

THE NORTH CAROLINA STATE BAR

# JOURNAL

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# An Interview with Our New President, Barbara R. Christy

*Greensboro attorney Barbara R. Christy was sworn in as president of the North Carolina State Bar by Chief Justice Cheri Beasley on October 23, 2020.*

**Q: Tell us about your upbringing.**

I grew up as an “air force brat” and lived in several states (and Newfoundland) before my father was transferred to Seymour Johnson AFB in Goldsboro, where I graduated from high school and went on to college at Appalachian State. I am the oldest of four children which, according to my siblings, accounts for my leadership skills (they call it “being bossy”). Both my father and mother grew up in large families on farms in middle Tennessee and instilled in all of us the importance of family, faith, hard work, and gratitude.

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

I decided to major in criminal justice while in college. I did not have much experience with the legal system (other than representing myself in traffic court), but one of my favorite professors introduced me to several local lawyers and strongly encouraged me to apply to law school. I entered law school thinking I wanted to be a litigator, but quickly decided that my skill set was more suited to a transactional practice.

**Q: Can you tell us how your career as a lawyer has evolved?**

I started practice in Greensboro in 1983 as an associate for a general practitioner. I quickly gravitated to residential real estate (despite the fact that the average mortgage rate at that time was above 15%). The number of women realtors and brokers was starting to increase at that time, and I began to do closings for several of them. When the attorney I was working for decided to move back



*With her husband, Rick, and grandson, Cooper, looking on, Barbara R. Christy is sworn in a president of the North Carolina State Bar.*

to his hometown, I opened a solo practice concentrating on residential real estate. In 1987, Schell Bray Aycock Abel & Livingston was formed, and Bill Aycock asked me to join as an associate in the firm’s commercial real estate practice. Joining Schell Bray was the best decision I ever made, as they allowed me the flexibility I needed while my children were young, and they supported my transition to partnership in later years. They’ve also been extremely supportive of the time I’ve spent on State Bar and *pro bono* matters.

**Q: You are a North Carolina State Bar real property law specialist and you have a highly respected, top drawer, commercial real property practice. What attracted you to this area of practice, and why did you seek specialty certification?**

Residential real estate was a great learning

ground. While I was a sole practitioner, I learned to do every aspect of the closing from title search to settlement statement. People were happy to be buying a home and I loved the challenge of pulling all the pieces together to close on schedule. I now close large commercial transactions, but the basics are the same. Everyone is working toward the same goal, so there is a lot of opportunity for collaboration and problem solving. Bill Aycock was one of the first commercial real estate specialists, and he encouraged me to pursue certification.

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

My father really wanted me to apply to the Air Force Academy, but I would probably have chosen to work with the justice system

in some capacity such as a juvenile court counselor. Looking back I believe I would have also enjoyed being a high school teacher.

**Q: What was your first leadership position?**

A hard-fought campaign for student government in middle school. I think I won because I was good at making posters.

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

When the seat in our judicial district become vacant, my good friend Nancy Ferguson encouraged me to enter my name as she felt the council needed someone with real estate and business experience. Like many lawyers, I did not know a lot about the State Bar prior to that time.

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

I did not know what to expect and never anticipated how meaningful service on the State Bar Council would be. I have had the opportunity to meet and work with lawyers from every district in the state, and every practice area, from sole practitioners to partners in very large firms. For the first time I have a true sense of what it means to be part of a "profession." I strongly encourage all lawyers to get involved with their local bar association, the NC Bar Association, and/or the State Bar. Your voice is important and needed.

**Q: Two national events have significantly affected North Carolina over the past year, the COVID-19 pandemic and the outcry following the death of George Floyd and other people of color. Do you believe that these events will have long-term impacts on the practice of law and, if so, what will they be? Will they have consequences for the regulation of the profession in North Carolina or nationally?**

I hope and believe that they will have a long-term impact. Both events have caused a great deal of sorrow and loss, and it is incumbent on us to use them to bring about positive change and improvement in our system of justice. On the whole, lawyers are resistant to change, yet COVID-19 has shown us how resilient lawyers can be as the profession has quickly adapted to the need to provide legal services remotely. It has also exposed the very great need we have for funding to support technology improvements such as e-filing for our judicial system. The deaths of Ahmaud Arbery, Breonna Taylor, George Floyd, and

too many other people of color caused many of us to stop and really listen to the voices that have been telling us that our system of justice is not the same for everyone. As Chief Justice Beasley stated, "Too many people believe that there are two kinds of justice.... We must openly acknowledge the disparities that exist and are too often perpetuated by our justice system." I believe there is great momentum for making long-overdue and much-needed changes.

**Q: Programmatically speaking and otherwise, what do you hope to accomplish while president of the North Carolina State Bar?**

It is the job of every member of the State Bar to self-regulate the legal profession in the public interest. The Preamble to the Rules of Professional Conduct reminds us that we are 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." To that end, the State Bar is currently engaged in many important initiatives, and I hope that over the coming year we can move those forward in a meaningful way. We are considering changes to the Preamble which sets out the values to which we aspire as a profession. There are many people that believe it is time for an affirmative commitment to the ideal of non-discrimination in the provision of legal services. We are also studying potential amendments to the Rules to incorporate some type of non-discrimination language. Because the Rules form the basis for discipline (as opposed to the Preamble, which is aspirational), the study of any Rule change will be a thorough and deliberative process. New educational requirements around the issues of implicit bias, racial justice, and related topics are under review. Regardless of the requirement, it is my hope that both the council and State Bar staff will actively participate in training on these issues so that change can start at the top. We also know that effective justice requires that it be both accessible and affordable. We have a very active committee studying possible innovations in those areas (more on that below). Finally, we know that the quality of legal representation is directly related to the quality of the lawyers rendering services, and we will continue efforts to ensure that our lawyers have the tools they need for both professional self-improvement and mental health and wellness.

**Q: To make room for innovation in the practice of law and to improve access to justice, several states (including Arizona, California, and Utah) are investigating ways to facilitate the utilization of technology to deliver legal services and considering whether to abolish or modify the prohibitions on sharing a legal fee with a non-lawyer and on nonlawyer ownership of and investment in law firms. What is your reaction to these proposals?**

There are many good reasons for the current restrictions on sharing legal fees with nonlawyers and nonlawyer ownership in law firms. That being said, it's time to take a fresh, albeit cautious, look at these issues, and we have formed a committee that is busy doing just that. I am very excited about some of the innovations being discussed and implemented in other states and the possibilities for increased use of new technology to help both lawyers and the public access legal solutions and information.

**Q: You live with your family on a small farm in a rural community where you raise beef cattle, honey bees, and fruit trees. How has that experience informed your practice of law and your service on the State Bar Council?**

I often jokingly say as I leave my high rise Greensboro office that I am going home to the "real world." I primarily work with large businesses and wealthy individuals, but I live in an area where many people still work for minimum wage. It keeps me grounded and aware of the very real struggles that most people have in securing affordable legal representation.

**Q: Tell us about your family.**

We are a blended family in a non-traditional way. Rick and I got married while students at Appalachian. We had three children, one of whom died at the age of 19 from an opioid overdose (shortly before the nation began to learn about this crisis of mammoth proportion). We were later blessed to add two teenagers to our family and have watched them grow into terrific young adults. Of course, my pride and joy are my grandchildren, Cooper age nine and Elizabeth age two. Feel free to ask me about them anytime.

**Q: What do you most enjoy doing when you're not representing clients or serving as a councilor or officer of the State Bar?**

While I enjoy traveling on occasion, my

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# COVID and the Military Legal Assistance Office

BY MICHAEL S. ARCHER

**L**awyers, like everyone else, have been trying to move forward despite a pandemic and related restrictions. For those Department of Defense lawyers assigned to help service members (SMs) and other eligible clients address civil issues, COVID-19 problems are exacerbated due to the typically high volume of such offices and the unique nature of the clients and services.

I am not an expert on COVID-19 or its overall effect on the legal profession, which my wife keeps reminding me. However, I'd have to be pretty dull indeed not to have learned from my experience at Camp Lejeune. This article is designed to help readers gain an appreciation of some military-related issues that have arisen, and at least one approach to meeting these challenges. These observations are mine alone and do not necessarily represent the views of the Department of Defense, the Marine Corps, or any unit thereof.

The first set of challenges military law offices faced were universal and concerned safety—how to diminish the likelihood of the spread of the contagion. One possible course of action was simply to close the office and deny legal services, an option rejected by our chain of command. The defense of the nation requires constant vigilance, and addressing

the legal issues of service members and their families is integral to that effort.

Therefore, we stayed open, limiting the access points to the building, requiring prospective clients to answer some basic health screening questions, and requiring all entrants to wear a mask. The installation commander mandated the wearing of a face covering, which no doubt assisted with compliance. Hand sanitization stations were set up at intervals in the law office hallway. Seats for people waiting for service were set at least six feet from each other down a long hallway. We also provided people the option of obtaining legal services remotely.

Governor Cooper's statewide stay at home order (Executive Order 121, March 27, 2020) did not constrain our business. By its own terms, the order was inapplicable to the United States government and, in any event, designated legal services as essential, an excep-



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tion to the general shutdown.

Social distancing at some of our activities was, and remains, difficult to maintain at key bottlenecks such as at shared photocopiers, at the reception desk on a busy walk-in morning, and in the execution of legal documents requiring the signature of the principal, witnesses, and a notary. The office employs attorneys designated as notary public by federal law (10 U.S.C. 1044a) as well as support staff who have attained a commission as a North Carolina notary.

NC Senate Bill 704, signed by the governor on May 4, 2020, and made effective that date, amended chapter 10B of the North Carolina General Statutes, authorizing emergency notarization and witnessing via teleconference. The bill also waived the witness

requirements for health care powers of attorney and for declarations of a desire for a natural death, thereby amending chapters 32A and 90, respectively. These provisions expire August 1, 2020. While this legislation may or may not adequately address discrete emergencies wherein the principal, witnesses, and notary can not all be present in the same place, use of these provisions is not well suited to the high volume of the typical military legal assistance office or the practical problem of ensuring that the documents prepared will be readily acceptable in every state and even overseas.

Roughly half of the office personnel were teleworking at any given time. After overcoming the initial bureaucratic and technical obstacles, we found telework to be a viable option for many employees. Teleworking employees prepared documents and conversed via email and telephone. Google provides a free service that allows the user to establish a phone number that, when called, reroutes the call to the user's personnel cell phone. In this way, employees can provide a work phone number to the public that can be answered at home without giving out a personal phone number.

We learned to use an organizational email mailbox (one that can be viewed by all authorized users) for prospective clients who could not or did not wish to visit the office in person. We confirmed the sender's identity through various means, principally the use of scanned military ID cards and a requirement to use the military email system, access to which requires insertion of proper ID into the computer. After checking for conflicts of interest with existing clients, the officer in charge would then either take the case or refer it to staff counsel. Unfortunately, after a while, the organizational mailbox option was used not only by those unable to come to the office due to COVID-19 concerns, but also by people who just liked the convenience or who were hundreds of miles distant from the installation.

The Camp Lejeune Base tax center, which annually prepares over 13,000 tax returns, developed procedures allowing it to remain open while keeping face to face contact at a bare minimum.

How do you provide a legal brief to a large number of people; for example, SMs deploying to New York City or elsewhere, consistent with social distancing and prohibitions on the congregation of groups of over ten people? My advice to the officer in charge, or the civilian law firm equivalent, is to find someone about

30 years younger than you, preferably a Marine Corps captain, and let them use their initiative and technical savvy to figure it out. There are apparently several means of talking to different groups of people simultaneously at different venues. Zoom is an option. If considering a Zoom meeting, remember that there may be limits on the number of free accounts for any particular meeting, and Zoom may not be compatible with military computers and their virus protection protocols. Use of conference calls, and multiple speaker phones at several venues, enhanced by emailing presentation slides, is a lower tech option. Video briefs for repetitive items can be prepared and can even be placed on a public website, but development, filming, editing, and other technical issues may require significant lead time—weeks rather than days.

We learned once again that a major disaster of any kind creates fresh opportunities for scam artists to separate the unwary from their money. The pandemic unleashed a torrent of email and phone scams designed either to steal the victim's money directly or to dupe the victim into providing private financial information with which to perpetrate identity theft. Scams included phony offers of vaccination; sale of phony COVID-19 test kits; fake charities; and imposters spoofing student loan servicers, the Centers for Disease Control, the World Health Organization, or a government agency providing information on how to obtain a relief check under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Early on, federal agencies, such as the FTC, CFPB, IRS, and FCC, posted warnings about these scams. One legal assistance office—sorry to say not mine—surveyed such websites, summarized the information therein, added their own two cents, and created a widely circulated newsletter.

We also found that the pandemic affected the practice of family law in ways beyond the shutdown of courts.

It turns out that whenever the United States provides some benefit, such as a CARES Act relief payment, it also provides yet another asset for a divorcing couple to wrangle over, an asset that should be considered in drafting a marital separation agreement.

COVID-19 has raised serious issues concerning child custody and visitation. Consider the dilemma of the SM who, on the one hand is prohibited by military and governor's orders from traveling, and on the other hand is compelled by a divorce decree to deliver custody of

the children to the other out of state parent. After consultation with the local judiciary, our advice to the SM on the horns of this dilemma is, essentially, do the best you can do. Attempt to negotiate with the other party concerning custody and visitation, determine whether the children can be delivered by a third party not subject to military restrictions on travel, and inquire whether an exception to policy can be granted by the commanding officer. In general, either find a way to deliver the children or be prepared to demonstrate that you have taken all reasonable steps to comply with the court's order.

The pandemic raised questions concerning landlord/tenant law, some of which I will address here. What happens when a SM tenant receives permanent change of station (PCS) orders to a new duty station and then all military travel is curtailed under a national Stop Movement Order (SMO) issued by the secretary of defense?

In one scenario, the SM, anticipating the PCS move, signs a lease at the new duty station, and then the orders are cancelled by the SMO. The applicable provision of the Servicemembers' Civil Relief Act (50 USC 3955) authorizes early lease termination upon receipt of deployment or PCS orders, but does not specifically authorize the SM to terminate the new lease based on the SMO. US Senate Bill 3637 is designed to address this issue.<sup>1</sup> In the meantime, any right under the SCRA to terminate a lease based on a SMO is subject to debate.

Does the SM find any relief in state law in this scenario? Unfortunately, the North Carolina law (NCGS 42-45) that specifically addresses military lease termination does not provide a remedy. Up until July 2019, that law allowed lease termination without penalty if accomplished 14 or more days prior to occupancy. Protection under NCGS 42-45 is now provided only to "military technicians;" active duty SMs were stripped of such protections as perhaps an unintended side effect of the passage of the NC SCRA, which became law last summer (S 420 / H 523).

In another scenario, the SM, anticipating PCS orders, provides written notice to terminate the current residence early pursuant to the SCRA, then changes his mind when the PCS orders are cancelled. Does the landlord have grounds to evict the SM tenant? Probably not, as there is no breach of the

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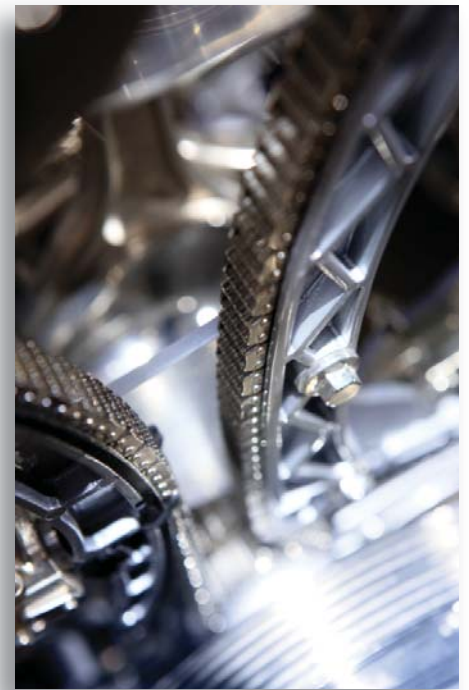
# Improving the Mechanics of Justice: Lessons of the Coronavirus

BY JUDGE MARTIN B. MCGEE

The coronavirus pandemic has laid bare the entrenched mechanical problems of our justice system. Despite the advances in technology, our court's logistical system for delivering justice exists largely unchanged from the pre-cell-phone/pre-internet era. While the occurrence of a pandemic should not have been a surprise, it caught our courts—and nearly all other entities—flatfooted.

The court's inability to quickly communicate and coordinate with lawyers, defendants, witnesses, civil litigants, and the public has proven unacceptable. The inability of our courts to address cases without transporting inmates from facility to facility, or without having large gatherings of people at the courthouse, has greatly slowed—and sometimes stopped—the delivery of justice. The inability of people to have routine interactions with the court remotely has been crippling and has threatened public health. The technological solutions of videoconferencing, online resolution of simple high-volume traffic cases, and the use of improved court date notification systems are the key components to alleviating the problems exacerbated by the pandemic and to improving the delivery of justice.

First, the court needs the email address and telephone number—preferably cell-phone number—of everyone who has a planned future interaction with the court: lawyers, defendants, civil litigants, witnesses, and victims. When an emergency strikes, mailing a letter is a poor communication strategy. It also limits the court's ability to communicate information to make participating in a court event more informed and convenient. Yet, mailing addresses are what the court and law enforcement collect. There is not even a place on a traffic citation to list a telephone number. And while court rules require lawyers to include their mailing address and telephone numbers on pleadings, counsel are not required to include their email address or a number that can receive a text. Thus, when the court needs to commu-



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nicate, other than making an individual call to a lawyer, it must rely on the postal system, third-parties such as the news media, or the Administrative Office of the Court's (AOC's) website ([nccourts.org](http://nccourts.org)), which is controlled from Raleigh. The routine collection of email addresses and telephone numbers are the gateway to the technological improvements that are necessary to meet the expectations of citizens in the 21st century.

While requiring—or at least trying to obtain—email addresses and telephone numbers may cause privacy concerns, perhaps this issue can be addressed by legislation. The same issue, of course, exists regard-

ing obtaining individuals' physical mailing addresses, which is a long-standing practice. In our modern society, the balance comes out the same: our courts need email addresses and telephone numbers to more safely function in a crisis and better serve during normal times.

Second, once the necessary contact information is collected, our courts need a better scheduling and information delivery system. Letters take too long and are too expensive. Because we do not have a quick and inexpensive communication system, we inefficiently schedule court and lack the ability to quickly change course when we gain new information, or to provide helpful information to people before they come to court. We currently have a court date notification system (CDN) that requires participants or other interested persons to go to the AOC website to sign up to receive texts or emails seven days and 24 hours before the next court date. The CDN also does not communicate any other information other than court dates and times. The current CDN is a good start, but it must be improved for the courts to better serve the public.

Anyone who has gone to the doctor or a dentist in the last few years has likely experienced a far superior electronic notification system than the one used by our courts. Patients are automatically enrolled, doctors use time block scheduling to set appointments, and changes in the schedule are forwarded by a text. As a result, patients' expectations are that they will receive clear information from their medical provider, be updated when circumstances warrant, and their medical provider will stick reasonably well to a schedule. This notification system, of course, also well serves the medical providers through inexpensive communication, fewer missed appointments, better prepared patients, improved patient satisfaction, and less administrative costs.

Our courts are far behind the medical model, and we suffer as a result. Our chief justice has directed during the pandemic that courts not schedule more cases than can be accommodated given the requirements of social distancing. The primary district court in Cabarrus County normally has a maximum capacity of 193, but as a result of social distancing that number has been reduced to 29. Our district criminal court normally operates the way other courts are scheduled throughout the state: everyone—

sometimes hundreds of people—is summoned to court the hour it starts. Thus, we have had to improvise a way to notify people to arrive at different times so that we can address more cases throughout the day than the courtroom can accommodate at 9 AM. Imagine if your doctor's office was run this way. We can—and should—do better if we have better technology.

With an improved scheduling system, we could schedule cases on an hourly basis and greatly reduce the wasted time and inconvenience participants endure as a result of waiting. With a better system, our courts could alert participants if court is cancelled due to inclement weather and provide a new court date. The system could alert witnesses that their presence is no longer needed because the case will be resolved by a guilty plea or dismissed. A better system could provide additional helpful information such as a link to the online resolutions services for traffic issues to save a trip to the courthouse (as will be discussed below) or updates on how the pandemic is affecting schedules and the requirements related to face coverings.

Court participants should be automatically enrolled into the program rather than being dependent upon individuals following a multistep process to be included. At our courthouse, we have experimented with offering to enroll defendants charged with felonies into the current CDN. Defendants are asked if they would like to participate by the magistrate, our clerks, and the presiding judge. If they want to participate and provide a number, then the court inputs their information. Also, in superior criminal court, if a defendant fails to appear at calendar call, a clerk calls the person—if we can locate their number—and lets him or her know that an order for arrest will be issued if they do not report to court. Our data indicates that this has resulted in a nearly one-fourth (24.69%) reduction in orders of arrest for failures to appear. Sixty percent of the people called or attempted to be called by a clerk ultimately report to court and avoid an order for arrest. This results in less work for the court and law enforcement (no issuing of an OFA, no searching for the defendant, no booking the defendant into jail, no additional calendaring the case, etc.). It helps the defendant avoid being arrested for simply forgetting to come to court. It lowers our jail population, and it reduces delay in resolving the case. The improvised

extra duties needed to implement this program (magistrates collecting telephone numbers, various individuals offering to input the information into the system, and calling defendants) could be automated with an improved CDN system, and it could easily be expanded to high volume courts addressing misdemeanors and infractions.

Third, pre-pandemic, when our local district court held administrative traffic court, the line to get into the courthouse would often stretch down the sidewalk in front of the building and beyond. Years ago, the AOC implemented online services that permit individuals to request that the district attorney dismiss or reduce various traffic matters such as registration violations and speeding tickets. Until the pandemic, lawyers have not been able to access the same system used by unrepresented people—lawyers had to come to the courthouse to represent their clients. Even now, during a pandemic, it costs an additional 3.25% more to pay the expenses associated with an improper equipment reduction, which totals approximately \$6 more than appearing in person. As a result of the additional cost associated with online resolution, few lawyers are using it and are opting to come to the courthouse. The added cost also discourages some unrepresented people from using the system as well. One assistant district attorney told me that she has been told by unrepresented people that they tried to use the online system, but opted to come to the courthouse when they saw the difference in cost.

The use of online services would be increased by the state absorbing the fees associated with the transaction costs and make it at least even money to resolve minor traffic cases remotely. Also, an improved CDN could text a link to the online system to individuals whose charges qualify them to participate, or suggest they seek counsel if they have questions. The system could also be set up so that certain charges are dismissed, without a request from that person, when the individual has complied to correct the infraction, such as getting his or her car inspected. This would reduce overcrowding in our courthouse during a pandemic and in the future. It would reduce the need for future expansions of courthouses as we grow. It would be more convenient for the public and the court. And it would allow the court to use court time and other resources to address higher level matters that have a greater

impact on public safety.

Finally, our courts should embrace videoconferencing to improve efficiency, convenience, and safety while reducing expense. A personal appearance in court is the gold standard for how disputes are resolved. The enormous resources needed for jury trials and the resolution of contested factual issues are worth the expense, in my view. There are many instances, however, where remote hearings are entirely sufficient to address issues, and this can be done at a fraction of the cost of meeting and waiting at the courthouse. Examples of matters that can be addressed remotely without prejudice include the appointment of counsel, guilty pleas, and criminal and civil motions not involving live testimony. There is simply no good reason to transport an inmate across the state, from one confinement facility to another, so that a judge can talk to the person for a few minutes to appoint an attorney, and then transport the inmate back to the original facility. Yet, this is how it was done prior to the pandemic. And, unfortunately, during the pandemic, many inmates have been transferred between confinement facilities for this and other purposes that could have been addressed remotely.

The Cabarrus County Superior Court evolved from not doing remote hearings prior to the pandemic to nearly all criminal hearings (pleas, appointment of counsel, and bond motions) being conducted with at least one participant appearing remotely—inmates from prisons, jails, and hospitals; non-custodial inmates from their lawyer's office; and from their homes inside and outside of North Carolina. Victims have appeared from their homes inside and outside of North Carolina. And lawyers and prosecutors have appeared from their offices and various places outside of the courthouse. Our civil motions are following the same trajectory—no remote hearings prior to the pandemic to nearly all civil matters being heard remotely.

The move to videoconferencing hearings has been the most challenging in the criminal context—the hearings are shorter and there are more of them. Without a statewide system, we have had to forge partnerships, and coordinating events has been time consuming. Our court has sometimes been the first to work with some facilities to avoid the transport of inmates, which means the process from beginning to end must be

explained. As more courts begin to use remote hearings, the coordination problems will increase. I am working to develop and document standard practices for our district, but teleconferencing will need to be developed uniformly statewide to maximize its utility. Although standard teleconferencing software (WebEx, Microsoft Teams, etc.) coupled with any electronic device with a camera, microphone, and internet connection is sufficient for these transactions, a scheduling software needs to be developed to coordinate events, custodial facilities and courtrooms need to be upfitted, and software needs to be developed to better store the recordings of these events. These changes, along with continuous improvements in AI speech recognition, may result in modification of responsibilities of court reporters from taking down verbatim records to managing the technology that organizes the hearings and records of the verbal interactions in the courtroom.

Ultimately, the pandemic has caused enormous challenges for our courts, but it has also revealed a better path forward. We need to act now to implement technological advances that are long overdue to create a new court system to meet 21st century expectations, and that is durable enough to meet the challenges of pandemics and other natural disasters to come. There is no need to waste people's time sitting all day in a courtroom when cases can be resolved online or at a time-certain hearing at the courthouse. We should make it easier to remind people of their court dates—for their sake and for the sake of the people who work in law enforcement and the courts. We should save the expense and inconvenience of travel to the courthouse to be heard on a summary judgment motion. Inmates should not—at great expense and some risk—be driven across North Carolina to talk to a judge for a minute or two to be appointed a lawyer. The coronavirus has caused great suffering and sacrifice inside and outside of the court system. We should learn from these hard lessons and difficulties and become a stronger, more responsive, more considerate institution. What is the cost of not doing this? ■

*Martin B. (Marty) McGee is the senior resident superior court judge in Judicial District 19A (Cabarrus). He has previously served as a special superior court judge (2014) and a district court judge (2000-2014).*

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## COVID and the Military Legal Assistance Office (cont.)

lease. Further, in determining whether the SM can revoke a notice to quit under the SCRA, the US Supreme Court, for over half a century, has directed that the law be interpreted "...with an eye friendly to those who dropped their affairs to answer the nation's call." *LeMaistre v Leffers*, 333 US 1, 6 (1948).

In yet another landlord/tenant scenario, the homeowner wants to show the house to prospective buyers over the objection of tenants who don't want the increased risk of deadly disease arising from such visitation; thereby pitting the landlord's right to reasonable entry against the tenant's right to quiet enjoyment of the property. We decided, generally, that it was not reasonable to show property for sale if doing so required the violation of the governor's order. Beyond that basic standard, resolution is a question of reasonableness, considering such matters as the precautions the homeowner takes to avoid spreading the plague, whether tenants have any special susceptibility to pandemic, and ultimately, the likelihood of illness, a question even our top epidemiologists have yet to answer satisfactorily.

