

THE NORTH CAROLINA STATE BAR

JOURNAL

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Invisible Signs of the Battles Within

BY DARRIN D. JORDAN

The tragic death of Cheslie Kryst has been in my thoughts this week. I can think of no more important subject to address in my very first "President's Message."

While I fully intended to address issues involving mental health, substance abuse, and the NCLAP program during my tenure of leadership, I failed to anticipate how imperative it would be to share these truths immediately. The practice of law is difficult. You can be an excellent lawyer, diligent in all regards, and forget to consider your own well-being. If you are going through difficult times, struggling with substance abuse or mental health issues today, please, I beg of you, ask for help!

Though I didn't personally know Cheslie, I was present when she gave an inspiring speech at the 200th Anniversary Celebration of the North Carolina Supreme Court in 2019. Her reflections were so touching that her speech was later published in the *State Bar Journal*.

Frankly, I have a lot of questions today and feel unsettled. I grieve the loss of a shining star who had so much potential and so many wonderful qualities and strengths. How could Cheslie, of all people, be taken from us? How could someone who appeared on top of the world meet such a tragic end? Could I or anyone else have helped?

Of course, those answers are hard to come by. We know mental health issues are not just common in our profession. They are endemic.

Robin Williams is noted for saying, "Everyone you meet is fighting a battle you know nothing about. Be kind. Always." He, more than many, knew that all too well.

The *Journal of Addiction Medicine* published a disturbing report in February 2016

(see bit.ly/JAMreport). One of the more comprehensive studies of our profession in years, if not decades, it revealed several troubling statistics regarding mental health and substance abuse issues among lawyers.

Those numbers indicate, for attorneys actively engaged in the practice of law:

- 21% likely meet the criterion to be deemed a "problem drinker"
- 28% of lawyers experience mild or higher levels of depression
- 19% experience mild or higher levels of anxiety
- 23% experience mild or higher levels of stress

"Young" lawyers, those who have practiced a decade or less, tend to have the highest instances of problems.

See Results: Substantial rates of behavioral health problems were found, with 20.6% screening positive for hazardous, harmful, and potentially alcohol dependent drinking. Men had a higher proportion of positive screens, and also younger participants and those working in the field for a shorter duration. Age group predicted Alcohol Use Disorders Identification Test scores; respondents 30 years of age or younger were more likely to have a higher score than their older peers. Levels of depression, anxiety, and stress among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively.

The study further made clear, "Attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations. Mental health distress is also significant. These data underscore the need for greater resources for

lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions."

Even one tragedy such as Cheslie's is far too many. Within the ranks of North Carolina attorneys, there were several similar tragedies in the last year. Just as invisible as the signs of the internal struggles that rage within, neither age, gender, race, nor success (or lack thereof) provide much assistance in predicting who will win or lose those battles. While being "kind" is not an absolute cure, kindness along with encouragement to get professional help can be a game changer, or in some cases, a life saver. I have a friend who likes to say, "It's nice to be nice." He's right.

I encourage North Carolina attorneys to be zealous advocates for your clients. While doing so, treat your opponent with dignity and a kind word. Don't reach only to the attorney who seems to be having a bad day, reach out to the attorney who may be "fighting a battle" that is invisible.

We have an incredible resource for lawyers, the North Carolina Lawyers Assistance Program or NCLAP. Executive Director Robynn Moraites and her staff are ready, willing, and able to assist you. Everything you share is strictly confidential. Reach out to them online at nclap.org. ■

Darrin D. Jordan is a partner with the law firm of Whitley, Jordan, Inge & Rary, PA. He maintains a criminal practice in both state and federal court and is a board certified specialist in state criminal law. While he practices in his hometown of Salisbury, he lives in Kannapolis.

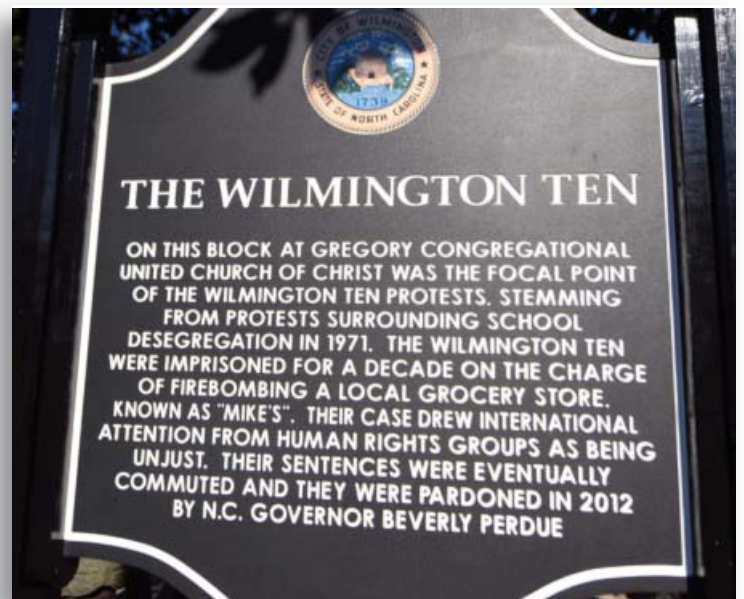
Note: I would like to thank my good friend and great lawyer, Bill Powers, for helping me put to words thoughts that for some reason were not making it to paper. We both share in our concern and compassion for lawyers and people who are being adversely affected by mental illness or substance abuse. Bill is the kind of friend we should all seek.



The Wilmington Ten—Starting a Conversation

BY BILL POWERS AND CHRIS BEDDOW

Our purpose in writing this article is twofold. First, we want to highlight the notorious, yet relatively unknown, case of the Wilmington Ten and its impact on North Carolina jurisprudence. Second, we hope to start a conversation regarding generational wrongs in our system of justice.



Matt Born/SunNews

As lawyers, it is incumbent upon us to educate ourselves regarding our history, including the negative aspects of our collective past. That is particularly true when lawyers and the legal profession are tied in an inseparable nexus with that history, be it good or bad.

In researching the topic, we have been honored to personally consult with some of the living legends involved in the case of the Wilmington Ten, including criminal defense attorneys *par excellence* James “Fergie” Ferguson and Irving Joyner.

We also spoke with former NC Supreme Court Justice Mark Davis, who served as legal counsel for Governor Beverly Purdue when she issued a pardon of innocence to the

Wilmington Ten in 2012.¹

Recently retired Honorable Jesse Caldwell III provided invaluable insights into the humanity of James “Jay” Stroud, the prosecutor assigned to the matters.

We have purposely not reached out to the still-living individuals comprising the Wilmington Ten. Their pain remains palpable, and we did not want to exacerbate it by asking them to reflect on their experiences. We’ve read about and, therefore, respect their expressed desire to be left alone and to tell or not tell their individual stories as they see fit.

The Port City

The story of the Wilmington Ten cannot

be accurately told without acknowledging the historical context of the 1898 *coup d’état* in Wilmington, NC. The tragedy of what took place is both particularly poignant, if not disturbingly similar to current social discourse.

Many very educated lawyers know almost nothing about the Wilmington Ten and what began 70 years before, with the *coup d’état* and the unrelenting, successful pursuit of Jim Crow laws. Some know but rather not think on such things.

North Carolinians, especially those in Charlotte and Raleigh, may be surprised to learn Wilmington was once the largest and most wealthy city in North Carolina.² With its deep-water port, it was an epicenter of

national and regional commerce supplying pine tar, rice, and tobacco during the Civil War and Reconstruction. Wilmington also served as a railhead for North Carolina and the southeast.³

Civic life included active participation of all segments of the community, including African Americans.⁴ That was, in part, an intended effect of the passage of the 14th Amendment in 1866 (ratified in 1868), the 15th Amendment (ratified in 1870), and the Reconstruction Act of 1867.⁵

It also helped that a condition precedent for seceding states' re-entry into the United States included banning high-ranking officers of the confederacy from participation in the formation of the "new North Carolina."⁶ Congress imposed, by military occupation, inclusion of African Americans into the body politic.⁷

Federal troops remained in areas of the south until 1877 as agreed upon in the Hayes-Tilden compromise which settled the hotly disputed results of the 1876 United States presidential election.⁸

Republican Rutherford B. Hayes became president over Democrat Samuel J. Tilden as part of the "compromise."⁹ The *quid pro quo* included the proviso that Hayes would remove federal troops then quartered in southern states, signaling the "end of Reconstruction."¹⁰

For a time, Wilmington served as a direct repudiation of the irrefutable Democratic Party's racist ideology. That was until Goldsboro Attorney Charles Aycock, Democratic Party State Chair Furnifold Simmons, and the owner of the *Raleigh News and Observer*, Josephus Daniels, began their efforts toward, "...[R]edemption of North Carolina from 'Negro Domination.'"¹¹ Those stalwarts of white supremacy espoused the goal that, "[African Americans] had to be kept away from the polls by any means necessary."¹²

Daniels, a "progressive Democrat," was secretary of the navy during World War I.¹³ He was also the 10th United States ambassador to Mexico and reportedly a close friend of President Franklin D. Roosevelt.¹⁴

He publicly lamented in a January 28, 1900, editorial in the *Raleigh News and Observer* that "The greatest folly and crime in our national history was the establishment of [N]egro suffrage immediately after the [Civil] War. Not a single good thing has come of it, but only evil."¹⁵

Charles Brantley Aycock was a lawyer, the US attorney for the Eastern District of North

Carolina, and eventually the 50th governor of North Carolina.¹⁶

In his 1903 speech, "The Negro Problem," Aycock professed:

These things are not said in enmity to the negro but in regard for him. He constitutes one third of the population of my state: he has always been my personal friend; as a lawyer I have often defended him, and as governor I have frequently protected him. But there flows in my veins the blood of the dominant race; that race that has conquered the earth and seeks out the mysteries of the heights and depths. If manifest destiny leads to the seizure of Panama, it is certain that it likewise leads to the dominance of the Caucasian. **When the negro recognizes this fact we shall have peace and good will between the races.**¹⁷ (Emphasis added.)

The Aycock Residence Hall at UNC Chapel Hill was named in his honor, as was the Aycock Auditorium at UNC Greensboro. Aycock Residence Hall has since been renamed. In February 2016, the Board of Trustees at UNC Greensboro voted to remove Aycock's name from its auditorium.¹⁸

Furnifold McLendel Simmons was a member of the US House of Representatives and a United States senator representing North Carolina for 30 years.¹⁹

In late 1897, a group of prominent Wilmington men began plotting to take back control of the Wilmington government.²⁰ The group, called the "Secret Nine," began to work with Simmons, Daniels, and Aycock as they built the 1898 democratic campaign, focusing on white supremacy.²¹

Also involved was Alfred Waddell, a Wilmington attorney who gained statewide notoriety in declaring during a speech, "We will never surrender to a ragged raffle of Negroes, even if we have to choke the Cape Fear River with carcasses."²²

Waddell was a US congressman and lieutenant colonel in the confederate Third Cavalry/Forty-First North Carolina Regiment.²³

The Democrats' work on their white supremacy campaign culminated in the events that took place in Wilmington in November 1898.

Any level of social equity in the Port City ended on November 9, 1898, when Waddell, at the behest of the "Secret Nine," went to the New Hanover County courthouse and presented a *White Declaration of Independence*, "to assert the supremacy of the white man."²⁴

With it came a demand for closure of the *Wilmington Record*, threatening "...[W]hen the negro paper of this city published an article so vile and slanderous that it would in most communities have resulted in the lynching of the editor."²⁵

Waddell gave African American politicians 12 hours to respond to the manifesto and renounce their elected offices.²⁶

With their demands unmet, Waddell, together with armed "Red Shirt" vigilantes and other white supremacists, proceeded to Thalian Hall in Wilmington.²⁷

Waddell forced the resignation, by gunpoint, of the Wilmington chief of police, the Board of Aldermen, and Republican Mayor Silas P. Wright.²⁸

As each official "resigned," Waddell appointed an "Anglo-Saxon" as their replacement, saving for himself the mayorship of Wilmington, a position he retained until 1905.²⁹

With that, the "Solid South" was cemented as the power-wielding class in Wilmington, with the *White Declaration of Independence* as printed in the *Raleigh News and Observer* on November 10, 1898, "We, the undersigned citizens of the city of Wilmington and county of New Hanover, do hereby declare that we will no longer be ruled, and will never again be ruled, by men of African origin."³⁰

Shortly thereafter, in 1899, the North Carolina General Assembly began its systematic attack on Reconstruction with the enactment, by statute (session laws), of literacy tests, poll taxes, and mandatory voter "registration."³¹

To ignore those laws, and the related intents and purposes, is to ignore the disturbing history of codified racism in North Carolina that is well within the memory of many who lived in the Tarheel State at the time.

The Wilmington Ten

Seventy years of Black Codes and Jim Crow laws, the objectives of which included subverting Reconstruction and disenfranchising, by statute, African Americans, had a substantial, lasting effect in North Carolina.

From the close of the 19th century and continuing through the mid-1960s, North Carolina endured perpetual racial discord. Wilmington was no exception nor was it, frankly, particularly unique in that regard.³²

A resurgence of violence and racial tensions culminated nationwide when the Rev-

erend Martin Luther King Jr. cancelled his April 4, 1968, speaking engagement at Williston High School in Wilmington.³³

Instead of traveling to Wilmington, Dr. King stayed in Memphis, Tennessee, where he was assassinated that same day.

Williston High School

On May 27, 1968, the US Supreme Court issued several landmark decisions regarding desegregation of schools in *Green v. County School Board of New Kent County* (1968), *Monroe v. Board of Commissioners* (1968), and *Raney v. Board of Education* (1968).³⁵

In *Eaton v. New Hanover County Board of Education*, Chief Judge Butler wrote, first referencing the US Supreme Court decisions, “[T]his court found that the New Hanover County public school system was an unconstitutional, racially dual system and directed that it be converted to a unitary system at the earliest practicable date.”³⁶

Judge Butler further stated, “On July 15, 1971, the school board filed written objections to the plan submitted by the United States Office of Education. In addition to general objections to the plan, the school board specifically objects on the ground that the plan will require an additional 38 school buses, and that ‘[d]ue to the costs involved, the uncertainty of available funds to buy extra buses, the necessity of obtaining additional trained bus drivers, the inconvenience to children and parents, the additional time and hazards of bus travel, the defendant objects

to the desegregation plan proposed by the Department of Health, Education and Welfare and the plaintiffs in this case.”³⁷

The Order in *Eaton* in relevant part sets forth, “The plan hereby adopted is effective to convert the New Hanover County School System to a unitary system. There will no longer be Black schools and white schools but just schools as required by law. *Green*, supra.”³⁸

The New Hanover Board of Education, in response to Judge Butler’s Order, chose to close Williston High School.³⁹

Williston High School traced its origins to a freedmen’s school that opened in 1866.⁴⁰ Students from Williston, all of whom were African American, were transferred to the all-white Hoggard and New Hanover High Schools, resulting in persistent violent outbreaks between students.⁴¹

The Fourth Circuit Court of Appeals, in the opinion *Chavis v. State of North Carolina*, writes regarding the closure of Williston, “As a protest, Black students boycotted the schools during the last week of January 1971. There were counter-activities on the part of whites.”⁴²

Rioting and arson broke out in Wilmington, as armed white supremacists began patrolling African American neighborhoods.⁴³

The Wilmington school superintendent met with students, hearing their complaints, hoping to tamp down tensions. He was thereafter hung in effigy by local Ku Klux Klan members and “The Rights of White People” white supremacist organization.⁴⁴ Reverend

Eugene Templeton, the white pastor of the integrated Gregory Congregational United Church of Christ, offered his church as a meeting place for students and protestors.⁴⁵

On Thursday, February 4, 1971, reports circulated that Gregory Congregational would be bombed.⁴⁶

As described by the Fourth Circuit, “A group of students decided to stay in the church and defend it. In fact it was not bombed, but a shooting spree began throughout the church neighborhood and continued for four days.”⁴⁷

In its opinion overturning the convictions of the Wilmington Ten, the court explained, Mike’s Grocery Store in Wilmington, North Carolina, was firebombed and burned on February 6, 1971, and the perpetrators of that crime, using various weapons, fired upon the firemen and policemen attempting to extinguish the fire. Benjamin F. Chavis and his nine co-petitioners were variously convicted in the Superior Court of Pender County, North Carolina, of felonious burning of that property and conspiracy to assault emergency personnel at the scene of the burning.⁴⁸

The “Wilmington Ten” were mostly young, African American students.⁴⁹ No one saw them set fire to Mike’s Grocery Store.⁵⁰

The way they were convicted, and the systematic racism exhibited by Prosecutor Stroud, violate any rational definition of true justice, due process, and equal protection under the law.

The Trials of the Wilmington Ten

The case of the Wilmington Ten was first called to trial in June of 1972.⁵¹ The trial ended with a mistrial due to the sudden illness of the prosecutor.⁵²

One would be remiss in failing to note, the possible panel of jurors for the first trial consisted of ten African Americans and two Caucasians.⁵³ Jury selection had not been completed. Jurors had not been empaneled prior to the mistrial.

On the back of a yellow legal pad, Prosecutor Stroud, in his distinctive handwriting, wrote “Disadvantages of a Mistrial” on the left side and “Advantages of a Mistrial” on the right side.⁵⁴

Stroud cited as advantages, “Different Judge,” and “[F]resh start new jury from another county,” and the disadvantage of, “Possibly get Judges Chess, Godwin, or Copeland on new trial.”⁵⁵

The Rev Ben Chavis greets supporters and protestors in February 1976 during the trial of Wilmington Ten members. Photo courtesy of the StarNews.



The notes of the prosecutor were not discovered until 2008. They were in a closet at the District Attorney's Office, marked, "Wilmington Ten – Do Not Open."⁵⁶

After a second jury selection in September 1972, this time with a panel of ten Caucasian and two African American jurors, and in part assisted by extremely favorable rulings by a different judge not from New Hanover County, convictions were secured on all ten defendants.⁵⁷

Superior Court Judge Robert M. Martin presided over the case. Judge Martin practiced law in High Point until he was appointed by Governor Moore as a special superior court judge and re-appointed by Governor Scott. Judge Martin thereafter resigned as judge of the superior court to accept an appointment by Governor Holshouser to fulfill the unexpired term of Justice Webb on the North Carolina Court of Appeals. After an unsuccessful bid for election to the Supreme Court, he was re-appointed to the court of appeals by Governor Hunt.⁵⁸

Pursuant to Superior Court Judge Martin's entry of judgment, members of the Wilmington Ten were imprisoned for periods that ranged from three to five years. For a period of time, all ten were out of prison on bail awaiting decisions from various appellate courts. The length of the actual served prison time varied based on each individual. Ben Chavis served the longest period of incarceration.

A fair read of the transcript of the proceedings and legal rulings are disturbing at best.

Commutation and Overturned Convictions

After three witnesses for the state recanted their testimony, a CBS *60-Minutes* exposé, and Amnesty International declaring the Wilmington Ten "political prisoners of conscience," Governor James B. Hunt commuted the sentences in 1978.⁵⁹

The Fourth Circuit overturned their convictions citing gross prosecutorial misconduct in 1980.⁶⁰

The Wilmington Ten co-petitioners complained of:

1. Due Process violations, including preclusion of the rights of confrontation and cross examination and a fair trial and impartial jury; and,

2. Concealment by the prosecutor and trial court of an "amended" pretrial statement of a key witness containing crucial impeachment material and falsely described by the

witness to the jury; and,

3. Refusal of the trial court to permit cross-examination of the same key witness and another significant witness regarding special favorable living conditions furnished to them by the prosecution; and,

4. Concealment by the prosecutor of inducements for testimony and special favorable treatment offered to each of three important prosecution witnesses including leniency, accommodations at a beach motel and a beach cottage paid for by the prosecution, an expense-paid trip for the girlfriend of the chief witness, and the gift of a minibike made after trial; and,

5. The prosecution's use of testimony of each of its three key witnesses which it knew or had reason to know was perjured.⁶¹

The Fourth Circuit set forth, "In deciding the case, however, it is not necessary for us to delve into contested facts, because we think that the prosecution's failure to produce and make available to the defense counsel the 'amended' statement and the record of the hospitalization of the state's key witness and the restrictions upon cross-examination of the key witness and another about favorable treatment which might have induced favorable testimony require us to overturn the convictions."⁶²

James Ferguson, a prominent civil rights attorney from Charlotte, served as counsel for some of the defendants comprising the Wilmington Ten. According to Hon. Jesse Caldwell III, "Fergie was with them all the way and celebrated with the Wilmington Ten when they received their pardon. It took tremendous courage for an African American attorney like Ferguson to serve as counsel. He never flinched in his steadfast and outstanding advocacy, despite all kinds of hurdles he himself had to endure during the trial."

Racially Motivated Prosecution

Assistant District Attorney James "Jay"



Protesters gather in Wilmington in August 1978 to demand the release of Wilmington Ten members from jail. Photo courtesy of the StarNews.

Stroud was considered, by friends and enemies alike, to be bright, competitive, and fastidious. He wrote exhaustive notes in the beautiful handwriting that would later expose the nature and extent of his depravity.

Mr. Stroud was known for using his large frame to physically intimidate others. He was a bully possessing, in today's standards, an almost unimaginable amount of unfettered power and discretion.

If Stroud wanted to speak with opposing counsel, he would either refuse to hang up, stating, "I'll hold," or make his way to the attorney's waiting room, similarly refusing to leave until he spoke with the lawyer.

Professional colleagues describe him as a prosecutor who would do anything and everything to win. (Now, younger attorneys may not fully understand the nature and circumstances of Wilmington Ten convictions because our courts, and lawyers within the system, lived in a different era. Societal norms in the 1970s, with the associated belief systems and standards of practice may be at times hard to imagine or recall, even for those who lived during those troubled times. That is not intended as an excuse. Even after decades of hard work and dedication by legal professionals throughout North Carolina to effect positive change, our criminal justice system, like society, remains fraught with inequities and biases.)

