

THE NORTH CAROLINA STATE BAR

JOURNAL

WINTER
2015



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NORTH CAROLINA
STATE BAR
JOURNAL

Winter 2015
Volume 20, Number 4

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Statement of Ownership, Management, and Circulation

1. Publication Title: **North Carolina State Bar Journal**

2. Publication Number: **0 0 0 1 1 5 0 4 8**

3. Filing Date: **10-14-2015**

4. Issue Frequency: **Quarterly**

5. Number of Issues Published Annually: **4**

6. Annual Subscription Price: **\$10.00**

7. Complete Mailing Address of Known Office of Publication (Notation: Street only, county, state, and ZIP+4®):
**217 E. Edenton Street
Raleigh, NC 27601**

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Notation: Street only, county, state, and ZIP+4®):
**217 E. Edenton Street
Raleigh, NC 27601**

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank):
Publisher (Name and complete mailing address):
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10. Owner (Do not leave blank. This information is printed on this statement only when the publication is owned by an individual or individuals. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a corporation, give its name and address as well as those of each individual owner.)
Complete Mailing Address:
**North Carolina State Bar
217 E. Edenton Street
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11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box: None

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one):
 For-Profit (Not checked during Preceding 12 Months)
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 Non-Profit (Not checked during Preceding 12 Months)
 Non-Profit (Changed during Preceding 12 Months)

13. Publication of Statement of Ownership:
 If the publication is a general publication, publication of this statement is required. We (we printed) in the **Winter 2015 (Dec.)** issue of this publication.

14. Signature and Title of Editor, Publisher, Business Manager, or Owner: _____ Date: _____

PS Form 3526, August 2012 (Page 1 of 2) (Instructions on page 2) 1575 5204-011-10-04011 PRIVACY NOTICE: See the privacy policy on www.usps.com

13. Publication Title: North Carolina State Bar Journal		14. Issue Date for Circulation Data Below: Fall 2015	
15. Extent and Nature of Circulation		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)		32,868	33,719
b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions (Stated on PS Form 3541) (Include paid distribution labels, normal rate, subscription's proof of mailing, and postage to local)	31,917	32,280
	(2) Mailed In-County Paid Subscriptions (Stated on PS Form 3541) (Include paid distribution labels, normal rate, subscription's proof of mailing, and postage to local)	0	0
	(3) First-Class Bulk Mail (Outside the Mail) (Include postage and business reply mail, direct vendor, counter sales, and other paid distribution outside USPS®)	0	0
	(4) Paid Distribution by Other Classes of Mail (Through the USPS (e.g., First-Class Mail®))	0	0
c. Total Paid Distribution (Sum of (2), (3), and (4))		31,917	32,280
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies (Included on PS Form 3541)	0	0
	(2) Free or Nominal Rate In-County Copies (Included on PS Form 3541)	0	0
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g., First-Class Mail®)	0	0
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	250	250
e. Total Free or Nominal Rate Distribution (Sum of (1), (2), (3), and (4))		250	250
f. Total Distribution (Sum of (2c) and (2e))		32,167	32,530
g. Copies not Distributed (See Instructions to 1. Labels on 84 (page 4))		707	1,219
h. Total (Sum of (2f) and (2g))		32,868	33,749
i. Percent Paid (2f divided by 2h times 100)		99.72%	99.73%
16. Total circulation includes electronic copies. Report circulation on PS Form 3526-X worksheet.			
17. Publication of Statement of Ownership: <input type="checkbox"/> If the publication is a general publication, publication of this statement is required. We (we printed) in the Winter 2015 (Dec.) issue of this publication.			
18. Signature and Title of Editor, Publisher, Business Manager, or Owner: _____ Date: _____			

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Remarks from the Chief Justice at the Inaugural Commission on the Administration of Law and Justice

BY CHIEF JUSTICE MARK D. MARTIN

The following welcome remarks were made by Chief Justice Mark Martin on September 30, 2015, to the members of the North Carolina Commission on the Administration of Law and Justice.

Good morning and welcome to the inaugural meeting of the North Carolina Commission on the Administration of Law and Justice.

We are honored to have so many distinguished guests joining us today. I thank each and every commission member for your presence at this inaugural meeting. I would also like to recognize a few of those who have helped make today possible. The funding to support the work of this commission was generously provided by the State Justice Institute, the North Carolina Governor's Crime Commission, and the Z. Smith Reynolds Foundation. Joining us today on behalf of these organizations is Jonathan Mattiello, executive director of the State Justice Institute, and David Huffman, retired sheriff of Catawba County and now executive director of the Governor's Crime Commission. Leslie Winner, executive director of the Z. Smith Reynolds Foundation, could not be with us today, but I have communicated our gratitude to the foundation. Finally, I want to say thank you to interim AOC Director Judge Marion Warren and the Administrative Office of the Courts for providing the meeting space and accommodations for today's meeting.

Today is a special moment for the legal profession, for the Judicial Branch of North Carolina, and for the people of this great state.

We assemble here on the shoulders of a proud tradition of inquiry and innovation that has directly shaped the courts we know today. Twice before in our state's history, multidisciplinary commissions of leaders from throughout this state have convened to conduct objective, comprehensive evaluations of the administration of justice in our courts.

"The administration of law and justice."

As we begin this inaugural meeting and launch this commission, I can think of no more fitting thing to do than to take a moment to reflect on the meaning of these words. The North Carolina constitution vests the judicial branch of government with the solemn duty of administering justice on behalf of the citizens of the state. What does that really mean? Well, the courts of our state resolve complex commercial disputes. They decide domestic disputes involving some of the most intimate and personal aspects of our lives. Our courts administer the punishment of crimes ranging from speeding tickets to first degree murder. And they guard the civil rights



Chief Justice Mark Martin gives the opening charge to the members of the North Carolina Commission on the Administration of Law and Justice.

enshrined in our Constitution. The power to administer justice is a sacred public trust that must be guarded carefully by each generation.

