THE NORTH CAROLINA STATE BAR

JOURNAL

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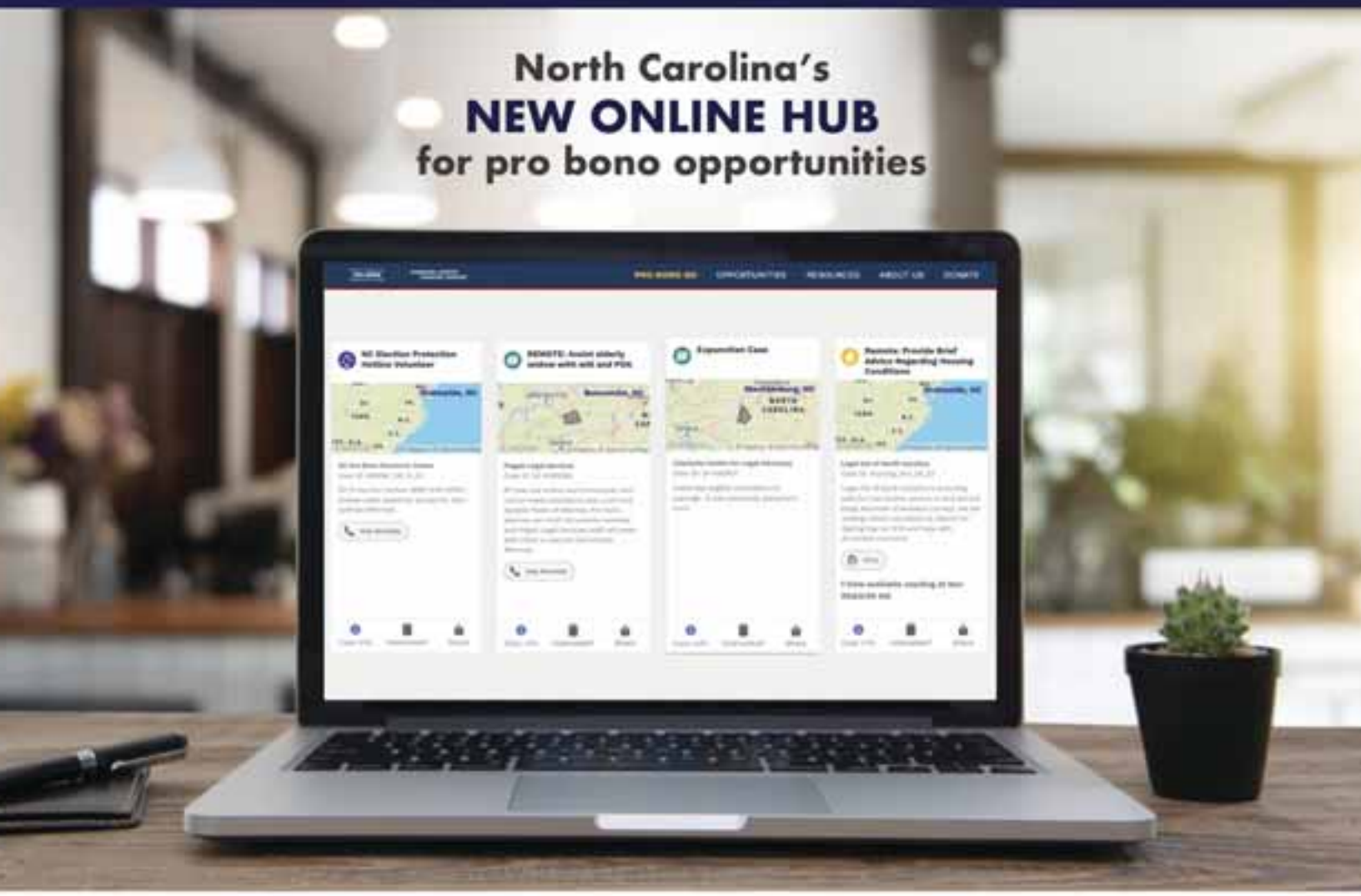

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Publication of an article in the Journal *is not an endorsement by the North Carolina State Bar of the views expressed therein.*

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Introducing Our New Executive Director

"Change is the law of life and those who look only to the past or present are certain to miss the future" —John F. Kennedy

The State Bar has undergone more change in its leadership and procedures in the past 18 months than since its inception in 1933. As a general rule, people do not like change. Organizations, made up of those same people, like change even less. But as Kennedy said, change is the law of life.

The latest change occurred this past October when Peter Bolac was sworn in as the secretary and executive director of the State Bar. He replaces Alice Mine, whose contributions to the legal profession and the state of North Carolina are immeasurable.

In 2006, Peter graduated from Wake Forest with a bachelor of arts in political science. He received his juris doctor from the University of Memphis School of Law in 2010 after a visiting year at Campbell Law School.

In 2011 he was employed by the North Carolina State Bar and worked in the Office of Counsel. He served as district bar liaison and trust account compliance counsel. During his time there, he authored the first Trust Account Compliance Program (TACP) in the country, which is still used today in North Carolina and has served as the model for other states around the nation.

In 2018 he was named assistant executive director to Alice Mine, though this title does little to encompass what Peter actually did in the role. He was instrumental in transforming our internet and communications capabilities, bringing us into the modern age. This allowed virtual participation by councilors and interested parties in the happenings of the State Bar.

He became the State Bar's legislative liaison to the North Carolina General Assembly in 2016. I can personally attest to his ability to interact with representatives and senators on both sides of the aisle to aid the legislature in understanding and assisting in the role of the State Bar in protecting the public. He was instrumental in providing context and assistance in the most recent legislation regarding the State Bar Review Panel and the resulting changes that allow respondent attorneys more of an opportunity to be heard.

Too often the State Bar is viewed as the watchdog of many attorneys. And while our regulatory mandate does require the enforcement of rules to protect the public, that perception is something that both Peter and I wish to change. Peter has committed to visiting all the district bars of the state in the months to come to get to know the attorneys, judges, and leadership within each of those districts and counties.

Here is a little background on Peter: He grew up in Maryland and often frequented Camden Yards to watch the Orioles, yet somehow became a Red Sox fan. He claims to have a state championship ring in football as a second-string quarterback and field goal holder, although no such evidence has been produced to my knowledge. He remains a long-suffering Demon Deacon fan and often reflects on the days of Childress, Duncan, and Paul.

He has been married to his wife, Corey, for 15 years, and they have twin daughters, Elise and Avery, who occupy every second of his free time. One of the most interesting attributes I have found about Peter is that he is trying to visit every National Park before his daughters graduate from high school. I believe he is up to 19 of 63 parks, but given his new role, he may need to push that ambitious venture to before the girls graduate from college.

During my time as a councilor and now an officer, I can say without question that Peter is devoted to the purpose and the people of the

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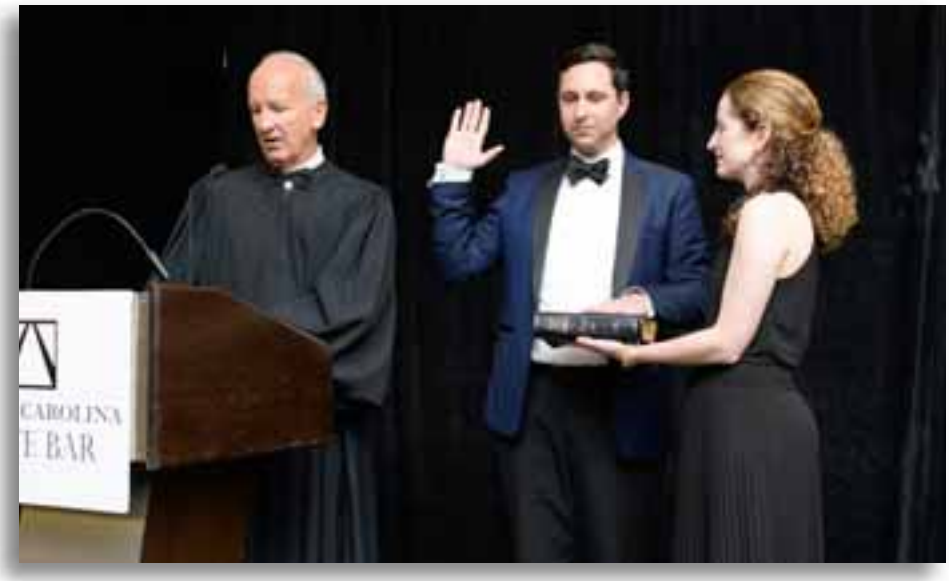
With his wife Corey looking on, Peter Bolac is sworn in as executive director/secretary of the North Carolina State Bar.



The Legacy of Self-Regulation

BY PETER G. BOLAC

"Today is an important occasion in the life of the legal profession of this state. It marks the point beyond which lies lasting greatness or indifferent existence. From this hour, there can be no turning away. The Bar of this state must here and now decide for itself what its future shall be." — I. M. Bailey, first president of the North Carolina State Bar, 1934

The North Carolina State Bar was established by statute in 1933. In 1934, the Bar held its first annual meeting in the new Page Auditorium at Duke University in Durham. State Bar President I. M. Bailey,[1] a securities lawyer and member of the NC House of Representatives, presided. In his address to the newly organized Bar, Bailey called on the lawyers of this state to use their new authority for the public good:

> It is important, therefore, that we, here and now, dedicate ourselves, individually and collectively, to use to the best of our ability, for the furtherance of the public good, the instrumentality of self-government which is now ours. If we fail to accept the rights and privileges and to assume the duties and responsibilities, we cannot expect to have the people of this state again repose confidence in us so long as memory lingers, nor assist us in any distress that may overtake us.[2]

Bailey and the other founding members of the State Bar, though marred by the same personal faults and generational failings as we all are and will be, also recognized that lawyers *must* play our key role in the administration of justice.

> Justice does not administer itself; it cannot be administered solely by judges; it cannot be administered solely by jurors. The three agencies—the judge, the lawyer, and the jury—must work together in a more perfect cooperation. We, of the Bar, must advance to our task, certain that at all times, to the best of our ability, opportunity for criticism of the part we play has been eliminated.

These quotes share a common theme with other speeches, reports, and transcripts from the early years of the Bar: the collective "we." *We* are the Bar. Our right to be an independent, self-regulating profession (something that is perhaps more important now than ever) hinges on our collective commitment to upholding high standards of integrity, professionalism, honesty, and trustworthiness. *We* must not fail.

Over time, the State Bar Council realized they could not properly carry out their duties alone and hired professional staff to handle day-to-day tasks on their behalf. Without diminishing the great work of our team here in Raleigh (and they are, without question, some of the best people you'll ever know), that's all we are: the professional embodiment of the idea of self-regulation. The mission of the State Bar, as you've heard us say countless times, is to regulate the legal profession for the protection of the public. But what we often fail to mention is that we do this work on *behalf* of the profession we serve. Because we love the profession and know how important it is to a just society, we are committed to ensuring that it operates with integrity and in the public interest.

Joseph B. Cheshire III,[3] the first chair of the State Bar's Grievance Committee, was especially conscious of the most important responsibility that comes with the right of self-regulation: the responsibility to discipline lawyers and, if necessary, remove unworthy lawyers from the profession.

> It is a most delicate duty, and proceedings for either discipline or disbarment should be instituted with great care and caution, and with sympathy for faults and mistakes that do not show real moral unfitness. Every effort must be made to avoid injustice; and on the other hand, we ought not to shirk from the painful duty of removing those who bring discredit and dishonor, not only on themselves but also on every member of the Bar.

Today, we reaffirm the ideals of our State Bar founders and renew our commitment to the lawyers and citizens of our great state. The professional staff of the State Bar will support the council in the act of self-regulation for the furtherance of the public good; we will play our role in the administration of justice in North Carolina; we will act with care, caution, sympathy, and humility; and we will not shirk from our duty to uphold the integrity of our profession. *"From this hour, there can be no turning away. The Bar of this state must here and now decide for itself what its future shall be."* ■

Peter G. Bolac is the executive director of the North Carolina State Bar.

Endnotes

1. President Bailey was the founding lawyer of the Raleigh firm now known as Bailey and Dixon LLP.
2. Spiderman's Uncle Ben was more succinct: "With great power comes great responsibility."
3. Mr. Cheshire, as you may suspect, was the father of deceased Raleigh lawyer Joseph B. Cheshire IV, and the grandfather of current Raleigh lawyer Joseph B. Cheshire V.

Discretion's Day—How To Prepare an Attractive Petition for Discretionary Review at the North Carolina Supreme Court

By D. Martin Warf and Lorin J. Lapidus

North Carolina was one of few states where a dissenting judge at an intermediate appellate court could file an opinion triggering an appeal as of right to the state's highest court. But on October, 3 2023, the 2023 North Carolina State Budget (HB 259) became law and ended that statutory avenue of automatic appellate review to the North Carolina Supreme Court. Thus, N.C.G.S. § 7A-30(2) is no more.

Worawee Meepian/istockphoto.com

But calculating when coverage from when the old statute ends and the new section 7A-30 begins involved some uncertainty until the Supreme Court's opinion in *Bottoms Towing & Recovery, LLC v. Circle of Seven, LLC*, 386 N.C. 359 (2024). Before *Bottoms Towing*, the bar was aware that the relevant session law decreed that this legislative change "is effective when it becomes law and applies to appellate cases filed with the Court of Appeals on or after that date." HB 259, Section 16.21.(e). But now, the Supreme Court has threaded the needle for the bench and bar alike by explaining that so long as an "appeal was filed and docketed

at the Court of Appeals before the effective date of that act [3 October 2023]," parties may still rely on under the prior G.S. § 7A-30(2) to obtain an appeal as of right to the Supreme Court based on a dissenting opinion in the court of appeals. *Bottoms Towing & Recovery, LLC v. Circle of Seven, LLC*, 386 N.C. at 361, fn 1. While there are just a few remaining opportunities to take advantage of the old law, it may still be prudent to couple a petition for discretionary review (PDR) with a notice of appeal based on a dissenting opinion, particularly for those cases where the filing of the record on appeal occurred on or before 3 October 2023, *but the docketing* of the appeal occurred after that date.

Substantively, North Carolina now sits in line with the majority of other states, and the United States Supreme Court, which retains a largely discretionary docket. To that end, the future of Supreme Court practice in this state is unmistakable—practitioners must work harder to convince the North Carolina Supreme Court that a case is worthy of further appellate review. That task is challenging but not insurmountable. The pertinent statutory provisions which authorize the Supreme Court to allow discretionary review mark the following important guideposts:

> ...when in the opinion of the Supreme Court:
> (1) The subject matter of the appeal has significant public interest, or
> (2) The cause involves legal principles of major significance to the jurisprudence of the State, or
> (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

N.C.G.S. § 7A-31(c) (2023). Preparing a PDR may seem daunting, and now even more so, since petition practice is now the principal gateway to trigger Supreme Court intervention. Thus, the following seven considerations are designed to guide practitioners preparing PDRs in North Carolina in order to maximize the chances for a favorable outcome:

1. Recognize the Institutional Function of the Supreme Court and Craft a Petition with That Understanding in Mind

The North Carolina Supreme Court is not an error-correcting body. That is the court of appeals' job. Thus, the denial of discretionary review does not necessarily mean that the decision of the court of appeals was legally correct. Rather, this state's Court of last resort serves as the guardian of North Carolina jurisprudence. To that end "[i]t is the institutional role of th[e] [Supreme] Court to provide guidance and clarification when the law is unclear or applied inconsistently." *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012). The core purposes of Supreme Court review are therefore to ensure the uniformity and protect the integrity of this state's jurisprudence. The Supreme Court is necessarily looking beyond the direct interests of the parties and whether their was reversible error below. The significance of the legal issue involved or its public importance coupled with its effect on the overall landscape of North Carolina law are of paramount concern. For example, if there are direct conflicts of published authority between panels of the court of appeals on important legal issues, that conflict could satisfy the requisite statutory criteria as a uniform rule may be needed. A court of appeals opinion that directly conflicts with a particular ruling of the Supreme Court might also qualify. *See Lumbee River Electric Membership Corp. v. Fayetteville*, 309 N.C. 726, 742, 309 S.E.2d 209, 219 (1983) (discretionary review appropriate when court of appeals misunderstood and misapplied North Carolina Supreme Court precedent). PDR-worthy issues thus present as broad legal problems that shake the system at its core.

2. Distill the Issues from the Court of Appeals to Highlight the Particular Dilemma with the Intermediate Appellate Court's Decision

Following the court of appeals' review, it is likely that many issues were presented to that court. But once the dust settles from the proceedings below, practitioners should carefully study the arguments made to that court and narrow the issues to those suitable to petition the Supreme Court for additional review. It may become evident that just one issue raised before the court of appeals meshes well with the statutory factors enumerated in G.S. § 7A-31. That issue should be carefully distilled to its essence so that the specific problem with the court of appeals' opinion becomes apparent. Once the issue is sufficiently narrowed, all energy should be focused on the particular issue that poses a significant harm to the overall legal landscape—in other words, that something needs fixing quite badly.

3. Focus the Main Component of the Petition on Why Its Acceptance is Appropriate Under G.S. § 7A-31

The objective of a PDR is not to argue the merits of a potential appeal to the Supreme Court. Instead, the focus is to convince the necessary complement of justices that the case is worthy of additional study on a higher level under G.S. § 7A-31. Some examples of such instances might include whether a statewide election can be conducted in a certain manner or whether capital punishment accords with constitutional protections. Such issues naturally look at the broad landscape above the interests of the parties at bar. Such issues may constitute an unresolved legal issue of importance on which the Supreme Court has not spoken or on which there has not been a doctrinal statement for some time. Additional matters ripe for Supreme Court intervention involve particularly problematic legal issues that persist in various forms over an extended period of time despite several attempts by the court of appeals to fix the problem. Practitioners should also take time to carefully state the specific issues on which further review is sought with conciseness and clarity. Only after this showing is offered should a PDR briefly preview the highlights of the arguments and authorities that the merits brief may contain if the petition is allowed. This approach will permit the Supreme Court to better evaluate whether its intervention will yield an appropriate return.

4. Use Dissenting Opinions Filed at the Court Of Appeals as a Scaffold

While dissenting opinions at the court of appeals no longer automatically trigger Supreme Court review, they could still provide excellent assistance in clearing a path towards obtaining discretionary review. It is too early to tell how many dissenting opinions we may see at the court of appeals under the new section

7A-30, but those opinions should become a carefully curated part of a compelling PDR. After all, if three court of appeals judges could not agree on one or more important legal topics, the dissenting judge's opinion may provide good indicia that one or more of the section 7A-30 factors are satisfied. For example, if a court of appeals judge specifically articulates the manners in which the majority's opinion at that court conflicts with a particular controlling decision of the Supreme Court, the dissenting opinion could provide valuable gravitas to a PDR. So too could a dissenting judge's opinion facilitate the argument that the case involves important legal principles to North Carolina law when all judges on the panel could not reach unanimity. Ultimately, a well-reasoned dissenting opinion could be the best amicus brief around during the PDR stage.

5. Clearly Articulate Why the Matter upon Which Review Is Sought Is Unique and Weave in Practical Implications That Illustrate How the Court of Appeals' Ruling Is Harmful or Unworkable

According to the 2021-2022 Statistical and Operational Report of North Carolina Appellate Courts, the Supreme Court disposed of 753 petitions during that time period. Many of the petitions could be relatively standard, but nonetheless advocate like Chicken Little that "the sky is falling." A good amount of other petitions (that may even have some merit) may be presented in a way that otherwise makes them relatively uninteresting or uncompelling. Consequently, to prepare a PDR that has a greater chance of making it to the short list, explain the pragmatic implications of why the court of appeals' decision would be harmful to the public or otherwise problematic to North Carolina law. Accordingly, when preparing a PDR, the practitioner may be wise to consider certain questions, such as whether technology, collateral developments here or in other jurisdictions has rendered the prior or existing rule unworkable, and whether the lack of Supreme Court review will continue to cause troubling results. Such unique or distinguishing characteristics may well make the petition stand out from the others.