We also learned that there are some really odd leases out there, particularly with respect to residences at or around colleges and universities, some of which purport to provide a temporary residence for a fee, the essence of a residential lease, and yet claim not to be a lease at all, and therefore not subject to any landlord/tenant law.

Finally, thanks to myriad other emergent issues, we learned over and over the humbling lesson of what we don't know. ■

*Michael Archer is a retired Marine Corps Judge Advocate, currently serving as the civilian director of legal assistance for Marine Corps Installations East. He is the recipient of both the ABA and NC State Bar Distinguished Service Award for military legal assistance, and the author of numerous related articles, as well as the book, "Ripped Off, A Servicemember's Guide to Common Scams, Frauds, and Bad Deals."*

### Endnote

1. Since this article was written, S 3637 became law, providing service members with a right to terminate a lease based on the receipt of stop movement orders.

# Grandmother's Confederate Statue—That's a Big Suitcase to Unpack

BY LOUIS ALLEN

I don't know whether to start unpacking my personal suitcase from today and move backward, or from the birth of my great-grandfather, Joseph Henry Land in 1842, and come this way. Or, I could start in the middle, in 1914 when the statue of the Confederate soldier was dedicated in front of the Alamance County Courthouse in Graham, NC. I could start six years later, on August 25, 1920, when John Jeffries was lynched, having been kidnapped from deputies in the shadow of that statue. Or, I could start about 25 years ago, when my father was given an ancient newspaper that described the 1920 lynching, and which listed my grandfather as one of the lawyers who had been appointed to represent Mr. Jeffries on the charge of assaulting a young white girl.

## Grandparents and the Confederacy

My father's parents were the biggest influence of any relatives (besides my mother and father) on shaping much of my world view. They lived a block from my elementary school, and I saw them almost every day. My grandfather was a soft-spoken, small-town lawyer, with a modest, gentle wit. He rarely got the chance to talk at home. That was Grandmother's territory. She was a walking, talking opinion, and there was not much air for other points of view.

So, while I had this general, immature notion that my grandfather ("Papa") was sort of progressive, it was mostly because he had volumes about FDR on his shelf, and he liked to read and chuckle over books by



*Alamance County Courthouse/Photo by Warren LeMay*

Will Rogers. I was more aware that my father, Louis Carr Allen Jr., was liberal, by Southern standards, because he was a fairly blunt-spoken school board attorney. His major professional focus was trying to push the Burlington City Schools through desegregation, though back in the 60s I heard him casually drop the "N word" more than once. I heard it far more often from his mother. Even though she pronounced it "nigra," her estimation of the race could not have been clearer. Sadly, I spent more time in the presence of Grandmother than the other adults, so I got it from the time she put me on her knee and read *Uncle Remus* to me. I felt vaguely sick when she wouldn't let her yard "boy," Uncle Jim, come into her house, but as our family sat in the pew of the Methodist Church every Sunday, it was

a Christian paradox that I kind of just accepted as the way it was.

I might have lived with that incongruity long enough for it to become permanent, had not Harvey Enoch and Anne Thompson been transferred to my fifth grade class in 1964. They were the only two Black children going to a white school in Burlington that year. They were the first two Black children I had ever known.

I liked them immediately. They were smart, talented, and friendly. But mostly, courageous. I don't think I consciously processed it, but I ached for how alone they must have felt. My heart burned when I heard comments made by a few classmates behind their backs. It was so unfair and ugly. I think I would have described myself as a wimp at that age, so I wasn't about to stand

up for them. But neither would I join those who wanted to ostracize them. My confusion over race had just achieved another level of discomfort. My solution? Stop thinking about it so much.

Back to the grandparents. How could these two, who married in 1922, be so different? Turns out, Grandmother's path isn't too hard to understand. She was born in Henry County Virginia, near the NC line, in 1897. I don't think her immediate family had any slaves or any money to speak of, but they made up for it in pride. She could trace her family back to General Joseph Martin of Revolutionary War fame (Martinsville, Virginia). She claimed she had four uncles on her mother's side and four on her father's who fought for the Confederate Army in the Civil War. Her own father volunteered in 1861 when he was 18. He fought with Stonewall Jackson until Jackson was killed at Chancellorsville. He saw his brother Edward killed at the battle of Cedar Run. He fought in many major battles, including The Wilderness, Bunker Hill, and Gettysburg, before being captured at Spottsylvania in 1864. He finished the war as a prisoner in Elmira, NY. I'm told he walked back home to southern Virginia. He lived into his 80s and was staying with my grandparents when he suddenly dropped dead in 1925. Somewhere, I have a picture of him holding my infant father. I need to remember all this when I judge my grandmother's racism. I also need to reflect on how much of her need to judge others has filtered down into my subconscious habits.

Grandmother wore her Daughters of the American Revolution and United Daughters of the Confederacy pins proudly. It must have made her heart swell with pride when she moved to Alamance County to teach school and saw the recently erected statue of the Confederate soldier towering 30 feet high on Court Square and facing north, courtesy of the Graham Chapter of the Daughters of the Confederacy. I know she pointed it out to me many times during our Sunday afternoon drives around the county, when she educated me about the shortcomings of hundreds of Alamance County's finest. She always drove, and Papa sat silently beside her. I think she felt like the steering wheel was her "talking stick," and as long as she had it, she had the floor.

Now what made Papa different? Hard to say. He was born in 1892. I have the

impression that he was raised on a hard-scrabble farm in Person County, between Graham and Roxboro. I discovered, in my recent research, that his grandfather, Henry Allen, entered service to the Confederate Army in June of 1861. He was discharged nine months later as a result of wounds, from which he subsequently died. Yet Papa didn't seem to carry those Confederate bona fides as the same un-redressed grievance as his wife. I certainly never heard him speak a word of bitterness, or refer to the Lost Cause.

As a teenager, he was able to move in with a relative in Durham so he could go to high school and ultimately graduate from Trinity College (later to become Duke University). He read for the law (an alternative to going to law school at the time). I gather that he went to basic training during WWI and was preparing to ship off to fight the Kaiser when the war mercifully ended. So, thus relieved, he moved to Alamance County in 1919 to try to make a living as a lawyer.

### The Discovery

My father began practicing law with Papa in 1949. It was just the two of them in Burlington for many years before my father started to grow the firm in the 60s. Louis Jr. had ambition, and was bitterly disappointed when he lost the race for president of the North Carolina Young Democrats in the late 50s.

Papa continued to come to the office until the day before he died at the age of 86 in 1979. At one time or another, Papa had told my father the story about the 1920 lynching (which occurred five years before my father was born). But back then, my father tended to be more interested in growing the firm and desegregating the schools than understanding his family's history, and he didn't take too much note of it.

However, many years later, after my grandfather had died, a large old house on Lexington Avenue in Burlington was being torn down to make way for a new city hall. A history buff, George Anthony, went through the old house looking for items of interest before they destroyed it. There he found yellowed clippings of a news article from a publication called the *Burlington News*, dated August 27, 1920. The first of five stacked headlines read: "Negro Beast Attacks Defenseless White Child."

The events had taken place two days ear-

lier, on Wednesday, August 25. The breathless and inflammatory style of the headline carried through every line of the news reporting, through the lynching of John Jeffries that same day.

What caught George Anthony's eye was a couple of lines which read: "All arrangements were being made to have an immediate trial. W. H. Carroll and L. C. Allen were asked to represent the negro...."

So, it seems that Papa, a brand new lawyer in a brand new county had been tapped to defend a black man for "THE MOST HORRIBLE CRIME EVER COMMITTED IN COUNTY" in a trial to take place at 4 PM on the same afternoon.

George immediately took the crumbling clipping to my father's office, and my father read, for the first time, more details than he had ever heard about this tragedy, and he became fully engaged.

My father had his secretary, Doreen Burgess, retype the article so that it could be preserved before the paper disintegrated. By letter of March 11, 1991, my father sent a copy of the article to the editor of the Burlington newspaper, *The Times News*. He suggested that, as shameful as the episode was, it was an important piece of Alamance County history about which he suspected few people knew. He wrote, "Nevertheless it is my opinion that the history of this county is not complete if we only print things we can be proud of. In this world of violence and racism, we need to know that Alamance County is not all that far removed from it." My father did not get a response, which resulted in a grudge he carried the rest of his life.

He sent me a copy of his letter and the newspaper article. I was practicing law in Greensboro, where I continue to represent indigent defendants to this day. I should probably add that I have no doubt that I would not have had the professional opportunities I have enjoyed in my life but for white privilege. I didn't resist at the time, preferring not to think about it too hard. Now, I've thought about it hard, and I'm not sure what to do about it.

However, at the time, I tucked the article away in a file, where it sat for about 25 years. Recently, as the removal of Confederate statues has been in the news, I read in the *Greensboro News and Record* about protests surrounding the Confederate statue on Graham's Court Square, and I thought

maybe I should find that article and see if it would be published now. I only realized as I was writing this, that it is the centennial of that awful summer in Graham.

I found it, but then hesitated, thinking that I would need at least a copy of the original article, and not a re-typed version, which might not be deemed credible evidence. I contacted the *Times News* to see if they had it in their archives. It turns out the *Times News* didn't even come into being until several years after the event. The re-typed article I had came from a publication known as the *Burlington News*. I could find no trace of this publication in Burlington, or Elon University, or the Greensboro Public Library.

But what I did find not only verified the account my father had received, it also led me to discover a lot more about Alamance County in the hot summer of 1920.

I searched the archives of the *Greensboro News* at the Greensboro Public Library. I found the August 25, 1920, edition, and there it was, on the front page. Its headline shouted: "NEGRO WHO ATTEMPTS ASSAULT ON ALAMANCE COUNTY GIRL LYNCHED." Its reporting was far more restrained than the *Burlington News*, with less offensively racist language. But the essential elements were the same. It did, however, make an unexpected observation that the daylight attack might have been in reaction to "the other recent assault case..." Hmmm?

A wonderful research librarian at Elon University was unable to find archives of the *Burlington News*. But she did find another newspaper that was being published at that time, *The Alamance Gleaner*. The August 26, 1920, edition of the *Gleaner* carried the headline: "NEGRO PAYS PENALTY FOR BRUTAL LUST." Despite its lurid headline, its reportage was also more straightforward than *The Burlington News* story. Interestingly, it also contained a clue to something else. The judge commended the packed courtroom of spectators awaiting the late afternoon trial "for their orderly conduct under the trying and aggravating circumstances, and in the shadow of the unfortunate tragedy of a month before he desired they show a patriotic respect for the process of law."

So, what went on in Alamance County the month before? I had to run the microfilm backward to find out.

## "WHITE WOMAN OUTRAGED BY NEGRO FIEND"

That was the headline that blared across the front page of the *Alamance Gleaner* on July 22, 1920. What had erupted a month before in Graham, finished disabusing me of my childhood notion that Graham was a peaceful little town, much like Mayberry.

On Sunday, July 18, 1920, a housewife who lived near the boundary between Burlington and Graham, reported that she had been assaulted in her home "by a masked negro with a pistol." Hounds were brought in from Raleigh for the search. At the time, Raleigh would have been well over an hour away. It is not clear how the hounds performed, but the result was the arrest of not one, but three Black men, who were taken to the jail in Graham. The sheriff then began to investigate which, if any, of these men was the guilty party. The victim was unable to identify any of them, owing to poor lighting in her home and the facial covering of the assailant.

Crowds immediately formed in the streets around the jail. The sheriff was so concerned about the angry mob, he asked the governor for troops to protect the prisoners. A machine gun company was sent from Durham, arriving by truck, automobile, and train. Most of the day Monday was fairly peaceful. The sheriff had told the crowd that he could not deliver the prisoners to them if, for no other reason, at least two of them were not guilty of anything.

Then chaos erupted around 9 PM Monday night. There had been a heavy shower, and for unknown reasons, the lights went off at the jail. There was not a crowd of people around the jail at the time, though some soldiers reported seeing a group of masked men in a cornfield nearby. For whatever reason, the soldiers guarding the jail began shooting pistols and machine guns, seemingly from many positions and in many directions. Three Graham residents, who had gone toward the jail to see what was going on, were hit by gunfire. One Graham citizen, James Ray, died.

Now Graham was really in an uproar. Crowds again swarmed around the jail. The sheriff called the governor again for help. Troops were sent by train that night, and were able to whisk the three prisoners back to Raleigh on the same train.

The inquest could not find evidence of any shots being fired toward the jail, only

those fired by the machine gun company.

There being no evidence to prosecute any of the three arrested Black men, they were ultimately, and quietly, released from custody in Raleigh. None of the men of the machine gun company were charged in the death of Mr. Ray.

The town of Graham was outraged, and was a ticking time bomb a month later when John Jeffries got off the train from Greensboro at Elon College.

## A Bad Day

On August 25, 1920, at around 8 or 9 AM, John Jeffries, 18, got off a freight train at the Elon College station and began walking east. The three newspaper accounts vary significantly in details, but all have Jeffries encountering a six-to-eight-year-old girl in a field. He was either invited to go with her into the woods, he walked with her into the woods, or he carried her forcibly into the woods. He either raped her, otherwise assaulted her, or was scared off by her screams. (Of course, this assumes that any of the reporting was accurate and that her story was true).

In astounding time, given communications a century ago, a posse was formed to track Mr. Jeffries. He was captured near the railroad tracks several miles away, near Graham, and was in the Alamance jail by noon. Superior court was in session and had not broken for lunch. Court was stopped. Judge Allen (no relation to my family) was informed of the situation, and a grand jury had returned an indictment before 1 PM. As I mentioned before, my newly-licensed grandfather and another attorney were appointed to represent Mr. Jeffries at trial to begin at 4 PM that afternoon.

Given my modern-day experience with the pace of the justice system, I can hardly comprehend how quickly things happened without the benefit of computers and cell phones. Unfortunately, to achieve justice, speed is not always a good thing.

Yet, by mid-afternoon, one estimate had 1,000 people crammed in the courtroom, awaiting the trial.

I have no idea how much time my grandfather had to meet and talk to Mr. Jeffries—or if he met him at all. I have no idea how he planned to defend him for his life with only moments to prepare. I have no idea if my grandfather would have been some version of Atticus Finch in the courtroom, or if he

would have been run over by a freight train of frontier justice. I wish I had known about this story when he was alive, because I had many years when I could have asked him about it. There is so much I want to know.

What I do know is that Wednesday afternoon at least six lawmen, including the sheriff, were escorting Mr. Jeffries the 180 yards from the jail to the courthouse for the trial.

During that short journey, several cars pulled up, and somewhere between eight and 25 (so much for accurate eyewitness testimony) men jumped out. "Officers were dashed about like they were children.... The officers were overpowered in the twinkling of an eye. The negro was thrown in the front automobile, and a dozen men climbed in on top of him, and [at] a terrific speed headed for the Bellemont road, followed by one or two other machines. The second machines followed at a slower pace, zig-zagging along, to act as trailers to keep back any pursuers."

"The courtroom was crowded with a thousand men, waiting to hear the trial. Someone yelled out, 'They have got the negro and gone.' Bedlam broke loose. Everybody tried to get down the steps at once, and those who could not get down the steps were hanging out the windows. Within ten minutes hundreds of automobiles filled with curious folk were racing toward the place where the machines had gone."

"The place selected for the execution was the first woods on the Bellemont road, about two miles from Graham. It must have taken just three minutes for the machine carrying the negro to get to that place. The men did not take time to use a rope that was in the front machine, but evidently threw the negro out and began shooting him full of bullets. Within 20 minutes a thousand people had rushed to the scene in automobiles and had viewed the body. All the afternoon people drove out to see the terrible sight, many ladies going out to see the wretch that had sacrificed his life by his inhuman act."

"It is not strange that none of the officers recognized any of the men, even if they had known them, because they were on top of them and all over them before they could raise a hand, but there were a number of reputable men nearby and not a single man recognized one of the members of the mob. It is natural that even if one of these men had recognized any one of the crowd that they would hesitate to tell, but we know that they absolutely did not recognize a single man."

## 2021 Meeting Schedule

Below are the 2021 dates of the quarterly State Bar Council meetings.

January 12-15	NC State Bar Headquarters, Raleigh
April 13-16	NC State Bar Headquarters, Raleigh
July 13-16	Renaissance Hotel, Asheville
October 5-8	NC State Bar Headquarters, Raleigh
<i>(Election of officers on October 7, 2021, at 11:45 am)</i>	

One of the deputies said that, "Those men did not come from around about here, they were foreigners and giants."

And then there was a closing paragraph, which expressed the community feeling about the actions from a month before.

"It is the general opinion, openly expressed, that this action was taken because of the decision of the investigating commission appointed by Governor Bickett, which commission absolutely refused to believe any evidence submitted by the people of the county, but believed and accepted the story of the men of the machine gun company. Another thing, the act of the governor in pardoning so many criminals has stirred our people to such an extent that there was a determination that this criminal that had confessed his crime, should be punished and that there should be no possibility of legal technicalities endangering a conviction and execution."

The local press seemed intent to justify the reaction of the community. The notion that a mob of out-of-towners had formed in an instant to see that Alamance County got the justice it deserved is patently absurd. The concluding paragraph implicitly admits that it was community justice and payback for the insult felt by the citizens at the injustice they felt from a month before. One paper observed that Mr. Jeffries was kidnapped on almost the same spot that James Ray was shot by the soldier guarding the jail a month before.

Certainly, the Confederate soldier saw it all. And he has remained silent about it to this day.

### Now That I Have Unpacked, Do I Have to Repack?

I have shared some of my particularly

unique experiences on race. I have many thousand more which are probably not unique to anyone who pays attention.

I miss the days of youth when I could compartmentalize and forgive the racism of my grandmother and other relatives and friends because I knew them and loved them. I could even deny my own racism.

But I am a fully grown man now, and I can't compartmentalize all that I have learned and seen. I should have learned that slavery and the treatment of indigent people was America's original sin in elementary school. Learning about Jim Crow should have been middle school material. Becoming conscious of intentional disadvantaging in housing and ghettoizing through highway development continued into my adulthood. Now, I am watching our lawmakers defund programs to help these young people. Instead of investing in education, mental health treatment, and job opportunities, we are spending billions of dollars on prisons and prosecutions.

And now, to pretend that efforts to inhibit voting do not spring from a sense of racial supremacy is like pretending we didn't recognize those men who lynched John Jeffries.

But, if I were to say instead, "don't mess with my grandmother's favorite statue"—that would mean I haven't learned a thing. ■

*Louis Allen III has been an attorney in Guilford County for 40 years, primarily representing indigent clients in criminal matters. His father and grandfather practiced law together in Alamance County. Louis Sr. started there in 1919, the year before the incident described here. Louis Jr practiced until 1995.*

# Looking Back: Remarks at the State Bar Presidential Installation

BY WADE SMITH

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*The following remarks were made during the State Bar's Annual Dinner celebrating the installation of State Bar President C. Colon Willoughby Jr. on October 24, 2019.*

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Chief Justice Beasley, distinguished guests, my fellow lawyers, it is my honor to be with you tonight and to offer words of congratulations to one of my most treasured friends. We could never have found a better person to lead us than Colon Willoughby. I extend my most heartfelt good wishes to Colon, to his wife, Trisha, and to his family.

My history with Colon is rich and filled with what I call the lore of the law. That is what my oldest and greatest mentor, Supreme Court Justice Carlisle Higgins, called the law itself, the courts, the clients, the cases, but especially the lifelong friendships we make among our fellow lawyers. Judge Higgins would say that the greatest reason to be a lawyer is the opportunity it provides us to know and appreciate—and even love—the other members of our profession. There is nothing like it in any other profession. Lawyers are the smartest and the most honest, and by far the most interesting, people who come our way. They are the best companions for a picnic, or concert, or any other gathering. Judge Higgins died at age the age of 92 in 1980. He has been gone now for almost 40 years. Yet, I think of him every day. He was surrounded by remarkable friendships. He loved his fellow lawyers. He was the best storyteller I ever encountered, and he told me many stories.

I will never forget his story about his first day on the North Carolina Supreme Court. He was appointed to the Court by Governor Umstead in 1954. He had been one of the



chief prosecutors of the Japanese war trials. He was a seasoned veteran lawyer, but he did not know the customs of the Court on his first day. The first day's work involved oral arguments in a bloody murder case from over in the mountains. An axe murder. When the arguments were over, the Court adjourned to conference to discuss the case. Judge Higgins assumed that, since he was the newest justice, he would be called upon last to give his views. He could piggyback. But, to his shock, the chief justice called upon him first. He said that for the first time in his life, he was wordless. He could not think of a single thing to say. The only thing he could come up with was, "I'm just as

sorry as I can be that the whole thing happened." He went on to become a treasured justice on our Court.

In his late 80s, he no longer had any real interest in bathing. His wife, Miss Myrtle, told me this. One morning she said to him, "Carlisle, I want you to take a shower, and when you finish I am going to feel the towels to see if they are wet from drying off." She heard the water running and assumed he was taking a shower; however, when the sound was at an end, she went in and felt the towels. They were dry. She said, "Carlisle, you did not take a shower. If you took a shower, how did you dry off? The towels are dry." And he said, "Woman, I shook off like a dog."

It was his relationship with his fellow lawyers that brings him to me so warmly tonight after 40 years. Such a friendship is mine with Colon.

Yet, my friendship with Colon grew up in the midst of the most robust and intense advocacy imaginable. I think it is a good example of how, as advocates, we can and should be totally devoted to our cases, and yet, we can and must have respect for our opponents. And as in this case, we can be seriously good friends.

The truth is though, that Colon never gave me the sweat from his armpit in any case I had with him. But in truth I never gave him the sweat from mine.

I am thinking tonight of the many times I made the journey over to the courthouse to Colon's office to discuss my case with him, my district attorney. I wanted a good outcome for my client. I was hoping for, as some would say, a blessing. I would be thinking, "What is my plan for today?" I need to create a good mood. I'll begin with sports. "So, Colon, what did you think of the game Saturday? Wasn't that a remarkable fourth quarter?" Bill Dowdy, a wonderful man indeed, would be there. He was Colon's investigator. Without any response about the game, there would be a pause and Colon would say, "What is on your mind today? What do you want to talk about?"

This would be a discouraging way to begin our discussion. But, I think I need bring it down a little more to a local kind of idea. "Colon, did you go to the fair? How about that world champion pumpkin? And did you try the fried turnips?"

There would be a pause as Colon opened the day's mail. Mind you, he was not being rude. He is a very busy man. Bill Dowdy would say, "Wade, what do you think your guy was thinking?"

This is even more discouraging, and I'd say, "Sure has been hot, hasn't it?" And Bill said, "Wade, I just don't think we can help you in this situation."

And so would always go our meetings. And so, in our story, it is on to trial. So we go to trial. Colon looks much larger in the courtroom than when you see him on the street. He seems to be much larger there. And for some reason in my memory, Judge Don Stephens is always up on the bench. He is kind and very jurisprudential, but he also never gave me the sweat from either of his armpits.

I am remembering a specific case now.

The name of the case is lost forever in the mists of time. My brother Roger and I were representing the defendant. And Colon was representing the state. Judge Stephens was up on the bench, God was in his heaven, and all was right with the world.

In a quiet moment, Roger and I had worked out an agreement with Colon. He would forgo some mean things he could bring out on direct if we would forgo some mean things we could have brought out on cross. These things really had no bearing on the trial.

For some reason, Colon thought we were not being faithful to the agreement. Out of the corner of my right eye, I saw something I had not seen before in a courtroom: Colon's chair was on fast ball bearing rollers, and he was coming across the courtroom while seated in his chair. He rolled right up to my right ear and whispered to me in clear words, not appropriate for public discussion, that if I persisted he would take the witness back on redirect and reveal the things we dreaded.

Judge Stephens was on the bench about eight feet away, and I saw his look of pure delight and amusement.

Colon's courtroom chair was a remarkable machine and it seemed to have a 3 horsepower Rotax marine engine attached to it.

Colon was remarkably effective as a courtroom lawyer in all phases of his cases; however, I never had a more honest, forthright, respectful opponent. Colon never took cheap shots. He never stooped to conquer any witness. He was a terrific trial lawyer, one of the best I have ever seen. He was always beautifully prepared.

These were great days and high times. And like a dream, they slipped away.

I like the story of the turtle that was attacked and robbed by three snails. The sheriff came to investigate, and he asked the turtle, "What happened?" The turtle said, "I just don't know. It all happened so fast."

Lately I have been immersed in the idea of time. What is it? Is there a giant cosmic clock ticking somewhere so that time passes in a measured way for all creation? Or is it different for each creature?

The mayflies down in Saint Clair's Creek in Beaufort County have all died in the summer heat. Their eggs are laying down on the bottom of the creek to rise up next summer. They only live for one day. That is all. They hatch in the morning, mate on the fly, and die in the evening. But we know that they

think they live a long time. Around 4 in the afternoon, of their one day, they are probably considering retirement and thinking about getting some advice.

Up in the constellation Orion there is the nebula shaped like a horsehead. It is turning at huge speed, but we don't see it move. It always looks the same. That is because our lives are so short, we can't see any change in its position. We don't live long enough.

Recently I read that if we could enter a spaceship and move at 183,000 miles per second, it would take 150,000 years to cross our galaxy.

We are like the mayflies. Yet we know there is so much out there to do. As the old saying goes, the fields are white unto harvest. But there are 25,000 lawyers in North Carolina. We are an army. We are on every little hill and in every little dell, village, and town. We are in little dilapidated offices and in shining towers. We hold hands with grieving people. We sit on the town councils and head up the fundraising for the hospitals. We are the judges of small and big courts. We are on the school boards and deacons on boards. North Carolina could not survive a single day without us. We coach the little league teams and sing in the choirs.

We see poverty in the world. We see poor people who cannot afford lawyers, but who need them. Somehow we must reach them and serve them. Our prisons are overflowing. What must we do?

Truth, as an idea, and as a lifetime pursuit, seems to be running away. But it is more important than it has ever been.

So, Colon, let us recommit ourselves to truth. And let us never cease our commitment to racial and gender equality.

Colon, we like your humility, your common sense, your belief in fair play. We like it that you are always what you seem to be. You don't put on airs.

Tonight, we remember what Tennyson said in the great poem *Ulysses*. "Come my friends. 'Tis not too late to seek a newer world. Push off and sitting well in order smite the sounding furrows."

So roll on, Colon, like the great rivers of North Carolina—the Nantahala, the Yadkin, the Cape Fear. Roll on the even greater days and higher times. It is good to be in the same lifetime with you. ■

*Wade Smith is a lawyer at Tharrington Smith in Raleigh.*

# NC Faith and Justice Alliance: Connecting Local and Faith Communities to Legal Resources

BY JULIAN H. WRIGHT

More than 1.5 million North Carolinians live in poverty. According to the Federal Reserve, four in ten Americans lack sufficient savings to cover an unexpected \$400 expense without adding to their debt. People in poverty



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also have at least their share of legal challenges. In a given year, 71% of low-income households experience at least one civil legal problem like a custody dispute, denial of government benefits, driver's license revocation, or a landlord and tenant dispute. Unfortunately, 86% of those civil legal needs will go unmet.

