed, wife of Campbell University President Dr. J. Bradley Creed. Named after the legal standard of evidence, "Preponderance" soars 20 feet tall above the law school's main entrance off Hillsborough Street. "We are beyond proud to partner with Thomas Sayre's and debut one of his stunning monuments, adding to our city's vibrant network of works of art for all to enjoy," Dean Leonard said.

Campbell Law has created six new sum-



mer fellowships in the Wake County justice system thanks to a generous donation from the nonprofit Carolina Correctional Services Inc. The Judge Robert Farmer Fellowships will be awarded to Campbell Law students with demonstrated financial need and a calling for public service. The fellows will have funded positions in the Resident Superior Court Judges' Chambers, the District Attorney's Office, and the Public Defender's Office.

## Duke Law School

Two scholars are joining the Duke Law faculty from the Indiana University Maurer School of Law after visiting Duke in 2019: Gina-Gail S. Fletcher and H. Timothy Lovelace. Fletcher, whose scholarship and teaching focus on financial market regulation, commodities markets, and corporate governance, has written several influential articles addressing various forms of market manipulation. Lovelace, a noted legal historian of the civil rights movement whose work examines how the civil rights movement in the United States helped to shape international human rights law, is the author of the forthcoming book, *The World is on Our Side: The US and the UN Race Convention* (Cambridge), which examines how US civil rights politics shaped the development of the International Convention on the Elimination of All Forms of Racial Discrimination.

L. Neil Williams Jr. Professor of Law Brandon Garrett is serving as independent monitor for a landmark settlement in Texas that could become a national model for cash bail reform. Garrett, the faculty director of the Duke Center for Science and Justice, is monitoring implementation of the O'Donnell Consent Decree in Harris County, Texas, that encompasses Houston. Working closely with colleagues in Texas, Garrett is directing a seven-year monitoring project that includes ongoing analysis of Harris County data and intensive engagement with stakeholders in that state.

Thomas Maher, who has taught criminal trial practice at Duke for almost 30 years, has joined the Duke Center for Science and Justice as executive director. A veteran criminal defense attorney, he served from 2006 to 2009 as executive director of the Center for Death Penalty Litigation where he represented capital defendants in trial, appellate, and post-conviction proceedings. From 2009 until 2020, he served as executive director of the North Carolina Office of Indigent Defense Services.

## Elon University School of Law

**Top 10 ranking for practical training**—Elon Law ranked #7 in *preLaw Magazine's* latest "Best Schools for Practical Training" feature with a grade of A+, in part because, as the magazine notes, every Elon Law student must complete a full-time residency-in-practice with a law firm, judge, government organization, nonprofit, or clinic as part of their studies. *preLaw* uses information collected by the American Bar Association to formulate its annual rankings: ratio of clinic seats to student body, number of clinics, externship ratios, simulation ratios, moot court ratios, and consideration of *pro bono* requirements.

**Elon Law students selected for NCBA 1L program**—Three Elon Law students will take part this summer in a prestigious North Carolina Bar Association program that promotes diversity and inclusion in the legal profession by placing accomplished first-year students into top internships. Zechariah Etheridge, Andrew Tawiah, and Kelsie Wiltse accepted invitations for the NCBA's Minorities in the Profession 1L Summer Associate Program, which is coordinated through its Minorities in the Profession Committee. It is the fourth year in a row that at least three Elon Law students have secured such placements.

**Researching "death by distribution" laws**—An Elon Law professor is partnering with a research mentor on Elon University's main campus to answer questions about drug-induced homicide laws as part of a prestigious national program aimed at supporting researchers involved with the health and criminal justice systems. Assistant Professor Taled El-Sabawi at Elon Law, and Assistant Professor Jennifer Carroll in Elon University's Department of Sociology and Anthropology, have been selected to serve as an independent investigator and research mentor, respectively, in a research training program funded by the National Institute on Drug Abuse and the Justice Community Opioid Intervention Network Coordinating and Translational Center.