Ensuring public confidence in the administration of justice is no small task. In his now famous 1906 speech to the American Bar Association, Dean Roscoe Pound quipped, "Dissatisfaction with the administration of justice is as old as law." Fifty-two years later, Dean Pound had the opportunity to reflect further on refining the administration of justice. He gave remarks discussing the challenges that the administration of justice faced in a "crowded, mechanically operated, eco-



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nomically unified world,” and argued that “practical means of attaining ideal ends are as much to be sought and studied as those ends.” He emphasized the importance of unification, flexibility, and efficiency, stating “there should be unification in order to concentrate the machinery of justice upon its tasks. There should be flexibility in order to enable it to meet speedily and efficiently the continually varying demands made upon it. And there should be conservation of judicial power in order to assure that the expensive machinery of the courts is applied to the true purposes of the law and not wasted on matters of inconsequence.”

Believe it or not, these reflections were made to none other than the North Carolina Bar Association on Thursday evening, June 12, 1958. In that address, Dean Pound noted that, “North Carolina is not alone in finding its organization of administering justice inadequate” to then-prevailing societal conditions. A mere seven months later, the Committee on Improving and Expediting the Administration of Justice in North Carolina, or the Bell Commission as it is now known, issued its final report. Responding to a challenge from Governor Luther Hodges, the

North Carolina Bar Association had conducted an exhaustive, three-year study of the state courts, with a focus on improving the administration of justice. What it accomplished was quite remarkable. Ultimately, the Bell Commission’s recommendations led to the unification of the North Carolina court system and the establishment of the district courts and the court of appeals. It also laid the groundwork for what we now know as the Administrative Office of the Courts.

In the 1990s it became clear that another review of our courts was needed. Chief Justice Jim Exum, whose portrait is scheduled to be presented to the Supreme Court in a few weeks, created the Commission for the Future of Justice and the Courts, or as we now know it, the Medlin Commission. Consistent with its predecessor, the commission’s report began with the candid acknowledgement that, “Our notions of justice have not changed much over the years. What does change, however, is how justice is delivered—and how satisfied the public is with the result.” The recommendations made by the Medlin Commission reflected diligence, thoughtfulness, and proactive thinking about the systemic issues facing the judiciary. The influence of that report can

be seen today in our family courts and in the increased use of technology in our courts.

True to the goal of guarding public confidence in the administration of justice, the opening pages of the Medlin report acknowledge that, “The courts are supposed to serve the people. If the people are not happy with them, then something needs to change, because in the final analysis, one of the cornerstones of democracy and civil society is support for and confidence in the court system.” As noted by the new book *Reimagining Courts*, “The past 60 years have witnessed the transformation of courts from adversarial forums into broad general markets for legal decision.” The broader the market, the more acute the issues of confidence become. Recent polling data confirms this. A 2014 nationwide survey conducted by the National Center for State Courts shows increased confidence across several important metrics, including whether state courts are perceived as fair and impartial, and whether they provide equal justice to all. However, other findings from the study are less positive: increased percentages of respondents stated concern and dissatisfaction regarding the role of politics in the courts, the use of technology by courts, and the levels of

customer service provided by courts. In sum, the importance of guarding confidence in the courts' ability to fairly and impartially administer justice is as important as ever.

We live in a time of great societal change, driven by an increasingly globalized economy, rapidly advancing technology, and changes in the way we live. These developments are presenting new and unprecedented questions to courts, and to the legal profession more generally. Studies by the American Bar Association reveal that a great many civil legal needs are going unmet. But at the same time, we know that almost half of all law school graduates are working in jobs that do not require a law degree. The 2014 survey by the National Center for State Courts shows that about 85% of respondents under the age of 40 are willing to conduct court business online. Perhaps even more remarkable is that this number drops only to about 76% when the category is broadened to age 65. Despite these strong numbers, we know that court resources and services are often not available electronically. The cost associated with obtaining legal help is resulting in historically high numbers of *pro se* litigants. Just last week, I spoke at the North Carolina Bar Association's Convocation on Aging about the dramatically increasing number of lawyers working well into retirement age and the factors driving that change. Did you know, for example, that over half of the Baby Boomer generation is providing financial support to their adult children? We are in uncharted waters in many respects.

Amidst this change around us, we know that fair and impartial courts are a foundational pillar of our constitutional democracy. The nearly 6,000 independently elected officials and employees comprising the Judicial Branch demonstrate a keen awareness of that fact. Indeed, they work very hard and do many things well. However, in a society marked by such dramatic change, we must be candid about the fact that much of what has worked well in the past does not work as well now. Where we can become better, we must be ready to innovate.

On behalf of our court system and those we serve, I charge you to undertake a comprehensive evaluation of our state judicial system and make actionable, real-world recommendations for strengthening our courts. This is no small task—our court system is diverse. It stretches across 100 counties, both rural and urban, from the mountains in the west to the coastline in the east. Our courts serve the peo-

ple of the ninth most populous state in the nation and handle approximately three million cases a year. While the size and diversity of our state's population demands a court system that is both innovative and flexible, the rule of law requires a uniformity that ensures that every person receives equal treatment under the law. At the same time, modern realities and budgetary concerns demand that our courts function in a manner that demonstrates effective and efficient stewardship of the resources entrusted to us.

In order to facilitate the success of this important work, the commission has been organized into five committees, each of which will focus on one of the following specific areas of inquiry: Civil Justice, chaired by Duke Law Dean David Levi; Criminal Investigation and Adjudication, chaired by retired federal Judge Bill Webb; Legal Professionalism, chaired by immediate past-president of the NCBA Catharine Arrowood; Public Trust and Confidence, chaired by Blue Cross Blue Shield CEO Brad Wilson; and Technology, chaired by North Carolina Supreme Court Associate Justice Barbara Jackson.

Each committee has 13 members to ensure a sufficient depth of experience, diversity of viewpoint, variety of perspective, and capacity to complete the task. Each of these committees will work independently to identify relevant issues, conduct objective and exhaustive research, craft recommendations for improvement, and draft final reports that will be made available to the General Assembly, the governor, the courts, and the public.