ADA Stroud also had the benefit of work-



The Wilmington Ten held a press conference at Central Prison in Raleigh in January 1978 to denounce Governor Jim Hunt's decision not to pardon them. Second to left is Ben Chavis and to his left is attorney James Ferguson. Photo courtesy of UNC Press; The New Hanover Public Library.

ing within a court system that to this day vests prosecutors with substantial docket/calendaring control and the tremendous resources of the state.

But for the elected district attorney in New Hanover County, Ben David, and an industrious professor at Duke University, Timothy Tyson, the Wilmington Ten very likely would have never received a Pardon of Innocence from Governor Beverly Perdue.⁶³

In 2008, after David's staff found the box of materials from the case, they were turned over to Tyson.⁶⁴ Ben David said, "The role of a prosecutor is to seek justice and to do what is right. It has been an honor to help." It wasn't until an aide examined the box that Tyson realized that he had something truly explosive.⁶⁵

In addition to the Fourth Circuit opinion, Governor Perdue cited the box of materials turned over by District Attorney David that included Prosecutor Stroud's notes.⁶⁶ Indeed, Governor Perdue noted, "These convictions were tainted by naked racism and represent an ugly stain on North Carolina's criminal justice system that cannot be allowed to stand any longer."⁶⁷

Specifically, Stroud recorded in his *voir dire* notes, "[P]robably KKK!!" and "Does not have a record – KKK!!" and "Good name and location – KKK if white."⁶⁸

Stroud also recorded in his notes, further exposing his intentional race-based jury selection, "Stay away from Black men" and

"[K]nows; sensible; Uncle Tom type."⁶⁹

After winning the Wilmington Ten trial, Jay Stroud moved on to serve as an assistant United States attorney, later securing an indictment in yet another infamous prosecution, the Jeffrey MacDonald case.⁷⁰

In a twist of fate, from 2006 to 2012, Stroud was convicted of different criminal offenses ranging from domestic violence to repeatedly ramming cars.

He became a courthouse pariah with substantial psychiatric issues, culminating in a ban from the Gaston County courthouse.

Moving Forward

The Wilmington Ten is but one example of the history of disparate treatment of people of color within the North Carolina judicial system.

The role of lawyers, particularly after the *coup d'état* of 1898, the resulting institutionalized racism due to "end of Reconstruction," and the associated Hayes-Tilden "compromise" cannot be overlooked.

Bill Powers has courageously addressed one of greatest injustices in our judicial history in North Carolina. We should all heed his call to address all injustices as and whenever they occur. Addressing injustice, in whatever form from whatever time, starts with acknowledging its existence and continues through honest dialogue. I encourage the younger generation to step up and make right decisions, doing

so in love and compassion for the down-trodden and those around them.

—James E. Ferguson II

This year has served as a stark reminder of the division that exists within our country.

Turning a blind eye to past injustice led by and effectuated by lawyers hinders our effectiveness to combat and prevent institutional wrongs. We believe that, as lawyers, we have an ethical and moral duty to make a meaningful impact on our profession by advocating for the equitable administration of justice regardless of race, color or creed.

We must use our legal education for good and to the service of others. From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked. That begins first with acknowledging past wrongdoings in the profession. Thereafter, the lawyers and legal professionals must actively engage in the holistic effort to fight for equal justice under the law. ■

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Are We Ready to Talk About Suicide Yet?

BY LYNN S. GARSON

“**I**nspiration” is an odd word to see written in the same sentence as “suicide.” Nevertheless, I was inspired to write this paper by a speaker at a recent webinar on well-being in law. Asked for her proudest accomplishment since joining a big law firm as its wellness officer, the speaker pointed unequivocally to the normalization of words such as “depression,” “anxiety,” and even “suicide.”

She felt strongly that if we are ever to move past the pernicious stigma attached to mental health and substance use issues, we have to be able to say the words attached to such challenges out loud, without judgment, without that little pause to check internally whether we are at risk of dropping a hot potato into the conversation.

Speaking as one with plenty of experience as the person who, quite unintentionally, stops conversations by simply talking about mental health challenges, I, too, would like to change the status quo. Like the speaker, it would be my proudest accomplishment to now play a role in starting the conversations, not stopping them. This article initiates my first such conversation with everything I know about suicide, the most

critical topic of all.

Lived Experience

My Story from the Inside Out

At age 16, I remember for the first time being able to name certain difficult, painful feelings as depression, and for decades I cycled between relatively stable, happy intervals and fairly dark, depressed periods. Those decades were the good times. They ended in November 2007 with a six-month period during which I went from mild to middling depression to rock bottom. By day 180, my diagnosis was major clinical depression and, for the first time in my life, anxiety—specifically, catastrophic anxiety and panic disorder. What led me there was an intense,



Sergey Niens/Shutterstock.com

unbearable feeling of isolation in the wake of divorce and a subsequent decision to try getting back together with my ex-husband.

Wayne is a wonderful man and we get along famously now, but my decision to get back together at that time was a function of warring instincts that ultimately broke me. I had one voice inside screaming, “I can’t stand this anymore, I want my family back, I want my life back, I want my community back.” (I lived in Wayne’s town and had not been there long enough for his friends, who comprised most of my community, to gravitate to me.) The other voice insisted that the

“...[h]eaded to the Harris Teeter grocery store on Colonial Avenue in Norfolk, Virginia, I looked into the grille of an oncoming vehicle and had the conscious thought, ‘If that car moves over into my lane, I will not turn the wheel to get out of the way.’”

divorce had happened for a reason and that this was a bad, bad idea. While my internal war raged, my health on all fronts got worse and worse. I could not eat, sleep, or breathe. Sometimes I would lie on the floor of my office with my feet propped against the door so that no one would walk in—the door had no lock—and struggle to take at least one relaxing breath. It never happened.

Unlike a number of lawyers who find themselves in mental or emotional crisis, I did seek help. I sought help everywhere: traditional talk therapy, hypnotism, Native American sweat lodges, you name it. And the medications...at times four different prescriptions, titrating up, titrating down, add one, take one away. I'd never heard of the word “titrate”—continuously adjust the balance—until then, but it became a constant drumbeat to which I marched. Despite the well-intentioned efforts of all of the local healers who tried to put Humpty Dumpty back together again, at the time nothing worked.

Like many lawyers in similar circumstances, I told no one at my office about my condition, wore a mask of competence and engagement, and continued to work long, stressful hours, closing two deals simultaneously on December 31, 2007. Some of us do not know how to quit. It's either not in our DNA and/or we drank the Kool-Aid when as children we were taught (or in some cases threatened), “Don't be a quitter!” Fierce tenacity is a helpful trait in many ways—it got us where we are and keeps us at the top of our game. It is a catastrophe when we would give up our lives rather than admit that we are not perfect and cannot achieve maximal results in the face of personal crisis.

By March of 2008, along with all of my other symptoms, my vision was becoming more and more impaired, not from any physical phenomenon, but from the fog that comes with sustained lack of sleep. Truly I was winding down, slowing down, shutting down. Some part of me knew that I could

not keep living this way. The psychic pain was unbearable and, like a fox in a trap, the time was nearing when I would do anything to escape.

In May 2008, headed to the Harris Teeter grocery store on Colonial Avenue in Norfolk, Virginia, I looked into the grille of an oncoming vehicle and had the conscious thought, “If that car moves over into my lane, I will not turn the wheel to get out of the way.” An instant later the fact that I'd had such a thought caught up with me, and for the first time I realized that death was a very possible—even likely—outcome, if not right here, right now, then soon. In that first moment, I was incredulous—it was impossible to take in or to believe. Dying by my own hand? That was not part of the plan; living a long and (sometimes) happy life had been promised to me and the fulfillment of that promise was an entitlement.

Incredulity did not linger, and on its heels followed a terror that I do not have the language to describe. Even now, 13 years later and many of them spent as a mental health advocate, it hurts and frightens me to remember and to write about my pain and fear.

I would be long dead but for good timing and my brother's intervention. When my family came to Virginia for my daughter's high school graduation two weeks after my initial suicidal thoughts, I told him that I was very sick and needed help. He concurred, because, unnoticed by me, I had very quickly dropped a huge amount of weight, a clear sign of major distress absent a physical explanation. At my brother's behest, the rest of my family rallied around and soon I was on my way to a top-notch mental health facility in Baltimore. Ten weeks at the Retreat at Sheppard Pratt launched my journey of recovery, which, while often erratic, has arrived at a state of considerable mental health and stability.

That was my brush with suicide. I didn't have a plan and I never made an attempt. I

got close enough to the edge of the abyss to gain an understanding of how someone can reach the point that taking one's life is an option, and perhaps from within that person's skin, the only option.

My Story from the Outside In

In February 2020 I received a call from a very close friend, Julia, that she and her husband, Tom, were on their way to their son's apartment because she was very fearful that he had taken his life. This was not a fantasy on her part. Their son, Paul, had struggled for many of his 33 years with bipolar depression, had made one previous attempt to take his life, and of late had not been doing well. My office was very close to Paul's apartment, and I said please call me when they arrived, but I was sure that he was just not answering his phone and would open the door when they knocked. In no way did I imagine that the worst had actually happened, but it had. When I picked up the phone to take Julia's call, she was screaming and crying, “He did it, he did it.” Shocking as that was, by that time I'd been a mental health advocate for a number of years and my strongest suit was being able to hear terrible, painful things without dodging them or dissolving myself. Julia and I both knew that to be true, so I asked if they wanted me to come right away and she said yes.

Until then, my entire orientation had been toward the struggling individual. It used to incense me when people said that taking one's life meant that someone “lacked courage” or “had taken the easy way out” and vilified them for “doing such a terrible thing to the people they left behind.” One thing I know beyond a shadow of a doubt is that anyone who has ended up at the door of suicide is one of the bravest people you will ever know. They have endured things that others cannot begin to imagine. They have suffered in ways that are impossible to describe. The closest I have ever heard anyone come is “the dark night of the soul,” which derives from a

How to be Helpful to Someone who is Threatening Suicide

- Be direct. Talk openly and matter-of-factly about suicide.
- Be willing to listen. Allow expressions of feelings. Accept the feelings.
- Be non-judgmental. Don't debate whether suicide is right or wrong, or whether feelings are good or bad. Don't lecture on the value of life.
- Get involved. Become available. Show interest and support.
- Don't dare him or her to do it.
- Don't act shocked. This will put distance between you.
- Don't be sworn to secrecy. Seek support.
- Offer hope that alternatives are available but do not offer glib reassurance.
- Get help from persons or agencies specializing in crisis intervention and suicide prevention

—via suicidepreventionlifeline.org

poem written by a 16th-century Spanish mystic. My observation at the time was that we ignore or even denigrate the pain of the sufferer in favor of the pain of the survivors, and that did not sit well with me.¹

It turns out that, as with most things, it is not “either or,” it is “both and.” Sitting in Paul’s apartment with Tom and Julia, the coroner and the mortuary people yet to arrive, experiencing a family’s grief that was pain beyond pain, taught me something. Everybody suffers; it is not a contest. Watching Paul’s friends and expanded family as they began to gather in the following days, the inclination to self-blame was pervasive. “Why didn’t I...?” “If only I had....” “It’s my fault.” The hurt of the loss was horrific on its own, but amplified by self-blame it approached unbearable.

Whether we blame the victim or the survivors blame themselves, the one constant is the need for accountability. Because if there is no accountability, unless one has a spiritual or religious faith of great strength, there is no answer to the “why” of it. And for a mother or a spouse or a child or a lover to not know why their loved one left them in this way, that is understandably unacceptable. I have no answer for it, except that,

leaving aside abusive situations and brain chemistry, when someone takes his or her life, it is no one’s fault. That may be hard to accept, but in my experience it is true. There is nothing the survivors could have done to stop the suicide and there was nothing they did that made it happen. Am I saying that interventions cannot help, so don’t even try? Absolutely not, as I discuss at length below. Over the duration of a person’s illness, help is possible and can even turn the tide, as in my case. But if the final outcome is sadly, terribly, suicide, the narrative “if only I had texted back right away,” “if only I had stayed home instead of going to the grocery store” may satisfy a need for accountability, but it is not true.

Reflections Based on My Experience

Becoming an expert in the mental health advocacy field based on “lived experience” is an easy thing to do once the “lived” part is no longer in question. You don’t need to go back to school, don’t have to memorize anything, you just have to survive your own personal dark night or nights of the soul and be willing to reflect upon them. I have and I am.

Your Own Recovery

This is what I know. Recovery from a place of near suicide is not linear, it is not quick, it takes willingness to take responsibility for your own journey, it is terrifically hard, and it is never complete. That is not to say that you can’t get to a place of great fulfillment and even joy, but it will only be after accepting and overcoming the hurdles barring the way. Recovery from mental or emotional crisis depicted on a graph would be a whole lot of jagged lines correlating to ups and downs, generally on an upward incline, but not always. One therapist I know describes it as a spiral in which one spirals up through the layers and down through the layers over the course of time, gradually staying closer to the top for longer and longer as time goes on. Either way works for me, as long as the idea is that all along the way there will be periods of shifting moods, instability, frustration, and falling back into old maladaptive patterns, interspersed with times of leading a “normal” life, without the extra baggage. Gradually, the periods of “normalcy” are longer and those of instability shorter and less frequent.

In 2008, the notion that I would not resume my former, pre-2007 life very quickly

and very smoothly came as a shock to me. When the lead therapist at Sheppard Pratt told me after my first three weeks that my chances for recovery were “fair to good with ongoing intensive treatment,” I was furious. Weren’t they the experts? They were supposed to make me better and I was supposed to be able to go back and live my life as if nothing had happened in a suitably short period of time. After all, I had people to see and things to do. And what did “ongoing intensive treatment” mean anyway? When I heard therapy three to four times a week, I laughed at him. Only when I landed back in a different hospital a year and a half later after ignoring his advice did I accept that I had an illness like diabetes that I had to learn to manage. And because my illness had been very severe, it was going to take a lot of management at the beginning. My illness was never going to go away, but as long as I “took my insulin” consistently by, in my case, attending multiple therapy sessions per week, I could live a full and satisfying life. (“Taking the insulin” means something different for everybody; there is no one-size-fits-all, no one pill or regimen or even type of therapy.) Once I gave up on the notion of snapping back like a yo-yo on a string, it became apparent that it had been unreasonable for me to think that getting back to myself would be easy. I didn’t get sick in a week or a month, so why would getting well be any different? I didn’t catch a head cold, I’d had double pneumonia that was nearly fatal. It takes time to come back from that kind of assault on your system physically; no less mentally and emotionally.

When I left Sheppard Pratt after ten weeks, that seemed like more than enough time to my family. The cost was prohibitive and, good grief, how long can you stay in a place like that? Upon reflection, ten weeks is nothing. It got me back on my feet, still reeling. That’s it, and that was more than I had any reason to expect from the facility. I had been so sick, my anguish had been so overwhelming, how could that possibly be addressed and overcome in ten weeks?

So not ten weeks, but how long? For me, a good four years at the very least, arguably quite a bit longer. My recovery took seed during my subsequent hospital visit in 2010 when the director told me that I would never work again and that I should apply for Social Security Disability. His statement shocked me into taking my recovery, and my destiny,

into my own hands. That's where it has been ever since. I now have a pretty good sense of the people I should listen to and the people to ignore when it comes to my mental health. I have developed a pretty strong self-compassion muscle. I have made a vow that my commitment to my mental health is non-negotiable. I have fully accepted that my recovery will always be a work in progress, and that is fine with me.

What Can Family and Friends Do for Someone Who is Very Mentally and/or Emotionally Sick?

In the times when I was very mentally and emotionally sick, there was very little that anyone could do to help me. Friends tried, oh how they tried. I have two very close friends who called me every single day and tried to lift me up, only to have to do it exactly the same way the very next day, and on and on for six months. The absence of existential hope is not something that anyone else can cure.

Recognizing that depression is a disease of isolation, others can try to spend time with the person or check in by phone if in person is not possible. The calls and visits from my friends propped me up enough to stay alive until I got the help I needed. If I had thought that no one cared, I wouldn't have made it through. If you see any spark of interest or liveliness, do your best to fan the flame. Given the person's low state, it may not work, but if it does you will have gained some ground. If the person wants to talk, listen. Don't listen so that you can respond and fix it (which you can't and will make you both miserable). Listen to be present to that person's distress. Don't hide from it, don't dramatize it, and don't inject your own pain or experience into the conversation unless invited. Just be lovingly present.

Importantly, encourage the person to seek help. You may have to make the suggestion many times and you may get sharp pushback. It may difficult to endure the pushback, but if you can tolerate the heat, it's good to keep trying. When my brother-in-law called and said that he was concerned about me, I bit his head off, but in fact I was nearing that last rebellious gasp. While he had no way to know it, if he had pushed again in a week or a month, I might have admitted that I needed help. By the same token, be attuned to the fact that people can ask for help in subtle ways. I asked for help

by announcing to my family when I picked them up at the airport for my daughter's high school graduation that I really shouldn't be driving the car. In my mind, that was as clear a statement as I could make that I needed help. No one responded, and I was crushed. Many years later, someone pointed out to me that they easily could have thought I meant that I was suffering from a hangover.

One note concerning subtle signs from a person in crisis: if someone has been hopeless and despondent for a long time and all of a sudden they seem happy and carefree, counterintuitive though it may seem, that is not a good sign. It frequently means that the person has an active plan to take his or her own life, the preparations have been made, and they have attained a sense of calm, believing that very soon they will no longer have to suffer. If someone you know behaves this way, ask them if they are thinking about suicide and whether they have a plan. All the learning now is that asking someone if he or she is thinking of suicide does not put the idea in his or her mind. The question does not hurt and it may help. The answer will inform your next steps. If you don't know what to do, you can call the National Suicide Prevention Lifeline (1-800-273-8255) or text the Crisis Text Line (text HOME to 741741). After July 16, 2022, you can simply dial "988" in accordance with new FCC rules requiring all phone service providers from that date forward to direct 988 calls to the National Suicide Prevention Lifeline.

My suggestions are not meant to be exhaustive and they certainly are not meant to be counseling in any way, shape, or form. I am a lawyer with absolutely no training as a clinician. My suggestions stem from my own "lived experience" and what I have observed or learned since becoming a mental health advocate. There are many other ways to try to help someone in crisis. In the final analysis the person who is ill has to have some hope, however little, and they have to want to help themselves. No one can make them want to help themselves, and if they don't, there is nothing anyone can do that will have any lasting impact. In my case, I had just enough hope to make it to the finish line and enough of the helpful kind of fierce tenacity to get me over it. If you see a sign of either, nurture it any way you can.

What Can Family and Friends Do for Someone Who is Coming Back from the Brink?

First and foremost, friends, family, employers, and colleagues can adjust their expectations. Know that recovery from severe mental illness and/or substance use issues is neither linear, quick, nor easy, and as mentioned above, you can't do the work for the other person. The last is worth further discussion, because I have observed it to be a very, very difficult thing for people to accept. Many parents are geared to fix things for their children, many married people are geared to fix things for their spouses, and many jobs (like practicing law) entail being a fixer. In this case, it is an impossibility. Instead, be present, listen, and try not to judge. I couldn't make my recovery go any faster than it went, and for a long time I railed against that. In truth, I was doing the best I could. Once I accepted that, beating myself up for failing to recover quickly enough was removed from my list of burdens and more space was freed up to do the actual work.

Understand that your loved one equally is doing the best that he or she can. At times that may seem like nothing and you may be tempted to push or criticize. Know that there is no timetable and that everyone's recovery is a unique process. Expect that the person will have to work hard to attain and maintain stability, and be as compassionate, supportive, and patient as you can. We are just starting to understand that there is as much need for compassion, support, and patience in the workplace as there is at home. Heretofore,

Be Aware of Feelings of a Colleague, Loved One, or Client

- Can't stop the pain
- Can't think clearly
- Can't make decisions
- Can't see any way out
- Can't sleep, eat, or work
- Can't get out of depression
- Can't make the sadness go away
- Can't see a future without pain
- Can't see themselves as worthwhile
- Can't get someone's attention
- Can't seem to get control

—via suicidepreventionlifeline.org

there has been an expectation that someone who has struggled with mental health or substance use issues and gone away to take care of it should hit the ground running when they come back. That is unrealistic and counterproductive. Long term, the chances of success are far better if you give someone a chance to ramp back up. Otherwise, you are throwing them back into the cauldron from which they just pulled themselves.

What Can Family and Friends Do for Themselves?

Get your own support. Period. It's the old "oxygen mask on the airplane" notion. You cannot be of help to someone else if you are not taking care of yourself. Having a loved one who is going through ups and downs, sometimes on an alarming scale, is very difficult for the people supporting them. Accept that recovery is likely to be much more of a marathon than a sprint, a test of endurance. Don't feel that doing things for yourself takes away from doing things for them. Or that you don't deserve it, because your partner/spouse/child/loved one is the one who is sick, not you. Again, it's not "either or," it's "both and."

Sometimes those giving support must

accept that there is nothing more they can do without risking their own destruction. I have borne witness to many in the role of primary support who have pushed themselves to the edge, ignoring their own needs—indeed their own lives—in favor of the needs of their loved one. It is not mine to judge when, if ever, to stop, but I can say from the bottom of my heart to such people, whom I consider unsung heroes and heroines, that you deserve help and guidance to sustain you through the days, weeks, months and years of carrying someone else's staggeringly heavy burdens in addition to your own.

Getting your own support is equally important if you are supporting someone in crisis or if you are a survivor of your loved one's suicide. There are many excellent support groups. The American Foundation for Suicide Prevention maintains a national list of support groups (afsp.org/find-a-support-group), including a list of virtual nationwide support groups.

* * * * *

There you have my reflections on suicide. I wish it were not a problem, that it were not on the rise or such a threat to our younger

population. There are plenty of statistics out there if you want to look at them. They are sobering. Our embarrassment over speaking the word hardly measures up against such loss of life. So let's start talking about suicide openly. It may save someone's life. ■

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These are the author's thoughts as a lay person, not a counselor of any type or description, and do not reflect the opinions, or positions of any other person, entity, agency or publication, including without limitation my employer, the State Bar of Georgia, the Chief Justice's Commission on Professionalism or the American Bar Association.