6. Enlist the Assistance of *Amici Curiae* Support to Highlight the Broader Concerns with the Court Of Appeals' Ruling

The recently amended Appellate Rule 28.1 confirms that *amici* are now welcome guests at the PDR stage. To that end, amicus briefs are prepared by various public or private policy groups or professional organizations whose interests in some important manner converge with the parties petitioning for discretionary review or the legal issues those parties are grappling with. For example, in a medical malpractice case involving the peer review privilege, the North Carolina Medical Board may want to get involved as *amicus* to highlight the importance of protecting the peer review privilege in advancing the care of patients and the practice of medicine in North Carolina. In such an instance, while the Supreme Court is considering whether the PDR has merit, it is given practical indicia—in real time—that the issues involved in the case necessarily involve broad-based public interest or concern.

7. The Stars Must be Properly Aligned

Despite all best efforts, whether a petition is granted may consist of several factors well beyond any practitioner's control. For example, a facially meritorious PDR may have been filed prematurely. The Supreme Court may recognize the potential problem pointed out by the PDR, but may want to let the matter percolate below for a bit longer to see if the issue presents a persistent problem worthy of intervention and whether the court of appeals could patch the problem. The nature of the legal issues involved, the status of existing jurisprudence, and the last time the Supreme Court weighed in on the issue (or a similar issue) can also affect disposition of the petition. The Supreme Court may likewise recognize that while a petition might appear meritorious, a deeper review indicates that public harm or damage to the jurisprudence of the state is not likely to occur at that time the PDR is filed. And since the Supreme Court has only so much bandwidth, a borderline petition may not make the cut during a given term of court based on resources alone. To some extent, then, disposition of the PDR could also depend on having a bit of pixie dust, and every lawyer in this state could always use a bit of pixie dust. ■

D. Martin Warf and Lorin J. Lapidus are both North Carolina board certified appellate practice specialists and former appellate law clerks who maintain vibrant appellate practices at Nelson Mullins Riley & Scarborough, LLP in North Carolina and beyond. Lorin and Martin provide strategic appellate counsel to businesses in high stakes litigation in the appellate courts and serve as embedded appellate counsel to assist trial counsel with pursuing critical motions, lodging objections, and ensuring proper error preservation.

Focus on Fraud: Checks Need to Be Checked Out

By Jonathan W. Biggs

"First of all, who writes checks anymore? They are so 20th century. Like...I mean...like... join us in the present. Just Venmo me!"

Hey boomer, the 80s called and they want their Walkman, parachute pants, and checkbook back. Imagine having this conversation with someone...let's just say a few years your junior—maybe even raised in a room down the hall—maybe someone who cannot function if you change the Wi-Fi password. By the way, if you gave this person a check, they would probably respond, "I didn't want a check, I wanted cash."

marchmeena29/istockphoto.com

So, who writes checks? Real estate attorneys—by the thousands. Given all the attention given to wire fraud, we like checks. They may be like a corded phone to our kids, but, to us, checks are tangible. Checks are reliable. Checks are tested and proven. Checks, however, can still be vulnerable in the wrong hands. While checks may not be as popular with the younger generation, they are still popular with all generations of title and settlement professionals and all generations of criminals.

Luckily, we do not have to "do checks" the way we did back in the 20th century. We have a few new things at our disposal that are even more advanced than the "Clapper" (remember that sound-activated switch for your lights?)—namely Positive Pay and the new and improved Payee Match Positive Pay.

Positive Pay

When we were younger, if we asked our parents for a little spending money, they wanted to know how much, when, and why. If we passed this three-part test, they would approve the release of funds, and we went on our merry way. Imagine if your parent could call the bank in advance and make sure that you were using the money the way they had approved—that is Positive Pay.

Bring that forward to the present day. Imagine if you called the bank every time you wrote a check and said, "Here are the checks that you are allowed to clear; any other check is probably fraudulent, so do not clear any other checks without confirming with me." Wow, we would love that type of control over our accounts. We all know that it would be impractical to call the bank every time you write a check. Besides, according to our kids, we are too busy wandering the aisles of Blockbuster looking for the VCR tape of the Jane Fonda Workout. But what if you could have that kind of control, even while "Sweating to the Oldies"?

YOU CAN! Positive Pay is an addition to your bank account that allows you to automatically and securely upload a small file from your accounting software (iTracs®, SoftPro®, RamQuest, etc.) to communicate with your bank and provide it with a daily list of checks with that same instruction. The file contains the following information for every check written that day:

1. check number,
2. check date, and
3. check amount.

If any of these three do not match, then the bank must confirm with you to make sure that the check is authorized and legitimate before allowing the check to clear. This process feels a lot like the movie theater calling your parents and asking if you are allowed to see the R-rated movie when you actually told them you were going to see the ABC After-School Special. You remain in control, and the bank follows your instructions unless overridden by—you guessed it—you. Who would not want that type of control over their trust account?

Positive Pay was adopted by the American Land Title Association's (ALTA) Best Practices in 2013 "if available in your market." In 2022, ALTA's Best Practices were updated to say that Positive Pay is required on checks—because it is available in everyone's market. Right now, there is no plausible excuse to not provide your client's money this type of control protection. If you do not have Positive Pay, you should contact your accounting software or your bank today.

Recent Trends

There has been a growing trend of criminals stealing mail and looking for checks. For example, if there is an envelope addressed to the power company, it probably contains a check. Nobody just writes to the power company to thank them for the fact that the lights came on as expected. Also, more and more people are using "window envelopes" so that the name and addressee of the payee on a check show through without having to address the envelopes. The mail can be stolen at either end of the delivery chain—through that unattended box on the side of the road—or by robbing the mail carrier. In recent months, unarmed mail carriers have been robbed at gunpoint, and the crooks have stolen the master key to the blue roadside boxes. Doing so allows them to run their own route and collect the mail, or, more specifically, take the checks in the mail.

All banks have a proofing department, but many do not look at checks with amounts less than $10,000—sometimes more. A lot of checks slip under the radar, but the numbers can add up quickly.

Another trend is to take some bleach and a Q-tip and remove or "wash" the payee name off the check. The rightful payee name is replaced with either the crook's real name or an alias. The criminal then takes it to the bank or uses their online deposit functions to receive funds in return for presenting the check. Back in the 80s, "acid-washed jeans" were all the rage—taking perfectly good serviceable clothing and altering it for a totally different look. The criminals are using this "old-school" boomer low-tech process to alter the check. The check will look different, minus the "Members Only" jacket and the mullet, and never make it to the intended recipient.

Payee Match Positive Pay

To combat this recent trend of "acid-washed" checks, Positive Pay has been enhanced to add a fourth element to the test for clearing a check. As the name would indicate, it is "Payee Match." While Positive Pay is available everywhere, the Payee Match enhancement is beginning to spread across the nation like Ghostbusters slime. Basically, the previously mentioned automated file being securely uploaded to the bank every day now has a fourth element. All of the following must match, or the check will not clear without your approval:

1. check number,
2. check date,
3. check amount, and
4. ***payee name.***

This additional step is tantamount to the movie theater telling your parents that not only are you trying to see the R-rated movie, but you are with "that bad influence," and the theater is denying admission without parental consent to all of the above. Payee Match is not the end-all-be-all to check security because you will obviously not be there when the check is presented for payment. You do not possess the magical skills of Siegfried and Roy; however, the magic of Payee Match narrows the sea of risk a little further and makes the criminals work a little bit harder. At its very essence, a check is a written, dated, and signed instrument that directs a bank to pay a specific sum of money under your control and direction to the bearer.

You might think that if you already have Positive Pay, then Payee Match is automatic. Maybe it should be automatic, but it is not. While you cannot have Payee Match without having Positive Pay, you can (and may) have Positive Pay without having Payee Match. Make the call today and make sure that you ask for both. Check with your accounting software of choice or reach out to your bank and ask them. This step will help you protect your clients' money in your trust or escrow account and reduce the chance that you will have to hire Magnum P.I. to locate funds that went missing. ■

Jonathan W. Biggs is vice-president /director of risk management and education for Investors Title Insurance Company.

State Parent Defender Reports to US Commission on Civil Rights

By Amanda Bunch

"People often focus on that horrific "1%" of cases. And those cases *are* horrific, and those people should *never* get their kids back. Those are the front-page stories. But 80–85% of cases involve neglect. And there are all kinds of cases. Still, to take care of the children, the number one thing we can do is take care of their families. ...There are approximately 11,500 children in foster care in North Carolina. Every one of those children and their parents deserves to have an attorney who is adequately compensated and has access to resources such as social workers, parent peer advocates, investigators, interpreters, and expert witnesses."

North Carolina Session Law 2017-41, House Bill 630, Part X, known as "Rylan's Law/CPS Observation," was approved on June 21, 2017. The NC General Statute 7B-903.1(c) was revised to address parent-child visitation before physical custody is restored to the parent or caretaker from which the child was removed. Essentially, it requires county child welfare agencies to observe and document two visitations between the parent/caretaker and the child, for no less than one hour each, conducted at least seven days apart, before the agency may recommend returning the child to the parent/caretaker.


Sotolongo

On August 7, 2024, State Parent Defender Wendy Sotolongo gave testimony to the North Carolina Advisory Committee to the United States Commission on Civil Rights. She provided seven specific recommendations to the committee, drawing from her more than 35 years of experience practicing abuse, neglect, and dependency (A/N/D) law in North Carolina. She stated unequivocally that child safety is non-negotiable but emphasized that most of the children in the system are there because of neglect, not abuse. She then posed the question: "What if those families labeled neglectful were offered the support and resources they needed instead of an investigation?" What if we addressed families' needs so they could thrive and avoid the trauma of investigations and separation altogether?

This advisory committee in North Carolina is focused on studying the child welfare system during the current term, which closes in May 2025. Since March 2024, the committee has been working toward answering the guiding question: "Whether the implementation of Rylan's Law has a disparate impact on individuals who are members of a protected class."

According to the committee's project proposal, the study will specifically examine the outcomes of state intervention thus far; analyze any disparities in the child welfare system based on race, color, age, disability, or other federally protected categories; assess the impacts of Rylan's Law on child/parent reunification rates; and identify areas for improvement in the implementation of Rylan's Law.

Sotolongo was a guest speaker for the "Policy and Governance" panel, the third of five planned public briefings. During these briefings, the committee heard from stakeholders, experts, and citizens on the topic of North Carolina's child welfare system. Those invited to testify spoke from their

expertise, experience, and perspectives, informing the committee's work and shaping how it might identify areas for improvement. While it is difficult to predict what the North Carolina study will reveal about this national issue, the committee intends to consider every testimony, every data point, and every written public comment to develop informed recommendations to the United States Commission on Civil Rights regarding Rylan's Law.

Sotolongo explained that she had considered many approaches for addressing the committee on a topic about which she is deeply passionate. Ultimately, she decided to speak only to areas within her expertise and knowledge. She chose to "be the lawyer" and focused on discussing the impact of the law on families and what, from her perspective, could be done to improve the system by amending North Carolina's juvenile code.

Sotolongo spent 16 years of her career as a DSS representative and later as a guardian ad litem attorney advocate, believing all the while that she was "helping children." However, in each of those roles, she admitted that she saw no real improvements in the outcomes for children and families caught up in the system. Based on her experience, she offered the following seven recommendations:

1. Study the Mandated Reporting Statute. Sotolongo cited a report showing that 42.1% of reports to county DSS agencies are screened out and another report indicating that only 17% of all abuse, neglect, and dependency reports are substantiated. "Clearly, there is a lack of understanding or training around what should be reported, leading to over-reporting by mandated reporters and unnecessary investigations." Sotolongo recommended that the state commission a research organization to study whether the universal mandated reporting law is effectively keeping children safe and whether alternatives could more effectively identify children at risk of harm.

2. Provide Parents with Attorneys During a Child Protection Services (CPS) Investigation. Sotolongo pointed out that by the time a petition has been filed, a parent's child has often already been removed from the home. This removal causes long-lasting trauma for the family. She recommended providing legal representation before a petition is filed to help stabilize families and prevent removals. Such pre-petition, preventive legal representation programs can reduce child maltreatment. "North Carolina should amend NCGS 7B-602 to ensure parents have access to quality legal representation during a CPS investigation."

3. Amend Statutes Regarding the Removal of Children to Address Trauma. Sotolongo noted that several North Carolina statutes address the criteria for removing a child from a parent's custody, but none address the trauma caused by removal. "Investigation, removal, and placement are traumatic events, in and of themselves, for all involved." She recommended that the state amend its statutes to incorporate consideration of the emotional and psychological harms of removal and require CPS to detail its plan to mitigate those traumatic effects.

4. Change the Culture of Parent-Child Contact After Removal. One hour per week is insufficient for evaluating whether a parent can demonstrate they have done all they were supposed to in order to reunify with their child. Sotolongo argued that North Carolina should amend its visitation statute to establish the presumption of weekly, multi-hour, unsupervised visitation unless proven to be contrary to the safety of the child.

5. Pass the Senate Version of SB 625 to Allow Children to Maintain Ties with Their Families After Adoption. "Termination of parental rights is rightly termed the 'death penalty of civil cases,'" Sotolongo said. She supported the Senate version of SB 625, which would allow children to maintain ties with their families after adoption. Recent trends toward "open" adoptions, especially beneficial to older children, enable children to maintain some form of connection after adoption, which can be particularly beneficial for children with strong attachments to their parents.

6. Increase the Pay for Attorneys Representing Parents in A/N/D Cases. Sotolongo criticized Rylan's Law for failing to address the need for high-quality legal representation for parents in A/N/D cases. She explained that fewer attorneys are available to take court-appointed cases, and growing caseloads are leading to reduced quality of legal representation. The hourly rate for A/N/D cases—reduced from $75 to $55 per hour in 2011 and raised slightly to $65 in 2022—is insufficient to allow good attorneys to continue representing parents. She recommended raising the rate to reflect inflation so attorneys can earn a wage that meets the cost of living.

7. Provide Interdisciplinary Legal Representation to All Parents with A/N/D Cases. Sotolongo, a proponent of Interdisciplinary Parent Representation (IPR), launched an IPR program in 2022 in the State Office of the Parent Defender. She emphasized that attorneys need additional resources to provide holistic representation to their clients. For example, having a social worker as part of the defense team can improve legal outcomes, shorten the length of time children stay in foster care, and improve overall family outcomes.

About the Advisory Committee

"On average, advisory committees produce at least one report to the commission per four-year term that reports salient civil rights concerns in the state," said Ana Victoria Fortes, the designated federal official appointed to this advisory committee. She clarified that the committee is "in no way an enforcement agency;" its role is strictly advisory, and its report to the commission serves as a "document that could potentially be used to move public policy."

"Its main purpose is to bring forth the concerns found through the study. Generally, the report is a public policy tool—used not to enforce anything, but to capture what is occurring at this time in North Carolina," she said.

Before the report is finalized, the committee will reflect on key questions and identify themes that emerged throughout the study. If any panel participant is cited in the report, there will be time for the DFO and editors to reach out to them for a draft review, expected in April 2025. Cited panelists will be contacted to ensure factual accuracy and clarify anything that wasn't clear in their original presentation.

The goal is to have the report voted on by May 16, 2025, and released to the public by July 2025. ■

Note: Ms. Sotolongo recently received the draft report that was sent to panelists who will be cited as a reference. She confirmed the final report from the advisory committee will include information taken directly from her August 7, 2024, testimony.

Amanda Bunch is a communications specialist with the Office of Indigent Defense Services.

A Day in the Life of a Legal Aid Attorney

By Legal Aid of North Carolina Attorneys, Piedmont Region

baona/istockphoto.com

Being a Legal Aid of North Carolina (LANC) attorney is a commitment to serve the most underserved and vulnerable individuals within our respective service areas. It is not for the faint of heart but is highly rewarding. There is also no typical day. Every day is different, depending on the position, office location, and practice area. Often, it is hard to predict what your day or week will look like, given the nature of our caseload. While it is nice to be organized and have a tidy roadmap for your day or week, sometimes you need a few curveballs to keep you growing.[1]

Since it is difficult to outline a 'typical' day, we decided to spotlight different advocates who chose to share their day. This is by no means exhaustive of the many roles we have at Legal Aid NC, but it provides a snapshot of a "day in the life" of our attorneys. Enjoy!

DV Supervising Attorney

By Kelly Carroll

Since my day varies significantly from day to day, I chose three primary areas that comprise most of my days.

Clients

While all my prospective clients have trauma in common, they all handle it differ-

ently. When I call a prospective client, I never know what emotion I will have to triage. It could be hysterical, angry, depressed, hopeful, or relieved. No matter how many training courses I have attended on trauma-informed interviewing techniques, it is difficult to channel them when a client is angry that I cannot represent them, hangs up on me, or is sharing the most heartbreaking story I have heard.

Litigation

Most domestic violence cases have a very quick turnaround time. From when a prospective client files their complaint to their one-year hearing, there are about ten days. By the time I receive a client's referral, there are only two to three days until the one-year hearing. Going to court with a case you have only been familiar with for less than 48 hours (about two days) typically raises anxiety levels. Often, I also don't know if the defendant will be present in court, if there will be opposing counsel, if I will be presenting my case to a trauma-informed judge, or if the defendant will agree to the terms of the protective order and sign a consent order.

Management

In addition to handling my caseload, I also manage four staff attorneys and two paralegals. Most of this work is administrative, which includes closing their cases, making schedules, doing evaluations, and conducting case reviews. My favorite part of my management role is seeing my team challenge themselves, advocate for themselves and their clients in court, and engage with the community. It is incredible to witness them handle their first custody or expunction case, see a client bestow their attorney with a hug and bouquet of flowers, or have a judge comment on the attorney's professionalism.

As a domestic violence attorney with Legal Aid, I am grateful for my sporadic apprehension and frequent pivots. It keeps me engaged daily and evolving throughout my career.

From a DV Staff Attorney

By Susan Yanagi

I decided to outline my day today as I'm going through it. While days certainly change depending on the week and/or caseload, today is a typical day for me:

6:00 AM: My alarm goes off, and the smell of coffee makes its way upstairs. The machine is prepped and ready the night before to ensure I can walk out the door with the energy I need to handle the day. I get up and check my calendar again—I am due in court to meet with my client at 8:00 AM before her 9:00 AM hearing. On occasion, we are assigned cases the day before a hearing and only get to speak with the client once. To gauge their confidence and fully prepare the client before their case is heard, I always try to meet with them at least an hour before to prepare them for every possibility and outcome.

8:00 AM: My client is waiting for my arrival. Usually, they are on high alert, their head on a swivel, looking for the defendant. I walk up, introduce myself, shake their hand, and we get to work. I go over my retainer agreement with them and walk through the draft of the consent agreement I drew up the night before. I explain that I will approach the defendant, should they appear, and try to negotiate a settlement so the matter does not have to go to trial. However, should the defendant want to be heard, we then go over the direct examination and possible cross-examination questions my client may be asked by opposing counsel or the defendant themselves should they appear *pro se*. We talk about the evidence that will be presented—usually photos of their injuries, text messages containing threats, or even medical records if the abuse was so severe that medical attention was required. I explain to the client that this is an emotional experience and that tears are expected and allowed. I encourage them to take their time testifying and to allow themselves to feel as they tell the

court the horrible things the defendant has put them through.

9:00 AM: The docket is called. The defendant in my matter is present, so I take a moment to speak with them about a possible consent agreement. This particular defendant wants the court to hear their side of the story, so I inform the court that we are moving forward with a hearing.

10:00 AM: Our case is called. My client begins, and we move through our direct examination flawlessly. They tell the court the abuse they have suffered at the hands of the defendant—strangulation, physical assault, sexual assault, threats to end their life, stalking and/or harassment, etc. We enter exhibits of photos of bruising, blood, text messages, and the like to corroborate my client's story. When finished, it is the defendant's turn. They have no questions but want to tell the court their version of events. Upon their conclusion, I then jump into cross-examination, poking holes in their narrative and corroborating facts mentioned in my client's story that line up with the defendant's. We then give closing arguments and the judge makes their ruling. In this case, the judge grants the order and puts a protection order in place for one year.