## University of North Carolina School of Law

**Carolina Law climbs to No. 27 in the U.S. News & World Report**—UNC School of Law moved up seven spots to number 27 out of 194 law schools ranked in the *U.S. News & World Report's* 2021 edition of "America's Best Graduate Schools." Of the public university

law schools listed in the top 50 schools as ranked by *U.S. News*, UNC School of Law is in the top 10.

**Writing program ranks number 7**—In the specialty areas rankings, the law school's Research, Reasoning, Writing, and Advocacy (RRWA) Program, now in its ninth year as a full-year, six-credit program, ranks number 7 in legal writing, up 11 spots since the 2018 rankings.

**3L class reaches 100% pro bono participation with 15,000 hours**—For the third time in the UNC School of Law Pro Bono Program's 22-year history, all third-year students, 100% of the graduating class of 2020, have participated in a *pro bono* project.

**UNC Law Alumni Association announces annual awards**—The Law Alumni Leadership Awards will be presented during the North Carolina Bar Association's Annual Meeting in Charlotte on June 26. Award recipients include Doris R. Bray '66 of Greensboro, NC; The Honorable Robert "Bob" C. Hunter '69 of Marion, NC; Brooks F. Jaffa '12 of Charlotte, NC; and Professor Deborah R. Gerhardt of Chapel Hill, NC.

**Carolina moves to online teaching and pass/fail grading system for spring semester**—Due to the coronavirus pandemic, UNC-Chapel Hill moved to remote instruction in mid-March. In a letter to the law school, Dean Martin H. Brinkley shared insights about his and the Academic Affairs Committee's decision to implement mandatory pass/fail grading for all spring semester courses.

## Wake Forest School of Law

**Wake Forest professor on balancing coronavirus restrictions and civil liberties**—Law Professor Mark Hall coauthors *New England Journal of Medicine* article, "Disease Control, Civil Liberties, and Mass Testing—Calibrating Restrictions during the COVID-19 Pandemic." The article, published in April, addresses how to go about lifting coronavirus-related restrictions in a way that balances civil liberties with the need to protect public health. He will present on this topic—the process of lifting and relaxing current economic, work, and social restrictions—for "Isolated By The Law, Part 2," an online symposium sponsored by the Wake Forest School of Law; Wake Forest Center for Bioethics, Health and Safety; *Wake Forest Journal of Law and Policy*; and the Wake Forest University Provost's Office.

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## John B. McMillan Distinguished Service Award

### John N. (Nick) Fountain

John N. (Nick) Fountain received the John B. McMillan Distinguished Service Award at the February 4, 2020, Wake County Bar Association Luncheon. North Carolina State Bar President Colon Willoughby Jr. presented the award.

Mr. Fountain obtained his law degree from Wake Forest Law School in 1968. Upon graduation, he served as law clerk to Judge David M. Britt on the North Carolina Court of Appeals. Mr. Fountain practiced law with Bailey, Dixon & Wooten for 20 years. In 1990 he began working at Young Moore, where he continues to serve as “of counsel.” Throughout his career, Mr. Fountain developed a niche in administrative law, particularly occupational licensing boards. He has been involved in more than 75 published cases in the North Carolina Supreme Court, the North Carolina Court of Appeals, the Business Court, the US District Court, and the Fourth Circuit. Mr. Fountain has appeared in 80 of the 100 courthouses in North Carolina.

Mr. Fountain has served as president of the Wake County Bar Association. He has been chair of the Bar Candidate Committee and has been organizing the interviews of bar candidates for many years. Mr. Fountain helped start the Wake County Bar Endowment/Scholarship Committee, served as its chair, and has continued to serve on its board. As a reflection of Mr. Fountain’s invaluable service to the Wake County Bar, he has been awarded the Wake County Bar President’s Award of Excellence as well as the Wake County Bar Association’s Joseph Branch Professionalism Award.

Mr. Fountain served on the North Carolina Bar Association’s Board of Governors from 1985 to 1988. He has been active on numerous NCBA committees and commissions, and served as chair of five committees. The NCBA awarded Mr. Fountain the Administrative Law Award for Excellence in 2019.