North Carolina's legal profession has a robust history of trying to meet the critical civil legal needs of those unable to afford an attorney. Legal aid attorneys work tirelessly to represent as many clients in crisis as possible, constrained by overwhelming need and insufficient resources. In our state, there are more than 8,000 people eligible for legal services for each legal aid attorney. Staggering

on its own, this ratio is even more unsettling when compared to the state at large: There is one attorney per 357 people in North Carolina.

Private attorneys providing *pro bono* legal services bridge some of the access to justice gap caused by inadequate support of our state's legal aid providers. North Carolina Rule of Professional Conduct 6.1 outlines

the profession's commitment to *pro bono* legal service as a way to address the needs of those with limited means. Rule 6.1 encourages every NC-licensed attorney to provide 50 hours of *pro bono* legal services each year. More than 520 attorneys were recognized for providing at least this many *pro bono* hours in 2019, joining the year's cohort of the North Carolina Pro Bono Honor Society.

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Further, the North Carolina Judicial Branch and the Equal Access to Justice Commission also work to improve the experiences of those who have to enter the court system without the assistance of an attorney. They do so through technological innovation and implementation of various policy changes. For example, the launch of eCourts Guide & File in late August supports self-represented litigants in common areas of law. This free online service uses web-based interviews to help *pro se* litigants prepare court documents to file in 14 areas of law.

Despite these and other laudable efforts, civil legal needs are still widespread, pervasive, and too often unmet among people living in poverty in North Carolina. Too frequently, low-income people face the consequences of civil legal needs without knowing that the law offers protection or remedy for them. They do so without knowing that legal resources might exist, or how to find those legal resources in their communities. Instead, as people have done for centuries, many low income North Carolinians will turn for guidance and instruction to their places of worship and their faith leaders. Particularly in

rural North Carolina, faith communities frequently serve as anchor institutions in a local area, providing emergency financial assistance, food, and other sustenance along with worship, fellowship, and direction. Given that the 40 counties with the highest rates of poverty in North Carolina are rural—meaning that they have population densities of less than 300 people per square mile—these faith communities can prove crucial in connecting many North Carolinians in need to existing legal resources. These faith communities also can inform the state's larger legal community about the legal needs and consequences prevalent at the local level throughout North Carolina.

Recognizing the essential role that local faith leaders can play in addressing unmet legal needs, Chief Justice Cheri Beasley recently launched the North Carolina Faith and Justice Alliance, a new program of the Equal Access to Justice Commission. Inspired by an established model in Tennessee, Chief Justice Beasley charged the group with building a coalition of faith-based groups and legal practitioners to help meet the growing need for legal assistance for

North Carolinians who lack the resources to access our courts and protect their legal rights. According to Chief Justice Beasley, "Solving the access to justice gap is our moral obligation and an obligation of the faith community. Faith and justice must walk hand in hand to serve our communities. Working together we can ensure that all people have access to justice."

The alliance began its work with a convening of a statewide, inter-faith steering committee, co-chaired by Dean Jonathan L. Walton, dean of the Wake Forest University School of Divinity, and me, Julian H. Wright Jr., an attorney with Robinson, Bradshaw & Hinson. The group heard from Justice Cornelia Clark of the Tennessee Supreme Court about four strategies the Tennessee Faith and Justice Alliance employs to meet legal needs: training faith leaders to identify legal issues and resources, referring clients to *pro bono* attorneys locally, hosting free legal advice clinics, and providing information to communities on common legal issues.

Given the shift to remote activities

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# A Holistic Approach to Hiring

BY KAYLA BRITT

I flunked out of law school in 2014. Now, in 2020, I'm a licensed attorney and a law clerk to the Honorable Reuben F. Young on the North Carolina Court of Appeals. The story of how I got to where I am today is significant and life-changing.

We are more than our setbacks. Those of us who have faced a perceived "failure," including those who have been academically dismissed or had to sit for the bar exam more than once, should stand just as much of a chance as those who have not. "Qualifications" are extremely important, but seeing a person as more than a resume is important, too.

North Carolina Central University School of Law gave me not one but two chances to achieve my dreams. During my 1L year, I did the required reading and prepared to respond to cold calls, but I did not study effectively for exams. I worked hard but not smart, and I was ultimately dismissed. When I was readmitted to law school in 2016, I was so focused on my grades that I did not build my resume by becoming involved in student organizations or other extracurricular activities. When it was time to apply for post-graduation jobs, I was just an average candidate, but that did not stop Judge Reuben E. Young from giving me the opportunity of a lifetime. In one hiring decision, he changed the whole trajectory of my career.

We have all heard the long list of successful people who failed the bar—Michelle Obama, Kamala Harris, Franklin Roosevelt, John F. Kennedy, Benjamin Cardozo, just to name a few. Many of us even used these individuals as encouragement while we studied for the bar. Their stories show us that "failure" does not deem one incapable of success. Imagine where they might be if they had been refused opportunities because of their per-



ceived failures. Academic dismissals from law school are not talked about as frequently, but we are capable of success, too. Here are testimonials from anonymous members of state bars in various states, including North Carolina, who have experienced "failure" and are now living success stories:

"I was academically dismissed from law school after my first year. Afterwards, I obtained my MBA and was then readmitted to law school. My first-year failure propelled me into a more academically mature person, which led to my passing the bar exam on the first try and securing an incredible job in the highly

coveted field of higher education law. I truly don't believe that I would be here if it weren't for my failures...they made me a better student, and now a great member of the profession."

"I was academically dismissed from law school. Returning to law school was the best thing that happened to me. It gave me a chance to rebuild what I wanted. On the second attempt, I held an executive position on the law review and passed the bar on my first attempt. I am now a telecommunications attorney for a federal government agency."

"My perceived 'failure' was not passing the bar the first time. When you sit for the bar a

second time, you level up mentally, physically, and emotionally. I am now licensed to practice law in North Carolina and New Jersey, and I work for a full-service law firm. The bar does not define the type of attorney you will be or the level of success you will achieve as an attorney.”

These attorneys are the epitome of dedication and hard work—all have owned their perceived failures and made great strides to overcome and prosper. But when it comes to a job interview, each of them may have had to explain why they had a gap in time between starting law school and graduation, or between graduation and becoming licensed. It is the responsibility of the candidate to present themselves in the best light, but it is the responsibility of the employer to look beyond perceived failures and to see the resilience demonstrated as a result of those perceived failures.

One of the most common questions I hear from law students and attorneys seeking new positions is, “How do I set my resume and application apart from other applicants?” On paper we may seem average, but in reality we may have just the type of resilience your department or firm needs. We are the employees who will not give up when the going gets tough. We are the employees who are so grateful for the opportunity that we will pour ourselves into providing the highest quality work product.

A distinguished but anonymous legal employer stated, “While a lawyer’s academic success is important, one’s life journey, successes, and challenges are most predictable of professional success. There is no substitute for hard work and persistence.” These words lay the foundation for new beginnings in the legal field.

I urge those who make hiring decisions to see setbacks and comebacks, if they are presented to you, as assets rather than liabilities. I encourage employers to provide opportunities to those who would not otherwise receive them. Look beyond the paper, the rank, the positions, and take a deeper look into what individuals have to offer. I will continue to advocate for those who have refused to give up, those who keep fighting despite obstacles, those who are so worthy of life-changing legal careers. ■

*Kayla Britt is a judicial law clerk for the Honorable Judge Reuben Young of the North Carolina Court of Appeals.*



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## Upcoming Appointments to Commissions and Boards

**Lawyer Assistance Program Board (LAP)** (two appointments; three-year term)—There are two appointments to be made. The rules governing the LAP require three members of the board to be State Bar councilors; three members to be mental health/substance abuse or addiction professionals; and three members to be LAP volunteers. A clinician member and a councilor member are both eligible for reappointment.

The purpose of the lawyer assistance program is to: (1) protect the public by assisting lawyers and judges who are professionally impaired by reason of substance abuse, addiction, or debilitating mental condition; (2) assist impaired lawyers and judges in recovery; and (3) educate lawyers and judges concerning the causes of and remedies for such impairment.

**Board of Law Examiners** (one appointment; three-year term)—There is

one appointment to be made. The appointee will complete the remainder of the term of Judge W. Erwin Spainhour who died in September 2020. All 11 members of the Board of Law Examiners must be members of the State Bar who are not State Bar councilors or law professors.

The Board of Law Examiners is responsible for establishing, administering, and enforcing the requirements for admission to the North Carolina State Bar.

**Client Security Fund Board of Trustees** (one appointment; five-year term)—There is one appointment to be made. The rules governing the Client Security Fund require that at least four of the five members of the board must be lawyers. There is currently one public member on the board.

The Client Security Fund was established by the North Carolina Supreme Court in 1984 to reimburse clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina.

# Grievance Committee and DHC Actions

*NOTE: More than 30,500 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/dhcorders](http://ncbar.gov/dhcorders).*

## Disbarments

**Joseph H. Forbes** of Elizabeth City willfully failed to account for and pay over to the

IRS payroll taxes required to be withheld from the paychecks of his law firm employees. Forbes surrendered his law license and was disbarred by the DHC.

## Suspensions & Stayed Suspensions

**Craig M. Blitzer** of Reidsville was the elected district attorney of Rockingham County. Blitzer pled guilty in Wake County Superior Court to misdemeanor willful failure to discharge duties. In August 2017, the chair of the DHC entered an order of interim suspension of his law license. While serving as the district attorney, Blitzer benefitted from his wife's state employment knowing that she did not perform any meaningful work for the benefit of the state; personally took, and asked staff to take, online academic classes for his wife on state time; and failed to provide discovery in criminal cases. The DHC suspended his license for four years. He will receive credit toward satisfaction of the suspension for the time his license was subject to interim suspension.

**Charles L. Morgan Jr.** of Charlotte violated numerous rules of trust account management and was held in contempt of court for violating a preliminary injunction prohibiting him from handling entrusted funds. The DHC suspended his license for three years. After serving six months of the active suspension, Morgan will be eligible to apply for a stay of the balance upon demonstrating his compliance with enumerated conditions.

## Completed Motions to Show Cause

In September 2019 the DHC suspended **Brooke McKinley Webster** of Winston-Salem for two years after his conviction of the crimes of secret peeping and trespassing. The suspension was stayed for two years. After a hearing, the DHC concluded that Webster did not comply with the conditions of the stay, lifted the stay, and activated the two-year suspension.

In April 2020 the DHC suspended **David C. Hefferon** of Charlotte for one year after finding that Hefferon had inappropriate con-

tact of a sexual nature with his client, provided financial assistance to his client, and engaged in a representation that was materially limited by his own interest. The suspension was stayed for two years on enumerated conditions. The DHC entered a consent order finding that Hefferon did not comply with a condition of the stay and modified the order of discipline. Hefferon is now suspended for two years, stayed for two years.

## Censures

Winston-Salem attorney **Herman L. Stephens** was censured by the Grievance Committee. Stephens neglected his client's case and did not communicate with his client about her case. He did not respond timely to the Grievance Committee. The Grievance Committee found as an aggravating factor that Stephens had prior discipline for neglect, failure to communicate with clients, and failure to respond or timely respond to the Grievance Committee.

**John Way** of Morehead City knowingly prepared and recorded a deed containing the false representation that the grantees took title "free and clear of all encumbrances," thereby engaging in conduct involving misrepresentation and conduct prejudicial to the administration of justice. He was censured by the DHC.

## Reprimands

**R. Steve Monks** of Raleigh neglected one client and did not communicate with her about her immigration case. Monks neglected a second client's immigration case and entered into a settlement of his liability to that client without first advising the client in writing to consult independent counsel and without giving him a reasonable opportunity to consult independent counsel. Monks was reprimanded by the Grievance Committee. The committee found as mitigating factors that he self-reported his misconduct relating to the second client and

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# Planning for 2020 and Beyond

Each year the IOLTA Board convenes for an annual planning meeting in August. At least part of the agenda prioritizes discussion of long-term planning, including strategies for grantmaking, expansion of revenue, and engagement within the community on access to justice issues. For many years, this planning meeting has allowed the board and staff to work jointly to identify opportunities for improvement and growth.

In 2019, part of this planning meeting was dedicated to devising a strategy for use of increased revenue. In the second half of this article, more detail is shared about the impacts of this discussion in 2019. However, on the heels of the best year of IOLTA revenue in the organization's history, where interest income topped \$5.2 million, IOLTA prepared for decreased revenue in 2020 as a result of slowing economic growth and predicted interest rate cuts. And the pandemic arguably accelerated movement on this predicted path.

Gerry Singsen, a national leader in the legal services field who has worked with and advised countless legal aid programs and access to justice efforts, wrote an article several years ago for the newsletter of the ABA Commission on IOLTA called "Don't Forget Your Umbrella."<sup>1</sup> Gerry calls on individual legal aid programs, statewide planners, and legal aid funders to prepare for uncertainty in funding of all types.

"It's a little like the weather. We can't know the future, but we can make predictions and protect ourselves in many circumstances," Gerry adds, "[f]acing such uncertainty, legal aid programs and their funders need to strengthen their planning and decision making in order to lead our institutions to stable operations and to maintain high quality advocacy. IOLTA Boards and staff are every bit as responsible for this leadership as the board members and executive directors of grantee programs."

In the coming months, NC IOLTA will embark on a strategic planning effort to more formally name the vision, priorities,

and strategies for the coming years, including how we prepare in the face of uncertainty. As we plan for the next six months, two years from now, or five years down the road, IOLTA will continue to share our work and progress with the legal community, without whom the program's undertaking would not be possible.

## 2020 Strategic Support Grants

At the 2019 planning meeting, the board committed to a number of strategies to utilize increased funds including: (1) a significant contribution of \$1.25 million to the grantmaking reserve, (2) an increase in regular grants to civil legal aid and administration of justice efforts, and (3) offering a new one time funding opportunity targeted to maximizing organizational effectiveness and efficiency through "strategic support" of infrastructure, training, planning, and sustainability efforts.

This new funding opportunity allowed IOLTA to use increased funding to bolster often overlooked and underfunded needs of grantee organizations on a one-time basis. On December 4, 2019, the NC IOLTA Board of Trustees approved awarding Strategic Support Grants totaling \$883,647 to 13 organizations.

## Funds Promoted Transition to Remote Work

While the transition to remote work was not projected at the time grants were awarded, grantee organizations were able to utilize Strategic Support Grants for technology upgrades to support this transition. Eight out of the 13 grantees were awarded funds for technology including new laptop computers, updated phone systems, and enhancements to case and donor management software programs.

A few quotes from recent grantee reports demonstrate the impact of Strategic Support Grants in making this transition to remote work:

- "As a result of COVID-19, staff has

## IOLTA Update

- New members and leadership were appointed to the IOLTA Board at the July 2020 State Bar Council meeting. Judge John S. Arrowood of Charlotte and John J. Keane of Mooresville were each appointed to serve a three-year term, beginning September 1, 2020. Anita Brown-Graham of Chapel Hill was reappointed to serve a second three-year term. Maria Misse of Ahsokie was appointed as chair of the IOLTA Board and Jane V. Harper was appointed as vice-chair.

- Revenue received by NC IOLTA in the third quarter remains well below 2019 figures. Interest income earned on IOLTA accounts between January and August of 2020 totaled \$2.78 million, a 17% decrease compared to the same period in 2019.

- NC IOLTA is continuing to communicate with all eligible financial institutions that are seeking to adjust the rate and policies on their IOLTA product as a result of economic conditions. 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).

- NC IOLTA continues to administer state funding on behalf of the NC State Bar under the Domestic Violence Victim Assistance Act. 2019-2020 funding totaled \$903,002, a decrease over 2018-2019 due to diminished filing activity in April, May, and June.

- Applications for 2021 grants were due on October 1, 2020. Grant awards will be made in early December.

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# Kimberly Bullock Gatling, Board Certified Specialist in Trademark Law

BY SHEILA SAUCIER, CERTIFICATION COORDINATOR, BOARD OF LEGAL SPECIALIZATION

I recently had an opportunity to talk with Kimberly Bullock Gatling, a board certified specialist in trademark law. Kim began her education as an electrical engineering major at North Carolina A&T State University, and continued on to George Washington University Law School where she earned her law degree. Following law school, Kim worked for Rhodes and Mason for 18 months before joining the firm of Smith Moore Leatherwood in 2001. In 2008, Kim became the first African American to make partner in the nearly 100-year history of Smith Moore Leatherwood's Greensboro office. Smith Moore Leatherwood combined with Fox Rothschild in November 2018. She currently serves as a partner at Fox Rothschild where she manages a portfolio of patents and trademarks. Kim took on an additional role in June 2020 when she became Fox Rothschild's first chief diversity and inclusion officer. In this role, she works to develop and implement programs and policies that support the firm's goals of increasing and promoting a diverse workforce and an inclusive environment at all levels.

Kim contributes to her community through her long-standing volunteer commitments. She chairs the board of the United Way of Greater Greensboro and works to ensure that each program and initiative makes a positive impact on the community. She is also vice-chair of the Cone Health Foundation, which invests in the development and support of activities, programs, and organizations that measurably improve the health of people in the greater Greensboro area. Additionally, Kim is on the Board of Trustees for North Carolina A&T State University and has held leadership positions with Habitat for Humanity, the

American Cancer Society, Jack and Jill of America, Inc., and The Links, Incorporated, among other organizations.

## Q: Tell us about yourself?

I am a native of Hampton, Virginia, and came to North Carolina to attend my beloved alma mater, North Carolina A&T State University, where I earned a bachelor's degree in electrical engineering. I went on to George Washington University Law School, where I earned my law degree, and immediately returned to Greensboro to start

my legal career over 20 years ago. My practice consists of managing global patent and trademark portfolios, intellectual property litigation, and drafting and negotiating technology licenses. My husband and I are the proud parents of three sons, and I am actively involved in the community, including with the United Way of Greater Greensboro, the Cone Health Foundation, and the North Carolina AT&T Board of Trustees.

## Q: What led you to become a lawyer?

Growing up, I always wanted to be like my father, who was an aerospace engineer at NASA. So I went to college and majored in engineering like he did. In my junior year, while I was attending a graduate school fair, a perfect stranger asked me a question that changed my trajectory—"Have you ever thought about being a patent attorney, which combines engineering and law?" I had never heard of patent law. He gave me the phone number of his daughter, a practicing patent attorney, and she told me about her work in the field. I decided that same day to build on my degree in engineering and go into law.

## Q: Why did you pursue becoming a board certified specialist in trademark law?

I promised myself that I would never

take another test after the bar exam and the US Patent registration exam. Nonetheless, when the opportunity arose to become a specialist, I couldn't resist, despite knowing it would require another exam. I viewed it as an opportunity to distinguish myself from other attorneys who dabble in trademark work, and to establish credibility with clients.

## Q: How has certification been helpful to your career?

I certainly believe the certification has helped my business development efforts. For example, I believe that clients are intrigued when they Google attorneys and discover that there are certified specialists in a field such as intellectual property law, and I am among that group. It is also a great talking point when discussing my experience and level of skill.

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

I would advise other attorneys not to be discouraged by the exam requirement. If an attorney meets the other requirements for specialization, which include dedicating a significant portion of their practice to that area of law, they already have the knowledge and skills needed to pass the exam and earn the certification.

## Q: What aspect of the daily job of being a lawyer interests you the most?

I love getting to know my clients' businesses and understanding their business strategies. It helps me to be a better counselor because I'm able to assess the issue that needs to be resolved or the intellectual property that needs to be protected, in context. That allows me to present custom legal options that advance the client's unique interests.

## Q: Tell us about your work as Fox Rothschild's chief diversity and inclusion officer?

In this critical role I am charged with



Bullock Gatling

strategic oversight of the firm's diversity and inclusion initiatives, working closely with the firm's Executive Committee, Diversity and Inclusion Committee, affinity groups, and our marketing, recruiting, professional development, and human resources departments. My task is to ensure that all of our programs and policies support a fully inclusive workplace and contribute to creating a firm culture in which it is understood that celebrating our differences enables us to better serve our clients, provides opportunities for new business, and strengthens the richness of our firm.

**Q: What is the best advice you've ever given/received?**

My advice, particularly to young attorneys, is to take risks while you can. There

will be a time in your life when there will be external factors that limit your ability to do so.

**Q: What is your immediate next goal in life?**

My next professional goal is to launch my firm's comprehensive diversity, equity, and inclusion strategy. We are already hard at work on developing it. I look forward to not only launching it, but also helping to drive implementation. My next personal goal is to carve out more time for myself for exercise, rest, and fun. ■

*For more information on board certification for lawyers, visit us online at [nclawspecialists.gov](http://nclawspecialists.gov). The application period for 2021 will open in March.*

## IOLTA Update (cont.)

been working remotely...[our organization] was able to leverage the grant from IOLTA to obtain additional funds to provide every staff member—full-time and part-time—a new Dell laptop.”

- “While we were able to transition to working from home with our old phone system, the system was clunky for staff to use, particularly front line staff who answer and transfer many calls a day. The new Voice over IP (VoIP) system has an array of features that will improve our efficiency and effectiveness, including: softphone, texting from [our] direct number, electronic faxing, direct employee support, and cell phone application access to the platform. In practice, this means that we are able to track call volume and determine how to distribute staffing resources. We anticipated an increase in calls for our services, and have been able to track the increases using this new system.”

- “...it would not be an understatement to say that the grant from IOLTA made keeping the [organization] operational during the pandemic possible...In addition, employee productiveness and morale has been greatly increased now that we have a better work environment and increased case management and

security...The investment the IOLTA grant made was not only in equipment... it literally was in the continuation of [our] work.”

- “We could not conduct intake of new cases or keep track of our litigation activities efficiently or effectively without this much appreciated upgrade to the new system.”

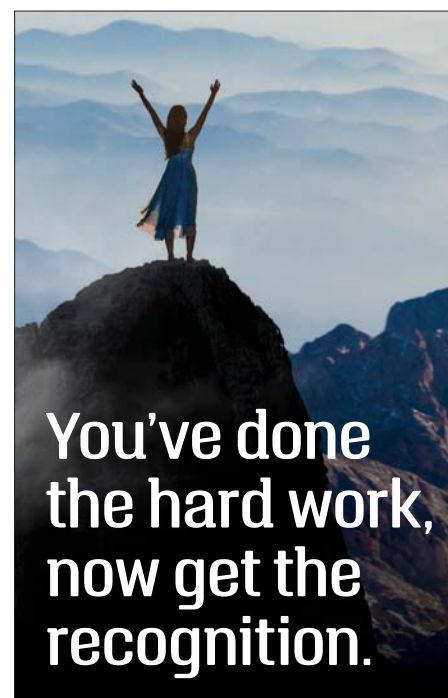
### Additional Supported Activities

In addition to technology improvements, Strategic Support Grants also funded other activities grantees are pursuing throughout this year. Other funded projects included: marketing to expand reach of community education materials and opportunities; strategic planning; leadership and management training; equity, diversity, and inclusion training and work; website development and upgrades; communications planning; fundraising planning; development of a statewide legal needs assessment; and improvements to physical office space.

NC IOLTA looks forward to sharing more about the impact of Strategic Support Grants in the coming year. ■

### Endnote

1. Singen, G. (2013, Winter). *Don't Forget Your Umbrella*, Dialogue, Vol. 16 (No. 3). Retrieved from [bit.ly/2Fw37OY](http://bit.ly/2Fw37OY).



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# Validation

BY ROBYNN MORAITES

Something interesting happened when the world screeched to a halt and the courts closed in mid-March. The lawyers the Lawyer Assistance Program (LAP) works with as volunteers and clients did not respond as everyone predicted lawyers would.<sup>1</sup> Were there—and are there still—fears of financial insecurity due to the decrease in new legal matters, reductions in salary, or the volatility of the stock market? Of course. Has there been intense frustration for lawyers who are homeschooling and trying to get some work done at the same time? Absolutely. Has there been a heightened sense of fear and anxiety around the virus? Certainly. Has there been terrifying dread when immediate or extended family members contracted the virus? Yes. And sadly, there has been grief in the loss of family and friends due to the virus. But another feeling arose in many of our volunteers and clients, one that had them scratching their heads. For many of our LAP participants, inexplicably, this feeling seemed to eclipse most everything else. The feeling was one of immense relief.

We spend a fair amount of time educating the bar about the effects of stress, including the fight or flight response. In a great video by Nat Geo entitled *Stress: Portrait of a Killer* (available on YouTube [youtu.be/eYG0ZuTv5rs](https://youtu.be/eYG0ZuTv5rs)), the opening scene shows a lion chasing a zebra. It also shows a man holding a briefcase waiting to get on the subway. The narrator explains that for the zebra, the fight or flight response is over in about three minutes. Either the zebra has gotten away or it's over for the zebra. The narrator goes on to explain that the man on the subway is experiencing this heightened sense of fight or flight as well. But what is supposed to be a short-term, acute survival response is experienced by many of us as a chronic day-in-and-day-out condition.

We often do not recognize in the

moment that we are in “reactive mode,” a hyper-adrenalized heightened state of stress, fear, or anger. It is only when the stimulus is removed that the highly reactive feeling dissipates. Only then can we recognize what was happening, because we have been restored to homeostasis, or a normal, responsive state. Hindsight is 20/20. But what happens if the stimulus is never removed? What if the feelings never have an opportunity to dissipate?

Tim Fall, a superior court judge in Northern California, documents in his short memoir, *Running for Judge*, his immediate fight or flight reaction to the phone call that alerted him he would have opposition in his reelection bid, and the emotional toll it took on his life and relationships during the campaign. Even though judges in California are first appointed and then reelected, it is unusual for them to have an opponent in a reelection year. He wrote the book specifically to document his “mental illness” and reduce the stigma associated with these conditions in the legal profession. One might question his use of the words “mental illness” to describe a totally normal fight or flight response to a threat. Personally, I would not put his reaction in the category of mental illness. Nevertheless, he does a great job of documenting how he experiences this prolonged fight or flight response in his emotional state and bodily response. It's not a cliffhanger, so this technically doesn't qualify as a spoiler alert. The moment he is reelected, he gets the first good night's sleep since the fateful phone call that started the ball rolling. His symptoms magically vanish into thin air. Poof. Gone. He feels immense relief. He finally feels normal again, like his old self.

That's essentially what happened to LAP participants. It was only when courts closed, and the day-to-day work demands vanished overnight, that many of our participants finally felt the deep relief they had been



seeking for years. This recognition of the curious feeling of relief permeated LAP support group meeting discussions across the state.

I think for many LAP participants, there was not only relief from the chronic fight-or-flight reactive state, but also relief in finally understanding and really getting that there is nothing fundamentally wrong with them. It really was the job—or their totally normal reaction to it. Nobody could have predicted that a worldwide pandemic would be the catalyst for this realization and validation. Many LAP participants felt “normal,” like their old selves, for the first time in years, despite all the additional COVID-19 pressures. And whatever COVID-19 pressures they were feeling, these were the same pressures being experienced by everybody else.