The success of your committees will depend to a large extent on the ability of each commissioner to work collaboratively. By pursuing open and honest dialogue with regard to the various components of our courts, you will find within the membership of your committee an incredible reservoir of experience and wisdom. Anecdotal evidence of issues and solutions can be powerful and informative, but the recommendations made by each committee may result in wide-ranging impacts and must be founded upon thoughtful research, supporting data, and careful analysis. In other words, data-driven.

You will have ample resources at your disposal. I have already mentioned the generous financial support of the State Justice Institute, Z. Smith Reynolds, and the Governor's Crime Commission. In addition, you will have access to the resources of the National Center for State Courts. The National Center has

decades of experience working with state court systems across the country, including ours. It has agreed to provide its very best experts and consultants for your use, including its vice-president, Dan Hall. You will also have access to our very own Administrative Office of the Courts' Research and Planning Division, which has committed its staff to support the commission as well. Dean Michael Smith and the School of Government have offered their assistance. Along with Dean Smith, the school's Tom Thornburg and Jessica Smith are serving on the commission, and Jim Drennan and Michael Crowell have agreed to help as well. And, finally, our commission's executive director, Will Robinson, and his staff are working day in and day out to serve the commission's needs. Use all of the resources at hand throughout this process. Seek out speakers, request data, and bring in experts. Leave no rock unturned in this important endeavor.

I am really excited that this day has finally come. Once again, I want to express my deep gratitude for your commitment to serve. It is my hope that this commission's work will lead to innovations that strengthen the administration of justice in our state. I am confident that the work you do will be of great benefit to those who work in and with the Judicial Branch each day and to all North Carolinians. Each one of us is a stakeholder in our court system. I look forward to the preliminary recommendations you will be making in the coming months and to your final reports in early 2017.

In closing, I want to note that what we do here will not be the final word on the administration of law and justice in North Carolina. In concluding his remarks to the ABA in 1906, Dean Pound espoused a hope that sounds quite similar to the one we hold for this commission, "[may we] look forward to a near future when our courts will be swift and certain agents of justice, whose decisions will be acquiesced in and respected by all." That we still seek the same goal over 100 years later does not mean that we have failed. Future change will require further collaboration and adaptations by our courts. Guarding the fair and impartial administration of justice is a generational task. But let it not be said of this generation, and of this commission, that we failed to put forth our best efforts toward carrying the torch in our time.

Thank you. ■

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North Carolina Grand Juries and Prosecutor Conflicts

BY RONALD F. WRIGHT

Grand juries in Ferguson, Missouri, and elsewhere have put this traditional criminal justice institution into the news headlines over the last several months. When the grand jury operates at its historical best, the public treats it as an independent check on the work of prosecutors in these newsworthy cases. In our legal culture of checks and balances, that independent

voice makes the work of criminal justice

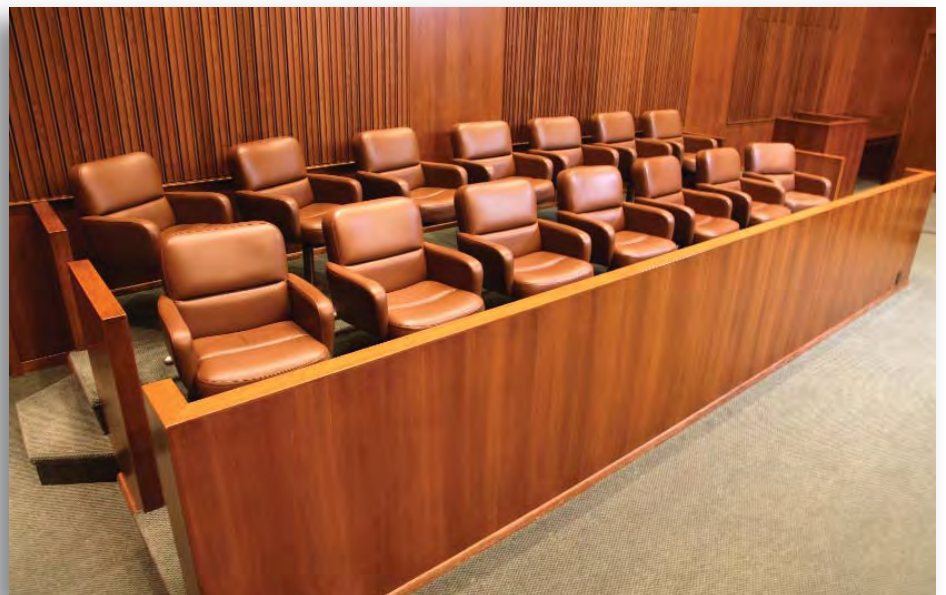
professionals more legitimate.

But the grand jury cannot always get the job done. Because the grand jury is, in functional terms, a tool of the prosecutor, questions about grand jury actions sometimes overlap with suspicions about the prosecutor. This is particularly true in connection with potential criminal charges against police officers. In this setting, some community members may wonder if the grand jury is really just a puppet of the prosecutor rather than an independent reviewer.

In this article, I will review North Carolina's legal framework for grand juries, noting the various devices that give the prosecutor effective control over their work. Then I will consider a mechanism that might sometimes be necessary to assure the independence of the grand jury in police-involved killings.

The Grand Jury's Historical Function as a Check on Prosecutors

Very early in the history of the American



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colonies, grand jury indictment became a prerequisite to conviction for any major crime. While it is no doubt true that grand juries approved most of the indictments that prosecutors brought to them, there were notable exceptions.

One of the most famous instances of a grand jury refusing to indict occurred in 1743, when the colonial governor of New

York sought to indict John Peter Zenger, a newspaper publisher, for criminal libel based on Zenger's criticism of the governor. Two grand juries refused to indict Zenger. Such refusals to indict became part of the lore of the American Revolution. They demonstrate vividly the ability of the people, through the grand jury, to thwart the will of a government that had lost their support and sympathy.¹

Prosecutors and Grand Juries Under North Carolina Law

Under North Carolina statutes, the superior court impanels 18 persons to serve on the grand jury. The law treats the grand jury as an arm of the court.² Nevertheless, the prosecutor has more practical control than any superior court judge over the grand jury's work. Although the prosecutor does not remain in the grand jury room during the testimony of a witness,³ the prosecutor does select the witnesses who will testify to the grand jury. Generally, those grand jury witnesses are law enforcement officers who summarize the evidence they have collected. If the grand jury asks to hear from another witness, the prosecutor must give permission before that witness can testify.⁴ The prosecutor has no obligation to present exculpatory evidence to the grand jury.

