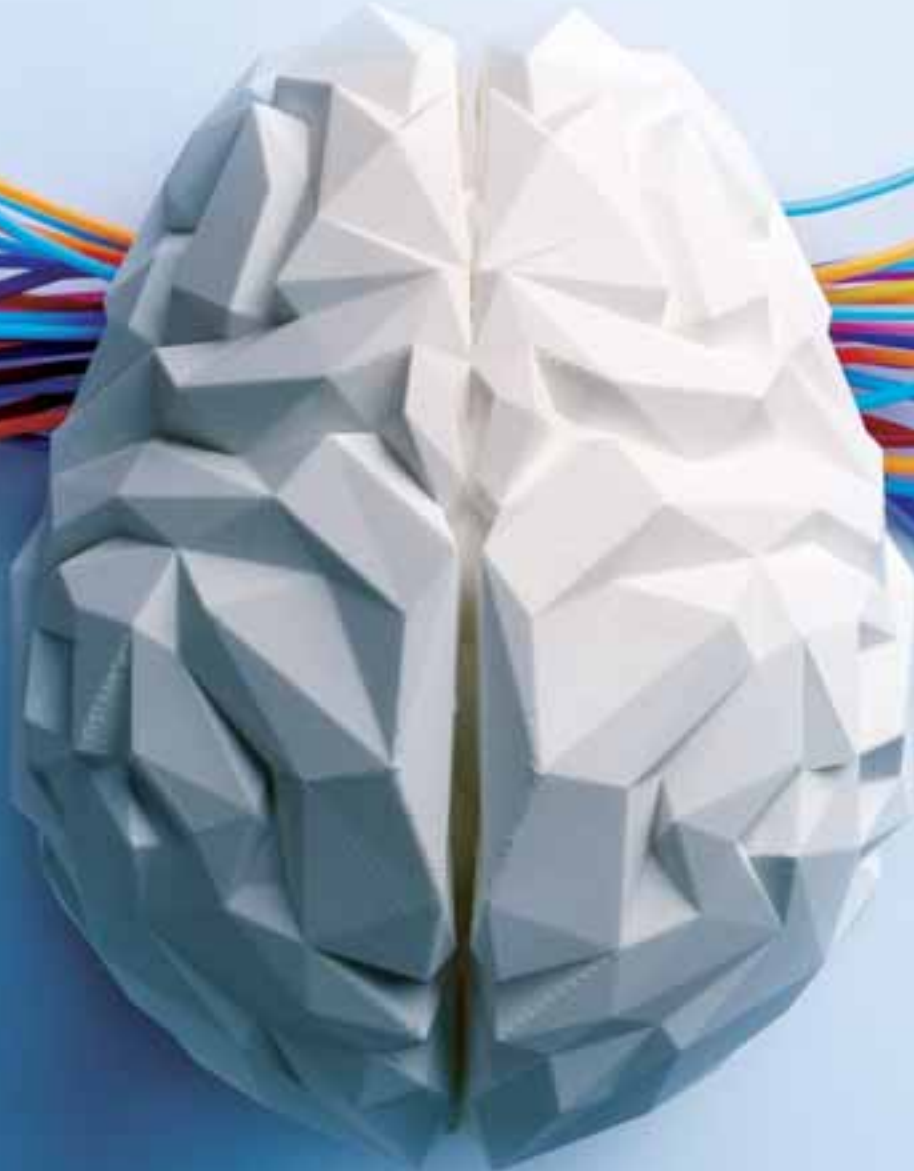


THE NORTH CAROLINA STATE BAR

FALL
2023

JOURNAL



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The State Bar Story - "Chapter 88"

BY MARCIA H. ARMSTRONG

As the 88th president of the North Carolina State Bar, I have the honor of being an author of "Chapter 88" in *The State Bar Story*. With this chapter nearing completion, I am overwhelmed with gratitude to have served our profession and the citizens of North Carolina in such a unique and meaningful manner. "Chapter 88" is but one portion of the State Bar story written by many authors with varying roles from the officers, councilors, and staff; to the advisory members of numerous committees; to the district bar presidents; to the members of boards (LAP, CLE, Specialization, IOLTA, and others); and to the many lawyers who tirelessly give back to our profession. Thank you all for answering the call.

As I traveled across the state from the mountains to the coast, I received a warm welcome from judges, lawyers, and clerks. Admittedly, this was somewhat of a surprise since visits from the State Bar are usually met with dread. Everyone is familiar with the State Bar's ethics and disciplinary functions, but the State Bar also has an Issues Committee and an Access to Justice Committee that study ways to improve the profession for the good of the public and lawyers. This is the message I shared during my visits with the good people of this state, and one I wish to share with you all in my final president's column.

The Issues Committee has been busy this year. It is working on three important initiatives: succession planning for solo and small firms, modification of the random audit selection process to ensure it is fair to all lawyers across the state, and the exploration of deferral programs for less egregious rule

violations (any new deferral program would be in addition to the Trust Accounting Compliance Program (TAC) and Lawyer Assistance Program (LAP)).



The Access to Justice Committee is nearing completion of its study of "unbundled legal services," which enable lawyers to represent clients on a limited basis or with a limited scope in civil cases. Sometimes clients only need a lawyer for a portion of their case. Perhaps more pointedly, sometimes clients can only afford to pay a lawyer for a portion of their case.

Although the Rules of Professional Conduct permit lawyers to limit the scope of their representation (Rule 1.2), Rule 16 of the General Rules of Practice in Superior and District Court—which are under the exclusive jurisdiction of the Supreme Court—requires a lawyer to obtain the court's permission to withdraw from a case where the lawyer has made an appearance as counsel. The committee is exploring whether to propose an amendment to Rule 16 that would allow lawyers to make a limited appearance in a client's case (e.g., for a deposition or to argue a motion for summary judgment) and exit the representation without requiring the permission of the court. The concern is that Rule 16's requirement that a lawyer obtain the court's permission prior to withdrawing from an ongoing case may serve as a deterrent to lawyers who want to offer limited (and even free) services to clients in pending litigation. Under the current rule, a lawyer who makes an appearance for a limited purpose in a pending case may very well get stuck with the entirety of the case. The proposed amendment under consideration by

the committee would permit a lawyer to make a limited appearance and presumptively exit the representation upon giving proper notice to all parties and following reasonable guidelines as to the limited services provided to the client. The hope is that this new procedure will encourage lawyers to assist otherwise *pro se* parties with critical aspects of litigation, thereby increasing the public's access to the justice system in a meaningful and effective manner. (After all, a lawyer in some part of the case is likely more beneficial to the client and the administration of justice than no lawyer in the entire case.) The committee hopes to conclude its work by October, at which point the State Bar Council could recommend the proposed amendment to the Supreme Court for consideration.

On May 19, 2023, the State Bar officers hosted an inaugural meeting of the district bar presidents (see page 46). The meeting was well attended with 34 out of 43 districts represented. The State Bar officers, several State Bar councilors, and Chief Justice Paul Newby were also in attendance. After presentations from Alice Mine and other staff, the floor was opened for discussion. Presidents from large districts and those from small rural districts heard the challenges faced by both. It was an educational moment for all in attendance. One common concern was the challenge of getting lawyers to engage with their local bars, a problem that has worsened since COVID. The group exchanged ideas with the hope of convincing lawyers that developing relationships with their peers is healthy and fosters civility.

A recurring concern shared by presidents from rural communities is the lack of lawyers. As older lawyers retire, they are not replaced with younger lawyers (who often prefer to practice in larger cities), leading to

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Artificial Intelligence, Real Practice

BY BRIAN OTEN

“We have only bits
and pieces of
information,
but what we

know for certain is that at some point in the early 21st Century all of
mankind was united in celebration. We marveled at our own mag-
nificence as we gave birth...to AI.”¹



Ivan Bajicistockphoto.com

These lines, spoken by heroic Captain Morpheus in the 1999 movie *The Matrix*, tell the story of [spoiler alert, though it's arguable that no such warning is needed when talking about a 24-year old movie because, well, if you haven't seen it by now you probably aren't planning on seeing it anyway] the war between humans and artificial intelligence driven machines. The Matrix itself turns out to be a computer program created by machines that is used to create a fictitious reality for humans as a means of control. Morpheus utters this dreary description of mankind's history during his explanation to newly-freed Neo about how the world he once knew is gone, and how he must now embrace the reality that artificial

intelligence changed everything about human existence.

Fast-forward to today, what is now appropriately described as the early part of the 21st Century—on March 13, 2023, the fourth version of ChatGPT was released for public use, and with it a barrage of comments, news reports, and articles spawning reactions from extreme excitement to absolute dread. For the uninitiated, ChatGPT is a version of generative artificial intelligence (AI). (Think of ChatGPT as the Bitcoin of AI projects, i.e., it's the most popular one out there, but it's not the only one out there.) “Generative artificial intelligence” is different from “semantic artificial intelligence,” which most readers will recognize

they have employed quite often in their own lives and practices. Very broadly, semantic AI programs can sort through and organize existing data sets or libraries of information. For example, when a lawyer uses an online legal research tool to find a relevant case on a particular topic or point of law, the lawyer is using a semantic AI program to sort through thousands (millions?) of cases and organize the results from most relevant to least relevant. Generative AI, on the other hand, goes beyond the already complex and sophisticated search of semantic AI programs and actually creates/generates plain language answers and analysis in response to prompts or questions provided by human users.

ChatGPT has gone through several itera-

tions thus far and will continue to develop further in the coming months and years. The most recent version, however, made headlines due to its advances in those aforementioned “generative” AI capabilities. Most notably, it was recently reported that ChatGPT obtained a passing score on the Uniform Bar Exam, with the program responding to the exam’s narrative essay prompts with apparently accurate and organized legal analysis.² And just in case you were wondering, no, the program does not rely on an active Internet connection to function. Rather, the program was trained (educated?) by its programmers using a vast amount of text databases from the Internet; and it produced correct answers to bar exam questions in a “closed universe” scenario.

Are you scared yet?

Needless to say, these advances in AI are remarkable. And over the past weeks, the ethics staff has received a number of calls from lawyers asking how ChatGPT and the emergence of artificial intelligence impacts a law practice. After all, ChatGPT has been proven to effectively complete tasks ranging from drafting college-level essays to template contracts and wills. It’s also been reported to be unreliable at times: In June 2023, a federal judge in New York fined two lawyers for relying upon ChatGPT to draft a legal argument that the lawyers then included in their brief filed with the court; the AI-generated analysis, it turned out, was full of fictitious case citations created by the program to support its argument, and the lawyers did nothing to review or validate the work product of the program.³ That instance led a federal judge in Texas to prohibit lawyers from using ChatGPT or other generative AI programs in drafting legal briefs—when filing a brief with the court, lawyers in that district now have to also file a certificate attesting that their work product was not created by AI.⁴

The range of benefits and detriments is vast, but before your head explodes, take comfort in knowing that lawyers have been using AI for some time. (As noted before: has anyone out there ever searched for a relevant case on Westlaw or Lexis?) Our use of yet another new, evolving technological tool need not be met with fear or discouragement—we’ve adapted before, and we need to adapt again. But there are a handful of ethical considerations to note as we venture into this new world of employing AI in a law

practice. So, let’s dive in: What are the ethical considerations for a lawyer’s use of artificial intelligence in a law practice?

Answer:

The use of artificial intelligence in the legal profession raises several ethical considerations for lawyers. While AI can provide valuable support to legal practitioners, it is essential for lawyers to remain mindful of their professional obligations and ethical duties. Some of the key ethical considerations include:

1. Competence: Lawyers have an ethical duty to provide competent representation to their clients. As AI becomes more integrated into the practice of law, lawyers should maintain a basic understanding of AI technologies to leverage them effectively and appropriately. This includes knowing the strengths and limitations of AI tools and recognizing when human intervention is necessary to ensure the quality of legal services.

2. Supervision: Lawyers have a responsibility to supervise the work of nonlawyers—including AI systems—to ensure compliance with ethical obligations. This involves monitoring the AI’s performance, understanding the AI’s decision-making process, and validating its output to ensure accuracy and reliability.

3. Confidentiality: Lawyers must protect client confidentiality and maintain attorney-client privilege when using AI tools. This includes ensuring that any AI tools or systems used in the practice have adequate security measures in place to protect sensitive client information from unauthorized access or disclosure.

4. Communication: Lawyers have an ethical duty to keep their clients informed about the status of their matters and to communicate with them in a manner that allows the clients to make informed decisions. When using AI tools, lawyers should be transparent with clients about the extent of AI involvement in their work and should communicate any potential risks or limitations associated with the use of AI.

5. Diligence: Lawyers have an ethical obligation to act diligently in representing their clients. Relying solely on AI without human input or oversight may lead to mistakes or oversights, potentially resulting in inadequate representation. Lawyers must exercise due care when using AI tools to ensure they are fulfilling their ethical duties.

6. Avoiding Unauthorized Practice of

Law (UPL): Lawyers must ensure that the use of AI does not result in the unauthorized practice of law by nonlawyers. While AI can assist with various tasks, lawyers should be cautious not to delegate tasks that require legal judgment or expertise to AI systems, as this may constitute UPL.

7. Billing: Lawyers have a responsibility to bill clients fairly and transparently. When incorporating AI tools into their practice, lawyers should consider how the use of AI affects billing practices and ensure that clients are not overcharged for services provided by AI.

8. Bias and fairness: AI systems may inadvertently perpetuate or exacerbate biases present in the data used for training the algorithms. Lawyers must be vigilant in identifying and addressing potential biases in AI tools to ensure they provide fair and unbiased legal services to their clients.

9. Responsibility and accountability: Lawyers must remain responsible and accountable for the work they produce, even when using AI tools. This includes acknowledging errors that may arise from the use of AI and taking corrective measures as needed.

By addressing these ethical considerations, lawyers can harness the potential of AI in their practice while maintaining their professional obligations and upholding the highest ethical standards.⁵

By the way, *everything* written above between the word “Answer” and the footnote ending the preceding paragraph was drafted by ChatGPT in response to the prompt, “What are the ethical considerations for a lawyer’s use of artificial intelligence in a law practice?”

Now are you REALLY scared?

Generally, I don’t disagree with the answers listed above, though I think the nuance of a lawyer’s professional responsibility when it comes to artificial intelligence needs a bit more exploration. (I also shudder at the idea of ChatGPT assigning personhood to itself when reflecting that lawyers “have a responsibility to supervise the work of nonlawyers, including AI systems[,]” but I digress.) To that end, the State Bar’s Ethics Committee intends to delve into this topic in the coming months. Whether the committee produces a new formal ethics opinion or some other guidance on this ever-evolving issue remains to be seen, but keep an eye out for future

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The Murdaugh Case Compels Us to Revisit Trust Account Rules

BY KATHY E. POPE

From 2011 to 2021, Alex Murdaugh allegedly stole millions and embezzled cash from an IOLTA general trust account held by a Hampton, SC, law firm. How did that go undetected for so long?

What opportunities were missed to disclose wrongdoing? How does an attorney rack up 99 counts of embezzlement, fraud, and other financial crimes against his firm and his clients without getting caught sooner?

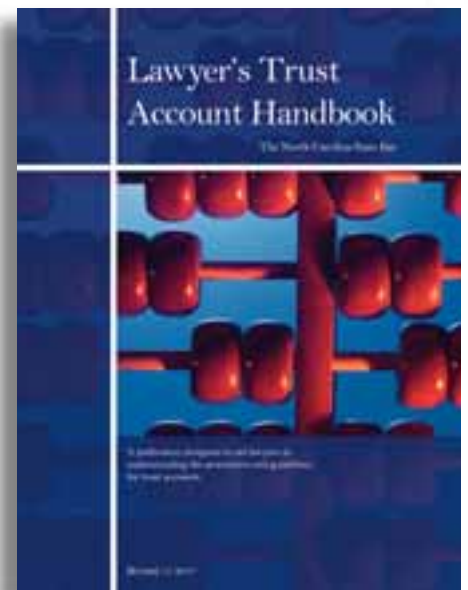
The answer is very simple: Failure to follow the Rules and lack of oversight. Alex Murdaugh's law firm, Peters, Murdaugh, Parker, Eltzroth and Detrick (PMPED), now conspicuously renamed as just the Parker Law Group, LLP, appears to have failed to adopt and/or enforce a written policy detailing the firm's trust account management procedures. Furthermore, the assignment of a firm trust account oversight officer (TAOO) would have been invaluable. It is unclear if PMPED had one, but if they did, that person did not do their job. At the end of this article, I have listed Five Missed Opportunities to Disclose Wrongdoing by

accomplished, recognized professionals that could have and should have uncovered these alleged activities sooner.

How Did We Get Here?

Alex Murdaugh referred to a "tangled web of lies" as his testimony wrapped up. Lead prosecutor, Creighton Waters, compared Murdaugh's situation as being akin to a Ponzi scheme on the verge of collapse. His plea to the Murdaugh jury included, "Don't let him fool you too. He's manufacturing an alibi. He's smart, he's a good lawyer."

Unfortunately, some "good lawyers" and their support staff often convince themselves



that Rules do not apply to them. Over the years, I have heard comments like, "Those Rules do not apply to our firm because we are small." I now laugh at how many times I repeated to controlling office staff, "That's not how it works, Angie!"

How Can We Stop It?

The two main ways theft or mismanagement is discovered are 1) during random audit, or 2) when a grievance is filed with the State Bar by a client. Like most of his testimony in court, there was a mixture of truth and lies in the explanation Alex Murdaugh gave his staff, clients, and others. For exam-

ple, the paralegal testified that Murdaugh often corrected her when she made out checks to Forge Consulting, a legitimate structured settlement firm used by the law group. Instead, he told her to make them out to Forge. Griswold testified that Murdaugh told her Forge was a subsidiary of Forge Consulting. Although it is true that an attorney may move funds held on the behalf of a client to a separate interest-bearing account if the money is to be held for an extended period, there are Rules that apply. Rule 1.15-2(l) General Rules include, “A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.”

None of that would have been possible if someone was performing the required three-way reconciliations each month. Successful monthly three-way reconciliation to safeguard client funds, however, is only possible with good recordkeeping and self-audit. PMPED was ultimately responsible for safe keeping of client funds and cannot simply delegate the duties with no oversight. There is a difference between reconciling a bank account and identifying who the money belongs to. Outstanding (uncleared) checks must be addressed timely. Tracking money for each client is basically equivalent to having a trust bank account and several short-term liability subaccounts. Reports must be reviewed and signed. Clients must be informed when money comes in, goes out, and at least annually in writing if funds are held. Disengagement letters confirming all trust money is disbursed and the matter is closed serve a valuable purpose. Escheating of abandoned funds is a requirement, not an option. Lawyers often hire a CPA, a bookkeeper, and even outsource the reconciliation of the accounts, but that does not relieve the attorney of oversight. I have been told by NC State Bar field auditors that lawyers are often lulled into a false sense of security when the trust account reconciliation is outsourced. In reality, unless you have personally met those performing the work, you are at the mercy of the service provider to make sure their staff is qualified and knows the rules and procedures that apply in your state.

What Are the Rules?

Rule 1.15 and its four subparts govern a lawyer’s duty to protect and safeguard other people’s property.

The duty to protect and account for client funds is, however, long-standing and predates the adoption of the Rules of Professional Conduct (RPCs) in 1990 as well as the Court’s adoption of the Financial Recordkeeping requirements in Rule 417, SCACR, in 1997 (as amended in 2011). South Carolina and North Carolina both offer and require trust account compliance and legal ethics education. Case law describes the manner in which the Court expects lawyers to abide by these Rules. The South Carolina Bar’s Ethics Advisory Opinions add guidance to understanding the interplay between the RPCs and the Financial Recordkeeping Rules. While the requirements may not be identical in North Carolina and South Carolina, the basic concept is the same.

For over 30 years I have offered confidential audits and have assisted firms to gain compliance. I often hear, “I just want to practice law. I am not a bookkeeper.” Staying current with amendments to Rule 1.15 of the Rules of Professional Conduct is often daunting.

The *Murdaugh* case compels us to revisit these rules governing the safeguarding of property.

Amendments to Rule 1.15—Did You Take Action to Remain in Compliance?

An article written by Peter Bolac, *Coming to Terms (and into Compliance) with the Trust Accounting Rule Amendments*, was posted to the Risk Management Resource Center on the Lawyers Mutual website. I started letting my attorney clients know action would be required to remain in compliance based on what I was seeing. I am shocked at how many firms have yet to change their procedure. I considered simply commenting on the Rules found in the *Trust Account Handbook*, but found the detailed explanation in the article to be very helpful, particularly for the attorneys practicing prior to 2016. I call them the old dogs that resist learning new tricks—of course, in a very respectful way.

Notice the article is dated August 24, 2016. (It is important to note that some of the paragraphs have since been re-lettered, but the message is the same.) The article is still on the Lawyers Mutual Risk Management website as of this writing.¹ I will comment on the Explanation of Amendments to Rule 1.15. The State Bar Rules can be found on their website, ncbareg.org.

Explanation of Amendments to Rule 1.15

(Items in bold marked with *** would require action in order to remain compliant.)

Rule 1.15-2, General Rules

Rule 1.15-2(f): This rule change clarifies that lawyers may not hold funds for third parties in the trust account unless they were received in connection with legal services or professional fiduciary services.

Comment/Observation: I have been asked many times if funds can be held for third parties. This Rule clarifies. Earnest money for a third party comes to mind.

Rule 1.15-2(g): This one-word change of “may” to “shall” clarifies that a lawyer must promptly remove funds to which the lawyer is or becomes entitled.

Comment/Observation: It has been made clear that the trust account shall not be used as a tax shelter or savings account for earned fees.

Rule 1.15-2(h): This amendment clarifies any confusion caused by the old language, but does not change the substance of the rule. Any item drawn on the trust account must identify (by name, file number, or other information) the client from whose balance the item is drawn. The identification must be made on the item itself, not on a stub or other document.