Mr. Fountain served nine years as a State Bar councilor representing the Tenth Judicial District. During his time on the

counsel, he served on the Authorized Practice Committee, the Grievance Committee, and the Legislative Committee. After his third term expired, Mr. Fountain continued to serve as an advisory member to those committees.

Mr. Fountain said, “I have been blessed to be able to demonstrate my pride in the legal profession by giving back to it. I am optimistic about the future for lawyers because young lawyers I meet still possess integrity, still take pride in their work, and still give back to the community. If I have had a part in passing down that tradition, consider me satisfied with the results of the past 50 years.”

### Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. Information and the nomination form are available online at [ncbar.gov/bar-programs-distinguished-service-award](http://ncbar.gov/bar-programs-distinguished-service-award). Please direct questions to Suzanne Lever at the State Bar office in Raleigh, (919) 828-4620. ■

## July 2020 Bar Exam Applicants

The North Carolina Board of Law Examiners presently intends to administer the July 2020 bar examination on July 28-29, 2020. If the July exam cannot be administered as scheduled, the NCBLE intends to administer the exam on September 9-10, 2020.

Published below are the names of the applicants whose applications were received on or before April 20, 2020. Members are requested to examine the list 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.

Roy Abernathy  
Bessemer City, NC  
Andrew Adams  
Winston-Salem, NC  
Justin Adams  
Raleigh, NC  
Sarah Adams

Raleigh, NC  
Melissa Adorno  
Charleston, SC  
Mariah Ahmed  
Charlotte, NC  
Simone Aldredge  
Davis, CA

Markea Allen  
Cornelius, NC  
Matthew Amrit  
Chapel Hill, NC  
Evan Anderson  
Clayton, NC  
Nicole Anderson

Durham, NC  
Nicole Arcodia  
Fallston, MD  
Nakia Arrington  
Raleigh, NC  
Jonathan Atkinson  
Tuscaloosa, AL

Mark Atkinson  
Durham, NC  
Stephen Atkinson  
Pageland, SC  
Cailey Augustin  
Asheville, NC  
Claudia Ayala