The prosecutor also frames the alleged crimes that the grand jury will consider by proposing charges in a bill of indictment. Sometimes the prosecutor asks a grand jury to consider charges against a defendant who has not yet been charged; at other times, the prosecutor asks the grand jury to indict a defendant, even after law enforcement officers or prosecutors have filed preliminary charges in the same case.

Four outcomes are possible in grand jury proceedings. First, the grand jurors can indict a defendant as the prosecutor requests; second, they can indict on lesser charges. Third, grand juries also hold the power to issue a "presentment" in a case if the prosecutor did not file any bill of indictment; however, the prosecutor has the power to dismiss any charges based on a grand jury presentment. Fourth, the grand jurors could decline charges altogether by returning a bill of indictment as "not a true bill."

Far and away the most common outcome is an indictment. Courthouse wisdom says that a grand jury would "indict a ham sandwich" (or is it a hamburger?) if the prosecutor asks for the indictment. Journalists and scholars who study the question confirm that grand juries issue indictments in virtually every case they consider.⁵

In sum, a prosecutor who sends a case to a grand jury under North Carolina law acts virtually alone to structure the jurors' choices. The presentation of evidence and the grand jury's deliberations remain secret. There is no judge to limit the admission of evidence or the selection of witnesses; there is

no defense attorney to test the quality of the evidence. The prosecutors, along with the law enforcement officers who provide most of the testimony, are the only criminal justice professionals on the scene.

The Special Case of Officer-Involved Shootings

When a police officer shoots a suspect or otherwise causes a death, somebody—either a prosecutor or a grand jury—must decide if the killing should result in criminal charges. That sometimes presents a legitimacy problem. Community members understand that prosecutors work closely with law enforcement officers. The filing of criminal charges against a police officer can strain that relationship. Therefore, in some environments, observers might conclude that the prosecutor declined charges just to keep the peace between the police department and the prosecutor's office.

A truly independent grand jury, in theory, could assure us all that an independent reviewer of the case reached the same conclusion as the prosecutor. If the grand jury decides after a careful review of the facts that charges against the officer were not appropriate, the prosecutor's relationship with law enforcement would not matter.

The trouble comes when the police and the prosecutor work in a toxic environment of distrust. Sometimes the prosecutor plays a role in creating this toxic distrust among community members, and in other instances the prosecutor merely inherits the problem. Whatever its source, a profound mistrust among the public makes the grand jury powerless to help in officer-involved shooting cases. Citizens who doubt the good will of the prosecutor will also see the many ways that the prosecutor can influence the grand jury. They will conclude that the prosecutor in these cases asks for grand jury review as a façade, while steering the grand jury to issue no true bill against the officer. The prosecutor, in their view, uses the grand jury to take the political blame for an outcome that was actually the prosecutor's preference all along.

This was the unhappy dynamic at work for St. Louis County District Attorney Robert McCulloch. His problem was not in his invocation of the grand jury to consider possible homicide charges against Officer Darren Wilson in the shooting of Michael Brown. Prosecutors in North Carolina have taken this same step at times, with good

effect. Nor was it a problem for Mr. McCulloch that he presented exculpatory witnesses or that he released all of the grand jury testimony to the public. Instead the problem was that he took these unusual steps in an environment of extreme distrust—even public hostility. (In my opinion, Mr. McCulloch himself was partially responsible for this poisonous atmosphere based on the way he operated his office over the years; but that is a topic for another day.) The St. Louis grand jury never had a prayer of convincing the public in Ferguson that the failure to indict Officer Wilson was legitimate.

Categorical Conflict for Prosecutors

Because the prosecutor participates so heavily in the daily affairs of the grand jury, it requires a certain amount of trust for the public to accept that the grand jury adds a voice that is independent of the local prosecutor. Perhaps there are ways to remove the prosecutor from the driver's seat of the grand jury in situations when the independence of that body is most in question.⁶

For instance, North Carolina might amend its special prosecutor statutes. Under current law, the local prosecutor must invite the state attorney general to designate a special prosecutor for grand jury or trial proceedings.⁷ That request happens when the local prosecutor concludes that his or her office faces a conflict of interest or lacks some specialized expertise.

But if the decision to call in a special prosecutor remains in local hands, we have an infinite regress problem. If the public already doubts the local prosecutor's use of a grand jury, it would also be suspicious of the district attorney's decision not to request a special prosecutor. In both settings, the very public official in question decides whether an outside review of the decision will happen.

Instead of waiting for the local prosecutor to request an outside prosecutor, North Carolina might amend its statutes to require a special prosecutor automatically for investigations and grand jury proceedings connected to officer-involved killings. This would amount to a categorical conflict of interest for the district attorney.

The precaution is a familiar one under the North Carolina Rules of Professional Conduct: attorneys in private practice must stay out of client representations that involve

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Paralegal Certification: Ten Years and Counting

BY ERICA C. MCADDOO

It's been ten years. During those ten years, thousands have made the choice, accepted the challenge, and accomplished their goal. Through their hard work and dedication to professionalism and to their profession, they have earned the right

to call themselves North Carolina Certified Paralegals.

But it's only been ten years. Ten years since legislation allowing the certification of North Carolina paralegals went into effect; ten years since North Carolina paralegals had the option to choose the path of state certification; and ten years since North Carolina certified its first paralegal. That said, the possibility of certification and potential methods and regulations to accomplish the same were introduced several years before certification even went into effect in North Carolina.