Comment/Observation: I constantly reiterate this Rule! While some attorney-specific software has settings that automatically include the information, some do not. It should become an automatic habit. Who is the client (name), what is their unique identifier (file number), and what information on the check face would be helpful for the payee to know to what account this payment should be applied. If not specified, a medical provider may apply the payment to an outstanding balance unrelated to the matter/lien as intended. While some firms include the information on the stub, that portion of the check is not included on the image on the bank statement. Put it on the check and be specific. Not only does this benefit the provider (payee), it helps the firm and provides a receipt if payment is questioned.

Rule 1.15-2(i): The amendment prohibits cash withdrawals by any means, not just debit cards.

Comment/Observation: I have noticed a reoccurring pattern of law firms with good intentions trying to help clients with no bank account to get their settlement check cashed. Consider disclosing whether the client needs

to open a bank account when they retain your services to avoid last-minute confusion, or see if the use of a check cashing service is an option. Another issue is when the attorney makes a check payable to a minor. Do some research and you may find the check is to be made payable to the guardian for the benefit of the minor. I have seen many files opened on matters including an adult client and minor children in the same accident. It would make sense to open files with sub files to better track the separate awards, fees, payments, and costs in these cases.

Rule 1.15-2(j): The amendment moves the debit card prohibition from the end of Rule 1.15-2(i) to a standalone paragraph.

Observation: Noted.

(All subsequent paragraphs in Rule 1.15-2 are relettered.)

Rule 1.15-2(k): An amendment to the title of the rule clarifies that entrusted funds should not be used or pledged for the personal benefit of the lawyer or a third party.

Comment/Observation: I would have assumed all lawyers that passed the bar exam would know this. *Murdaugh* repeated on the stand, “I took money that was not mine, and I shouldn’t have done it.”

Rule 1.15-2(p): This is a substantive amendment to the lawyer’s duty to report misappropriation or misapplication of entrusted property. While confirming that intentional theft or fraud must be reported immediately, this amendment removes the reporting requirement for unintentional and inadvertent misapplications of entrusted funds if the misapplication is discovered and rectified on or before the lawyer’s next quarterly reconciliation. The amendment also clarifies that to satisfy the lawyer’s duty to self-report, the lawyer may reveal confidential information otherwise protected by Rule 1.6. Comment [26] further explains the lawyer’s duty to report misappropriation or misapplication of entrusted funds, and a comment to Rule 8.3, Reporting Professional Misconduct, clarifies that a lawyer has a duty to report misappropriation or misapplication of trust funds regardless of whether the lawyer is reporting the lawyer’s own conduct or that of another person.

Comment/Observation: I am consulted about this Rule probably more than any other when bookkeeping errors are made or fraudulent activity is discovered. The first key word here is *intentional*. Mistakes happen. As soon as it is discovered fix it, then explain it in your

reconciliation report confirming the error was found and timely corrected.

When a lawyer is found to have intentionally misappropriated or misapplied entrusted property as in the *Murdaugh* case, that is a whole different story. This is a sticky situation to find yourself in as the person in charge of HR, the bookkeeper, or the paralegal responsible for the case. I have found myself explaining to attorneys, staff, and software vendors that it is my duty to point out anything that would endanger the law license of any or all of the attorneys in the firm. It is especially hard when the attorneys are related, such as father and son, brothers, or husband and wife. If I see something and fail to make the person(s) that retained me aware, I have not done my job. I repeat that others have a duty to report and are held to a different standard than me. I make it a habit not to work for attorneys that expect me to turn my head to clear intentional violations that are repeated, even after I have pointed them out. To my knowledge, I personally do not have a duty to report the attorney to the State Bar. I am required based on my contract to make the attorney aware of the violation(s) I see and explain that it takes just one grievance from a client to bring down the house. In the *Murdaugh* trial, Alex mentioned that his father knew of his drug addiction, but did not disclose this to the proper authorities or to Alex’s brother, a partner in the family firm. I like to think they could have sought help, and that the outcome could have been totally avoided. I was highly impressed that Alex’s paralegal did not simply overlook her duties, but spoke out. It is unfortunate that Alex was allowed to continue to conduct himself in what was described as “ass on his shoulders, Tasmanian devil, disrespectful way” (her words) without gaining the attention of HR or another partner. It took courage to set healthy and professional boundaries. Stress caused by his son’s boat case was cause for mental health wellbeing intervention.

*****Rule 1.15-2(s) –** This amendment requires that checks drawn on a trust account must be signed by a lawyer, or by an employee who is not responsible for reconciling the trust account and who is supervised by a lawyer. Further, any lawyer or employee who exercises signature authority must take a one-hour trust account management CLE course before exercising such authority. The rule also prohibits the use of signature stamps, preprinted signature lines, or electronic signatures on trust account checks. As comment [24]

explains, “dividing the check signing and reconciliation responsibilities makes it more difficult for one employee to hide fraudulent transactions. Similarly, signature stamps, preprinted signature lines on checks, and electronic signatures are prohibited to prevent their use for fraudulent purposes.” ***

Comment/Observation: The Three-Way Reconciliation form provided by the NC State Bar includes check boxes and notes to assist with assuring compliance. I DO NOT have signature authority on the checking account and my work is reviewed/supervised by the attorney. After review, he/she signs the Reconciliation Report (monthly) and randomly selects, reviews, then signs the required self-audit (quarterly). As stated earlier, I have been informed by NC State Bar auditors that some firms are lulled into a false sense of security to allow software vendors or other businesses to reconcile their trust account. There is no way for the firm to really know who is reconciling their account and if they are familiar with the Rules or keep up with changes.

Rule 1.15-3, Records and Accountings

Rule 1.15-3(b) and (c): Lawyers can now electronically maintain images of cancelled checks and other items instead of hard copies because new Rule 1.15-3(j) allows lawyers to maintain records electronically, provided certain requirements are met.

Rule 1.15-3(b) also amends language to mirror the clarification in Rule 1.15-2(h).

Comment/Observation: Including digital images (front and back) of checks can cause the bank statement to be quite voluminous. Most bank statements do not include images of deposits. Be aware that copies of deposited images and reports can be printed and stored as proof of deposit when remote image deposit machines are used. Care must be taken to provide information on any deposit made using a cell phone to include the information that would otherwise be written on a deposit slip.

*****Rule 1.15-3(d):** Explains how a quarterly reconciliation should be performed and adds the requirement that a lawyer must review, sign, and date a copy of all monthly and quarterly trust account reconciliations. ***

Comment/Observation: This is an excellent resource.

*****Rule 1.15-3(i):** The new rule requires the lawyer to 1) review bank statements and cancelled checks for each trust account and

fiduciary account on a monthly basis, 2) at least quarterly, review a random sample of a minimum of three transactions (statement of costs and receipts, client ledger, and cancelled checks) to ensure that disbursements were properly made, 3) resolve any discrepancies discovered during the reviews within ten days, and 4) sign, date, and retain a copy of a report documenting the monthly and quarterly review process, including a description of the review, the transactions sampled, and any remedial action taken. ***

The monthly review will disclose a) forged signatures, b) improper payees or checks to cash, and c) unexplained gaps in check numbers indicating checks may have gone missing. The lawyer can verify that checks from the general trust account properly identify on the face of the check the client from whose balance the check is drawn. The lawyer can also examine the back of cleared checks to ensure proper endorsements were made.

Random review of ledgers and settlement statements helps to ensure that the ledgers and statements accurately reflect the transaction. This type of review can uncover improper disbursements, incorrect deposits, and substituted or unissued checks. While the random review requirement may not uncover any improper activity, it will most definitely act as a deterrent to employee malfeasance.

Comment/Observation: This Rule is often overlooked, be it intentional or unintentional. This is the first Rule that came to mind when I was made aware that a South Carolina attorney was able to make checks payable to a variation of a known payee and endorsed the checks with his own scribbled handwriting. Because the checks are right there on the bank statement, I do look at them. Sometimes the bank will actually pick up what appears to be obvious fraud and will flag it as fraudulent, and a deposit/credit for the check will appear along with the provisionally cleared check. *REMINDER: This duty cannot be delegated to staff or the bank.*

Rule 1.15-3(j): The new Rule provides for the retention of records in electronic format provided 1) records otherwise comply with Rule 1.15-3, including any signature requirements, 2) records can be printed on-demand, and 3) records are regularly backed up by an appropriate storage device.

Comment/Observation: It is not uncommon for attorneys to request that all generated reports be printed to paper along with only

the first page of the bank statement. The statement can be reviewed and saved in electronic format. It is also available from the bank by request if it is not available on the bank history online.

Rule 1.15-4, Alternative Trust Account Management Procedure for Multi-Member Firm

This new rule permits, but does not require, a law firm to designate a trust account oversight officer (TAOO) to oversee the administration of the firm's general trust accounts. This is an optional rule; firms are not required to designate a TAOO. However, if the firm would like to designate a TAOO, it must follow the following guidelines.

Rule 1.15-4(a): Permits a firm to designate a partner as the firm's TAOO. A partner is defined as a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law. The designation must be in writing and signed by the TAOO and the managing lawyers of the firm. A law firm may designate more than one partner as a TAOO. Comment [27] explains the supervisory requirements for delegation under Rule 5.1, and states that "delegation consistent with the requirements of Rule 1.15-4 is evidence of a lawyer's good faith effort to comply with Rule 5.1."

Rule 1.15-4(b): Lawyers remain individually responsible for the oversight of any dedicated trust account and fiduciary account associated with a legal matter for which the lawyer is primary legal counsel, and must continue to review disbursements, ledgers, and balances for any such account. Comments [28] and [29] further explain the limitations on delegation.

Rule 1.15-4(c): Explains the initial and annual training requirements of a TAOO. Comment [29] further explains this requirement.

Rule 1.15-4(d): Sets forth what must be included in the written agreement designating a lawyer as a TAOO.

Rule 1.15-4(e): Requires any firm that designates a TAOO to have a written policy detailing the firm's trust account management procedures.

Comment/Observation: Pay attention to this part: Lawyers remain individually responsible for the oversight of any dedicated trust account and fiduciary account associated with a legal matter for which the lawyer is

primary legal counsel, and must continue to review disbursements, ledgers, and balances for any such account. Occasionally I have been assigned the task of assisting with a written policy detailing the firm's trust account management procedures. This includes individual reports for each attorney for their review, along with a master report including all information necessary to ensure the other partners are not guilty of professional misconduct. *Reporting professional misconduct clarifies that a lawyer has a duty to report misappropriation or misapplication of trust funds regardless of whether the lawyer is reporting the lawyer's own conduct or that of another person. It is also important that support staff know their boundaries and do not practice law. It can be very tempting to bill for legal work performed by a skilled assistant without a license with little or no overview.*

Reminders/Checklist:

- All trust account checks are signed by a lawyer, or by an employee who is not responsible for reconciling the trust account and who is supervised by a lawyer.
- Any person with signatory authority on the trust account has taken a one-hour trust account management CLE (within the last three years). *NOTE: Proof of completion of the CLE requirement will not need to be sent to the State Bar, but should be retained and will be checked during a random audit.*
- No trust account checks are signed using signature stamps, pre-printed signature lines, or electronic signatures.
- All three-way reconciliations are reviewed, signed, and dated by a lawyer along with the name and signature of the person that prepared the report stating their position. If the report is prepared by a non-lawyer, he/she cannot have check signing authority for the trust account. Be careful to note the total on the Reconciliation Report must include only POSITIVE balances. This requires looking at each client balance individually to confirm no ledger has a negative balance.
- A lawyer reviews the bank statements and cancelled checks for all trust and fiduciary accounts on a monthly basis and a report is created documenting the review. These checks should appear on the bank statement (front and back images).
- At least quarterly, a lawyer reviews a random sample of at least three transactions (selected by the lawyer) to ensure that dis-

bursements were properly made by reviewing the statement of costs and receipts, client ledgers, and cancelled checks for each transaction. Transactions should include multiple disbursements where available. A report is created documenting the lawyer's review. All reports are signed and dated by a lawyer.

- Any discrepancy discovered during reconciliations or reviews is to be investigated and resolved within ten days.

Missed Opportunity to Disclose Wrongdoing #1

(Law firm - No oversight, three-way reconciliation, or self-audit performed by firm?)

Fake Forge Account – Forge was a shell account Murdaugh had disguised to look like the legitimate Forge Consulting. Forge Consulting is a company that, among other services, helps clients set up structured settlements. Checks were written from at least two separate IOLTA trust accounts to this fake Forge account at the direction of Alex Murdaugh. It is reported that Alex Murdaugh deposited checks himself using remote deposit (cell phone). Alex then used the fake Forge account to divert money for his personal use. He created this scheme to control client settlement funds, and it went unnoticed for years. If the NC State Bar Reconciliation Report in use in April 2017 was completed by someone familiar with the Rules, then reviewed and signed by either the TAOO or an attorney active in management of the firm, the images would have been reviewed as part of the process and Alex's signature on the back of the checks would have been discovered. (The current form - revised on 11/2019 - is available online.)

The reports provided by the Bar for trust account reconciliation provide an excellent tool for assisting with reviewing file status, proper workflow, etc. I now understand a comment made to me by an insightful Charlotte, NC, attorney that hired me to oversee the reconciliation of his trust account. "I am hiring you because you are not friends with anyone here, keep it that way."

Missed Opportunity to Disclose Wrongdoing #1 (Continued)

(Law firm - Lack of trust account procedure, or enforcement of same, which should include providing proper backup documentation before writing checks out of account.)

Attorney Richard A. Harpootlian introduced the idea in court, when cross examin-

North Carolina State Bar Reconciliation Report		REPORT DATE: _____ 20____
		ACCOUNT #: _____
Instructions		
<ul style="list-style-type: none"> Complete steps 2-7 monthly for each general trust, dedicated trust, and fiduciary account. Attach: 1) a copy of the general ledger/checkbook register, 2) a list of outstanding deposits, 3) a list of outstanding checks, 4) the corresponding bank statements and cancelled checks (or images thereof). Complete entire form at least quarterly for each general trust account. Attach: 1) items 3-4 above and 2) a list of subsidiary ledgers¹ with corresponding balances. 		
Reconciliation of Lawyer's Trust Account Records		
1. Total of positive subsidiary ledger balances as of _____		\$ _____
(as of ending date shown on the corresponding bank statement)		
Does any subsidiary ledger have a negative balance? <input type="checkbox"/> Yes <input type="checkbox"/> No		
2. General ledger/checkbook register balance as of _____		\$ _____
(as of ending date shown on the corresponding bank statement)		
Bank Statement Reconciliation		
3. Statement Ending Date _____		and Balance \$ _____
4. Plus: Outstanding deposits made to the account through end of month but not reflected on bank statement		
Number of outstanding deposits _____	Amount of outstanding deposits + _____	
5. Minus: Outstanding disbursements made through end of month but not reflected on bank statement		
Number of outstanding disbursements _____	Amount of outstanding disbursements - _____	
6. Adjusted Bank Balance		\$ _____
7. The balance on line #6 <input type="checkbox"/> agrees <input type="checkbox"/> does not agree with the balances on lines #1 and #2. If the balances do not agree, attach explanation and corrective action taken.		
Report prepared by: _____		
Print Name and Position		Signature
Report prepared by a non-lawyer? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, does he/she have check signing authority for this trust account? <input type="checkbox"/> Yes <input type="checkbox"/> No		
I certify that, for this account, I personally reviewed the above report, bank statement, and cancelled checks, and that all discrepancies shall be investigated, identified, and resolved within ten days of this report.		
Report reviewed by: _____		
Print Lawyer Name		Signature Date
November 2019		
¹ Subsidiary ledgers = 1) all individual client ledgers; and 2) the administrative ledger on which all transactions involving administrative funds maintained in the account pursuant to Rule of Professional Conduct 1.15-2(f)(1) are recorded.		
² If yes, attach explanation and corrective action taken.		

ing the PMPED CFO, that at least some of the clients were aware Alex had borrowed from them, and in some instances those clients agreed that Alex could take ownership of their money as a gift or repayment of money owed to him in other matters. It was implied by Jeanne Seckinger that none of the settlement approvals, if any existed, were properly filed through the Hampton County clerk of court or discussed with PMPED partners and would be hard to prove without further witness testimony.

It is reported that the PMPED law firm filed a complaint in Colleton County Court in South Carolina, which reads, "PMPED has determined that Alex Murdaugh was able to covertly steal these funds by disguising disbursements from settlements as payments to

an annuity company, trust account or structured settlement for clients, or as structured attorney's fees that he had earned when in fact they were deposited into the fictitious account at Bank of America."

Missed Opportunity to Disclose Wrongdoing #2

(Palmetto State Bank CEO failed to report Murdaugh.)

Russell Laffitte, the former CEO of Palmetto State Bank, had the opportunity/duty to report misappropriation. Instead, he allegedly conspired with Lowcountry Attorney Alex Murdaugh on all six charges. Laffitte presented the good faith defense. His attorneys argued he did not have intent to commit any crime. Judge Gergel

reminded the jurors that deliberately closing one's eyes to something that would have been obvious is not good faith.

Missed Opportunity to Disclose Wrongdoing #3

(Clerk's office review of accounting.)

Palmetto State Bank's Russell Laffitte served as the court-appointed conservator for Natarsha Thomas. The prosecutors say the settlement funds were diverted by Laffitte at Murdaugh's direction to the lawyer, his family members, and those to whom he owed money. Among the recipients, Laffitte's father, who had lent Murdaugh money, Murdaugh's wife, Murdaugh himself, and the conservatorship account of Hannah Plyler, to which Murdaugh also owed money. Laffitte was said to have lent him money from Plyler's account as her conservator in a separate car crash case. While her lawsuit was playing out, Thomas needed money for school expenses. In 2010, she borrowed money against the settlement she expected to win. Laffitte had signed papers to become her conservator a few months earlier, but he did not mention it and she didn't know he had been appointed to the role. According to Thomas, even after she turned 19, her conservatorship was still open.

It is my understanding that when you

take on the important role of serving as a conservator, you must complete and file an accounting with the clerk of superior court, not less than annually. Did the clerk of court, when reviewing the accountings, overlook the opportunity to catch a pattern of wrongdoing?

Missed Opportunity to Disclose Wrongdoing #4

(Banker failed to fulfill duties to the estate as well as to the probate court.)

Also accused of wrongdoing is Chad Westendorf, vice-president of Palmetto State Bank. Murdaugh allegedly encouraged Satterfield's sons to hire Westendorf to deal with "business matters" he said would arise. Murdaugh, Fleming, and Westendorf are accused of negotiating \$4.3 million in payouts from Lloyd's Underwriters and Nautilus Insurance Company—two insurance companies with which Murdaugh held policies. See Chad Westendorf Deposition by ABC News 4 on Scribd.

Missed Opportunity to Disclose Wrongdoing #5

(Attorney, banker, and judge allegedly failed to fulfill duties to the estate as well as to the probate court.)

Statements under oath by a Hampton

banker paint a picture of possible misdeeds by a Beaufort attorney and low country judge in connection to a reported multi-million-dollar theft by Alex Murdaugh. ■

Kathy E. Pope has over 30 years of experience in reconciling IOLTA trust accounts, as well as conducting confidential trust account audits. As a consultant, Kathy is available to design and implement procedures to assist your firm in improving compliance and documentation. Contact Kathy at Kathy@Popetrust.com.

DISCLAIMER: My work background includes stenographer with the Department of Correction and deputy clerk in Buncombe County, NC (courtroom clerk). I have over 30 years of experience working to assist with trust account compliance. I am not an attorney. Nothing in this article is to be construed as practicing law or giving legal advice. The purpose of this writing is to share experiences which may prove helpful to lawyers and their staff relating to IOLTA trust account compliance. Information gathered by viewing trial live stream, editorial commentary, and personal experience is shared.

Endnote

1. Article written by Peter Bolac, *Coming to Terms (and into Compliance) with the Trust Accounting Rule Amendments*, bit.ly/43S5YI3.

President's Message (cont.)

the creation of "legal deserts" where there are simply not enough lawyers to serve the population. Sadly, the problem of legal deserts is not unique to North Carolina; it is a national problem.

The council's Access to Justice Committee has a legal deserts subcommittee working on ways to address this problem. The Chief Justice's Commission on Professionalism (CJCP), headed by Co-Executive Director James "Jimbo" Perry, is also tasked by Chief Justice Newby with finding solutions to this problem. There are other groups that recognize the urgency of the problem and are committed to assisting in this endeavor.

To help facilitate the conversation amongst these different groups, the State Bar and the CJCP are co-hosting a legal deserts summit on Thursday, August 31, 2023, at

the State Bar building, to bring together various stakeholders to address both the immediate acute needs and the chronic problem facing our profession and our state. The invitees include Chief Justice Newby and members of the CJCP; State Bar officers and councilors; members of the General Assembly; and representatives from the Equal Access to Justice Commission, Legal Aid of North Carolina, Board of Law Examiners, Indigent Defense Services, NC LEAF, IOLTA, North Carolina Bar Association, North Carolina State Bar Foundation, Administrative Office of the Courts, District Court Judges Conference, Superior Court Judges conference, the law schools, North Carolina Association of Black Lawyers, and North Carolina Pro Bono Resource Center.

The goal of the summit is to develop an immediate action plan to put lawyers in rural

areas that are in desperate need, as well as develop a long-term plan to encourage and assist lawyers to set up shop and become a part of the fabric of life in small, rural communities. Those of us who practice in these communities know the benefits and joy of this path, but we must get the message and support out to our next generation of lawyers. Stay tuned...

It has been a professional highlight to lead Chapter 88 of *The State Bar Story*, and I have the utmost confidence that the authors of "Chapter 89" are well equipped to continue the important story of self-regulation and good works for the benefit of the public we serve. I look forward to supporting those efforts, and I look forward to reading new chapters in the years to come. ■

Marcia H. Armstrong is a partner with The Armstrong Law Firm, PA, in Smithfield.