We often say, and we have published in our law school brochure, “You are having a normal reaction to an abnormal situation.” Law practice creates a super abnormal situation, right from the forced-curve get-go. With its winner-take-all adversarial nature, its unrelenting demands, and the inherently competitive people who are attracted to the profession, the practice creates a pronounced and prolonged abnormal work situation. It was only when the abnormal situation was suddenly, completely removed that LAP

participants went back to a baseline emotional state that, for many, pre-dated law school. We now have LAP participants who are seriously considering leaving the practice of law—or at least the version of practice that they are practicing today. They are realizing they have greater agency to choose circumstances that affect the way they feel and their attendant day-to-day quality of life.

Unfortunately, the prolonged stress, having to fight to accomplish everything (big and small), repeated exposure to other people's trauma, with no real break in the cycle, all can create PTSD-like symptoms in many lawyers. One need not be a personal trauma survivor to "catch" and display the hyper-adrenalized reactivity found in the neurological dysregulation cycle of actual trauma survivors. When we are in this hyper-adrenalized, PTSD-like reactive state, we are largely unconscious of it. It takes a lot of mindfulness and personal awareness to come back to ourselves. Hard exercise breaks the PTSD-symptom cycle because it releases the adrenaline and cortisol that has built up in our bodies. Sometimes, we just need a different job.

We don't necessarily need to leave the practice of law altogether. I'm a big fan of what I affectionately call, "bushwhacking your way into a law practice that works for you." I want to give a quick shout-out to friends from law school who have done this. If high stakes litigation or family law is your thing, that's awesome. Seriously. I have had some lawyers ask, like a form of survivor's guilt, if something is wrong with them because they are happy practicing law. There is nothing wrong with you for liking what you do and succeeding at it. I knew immediately that litigation was not a good fit for me. One case was all it took, with both the facts and the law on our side! I finally ended up in a transactional and regulatory practice in both in-house and small-firm settings. I excelled. It was interesting, intellectually challenging, and complex work. I was happy, as were my clients. It was a good fit for my relationship-driven personality and business acumen. Had I remained in litigation, no amount of therapy or medication would have eased my hyper-adrenalized, paranoid, anxiety-ridden, sleepless state.

LAP often interfaces with lawyers who have entered the discipline and grievance process. Some become LAP clients, but some

do not. A lawyer who did not work with us at the time recently emailed me. I have included this with his permission.

I shared with [a therapist I know] my personal search for a mental health diagnosis that fits the criteria for what I had experienced during that time in my life [when a grievance was filed against the lawyer]. The self-diagnosis was Prolonged Stress Disorder. The symptoms mirror PTSD, but instead of there being one major event causing the disorder, there is persistent stress over time. I did not research any further once I was satisfied that I had not just become a bad person. I realized I was always a good person, just one with clouded judgment from prolonged stress. And I had a lot of circumstances going on that demanded better judgment than I was able to exercise at that time in my life. So, I have a special appreciation for LAP, because you all see everyone as I was able to ultimately see myself.

It can be daunting to really admit to ourselves that we are in this chronic fight or flight state. First, it might be difficult to recognize because we have been living with it for so long. Also, admitting it means we probably have to do something about it. LAP has supported lawyers through the years as they have navigated this terrain. Whether it is transitioning to a new or different job in the law or learning and practicing mindfulness and meditation tools, the path is as unique as each person with whom we work. ■

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

*The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. For more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.*

#### Endnote

1. This article represents observations only about trends we noticed with established LAP participants, not the bar at large or new clients who just began working with our program during the COVID-19 lockdown.

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## Disciplinary Department (cont.)

withdrew the impermissible release after he received the State Bar's letter of notice.

**Paris Branch-Ramadan** of Louisburg was reprimanded by the Grievance Committee. Branch-Ramadan was aware that a client she previously represented was contending on appeal that she rendered ineffective assistance of counsel. Approximately eight months after her client's guilty plea, Branch-Ramadan destroyed portions of the client's file in violation of N.C. Gen. Stat. § 15A-1415(f) and Rules of Professional Conduct 1.15-2(a) and 1.15-3(g). In post-conviction proceedings, Branch-Ramadan certified that she "made available for pick up each and every piece of discovery provided to me..." testified that she did not recall receiving letters from post-conviction counsel requesting the client's file, and testified that she did not inventory what she produced. Numerous items were missing from the discovery she produced in response to a court order. She also did not produce other documents from the client's file. In its order denying the client's MAR, the court found Branch-Ramadan's testimony concerning the loss or destruction of the file "at times incomplete and evasive."

**James R. Levinson** of Benson was reprimanded by the Grievance Committee. In the course of representing two clients in a bankruptcy case, Levinson did not maintain the original signed version of all electronically-filed documents; did not disclose all compensation he received for the bankruptcy case; filed conflicting documentation regarding his compensation; improperly collected additional legal fees from his clients while the bankruptcy case was pending and while the automatic stay was in effect; did not communicate to his clients the multiple reasons why they were not obligated to pay the additional legal fees he collected from them; made material omissions in documents filed with the court; did not promptly disclose to the court his receipt of funds for one client; did not promptly turn over to the bankruptcy trustee funds he received for one client and did not deposit those funds into a trust account; did not promptly inform his client that he had received funds for the client; and engaged in the representation involving a concurrent conflict of interest. ■

# Resilient Parenting While Lawyering at Home: Three Tips for Improved Work-Home Balance

BY LAURA MAHR

Once upon a time, lawyer-parents dropped their children off at schools and daycares in the morning, went to the office for the day to concentrate on work, then picked their kids up at the end of the day and headed home. Months now into the pandemic, those times may seem more like a fairy tale than current reality. With the radical shift in home and work routines over the past year, attorneys' parenting and professional skills are being tested like never before. Challenged over the past months to set and hold boundaries between work and home, my individual coaching clients with children are asking for tools to help them navigate the new challenges of parenting while lawyering at home. In particular, they are asking for tips on how to be present and effective in both worlds, and how to maintain their own balance while their work-life world is upside down.

The pandemic has also pushed firms nationally to expand the kinds of well-being offerings they provide for lawyers and staff. As home spaces have transformed into work spaces, and the boundaries between the two have blurred more dramatically than ever before, firms are recognizing that they need to provide training to educate their workforce on how to cope. Firms are seeking trainings that provide practical tips and parenting tools to help attorneys and support staff quickly grow the skills needed to work well and parent well while working at home.

In this article, I share three ways that lawyer-parents (or other caregivers for children) can better manage their dual roles, and grow more resilient children and families during challenging times. As always, I use a neurobiological approach to under-

standing and cultivating resilience, with appreciation for my training in Polyvagal Theory<sup>1</sup> which provides an excellent framework for understanding our—and our children's—response to staying regulated during challenging times.

## Acknowledging and Naming What Is:

The first key to resilient parenting is acknowledging the challenges you are facing by naming “what is.” It may be difficult for us lawyers, who want to feel like we have it all together, to admit that we are struggling right now. Most parents I hear from have been running at full speed to keep up with the shifts in school schedules and childcare since February. Few have taken the time to pause for a moment and acknowledge how new, different, and challenging it is to parent during these times. The practice of pausing, acknowledging, and naming what is going on—even if it is a challenge and not a success—can help. Taking a moment to name “what is” helps your nervous system to catch up, integrate, and metabolize the changes in your family's daily routine. Identifying and integrating “what is” can help you feel more present in your work and home life. When you are present, your nervous system settles down, finds a moment of calm, and allows the problem solving regions of the brain to come back online so that you can better address the challenges of the day.

Connecting with other parents to name



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“what is” has been helpful for numerous participants in the parenting webinars I have been conducting at firms during the pandemic. Participants have shared that they thought they were alone with their struggles. For many lawyers, it is difficult to admit that we don't have “this working from home and parenting thing” figured out, and that we are challenged. It is helpful for parents to know that they aren't the only ones who are getting frustrated and losing their cool when the demands of work and home occur simultaneously.

A constant pull on your attention and constant switching of roles to address the competing needs of work and home often creates anxiousness. Many lawyer-parents are expressing that they feel like they should be doing one thing while they are doing another—feeling like they are never doing the right thing, or never doing anything right. For example, one parent shared, “It seems that every time I get my child set up for an hour with school and I start to focus on work, my child interrupts, needing something. I get frustrated and feel torn. It's

impossible to keep focused on the work matter, and yet I feel resentful that I have to attend to my child's needs when I want to concentrate. This makes me feel guilty—like I'm a bad parent and a bad lawyer."

Another parent, having heard this comment from a colleague during the webinar shared, "It was so helpful to know that I am not the only one feeling this cycle of frustration, resentment, and guilt. Hearing what my team member shared was a 'break-through moment.' It encouraged me to admit that I'm not doing ok and that I need to reach out for help to better navigate my life right now."

Naming "what is" can be simple: Make a list of your top challenges with balancing work and home right now, using one column for work challenges, and another for parenting challenges. Read your list aloud, slowly and mindfully, or share it with an understanding friend or family member. Exhale five long and slow breaths after you read or share your challenges to help your nervous system relax. Move to problem solving the challenges only once you have taken a few moments to mindfully breathe and reflect on "what is."

**Managing Our Expectations:** Another key to resilient parenting is managing our expectations for ourselves during challenging times. While most lawyers are astute about helping clients manage their expectations about legal matters, we often forget to manage our expectations for ourselves. We like to do things well, and have high expectations for ourselves, both personally and professionally. When we feel like we are underperforming at work or home or both—as many parents are worrying they are these days—our nervous systems may respond by feeling anxious or like giving up. When feelings of anxiety or collapse arise, it is our nervous system's way of communicating that we are experiencing more stress than we can handle in the moment. When that happens, we may act in ways that we later regret. For example, if we feel anxious because we are torn about where to focus our attention, we may snap at our child, or be short with a colleague or client. Or, if we feel so overwhelmed that we feel like giving up, we may procrastinate on a work task, or withdraw from our families or colleagues in an effort to cope.

To lower stress, we may need to "lower our standards" for ourselves, even if it is just

for the time being. While "lowering our standards" as lawyers or as parents may feel unfamiliar and uncomfortable, it's helpful to keep things in perspective. It is likely that over the long haul you will be able to "improve your game," and that now is an ok time to hold steady and get done what needs to get done as best as you can.

One tip that is helping parents dial back perfectionism is incorporating a catch phrase that helps them to reframe their expectations. For example, the phrase "good enough is good enough" may be a helpful thing to say to mobilize you when you feel procrastination. An attorney told me that after trying this phrase at home with her kids, it became her family's motto, and allowed them to laugh when things didn't go as well as planned. If your child or children are old enough, ask them to come up with phrases that your family can use as code words for "we are trying as best as we can given the circumstances, even when things go wrong."

**Savoring:** A final key practice to growing resilience is taking time to savor the things that are going well in life. While there are undoubtedly many challenges to working at home while parenting, attorneys share with me that there are also many aspects that are new and wonderful. For example, parents have more time with their children because they spend less time commuting; families enjoy regular meals together and have time together during the day to play outdoors. In addition, parents are able to tune into their children's growth and education in ways they previously missed because they were absent. Savoring these moments builds our resilience because it wires our brain for what's going well instead of what's going wrong. Savoring is a particularly important practice for attorneys, as we spend most of our work time focusing on what went wrong—or could go wrong—in order to mitigate loss for our clients.

For most lawyers, used to responding to urgent requests and moving quickly and agilely from one mental task to another, savoring is a helpful practice to grow our mindfulness skills. It is also a way to slow down and be present with our children's growth, so we don't feel like we missed their childhood because we were stuck in our heads or immersed in our to-do list while they were growing up. Savoring is an excellent practice to begin cultivating now so

that it becomes a habit you can enjoy when you return to work.

Savoring is a simple practice: When something is going well, pause and enjoy it with all of your five senses. For example, when you observe your child growing in a new way, take a moment to get present with what you're experiencing. Take in the moment fully; note what you see, hear, smell, feel, and even taste as you take in the moment. To magnify your savoring experience, you may wish to express to your child the growth you are observing, and how meaningful it is to you. For example, you may say, "I see you doing this new thing, and that makes me smile. Last week you couldn't do this, and now you can—look how you're learning and growing!" Later, you may want to share the moment with your spouse or co-parent or someone else who loves your child so you can savor it together.

In the coming weeks, take some time and try these things at home. You may wish to share this article with your attorney-parent colleagues or your spouse or partner so you can do them or discuss them together. A little bit at a time each day is a helpful way to rewire your—and your children's—nervous system. Good luck and feel free to share your success! ■

*Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing mindfulness based well-being 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 neuroscience, and a passion for resilience. If you would like to bring Laura to your in-person or virtual event to conduct a well-being CLE or do one-on-one resilience coaching with Laura, contact her at [consciouslegalminds.com](http://consciouslegalminds.com).*

*If you'd like to learn more about stress reduction and improved cognitive functioning using mindfulness, check out: "Mindfulness for Lawyers: Building Resilience to Stress Using Mindfulness, Meditation, and Neuroscience" (online, on demand mental health CLE approved by the NC State Bar for CLE), [consciouslegalminds.com/register](http://consciouslegalminds.com/register).*

## Endnote

1. For more information on Polyvagal Theory, see the work of Dr. Stephen Porges and Deb Dana.

# Things to Do During COVID Quarantine:

*Finally donate your “skinny” jeans, clean out your junk drawer(s), and review the Rules of Professional Conduct.*

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

Assuming you have already completed the first two tasks, it's time to reacquaint yourself with The Rules of Professional Conduct. Sure, you are familiar with a handful of the rules, but did you know there are actually 58 of them? That's more than the number of states in the country—of which I can name about 15. Complete digression here, but if you have not seen the *Friends* episode where Ross struggles to name all 50 states, please add that to your “to do” list right after reviewing the Rules of Professional Conduct. Two of my favorite Joey Tribbiani quotes come from this episode:

**First:**

Joey: (sits down next to Ross and looks at his list of states)

“First of all, Utah? Dude, you can't just make stuff up!”

**Second—unrelated to the state naming game:**

Joey: “All right, Rach, the big question is, does he like you? All right? Because if he doesn't like you, this is all a moo-point.”

Rachel: “Huh. A moo-point?”

Joey: “Yeah, it's like a cow's opinion. It just doesn't matter. It's moo.”

Okay refocus. The Rules are broken down into eight sections based on a lawyer's specific professional responsibilities in different scenarios: Counselor, Advocate, Transactions with Persons Other Than Clients, Law Firms and Associations, Public Service, Information About Legal Services, and Maintaining the Integrity of the Profession

Prior to these eight rule sections, however, are two very important prefaces to the rules. The first is the Preamble. Read it, contemplate it, aspire to live it. The preamble sets out an overview of a lawyer's professional responsibilities. Paragraph one of the preamble notes that a lawyer as a member of the legal profession is (1) a representative of clients,

(2) an officer of the legal system, and (3) a public citizen having special responsibility for the quality of justice. Paragraph eight profoundly provides:

The legal profession is a group of people united in a learned calling for the public good. At their best, lawyers assure the availability of legal services to all, regardless of ability to pay, and as leaders of their communities, states, and nation, lawyers use their education and experience to improve society. It is the basic responsibility of each lawyer to provide community service, community leadership, and public interest legal services without fee, or at a substantially reduced fee, in such areas as poverty law, civil rights, public rights law, charitable organization representation, and the administration of justice.

Following the preamble is the terminology section. This is an extremely underutilized source of information in the Rules of Professional Conduct. Many of the questions I receive can be answered by looking at the term definitions provided in this section. Of particular interest lately is the definition of “signed writing.” Rule 1.0(o) provides that “writing” denotes:

[A] tangible or electronic record of a communication or representation, and any data embedded therein (commonly referred to as metadata), including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

This section also provides definitions of terms crucial to interpreting the Rules of Pro-

fessional Conduct such as “informed consent,” “reasonable belief,” “screened,” and “tribunal.”

## Client-Lawyer Relationship

The first true “rule” section of the Rules of Professional Conduct deals with the client-lawyer relationship. Not surprisingly, this is the largest section in the Rules. This section is chock full of rules that lawyers love to discuss, debate, and dissect with ethics counsel. There are 19 rules and subparts in this section, including very detailed trust account rules. In addition to the trust account rules, this section includes numerous rules on conflicts of interest, fees, confidentiality, terminating representations, dealing with clients with diminished capacity, and, of course, sexual relations with clients (not to be confused with engaging in intimate relationships with opposing counsel, which is specifically addressed in 2019 FEO 3). Some lesser known rules in the section include the rules on organizations as a client (Rule 1.13) and on the sale of a law practice (Rule 1.17).

## Counselor

The shortest section in the Rules is the second section entitled “Counselor.” Included in this section are the rules on lawyers serving as advisors and third-party neutrals. This section also includes Rule 2.3, which applies to lawyers providing evaluations for use by a third person. I have never actually been asked a question relating to this specific rule, and evidently neither has the Ethics Committee because there are no ethics opinions interpreting the rule. It seems the rule often comes into play when there is a need for financial audits, tax opinions, or securities opinions. Therefore, unless you practice in one of these areas of law, this rule may be a moo-point.

## Advocate

Moving on. Section three of the Rules of Professional Conduct discusses the more familiar role of the lawyer as “Advocate.” Some of the greatest hits in this section include Candor to the Tribunal (Rule 3.3), Fairness to Opposing Party and Counsel (Rule 3.4), Impartiality and Decorum of the Tribunal (Rule 3.5), Lawyer as Witness (Rule 3.7), and Special Responsibilities of a Prosecutor (Rule 3.8). In 2017, Rule 3.8 was amended to include 3.8(g):

(g) When a prosecutor knows of new, credible evidence or information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall:

- (1) if the conviction was obtained in the prosecutor’s jurisdiction, promptly disclose that evidence or information to (i) the defendant or defendant’s counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction; or
- (2) if the conviction was obtained in another jurisdiction, promptly disclose that evidence or information to the prosecutor’s office in the jurisdiction of the conviction or to (i) the defendant or defendant’s counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction of conviction.

Rule 3.8(g) is definitely worth reviewing. This section also includes Rule 3.2 (Expediting Litigation), which provides that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 3.2 has become increasingly relevant during the COVID pandemic as lawyers (and judges) attempt to balance the need for litigation expediency with the necessity to comply with CDC guidelines.

## Transactions with Persons Other Than Clients

Section four of the Rules pertains to lawyers’ transactions with persons other than clients. This is another short section with the most notable rules being the two pertaining to communicating with represented (Rule 4.2) and unrepresented individuals (Rule 4.3). These two rules received a lot of atten-

tion recently by the Ethics Committee and North Carolina lawyers during the drafting and ultimate adoption of 2018 FEO 5 (Accessing Social Network Presence of Represented or Unrepresented Persons). For an in-depth discussion on Rule 4.2, take a look at this article in the Fall 2011 edition of the *Journal*: “You Can’t Touch This—A Look at the Anti-Contact Rule.”

Section four also contains the often-misunderstood rule regarding a lawyer’s duties when the lawyer receives inadvertently disclosed information. Rule 4.4(b) provides that a lawyer who receives a writing relating to the representation of the lawyer’s client and knows or reasonably should know that the writing was inadvertently sent “shall promptly notify the sender.” That is the only duty set out in Rule 4.4(b). Comment [3] to Rule 4.4 explains that “[w]hether the lawyer who receives the writing is required to take additional steps, such as returning the writing, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a writing has been waived.” Comment [4] to Rule 4.4 further provides:

Some lawyers may choose to return a writing or delete electronically stored information unread, for example, when the lawyer learns before receiving the writing that it was inadvertently sent. Whether the lawyer is required to do so is a matter of law. When return of the writing is not required by law, the decision voluntarily to return such a writing or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. *See* Rules 1.2 and 1.4.

## Law Firms and Associations

Section five of the Rules pertains to Law Firms and Associations. Included in this section are rules addressing the responsibilities of supervisory and subordinate lawyers as to each other and the responsibilities of lawyers as to nonlawyer employees (Rules 5.1 through 5.3). These rules are particularly ripe for review as law practices adjust to the times in which we live, including transitioning to remote work. In sum, it’s a lawyer’s responsibility to make sure the conduct of those she supervises comports with the lawyer’s own professional responsibility obligations. Now is the time to update (or finally write down!) your office policies on important issues like handling confidential information outside of the office and minimum cybersecurity re-

quirements. Talk with your peers, consult a professional—just take the time necessary to not merely complete the task, but to do it well. As Joey said, “Dude, you can’t just make stuff up!”

This section also contains rules addressing the unauthorized practice of law (Rule 5.5), restrictions on the right to practice (Rule 5.6), responsibilities regarding law-related services (Rule 5.7), and professional independence of lawyers (Rule 5.4). Based in part on the changing landscape of online marketing of legal services, the provision on fee sharing in Rule 5.4 was amended in 2019. Rule 5.4(a)(6) now provides that a lawyer “may pay a portion of a legal fee to a credit card processor, group advertising provider, or online marketing platform if the amount paid is for payment processing or for administrative or marketing services, and there is no interference with the lawyer’s independent professional judgment or with the client-lawyer relationship.” Comment [2] to Rule 5.4 provides:

A determination under paragraph (a)(6) of this rule as to whether an advertising provider or online marketing platform (jointly “platform”) will interfere with the independent professional judgment of a lawyer requires consideration of a number of factors. These factors include, but are not limited to, the following: (a) the percentage of the fee or the amount the platform charges the lawyer; (b) the percentage of the fee or the amount that the lawyer receives from clients obtained through the platform; (c) representations made to prospective clients and to clients by the platform; (d) whether the platform communicates directly with clients and to what degree; and (e) the nature of the relationship between the lawyer and the platform. A relationship wherein the platform, rather than the lawyer, is in charge of communications with a client indicates interference with the lawyer’s professional judgment. The lawyer should have unfettered discretion as to whether to accept clients from the platform, the nature and extent of the legal services the lawyer provides to clients obtained through the platform, and whether to participate or continue participating in the platform. The lawyer may not permit the platform to direct or control the lawyer’s legal services and may not assist the platform to engage in the practice of

law, in violation of Rule 5.5(a).

There is a lot of talk nationally surrounding Rule 5.4's prohibition on fee-sharing with nonlawyers, particularly in the western part of the country where states like Utah and Arizona have recently eliminated the prohibition all together. The State Bar Council is currently studying developments in other jurisdictions, and they certainly make for an interesting read if you are so inclined.

## Public Service

Section six of the rules is entitled "Public Service." This is an extremely important section of the Rules of Professional Conduct, but one that does not get enough attention. Rule 6.1 (Voluntary Pro Bono Publico Service) provides that every lawyer has a professional responsibility to provide legal services to those unable to pay and that lawyers "should aspire to render at least (50) hours of *pro bono publico* legal services per year." Rule 6.1 reiterates the sentiment set out in the preamble that it is the basic responsibility of each lawyer to provide public interest legal services without fee, or at a substantially reduced fee, "in such areas as poverty law, civil rights, public rights law, charitable organization representation, and the administration of justice." Comment [5] to Rule 6.1 notes that constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing certain *pro bono* services. These limitations are also discussed in 2014 FEO 3. These lawyers are encouraged to participate in activities aimed at improving the law, the legal system, or the legal profession. Rule 6.1(b)(2).

To facilitate lawyers' participation in *pro bono publico* legal services, the rules as to conflicts of interest are "relaxed" in certain scenarios involving these services. For example, Rule 6.3 encourages lawyers to serve as directors, officers, or members of a legal services organization, apart from the law firm in which the lawyer practices. The rule provides that a lawyer may participate in such legal services organizations even if the organization serves persons having interests adverse to a client of the lawyer. Similarly, Rule 6.4 states that a lawyer may serve as a director, officer, or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. In addition, Rule 6.5, which

pertains to limited legal services programs, provides that a lawyer who "under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter: (1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and (2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

## Information About Legal Services

Most lawyers are familiar with section seven of the Rules of Professional Conduct. Section seven contains all of the advertising rules. **Because the advertising rules are currently undergoing comprehensive revision, you might want to hold off on a review of this section. Stay tuned for more to come on these rules.**

## Maintaining the Integrity of the Profession

And last, but definitely not least, section eight of the Rules of Professional Conduct deals with maintaining the integrity of the profession. Section eight contains some of the "heavy-hitting" rules, including the prohibition on a lawyer committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer (Rule 8.4(b)), the prohibition on conduct that is dishonest, fraudulent, deceitful, or constitutes a misrepresentation (Rule 8.4(c)), and the oft-described "catch-all" provision prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice (Rule 8.4(d)). Section eight also reaffirms the opinion set out in the preamble that self-regulation of the legal profession is necessary to "maintain the legal profession's independence from government domination." Rule 8.3 (Reporting Professional Misconduct) specifically supports the statement in paragraph 16 of the preamble that provides that every lawyer is responsible for observance of the Rules of Professional Conduct and for "securing their observance by other lawyers." For a detailed discussion of a lawyer's reporting duties under Rule 8.3, take a look at the Summer 2014 State Bar Journal article "I'm Telling Mom! Reporting Profes-

sional Misconduct."

Importantly, section eight also contains a rule similar to Rule 3.8(g). While Rule 3.8(g) is limited to prosecutors, Rule 8.6 discusses *all lawyers'* disclosure duties when the lawyer knows of credible evidence or information that creates a reasonable likelihood that a defendant did not commit the offense for which the defendant was convicted.

I haven't specifically addressed each and every rule of professional conduct in this article. There are a lot of rules and a whole heck of a lot of comments to the rules. We all have a professional responsibility to be familiar with these rules and comments. If you have made it to the end of this article, you're off to a really good start. The next thing I would suggest is that you read the table of contents to the Rules of Professional Conduct. In the 2019 and 2020 *Handbook*, the table of contents is on page "Rules of Prof'l Conduct 9-1." When you come across a rule with which you are not familiar (and you will), make a note to read that rule and the comments. Before you know it, you will be as familiar with the Rules of Professional Conduct as Joey Tribbiani is with the states—he was able to name 56 of them. ■

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## New President (cont.)

favorite place to be is home. I really love the Snow Camp community and am grateful that we have a large pond, a garden, acres of woods, horses, four-wheelers, and the world's greatest neighbors. We also have a small home at Badin Lake and enjoy spending time there with family and friends.

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

There is a quote that defines how I want to lead and how I would like to be remembered as a leader. "Leadership is not a position or a title, it is action and example." I also love this quote from Socrates - "The secret of change is to focus all of your energy, not on fighting the old, but on building the new." ■

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# Committee Publishes Five New Opinions, Including Opinions on *Ex Parte* Communications and Confidential Nature of Public Information

## Council Actions

At its meeting on October 23, 2020, the State Bar Council adopted the ethics opinions summarized below:

### 2020 Formal Ethics Opinion 3

#### *Solo Practitioner as Witness/Litigant*

Opinion rules that a solo practitioner/owner of a PLLC is not prohibited from representing the PLLC and testifying in a dispute with a former client.

### 2020 Formal Ethics Opinion 4

#### *Investment in Litigation Financing*

Opinion rules that a lawyer may not invest in a fund that provides litigation financing if the lawyer's practice accepts clients who obtain litigation financing.