In 2001 a group of paralegals and educators got together to discuss their joint desire to increase professionalism within the paralegal field. Ultimately, the North Carolina State Bar created a study committee to consider the desires, proposals, and options for increasing professionalism and/or implementation of a program for the certification of paralegals. This committee was created in response to the "grassroots" movement of North Carolina paralegals who were seeking a way to increase professionalism among paralegals, and to identify paralegals who had achieved a certain level of experience, education, and/or professionalism. Standards for certification were

drafted by the State Bar study committee in 2004 and published for comment; later in 2004, the North Carolina State Bar approved The Plan for Certification of Paralegals ("the Plan"), and the Plan was subsequently adopted by the North Carolina Supreme Court in October of the same year. According to Rule .0101, the purpose of the Plan was and is:

to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer, and including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public; and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification.¹

As part of the North Carolina State Bar's enactment of a paralegal certification program, a Board of Paralegal Certification was appointed, an assistant director was hired, and



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procedures were established. Alice Mine, assistant executive director of the North Carolina State Bar since 1993, was appointed director of the North Carolina State Bar's Paralegal Certification program. On July 1, 2005, the North Carolina State Bar received its first application from a paralegal seeking certification, and in September 2005 the first paralegal was certified in North Carolina.

Even before paralegals could be certified in North Carolina, Martha McMillan was already working in the legal field as a paralegal. She had a bachelor's degree in psychology and a certificate in civil litigation from the Meredith College Paralegal Program. She had also obtained the CLA/CP (Certified Legal Assistant/Certified Paralegal) certification from NALA (National Association of Legal Assistants). Her first job in the legal field was as a runner at a law firm while she was still in college. After she completed her bachelor's degree, she began working as a receptionist at

the same firm while simultaneously completing the paralegal program at Meredith College. After completing the Meredith program, Martha began her first paralegal job at a law firm where she worked in environmental litigation and supported two attorneys.

By the time North Carolina implemented paralegal certification in 2005, Martha had already been working in the legal field for almost 15 years. Martha submitted her application for certification and, on September 1, 2005, officially became a North Carolina Certified Paralegal. For her, national and local certification seemed like a logical pursuit, and one she considered to be prestigious. She believed—and continues to believe—that “certification is important to the profession in order to continue to maintain consistent standards and provide firms with quality paralegals.” Over the years, Martha has continued to renew her North Carolina paralegal certification because she believes “it is important to obtain and maintain paralegal certification. I believe paralegals should hold themselves to the highest standards of the profession, which should include education and certification.”

For the first two years after paralegal certification was implemented in North Carolina, paralegals were able to achieve certification based primarily on years of experience without being required to sit for an examination or meeting certain paralegal program education requirements. Paralegals seeking certification after June 30, 2007, were and are required to meet additional criteria as further described below. On average, approximately 300 paralegals attempt to obtain their North Carolina paralegal certification each year, and the employment options and opportunities for paralegals continue to grow.

Certification has changed the profession for paralegals. It has also changed the profession in the eyes of attorneys and those seeking to become paralegals. According to Alice Mine, “[certification] telegraphs to lawyers that certified paralegals are also professionals with specific educational training, the competency to pass a rigorous examination, and the character and fitness to serve the public under a lawyer’s supervision.” Additionally, those seeking to enter the paralegal profession will now often begin by first becoming a North Carolina Certified Paralegal (NCCP) as opposed to first trying to obtain employment in a law firm.

Obtaining and maintaining the title of North Carolina Certified Paralegal is a

worthwhile and honorable achievement. It also requires considerable planning and dedication. Those seeking certification must have earned an associate’s, bachelor’s, or master’s degree from a qualified paralegal studies program; a certificate from a qualified paralegal studies program and an associate’s or bachelor’s degree in any discipline; or a juris doctorate degree from a law school.² After satisfying the educational requirement, an applicant must sit for and pass the North Carolina paralegal certification exam. There is also an initial application fee and a testing fee. Then, to maintain NCCP status, paralegals must participate in a minimum of six hours of continuing paralegal education (CPE), one hour of which must be in ethics. All CPE courses must be board approved, and the courses usually require payment of a registration fee. Additionally, a recertification fee must be submitted annually when paralegals apply to renew their North Carolina paralegal certification.

According to Joy Belk, assistant director of paralegal certification at the North Carolina State Bar, “Financial strain is the most common reason why a certified paralegal does not renew their certification.” As previously stated, there are fees associated with CPEs as well as with submitting the annual certification renewal application. Many firms will assist their paralegals by offering to cover part or all of these costs.

Having certified paralegals on staff is beneficial to attorneys and to the firm as a whole. According to attorney Warren Hodges, department chair for the Paralegal Technology Program at Forsyth Technical Community College, “Attorneys benefit from hiring a certified person because they receive a higher quality, more dependable service from a certified paralegal. [Attorneys] may also notify their clients that their staff paralegals are certified, and thus acknowledged as qualified to do the work for which the client is paying.”

Martha McMillan also believes that attorneys and firms benefit from contributing toward the cost of paralegal CPEs and recertification fees. By assisting paralegals with these costs, a firm can help ensure that its paralegals maintain their distinguished certified status and attend the required CPEs. Participation in CPEs helps paralegals stay current, expand their knowledge, be inspired, and maintain high professional and ethical standards.

There have been many developments, advancements, and changes in the paralegal

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profession in North Carolina over the last ten years, but there may be more changes on the horizon. Some states, including Washington, are considering or have already implemented programs for licensing what Washington calls Limited License Legal Technicians (LLLT). According to the Washington State Bar Association’s website (wsba.org), family law LLLTs “are trained and licensed to advise and assist people going through divorce, child custody, and other family law matters in Washington.” The LLLT program in Washington is aimed at “making legal services more accessible to people who can’t afford an attorney.” For now, North Carolina does not have an LLLT program; however, the North Carolina State Bar is monitoring Washington’s program. According to Alice Mine, “If the Washington program delivers on its promise of lowering legal costs for some members of the public without increasing risk, the North Carolina State Bar may consider a similar program. If so, there will be a study of how such a program should be initiated, and whether the existing paralegal certification program should be involved.”