A Legal Incubator Update: Durham's Incubator is Now North Carolina's Incubator

BY MARK ATKINSON

As lawyers, we learn “the law” in law school, but we are rarely, if ever, taught how to run a business. Starting, running, and sustaining a law firm—like it or not—is running a business. To address this reality, legal incubators have sprouted up to provide business support, training, and mentoring for participants to launch their own sustainable solo or small law firm.

As described in the Summer 2021 issue of the North Carolina State Bar *Journal*, a new legal incubator was established in Durham to “equip entrepreneurial lawyers with practical and substantive business and legal training to launch innovative, socially conscious, and financially sustainable law practices that address the access to justice gap.” This new legal incubator was originally called the Durham Opportunity and Justice Incubator (DOJI). The early planning for the incubator was pre-pandemic, and the intent was to focus on Durham attorneys and Durham needs. However, the reality of the pandemic

created the need to pivot to a virtual presence so that the incubator could serve attorneys across the state. With that broader reach, the incubator’s name was changed to the Incubator for Legal Practice and Innovation (ILPI). Over the past two years, ILPI has supported attorneys across the state (and beyond) in starting and running their law firms, including lawyers in Raleigh, Durham, Charlotte, Bunn, Fayetteville, and Raeford (as well as Maryland, Tennessee, and Nevada).

Though the name has changed to ILPI, the mission of the incubator has not



RS Legal Group is composed of Michelle Schalliol and Cameron Redd, who were participants in the inaugural ILPI cohort. They are mid-way into their third year and doing well—financially stable and serving lots of clients.

changed. ILPI exists to improve access to justice by training entrepreneurial attorneys to be innovative and financially savvy. The 12-month incubator program typically starts with a two-day boot camp that provides a quick immersion in the business aspects of starting a law firm: budgeting, accounting, finding clients, client billing and payment, designing websites, innovative uses of AI, evaluating options for practice management

software, exploring alternative billing strategies, and learning from successful solo and small firm attorneys. After the boot camp, ILPI's programs shift into "accelerator-mode" with a cycle of regular "lunch-n-learn" sessions to learn more (and reinforce) best business practices, hear stories of how other attorneys built their successful businesses, connect with important vendors and consultants (IT, marketing, and accounting professionals), and learn from each other.

In addition to the training program, ILPI participants have access to both business coaching as well powerful resources through our generous partners. Business coaching is available for participants to get feedback on their various law firm management (business) ideas and strategies, while partners, such as Lexis, Practising Law Institute, and Clio, provide access to their material for the benefit of the participants. That access includes legal research, analytical tools, templates, checklists, CLEs, and free or reduced pricing for practicing management software. Participants do pay a monthly ILPI membership fee, but for every \$1 of fees, they receive \$8-10 in benefits.

Two cohorts of attorneys have already completed the 12-month cycle, and a third cohort is nearly complete. These three groups have supported 21 attorneys in their entrepreneurial journey. A fourth cohort will launch in September 2023. If interested, check out innovationlegal.org for more information. ■

Mark Atkinson is an attorney and a 2020 graduate of North Carolina Central University School of Law.

Prior to law school, he was a principal at Kimley-Horn and Associates, Inc. For additional information about the ILPI program or how to apply, contact mark@innovationlegal.org or visit innovationlegal.org



Erin Edgar (above) and Reatter Neal (left) were in last year's cohort. Erin is a solo estate attorney in Raleigh. Reatter Neal has gone back to her hometown, Bunn in Franklin County, to open a general practice to help those who are often overlooked and underserved.



Artificial Intelligence (cont.)

updates on the committee's efforts regarding AI.

For those who are anxiously awaiting an answer on the interaction between a lawyer's professional responsibility and AI, let's cut to the chase: Nothing in the Rules of Professional Conduct prohibits a lawyer from using machine learning or artificial intelligence tools in a law practice. However, like other law practice resources, a lawyer must use these tools competently (Rule 1.1), ensure that confidentiality is preserved (Rule 1.6), and review/supervise the work product generated (similar to a lawyer's duty of supervision per Rule 5.3). A lawyer needs to be particularly careful when using a public artificial intelligence tool (like ChatGPT) because any client-specific information provided to the public tool could be subsequently used or potentially revealed by the program, breaching the lawyer's duty of confidentiality. Depending on the circumstances of the representation, a lawyer may also need to consult

with a client prior to delegating certain tasks to an AI program or process, similar to a lawyer's responsibilities when outsourcing legal support services to foreign assistants. *See* 2007 FEO 12. And, of course, a lawyer must be transparent with a client when billing for work assisted by AI. After all, AI may very well reduce a previous 60-minute task to six minutes (or less); in such a scenario, a lawyer must accurately and honestly bill based upon the time actually spent on the task, and any efficiencies created by the lawyer's use of AI must be passed on to the client. *See* Rules 1.5, 7.1, and 8.4(c).

There is no way to un-ring this bell. The issues will incessantly evolve and grow in complexity, but the Ethics Committee and staff counsel will continue to explore the integration of AI into the legal profession. In the meantime, be careful out there: If you're going to employ AI in your practice, be sure to do so competently and securely, and review the program's work product as if it were done by a summer intern (there's potential, yes, but it's not quite there and may even be riddled with

errors). Ultimately, every lawyer that relies upon AI will be responsible for its product and the implications thereof. And if this technology ever evolves into the equivalent of a first-year associate or higher, we can collectively "marvel at our own magnificence" ...while also updating our resumes. ■

Brian Oten is the ethics counsel for the State Bar, and the director of the Legal Specialization and Paralegal Certification programs.

Endnotes

1. *The Matrix* (Warner Bros. 1999).
2. Debra Cassens Weiss, *Latest Version of ChatGPT Aces Bar Exam with Score Nearing 90th Percentile*, ABA Journal, bit.ly/3KBnl8o, March 16, 2020.
3. *Lawyers Fined for Filing Bogus Case Law Created by ChatGPT*, CBS News, June 23, 2023, cbsnews.com/news/chatgpt-judge-fines-lawyers-who-used-ai.
4. *Texas Judge Bans Filings Solely Created by AI After ChatGPT Made Up Cases*, CBS News, June 2, 2023, cbsnews.com/news/texas-judge-bans-chatgpt-court-filing.
5. "What are the ethical considerations for a lawyer's use of artificial intelligence in their law practice?" ChatGPT-4, April 4, 2023, chat.openai.com/chat.

Just Throw a Rock...and Run: An Interview with the Author, Judge Gary Trawick

BY STEVE CULBRETH

Just Throw a Rock...and Run is an introspective and brutally honest look at race relations in the Southern United States. In it, Judge Gary Trawick vividly illustrates what it was like living through the creation and implementation of the Civil Rights Act in North Carolina.

He also shares how he came to grips with misplaced hate, endemic racism, and toxic culture. His challenge to readers is to find the courage to forgive and love their fellow man, and he provides insights on how to find solace in a world that is becoming increasingly polarized.

One of Judge Trawick's philosophies as a lawyer is, "You cannot practice law scared," meaning you cannot be effective as a trial lawyer if you are afraid to take on the unpopular cases or worried about what members of the public are going to think of you if you do. This philosophy is carried forward in this book, in which he tackles the sensitive issue of race in our community and in our country.

Readers of the book will discover in the first chapter the meaning behind the book's title. When Judge Trawick was a young boy—about eight or nine years old—he was walking home from school with his older brother. They came across a group of Black students, and Judge Trawick's older brother

told him to, "Just throw a rock and run."

Wilmington lawyer Steve Culbreth, a former State Bar counselor and former member of the Disciplinary Hearing Commission, recently interviewed retired Superior Court Judge Gary Trawick about his book. Following is a portion of that interview.

Steve: You have held court in every county in the state. You have been recognized as an outstanding trial judge by both the civil and criminal bar and as a former councilor of the State Bar. This is not your first book. You have written a history of Pender County, *Born in Reconstruction*; a collection of essays, *Give Them Another Chance*, largely taken from commentaries you did for public radio station WHQR. You have had articles published in *The State* magazine, a short story in *Wildlife in North Carolina*, articles in other magazines, and feature articles in most major newspapers in North Carolina. So, my first question is, why did you write a memoir of the progression of your views on race?

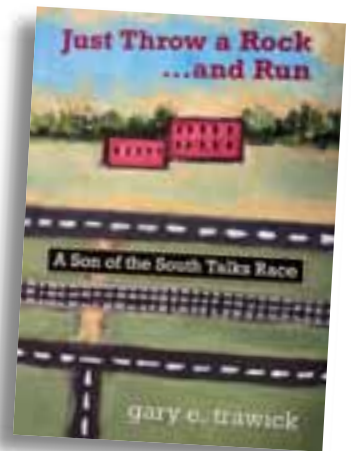
Gary: I consider race to be one of the

most important unresolved issues in our country today. I want my children and grandchildren to understand how Black people were treated during my growing up and early work years.

I want white people of my generation to stop talking about slavery and face up to the fact that our generation and the generation just before us have not treated Black people as equals. By focusing on slavery and Jim Crow times, we let ourselves off the hook and say, "Well, that was another time, those things don't happen today."

Steve: With the passage of the Civil Rights Act and the Supreme Court's decision rejecting "separate but equal," is your book just a history of another time, or do you think there is still a need for progress in the area of race relations?

Gary: Certainly, in the public sector, institutions, and accommodations, things have changed. Black people go to the same schools, hospitals, libraries, hotels, restaurants, etc. as white people. Yet, look at our social interaction. I have been a member of two churches in my lifetime and neither have had a Black member. I have been a



member of two hunting clubs and neither had a Black member. I was a member of a country club without a Black member. Now, I do not think all of this social separation is the fault of white people alone. We have three Black churches in Burgaw. I know any of them would welcome me as a visitor, but I am not sure they would welcome me as a member.

Steve: What has been the reaction to your book?

Gary: It has been mixed. I have had responses that it is too white for Black people, and too Black for white people. A friend I would put in the racist category called me to tell me that he could find nothing wrong in what I had written, that I had told it like it was. Yet, I know he thinks I should not have written it, that I should let the past stay in the past.

A Black history professor said the book was not “race sensitive.” I told a Black friend what the professor said, and her response was that she did not understand what the professor was saying. She said, “You used the language that regular people use.” When reading the book she said, “It felt as if you were talking to me.” I like that she felt that way.

Dr. Chris Fonville, a white history professor, described the stories in the book as “brutal and honest, and deserved to be heard.” I don’t expect everyone who reads the book to agree with my perspective. I do hope they agree that I am honest in the stories I relate.

An interesting thing is that after every book talk I have given, someone will want to tell me their story. It seems everyone has a “race story.”

Steve: In the beginning of the book you tell why you use the term Black instead of African American. Explain to the readers why you do this.

Gary: As I explain in the introduction to the book, the term African American seems to me to be saying Black Americans are only half American, they are not “fully” American. Black Americans are as fully American as I am. No one refers to me as a white American, I am just an American. I want Black Americans to be treated just as I am. It is okay to differentiate race by skin color, but not whether you are an American.

Steve: While your book centers on your perspective as a white person, you include conversations with Black people. Why did you feel it necessary to do that?

Gary: I wanted to give real life examples

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of how some Black people have handled racial discrimination. And also, I want white people to see how similar we are to Black people in much of our thinking and attitudes.

A couple of examples. Like many white people, Irene Taylor, a Black lady, is fond of the British Royals; and Venessa Nixon and China Toodle Berry, two Black women, are concerned about the young people for the same reasons I hear expressed by white people.

I am also impressed with the lack of bitterness I heard in the Black people with whom I had conversations in the book. After pondering this, I came to the conclusion that the reason is all of them are successful people who know their lives have value.

Steve: Do you feel that the Black people were open and honest with you, or do you feel, because they know of your more progressive attitude, they were trying to be nice to you?

Gary: The answer is yes and no. The no comes from knowing that all these people are exceptionally nice. They did not want to make an “old white boy” feel bad because of the things they had gone through regarding race. You should know I chose these people because I know some of the things that had happened to them personally as they faced racial hatred. The yes comes because, after I let them know I knew some of what they had faced, they became more open to me and talked more freely. It seems I have a knack for talking to people about painful things—topics other people just don’t want to get into. Maybe it comes from practicing law or maybe it is just part of my personality.

Steve: Do you see a solution to the race problem in this country?

Gary: I state in the book that I don’t have a solution. If we all see each other, Black and white, as members of God’s family, as God’s children, that would solve the problem, but I

do not see that happening any time soon. I also see the issue as an economic problem as much as a problem of skin color. Black people are more likely to be in the poor level of society. Most of my white friends have never had the opportunity to associate with Black people on their economic level. Maybe the exception is teachers. Also, as a practicing lawyer, I had the good fortune that half my clients were Black. That opportunity instilled in me how little difference there is between Black people and white people. It is going to take more social interaction for both races to see what I have seen. We need to talk to each other. Then we will see how much more we are alike than how different we are. It’s my hope that this book will cause us to think about our racial attitudes and maybe start a conversation.

Conclusion

Considering the situation in our country today with the racial discourse that we see from an element of our population that, until recently, has confined itself to marginal hate groups, the author has certainly presented a well-documented story of changes in the attitudes that were instilled in him while growing up in southeastern North Carolina. This is a true history book as Judge Trawick describes events like two lynchings, events surrounding the Wilmington 10, and general white racial attitudes.

I recommend this book for reading and discussion, to start conversations, to look at society’s attitude about race, and to consider what can be done to improve the situation. Something certainly needs to be done to counteract the current race vitriol and “population replacement” that are too prevalent in the public forum today.

Steve: One final question, where can someone get the book?

Gary: If they will go to creekbooks.com they can order one. ■

Wake Legal Support Center: A Model for Helping *Pro Se* Litigants

AN INTERVIEW WITH JUDGE ASHLEIGH PARKER DUNSTON

The Wake County Legal Support Center opened its doors on January 13, 2023. The center provides resources to individuals who cannot afford a lawyer, but are trying to navigate the complexities of the judicial system in Wake County on their own. The Support Center was, in many ways, the brainchild of Wake County District Court Judge Ashleigh Parker Dunston. Working with such partners as Wake County, the City of Raleigh, the NC Judicial Branch, the NC Equal Access to Justice Commission, and NC IOLTA, Judge Parker Dunston was instrumental in making a vision into a reality. This summer, the *Journal* interviewed Judge Parker Dunston about the center and how it came into existence.

Q: What does the Wake Legal Support Center do?

The Wake County Legal Support Center serves as a destination to access civil legal information and resources for the substantial number of Wake County residents who manage the judicial system without any legal representation.

Additionally, the center is a hub for organizations to provide wrap-around services and *pro bono* opportunities for members of the 10th Judicial District Bar.

The center, which is manned by Equal Access to Justice Center staff and volunteers, provides legal forms and informational packets that address common problems like family law and housing issues. Additionally, individuals are provided one-on-one assistance

with filling out the packets and information regarding the next steps. They are also assisted in navigating Odyssey (the new e-filing system).

Through the Attorney of the Day program, attorneys from the 10th Judicial District Bar meet with individuals and provide free limited legal representation.

The center is available to anyone regardless of their income or educational level.

Q: Why did Wake County need a legal support center?

According to the 2021 Civil Legal Needs Assessment, 11% of Wake County residents live in poverty and do not have the means to hire an attorney. Additionally, there is only one Legal Aid attorney for every 10,000 individuals in NC in need of an attorney for their civil needs. From a practical standpoint, this means that thousands of Wake County citizens and North Carolinians are forced to navigate the legal system without representation. This can and does result in delays and denials of their claims all because they could not afford an attorney. In short,



Wake County Legal Support Center Program Coordinator S.M. Kernodle-Hodges assists pro se litigants with informational packets.

the need for the center was well overdue. Mecklenburg County has had one for over 24 years!

Q: What did you do personally to get the project started? Did you have a team of helpers and, if so, who were they and why did you ask them to help?

While this was theoretically six years in the making, it took a lot of time and effort because once the ball was rolling, it came together in about six months. I was grateful to have the assistance of my PINC (Partner in Non-Criminal) Activity, Jennifer Lechner, the executive director of the North Carolina Equal Access to Justice Commission. Together, we pulled together

stakeholders such as Chief Justice Newby and the Administrative Office of the Courts (AOC), Wake County courthouse leadership, 10th Judicial District/Wake County Bar Association leadership, Wake County commissioners, Wake County county manager and staff, NC State Bar, Campbell Law School, and so many others who were invested in this project. I wanted to involve the most amount of people because I knew that this would need to be a collaborative effort to be successful. I was definitely proven right because without each of these organizations, this project would not have come to fruition.

Q: What was your initial vision for the legal support center? Has that come to fruition?

When I became a judge, I was assigned to handle matters in our domestic courtrooms, specifically child support and child custody. I quickly realized that the majority of our children end up in the adult system due to the lack of access to parents. Many parents wanted to assist with the rearing of their children, but didn't have the financial resources or legal acumen to navigate the civil system and have their case heard. I truly believe that an educated community is an empowered community, and we were doing a large demographic of people a disservice by not assisting them with navigating our complex legal system simply because they didn't have the financial resources.

The center has exceeded my vision of providing access to restore families and help people with their housing issues. Thanks to phenomenal staff under the leadership of the center's director, Anh LyJordan, it has become a "homebase" of the Wake County courthouse. Judges, clerks, staff, deputies, etc. are able to point people to a location that can try to help answer the questions that they can't. It's a one-stop shop where people can fill out their packet, get it notarized, and file it correctly, which has truly helped all of us be more efficient. I have received numerous messages about how the center has positively affected so many lives in just the few short months that it's been open, and I'm so grateful that it's here.

Q: Have you seen a decrease in the problems related to *pro se* representation since the support center opened?

Navigating the legal system as a *pro se* litigant can be overwhelming and confusing, and based on responses to our post-visit surveys, *pro se* litigants have shared that they

found the assistance in the Legal Support Center was helpful in understanding the legal system and what steps they needed to take. We have found that *pro se* litigants who receive assistance from the Legal Support Center are better able to represent themselves in court, understand what is happening when they go to court, and feel more confident about their participation in the legal system. For example:

"I was provided with the correct tools and the right legal advice with no attitude or nastiness. I felt welcomed, while dealing with a stressful situation." – Jerry

"This is an awesome service that has been implemented to serve individuals, particularly individuals who do not know how to navigate the courts and the different processes. This is also great as you may not always need an attorney to assist with basic services. Thank you, Wake County, for implementing a service of necessity for the people." – Erica

Q: What have you learned from your advocacy for the Wake Legal Support Center?

We immediately learned that the need we anticipated was real, as evidenced by the numbers. In the first six months, the Legal Support Center assisted over 2,500 visitors, and that is despite the fact that we are only open four hours a day. We also learned that access to legal information and resources definitely helps bridge the gap in access to justice, but there remain issues where information is not enough and only access to legal representation will ensure meaningful assistance. That's why we established the Family Law Attorney of the Day program where *pro bono* attorneys from the area's best firms provide legal consultations at no charge. This program has been so successful that we have been looking to expand it into other areas of need, such as housing, estate administration and more.

Q: What were the biggest impediments to



Visitors to the Legal Support Center use tablets from the Administrative Office of the Courts (AOC) to access eCourts.

getting the legal support center?

The biggest impediment to getting the center was convincing some individuals about the absolute necessity behind this venture and the amount of funding needed to accomplish it at the level of excellence that we wanted it to have. Thankfully, this wasn't a huge task because there were so many people who believed in this project and wanted to support its existence.

Q: How is the legal support center financed?

The center is funded by numerous partners including Wake County, the City of Raleigh, NC IOLTA, the Wake County Bar Association Foundation, and private funders. Additionally, the AOC has graciously provided all of the equipment and technical services for the center.

Q: What are the next steps for the support center? Will it grow and, if so, how? Where will the funding for growth come from?

Our goal was always expansion. We created the Wake County Legal Support Center to serve as a template with the hope that a version will be available in all 100 counties for citizens to receive assistance. The AOC has been extremely supportive of these efforts, and hopefully the legislature will assist us with this goal, understanding that not every county is able to afford to staff a center.

If a district is interested in starting a center, they could contact our amazing director, Anh LyJordan, at anh@wakelsc.org, or myself at Ashleigh.P.Dunston@nccourts.org. ■

Letters to the District Attorney

BY ED BOGLE

The following are excerpts from a book, Letters to the District Attorney, written by Gaston County attorney, now judge, Ed Bogle. All names in these letters are pseudonyms (except for Ed's).

Chocolate and the Olive Garden

Dear Brandon:

I received your plea offer regarding my client, Antonio Williams, and I was...well...hurt and disappointed that you wish to make poor Antonio do prison time for this minor offense. I realize that he has a horrible record. I realize that he is a habitual felon. I also realize that his criminal history indicates that he has been selling drugs his entire life. However, when we put all this in perspective, a much brighter side of Antonio will appear.

First, let's examine this investigative file, which I contend contains numerous errors. All of this began when the Gaston County Police, with nothing better to do, decided to put their paid, confidential informant to work in an effort to lure my unsuspecting client back into the world of crime. Poor Antonio, unable to find work because of his criminal record, needed to fend for his kids and their mother. So when the informant called begging for some weed, it appears that Antonio succumbed to the request and sold seven grams of a green, leafy substance to the informant in the gazebo at the Erwin Center.

Although your file does not provide the name and identity of the informant, he is called "Nestle." Without having the CD that allegedly recorded this incident, it is unclear whether Nestle's name is pronounced "Ness-lee" or "Ness-ul." If pronounced "Ness-lee," then he may well possess some degree of truthfulness. After all, if it's "Ness-lee," then he probably loves chocolate; and most people who love chocolate are decent people. I love chocolate—all kinds of chocolate. I even once liked white chocolate until I found out

it wasn't chocolate. Then I vowed never to touch it again. I'm a chocolate purist, in case you didn't know.

If the name is pronounced "Ness-ul" however, then everything changes. Any man called "Ness-ul" lacks character and integrity at all levels. Dung like him will betray any friend or family member just to pad his own pocket. A "Ness-ul" would not even bat an eye when his actions ultimately led to putting the father of three young children in prison over a \$65 drug deal. Such a man would take the \$80 paycheck he received from the police for his work and simply walk away. And that's exactly what "Nestle," or "Ness-ul," we should say, did.