11:00 AM: We get the order from the clerk, and I review it with my client outside of the courtroom. They thank me, and we go our separate ways.

11:30 AM: Upon my return to the office, I check my email and see that I have been assigned a new matter. I review the complaint, the evidence provided, and perform a criminal record check on both parties. I then look to see if the defendant in this matter has been served.

12:00 PM: I call the new client and ask to perform a client interview, during which we go over their complaint—the what, when, where, who, why. This is usually the third or fourth time the client has had to tell their story, so I expect them to be frustrated in having to tell it again. By the end of their narrative, we have established a sense of trust with one another. I walk through what will happen at their hearing, explaining the 50B statute, addressing custody concerns if the client has children, going over their evidence with them, and addressing the different outcomes that could happen in court. We end the call, and I inform the client I will let them know if I can provide representation by the end of the day.

1:00 PM: I review my notes from the client interview, the evidence provided by the client, any police reports I was able to obtain prior to our call, the court filings, and previous filings. I make the determination that I will provide representation at their hearing, so I call them back to schedule a hearing preparation call, where we will walk through the direct, possible cross-examination questions leveled by the defendant or opposing counsel, and court expectations.

2:00 PM: I begin prepping for the client's case.

2:30 PM: I complete all the necessary casework, including drafting a response to the defendant's motions and reviewing the applicable case law. I make sure all documents are properly formatted according to court rules and that all exhibits are organized for the hearing.

3:30 PM: I attend a team meeting to discuss upcoming cases, share strategies, and support my colleagues. This is an important part of my day, as it allows us to brainstorm solutions to common challenges, discuss difficult cases, and make sure we are all on the same page.

4:30 PM: I finish up some administrative tasks—responding to emails, returning phone calls, and reviewing my calendar for the next few days. I also check in on my ongoing cases to ensure that deadlines are met and clients are being properly supported.

5:00 PM: The office starts to wind down, but I often take some time to reflect on the day's work. I review any important notes I've made, prepare for the next day's hearings or meetings, and try to wrap up any loose ends.

6:00 PM: As I leave the office, I feel a sense of accomplishment, knowing that I've helped clients navigate a complex and challenging system. I reflect on the emotional weight of my work but also the positive impact I've had in helping clients move forward with their lives. The job can be draining, but it's worth it when I see the change I can make in someone's life.

From a Housing Staff Attorney

By Antonette Edwards

7:00 AM: I start my day early, as I know the caseload for housing issues is often overwhelming. I review my calendar, check for any urgent cases, and make sure I have all the documents I need for today's hearings and client meetings.

8:30 AM: I arrive at the office and dive right into reviewing new referrals. I start by examining their housing issues: evictions, landlord disputes, and habitability concerns. I prioritize based on urgency—evictions usually need to be addressed first, while other issues can sometimes wait a day or two.

10:00 AM: I meet with a client to discuss their eviction case. We go over the complaint filed by the landlord and prepare a defense strategy. I explain the eviction process to the client, make sure they understand their rights, and review any evidence

that might help their case.

11:00 AM: I head to court for an eviction hearing. As I wait for the case to be called, I review my notes one last time, anticipating the landlord's arguments and preparing my counterpoints. When my case is called, I represent my client, highlighting their defenses and advocating for a fair settlement or delay in the eviction.

12:30 PM: The hearing concludes, and I quickly debrief with my client to discuss the outcome. We go over next steps and any further action needed. While sometimes we win cases outright, other times we negotiate agreements that allow clients more time to stay in their homes or find alternative housing.

1:00 PM: I grab lunch at my desk, reviewing any incoming emails or calls from clients, opposing counsel, or other stakeholders. I use this time to make sure I'm staying on top of any follow-ups needed for ongoing cases.

2:00 PM: I head back to the office to review documents for an upcoming trial. I prepare witness statements, gather additional evidence, and make sure everything is ready for the next court date.

4:00 PM: Another meeting with a client, this time for a lease dispute. We go over the issues with their landlord, explain their rights, and assess whether litigation or negotiation is the best path forward. I also advise the client on how to maintain housing while we resolve the dispute.

5:30 PM: The workday is winding down, but I finish up any remaining tasks, such as reviewing pleadings, preparing for tomorrow's cases, and responding to client inquiries.

6:00 PM: I head home for the evening, thankful for the opportunity to help clients secure stable housing. It's a long day, but I know that each case I take on brings my clients closer to stability, which is one of the most rewarding aspects of my work.

From a Housing Supervising Attorney

By Tommy Holderness

I supervise housing staff attorneys and maintain my own caseload. I'm also primarily responsible for supervising our housing courthouse clinics. Below is a snapshot of my day today. This can vary but is largely indicative of what a typical day looks like for me.

7:45 AM: I check the dockets online to see if any known "bad" landlords are in court today. I also look for *pro se* landlords who are more likely to fail to prove their case.

8:30 AM: I head to the courthouse, introduce myself to people in one or more courtrooms and ask if they have any questions. I provide information to a few people and open cases for three others. Opening a case involves screening them for eligibility, running a conflicts check, and interviewing them. One of the cases gets continued and I try the other two that morning—winning both.

11:00 AM: I head home, get the intake sheets and retainers uploaded to Legal Server, and enter the hearing summary into Legal Server.

11:30 AM – Noon: I answer emails and review staff attorneys' pleadings.

Noon - 12:15 PM: I grab a quick lunch.

12:15 - 2:30 PM: I draft an answer and counterclaims in the case that was continued, and get it filed and served. I prepare for trial.

2:30 - 3:15 PM: I review the clerk's website for orders in cases that have been decided before today. Two orders have been entered. I send those orders to the clients and close their cases.

3:15 - 3:45 PM: I answer more emails and review a settlement agreement.

3:45 - 4:15 PM: I work on a brief for a case in the NC Court of Appeals. We won a $34,000 judgment below and the landlord has appealed.

4:15 - 4:45 PM: I approve case closings for other attorneys.

4:45 - 5:00 PM: I plan my weekly training session.

5:00 - 5:30 PM: I call and interview a client whose case was assigned to me today. I review the complaint online and ask her to send me all relevant documents. The client lost in small claims court, so I draft appeal paperwork for her and email it to her.

From a Rural Area Managing Attorney

By Melanie Tarrant Bull

6:00 AM: I sleepily glance at my clock and do the mental calculations…how much time do I really need to shower, fix lunches, do my daughter's hair, and make it out the door by 7:30 AM to drop my son off at school? I decide I can sleep for 30 more minutes, but unfortunately the schedule for the day ahead starts running around my brain and I can't go back to sleep. Oh well, I probably need the extra time to find a suit jacket that semi-matches the only clean pair of black pants I have left.

9:00 AM: I've run through the urgent emails and am heading out the door, hoping I can finish my first cup of coffee during the five-minute drive to our local courthouse. I'm off to attend calendar call with our newest housing attorney on her first district court case. She's representing a tenant who has been living with brown and smelly water for four years, despite numerous complaints to the landlord. Eventually, our new staff attorney will go on to win her first trial and get a judgment for the client, but today we are asking for a continuance. The landlord still has discovery to answer.

Noon: Back in the office after calendar

call and getting ready to have our weekly lunchtime staff meeting. We laugh over humorous exchanges with opposing counsel, rant a bit about cases that did not go our way, and generally reconnect while sharing important news. While there are many challenges with small offices, there is a comradery in a small office that makes my 45-minute commute totally worth it.

3:00 PM: Time to meet with a new client. As a managing attorney in a small office, I have my own case load. Today it's a relatively easy, but important, matter—helping a client fill out her motion to claim exempt property so that she does not lose any essential property to a judgment collection. As I talk to my client, I hear a story that is as familiar as it is frustrating. My client had co-signed for a car for a family member, not realizing that they would be on the hook for the full amount when the family member stopped paying. In this case, the client co-signed for her husband's truck, for which he did not make a single payment. But to dig the knife even further, the husband then left the client…and took the truck with him. The loan company could not even find the vehicle to repossess it and recoup some of the debt, so the client was sued on the entire loan. Fortunately, the client was able to protect the equity in her home, as well as all of her personal property, and left the appointment feeling much better about the effect that this judgment would have on her life. Note that neither she, nor I, felt much better about the effect her good-for-nothing husband had on her life.

6:00 PM: I am just arriving home from the office and hanging up the phone, having talked to our paralegal about a new emergency housing case that has walked in at the end of the day. A family has just been served with a writ of possession, which states that the sheriff will be out to lock out the property within three days. We firm up plans for the information we need to get from the client and which staff attorney will attempt to reason with the landlord the following day. But for now, it's time to switch to mom mode, grab my son, and head off to karate practice.

From a Managing Attorney in a Metropolitan Area

By Larissa Mañón Mervin

My office calls me the "meeting queen" for good reason. While everyday looks entirely different for me, it is usually filled with, you guessed it, meetings! They are usually about a variety of issues, such as office management, organizational policy and procedure, community engagement, *pro bono* partnerships, grants and funding, staff relations, case related questions and review, bar association work, and training. I thoroughly enjoy each of these areas and how my skillset has transformed into what it is now from when I traditionally only practiced in direct client representation, I decided to touch on three of my most enjoyable roles below.

Community Engagement

Let's start with community engagement. This is my absolute favorite part of the job. I get to repeatedly share our mission at various community events and meetings—and it never gets old. It looks different in every setting. I may be chatting with a potential donor or existing grant funder, but I could also be speaking with a prospective client and community member who needs our services. In either setting, I get to share the incredible work our staff engages in. We keep people housed, help them achieve safety and economic stability, and serve as a voice for some of the most marginalized members of our community. It's rewarding to be able to use our education and skills to make such impactful change and the fact that I'm tasked with the responsibility of sharing that across our area is unique and incredible. Despite our longstanding presence in the state, there is still so much about our firm that people don't know. So, being sure to capitalize on every opportunity to share who we are helps bridge that knowledge gap, which will hopefully help to ultimately bridge the access to justice gap.

Staff Relations

Like community engagement, this part of the job brings me great joy. It is a uniquely gratifying experience to train and mentor staff, work to keep staff morale high, and meet staff members where they need it most. This inevitably looks different for each staff member depending on their professional development goals, desires, dreams, current needs, caseloads, and practice areas. I can never use a "one size fits all approach," and given the size of my office, it keeps me on my toes. But I love the challenge. Someone may want experience in a different area of the law, and I can try to find opportunities for them to take on work in that area. Or maybe they want to work on a unique type of case, such as an appeal or federal case. I then get to advocate for them to be placed on those teams as they become available. Someone else may want to feel more confident in their public speaking engagements or in trial. I get to work with them to find mentors and training to help them develop those skills. You get the idea. It all varies from person to person, and I get to be a part of their journey.

Organizational Influence

Finally, I'll end with this. I have already shared how uniquely rewarding our work is. To be in a firm that does this type of work is a gift. To be in a leadership position at a firm that does this type of work may be even more rewarding. I get to help craft what our policies and procedures look like.

Tell Us in a Few Sentences

Welcome to a new column in the *Journal*, Tell Us in a Few Sentences. Each quarter we'll ask you, our readers a question. This quarter we asked you to tell us...***what was your shortest trial?***

My shortest trial was my first trial, a one-day civil district court trial. We started at 9:00 AM and the jury was back by 5:30 PM. We picked a jury; had opening statements; called the plaintiff and defendant as witnesses; had a charge conference, closing arguments, and a verdict. By the time we reached the closing arguments, I barely had a voice! In the end the jury awarded exactly what the defense (me!) had offered.—***Jackie Houser***

For those who remember Superior Court Judge William Griffin and tried cases in front of him, you know he was not one to waste any time. Indeed, as soon as he instructed jurors on the law and sent them out to deliberate, he would turn to the DA and say, "Call your next case Mr. DA." During those years the entire jury venire would be seated in the courtroom itself (no jury lounge). I even remember him on occasion saying, "Mr. DA, the jurors are waiting with bated breath to see what the State is going to call next."

Back in the late 1980s I was an assistant district attorney in the five counties of the Second Judicial District where Judge Griffin was resident. We were holding court one week in Washington County (Plymouth, NC) doing a "clean-up" calendar. In addition to guilty pleas, I prosecuted five jury trials. In a reckless driving case involving a defendant who had attempted to elude the local police by driving his car through the backyards of a Plymouth neighborhood, we seated the first 12 jurors to be called to the jury box, put on the evidence, argued to the jury, the judge instructed on the law, and we had a guilty verdict all in an hour's time.

Another case that week involved an inmate of the local jail who had set his jail cell mattress on fire and had been charged with damage to property. Although I do not recall the length of the trial, not only was it short, but the jury set a record for quickness. Judge Griffin charged the jurors on the law, sent them out to deliberate, and as he turned to me and said, "Call your next case," there was a loud banging on the jury room door. Judge Griffin told the bailiff to go see what was the matter. When the bailiff came back into the courtroom he said, "Judge, they've got a verdict!" The jurors were brought back into the courtroom and announced their verdict of guilty. Even Judge Griffin was shocked at the speed with the verdict was reached.—***Rob Johnson***

My shortest jury trial was also my first post-COVID trial. We were in Burke County with the Honorable Robert Ervin. As you might expect in April 2021, there were some logistical challenges to a jury trial. However, we started about 2:20 PM on Tuesday with voir dire at the local municipal auditorium. After the jury was empaneled, we moved back to the courthouse. Even with that and multiple witnesses, we had a verdict by 4:40 PM on Wednesday. Judge Ervin runs a very efficient court!

My shortest bench trial was some years ago in Guilford County. The total trial and deliberation ran about 90 minutes.—***Adrienne Blocker***

The shortest trial I ever had was in Wentworth in Rockingham County. It was my first year in practice as an attorney. It was not in a courthouse, but rather a magistrate hearing across the street in a lovely country house with a wrap-around gallery porch. The magistrate sat in a porch swing while counsel had wooden patio rocking chairs. The claim was for several hundred dollars for windows knocked out of a nearby home by a couple of young ruffians throwing rocks under cover of darkness. Suit was filed against my clients—the parents of these juvenile neighborhood terrors—under the vandalism statute. While plaintiff could not actually identify who tossed the stones that night, apparently everyone in Wentworth knew exactly who did it, so after 20 minutes of speculation and innuendo, plaintiff was awarded judgment for $100, the fair market value at the time for a handful of window panes. I left fuming, but by the time I made it back to the office in Winston-Salem, I was laughing (and grateful that no rocks had been thrown at my car windows during the trial by you know who).—***Gray Wilson***

And now it's your turn, readers! **In a few sentences please tell us...what's the strangest form of payment you've ever received?** Send your answers to the editor, Jennifer Duncan, at jduncan@ncbar.gov.

I regularly brainstorm ideas with other leaders and hear their perspectives from their lived experiences. Together, we all get to help create what our future direction looks like as a firm—and that is pretty cool!

Final Thoughts

Being a staff attorney at Legal Aid requires dedication and emotional resilience, as we frequently navigate complicated legal

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Everybody Hurts (Even Lawyers) Sometimes

By Bruce Simpson

Editor's note: The following article discusses suicide and includes a variety of sensitive details that might be triggering to readers.

Svitlana Hulko/istockphoto.com

I have practiced law in Kentucky for 40 years. I thought previously about submitting an article for the *Bench & Bar*, but I feared that since I practice in the esoteric field of land use law, I might lose your interest halfway through the first paragraph. I do not want to lose your interest today. I am here to warn you about reaching the point of no return should you ever determine, as I did in January 2023, that death is a better option than life. Yes, I attempted suicide. Now, the facts.

During the last half of my career, I have heard it said, "Bruce, you have an excellent reputation as a lawyer." I cherished hearing these words. My self-worth became increasingly dependent on receiving such positive affirmation. This is because I have had low self-esteem for most of my life. I masked it well, but beginning in early adolescence, I suffered from untreated, sometimes, paralyzing depression, a problem I did not recognize, appreciate, or obtain treatment for until after a significant life crisis in January 2023. I was in my mid-40s before I began feeling better about myself but that was only because I started experiencing major success as a lawyer.

In early 2022, doctors diagnosed me with atrial fibrillation, which required hospitalization. In May 2022, I sustained a brain bleed (hemorrhagic stroke) from a fall. I was hospitalized four times during the next seven months. The brain bleed exacerbated a pre-existing cognitive memory impairment, related to my depression, that I did not know I had until it was too late.

In January 2023 I received a shocking adverse decision from an appellate court which noted I had not filed a responsive brief in a case I won at the trial court level. Instantly, I was crushed by more anxiety than I knew existed. How could I not have filed a brief in a case I won? I could not believe I hurt my clients and I saw my "excellent reputation" disintegrate. I was up all night, overcome with grief, sorrow, and humiliation. In less than 12 hours, I concluded that suicide was my only option. I had previously thought about suicide should my self-esteem ever be seriously threatened. I had to be perfect as a lawyer and anything less was unacceptable. I never took any steps to ameliorate my depression and thoughts of suicide. Such is the nature of depression. A person suffering from depression often is constrained from seeking help.

I went to a gun shop to purchase a powerful pistol. I had not fired a weapon since serving two years in the army several years prior. I did not want to survive. I knew of people with failed suicide attempts by gun only to live out their days in tortured agony and dependency. I did not want this. I was advised to purchase a .357 Magnum revolver and hollow point bullets. I was shown how to load and fire the gun. I paid close attention. I intended to be successful.

I went home and wrote a note to my family. I love my family, but I thought I had dis-

graced them and myself beyond restoration. I emailed my clients, advising them of the decision and their appeal rights. I also recommended that they retain new counsel. I did not tell them what I was going to do. I took an Uber to the cemetery where my grandparents are buried. Before exiting the Uber, I texted a partner advising him of my error and apologized.

I milled around the cemetery, pausing momentarily before pulling out the gun. Alone, I thought, "Really, Simpson, is this how you want your life to end? Is this how you want to be remembered?" My cell phone started blowing up with calls. My wife had obviously found my note.

I turned off my phone. I did not want to be dissuaded. I had reached the point of no return.

I wondered if the gun would fire so I test-fired a round into the ground. I was stunned by the loudness and kickback. I knew the shot would attract attention. I called 911 and reported that I discovered a body. I removed the spent shell and then pulled the hammer back from the pistol watching the next bullet rotate into the firing chamber like the previous bullet did during the test firing. I pointed the gun to the side of my head. I pulled the trigger. The gun did not fire, it merely clicked. I was dumbfounded. I intended to kill myself. What happened? I knew the police would arrive soon. I did not want to shoot myself while an officer was approaching. I put the gun in my pocket. The officer drove up, stopping next to me. I told him I was wrong about the body, that it was a garbage bag. He said, "No problem, thanks for reporting it anyway." He drove away.

Totally bewildered, I walked out of the cemetery. A thought entered my mind to call a former close friend, Bruce Smith, also an attorney. We had been friends for years, but we had two hotly contested cases opposite one another, and the relationship soured. I had not thought about calling him in five years. If he did not answer, I would return to the cemetery and finish it. He answered. He agreed to talk. He picked me up in his car and we went to a bar. We talked for two and a half hours and healed our friendship. Nevertheless, I was still determined to return to the cemetery and kill myself. I never disclosed this to Bruce.

When it came time to leave, I asked Bruce to drop me off at the gas station across from the cemetery and that I would wait for an Uber. As I departed his car, he asked, "Where are you going?" I told him, "To wait for an Uber." He said, "No, it's cold, I'll wait with you," I said, "No, go ahead, it's late." He said, "I'm waiting with you." I attempted to leave his car three times that night for the cemetery and each time he stopped me. He subsequently took me home.

Driving down my street towards my house, we observed five or six police cars. Bruce looked at me and demanded, "What the hell is going on?" I muttered something ridiculously unbelievable. I asked him to drive me to the main road two miles away. As I finally left his car, Bruce grabbed my arm and asked, "You are going home, right?" I lied again and said, "Yes." I still intended to kill myself. However, after leaving his car, I had a sudden change in thinking. I could not kill myself after he had driven 12 miles to take me home. I could not leave Bruce with that memory.