## Ethics Committee Actions

The Ethics Committee considered a total of 12 ethics inquiries, including the two opinions adopted by the council referenced above. Five inquiries were sent or returned to subcommittee for further study, including inquiries addressing a lawyer's professional responsibility when asked by a client to take possession of evidence constituting contraband, a lawyer's duty to recognize and avoid counterfeit check scams, and a lawyer's professional responsibility in utilizing machine learning/artificial intelligence in a law practice. The committee also reconsidered Proposed 2020 Formal Ethics Opinion 2 after receiving an adverse comment to the previously published opinion; the committee amended the opinion and voted to republish the opinion for comment, found below. Lastly, the committee approved the publication of proposed opinions for the remaining four inquiries, which appear below.

### Proposed 2019 Formal Ethics Opinion 4

## Communications with Judicial Officials

October 22, 2020

*Proposed opinion discusses the permissibility of various types of communications between lawyers and judges.*

*In connection with the adoption by the council of the opinion below on \_\_\_\_\_, the following prior ethics opinions were withdrawn: RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17.*

Lawyers communicate with judges on a daily basis. Communicating with members of the judiciary is required for the effective representation of clients and the administration of justice. These communications range from formal pleadings and arguments during public proceedings to informal communications about scheduling dilemmas.

Over the years, the Ethics Committee has issued a number of opinions interpreting and applying the Rules of Professional Conduct to various lawyer-judge communications. See RPC 237, 97 FEO 3, 97 FEO 5, 98 FEO 12, 98 FEO 13, 2001 FEO 15, 2003 FEO 17. However, these opinions—spanning 30 years—were based upon different iterations of the Rules of Professional Conduct. This opinion addresses and clarifies a lawyer's responsibilities under the current Rules of Professional Conduct in communicating with a member of the judiciary while acting in a representative capacity. As a result, upon adoption of the present opinion, the State Bar Council withdrew the aforementioned opinions.

In general, to ensure fair access to the courts and to avoid the appearance of impropriety, a lawyer is encouraged to refrain from communicating directly and exclusively with the presiding judge in a particular case—including communications

## 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 at [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov) no later than December 22, 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.

about scheduling or administrative matters—unless authorized by law or by the court. Instead, a lawyer, acting in accordance with the Rules of Professional Conduct and

with copy to opposing counsel when appropriate, should attempt to send any communications intended for the presiding judge through the clerk, the trial court administrator, the trial court coordinator, or some other court personnel aside from the presiding judge who can relay the communication to the presiding judge. The Rules of Professional Conduct, however, do not strictly prohibit all communications with judges. Accordingly, this opinion addresses a lawyer's professional responsibility in communicating directly with a member of the judiciary when not otherwise prohibited by law or by the court.

Additionally, and importantly, the following scenarios address a lawyer's professional responsibility in communicating with a member of the judiciary during the course of litigation where the opposing party is represented by counsel. While this scenario is common, it is very possible that a lawyer may need to communicate with a member of the judiciary during the course of litigation where the opposing party is self-represented. Although this opinion analyzes only the former scenario, a lawyer's professional responsibility to avoid improper communications with the tribunal applies equally to situations where the opposing party is represented and where the opposing party is *pro se*. As part of the ongoing effort to preserve the integrity of and instill confidence in the justice system, a lawyer should take great care to ensure his or her conduct in communicating with a tribunal is compatible with the Rules of Professional Conduct, particularly when dealing with an unrepresented party.

#### **Inquiry #1:**

Lawyer A represents Wife in a domestic case against Husband, who is represented by Lawyer B. The case was filed in County X. Lawyer B scheduled a hearing in the domestic case in County X. Lawyer A subsequently learned that the court of appeals scheduled oral arguments in one of Lawyer A's other cases for the same day as Lawyer B's hearing in County X. Lawyer A needs to inform the court in County X of the scheduling conflict and request that the hearing be continued.

May Lawyer A file a motion to continue the hearing with the clerk of court in County X, with a copy to Lawyer B?

#### **Opinion #1:**

Obviously, yes. Communication between

lawyers and the courts by way of formal filings are the backbone of an effective justice system. As such communications occur entirely on the record and with a copy to the opposing counsel or the opposing party, the communications do not raise any of the concerns underpinning the prohibition on *ex parte* communications under Rule 3.5. Rule 3.5(a)(3) prohibits a lawyer from communicating *ex parte* with a judge or other official unless authorized to do so by law or court order. Rule 3.5(d) defines "*ex parte* communication" as "a communication on behalf of a party to a matter pending before a tribunal that occurs in the absence of an opposing party, without notice to that party, and outside the record." The primary purpose of the prohibition on *ex parte* communications is to ensure fair and equal access to the presiding tribunal by parties and their representative counsel. However, the submission to a tribunal of formal written communications, such as pleadings and motions, pursuant to the tribunal's rules of procedure, does not create the appearance of granting undue advantage to one party. Presuming the filings comply with the Rules of Civil Procedure, the local rules, and any other requirements imposed by law or court order, such communication is entirely permitted under the Rules of Professional Conduct.

#### **Inquiry #2:**

Lawyer A represents Wife in a domestic case against Husband, who is represented by Lawyer B. Lawyer A's young child is sick, requiring Lawyer A to stay home to care for his child for the rest of the week. Lawyer A is scheduled to appear in court for a hearing in Wife and Husband's domestic case tomorrow, but can no longer attend the hearing due to childcare issues. May Lawyer A inform the court of his inability to attend court and informally request that the hearing be continued by email or text message to the judge presiding in the domestic case, without copying Lawyer B?

#### **Opinion #2:**

No. The definition of *ex parte* communications encompasses all communications concerning a matter that is pending before a tribunal, including scheduling issues concerning the pending matter. Rule 3.5(d). The Rules of Professional Conduct do not exempt scheduling matters from the prohibition on *ex parte* communications.

Accordingly, although *ex parte* communications concerning scheduling matters are often limited and innocent in nature, they are prohibited unless authorized by law or court order. In this instance, Lawyer A's communication is sent a) on behalf of himself and his client, b) concerning a matter pending before the tribunal (the domestic proceeding), c) outside of the record, d) without notice to the opposing counsel, and e) in the absence of opposing counsel. Accordingly, Lawyer A's communication is an *ex parte* communication with the court, and thus prohibited unless authorized by law or court order.

#### **Inquiry #3:**

Same scenario as Inquiry #2. Does Lawyer A cure the *ex parte* nature of his communication by sending an email or text message to all judges in his district concerning his inability to attend court that week and requesting all hearings for which he is responsible during the week be continued, without copying Lawyer B or any other opposing counsel or party?

#### **Opinion #3:**

No. If Lawyer A has a matter pending and the communication is sent to the judge presiding in that matter, amongst other judges, the communication remains *ex parte* and is prohibited. See Opinion #2. Depending on how many matters Lawyer A has pending, the single, generic communication described in this inquiry may constitute multiple instances of prohibited *ex parte* communication.

#### **Inquiry #4:**

Same scenario as Inquiry #2. May Lawyer A inform the court of his inability to attend the day's hearing and informally request that the hearing be continued via email or text message to the presiding judge, with Lawyer B copied on the email or text message?

#### **Opinion #4:**

No. Absent prior authorization by the law or presiding judge, a communication to a judge is a prohibited *ex parte* communication if made "in the absence of an opposing party [or counsel]" and "without notice to that party [or counsel]." Rule 3.5(d). Previous definitions of *ex parte* communications permitted communications to a judge such as that described in the present inquiry

so long as opposing counsel was simultaneously provided with the communication. However, this exception to *ex parte* communications relied on a flawed assumption that simultaneous provision of a communication resulted in simultaneous receipt of that communication, particularly with regard to electronic communications. Additionally, at times the exception was misunderstood as permitting both administrative and substantive communications concerning pending matters with the presiding judge so long as opposing counsel was copied on the communication; this misunderstanding led to the exception being strategically utilized to gain unfair advantage over opposing counsel. Accordingly, in an effort to prioritize fairness and equal access to the tribunal, the current definition of *ex parte* communications eliminates the exception for simultaneously provided communication in favor of a requirement that communications with the presiding judge be made in the presence of the opposing party, with proper notice to opposing counsel, and/or on the record. Rule 3.5(d). As a result, merely copying opposing counsel on a communication to a judge does not qualify the communication as being made in the presence of opposing counsel or with notice to counsel to avoid classification as a prohibited *ex parte* communication.

As noted at the outset of this opinion, a lawyer should refrain from communicating with the presiding judge about scheduling or administrative matters, and instead attempt to communicate his unavailability to the clerk, the trial court administrator, the trial court coordinator, or some other court personnel aside from the presiding judge (with a copy to opposing counsel) who can relay the communication to the presiding judge. Otherwise, Lawyer A must provide reasonable, advance notice to opposing counsel of the need and intention to send the communication to the judge, followed by Lawyer A copying opposing counsel on the eventual communication to the judge.

#### **Inquiry #5:**

Lawyer A is scheduled to appear in court for a hearing later in the day. On the way to the courthouse, Lawyer A gets in a significant car accident and is unable to attend the hearing. Lawyer A has limited time to communicate his unavailability to the presiding judge and wants to contact

the presiding judge directly via email or text message, copying opposing counsel on the communication. Does the analysis under Opinion #4 change due to the emergency circumstances?

#### **Opinion #5:**

No. Although the Rules of Professional Conduct are rules of reason, *see* Scope cmt. [1], a lawyer should strive to comport his conduct with the Rules, even in emergency situations. Absent prior authorization by the law or the presiding judge, or unless Lawyer A provided notice to opposing counsel of the communication with the judge, Lawyer A's communication would be a prohibited *ex parte* communication. *See* Opinions #2 and #4.

#### **Inquiry #6:**

Same scenario as Inquiry #2. May Lawyer A, with proper notice to Lawyer B, communicate his inability to attend the hearing and informally request a continuance via email or text message to the presiding judge, with Lawyer B copied on the email or text message, if the email or text message contains additional argument from Lawyer A on the matter to be heard by the court in the upcoming proceeding?

#### **Opinion #6:**

No. Even though such a communication may not be a prohibited *ex parte* communication, it is still improper. Unsolicited communications addressing the merits of the underlying matter made outside the ordinary or approved course of communication with the court are prejudicial to the administration of justice in violation of Rule 8.4(d). As noted above, the purpose of the prohibition on *ex parte* communications is to ensure fair and equal access to the presiding tribunal by parties and their counsel. Allowing one party unfettered access to make off-the-record arguments to the presiding judge via electronic communication undermines the principle of fair and equal access to the presiding judge. *See* Rule 3.5 cmt. [8] ("All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings, a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which the judge presides in circumstances which might have the effect or give the appearance

of granting undue advantage to one party."). It is also antithetical to the notion that cases are tried in a public forum rather than in private discussions behind closed doors. Providing notice and copying the opposing party/counsel on such a communication does not remedy these problems. Unless the communication is authorized by law or court order, or unless the communication is solicited by the presiding judge, informal communications that address the merits of the case are improper and constitute misconduct under Rule 8.4(d).

#### **Inquiry #7:**

Judge has instructed Lawyer A to send a proposed order to the court via email, with a copy to Lawyer B, by the end of the day. May Lawyer A submit the proposed order to the court as directed, with the copy to Lawyer B?

#### **Opinion #7:**

Yes. If the presiding judge has instructed counsel to communicate directly with the court, thereby providing notice to the opposing counsel/party about the anticipated communication, it is not a prohibited *ex parte* communication under Rule 3.5 and it is not prejudicial to the administration of justice under Rule 8.4(d). Additionally, pursuant to N.C. Gen. Stat. § 84-36, the Rules of Professional Conduct are not meant to disable or abridge "the inherent powers of the court to deal with its attorneys." The presiding judge has the authority to determine how counsel are to communicate with the court; except as prohibited by law or court rule, such communications are within the discretion and preference of the tribunal and the presiding official.

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## **Proposed 2020 Formal Ethics**

### **Opinion 1**

### **Responding to Negative Online Reviews**

**October 22, 2020**

*Proposed opinion rules that a lawyer is not permitted to include confidential information in a response to a client's negative online review, but is not barred from responding in a professional and restrained manner.*

#### **Inquiry #1:**

Lawyer's former client posted a negative review of Lawyer's representation on a consumer rating website. Lawyer does not have the ability to edit or remove reviews posted

on the 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 #1:

In response to the former client's negative online review, Lawyer may post a professional and restrained response that does not reveal any confidential information. Lawyer may deny the veracity of the review, but lawyer may not use confidential client information to contradict specific facts set out therein. Online reviews are written by current or past clients and posted publicly. Typically, reviews will include a comment from the client regarding the lawyer's services as well as some type of "rating." Once the review is posted, it is visible to the public. Online reviews are today's personal recommendations. Many potential clients will read—and rely on—online reviews as the first step to finding a lawyer.

Because online reviews are so important to a lawyer's practice, online reputation management is crucial. Therefore, it may be in the lawyer's best interest to respond to a negative review. Nevertheless, 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

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 exception" set out in Rule 1.6(b)(6). Rule 1.6(b)(6) recognizes three circumstances in which the self-defense exception to the lawyer's general duty of non-disclosure may apply: (1) in a controversy between the lawyer and client; (2) when a criminal charge or civil claim has been asserted against the lawyer based upon conduct in which the client was involved; or (3) 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). Because online criticism, standing alone, does not constitute a "criminal charge," "civil claim," or "proceeding," the remaining question is whether a negative online review creates a "controversy" between the lawyer and client as to which the lawyer may disclose otherwise protected client-related information in order "to establish a claim or defense."

Several jurisdictions conclude that a neg-

ative online review does not amount to a controversy that triggers the self-defense exception. We agree with the analyses set out in these ethics opinions. For example, the Pennsylvania Bar Association concludes that while there are certain circumstances 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 states:

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.

Penn. Bar Ass'n Ethics Comm. Op. 2014-200. Likewise, the New York State Bar Association opines 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 Professional Ethics Committee for the State Bar of Texas opines 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 Association states 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. 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[.]”<sup>1</sup> Restatement (Third) of the Law Governing Lawyers § 64, cmt. c. (Am. Law Inst. 2000).

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, we agree with the Pennsylvania Bar Association that there must be an action or proceeding in contemplation for the exception to apply. *See* Penn. Bar Ass’n Ethics Comm. Op. 2014-200. The Restatement explains 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. 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.* It is the “manifestation of intent” that makes the disclosure of confidential client information “reasonably necessary” under Rule 1.6(b)(6). The online posting of negative comments about a lawyer does not amount to the requisite “manifestation of intent” to initiate proceedings against the lawyer that would permit the lawyer to rely on the self-defense exception.

While Lawyer is not permitted to reveal confidential information in a response to the negative review, Lawyer is not barred from responding in a professional and restrained manner. For example, the Bar Association of San Francisco opines 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). The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility 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 believe that the post presents a fair and accurate picture of the events.

Penn. Bar Ass’n Ethics Comm. Op. 2014-200. Accordingly, Lawyer may respond to the former client’s review by denying the veracity of the review, but lawyer may not use confidential client information to contradict specific facts set out in the review. We conclude that the following response complies with the Rules of Professional Conduct:

A lawyer has a professional responsibility to keep client confidences. This duty has very few exceptions. Even when false statements are made about a lawyer, the lawyer is often required to maintain the client’s confidences.

As a result, I do not feel at liberty to respond to this review in a point-by-point fashion. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events. Clients and former clients are permitted to release lawyers from their confidentiality obligations, and if that were done, I would be able to respond more fully.

#### **Inquiry #2:**

An individual who is not a current or former client, and has never consulted with Lawyer with respect to a particular matter, posts a negative review of Lawyer’s legal services on a consumer rating website. May Lawyer respond to the post by stating that he has never represented the individual?

#### **Opinion #2:**

Yes. The duty of confidentiality set out in

Rule 1.6 only applies to information obtained during a lawyer-client relationship.

#### **Inquiry #3:**

A potential client contacts lawyer for representation. Lawyer declines the representation—perhaps because he does not practice in the relevant area of law, he has a conflict, or he does not believe the case has merit. The potential client posts a negative review of Lawyer on a consumer rating website. May Lawyer respond to the post by stating that he has never represented the individual?

#### **Opinion #3:**

No. Pursuant to Rule 1.18(a), a person who consults with a lawyer with respect to a particular matter is a prospective client. Prospective clients are entitled to some of the protections afforded clients. Rule 1.18, cmt. [1]. Specifically, Rule 1.18(b) prohibits a lawyer from using or revealing information obtained during a consultation with a prospective client—except as permitted by Rule 1.9—even if the lawyer decides not to proceed with the representation. Notably, the duty exists regardless of how brief the initial conference may be. Rule 1.18, cmt. [3].

Lawyer may not confirm or deny his representation of the prospective client. Lawyer may, however, state that it is not possible for him to accept every prospective client’s case. Lawyer may enumerate the various reasons that a prospective client’s case may be declined.

#### **Inquiry #4:**

A relative or a friend of a former client posts a negative review of Lawyer’s representation of the former client on a consumer rating website.

Lawyer believes that the 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 comments?

#### **Opinion #4:**

Lawyer may respond that he never represented the relative or friend. *See* Inquiry #2. In addition, Lawyer may post a professional and restrained response to the negative review, but may not disclose confidential

client information obtained during the representation of the former client, unless the former client consents. *See* Inquiry #1.

#### **Inquiry #5:**

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 and libelous. May Lawyer sue his former client for defamation?

#### **Opinion #5:**

Yes. If there is a basis in law and fact for a defamation suit against the former client, the Rules of Professional Conduct do not prohibit Lawyer from filing such a suit.

#### **Inquiry #6:**

May Lawyer include the following provision in his representation agreement?

A lawyer is generally prohibited from using or revealing confidential information of a former client. Client agrees that confidential information may nonetheless be revealed by Lawyer in the event Client publishes or causes the publication of a claim on the internet that Client's representation by Lawyer was deficient in some respect, but only to the extent reasonably necessary to directly rebut such a claim.

#### **Opinion #6:**

No. Rule 1.6(a) 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. Pursuant to Rule 1.0(f), "informed consent" denotes the agreement by the client to a proposed course of conduct "after the lawyer has communicated adequate information and explanation appropriate to the circumstances." The proposed representation agreement provision does not provide adequate information and explanation such that the client could give informed consent to the prospective disclosure of confidential client information in the hypothetical circumstance set out in the proposed provision.

#### **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).

### **Proposed 2020 Formal Ethics**

#### **Opinion 2**

#### **Advancing Client Portion of Settlement**

**October 22, 2020**

*Proposed opinion rules that a lawyer may not advance a client's portion of settlement proceeds while a matter is pending or litigation is contemplated, but may advance a client's portion of settlement proceeds under other circumstance if the lawyer complies with Rule 1.8(a).*

#### **Inquiry #1:**

Lawyer represents Client in a civil dispute. On behalf of Client, Lawyer filed a civil lawsuit against the defendant claiming damages. Prior to trial, Lawyer settles Client's matter with the defendant. Client has executed the necessary release to resolve the claim, and Lawyer has received a check from the defendant representing the settlement proceeds. The check is not one that would permit disbursement on provisional credit pursuant to the Good Funds Settlement Act. Prior to the settlement proceeds check clearing Lawyer's trust account, Client informs Lawyer about a significant and pressing financial need and asks Lawyer to advance to him his share of the settlement proceeds. Lawyer will make the advancement to Client out of Lawyer's personal or operating account. Lawyer will reimburse himself by deducting the amount advanced to Client from the settlement proceeds once defendant's check clears Lawyer's trust account.

May Lawyer advance settlement proceeds to Client?

#### **Opinion #1:**

No. Rule 1.8(e)(1) prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation, except that the lawyer may advance court costs and expenses of litigation.

The term "pending" is not defined in the

terminology section of the Rules of Professional Conduct. However, citing a 1941 case, the North Carolina Court of Appeals opined that, "an action is deemed to be pending from the time it is commenced until its final determination[.]" *Brannock v. Brannock*, 135 N.C. App. 635, 523 S.E.2d 110 (1999) (internal citations omitted). *See also Black's Law Dictionary* 1021 (5th ed. 1979) ("an action or suit is 'pending' from its inception until the rendition of final judgment").

Until the release is signed, the settlement funds are paid to Lawyer or Client, and an order dismissing the lawsuit is filed with the court, the matter is pending, and Lawyer cannot advance settlement proceeds to Client.

#### **Inquiry #2:**

Lawyer represents Client in a civil dispute. Lawyer settles Client's matter with the defendant prior to filing a lawsuit against the defendant. Client has executed the necessary release to resolve the claim, and Lawyer has received a check from the defendant representing the settlement proceeds. The check is not one that would permit disbursement on provisional credit pursuant to the Good Funds Settlement Act. Prior to the settlement proceeds check clearing Lawyer's trust account, Client informs Lawyer about a significant and pressing financial need and asks Lawyer to advance to him his share of the settlement proceeds. Lawyer will make the advancement to Client out of Lawyer's personal or operating account. Lawyer will reimburse himself by deducting the amount advanced to Client from the settlement proceeds once defendant's check clears Lawyer's trust account.

May Lawyer advance settlement proceeds to Client?

#### **Opinion #2:**

Yes, provided Lawyer satisfies himself that the potential litigation against the defendant is no longer contemplated and Lawyer complies with Rule 1.8(a) as set out in Opinion #3 below. Rule 1.8(e)(1) prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation, except that the lawyer may advance court costs and expenses of litigation. The scenario in this inquiry differs from that in Inquiry #1 in that the litigation is not pending (*see* Opinion #1) and litigation is no

longer contemplated under Rule 1.8(e). Merriam-Webster Dictionary defines “contemplate” as, “To view or consider with continued attention; meditate on; to view as likely or probable or as an end or intention.” *Contemplate*, Merriam-Webster Dictionary, merriam-webster.com/dictionary/contemplate. With the release signed, the parties have effectively resolved their dispute, and the litigation is reasonably presumed to be both concluded and no longer contemplated for purposes of Rule 1.8(e).

However, although execution of a settlement agreement and/or releases related to the action express the parties’ collective desire to resolve the matter and serve as a significant step in carrying out that desire, the parties may continue to contemplate the continued pursuit of litigation to resolve the dispute until the actual exchange of consideration between the parties occurs and is final. For example, checks representing settlement funds can be dishonored, and clients who previously signed a release can withdraw their agreement with the resolution. Therefore, whether a matter is no longer contemplated under Rule 1.8(e) must be determined individually by the lawyer based upon the circumstances. Considerations for making this determination can include the financial stability and reliability of the defendant, the legitimacy of the check or instrument conveying the settlement funds, the lawyer’s prior dealings with the defendant, and the client’s certainty and satisfaction with the resolution. It is incumbent upon the lawyer to reasonably determine whether litigation remains or should remain contemplated. If a lawyer reasonably concludes that litigation remains contemplated despite steps taken to act upon a settlement agreement, the lawyer is prohibited from providing the advancement pursuant to Rule 1.8(e).

### **Inquiry #3:**

Lawyer represents Client in a civil dispute. Lawyer settles Client’s matter with the defendant, and the litigation is no longer pending and/or no longer contemplated per Rule 1.8(e). Client has executed the necessary release to resolve the dispute, and Lawyer has received a check from the defendant representing the settlement proceeds. The check is not one that would permit disbursement on provisional credit pursuant to the Good Funds Settlement Act. Prior to the settlement proceeds check clearing Lawyer’s

trust account, Client informs Lawyer about a significant and pressing financial need and asks Lawyer to advance to him his share of the settlement proceeds. Lawyer will make the advancement to Client out of Lawyer’s personal or operating account. Lawyer will reimburse himself by deducting the amount advanced to Client from the settlement proceeds once defendant’s check clears Lawyer’s trust account.

May Lawyer advance settlement proceeds to Client under these circumstances?

### **Opinion #3:**

Yes, if the lawyer complies with Rule 1.8(a). Presuming the lawyer concludes that the litigation is no longer pending nor contemplated, a lawyer may advance the client’s portion of settlement proceeds to the client without violating Rule 1.8(e). However, the advancement provided by the lawyer to his client is a business transaction made with the client subject to Rule 1.8(a). Rule 1.8(a) prohibits a lawyer from entering into a business transaction with a client unless the following provisions are met:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.

Rule 1.8(a)(1)-(3). In considering what terms are “fair and reasonable” to a client in this scenario, the Ethics Committee considered the purpose for the advancement and the need to protect clients from potential disputes with their lawyer as a result of this advancement. Accordingly, any advancement of settlement proceeds made by a lawyer to his client in this scenario must contain at least the following “fair and reasonable” terms:

1. Lawyer will not attempt to recover from Client any funds provided to Client as part of this advancement should the

instrument conveying settlement proceeds be dishonored;

2. Lawyer will not initiate or threaten to initiate legal action to recover from Client any funds provided to Client as part of this advancement should Lawyer’s calculation of funds result in an over-disbursement to Client;

3. Lawyer will provide to Client any and all remaining settlement funds not previously provided to Client via the advancement; and

4. Lawyer will not charge Client any interest on the advancement made and will not charge an administrative fee associated with the advancement to Client.

If Lawyer complies with the entirety of Rule 1.8(a), including inclusion of the above terms into the signed agreement with Client, Lawyer may provide Client’s portion of settlement proceeds to Client as described in the inquiry.

Lastly, the Ethics Committee notes that, in making the eventual reimbursement to Lawyer from Client’s settlement proceeds once the instrument conveying the funds clears Lawyer’s trust account, Lawyer must keep detailed records of the transaction to justify the reimbursement. As a result of the advancement, Lawyer’s trust account will reflect disbursements made to himself/his practice, and no disbursements made to Client in the settlement. Every disbursement from a trust account must be accounted for and justified by client directive. *See* Rule 1.15-2. Accordingly, if Lawyer advances Client’s portion of settlement proceeds as described in this inquiry, Lawyer must retain all records necessary to support the disbursements made, including but not limited to copies of bank records for the advancement and Client’s executed agreement consenting to the transaction pursuant to Rule 1.8(a).

### **Inquiry #4:**

May Lawyer advertise to the public or otherwise inform potential clients that Lawyer may consider advancing Client’s portion of any settlement proceeds prior to the settlement proceeds check clearing his trust account?

### **Opinion #4:**

No. Rule 7.1(a) prohibits a lawyer from making false or misleading communications about the lawyer or lawyer’s services. Rule 7.1(a)(2) states that a communication is false

or misleading if the communication “is likely to create an unjustified expectation about results the lawyer can achieve[.]” As noted in Opinion #2, a lawyer must individually and thoroughly evaluate his client’s case and circumstances as well as the lawyer’s own circumstances to determine whether advancing settlement proceeds prior to the actual receipt of proceeds is appropriate and something the lawyer is willing to do. Each case and each client is different, and circumstances surrounding the case, the client, and the lawyer have the potential to change during the course of the representation. Therefore, a lawyer cannot communicate with requisite certainty his willingness to offer an advancement of the client’s settlement proceeds prior to actually receiving the proceeds at the outset of litigation. Making such a communication creates an unjustified expectation about the lawyer’s service and the results the client can expect through the lawyer’s services in violation of Rule 7.1(a). Accordingly, because of the potential for unjustified expectations in violation of Rule 7.1(a), the possibility of advancement may not be used as an inducement by the lawyer to obtain employment, and the possibility of advancement may not be advertised or publicized by the lawyer.