And what about "Ness-ul's" payday? He received more money for the deal than the man charged with the crime. What's up with that? That's criminal in itself. Of course, I suppose betraying a fellow citizen ought to pay well—it helps assuage the ole conscience, assuming "Ness-ul" has one.

According to the file, the alleged transaction occurred in the gazebo at the Erwin Center. Consequently, the police piled upon Antonio the additional charge of selling/distributing a controlled substance within 1,000 feet of a park. What they don't tell you is that no one was at the park. Why? It was December 10th and it's cold in December. I don't know the exact temperature that day, but my Almanac indicated that December 8th through 12th would be extremely cold. And the Almanac never lies. So you know it



horrgerlach/istockphoto.com

was cold in that gazebo.

As an aside, I like a gazebo. There's just something about those quaint little wooden structures that appeals to me. Perhaps it's that bit of shelter they provide from a sea of sunshine. Perhaps it's the open air design. Perhaps it's their rustic appearance or even the polygonal shape. Nope, I remember now. One of my college girlfriends and I had a fun encounter in a gazebo back in my undergraduate days. Oh, and in case you intend on trying that—word to the wise—watch out for splinters. The file doesn't indicate if a splinter stuck "Ness-ul," but he deserved it.

Meanwhile, Antonio had a job interview with the Olive Garden, so I doubt he and "Ness-ul" spent as much time in the gazebo as that girl and I did. The Olive Garden will, from time to time, hire someone with a felony record and they were considering hiring Antonio. But for "Ness-ul" and the county police, the only green, leafy substance that Antonio was desired to sell was the all-you-can-eat salad at the Olive Garden. Actually, it's all you can eat salad, soup, and



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breadsticks. It always amazes me that so many people flock to it. It's lettuce, for goodness sake. Just because they throw in six croutons, two slices of onion, and a tablespoon of tangy dressing into each gallon bowl doesn't church it up enough to call it a salad. Likewise, throwing some butter and garlic salt on that tasteless, doughy bread of theirs doesn't make it worthy of being called a breadstick. I'm surprised real breadsticks across the land aren't up in arms over this. I do, however, enjoy their soup. Antonio believes I criticize the Olive Garden too harshly, although he will confess that the minestrone needs a dash more basil.

Of course, now that you wish to incarcerate Antonio, his dreams of employment at the Olive Garden are quashed completely. His children will now suffer, their mother will suffer. Heck, even the Olive Garden will suffer. After all, it sounds like he was on his way to improving their minestrone.

Can you please reconsider your plea offer and place Antonio on probation? It's a win-win for all. Thank you.

Your very truly,
Edgar F. Bogle

The Chuck Wagon and the Cello

Dear Howard:

I am writing you regarding Ms. Valerie Kanowski, who is charged with various traffic offenses relating to an automobile collision in which William Augustus Anthony III, Charles Lifford, Brent Ratchford, and I were the victims. No, I am not writing to request that you throw the book at her. Rather, I am writing requesting you show her mercy. Why, you may ask? I will explain.

You see, this all began when we were on our way to the Longhorn for lunch. Since you are new to the District Attorney's Office, you may not be familiar with everyone involved: Mr. Anthony, my esteemed partner, better known as "Gus," Mr. Brent Ratchford, and I have been eating lunch together for years. In many ways, it is the highlight of our day. When Mr. Lifford, or "Chuck" as he is known, joined our firm, he became part of our lunch gang as well. Chuck retired as an assistant chief of police from the Gastonia Police Department several years ago and decided to return to school to become a lawyer. Why he chose to join our firm, one can only speculate. I am assuming it's because of lunch. Regardless, Gus and I are pleased because among other assets Chuck brings to the firm, he also drives us to lunch.

On this particular day, Chuck was driving his recently acquired 2013 Camry east on Franklin Boulevard. Brent occupied the front passenger seat while Gus and I sat comfortably in the back. We had stopped at the New Hope Road traffic light when suddenly, WHAM! Someone had run into the rear of Chuck's car, which Gus had affectionately named the "chuck wagon." Although the impact was not tremendous, it startled all of us. Gus and I turned to see who and what had rear-ended us and observed a young lady in her 20s behind the wheel of an older model Honda Accord station wagon. Avoiding eye contact, she appeared to look to see what damage, if any, she'd caused. She began to back up her vehicle in what I thought was an effort to separate her car from ours; and then it happened. She threw her car into drive,

mashed the accelerator, swerved to the right, and commenced her escape. "She's rabbiting," Gus yelled. "Get her, Chuck!"

You talk about excitement. My blood was pumping. We were going to be in a car chase—with an ex-cop at the wheel. Wow. Although adrenaline consumed us, we still observed her tag number and duly recorded it. Of course, that wouldn't matter because we were clearly going to catch her—after all, there was no way she would get away from the 2013 Camry in that old station wagon. Well, at least that's what we thought. As it turns out, Chuck, in an attempt to activate his flashers, disengaged his steering wheel setting and then could not locate the flasher button. "She's getting away," we all shouted. Skipping the flasher option, Chuck took off after her. Meanwhile, she'd taken a right onto New Hope Road, the back end of that Honda fishtailing perfectly through the turn. She then headed south with surprising speed and had gained at least 100 to 150 yards on us. By the time Chuck had turned right onto New Hope, she had reached the light at Burtonwood Drive, which was red. Undaunted, she drove into the empty left turn lane, tires squealing, and ran the red light in a most impressive maneuver just as the light turned green. And just like that, she was gone.

Realizing defeat, we called 911 and returned to the scene of the accident. As we waited for the police to arrive, we continued to give Chuck a hard time. As it turns out, he'd never been in a car chase before. Like he pointed out, you don't see too much action of that nature in the Alcohol Law Enforcement division. That little tidbit of information did not assuage our disappoint-

ment. A short time later, Officers Mike Thomas and Keith Quinn arrived on the scene. They interviewed us as they jotted down detailed notes regarding the whole affair. Of course, if you know Officer Thomas, you know how precise this man is. He may be the most overqualified individual ever to work traffic accidents. The number of courses and classes he's taken just to write accident reports exceeds the education one would receive from most undergraduate institutions. Overqualified individuals always intimidate me. I remember when Gus and I received a résumé from a lady who was applying for a paralegal position with us. She possessed four different undergraduate degrees, spoke three languages, and had played in the Charlotte Symphony Orchestra. Overwhelmed, I showed the résumé to Gus. He read it, looked at me, and said, "She had me at cello." Needless to say, we couldn't afford her.

Fortunately, we did not have to pay for the advance skills of Officer Thomas, who efficiently recorded all of the relevant information regarding the accident and then set out to arrest Ms. Kanowski. Although the "chuck wagon" had sustained no noticeable damage, Officer Quinn pointed out that the material inside the rear bumper most definitely would require repair. While everyone else was angry at Ms. Kanowski for leaving the scene of the accident, I had to commend her excellent driving skills to the officers. Sure, she'd violated numerous traffic laws; and admittedly, it is never good to run your car into a bunch of lawyers. Nonetheless, if she can drive that old Honda Accord station wagon with such skill, speed, and poise, she could eventually join Danica Patrick on the NASCAR circuit. So, please, be lenient on her. She may become a star one day.

Yours very truly,

Edgar F. Bogle

Of Mice and Marijuana

Dear Ms. District Attorney:

I apologize for not visiting you earlier regarding this case. However, you will be pleased to know that I have reviewed the file with my client. That said, I was inquisitive as to why you wanted Mr. Hills to plead guilty to felony possession with intent to sell/distribute marijuana? After all, the file indicates he's a robbery victim in this case. Additionally, the case involves less than seven grams of marijuana, and my client was not

one of the two alleged contracting parties. In my opinion, the only thing Jeffrey Hills is guilty of is being a good brother.

That's right. I'm starting this letter by extolling the brotherly virtues of my client. While I don't know if the nobility of his actions rose to a level worthy of a Dostoyevsky novel, I do know that they shouldn't warrant much of a punishment, if any. According to the file, Mr. Hills accompanied his brother to Mr. Robinson's automobile where his brother was to receive \$90 in exchange for what the police allege to be seven grams of marijuana. Evidently, that shameful little Mr. Robinson grabbed the weed and tried to drive off, when my client—acting nobly I might add—jumped into the would-be thief's vehicle and attempted to put a stop to his chicanery. At this point, the thief pulled a gun on my client and left with the money and the weed.

Disappointed? Yes. Angry? Yes. But more than anything, Jeffrey Hills was hurt! Hurt, because he couldn't help his brother. Even with all of his might and all of his will, he was no match for a loaded .45 pointed his way. No doubt his brother still appreciated Jeffrey's attempt to help. Jeffrey's his big brother, so he's relied on Jeffrey many times in their lives. Like all those times when Jeffrey would complete both of their chores, so his little brother wouldn't get in trouble. Or those times Jeffrey rescued his little brother when he couldn't keep up. Or maybe it was just the thousand times Jeffrey tied his little brother's shoes when they were kids. Whatever the case, being an older brother—a good one, that is—has its drawbacks. And this event proves to be no exception to that rule.

Before I continue my case for Jeffrey, I would like to inquire quickly as to what was Mr. Robinson's intended use for the marijuana? If he intended to reduce it to extract, I'd like to know. You see, recently, while in my optometrist's waiting room, I had a great conversation with a gentleman who, along with other scientists, had been conducting experiments on mice in hopes of discovering new and valuable uses for the extract from marijuana. As he explained to me some of their findings, I could not deny their impressive nature. Still, did the mice not experience any negative effects? At this question, he hung his head slightly. After a few seconds, he began to answer. He said it started slowly, but within days of exposure to the extract,

the mice began showing up late for experiments. When they did arrive, their clothing was disheveled. After three weeks of treatment, they had completely abandoned their traditional attire in favor of sunglasses and what he could only describe as "more comfortable" clothing. One of the mice had even appeared for his experiment in a bath robe and bedroom slippers. And the overall performance of the mice during experiment and testing procedures dropped considerably. Several mice even refused to participate, instead opting to fall asleep. Similarly, the mice adopted a completely new approach to their free time. The treadmill, once the most popular item in the mouse village, now sat idly, covered with a thin layer of dust. Instead, the mice had opted to spend hour after hour watching internet videos and playing online games while eating copious amounts of Cheetos, Doritos, and potato chips. Not surprisingly, the mice as a group experienced a 23% weight increase in three short months. When I asked the gentlemen how he thought the public might react to the negative findings, he informed me the public would never know. He went on to explain that because the experiment was privately funded by a corporate entity, they had no duty to release any negative findings or conclusions. "What corporation would refuse to release such important information?" I asked. He looked around quickly for eavesdroppers, then turned to me and whispered, "Frito Lay."

So I am sure now you can see my concern for the intended use of marijuana. Of course, whatever Mr. Robinson's intended use, he had no justification for robbing my client. As I pointed out earlier, my client was simply attempting to help his brother, like he'd done thousands of times before. I would even argue my client was completely just in his actions. After all, Mr. Robinson was clearly the breaching party of whatever contract he and my client's brother had. And my client, like many honorable men, observed this wrong and sought to right it. Isn't that more of a noble act than a criminal one? At the very least, it should mitigate my client's culpability to more of a misdemeanor punishment than a felony. Don't you think?

Please let me know your thoughts on this matter. In the meantime, watch out for mice wearing bath robes and sunglasses.

Yours very truly,

Edgar F. Bogle ■

Double Checking

BY LEANOR BAILEY HODGE, TRUST ACCOUNT COMPLIANCE COUNSEL

It's vacation season! The world is back on the move after the screeching halt caused by the worldwide pandemic that began a few years ago. If you follow travel reports in media, then you know that the combination of summer and a world on the move means lots of planes, trains, and automobiles for Americans. However, before we hit the road or take to the skies, we must pack for the trip. Efficient packers usually have a packing list and a process that includes double checking that list to ensure that they have all items needed for the trip. Regrettably, the double checking of efficient packers is not the only type of double checking on the rise since the pandemic. Criminals are also double checking, but in a different way. They are counterfeiting checks drawn on lawyers' trust and fiduciary accounts hoping to enrich themselves with ill-gotten gains.

Rule of Professional Conduct 1.15-2(p) requires a lawyer who discovers intentional theft or fraud in a trust or fiduciary account to report the incident to me immediately.¹ Because of this requirement, I am reminded almost daily that theft by counterfeit check is prevalent. This fraud is typically perpetrated in one of two ways. The fraudster either (1) steals an authentic trust account check and washes it (i.e. changes the payee's name, amount, and sometimes the signatory on an actual trust account check) or (2) creates an entirely different check that bears the firm name, bank routing number, and account number, but differs from a true trust account check in most other observable ways. Spotting the second type of counterfeit check is usually easier because the canceled check images do not look like true trust account checks. It can be a bit more challenging to identify washed checks, especially if you are not familiar with the payees and amounts of checks issued on the account. In those instances involving

washed checks, the original check was either stolen directly from a mail receptacle or obtained after a true recipient ceased to have need for the check, often after the recipient has negotiated the check using mobile deposit. While not common, I am also aware of one instance in which the original check was washed in connection with misuse by a rightful recipient.

Pursuant to Rule of Professional Conduct 1.15-3(e)(1), for each general trust, dedicated trust, or fiduciary account, the lawyer is required to review the bank statement and the canceled checks for the month covered by the bank statement. Subsection (5) of this rule requires that a report of the monthly review be prepared and that the report be signed and dated by the lawyer. Unlike the reconciliation requirements of Rule of Professional Conduct 1.15-3(d), Rule 1.15-3(e) expressly states the review requirement is the duty of the lawyer. Monthly canceled check review is a valuable tool to help protect against theft of entrusted funds by fraudulent check and, since it must be performed by the lawyer, some types of employee theft as well. If you follow disciplinary cases, you know there have been instances of employee theft that would have been discovered if the lawyer had complied with this ethical requirement.

Monthly review of canceled check images is an important and necessary duty, but can be a mundane task. It helps to know what you should be looking for, especially if many trust account checks are processed in your trust account each month. Hallmarks of checks that have been washed include unfamiliar payee names and amounts that are usually in the thousands of dollars. Some of these checks also include fake signatories. In one recent fraudulent check occurrence, the lawyer noticed that Richard Nixon had signed the fraudulent check. Spoiler alert: Richard Nixon was not affiliated with the firm whose trust account check had been

counterfeited. Entirely counterfeit checks often look very different from authentic trust account checks, with the only common factors including the law firm name, bank routing number, and account number. For this reason, these fraudulent checks are easily detectable during review of canceled check images.

In addition to performing the mandatory monthly canceled check image review, many lawyers also take other steps to protect their clients' entrusted funds from theft by counterfeit check. Some lawyers review canceled check images online at more frequent intervals. Other lawyers, whose banks offer a Positive Pay service, use it to help identify fraudulent checks before any entrusted funds are stolen from the trust account. These extra efforts are great supplements to the required monthly review of canceled check images, but they cannot replace it.

Whether you are among those efficient travelers whose pre-trip preparations include lists that you double check before departure, or are the type of vacationer who simply throws a few things in a bag before heading out, as a lawyer it is important to remember the other type of double checking. If you maintain a general trust, dedicated trust, or fiduciary account, these days fraudulent checks are a commonplace issue that you must double check and guard against. Monthly review of canceled checks is the ethically required mechanism for protection against theft of entrusted funds by fraudulent check. Therefore, make sure you are reviewing your canceled check images each month, even double checking them, to make certain nothing looks suspicious. ■

Endnote

1. If funds are stolen from your trust account by fraudulent check, in addition to reporting to me, you should report the incident to the bank and law enforcement, and review and follow the guidance given in 2015 FEO 6.

Orly Reznik, Estate Planning and Probate Law Specialist

BY DENISE MULLEN, MANAGING DIRECTOR, BOARD OF LEGAL SPECIALIZATION

I recently had an opportunity to catch up with Orly Reznik, a board certified specialist in estate planning and probate law. Orly is a solo practitioner in Cary, NC, with a niche practice focusing on wills, trusts, estates, and business succession planning. She graduated from Rutgers University School of Law in 2007, and moved from New Jersey to North Carolina in 2009. Orly became certified as a legal specialist in estate planning and probate law by the North Carolina State Bar Board of Legal Specialization in 2022.

Q: Tell us about yourself.

I was born and raised in Essex County, New Jersey. I attended Washington University in St. Louis, Missouri, for my undergraduate degree. St. Louis was a great college town and I really enjoyed living there. So much so that I took a year off after college to enjoy St. Louis and work before beginning law school at Rutgers University. During law school, I interned at Archer and Greiner PC, a medium-sized New Jersey law firm. The firm was a great fit for me, but they didn't have a spot in the trusts and estates division. Nonetheless, after graduation I joined the firm as an associate in the environmental litigation department. The work was interesting, but it wasn't the area in which I wanted to practice. After about two years at Archer and Greiner, my husband received a job offer in Cary, North Carolina.

Moving to Cary was the best decision we ever made. We love living here and it was the perfect opportunity for me to transition into a different area of legal practice. After relocating, I took the North Carolina bar exam and worked in property management, drafting leases and managing eviction cases. Eventually I joined a small business and estate planning law firm in Cary. It was at that time I decided to truly dive into the field of trusts and estates

and began to work towards specialization and pursuing advanced legal degrees.

In 2016 I founded my firm, Reznik Law, PLLC, a law firm focused exclusively on estate planning. I founded my own firm so I could provide a lot of hands-on assistance to clients. I wanted to create a law firm where clients knew their lawyer was accessible and available to answer their questions. As I worked on growing my law firm, I also worked on expanding my level of expertise. I completed my Master of Law in taxation in May 2023, and will complete my Master of Law in elder law by the end of 2024.

Q: What led you to become a lawyer?

My family inspired me to become a lawyer. I'm a first generation American and my parents never had the opportunity to attend college. They moved to this country with a high school education and a business idea. They worked tirelessly, seven days a week, to make their business a success. One of their biggest struggles was obtaining affordable legal assistance. My parents were adamant that they didn't want me taking over the family business, so I figured obtaining a legal education was one way I could still help them and their business.

Q: How has certification been helpful to your practice?

Board certification has been a tremendous help to my practice. The exam preparation process deepened my understanding of this area of the law. It also helps to let clients know that I am truly committed to this area of practice. It demonstrates my dedication to staying current with the latest changes that impact estate planning. I have also received feedback from clients that they specifically chose to work with me because of the board certification.

Q: How does specialization benefit the public? The profession in general?

Specialization benefits the public because it gives the public an objective measure of their attorney's capabilities. Many people don't know attorneys personally, and often turn to internet reviews or social media for attorney recommendations. That is a great place to start, but that recommendation alone may not provide the individual with an assurance that the attorney is the right fit for their legal needs. Specialization allows the public to confidently hire an attorney and know that they are truly committed to that area of practice and have the necessary skills, because they can rely on the specialization application and exam process.

Q: Tell me your biggest success story related to your estate planning law practice.

Unfortunately, success stories in the field of estate planning can be difficult to truly celebrate because they are typically related to someone's passing. The closest thing I have to a success story is a case that is very personal to me because it involved a member of my community. A young single parent received an unexpected terminal diagnosis, and they didn't have the time or means to update their estate plan. An update was essential because the individual didn't have a trust for their minor child, and the current guardianship arrangement was no longer in the child's best interest. I volunteered to create the estate plan *pro bono*, and a very generous family friend volunteered to become the child's guardian. Time was of the essence, and I worked through the night to create the estate plan, present it to the client while they still had capacity, and get all the documents signed. The client passed a couple days after signing the documents. This case was very meaningful to me because I saw the relief and peace in the parent's eyes as they signed the documents. They seemed to gain a sense of peace knowing that their child would be cared for by the right people, and that the child's finances were all in order.

Q: What is most challenging about your



Reznik

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work?

Planning an estate and thinking about one's own legacy and mortality can be very emotional. Every client's level of comfort in discussing these topics is different. For some, this topic is extremely difficult, and it's my job to not just offer legal advice, but also provide emotional support to help the client get through the estate planning process.

Q: How do you keep yourself motivated?

My colleagues help keep me motivated. I am very fortunate to have a wonderful group of estate planning colleagues. We've been friends for years and we have Zoom meetings, group texts, and lunch meetings. We all have different skill sets and work collaboratively to help support each other and our law practices. We are there as a sounding board for practice management issues or anything else that comes up in our practices and personal lives. Burnout is real, and this group of colleagues has been a great resource to help keep the practice of law fun and help me maintain a healthy work-life balance.

Q: Why is this job a good fit for you?

I truly love this area of practice! I enjoy creating an estate plan because it's like putting a puzzle together. We need to consider the client's assets, their goals, their unique family situation, and the tax consequences. All these elements need to fit together in an efficient and cohesive way. The most rewarding part of my practice is problem solving. Often clients

come to me with a planning scenario they think isn't possible, or an estate/trust administration issue that they think is unsolvable. I love being able to provide solutions.

Q: What advice do you wish you had been given when you were starting out?

Trust yourself. As a young associate attorney, it is tempting to quiet one's own instincts and listen to senior people around you. While advice from senior practitioners is helpful, it should not be taken to the point where it contradicts one's own interests or desired career path.

Q: What do you enjoy doing when you are not working?

I enjoy spending time with my husband and two children. We like taking road trips and being patrons of the arts. We love to attend musicals, plays, symphonies, concerts, and festivals. I also enjoy doing volunteer work with my daughter. She and I are members of the Carolina Lily Chapter of the National Charity League. This is a national charitable organization dedicated to mothers and daughters doing philanthropic work together. It is a six year service commitment and a great way to do some mother-daughter bonding while giving back to our community.

Q: What is your immediate next goal in life?

My immediate next goal is to complete my second Master of Law. I graduated from Boston University with my Master of Law in taxation in May 2023. I am four courses away from

completing my Master of Law in elder law and estate planning from Western New England University. I wasn't kidding when I said I was a lifelong learner.