It’s already been ten years, so here’s to the next ten years. Here’s to challenging ourselves as paralegals to continue to uphold high levels of professionalism both personally and for the paralegal profession as a whole. Here’s to ten more years of increased knowledge and growth in the paralegal field and our individual careers. Here’s to staying up to date on legal trends, upholding high ethical standards, and continuing to strive for production of exceptional work product. And last but not least, here’s to those paralegals, instructors, attorneys, paralegal organizations, North Carolina State Bar officers and staff, and all others who have helped advance the paralegal profession over the years

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Public Law and Public Administration

BY GINI HAMILTON

Why would an experienced lawyer return to graduate school to study public administration? And why would a city manager need to study law?

According to UNC School of Government faculty members, 50% of whom are lawyers, the two disciplines can be interdependent.

Mike Silver, assistant district attorney in Winston-Salem, North Carolina, earned his JD from NC Central University in 2007. In 2014 he returned to graduate school in the online format of the UNC Master of Public Administration (MPA) program.

“As an attorney, people think that you have a certain skill set that you might not possess,” said Silver. “You get promotions because you’ve done well in the courtroom, but doing well in the courtroom does not necessarily translate to being a manager or a leader who can sit on boards. The MPA program gave me a chance to learn many of the leadership skills that people thought I had, but that I didn’t actually possess coming out of law school.”

What is Public Administration?

Studying public administration is useful for individuals who seek careers in local, state, or federal government and in nonprofit or other organizations that support the public interest. The UNC MPA program focuses on preparing students for leadership roles in the career path of their choice, emphasizing skills needed to collaborate, to seek innovative and pragmatic solutions to problems, and to inspire others to create change. Increasingly, students who study public administration seek dual degrees in law,

social work, or information and library science. “The way I manage the people whom I supervise has changed drastically since I’ve been in the MPA program,” said Silver. “And the strategies that I’m learning in school and demonstrating on a daily basis are being adopted by other people in my office.”

Many attorneys who do not seek an additional graduate degree also benefit from learning more about public administration. Those who do business with government on behalf of clients or who serve as attorneys for city or county governments need to understand the inner workings of local government in the same way they would need to know the business model of a corporate client in order to be successful. Many of these attorneys supplement their legal training with individual courses at the School of Government.

On the other hand, the topic of law is considered a required competency for students in the UNC MPA program who aspire to be public service leaders.

“If you’re choosing to work in government, you need to be able to make legal decisions for the public good,” said school faculty member Charles Szypszak, who teaches the public administration law course. Szypszak, who earned a JD from the University of Virginia School of Law and practiced law in New Hampshire before joining the School of Government, also teaches and provides counsel on real property registration and conveyance laws to North Carolina public officials as well as to national and international educational institutions and organizations.

What is Included in a Law for Public Administration Course?

Obviously a single law course, however rigorous, does not substitute for a law school

education. But it teaches future public leaders that they must take responsibility for the laws they will be required to follow in their work, and how to recognize when an issue appears that needs legal attention. The MPA law course exposes students to the laws they are likely to encounter in their public service careers.

MPA graduate Eric Petersen has served as Hillsborough, North Carolina’s, town manager since 1997. Previously, he was manager for the towns of Tabor City and Topsail Beach, where he also served as incident commander during evacuations and hurricanes. Petersen says the law course he took in the MPA program has been put to use “from the first day on my first job and every job since then.”

“Because of the law course, I know enough to recognize the little warning flags,” says Petersen. “I may need to look up a bidding statute, for instance, or something more complex, meet with my city attorney, or call someone at the School of Government for clarification. Zoning and development situations, personnel issues—dealing with the law around these and other topics—are a huge part of what local government managers do. “I am not bashful at all about calling my city attorney,” he says. “A good city attorney is a city manager’s best friend.” ■

Gini Hamilton is senior marketing and communications specialist for the School of Government at UNC-Chapel Hill.

The Master of Public Administration program at UNC-Chapel Hill is offered in two formats. The on-campus format offers the option of dual degrees with other UNC programs. The online format, known as MPA@UNC, is designed for working professionals and others who need the flexibility of an online program. For more information, visit mpa.unc.edu.

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The Publications Committee of the *Journal* is pleased to announce that it will sponsor the 13th Annual Fiction Writing Competition in accordance with the rules set forth below. The purposes of the competition are to enhance interest in the *Journal*, to encourage writing excellence by members of the bar, and to provide an innovative vehicle for the illustration of the life and work of lawyers. If you have any questions about the contest, please contact Jennifer Duncan, Director of Communications, North Carolina State Bar, ncbar@bellsouth.net, 910-397-0353.

Rules for Annual Fiction Writing Competition

The following rules will govern the writing competition sponsored by the Publications Committee of the *Journal*:

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

2. Subject to the following criteria, *the story may be on any fictional topic and may be in any form—the subject matter need not be law related*). Among the criteria the committee will consider in judging the articles submitted are: quality of writing; creativity; extent to which the article comports with the established reputation of the *Journal*; and adherence to specified limitations on length and other competition requirements. The committee will not consider any article that, in the sole judgment of the committee, contains matter that is libelous or violates accepted community standards of good taste and decency.

3. By submitting the article, the author warrants that all persons and events contained in the article are fictitious, that any similarity to actual persons or events is purely coincidental, and that the article has not been previously published.

4. *Articles should not be more than 4,000 words in length* and should be submitted in an electronic format as either a text document or a Microsoft Word document.

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

6. **All submissions must be received in proper form prior to the close of business on May 27, 2016.** Submissions received after that time will not be considered. Please direct all questions and submissions to: Jennifer Duncan, ncbar@bellsouth.net, 910-397-0353.

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

8. The winning article, if any, will be published. The committee reserves the right to edit articles and to select no winner and to publish no article from among those submitted if the submissions are deemed by the committee not to be of notable quality.

Deadline is May 27, 2016

Reflections from a Lay Member of the Disciplinary Hearing Commission

AN INTERVIEW WITH PATRICIA REED HEAD CONDUCTED BY DOROTHY C. BERNHOLZ

Patricia “Patti” Reed Head is a Wake Forest University honors graduate. Patti taught in Forsyth County schools and has been a highly visible community volunteer for 41 years. She was elected to serve on the Wake County School Board

(2001-2009), where she was also elected as vice-chair and then chair. In July 2010 she was nominated by the NC State Bar Council for appointment by the governor to the Disciplinary Hearing Commission (DHC), where she continues to serve as a lay (public) member.