As I walked home, I experienced an enveloping sense of peace, in stark contrast to the nightmarish distress which had consumed me. My suicidal thoughts abated. Approaching my home, I noticed the police cars were gone. I telephoned my wife. She was ecstatic. She bolted out the front door crying and hugged me. She was elated and devastated at the same time.

My wife called the police, advising them of my return. Shortly, two police cars and a paramedic unit appeared. I told them my desire for suicide had ceased. A police officer said that because of my threatened action, I would have to be detained for three days at Eastern State Hospital. My gun was confiscated. A police officer searched me for other weapons and then escorted me outside. I was handcuffed and lodged in the backseat of a cruiser, all in front of my home and neighbors.

En route to the hospital, I recalled my past inappropriate comments about people in mental hospitals. I was put in an unlocked room and checked on every 15 minutes. Staff had to unlock the restroom when I needed to use it and be in the bathroom when I showered.

I was truthful in my responses to all questions, but I did not volunteer that I had pulled the trigger, or that I tried multiple times that night to finish my mission. I was afraid if I told them this, they might confine me longer than three days. I only shared that I had changed my mind about suicide.

During my stay at Eastern State Hospital, a clinical psychologist, Dr. Donald Crowe, helped me understand that my self-worth should be based on who I am, not what I do in my profession. Through diagnostic testing, he discovered I had a cognitive memory impairment. Physicians at the University of Kentucky later confirmed this, and that my depression most likely caused the memory impairment. These physicians ruled out dementia and Alzheimer's disease. I learned that my memory problem could be substantially—if not totally—corrected with the healing of the brain bleed, appropriate medication, nutrition, and proper sleep. I have improved considerably and gotten progressively better. But for my involuntary commitment, I would have never gained this valuable insight and information.

Ten days after my attempted suicide, I met with my clients. I apologized and informed them of their right to sue me and the statute of limitations. I still think about my mistake almost every day, but I am no longer suicidal. Before all this, I had been highly skeptical of counseling's efficacy. I was convinced that by sheer willpower anyone could conquer what I thought were merely, "emotional problems." I was wrong. Competent counseling combined with appropriate medication is immensely helpful. My internist, Dr. Chitra Raghavan, my consulting psychologist, Dr. Marty Seitz, and my nurse practitioner, Kristy Carter, helped save my life.

But too many people have prejudicial attitudes about those who need mental health care. A stigma attaches to mental health treatment which does not attach to treatment for cancer, heart disease, and the like. Yet, the pain and incapacity from being mentally overwhelmed can be as pernicious as any physical malady we readily acknowledge. I know. I have experienced both.

As I started to heal, I began reading about suicide, its contributing risk factors, and its incidence. The threat of suicide is significant. The Centers for Disease Control and Prevention reports that suicide rates increased 36% between 2000 and 2021. There were 48,183 suicides in the United States in 2021, or one death every 11 minutes. Lawyers are two to three times more likely to die by suicide than nonlawyers over 18. (See *Stressed, Lonely, and Overcommitted: Predictors of Lawyer Suicide Risk*, February 11, 2023, by Patrick R. Krill for an excellent

discussion of risk factors regarding lawyer suicide, mdpi.com/2227-9032/11/4/536).

But why publicly share these intimate, personal revelations, which may unnecessarily generate doubts about my fitness to practice a profession I love, especially since my memory and mental health have greatly improved? I have had four major hearings since January 25 where I performed exceptionally well. I feel better mentally and think more clearly than I ever have. I have back-up support from other attorneys with whom I co-counsel on every case. We divide the work so there is no additional cost to the client.

Here is why I am sharing this. People are more vulnerable to being mentally shattered, given certain life crises, than they sometimes can appreciate. I do not want anyone I can influence—lawyer or not—to descend into an unstoppable spiral to the

A Message from the Director of the North Carolina State Bar's Lawyer Assistance Program

The author describes something we often see at the NC Lawyer Assistance Program (LAP) with the lawyers and judges we work with: one's total identity and self-worth being tied to professional success, reputational recognition, and accolades. How do we wind up there? It's a bit of both nurture and nature, with heavy emphasis on nurture (read: law school training, and later, the legal profession itself).

What you may be surprised to learn is that studies have documented that law students entering law school score higher on measures of self-esteem and self-actualization and have lower-than-average rates of mental health issues. Three years later, we graduate with skyrocketing rates of mental health issues that mirror those in the profession, and our inherent self-esteem and self-worth have plummeted.

Part of the problem may be the self-selected group of intelligent, highly competitive, often perfectionistic people who go to law school. As explained in the article *Maladaptive Perfectionism*, "Most perfectionists learn or perceive early in life that other people value them because of what they can do—not for who they are. As an adult, this skewed valuation translates into being increasingly disconnected from our authentic selves and the ability to feel good about our intrinsic value and worth. Our self-worth is based on other people's approval and/or external standard(s). So, our accomplishments and achievements become one of the only ways we feel affirmed and appreciated. We are only as good as our last test score, our ranking in our law school class, our last case, the net income on our last W2, and so on."

But a huge part of the problem that cannot be ignored is the training we receive in law school: 1) that reinforces this praise-dependent, false self we develop in response to law school demands; 2) that disconnects us from our internal values in order to gain approval and reputational standing; and 3) that disassociates us from our inherent worth. We explain how this process unfolds in that longer, previously referenced article *Maladaptive Perfectionism*. In addition, we spend a considerable amount of our time at the LAP writing about and giving CLE presentations on the ways in which lawyers develop this false self, how the profession reinforces such a phenomenon, and the ways in which it is detrimental to our mental health. *See Getting Lost in Our Own Lives*.

All these factors, and possibly others, can lead a lawyer to thoughts of suicide when something goes wrong professionally, as happened with the author of this article. Lawyers who die by suicide are 91% more likely to have "job-related factors" that contribute to their death than non-lawyers who die by suicide. Somewhere along the way in our professional journeys, many of us are confusing who we are with what we do.

Early in my tenure at the LAP, one of our long-time LAP volunteers relayed a story to me, with hindsight perspective and wisdom. Very early in his recovery journey (some 40+ years ago), he made a mistake on a client matter and concluded the only reasonable and rational course of action was suicide. Thankfully, he mentioned the problematic situation to his LAP mentor who said, "that's what malpractice liability insurance is for…For when we make mistakes." When relating this story to new LAP participants over the years, it provided him an opportunity to discuss the pitfalls of intertwining our identities too closely with our jobs and to highlight the difference in internal felt experience between, "I made a mistake" and "I am a mistake."

So much of the work we do at the LAP is helping lawyers and judges uncover, discover, and discard the underlying motivations, causes, and conditions that are no longer working and that can eventually lead to more serious mental health issues. As lawyers learn to reconnect with their authentic selves, there emerges a recognition and internal felt experience of their inherent worth. They learn to uncouple who they are from what they do and then model that healthier behavior and thought process to others new in their recovery journeys. Almost without trying, many develop a work-life balance as a collateral outer effect of the inner work. The lawyers and judges we work with (and stick with it) gain a fresh understanding and new perspective. They experience a newfound freedom and happiness.

If you relate to any of this or find yourself longing for a fresh perspective, give us a call or send us an email. Peruse related articles on our website: nclap.org. If you are having an immediate crisis or thoughts about suicide, text 988 or visit 988lifeline.org. ■

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

point of no return.

I am grateful to have another chance—not everybody attempting suicide gets one. I have witnessed the wreckage a suicide attempt can have on one's family and friends. It is gut-wrenching. I can only imagine the horrific suffering of family members and friends of someone who dies by suicide. I did not realize the catastrophic impact suicide can have on others when I planned my own.

We have one opportunity in life, of course, and as miserable as it may get, such hardships can be mitigated and even remedied with assistance. Some of us may need more help than others. Our future can be better than our past. I am experiencing it.

But we must stop whispering about suicide when we learn of someone's attempt. It should not be the subject of juicy gossip that must be immediately and "secretly" shared. This is harmful. On the contrary, I appreciated the few people who compassionately reached out to offer me support when they learned of my attempt.

The data is compelling that suicide is an escalating public health problem. As a society, we must institute prompt and improved measures which address suicide prevention. Moreover, as a profession, if we proceed with the same ineffective response, what does this say about our concern for young people aspiring to be lawyers? We owe them and fellow attorneys of today more than what we are doing. We are killing ourselves at an alarming rate. Emergency assistance is available.

I do not know the answers. I have ideas. I am available to listen and share with any lawyer contemplating suicide. I am not a licensed counselor. I am only a volunteer with the Kentucky Lawyer Assistance Program, but I am also someone who has been to the bottomless abyss of the darkest place. I am not sure I will ever be able to articulate with enough clarity the awfulness of the worst place any human being can venture. I do not want you to go there. There is a path forward which is not permeated with sadness or misery. Rewarding therapeutic help is available and, more importantly, it works! Please, for yourself, your family, and your friends, reach out for it. ■

Bruce Simpson received his BA and MSW from the University of Kentucky, as well as his JD from the University of Kentucky J. David Rosenberg College of Law. He serves as an attorney at Bruce Simpson Law, PLLC, with the last 25 years focusing on land use law; the first 15 years as a civil trial lawyer. He is a board member and past-president of the Children's Advocacy Center of the Bluegrass and a board member at the Kentucky Equal Justice Center. He has also served as past-president of the Fayette County Bar Association and Prevent Child Abuse Kentucky. Simpson also volunteers with the Kentucky Lawyer Assistance Program. Simpson can be reached via email at: bruce@bsimpsonlaw.com.

The title is a modification of "Everybody Hurts Sometimes," by REM, a moving song about suicide prevention.

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From Trial Lawyer to Commissioner: A Political Journey

By G. Gray Wilson

"Have you lost your mind?" This came from Superior Court Judge Richard Gottlieb at the dedication of the new courthouse in Winston-Salem on October 22, 2023, in response to my flippant comment, "I think I'm going to run for county commissioner." My long-suffering spouse Cheryl was simply amused by my latest pitch but was amenable nevertheless, observing that at least with this local gig, I would be home every night. Having worked with a dedicated group of attorneys for the better part of a decade to build a new courthouse in Forsyth County, I had come to know the operations of the county commissioners quite well and figured I could do that job just fine. What I didn't know was how to get elected.

With his wife Cheryl looking on, G. Gray Wilson is sworn in as a Forsyth County commissioner by Judge Morgan.

Here's the lineup. There were seven sitting commissioners in two wildly gerrymandered districts (for which both parties are shamelessly to blame). For 2024, the election was limited to District B, which I lived in and which wrapped around the county like a donut or a python, depending on your viewpoint. There were three seats up for grabs that year and six candidates (three from each party). The party I happened to be registered with had three veteran commissioners who had served for decades. They were wildly popular and for good reason—they all had good intentions and a healthy dose of common sense. None of them were vulnerable in a primary.

But the word was out that one of them was not going to run again because of his age (heaven forfend, he was in his 80s), so there appeared to be an opening. That gap was soon filled by three candidates, including me, with a tidy filing fee. I was in a protracted jury trial in another county during the entire filing period in December, so I had to send in the check with an affidavit in lieu of a visit in person to the local elections board. Then I learned that right before the filing deadline, all three of the incumbents had filed for reelection. No, the elections board does not give refunds.

So I soldiered on, having no clue how to run a campaign. I learned from the district attorney that a local campaign guru from Washington, DC, was in the area, and while I could not afford to enlist his services, he did grant me a few minutes just to hear about my bid. Cynical to the max, he gave me a cruel smile by the time I finished and informed me that I was on a fool's errand—a white, male, Republican lawyer. His exit line went this way: "Mr. Wilson, you seem like a nice guy, but trust me, no one will vote for you."

Armed with that solid endorsement, I ventured forth to assemble a campaign committee. Richard Bennett, a recently retired trial lawyer and good friend, volunteered to serve as campaign manager, and that tied him for first place with Cheryl and my daughter Hailey when it came to wise decisions. Then I retained a vendor to set up a website, but he apparently meant three months when he said three weeks, because we were well into 2024 before that poorly assembled online disaster went live. I had another vendor send a letter to the local bar asking for a contribution, but six weeks went by with not a single response. Then we discovered that, in fact, a number of attorneys had sent a donation, but the post office was holding all the responses because the vendor had failed to pay a charge for $10. This time, I had to threaten a lawsuit to get him to go bail out the envelopes (the post office would only release them to him).

I soon learned that this was going to be a grassroots campaign because I had never been active in the party. There were candidates there who had worked within the party apparatus for years—good people who wanted their shot at the same office I was seeking. Then, in late February, another bomb hit. The commissioner no one thought was going to run announced that he was resigning from the commission in July. The problem was that, aside from a brief news article, no one remembered that on primary day. By then, my campaign had underwritten a mailer to those in the same party in my district, a billboard on Business I-40 downtown, and signature ads in the three county newspapers. I had a committee of volunteers who devoted countless hours to the campaign. My wife was there every step of the way, always encouraging me when I was ready to throw in the towel.

All for naught, or at least it seemed that way. I came in fourth behind the three incumbents (including the one who had resigned). Then, the commissioner ahead of me by about a thousand votes had a wonderful news article in which he retracted his resignation (which had never been official), so I packed up my political paraphernalia and planned to return to the full-time practice of law.

Two weeks later, that same commissioner resigned a second time, and this one was official, throwing the party into an uproar as everyone who had ever wanted to be a commissioner tossed his hat into the ring. A six-hour slugfest at a party convention in late March ended up with me taking the interim slot on the commission by three votes. I was sworn in on July 1, with the lovely prospect of trying to keep my seat in the general election in November. Three days later, I rode in Richard Bennett's muscle car (a vintage Camaro flanked with magnet signs) in the Kernersville Fourth of July parade.

That's when the gloves came off. I could be at a groundbreaking during the day (but only if I was not in court) and a candidate forum that night. I saw it all: book burners, bomb throwers, sob sisters, Bible thumpers, you name it. There was name-calling, lying, photoshopping, personal attacks, and even a few threats, and yes, some of that was directed at me, my profession, and my family. I learned that nothing is off-limits in politics and that Facebook should be renamed "Fabricationbook."

By autumn I was in the thick of it, juggling a trial practice with up to four political or commissioner events a day, six days a week. That went to seven days by the time early voting began. I worked eight hours a day at the polls every weekend, passing out rack cards and holding my tongue when some quadruped disparaged my candidacy. I did my best to avoid the occasional shouting matches, turf battles, and hyperpolarization that seemed to infect so many who turned out to vote.

Election day was a 13-hour gig, standing on my feet, begging for that last round of votes that might make the difference. How little did I know. I staggered home in the dark, scarfed down a sandwich, and parked in front of the TV as the returns started to roll in around 9 PM. Of the six candidates opting for the three slots on the commission, I was initially dead last, in sixth place. That was enough to send my wife into a funk, but we held out until I worked my way up to fourth place over the next couple of hours. Then I held third place (a win) briefly, only to be passed again. The other two incumbents in my party were already well ahead of the pack. So, I packed it in as well, wiser for the experience but disappointed with the outcome.

I woke up early the next morning, decided to see how bad it was, and found myself back in third place, ahead of my nearest opponent by 2,600 votes. A local news outlet had already opined that a recount might be in order, then quickly retracted that thought. So, I had made it over the hump, now with four years as a public official to ponder the riddle of democracy. I briefly suffered a debilitating neurological condition known as "campaign brain," but a week later I was back on my feet in court, trying to function like a trial lawyer once again. I was asked by a reporter to relay the most important thing I had learned in the campaign, and that was an easy one: I now

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Grievance Committee and DHC Actions

NOTE: More than 32,500 people are licensed to practice law in North Carolina. Some share the same or similar names. All public orders of discipline are available on the State Bar's website.

Disbarments

Kevin L. Wingate of Raleigh was convicted by a jury of one count of first-degree statutory sex offense, a class B1 felony, and four counts of indecent liberties with a child, a class F felony. Wingate surrendered his license and was disbarred by the Wake County Superior Court.

Suspensions & Stayed Suspensions

Mark A. Key of Lillington was suspended by the DHC in 2023 for various misconduct including tax-related crimes, mortgage fraud, and false statements in connection with a disciplinary investigation. The case was heard on remand after the court of appeals vacated the suspension originally imposed. After receiving additional evidence regarding appropriate discipline, the DHC imposed the same discipline (five-year suspension with opportunity to seek a stay after three years upon compliance with conditions) as the original hearing panel.

Nicolle T. Phair of Sanford misled the court during her representation of a criminal defendant by having a stranger pretend to be her client when her client's case was called for trial. Phair also engaged in contempt of court, did not act with diligence, and prejudiced the administration of justice when she failed to return to an afternoon session of court as directly ordered by the court, resulting in unnecessary continuances for clients who remained in jail. The DHC entered a consent order suspending Phair for three years with the ability to seek a stay after six months.

Completed Grievance Noncompliance Actions before the DHC

Karen S. Biernacki of Rowan County failed to comply with two grievance investigations and failed to respond to the DHC's Order to Show Cause. The DHC entered an order suspending Biernacki's license until she demonstrates that she has complied with the investigations.

Completed Grievance Review Panels

Three Grievance Review Panels were conducted this quarter.

Censures

Joseph Eric Altman of Rockingham was censured by the Grievance Committee for failing to promptly notify opposing counsel and his client about a scheduling conflict for the date of a noticed deposition and not seeking a court order to delay the deposition. In addition, Altman failed to inform his client that a motion for sanctions, which was later granted, had been filed against her for failure to timely respond to discovery and not attending the noticed deposition.

Reprimands

Trevor D. Brandt of Wake Forest was reprimanded by the Grievance Committee for disbursing entrusted funds related to a real estate transaction to himself and his client after the court entered an order prohibiting transfer of those funds, and for misrepresentations made to opposing counsel concerning the funds.

Completed Petitions for Reinstatement/Stay – Contested

Fletcher L. Hartsell Jr. of Concord surrendered his law license and was disbarred by the State Bar Council in October 2018 due to state and federal convictions for fraud in his solicitation, use, and tax reporting of campaign contributions. After a July 2024 hearing, the DHC recommended that Hartsell be reinstated. Hartsell's petition was considered and denied by the council at its January 2025 meeting.

Transfers to Disability Inactive Status

Juan A. Arreola of Wilson was transferred to disability inactive status by consent order entered by the chair of the Grievance Committee.

Janet H. McLamb of Chapel Hill was transferred to disability inactive status by consent order entered by the chair of the Grievance Committee.

Stanford K. Clontz of Asheville was transferred to disability inactive status by consent order entered by the chair of the Grievance Committee.

L. Ragan Dudley of Mooresville was transferred to disability inactive status by consent order entered by the chair of the Grievance Committee.

Ronnie P. King of Roxboro was transferred to disability inactive status by order of the DHC. ■

President's Message (cont.)

State Bar. He has repeatedly gone above and beyond the call of duty to ensure that the organization and its purpose remain on solid ground. It is my understanding that he even painted the shovels that broke ground at the current State Bar Building.

With the rest of the membership, I look forward to where Peter leads us in the decades to come, and with this change, not missing the future. ■

Matthew Smith is an associate and partner at Maddrey Etringer Smith Hollowell & Toney, LLP, in Eden.

Ashley H. Sappenfield, Board Certified Specialist in Social Security Disability Law

BY SHEILA SAUCIER, MANAGING DIRECTOR, LEGAL SPECIALIZATION

I recently had the opportunity to talk with Ashley Sappenfield, a board-certified specialist in social security disability law. Ashley practices at Lanier Law Group in Greensboro, North Carolina.


Sappenfield

Q: Tell us about yourself.

I am a social security disability, veterans' disability, and personal injury attorney for a statewide law firm. I am the current chair of the North Carolina Advocates for Justice Disability Advocacy Section (NCAJ-DAS), vice-chair of the North Carolina Bar Association's (NCBA) Veterans Section, and a board member of the National Organization of Social Security Claimants' Representatives (NOSSCR). I am also an adjunct professor at Elon University School of Law, where I teach a Social Security disability clinic. I live in Greensboro and have two young children. I enjoy playing volleyball, running, and singing in our church choir.