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

I read a quote once that really resonated with me. I don't remember the author, but it went something like, "Life is hard, do what you can to make it easier for those you encounter." I try my best to incorporate this philosophy into my daily life and law practice. Modern life is fast paced, and everyone is so busy. It can be hard to find time for anything extra. I always acknowledge to my clients that estate planning is extra. They are adding estate planning to an already full to-do list. I try to provide support and resources to my clients to make the planning process as easy for them as possible. This includes having a lot of client contact and not simply sending the client estate drafts for them to review on their own. I meet with the client and explain the documents to them, section by section. This makes the planning process less overwhelming for the client. It also assures me that the client read their documents and understands them, because I was there and we did it together. ■

For more information on the State Bar's specialization programs, visit us on the web at nclawspecialists.gov.

A PSA for Our Times: Adderall and Delta-8

BY ROBYNN MORAITES AND HAROLD HONG, MD

Consider this article a public service announcement based on the emergence of an alarming trend we're seeing at the Lawyer Assistance Program: an increase in cases of drug-induced delusion and psychosis, not only in lawyers, but in children of lawyers. This article explains why. One case is too many—in a lawyer or their child. Our hope is to reduce these occurrences in lawyers and their children with education about this trend.

Unfortunately, detoxification and cessation of the drugs that caused the psychosis do not guarantee that the psychosis will ever abate. Yes, you read that right: *ever*. The implications are chilling, particularly for those of us in a profession that values our cognitive ability and whose success in the profession is entirely dependent upon intellectual acuity.

In today's US healthcare system, disorders often become widely diagnosed only after medications have been developed to treat them. For example, erectile dysfunction was not widely diagnosed until Viagra, originally being developed as a cardiovascular medication, was shown to also be effective in the treatment of erectile dysfunction. Similarly, Adderall has transformed the landscape of attention deficit hyperactivity disorder (ADHD).

According to the CDC, approximately six million children in the US were diagnosed with ADHD from 2016 to 2019,¹ approximately 60% of whom are receiving medication as a primary form of treatment.² The most commonly prescribed medications are Adderall and Ritalin.

There are also many adults using Adderall for academic and job performance who have no history of ADHD. The number of Adderall prescriptions for adults surged during COVID.³ The surge is a result of quick-to-prescribe online platforms flooding social media with advertisements on how to easily obtain it. US demand for the drug is so high, it has resulted in a long-term, nationwide, "demand-driven" shortage of the drug,⁴

which began in the fall of 2022.⁵

Adderall use is prevalent in the legal profession, and it is one of the most commonly used and abused prescription medications. It is easy to see why. It is an amphetamine. All stimulants, to varying degrees, can give one a sense of euphoria and well-being. But most lawyers start taking Adderall to enhance academic and, later, job performance. It should be noted that sometimes lawyers start using Adderall (with or without a prescription) to counteract the residual effects of long-term use of alcohol, marijuana, or benzodiazepines they may be taking for anxiety. Upon taking it, one feels more alert, awake, focused, organized, and motivated. Behind LAP's closed doors, we hear about law firms making unmarked bottles of Adderall available in the restroom for general use when pushing towards an all-hands-on-deck-round-the-clock deadline. Adderall abuse is so well-known and mainstream, it even shows up in sitcom TV shows like *Silicon Valley*.⁶ If you want to laugh at a sad commentary on just how easy it is to get a prescription for Adderall, *or anything else for that matter*, watch John Mulaney's current Netflix comedy special, *Baby J - A Wide-Ranging Conversation*. With so much acceptance in mainstream pop culture, one might be inclined to think that a legitimate prescription of an FDA-approved medication is safe, right?

Enter epigenetics.

Epigenetics is the study of how behaviors and environment can cause changes that affect the way our DNA/genes work or how our DNA/genes "express" themselves (i.e., show up as traits or health conditions, both good and bad). Epigenetics first gained real traction and visibility in research for conditions like cancer, Alzheimer's Disease, Multiple Sclerosis, and other autoimmune diseases. So, to the question, is it nurture or nature? Epigenetics is finding that the answer is both. Our DNA loads the gun, but the environment pulls the trigger. At least that's what epi-



geneticists are discovering for a host of conditions. Our DNA alone is not the problem, but it can set us up to have a problem if we are exposed to certain environmental stressors (like carcinogens, neurotoxins, or other chemicals we might ingest in the food supply or in medications we take).

For example, it is well known in recovery circles that someone can be genetically predisposed to alcoholism. For a majority of recovering alcoholics, alcohol had a different effect on them than casual drinkers—right out of the gate. But take someone who comes from a long family line of alcoholics throughout the generations. While that individual may be genetically predisposed, they will not become alcoholic if they never take a drink of alcohol. The trigger of that particular gun never gets pulled—for them. But the gun is still loaded for their children, genetically speaking.

Many parents in the 12-step fellowship of Al-Anon—for friends and family of alcoholics—come in dismayed and confused because, although they've never had any alcohol themselves (by choice due to growing up with alcoholic parents), their teen or young adult children are nevertheless having serious problems with alcohol, despite having been raised in an alcohol-free home.

The research in epigenetics is exploding with the dramatic rise of cancers, autoim-

mune disorders, as well as neurodegenerative conditions—a rise in both total numbers of people contracting these diseases as well as new variations of disease type. And now, there is early epigenetic research conclusively linking Adderall use, psychosis, paranoia, and schizophrenia.

Psychosis is a loss of contact with reality causing the inability to differentiate between what is real and what is not. When someone is having a psychotic episode, the thoughts in their mind seem like reality.

It might not be initially clear that the person is in a psychotic episode. Psychosis does not mean the person is necessarily “acting crazy.” They may appear calm, collected, intelligent, and well spoken. The observer may not realize anything is at all amiss until the person begins reporting or responding to phenomena that clearly do not exist. Either the observer has no idea what they’re talking about because the person is hallucinating, or the person is reporting something with no basis in reality—for example, reporting that a centuries-old historic figure was the person’s best friend growing up.⁷

Paranoia and paranoid delusions often take center stage. Even under fairly normal circumstances, lawyers can experience paranoia as a result of our training, the adversarial nature of our work, and baseline reputational fear of showing weakness or being exposed in some way. Actual, diagnosable paranoia goes further. It involves intense anxious or fearful feelings and thoughts often related to persecution, threat, or conspiracy that others are “out to get me” in some way with no evidence, proof, or basis in reality. Paranoia makes a person think and feel they are in a perpetual state of actual danger. Paranoid thoughts can become delusions when they become so fixed that nothing can convince a person that what they think or feel is not true, even when all evidence points to the contrary.⁸

We have been scratching our heads because we are seeing more and more cases of delusional disorder. According to the Cleveland Clinic, delusional disorder is “a type of psychotic disorder. Its main symptom is the presence of one or more delusions. A delusion is an unshakable belief in something that’s untrue. The belief isn’t a part of the person’s culture or subculture, and almost everyone else knows this belief to be false.” As an example, someone may be convinced that they are working within a vast conspiracy involving financial fraud and that

they are under constant surveillance, when in reality they are conflating delusional paranoia with a contentious real estate or business transaction.

It is difficult to spot and identify substance use disorder problems when caused by prescriptions like Adderall until we see the psychosis and paranoia. These are lawyers who do not identify as having any kind of a substance use disorder problem, far more so than the baseline denial we usually see. Yet, when we suggest cessation of the pills, they will not remotely consider giving up their “legitimately prescribed” Adderall, insisting they “need it to function.”⁹ And yet their very sanity depends entirely upon medically detoxifying from these kinds of substances.

Similarly, we are seeing more reports from lawyers about their adolescent and young adult children exhibiting signs of very serious mental illness, including psychosis. Psychosis in teens can be particularly difficult to spot at first because it can start with isolation and withdrawal from family and friends. Even healthy teenagers withdraw from family members just for the cool/uncool factor. But when psychosis is unfolding, as paranoia develops, the teen or young adult may cut off all communication and contact with parents or other family members. The psychosis may take the form of allegations of verbal and physical abuse that plainly did not happen. Parents begin to question themselves and historical interactions, second guessing themselves and how their seemingly benign interactions could have been so misinterpreted. Any attempts at clarifying or insisting on communication will be met with strong resistance, often including violence towards the parents and/or threatening suicide and self-harm, necessitating calling the police and proceeding with involuntary commitment.

Schizophrenia is often misunderstood as a split personality. Schizophrenia is an inclusive umbrella diagnosis when there are symptoms of psychosis, paranoid delusions, hallucinations (auditory hallucinations are more common than visual ones), disorganized thought patterns, and an inability to express emotions or experience pleasure.¹⁰

All these conditions involve dysregulation of the dopamine system. What do drugs and alcohol do? They impact the regulation of dopamine in the central nervous system. But some drugs—even prescription drugs—have more of an impact than others. Adderall and marijuana—two of the most abused sub-

stances—are two of the most impactful.

Russian Roulette

The difficulty here is that 99% of people who take Adderall will not be driven into either acute episodic psychosis or long-term chronic psychosis. But some will, and the odds certainly increase if they have a genetic predisposition for this type of reaction. How can you tell if you have (or your child has) a genetic predisposition? You can’t. You can’t, that is, until you take it for some time (or give it to your child) and see what happens. For a profession and a group of people that value our cognitive ability above all else, it feels like a game of Russian roulette with a bullet loaded in the chamber.

Adderall packs more of a dopamine one-two punch than Ritalin. Not only does it act as a dopamine reuptake inhibitor, leaving more dopamine behind in the neuronal synapse (space, or gap), but it also encourages extra dopamine release. Adderall has the effect of being a much more potent stimulant medication by having a greater ability to increase dopamine activity. The precise mechanism by which Thus, Adderall or other stimulants induce psychosis remains unclear; however, anti-psychotic medications like Haldol work by blocking the dopamine receptor and reducing the overall dopamine signaling in the brain. It is therefore a common belief among scientists that excessive doses of stimulants can cause the psychotic symptoms of delusions and hallucinations by inducing excessive levels of dopamine.

Scientists always differentiate causation from correlation. While scientists are still researching the intricacies of the dopamine and psychosis cause and effect, research has conclusively established a correlation between the intake of amphetamines like Adderall and the development of psychosis.^{11 12} As we often see in the substance use disorder world, science can be slow to catch up to common sense experience and observation. Just ask Google (search “Adderall induced psychosis and paranoia”). There are dozens of sub-Reddit threads—some dating back ten years—of people describing their own psychotic and paranoid delusional episodes when taking even low doses of Adderall, both with and without an ADHD diagnosis.

An ADHD diagnosis does not guarantee safety from a psychotic episode.¹³ Once a person is psychotic, if you can get them to a hospital, they are treated with antipsychotic

medications called dopamine antagonists, like Haldol, which block the effects of dopamine.¹⁴ The risk for serious adverse effects is compounded when combined with other substances (either prescribed or not—we will cover both) used to offset the side effects of long-term Adderall use, the most common of which are anxiety, inability to sleep, and panic attacks.

Enter polypharmacy.

Polypharmacy is an umbrella term used to describe the simultaneous use of multiple medicines, typically five or more. The medical-industrial complex promotes this practice. Most medical treatments today are more about symptom management or temporary alleviation than about curing the underlying medical condition or eliminating its cause. Rather than recommend a patient discontinue Adderall if it causes anxiety or insomnia, many well-meaning prescribers will prescribe Klonopin—a benzodiazepine—to counteract Adderall's unwanted effects.

Benzodiazepines (benzos), also highly addictive, are a class of medications that slow down activity in the brain and central nervous system.¹⁵ The most common benzos are the prescription drugs Valium (diazepam), Xanax (alprazolam), Halcion (triazolam), Ativan (lorazepam), and Klonopin (clonazepam). One of the problems with the use of benzos to counteract the effects of Adderall is that benzos are not meant for long-term use. They are meant to be used for the acute and brief (one to two weeks) treatment of anxiety. Benzos are often used to treat panic attacks in emergency rooms, without a follow-up prescription. Studies show that tolerance develops over the course of days or weeks, and after four months, the brain has altered itself to the point that a given dose of benzodiazepines is no longer effective.¹⁶ It is also worth noting that alcohol and benzos are essentially the same, as far as the brain is concerned.

LAP has worked with lawyers who have used multiple brain chemistry pills for years. We've seen lawyers on as many as eight different psychiatric medications. Detox must be medically supervised, and dosages carefully reduced over weeks or months depending upon the drugs. Like alcohol, immediate cessation of benzos can throw someone into severe withdrawal syndromes of racing heart rate, dangerously high blood pressure, hallucinations, seizures, and eventually a potentially fatal condition called delirium tremens which requires care in an intensive care unit. Why?

Because our brain has learned to “lean” on the external substances to operate at an appropriate level of intensity. But when those substances are suddenly taken away, we lose balance, and the brain inadvertently creates a surge of intensity by releasing an uncontrolled amount of adrenaline and glutamate. The only way to safely detox from these medications is under close medical supervision, often in an inpatient setting.

That is what happens in the prescription drug world. But as we've noted, many Adderall users do not have valid prescriptions. The lawyers, or their children, who are using Adderall without a prescription are more likely to turn to nonprescription remedies to self-medicate the side effects of Adderall use. Research shows that users of nonprescription stimulants are more likely to report use of alcohol, cigarettes, marijuana, ecstasy, and cocaine.¹⁷ Marijuana edibles, like delta-8, are quickly becoming the go-to substance of choice to help one feel calmer and get to sleep.

Cannabis and THC

As a result of the sweeping legalization across the country of its use for both medical and recreational purposes, there are some serious misconceptions about marijuana's purported safety. It is not an overstatement to say that many readers might assume marijuana use is “safer” than alcohol use. But to be considered safer than the fourth leading cause of preventable deaths¹⁸ is not saying much. The dangers of THC are especially concerning when combined with Adderall, and especially in people ages 11 to 25 (even without Adderall).¹⁹

Enter delta-8.

Delta-8 (short for Delta-8 THC) is technically a “hemp” product, so it is currently legal at the federal level and unregulated. As a result, sales of delta-8 products across the country have exploded. You can buy it at your local gas station or convenience store, along with other unregulated synthetic or designer drugs, like kratom, spice, and bath salts.²⁰ Sometimes packaged like candy, it is often sold in the edible form of gummy bears and marketed to youth.²¹ It's also sold at herbal stores or CBD stores as a “natural remedy” sleep aid.

Let there be no confusion—delta-8 is a type of THC. THCs are the psychoactive chemicals contained in marijuana, which is addictive. Because delta-8-containing prod-

ucts are not regulated, manufacturers employ various methods to increase the concentration of THC in their products to keep consumers coming back for more. Some products reach a THC potency of 95%.²² This is especially true for delta-8 vape juice products. Vape juice is liquid used in e-cigarettes, which, when heated, creates an aerosol that users inhale.

The FDA recently started tracking delta-8 related “adverse events” and calls to poison control centers.²³ Adverse events (over a 14-month span) included, but were not limited to, hallucinations, vomiting, tremor, anxiety, dizziness, confusion, loss of consciousness, admission to hospitals (including critical care units), and at least one known death.²⁴ As if that weren't enough, our dogs are going into seizures from neurotoxicity from eating dropped edibles while they are out on their evening walks.²⁵

I consulted Harold Hong, MD, for help writing this article. Dr. Hong is the medical director at New Waters Recovery in Raleigh. He spoke at our annual LAP conference in November about the neuroscience of addiction and recovery. I have been at LAP for a dozen years now, and I have never witnessed a response like I did when he described the impacts of marijuana use on the young, still developing brain. There was a collective gasp. Now let me assure you, not much can shock LAP volunteers—much less cause gasping. Most of them are well-schooled in the neuroscience of addiction. But neuroscience research and understanding are evolving.

The LAP volunteers audibly gasped when Dr. Hong talked about synaptic pruning, which is particularly crucial to brain development in late adolescence through the mid-20s. This is the process that occurs as we mature from emotionally reactive children, with little-to-no impulse control, into more measured, thoughtful, reasoning adults. Synaptic pruning is a process during which the highly emotionally reactive “tendrils” of neurons are pruned, eliminating up to 50% of the synaptic connections in some regions of the brain. The process contributes to the increases in brain efficiency, learning, and emotional maturation seen during adolescence and young adulthood.

More importantly for our purposes, appropriate pruning is associated with effective mood regulation and impulse control, while disrupted pruning is associated with clinical mood disorders²⁶ due to overactivity,

or “white noise” in how different parts of the brain communicate with each other. *Use of marijuana/THC in any form interferes significantly with and stops the pruning process,²⁷ and once this critical window of pruning and brain maturation closes in the mid to late 20s, there is no known way to induce it to happen again, which is to say that these effects on disrupted brain development persist throughout a lifetime.* If an adolescent uses marijuana in any form for, say, five years, the brain does not go back and catch up or make up for lost time. That window has closed. The result? *“It has long been recognized that the use of cannabis in early adolescence increases the risk of later development of psychosis and schizophrenia.”²⁸*

The problem with the conversation around marijuana use is that a 40-year-old who has never used THC before, and underwent healthy brain development, will have a totally different response to it than an adolescent. It is also worth noting that marijuana today is so much more potent and is having some of the same adverse effects on adults, just not for the same developmental reasons. Prior to the 1990s, the THC content in marijuana was less than 2%. In the 1990s it grew to 4%, and between 1995 and 2015 there has been a 212% increase. As of 2021, research shows an average content of 15.34%, with some products as high as 95%.²⁹ At the risk of sounding hyperbolic, instead of the stereotypical super mellow individual we see at 40, we will be seeing a generation of volatile, hyper-reactive, sometimes violent, psychotic, and schizophrenic young adults. And, regardless of age, when used with Adderall, the incidence of psychosis increases exponentially. As we see with alcohol, just because something is legal does not mean it is safe.

Tying It All Together

Adderall use and abuse is on the rise. Its use is particularly prevalent in the legal profession. For a small percentage of lawyers, use of it alone can throw them into psychosis. Acute psychotic episodes are easy to spot. But there are plenty of lawyers experiencing a gradual build of paranoia that develops into delusional disorder, followed by full-blown psychosis, even as they are still functioning as lawyers.

Marijuana use, particularly with products containing delta-8 THC, is on the rise. Its use is gaining momentum in the profession because it is legal in some forms. For a small

percentage of lawyers, use of marijuana by itself can throw them into psychosis based on the potency issues discussed above. Adolescents under the age of 25 should not use it in any form. It impacts and hinders brain development so severely, it puts them at much greater risk for not only acute psychosis when they are young, but also long-term psychosis and schizophrenia as adults.

Adderall use along with products like delta-8 THC is also on the rise, causing or threatening to cause psychosis in a much larger percentage of lawyers.

The Takeaway?

Forewarned is forearmed.

All of this has created a perfect storm. THC increases the total number of synaptic connections by disrupting the process that would have pruned away extraneous connections. Adderall increases the activity at these extraneous connections by dramatically enhancing the levels of dopamine in those connections. Easy access to Adderall has expanded via quick-to-prescribe online platforms flooding social media with advertisements on how to obtain it. Add to that the pervasive availability of THC products at your local gas station or convenience store, and we have a reasonable understanding and explanation for why we are seeing a significant uptick at LAP of both lawyers, and especially their children, with delusional and psychotic symptoms.

For every regrettable action, in the heat of the moment, there was a seemingly good reason to do it. When a major case or deal requires one or more late nights, Adderall can seem like a great option to get across the finish line. When the stress of a challenging case is keeping us up at night, a delta-8 gummy can seem like the perfect solution. But our experience at the LAP tells us that it is not worth the risk. There are numerous highly effective and healthy solutions to these challenges available to us that don’t involve the dangerous consequences of quick-fix drugs. The LAP specializes in helping lawyers find and implement these solutions in their own lives without resorting to “better living through chemistry” that can have unintended, long-lasting consequences, some of which are devastating and irreversible. ■

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 ncclap.org or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.

Harold Hong, MD, is the medical director of New Waters Recovery, a detox and treatment facility in Raleigh, NC. Dr. Hong is a board-certified psychiatrist who is passionate about recovery from substance use disorders and addiction through a holistic approach. Read his full bio at newwatersrecovery.com/who-we-are/meet-the-team/dr-harold-hong.

Endnotes

1. See cdc.gov/ncbddd/adhd/data.html.
2. *Id.*
3. See CNN: bit.ly/3Q7JJtN.
4. *Id.*
5. See FDA: bit.ly/3rlwknr.
6. HBO, Season 1, Episode 6, 2014.
7. See www.nimh.nih.gov/health/publications/understanding-psychosis for an excellent short summary and overview of signs and symptoms of psychosis.
8. For a detailed and devastating account of prescription Adderall abuse and the unfolding paranoia and eventual suicide of a promising young man, see this five-minute YouTube video, youtu.be/7AHkhnmlrZk.
9. This reaction is commonplace across all substances, but something about a prescription legitimizes it more so in lawyers’ minds.
10. See psychiatry.org/patients-families/schizophrenia/what-is-schizophrenia for an excellent short summary and overview of signs and symptoms of schizophrenia.
11. See, e.g., link.springer.com/article/10.1186/1471-244X-12-221.
12. See, e.g., ncbi.nlm.nih.gov/pmc/articles/PMC9403214.
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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/dhcoders.

Disbarments

J. Brent Garner of Rockingham misappropriated entrusted funds, made misrepresentations to the Grievance Committee, improperly disbursed entrusted funds, did not properly maintain entrusted funds, did not conduct required trust account reconciliations and reviews, and did not maintain other required trust account records. He is enjoined from handling entrusted funds. He was disbarred by the DHC.

Charles R. Gurley of Goldsboro grossly abdicated to nonlawyer staff his trust accounting obligations, mishandled entrusted funds, did not represent dozens of clients diligently, did not return unearned fees, delegated much of his law practice to nonlawyer staff without supervision, made misrepresentations to the Grievance Committee, did not provide required information to the Grievance Committee to such a degree that he was held in contempt of court and enjoined from practicing law, did not file personal income tax returns, and did not pay taxes he withheld from employee paychecks for several years. Gurley was disbarred by the DHC.