## **Proposed 2020 Formal Ethics**

### **Opinion 5**

#### **A Lawyer’s Responsibility in Avoiding Fraudulent Attempts to Obtain Entrusted Client Funds October 22, 2020**

*Proposed opinion discusses a lawyer’s professional responsibility to inform clients about relevant, potential fraudulent attempts to improperly acquire client funds during a real property transaction.*

#### **Facts:**

Buyer in a real estate transaction retained Lawyer as settlement agent. At the outset of the representation, Lawyer sent Buyer an informational letter including instructions for wiring closing proceeds to Lawyer’s trust account. Lawyer’s letter includes a warning about potential wire fraud associated with the transaction, and that in order to prevent wire fraud Buyer should telephone Lawyer’s office using the number listed in the letterhead before initiating the wire to verify the wiring instructions. The letter also states that Lawyer will not change wire instruc-

tions via email.

On the date of the scheduled real estate closing, Buyer telephoned Lawyer’s office and left a voicemail inquiring about wiring instructions for sending closing proceeds to Lawyer’s trust account. Minutes later, Buyer received an email message purporting to be from Lawyer indicating that Buyer should ignore Lawyer’s previous wire instructions and instead should utilize new wire instructions that were attached to the email. This email was not sent by Lawyer or by anyone acting under Lawyer’s direction. The email did not have an attachment, so Buyer replied to the email noting the lack of an attachment. In response, Buyer unknowingly received fraudulent wiring instructions and initiated the wire transfer of the closing proceeds to what he thought was the Lawyer’s trust account but was actually to a third party’s fraudulent account. When Buyer appeared at closing and inquired about Lawyer’s receipt of the closing proceeds, Lawyer discovered that the funds had never been received into his trust account.

#### **Inquiry #1:**

Did Lawyer violate the Rules of Professional Conduct by failing to prevent the fraudulent wire transfer of Buyer’s proceeds?

#### **Opinion #1:**

No. Lawyer’s letter to Buyer at the outset of the representation containing a warning about the potential for wire fraud and instructions to the client to personally confirm wire transfer instructions via telephone to Lawyer’s office reasonably minimize the risks associated with the transfer of funds during a real property transaction.

Lawyers have a duty to competently represent clients and to communicate with clients concerning the representation. Rules 1.1 and 1.4. A lawyer’s duty of competency requires the lawyer to have the necessary “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Comment 8 to Rule 1.1 further states,

To maintain the requisite knowledge and skill, 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, engage in continuing study and education, and comply with all

continuing legal education requirements to which the lawyer is subject.

In addition to accepting and pursuing a client’s matter with the requisite competence, a lawyer must adequately communicate with the client about “the means by which the client’s objectives are to be accomplished” and to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Rules 1.4(a)(2) and 1.4(b); *see also* Rule 1.4 [cmt. 5] (“The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so.”).

Safeguarding entrusted client property is one of the most important aspects of a lawyer’s practice. In addition to complying with the requisite safeguards set out in Rule 1.15 in handling entrusted property, a lawyer must also make efforts to educate him or herself on the potential risks associated with the transfer of funds, including the risks to client funds that exist prior to a lawyer’s possession of the funds, and ensure that those involved in a particular transaction are aware of such risks. *See* Rules 1.1, 1.4, and 5.3; *see also* 2015 FEO 6. Unfortunately, scams and other attempts to divert and fraudulently acquire client funds associated with a real property transaction are ever-present, increasing, and evolving. Furthermore, these scams have been widely reported on by various outlets, including the State Bar and the news media. *See generally* North Carolina State Bar, Alert: Compromised Email/Wire Instructions Fraud Continues to Target North Carolina Lawyers (May 23, 2017), [ncbar.gov/news-publications/news-notices/2017/05/alert-compromised-emailwire-instructions-fraud-continues-to-target-north-carolina-lawyers/](http://ncbar.gov/news-publications/news-notices/2017/05/alert-compromised-emailwire-instructions-fraud-continues-to-target-north-carolina-lawyers/); Caroline Biggs, *How To Protect Yourself From Real Estate Scams*, N.Y. Times (Jan. 3, 2020), [nytimes.com/2020/01/03/realestate/how-to-protect-yourself-from-real-estate-scams.html](https://www.nytimes.com/2020/01/03/realestate/how-to-protect-yourself-from-real-estate-scams.html). Given the constant threat to client funds and the significant harm that can result from such fraudulent activity, a lawyer’s duty in representing clients in real property transactions necessarily requires the lawyer to be vigilant in reasonably educating him or herself on the current state of such fraudulent attempts and in communicating

with clients and staff about such risks.

In 2015 FEO 6, the Ethics Committee addressed a lawyer's professional responsibility to safeguard entrusted funds from third party interference, including theft. There, the committee determined that a lawyer who has taken reasonable care to minimize the risks to client funds by implementing reasonable security measures in compliance with the requirements of Rule 1.15 is not ethically obligated to replace funds that are stolen from the lawyer's trust account. The committee also cited a prior ethics opinion in explaining a lawyer's continuing obligation to educate him or herself about the relevant and evolving risks associated with the lawyer's practice and handling of entrusted client funds ("In 2011 FEO 7 the Ethics Committee opined that a lawyer has affirmative duties to educate himself regularly as to the security risks of online banking;...and to ensure that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm.").

In the present inquiry, Lawyer has not yet received entrusted property from Buyer, and thus Rule 1.15 is not yet implicated. However, Lawyer has a duty to competently represent Buyer in the real estate transaction and to "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[.]" Rule 1.1 [cmt. 8]. Lawyer also has a duty to adequately and effectively inform Buyer about the potential risks associated with the transfer of funds in connection with a real property transaction so that Buyer can make "informed decisions regarding the representation." Rule 1.4(b). Similar to the situation addressed in 2015 FEO 6, a lawyer satisfies his or her professional obligation if s/he takes reasonable measures to educate him or herself on real property transaction scams; implements within the lawyer's practice (including staff) reasonable measures to minimize the risks to client funds in accordance with the Rules of Professional Conduct; and adequately communicates to the client the risks associated with the transfer of funds in connection with a real property transaction and clear instructions on how to safely transfer funds to complete the real property transaction. Accordingly, Lawyer has fulfilled his professional responsibility with regards to Buyer and the underlying real property

transaction.

#### **Inquiry #2:**

Same scenario as Inquiry #1, but Lawyer failed to send the letter at the outset of the representation containing the warning about wire fraud and the instructions for verifying wire transfer instructions at closing. Lawyer did not otherwise provide any warning to Buyer about potential wire fraud, Lawyer did not provide instructions specifically described to avoid wire fraud, and Lawyer has not made any effort to educate himself or his staff about the potential for wire fraud in connection with real property transactions conducted by Lawyer's law office.

Does Lawyer's failure to provide any warning to Buyer or otherwise take steps to avoid potential wire fraud violate the Rules of Professional Conduct?

#### **Opinion #2:**

Yes. As noted above, scams and other attempts to divert and fraudulently acquire client funds associated with a real property transaction are ever-present, increasing, and evolving. A lawyer serving as a settlement agent for real property transactions has a duty to implement reasonable measures to minimize the risks associated with the transfer of funds in real property transactions, including to be aware of and educated on these developments, and to communicate with his client about these risks and how the lawyer intends to avoid them. *See* Opinion #1.

#### **Inquiry #3:**

Same scenario as Inquiry #1, but instead of Lawyer sending a letter to Buyer at the outset of the representation containing the warning and instructions regarding wire fraud, Lawyer includes the warning and instructions as generic language at the end of all of Lawyer's sent emails. Does this effort satisfy Lawyer's obligation to communicate with Buyer about the risks associated with wire fraud in real property transactions?

#### **Opinion #3:**

Yes, provided Lawyer specifically alerted Buyer to the language contained in the email and directed Buyer to read the language in its entirety. The medium by which this language is communicated to Buyer is not as material as Lawyer's clear communication of the information to Buyer. If Lawyer directs

Buyer's attention to the warning and instructions contained in an email, Lawyer has satisfied his obligation to adequately communicate with Buyer to enable Buyer to make informed decisions about the representation. Rule 1.4(b). Lawyer does not satisfy his professional responsibility by simply including the language at the end of an email without any direction to Buyer to read the language, as such language can often go overlooked and unread by the email recipient.

Similar to 2011 FEO 7's discussion of a lawyer's professional responsibility in using online banking, this opinion does not set forth specific requirements beyond those of education and adequate communication needed to minimize the risks associated with wire fraud. As noted in 2011 FEO 7, imposing specific requirements can "create a false sense of security in an environment where the risks are continually changing. Instead, due diligence and frequent and regular education are required."

#### **Inquiry #4:**

Same scenario as Inquiry #1, but prior to Lawyer providing any instruction or information to Buyer, Lawyer learns that Buyer received documentation from a third party (e.g. Buyer's realtor or Buyer's lending institution) warning Buyer about the dangers associated with wire fraud in residential real property transactions. Must Lawyer still warn Buyer about the dangers associated with wire fraud, or may Lawyer rely upon the third party's warning/information previously provided to Buyer?

#### **Opinion #4:**

Yes. Lawyer's knowledge that a third party provided similar warnings to Buyer does not absolve Lawyer of his professional responsibility to competently represent Buyer and communicate any relevant concerns about the transaction.

#### **Inquiry #5:**

Does Lawyer have a duty to report the theft of Buyer's funds intended for Lawyer's trust account to the State Bar's Trust Account Compliance Counsel?

#### **Opinion #5:**

No. Rule 1.15-2(p) states that, "[a] lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform

the Trust Account Compliance Counsel (TACC) in the North Carolina State Bar Office of Counsel.” Rule 1.15-1(f) defines “entrusted property” as “trust funds, fiduciary funds, and other property belonging to someone other than the lawyer which is in the lawyer’s possession or control in connection with the performance of legal services or professional fiduciary services.” At the time of the theft, Buyer’s funds were neither in Lawyer’s possession nor in Lawyer’s control, and thus are not entrusted funds subject to the reporting requirement in Rule 1.15-2(p). However, lawyers are encouraged to report such fraudulent attempts on client funds—successful or unsuccessful—to the State Bar to make the State Bar aware of such attempts and empower the State Bar to issue appropriate alerts and/or guidance to help lawyers and clients avoid future fraudulent efforts.

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**Proposed 2020 Formal Ethics  
Opinion 6  
Commenting Publicly on Client  
Information Contained in Public  
Records  
October 22, 2020**

*Proposed opinion rules that a lawyer is prohibited from commenting publicly about information acquired during representation unless the client consents or the disclosure is permitted by Rule 1.6(b).*

Lawyer served as trial counsel for Client in a criminal matter that garnered a lot of publicity. The matter was ultimately decided by the Supreme Court of North Carolina. After the publication of the Supreme Court opinion, Lawyer was asked to discuss the case through a variety of public appearances, including continuing legal education seminars and podcasts. Lawyer would like to accommodate these requests and discuss the case publicly; Lawyer would limit his comments to the information and events contained in the public record or occurring in public hearings, and Lawyer would not be paid for these appearances. Although Lawyer did not think it was necessary to ask Client for consent to speak about the case, Lawyer felt the better practice was to inform Client and seek Client’s consent. However, after Lawyer explained the request to Client, including that Lawyer would only be discussing information that was a matter of public record, Client refused to consent to Lawyer’s request and asked Lawyer not to

speak about his case at these public appearances. Despite Client’s response, Lawyer still desires to speak publicly about the public aspects of Client’s case.

**Inquiry #1:**

May Lawyer ignore Client’s request and speak publicly about Client’s case if Lawyer will only discuss information that is a matter of public record?

**Opinion #1:**

No. The protection of client information is one of the most significant responsibilities imposed on a lawyer. Accordingly, lawyers who discuss client matters in public forums must comply with the Rules of Professional Conduct, including Rule 1.6. Rule 1.6(a) provides that a lawyer shall not reveal information acquired during a 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. Notably, Rule 1.6(a) does not refer to “confidential information.” Rather, the rule protects any information relating to the representation of a client acquired during the representation. Rule 1.6(a) grants primary authority to the client to control the dissemination of information acquired during the professional relationship with his or her lawyer—including publicly available information—because the information acquired by a lawyer concerning that representation is the client’s information, not the lawyer’s information. Furthermore, this duty to keep confidential “any information acquired during the professional relationship with a client” or information “relating to the representation of a client” extends beyond the conclusion of the representation. *See* Rules 1.6(a), 1.6(c), 1.9(c)(2). Information in public records that relates to the representation of a current client is “information related to the representation of a client” that is covered by the Rules. There is no exception for disclosing information in public records or those public records themselves.

Therefore, without express or implied client consent, Lawyer is prohibited from commenting publicly about any information acquired during the professional relationship or related to the client’s representation. This prohibition applies to information contained in court orders as well as information provided in public judicial proceedings. *See* ABA

Formal Op. 480 (2018); Colo. Formal Op. 130 (2017) (without informed consent, lawyer may not disclose information relating to representation of a client even if the information has been in the news). *See also In re Anonymous*, 932 N.E.2d 671 (Ind. 2010) (neither client’s prior disclosure of information relating to her divorce representation to friends nor availability of information in police reports and other public records absolved lawyer of violation of Rule 1.6); State Bar of Nev. Op. 41 (2009) (all information relating to representation is protected by Rule 1.6 even if the information is public or already generally known); *Iowa S. Ct. Attorney Disciplinary Bd. v. Marazen*, 779 N.W.2d 757 (Iowa 2010) (rule of confidentiality breached when an attorney discloses information learned through the attorney-client relationship even if that information is otherwise publicly available); *Lawyer Disciplinary Bd. v. McGraw*, 461 S.E.2d 850 (W. Va. 1995) (ethical duty of confidentiality is not nullified by the fact that information is part of public record). *But see Hunter v. Va. State Bar*, 744 S.E.2d 611 (Va. 2013) (rejecting State Bar’s conclusion that Rule 1.6 prohibited lawyer from posting information revealed in public criminal trials of his client as unconstitutional infringement on lawyer’s free speech rights).

**Inquiry #2:**

If the answer to Inquiry #1 is “no,” would the answer be different if Lawyer did not ask his client for consent?

**Opinion #2:**

No. A lawyer must keep confidential information acquired during the course of the representation or relating to the representation regardless of whether the client affirmatively requests lawyer to do so. Rule 1.6.

**Inquiry #3:**

May Lawyer discuss the client’s matter in the form of a hypothetical?

**Opinion #3:**

Lawyer may discuss the client’s matter in the form of a hypothetical if Lawyer can make the discussion so generic that the identity of the client and the client’s specific matter cannot be ascertained. *See* Rule 1.6, cmt. [4]. In the case of high-profile litigation, it is unlikely that a lawyer will be able to meet this standard. ■

# Amendments Approved by the Supreme Court

On September 25, 2020, the North Carolina Supreme Court approved the following amendments. (For the complete text of the rule amendments, see the Spring and Summer 2020 editions of the *Journal* or visit the State Bar website: [ncbar.gov](http://ncbar.gov).)

## Amendments to the Rules on the Annual Membership Fee

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

The amendments make the language of Rule .0203 consistent with the authorizing statute and delay imposition of the late fee until September 1, 2020, for the 2020 calendar year only.

## Amendments to the Discipline Rules

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

The amendments eliminate the requirements in Rule .0113 that letters of warning, admonitions, reprimands, and censures issued by the Grievance Committee be served by certified mail or personal service when valid service has previously been accomplished upon the respondent.

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

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

The amendments to Rule .0902 and Rule .0904 replace the \$125.00 fee for reinstatement from inactive status and administrative suspension with a fee in an amount to be determined by the Council. They also eliminate the six-hour cap on online CLE when fulfilling the requirements for reinstatement from inactive status and from administrative suspension.

## Amendments to the Certification Standards for the Immigration Law Specialty

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

The amendments update and clarify the requirements for substantial involvement for certification as a specialist in immigration law.

## Amendments to the Regulations for Organizations Practicing Law

27 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 amendments replace specified filing and registration fees with fees in amounts to be determined by the Council.

## Amendments to the Rules on Prepaid Legal Services Plans

27 N.C.A.C. 1E, Section .0300, Rules Concerning Prepaid Legal Services Plans

The amendments to the rules on prepaid legal services plans are comprehensive and include the following: incorporating the registration, renewal, and amendment forms in the rules; eliminating the requirement that the State Bar review plan documents to determine whether representations made in the

## Highlights

- Comprehensive amendments to the Rules of Professional Conduct on legal advertising were adopted by the Council at its meeting on October 23, 2020, and will be sent to the Supreme Court for approval next January.
- The proposed amendment to the Preamble to the Rules of Professional Conduct published last quarter received many comments, both in support and opposed. The proposed amendment identifies the avoidance of discriminatory conduct while acting in a professional capacity as a value of the provision. At its meeting on October 22, 2020, the Executive Committee of the Council sent the comments to a subcommittee of the Ethics Committee for study.

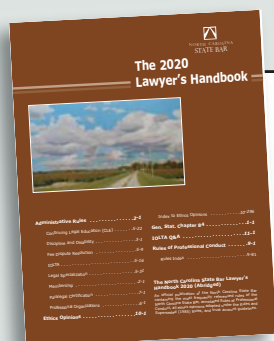
registration, renewal, and amendment forms are true; and specifying that registration and renewal fees shall be in amounts to be determined by the State Bar Council.

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

Rules Governing Admission to the Practice of Law in the State of North Carolina

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

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



## Preorder the 2021 Lawyer's Handbook

Order a hard copy by submitting an order form (found on the State Bar's website at [bit.ly/2qXcDTA](http://bit.ly/2qXcDTA)) by April 2, 2021. The digital version will still be available for download and is free of charge.

# Amendments Pending Supreme Court Approval

At its meeting on October 23, 2020, the Council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for its approval. (For the complete text of the rule amendments, see the Fall 2020 edition of the *Journal* or visit the State Bar website: [ncbar.gov](http://ncbar.gov).)

## Amendments to the Student Practice Rules

27 N.C.A.C.1C, Section .0200, Rules Governing the Practical Training of Law Students

The rule amendments clarify the different forms of student practice placements outside the law school and the supervision requirements for those placements. In addition, throughout the rules, the term “stu-

dent intern” is replaced with the term “certified law student” to avoid confusion between student practice in law school clinics and practice placements outside the law school.

## Amendments to Rule 1.5, Fees, in the Rules of Professional Conduct

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

Amendments to Rule 1.5 add a specific prohibition on charging a client for responding to an inquiry by a disciplinary authority regarding allegations of professional misconduct by the lawyer; for responding to a Client Security Fund claim alleging wrongful conduct by the lawyer; or for responding to and participating in the resolution of a petition for resolution of a disputed fee filed against the lawyer.

## Amendments to the Advertising Rules in the Rules of Professional Conduct

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

Comprehensive amendments to the rules on legal advertising in Section 7, Information About Legal Services, of the Rules of Professional Conduct accomplish the following: strengthen and prioritize the prohibition on false and misleading communications concerning a lawyer’s services; streamline the rules on advertising and eliminate unnecessary or unclear provisions; update the rules to reflect the current state of society and the profession, including the recognition of technology’s presence in personal and professional lives and of the increasing sophistication of the consuming public; and enable lawyers effectively and truthfully to communicate the availability of legal services.

# Proposed Amendments

At its meeting on October 23, 2020, the Council voted to publish for comment the following proposed rule amendments:

## Proposed Amendments to the Rules Governing the Continuing Legal Education Program

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

The proposed amendments define a new category of CLE credit called “Diversity, Inclusion, and Elimination of Bias Training” and impose a 1-hour mandatory requirement in this new category for all active members during the 2022 CLE reporting period. The requirement is only effective for 2022; however, the CLE Board intends to propose an ongoing requirement for diversity, inclusion, and elimination of bias training following the board’s comprehensive review of its rules and procedures over the next two quarters.

### .1501 Scope, Purpose, and Definitions

(a) Scope ...

(b) Purpose ...

(c) Definitions

(1) “Active Member” shall include any person...

(8) “Diversity, Inclusion, and Elimination of Bias Training” shall mean a program, directly related to the practice of law, devoted to diversity, inclusion, and elimination of bias towards persons based on race, sex, national origin, religion, age, disability, sexual orientation, gender identity, marital status, or socioeconomic status. Programs may focus on implicit and explicit bias, equal access to justice, serving a diverse population, diversity and inclusion initiatives in the legal profession, and sensitivity to cultural and other differences, among other things, when interacting with clients, judges, jurors, litigants, attorneys, court personnel, and members of the public.

(9)(9) “Inactive member” shall mean a member of the North Carolina State Bar who is on inactive status.

[re-numbering remaining paragraphs]

## .1518 Continuing Legal Education Program

(a) Annual Requirement. Each active member subject to these rules shall complete 12 hours of approved continuing legal education during each calendar year beginning January 1, 1988, as provided by these rules and the regulations adopted thereunder.

Of the 12 hours:

(1) at least 2 hours shall be devoted to the areas of professional responsibility or professionalism or any combination thereof;

(2) at least 1 hour shall be devoted to technology training as defined in Rule .1501(c)(17) of this subchapter and further explained in Rule .1602(e) of this subchapter;

(3) ~~effective January 1, 2002,~~ at least once every three calendar years, each member shall complete an hour of continuing legal education instruction on substance abuse and debilitating mental conditions as defined in Rule .1602 (a).

This hour shall be credited to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/professionalism requirement. To satisfy the requirement, a member must attend an accredited program on substance abuse and debilitating mental conditions that is at least one hour long.

**(4) Temporary Rule for 2022 Reporting Period. All members shall complete at least one hour of approved diversity, inclusion, and elimination of bias training (as defined in Rule .1501(c)(8) of this subchapter) during the 2022 reporting period. This training will be credited**

**to the annual 12-hour requirement but shall be in addition to the annual professional responsibility/ professionalism requirement.**

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

Section .0900, Examinations

The North Carolina Board of Law Examiners proposes an amendment to Rule .0902 on the examination requirements for admission to the North Carolina bar. To comply with social distancing requirements during the coronavirus pandemic, there is a need for additional venues at which to

administer the February 2021 bar exam. To permit administration of the exam at some of the state's law schools, the board seeks to remove the requirement in the rule that all exams be administered in Wake County. This will permit the exam to be administered anywhere in North Carolina.

### **.0902 Dates**

The written bar examinations shall be held in ~~Wake County or adjoining counties~~ **North Carolina** in the months of February and July on the dates prescribed by the National Conference of Bar Examiners. ■

### **In Memoriam**

Elizabeth Ross Bare  
Concord, NC

Donald Wade Bullard  
Pembroke, NC

Robert N. Burris  
Charlotte, NC

Andrew Arthur George Canoutas  
Wilmington, NC

Jack Edward Carter  
Hope Mills, NC

Martha Hawkins Curran  
Charlotte, NC

Gregory Davis  
Winston-Salem, NC

Koy Ellis Dawkins  
Monroe, NC

Nicholas John Dombalis II  
Raleigh, NC

John Randolph Dover III  
Johns Island, SC

Douglas G. Eisele  
Statesville, NC

Robert R. Gardner  
Raleigh, NC

Melanie Wade Goodwin  
Raleigh, NC

William Kenneth Hale  
Wilmington, NC

LaVee Hamer  
Vanceboro, NC

Neal Gardner Helms  
Charlotte, NC

David Harrison Idol II  
High Point, NC

William L. Mason  
Millers Creek, NC

William Patrick Mayo  
Washington, NC

Eugene John McDonald  
Durham, NC

John Michael McLeod  
Dunn, NC

James Allen Medford  
Greensboro, NC

Shawn Middlebrooks  
Apex, NC

Ronald Lee Moore  
Asheville, NC

James Henry Morton  
Charlotte, NC

Carlos William Murray Jr.  
Greenville, NC

Roy H. Patton Jr.  
Clyde, NC

Scott Troendly Pollard  
Charlotte, NC

Rodney Lamar Purser  
Charlotte, NC

George Robinson Ragsdale  
Raleigh, NC

James Dillard Riddick III  
Como, NC

William E. Rouse Jr.  
Raleigh, NC

Thomas Waller Seay Jr.  
Spencer, NC

Wendell Gene Sigmon  
Newton, NC

John Manning Skinner  
Williamston, NC

Wilbur Ritchie Smith Jr.  
Fayetteville, NC

William Erwin Spainhour  
Concord, NC

Barry Morton Storick Sr.  
Summerville, SC

Joseph Lindsey Tart  
Dunn, NC

John Wyatt Twisdale  
Smithfield, NC

Henry Whitehead Underhill Jr.  
Alexandria, VA

Sara Waitt  
Durham, NC

Hallett Sidney Ward Jr.  
Waynesville, NC

Dewey Blake Yokley  
Winston-Salem, NC



## State Bar Swears In New Officers



Christy



Jordan



Armstrong

### Christy Installed as President

Greensboro Attorney Barbara R. Christy was sworn in as the 86th president of the North Carolina State Bar by North Carolina Supreme Court Chief Justice Cheri Beasley. The small, in-person, socially distanced installation ceremony took place at State Bar Headquarters on Friday, October 23, 2020.

Christy earned her BS magna cum laude from Appalachian State University, and her JD from the University of North Carolina School of Law.

A member of Schell Bray PLLC, in Greensboro, North Carolina, where she serves on the firm's Executive Committee, her practice focuses on commercial real estate transactions.

Christy's professional activities include volunteering with Legal Aid of North Carolina's Lawyer on the Line initiative and the Pro Bono Resource Center. She is also a North Carolina State Bar board certified specialist in real property law—business, commercial, and industrial transactions, a fellow with the American College of Real Estate Lawyers, and a member of the Piedmont Triad Commercial Real Estate Women. Additionally, Christy is involved with her community, serving on the Board of Directors for Southern Alamance Family Empowerment, Inc., and is a past member of the UNC Law Foundation, Inc. Board of Directors.

As a Bar councilor for the 24th Judicial District, Christy has served as vice-chair of the Authorized Practice Committee,

Grievance Committee, and Legislative Committee, and as chair of the Ethics Committee.

Christy and her family live on a small farm in the Snow Camp community in southern Alamance County. She is a member of Saxapahaw United Methodist Church where she has been the long-time church pianist.

### Jordan Elected President-Elect

Salisbury Attorney Darrin D. Jordan was sworn in as president-elect of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar on Friday, October 23, 2020.

Jordan earned his BA from Catawba College in political science and accounting in 1987, and his JD from Campbell University School of Law in 1990.

A partner of Whitley Jordan & Inge, PA, he has been a board certified specialist in criminal law since 2004. He maintains a state and federal criminal law practice in Salisbury and he is admitted to the federal district courts in both the middle and western districts.

Jordan was a member of the North Carolina State Bar Council representing Judicial District 19C from 2010–2018, during which time he served as chair of the Ethics and Communications Committees as well as the Lawyers Assistance Program Board.

Jordan currently serves as chair of the NC Indigent Defense Services Commission and has been on the commission since 2014. In 2012, he was presented with the Professor John Rubin Award for Extraordinary Contributions to Defense Training Programs, which is awarded each year by the Indigent Defense Services

Commission in honor of its namesake at the UNC School of Government. He has coordinated annual continuing legal education programs in Rowan County for the last 12 years in the areas of criminal law and family law.