Endnote

1. The lawyer in me hears, "What about the person who commits a mass shooting and then turns the gun on him or herself? Or the person who kills every member of his or her family and then takes his or her own life? Is the pain they suffered and the courage it took to battle their demons for as long as they did also worthy of grace?" That is a difficult question beyond the scope of this article and merits a further conversation.

Support for Distressed Lawyers & Staff

The practice of law is stressful. Knowing how to provide support to lawyers and staff is just as important as dealing with distressed clients. Consider

offering training and developing policies which create a safe environment for employees to express concerns for themselves and others.

The Suicide Prevention Resource

Center offers a training guide to co-workers: *The Role of Co-Workers in Preventing Suicide in the Workplace* (bit.ly/3rzqaxr).

The NC State Bar Lawyer Assistance Program is a service of the North Carolina State Bar which provides free, confidential assistance to NC lawyers and judges with any mental health issues, including depression, anxiety, or alcohol or drug problems. For more information contact 919-719-9290 or visit nclap.org.

BarCARES (Confidential Attorney Resource and Enrichment Services) is a program offered by the NC Bar Association developed to offer support for attorneys and their families. This program offers support in dealing with issues concerning personal, family, and work life. BarCARES also offers student support and stress management. You can contact BarCARES at 1-800-640-0735 for more information.



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Appellate Practice for Trial Work

BY R. DANIEL GIBSON

A trial lawyer recently described appellate

practice to me as “a lot of rules and time-lines” that are “really complicated.” The good news is there are lawyers who enjoy



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appellate practice. The better news is if you are a trial lawyer, you don't have to know all the intricacies of appellate practice.

There are four main things trial lawyers need to know about appeals.

1. Appellate Deadlines. This looks like the easiest thing to know. In civil cases, rule 3 of the North Carolina Rules of Appellate Procedure gives you 30 days to file *and serve* notice of appeal from the judgment you want to appeal. In criminal cases, rule 4 gives you 14 days (you can also give oral notice in court). If you don't file and serve your notice of appeal in time, you have lost the right to appeal.

But looks can be deceiving. There are two exceptions to the deadline.

First, certain motions can toll the deadline

to appeal. A rule 60 motion to set aside a judgment *does not* toll the deadline to appeal. *Wallis v. Cambron*, 194 N.C. App. 190, 192-93, 670 S.E.2d 239, 241 (2008). (If I wrote in all capital letters, I would write this in all capital letters). Rule 50(b) or 52(b) motions generally *do* toll the deadline to appeal.

A rule 59 motion for a new trial or to amend a judgment *might* toll the deadline—but only if you follow the rule closely. Your motion must cite the specific rule 59 grounds you're alleging and explain how those grounds apply. You cannot use rule 59 to amend non-final (i.e., interlocutory) orders. *Doe v. City of Charlotte*, ___, N.C.

App. ___, ___ 848 S.E.2d 1, 7 (2020). (Again, all caps.) You cannot use rule 59 as a substitute for appeal; the motion must be based on one of errors listed in Rule 59(a). *Smith v. Johnson*, 125 N.C. App. 603, 606, 481 S.E.2d 415, 417, *disc. review denied*, 346 N.C. 283, 487 S.E.2d 554 (1997).

Second, if the order is not a judgment (i.e., it is not a final order) you do not have to immediately appeal it.

2. Interlocutory Appeals. An appeal of a non-final order is called an interlocutory appeal.

Trial court orders are of two varieties: final and interlocutory. A final order disposes

of all claims against all parties. *E.g., Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). Any other order is interlocutory.

Normally, you have to wait until a final order is entered to appeal an interlocutory order. There are three cases when you can immediately appeal an interlocutory order.

First, the order is final as to some (but not all) claims or parties and the trial court certifies under Rule 54(b) that there is no just reason to delay the appeal. Second, one of the grounds listed in N.C.G.S. §§ 1-277 or 7A-27(b)(3) exists. Third, the order affects a substantial right and that right will be lost, prejudiced, or inadequately preserved without an immediate appeal. The substantial right doctrine is tricky. Even our courts admit the test “is more easily stated than applied.” *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 208, 240 S.E.2d 338, 343 (1978).

The Appellate Rules Committee has an excellent guide on appealing interlocutory orders.¹ Regardless of the legal standard for appealing an interlocutory order, practical concerns can often drive the decision to appeal an interlocutory order. These practical concerns typically look like weighing the cost of an appeal now and the risk of having the court of appeals dismiss the appeal as interlocutory against the harm to your client if you wait to appeal.

3. Issue Preservation. This is one of the most important aspects of appeals for a trial lawyer to know.

If you do not make an argument at the trial court, you generally cannot make the argument at the court of appeals. *E.g., Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934). Rule 10 of the Rules of Appellate Procedure requires you to make a “timely request, objection, or motion stating the specific grounds for the ruling [you] desire[].” There are issues that are preserved as a matter of law and, in criminal cases, errors so grave you need not object (i.e., plain error—which only applies in criminal cases). These issues may save you after the fact. But don’t rely on them.

If you understand two concepts, you will understand much of issue preservation. Those concepts are timeliness and the record.

Timeliness is simple. If you want the court to do something, you have to ask them to do it at the appropriate time. And the court has to actually decide whether to do it. You need a timely objection or motion and a

ruling on that objection or motion. This is most important at trial. For example, when the other side offers inadmissible evidence, you must object and the court must rule on the objection. If you don’t object before the evidence is admitted or the court doesn’t decide the objection, you likely have not preserved that issue. And the court of appeals probably won’t review issues you didn’t preserve. This is true of motions practice too: your motion must be timely and the court must rule on it. Moving for a new trial 20 days after the trial is over and the judgment is entered won’t preserve your issues.

The record is slightly more complicated. When the court of appeals reviews your case, they only review certain documents you give them. To prove you’ve preserved an issue, the “specific grounds” for the “ruling you desire[]” and the court’s actual ruling on that issue need to be in those documents. Those documents are the record, transcripts, and a narration.

Getting issues in the record is the simplest. Write a brief or a motion explaining what you want the court to do and why. Submit it to the court. When the court rules against you, get a written order saying that. Whoever represents your client on appeal should make sure the motion, the brief (if there is one), and the order are all in the record on appeal. If the motion, brief, and order are in the record, the court of appeals can see what you asked for, why you asked for it, and what the trial court did. That shows the court of appeals you preserved your issues.

Getting issues in a transcript is fairly simple too. Make sure your hearing or trial is recorded or a court reporter is present. Tell the judge what you want her to do and why. Make sure the judge actually rules on your request (i.e., “granted,” “denied,” “sustained,” or “overruled”). Having that in the transcript means the court of appeals can see you preserving your issues. You can wait up to 14 days after you file notice of appeal to order the transcript. But why wait? Order a transcript as soon as you know you’re going to appeal.

If you can’t get a transcript and your issue isn’t in the record, you may be able to use a narration. A narration is a statement about what happened at a hearing or trial. Narrations are very uncommon. You should not rely on narrations to preserve issues because opposing counsel does not have to agree to your narration.

4. Offers of Proof. Offers of proof are really a type of issue preservation. But they’re complicated enough they need their own section.

The problem is fairly simple. You’re at trial and you have critical evidence. You try to get the judge to admit the evidence. Opposing counsel objects and the judge sustains the objection. When you go to the court of appeals, you want to say, “I would have won if the judge admitted my evidence.” But how is the court of appeals supposed to know what your evidence would have been had the judge admitted it?

Offers of proof resolve this issue. After the judge has sustained an objection, ask to make an offer of proof. Be respectful—you’re basically telling the judge you might appeal her decision. Don’t treat offers of proof as opportunity to reargue the objection. You might get away with just telling the judge what your evidence would have been. But why take the risk? Our courts say the “preferred” way to do an offer of proof is by actually giving the court your evidence. If it’s witness testimony, have the witness testify (without the jury present, obviously). If it’s a document, give the document to the clerk.

If the judge gives you a hard time about an offer of proof, show the judge Rule 103(1) of the Rules of Evidence, Rule 43(c) of the Rules of Civil Procedure, and (in criminal cases) N.C.G.S. § 15A-1446. These rules explain that you must make an offer of proof for the record to preserve your issue. You’re not being a sore loser (at least you shouldn’t be); you’re making sure your issues are preserved if you want to appeal.

This article doesn’t cover every aspect of appellate practice—which is why you should hire an appellate attorney to at least consult on your appeal. But these four points can help make sure you don’t lose your appeal before the briefs are even filed. That will go a long way to ensuring the court of appeals decides your case on the merits instead of on a procedural defect, and getting a decision on the merits is the first step to winning on the merits. ■

Dan Gibson is a partner at Stam Law Firm in Apex, NC. His practice focuses on appeals and civil litigation. He has been recognized as a SuperLawyer by Thomson-Reuters and by Business North Carolina as being among the Legal Elite for appellate practice.

Endnote

1. bit.ly/Spring2022Appellate1

But That was Good Fortune—

The Education of Thomas Jackson White Jr.

EDITED BY THOMAS H. DAVIS JR.

Editor's Note: Thomas Jackson White Jr. (1903-1991) was a prominent North Carolina attorney and legislator from Kinston. He served in both houses of the General Assembly, and he is credited with the creation of the North Carolina Wildlife Resources Commission. White chaired the State Legislative Building Commission (1959-1973) and the Museum of Art Building Commission (1967-1983). A trustee of the University of North Carolina and a member of the Board of Governors, White received the William R. Davie Award for distinguished service to the university. The following is White's own description, verbatim, of his unusual education path as edited from a 1986 deposition transcript.

I've had a very checkered educational career. As a matter of fact, you're looking at one of the poorest educated people that you'll ever see. I started off in the first grade in Concord, North Carolina. That's Cabarrus County. I made my grades through the fifth grade, near the end of which my father moved to South Carolina. He had bought a farm in Kershaw County, South Carolina, nine miles from Camden toward Columbia, on what is now US Highway Number 1. At that time, my father's family consisted of himself, my mother, myself, and two younger brothers.

In the first fall we were there, we presented ourselves to the grammar school in a little village called Lugoff, on the Seaboard Railroad which was said to have been named for an old German conductor. We presented ourselves at the schoolhouse, and we were told that we could not be admitted. There were three of us, I think, in grade school level at that time. The reason given to us was that my father had



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not lived in South Carolina for a whole year, and for that reason he was not entitled to send his children to the public school.

Faced with that dilemma, my father improved a small tenant house on our farm. It had a fireplace in it, a wood burning fireplace. He then was able to interest several other men in chipping in with him to employ a teacher. This teacher would have to be one who could teach from the first grade through whatever grades they had. Obviously, we didn't get much schooling that year.

They advertised for a teacher, these men did, in a newspaper called the *Columbia State* published in Columbia, South Carolina. We lived about 30 miles from Columbia. The wives of these men suggested that they

require the applicants to send in their pictures, which the husbands did. They then employed the ugliest old gal there was in the crowd as the teacher. The wives were looking after the home team, I suppose.

Anyway, during that year, in my efforts to be educated, I cut wood in the woods all winter and kept the fireplace all winter. I liked that better than sitting in the schoolhouse. So, that's what I did that year.

World War I was going on, and I had become 14 years old and was fascinated by all those dog fights between the Red Baron and all the rest of them. I wanted to get in the war. My father, realizing that and running afoul of a very good prep school salesman, sent me to Bailey Military Institute at Greenwood, South Carolina. There was

another military school called Porter Military Academy at Charleston, which was said to have been better than Bailey. At any rate, I think the year that I spent at Bailey Military Institute is probably the best, if not the only, good year of school that I've ever had.

The armistice was signed November 11, 1918. In the meantime, I had been sent to a private school in Charlotte called Charlotte University School. It was operated by an old gentleman named Hiram Glasgow. And that must have been in the winter of 1918, because I remember (I hate to admit ever working for a newspaper) I carried the papers for the *Charlotte News*. Characteristically, they paid me ten percent of what I could collect on past due bills. That was all I got except for some experience.

Later, I rejoined in the 11th grade the old class which I had left in the fifth grade because my father had sold this pile of sand in South Carolina and bought a farm near his old home, our old neighborhood, in Cabarrus County. I had to take two years of French in one, and two years of one or two other subjects in one, because I had lost some years.

I handed in a blank paper on my final examination for French. My teacher, who was a very lovely lady, asked me what I meant by that. And I said, well, I was just trying to be honest. That's all I learned, except for one thing. I did learn the name of that old book, which was *Labelle France*. I'll never forget it. Well, she said, don't you know you can't graduate from high school like that? I said, Yes ma'am. But she was a fine teacher and a godly soul, so she prepared a special examination from marked pages in *Labelle France*. There were corresponding answers in another section of it. Concord High School is the only thing from which I have graduated, besides the beach.

Well, in those days, which were in the days of the 1920s, my father wanted me to go to State College and become a farmer. I admired and respected my father, so I went to State College. In 1919 the farmers had a pretty good year.

In 1920 they had a prelude to the Great Depression. I had been at State College 30 days, and I had a letter from my father telling me that he could send me no more money. He would not require me to come home. If I could make it on my own, that would be fine with him. He had paid my fees and room rent for the first semester.

I went over to the mess hall and got a job waiting on tables. I had good luck. The government was sending veterans of the war, called "rehabilitation students," which they were paying the expenses for, plus a stipend of some kind. These men, I waited on them very well they thought, and they would tip me. That helped out a good deal.

I did lots of different kinds of jobs. I worked on an experiment farm at 40 cents an hour, stacking up different varieties of soybeans after I thrashed them out. The worst job I ever had was setting up tenpins for some college professors at five cents a game.

And, again, I have to confess I worked for a newspaper. This time for the *Raleigh News and Observer*. They paid me a dollar and a half to work all night slipping the funny paper in the other paper. That's what I did for them.

Well, I stuck it out three semesters taking agriculture at State College. My father became ill, and I had to go home and take over the farm, which I did.

After a year or so, he permitted me to get jobs in town. I did a lot of different kinds of things. I drove trucks. I delivered ice. I worked in the ice plant drawing ice, they called it, which is to turn a crank until a three hundred pound block of ice appeared above the floor. I worked at cotton mills in the daytime. I worked at cotton mills at night. I did lots of different things.

I finally got a job at a hardware store for 17 and a half dollars a week. I worked from seven in the morning until six at night. The owner of the hardware store was a friend of my father's, so he let me sleep in the loft of the hardware store. I didn't have a bed, but I had a good army blanket and got along fine.

I was saving money then to go to Carolina. I paid seven dollars a week for board, 50 cents for laundry, and I put ten dollars in the bank every Saturday. I knew I was going to be 21 years old within the year, and, by that time, I had saved up \$250. So, without any further ado, and over the protests of some friends of my father who thought I ought to stay there and work, I went to Carolina. That \$250 lasted less time than Pat stayed in the army.

The reason I took law was because it was the only thing in the catalog that the University of North Carolina provided that had no math in it. I could pass math, but it would take me too much time. I had to work. I had passed math in prep school, that

military school. I even passed algebra, which I never saw any sense in. But I passed everything down there.

So, I was admitted to the law school under the regulations at that time on probation. I couldn't buy all the books, but I borrowed some. I always sat in the front seat, and I took copious notes, and I paid strict attention to what my teacher was trying to get across.

I remember one instance when I thought I was going to be flunked for sure because of a gentleman, who has over the years become one of my closest friends, but I didn't like him at that time. He was a young professor who had just graduated from Harvard University Law School by the name of Albert Coates, and he taught backwards. He was always raising these questions for the students to answer. I went there to learn. I felt like I was being cheated. I wanted some answers.

I remember one day in trusts class (and I never did like trusts much either) he reeled off this fancy trust equation. He said, suppose you had your license, and you were in your office, and a client came in and asked you this question, what would you tell him? I said, I would tell him to come back in about a week, and by that time I would have associated the finest trust lawyer there was in the county. I gave him that answer, and the class laughed at him. I thought he was going to flunk me, but he didn't.

At Christmastime my first year at Chapel Hill, I went home for Christmas. I didn't have the right kind of clothes. I borrowed clothes, and all of them didn't fit. We lived out in the country. We didn't have running water. But I had friends who did in town, and they came out Christmas afternoon to take me to Concord where I could dress in more comfort than I could at home. They came out, drove out, to get me. We lived about five miles from town.

Before we got to town, another automobile ran into the car that we were riding in, occupied by two men. Of course, we all stopped and looked around. I didn't see where any damage had been done, and nobody had been hurt. So, I told the man that seemed to be sort of in charge of the group I don't think any damage has been done. Why don't we just go about our business, go ahead. That seemed to be agreeable until one of these guys that ran into us got about 30 or 40 yards from us, and he turned

around and singled me out and called me names that I never have taken off anybody yet. And I went down there and hung one on him. The first thing that hit the pavement was the back of his head, and he just laid there. I'd been in law school long enough to know that if you didn't get going, that would be manslaughter, or could be. So I waited around until he began to get up. Then I heard him ask his partner, where did you put my gun?

Well, I thought I had better go back down there. He and I, our hands closed over that big old (it was a big old horse pistol, I call it) revolver at the same time. I took it away from him and unloaded it. He didn't see me unload it. I put the cartridges in my pocket. The man with him said, what are you going to do with that gun? I said, I'm going to give it to the officers, of course. He said, please don't do that, we just borrowed that gun to try it out. I said, well, I don't want you trying it out on me. He said, well, let me have that gun, I'll keep it away from this fellow.

Well, he didn't do that, because I went on up town with my friends. And his guy who I had an altercation with came up behind me and hit me over the head with that pistol. I had on a felt hat, and I had on an overcoat that was a little tight. I tried to catch his hand, but I couldn't get mine up high enough. The gun came down and hit one of my fingers and then went right into my left parietal bone, which I understand controls your right side. My right arm just fell very limply at my side and the blood went up in the air.

I was a bit dizzy, and I could hardly see, but I saw him coming back at me. He had hit me so hard that evidently he had bounced off or something. Anyhow, he was coming at me again. I was just plain lucky because I caught him with my left real good. And the next folks he saw were the policemen. We got him locked up in jail.

Well, we went on. I was going to a dance that night. I went to the dance, and I had an awful headache the next morning. But before we went to the dance we went to a doctor. This was Christmas Day, and the doctor was celebrating Christmas Day, but he did sew up my head.

I went back to the university and continued to go out for wrestling. I put cotton in a football helmet and wrestled for 30 days. But there never was any cessation of pus forming in my skull up there. The boys in the dormi-

tory got worried about it. And x-ray had just been invented. It was five dollars a shot. I didn't have five dollars. And they said, well, if you don't get it fixed, we're going to take up a collection for you. They knew how to hit me on my pride side. Anyhow, it was x-rayed and found that the skull, both tables of my skull (I didn't know it had but one table up there until that time) were broken, and the bottom one was just off my brain.

So, I went home and was seen by Dr. Addison G. Brenizer. He was from Charlotte and a very fine surgeon and had a lot of practice in World War I. He said, well, I cannot operate with all this pus and inflammation. So, he began to work on that and took out several pieces of bone about the size of my thumbnail and some smaller pieces and a piece of felt hat about an inch and a half long that had been in there 30 days. It was in a curve just the shape of the chamber of that old revolver.

I went on back to school and that healed up very quickly. I went on back to Charlotte, to the Presbyterian Hospital. They did what they called a decompression operation, whatever that is. I've never had any trouble at all from it, but, of course, I've been half cracked all my life, I guess.

But, anyway, the doctor's orders were that I not exert myself in any way, and that I would have to sit for at least three months and be quiet for three months, which is what I think is the best thing that happened to me. That's where I got probably most of my legal education because I sat in the law library.

Having entered on probation, I did a little better than that. I was nominated as one of the student editors for the Law Review. I never got anything published because I never could get it there on time. But that was good fortune even though it happened as it did.

They had the bar examination in my last semester. I took that bar examination. I passed the bar. McLendon and Hedrick offered me a job. I've always hated debt, and I owed \$400, so I figured it was my duty to take that job and let the law degree go. I think I would have been entitled to the degree all right, but I took that job in Durham and went to work in 1927. ■

Editor's Note: White practiced law three years with McLendon and Hedrick in Durham before moving to Kinston. There he co-founded the law firm of White and Allen where he remained for the rest of his life.

Thomas Davis is a partner with Poyner Spruill in Raleigh.

Wilmington Ten (cont.)

in Wilmington 10 case, The Wilmington Journal (Dec. 26, 2012), bit.ly/Wilmington10-30.

70. MacDonald Defense Committee, *Justice for Jeffrey MacDonald: A Man Wrongly Convicted – An Egregious Miscarriage of Justice*, athemacdonaldddefense.wordpress.com/case-facts.

Additional Sources of Information and Reference Materials

Reasonable efforts have been made to confirm the accuracy of the materials presented herein. This article is intended to be a starting point for discourse, additional research, and inquiry. It is neither a doctoral dissertation nor a law review level submission. Clearly, and as to be expected, reasonable minds can and do in fact differ at times on the topic(s) discussed. That has been the case for generations. The author encourages your independent review and drawing your own conclusions. To that end, you may benefit reviewing the following materials:

Testimony of Irving Joyner, Delivered to the Subcommittee on Election, US House Committee on Administration, April 18, 2019, bit.ly/Wilmington10-34.

The Life and Speeches of Charles Brantley Aycock (1912), docsouth.unc.edu/nc/connor/connor.html.

1898 Wilmington Race Riot Report, 1898 Wilmington Race Riot Commission, Research Branch, Office of Archives and History, North Carolina Department of Natural and Cultural Resources.

The University Libraries project. *On the Books: Jim Crow and Algorithms of Resistance*.

Nineteenth-Century North Carolina Timeline – NC Museum of History, bit.ly/Wilmington10-35.

Transcripts in the Case of State of North Carolina v. Benjamin Franklin Chavis, et al, The United States Department of Justice, bit.ly/Wilmington10-36.

Wilmington Ten Foundation, *For Social Justice*, wilmten-foundation.org/history.htm.