Rebecca A. Nelson of Raleigh submitted an affidavit of surrender of her law license and was disbarred by the State Bar Council at its July meeting. Nelson pled guilty to and was convicted of one count of second-degree murder and two counts of assault with a deadly weapon with intent to kill inflicting serious injury. She is incarcerated.

Michelle Congleton Smith of Raleigh did not verify wiring instructions before wiring payoff funds in a refinance transaction. As a result, she wired entrusted funds to a fraudster. She also made multiple false statements to the Grievance Committee. She surrendered her law license and was disbarred by the DHC.

Suspensions & Stayed Suspensions

Gregory A. Bullard of Pembroke did not ensure that his law firm remitted withheld taxes from employee paychecks to the IRS for 2007 for six years and did not timely file and pay his federal and state personal income taxes for four years. Bullard has been a district court judge since January 2021. The DHC suspended his license for three years. The suspension is stayed for three years on enumerated conditions, including the requirement that he comply with his payment arrangements with taxing authorities.

Kenneth Robert Davis of Elizabethtown did not properly maintain and disburse entrusted funds, did not conduct required trust account reconciliations, did not always identify the client on trust account checks and deposit slips, did not timely file and pay individual federal and state income taxes, and did not ensure timely filing of employment tax returns and timely payment of those taxes. The DHC imposed a three-year suspension. The suspension is stayed for five years on enumerated conditions.

Monica Savidge of Southport mishandled entrusted funds, did not conduct required trust account reviews and reconciliations, and made misrepresentations to the Grievance Committee. The DHC suspended her license for three years. The suspension is stayed for three years on enumerated conditions.

Completed Disciplinary Review Panels

One disciplinary review panel met on July 21. At the October 2023 meeting, the Grievance Committee will consider any recommendation of that review panel for a disposition that differs from the discipline that was issued by the Grievance Committee.

Reprimands

Lee W. Bettis Jr. of New Bern was reprimanded by the Grievance Committee. He signed pleadings and affidavits in an *ex parte* domestic violence proceeding without adequate review and on behalf of a party he claimed not

to represent. He should have known that statements in the filings were false and that there was not a nonfrivolous basis in law and fact for filing them. During the *ex parte* proceeding, Bettis did not inform the tribunal of all material facts known to him that would have enabled the tribunal to make an informed decision. Bettis also engaged in a conflict of interest by continuing to advise the client about the domestic violence matter, despite his personal interest in avoiding criticism and embarrassment from the proceedings he had participated in.

Transfers to Disability Inactive Status

Douglas Hux of Eden and **Richard T. Dail** of Thomasville were transferred to disability inactive status.

Notice of Intent to Seek Reinstatement

In the Matter of Charles Kevin Blackmon

Notice is hereby given that Charles Kevin Blackmon of Greensboro, North Carolina, intends to file a Petition for Reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Mr. Blackmon was disbarred effective January 16, 2019, by the North Carolina State Bar for failing to act with reasonable diligence and promptness in representing a client, and misappropriating and converting to his own use funds to which his employer was entitled.

In the Matter of Harry L. Southerland

Notice is hereby given that Harry L. Southerland of Raeford, North Carolina, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Southerland was disbarred effective August 9, 2004, by The North Carolina State Bar for misappropriating client funds for his own use.

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the North Carolina State Bar, PO Box 25908, Raleigh, NC 27602-5908, before November 1, 2023. ■

2022 Annual Report: NC IOLTA's Impact and One Client's Story

Justice is a journey, not a destination. For many, the path to pursuing justice in their lives and communities is truly a journey. A journey that might start with a simple event—the onset of an illness, a missed payment, a job lost, a relationship fractured. A journey that involves forks in the road, sometimes having to retrace steps and start from the beginning. A journey that takes time—meetings, finding documents, missing work, getting to appointments, court dates, submitting information, waiting.

Even once that particular journey is resolved in one way or another, the journey continues—where that simple event may now represent a “before” and an “after” in the lives of a family, an experience to be shared with others (good or bad), a milestone on a timeline.

Through our work, North Carolina Interest on Lawyers' Trust Accounts (NC IOLTA) is a part of that journey towards justice for our fellow North Carolinians. We envision a state where all have access to the legal representation they need to thrive. Unfortunately, the resources available to provide

legal aid to those in need continue to fall short of the demand. Using the resources we have, we work to improve the lives of North Carolinians by strengthening the justice system as a leader, partner, and funder. What does this mean? We make grants to civil legal aid and other administration of justice efforts, build awareness of the critical need for legal aid, and contribute to collaborative efforts to problem solve and improve, hopefully putting legal resources within reach for more individuals in need.

NC IOLTA's 2022 Annual Report, 40 Years of Restoring Hope Through Justice, shares more about our work on this journey over the past year.

- Last year, North Carolina's legal services programs served 47,123 North Carolinians.
- Volunteer attorneys contributed more than 13,000 *pro bono* hours to support access to justice through organizations supported by NC IOLTA.
- NC IOLTA administered 2022 grants totaling \$4,254,500.

We encourage you to read more about our impact in the full report at nciolta.org/media/730737/annual-report-2022.pdf.

[dia/730737/annual-report-2022.pdf](https://nciolta.org/media/730737/annual-report-2022.pdf).

Martha's story, shared in the 2022 Annual Report, highlights the journey toward justice for a client of International House, a nonprofit organization located in Charlotte that empowers immigrants and international culture to thrive.

Originally from Monrovia, Liberia, Martha Warkie came to visit relatives already living in the United States in 2000. She didn't plan to stay long term, but the ongoing civil war and political instability in her native country made her decide to apply for Temporary Protected Status (TPS).

A TPS designation currently allows citizens in 16 countries around the world experiencing dangerous conditions, such as armed conflict, to stay in the United States and legally obtain a job. Each year, those with TPS must wait for an announcement from the presidential administration in office as to whether the program will be continued.

Despite ongoing uncertainty about being able to stay in the country, Martha remained

CONTINUED ON PAGE 39

• **IOLTA Revenue.** Income earned on IOLTA accounts in the first half of 2023 exceeded \$7.2 million, nearly surpassing total 2022 income. Board and staff will be working in the coming months to identify priorities for 2024 spending.

• **New Funding Opportunity.** NC IOLTA received eight requests that totaled more than \$2 million in response to the out-of-cycle grant opportunity released in the spring. The out-of-cycle opportunity was structured to fund the recommendations developed from the Legal Needs Assessment working groups hosted last year. The working groups looked at four areas of specific

need from the Legal Needs Assessment—family law, legal services for immigrants, communications and outreach, and coordinated intake—and developed recommendations for improving civil legal aid in these areas. NC IOLTA staff and board are currently reviewing the applications. Grant awards will be announced in early September.

• **Newly Released Video.** How does IOLTA work? You can learn more about NC IOLTA through a new video released this summer. The video explains in brief how we work and the impact we have in partnership with the legal profession, finan-

cial institutions, and nonprofit partners. The video can be found at youtube.com/watch?v=J91GqNmLQs.

• **Updated Prime Partner List.** NC IOLTA continues to celebrate the commitment of Prime Partners—financial institutions that are approved to hold IOLTA accounts in NC that pay a more favorable interest rate in support of increased access to legal services. Current Prime Partners include Bank of Oak Ridge, Blue Ridge Bank, First Bank & Trust Co. of Virginia, First Capital Bank, Providence Bank & Trust, Roxboro Savings Bank, US Bank, and Wells Fargo.

One New Opinion Adopted, Committee Publishes a Revised Opinion on Billing for Overlapping Services

Council Actions

At its meeting on July 21, 2023, the State Bar Council adopted the ethics opinion summarized below:

2023 Formal Ethics Opinion 2

Confidentiality Clause that Restricts a Lawyer's Right to Practice

Opinion rules that a confidentiality clause contained in a settlement agreement that restricts a lawyer's ability to practice violates Rule 5.6.

In addition to adopting the opinion described above, and following favorable votes from both the Ethics Committee and the Executive Committee, the council voted to adopt a proposed amendment to Rule 1.8(e) of the North Carolina Rules of Professional Conduct that would create a new exception to the general prohibition on providing financial assistance to a client in connection with pending or contemplating litigation. The proposed amendment would allow a lawyer to provide modest gifts for basic living expenses provided that a) the client is indigent, and b) the representation is *pro bono* (including representation of indigent clients through legal service organizations and law school clinics) or court-appointed, subject to certain conditions. The proposed amendment will be sent to the Supreme Court for approval during the next quarter.

Ethics Committee Actions

At its meeting on July 20, 2023, the Ethics Committee considered a total of eight inquiries, including the opinion and proposed rule amendment noted above. Five inquiries were sent or returned to subcommittee for further study, including an inquiry addressing a lawyer's ability to obligate a client's estate to pay the lawyer for any time spent defending the lawyer's work in drafting and executing the client's will, an inquiry exploring a lawyer's professional responsibility when using artificial intelligence in a law practice, and an inquiry concerning the permissibility of purchasing a

law firm's trade name as a keyword for advertising through an online search engine. Additionally, the committee approved the publication of a revised version of 2022 FEO 4, Billing Considerations for Overlapping Legal Services, which appears below.

Proposed 2022 Formal Ethics Opinion 4 Billing Considerations for Overlapping Legal Services July 20, 2023

Proposed opinion rules that a lawyer may provide services to multiple clients simultaneously and explores various billing structures for overlapping services.

Inquiry #1:

May a lawyer provide services to multiple clients at the same time, to wit: Lawyer appears at the same calendar call for four separate clients; or Lawyer provides legal services for Client B while traveling for Client A's case?

Opinion #1:

Yes, provided Lawyer's services for each client are not detrimentally impacted by Lawyer's joint efforts and confidentiality is maintained as to each client matter. Modern clients expect a lawyer to be available, capable, and willing to provide services in a variety of scenarios and at a variety of times. Clients also expect a lawyer to make efficient use of time and resources in providing reasonably prompt and diligent representation in accordance with Rule 1.3. If Lawyer can maintain the same quality of services when providing overlapping or simultaneous services to multiple clients, and if Lawyer takes steps to preserve the confidentiality owed to each client when providing such services pursuant to Rule 1.6, Lawyer may provide services to multiple clients at the same time.

Inquiry #2:

Given the answer in Opinion #1, may

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 September 30, 2023.

Public Information

Ethics Committee's meetings are public, and materials submitted for consideration are generally NOT held in confidence. Persons submitting requests for advice are cautioned that inquiries should not disclose client confidences or sensitive information that is not necessary to the resolution of the ethical questions presented.

Lawyer bill each client an allocated portion of the total time Lawyer actually spent performing overlapping services?

Opinion #2:

Yes, provided the client consents to the billing structure and the billing structure is accurate and honest, not clearly excessive, and

any efficiencies created by the Lawyer's provision of overlapping services are passed on to the client. *See* Opinions 3 through 10, below.

Inquiry #3:

Lawyer appears at calendar call on Monday morning. Lawyer spends one hour attending calendar call, during which Lawyer appears on behalf of four clients. Lawyer's fee agreement with each client provides Lawyer may bill \$200 for each hour of legal work completed, including court appearances.

May Lawyer, who bills on an hourly fee basis, bill a total amount of hours to multiple clients that exceeds the actual amount of time Lawyer collectively spent providing the overlapping services (e.g., Lawyer bills each of the four clients for one hour of legal work, for a total of four billed hours of work)?

Opinion #3:

No.

Rule 1.5(a) prohibits a lawyer from charging or collecting "clearly excessive" fees. Comment 6 to Rule 1.5 states that, "[a] lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures." Furthermore, Rule 7.1 prohibits a lawyer from making a "false or misleading" statement about the lawyer's services, and Rule 8.4(c) prohibits a lawyer from "engag[ing] in conduct involving dishonesty . . . or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer[.]"

In RPC 190, the Ethics Committee concluded that it was dishonest for a lawyer to bill one client for the completion of work product and subsequently bill a different client the same amount for the reused work product. "Implicit in an agreement with a client to bill at an hourly rate for hours expended on the client's behalf is the understanding that for each hour of work billed to the client, an hour's worth of work was actually performed. If a lawyer who has agreed to accept hourly compensation for her work subsequently bills the client for reused work product, the lawyer would be engaging in dishonest conduct in violation of Rule [8.4(c)]." RPC 190. In 2007 FEO 13, the Ethics Committee reiterated, "The fiduciary character of the client-lawyer relationship requires a lawyer to act in the client's best interests and to deal fairly with the client. When billing on an hourly basis, fair dealing requires that the lawyer provide an hour's worth of legal services for each hour billed."

The American Bar Association reached a

similar conclusion in 1993. In ABA Formal Opinion 93-379, entitled "Billing for Professional Fees, Disbursements and Other Expenses," the ABA addressed various billing practices involving one lawyer completing work for multiple clients simultaneously, all of which were considered "unreasonable fee[s]" in violation of Model Rule 1.5:

A lawyer who spends four hours of time on behalf of three clients has not earned twelve billable hours. A lawyer who flies for six hours for one client, while working for five hours on behalf of another, has not earned eleven billable hours. A lawyer who is able to reuse old work product has not re-earned the hours previously billed and compensated when the work product was first generated. Rather than looking for profit from fortuity of coincidental scheduling, the desire to get work done rather than watch a movie, or the luck of being asked the identical question twice, the lawyer who has agreed to bill solely on the basis of time spent is obliged to pass the benefits of these economies on to the client.

ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 93-379 (1993). Multiple state ethics opinions agree with the ABA's conclusions. *See, e.g.,* Oregon Formal Op. 2005-170 (2005) ("A lawyer who bills more than one client for the same time expended on the same service has billed more time than the lawyer actually worked. The lawyer-client relationship is 'one of special trust and confidence' and 'must be characterized by fairness, honesty and good faith.'" (*citing In re Howard*, 304 Or. 193 (1987)); Alaska Formal Op. 96-4 (1996) ("For example, a lawyer spends three hours traveling to attend a deposition in Seattle. If the lawyer decides to spend the time on the airplane drafting a motion for a different client, he or she may not charge both clients, each of whom agreed to hourly billing, for the time during which he was traveling on behalf of one client, but drafting a document on behalf of another. The lawyer has not earned six billable hours.... [W]here the client has agreed to pay the lawyer on an hourly basis, the economies associated with a lawyer's efficient use of time must benefit the client rather than giving the lawyer an opportunity to charge a client for phantom hours.")

North Carolina joins in the chorus agreeing with the ABA's and other jurisdictions' conclusions on this issue. Lawyer has an obligation to respect and strengthen the trust and confidence that his clients place in Lawyer by carry-

ing out the representation in their best interests, including Lawyer's billing practices. To this end, Lawyer must prioritize his clients' interests above his own by passing any benefits created by Lawyer's efficient provision of legal services on to the clients. Unquestionably, Lawyer may complete work for multiple clients at the same time (provided Lawyer's legal services for each client are not detrimentally impacted by Lawyer's joint efforts); but Lawyer's billing structure must be accurate, honest, not misleading, and not clearly excessive in accordance with Lawyer's professional responsibilities. Accordingly, Lawyer may not bill a total of four hours for one hour of actual work because doing so would be clearly excessive, dishonest, and misleading in violation of Rules 1.5(a), 7.1, and 8.4(c).

Inquiry #4:

Same scenario as Inquiry #3. May Lawyer bill each client one quarter of an hour, for a total of one hour billed?

Opinion #4:

Yes, provided the client consents to the billing structure and the billing structure is accurate and honest, not clearly excessive, and any efficiencies created by the Lawyer's provision of overlapping services are passed on to the client. When Lawyer completes work for multiple clients simultaneously, Lawyer may prorate his fee by allocating an equal portion of the total time spent providing legal services to each of the clients served. Alternatively, and when measurable, Lawyer may prorate his fee for each client based upon the proportion of work attributed to the client over the hour of actual work completed. *See* Opinion #2.

Inquiry #5:

Same scenario as Inquiry #3. May Lawyer charge each client a flat fee for each court appearance made on the client's behalf?

Opinion #5:

Yes, provided the flat fee charged is not clearly excessive and the client consents to the fee charged. Rule 1.5(a). A flat fee is a fee paid "for specified legal services on a discrete legal task or isolated transaction[.]" 2008 FEO 10. The flat fee "pays for all legal services regardless of the amount of time the lawyer expends on the matter[.]" *Id.* If Lawyer has clearly communicated to the client this proposed flat fee billing structure and the client has consented to the flat fee charge for each court appearance

made by Lawyer on the client's behalf, and provided the flat fee charged is not clearly excessive, Lawyer may charge each client the agreed upon flat fee upon completing the discrete task of appearing in court for the client.

Inquiry #6:

Lawyer is flying to Seattle from Raleigh for a deposition in Client A's case. Lawyer's fee agreement with Client A provides that Lawyer may charge Client A \$150 per hour for time spent traveling for purposes of the representation. During the flight, Lawyer worked for three hours on a brief in Client B's case. Lawyer's fee agreement with Client B provides that Lawyer may charge Client B \$300 for every hour of legal work completed in Client B's case. May Lawyer bill Client A for four hours of travel time to Seattle and Client B for three hours of legal work completed during the flight to Seattle, for a total of seven hours billed time?

Opinion #6:

No. *See* Opinion #3. In this scenario, Lawyer has spent four hours traveling for Client A, during which he completed three hours of work for Client B. Lawyer did not complete seven hours of work in four hours of actual time; to claim otherwise would be inaccurate. Accordingly, billing seven hours of work that occurred during the span of four actual hours would be false or misleading in violation of Rule 7.1 and dishonest in violation of Rule 8.4(c). Additionally, billing one client a full hourly rate for time spent traveling while simultaneously billing another client a full hourly rate for legal services rendered is clearly excessive in violation of Rule 1.5(a). Lawyers are permitted to bill clients for time spent traveling because travel requirements deprive the lawyer of the ability to work for clients or otherwise be productive in a law practice. A lawyer sacrifices the time that could be spent providing legal services to another client when traveling, and thus the lawyer has the option to bill for time spent traveling as a means to be compensated for lost work time. However, a lawyer who is able to work while traveling negates the justification for full hourly compensation based upon travel for a client. Accordingly, billing a full hourly travel rate for time spent traveling while simultaneously working for and billing a different client a full hourly rate for legal services is clearly excessive.

Without question, Lawyer may complete work for Client B while traveling for Client A.

See Opinion #1. Nothing in this opinion should be construed to indicate that Lawyer cannot or should not provide—and bill—legal services to one client while traveling for a different client so long as Lawyer's services to both clients are not detrimentally impacted by the simultaneously provided services and Lawyer's billing practice for such a scenario is accurate, honest, not misleading, and not clearly excessive. *See* Opinion #3.

Inquiry #7:

Same scenario as Inquiry #6. May Lawyer prorate his hourly rates for each client, to wit: charge 50% of Lawyer's travel hourly rate to Client A and 50% of Lawyer's hourly rate for legal services provided to Client B during the time Lawyer's services to each client overlapped?

Opinion #7:

Yes, provided the client consents to the billing structure and the billing structure is accurate and honest, not clearly excessive, and any efficiencies created by the Lawyer's provision of overlapping services are passed on to the client. *See* Opinion #4. Alternatively, Lawyer could bill Client B Lawyer's full hourly rate for the time spent providing legal services, then deduct that amount of time spent on Client B's matter from Client A's travel time (in this scenario, Client B would be charged three hours for legal services provided, and Client A would be charged one hour of travel time).

Inquiry #8:

Same scenario as Inquiry #6. May Lawyer bill Client A a set fee that is not based upon an hourly rate (e.g., a flat fee for travel services or a per diem) while billing Client B the full hourly rate for legal services provided?

Opinion #8:

Yes, provided the fees charged are not clearly excessive and the clients consent to the fees charged. Rule 1.5(a). *See* Opinion #5.

Inquiry #9:

Same scenario as Inquiry #6. If Lawyer charges Client A a set fee or prorated fee for travel as described above, is Lawyer prohibited from also billing Client A for travel expenses incurred (e.g., mileage for driving, airplane ticket, lodging)?

Opinion #9:

No, provided the expenses charged are re-

lated to the representation, are not clearly excessive, and the client is aware of and consents to the expenses for which he will be responsible. Rules 1.5(a) and (b).

Inquiry #10:

Lawyer bills clients in six minute "units," charging a client one-tenth of his hourly rate for each unit of work. Lawyer clearly sets out his unit billing practices in all of his fee agreements and obtains the client's agreement to the billing practice prior to providing legal services.

Lawyer spends three minutes responding to an email from Client A; as a result, Lawyer charges Client A one billing unit. Lawyer immediately thereafter spends three minutes responding to an email from Client B, charging Client B one billing unit. Although Lawyer has completed only six minutes of work, Lawyer charged two separate billing units representing 12 minutes of work. Considering the opinions above, does Lawyer's unit billing to Clients A and B violate the Rules of Professional Conduct?

Opinion #10:

No, provided the client consents to the billing structure and the billing structure is accurate, honest, and not clearly excessive. Rules 1.5(a), 7.1, and 8.4(c). The legal services Lawyer provides to Clients A and B do not overlap; rather, Lawyer provided distinct and separate services to each client. Because Lawyer has clearly communicated the basis of his unit billing practice to each client in writing and obtained each client's consent to the billing structure, and because Lawyer's unit billing practice is not clearly excessive, Lawyer is entitled to bill each client the relevant "units" of time for the separate services rendered. Notably, while hourly billing is a form of unit billing, billing in one-hour units would be clearly excessive. Rule 1.5.

Inquiry #11:

Are there additional billing structures that are not covered by this opinion that would be permissible under the Rules of Professional Conduct?

Opinion #11:

Yes. As discussed above, the hourly billing structure is the most problematic billing structure when providing overlapping or

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Amendments Approved by the Supreme Court

On June 14, 2023, the North Carolina Supreme Court approved the following rule amendments. (For the complete text of the amendments, see the Spring 2023 edition of the *Journal* or visit the State Bar website: ncbar.gov.)