Mooresville, NC	Andrea Bonvecchio	Raleigh, NC	Hana Crandall	Lumberton, NC
Marianna Baggett	Gainesville, FL	Ventrice Carpenter	St. Louis, MO	Megan Ellis
Raleigh, NC	Erin Bowman	Matthews, NC	Hannah Crater	Cary, NC
Tatyana Bailey	Chattanooga, TN	Hannah Carter	Raleigh, NC	Taylor Emory
Durham, NC	Karen Boyd	Winston-Salem, NC	Kirsten Crawford	Raleigh, NC
John Ballesta	Kingsport, TN	Ginger Cartwright	Charlotte, NC	Benny Enemchukwu
Durham, NC	Rachel Boyd	Salisbury, NC	Anna Cribb	Greensboro, NC
Milton Barba	Abingdon, VA	Phillip Carwane	Lynchburg, VA	Whitney Engen
Cary, NC	William Bradham	Durham, NC	Shelley Cridlin	Charlotte, NC
Marissa Barbalato	Greenwood, SC	Jordan Cassino	Saint Petersburg, FL	Corbin Erickson
Holly Springs, NC	Summer Branch	Winston-Salem, NC	Freddie Cruz	Raleigh, NC
Mark Bardill	Pendleton, NC	Erin Catlett	Apex, NC	Matthew Esterline
Raleigh, NC	Colin Brennan	Holly Springs, NC	Tahlia Cypress	Rocky Mount, NC
Blair Barker	Birmingham, AL	Taylor Caulk	Raleigh, NC	Whitney Eudy
Hixson, TN	Alondra Bribiesca	Charleston, SC	Joseph D'Agostino	Mount Pleasant, NC
Artrice Barksdale	Cary, NC	Thomas Caune	Savannah, GA	Andrew Falk
Charlotte, NC	Rachel Brinson	Concord, NC	Taylor d'Alelio	Raleigh, NC
Gwendolyn Barlow	Durham, NC	Sydney Cauthen	Raleigh, NC	Matthew Farley
Chapel Hill, NC	Ryan Bristow	Winston-Salem, NC	Aaron Dalton	Chapel Hill, NC
Cheyenne Barnes	High Point, NC	Andrew Cave	Statesville, NC	Sarah Fedyschyn
Raleigh, NC	Harrison Broadbent	Clayton, NC	Robert Daniel	Durham, NC
Matthew Baruch	Wilmington, NC	Mia Chalhoub	Chapel Hill, NC	Patrick Figuerado
Cornelius, NC	Xavier Bromell	Raleigh, NC	Taylor Dant	Durham, NC
Joseph Bates	Loris, SC	Adam Chalmers	Woodbridge, VA	Haley Finn
Sanford, NC	Davidson Brooks	Winston-Salem, NC	Sandra Daussin	Dayton, OH
Austin Bauersmith	Waxhaw, NC	Aaron Chastain	Apex, NC	Dominic Fiore
Chalfont, PA	Shelby Brooks	Brasstown, NC	London Davenport	Philadelphia, PA
Kelley Beck	Radford, VA	Dana Chavis	Raleigh, NC	Eric Fisher
Cary, NC	Alexander Brown	Raleigh, NC	Callie Davis	Chapel Hill, NC
Katie Becker	Durham, NC	James Cheek	Raleigh, NC	Rebecca Fisher
Kannapolis, NC	Marion Brown	Chapel Hill, NC	Chatnea Davis	Chapel Hill, NC
Brian Becraft	Raleigh, NC	Tyler Chriscoe	Durham, NC	Polly Ann Flinch
Lexington, VA	Meghan Brown	Madison, WI	Jennifer Davis	Durham, NC
Rebecca Bee	Durham, NC	Abigail Christoph	Cary, NC	Toya Flynn
Gainesville, FL	Michael Brown	Chapel Hill, NC	Matthew Davis	Raleigh, NC
Abdellah Benadada	North Wilkesboro, NC	Cory Church	Denver, NC	Christina Fonda
Ashburn, VA	Garra Brown Bartley	Tuscaloosa, AL	Johnell Daye	Winston-Salem, NC