The Lost History of an American Coup D'État, The Atlantic, bit.ly/Wilmington10-37.

Narrative, Political, Unconscious, and Racial Violence in Wilmington, North Carolina, Leslie H. Hossfeld, bit.ly/Wilmington10-38.

northcarolinahistory.org/encyclopedia/furnifold-mcclendon-simmons-1854-1940.

aaregistry.org/story/riot-in-wilmington-n-c-occurs-and-jim-crow-laws-begin.

people.uncw.edu/schmidt/Misc/1898/1898prelude5new.html.

wral.com/news/state/nccapitol/video/11923538.

journalnow.com/naacp-notes-show-prejudice-in-wilmington-10-case/article_029c5752-390e-11e2-b938-0019bb30f31a.html.

myreporter.com/2013/01/where-is-the-prosecutor-who-tried-the-wilmington-10-is-he-still-a-lawyer.

wect.com/story/13960930/wilmington.

If Trees Could Testify—

A novel based on the true story of Madison County's infamous Gahagan murders

REVIEWED BY M. LEANN MELTON

During his 35 years as a criminal defense attorney, Bill Auman has handled roughly 70 murder cases, including being counsel of record in ten death penalty trials. None of those, however, contained a storyline that, as the former publisher of the *Madison News-Record and Sentinel* described, involved “stranger-than-life events that belong on the silver screen.” That designation belongs solely to Madison County’s infamous Gahagan murders, a cold-case double homicide from 1983 that was charged in 2001 after a long-time suspect came forth with new information that led to an investigation with more twists and turns than a rollercoaster ride.

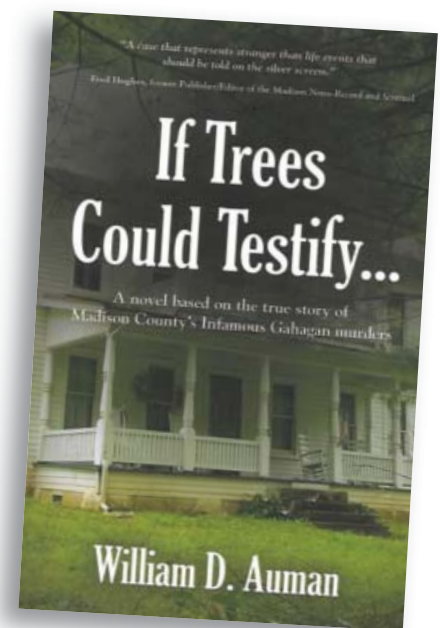
Auman, who has been an adjunct professor for a combined 25 years at both Mars Hill University and UNC-Asheville, enjoys writing in his spare time. He is the author of *Pioneer Paddling Colonial Carolina*, together with numerous articles in various legal and outdoor journals. *If Trees Could Testify...*, based on the true story of the Gahagan murders, is his first novel and the first time that he has written about one of his actual cases, albeit in fictionalized form.

The tale begins with a phone call from the leader of a local biker gang who needed help from law enforcement due to some legal troubles that he was having in the state of Ohio. This led to a re-opening of the tragic case that saw two elderly siblings robbed and murdered in their Georgian-style colonial home. The victims were part of a founding family in the local community who, having lived through the Depression, never regained their trust of banks. Consequently, it was

known to many that large amounts of cash and gold coins were kept in the residence, which also featured numerous antiques. One specific item of note was a framed letter from President Franklin Delano Roosevelt to Grady Gahagan’s father, thanking him for loaning money to the government during the era of the Depression.

Suspects came and went through the years as investigators looked at an organized crime connection in Eastern Tennessee, certain relatives of the victims, and also gave close attention to the biker gang that had been camped nearby on the night of the murders. The case captivated the small mountain community, and locals claimed to have seen the ghost of Bonnie Gahagan walking along the roadside at night while carrying a lantern. It was said that legendary Sheriff E.Y. Ponder was the only one who really knew what happened and took his knowledge to the grave with him. But eventually a witness came forward and arrests were made some 18 years after the crimes were committed. At that point Auman, who lived in Madison County although maintaining a practice centered in nearby Asheville, was asked to defend the defendant deemed by law enforcement to be the primary suspect.

In the fictionalized account, names have been changed to protect the innocent as well as the potentially guilty. And characters such as the draft-dodging son of a snake-handling minister have been created by the author to add some degree of levity to an otherwise disturbing chain of events. Auman keeps to the basic chronological order of how the case



actually developed, but engages the reader in a conversational mode that allows for an enjoyable read. The search for justice and fair play for all is a recurrent theme throughout the book. At appropriate intervals, he includes historical components of the county and the town of Marshall, described as being “a block wide, a mile long, sky high, and hell deep.”

If the old-growth trees on the property could have testified, perhaps we would know for sure what happened beneath their branches on that night long ago. *If Trees Could Testify...* is available through the author’s website, iftreescouldtestify.com, numerous online outlets including Amazon, and several bookstores including Malaprop’s in Asheville, Quail Ridge in Raleigh, and Park Road Books in Charlotte among others. ■

M. LeAnn Melton is a former chief public defender for Buncombe County.

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.

Disbarments

H. Bright Lindler of Rockingham did not pay federal and state personal income taxes for multiple years and withheld funds from employees' paychecks but did not remit them to taxing authorities for 37 quarters. After Lindler's client told him she would not accept a settlement offer, Lindler settled her workers' compensation case and retained the settlement funds for payment of expenses when the client declined to communicate with him. Lindler tendered an affidavit of surrender of his law license and was disbarred by the Disciplinary Hearing Commission.

Katherine Pekman of Hickory did not diligently represent and adequately communicate with multiple clients, did not refund unearned fees, did not respond to notices of mandatory fee dispute resolution, and did not respond to the Grievance Committee. Pekman was suspended at the time of this action for similar conduct. Pekman did not participate in this disciplinary proceeding. She was disbarred by the DHC.

Joshua Michael Reed of High Point submitted an affidavit of surrender and was disbarred by the council at its January meeting. Reed pled guilty in the United States District Court for the Western District of North Carolina to the federal felony offense of attempted coercion or enticement of a minor in violation of 18 U.S.C. § 2422(b).

Tiffany Dawn Russell of Raleigh submitted an affidavit of surrender and was disbarred by the State Bar Council at its January meeting. Russell pled guilty in the United States District Court for the Eastern District of North Carolina to the federal felony offenses of conspiracy to commit mail, wire, and financial institution fraud in

Wire Fraud - Heightened Discipline

Six years ago, in 2015, the State Bar began receiving reports of criminals hacking into the email accounts of lawyers, their clients, real estate brokers, and others, altering wiring instructions, and diverting loan payoffs and other disbursements from real estate and other transactions. Since 2015 the State Bar has written and spoken extensively about this danger in the *Journal*, on social media accounts, and in continuing legal education programs. The State Bar has also issued Formal Ethics Opinions (2015 FEO 6 and 2020 FEO 5) about this topic. Lawyers Mutual Insurance Company and title insurance companies have also continued to broadcast warnings and educational information about these scams. To date, the State Bar's Grievance Committee has opened 65 grievance files when lawyers failed to take adequate precautions to protect entrusted funds from these wire fraud scams. Initially, the Grievance Committee issued dismissals accompanied by letters of warning, advising respondent lawyers of their professional obligation to protect entrusted funds. After nearly three years of extensive education on this topic, the Grievance

Committee concluded that lawyers should be fully aware of the danger posed by these email scams. At its July 2019 meeting, the Grievance Committee began issuing permanent discipline—one reprimand and two admonitions—in wire fraud cases. Since then, the Grievance Committee has referred two lawyers to the Disciplinary Hearing Commission and has issued four reprimands, 12 admonitions, three dismissals with letters of warning, and three dismissals with letters of caution. Special alerts were also published in The Disciplinary Department section of the State Bar *Journal's* Fall 2019 and Winter 2019 issues. Unfortunately, although North Carolina lawyers have now received two additional years of notice and education on this issue, the State Bar continues to receive reports of lawyers who failed to take adequate precautions to prevent wire fraud scams. **ACCORDINGLY, THE GRIEVANCE COMMITTEE IS PROVIDING NOTICE THAT LAWYERS WHO FAIL TO TAKE ADEQUATE PRECAUTIONS TO PROTECT AGAINST WIRE FRAUD SCAMS CAN EXPECT IMPOSITION OF MORE SERIOUS PROFESSIONAL DISCIPLINE.**

violation of 18 U.S.C. § 1349 and making and subscribing to a false return in violation of 26 U.S.C. § 7206(1).

Suspensions & Stayed Suspensions

Mark D. Lackey of Shelby did not reconcile his trust account and committed multiple other trust accounting violations. The DHC suspended Lackey for two years. The suspension is stayed upon Lackey's compliance with enumerated conditions.

Christopher D. Lane of Clemmons assisted out-of-state entities in the unauthorized practice of law, shared fees with non-

lawyers, made false or misleading statements about his services, engaged in conduct involving dishonesty or misrepresentation, neglected and did not communicate with a client, and did not properly supervise nonlawyer assistants. Lane was suspended for two years by the DHC. The suspension is stayed upon his compliance with enumerated conditions.

Mark E. Raynor of Jacksonville solicited his client for the purpose of prostitution. The DHC suspended him for four years. After serving two years of the suspension, Raynor will have the opportunity to apply

for a stay of the balance upon demonstrating compliance with enumerated conditions.

Interim Suspensions

The DHC entered an order suspending the law license of **Joshua Michael Reed** of High Point on an interim basis pending conclusion of disciplinary proceedings. Reed pled guilty to attempted coercion or enticement of a minor in violation of 18 § U.S.C. 2422(b) in the United States District Court for the Western District of North Carolina. Reed surrendered his license and was disbarred by the State Bar Council at its January meeting.

Censures

John Snyder of Matthews was censured by the Grievance Committee for two separate grievances. One client retained Snyder in 2017 in a claim against a school district. The client paid Snyder over \$23,000, which was clearly excessive for the amount of work Snyder completed. Snyder never responded to the opposing party's discovery requests, did not inform the client when his law license was suspended, and did not participate in the State Bar's fee dispute resolution program. In the second case, Snyder was retained to assist a client with estate planning documents. He abandoned communication with the client for several months, filed incorrect documents, and did not complete the work for which he was retained.

Edward V. Williams of Raleigh was censured by the Grievance Committee. He engaged in the unauthorized practice of law while administratively suspended, engaged in conduct prejudicial to the administration of justice, and did not respond to the Grievance Committee in two grievances.

Reprimands

Jerry Clayton of Durham was reprimanded by the Grievance Committee. He billed a clearly excessive fee for a criminal representation in state court when he knew the case would be indicted to federal court where he does not practice. During the representation, Clayton made minimal efforts to obtain discovery and to ascertain when the client would be indicted. He did no meaningful work on the client's behalf and did not personally appear in court for several of the client's court appearances. Clayton split his fee with another attorney without

obtaining the client's consent. He also told the Grievance Committee that his fee was nonrefundable.

Matthew P. Doyle of Charlotte did not adequately supervise his paralegal, who did not verify wiring instructions for disbursement before wiring the lender's payoff. He was reprimanded by the Grievance Committee.

Harry C. Marsh of Matthews was reprimanded by the Grievance Committee. He made statements to an opposing party in a landlord-tenant dispute that were false and misleading, made statements to an opposing party that had no substantial purpose other than to embarrass, delay, or burden a third person, and did not timely respond to the Grievance Committee.

In October 2017 the DHC censured **Robert Weckworth** of Greensboro. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. The North Carolina court of appeals issued an unpublished opinion affirming the rule violations but remanding to the DHC for additional findings regarding the appropriate discipline. After hearing on remand, the DHC reprimanded Weckworth.

The Grievance Committee reprimanded **Andrew K. Wigmore** of Beaufort. Wigmore repeatedly failed to keep a client reasonably informed of her court dates. He withdrew from the representation the day before the client's court date without taking reasonable steps to protect her interests and did not communicate with her about his withdrawal. He disclosed embarrassing information to a third party about the client's representation, without authorization. Wigmore also engaged in conduct prejudicial to the administration of justice by pressuring the client to withdraw a grievance she filed with the State Bar.

Admonition

Nicolle T. Phair of Sanford allowed her office manager to certify yearly mediator renewal applications to the Dispute Resolution Commission on her behalf without reviewing the applications and without attesting that she was the person filling out the application. One such renewal application denied the existence of a pending grievance of which Phair was aware and which she was required to disclose to the commission. Phair was admonished by the DHC.

Transfers to Disability Inactive Status

Kenneth Gregory Gunther of Raleigh, **Dean R. Davis** of Wilmington, and **Christopher C. Peace** of Charlotte were transferred to disability inactive status by the chair of the Grievance Committee.

Notice of Intent to Seek Reinstatement

In the Matter of David Shawn Clark

Notice is hereby given that David Shawn Clark intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. On September 14, 2012, Clark pled guilty to two counts of misdemeanor communicating threats and to one count of common law obstruction of justice. The guilty pleas stemmed from allegations that Clark engaged in a sexual relationship with a current client and threatened the client and his secretary if they divulged their knowledge of the relationship. On October 30, 2013, an order of discipline was entered disbaring Clark from the practice of law. On May 17, 2019, an order denying reinstatement was entered. This order was appealed, and the North Carolina Court of Appeals affirmed the commission's decision on July 21, 2020.

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC 27611-5908, before May 1, 2022. ■

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John Korzen, Board Certified Specialist in Appellate Practice

BY SHEILA SAUCIER, LEGAL SPECIALIZATION CERTIFICATION COORDINATOR

I recently had an opportunity to talk with John Korzen, a board certified specialist in appellate practice. John is the director of the Appellate Advocacy Clinic and an associate professor of legal writing at Wake Forest University School of Law in Winston-Salem. John has been chair of the North Carolina General Statutes Commission since 2019. He has argued appeals in the Supreme Court of the United States, the Fourth Circuit, the Eleventh Circuit, the Supreme Court of North Carolina, and the North Carolina Court of Appeals. He has supervised the work of third year law students in all those appellate courts and others. Before joining the faculty in 2003, Professor Korzen practiced law for a total of 11 years with Smith Helms Mulliss & Moore in Greensboro, NC, and Anderson, Korzen & Associates in Kernersville, NC. He previously served as a law clerk for the late Sam J. Ervin III, then chief judge of the United States Court of Appeals for the Fourth Circuit, and as a summer law clerk to the late James B. McMillan, judge for the United States District Court for the Western District of North Carolina. John and his wife Catherine have three children and live in Kernersville, NC.

Q: Tell us about yourself?

My four grandparents were immigrants from Eastern Europe who all entered the United States through Ellis Island and settled in Newark, New Jersey. My parents met there while students at West Side High School. They married in 1954, shortly after my dad finished serving three years in the army during the Korean War. My older brother Greg was born in 1955, and I was born in 1960. Our last name was



Korzen

“Korzenewich” (pronounced Core-zinn-YEV-ich) until my parents shortened it a few months after I was born. My dad worked in manufacturing for American Can Company, Campbell Soup Company, and Continental Can Company. My brother and I were “corporate brats,” because my dad’s employers kept transferring him every two years or so. In addition to multiple towns in New Jersey, we lived in Paris, Texas when I was four; outside Chicago, Illinois (twice); and in Winston-Salem.

My favorite of all the places we lived was Winston-Salem, where I spent seventh and eighth grade, and I later applied to only one school, Wake Forest University. My college years at Wake were bookended by family tragedy, as my brother died of cancer during my freshman fall, and my dad died of cancer during my senior spring. In the summer after my junior year, however, I met my future wife, Catherine, while I was working for the first of three summers at Falling Creek Camp in Tuxedo, North Carolina. She lived in nearby Hendersonville. She was a year behind me at Wake, and a couple of mutual friends (one was later best man at our wedding) said we should meet. We have been married for 38 years and have three children.

Q: What led you to become a lawyer and a law professor?

During college, my work as a camp counselor and a widely publicized report, *A Nation at Risk*, helped me decide to be a teacher. After college I taught for six years in the Winston-Salem public schools, in grades four through seven. While teaching I chose to become a lawyer because I had always liked reading, writing, and public policy. In fact, when I applied to law school, I was a precinct

chair for a political party. In addition, one of my wife’s sisters was enjoying law school at Wake. She told us all about it when she did laundry at our house. As with college, I applied to only one law school, Wake Forest.

My path to becoming a law professor was a little unusual. After law school I clerked for Sam J. Ervin III, then chief judge of the Fourth Circuit, and practiced at two law firms for a total of 11 years: first at the Greensboro office of Smith Helms Mulliss & Moore (now Fox Rothschild) for seven years, and then for four years at Anderson Korzen & Associates, a three-attorney firm started by Joseph Anderson. During the 1990s I was also an adjunct law professor at Wake Forest for five fall semesters. In 2003, a friend and former colleague at Smith Helms, Chris Coughlin, told me there was an opening to teach legal writing at Wake Forest, where she had become the director of the Legal Writing Program. Based on my years of public school and adjunct teaching, I was very interested in teaching again. I applied, was hired, and started teaching various legal writing courses, including legal writing I and II, appellate advocacy, and business drafting. In 2006 I added the Appellate Advocacy Clinic, which I have directed ever since, while continuing to teach legal writing and, occasionally, other courses. I am lucky to have the best of both worlds—teaching in a law school and maintaining an appellate practice.

Q: Why did you pursue becoming a board certified specialist in appellate practice?

When I became a board certified specialist in 2011, I had long been interested in appellate practice. After law school I had the extreme good fortune of clerking for Chief Judge Ervin. He was a wonderful mentor, and I gained invaluable practical appellate experience that year. I saw scores of oral arguments, and I researched and drafted 55 bench

memos, 23 majority opinions, and one dissent. Next, while at Smith Helms in the mid-1990s, I was in the firm's appellate practice group, which was headed by former Chief Justice Jim Exum. He and I had offices next door to each other and worked on several appeals together. He was another great mentor. We discussed the possibility of an appellate practice specialization in North Carolina back then. I researched other states and found that two, Florida and Texas, had an appellate specialization at the time. I left Smith Helms in 1999 and continued an appellate practice during my four years with Joseph Anderson and after I joined the Wake Forest faculty.

I was excited when North Carolina began to recognize the appellate specialty in 2011. Back when I had taken the bar exam in 1991, like many new lawyers, I vowed to never take another exam. But after 20 years, and with my longtime interest in appellate practice, I broke my vow and took the appellate specialization exam the first time it was offered. I later served on the State Bar Appellate Specialization Committee for several years, including two years as chair. Being a board certified specialist has helped me keep up with developments in appellate law and meet many outstanding appellate lawyers. I encourage other lawyers to seek specialization in their fields of practice.

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

It's hard to pick one thing, because much of being a law professor at Wake Forest is interesting. My colleagues are brilliant. I enjoy hearing about the research they are doing and sharing ideas. Our administrative staff members, from Dean Aiken on down, are extremely dedicated and make what we do possible. Our students are very supportive of each other and public spirited. I also find class preparation interesting, because often there is a new court decision or other breaking legal news that ties in nicely with an upcoming topic. I'm the faculty advisor to our Moot Court Program and coach two or three teams each year, so many of my days include something related to moot court. I love working with teams and helping them reach their potential. A team I coached won the national championship in the National Moot Court Competition sponsored by the City Bar of New York in 2017, out of more than 180 teams. Another reached the semi-finals in 2015, and several others have made it to the sweet sixteen.

Q: What career accomplishment makes you most proud?

I am most proud of the Appellate Advocacy Clinic that I direct. So far under my supervision, 48 3Ls have made oral arguments in a variety of courts. Most have argued in the Fourth Circuit. Others have argued in the Seventh Circuit, the Eleventh Circuit, the North Carolina Court of Appeals, the North Carolina Industrial Commission, and the North Carolina Superior Court. Many have said it was their best experience in law school. I'm proud that 29 of the 48 students who have argued have been female, especially in light of a recent ABA study of Seventh Circuit arguments, which found that the vast majority of oral arguments in 2009 and again in 2019 were made by male attorneys.

One of our clinic cases was heard in the Supreme Court of the United States. I argued, with nine then-current and two former students (who had worked on the case in the circuit below) in the courtroom. After the argument Erin Brockovich joined us for lunch. It was an environmental contamination case, and she had led a rally outside the courthouse that morning in support of our side.

In recent years I have added *amicus curiae* representation to our case mix, which gives students policy-writing experience in cases pending at the Supreme Court of the United States and other appellate courts.

Working closely on real cases with talented and dedicated 3Ls has been the highlight of my 30 year legal career.

Q: Who is your hero and what makes them your choice?

I'd like to answer that question in two parts, as we sometimes say at oral argument. First, for somebody I've known, I choose my dad. As a 22-year-old army vet, he married, started college, had a child, and worked a full-time third-shift manufacturing job to support my mom and older brother. Despite those responsibilities, he graduated from Rutgers in five years. (I came along about a year later, apparently a graduation present.) My dad was also very brave, saving two lives. In his early 30s he saved a co-worker's life when he pushed him out of the way of a falling stack of tin sheets at the factory where they worked. Some of the metal fell on my dad and severely injured his right foot. His big toe would never bend again. In his mid-40s he saved someone who had slit his wrists to attempt suicide by breaking down a

locked door to get him emergency care in time. My dad also had a sense of humor and made time for my brother and me. I so wish he had not passed away during my senior year of college.

Second, for a hero I never met, my choice is Abraham Lincoln. I'm an amateur Lincoln historian, with multiple shelves of books about him. I have gone to his house, his law office, and other historic sites in Springfield, Illinois, three times in the past decade. Before being elected president, Lincoln was an outstanding lawyer with wide interests. For example, he is the only president who ever obtained a patent. He began his presidency with a short-term goal, saving the Union, and a long-term goal, eliminating slavery. He accomplished both, while leaving us timeless speeches that help to define America. And he maintained a sense of humor, despite numerous personal tragedies. He was not perfect by any means, but to me his life is endlessly fascinating and inspiring. ■

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CONTINUED ON PAGE 50

Stop, Call, and Verify

BY LEANOR BAILEY HODGE, TRUST ACCOUNT COMPLIANCE COUNSEL

If I yelled “Stop, Drop, and Roll,” you would immediately know that you were on fire and would govern yourself accordingly by following my command. It would not matter whether you saw flames or even smelled smoke. You would not be concerned about the time it would take to get down to the ground or the possibility that the fire might possibly be extinguished another way. You would simply hit the ground...IMMEDIATELY. You would act as if your life depended upon it because it might.