Dorothy Bernholz (DB): Patti, I sense that you have always put your family first, and yet you exemplify public service. Not only have you earned the esteem of the Wake County community for your leadership on the Wake County School Board, but you are a visible force in support of your husband, Allan Head, as he leads the North Carolina Bar Association as its executive director. When the call came from the North Carolina State Bar asking you to serve as the lay member of the DHC, what informed your decision to serve the state yet again?

Patti Head (PH): I was honored that the State Bar asked me to serve the legal profession in this capacity. The law, justice, and

lawyers have been a part of the fabric of our family for almost 50 years. My respect for the process of self-discipline set up by the NC State Bar to protect the public and the profession has only become stronger over my five years of service.

DB: The DHC, as you well know, is an administrative court that is independent of the NC State Bar. Prior to a case coming before you and members of your panel, there has been a finding of probable cause by the NC State Bar’s Grievance Committee. The hearings are public and you, as a panel member, must hear the evidence and decide (1) whether ethical rules have been broken, and (2) if so, what discipline should be imposed.

The panel acts much like a superior court. The lawyer/respondent has the right to counsel and the right of appeal to the NC Court of Appeals. What do you feel is the major contribution by a lay panel member to that process?

PH: The major contribution for a public member is that he/she adds “legitimacy” to the panel for the public. It helps take out the idea that lawyers perhaps are protecting their own. Quite to the contrary, I can attest that the very bright, successful attorneys and judges that serve on the panels are all about fairness to the attorney in question, but even more important to them is the protection of the rights and wellbeing of the clients, and the confidence of the public in the profession and the rule of law.

DB: What has been the most challenging part of the hearing process?

PH: At times discussion and testimony pertaining to trust accounts can get a little technical and confusing. That is when it is very helpful to have the expertise of the attorneys with whom you are serving to help make it clear. The Chair and staff of the DHC have an effective training program, and it helped me understand general areas of concern and lessons learned from past hearings. I feel that panel members are appreciative of my requests for clarification.

DB: Often an attorney/respondent elects to represent himself/herself in the presentation of their defense. How do you feel about a *pro se* attorney/respondent and, in particular, do you feel it increases your burden as a finder of fact when the “prosecutor” in the matter is always an attorney representing the interests of

the NC State Bar?

PH: No. The *pro se* attorney is indeed an attorney also. We must be a finder of facts regardless of whether the defendant represents himself/herself or has an attorney. Our duty is to find the evidence to be “clear, cogent, and convincing” as stated in the Rules of Professional Conduct. I do think that it is better for the defendant to have another lawyer to present his/her case in order to have that emotional and intellectual “distance” during the presentation of the case.

DB: As former chair of the Wake County School Board, I suspect you are steeped in the pros and cons of the adversarial process. Do you feel that your leadership background in resolving high stakes issues in public hearings conducted by the Wake Board prepared you for your role as decision-maker in hearings to evaluate an attorney’s fitness to practice law? If so, how?

PH: Yes. Understanding that there are two sides to every story and practice in dealing with adversarial issues does help in dealing with the pressure of making those hard decisions that have important consequences for the attorney, the Bar, and the public.

DB: Has your service on the DHC changed your perception of the legal profession, and if so, in what way?

PH: Simply stated, it has deepened my respect. I am a strong advocate for the DHC. Who better than lawyers to understand the problems and ethical issues that are a part of the practice of law and to determine the appropriate discipline for those who violate their Professional Code of Conduct and Code of Ethics? What the public member adds is a different perspective and that assurance that the lawyers are not just “protecting their own.” When I say, help me understand the “legalese” or complicated testimony, what usually follows is a very thoughtful explanation and common sense insight for all of us serving on the panel.

DB: Like most professions in North Carolina, attorneys are self-regulating, and are empowered by the NC Supreme Court and the NC Administrative Code to establish and enforce ethical standards for attorneys. Based on your observations during your participation on the DHC, what do you think of this model of self-regulation?

PH: I am very supportive of self-regulation and an ambassador of the process and procedures. I am very impressed by how serious and committed the DHC is about its

very important responsibility. It is about doing the “right thing.”

DB: As a member of the DHC, you have dealt with attorneys who are fighting against sanctions—often disbarment—for unethical dealings with the public, including their own clients. You have gotten to know the leadership of the many North Carolina attorneys who demonstrate exemplary service to the public, their clients, and their community. Do you have any observations of why some attorneys fail to live up to their ethical duties?

PH: It has been my honor through Allan’s position to come into contact with thousands of extraordinary lawyers and judges. Through service on the DHC, I have been able to serve on panels with lawyers and retired judges who hold their profession as a sacred trust. For some, it is Biblically based: Micah 6:8 “What does The Lord require of you? To act justly and to love mercy and to walk humbly with your God.”

Unfortunately, there are those in all professions and walks of life who abuse their positions, some intentionally, others inadvertently. I am a strong advocate for mentorship for young attorneys who hit the pavement with lots of “book learning,” but who would benefit greatly with the practical advice and wisdom of an established attorney. For those who just don’t take their oath of office and ethical duties seriously, there is the NC State Bar Grievance Committee and the DHC, and the very real possibility that their licenses will and should be revoked.

DB: Based on your experience on the DHC, what are your words of wisdom to a young lawyer just beginning a law practice on how to avoid being summoned to account for an ethical violation?

PH: 1. Get a mentor; 2. Don’t be afraid to ask questions; 3. Call the State Bar whenever in doubt...staff are ready, willing, and able to help with questions; 4. Stay healthy in spirit, mind, and body...have a good balance and quality of life; 5. Climb the ladder of success, but make sure that you take your family with you.

DB: Once an attorney has been notified by the NC State Bar regarding an investigation of an ethics complaint, what would be your advice to that attorney on how to respond to that complaint?

PH: 1. Be fully cooperative; 2. Be timely in responding; 3. Be fully transparent and truthful; 4. If an error has been made, own up and be quick to “right the wrong.” ■

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Ten Years and Counting (cont.)

through their inspiration, determination, hard work and implementation of paralegal certification in North Carolina. ■

Erica McAdoo is a North Carolina Certified Paralegal.