Kollin Bender	Winston-Salem, NC	Courtney Clark	Morrisville, NC	Alexander Fowler
Chapel Hill, NC	Michael Brummitt	Columbia, SC	Alexandria Dean	Raleigh, NC
Dorothy Bennett	Oxford, NC	Louisa Clark	Roanoke Rapids, NC	Katelyn Fowler
Columbia, SC	Annie Bruton	Wake Forest, NC	Allison Dean	Racford, NC
Erin Bennett	Lexington, KY	Maddison Clark	Fayetteville, NC	Heather Fox
Durham, NC	Lisa-Ann Buczek	Fort Worth, TX	Breanne DeBaets	Lynchburg, VA
Carolyn Bergkvist	Raleigh, NC	Samantha Cockerell	Raleigh, NC	Matthew Fox
Gladwyne, PA	Allison Buczynski	Durham, NC	Ryan Dibilio	Raleigh, NC
Gehrig Bernstein	East Meadow, NY	Jennifer Cofer	Charlotte, NC	Mark Frederick
Durham, NC	Jason Burgess	Greensboro, NC	Jordin Dickerson	Raleigh, NC
Mackenzie Betchan	Rock Hill, SC	William Colbert	Charlottesville, VA	Tevin Frederick
Sunset Beach, NC	Hannah Burgin	Cornelius, NC	Karen Dickerson	Durham, NC
Kimberley Beyer	Tryon, NC	Jayla Cole	Weaverville, NC	Eva Freeman
Glenville, NC	Bradley Burk	Monroe, NC	Marcea DiGabriele	Mebane, NC
Ashley Bilbrey	Huntersville, NC	Chamberlain Collier	Pittsford, NY	Sarah Fritsch
Gastonia, NC	Emily Burns	Raleigh, NC	Nia Doaks	Raleigh, NC
David Blackwelder	Tallahassee, FL	Payton Collier	Winston-Salem, NC	Margaret Fryling
Wake Forest, NC	Kaitlan Cabe	Raleigh, NC	Sarah Dorr	Charlotte, NC
Nicholas Blackwood	Mount Pleasant, SC	Andrew Collins	Durham, NC	Vadim Furmanov
Greensboro, NC	Willoe Cahill-DeFuccio	Raleigh, NC	Asia Dukes	Chicago, IL
Joseph Blake	Nashville, TN	William Collins	Durham, NC	Gabrielle Gabriel
Charlotte, NC	Zhen Cai	Mount Ulla, NC	Miles Duncan	Charlotte, NC
Jacob Blakeslee	Charlotte, NC	Anna Conaway	Charlotte, NC	Stephen Gambill
Morrisville, NC	Thomas Cain	Charlotte, NC	Allison Dunsford	Columbia, SC
Shae Blankenship	Winston-Salem, NC	Patrick Cook	Huntersville, NC	Stephen Gamble
Culloden, WV	Meredith Cairo	Raleigh, NC	Harrison Dusek	Chicago, IL
Mark Blevins	Raleigh, NC	Rebecca Cook	Chapel Hill, NC	Katelyn Gano
North Charleston, SC	Nicholas Cale	Saint Petersburg, FL	Sloane Echevarria	Tega Cay, SC
Mackenzie Bluedorn	Sanford, NC	Zachary Cooper	Roxboro, NC	Noah Ganz
Winston-Salem, NC	Vanessa Canuto	Youngsville, NC	David Egan	Durham, NC
Courtney Bobrovnikov	Durham, NC	Nicole Corley	Columbia, SC	Joseph Garfunkel
Sanford, NC	Marquita Capers	Broadway, NC	Adeline Elliott	Columbia, SC
Nicholas Bogdash	Knightdale, NC	Courtney Cornelius	Charlotte, NC	Ryan Gee
Chapel Hill, NC	Tanner Caplan	Apex, NC	Aaron Ellis	Wake Forest, NC
Reginald Boney	Chapel Hill, NC	Allison Cottle	Raleigh, NC	Rachel Geissler
Durham, NC	Ethan Carpenter	Elizabethtown, NC	Matthew Ellis	Chapel Hill, NC