What if I told you to “Stop, Call, and Verify”? Would you know what to do? Would you immediately know that danger loomed ahead that could be avoided by heeding my directive? Because for too many lawyers, the answer to both questions is still no, and the discipline landscape for lawyers who fall victim to wire fraud is changing.

Hopefully, everyone reading this column saw the segment titled “Wire Fraud—Heightened Discipline” in the Disciplinary Department section of the Fall 2021 *Journal*. If you have not, I commend it to you for reading. It was not captioned under the heading of warning, but it could fairly be taken as one. In it, a summary of grievance investigations into reports of computer hack-

ing is provided. It offers a glimpse into some of the fact patterns at issue in the reports and details how the Grievance Committee disposed of many of these files. The piece ended with the following announcement: “ACCORDINGLY, THE GRIEVANCE COMMITTEE IS PROVIDING NOTICE THAT LAWYERS WHO FAIL TO TAKE ADEQUATE PRECAUTIONS TO PROTECT AGAINST WIRE FRAUD SCAMS CAN EXPECT IMPOSITION OF MORE SERIOUS PROFESSIONAL DISCIPLINE.”

The landscape is changing for lawyers who are “victims” of wire fraud but fail to heed the warnings and guidance that have been issued about it. One such recent directive about wire fraud is the reminder that

our ethical duty to be diligent in our representation of clients includes certain duties relating to protecting against fraudulent theft of entrusted funds. Recently, in 2021 FEO 2, the Ethics Committee confirmed that our duties of competence and diligence as lawyers require us to be knowledgeable about the dangers of potential fraud in the practice of law and, specifically, fraudulent attempts to access entrusted client funds. The opinion notes that, in the case of counterfeit check scams, state and federal agencies have alerted lawyers to the “existence and persistence” of these scams for some time, and therefore, “reliance on the counterfeit check is unexcused.” This is not just true for counterfeit check scams, the same is true for criminal efforts to access entrusted funds by wire fraud.

The method hackers commonly use to access entrusted funds by wire fraud is the Business Email Compromise (BEC) scam. The FBI’s Internet Crime Complaint Center (IC3) began tracking the BEC scam in late 2013. “Business E-Mail Compromise.” FBI, 28 August 2015, [fbi.gov/news/stories/business-e-mail-compromise](https://www.fbi.gov/news/stories/business-e-mail-compromise). In August 2015, the total dollar losses in the United States exceeded \$740 million. *Id.* At that time, the victims were from all 50 states with most of the fraudulent transfers ending up in Chinese banks. *Id.* Fast forward to today and the scams have increased exponentially. In its 6 April 2020 Alert No. I-040620-PSA, the FBI disclosed that between January 2014 and October 2019, IC3 has received complaints of losses totaling more than \$2.1 billion. The FBI reported in its 2020 IC3 Internet Crime report that in 2020 IC3 received 19,369 BEC/EAC (Email Account Compromise) complaints with adjusted losses of over \$1.8 billion. Internet crime is big business for the criminals and a significant risk for potential victims.

The response to this rise in internet crime has included efforts to inform and educate those who might otherwise be victims of these crimes. In North Carolina, our legal community addressed the problem early on when the Ethics Committee adopted 2015 FEO 6 on October 23, 2015. In this opinion, the Ethics Committee offered guidance about a lawyer's ethical obligations in the wake of various types of theft of entrusted funds. Included among the scenarios considered was wire fraud in a real estate transaction in which the hacker tricks the lawyer into wiring entrusted funds to the criminal instead of the intended recipient. This opinion informed lawyers that we must use reasonable care to prevent third parties from gaining access to client funds held in the trust account and that we have a duty to also implement reasonable security measures. It also used as an example of a reasonable security measure, calling a known number for the intended recipient of entrusted funds to verify any change in disbursement instructions—said differently, stop, call, and verify. In a more recent opinion, 2020 FEO 5, which was adopted on January 15, 2020, the Ethics Committee provided a few specific examples of ways in which a lawyer can satisfy the professional obligation to protect against risks associated with transfer of funds in real property transactions. Such measures included becoming educated about real property transaction scams, adequately communicating to the client the risks associated with transfer of funds in real property transactions, and communication of clear instructions about how to safely transfer funds to complete the transaction. One such clear instruction that 2015 FEO 6 makes clear should be included about how to safely transfer funds is to stop, call, and verify.

Wire fraud is not the unexpected event it was when the FBI first began tracking the BEC scam in 2013 and when the first files were considered by the Grievance Committee in 2015. It has garnered the attention of federal and state law enforcement, regulatory agencies, many lawyers, some real estate professionals, and now even members of the public. Over the past five years, law enforcement and regulatory agencies have worked together to inform those whom they regulate and the public

about wire fraud, its dangers, and how to protect against it. There have been articles in various publications and on websites to inform and educate readers about wire fraud. Real estate professionals have begun including information sheets about wire fraud among the materials provided to buyers and sellers of real estate. Also, the FBI has several public service announcements about BEC scams and other internet crime on its website, most, if not all of which, includes information about how to protect against internet crime. Lastly, many continuing legal education and other educational presentations now include information about wire fraud and how to guard against it. In the wake of all this information about wire fraud, it is becoming increasingly difficult for lawyers and other professionals to claim that they are victims of wire fraud.

There are several definitions for victim, but the one that is most applicable in the wire fraud scenario is one that is tricked or duped. ("Victim," merriam-webster.com, October 14, 2021). In 2013, a lawyer could more credibly claim to have been the victim of wire fraud because of the lack of available information about it. This was evident in the manner in which the grievance investigations at the beginning were resolved—with dismissals. In 2021, with all the education and information provided about wire fraud by law enforcement, regulators, and others, lawyers can no longer fairly claim to be tricked or duped by wire fraud absent a new twist on this almost decade-old scheme. Thus, it is logical to conclude that lawyers whose entrusted funds are stolen due to wire fraud will no longer be treated as victims in the grievance process, and that the outcome in future cases may be imposition of more serious professional discipline.

The need to protect your clients' entrusted funds from theft by wire fraud certainly does not feel as urgent as protecting yourself from the spread of a fire that is spotted on your body. However, wire fraud is a perilous situation that has caused harm to many as evidenced by the statistics maintained by IC3. Stop, Drop, and Roll has become a ubiquitous phrase in the context of fire safety—so much so, that executing this command during a fire is likely to occur almost instinctively. Lawyers who electronically transfer entrusted funds could benefit from making Stop, Call, and Verify a com-

mon phrase in the context of wire fraud such that this process is automatically followed anytime there is a request to change the disbursement method for entrusted funds. We can take one step toward that goal now by committing to remember that if you receive an email request seeking to change information relating to payment of funds in connection with a real estate transaction, before taking any action in response, Stop, Call, and Verify. It just might be your client's funds you are saving, and possibly yourself from imposition of professional discipline. ■

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Imposter Syndrome

BY ROBYNN MORAITES

Think everybody else has figured out a special something that you have yet to discover? They haven't. Worried secretly that you are, at best, deficient, at worst, a fraud that has no business practicing law, sitting on the bench, or holding your current position? You aren't. And you are not alone.



In fact, if I had to identify the most consistent complaint or issue that attorneys and judges struggle with, it is imposter syndrome. It comes up every week in our support group meetings across the state and cuts across age, race, gender, practice area, practice setting, whatever law school you hail from, and class rank. It can range in severity from mildly irritating to outright debilitating. And it usually starts in law school.

According to the research, theoretically at least, imposter syndrome is usually more prevalent in the earlier years of law practice and tends to diminish with time as one gains confidence and skill in one's legal practice. We have found, however, with the lawyers we work with, that the feeling of imposter syndrome does not gradually go away with time in the field, but persists unless outright addressed with some sort of support or action.

There is growing research on the correlation between ongoing, unresolved imposter syndrome for women and minorities and systemic gender and race implicit biases and the micro (and sometimes not-so-micro) aggressions these populations experience.¹ In those cases, individual intervention and attention will not resolve the issue and likely a systemic change is needed. In addition, the adversarial nature of law practice does not

provide the positive mirroring and validation needed to quell imposter syndrome.

If anything, the practice of law perpetually reinforces this feeling, with steel girders. While imposter syndrome was not the sole focus of a recent Sidebar podcast episode, we touched on the issue. You can listen to that episode, entitled, "Validation," at nclap.org/podcast-sidebar/12-validation. As our Sidebar podcast guest points out in that episode, the profession is filled with never-ending external messages of, "You are wrong and stupid," that start in law school and continue into practice. With such overwhelming external reinforcement, it is that much harder to overcome negative internal messages.

But imposter syndrome in the legal profession is not confined to women and minority populations. To be clear, white men also struggle with imposter syndrome. For a chilling examination of imposter syndrome in the extreme that ultimately led to a white male lawyer's suicide, see the article, "Big Law Killed My Husband."² This is not a phenomenon from which white men are exempt.

But the focus of this article is on what we see at the Lawyer Assistance Program across the board and to provide tools at the individual level for increased self-awareness, self-actualization, and self-compassion. And what

we have seen is that imposter syndrome is prevalent across the profession and can rear its ugly head especially upon taking a new position, changing practice areas, or moving to a new practice setting (including being elected or appointed to the bench).

Imposter syndrome is not a psychological diagnosis. It is a term of art used to describe the phenomenon people experience when they doubt their accomplishments and abilities and feel like a phony or a fraud. It can lead to anxiety based on a free-floating, unnamed fear of somehow being found out or exposed as deficient. And research shows a high correlation with depression. It is well documented that this phenomenon disproportionately affects high-achieving people, which makes sense when you consider what often propelled high-achieving people to become high achieving in the first place. It frequently originates out of that same place, that same voice or feeling.

You know that voice in your head that ranges from a quiet whisper to a booming shout that reminds you incessantly of all the myriad ways in which you are failing to measure up? Or maybe you experience it as a dread in the pit of your stomach, or a tightness in your chest, and you just know you are lacking in some fundamental way. Say hello to

my little friend, the inner critic.

The inner critic helped to shape who we each are. From an early age, we begin to internalize the messages we get from our parents, family, teachers, mentors, and other influential adults about how to succeed, meet expectations, and play well with others. In our earliest development and education, we are learning to differentiate what we want to do from what we “should” or “should not” do. This behavioral conditioning bleeds over (or we may have received overt messages) from what we should or should not “do,” to what we should or should not “feel,” “think,” and “be.”

Eventually we internalize these messages and sprout our own delightful inner critic that knows precisely how to push our buttons, even when we aren't doing anything wrong. Or so you thought! The inner critic finds all kind of fault, even where there is none. The inner critic says, “Jump,” and we unconsciously, automatically respond, “How high?” And then we jump. Of course we jump! Everything in our being, down to our bones, knows we must jump! We must! Right? It never occurs to us to question this process, or learn to differentiate ourselves from the inner critic, until something isn't working—then it becomes imperative.

Various types of inner critic structures have been identified by psychologists: the perfectionist, the taskmaster, the inner controller, the guilt tripper, the destroyer, the underminer, and the molder. Some of us, particularly those of us from traumatic backgrounds, may feel like we went through the cafeteria line of life more than once and somehow ended up with a whole inner critic pie with a slice of each flavor! Each form comes with its own special twist on how to make us conform to what it is we think we should be doing (/being/feeling) or should be doing (/being/feeling) better. But you don't have to come from a traumatic background to have a harsh inner critic voice.

“Isn't this just having a conscience?” you may ask. No. A conscience is more like a guidance system based on empathy and compassion for others, and it matures as we mature. So, we may reflect on something we said or did in our younger years that we would not say or do today; in fact, we may cringe when we think of that thing we said or did with impunity back then. An inner critic does not mature, and its message stays surprisingly consistent across the decades. It is a one-trick pony—the proverbial hammer to which everything looks like a nail, namely us.

Carl Jung observed, “There are, indeed, not a few people who are well aware that they possess a sort of inner critic or judge who immediately comments on everything they say or do....[P]eople..., if their inner life is fairly well developed, are able to reproduce this inaudible voice without difficulty, though as it is notoriously irritating and refractory, it is almost always repressed.” Many people experience their inner critic, not so much as a voice, but as an uncomfortable feeling that arises in the body. It is as if the message occurs in the unconscious or subconscious, and the only thing that floats to the surface is the uncomfortable or bad feeling.

The inner critic is usually what propelled us to become high achieving students. For some of us it may have propelled us to go to law school. How we got to law school does not matter as much as recognizing that, for a majority of law students, the forced-curve, highly-competitive nature of law school throws our inner critics into overdrive.

The stage is now set. Dim the lights. Raise the curtain. Making its grand entrance, stage left: imposter syndrome. It is the nagging feeling that we are out of our league. That somehow everybody else has it together and we don't. Or that they have it together in a way we have not yet figured out. And if we don't make law review or (insert honor/award/accolade of choice, the possibilities are endless), our deepest fears are fueled, if not confirmed. It never occurs to us that all these other students feel the same way we do. Guess what...they do. Trust me. They do. Except for that one guy. But I digress.

There is a slogan in recovery circles: “Never compare your insides to someone else's outsides.” Law school sets up the big Comparison Marathon. True confession here. When I would walk through an open study area in law school and see someone, say with his or her contracts book open, I felt like such a loser because I was still reading for property class. It never even crossed my mind that while I had not yet gotten to contracts, maybe that other student had not yet gotten to property. A few years ago, I finally realized this scenario, which was most likely the situation, had never occurred to me. I simply defaulted to the belief that I was just deficient, and it propelled me to work harder. As if I wasn't already working hard.

Have you ever seen the backside of a needlepoint design? It's all a jumble of threads and knots and craziness that looks like

something a sewing kit barfed up. Meanwhile the front is this smooth, beautiful, finished work. We are all like needlepoint. Our insides are like the backside of a needlepoint. While we are staring at our own colorful, jumble-of-a-catastrophe insides, we see everyone else's fine, finished-work outsides. And while we cannot believe anyone could mistake our hot-mess insides for finished-work outsides, guess what...they do. Trust me. They do.

And trust me on this, too. You're more of the finished-work outsides than you realize.

So, what's the first step in overcoming imposter syndrome? First, recognize what is happening. And do a reality check with someone to see if you are in a toxic workplace that is giving you overt messages that you are deficient. If so, the solution may be a change in workplace environment. This can be hard in the legal profession because we are swimming in a sea of messages that we are deficient, especially from opposing counsel. And because of the way the profession is structured, we are not receiving the necessary, counteracting, positive messages that typical corporate, team-based environments provide. Acknowledging the very real limitations of your practice environment can be an important step in helping to quell imposter syndrome. And if you can't change your work environment right then for whatever reason, acknowledging the limitations of your current situation and working to seek out what you need from another outside source can be really helpful. Find a professional mentor who works elsewhere, join a networking group, or seek a career counselor.

Next, see if you can identify the messages your inner critic is whispering to you or shouting at you, and differentiate the external messages you receive (say, a judge's comment) from the internal messages that are triggered in response (usually something no one in the world would actually say to you like, “you idiot” or “stupid”). Put the messages or thoughts on paper. This exercise will probably make your toes curl in your shoes the first time you do it, because it is bringing to light the underlying fear, secret shame, or feeling of inherent badness/wrongness that has motivated you your entire life. It is really helpful to do this exercise with a therapist. Multiple times. The more often we can pull back the curtain to expose the little wizard behind the scene, the less identified we become with that voice, and ultimately the less power it has over us to dictate our behavior. It

gives us more agency of choice. With the inner critic, knowledge really is power.

As we mindfully acknowledge the inner critic, try not to attach to it, and directly think of the counterpoint. Take this example, courtesy of Nicki Ellington, our LAP counselor based in our Raleigh office. Let's say you draft an article on imposter syndrome and send it to your LAP counselors for comments. You then get the article back with suggestions and feedback and your inner critic says, "You are so stupid, why didn't you think of that?" Notice that thought and then tell yourself instead, "This is a rough draft, and the feedback is not about my intelligence, but another person bringing her experience to the article." The more that we practice this, the faster our brain will access the counterpoint, with the hope that eventually the inner critic will not be as critical in general.

The next step in the process is objectively recognizing and evaluating your accomplishments. In some ways this may be the more difficult part of the exercise. Sometimes people get confused here because often we cover up our insecurity with bravado. This is not an exercise in bravado or bragging. Rather it's an exercise in taking stock of all that you have actually accomplished. It is helpful here to also write a list of skills that were needed to accomplish

what you have. The accomplishments do not have to be only work related. Many lawyers today are juggling small children, aging parents, busy practices, single parenthood, etc. None of it is easy.

Then, connect the dots for yourself. Understand, the inner critic is not a rational process. The hope is that this exercise reveals just how irrational it is.

It can be helpful to do this with someone who understands this kind of exercise. If you have a supportive friend, colleague, or therapist, see if they would be willing to listen to you discussing your accomplishments, so that they can mirror back to you and validate your experience. If you are a regular reader of this column, you know how vital positive mirroring is to our mirror neurons and overall brain health, and consequently, our mental health.

Then, ultimately, when that inner critic voice amps up, you can stop, take a deep breath, and politely tell it something like, "Thanks for sharing. I know you helped me a lot when I was a kid. I appreciate your input." And then go on about your business (without jumping in response to its demand). There is a discussion about this phenomenon woven through another podcast episode where I interviewed a lawyer who was recovering from compassion fatigue. She identifies her inner critic as her "inner jerk."

You can listen to that episode, entitled "Self-Care vs Car Wrecks – A Compassion Fatigue Story," at nclap.org/podcast-sidebar/10-self-care-vs-car-wrecks.

I have good news and bad news. The bad news is that the inner critic never really goes away. It gets quieter. Less harsh. But in my experience, it morphs over time and becomes more sophisticated as we become attuned to its tricks. It's still that one-trick pony, back again, but this time it shows up with a clown wig on and a noise maker in its mouth. I have been known to say, out loud, "You're not fooling anyone." The good news is that as we become better skilled at recognizing it and detaching from it, it stops having power over us and tormenting us. In fact, it can become quite funny. It is a great relief to stop taking ourselves (and it) so seriously.

Speaking of not taking it so seriously, Tim Urban has a funny exploration of this topic (complete with expletives) in his blog *Wait But Why*.³ If you enjoyed this column, I encourage you to check out that blog post.

Imposter syndrome is rampant in the legal profession, even for lawyers and judges who are accomplished and greatly admired. We all have an inner critic voice. Some of us are more attuned to it than others. For some of us, it can serve as a motivator, but for some of us, it goes further and downright torments us. At LAP we find that imposter syndrome does not necessarily diminish with time and practice. It takes consciously acknowledging the issue and the unchecked inner critic voice that spurs it on and seeking out some support and tools to better deal with it. While we may find it never fully goes away, it no longer runs our lives and we become both empowered and liberated. ■

Upcoming Appointments to Commissions and Boards

Anyone interested in being appointed to serve on any of the State Bar's boards, commissions, or committees should email lheidbrink@ncbar.gov to express that interest (being sure to attach a current resume), by April 8, 2022. The council will make the following appointments at its meeting in January:

Disciplinary Hearing Commission (3-year terms)—There are five appointments to be made by the State Bar Council. James Davis, Margit Hicks, Margaret Hunt, and Jaye Meyer are eligible for reappointment. Donald Prentiss is not eligible for reappointment.

The terms of the three public members will expire in June but all are eligible for reappointment. These appointments are

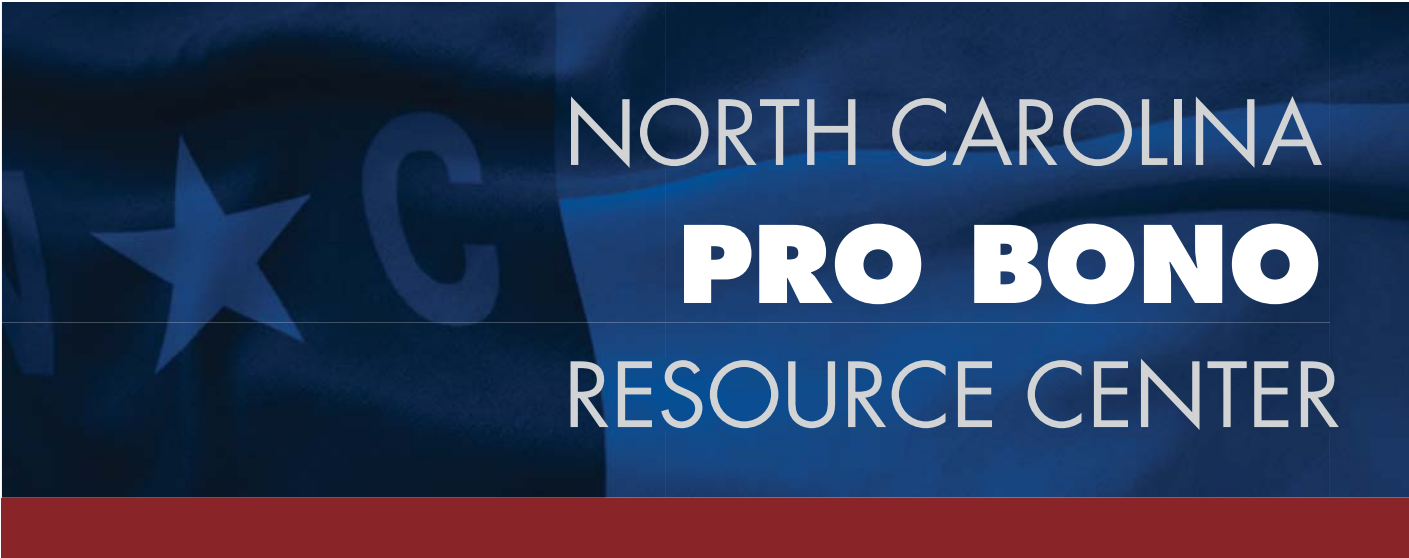
made by the governor and the senate president pro tempore. Letters will be sent to their offices to notify them of the appointments.