Q: What led you to become an attorney?

I have always been interested in the law and social justice. At my last job before law school, as a legal assistant, I realized that advancement would only occur if I took the chance to go to law school. I applied to Elon and fell in love with the location in downtown Greensboro. I still have a deep appreciation for the many amazing professors I had there.

Q: Why did you pursue becoming a board-certified specialist in Social Security disability law?

This, for me, felt like a natural next step. Many of my colleagues are board-certified, and I also wanted to affirm for myself that I have the knowledge and expertise to pass the examination. Additionally, I knew that familiarizing myself with the intricacies of Social Security law would make me a better advocate and mentor.

Q: Tell us about your work as chair of the Disability Advocacy Section of the North Carolina Advocates for Justice.

This has been a really rewarding experience for me. As chair, I help organize our annual CLEs for the section and encourage participation in *pro bono* activities. I've also had the opportunity to discuss individual members' concerns regarding legislation and new policies promulgated by the Social Security Administration. Additionally, I have been invited to speak with influential individuals in the field of disability advocacy, including Congresswoman Deborah Ross, at a Medicare/Disability Roundtable. I am honored to be in a position where I can advocate for meaningful change for not only my clients but the disabled community as a whole.

Q: Who are some of the most influential people in your life and how have they impacted you?

I've always been drawn to strong, intelligent women like my mother and grandmother, who are absolute forces of nature. My mother is a veteran and works harder than anyone I know. Someone who influenced me greatly in law school was my civil procedure professor, Catherine Dunham, who to me epitomizes professionalism and poise. My employer, Lisa Lanier, also exemplifies what it means to be a strong leader, and I am honored to be under her tutelage and to learn from her experience.

Q: What is something most people don't know about you?

I spent much of my childhood summers on a rural farm in Wisconsin with my maternal grandparents. I would pick strawberries, cucumbers, zucchini, and tomatoes to sell at my grandfather's produce stand, and I spent long nights talking to my grandmother about her childhood as an au pair from the time she was ten years old. Those are some of my most cherished memories.

Q: What is the most valuable lesson you've learned that you didn't learn in formal education?

You might not always be the smartest person in the room, but you should always be the hardest working.

Q: If you could go back to one moment in your career and relive it, which would it be and why?

There are so many, but one that really stands out to me is the first appeals council reversal I received (which happens in only one to three percent of cases). That first reversal also happened to be the first case I ever appealed. Being able to tell the client, who had felt so defeated after an unsuccessful hearing, that the appeals council had reversed and found a fully favorable decision was one of the most rewarding experiences of my life, and it's something I truly hold dear.

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

In college, I read *Being Peace* by Thich Nhat Hanh. I loved the central messages of interconnectedness and how understanding is the source of love—and even love itself. I know many of the meditations in that text by heart and often draw from them to calm myself before hearings, difficult conversations with clients, or when preparing for other important tasks.

Q: What advice would you give someone just starting out in this field who wants to become certified as you have?

It's not just important to be a good lawyer; it's also important to be a good advocate. In this practice, it's easy to focus solely

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NC IOLTA Grants Support Disaster Relief Legal Services

North Carolina Interest on Lawyers' Trust Accounts (NC IOLTA) awarded $910,500 in December to four organizations providing free civil legal services in communities impacted by Hurricane Helene. Services of grantee programs target those individuals hit hardest by the storm who otherwise could not afford to pay for the services of an attorney.

Grantees include:

• **Disability Rights North Carolina** – funding will support legal services for individuals with disabilities.

• **Legal Aid of North Carolina** – funding will support increased *pro bono* efforts in Western North Carolina as well as other operational needs of the organization as they increase their capacity to serve residents impacted by disaster.

• **North Carolina Bar Foundation** – funding will support the North Carolina Disaster Legal Services Pro Bono Program, a collaborative effort that activates volunteers to provide disaster-related resources and legal services through both remote case referral and management and in-person clinics.

• **Pisgah Legal Services** – funding will support ongoing disaster recovery efforts in the region, including legal staff to work on housing and benefits issues and coordinate volunteer efforts.

"Civil legal aid plays a critical role in recovery for communities following disaster," said Shelby Duffy Benton, chair of the North Carolina IOLTA Board of Trustees. "In times of disaster, new legal needs emerge. Legal services can help individuals access benefits and insurance and protect against consumer fraud or scams. Together, we are working to ensure that every North Carolina resident facing challenges as a result of Hurricane Helene has legal representation to navigate this crisis."

"We are grateful to the organizations that have been working on the ground in Western North Carolina to support our fellow North Carolinians since the early days following the storm," said Mary Irvine, NC IOLTA executive director. "Without access to legal services, the justice system simply cannot work for everyone. Through these grants, we are strengthening the justice system so it can work for everyone, and improving the lives of North Carolinians in need as they rebuild their lives."

In addition to the awards approved in December, NC IOLTA awarded funds in October to two organizations to provide immediate assistance to their employees who were impacted by Hurricane Helene. ■

NC IOLTA Program Updates

• Though 2024 income figures have not been fully finalized, NC IOLTA anticipates 2024 interest earned on lawyers' general pooled trust accounts will exceed $17 million.

• In December, the NC IOLTA Board of Trustees approved allocating $4.3 million to the grantmaking reserves. NC IOLTA's Reserve Fund was established to stabilize the amount of funds available in years when income declines or for other emergency uses.

• After reestablishing the Public Interest Internship Program last year, NC IOLTA again approved $50,000 for each accredited law school to use in 2025 to support summer stipends for law students who are working in an unpaid public interest internship in a legal desert over the summer. In 2024, 24 students from six law schools received stipends for their summer experiences working with public defenders' offices, district attorneys' offices, judges, and legal aid organizations.

• NC IOLTA recently released the 2023-24 report on funding administered under the Domestic Violence Victim Assistance Act. In 2023-24, NC IOLTA administered $861,974 in funding to Legal Aid of North Carolina and Pisgah Legal Services for legal services for domestic violence victims. A copy of the report can be found at nciolta.org. ■

From Trial Lawyer to Commissioner (cont.)

know why good people do not want to run for public office. But there was a time when lawyers dominated local, state, and federal office. At least in local elections, their presence might tamp down the yahoo factor. In the meantime, our founding fathers and Abe Lincoln will continue to turn over in their graves. ■

G. Gray Wilson has been a full-time practicing trial lawyer in Winston-Salem for 47 years, following his service as a lieutenant in the United States Army. He currently practices with Nelson Mullins Riley & Scarborough LLP. Mr. Wilson is also a past-president of the North Carolina State Bar.

NORTH CAROLINA
IOLTA

INVESTING IN JUSTICE FOR
ALL NORTH CAROLINIANS

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Disaster Challenges

BY LAURA MAHR

The legal profession plays a critical role in supporting communities during and after natural disasters. The increased frequency and severity of natural disasters across our country—from Hurricane Helene in Western North Carolina to the fires in Los Angeles—highlight the urgent need for our profession to bolster its post-disaster recovery capacity. Natural disasters create complex legal challenges for both lawyers and their clients, including navigating insurance claims, accessing disaster relief, addressing property loss, and handling matters related to the disaster-related injuries and deaths of loved ones. These events also lead to broader communal losses, such as the destruction of green spaces, public facilities, farmland, and the closure of local businesses and restaurants, as well as a communal loss of safety and stability. To remain resilient in the face of traumatic and disruptive events, we must cultivate specific skills that support our personal recovery. These skills also enhance our ability to effectively serve clients and contribute meaningfully to disaster recovery efforts when needed.

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One of the most surprising things to me about going through a "Big T" trauma is the ensuing brain scramble. While I have studied this phenomenon and witnessed it when representing sexual violence survivors as an attorney, I wasn't prepared for my lived experience. My own disorganized thinking, forgetfulness, and inability to perform certain tasks, like basic arithmetic, were disorienting. For example, I wrote a check to a contractor for home repairs after the storm for $9,000 over the invoice! Following instructions was also difficult; Siri's "return to the route" became a regular refrain while driving after Helene. Staying focused and keeping track of time, such as remembering the day of the week or upcoming holidays, was also a significant challenge.

Mental confusion, disorganization, and forgetfulness are particularly hard for lawyers to endure. We rely heavily on our mental cognition; losing it, even temporarily, makes living life and practicing law even more difficult.

A Tangible Solution to Address Disaster-Related Challenges

Last fall, in the month following the hurricane, the Buncombe County Bar (BCB) partnered with my business, Conscious Legal Minds, to offer an innovative multi-week CLE course. Shortly after cell service was restored in the days following Helene, the BCB's incoming president, Susan Russo Klein, called me to brainstorm ways to support the membership post-Helene. Offering a no-cost well-being CLE was one tangible solution.

A few weeks later—almost a month to the day after Helene—the five-week course began. *Mastering the Mind-Body Connection: Somatic Strategies for Improving Well-Being and Cultivating Resilience in the Practice of Law Post-Helene* helped bar members process the personal and professional impact of the storm using mindfulness-based somatic practices. It equipped Asheville-based attorneys with tools to help process individual and collective trauma, foster emotional resilience, and bring renewed mental capacity to serve clients effectively during challenging times.

The online course was remarkably well attended, despite post-Helene internet connectivity challenges. It was an honor to lead this course for the courageous attorneys who participated. The feedback was overwhelmingly positive; the sense of connection and collegiality we shared became a vital part of my own hurricane recovery. Inspired by its success, I'm sharing here the foundational principles behind its creation. My hope is that this framework can serve as a valuable resource for other legal communities navigating the personal and collective loss, shock, and trauma that follow disasters, wherever they may occur.

Foundational Elements of the Mind-Body Course

I drew from three research-based neuropsychology models as the framework for the course's curriculum, applying similar practices that I use with individual coaching clients to the group exercises. Each week's curriculum included practices based in:

- Somatic Experiencing (SE), founded by Dr. Peter Levine;
- Internal Family Systems (IFS), founded by Dr. Richard Schwartz; and
- Applied Polyvagal Theory (PVT), founded by Dr. Stephen Porges and as applied to trauma treatment by clinician Deb Dana, LCSW.

These frameworks are effective for post-disaster recovery because they each help slow down the mind, reconnect it with the body, and support the body in returning to homeostasis after trauma/shock by reducing overwhelm. In the course, I provided concrete tools based on these three models, along with mindfulness meditation practices. These tools taught participants how to regulate their physiology and reduce stress while also learning to manage their thoughts and emotions in the aftermath of a natural disaster.

Each week focused on regulating a physiological system affected by stress, such as the respiratory system and the digestive system. We explored how stress and disaster trauma impact these systems while learning practical strategies to mitigate their negative effects. We also practiced tools for integrating mind-body health into legal work. The course highlighted the importance of using short somatic practices throughout the workday as a foundation for effective legal practice, professionalism, and well-being at work, particularly after a natural disaster.

It was deeply moving to hear participants share what they learned about paying attention to their physiology throughout the day. "The tools learned through Laura's sessions have helped to calm and refocus my mind after tragic events," shared William Auman. Another participant shared, "In a world where we are trying to find normalcy, there isn't much opportunity to take time to process the current state of our community. These sessions helped to process."

Mind-Body Tools Are Pivotal for Disaster Recovery in the Legal Profession

Attorneys and judges face compounded stress after a disaster, as we must navigate our own mental and emotional recovery while supporting clients and litigants who rely on us for guidance. "Mental health is critical for attorneys," noted Russo-Klein, "but especially when we're experiencing a disaster." The shock and disorientation caused by a disaster can obscure the need for these recovery tools, both immediately and in the months that follow. "The BCB leadership was aware that our members had an immediate need for recovery tools," shared Russo-Klein. "We were able to pivot during the disaster to provide the Mind-Body CLE to all of our members at no cost. Our colleagues at the Harnett County Bar Association generously stepped forward with a grant to support the members of the Buncombe County Bar."

"Hurricane Helene has been and continues to be a super stressful event for our community," expressed course participant attorney Brad Searson, acknowledging that "many of our clients and fellow lawyers are still suffering." Despite continued suffering, attorneys directly or indirectly affected by the disaster may believe they are "fine," underestimating how practicing law in a post-disaster environment affects their ability to think clearly and negotiate effectively.

Through the course, participants learned to recognize and address the additional stress caused by Hurricane Helene, tracking its impact on their minds and bodies while actively working to mitigate it. As one participant noted, "We're under unprecedented stress—personally, for sure, if not professionally—and it is wise to stay aware of the potential impact of that stress on a daily basis."

Why Mind-Body Practices Work

Interestingly, reconnecting with the body is essential for restoring both physiological calm and cognitive functioning. During traumatic events, the prefrontal cortex—the part of the brain responsible for cognitive processes like decision-making, reasoning, and impulse control—slows down so that the brain can focus on surviving the immediate threat. More primal parts of the brain are activated, such as the amygdala. This slowdown helps the body react quickly to danger but can lead to difficulties with clear thinking, memory, and decision-making during or after a traumatic event. At times, even after the danger has passed, the prefrontal cortex remains offline. To re-engage it, we must connect with the body to signal to the nervous system that the trauma is over and it is now safe—or safe enough—to relax, recover, and return to normal thinking and decision-making.

While mind-body connection skills are important for everyday law practice, they are imperative for post-disaster lawyering when our ability to think, reason, and remember may be impaired.

"These practices should be shared with all lawyers in order to manage stress, model compassion, and better assist clients," expressed participant attorney David Irvine.

It is important to recognize that while disaster survivors may experience slowed cognitive processing during their recovery, this does not mean they are unfit to practice law or adjudicate. Instead, it highlights the critical need for awareness in the legal field about the potential for cognitive disruption after a disaster, both for ourselves and for our clients and colleagues. Additionally, it underscores the importance of providing attorneys and judges with access to trauma education and effective strategies for resilience and recovery. BCB course participant attorney Clifton Williams commented, "I was carrying stress from the storm that I wasn't fully aware of. Laura's CLE series helped me cope with it in a positive, productive way."

Coming Together Shortly After a Disaster is Key to Recovery

Collective trauma (defined as the psychological and emotional trauma response of a group of people after undergoing a shared traumatic event or series of events) has the potential to permanently wound a community. However, if properly addressed, collective trauma can be healed and, over time, cultivate renewed communal strength and deeper relationships within the community. Like many disasters, Helene caused extensive isolation due to road closures, limited fuel supply, and unavailable community resources like gyms, stores, and workplaces. I was encouraged to hear from the mind-body course participants that having a forum to come back together and share experiences shortly after the storm was key for them. One participant shared, "What I most enjoyed about the course was regulating our nervous system as a group and the connection with the group." Additionally, Russo-Klein shared, "The Mind-Body course provided our members with a valuable opportunity to connect, support one another, and process the disaster

CONTINUED ON PAGE 33

Medicating Away Someone Else's Crazy

By Anonymous

To be fair, it wasn't good news.

But the partner was practically hyperventilating. By his account, the news that we'd just received would destroy our client's case, embarrass us in front of a federal judge, imperil our relationship with the client, and pitch the firm into financial freefall. In short, it was, through no fault of our own: The. End. Of. The. World.

I murmured consoling words. I made a few suggestions about ways to address, or at least mitigate, the situation. But when it became clear that the keening was destined to continue, I excused myself and went back to my own office, where I quietly—and quite contentedly—got back to my work. It's not that I didn't care about the "crisis." It's not that I wasn't fully engaged in finding a solution. It's just that, at long last, I have finally learned that responding in kind to another person's overreaction, temper tantrum, anxiety attack, or catastrophizing is:

a) a waste of time,

b) unproductive,

c) a threat to my serenity, and

d) a danger to my recovery.

Early on in my career, and certainly before I entered recovery, I could not have exited that office or that conversation (to the extent someone else's uncontrolled ranting allows conversation). Instead, I would have stayed. I would have engaged with the partner's anxiety. In fact, I would have been tied up in knots by it.

In the end, I would have adopted the senior partner's anxiety as my very own, careening mentally through the rest of the workday—and looking for release from it at the bottom of a bottle when I got home.

You've heard about resentment being poison you drink to kill someone else? This was similar: I would try to self-medicate away someone else's crazy.

Given that I had enough of my own crazy to work on, this was not sustainable.

One of the many brilliant but simple lessons I have learned in recovery is that the way someone else behaves is completely outside my realm of control. All I can control is my reaction.

For example: Opposing counsel is deliberately nasty by text, email, and voicemail. At first, I fire back, but it only revs his engine. He is provocative in this way for a reason. So I detach. I do not respond in kind. And I discover that the more pleasant and polite I am, the more frustrated he becomes. Depriving the flame of its oxygen works.

And I stay sober.

A client decides that the way to respond to an opposing party taking video of her is to flip them off on camera. I advise that this is NOT a good look; please, I tell her, no further responses. She doubles down with a text to the other side that would make a sailor blush. Irritation rises…Then I realize my client is going to do what she's going to do. I try to see the humor in the situation. Where's *Candid Camera* when you need it?

And I stay sober.

Sometimes, of course, it is impossible at work, as in our private lives, to let everything just roll off our backs. A boss responds with fury over minor edits. A colleague mocks co-counsel for getting emotional. A client is abusive to the receptionist over the phone. (Unacceptable.)

Sometimes we get triggered. Sometimes (back to charming opposing counsel) someone tries to trigger us.

In those moments when I feel myself ramping up, my stomach turning, and my chest tightening, I try to create some mental distance from the situation.

I do a quick inventory. What's going on? What part of me is being threatened? (Too often—ding, ding, ding—it's my ego.)

Also, critically: What is my part? What was my role in creating the situation? Is there anything I did or didn't do that made matters worse?

Once I am able to assess my own behavior—which is the only part of a situation I can reliably control—I am able to look with a little more clarity at what else is going on. First, I can try to correct my own missteps. I can apologize. I can try to get my attitude in check.

I can also remember that everyone comes to every moment with a lifetime of struggles—recognized or unrecognized, it doesn't matter. Everyone has their monsters—or crazy—to grapple with. Everyone has a plain ol' bad day.

Opposing counsel may be struggling with his own addiction. The client may have anger issues, or early-onset dementia. The judge on her lofty perch may fear getting older, or be caring for an ailing spouse. The list of possibilities is endless. I don't need to know what the thing is that is causing the out-of-proportion reaction. This doesn't mean I immediately become a powerless doormat because someone else is freaking out. I still can speak my truth. I just try to do it calmly, with purpose. I need to be able, in the moment of the "crisis," to stake out that mental distance that allows me to see that, whatever the cause, the crazy is almost always not about me. I can be gracious and kind to the person wigging out, which benefits the

other person and also protects my sobriety and my sanity.

So when the boss is losing it, I listen, I offer to help, I strategize. At the same time, I try to stake out mental distance to see that the work itself is one thing, while his reaction is really just about him. After all, snafus are inevitable; his reaction is not. I try to remind myself that this is his reaction, or overreaction, not mine.

He may be able to rant now and throw back a few whiskeys later. He can self-medicate his own crazy. I don't have the luxury of self-medication. I can't drink away my own problems, much less his. So when the atmosphere starts to feel toxic, I step away mentally, or physically if required.

Happily, the longer I'm in recovery, the more I find that even the smallest change in geography—office to office—is unnecessary. I've learned that the most important space is not so much between our office doors as it is between my ears.

I don't wish crazy on anybody. But I'm done—I hope—trying to self-medicate away someone else's crazy in me. ■

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

Pathways to Well-Being (cont.)

while courts and offices were closed. Laura's mindfulness tools and practices have been a lifeline for me during this challenging time."

This feedback aligns with resilience research, which shows that coming together as a community after a natural disaster provides several key benefits, including: **emotional support** (sharing experiences and feelings with others who understand, which fosters connection, reduces isolation, and promotes emotional healing); **collective strength** (pooling our wisdom and resilience recovery efforts, which allows the community to address challenges more effectively than individuals working alone); and **resilience building** (community support helps individuals navigate trauma, adapt to change, and rebuild with a sense of shared purpose and hope).