Jordan is a member of the North Carolina Advocates for Justice, where he currently serves on the Board of Governors, and was a commissioner of Chief Justice Mark Martin's Commission on the Administration of Law and Justice where he served on the Criminal Adjudication and Investigation Committee.

In addition to his numerous professional activities, Jordan formerly served on the Board of Directors for Elizabeth Hanford Dole Red Cross and the Rowan Helping Ministries. For six years he was the cub master of Cub Pack 254 of Bethpage United Methodist Church in Kannapolis. In 2011 he received the District Award of Merit for service to the Kannapolis District, Central North Carolina District of the Boy Scouts of America.

He resides in Kannapolis with his wife and two adult children and attends Harvest Community Church. He enjoys spending time in Cullowhee, North Carolina, fly fishing in the North Carolina mountains, and raising vegetables in his garden. He is also an amateur beekeeper.

### Armstrong Elected Vice-President

Smithfield Attorney Marcia H. Armstrong was sworn in as vice-president of the North Carolina State Bar by Chief Justice Cheri Beasley at the State Bar on Friday, October 23, 2020.

Armstrong earned her bachelor's degree from Salem College and her JD from the Wake Forest University School of Law.

Armstrong was a member of the North Carolina State Bar Council from 2011–2019, during which time she served as chair of the Legislative Committee as well as the

CONTINUED ON PAGE 49

## Resolution of Appreciation for C. Colon Willoughby Jr.

WHEREAS, C. Colon Willoughby Jr. was elected by his fellow lawyers from Judicial District 10 in 1997 to serve as their representative in this body; he was, thereafter, re-elected councilor for two successive three-year terms. At the time, he was the only sitting district attorney serving on the State Bar Council and remains one of the few district attorneys to ever serve on the council; notably, this career experience as a prosecutor, running a major district attorney's office, made him an ideal fit for service as a councilor; and

WHEREAS, after the required hiatus, and ignoring his own admonition to "not take the second kick of the mule and call it education," Mr. Willoughby ran for State Bar councilor in 2013, and, in a demonstration of the continuing esteem with which he is held by the lawyers of the 10th Judicial District Bar, Mr. Willoughby was elected to serve as councilor for the district for another three-year term; and

WHEREAS, in October 2017 Mr. Willoughby was elected vice-president; and in October 2018 he was elected president-elect; and, on October 24, 2019, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. Willoughby has served on the following committees: Administrative Committee; Appointments Advisory Committee, including as vice-chair and chair; Authorized Practice Committee, including twice serving as chair;

Disciplinary Review II Committee, including as chair; Distinguished Service Committee; Ethics Committee; Executive Committee, including as vice-chair and chair; Finance and Audit Committee, including as vice-chair and chair; Grievance Committee, including as vice-chair; Issues Committee, including as vice-chair and chair; Justice System Committee; Legislative Committee; Professionalism Committee; and Trust Accounting Committee; and

WHEREAS, over the many years that he served as a State Bar councilor, Mr. Willoughby participated in numerous significant initiatives for the State Bar including a major revision of the Rules of Professional Conduct, establishment of the Attorney/Client Assistance Program, reorganization of the State Bar's committee structure, creation of the Paralegal Certification Program, expansion of the Lawyer Assistance Program to include mental health as well as substance abuse intervention, creation of the John B. McMillan Distinguished Service Award, construction of the new State Bar headquarters, and extensive review of the disciplinary process, to name but a few; and

WHEREAS, Mr. Willoughby's presidential year started out auspiciously but routinely with a successful first quarterly meeting of the council in January 2020 at State Bar Headquarters in Raleigh; however, in the words of the wise man himself, "as with love and rain dancing, timing is everything," the remainder of his presidential year was anything but routine, including both a global pandemic and his-

torical unrest over racial injustice; and

WHEREAS, when in mid-March 2020 the unique coronavirus, COVID-19, brought life as we know it worldwide to a standstill, requiring extraordinary measures to prevent the spread of the virus including the conversion of the April, July, and October meetings of the council from in-person meetings to online "virtual meetings," President Willoughby was unflappable as he guided the State Bar's response to the pandemic including a successful request to the Governor's Office to find that legal services are essential and should be exempt from local and statewide "shelter in place" orders, thereby enabling lawyers to continue to practice and to serve their clients and their communities; and

WHEREAS, when the nation was shaken by death in June of another Black man in police custody, and protests erupted across the state and the nation, President Willoughby was a voice of understanding, compassion, and leadership, writing to the membership:

The death of George Floyd, combined with the nationwide call to action inspired by that death and the senseless deaths of too many other people of color, has brought to the forefront of our lives the historical inequities of our justice system and of our society. Much has been said about the issues surrounding racial inequality in America, and yet much more needs to be said. And, most importantly, the anguish that underlies the protests needs to be

heard and acted upon.

Subsequently, President Willoughby facilitated initiatives to revise the Rules of Professional Conduct and mandatory CLE requirements to encourage, assist, and support lawyers in fulfilling their professional responsibility to seek equal justice for all; and

WHEREAS, during the turmoil of 2020, President Willoughby provided steady, wise leadership, including timely and impactful communications with lawyers, public officials, and members of the public; and, although his presidential year was absent the usual trappings of

office, most especially the opportunity to preside in person over meetings of the council, President Willoughby never complained or objected, but rather accepted with grace, patience, and good humor the unprecedented circumstances of his presidential year; and

WHEREAS, President Willoughby's down-to-earth style, direct and candid communications—interspersed with homespun wisdom, “down east” proverbs, and a generous sense of humor—along with his uncommon ability to connect with anyone, were boons to the members of the council and of the State Bar staff as we confronted the difficulties of 2020 together.

NOW, THEREFORE, BE IT RESOLVED that the council of the North Carolina State Bar does hereby, and with deep appreciation, express to C. Colon Willoughby Jr. its debt for his personal service to the State Bar, to the people of North Carolina, and to the legal profession, and for his dedication to the principles of leadership, integrity, professionalism, and equality.

BE IT FURTHER RESOLVED that a copy of this resolution be made a part of the minutes of the Annual Meeting of the North Carolina State Bar and that a copy be delivered to C. Colon Willoughby Jr.

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## New Officers (cont.)

Opioid Summit Special Committee, and was a vice-chair of the Grievance Committee.

A partner of The Armstrong Law Firm, PA, Armstrong has been a board-certified specialist in family law since 1989. She is a frequent speaker and course planner at law schools and at continuing legal education programs sponsored by the North Carolina Bar Foundation. She has written and presented manuscripts on a wide range of family law topics.

Armstrong is a past-president of the state

chapter of the American Academy of Matrimonial Lawyers (AAML), which is recognized as the top family law association in the country. She is a past-president of the Johnston County Bar Association and the 11th Judicial District Bar. In 2011 she received the Sara H. Davis Excellence Award from the North Carolina State Bar Board of Legal Specialization. She was recognized in 2010 as a Citizen Lawyer by the North Carolina Bar Association and has served in the past on the association's Board of Governors and as chair of the Family Law Section. In 1997, Armstrong was awarded the Distinguished Service Award from the North Carolina Bar Association

for her service to the Family Law Section. Additionally, Armstrong received the Gwyneth B. Davis Award in 1995 from the North Carolina Association of Women Attorneys. She is currently an advisory member on the State Bar's Ethics and Legislative Committees.

Armstrong practices law with her husband, Lamar; her son, Lamar III; her daughter, Eason Keeney; and her son-in-law, Daniel Keeney. Lamar's wife, Beth, is a second grade teacher. Armstrong's other son, Hinton, is a biochemical engineer, and his wife, Anna, is a pharmacist. They reside in Smithfield. Altogether, there are five grandchildren, all under the age of four. ■

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## Faith and Justice Alliance (cont.)

brought about by COVID-19, the alliance began with providing online resources and sharing *pro bono* opportunities tailored to legal needs during a pandemic, such as unemployment benefits, advance directives, and other COVID-19 related assistance. At the same time, the alliance surveyed local and faith communities about legal needs prevalent for them, allowing the space to share priorities for how the alliance should proceed. Further,

the alliance established an email distribution list, which any member of the public can join, that will timely distribute *pro bono* and other legal resources, such as disaster legal preparedness, drivers license restoration eligibility, and small business and nonprofit legal assistance.

The Faith and Justice Alliance looks forward to learning about local legal issues from the perspective of faith communities. The alliance also looks forward to working collaboratively with its many partners across North Carolina, including legal service providers, public officials, law firms, and faith leaders. In the coming months, the alliance will provide

information to faith leaders about identified substantive legal issues and the legal resources available to support them in those areas. It will also develop new legal resources, including *pro bono* clinic opportunities. While this work has already begun, the alliance looks forward to finding new ways to support faith communities in addressing the unmet legal needs of the too many North Carolinians living in poverty. ■

*To learn more about the North Carolina Faith and Justice Alliance, visit [ncfaithandjustice.org](http://ncfaithandjustice.org).*

# Law School Briefs

## Duke Law School

Duke University alumnus Derek Wilson, through The Wilson Foundation, has made a \$5 million grant to the Center for Science and Justice at Duke Law School to advance criminal justice research, education, policy, and reform. The center has been renamed the Wilson Center for Science and Justice.

The center engages students, faculty, and staff from such disciplines as law, medicine, public policy, and arts and sciences in interdisciplinary collaborations to study, expose, and remedy structural inequities in the criminal system. L. Neil Williams Jr. Professor of Law Brandon Garrett serves as faculty director.

The grant will help expand the center's work over the next six years in three signature areas: accuracy of evidence in criminal cases, the role of equity in criminal outcomes, and the mental and behavioral health treatment needs of people in the justice system. Highlights of the center's recent work:

- **Accuracy:** Recent studies relating to the prevention of wrongful convictions have examined how jurors evaluate forensic evidence. Garrett helped draft a set of principles regarding eyewitness, confession, informant, and forensic evidence for the American Law Institute. This work is supported by the Center for Statistics and Applications to Forensic Evidence, of which Duke is a member.

- **Equity:** Garrett was recently appointed independent monitor of a landmark misdemeanor bail reform settlement in Harris County, Texas. The team's initial report found that in its first six months, the new bail system reduced the number of people jailed on minor offenses with no accompanying increase in recidivism. Garrett's team will continue to work to ensure compliance for the next seven years.

- **Needs:** A recent report uncovered the impact of fines and fees on one in 12 North Carolinians, a disproportionate number of whom are Black and Latino. The center is closely engaged with work aimed at improv-

ing policing.

## Elon University School of Law

*An award-winning question: Should a person's reputation on social media be admissible in court?*—Professor Catherine Ross Dunham's forthcoming essay, "Reputation Evidence in the Age of Instagram," has been named the 2020 Edward D. Ohlbaum Paper in Advocacy from Temple University and is set to be published in the Temple Law Review Online. The essay suggests that federal courts should reconsider the rules by which witnesses are allowed to testify to someone's character.

*Elon Law student & mentor create resource for NC defense attorneys*—Cynthia Hernandez L'20, with guidance from Assistant Professor Taleed El-Sabawi, compiled a checklist sent this summer via the University of North Carolina School of Government to lawyers who defend clients facing murder charges under the state's new "death by distribution" law. Modeled after the Drug-Induced Homicide Toolkit and a blog post from the UNC School of Government, with language and considerations specific to North Carolina's own law, the document gives attorneys a resource to quickly determine legal strategies for clients who could be innocent of the charge.

*Elon Law program director co-leads national webinar series on strangulation*—Margaret Dudley, the supervising attorney for Elon Law's Emergency Legal Services Program, which provides legal consultations to clients of the Family Justice Centers in Greensboro and Alamance Counties, was one of three presenters this summer for "What Civil Attorneys Need to Know about Strangulation" hosted by the American Bar Association and the Alliance for HOPE International's Training Institute on Strangulation Prevention. The ABA has identified strangulation as "one of the most lethal forms of domestic violence," and the webinar helped attorneys understand its lethality, identify signs and symptoms of

strangulation cases, and investigate and document domestic violence.

## University of North Carolina School of Law

*UNC ranks number 1 with 96% July NC bar exam passage rate*—For the second time in a row, UNC held the top spot for overall bar passage rate among North Carolina law schools. Ninety-six percent of the 111 Carolina Law graduates who took the bar exam in July passed. First time test takers also performed well with a 97% passage rate for the 110 Carolina Law graduates who took the North Carolina bar exam.

*Constitution Day speakers discuss "Bush v. Gore at 20"*—UNC hosted Teresa Roseborough '86, a lead litigator in the *Bush v. Gore* case, which settled a vote recount dispute in Florida during the 2000 presidential election. Roseborough spoke on a webinar with Professors William P. Marshall, Kerrel Murray, and Mary-Rose Papandrea.

*UNC expands outstanding faculty with two new hires*—Over the next 12 months, Professors Ifeoma Ajunwa and Osamudia James will join the UNC School of Law faculty, bringing with them expertise in labor and employment law, privacy law, law and technology, anti-discrimination law and ethics, race and the law, torts, administrative law, and education law.

*Professor Charles E. Daye honored with portrait dedication*—Artist William Paul Thomas' portrait of Daye was commissioned by the school to honor the legacy of a man who helped encourage and support students at both of North Carolina's public law schools for more than four decades. Daye was the first African American to hold a tenure-track position at UNC School of Law. He also served as dean of NC Central School of Law.

*Earn CLE credit*—Satisfy your annual CLE requirements with virtual programming through UNC. Visit [law.unc.edu/cle](http://law.unc.edu/cle).

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# Annual Reports of State Bar Boards

## Board of Continuing Legal Education

*Submitted by George L. Jenkins Jr., Chair*

Lawyers continue to meet and exceed their mandatory continuing legal education requirements. By mid-March, 2020, 24,858 annual report forms had been filed either electronically or by hard copy for the 2019 compliance year. I am pleased to report that 98% of the active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2019. The report forms show that North Carolina lawyers took a total of 400,648 hours of CLE in 2019, or 15 CLE hours on average per active member of the State Bar. This is three hours above the mandated 12 CLE hours per year.

The CLE program operates on a sound financial footing and has done so almost from its inception over 30 years ago. Funds raised from attendee and non-compliance fees not only support the administration of the CLE program, but also support three programs that are fundamental to the administration of justice and the promotion of the professional conduct of lawyers in North Carolina. The program's total 2019 contribution to the operation of the Lawyer Assistance Program (LAP) was \$323,099. As of September 30, 2020, the board has also collected and distributed \$257,088.39 to support the work of the Equal Access to Justice Commission and \$257,182.69 to support the work of the Chief Justice's Commission on Professionalism. In addition, the CLE program generated \$64,271.61 to cover the State Bar's costs for administering the CLE-generated funds for the LAP and the two commissions.

This summer a subcommittee of the CLE Board studied and ultimately recommended the establishment of a new category of CLE entitled Diversity, Inclusion, and Elimination of Bias Training. The CLE Board adopted the recommendation of the subcommittee and sent proposed rule amendments to the State Bar Council this week that would establish a diversity, inclusion, and elimination of bias

training requirement on North Carolina lawyers beginning in 2022.

The State Bar is beginning a project to develop new regulatory management software. This project includes a new CLE database, and lawyer and sponsor portals. As the project progresses, the CLE Board will review its rules and procedures to determine what, if any, changes can improve the program.

Regrettably, the terms of Chief Judge Linda M. McGee of Raleigh and J. Dickson Phillips III of Chapel Hill have come to an end. Both board members will be greatly missed.

The board strives to ensure that the continuing legal education requirements meaningfully advance the competency of North Carolina lawyers. We welcome any recommendations or suggestions that councilors may have in this regard. On behalf of the other members of the board, I thank you for the opportunity to contribute to the protection of the public by overseeing the mandatory continuing legal education program of the State Bar.

## Board of Legal Specialization

*Submitted by Larry H. Rocamora, Chair*

North Carolina's Legal Specialization program exists for two reasons: First, to assist in the delivery of legal services to the public by identifying lawyers who have demonstrated special knowledge, skill, and proficiency in a specific field, so that the public can more closely match its needs with available services; and second, to improve the competency of the Bar. I am proud to report that, under the guidance of the Board of Legal Specialization, and with the tireless efforts of the specialty committees and staff, our program is stronger than ever and continually achieving the very purpose for which the State Bar Council created the program in 1985. On top of that, our program is entirely self-sufficient.

With the addition of 36 new specialists last November, there are nearly 1,100 certi-

fied legal specialists in North Carolina. The State Bar's specialization program certifies lawyers in 13 specialties. This spring we received 102 applications from lawyers seeking certification. Of the 2019 applicants, 93 met the substantial involvement, CLE, and peer review standards for certification and were approved to sit for their respective specialty exams. Of course, due to public health considerations stemming from the COVID-19 pandemic, we are not administering our 2020 exams in the traditional in-person setting, but rather are for the first time administering our exams using remote proctoring. Early in the pandemic, our board, our specialty committees, and our staff began exploring the viability of remote proctoring, including surveying applicants for their preference and willingness to take the exam via remote proctoring. This year's applicants overwhelmingly supported taking the exam via remote proctoring. Starting on October 23, and continuing on through October 30, we will administer our specialty exams in this manner; and it is our hope that, depending on our collective experience with this new mechanism, we may continue to offer our exams remotely in future years. Offering a remote exam very well could enable more lawyers from across the state to pursue specialty certification, particularly those who ordinarily could not afford the time or the travel expense of taking the exam at one of our traditional testing locations. In this way, we are viewing the difficulties of 2020 as offering an opportunity to evolve our program for the betterment of legal services in all parts of our state.

To assist lawyers interested in becoming certified specialists but who are not yet qualified, in 2018 we successfully created and implemented a new process allowing lawyers to fill out a Declaration of Intent form. We continue to utilize this form to track, communicate with, and assist interested lawyers regarding the lawyer's eligibility under the applicable certification standards. I am happy to report that this relatively new

process remains both successful and appreciated by members of the profession.

In May 2020 the Board of Legal Specialization was scheduled to hold its annual luncheon to honor both long-time and newly-certified specialists in Winston-Salem. Unfortunately, and like most others during the pandemic, our event was cancelled in May. The board looks forward to 2021 affording an opportunity to resume our annual luncheon, where we will recognize specialists certified during the 2019 and 2020 application cycles, along with the specialists who achieved the significant milestones of 25 and 30 years of continued certification in both 2019 and 2020. We will also resume awarding the board's three Service and Excellence Awards named in honor of past chairs of the board: The Howard L. Gum Excellence in Committee Service Award; the James E. Cross Leadership Award; and the Sara H. Davis Excellence Award.

I am also happy to report that, despite the financial difficulties presented by 2020, the Jeri L. Whitfield Legal Specialty Certification Scholarship Fund established to provide scholarships for specialization application fees for prosecutors, public defenders, and nonprofit public interest lawyers who wish to become certified specialists continued to experience success in 2020. The fund is administered by the North Carolina Legal Education Assistance Foundation (NC LEAF). We received several donations from specialists and board members during 2020. The fund balance at the beginning of 2020 was \$1,355, and we received over \$350 in additional scholarship funds thus far in 2020. All contributions are tax deductible and can be made through NC LEAF. As a result of this scholarship fund, I am pleased to report that eight public interest applicants received scholarships this year, thereby offering these lawyers the opportunity to not only attain certified status, but also instill trust and confidence in the legal services received by the clients they serve.

Our exams continue to be a strong and objective measure of proficiency for the various specialties, and we are ever-striving to improve both the content of the exams and the testing experience. In 2019 we reinitiated our working relationship with Dr. Terry Ackerman with the University of Iowa. Dr. Ackerman previously provided psychometric analysis for the program's exams for sev-

eral years, and Dr. Ackerman has resumed that role in providing valuable psychometric analysis for each of our specialty exams to ensure our exams remain valid and reliable. We also continue to utilize ExamSoft and its testing program, Exemplify, for all of our testing needs. Examsoft is a secure, cloud-based software that is used by many law schools and on most bar exams. The program's significant capabilities help streamline all aspects of the testing process, from writing and storing exam questions to grading and analyzing exams. As mentioned before, we are also utilizing the remote proctoring features offered through ExamSoft to administer our certification exams in 2020; without the ability to proctor the exams remotely, we likely would have cancelled certification exams this year. We are hopeful that this new method of offering the exams will prove useful in reaching more lawyers in more parts of the state, thereby increasing lawyers' access to our program and the public's access to improved legal services via specialty-certified lawyers.

Also in this year's specialization news, the State Bar *Journal* featured interviews with Anna Hamrick, a workers' compensation law specialist from Asheville; Vernon Sumwalt, a workers' compensation and appellate law specialist from Charlotte; Ben and Christine Burnside, social security disability law specialists from Greensboro; and Kimberly Bullock Gatling, a trademark law specialist from Greensboro.

We continue to be thankful for the State Bar Council's support of our program, including its thoughtful consideration in reappointing the following board members to additional three-year terms: criminal law specialist and lawyer member Jan E. Pritchett, non-specialist lawyer member Nancy Ray, and public member Laura V. Hudson. The board looks forward to continued success in certifying lawyers in their specialty practice areas, thereby contributing to the State Bar's mission of protecting the public by improving the quality of legal services available to the people of this state.

### **Board of Paralegal Certification**

*Submitted by Warren Hodges, Chair*

Like everyone else, the Board of Paralegal Certification had different plans for 2020. This year marks the 15th anniversary of the State Bar's Paralegal Certification Program. To celebrate this milestone, we

planned to host an anniversary lunch in March. Chief Justice Cheri Beasley agreed to deliver the keynote address, and over 200 certified paralegals and special guests were signed up to attend the event. Sadly, our event was cancelled in March, and the rescheduled date for September suffered the same fate.

Despite the difficulties of 2020, our program continues to do the good work of the North Carolina State Bar by serving the public and contributing to the improvement of legal services offered in this state. North Carolina's Paralegal Certification Program exists for two reasons: First, to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer; and second, to improve the competency of those individuals. I am proud to report that, under the guidance of the Board of Paralegal Certification and with the tireless efforts of various volunteers and staff, our program is thriving and continually achieving the very purpose for which the State Bar Council created the program. Importantly, our program is entirely self-sufficient.

Fifteen years after the first application for paralegal certification was accepted by the board on July 1, 2005, there are today over 3,600 North Carolina State Bar certified paralegals. Unfortunately, due to public health considerations stemming from the COVID-19 pandemic, we were forced to cancel our April 2020 paralegal certification exam. However, early in the pandemic the board and staff made preparations to administer the certification exam via remote proctoring should the pandemic continue into the fall. On October 24, 2020, we will administer our paralegal certification exam via remote proctoring to 245 applicants. We anticipate designating over 180 new certified paralegals after the results of the October exam are released in November. Additionally, depending on our collective experience with the remote-proctored exam, we may continue to offer our exam remotely in future years. It is our hope that offering a remote exam will enable more paralegals from across the state to pursue paralegal certification, particularly those who ordinarily could not afford the time or the travel expense of taking the exam at one of our traditional testing loca-

tions. In this way, we are viewing the difficulties of 2020 as offering an opportunity to evolve our program for the betterment of legal services offered by paralegals in all parts of our state.

Also, in 2020 the board will have considered over 3,600 recertification applications. To maintain certification, a certified paralegal must complete six hours of continuing paralegal education (CPE) credits annually, including one hour of ethics. I am pleased to report that certified paralegals have continued to improve their competency by taking over 21,500 hours of CPE in the last 12 months.

Earlier this year, the Supreme Court of North Carolina approved the rule amendment presented to the State Bar Council at the end of 2019 that allows a paralegal to qualify to take the paralegal certification exam based upon the applicant's work experience. The new rule recognizes our state's valuable and experienced paralegals who did not obtain particular degrees prior to joining the paralegal profession by allowing paralegals with five years of paralegal work experience plus ethics training to qualify for the exam. The board feels this new rule works well with our ongoing educational requirements, allowing only those paralegals who have demonstrated specific educational achievements or substantial paralegal work experience to sit for the exam, thereby ensuring the high standards communicated by our certification process. We are thankful for the State Bar Council's and Supreme Court's support of this rule amendment. I am happy to report that 15 paralegals have qualified to sit for our 2020 certification exam by way of their work experience, and we expect that number to grow in 2021.

Our exam continues to be a strong and objective measure of proficiency for paralegals, and we are ever-striving to improve both the content of the exam and the testing experience. In 2019 we reinitiated our working relationship with Dr. Terry Ackerman with the University of Iowa. Dr. Ackerman previously provided psychometric analysis for our program's exam during the early years of our existence, and Dr. Ackerman has resumed that role in providing valuable psychometric analysis to ensure our exam remains valid and reliable. We also continue to utilize ExamSoft and its testing program, Examplify, for all of our testing needs. ExamSoft is a secure, cloud-based software

that is used by many law schools and on most bar exams. The program's significant capabilities help streamline all aspects of the testing process, from writing and storing exam questions to grading and analyzing exams. As mentioned before, we are also utilizing the remote proctoring features offered through ExamSoft to administer our certification exam in 2020; without the ability to proctor the exams remotely, we likely would have cancelled both certification exams this year. We are hopeful that this new method of offering the exam will prove useful in reaching more paralegals in more parts of the state, thereby increasing paralegals' access to our program and the public's access to improved legal services via certified paralegals.

We continue to be thankful for the State Bar Council's support of our program, including its thoughtful consideration in reappointing lawyer member and State Bar Councilor H. Russell Neighbors, paralegal member Lakisha Chichester, and paralegal member Sarah Kaufman for additional three-year terms.

The Board of Paralegal Certification looks forward to continued success certifying qualified paralegals to help with the delivery of legal services to the citizens of North Carolina. We welcome any recommendations or suggestions that councilors may have for ways in which the board might improve the paralegal certification program. On behalf of the other members of the board, thank you for the opportunity to contribute to the protection of the public by overseeing this important program of the North Carolina State Bar.

### **Lawyer Assistance Program**

*Submitted by Robynn Moraites, Director*

The Lawyer Assistance Program, both staff and volunteers, have risen to the unique challenges of this unprecedented year. But first, all our activities came to a screeching halt. Unlike many departments of the State Bar, almost everything we do at LAP we do in person, from counseling sessions to support groups, CLE talks, and law school office hours. Even drug testing and client monitoring must happen in person. I have been very proud of how streamlined and efficient we have become across the whole program, from staff to volunteers. But it took shutting everything down over the course of five non-stop, grueling days to realize just how much we were actually

doing (especially Delia Brown, our communications and CLE coordinator).

Because LAP has both Charlotte and Raleigh offices and our own database infrastructure separate and apart from the State Bar, we had already converted to a mostly-paperless, virtual office infrastructure years ago. We were thus agile enough to get back up and running in this new virtual world and resume full services; although, like everyone, it took us a stunned minute or two.