The Disciplinary Hearing Commission (DHC) is an independent adjudicatory body that hears all contested disciplinary cases. It is composed of 12 lawyers appointed by the State Bar Council and eight public members appointed by the governor and the General Assembly. The DHC sits in panels of three: two lawyers and one public member. In addition to disciplinary cases, the DHC hears cases involving contested allegations that a lawyer is disabled and petitions from disbarred and suspended lawyers seeking reinstatement.

Robynn Moraites is the director of the North Carolina Lawyer Assistance Program, 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 or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/ down east) at 919-719-9267.

Endnotes

1. See bit.ly/Spring2022LAP1.
2. See bit.ly/Spring2022LAP2.
3. See bit.ly/Spring2022LAP3.

The banner features a dark blue background with a large, faint white star and the letters 'N C' on the left. The text 'NORTH CAROLINA' is in white, 'PRO BONO' is in large white bold letters, and 'RESOURCE CENTER' is in white. A solid red horizontal bar is at the bottom.

NORTH CAROLINA **PRO BONO** RESOURCE CENTER

NC ATTORNEY PRO BONO REPORTING DEADLINE: MARCH 31, 2022

WHAT SHOULD I REPORT?

The North Carolina Pro Bono Reporting Form collects information about all the activities encouraged in NC Rule of Professional Conduct 6.1: pro bono legal service; legal service at a substantially reduced fee; activity that improves the law, the legal system, or the legal profession; non-legal community service; and financial support of legal service providers.

HOW DO I REPORT?

Visit **ncprobono.org/report** and provide information about the activities included in NC Rule of Professional Conduct 6.1. You will need to report the total number of pro bono legal service hours you provided in 2021 – this is the only activity from Rule 6.1 that leads to recognition through the North Carolina Pro Bono Honor Society. Questions about other activities from Rule 6.1 only require general information about participation.

WHY SHOULD I REPORT?

There are four major reasons to report your pro bono legal service: (1) it's a way to showcase attorney volunteerism in NC – we want to share the good work being done by the legal profession in our state; (2) it's an opportunity to encourage your peers to grow their pro bono involvement by sharing about your own engagement; (3) it's a mechanism to identify areas to grow pro bono efforts in North Carolina and (4) it's an opportunity for recognition – attorneys licensed in NC who report at least 50 hours of pro bono legal service in a year will be inducted into that year's cohort of the NC Pro Bono Honor Society and receive a certificate from the Supreme Court of North Carolina recognizing their achievement.

WHO SHOULD REPORT?

For the first time, North Carolina paralegals are welcome to join attorneys licensed in North Carolina in submitting their pro bono information. Learn more at **ncprobono.org/report**.

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Effective Workplace Communication: Five Questions to Ask Yourself Before Saying “Yes” to a Request

BY LAURA MAHR

One key to a successful law practice is effective communication. Whether you're a partner, associate, solo practitioner, or support staff, you likely field countless requests from colleagues and clients on a daily basis. When your workload is at max capacity, it can be challenging to discern what to say “yes” to and what to say “no” to.

A Common Law Firm Communication Breakdown

Saying “yes” to everything, especially when you want to say “no,” often leads to communication breakdowns and complicates intra-office relationships and client services. Many attorneys share some variation of this communication breakdown with me:

A colleague says “yes” to a request when they really mean “no,” “not now,” or “I’m not sure.” For example, a partner asks an associate (or staff person) to perform a task, and the associate/staff person agrees because they feel like they can’t say “no” without repercussions.

Or a client makes a request, and the attorney feels like they can’t say “no” or “not until later.”

In either scenario, saying “yes” often leads to a work product created under stress and a less-than-optimal deliverable. This can disappoint and frustrate both the requester and the doer. Associates share with me that feeling like they must say “absolutely yes” to a partner’s request often results in overwhelm, feeling disempowered, and feeling chronically anxious. On the flip side, partners share with me that they feel frustrated and bewildered when a work product is done poorly or turned in late. Both sides of the coin lead to



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strained work relationships, and over time can lead to burnout and attrition.

Five Questions to Ask Yourself Before You Say “Yes” to a Request

Since workplace communications have changed—and been strained—as a result of the pandemic, firms have recently been asking me to conduct trainings on effective communication skills. Through the process of creating and conducting these trainings, I have dialed in on five key questions to ask before responding to a request:

- Can I pause before saying “yes” or “no”?
- Do I have capacity?
- Can I give a qualified yes?
- What am I afraid of?
- Does it feel right?

These five questions guide the doer through an internal process that helps to clarify a response before answering.

1. Can I pause before saying “yes” or “no”?
Pausing before replying to a request gives

you time to check in with yourself and assess the situation from a broader perspective. Due to the fast-paced nature and pressures of practicing law, you may feel you must urgently respond to a colleague’s or client’s request. Most inquiries, however, aren’t so urgent that you can’t take five minutes to pause and evaluate your options. It doesn’t have to be awkward to take a pause. If the request comes through email, take a mental break by stepping away from your computer or phone for a few minutes and then respond. If the request is made in person, get the information you need and then say, “let me check on a few things and get back to you [offer a day or time].”

2. Do I have capacity?

Capacity is your ability to do something in the timeframe requested. Having capacity includes whether you have the skill, competence, experience, and time to deliver on the request. If you determine that you don’t have skill, competence, or experience, but you do

have interest and time to deliver, ask yourself: “Who can help me so I can learn what is needed here?”

If you want to say “yes” but don’t have the time to do the task in the timeframe requested, ask the requester: “Can we negotiate a more doable timeframe?” Negotiating a workable schedule gives you the time to deliver a work product that you enjoy doing and feel proud of.

It can be challenging for lawyers to admit that we don’t have capacity. However, saying “yes” when you don’t have time or proficiency can erode trust with the requester, as you may deliver either a tardy or a shoddy work product, or both. Conversely, discussing capacity can build trust as it helps the requester understand your capacity and where you need assistance. It can also offer you a valuable opportunity to ask for and receive help and to learn something new.

3. Can I give a qualified yes?

Instead of an “absolute yes,” consider instead a “qualified yes.” A “qualified yes” is a “yes” with a condition or a clarification. For example, if asked, “Can you do this now?,” a “qualified yes” from an associate to a partner might sound something like, “Yes, but can you please clarify if I should do this project before or after the project you assigned yesterday?” or “Yes, if you are able to help me better understand the format you’d like me to use.” A “qualified yes” to a client may sound something like, “Yes, but not until next Friday,” or “I would like to say yes, but I need to do some research first; I’ll get back to you by the end of the week.”

4. What am I afraid of?

Saying “yes” out of fear, such as the fear of disappointing the requester or the fear of missing out on an opportunity, may result in compromising yourself. You may also compromise your mental or physical health, your other commitments, and/or your work product.

Agreeing to do something out of fear often results in procrastination or rumination, both of which generate stress and decrease efficiency. If you feel anxious or dread when fielding a request, pause and see if a “qualified yes” or a “no” is a better choice. If you find yourself wanting to say “yes” out of fear or reactivity, pause and see if a “qualified yes” or a “no” is a more appropriate response.

5. Does it feel right?

This is your opportunity to do a “gut

check.” Our bodies register our stress response to requests in a way that our thinking brains may miss. Any physical tightness—commonly felt in the stomach, shoulders, chest, or jaw—is our body’s way of telling us that something is not right, and a pause is in order. Emotional tension (such as frustration or resentment toward the requester or about the situation) is also an indicator that pausing to reflect on the questions above would help before responding to the request.

Conversely, feeling physically relaxed, or like you have energy to mobilize toward the task requested of you, or feeling curious or enthusiastic about the request are good indicators that you’re ready to say “yes.”

Make it Meaningful

Once you’ve agreed to deliver on a request, find something about completing the task that makes it meaningful to you. For example, ask yourself, “How will completing this task further my career goals?” Or “What is the most interesting thing about performing this task?” Focusing on what is meaningful to you before performing a request will help you engage in the task and increase your satisfaction in the process.

Saying “Yes” When You Really Want to Say “No”

Something else to consider is if you find yourself frequently saying “yes” at work when you, in fact, feel like saying “no.” In this situation, it may be helpful to pause and reflect on whether your current job is a good match for you and your values. Ideally, your overall impression of your work should feel positive despite the volume of requests. However, if you feel chronically overwhelmed at work and feel like saying “no” most of the time, it is advisable to seek support from a resilience coach or therapist. With professional support, you can cultivate healthy workplace boundaries and assess whether the culture in which you’re working is generating sufficient satisfaction for your life goals. A resilience coach or therapist can also help you determine if you’re burning out and offer tools to help you recover.

If you’re a team leader noticing that your team is having ongoing struggles with communication, delegation, and boundaries, it could be helpful to consider hiring a consultant to help the team learn effective communication skills. A whole-team approach to

solving communication disconnects will ease frustration and improve team efficiency, while more effectively meeting client demands.

Putting It into Practice as a Pathway to Well-Being

For individuals: take yourself through the five question inquiry process the next ten times a request is made of you, particularly if you notice yourself wanting to give a “knee-jerk yes” when you actually feel like saying “no.” You can go through the process mentally, verbally with another person, or by writing out your answers. The more you practice with the questions, the quicker the inquiry process becomes and the better you’ll be at responding clearly to requests.

For team leaders: share this article with your team so that everyone is on the same page about how to effectively respond to a request. It may be helpful to bring in an outside expert to help walk through implementing these questions into your workflow and to address how to effectively make a request and clean up communication disconnects.

Addressing communication challenges—especially those that pop up chronically without resolution—is an important but often overlooked pathway to firm-wide well-being. As humans, we are “wired for connection.” Our nervous systems require healthy relationships in order to feel safe and at peace in the world. When communications with colleagues and clients go well, we feel connected. Healthy interactions feel good physically and emotionally: we look forward to connecting with the other person and anticipate comradery and good will. When we intentionally and effectively address communication challenges, we build trust and reliability among team members. Similarly, cleaning up communication disconnects with clients builds integrity, accountability, and loyalty.

Conversely, when communication breaks down, it creates disconnection and a lack of ease in our nervous system. Without repair, communication challenges create relational discomfort that stymies or halts team efficacy. Practicing effective communication includes having both clear expectations about making and responding to requests, as well as a structured process for “cleaning up” communication disconnects.

The five question inquiry process above is

CONTINUED ON PAGE 37

Death of a Client

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

When a lawyer's client dies, the lawyer's professional responsibilities to the client may change, but they nevertheless continue.

Withdraw or Substitute Party

Lawyers are the agents of their clients and when the client dies, the lawyer-client relationship ends. As a matter of agency law, the lawyer's authority to act for the client terminates at the client's death. The rights of the deceased client relating to the lawyer's representation may pass to other persons who can, if they wish, continue the representation.

If an action has already been filed on behalf of the deceased client, the lawyer should first determine whether there are plans to open an estate. If the decedent's family is going to open an estate, the lawyer should attempt to communicate with the family (preferably next of kin) about continuing the representation until the estate is opened and a personal representative is appointed. If the family expresses a desire to continue the representation, the lawyer should then notify the court of the decedent's death and seek the court's guidance on proceeding with the litigation (e.g., whether the case should be continued until such time as the estate is opened). If the family does not consent to the lawyer's continued representation, the lawyer should file a motion to withdraw.

Once a personal representative has been appointed, the lawyer should ask the personal representative if he would like for the lawyer to continue as the lawyer for the estate in the pending litigation. If not, the lawyer must file a motion to withdraw. If the personal representative consents to the continued representation, the lawyer may need to substitute the estate as the party. Regardless of the decision of the personal representative, the lawyer for the deceased client must cooperate and seek to protect the deceased client's property and other rights. Also, the lawyer cannot withdraw without the consent of the court and must

continue to represent the interests of the client/estate until the lawyer is released by the court per Rules 1.16(c) and (d).

If there are no plans to open an estate and there is litigation pending, the lawyer may determine that it is necessary to have an estate opened and a public administrator appointed. After a public administrator is appointed, the lawyer would take his directions from the public administrator. Alternatively, the lawyer may file a motion to withdraw.

If there is no pending litigation and the family does not plan to open an estate, the lawyer's authority to act on behalf of the decedent's interest is circumscribed, and in most instances, the lawyer may not seek to have an estate opened. Thus, the lawyer's representation will end.

If a lawyer runs into any of these scenarios, he should contact his liability or malpractice insurance carrier for their additional risk management advice.

Disclose Death

A related issue a lawyer may face after a client's death is properly notifying relevant parties that the client has died. Rule 4.1 provides that, in the course of representing a client, "a lawyer shall not knowingly make a false statement of material fact or law to a third person." Comment 1 to Rule 4.1 explains that "[m]isrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements." Prior to the death, the lawyer acted on behalf of an identified client. When the client dies, the lawyer no longer represents that identified client (although lawyer may represent the decedent's estate, as set out in the prior section). Therefore, any subsequent communication to an opposing counsel with respect to the matter would be the equivalent of a knowing misrepresentation if the lawyer fails to disclose the fact that he no longer represents the

previously identified client. Consequently, the lawyer must disclose the client's death to any opposing party.

This is true even if the client dies in the midst of settlement negotiations. Pursuant to RPC 182, a lawyer is required to disclose to an adverse party with whom the lawyer is negotiating a settlement that the lawyer's client has died. The death of a client means that the lawyer, at least for the moment, no longer has a client and, if he does thereafter continue in the matter, it will be on behalf of a different client. To continue to negotiate without a client would be to communicate a false statement of fact in violation of Rule 4.1. Therefore, the lawyer must disclose the death of the client to the opposing party before continuing negotiations.

In addition, the death of a client is a material fact that must be disclosed to the court pursuant to RPC 182. Any appearance by the lawyer before the court without disclosing the client's death would be tantamount to making a "false statement of material fact...to a tribunal" within the meaning of Rule 3.3.

Protect Confidentiality

Although the lawyer has the duty to disclose the death of his client to the opposing party and the court, the lawyer has a duty to keep other information related to the representation confidential. Often after a client dies a lawyer will receive requests for information relating to the representation. An executor, spouse, or other family members of the deceased client may ask the lawyer to hand over the client's file or to disclose information the lawyer obtained in the relationship. However, there are limited circumstances under which the lawyer may comply with requests for information regarding the representation of a deceased client.

A lawyer is generally prohibited from revealing information relating to the representation of a client unless the client gives

informed consent. Rule 1.6(a). The duty applies to all information gained in the professional relationship, whatever its source, and *continues after the death of a client*. See Rule 1.9(c)(2); *see also* Rule 1.6, cmt. [21].

If a lawyer receives a request for a deceased client's information, and none of the exceptions set out in Rule 1.6(b) apply, the lawyer must determine whether he has the client's "implied authorization" to disclose the information in order to carry out the goals of the representation. See Rule 1.6(a). Whether a lawyer has a deceased client's implied consent to disclose information acquired during the representation depends on a variety of considerations, including the client's prior statements as well as the context or goals of the representation.

For example, it is assumed that a client impliedly authorizes the release of (certain) confidential information to the person designated as the personal representative of his estate after his death in order that the estate might be properly administered. See RPC 206. Generally, the lawyer may reveal a client's confidential information to the personal representative of the client's estate, and he may also reveal the deceased client's confidential information to third parties at the direction of the personal representative. *Id.* However, the lawyer may not disclose the information to the personal representative or third party if such disclosure would be clearly contrary to the goals of the original representation or contrary to express instructions given by the client before his death. If the lawyer is aware through his representation that the deceased client would not consent to the revelation, then the information should not be disclosed to anyone absent a court order.

As another example, it is possible that an attorney will become involved in a will caveat procedure after a client's death. If the personal representative calls the lawyer who drafted the will as a witness, the lawyer may testify because the personal representative has consented to the disclosure. See 2002 FEO 7. Alternatively, the lawyer may receive a subpoena seeking production of the client's file and the lawyer's testimony as a witness. One of the exceptions to confidentiality under Rule 1.6(b) is to comply with "the law or court order." Because compliance with a subpoena is required by law, a lawyer who is served with a subpoena may reveal confidential—but not privileged—information to the

extent reasonably necessary to comply with the subpoena. It may be prudent for the lawyer to insist on a subpoena from any party other than the personal representative and then to file an objection or motion to quash the subpoena so the judge can decide what testimony the lawyer must give. See *Journal* article "You've Been Served." (*Journal* 15,1 - March 2010). As noted in the article, if a lawyer does run into this scenario, the lawyer should contact his liability or malpractice insurance carrier for their additional risk management advice. Some liability carriers specifically provide subpoena assistance.

Disburse Funds in Trust

Another issue a lawyer may have to deal with is funds of the deceased client that are remaining in the lawyer's trust account. The lawyer will need to determine who is legally entitled to the funds. In most instances, any remaining funds belong to the deceased client's estate. If an estate is opened, the funds need to be turned over to the personal representative of the client's estate. If no estate is opened, the lawyer should seek the advice of the clerk of court and, if possible, turn the funds over to the clerk or interplead the funds.

Retain Client File

Finally, the lawyer must consider his duties as to the client's file. Pursuant to the Rules of Professional Conduct and relevant ethics opinions, a lawyer is required to keep a client's file for six years unless there is a limitation period or other legal requirement obligating the lawyer to keep the file for a longer period of time. See RPC 209. In addition, the lawyer should check with his liability or malpractice carrier to see what they require. Originals of certain documents should never be destroyed, but instead should be returned to the rightful owner (likely the decedent's estate). Documents should not be discarded if they have legal significance or inherent value as original records, such that an electronic reproduction would not constitute a duplicate record (for example, stock certificates, wills, deeds, titles). These documents must be kept indefinitely, delivered back to the client, or deposited with the court.

Conclusion

The death of a client is a challenging experience for a host of reasons, and it is imperative for a lawyer facing this difficult

moment to stay professionally and respectfully focused on serving the best interest of his client. However, the lawyer should also pay attention to his own state of mind. The Lawyer Assistance Program can assist lawyers struggling with their own bereavement issues. See nclap.org/grief-loss. Reach out to LAP if you need help navigating grief and loss issues. As always, lawyers are encouraged to contact the State Bar's ethics staff for guidance if needed. Inquiries requesting ethics advice can be sent via email (ethicsadvice@ncbar.gov) or through the State Bar's new membership portal. ■

Pathways to Well-being (cont.)

a building block for effective communication and healthy boundaries in the workplace. There may be a period of adjustment as you or your team implement these questions before responding to requests. Over time, however, you can create a "new normal" that cultivates better workplace boundaries, a more safe and satisfying workplace culture, and a greater sense of personal well-being and accomplishment. As you progress, notice how your mental and physical health are positively impacted and look for signs that indicate your resilience and performance are improving. ■

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'd like to learn more about cultivating effective communication skills with your team, contact Laura Mahr, consciouslegalminds.com, info@consciouslegalminds.com, 828-484-2004.

As an additional resource for building resilience to workplace-related stress, check out: "Mindfulness for Lawyers: Building Resilience to Stress Using Mindfulness, Meditation, and Neuroscience" (online and on demand mental health CLE approved by the NC State Bar): consciouslegalminds.com/register.

2022 Grants Approved, Increase with Improved Income

Income

Interest income earned on IOLTA accounts held by partner financial institutions in 2021 through November exceeds \$4.9 million, an increase of 20% compared to the same time period in 2020. All income from IOLTA accounts will be fully accounted in early 2022. Average monthly income received in 2021 is consistent with revenue in 2019, when revenue from IOLTA accounts hit a historical peak of \$5.1 million. We anticipate upcoming decreases in monthly revenue in part due to recently approved adjustments to interest rates from several financial institutions.

IOLTA's reserve fund has a current balance of \$4,232,207. The IOLTA Board established the reserve fund to provide for stability in year-to-year funding available for grantmaking when income declines. In December 2021 the IOLTA Board approved a contribution to the reserve of \$750,000. Following this contribution, the reserve fund now meets the identified target.

Cy pres and other court awards continue to be an important source of funding for NC IOLTA. In 2005 the NC General Assembly passed a statute stating that the unpaid residuals in class action litigation (unless otherwise

ordered by the court) shall be divided and sent equally to the NC State Bar for the provision of civil legal services for indigents and to the Indigent Person's Attorney Fund for criminal defense for indigents. In 2021, NC IOLTA received \$142,098 in cy pres and other court awards.

The NC Equal Access to Justice Commission recently released an updated cy pres manual which provides information for judges and attorneys about cy pres, tips for structuring award agreements, and examples of awards. The manual can be found at nciolta.org/for-lawyers/court-awards-cy-pres.

Grantmaking

On December 2 the IOLTA Board approved 2022 IOLTA grant awards totaling \$4,254,500. Grantmaking by category and source is as follows:

- \$3,516,000 to providers of direct civil legal aid to indigent clients,
- \$491,000 to volunteer lawyer programs facilitating *pro bono* legal services, and
- \$247,500 to projects to improve the administration of justice.

Regular 2022 grantmaking increased by 40% over 2021 regular grant levels.

More information on grantmaking including a full list of 2022 awards can be found at nciolta.org/grant-programs/grant-information.

State Funds

NC IOLTA administers state funding on behalf of the NC State Bar under the Domestic Violence Victim Assistance Act. Funds generated by costs assessed in civil and criminal court actions are distributed to Legal Aid of North Carolina and Pisgah Legal Services to support legal assistance for domestic violence victims. Since the start of the state's fiscal year in July, NC IOLTA has administered \$392,407 in domestic violence state funds. Funds received under the act continue to be significantly less than pre-pandemic levels.

The 2020-21 report on funding administered under the act is available now: nciolta.org/media/730496/domestic-violence-report.pdf.