<b>Damon Gialenios</b> Fuquay-Varina, NC	<b>Brianna Hardee</b> Seabrook, TX	<b>Jason Iglesias</b> Asheville, NC	<b>Josh Kinning</b> Falls Church, VA	<b>Kevin Littlejohn</b> Rolesville, NC
<b>Shomik Gibson</b> Greensboro, NC	<b>Matthew Harden</b> Charlotte, NC	<b>Jessica Inscore</b> Fuquay Varina, NC	<b>Bailey Kirby</b> Harrisburg, NC	<b>Courtney Lockamy</b> Raleigh, NC
<b>Emily Gillenwater</b> Jackson, MS	<b>Mackenzie Harmon</b> Clemmons, NC	<b>Michelle Iqbal</b> Charlotte, NC	<b>Garret Kirkpatrick</b> Lynchburg, VA	<b>Hetali Lodaya</b> Ann Arbor, MI
<b>Samuel Gilleran</b> Winston-Salem, NC	<b>Ashton Harrell</b> Raleigh, NC	<b>Lislah Isaboke</b> Concord, NC	<b>Ashley Knapp</b> Hickory, NC	<b>Anna Long</b> Greensboro, NC
<b>Carly Gillespie</b> Raeford, NC	<b>James Harris</b> High Point, NC	<b>Megan Isserman</b> San Diego, CA	<b>Nicole Knowlson</b> Apex, NC	<b>Richard Long</b> Raleigh, NC
<b>Jenell Gillespie</b> Lumberton, NC	<b>Zachary Harris</b> Winston-Salem, NC	<b>Madison Jaros</b> Waxhaw, NC	<b>Matthew Koehl</b> Raleigh, NC	<b>Ashley Longman</b> Durham, NC
<b>Kiarra Gilliam</b> Charlotte, NC	<b>Merideth Harrison</b> Raleigh, NC	<b>Sarah Jeffers</b> Knightdale, NC	<b>Daniel Korycki</b> Naples, FL	<b>Kristen Longmire</b> Knightdale, NC
<b>Joseph Giovinnazzo</b> Cornelius, NC	<b>Philip Harvey</b> Ooltewah, TN	<b>Katheryn Jenifer</b> Carrboro, NC	<b>Alexis Kovolenko-Vassillion</b> Fayetteville, NC	<b>Clinton Looper</b> Granite Falls, NC
<b>Teresa Glascoe</b> Humble, TX	<b>LaTonya Hayes</b> Stone Mountain, GA	<b>James Jenkins</b> Raleigh, NC	<b>Stephen Krieski</b> Raleigh, NC	<b>Kaitlyn Lumpkin</b> Pearland, TX
<b>Brianne Glass</b> Durham, NC	<b>Kempton Healey</b> Raleigh, NC	<b>Mason Jennings</b> Raleigh, NC	<b>Julian Kritz</b> Raleigh, NC	<b>Alexandria Lynn</b> Charlotte, NC
<b>Christopher Godwin</b> Fayetteville, NC	<b>Micah Hedgepeth</b> Cullowhee, NC	<b>Phillip Jester</b> Charlotte, NC	<b>Clare Kurdys</b> Durham, NC	<b>Mary MacGuire</b> Chapel Hill, NC
<b>Daniel Goldstein</b> Raleigh, NC	<b>Phillip Hedrick</b> Raleigh, NC	<b>Amy Jicha</b> Decatur, GA	<b>Robert Labonte</b> Raleigh, NC	<b>Michael Maddox</b> Hendersonville, NC
<b>Jessica Goldstein</b> Mt. Pleasant, NC	<b>McCae Henderson</b> Raleigh, NC	<b>Brittani Johnson</b> Fayetteville, NC	<b>Alexandra Laks</b> San Francisco, CA	<b>Ga Malik</b> Raleigh, NC
<b>Ruth Goldstein</b> Austin, TX	<b>Caitlin Herlihy</b> Winston-Salem, NC	<b>Darrell Johnson</b> Atlanta, GA	<b>Matthew Lancaster</b> Chapel Hill, NC	<b>Megan Mallamas</b> Raleigh, NC
<b>Jacob Gooden</b> Johnson City, TN	<b>Stephanie Hernandez</b> Durham, NC	<b>Lindsay Johnson</b> Winston-Salem, NC	<b>Brandon LaRose</b> Winston-Salem, NC	<b>Melissa Malone</b> Charlotte, NC
<b>Miranda Goot</b> Chapel Hill, NC	<b>Carissa Herring</b> Winston-Salem, NC	<b>Logan Johnson</b> Durham, NC	<b>Kira Latham</b> Durham, NC	<b>Mikayla Mann</b> Hillsborough, NC
<b>Allison Gordon</b> Apex, NC	<b>Justin Hill</b> Raleigh, NC	<b>Shane Johnson</b> Wilmington, NC	<b>Kevin Latshaw</b> Raleigh, NC	<b>Caroline Martin</b> Charlotte, NC
<b>Joseph Gorga</b> Raleigh, NC	<b>Roy Hill</b> Raleigh, NC	<b>Zachary Johnson</b> Raleigh, NC	<b>Melissa Lawrence</b> Mount Airy, NC	<b>Clarke Martin</b> Chapel Hill, NC
<b>Robert Graham</b> Lexington, VA	<b>Henry Hilston</b> Greensboro, NC	<b>Marlene Johnson-Moore</b> Kernersville, NC	<b>Brandy Lea</b> Raleigh, NC	<b>Jasmin Martin</b> Sanford, NC