One of the very first initiatives we rolled out was a free-of-charge resilience webinar CLE with Laura Mahr of Conscious Legal Minds, with sponsorship funding provided by the LAP Foundation of North Carolina, Inc. and the North Carolina Bar Foundation. Susie Taylor, LAP's special projects manager, provided staffing support. The State Bar, LAP, and BarCARES provided promotional and infrastructural support. It was a huge collaboration and team effort to address an immediate need, and the program can only be described as a runaway success. Over 1,700 lawyers attended the first webinar and over 500 lawyers attended the second. With that single CLE initiative we reached almost 10% of the Bar.

We began holding client meetings and support groups via Zoom. We have also become adept at giving CLE webinars via Zoom and WebEx. "Zoom Gloom"—the perplexing sense of being drained while having accomplished almost nothing—is real. The reasons why are discussed in our latest CLE talk: Mental Health and Well-Being During COVID-19. We, like you, continue to adapt. And we are busy again, albeit with cases that appear even more severe and with COVID-related obstacles.

There had been a lull in new cases, like the tide that goes out before the tsunami hits. "The lull" was welcome and dearly, desperately needed. We had been understaffed for two and a half years and it was taking a serious toll on Cathy Killian and Nicki Ellington, our in-house clinical and counseling team. Cathy and Nicki have given so much to our program and its participants. They deserve far more recognition than they receive. Having no success in finding a third counselor, we restructured the vacant position. We migrated many of Nicki's and Cathy's administrative and volunteer management responsibilities that are time

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# February 2021 Bar Exam Applicants

The February 2021 bar examination will be held in Raleigh on February 23 and 24, 2021. Published below are the names of the applicants whose applications were received on or before November 3, 2020. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

<b>Lindsey Abboushi</b> Lisle, IL	<b>Hialeah, FL</b>	<b>David Blackwelder</b> Wake Forest, NC	<b>Charlotte, NC</b>	<b>Christine Cline</b> Greensboro, NC
<b>Lalisa Abdul-Malek</b> Durham, NC	<b>Morgan Barker</b> Charlotte, NC	<b>Mysty Blagg</b> Raleigh, NC	<b>David Burroughs</b> Holly Springs, NC	<b>Charles Cole</b> Winston-Salem, NC
<b>Kevin Acuna</b> Winston-Salem, NC	<b>Artrice Barksdale</b> Charlotte, NC	<b>Joseph Blake</b> Charlotte, NC	<b>Alaina Byrd</b> Charlotte, NC	<b>Jayla Cole</b> Monroe, NC
<b>Mariah Ahmed</b> Charlotte, NC	<b>Gwendolyn Barlow</b> Greensboro, NC	<b>Mark Blevins</b> North Charleston, SC	<b>Sarah Byrd</b> Charlotte, NC	<b>Thomas Cole</b> Durham, NC
<b>Amani Alayoubi</b> Troy, MI	<b>Cheyenne Barnes</b> Raleigh, NC	<b>Dana Blond</b> Savannah, GA	<b>Kaitlan Cabe</b> Mount Pleasant, SC	<b>Pamela Collins</b> Durham, NC
<b>LaShon Albert</b> Winston-Salem, NC	<b>Sontina Barnes</b> Raleigh, NC	<b>Mary Wills Bode</b> Raleigh, NC	<b>Zhen Cai</b> Charlotte, NC	<b>Tarra Collins</b> Greensboro, NC
<b>Dawnwin Allen</b> Charlotte, NC	<b>Dhruvi Barot</b> Holly Springs, NC	<b>Jerrad Bodenschatz</b> High Point, NC	<b>Vanessa Caledonia</b> Sarasota, FL	<b>Krista Contino Saumby</b> Cary, NC
<b>Toya Allison</b> Fayetteville, NC	<b>Patrick Barrecchia</b> Shallotte, NC	<b>Reginald Boney</b> Durham, NC	<b>Makayla Caliri</b> Charlotte, NC	<b>Victoria Corey</b> Greensboro, NC
<b>Sam Alman</b> Asheville, NC	<b>Kia Barrett</b> Greensboro, NC	<b>Matthew Booth</b> Chapel Hill, NC	<b>Taylor Campos</b> Annapolis, MD	<b>Emily Corigliano</b> Greensboro, NC
<b>Ava Almaraz</b> Huntersville, NC	<b>Danyelle Barron</b> Washington, DC	<b>Margaret Booz</b> Raleigh, NC	<b>Taylor Carraway</b> Walstonburg, NC	<b>Courtney Cornelius</b> Charlotte, NC
<b>Angie Amador</b> Winston-Salem, NC	<b>Madeline Baruch</b> Greensboro, NC	<b>Erin Bowman</b> Chattanooga, TN	<b>Hayleigh Carroll</b> Greensboro, NC	<b>Hunter Cornelius</b> Greensboro, NC, NC
<b>Cynthia Anaya Sanchez</b> Roxboro, NC	<b>Matthew Baruch</b> Chapel Hill, NC	<b>Khristen Boyette</b> Durham, NC	<b>Hannah Carter</b> Winston-Salem, NC	<b>Brianna Cotton</b> Barksdale AFB, LA
<b>Matthew Anderson</b> Peachtree City, GA	<b>Joseph Bates</b> Sanford, NC	<b>Nina Bragg</b> Clarksville, IN	<b>Brandon Casey</b> Spruce Pine, NC	<b>Morgan Cotton</b> Raleigh, NC
<b>Megan Anderson</b> Mooresville, NC	<b>Tanya Becena</b> Raleigh, NC	<b>Joshua Brantley</b> Mount Airy, VA	<b>Sydney Cauthen</b> Waxhaw, NC	<b>Shelley Cridlin</b> Saint Petersburg, FL
<b>Nicole Anderson</b> Durham, NC	<b>Megan Bellamy</b> Knightdale, NC	<b>Tanner Brantley</b> Greensboro, NC	<b>Andrew Cave</b> Clayton, NC	<b>Tyler Crima</b> Burlington, NC
<b>Houston Armstrong</b> Granite Falls, NC	<b>Dorothy Bennett</b> Columbia, SC	<b>Molly Brazil</b> Greensboro, NC	<b>Mia Chalhoub</b> Raleigh, NC	<b>Brittany Crimmins</b> Indianapolis, IN
<b>Shaun Arnold</b> Greensboro, NC	<b>Samuel Bennett</b> Edgemoor, SC	<b>Taylor Brennan</b> Durham, NC	<b>Adam Chalmers</b> Hackensack, NC	<b>Morgan Cutright</b> Raleigh, NC
<b>Cailey Augustin</b> Miami, FL	<b>Jordan Bentley</b> Charlotte, NC	<b>Ryan Bristow</b> High Point, NC	<b>Jimmy Chang</b> Santa Monica, CA	<b>Tahlia Cypress</b> Raleigh, NC
<b>Mark Avera</b> Gainesville, FL	<b>Katheryn Berlin</b> Charlotte, NC	<b>Katherine Brock</b> Greensboro, NC	<b>Regina Chavis</b> Raleigh, NC	<b>DeLisa Daniels</b> Greensboro, NC
<b>Kaila Baccas</b> Greensboro, NC	<b>Erin Berry</b> Knightdale, NC	<b>Thelma Brooks</b> Charlotte, NC	<b>Danielle Chien</b> Omaha, NE	<b>Taylor Dant</b> Woodbridge, VA
<b>R. Baker</b> Greensboro, NC	<b>Mackenzie Betchan</b> Clemmons, NC	<b>Kelley Brosky</b> Greensboro, NC	<b>Tai Chisholm Hensley</b> Clemmons, NC	<b>Timothy Daugherty</b> Greensboro, NC
<b>Melenni Balbach</b> Carolina Beach, NC	<b>Meyoshia Bethea</b> Hamer, SC	<b>Kenyada Brown</b> Charlotte, NC	<b>Brooke Church</b> Laurel Springs, NC	<b>James Davis</b> Davidson, NC
<b>Clarence Ballenger</b> New Bern, NC	<b>Kimberley Beyer</b> Glenville, NC	<b>Louise Brunson</b> Raleigh, NC	<b>Sarah Church</b> Summerfield, NC	<b>Samuel Davis</b> Durham, NC
<b>Victor Bao</b> Palmetto Bay, FL	<b>Ashley Bilbrey</b> Gastonia, NC	<b>Melissa Buck</b> Kannapolis, NC	<b>Brian Cindrich</b> Greensboro, NC	<b>Delicia Dawson</b> Clayton, NC
<b>Joshua Barfield</b> Sharpsburg, NC	<b>Brandye Birdsall</b> Elizabeth City, NC	<b>Allison Buczynski</b> Mountaintop, NY	<b>Courtney Clark</b> Columbia, SC	<b>Johnell Daye</b> Morrisville, NC
<b>Dominique Barile</b>	<b>Livia Birtalan</b> Charlotte, NC	<b>Gregory Bullard</b>	<b>Dale Clemons</b> Raleigh, NC	<b>Katherine DeForest</b>

Wilmington, NC	Louis Fristensky	Morrisville, NC	Megan Isserman	Carolina, PR
<b>Tyler Demery</b>	Wayneville, NC	<b>Alisha Harris</b>	San Diego, CA	<b>Allison Layton</b>
Raleigh, NC	<b>DeAnna Fulmore</b>	Denver, NC	<b>Olivia Izze</b>	Fuquay Varina, NC
<b>Andrew Denoff</b>	Brandon, FL	<b>James Harris</b>	Huntersville, NC	<b>Brandy Lea</b>
Greensboro, NC	<b>Neil Fulsang</b>	High Point, NC	<b>Harriet Jackson</b>	Hampstead, NC
<b>Iris DeWitt</b>	Carthage, NC	<b>Rachel Harris</b>	Charlotte, NC	<b>Tyrone Leader</b>
Charlotte, NC	<b>Regina Fulton</b>	Greenville, SC	<b>Rachel James</b>	Concord, NC
<b>Karen Dickerson</b>	Raleigh, NC	<b>Ronisha Harris</b>	Charlotte, NC	<b>Clifford Leagan</b>
Weaverville, NC	<b>Vadim Furmanov</b>	Benson, NC	<b>Matthew Jensen</b>	Mount Airy, NC
<b>Taryn DiPalma</b>	Durham, NC	<b>Thomas Harvey</b>	Mountain View, CA	<b>Lena Lee</b>
Durham, NC	<b>Gabrielle Gabriel</b>	Wilmington, NC	<b>Victoria Jimenez</b>	Cresskill, NJ
<b>Taylor Distefano</b>	Charlotte, NC	<b>LaTonya Hayes</b>	Charlotte, NC	<b>Sangeun Lee</b>
Greensboro, NC	<b>Natalie Galvez</b>	Stone Mountain, GA	<b>Gabrielle Johnson</b>	Garden Grove, CA
<b>Alexander Doernberg</b>	Gastonia, NC	<b>Timisha Henley</b>	Las Cruces, NM	<b>Corey Lengyel</b>
Cary, NC	<b>Tukesia Garner</b>	Greensboro, NC	<b>Lauren Johnson</b>	Myrtle Beach, SC
<b>John Dowling</b>	Charlotte, NC	<b>Cynthia Hernandez</b>	Fort Wayne, IN	<b>Jason Lerman</b>
Huntersville, NC	<b>Jessany Garrett</b>	Greensboro, NC	<b>Lindsay Johnson</b>	Winston-Salem, NC
<b>Michelle Dozier</b>	Charlotte, NC	<b>Stephanie Hernandez</b>	Chapel Hill, NC	<b>Morgan Lewis</b>
Greenville, NC	<b>Sarah Ghannam</b>	Durham, NC	<b>Amber Jones</b>	Winston-Salem, NC
<b>Samantha Dudley</b>	Charlotte, NC	<b>Kelly Higa Brown</b>	Winston-Salem, NC	<b>Stephen Lindsay</b>
Mint Hill, NC	<b>Lani Gholston</b>	Durham, NC	<b>Casey Jones</b>	Arden, NC
<b>Kjirsten Durand-Johnson</b>	Jacksonville, NC	<b>Myron Hill</b>	Wilson's Mills, NC	<b>Christopher Linton</b>
Greensboro, NC	<b>Lexis Gibson</b>	Raleigh, NC	<b>Chanelle Jones</b>	Winston-Salem, NC
<b>Alexander Earnhardt</b>	Atlanta, GA	<b>Alyssa Hiltbold</b>	Chesapeake, VA	<b>Mario Liranzo</b>
Raleigh, NC	<b>Anna Gillespie</b>	Durham, NC	<b>Dax Jones</b>	Charlotte, NC
<b>Candace Eaton</b>	Bullock, NC	<b>Joshua Hinson</b>	Greensboro, NC	<b>Ashley Little</b>
Winston-Salem, NC	<b>Jenell Gillespie</b>	Columbia, SC	<b>George Jones</b>	Charlotte, NC
<b>Anthony Eben</b>	Lumberton, NC	<b>Danielle Hipsman</b>	Greenville, NC	<b>Courtney Lockamy</b>
Asheville, NC	<b>Charlene Gilliam</b>	Sanford, NC	<b>Marianna Kacjuba</b>	Raleigh, NC
<b>Adeline Elliott</b>	Asheville, NC	<b>James Hoch</b>	Denver, NC	<b>Courtney Lockerman</b>
Charlotte, NC	<b>Kiarra Gilliam</b>	Raleigh, NC	<b>Haddijatou Kah-Jallow</b>	Linwood, NC
<b>Robert Ellis-Liang</b>	Charlotte, NC	<b>Raven Hoff</b>	Warwick, RI	<b>Keri Lofton</b>
Raleigh, NC	<b>Joseph Giovinazzo</b>	Lancaster, TX	<b>Mark Kaisoglus</b>	Charleston, SC
<b>Amro Elsayed</b>	Cornelius, NC	<b>Serenity Hogan</b>	Hendersonville, NC	<b>Michael Longo</b>
Winston-Salem, NC	<b>Robert Goode</b>	Raleigh, NC	<b>Omar Kalala</b>	Jacksonville, NC
<b>Corbin Erickson</b>	Indianapolis, IN	<b>Isabella Hohler</b>	Charlotte, NC	<b>Clinton Looper</b>
Raleigh, NC	<b>Clayton Goris</b>	Fuquay Varina, NC	<b>Caitlin Kaloostian</b>	Granite Falls, NC
<b>Matthew Esterline</b>	Raleigh, NC	<b>Jack Holbrook</b>	Miami, FL	<b>Guadalupe Lugo</b>
Rocky Mount, NC	<b>Christopher Graham</b>	Kernersville, NC	<b>Reed Kegel</b>	Charlotte, NC
<b>Julia Eurey</b>	Mebane, NC	<b>Larry Holder</b>	Ellwood City, PA	<b>Hannah Lundquist</b>
Lincolnton, NC	<b>Eboni Graham</b>	Raleigh, NC	<b>Kevin Kenney</b>	Lester Prairie, MN
<b>Michael Evans</b>	Winston-Salem, NC	<b>Allison Hopkins</b>	Wilmington, NC	<b>Liana Madison</b>
Fuquay Varina, NC	<b>John Grahl</b>	Kernersville, NC	<b>Elizabeth Kenny</b>	Cary, NC
<b>John Everett</b>	Winston-Salem, NC	<b>Brianna Hourihan</b>	Morrisville, NC	<b>Ananya Mallavarapu</b>
Duck, NC	<b>Cara Gray</b>	Columbia, SC	<b>Trent Kerns</b>	Matthews, NC
<b>Derek Farrugia</b>	Raleigh, NC	<b>Deidra Howard</b>	Richmond, VA	<b>Emily Mann</b>
Chicago, IL	<b>Misty Greene</b>	Concord, NC	<b>Heather Kindley</b>	Charlotte, NC
<b>Hossein Fazilatfar</b>	Angier, NC	<b>Rebecca Howell</b>	Thomasville, NC	<b>Jessica Mantekas</b>
Waynesville, NC	<b>Susan Gregory</b>	Chapel Hill, NC	<b>Connor Kirol</b>	Raleigh, NC
<b>Elizaveta Fedun</b>	Sarasota, FL	<b>Christopher Hsu</b>	Johns Island, SC	<b>Anna Marion</b>
Hendersonville, NC	<b>Joseph Gribaudo</b>	Matthews, NC	<b>Julie Kirstein</b>	Carrboro, NC
<b>Matthew Feigler</b>	Wilmington, DE	<b>Helen Hsu</b>	Fairview, NC	<b>Christopher Martineau</b>
Harahan, LA	<b>Jessica Griffin</b>	Raleigh, NC	<b>Brittani Kleen</b>	Greensboro, NC
<b>Jonathan Fernandez</b>	Lancaster, SC	<b>Anna Huffman</b>	Chesapeake, VA	<b>Joseph Martinez</b>
Burnsville, NC	<b>Michael Grisham</b>	Elon, NC	<b>Matthew Koehl</b>	Valdese, NC
<b>Michael Fiori</b>	Dallas, TX	<b>Austin Hughey</b>	Nebo, NC	<b>Stephanie Mascella</b>
Greensboro, NC	<b>Alexis Grossman</b>	Camp Hill, PA	<b>Kaylee Kone</b>	Myrtle Beach, SC
<b>Patricia Fishback</b>	High Point, NC	<b>Tristan Hunkin</b>	Glendale, AZ	<b>Anthony Masters</b>
Sanford, NC	<b>Chen Guo</b>	White Plains, MD	<b>William Kopp</b>	Advance, NC
<b>Darrilyn Fisher</b>	Cary, NC	<b>Alexandra Hunt</b>	Charlotte, NC	<b>Brandon Mayes</b>
Raeford, NC	<b>Marina Gutierrez</b>	Raleigh, NC	<b>Sarah Koucheiki</b>	Chapel Hill, NC
<b>Joshua Flack</b>	Wendell, NC	<b>Hunter Hurst</b>	Durham, NC	<b>Donovan May-Parker</b>
Raleigh, NC	<b>Madison Guttry</b>	Raleigh, NC	<b>Alexis Kovolenko-Vassillion</b>	Raleigh, NC
<b>Kate Foshee</b>	Greensboro, NC	<b>Jason Iglesias</b>	Fayetteville, NC	<b>Kia McCormick</b>
Shawnee, KS	<b>Edward Hagerich</b>	Asheville, NC	<b>Stephen Krieski</b>	Raleigh, NC
<b>Alexander Fowler</b>	Apex, NC	<b>Michelle Iqbal</b>	Raleigh, NC	<b>Anthony McCue</b>
Dobson, NC	<b>Kathryn Hagerman</b>	Charlotte, NC	<b>Brooke LaMachio</b>	Chapel Hill, NC
<b>Joshua Franks</b>	Charlotte, NC	<b>Robert Irvine</b>	Greensboro, NC	<b>Ericka McDaniel</b>
Raleigh, NC	<b>Kristin Halverson</b>	Davidson, NC	<b>Patrick Lambert</b>	Greensboro, NC
<b>Montre Freeman</b>	Fair Oaks, CA	<b>Tucker Irvine</b>	Cherokee, NC	<b>Sarah McIntyre</b>
Roanoke Rapids, NC	<b>Donald Hamilton</b>	Charlotte, NC	<b>Tania Laporte-Reveron</b>	Browns Summit, NC

<b>Edward McKenzie</b> Dillon, SC	Myrtle Beach, SC	<b>Brandon Price</b> Fayetteville, NC	Granite Falls, NC	<b>Danny Stamey</b> Pasadena, CA
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<b>Dorian McKay</b> Raleigh, NC	<b>Trevor O'Hara</b> Charlotte, NC	<b>Cher Marana Quibang</b> Greensboro, NC	<b>Melissa Schwartz</b> Weaverville, NC	<b>Gregory Starks</b> Durham, NC
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## Annual Reports (cont.)

consuming but do not require clinical expertise, and we created a field coordinator position.

Candace Hoffman joined our team in March. She came to LAP after many years litigating cases for the Department of Justice. We were in the fortunate/unfortunate position of having dozens of enthusiastic, dedicated volunteers apply—all monumentally overqualified, including Candace. She came on board just as everything was coming to a screeching halt. During the lull, Cathy and Nicki had a respite from new clients and their attendant emergencies. They reconnected with volunteers and clients in more sustainable and meaningful ways. They had opportunities to connect with those in rural

areas whom they do not see as often. We also trained Candace on the database system and the reports she would be running. She began meeting volunteers across the state via Zoom interviews. And our volunteers have showed up in new and amazing ways.

In *Farewell to Arms*, Ernest Hemingway observed, “The world breaks everyone, and then some become strong in the broken places.” He has beautifully described the process of recovery—all forms of recovery. As soon as LAP participants begin actively using recovery tools, they become incredibly resilient and 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), situations where there is a sense of a loss of control, not only to shape outcomes (as we like to think we do as

lawyers), but even loss of control over the process.

This is where people in long-term recovery shine. They’ve had years of practice implementing these tools day in and day out. Recovery is mostly about day-to-day emotional well-being as we navigate the vagaries of life. As soon as we went into lock-down quarantine, volunteers began sharing how they were relying on recovery tools as applied to the pandemic. Out of that sharing, and the various articles they sent me, were born both the Pandemic Editions of the *Sidebar* and the Coronavirus Mental and Emotional Well-Being Toolkit.

Thank you all: LAP staff and volunteers. I often get credit for what is really your stellar work.

For a detailed annual report visit: [nclap.org/annual-report](http://nclap.org/annual-report). ■

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## Law School Briefs (cont.)

### Wake Forest School of Law

*Wake Forest Law contributes to New America study on housing loss*—WFU Law worked with WFU and WSSU to examine the impact of housing loss in Forsyth County. The report discovered a 4.4% eviction rate in the area, with the highest rates of those affected found in predominantly non-white households. This collaboration resulted in a contribution led by Professor Scott Schang, director of WF Law’s Environmental Law and Policy Clinic, to the “Displaced in America” report from New America.

*Professor Emily Benfer leads national*

*conversation on eviction*—Professor Emily Benfer has been active on the national stage bringing attention to the looming eviction crisis that threatens many Americans. Her efforts as chair of the ABA’s COVID-19 Task Force Committee on Eviction, and her work as co-author of the Aspen Institute’s report, “The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk,” directly impacted the CDC’s decision to issue a moratorium on evictions of tenants struggling during the pandemic.

*Wake Forest Law and Thomson Reuters join forces to help small businesses*—Professor Steve Nickles led the creation of a free 15-hour course designed to help legal and financial advisors tasked with helping

small businesses facing bankruptcy. “Bankruptcy and Small Business: A Practical Course for Newcomers” is the first WFU Law course offered by Thomson Reuters. Professor Nickles conceived this program in response to the anticipated economic impact of the pandemic on small businesses.

*Pro Bono Project’s Unemployment Insurance, Protestors’ Rights Projects*—WFU Law’s Pro Bono Project launched two noteworthy initiatives. The first helped people who lost their jobs due to the COVID-19 pandemic navigate unemployment insurance in an overwhelmed NCDES system. The second, the Protestor’s Rights Project, is an initiative intended to educate the community about their legal rights during a protest. ■

# The North Carolina State Bar and Affiliated Entities

## *Selected Financial Data*

### The North Carolina State Bar

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	\$7,568,001	8,134,482
Property and equipment, net	13,787,793	14,674,655
Other assets	<u>738,013</u>	<u>859,850</u>
	\$22,093,807	\$23,668,987
<b>Liabilities and Fund Equity</b>		
Current liabilities	\$5,353,583	\$6,484,668
Long-term debt	<u>8,992,271</u>	<u>9,199,750</u>
	14,345,854	15,684,418
Fund equity-retained earnings	<u>7,747,953</u>	<u>7,984,569</u>
	\$22,093,807	\$23,668,987

### Revenues and Expenses

Dues	\$8,689,115	\$8,586,298
Other operating revenues	<u>1,140,285</u>	<u>980,445</u>
Total operating revenues	9,829,400	9,566,743
Operating expenses	9,771,920	(9,437,543)
Non-operating expenses	<u>(294,096)</u>	<u>(341,274)</u>
Net income (loss)	\$(236,616)	\$(212,074)

### The North Carolina State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	\$6,195,593	\$2,881,365
Interest receivable	473,247	426,347
Other assets	<u>3,466,530</u>	<u>6,318,318</u>
	\$10,135,370	\$9,626,030
<b>Liabilities and Fund Equity</b>		
Grants approved but unpaid	\$5,047,497	\$3,896,665
Other liabilities	<u>107,795</u>	<u>374,817</u>
	5,155,292	4,271,482
Fund equity-retained earnings	<u>- 5,354,548</u>	
	\$5,155,292	\$9,626,030

### Revenues and Expenses

Interest from IOLTA participants, net	\$5,119,918	\$3,016,977
Other operating revenues	<u>361,856</u>	<u>132,265</u>
Total operating revenues	5,481,774	3,149,242
Operating expenses	(7,257,371)	(3,465,210)
Non-operating revenues	<u>166,127</u>	<u>141,015</u>
Net income (loss)	\$(1,609,470)	\$(174,953)

### Board of Client Security Fund

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	\$2,188,496	\$1,432,123
Other assets	<u>1,441</u>	<u>1,080</u>
	\$2,189,937	\$1,433,203
<b>Liabilities and Fund Equity</b>		
Current liabilities	\$32,913	\$31,240
Fund equity-retained earnings	<u>2,157,024</u>	<u>1,401,963</u>
	\$2,189,937	\$1,433,203

### Revenues and Expenses

Operating revenues	\$1,069,147	\$914,342
Operating expenses	(314,238)	(917,299)
Non-operating revenues	<u>152</u>	<u>111</u>
Net income (loss)	\$755,061	\$(2,846)

### Board of Continuing Legal Education

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	\$250,009	\$222,170
Other assets	<u>173,800</u>	<u>151,266</u>
	\$423,809	\$373,436
<b>Liabilities and Fund Equity</b>		
Current liabilities	35,835	60,581
Fund equity-retained earnings	<u>387,974</u>	<u>312,855</u>
	\$423,809	\$373,436

### Revenues and Expenses

Operating revenues	\$891,911	\$704,819
Operating expenses	(816,792)	(708,634)

Non-operating revenues	<u>-</u>	<u>-</u>
Net income (loss)	\$75,119	\$(3,815)

### Board of Legal Specialization

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	157,292	158,430
Other assets	<u>1,300</u>	<u>443</u>
	\$158,592	\$158,873

### Liabilities and Fund Equity

Current liabilities	11,332	12,038
Fund equity-retained earnings	<u>147,260</u>	<u>146,835</u>
	\$158,592	\$158,873

### Revenues and Expenses

Operating revenues-specialization fees	\$187,386	\$195,600
Operating expenses	(186,961)	(204,898)
Non-operating revenues	<u>-</u>	<u>-</u>
Net income (loss)	\$425	\$(9,298)

### Board of Paralegal Certification

	2019	2018
<b>Assets</b>		
Cash and cash equivalents	\$398,405	\$406,749
Other assets	<u>-</u>	<u>825</u>
	\$398,405	\$407,574

### Liabilities and Fund Equity

Current liabilities-accounts payable	47,462	44,079
Fund equity-retained earnings	<u>350,943</u>	<u>363,495</u>
	\$398,405	\$407,574

### Revenues and Expenses

Operating revenues-fees	\$241,535	\$249,955
Operating expenses	(254,087)	(249,192)
Non-operating revenues	<u>-</u>	<u>-</u>
Net income (loss)	\$(12,552)	\$763



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