Other Updates

NC IOLTA's 2020 Annual Report, *Justice is Foundational*, provides an overview of IOLTA's activities and impact. Find the report here: nciolta.org/media/730672/annual-report-2020.pdf. ■



41,629

North Carolinians served by all NC IOLTA grantees



27,687

cases closed by grantees



100

North Carolina counties served by NC IOLTA grants



17,370

hours of pro bono service provided by volunteer attorneys

Council Adopts Three Opinions, Publishes Proposed Amendments to Rules on Confidentiality of Information; Committee Publishes One New Opinion

Council Actions

At its meeting on January 21, 2022, the State Bar Council adopted the ethics opinions summarized below:

2021 Formal Ethics Opinion 3

Charging Fees to Separately Represented Party in Residential Real Estate Closing

Opinion rules that a closing lawyer representing the buyer in a residential real estate transaction may not charge a fee for services performed that primarily benefit the buyer to a separately represented seller unless the seller consents to the fee and the lawyer complies with Rules 1.5(a) and 1.8(f). The opinion also allows a closing lawyer to charge a seller for services performed that primarily benefit the seller if seller is notified in advance of the charge and has a reasonable opportunity to object to the charge.

2021 Formal Ethics Opinion 4

Taking Possession of Photographs Portraying Minor Committing Sexual Acts

Opinion rules that a lawyer may not take possession of photographs portraying a minor engaged in sexual activity.

2021 Formal Ethics Opinion 6

Departing Lawyer's Email Account

Opinion addresses a law firm's ethical responsibilities as to a departing lawyer's email account.

In addition to adopting the three opinions described above, and following favorable votes from both the Ethics Committee and the Executive Committee, the council adopted and approved for transmission to the Supreme Court a proposed comment to Rule 1.1 (Competency) addressing a lawyer's awareness of implicit bias and cultural differences that was published during the past quarter. The council also approved for publication revisions to Rule 1.6 and Rule 1.9 regarding a lawyer's professional responsibility

in handling confidential client information. The proposed revision to Rule 1.6 adds language to the comment clarifying that the scope of Rule 1.6 does not encompass a lawyer's legal research and legal knowledge gained during the course of a representation. The proposed revisions to Rule 1.9 permit a lawyer to use and/or disclose confidential client information when that information is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated. A revision to Rule 1.9(c)(2) limits the new permitted disclosure to instances where the disclosure will not be embarrassing or detrimental to the client. The full text of the proposed amendments is published in this edition of the *Journal* and on the State Bar's website.

Ethics Committee Actions

At its meeting on January 20, 2022, the Ethics Committee received reports and recommendations from subcommittees studying proposed amendments to the Rules of Professional Conduct. One subcommittee is studying the adoption of anti-discrimination language in the text of the Rules of Professional Conduct. The other subcommittee is studying potential amendments to Rule 1.19 (Sexual Relations with Clients Prohibited). Both subcommittees will continue their work over the next quarter.

In addition to the proposed rule amendments, the Ethics Committee considered a total of eight ethics inquiries, including the three opinions adopted by the council referenced above. Three inquiries were returned to subcommittee for further study, including an inquiry addressing the ethical considerations surrounding a lawyer's participation in an online advertising platform such as Google's Local Service Ads, and a lawyer's

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 its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at ethicscomments@ncbar.gov no later than March 30, 2022.

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.

professional responsibility in providing limited representation to an indigent client in a criminal matter. Lastly, the committee

approved the publication of one new proposed opinion, which appears below.

**Proposed 2022 Formal Ethics
Opinion 1
Attorney Serving Dual Role of
Guardian ad Litem and Advocate
January 20, 2022**

Proposed opinion rules that an attorney appointed by the court as the guardian ad litem and the attorney advocate in an abuse, neglect, and dependency proceeding may not testify as a witness unless directed to do so by the court.

Background Information:

The North Carolina Guardian ad Litem (GAL) Program, which was established through N.C. Gen. Stat. § 7B-1200, represents juveniles in district court proceedings involving allegations of abuse, neglect, and/or dependency. When a county department of social services agency files a petition alleging that a juvenile is abused or neglected, the GAL Program is appointed to represent the juvenile. When dependency is the sole allegation in a petition, the appointment is discretionary. Under N.C. Gen. Stat. § 7B-601(a), an attorney advocate must be appointed “to assure protection of the juvenile’s legal rights” in every case where a nonattorney is appointed as the guardian ad litem. In all cases where an appointment occurs, the appointment must be made through the GAL Program, pursuant to N.C. Gen. Stat. § 7B-601 and N.C. Gen. Stat. § 7B-1200. However, as per N.C. Gen. Stat. § 7B-1202, the court may appoint “any member of the district bar to represent the juvenile” if “a conflict of interest prohibits a local program from providing representation.”

Facts:

A conflict of interest is present that precludes the GAL Program from being appointed to serve a juvenile in abuse/neglect/dependency (AND) proceedings. As a result, an attorney who is not associated with the GAL Program is appointed to serve the dual role of GAL volunteer and GAL attorney advocate. The appointed attorney is required to fulfill the statutory obligations of the GAL Program and the GAL volunteer as well as the legal and ethical duties of the GAL attorney advocate. In performing the statutory duties of the GAL volunteer, the attorney will, among other things, interview and communicate with the child-client, the placement provider, and other collateral sources; draft and submit to

the court GAL court reports, and testify about his/her investigation and recommendations to protect and promote the juvenile’s best interests.

The GAL court reports contain firsthand observations of the attorney and statements made to the attorney by the child-client that are intended to be communicated to the court and statements made by the placement provider, teachers, and other collateral contacts. The GAL court reports also include recommendations to the court about all aspects of the child-client’s life and the case including the placement and custody of the child-client and services that should be provided to the child-client, the parents, or other parties. In some instances, the court will not admit the GAL court report into evidence without the attorney providing the appropriate foundation through their sworn testimony or affirmation.

Inquiry #1:

May the attorney file with the court and offer a GAL court report into evidence that he/she drafted?

Opinion #1:

Yes, if the court appoints the attorney solely in the GAL role. However, if the court appoints the attorney in the dual role of GAL and attorney advocate, the attorney may only proceed if the attorney informs the court of the ethical concerns associated with the attorney’s dual role and the court concludes that the attorney may proceed in the dual role.

Generally, when an attorney is appointed in a purely GAL role, the attorney does not have an attorney-client relationship with the child and therefore most of the Rules of Professional Conduct do not apply. 2004 FEO 11. However, when an attorney is appointed to serve the dual role of GAL and attorney advocate, the Rules of Professional Conduct apply. For example, except under limited circumstances, attorneys are prohibited from acting as an advocate at a trial if the attorney is likely to be a necessary witness. Rule 3.7. Therefore, the attorney must inform the court that the attorney cannot serve as a GAL and the advocate if the court will call upon the attorney to testify. The attorney must ask the court to limit the attorney’s role to either the GAL or the advocate. The attorney must also ask the

court to either appoint a nonlawyer to serve as the GAL or appoint a second attorney to serve as the attorney advocate.

The Ethics Committee previously addressed a similar issue. In 2012 FEO 9, the ethics committee opined that an attorney appointed to represent a child in a contested custody or visitation case should decline the appointment unless the order of appointment identifies the attorney’s role and specifies the responsibility of the attorney. The opinion directs the attorney to remind the court of the attorney’s professional limitations regarding testifying as a necessary witness under Rule 3.7 and assist the court with defining the attorney’s role. The same is true here. If the attorney is appointed to the dual role of GAL and advocate, the attorney must immediately inform the court that he has a conflict under Rule 3.7 and ask the court to clarify the attorney’s role.

If the court appoints the attorney solely as the GAL, the duties of the GAL are outlined in N.C. Gen. Stat. § 7B-601. The statute provides:

The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; to conduct follow-up investigations to insure [sic] that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

N.C. Gen. Stat. § 7B-601.

An attorney may only prepare the GAL report and testify if the court is informed by the attorney of the conflict created by the dual roles (e.g., that an attorney cannot serve as a necessary witness and simultaneously serve as the advocate) and the court permits the attorney to serve dual roles in the proceeding.

Inquiry #2:

If the court declines the attorney’s request to limit the appointment to one role, do the

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North Carolina Rules of Professional Conduct, specifically Rule 3.7, permit the attorney to be a witness and be subject to cross-examination?

Opinion #2:

No, unless at the time of appointment the attorney has asked the court to clarify the attorney's role, and the court orders the attorney to serve the dual role of GAL and attorney advocate. *See* Opinion #1. Rule 3.7(a) provides that an attorney shall not act as advocate at a trial in which "the lawyer is likely to be a necessary witness" unless: (1) the testimony relates to an uncontested issue; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) disqualification of the lawyer would work substantial hardship on the client.

Rule 3.7 prohibits an attorney from serving as both an advocate and a witness in a trial to eliminate the confusion that may result for the trier of fact when an attorney serves in both roles. The comment to the rule describes this as "the ambiguities of the dual role" and observes, "[a] witness is required to testify on the basis of personal

knowledge, while an advocate is expected to explain and comment on evidence given by others." Rule 3.7, cmt. [2]; *see also* 2011 FEO 1.

An attorney who is identified as a witness has a professional responsibility, pursuant to Rule 3.7, to determine whether he or she is "likely to be a necessary witness" and, as such, is disqualified from acting as an advocate at the trial. It is generally agreed that when the anticipated testimony is relevant, material, and unobtainable by other means, the attorney's testimony is "necessary." *See* Ann. Model Rules of Professional Conduct R. 3.7 (6th ed. 2007), p. 361 (internal citations omitted); 2012 FEO 15.

Notwithstanding the above, the purpose of the prohibition set out in Rule 3.7 is to avoid confusing the trier of fact. In AND cases, the only trier of fact is the judge, and no jury is impaneled. It is unlikely the judge will be confused by the attorney's role. Moreover, the court has concurrent jurisdiction on matters of ethics and maintains inherent powers to deal with its attorneys. *See* N.C. Gen. Stat. § 84-36. Therefore, if the judge decides that in the interest of judicial efficiency the

attorney will serve dual roles, the attorney may serve dual roles and prepare and file a GAL court report, testify as to his findings in the GAL court report, and simultaneously serve as the attorney advocate for the children. Under this limited circumstance, the attorney may be called as a witness and be subject to cross-examination.

Inquiry #3:

What is the court's role, either within a hearing or through local rules, in resolving issues about whether the attorney may file a GAL court report or testify?

Opinion #3:

It is outside the purview of the Rules to determine the court's role. However, N.C. Gen. Stat. § 84-36 provides, "[n]othing contained in this Article [Chapter 84] shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys." Because the court has concurrent jurisdiction on matters of ethics, the court may in its discretion determine whether the attorney may file a GAL court report and whether the attorney's testimony is necessary. *See* Opinion #2. ■

Amendments Approved by the Supreme Court

On December 14, 2021, the North Carolina Supreme Court approved the following amendments. (For the complete text of the rule amendments, see the Spring and Summer 2021 editions of the *Journal* or visit the State Bar website.)

Amendments to the Rules on Organization of the North Carolina State Bar

27 N.C.A.C. 1A, Section .0800, Election and Appointment of State Bar Councilors

The amendments permit notices for district bar elections for State Bar councilors to be sent via email.

Amendments to the Discipline and Disability Rules

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

Amendments to Discipline and Disability Rule .0129, Reinstatement, update the bar exam requirements for reinstatement if a petition for reinstatement is filed seven or more years after the effective date of the petitioner's suspension or disbarment. The amendments also set forth additional requirements for reinstatement from suspension, disbarment, and disability inactive status, and specify that failure to comply with any requirement can result in dismissal of the petition.

Amendments to the Rules for the Administrative Committee

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

The bar exam must be passed by any petitioner for administrative reinstatement

whose petition is filed seven or more years after the effective date of the order administratively suspending the petitioner or transferring the petitioner to inactive status. The amendments to the rules on reinstatement from administrative suspension and inactive status, like the disciplinary rule on reinstatement noted above, update the rules to accurately reflect the current requirements for the North Carolina bar exam.

Amendments to the Rules and Regulations Governing the Continuing Legal Education Program

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program; Section .1600, Regulations Governing the Continuing Legal Education Program

The amendments require sponsors of CLE programs to remit sponsor fees within 90 days following the completion of a program or risk having future applications for program approval denied.

Amendments to the Plan for Legal Specialization

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

The amendments eliminate a designated time of year for the Board of Legal Specialization's annual meeting, permit notice of meetings by email, and correct references to the Rules of Professional Conduct.

Amendments to the Rules for Certain Specialty Certifications

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

Highlights

- Proposed amendments to Rules 1.6 and 1.9 of the Rules of Professional Conduct address the confidentiality of information.

cation Standards for the Workers' Compensation Law Specialty; Section .2800, Certification Standards for the Social Security Disability Law Specialty; Section .2900, Certification Standards for the Elder Law Specialty; Section .3000, Certification Standards for the Appellate Practice Specialty; Section .3100, Certification Standards for the Trademark Law Specialty; Section .3200, Certification Standards for the Utilities Law Specialty; Section .3300, Certification Standards for the Privacy and Information Security Law Specialty.

The amendments make the rules for the various specialties consistent with each other and enable the specialization program to send peer reference forms for all specialties by email.

Amendments to the Plan of Legal Specialization to Add a Specialty Certification in Child Welfare Law

27 N.C.A.C. 1D, Section .3400, Certification Standards for the Child Welfare Law Specialty [NEW Section]

The rules create a new specialty certification in child welfare law. The standards are comparable to the standards for the other specialty certifications.

Amendments Pending Supreme Court Approval

At its meetings on April 16, 2021, July 16, 2021, and January 21, 2022, the North Carolina State Bar Council voted to adopt

the following rule amendments for transmission to the North Carolina Supreme Court for its approval. (For the complete text of the

proposed rule amendments, see the Winter 2020, Summer 2021, and Fall 2021 editions of the *Journal* or visit the State Bar website.)

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 add “Diversity, Inclusion, and Elimination of Bias Training” to the definitions in Rule .1501 and, in Rule .1518, include such training in the 2022 CLE requirements for active members of the State Bar.

The proposed amendments were originally published for comment in the Winter 2020 edition of the *Journal*. During publication, comments were received. At the January 2021 Quarterly Meeting of the council, the Executive Committee sent the proposed rule amendments, together with the comments, to the Board of Continuing

Legal Education for reconsideration. The CLE Board reviewed the comments and recommended no revisions to the proposed amendments. Therefore, the proposed amendments were not re-published prior to adoption by the council on April 16, 2021.

Proposed Amendments to the Rules Governing the Plan of Legal Specialization

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

The proposed amendments adjust the criminal law specialty rules to recognize separate subspecialties in federal criminal law, state criminal law, and juvenile delinquency law. Currently, the rules recognize a combined federal/state criminal law specialty, a state criminal law subspecialty, and a juvenile delinquency law subspecialty.

Specialists currently certified in the federal/state criminal law specialty will remain so until their next recertification when they will have to qualify for recertification in federal criminal law or state criminal law or in both subspecialties.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 0.1, Preamble

The proposed amendment adds a paragraph to the Preamble on equal treatment of all persons encountered when acting in a professional capacity.

27 N.C.A.C. 2, Rule 1.1, Competence

The proposed amendment to Rule 1.1 adds new comment [9] which states that awareness of implicit bias and cultural differences enhances a lawyer’s competency.

Proposed Amendments

At its meeting on January 21, 2022, the council voted to publish for comment the following proposed rule amendments:

Proposed Amendments to Rulemaking Procedures

27 N.C.A.C. 1A, Section .1400, Rulemaking Procedures

The proposed amendment increases the timeframe within which a rule or rule amendment adopted by the council must be transmitted to the Supreme Court for its review.

.1403, Action by the Council and Review by the North Carolina Supreme Court

(a) ...

(b) Any proposed rule or amendment to a rule adopted by the council shall be transmitted by the secretary to the North Carolina Supreme Court for its review on a schedule approved by the Court, but in no event later than ~~120~~ 183 days following the council’s adoption of the proposed rule or amendment.

(c) ...

Proposed Amendment to the Rule on Petitions for Inactive Status

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

The proposed amendment will give the secretary of the State Bar the discretion to transfer an active member to inactive status upon the completion of a petition to transfer to inactive status in the same manner that the secretary has the discretion to reinstate inactive members.

.0901, Transfer to Inactive Status

(a) Petition for Transfer to Inactive Status

...

(b) Conditions Upon Transfer

...

(c) Order Transferring Member to Inactive Status

...

(d) Transfer to Inactive Status by Secretary of the State Bar

Notwithstanding paragraph (c) of this rule, an active member may petition for transfer to inactive status pursuant to paragraph (a) of this rule and may be transferred to inactive status by the secretary of the State Bar upon a finding that the active member

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to Alice Neece Mine, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

The Process

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

has complied with or fulfilled the conditions for transfer to inactive status set forth in paragraph (b) of this rule. Transfer to inactive status by the secretary is discretionary. If the secretary declines to transfer a member to

inactive status, the member's petition shall be submitted to the Administrative Committee at its next meeting and the procedure for review of the petition shall be as set forth in paragraph (c) of this rule.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 1.6, Confidentiality of Information

The proposed amendment adds a sentence to the comment to Rule 1.6 clarifying that information acquired during a professional relationship with a client does not encompass information acquired through legal research.

Rule 1.6, Confidentiality of Information

(a) A lawyer shall not reveal information acquired during the professional relationship with a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

...

Comment

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client acquired during the lawyer's representation of the client. "Information acquired during the professional relationship with a client" does not encompass information acquired through legal research or other expansion of the lawyer's legal knowledge, even if acquired during the representation, as the client does not have any reasonable expectation of confidentiality of such information. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information acquired during a lawyer's prior representation of a former client, and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients and Rule 8.6 for a lawyer's duty to disclose information to rectify a wrongful conviction.

...

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 1.9, Duties to Former Clients

The proposed amendments clarify when a lawyer who has formerly represented a

client may use or reveal information relating to the former representation.

Rule 1.9, Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) ...

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information ~~has become generally known~~ is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated;

or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client. A lawyer may disclose information otherwise covered by Rule 1.6 that is contained in the public record, was disclosed at a public hearing, or was otherwise publicly disseminated unless the information would likely be embarrassing or detrimental to the client if disclosed.

Comment

[1] ...

...

[8] ~~Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. Whether information is "generally known" depends in part upon how the information was obtained and in part upon the former client's reasonable expectations. The mere fact that information is accessible through the public record or has become known to some other persons, does not necessarily deprive the information of its confidential nature. If the information is known or~~

~~readily available to a relevant sector of the public, such as the parties involved in the matter, then the information is probably considered "generally known." See Restatement (Third) of The Law of Governing Lawyers, 111 cmt. d. The Rules of Professional Conduct are rules of reason and should be applied with a commonsense approach. Rule 0.2, Scope, cmt. [1]. To reveal is to make public something that was secret or hidden. See Reveal, Merriam-Webster's Collegiate Dictionary (10th ed. 1998). A lawyer cannot reveal that which has already been revealed via public disclosure. Accordingly, the prohibition on a lawyer revealing information pursuant to Rule 1.9(c)(2) does not extend to information that has been made public because public information by its nature is no longer capable of being revealed.~~

[9] ~~Whether information is likely to be embarrassing or detrimental to a client if disclosed must be determined by the lawyer prior to the disclosure under Rule 1.9(c)(2). A lawyer should elevate a client's desire for his or her lawyer to not publicly discuss his or her case over the lawyer's desire to publicly speak about the case after the representation has ended. When it is unclear whether a lawyer's disclosure pursuant to Rule 1.9(c)(2) would be embarrassing or detrimental to the client, a lawyer should consult with the client about the potential disclosure and the resulting impact thereof.~~

[9]10] ...

Published on Behalf of the Board of Law Examiners: Proposed Amendments to the Board of Law Examiners' Rules Governing Admission to the Practice of Law

Section .0500, Requirements for Applicants

The proposed amendments eliminate the North Carolina state-specific component requirement for general and Uniform Bar Examination transfer applicants.

.0501, Requirements for General Applicants

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

(1) ...;

...

~~(8) have successfully completed the State-Specific Component, consisting of the course in North Carolina law prescribed~~

by the Board, within the twenty-four (24) month period next preceding the beginning day of the written bar examination which applicant passes as prescribed above, or within the twelve (12) month period thereafter; the time limits are tolled for a period not exceeding four (4) years for any applicant who is a service member as defined in the Service Members Civil Relief Act, 50 U.S.C. Appx. § 511, while engaged in active service as defined in 10 U.S.C. § 101, and who provides a letter or other communication from the service member's commanding officer stating that the service member's current military duty prevents the service member from completing the State-Specific Component within the twenty-four month period next preceding the beginning day of the written bar examination which applicant passes as prescribed

above, or within the twelve month period thereafter.

.0504, Requirements for Transfer Applicants

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

(1) ...;

...

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

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

(i) the applicant is an active member of the bar of the jurisdiction and the jurisdiction issues a certificate attesting to the applicant's good standing therein; or
(ii) the applicant was formerly a member of the jurisdiction and the jurisdiction certifies the applicant was in good standing at the time that the applicant ceased to be a member; and

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

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

In Memoriam

Robert Joel Blum
Cary, NC

Dominic Julius Chiantera
Chapel Hill, NC

Francis Earl Dail
Raleigh, NC

Winston Joe Dean
Rockville, MD

Douglas F. Debank
Durham, NC

Robert Cowan Derossett Jr.
Charlotte, NC

Daniel William Donahue
Winston-Salem, NC

Phillip Tefft Evans
Winterville, NC

Susan L. Evans
Winston-Salem, NC

Katharine Dudley Garner
Charlotte, NC

Henry Averill Harkey
Charlotte, NC

Stanley Morris Herman
High Point, NC

Raymond Walter Hines
Winston-Salem, NC

Fred F. Holt
Raleigh, NC

Ralph Jacobson
Pinehurst, NC

Cheslie Kryst
Fort Mill, SC

Clarence Dickinson Long III
Warrenton, VA

William Sinclair Lowndes
Asheville, NC

Howard Randolph McLean
Charlotte, NC

George W. Miller Jr.
Durham, NC

John Kings Motsinger Sr.
Walkertown, NC

Angela Renee Narron
Smithfield, NC

John Burke O'Donnell Jr.
Raleigh, NC

William Kellam Oden Jr.
Greensboro, NC

Nancy Carol Osborne
Elkin, NC

John Michael Owens
Cologne, Germany

Wade Hampton Penny Jr.
Durham, NC

Susanne M. Robicsek
Charlotte, NC

John Spotswood Russell
Raleigh, NC

Frank Lodwick Schrimsher
Charlotte, NC

Jesse Brian Scott
Rocky Mount, NC

John Gilbert Shaw
Fayetteville, NC

Delmar David Steinbock Jr.
Raleigh, NC

Robert Vance Suggs
High Point, NC

William Rogers Titchener
Raleigh, NC

William Banfield Trevorvrow
Greensboro, NC

Judith Welch Wegner
Nantucket, MA

John B. McMillan Distinguished Service Award

Lisa S. Costner

Lisa S. Costner received the John B. McMillan Distinguished Service Award during a virtual presentation on January 10, 2022. The award was presented by State Bar President Darrin D. Jordan.