<b>Charles Gray</b> Wendell, NC	<b>Lonnie Hinton</b> Clayton, NC	<b>Amber Jones</b> Winston-Salem, NC	<b>Alexandria Leake</b> Mars Hill, NC	<b>Agustin Martinez Martinez</b> Greensboro, NC
<b>Savian Gray-Sommerville</b> Chapel Hill, NC	<b>Cody Hochstetler</b> Western Springs, IL	<b>Lindsay Jones</b> Winston-Salem, NC	<b>Cody Ledford</b> Winston-Salem, NC	<b>Stephanie Mascella</b> Myrtle Beach, SC
<b>De'Erricka Green</b> Durham, NC	<b>Noah Hock</b> Greensboro, NC	<b>Wesley Jones</b> VA Beach, VA	<b>Alexis Ledlow</b> Raeford, NC	<b>Zachary Mason</b> Lenoir City, TN
<b>Jacqueline Greenberg</b> Avon, CT	<b>Serenity Hogan</b> Raleigh, NC	<b>Miles Jordan</b> Winston-Salem, NC	<b>Chad Lee</b> Ann Arbor, MI	<b>Alexis Massengill</b> Garner, NC
<b>Wilson Greene</b> Edenton, NC	<b>Cory Holliday</b> Elkview, WV	<b>Katherine Kacsur</b> Winston-Salem, NC	<b>Steven Leger</b> Durham, NC	<b>Bret Matera</b> Chapel Hill, NC
<b>April Gregory</b> Burlington, NC	<b>Cassie Holt</b> Raleigh, NC	<b>Haddijatou Kah-Jallow</b> Warwick, RI	<b>Andrew Legg</b> Hendersonville, NC	<b>Brandon Mayes</b> Chapel Hill, NC
<b>Victoria Grieshammer</b> Winston-Salem, NC	<b>Matthew Hooker</b> Winston-Salem, NC	<b>David Kahn</b> Tunbridge, VT	<b>Jason Lerman</b> Winston-Salem, NC	<b>Katherine Mayes</b> Charlotte, NC
<b>Jessica Griffin</b> Matthews, NC	<b>Aaron Horner</b> Moravian Falls, NC	<b>Katelin Kaiser</b> Carrboro, NC	<b>Brittany Levine</b> Raleigh, NC	<b>Chanda McClain</b> Greenville, SC
<b>Michael Grisham</b> Dallas, TX	<b>Megan Horney</b> Newland, NC	<b>Mark Kaisoglus</b> Hendersonville, NC	<b>Kyle Lewis</b> Durham, NC	<b>Skylar McClain</b> Charleston, SC
<b>Hailey Guerra</b> Williamsburg, VA	<b>Mara Howard-Williams</b> Chapel Hill, NC	<b>Caitlin Kaloostian</b> Miami, FL	<b>Matthew Lewis</b> Lexington, NC	<b>Jared McDaniel</b> Rainbow City, AL
<b>Chen Guo</b> Cary, NC	<b>Rebecca Howell</b> Chapel Hill, NC	<b>Elizabeth Keenum</b> Shannon, NC	<b>Morgan Lewis</b> Winston-Salem, NC	<b>William McDougal</b> Apex, NC
<b>Marina Gutierrez</b> Willow Spring, NC	<b>Christopher Hsu</b> Matthews, NC	<b>Briana Kelly</b> Raleigh, NC	<b>Patricia Lewis</b> Charlotte, NC	<b>Robert McGlothlin</b> Carrboro, NC
<b>Mark Hamblin</b> Washington, NC	<b>Helen Hsu</b> Raleigh, NC	<b>Colin Kennedy</b> Charlotte, NC	<b>Eric Limbert</b> Raleigh, NC	<b>Trenton McGuirt</b> Columbus, OH
<b>Kylie Hamilton</b> Winston-Salem, NC	<b>Hao Hu</b> Durham, NC	<b>Kevin Kenney</b> Wilmington, NC	<b>Stephen Lindsay</b> Arden, NC	<b>Sarah McIntosh</b> Cornelius, NC
<b>Camekia Hammond</b> Charlotte, NC	<b>Tyler Humphrey</b> Oxford, MS	<b>Alongkorn Khamkam</b> High Point, NC	<b>Madeline LiPe</b> Cary, NC	<b>Melissa McKinney</b> Winston-Salem, NC
<b>Kylie Hanlon</b> State College, PA	<b>Alexandra Hunt</b> Raleigh, NC	<b>Christine Kidd</b> Pittsboro, NC	<b>Mario Liranzo</b> Charlotte, NC	<b>Dorian McKoy</b> Raleigh, NC
<b>Shelby Hansen</b> Winston-Salem, NC	<b>William Hurley</b> Lynchburg, VA	<b>Christian Kiechel</b> Macon, GA	<b>Jonathan Litsey</b> Mooresville, NC	<b>Elizabeth McLellan</b> Lexington, VA
<b>Alex Hardee</b> Emerald Isle, NC	<b>John Hutson</b> Winston-Salem, NC	<b>Jacquelyn Kinni</b> Columbia, SC	<b>Ashley Little</b> Charlotte, NC	<b>Holden McLemore</b> Raleigh, NC