Coming Back Stronger

While the individual and collective trauma caused by a natural disaster is challenging beyond comprehension, therein also lies the opportunity for positive transformation. It is my hope that as we navigate the challenges nature delivers, we continue to come together to share our collective strength and resources. Ideally, the connection created through healing from our shared losses cultivates a renewed sense of purpose for our law practices, empowerment for our communities, and understanding for our world. ■

Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being consulting, training, and resilience coaching for attorneys and law offices nationwide. Through the lens of neurobiology, Laura helps build strong leaders, happy lawyers, and effective teams. After bringing herself back from the brink of burnout with the tools she now teaches, Laura brings lived experience and compassion to thousands of lawyers, judges, and support staff each year in her writing, coaching, and CLE training. Her work is informed by 13 years of practice as a civil sexual assault attorney, 30 years as a teacher and student of mindfulness and yoga, and ten years studying neurobiology and neuropsychology with clinical pioneers. www.consciouslegalminds.com.

Legal Specialization (cont.)

on the law and assisting a client in meeting the definition of disability as a
term of art. However, understanding the unique challenges that the medicolegal environment has created for the disabled community and working to move away from linguistic ableism in those spaces—while instead exalting disabled voices—may be the most important work you do for both yourself and your future clients.

Q: Are there any hot topics in your specialty area right now?

There are too many to count, but a truly hot topic that transcends into other specialties is the exorbitant cost of medical records. Getting to the hearing stage for Social Security disability often takes years, and the exhibit file can contain thousands of pages of relevant medical records. Depending on where the records need to be ordered from, this can carry an outrageous cost. I hope North Carolina can soon follow a model like that of Illinois and other states, where record collection is either free or nominal for disability claimants.

Q: What is one skill that is often overlooked but critical to success in your practice area?

Never underestimate the power of a good brief. Particularly, a brief that is succinct, persuasive, and tackles difficult fact patterns head-on can win a case before the hearing.

Q: What is one thing you do outside of your work that helps you recharge and stay inspired in your career?

I have become an avid runner and just recently completed my first half marathon.

Q: What would be your dream vacation?

Rio Perdido, Costa Rica.

Q: What is your next goal in life?

To make the perfect Negroni Sbagliato. ■

For more information about the specialization program, please visit our website at nclawspecialists.gov.

Council Adopts New Opinion; Committee Publishes Opinion on Duties When Leaving a Law Firm

Council Actions

At its meeting on January 24, 2025, the State Bar Council adopted the ethics opinion summarized below:

2024 Formal Ethics Opinion 3

Fee Agreement Requiring Payment of Estate Planning Lawyer's Future Legal Fees

Opinion rules that estate planning engagement agreement may require payment of legal fees for lawyer's participation in collateral litigation related to the estate plan under certain conditions.

Additionally, the council withdrew 2005 Formal Ethics Opinion 8, URL for Firm Website is Trade Name and Must Register with Bar, on the basis that the opinion addressed a Rule of Professional Conduct and State Bar process that no longer existed.

Ethics Committee Actions

At its meeting on January 23, 2025, the Ethics Committee considered a total of seven inquiries, including the adopted opinion referenced above. Three inquiries were sent or returned to subcommittee for further study, including an inquiry addressing a lawyer's ability to increase the rate charged for services during the representation and an inquiry opining on a lawyer's ability to negotiate licensure reporting capabilities during mediation. The committee also withdrew Proposed 2024 FEO 2, Withholding Criminal Discovery in District Court, which was published last year and received negative comment. The committee also approved the publication of one new proposed formal ethics opinion for comment, which appears below.

Proposed 2025 Formal Ethics Opinion 1
Obligations Related to Notice When Lawyer Leaves a Firm
January 23, 2025

Proposed opinion sets out the requirements of the notice that must be sent to affected clients when a lawyer leaves a law firm.

Departing Lawyer is employed by Law Firm. Departing Lawyer has decided to terminate his employment with Law Firm and begin practicing with another law practice. Departing Lawyer requests the contact information for his clients so that he can give the clients notice of his change in employment and offer the clients the opportunity to transfer their matters to his new firm.

Law Firm maintains that there is no ethical requirement to notify any of Law Firm's clients of the lawyer's departure and that Departing Lawyer is not entitled to the clients' contact information.

Inquiry #1:

Do the Rules of Professional Conduct require that notice be given to any of Law Firm's clients that Departing Lawyer is leaving the firm?

Opinion #1:

Yes. Our ethics opinions have consistently held that when a lawyer leaves a law firm, clients affected by the lawyer's departure must be notified. *See* CPR 24 (1974); RPC 48 (1988), RPC 200 (1995), 2021 FEO 6. These opinions highlight a lawyer's professional responsibilities to diligently represent a client as set out in Rule 1.3, and the accompanying duty to properly communicate with the client throughout the representation as required by Rule 1.4. Rule 1.3 requires lawyers to "act with reasonable diligence in representing a client." The duty of diligent representation requires lawyers involved in firm dissolutions or lawyer transitions to take care that they continue to fulfill the lawful objectives of their clients. RPC 48. Rule 1.4 requires lawyers to "keep the client reasonably informed" about the status of the client's matter and to provide the client with enough information "to permit the client to make informed decisions regarding the representation." In order to fulfill the client's objectives during periods of transition, communication between the lawyer and the client is necessary. Rule 1.4, cmt.[1].

The departure of a lawyer who plays a principal role in a client's representation "is information that may affect the status of a

Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment—including comments in support of or against the proposed opinion—or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at ethicscomments@ncbar.gov no later than March 21, 2025.

Public Information

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

client's matter" and the transition requires the conveyance of sufficient information to the client to "permit the client to make informed decisions" regarding the continuation of the representation. ABA Formal Op. 99-414 (1999). "In most situations, a lawyer's change of affiliation during the course of a representation will be material to a client, as it could affect such client concerns as billing arrangements, the adequacy of resources to support the lawyer's work for the client, and conflicts of interest." D.C. Bar Ethics Op. 273 (1997). Accordingly, the Rules of Professional Conduct require that any client affected by a lawyer's departure be notified of the lawyer's planned departure.

Inquiry #2:

Which law firm clients must be notified of the lawyer's departure from the firm?

Opinion #2:

Clients who will be affected by a lawyer's departure must be given notice of the departure. Previous North Carolina ethics opinions state that notice must be given to each client with whom the departing lawyer "has an ongoing professional relationship" or "for whose work [the departing lawyer] was responsible at the time of his departure from the firm." RPC 48; RPC 200. The American Bar Association has also published ethics opinions addressing this issue. ABA Formal Opinion 99-414 (1999) provides that notice must be given to clients for whose active matters the departing lawyer currently is responsible or for whom the departing lawyer plays a "principal role" in the current delivery of legal services. ABA Formal Opinion 19-489 (2019) provides that departing lawyers should give notice to all clients with whom the departing lawyer has had "significant client contact."

Generally, affected clients are clients for whom the lawyer provided significant legal services, or with whom the lawyer has had significant client contact. Providing "significant legal services" or having "significant client contact" refers to the extent and nature of the involvement a lawyer has with a client's legal matters. Providing significant legal services would include drafting legal documents, conducting legal research, or representing the client in court. Significant client contact refers to meaningful interactions between a lawyer and their client. Such interactions would include regular communication with the client to discuss case updates, strategies, and decisions. Lawyers who have significant client contact are often seen as the primary point of communication for the client. Therefore, the issue of which clients must receive notice should be analyzed from the perspective of the client. Significant client contact would include contact that would result in a client "identifying the departing lawyer, by name, as one of the attorneys representing the client." ABA Formal Op. 19-489 (2019). A lawyer who merely prepares one research memorandum without direct client interaction does not meet this threshold. *Id.*

Both terms indicate that the lawyer has played a principal role in the client's legal matter. In either instance, these clients must be informed of the lawyer's departure. If the identity of a client's lawyer is debatable, Departing Lawyer and Law Firm should err on the side of caution by providing notice to the client. Ariz. Ethics Op. 10-02 (2010).

Inquiry #3:

Who may or must send the notice to the affected clients?

Opinion #3:

Departing Lawyer and Law Firm have joint professional responsibility to ensure that clients affected by lawyer's departure are notified of the lawyer's departure. In giving this notice, the right of clients freely to choose counsel must be preserved. The preferred method of advising clients of the lawyer's departure is "by the sending of a notice upon which the remaining and departing lawyers agree and which clearly informs the clients of their right freely to choose counsel." RPC 200. Law Firm and Departing Lawyer should agree on the content of the notice as well as who will provide the communication to the affected clients.

However, if Law Firm and Departing Lawyer cannot agree on the language of a joint letter or cannot agree on who should provide the agreed upon notice to the affected clients, Departing Lawyer and Law Firm each have a responsibility to communicate the requisite information to the clients in a truthful, nondisparaging manner. *See* RPC 48; ABA Formal Op. 99-414 (1999). Departing Lawyer and Law Firm must cooperate to ensure that all professional obligations to the client are fulfilled. Ariz. Ethics Op. 10-02 (2010). If Departing Lawyer and Law Firm "cannot or will not cooperate, then each must take the steps necessary to protect the client's interests without impeding or preventing the fulfillment of the other's obligations." *Id.* "A law firm cannot prevent a departing lawyer from notifying affected clients for whom he or she has principal responsibility." Law Firm may not take any action that "impedes or prevents" Departing Lawyer's compliance with his duties under the Rules of Professional Conduct. *Id.* Specifically, Law Firm may not restrict Departing Lawyer's access to client contact information because Departing Lawyer has the ethical obligation to notify current clients of his departure. Tenn. Ethics Op. 2023-F-169 (citing ABA Formal Op. 19-489 (2019)). "The responsible members of the law firm must not take actions that frustrate the departing lawyer's current clients' right to choose their counsel" by denying access to the clients' file or otherwise. ABA Formal Op. 99-414 (1999).

Both Law Firm and Departing Lawyer have the right to send individual letters to these same clients. In addition to their professional duty to communicate with these clients regarding the lawyer's departure, they each have the right to communicate with these clients to express their desire to continue the representation.

Inquiry #4:

May Departing Lawyer inform his clients that he is leaving Law Firm before informing Law Firm of his intentions?

Opinion #4:

Maybe. There is no rule of professional conduct requiring Departing Lawyer to inform Law Firm of his intentions prior to notifying his affected clients. However, when deciding when to notify Law Firm and his clients, Departing Lawyer may not put his own personal or financial interests ahead of his clients. *See* Rule 1.4, cmt. [5]. Cooperation between the departing lawyer and the law firm will be necessary for an orderly transition of client matters to take place. Tenn. Ethics Op. 2023-F-169. Informing Law Firm prior to notifying clients will allow Law Firm to assist in handling the separation in the appropriate manner. *See* RPC 48; RPC 200. Therefore, Departing Lawyer may only inform his clients of his intended departure prior to notifying Law Firm if Departing Lawyer reasonably believes such a course of action is necessary to protect his clients' interests. This course of action should only be taken in extreme cir-

cumstances. For example, if a law firm has a history of "cutting off" or "ushering out" a departing lawyer as soon as the firm is notified of the planned departure, thereby preventing the departing lawyer from continuing to represent his current clients, departing lawyer may reasonably believe that he needs to inform his clients before informing the firm so that he can protect his clients' interests.

Although the Rules of Professional Conduct do not mandate that a departing lawyer inform his law firm before notifying his clients, Departing Lawyer must consider other obligations and restrictions applicable to this issue, such as his employment contract as well as legal fiduciary duties. This opinion does not address the possible legal and fiduciary duties of a departing lawyer to his or her former firm or the possibility of civil remedies. Similarly, the interpretation of the employment contact or of any applicable legal obligations is outside the purview of the ethics committee and is not addressed in this opinion.

Inquiry #5:

When should the notice be sent to the affected clients?

Opinion #5:

Notice should be timely and should prioritize the client's best interests over the interests of the departing lawyer or the firm. "[I]nforming the client of the lawyer's departure in a timely manner is critical to allowing the client to decide who will represent him." ABA Formal Op. 99-414 (1999). Specifically, a lawyer has an obligation under Rule 1.4 to notify a client "sufficiently in advance of the departure to give the client adequate opportunity to consider whether it wants to continue representation by the departing lawyer and, if not, to make other representation arrangements." D.C. Bar Ethics Op. 273 (1997). The timing must be reasonable under the circumstances and consistent with the client's best interests. Ohio Board of Professional Conduct, Op. 2020-06. "Recognizing that the severing of a relationship with a law firm can occur suddenly or without warning to either party[,] the notice, preferably in writing, to the affected clients should be delivered as soon as feasibly practicable to protect the interests of the clients." *Id.*

Inquiry #6:

What must be included in the notice to the affected clients?

Opinion #6:

Notice should be given to each affected client informing the client of the lawyer's departure from the firm and advising the client of the right to freely choose counsel. The fact that the lawyer is leaving and where the lawyer will ultimately practice is information that will aid the client in determining whether to stay with the law firm, leave with the lawyer, or seek legal representation elsewhere. Tenn. Ethics Op. 2023-F-169.

Generally, affected clients will have the option of staying with the current law firm, transferring their matter to the departing lawyer, or obtaining entirely new counsel. RPC 48. If one or more of these options is not available, clients need only be advised of the existing options. For example, departing lawyer is changing practice areas, will work for the opposing side, is moving to another part of the state or out of state, or joining a corporation as in-house counsel. To comply with Rule 1.4, the notice should provide enough information for the client to make an informed choice as to the continued representation.

When determining the options that should be presented to the client, Departing Lawyer must consider whether the transition to the new firm will create any conflicts of interests. In addition to potential personal conflicts, Departing Lawyer will need to consider whether conflicts arise under Rule 1.9(b) or Rule 1.10(c). Departing Lawyer "should also be prepared to provide to the client information about the new firm (such as fees and staffing) sufficient to enable the client to make an informed decision concerning continued representation by the lawyer at the new firm." D.C. Bar Ethics Op. 273 (1997). Affected clients should be informed that if they choose to follow Departing Lawyer to their new firm, they will need to sign a new fee agreement. The notice should provide details about the terms of the new fee agreement, such as any changes to billing rates, fee structures, or terms. The notice should explicitly state if the fee structure or terms will remain the same.

Departing Lawyer must ensure that he has the knowledge and resources necessary to handle the matter at his new firm. Law Firm also has a duty to ensure that, after Departing Lawyer leaves the firm, there are other lawyers in the firm with the ability to handle the client's matters. Tenn. Ethics Op. 2023-F-169. "The law firm management should assess if it has the capacity to and expertise to offer to continue to represent the clients. If the departing lawyer is the only lawyer at the firm with the expertise to represent a client on a specific matter, the firm should not offer to continue to represent the client unless the firm has the ability to retain other lawyer with similar expertise." Tenn. Ethics Op. 2023-F-169. Departing Lawyer and Law Firm may consider whether they have the ability to consult with or retain other lawyers with the necessary expertise to continue the competent representation of the client. See Rule 1.1(c).

If Law Firm cannot continue the representation due to the unavailability of competent lawyers in a particular legal area, and Departing Lawyer cannot carry out the representation due to a conflict at the new firm, Departing Lawyer and Law Firm must work together to assist the client in obtaining new counsel. See Rule 1.16(d). "Both the departing lawyer and the law firm have an ethical duty to ensure that active matters pending while the client chooses counsel are handled with the requisite competence and diligence and that all steps are taken to ensure the withdrawal of representation by either party protects the client's interests." Ohio Board of Professional Conduct, Op. 2020-06.

If both Departing Lawyer and Law Firm have the means to continue representing the client and are not precluded from doing so by a conflict of interest, both Departing Lawyer and Law Firm should be offered as a choice to the client. Lawyers may not elevate their personal financial interests above those of the client. The same principles of client protection and client choice are paramount when a lawyer retires and sells his law practice. "[C]lients of a retiring or departing lawyer must be given an opportunity to select their own new counsel." *The Law of Lawyering*, §22.04. Rule 1.17(b) requires that when a retiring lawyer sells his practice, that the "entire practice, or the entire area of practice" be sold to one or more law firms. This requirement helps protect "those clients whose matters are less lucrative and who might find it difficult to secure other counsel…" Comment [5] to Rule 1.17. Likewise, neither Law Firm nor Departing Lawyer can use Departing Lawyer's transition to cherry pick higher fee-generating client matters and reject others. Comment [5] to Rule 1.5 provides that "[o]nce a fee agreement has been reached between attorney and client, the attorney has an ethical obligation to fulfill the contract and represent the client's best interests regardless

of whether the lawyer has struck an unfavorable bargain."

The notice should provide information regarding the current status of the matter as well as an accounting of any client property held in trust. The notice should also include information about any responsibility the client has for fees and costs already incurred. The notice should explain that the client's file will remain with Law Firm unless the client directs Law Firm to return the file to the client or instructs Law Firm to transfer the file to Departing Lawyer or new counsel. RPC 200.

The notice should advise the client that any entrusted funds will remain with Law Firm unless the client directs Law Firm to return the funds to the client or transfer the funds to Departing Lawyer or new counsel. The notice should provide a date by which clients need to indicate their choice of counsel and should inform clients that failure to make an election by that date will be considered a choice to remain with the current firm.

As noted above, Departing Lawyer and Law Firm each may communicate the requisite information to the affected clients, but they are prohibited from making false or misleading statements or from disparaging each other. *See* ABA Formal Op. 99-414 (1999). ABA Formal Op. 03-429 counsels that, when providing a client with information about the departed lawyer, a firm lawyer "must be careful to limit any statement to ones for which there is a reasonable factual foundation." In circumstances where there are concerns such as those set out in 2013 FEO 8 (Responding to the Mental Impairment of Firm Lawyer), or where the departing lawyer is under investigation for serious ethics violations such as embezzlement, the law firm may have a professional responsibility to disclose this information to the departing lawyer's current clients. 2013 FEO 8; Tenn Ethics Op. 2023-F-169; ABA Formal Op. 03-429. The communication must be factual, avoid defamation, and be made in good faith. It should not come across as a competitive attempt to retain the client. Therefore, it's critical to tread carefully and base any communication on objective facts.

Sample language in a joint notice letter may include:

Dear [Client's Name],

We hope this letter finds you well. We are writing to inform you of an important change regarding your legal representation at [Law Firm Name]. Effective [Date], [Departing Lawyer's Name] will be departing from our firm to pursue a new opportunity.

We want to assure you that your legal matters remain our top priority during this transition. As a valued client, you have several options regarding your representation moving forward:

Continue with [Law Firm Name]: If you would like to continue your legal representation with [Law Firm Name], please rest assured that our team will remain dedicated to providing you with high-quality legal services. Your case will continue to be handled by [New Lawyer's Name or Team], who is fully briefed on your matters and ready to assist you. We will provide you with an updated status of your case, including any upcoming deadlines or important actions needed. Additionally, any outstanding accounting of fees and costs incurred will be shared with you. All client files and documents will remain with [Law Firm Name]. Any trust funds currently held in your matter will also remain with the firm to be managed in accordance with our standard procedures.

Transition to Departing Lawyer's Name]: If you prefer to continue working with [Departing Lawyer's Name], you are welcome to follow him or her to their new firm, [New Firm Name], where he or she will be practicing starting [Date]. If you choose this option, we will facilitate the transfer of your file and any related trust funds to ensure a smooth transition. You will need to provide written consent for the release of your file and the transfer of any trust funds to [New Firm Name]. We will also provide an accounting of any fees and costs incurred up to the date of transfer. Please let us know how you wish to proceed by [Response Date], and we will assist you with the necessary steps.

Seek New Counsel: Should you decide that you would like to seek representation from a different attorney or firm, you are free to do so at any time. As with the transition to [Departing Lawyer's Name], you will need to provide written consent for the release of your file to your new counsel. If you choose this option, any trust funds related to your matter will remain with [Law Firm Name] until you decide how to handle them, and we will provide you with a detailed accounting of fees and costs incurred.

Handling of Client Files and Trust Funds

Please be assured that your client file will remain confidential and secure regardless of your decision. If you choose to transition to [Departing Lawyer's Name] and provide consent, we will ensure that your files and trust funds are transferred smoothly and ethically to [New Firm Name]. We will also provide you with a final status report on your case and an accounting of all fees and costs incurred.