Amendments to the CLE Rules and Regulations

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

Continuing Legal Education Program

The amendments reimagine the procedures and processes for regulating compliance with mandatory CLE. The changes include the adoption of a two-year reporting and compliance cycle, the elimination of the annual report requirement, and the elimination of the credit-hour attendee fee in favor of program application fees and an annual attendance fee assessment of active State Bar members. Rollover credit of up to 12 CLE hours is retained. Section .1600 of the CLE rules is deleted.

Highlights

On June 14, 2023, the Supreme Court approved amendments to CLE rules that change fundamental aspects of the way mandatory CLE is regulated. The changes to the CLE rules will be enforced beginning March 1, 2024. Note that additional amendments to four CLE rules, which were published for comment in the Spring 2023 edition of the *Journal*, are pending approval by the Supreme Court.

Amendments Pending Supreme Court Approval

At its meetings on April 21, 2023, and July 21, 2023, 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 rule amendments, see the Spring and Summer 2023 editions of the *Journal* or visit the State Bar website.)

Proposed Amendments to the Discipline and Disability Rules

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

The proposed amendment is a technical correction that clarifies that the procedure for refusing a letter of warning is distinct from the requirements for service of process for a letter of warning.

Proposed Amendments to the CLE Rules and Regulations

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

The proposed amendments extend the existing exemption from CLE for members of the judiciary and their law clerks, and add an exemption from CLE for lawyers who are full-time employees in the General Assembly. They also add an annual renewal fee for on-demand programs; create a “registered sponsor” status that can be granted by the CLE Board to sponsors that meet certain requirements; and limit the presentation of PNA programs to registered sponsors and judicial district bars approved by the board to offer such programs.

Proposed Amendments to the Rules Governing the Specialization Program

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization; Section .3400, Certification Standards for the Child Welfare Specialty

The proposed amendments clarify a specialist’s duty to report professional misconduct to the board, and make technical corrections to rules relating to the new specialty in child welfare law.

Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Section .0100, Client-Lawyer Relationship

The proposed amendment allows a lawyer to provide modest gifts to the client for basic living expenses, subject to certain conditions, if the lawyer is representing an indigent client *pro bono*, a court-appointed client, an indigent client *pro bono* through a non-profit legal services or public interest organization, or an indigent client *pro bono* through a law school clinic or *pro bono* program.

Transmitted on Behalf of the Board of Law Examiners

NC BLE Rule .0503, Requirements for Military Spouse Comity Applicants

The rule amendment proposed by the North Carolina Board of Law Examiners will eliminate the application fee for military spouse comity applicants.

Proposed Amendments

At its meeting on July 21, 2023, the council voted to publish for comment the following proposed rule amendments:

Proposed Amendments to the Duties of the Secretary

27 N.C.A.C. 1A, Section .0400, Election, Succession, and Duties of Officers

The proposed amendments permit the secretary of the State Bar to delegate ministerial tasks, such as the certification of copies of court records, to other State Bar employees.

Rule .0406, Vacancies and Succession

(a) ...

...

(d) Temporary Inability of Secretary to Perform Duties. If the secretary is absent or is otherwise temporarily unable to perform the duties of office, the assistant director and director for management, finance, and communications shall perform those duties until the secretary returns or becomes able to resume the duties....Notwithstanding the foregoing, the secretary may delegate any ministerial task to any employee of the North Carolina State Bar.

Rule .0411, Secretary

The secretary shall attend all meetings of the council and of the North Carolina State Bar, and shall record the proceedings of all such meetings... The secretary may delegate any ministerial task to any employee of the North Carolina State Bar.

Proposed Amendment 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

In addition to the previously published amendments to this rule, the definition of an ethics program is revised and a definition for a "Registered Sponsor" is added.

Rule .1501, Scope, Purpose, and Definitions

(a) Scope,

...

(b) Purpose,

The purpose of these continuing legal education rules is to assist lawyers licensed to practice and practicing law in North Carolina in achieving and maintaining professional competence for the benefit of the public whom they serve. The North Carolina State Bar, under Chapter 84 of the General Statutes of North Carolina, is charged with the responsibility of providing rules of professional conduct and with disciplining ~~attorneys~~ lawyers who do not comply with such rules. The ~~Revised~~ Rules of Professional Conduct adopted by the North Carolina State Bar and approved by the Supreme Court of North Carolina require that lawyers adhere to important ethical standards, including that of rendering competent legal services in the representation of their clients.

...

~~It has also become clear that in order to render legal services in a professionally responsible manner, a lawyer must be able to manage his or her law practice competently. Sound management practices enable lawyers to concentrate on their clients' affairs while avoiding the ethical problems which can be caused by disorganization.~~

It is in response to such considerations that the North Carolina State Bar has adopted these minimum continuing legal education requirements. The purpose of these minimum continuing legal education requirements is the same as the purpose of the ~~Revised~~ Rules of Professional Conduct themselves—to ensure that the public at large is served by lawyers who are competent and maintain high ethical standards.

(c) Definitions,

(1) ...

...

(5) "Continuing legal education" or "CLE" is any legal, judicial or other educational program accredited by the ~~b~~Board...

...

(8) "Ethics" shall mean programs or segments of programs devoted to (i) professional responsibility, or (ii) professionalism as defined in Rules .1501(c)(14) and (15) below.

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

(9) "In-house continuing legal educa-

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.

tion" shall mean courses or programs offered or conducted by law firms, either individually or in connection with other law firms, corporate legal departments, or similar entities primarily for the education of their members. ~~The board may exempt from this definition those programs which it finds~~

~~(A) to be conducted by public or quasi-public organizations or associations for the education of their employees or members;~~
~~(B) to be concerned with areas of legal education not generally offered by sponsors of programs attended by lawyers engaged in the private practice of law.~~

(10) A "newly admitted active member" is one who becomes an active member of the North Carolina State Bar for the first time, ~~has been reinstated, or has changed from inactive to active status.~~

(11) "On demand" program...

(12) "Online" program...

(13) "Participatory CLE" shall mean programs or segments of programs that en-

courage the participation of attendees in the educational experience through, for example, the analysis of hypothetical situations, role playing, mock trials, roundtable discussions, or debates.

(14) “Professional responsibility” shall mean those programs or segments of programs devoted to ~~a)(i)~~ the substance, underlying rationale, and practical application of the Rules of Professional Conduct; ~~b)(ii)~~ the professional obligations of the lawyer to the client, the court, the public, and other lawyers; ~~or c)(iii)~~ moral philosophy and ethical decision-making in the context of the practice of law; ~~and d) the effects of stress, substance abuse and chemical dependency, or debilitating mental conditions on a lawyer’s professional responsibilities and the prevention, detection, treatment, and etiology of stress, substance abuse, chemical dependency, and debilitating mental conditions.~~ This definition shall be interpreted consistent with the provisions of Rule .1501(c)(4) or (6) above.

(15) “Professionalism” programs ...

~~(16) “Registered sponsor” shall mean an organization that is registered by the board after demonstrating compliance with the accreditation standards for continuing legal education programs as well as the requirements for reporting attendance and remitting sponsor fees for continuing legal education programs.~~

~~(17) “Rules” shall mean the provisions of the continuing legal education rules established by the Supreme Court of North Carolina (Section .1500 of this subchapter).~~

~~(18) “Sponsor” is any person or entity presenting or offering to present one or more continuing legal education programs, whether or not an accredited sponsor.~~

(18) “Professional well-being” (PWB) is a program focused on the relationship between stressors inherent in the profession, competence, professionalism, and fitness to practice. Topics may include the prevention, detection, treatment, and etiology of a range of substance use and mental health conditions, as well as resources available for assistance and strategies for improving resilience and well-being. Experiential exercises, practices, or demonstrations of tools for improving resilience and well-being are permitted provided they do not exceed a combined total of 20 minutes in any 60-minute presentation.

(19) “Technology training” shall mean a program, or a segment of a program, devoted to education on information technology (IT) or cybersecurity (see N.C. Gen. Stat. §143B-1320(a)(11), or successor statutory provision, for a definition of “information technology”), including education on an information technology product, device, platform, application, or other tool, process, or methodology that is specific or uniquely suited to the practice of law. A technology training program must have the primary objective of enhancing a lawyer’s proficiency as a lawyer. To be eligible for CLE accreditation as a technology training program, the program must satisfy the accreditation standards in Rule .1519 and the course content requirements in Rule .1602(c) of this subchapter.

~~(20) “Year” shall mean calendar year.~~

(20) “Registered Sponsor” shall mean an organization that is registered by the board after meeting the eligibility standards in Rule .1522(b).

Proposed Amendments to the Rules Governing the Specialization Program

27 N.C.A.C. 1D, Section .3500, Certification Standards for the Employment Law Specialty

The proposed amendments create a specialty in employment law. The proposed rules, which are all new, establish the standards for the new specialty.

[NEW] Rule .3501, Establishment of Specialty Field

The North Carolina State Bar Board of Legal Specialization (the board) hereby designates Employment Law as a specialty for which certification of specialists under the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) is permitted.

[NEW] Rule .3502, Definition of Specialty

The specialty of employment law, in general, involves the practice of law as it applies to employers and employees (public and private) and their respective rights and obligations in accordance with myriad federal and state laws. The practice, more specifically, involves the counseling and representation of employers, employees, and independent contractors regarding the evolving array of torts, contractual issues, and federal and North

Carolina statutes pertaining to employment relationships, including but not limited to: the Family and Medical Leave Act (FMLA); Americans with Disabilities Act (ADA); Section 504 of the Rehabilitation Act of 1973; Title VII of the Civil Rights Act; the Age Discrimination in Employment Act; Older Workers Benefits Protection Act; National Labor Relations Act (NLRA) (insofar as it pertains to “protected concerted” activity and related unfair labor practices); Fair Labor Standards Act (FLSA); Occupational Safety and Health Act (OSHA) (insofar as it pertains to obligations arising under the “General Duty Clause”); Worker Adjustment and Retraining Notification Act (WARN); Pregnancy Discrimination Act; the Uniformed Services Employment and Reemployment Rights Act (USERRA); Section 1981 of the Civil Rights Act of 1866; the North Carolina Wage and Hour Act (WHA), North Carolina Retaliatory Employment Discrimination Act (REDA); North Carolina Employment Security law; North Carolina Persons with Disabilities Protection Act; North Carolina State Human Resources Act (HRA) (insofar as the last pertains to coverage of the HRA and deadlines by which relevant claims must be made); North Carolina law regarding restrictive covenants (non-competition, non-solicitation, and non-disclosure); and related regulations and developing common law. The specialty does not encompass matters arising under the North Carolina Workers’ Compensation Act (other than proficient familiarity with the circumstances in which the Act may apply) or the practice of employee benefits law (such as but not limited to federal and North Carolina laws regulating group health insurance plans and tax-qualified retirement plans).

[NEW] Rule .3503, Recognition as a Specialist in Employment Law

If a lawyer qualifies as a specialist in employment law by meeting the standards set for the specialty, then the lawyer shall be entitled to represent that the lawyer is a “Board Certified Specialist in Employment Law.”

[NEW] Rule .3504, Applicability of Provisions of the North Carolina Plan of Legal Specialization

Certification and continued certification of specialists in employment law shall be governed by the provisions of the North Carolina Plan of Legal Specialization (see Section .1700 of this subchapter) as supplemented by these

standards for certification.

[NEW] Rule .3505, Standards for Certification as a Specialist in Employment Law

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

(a) **Licensure and Practice** - An applicant shall be licensed and in good standing to practice law in North Carolina as of the date of application. An applicant shall continue to be licensed and in good standing to practice law in North Carolina during the period of certification.

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

(1) Substantial involvement shall mean that, during the five years immediately preceding the application, the applicant devoted an average of at least 700 hours a year to the practice of employment law but not fewer than 400 hours in any one year.

(2) Practice shall mean substantive legal work in employment law done primarily for the purpose of providing legal advice or representation, including the activities described in paragraph (3) below, or a practice equivalent as described in paragraph (4) below.

(3) Substantive legal work in employment law focuses on the practice of law as it applies to employers and employees and their respective rights and obligations to one another in accordance with myriad federal and state laws. The practice requires proficiency in federal and North Carolina statutes and related regulations, including but not limited to those laws listed in "Rule .3502, Definition of Specialty," of this subchapter as well as common law pertaining to employer and employee rights.

The specialist must be able to competently advise and represent clients in counseling and before administrative agencies or in court-based litigation (provided, that proficiency in civil litigation is not required); recognize employment laws and spot related issues and risks that are or may be presented by the client's circumstances; know when the laws of states other than those of North Carolina may apply; know when the advice of lawyers who are con-

versant with other legal fields (such as taxation, business law, and professional licensing requirements) may be required; and recognize ethical issues that can arise in the course of relationship with the client.

(4) "Practice equivalent" shall mean: service as a law professor concentrating in the teaching of employment law for up to three years during the five years prior to application may be substituted for an equivalent number of years of experience necessary to meet the five-year requirement set forth in Rule .3505(b)(1).

(c) **Continuing Legal Education** - To be certified as a specialist in employment law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in employment law and related fields during the three years preceding application. The 36 hours must include at least 27 hours in employment law; the remaining nine hours may be in related-field CLE. Related fields include contract law; administrative law; alternative dispute-resolution; workers' compensation law; the law of trade secrets and data privacy; business law/corporate governance law; employment benefits; tax law as regards compensation of employees; employment-related investigations; and civil litigation/trial advocacy. The applicant may request recognition of an additional field as related to employment law practice for the purpose of meeting the CLE standard.

(d) **Peer Review** - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers and/or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice in North Carolina. An applicant consents to the confidential inquiry by the board or the specialty committee of the submitted references and other persons concerning the applicant's competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a partner or associate of the applicant at the time of the application.

(2) The references shall be given on standardized forms provided by the board with the application for certification in the spe-

cialty field. These forms shall be returned directly to the specialty committee.

(e) **Examination** - An applicant must pass a written examination designed to demonstrate sufficient knowledge, skills, and proficiency in the field of employment law to justify the representation of special competence to the legal profession and the public.

(1) **Terms** - The examination shall be in written form and shall be given annually. The examination shall be administered and graded uniformly by the specialty committee.

(2) **Subject Matter** - The examination shall cover the applicant's knowledge and application of employment law as defined and described in "Rule .3502, Definition of Specialty," of this subchapter including but not limited to the following:

- (A) Fair Labor Standards Act
- (B) Family and Medical Leave Act
- (C) Americans with Disabilities Act
- (D) Title VII of the Civil Rights Act
- (E) Equal Pay Act
- (F) Genetic Information Nondiscrimination Act
- (G) Section 504 of the Rehabilitation Act of 1973
- (H) Age Discrimination in Employment Act
- (I) Older Workers Benefits Protection Act
- (J) Worker Adjustment and Retraining Notification Act
- (K) Pregnancy Discrimination Act
- (L) Occupational Safety and Health Act (only as regards scope of "general duty" clause)
- (M) National Labor Relations Act (only as regards employees' right to engage in Section 7 protected "concerted activity" and related unfair labor practices)
- (N) Uniformed Services Employment and Reemployment Rights Act
- (O) Section 1981 of the Civil Rights Act of 1866
- (P) North Carolina Retaliatory Employment Discrimination Act
- (Q) North Carolina Wage and Hour Act
- (R) North Carolina statutes and common law regarding restrictive covenants (*e.g.*, non-competition, non-solicitation, and non-disclosure agreements)
- (S) North Carolina Persons with Disabilities Protection Act
- (T) North Carolina State Human Resources Act

[NEW] Rule .3506, Standards for Continued Certification as a Specialist

The period of certification is five years. Before the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3506(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The applicant must demonstrate that, for each of the five years preceding application for continued certification, the applicant has had substantial involvement in the specialty as defined in Rule .3505(b) of this subchapter.

(b) Continuing Legal Education - The applicant must earn no less than 60 hours of accredited CLE credits in employment law and related fields during the five years preceding application for continued certification. Of the 60 hours of CLE, at least 42 hours shall be in employment law, and the balance of 18 hours may be in related-field CLE (including but not necessarily limited to the related fields set forth in Rule .3505(c) of this subchapter). A list of the topics that qualify as related-field CLE shall be maintained by the board on its official website.

(c) Peer Review - The applicant must provide, as references, the names of at least six

lawyers and/or judges, all of whom are licensed and currently in good standing to practice law in North Carolina. References must be familiar with the competence and qualification of the applicant as a specialist. For an application to be considered, completed peer reference forms must be received from at least three of the references. All other requirements relative to peer review set forth in Rule .3505(d) of this subchapter apply to this standard.

(d) Time for Application - Application for continued certification shall be made not more than 180 days nor fewer than 90 days before the expiration of the prior period of certification.

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3505 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification was suspended or revoked during a period of certification, then the application shall be treated as if it were for initial certification under Rule .3505 of this subchapter.

[NEW] Rule .3507, Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in employment law are subject to any general requirement, standard, or procedure adopted by the board ap-

plicable to all applicants for certification or continued certification. ■

Proposed Opinions (cont.)

simultaneous services because billing full hourly rates to multiple clients while providing such services produces clearly excessive, inaccurate, and misleading or dishonest fees. See Opinions #3 and 6. This opinion identifies alternative, permissible billing structures that a lawyer may incorporate into his practice when providing simultaneous or overlapping services, but the alternatives identified herein are not exhaustive. Billing structures may vary depending on the client or the nature of the representation. Provided the billing structure is accurate, honest, not misleading, and not clearly excessive, and provided the client is sufficiently informed about and consents to the billing structure, a lawyer should exercise his professional judgment when creating and incorporating a billing structure into the representation of a client. Additionally, although the Rules of Professional Conduct recognize that not all fee agreements must be reduced to writing, the Ethics Committee strongly encourages lawyers to reduce all fee agreements and the billing structures therein to writing when practicable to ensure clarity for all parties involved. ■

IOLTA Update (cont.)

committed to her employer and the Charlotte community. She loves helping others and has been a nutrition aide at University Place Nursing and Rehabilitation Services since 2001. The facility serves patients recovering from illness or injury, as well as long-term residents with Alzheimer's and similar conditions.

Martha enjoys her job and is a hard worker who excels in a challenging role. Nutrition aide positions are often difficult to fill and have high turnover rates.

Jelena Giric-Held, the Immigration Law Clinic director at the nonprofit International House, has assisted Martha since 2015 with her TPS renewal. A 2022 NC IOLTA

grantee, International House provides low-income immigrants and refugees with the legal assistance they need to navigate documentation, naturalization, and related issues.

International House's services are increasingly vital. About 16-18% of Charlotte's population is now foreign-born, compared to less than 1% in 1980. In 2017, immigrant households in Charlotte earned \$4 billion and contributed over \$1 billion in taxes (New American Economy, 2019).

When Liberians unexpectedly became eligible to apply for green cards in 2019, Jelena helped Martha with the application process. She assisted her with completion of the appropriate forms and went with her to her qualifying interview.

Once she had a green card, Martha could

apply for and obtain American citizenship. Now in her late 70s, she is extremely grateful for Jelena's support and continues to make a positive impact on others every day. ■

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Supreme Court Approves Proposed Changes to CLE Program—Effective Date March 1, 2024

On June 14, 2023, the North Carolina Supreme Court approved the State Bar's proposed changes to the rules of the Continuing Legal Education (CLE) program. The new rules, available on the State

Bar's website and summarized in the chart below, will take effect on March 1, 2024. **There are no changes to the State Bar's 2023 CLE requirements.** The State Bar will provide additional information about

the changes to lawyers and sponsors throughout the remainder of 2023, including multiple opportunities for lawyers and sponsors to meet with State Bar staff and ask questions. ■

North Carolina State Bar Changes to CLE Rules (Effective March 1, 2024)		North Carolina State Bar Changes to CLE Rules (Effective March 1, 2024)	
1	ANNUAL ATTENDANCE FEE The \$3.50/hr attendance fee is eliminated. Lawyers will now pay a \$25 annual CLE attendance fee during the membership renewal process.	63.50 x 12 = 642 \$25	
2	2-YEAR REPORTING PERIOD... Over 2 years, lawyers must complete 24 hours of CLE, including 4 Ethics Hours, 1 Technology Training Hour, and 1 Professional Well-Being Hour (formerly Mental Health/Substance Abuse).	2 years 24 Hours	
3	...EXCEPT FOR 2024 To create a stagger where the reporting period ends for half of lawyers each year, lawyers with an odd year of admittance (e.g., 2023) will have a one-time, 1yr/12hr requirement. Even year lawyers will go directly to 2yrs/24hrs.		
4	NO ANNUAL REPORT REQUIREMENT Beginning at the end of the 2024 reporting period, lawyers will not be required to file an annual report. No more late fees for failing to click a few buttons!		
5	CARRY OVER UP TO 12 HOURS Lawyers may carryover up to 12 hours of CLE from one reporting period to the next. Hours will carryover as total hours only. <u>Ethics, Technology, and PWB hours must be taken every reporting period.</u>		
6	12-MONTH CLE YEAR (NO GRACE PERIOD) The 12-month CLE year begins March 1. Reporting periods end at the end of February. Hours must be completed by the end of the lawyer's reporting period in order to avoid a late fee.		<i>March to February</i>
7	STREAMLINED ENFORCEMENT Lawyers who fail to complete their hours requirements will be subject to non-compliance fees and a more streamlined suspension process.		
8	EXEMPTIONS CLAIMED AT RENEWAL Lawyers eligible for an exemption from CLE requirements will claim exemptions during the membership renewal process and will not be charged the annual attendance fee.		
9	ONLINE COURSE APPLICATION & FEE Sponsors of CLE programs will be apply online and pay a course application fee (\$50 for live programs). Programs offered for free will not be charged. The full fee schedule will be released in October 2023.		
10	MORE INFORMATION ON THE WAY Additional information for lawyers and sponsors will be provided throughout the remainder of 2023.		