<b>Selene Medina Gomez</b> Washington, DC	<b>John Nedley</b> Durham, NC	<b>Roshan Patel</b> Matthews, NC	<b>Lauren Privette</b> Flat Rock, NC	<b>Ashley Robinson</b> Syracuse, NY
<b>Laura Medlin</b> Cary, NC	<b>Erin Neely</b> Concord, NC	<b>Vivek Patel</b> Waxhaw, NC	<b>Krystal Pruet-Lantz</b> Macon, GA	<b>Malindi Robinson</b> Chapel Hill, NC
<b>Rebekah Meier</b> Lynchburg, VA	<b>Alexander Newkirk</b> Knightdale, NC	<b>Brandon Paul</b> Lexington, NC	<b>Britni Prybol</b> Raleigh, NC	<b>Maryam Robinson</b> Raleigh, NC
<b>Jasmine Meikle</b> Charlotte, NC	<b>Allison Newton</b> Durham, NC	<b>Lisette Payne</b> Chapel Hill, NC	<b>Kyle Putnam</b> Morganton, NC	<b>Adam Rodrigues</b> Raleigh, NC
<b>Jancel Melendez Morales</b> Wendell, NC	<b>Leonidas Newton</b> Charlotte, NC	<b>Caroline Peake</b> San Francisco, CA	<b>Jasmyne Quinn</b> LaVergne, TN	<b>Rachel Rogers</b> Fayetteville, NC
<b>Roecker Melick</b> Winston-Salem, NC	<b>Vanden Nibert</b> Winston-Salem, NC	<b>Abbey Peavy</b> Griffin, GA	<b>Evan Raczowski</b> Chapel Hill, NC	<b>Tess Rogers</b> Durham, NC
<b>Korey Mercer</b> Durham, NC	<b>Rebecca Nicoletta</b> Mount Pleasant, SC	<b>Taylor Peed</b> Winston-Salem, NC	<b>Sean Rafferty</b> Chapel Hill, NC	<b>Shameka Rolla</b> Winston-Salem, NC
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## Law School Briefs (cont.)

*Wake Forest School of Law updates timely quarantine symposium for online access*—Law Professor Christine Nero Coughlin leads “Isolated By The Law, Part 2,” an update of the *Wake Forest Journal of Law and Policy* 2018 symposium. Coughlin brings together a range of nationally recognized experts who will cover

the significant legal, ethical, and public health issues that have surfaced as a result of the coronavirus. The symposium will be publicly available online in an asynchronous format at [law.wfu.edu](http://law.wfu.edu).

*Wake Forest School of Law is educating legal and medical professionals about telehealth and COVID-19*—In just two weeks, Wake Forest Law updated its well-received “Tele-

health: Options, Usage, Clinical Risk, and Legal Implications” online executive education course with a new focus on COVID-19. The new four-week course session began April 1. As we face the reality of a long-term national state of emergency, telehealth’s legal and practical implications gain new importance. Legal professionals receive NC CLE credits through this fully online, self-paced, innovative course. ■



Lawyers Mutual welcomed three new managers to our team in 2018: Claire Modlin, VP of Claims, Kathy Fisher, VP of Underwriting, and Julie Beavers, Director of Client Services.

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