If we do not receive a response from you by [Response Date], we will assume that you wish to continue your representation with [Law Firm Name], and your matters and files will remain with the firm. Any trust funds related to your case will also remain with [Law Firm Name] and be managed according to our standard procedures.

Client Liability for Fees and Costs

Please note that regardless of the option you choose, you will remain liable for any fees and costs incurred by [Current Law Firm Name] prior to my departure. This means that any outstanding balances for services rendered or costs incurred will still be your responsibility. Should you have any questions regarding these fees, or the services provided, please do not hesitate to reach out to [Current Law Firm Name].

Please know that your decision is entirely up to you, and we are here to support you in whatever choice you make. If you have any questions or would like to discuss your options further, please do not hesitate to reach out to us at [Law Firm Phone Number] or [Law Firm Email Address].

We appreciate your trust in us and in [Departing Lawyer's Name] during this transition, and we remain committed to ensuring your legal needs are met with the utmost care.

Thank you for your understanding, and we kindly ask for your response by [Response Date] by email or regular mail.

Your Choice

Please indicate your preferred option by

Need Ethics Advice?

After consulting the Rules of Professional Conduct and the relevant ethics opinions, if you continue to have questions about your professional responsibility, any lawyer may request informal advice from the ethics department of the State Bar by calling (919) 828-4620 or by emailing ethicsadvice@ncbar.gov.

marking the appropriate box below:

Continue with [Law Firm Name]

_____I wish to continue my legal representation with [Law Firm Name].

Transition to [Departing Lawyer's Name]

_____I would like to follow [Departing Lawyer's Name] to [New Firm Name].

Seek New Counsel

_____I have decided to seek representation from a different attorney or firm.

Inquiry #7:

Is Departing Lawyer entitled to contact information for his current clients?

Opinion #7:

Yes. *See* Opinion # 3.

Inquiry #8:

Must law firm make reasonable efforts to provide Departing Lawyer with a list of all his former clients?

Opinion #8:

Yes. Both Law Firm and Departing Lawyer share an obligation to protect client interests. Therefore, the departing lawyer and the former firm should cooperate to ensure that all parties are aware of potential conflicts. The Rules of Professional Conduct require departing lawyers and law firms to adopt reasonable conflict-checking procedures to identify potential conflicts that could arise when lawyers bring in new clients or move between firms. *See, e.g.,* Rule 1.7, cmt. [3]. A necessary component of any conflict-checking procedure is a list of both current and former clients. Given this existing requirement, it is reasonable to require Law Firm to provide Departing Lawyer with the names of his former clients. Making a reasonable effort to provide Departing Lawyer with a list of his former clients is essential for both the law firm and the departing lawyer to meet their ethical duties.

Rule 1.6(b)(8) provides that a lawyer may reveal information protected from disclosure by Rule 1.6(a) to the extent the lawyer reasonably believes necessary "to detect and resolve conflicts of interest arising from the lawyer's change of employment . . . but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client." By providing Departing Lawyer with a list of his prior clients, Law Firm ensures that Departing Lawyer knows which matters he needs to avoid at his new firm. Providing the list will also ensure that

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In Memoriam

Mason H. Anderson
Shallotte, NC

Richard Gordon Bell
Winston-Salem, NC

Sara Machelle Biggers
Chapel Hill, NC

John Tabor Brock
Mocksville, NC

Shane Von Farr Glen
Alpine, NC

Derek Ross Fletcher
Nashville, TN

Diane Penegar Furr
Charlotte, NC

Robert Howard Grubbs
Blowing Rock, NC

James S. Hassan
Charleston, SC

John Henderson Hasty
Gastonia, NC

Sarah Llewellyn Heekin
Goldsboro, NC

Marvin Vale Horton Jr.
Tarboro, NC

Malcolm Jones Howard
Greenville, NC

Joseph Robert John Sr.
Raleigh, NC

Kenneth Miles Johnson
Raleigh, NC

Phyllis Priscilla Jones
Fayetteville, NC

Gary Paul Kane
Greensboro, NC

Lawrence Maury Kimbrough
Davidson, NC

Janice Head Kornegay
Mount Olive, NC

Graham Gordon Lacy Jr.
Greensboro, NC

Robert Bradford Leggett Jr.
Winston-Salem, NC

Leonard Gilmore Logan Jr.
Kitty Hawk, NC

Brendan Patrick Manning
Charlotte, NC

Alfred Ray Mathis
Charlotte, NC

William Gregory McCall
Charlotte, NC

Dewitt Clinton McCotter III
Morehead City, NC

Michelle B. McPherson
Fort Mill, SC

Deborah Rose Norris Meyer
Durham, NC

Anita Davis Pearson
Knightdale, NC

Stafford Randolph Peebles Jr.
Winston-Salem, NC

William Ripley Rand
Wilson, NC

Philip Carl Shaw
Four Oaks, NC

William Golden Simpson Jr.
Chapel Hill, NC

Patricia Hinds Marschall Spearman
Raleigh, NC

Robert James Willis
Pittsboro, NC

Allen Wilton Wood III
Newton, NC

Jeffrey Thomas Workman
Greensboro, NC

Amendments Pending Supreme Court Approval

At its meeting on January 24, 2025, the 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 Winter 2024 edition of the *Journal* or visit the State Bar website: ncbar.gov.)

Amendments to the Rules Governing Discipline

27 N.C.A.C. 1B, Section .0100, Rule .0113, Proceedings Before the Grievance Committee; Rule .0136, Expungement or Sealing of Discipline [New Rule]; Rule .0108, Chairperson of the Hearing Commission: Powers and Duties

The amendments to Rule .0113 and new Rule .0136 implement the provisions of Session Law 2024-25 (Senate Bill 790) that require the State Bar to produce certain records to a respondent; to provide an opportunity for a respondent to address the Grievance Committee; and to adopt a rule on expungement. The amendments to Rule .0108 empower the chair of the Disciplinary Hearing Commission to review vexatious complainant designations and to rule on requests to expunge or seal discipline.

Amendments to the Rules Governing the Continuing Legal Education Program

27 N.C.A.C. 01D, Section .1500, Rule .1523, Credit for Non-Traditional Programs and Activities

The amendment adds technology training and professional well-being programs to the types of programs that can be presented "in-house" by a person or organization not affiliated with the lawyers attending the program or their law firm.

Highlights

On January 24, 2025, amendments to 27 N.C.A.C. 01B .0113, .0136, and .0108 were adopted by the council and approved for transmission to the NC Supreme Court for approval. These amendments implement Session Law 2024-25 (SB 790).

Proposed Amendments

At its meeting on January 24, 2025, the council voted to publish for comment the following proposed rule amendments:

Proposed Amendments to the Rules Governing the Election, Succession, and Duties of Officers

27 N.C.A.C. 01A, Section .0400, Election, Succession, and Duties of Officers

The proposed rule amendment eliminates the requirement that elections for State Bar Council officers be held by secret ballot in conformance with G.S. 143-318.13(b), which states that "a public body may not vote by secret or written ballot."

Rule .0404, Elections

(a) A president-elect, vice-president and secretary shall be elected annually by the council at an election to take place at the council meeting held during the annual meeting of the North Carolina State Bar. ~~All elections will be conducted by secret ballot.~~

(b) If there are more than two candidates for an office, then any candidate receiving a majority of the votes shall be elected. If no candidate receives a majority, then a run-off shall be held between the two candidates receiving the highest number of votes.

Proposed Amendments to the Rules Governing the Procedures for Fee Dispute Resolution

27 N.C.A.C. 01D, Section .0700, Procedures for Fee Dispute Resolution

The proposed rule amendments clarify procedural aspects of the fee dispute resolution process, allow staff to determine that a matter is not appropriate for the program due to characteristics that would require expenditure of disproportionate program resources, and reallocate certain decision-making authority—including allowing staff to determine that a matter has reached impasse without input from the councilor overseeing the fee dispute program.

Rule .0706, Powers and Duties of the Vice-Chairperson

The vice-chairperson of the Grievance Subcommittee overseeing ACAP, or his or her designee, ~~who must be a councilor,~~ will:

(a) **approve or disapprove a respondent's request to withhold the respondent's response from the petitioner;** ~~approve or disapprove any recommendation that an impasse be declared in any fee dispute;~~ and

(b) refer to the Grievance Committee all cases in which it appears that

(i) a lawyer might have demanded, charged, contracted to receive, or received an illegal or clearly excessive fee or a clearly excessive amount for expenses in violation of Rule

1.5 of the Rules of Professional Conduct; or

(ii) a lawyer might have failed to refund an unearned portion of a fee in violation of Rule 1.5 the Rules of Professional Conduct, or

(iii) a lawyer might have violated ~~one~~ **any other provision of the** ~~or more~~ Rules of Professional Conduct ~~other than or in addition to Rule 1.5~~.

Rule .0707, Processing Requests for Fee Dispute Resolution

(a) A request for resolution of a disputed fee must be submitted in writing to the coordinator of the Fee Dispute Resolution Program addressed to the North Carolina State Bar, PO Box 25908, Raleigh, NC 27611. A lawyer is required by Rule of Professional Conduct 1.5 to notify in writing a client with whom the lawyer has a dispute over a fee (i) of the existence of the Fee Dispute Resolution Program and (ii) that if the client does not file a petition for fee dispute resolution within 30 days after the client receives such notification, the lawyer will be permitted by Rule of Professional Conduct 1.5 to file a lawsuit to collect the disputed fee. A lawyer may file a lawsuit prior to expiration of the required 30-day notice period or after the petition is filed by the client only if such filing is necessary to preserve a claim. If a lawyer does file a lawsuit pursuant to the preceding sentence, the lawyer must not take steps to pursue the litigation until the fee dispute resolution process is completed. A client may request fee dispute resolution at any time before either party files a lawsuit. The petition for resolution of a disputed fee must contain:

(1) the names and addresses of the parties to the dispute;

(2) a clear and brief statement of the facts giving rise to the dispute;

(3) a statement that, prior to requesting fee dispute resolution, a reasonable attempt was made to resolve the dispute by agreement;

(4) a statement that the subject matter of the dispute has not been adjudicated and is not presently the subject of litigation.

(b) A petition for resolution of a disputed fee must be filed (i) before the expiration of the statute of limitation applicable in the General Court of Justice for collection of the funds in issue or (ii) within three years of the termination of the client-lawyer relationship, whichever is later.

(c) The State Bar will process fee disputes and grievances in the following order:

(1) If a client submits to the State Bar simultaneously a grievance and a request for resolution of disputed fee involving the same attorney-client relationship, the request for resolution of disputed fee will be processed first and the grievance will not be processed until the fee dispute resolution process is concluded.

(2) If a client submits a grievance to the State Bar and the State Bar determines it would be appropriate for the Fee Dispute Resolution Program to attempt to assist the client and the lawyer in settling a dispute over a legal fee, the attempt to resolve the fee dispute will occur first. If a grievance file has been opened, it will be stayed until the Fee Dispute Resolution Program has concluded its attempt to facilitate resolution of the disputed fee.

(3) If a client submits a request for resolution of a disputed fee to the State Bar while a grievance submitted by the same client and relating to the same attorney-client relationship is pending, the grievance will be stayed while the Fee Dispute Resolution Program attempts to facilitate resolution of the disputed fee.

(4) Notwithstanding the provisions of subsections (c)(1), (2), and (3) of this section, the State Bar will process a grievance before it processes a fee dispute or at the same time it processes a fee dispute **only when the State Bar** ~~whenever it~~ determines that doing so is in the public interest.

(d) The coordinator of the Fee Dispute Resolution Program or a facilitator will review the petition to determine its suitability for fee dispute resolution. If it is determined that the dispute is not suitable for fee dispute resolution, ~~the coordinator and/or the facilitator will prepare a letter setting forth the reasons the petition is not suitable for fee dispute resolution and recommending that the petition be discontinued and that the file be closed~~ **the parties will be notified in writing that the dispute is not suitable for fee dispute resolution and that a file will not be opened or, if a file has already been opened, that the file has been closed**. ~~The coordinator and/or the facilitator will forward the letter to the vice-chairperson. If the vice-chairperson agrees with the recommendation, the petition will be discontinued and the file will be closed. The coordinator and/or facilitator will notify the parties in writing that the file was closed.~~ Grounds for concluding that a petition is not suitable for fee dispute resolution or for closing a file include, but are not limited to~~, the following~~:

(1) the petition is frivolous or moot; ~~or~~

(2) the committee lacks jurisdiction over one or more of the parties or over the subject matter of the dispute~~;~~ **; or.**

(3) due to complexity of the dispute, the amount of fees or expenses at issue, lack of cooperation by one or more of the parties, or other factors, facilitating resolution of the dispute will consume a disproportionally large amount of the fee dispute program's resources.

~~(e) If the vice-chairperson disagrees with the recommendation to close the file, the coordinator will schedule a settlement conference.~~

Rule .0708, Settlement Conference Procedure

(a) The coordinator will assign the case to a facilitator.

(b) The State Bar will serve a letter of notice upon the respondent lawyer.

(1) The letter of notice shall be served by one of the following methods:

(A) mailing a copy thereof by registered or certified mail, return receipt requested, to the last known address of the member

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments by April 4 to Peter Bolac, 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.

contained in the records of the North Carolina State Bar ~~or such later address as may be known to the person attempting service~~;

(B) mailing a copy thereof by designated delivery service (such as Federal Express or UPS), return receipt requested, to the last known address of the member contained in the records of the North Carolina State Bar ~~or such later address as may be known to the person attempting service~~;

(C) personal service by the State Bar counsel or deputy counsel or by a State Bar investigator;

(D) personal service by any person authorized by Rule 4 of the North Carolina Rules of Civil Procedure to serve process; or

(E) email sent to the email address of the member contained in the records of the North Carolina State Bar if the member sends an email from that same email address to the State Bar agreeing to accept service of the letter of notice by email. Service of the letter of notice will be deemed complete on the date that the letter of notice is sent by email.

A member who cannot, with reasonable diligence, be served by one of the methods identified in subparagraphs (A)–(E) above shall be deemed served upon publication of the notice in the State Bar Journal.

(2) The letter of notice shall enclose copies of the petition and of any relevant materials provided by the petitioner.

(3) The letter of notice shall notify the respondent (i) that the petition was filed and (ii) of the respondent's obligation to provide to the State Bar a written response to the letter of notice, signed by the respondent, within 15 days of service of the letter of notice.

(c) Within 15 days after the letter of notice is served upon the respondent, the respondent must provide a written response to the petition **which must be** signed by the respondent. The facilitator may grant requests for extensions of time to respond. The response must be a full and fair disclosure of all the facts and circumstances pertaining to the dispute. The response shall include all documents necessary to a full and fair understanding of the dispute **and**~~. The response~~ shall not include documents that are not necessary to a full and fair understanding of the dispute. The facilitator will provide a copy of the response to the petitioner **unless the vice-chair or the vice-chair's designee determines that good cause exists to approve a respondent's request not to provide the response to the petitioner.** ~~unless the respondent objects in writing~~. **The determination of the vice-chair or of the vice-chair's designee whether good cause exists is final and is not subject to review.**

(d) The facilitator **may conduct** ~~will conduct an~~ **any** investigation **the facilitator determines to be necessary to understand the facts relevant to the dispute**.

(e) The facilitator **shall determine, in the facilitator's sole discretion, whether the settlement conference will be held via email or telephone communications, with both parties simultaneously, or with one party at a time.** ~~may conduct a telephone settlement conference. The facilitator may conduct the settlement conference by conference call or by telephone calls between the facilitator and one party at a time, depending upon which method the facilitator believes has the greater likelihood of success.~~

(f) The facilitator will explain the following to the parties:

(1) the procedure that will be followed;

(2) the differences between a facilitated settlement conference and other forms of conflict resolution;

(3) that the settlement conference is not a trial;

(4) that the facilitator is not a judge;

(5) that participation in the settlement conference does not deprive the parties of any right they would otherwise have to pursue resolution of the dispute through the court system if they do not reach a settlement;

(6) the circumstances under which the facilitator may communicate privately with any party or with any other person;

(7) whether and under what conditions private communications with the facilitator will be shared with the other party or held in confidence during the conference; and

(8) that any agreement reached will be reached by mutual consent of the parties.

(g) It is the duty of the facilitator to be impartial and to advise the parties of any circumstance that might cause either party to conclude that the facilitator has a possible bias, prejudice, or partiality.

(h) It is the duty of the facilitator to timely determine when the dispute cannot be resolved by settlement and to declare that an impasse exists and that the settlement conference **will** ~~should~~ end.

(i) Upon completion of the settlement conference, the facilitator will prepare a disposition letter to be sent to the parties explaining:

(1) that the settlement conference resulted in a settlement and the terms of settlement; or

(2) that the settlement conference resulted in an impasse. ■

Proposed Opinions (cont.)

Departing Lawyer's new firm is able to timely implement screening measures when conflicts arise in the future based on Departing Lawyer's former clients. Timely implementation is necessary to avoid the imputation of conflicts to the new firm pursuant to Rule 1.10. Under Rule 1.10, conflicts of interest are imputed to the entire firm unless certain steps, like screening, are implemented. For the new firm to create appropriate ethical screens (such as prohibiting the departing lawyer from accessing case files or working on certain matters), Departing Lawyer must know who his former clients were and whether those clients are involved in substantially related matters at the new firm.

The ultimate purpose of conflict-checking procedures is to protect client interests by preventing a lawyer from acting against his former clients in ways that could compromise confidential information or the lawyer's duties to those clients. Refusing to make reasonable efforts to provide a list of former clients to Departing Lawyer could potentially harm the interests of former clients. Without access to a list of former clients, Departing Lawyer might inadvertently represent a client in conflict with a former client from Departing Lawyer's former law firm in violation of Rule 1.9. Such a scenario could expose the new firm to potential conflict-related issues, which could lead to disqualification in certain cases. Accordingly, as permitted by Rule 1.6(b)(8), law firms can and should provide limited information to Departing Lawyer, such as client names and the general nature of the representation, without disclosing sensitive details. *See* Rule 1.6 cmt. [17], [18]. This allows Departing Lawyer to check for conflicts without Law Firm breaching confidentiality under Rule 1.6. ■

Upcoming Appointments

Anyone interested in being appointed to serve on one of the State Bar's boards, commissions, or committees should visit bit.ly/NCSBInterestForm to complete a "Boards and Commissions Interest Form." The deadline for completion of the interest form is April 15, 2025. Your information will be included in agenda materials for the April meeting of the council. The council will make the following appointments at its April 22, 2025, meeting:

Disciplinary Hearing Commission (six appointments, three-year terms)—There are six appointments to be made by the State Bar Council. Stephanie Davis, James Davis, Margit Hicks, and Josh Willey are not eligible for reappointment. Chris Halkiotis and Jaye Meyer are eligible for reappointment.

The Disciplinary Hearing Commission (DHC) is an independent adjudicatory body that hears all contested disciplinary cases. It is composed of 18 North Carolina lawyers. Twelve of the lawyers are appointed by the State Bar Council; two are appointed by the General Assembly upon the recommendation of the president *pro tempore* of the Senate; two are appointed by the General Assembly upon the recommendation of speaker of the House; and two are appointed by the chief justice of the North Carolina Supreme Court. The eight public members of the DHC are appointed by the governor and the General Assembly: four are appointed by the governor; two are appointed by the General Assembly upon the recommendation of the president *pro tempore* of the Senate; and two are appointed by the General Assembly upon the recommendation of speaker of the House. The DHC sits in panels of three: two lawyers and one public member. In addition to disciplinary cases, the DHC hears cases involving contested allegations that a lawyer is disabled and petitions from disbarred and suspended lawyers seeking reinstatement.

Grievance Resolution Board (four-year term; appointed by the governor)—The term of Travis F. Ellis expires on June 30, 2025. The State Bar must submit five names to the governor for his consideration. There is no limit to the number of consecutive terms a member may serve.