Ms. Costner graduated from Wake Forest University with her bachelor of arts degree in 1984 and went on to earn her JD at Wake Forest University School of Law in 1987. She immediately began to practice law in North Carolina. Ms. Costner is licensed to practice in all three federal districts in North Carolina, the Fourth Circuit Court of Appeals, and the United States Supreme Court. She is also a board certified specialist in state and federal criminal law and in appellate practice.

Ms. Costner has been the federal Criminal Justice Act (CJA) Panel representative for the Middle District of North Carolina for the past 20 years. In that role she has been the contact point between the 70 attorneys on the CJA Panel, the court, and the federal defender office. She has worked tirelessly to improve the quality of federal criminal representation by generously sharing her time, wisdom, information, and advice. Ms. Costner's maintenance of the CJA Panel listserv provides an invaluable resource to both new and experienced attorneys. Additionally, she was previously on the Defender Services Advisory Group (DSAG), representing the 3rd, 4th, and DC Circuits. She has continued as the DSAG representative for the 4th Circuit since 2016. Ms. Costner has also served on a national committee that debates federal CJA policy and advises the national Defender Services Office and the Administrative Office of the Courts in Washington, DC. Ms. Costner was the commissioner of the North Carolina Sentencing and Policy Advisory Commission from 2015 to 2020, and she has worked tirelessly on behalf of the Forsyth County Bar, particularly in the criminal law section.

In addition to practicing law, Ms. Costner has been an adjunct professor of trial

practice at Wake Forest University School of Law since 2014. In 2017 Ms. Costner received the Harvey A. Lupton Award from the Forsyth County Criminal Defense Trial Lawyers Association.

As stated by one of her colleagues, Ms. Costner, "sets the bar of professionalism high for the rest of us, but she illuminates the path forward by exemplifying all those necessary attributes great lawyers strive to attain: passion, compassion, wisdom, knowledge, skill, and character."

B. Geoffrey Hulse

B. Geoffrey Hulse received the John B. McMillan Distinguished Service award on January 28, 2022, at the Wayne County Courthouse in Goldsboro, North Carolina. North Carolina State Bar President-Elect Marcia H. Armstrong presented the award. Mr. Hulse was raised in Goldsboro, North Carolina, and attended Goldsboro High School. He received his undergraduate degree from the University of North Carolina in 1979 and his law degree from Campbell University in 1985. Mr. Hulse practices with Haithcock, Barfield, Hulse & King, PLLC in Goldsboro.

Mr. Hulse is a North Carolina State Bar certified specialist in state criminal law. He is known as a lawyer who can identify weaknesses in the state's cases, counsel his clients as to their options and best courses of action, and communicate his clients' best positions zealously and effectively to juries or judges. Mr. Hulse has represented countless indigent clients, never hesitating to take on difficult cases.

Mr. Hulse is well known for fostering civility among members of the bar and building comradery between the bench and the bar. He recognized early on how lonely it can be to be a traveling superior judge. To remedy this, he began and continues the long-time tradition of a welcoming lunch for a superior judge when the judge arrives and a goodbye dinner to thank the judge for his or her service. Mr.

Hulse has assisted many lawyers in personal issues in their lives. He often assists his fellow lawyers in contacting the North Carolina Lawyer Assistance Program.

Mr. Hulse served three terms on the North Carolina State Bar Council, as counselor for the Eighth District (now Ninth District). He is an active member of the North Carolina Bar Association, currently serving on the BarCARES Board. Mr. Hulse actively participates in the activities of the district bar, as well as the Wayne County Bar. He was instrumental in the establishment of the Tommy Jarrett Citizen-Lawyer Award, given in honor of former State Bar President Tommy Jarrett, who personifies lawyers giving to the local community.

Mr. Hulse bridged conflicting groups by his transparent and trusted leadership as chair, and eight-year member, of the Wayne County Board of Elections. As a long-time member of the Downtown Goldsboro Development Corporation (DGDC), he works to accomplish the DGDC's vision to develop diversity and vibrancy in downtown Goldsboro. Mr. Hulse lends his talents to assist with after-school reading programs, the Boys and Girls Club, Friends of the Wayne County Public Library, Literacy Connections of Wayne County, Wayne Charitable Partnership, and a multitude of other organizations working to improve literacy, community cohesiveness, and public involvement.

Mr. Hulse serves on the Wayne Community College Board of Trustees and is the incoming chair of that board, and he has been a board member of the Wayne County Chamber of Commerce. He has also been active with the Downtown Goldsboro Development Corporation (board member and chair), the Friends of Wayne County Public Library, the Wayne County Arts Council, the Wayne Boys & Girls Club, the Flynn Christian Fellowship Home, and the Paramount Foundation. He has led the

CONTINUED ON PAGE 48



IMPORTANT NOTICE REGARDING STATE BAR EMAILS

As a member of the North Carolina State Bar, you are routinely sent critical emails regarding dues notices, CLE report forms, etc. To increase efficiency and reduce waste, many reports and forms that were previously sent by US mail will now only be emailed. To receive these emails, make sure you have a current email address on file with the State Bar. You can check membership information by logging into your account at portal.ncbar.gov.

If you have unsubscribed or fear your email has been cleaned from our email list, you can resubscribe by going to bit.ly/NCBarResubscribe.

Thank you for your attention to this important matter.



Client Security Fund Reimburses Victims

At its January 20, 2022, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$83,730 to eight applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$11,000 to a former client of Phillip K. Anderson of Raleigh. The client retained Anderson to represent him on criminal charges. Prior to his death on May 3, 2021, Anderson failed to provide any meaningful legal services for the fee paid. The board previously reimbursed one other Anderson client a total of \$1,840.

2. An award of \$720 to a former client of Beth B. Carter of Denver. The client retained Carter to file a Chapter 7 bankruptcy petition on her behalf. Beyond an initial consultation undertaken by her legal assistant, Carter failed to provide any meaningful legal services for the fee paid prior to her death on May 2, 2021.

3. An award of \$4,500 to a former client of Bruce T. Cunningham Jr. of Southern Pines. The client retained Cunningham to review his case and file an MAR if warranted. Cunningham completed the review, but failed to file the MAR prior to his death on July 5, 2019. The board previously reimbursed several other Cunningham clients a total of \$114,025.

4. An award of \$2,500 to a former client of Mary M. Exum of Asheville. The client retained Exum in August 2017 to file a Motion for Appropriate Relief. Exum was suspended from the practice of law in June 2017. Exum was no longer able to provide legal services to anyone, but held herself out as being able to file an MAR for the client and accepted payment for services under false pretenses. Exum was disbarred on February 28, 2019. The board previously reimbursed two other Exum clients a total of \$55,105.

5. An award of \$23,000 to a former client of Edward D. Seltzer of Charlotte.

The client retained Seltzer to represent him on multiple criminal charges. The client's parents made several payments towards the quoted flat fee, including an up-front payment of \$13,000. Seltzer failed to provide meaningful legal services for the fee paid prior to his death on June 30, 2021.

6. An award of \$14,500 to a former client of Edward D. Seltzer. The client retained Seltzer to represent him on homicide charges. The client and his wife made payments towards the quoted \$25,000 fee. Seltzer failed to provide meaningful legal services for the fee paid prior to his death.

7. An award of \$20,000 to a former client of Edward D. Seltzer. The client retained Seltzer to represent him on criminal charges. Seltzer failed to provide any meaningful legal services for the fee paid prior to his death.

8. An award of \$7,510 to an applicant who suffered a loss as the result of the actions of Karen C. Wright of Shelby. Wright was appointed to administer the estate of the applicant's sister. Wright sought approval from the court for payment to herself of certain costs and fees, but submitted falsified accountings to the court and ultimately, through disbursements to herself in excess of payment approved by the court, embezzled \$7,510 from the estate. Wright was disbarred on July 24, 2021.

Funds Recovered

It is standard practice to send a demand letter to each current or former lawyer whose misconduct results in any payment from the fund, seeking full reimbursement or a confession of judgment and agreement to a reasonable payment schedule. If the lawyer fails or refuses to do either, counsel to the fund files a lawsuit seeking double damages pursuant to N.C. Gen. Stat. §84-13, unless the investigative file clearly establishes that it would be useless to do so. Through these efforts, the fund was able to

recover a total of \$30,231.39 this past quarter. ■

Distinguished Service Awards (cont.)

lawyer fundraising campaigns for United Way of Wayne County for many years. His service is also displayed through his commitment to St. Stephen's Episcopal Church. Mr. Hulse has been recognized for his many civic activities, having received such awards as The United Way of Wayne County Emil Rosenthal Volunteer Service Award, The Downtown Goldsboro Development Corporation Lifetime Achievement Award, the Goldsboro Rotary & Rotary International's Paul Harris Award, the Goldsboro DAR Award, and The Order of the Long Leaf Pine.

Mr. Hulse is actively involved in local stage productions as an "amateur actor" through Center Stage Theater and Wayne Community College. He has brought to life on stage several characters: Norman in *On Golden Pond*, The Wizard in the *Wizard of Oz*, but his most compelling performance was his portrayal of Atticus Finch alongside his daughter, Lura, as Scout, in *To Kill a Mockingbird* at Goldsboro's reinvigorated Paramount Theater. B. Geoffrey Hulse is indeed a modern-day Atticus, unafraid to take on difficult cases and quick to call out injustice when he encounters it.

Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. Information and the nomination form are available online: ncbar.gov/bar-programs/distinguished-service-award. Please direct questions to Suzanne Lever at slever@ncbar.gov. ■

Law School Briefs

Campbell University School of Law

Campbell Law School officially opened its sixth *pro bono* clinic—the Gailor Family Law Litigation Clinic—on October 28, 2021, with a formal ribbon cutting attended by Raleigh’s Mayor Mary-Ann Baldwin, among other dignitaries. Dean J. Rich Leonard told the crowd of about 50 gathered at the clinic’s home—the historic Horton-Beckham-Bretsch House—that in his nine years at the helm of the law school it has been his job to keep a balance between teaching future lawyers substantive law and offering them experiential learning opportunities. “Starting a new clinic is a serious matter,” Leonard said. “It requires designing an experience that is pedagogically sound for my students, but also meets the unmet needs of the underserved populations in our city and region. We looked carefully at the Chief Justice’s Commission on Access to Justice study and what we heard over and over again is that the most pressing need for legal services among those who could not find a private lawyer or be served by Legal Aid is in the area of family law. So we responded.” The Gailor Family Law Litigation Clinic is made possible through the generous donation of \$250,000 from family lawyer Carole Gailor, making her the first woman to have a clinic named after her at Campbell Law. Additional participating donors include law school alumna Shelby Duffy Benton ’85, the North Carolina Chapter of the American Academy of Matrimonial Lawyers (AAML), and North State Bank. The clinic, directed by family law attorney Professor Richard Waugaman III ’12, has already served more than 60 clients to date. Baldwin said, “Thank you Carole and Richard for doing the right thing and thank you for all you are doing... that’s what makes Raleigh a special community and that’s what today is all about.”

Duke University School of Law

The Department of State has nominated Harry R. Chadwick, Sr. Professor of Law Laurence R. Helfer, as the US candidate for election to the United Nations Human Rights Committee, a quasi-judicial body of 18 independent experts that monitors state compliance with the International Covenant on Civil and Political Rights. Helfer is an expert on international human rights law with decades of UN experience. If elected, his term will begin in 2023.

Duke Law’s Center for Criminal Justice and Professional Responsibility was awarded a \$300,000 grant from the Bureau of Justice Assistance to hire a two-year fellow who will oversee case screening and assist with litigating innocence cases through the Wrongful Convictions Clinic, and pay for ongoing use of investigators and expert witnesses. To date, the clinic has secured the exonerations of ten North Carolina men, five of whom also have received a pardon of innocence from the governor.

The Bolch Judicial Institute has launched a search for a new director following the announcement that David F. Levi will retire on June 30, capping a 15-year tenure at Duke Law School that included 11 years as dean. Previously Levi served as a federal judge for 17 years. In March the institute will award its annual Bolch Prize for the Rule of Law to Chief Judge Emeritus J. Clifford Wallace of the US Court of Appeals for the Ninth Circuit.

The Wilson Center for Science and Justice received nearly \$900,000 from Arnold Ventures, the Chan Zuckerberg Initiative, and Charles and Lynn Schusterman Family Philanthropies to examine plea bargaining practices and sentencing outcomes in district attorneys’ offices. Researchers from the center and Duke’s Sanford School of Public Policy will collaborate with prosecutors in Durham and Provo, Utah, to design and pilot a three-year Plea

Tracker project that generates comprehensive data on the factors that drive case outcomes.

Elon University School of Law

Elon Law was officially notified in December that it remains an American Bar Association-approved law school for another decade by meeting compliance standards that govern legal education in the United States.

Elon Law adopted its 2.5-year, seven-trimester curriculum in 2014 shortly after former Dean Luke Bierman’s arrival. Since then, Elon Law has grown enrollment by 50%, deepened its commitment to diversity and inclusion, and reduced average student loan debt at graduation by nearly 30%. Strategic investments in the Office of Academic Success and the Office of Career and Student Development have led to successful bar exam passage and career placement rates, which have hovered at 90% in recent years.

Senior Associate Dean Alan D. Woodlief Jr., a founding member of the Elon Law administration and faculty, will serve as interim dean through May 31. With assistance from the global executive search firm WittKieffer, Elon University is now conducting a national search with the goal of identifying Elon Law’s fourth dean by early spring.

Woodlief joined Elon Law in May 2005, serving as an associate professor and associate dean for admissions and administration. He currently oversees the law school’s admissions efforts, facilities, budget, and other administrative functions.

Elon conferred degrees on 127 law school graduates on December 11 in a commencement ceremony featuring remarks by Deborah Enix-Ross, president-elect of the American Bar Association. The 14th graduating class from Elon Law was encouraged to “say yes to service” by the attorney with Debevoise & Plimpton in New York City who in August will take the helm as presi-

dent of the world's largest voluntary association of lawyers.

University of North Carolina School of Law

Students in the Pro Bono Program are providing North Carolinians with the informational tools they need to assess the safety of their well water. They recently published a brochure with the North Carolina Real Estate Commission to help agents and home buyers understand the types of pollutants that might contaminate residential wells, the testing process, and resources for addressing contamination.

A \$2 million commitment from Jim Kerr '92, and his wife, Frances King Kerr, to UNC School of Law will create The Kerr Family Civil Rights Endowment Fund, which will support teaching, research, experiential learning, and student engagement in civil rights.

Professor O.J. Salinas has penned a book to assist graduates taking the multistate bar examination. In *MBEs for the MBE: Mnemonics, Blueprints, and Examples for the Multistate Bar Examination*, Salinas provides tools for graduates to remember the immense amount of black letter law they need to study for the bar exam.

Professors Alexa Chew and Beth Posner '97 were honored with Distinguished Teaching Awards for Post-Baccalaureate Instruction. Chew and Posner were selected from more than 800 nominations as two of

the 25 winners of UNC's University Teaching Awards.

Professor Allison Constance '09 received the AALS's Section on Pro Bono & Public Service Opportunities Emerging Leader Award. Constance is the director of *pro bono* initiatives.

Professor Craig Smith was named associate dean for academic affairs and 2022 Blackwell Award Winner for Outstanding Achievement in Legal Writing. Under Smith's leadership, the Research, Reasoning, Writing and Advocacy program, now in its tenth year as a full-year, six-credit program, ranks ninth in legal writing in *US News & World Report*.

Earn CLE credit - Satisfy your annual CLE requirements with virtual programming through UNC. Visit law.unc.edu/cle.

Wake Forest University School of Law

Wake Forest Law is proud to have welcomed the following ten new faculty members: Alyse Bertenthal, Meghan Boone, Brenda Gibson, Allyson E. Gold, Esther Hong, Eleanor Morales, Sarah Morath, Stratos Pahis, Keith Robinson, and Zaneta Robinson. Audra Savage will also join the faculty in Fall 2022.

Two new clinics launched this academic year. In the Medical-Legal Partnership Clinic, students identify legal issues that negatively contribute to the health of patients and develop strategies to overcome

barriers to health justice. Students in the Intellectual Property Law Clinic assist clients with the clearance, protection, and management of copyright, trademark, and related intellectual property rights.

Nearly \$1 million of an \$8.6 million grant from the Kern Family Foundation will directly go toward expanding Wake Forest Law's efforts to grow instruction and programming for law students to develop their character, leadership skills, and professional identity.

Professor Sidney Shapiro has received the Annual Scholarship Award from the ABA's Section of Administrative Law and Regulatory Practice. Shapiro, alongside co-author Elizabeth Fisher, accepted the award recognizing the best work published in the field of administrative law in 2020 for their book, *Administrative Competence: Reimagining Administrative Law*.

Professor Laura Graham has been named the president of the Association of Legal Writing Directors. Graham, who serves as director of legal analysis, writing, and research at Wake Forest Law, began her term on August 1. Wake Forest Law's writing program is ranked 5th in the nation.

Associate Professor Marie-Amélie George has received the Haub Law Emerging Scholar Award in Gender and Law. George was selected as the winner of the 2020-2021 award, presented annually in recognition of excellent legal scholarship related to gender and the law, for her paper *Exploring Identity*, 54 *Fam. L. Q.* ■

Legal Specialization (cont.)

Janelle Headen, Fayetteville
Jennifer Mathews, Lenoir
Michael Smith, Rocky Mount
Virginia Sullivan, Southern Pines

Federal/State Criminal Law

Edd Roberts, Raleigh

Juvenile Delinquency Criminal Law

David Andrews, Durham
Veronika Monteleone, Gastonia

Elder Law

John Potter, Charlotte (certified August 13, 2021)

Estate Planning and Probate Law

Erin Bailey, Greensboro
Tyler Chriscoe, Raleigh
Adam Kerr, Greensboro

Family Law

Carolyn Bellof, Charlotte
Ashley Crowder, Charlotte
Brittany Hall, Wilmington
Jessica Heffner, Raleigh
Hilary Hux, Greensboro
Bradley Jones, Morehead City
Martha Massie, Greensboro
Marion Parsons, Asheville
Melanie Phillips, Raleigh
Isla Tabrizi, Monroe

Commercial Real Property Law

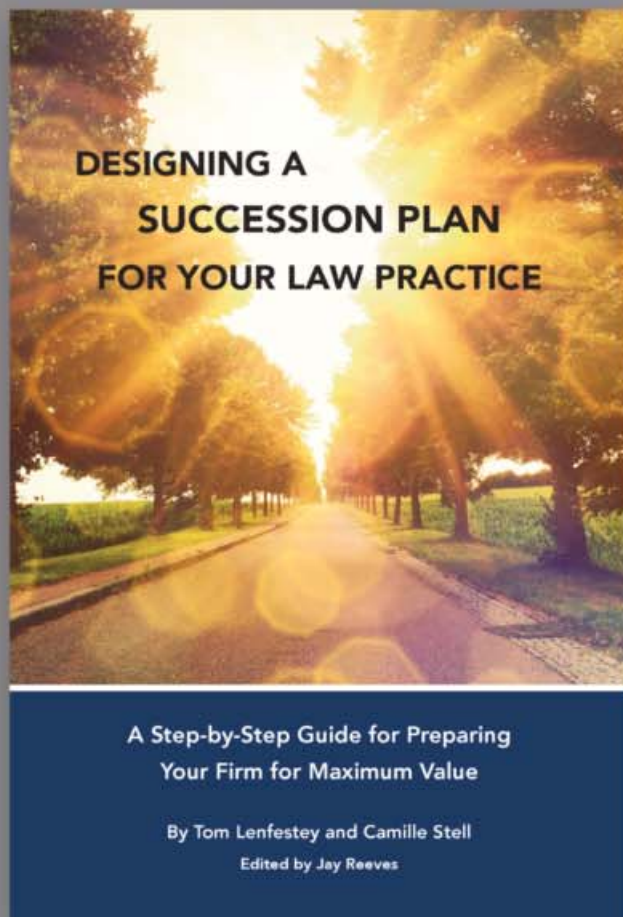
James E. Hill, Cayce, SC
Jennifer Scott, Wilmington

Utilities Law

Christina Cress, Raleigh
Tim Dodge, Durham
Molly Jagannathan, Charlotte
Andrea Kells, Raleigh

Workers' Compensation Law

Jacalyn Ackerman, Greensboro
Christian Ayers, Charlotte
Susan Overby, Durham
Marcus Spake, Charlotte
Anastase Vonsiatsky, Charlotte
Benjamin Winikoff, Winston-Salem



The insider's guide to selling a law practice, transferring ownership, and designing a great Life After Law, written by two of the top authorities in succession planning.

“

Practical. Readable. Motivating. “Designing a Succession Plan” is an invaluable resource and planning guide. Solo and small firm partners will be especially interested in the sections on valuing and selling a law firm. All lawyers will appreciate the practical, expert advice outlining the options that await lawyers in this next phase.

— Joan H. Feldman, Editor/Publisher, Attorney at Work

Learn more and see additional resources at WWW.DESIGNINGASUCCESSIONPLAN.COM

The North Carolina State Bar
PO Box 25908
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Spring 2022

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