Frye Nominated as Vice-President



North Carolina State Bar.

Raleigh attorney and Hickory native Katherine Frye has been selected by the State Bar's Nominating Committee to stand for election to the office of vice-president of the

Katherine founded Frye Law Offices in Raleigh in 2003, where she is a family law specialist at her solo practice.

Since 2016, Katherine has represented Wake County at the NC State Bar as a councilor where she has served as a vice chair of a Grievance subcommittee, chair of the Communications Committee, and currently serves as the chair of the Ethics Committee.

Katherine graduated from the Norman Adrian Wiggins School of Law. She is a fellow in the American Academy of

Matrimonial Lawyers, a NC Board Certified Specialist in family law, and a NC Dispute Resolution Commission certified mediator. She has held numerous other leadership positions for the Wake County Bar and the NC Bar Association.

Katherine's election will take place at the State Bar's annual meeting in October 2023. At that time, Charlotte attorney A. Todd Brown will assume the office of president, and Eden attorney Matthew Smith will also stand for election as president-elect. ■

2023 Second Quarter Random Audits

Judicial Districts 15 and 33 were randomly selected for audit for the second quarter of 2023. Lawyers randomly selected for audit are drawn from a list generated from the State Bar's database based upon judicial district membership designations in the database.

Judicial District 15 is composed of Bladen, Brunswick, and Columbus Counties; 21 lawyers/firms were audited in the district. Judicial District 33 is composed of Davidson and Davie Counties; 14 lawyers/firms were audited in the district.

Following are the results of the 36 audits:

1. 31% failed to:
 - review bank statements and cancelled checks each month;
 - escheat unidentified/abandoned funds as required by GS 116B-53;
 - maintain images of cleared checks or maintain them in the required format.
2. 23% failed to sign, date, and/or maintain reconciliation reports.
3. 20% failed to:
 - complete quarterly transaction reviews;
 - identify the client and source of funds,

when the source was not the client, on the original deposit slip.

4. 17% failed to identify the client on confirmations of funds received/dispensed by wire/electronic/online transfers.
5. 14% failed to complete quarterly reconciliations.
6. Up to 10% failed to:
 - prevent over-disbursing funds from the trust account resulting in negative client balances;
 - prevent bank service fees being paid with entrusted funds;
 - take the required one-hour trust account management CLE course;
 - indicate on the face of each check the client from whose balance the funds were withdrawn;
 - promptly remove earned fees or cost reimbursements;
 - provide written accountings to clients at the end of representation or at least annually if funds were held more than 12 months;
 - provide a copy of the Bank Directive regarding checks presented against insuffi-

cient funds.

7. Areas of consistent rule compliance:

- properly maintained a ledger for each person or entity from whom or for whom trust money was received;
- completed monthly bank statement reconciliations;
- maintained a ledger of lawyer's funds used to offset bank service fees;
- removed signature authority from employee(s) responsible for performing monthly or quarterly reconciliations;
- properly deposited funds received with a mix of trust and non-trust funds into the trust account;
- properly recorded the bank date of deposit on the client's ledger;
- promptly remitted to clients funds in possession of the lawyer to which clients were entitled;
- used business size checks containing the Auxiliary On-U's field;
- signed trust account checks (no signature stamp or electronic signature used);
- properly maintained records that are retained only in electronic format. ■

John B. McMillan Distinguished Service Award

C. Ricky Bowman

C. Ricky Bowman was posthumously awarded the John B. McMillan Distinguished Service Award on June 14, 2023, at the Surry County courthouse in Dobson, North Carolina. State Bar Past-President Darrin D. Jordan presented the award, and State Bar Councilor Thomas B. Langan also participated in the presentation.

Mr. Bowman was born August 31, 1956, in Elkin, North Carolina. He graduated from Surry Central High School. He was a strong believer in hard work, education, and seizing opportunities, all of which he credited with rescuing him from poverty. After a stint at Surry Community College, Mr. Bowman began commuting to Wake Forest University for his undergraduate degree in sociology. He worked his way through college and applied to law school at Campbell University. He graduated from Campbell University School of Law in 1984.

Upon passing the bar exam, Mr. Bowman began operating a private law firm until May 1, 1995, when Governor Jim Hunt appointed him to the post of district attorney for Surry and Stokes Counties. On March 31, 2021, he ended the longest active district attorney tenure in the state. Over his time in office, Mr. Bowman never faced a competitive election, having run for re-election unopposed seven times. His achievements in office include working with area judges to establish the administrative traffic court, probation court, plea court, and trial court. Under Mr. Bowman, District 17B adopted open file discovery long before it was mandated.

During his time as elected district attorney, Mr. Bowman tried cases big and small. He called the calendar and answered the phones, and never asked an employee to perform any task he would not undertake himself. His door was always open to lawyers, citizens, law enforcement, and even the occasional criminal defendant.

Within the bar itself, Mr. Bowman was

often called upon to mediate disputes among lawyers and other officers of the court. He had a gift for identifying common ground and working from there to soften grudges. He did this during plea negotiations and trial preparations. On Fridays, Mr. Bowman made a habit of visiting nursing homes and hospitals and delivering meals to shut ins.

Mr. Bowman was dedicated to mentoring and encouraging young lawyers. He never turned down an opportunity to speak to schoolchildren or civic groups about the legal system and the prosecutor's role in it. He encouraged his staff to do the same. When addressing the public, as when orienting new prosecutors, he was sure to educate them that his duty was not merely to seek convictions, but to do justice.

Mr. Bowman belonged to the North Carolina Bar Association and the North Carolina District Attorney's Association, Copeland Masonic Lodge #390 AF and AM, Mothers Against Drunk Driving, Rotary Club of Mount Airy, and was a faithful member of New Home Church of Christ for more than 50 years.

As the district's chief law enforcement officer, Mr. Bowman was committed to convicting the guilty and protecting the innocent—demonstrating that these duties were not mutually exclusive, but essential to promoting confidence in the rule of law. He did this by adhering scrupulously to the highest ethical standards and by aspiring to ensure equal justice under the law.

Cheryl D. Howell

Cheryl D. Howell was awarded the John B. McMillan Distinguished Service Award on June 20, 2023, at the North Carolina District Court Judges Conference in Wrightsville Beach, North Carolina. State Bar President Marcia H. Armstrong presented the award.

Ms. Howell graduated magna cum laude from Appalachian State University in 1984.

She graduated with honors from The University of North Carolina School of Law in 1987, where she was a member of the Order of the Coif. Ms. Howell was in private practice from 1987-1991, first with Petree, Stockton in Winston-Salem and then with Reid, Lewis, Deese & Nance in Fayetteville. In 1992, Ms. Howell served as a research assistant for Chief Judge R.A. Hedrick with the North Carolina Court of Appeals. From September 1992 until the present, she has been a professor at the UNC School of Government and is currently an Albert Coates Distinguished Professor.

Ms. Howell has served in numerous positions with the North Carolina Bar Association. She currently serves as a member of the Family Law Section's committee that reviews equitable distribution statutes for updating and revision. She is a member of the North Carolina Family Court Advisory Commission and the Chief Justices North Carolina Child Custody and Visitation Mediation Advisory Committee.

Ms. Howell serves as an ex officio member of the North Carolina Domestic Violation Commission and is the chairperson of the Civil Domestic Violence Protective Orders Study Group. She is also a member of the eProject Study Advisory Board tasked with researching the effectiveness of electronic filing for civil domestic violence protective orders.

Ms. Howell serves the legal profession and the citizens of North Carolina as an educator of both judges and attorneys. She updates the Family Law Chapters of the North Carolina Trial Judges' Bench Book. She has also co-authored 14 other book chapters, written 15 articles, written almost 100 blog posts for the School of Government's The Civil Side, and 145 manuscripts for speaking engagements at CLEs, law school classes, and training classes. She has also trained countless judges.

Ms. Howell was awarded the Women of Justice Legal Scholar Award in 2013 and

was instrumental in the School of Government receiving ABA awards for its judicial education and training. In 2022, Ms. Howell was awarded the NCBA Liberty Bell Award for her lifelong service to the law in NC. She has shown dedication to the law, the judges, and attorneys of North Carolina, and to the families that must interact with the court system.

William David Lee

The Honorable William David Lee was posthumously awarded the John B. McMillan Distinguished Service Award on June 7, 2023, in Monroe, North Carolina. The ceremony was held in the courtroom of the historic Union County Courthouse. Past-President Darrin D. Jordan presented the award on behalf of the North Carolina State Bar. Bar Councilor H. Ligon Bundy also participated in the presentation.

Judge Lee received his undergraduate degree from Western Carolina University in 1972 and his law degree from the Wake Forest University School of Law in 1975. Judge Lee practiced law in Monroe for 27 years in a general civil practice. In 2003 he was appointed to the superior court bench. In 2004, Chief Justice Lake appointed him to the North Carolina Dispute Resolution Commission, which he later chaired. Judge Lee became the senior resident superior court judge in 2006 and served in that capacity until his retirement in 2016. Just months into his retirement, Supreme Court Chief Justice Mark Martin asked Judge Lee to preside over the legendary *Leandro v. State of North Carolina* case.

During the time that he served on the bench, Judge Lee worked tirelessly to educate and improve the quality of the judiciary in North Carolina. His strong leadership in managing the ever-increasing caseloads of Union County enabled his judicial district to keep dockets current during a time when backlogs were on the rise statewide. Judge Lee served as a member and later co-chair of the Education Committee for the North Carolina Superior Court Judge's Conference and served as a presenter at many judicial seminars, legal conferences, and judicial schools.

Judge Lee served his community through service on many boards. In recognition for his service to the community, he was declared the Young Man of the Year by the Monroe-Union County Jaycees, and he

received the Distinguished Rotarian of the Year Award. In 2012 he received the Centennial Award for Community Service from the NCBA. In 2016, the governor awarded his highest honor, the Order of the Long Leaf Pine, to Judge Lee for his contributions to his community and state.

Judge Lee's exemplary attributes, and his admirable walk through life, are worthy of

high recognition and he is a most deserving recipient of the John B. McMillan Distinguished Service Award.

Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have

CONTINUED ON PAGE 44

In Memoriam

Oliver Alphin

Holly Ridge, NC

Albeon Anderson Jr.

Rocky Mount, NC

Kristi Bellamy

Charlotte, NC

Arthur Blue

Carthage, NC

Charles Bullock

Smithfield, NC

Samuel Cathey

Alexander, NC

Charles Clement

Valle Crucis, NC

George Cunningham

Davidson, NC

Mark Edwards

Charlotte, NC

Jack Floyd

Greensboro, NC

Louis Fogleman Jr.

Chapel Hill, NC

Edwin Gooch III

Durham, NC

C. Gray

Washington, DC

K. Greene

Raleigh, NC

Theodore Haigler Jr.

Raleigh, NC

Maynard Harrell Jr.

Plymouth, NC

Richard Hatch

Cary, NC

Mathias Hunoval

Wrightsville Beach, NC

John Hunter III

Raleigh, NC

Ronald Kirschbaum

Raleigh, NC

William David Lee

Monroe, NC

Theodore Matus

Charlotte, NC

Leslie McDaniel

Raleigh, NC

Bobby McNeill

Raeford, NC

John Ogburn Jr.

Asheboro, NC

John Ormand III

Raleigh, NC

Lucia Peel

Williamston, NC

Ralph Peebles

Winston-Salem, NC

Robert Pierce

Raleigh, NC

Kathy Priest

Chapel Hill, NC

Larry Reavis

Yadkinville, NC

Dalbert Shefte

Charlotte, NC

James West Jr.

Kings Mountain, NC

John Whitley

Wilson, NC

Client Security Fund Reimburses Victims

At its July 20, 2023, meeting, the North Carolina State Bar Client Security Fund (CSF) Board of Trustees approved payments of \$121,400 to 11 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$4,500 to a former client of Brooke M. Crump of Mount Gilead. The client retained Crump to file a civil suit regarding a land dispute. After the client paid the quoted fee and provided the requested documentation, Crump failed to file a complaint, became non-responsive, and then disappeared. Crump provided no legal services for the fee paid and failed to respond to and engage in the CSF process. Crump was disbarred on December 9, 2022. The board previously reimbursed ten other Crump clients a total of \$31,130.

2. An award of \$1,800 to a former client of Brooke M. Crump. The client retained Crump to draft a will and handle probate after the passing of a family member. Crump filed to open the estate after death, but failed to pay the court fees and never filed the publication notice to creditors. Crump provided no meaningful legal services for the fee paid and failed to respond to and engage in the CSF process.

3. An award of \$100,000 to a former client of Kenneth A. Free Jr. of Greensboro. The client retained Free to handle the wire transfer for a business transaction as the escrow agent. Free transferred the majority of the payment to the supplier and others, including himself, prior to the supplier fulfilling the contract and without the client's authorization to do so. Free engaged in dishonest conduct by making unauthorized disbursements to himself and others.

4. An award of \$2,000 to a former client of Charles M. Kunz of Durham. The client retained Kunz to represent him in a criminal matter. The client paid the quoted fee, but Kunz failed to provide any meaningful legal services to the client for the fee paid prior to his disbarment and death. Kunz was disbarred on April 14, 2023, and committed suicide on April 21, 2023. The board previously reim-

bursed two other Kunz clients a total of \$6,000.

5. An award of \$200 to a former client of Charles M. Kunz. The client retained Kunz to handle a traffic ticket. The client paid the flat fee, but Kunz failed to provide any meaningful legal services to the client for the fee paid prior to his disbarment and death.

6. An award of \$2,000 to a former client of Charles M. Kunz. The client retained Kunz to assist him in filing for divorce. The client paid \$2,000 towards the \$4,000 fee quoted, but after months of not hearing from Kunz, the client requested a refund. Kunz failed to provide a refund and failed to provide any meaningful legal services to the client for the fee paid.

7. An award of \$2,000.00 to a former client of Charles M. Kunz. The client retained Kunz to assist her in filing for divorce. The client paid the quoted fee, but Kunz failed to provide any meaningful legal services to the client for the fee paid, prior to his disbarment and death.

8. An award of \$550.00 to a former client of Charles M. Kunz. The client retained Kunz to file suit against the property company that evicted her friend and caused her to lose her possessions. Upon receiving the payment, Kunz led the client to believe that he had filed suit and had been negotiating a settlement, which the client later discovered not to be true. Kunz lied to his client and failed to provide any meaningful legal services to the client for the fee paid.

9. An award of \$6,500 to a former client of Charles M. Kunz. The client retained Kunz to assist in her immigration process. The client paid \$6,500 towards the \$10,000 fee quoted. Other than filing the petition and paying the filing fee, Kunz provided no meaningful legal services for the fee paid and should have known that he would not have been able to follow through with the representation given his disciplinary status.

10. An award of \$1,500 to a former client of Charles M. Kunz. The client retained Kunz to assist with her equitable distribution matter

and an upcoming court hearing. The client paid the flat fee quoted. Kunz only notarized and filed the documents the client completed herself and missed the court appearance. Kunz failed to provide any meaningful legal services to the client for the fee paid.

11. An award of \$350 to a former client of Charles M. Kunz. The client retained Kunz to file a small claims case relating to a vehicle accident. The client paid the flat fee quoted. Kunz lied to the client when he told the client he had filed the complaint and that there was an upcoming court date. After Kunz's death, the client discovered that no complaint was filed. Kunz lied to the client and failed to provide any meaningful legal services to the client for the fee paid.

Funds Recovered

It is standard practice to send a demand letter to each current or former attorney 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 attorney 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 \$5,643.32 this past quarter. ■

Distinguished Service Award (cont.)

demonstrated outstanding service to the profession for the John B. McMillan Distinguished Service Award. 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.

Upcoming Appointments

Anyone interested in being appointed to serve on a State Bar's board, commission, or committee should email State Bar Executive Director Alice Neece Mine at amine@ncbar.gov, or Lanice Heidbrink at lheidbrink@ncbar.gov, to express that interest, being sure to attach a current resume. Please submit before October 7, 2023. The council will make the following appointments at its October meeting:

Board of Continuing Legal Education (three-year terms)—There are three appointments to be made. Paul Capua and Judge Ashleigh Parker Dunston are eligible for reappointment. Robert C. Kemp III is not eligible for reappointment. The rules governing the Board of Continuing Legal Education require the council to appoint the board's chair and vice-chair annually.

The Board of Continuing Legal Education (CLE) is a nine-member board composed of North Carolina licensed attorneys. The board establishes policy related to the execution of the CLE program's mission and is responsible for oversight of the operation of the program subject to the statutes governing the practice of law, the authority of the council, and the rules of the board. The board usually meets four times a year.

The North Carolina State Bar's mandatory CLE program helps lawyers licensed to practice and practicing in North Carolina achieve and maintain professional competence for the benefit of the public they serve.

Board of Law Examiners (three-year terms)—There are three appointments to be made. George R. Hicks III, Judge Ned W. Mangum, and Roger A. Askew are eligible for reappointment.

The 11 members of the North Carolina Board of Law Examiners are appointed by the State Bar Council. The board examines applicants and establishes rules and regulations for admission to the North Carolina State Bar. The board's objective is to ensure that all persons seeking admission to practice law in North Carolina possess the requi-

site competency and qualifications of character and fitness. Board members review bar examination questions; conduct character and fitness and comity hearings; supervise the bar examinations; and grade the examinations. Additionally, the board engages in periodic review of methods utilized in the examination and grading process. A board member donates an average of 35-45 days to service each year.

Client Security Fund Board of Trustees (five-year terms)—There is one appointment to be made. L. Thomas Lunsford is not eligible for reappointment. The rules governing the Client Security Fund require the council to appoint the board's chair and vice-chair annually.

The Client Security Fund was established by the North Carolina Supreme Court in 1984 to reimburse clients who have suffered financial loss as the result of dishonest conduct of lawyers engaged in the private practice of law in North Carolina. The fund is administered by a board of trustees composed of four North Carolina lawyers and one public member. The trustees are appointed by the North Carolina State Bar Council.

Board of Paralegal Certification (three-year terms)—There are three appointments to be made. Bryan G. Scott (lawyer member), Lakisha Chichester (paralegal member), and Sarah H. Kaufman (paralegal member) are not eligible for reappointment. The rules governing the Board of Paralegal Certification require the council to appoint the board's chair and vice-chair annually.

The Board of Paralegal Certification is a nine-member board composed of five North Carolina licensed attorneys (one of whom must be a paralegal educator) and four North Carolina certified paralegals. The board establishes policy related to the execution of the paralegal certification program and is responsible for the oversight of the operation of the program subject to the statutes governing the practice of law, the authority of the council, and the rules of the

board. The paralegal certification program assists in the delivery of competent representation to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer. The board usually meets four times a year.

North Carolina Judicial Standards Commission (six-year terms)—There are two appointments to be made. Allison Mullins is eligible for reappointment (because she was completing an unexpired term). Lonnie M. Player Jr. is not eligible for reappointment. N.C. Gen. Stat. §7A-375(a) states that the State Bar Council appointments to the commission "four members of the State Bar who have actively practiced in the courts of the state for at least ten years."

The 14-member commission is composed of six judges appointed by the chief justice (two court of appeals judges; two superior court judges; two district court judges); four attorneys appointed by the North Carolina State Bar Council; four citizen members who are not judges or lawyers of which two are appointed by the governor and two are appointed by the General Assembly (one upon recommendation of the president pro tempore of the Senate and one upon the recommendation of the speaker of the House of Representatives). Members serve a six-year term except for the court of appeals judges who operate as the chair and vice-chair of the commission and serve at the pleasure of the chief justice.

The commission was established in 1973 to consider complaints against judges of the state's general courts of justice and, where appropriate, to make recommendations for discipline. The commission also serves as the judicial ethics advisory committee with respect to the Code of Judicial Conduct and is authorized to provide formal and informal advisory opinions regarding application of the code to specific situations. ■

District Bar Presidents Meet at the State Bar to Share Ideas about Member Engagement

On May 19, 2023, presidents and representatives of 34 judicial district bars from across the state met in Raleigh at State Bar Headquarters to share their experience with engaging district bar members in matters of importance for the judiciary, the State Bar, and district bars. State Bar President Marcia Armstrong welcomed the 64 district bar presidents and representatives attending the meeting. Chief Justice Paul Newby reported on issues for the courts and thanked those present for their service as local bar officers. After a presentation on issues under study by the State Bar, the meeting was opened for discussion. The discussion focused on (1) retaining and attracting lawyers to “legal deserts”—communities where there is an insufficient number of lawyers; (2) getting and keeping lawyers on the private appointed lists—particularly in rural areas; and (3) engaging lawyers in the activities of the local district bars. The following are some of the comments made during the meeting:

“If we are serious about having young lawyers invest in our communities, we have to invest in them.”

- Invite summer interns to play golf, have lunch, go to church, dinner.
- They will come to rural communities if



they lay down some roots.

“Find leaders in your community.”

- Sit with stakeholders to ask, “What would get you back on the court-appointed list?”

• It takes leadership—we need to introduce young attorneys to the community; give them friendly advice.

“We need to accommodate [the pressures on] lawyers on the appointed list.”

- Make it easier to handle appointed cases: e.g., get those lawyers in and out of court as

quickly as possible.

- Make financial opportunities in rural communities better.
- Create collegial environments.

“If older attorneys are looking to transition to a slower pace, they should consider moving to a small town like [I did].”

- Compensation for court-appointed lawyers is the crux of this issue—it’s the reason lawyers are dropping off the list; a young family can’t be supported.

“Engagement with a local district bar doesn’t happen overnight.”

- Create a connection to the schools; inspire and create a pipeline to leadership in the district bar.

- Have a judge at the table at all meeting/activities to motivate attendance.

The meeting successfully brought local bar officers together to share their insights, to network, and to continue the difficult work of finding solutions to legal deserts and the declining number of lawyers serving on court-appointed lists. President Armstrong observed, “I believe it’s important for the district bars to be supported and heard.” The State Bar intends to make the meeting an annual event. ■



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