The Inmate Grievance Resolution Board has jurisdiction over all appeals of inmate grievances filed through the Administrative Remedy Procedure established pursuant to Article 11A of Chapter 148 of the North Carolina General Statutes. Its responsibilities include review of the grievance procedure and other functions assigned by the Governor. ■

John B. McMillan Distinguished Service Award

W. Donald Carroll Jr.

W. Donald Carroll Jr. received the John B. McMillan Distinguished Service Award on November 20, 2024, in Charlotte, North Carolina. The award was presented by North Carolina State Bar Past-President A. Todd Brown, with additional remarks from Larry J. Dagenhart, Ted Fillette, Patrick Jenkins, and Ann Starrette.

Mr. Carroll was born in New York City in 1945. His family moved to Virginia in 1947, and he later settled in Charlotte in 1972. He received his undergraduate degree from Davidson College in 1967. He holds a master of philosophy degree from the University of Dundee in Scotland, an MFA in writing from Vermont College, and received his law degree with honors from the University of Virginia in 1971.

Mr. Carroll served as a law clerk for the Honorable James B. McMillan and practiced civil litigation from 1972 to 1991 at Helms, Mullis, and Johnston. In 1977, Mr. Carroll entered elected public service as the first elected representative for District 1 on the Charlotte City Council. During his tenure, he championed affordable, safe housing, worked with grassroots leaders to preserve historically Black neighborhoods, and advocated for increased funding to revitalize uptown Charlotte. He also participated in bus system financing reforms and focused on repairing, rather than demolishing, deteriorated housing. His leadership led to groundbreaking amendments to housing codes, including a requirement for landlords to provide safe, functional heating systems, significantly improving living conditions.

Mr. Carroll's commitment to housing advocacy continued through his service on the Charlotte Housing Authority, where he served from 1982 to 1991 as commissioner, vice chair, and chair. He secured local funding to address the cessation of federal public housing construction and led the hiring of the authority's first Black director, further solidifying his legacy of equity and inclusion.

Mr. Carroll's most profound contributions to the legal profession began in 1994 when he set aside his thriving legal career to lead the North Carolina State Bar's Lawyer Assistance Program (LAP). At a time when addiction and mental health challenges among lawyers were often overlooked, Mr.

Carroll became a pioneering advocate. His articulate and persuasive leadership helped destigmatize these issues, transforming the program into a critical resource and national model that helped countless lawyers rebuild their careers and lives while promoting professionalism and protecting the public. His ability to champion the program's mission, even to skeptical audiences, left an enduring impact on the legal community. In 2000, Mr. Carroll was awarded the Addiction Professionals of North Carolina Outstanding Achievement Award. He also received the Jody Kellerman Award in 2009. Upon his retirement from LAP, Chief Justice Sarah Parker inducted Mr. Carroll into the Order of the Long Leaf Pine, the highest award for state service granted by North Carolina's governor.

Mr. Carroll remains dedicated to service as an author and spiritual director, reflecting his commitment to justice, equity, and community well-being. From his skill in the courtroom to his transformative impact on affordable housing and his compassionate leadership of the Lawyer Assistance Program, William Donald Carroll Jr. exemplifies the highest standards of justice, equity, and service.

Justice Robert H. Edmunds Jr.

Justice Robert H. Edmunds Jr. received the John B. McMillan Distinguished Service Award on January 16, 2025, at the Greensboro Bar Association's member meeting. The award was presented by North Carolina State Bar President Matthew Smith and Executive Director Peter Bolac.

Born in Danville, Virginia, Justice Edmunds moved to Greensboro, North Carolina, in 1957. He earned a BA in English from Vassar College and a JD from UNC-Chapel Hill before serving in the US Navy. Upon completing his military service, Justice Edmunds began his legal career as an assistant district attorney in Greensboro, later becoming an assistant US attorney before being appointed US Attorney for the Middle District of North Carolina by President Ronald Reagan, a position he held through President George H. W. Bush's administration. In 1993, Edmunds became a board-certified specialist in state and federal criminal law, adding certification in criminal appellate practice the following year. He entered private practice as a partner at Stern & Klepfer LLP before being elected to the North Carolina Court of Appeals in 1998. Two years later, he won a seat on the North Carolina Supreme Court, where he served two terms.

Beyond his judicial service, Justice Edmunds has demonstrated an unwavering commitment to education, ethics, and access to justice. He has been a mentor and educator, serving as an adjunct professor at Campbell University School of Law, Regent University School of Law, and as a jurist-in-residence at High Point University School of Law. He has chaired the North Carolina Bar Association's Appellate Rules Committee and the North Carolina Bar Association's Judicial Independence and Integrity Committee. His commitment to legal scholarship is evident in his numerous CLE presentations, appellate advocacy training sessions, and legal writings.

Justice Edmunds has been a leader in improving access to justice. He was instrumental in establishing North Carolina's appellate practice specialty program, advocated for *pro bono* representation in appellate courts, and is on the board of the North Carolina Equal Access to Justice Foundation. He has been a steadfast supporter of judicial education, serving as president of the Appellate Judges Education Institute and holding leadership roles in the American Bar Association's Appellate Judges Conference.

Recognized for his integrity, professionalism, and mentorship, Justice Edmunds's collegiality and fairness have set a high standard in the legal profession. His ability to bridge ideological divides made him an ideal choice for the special master panel in North Carolina's recent redistricting case, further cementing his reputation as an attorney and judge beyond reproach.

Justice Edmunds embodies the very essence of service and dedication that this award represents.

Robert "Bert" C. Kemp III

Robert "Bert" C. Kemp III was honored with the John B. McMillan Distinguished Service Award on December 12, 2024, at the Pitt County Bar Association Holiday Party in Greenville, North Carolina. State Bar President Matthew W. Smith presented the award.

A North Carolina native, Mr. Kemp was born in Henderson and raised in Oxford, where he graduated as valedictorian of Oxford Webb High School. He earned his BA in economics from UNC-Chapel Hill in 1993 and his Juris Doctor from Wake Forest University School of Law in 1996.

Out of law school, Mr. Kemp began his career as an assistant district attorney in Pitt County before joining the Pitt County Public Defender's Office in 2001 as an assistant public defender. In 2007, Bert was promoted to chief public defender for Pitt County, a role he has held for the past 16 years. Under his leadership, he has supervised and mentored an office of 13 attorneys, ensuring the indigent population of Pitt County receives competent and zealous representation in the criminal court system.

Mr. Kemp is widely recognized by his colleagues as a leader of people and a champion of legal professionalism. He is a past-president of both the Pitt County Bar Association and Judicial District 3 (formerly 3A) Bar. He has served as past section chair of the Criminal Justice Section of the North Carolina Bar Association and past-president of the North Carolina Public Defender Association. Bert's expertise is further reflected in his certification as a North Carolina State Bar board certified specialist in state criminal law and his previous role as chair of the Criminal Law Specialty Committee.

Mr. Kemp has contributed broadly to the betterment of legal services statewide. He has served as a member of the North Carolina Courts Commission, the Governor's Crime Commission, the Chief Justice's Equal Access to Justice Commission, and the Chief Justice's Commission on Professionalism. His commitment to the legal community also includes a longstanding role as an adjunct professor of law at Campbell Law School, where he shared his knowledge with aspiring lawyers. Because of his significant contributions to the profession, Bert was presented with the Wade M. Smith Award by the NCBA Criminal Justice Section and the Chief Justice's Professionalism Award by Chief Justice Paul Newby in 2023.

In addition to his civilian legal career, Mr. Kemp has had a distinguished military career as a member of the North Carolina National Guard. He holds the rank of lieutenant colonel in the Judge Advocate General's Corps. He completed two tours of duty in Iraq in support of Operation Iraqi Freedom. Bert graduated from the Army War College in 2020 with a master's in strategic studies and is currently a certified state military judge.

Mr. Kemp's leadership and dedication to justice have also been exemplified through his service as a State Bar councilor for Pitt County, beginning in January 2021. As a councilor, he served with distinction on the Ethics, Administrative, Appointments, and LAMP Com-

mittees, as well as on the Editorial Board and the CLE Board.

While illness forced Mr. Kemp to step down at the end of 2023, his legacy of professionalism, compassion, and leadership remains deeply felt. His years of service to the legal profession, his mentorship of young lawyers, and his unwavering dedication to the principles of justice exemplify why he is so deserving of the John B. McMillan Distinguished Service Award.

Patricia P. Shields

Patricia P. Shields received the John B. McMillan Distinguished Service Award on November 14, 2024, in Raleigh, NC. Past-President A. Todd Brown presented the award. Warren Savage assisted in the presentation.

Ms. Shields was born in Elizabeth City and raised in Durham. She received her BA from Wake Forest University in 1982 and her JD from the University of North Carolina School of Law. She began her legal career in 1985, serving as a law clerk for Chief Judge R.A. "Fred" Hedrick at the North Carolina Court of Appeals. Judge Hedrick, who had lost his sight as a child, had a profound impact on Ms. Shields's approach to the law, teaching her the importance of fairness, impartiality, and equal treatment under the law. She spent two years assisting him in reviewing case records, researching legal issues, and drafting opinions, all while learning the value of applying the law without bias.

After her clerkship, Ms. Shields became an associate and later a partner at Bailey & Dixon in Raleigh. She went on to practice with Troutman Sanders and Hedrick, Gardner, Kincheloe & Garofalo. She built a successful career in civil litigation, focusing on a broad range of legal matters including personal injury, products liability, professional malpractice, employment law, civil rights, and complex commercial cases, along with administrative law. She also defends and prosecutes licensees before occupational licensing boards. Throughout her career, Ms. Shields has represented clients in some of the most challenging situations, often offering *pro bono* services to disadvantaged clients. In addition to her civil litigation practice, Ms. Shields has developed an extensive appellate practice. She has handled numerous appeals and appeared before the North Carolina Court of Appeals, the North Carolina Supreme Court, and the Fourth Circuit Court of Appeals.

Ms. Shields has earned widespread recognition for her legal skills and contributions. She has received the Women of Justice Award from North Carolina Lawyers Weekly and the Diversity and Inclusion Award from North Carolina/South Carolina Lawyers Weekly. Ms. Shields has made significant contributions to the legal community. She served as president of the North Carolina Association of Defense Attorneys (NCADA). In her role as president, Ms. Shields initiated the NCADA's Diversity Committee, emphasizing the critical role of diversity and inclusion. Under her leadership, the NCADA was nationally recognized for its diversity efforts and programming. In 2020 she was awarded the Robert J. Elster Award for Professional Excellence by NCADA. Her commitment to the legal profession is further demonstrated through her leadership within her firm and her active role in mentoring and advocating for diversity within the legal community. She is a member of the Defense Research Institute and the Professional Liability Underwriting Society. At Hendrick Gardner, Ms. Shields is general counsel for the firm and serves on the Pro Bono Committee and the Associate Development Committee. She serves on the adjunct faculty for Campbell University School of Law, where she teaches trial advocacy and mentors law students.

Throughout her career, Ms. Shields has remained dedicated to fairness, professionalism, and advancing the legal profession. Her career is marked by a commitment to justice, integrity, and the highest ethical standards.

Charles Branson "Branny" Vickory III

Charles Branson "Branny" Vickory III was presented with the John B. McMillan Distinguished Service Award on November 14, 2024, at the 9th Judicial District Bar annual meeting in Goldsboro, NC. State Bar President Matthew W. Smith presented the award. Shelby Duffy Benton also participated in the presentation.

Mr. Vickory graduated from Southern Wayne Senior High School in 1974 and earned a bachelor's degree in industrial relations and psychology from the University of North Carolina at Chapel Hill in 1978. He completed his Juris Doctor at Wake Forest University in 1981.

Mr. Vickory began his legal career practicing law with his father in Mount Olive. In 1984 he became an assistant district attorney for the Eighth Prosecutorial District, a role he held until 1998. That year, Governor James B. Hunt appointed him district attorney for the Eighth Prosecutorial District. He served with distinction in this role until 2014. Running unopposed in multiple elections, his tenure reflected his dedication to justice and the community. As district attorney, Mr. Vickory led an efficient office, hiring a diverse staff and mentoring lawyers who later assumed leadership roles in the community. He worked collaboratively with court officials, law enforcement, and the public to ensure that crimes were prosecuted fairly and swiftly.

After retiring as district attorney, Mr. Vickory joined Everett, Womble & Lawrence, LLP, as of counsel until 2023. He continued to serve the community as an arbitrator for the Court-Ordered Civil District Court Arbitration Program, frequently handling cases involving p*ro se l*itigants.

Mr. Vickory has been an active member of the North Carolina Bar Association, the North Carolina State Bar, and the Wayne County Bar Association. He served as the State Bar councilor for the Eighth District from 2015 to 2021 and as president of the North Carolina Conference of District Attorneys. He was also a member of the National District Attorneys Association and served as a commissioner for the North Carolina Innocence Inquiry Commission from 2007 to 2014. His involvement with the Juvenile Crime Prevention Council helped improve case efficiencies for victims, offenders, families, and attorneys alike. Equally inspiring is Mr. Vickory's dedication to his colleagues. He fostered civility within the Bar and supported lawyers facing personal struggles such as addiction, depression, and anxiety. Called upon by resident superior court judges and the State Bar, he has assisted lawyers in need, showing compassion and leadership by helping individuals while also strengthening the broader legal community.

A committed civic leader, Mr. Vickory has been a member of the First United Methodist Church in Mount Olive since 1970. Over the years, he has served in numerous leadership roles, including chairman of the Pastor-Parish Committee, board of trustees, and church council. He has also been a Sunday school teacher. Beyond his church, Mr. Vickory's dedication to his community includes active membership in the Mount Olive Rotary, the Mount Olive Masonic Lodge No. 208, and the Wayne County Democratic Party. He has also served as chair of the Wayne County

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Client Security Fund Reimburses Victims

At its January 21, 2025, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of $40,175 to nine applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of $275 to a former client of Arthur M. Blue of Carthage. The board determined that the client retained Blue to handle traffic charges. Blue charged and was paid a fee of $275. Blue passed away prior to handling the client's case and provided no meaningful legal services for the fee paid. Blue transferred to disability inactive status by consent order on April 19, 2023, and subsequently died on May 31, 2023. The board previously reimbursed 27 other Blue clients a total of $20,223.

2. An award of $400 to a former client of Arthur M. Blue. The board determined that the client retained Blue to handle a criminal matter. Blue charged and was paid a $400 fee, which the client paid in two installments; however, Blue provided no meaningful legal services for the fee paid before being enjoined by the State Bar and then passing away prior to resolving the client's case.

3. An award of $750 to a former client of Arthur M. Blue. The board determined that the client retained Blue to assist with her case. Blue charged and was paid a $750 fee, but provided no meaningful legal services for the fee paid prior to being enjoined by the State Bar and then passing away.

4. An award of $20,000 to a former client of Arthur M. Blue. The board determined that the client retained Blue for representation in a civil suit. The client paid Blue's initial retainer of $20,000, but Blue provided no meaningful legal services for the fee paid prior to being enjoined by the State Bar and then passing away.

5. An award of $7,000 to a former client of Charles M. Kunz of Durham. The board determined that the client retained Kunz to apply for asylum and to obtain a visa. Kunz accepted $7,000 towards his $10,000 quoted fee knowing of his impending disbarment. Kunz failed to perform any meaningful legal services for the fee paid prior to his disbarment and subsequent passing. Kunz was disbarred on April 14, 2023, and passed away on April 21, 2023. The board previously reimbursed 43 other Kunz clients a total of $252,530.

6. An award of $5,000 to a former client of Charles M. Kunz. The board determined that the client hired Kunz to file an I-130, Petition for Alien Relative; an I-485, Application to Adjust Status, an I-765, Application for Employment; and an I-601A, Waiver for Inadmissibility. Kunz charged and was paid the $8,000 fee quoted. Kunz provided the legal services for the initial $3,000 payment but failed to complete the filings for the additional $5,000 payment prior to his disbarment and subsequent passing.

7. An award of $750 to a former client of Charles M. Kunz. The board determined that the client hired Kunz to file a civil suit for alienation of affection. The client paid Kunz $750 towards the quoted $1,500 fee. Kunz provided no meaningful legal services for the fee paid prior to his disbarment and subsequent passing.

8. An award of $4,000 to a former client of Charles M. Kunz. The board determined that the client hired Kunz to assist him with his asylum interview. The client paid $4,000 fee quoted; however, Kunz provided no meaningful legal services for the fee paid prior to his disbarment and subsequent passing.

9. An award of $2,000 to a former client of Julia Olson-Boseman of Wilmington. The board determined that the client hired Olson-Boseman to handle a civil claim resulting from an accident on a contingency fee basis. Olson-Boseman misappropriated a $2,000 settlement check from the insurance company that was supposed to be disbursed to a medical provider on the client's behalf. Olson-Boseman was disbarred on January 19, 2024.

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 $924.89 this past quarter. ■

Distinguised Service Awards (cont.)

United Way and the Carver Elementary Advisory Council, where he played a pivotal role in advocating for the construction of Carver Elementary School. He frequently emceed events to raise funds for educators, first responders, and community causes like United Way.

For his unwavering commitment to justice, mentorship, and community service, Charles Branson "Branny" Vickory III is truly deserving of the John B. McMillan Distinguished Service Award.

Nominations Sought

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

2024 Fourth Quarter Random Audits

Audits were conducted in Alamance, Davidson, Hoke, Lenoir, Mecklenburg, Moore, Pitt, Union, Wake, and Wayne Counties.

One audit each was conducted in Alamance, Davidson, Lenoir, and Moore Counties, two audits each were conducted in Hoke, Union, and Wayne Counties, three audits each were conducted in Pitt and Wake Counties, and five audits were conducted in Mecklenburg County.

The following are the results of the audits.

1. 43% failed to complete quarterly transaction reviews.

2. 38% failed to escheat unidentified/abandoned funds as required by GS 116B-53.

3. 33% failed to:

• complete monthly bank statement reconciliations;

• identify the client and source of funds, when the source was not the client, on the original deposit slip.

4. 29% failed to identify the client on confirmations of funds received/disbursed by wire/electronic/online transfers.

5. 19% failed to maintain images of cleared checks or maintain them in the required format.

6. 14% failed to:

• complete quarterly reconciliations;

• review bank statements and cancelled checks each month;

• take the required one-hour trust account CLE course.

7. Up to 10% failed to:

• sign, date and/or maintain reconciliation reports;

• indicate on the face of each check the client from whose balance the funds were drawn;

• promptly remove earned fees or cost reimbursements;

• provide a copy of the Bank Directive regarding checks presented against insufficient funds;

• use business size checks containing the Auxiliary On-Us field;

• properly sign trust account checks (no signature stamp or electronic signature used).

8. Areas of consistent rule compliance:

• properly maintained a ledger for each person or entity from whom or for whom trust money was received;

• prevented over-disbursing funds from the trust account resulting in negative client balances;

• properly prevented bank service fees being paid with entrusted funds;

• properly maintained a ledger of lawyer's funds used to offset bank service fees;

• properly 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;

• provided written accountings to clients at the end of representation or at least annually if funds were held more than 12 months;

• properly maintained records that are retained only in electronic format.

Based on the geographic plan for 2025, audits for the first quarter will be conducted in Chatham, Davidson, Durham, Forsyth, Franklin, Granville, Guilford, Johnston, Lee, Mecklenburg, Orange, Pasquotank, Surry, and Wake Counties. ■

A Day in the Life of a Legal Aid Attorney (cont.)

issues and advocate for clients who are facing difficult situations. Whether working with survivors of domestic violence, tenants at risk of eviction, or other vulnerable populations, each day is an opportunity to make a real difference in someone's life. The work is challenging, but it is also deeply rewarding, and the impact we have on our clients can last a lifetime. ■

Endnote

1. The Yerkes-Dodson law in psychology suggests that moderate levels of anxiety improve performance in humans and animals, too much anxiety impairs performance, but so does too little. Kendra Cherry, November 22, 2023, *The Yerkes-Dodson Law and Performance*, The Yerkes-Dodson Law and Performance (verywellmind.com).

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