Endnotes

1. North Carolina State Bar’s Rules and Regulations, Subchapter G, The Plan for Certification of Paralegals, Rule .0101.
2. NC State Bar’s Rules and Regulations, Subchapter G, The Plan for Certification of Paralegals, Rule .0119(a).

Middle District of North Carolina: Judge Thomas D. Schroeder

BY MICHELLE RIPPON

It is good to be a middle child from a very middle class family. And it is good to have had a stay-at-home mom whose priorities were to raise good children and, by her own example, to teach them what it means to be good citizens. It is also good to be self-motivated, goal oriented, disciplined, and passionate enough to become an outstanding musician. Such were the factors that ultimately guided Judge Tom Schroeder toward a distinguished legal career spanning 30 years and culminating in his appointment as a Federal District Court Judge

for the Middle District of North Carolina.

Schroeder's father worked for a company that sold mobile homes. Schroeder was born in Atlanta and, shortly thereafter, his family moved to the small community of Americus, Georgia. When Schroeder was in the second grade, the family relocated to Dallas, Texas. While in Dallas, his mother volunteered her time working on efforts to return American servicemen held as POWs during the

Vietnam War. The family was by no means wealthy, but Schroeder's parents emphasized the value of education, and ultimately the Schroeder children—including Schroeder's two older brothers and two younger sisters—all completed college. Like his siblings, Schroeder helped finance his education with loans and by working.

Schroeder participated in an excellent

music program while attending Dallas public schools and quickly became an accomplished trumpet player. In fact, his goal was to become a professional trumpet player—a goal he continued to pursue through high school and into college. While Schroeder was not happy about leaving Dallas when his father took a job in Mocksville and moved the family to Winston-Salem, the move



proved fortuitous. As a sophomore in high school, Schroeder auditioned for and was accepted to attend the North Carolina School of the Arts, where he was able to continue his musical training. Indeed, the conductor of the Winston-Salem Symphony (a former trumpeter himself) arranged for Schroeder to play as an apprentice with the symphony. He also played in the symphony's *Music at Sunset* series in addition to completing the rigorous course of study at the arts school. Schroeder completed his last two years of high school at RJ Reynolds, where he played in the Reynolds band and jazz band, took private music lessons, and played with the symphony.

Schroeder's trumpet teacher recommended that he apply to attend college at the prestigious Cincinnati Conservatory of Music. He auditioned, was accepted, and was offered a full tuition scholarship. Having been trained classically, Schroeder's goal was to play as a professional musician in an orchestra. However, as the year progressed it became evident that landing a chair in a major orchestra was not only competitive, but also likely unrealistic.

By this time, Schroeder's father had once again relocated, this time to Russell, Kansas. Schroeder left the Cincinnati Conservatory of Music, his full scholarship, and his plan to become a professional musician, and moved to Lawrence, Kansas, where he attended the University of Kansas. He was able to visit his family regularly, and the city and the university provided a comfortable environment not unlike the University of North Carolina in Chapel Hill.

Without the benefit of a scholarship but based on his academic performance, Schroeder was accepted to live in a less costly "scholarship hall" where the students did their own cooking and cleaning. He worked as a cook preparing desserts for 48 men, and even succeeded in preparing baked Alaska. He also worked 20 hours a week in the copy center on campus. One summer he returned to Dallas, where he stayed with his brother and worked as a plumbing/electrical sales clerk in a friend's hardware store. The following summer saw Schroeder in Enid, Oklahoma, where his second brother, an air force pilot, was stationed. Here he worked in a large grain elevator with a 13.5 million bushel capacity where he was assigned the job of sweeping the wheat dust from the floor. It was hot and exhausting work. The

sweepers would begin at one end and sweep to the other end of the massive building, and then begin again, and again, and again all day. But, as Schroeder says, "it was better than coal mining."

While at the University of Kansas, Schroeder began playing the acoustic guitar and became an enthusiastic runner. He majored in business, and during his senior year worked as a proctor (or residence advisor) of his scholarship hall, essentially "the residence police." In 1981 Schroeder graduated from KU and prepared to move to the next level—law school. As a young man in Winston-Salem, Schroeder had developed a friendship with a neighbor, Gary Tash, a prosecutor and eventually a state court judge. Schroeder would occasionally go to court with Tash and always, in the back of his mind, he had considered a career in law. He applied to several law schools, including Wake Forest and UNC Chapel Hill, but eventually chose Notre Dame because of its Catholic mission and trial training program. After his first year at Notre Dame, Schroeder returned to Winston-Salem and worked for a small firm—then Alexander, Hinshaw & Newton. He clerked with Womble Carlyle after his second year under the tutelage of Grady Barnhill, where he was immersed in a federal civil rights case and gained experience in general litigation. He finished his third year at Notre Dame as editor-in-chief of the Notre Dame Law Review.

Following his graduation from Notre Dame, Schroeder took a month off and backpacked throughout Europe. He returned to clerk for Judge George E. MacKinnon at the United States Court of Appeals for the DC Circuit. In his office hangs a photograph of the court at the time, which included Antonin Scalia, Ruth Bader Ginsburg, and Robert Bork. He also recalls that Chief Justice Rehnquist met and spoke with the clerks that year, and that the clerks all played softball together.

Schroeder returned to Womble Carlyle following his clerkship, where he practiced law for 23 years and served as Product Liability Practice Group leader and firm vice-chair. He married a graduate of Wake Forest Law School, who worked as a corporate attorney until their children were born. Their son recently graduated from UNC Chapel Hill, and their daughter is a second year medical student.

On January 8, 2008, Schroeder assumed

his seat on the United States District Court for the Middle District of North Carolina. His philosophy is simple and straightforward: "The role of the judge is not to give people an opinion, but just to decide a case." He enjoys the variety of cases that come before him and appreciates the ability to better control his schedule. He especially enjoys working with his law clerks who have come to him out of law school, but have also included practicing attorneys, both partners and associates. Judge Schroeder looks for clerks who are mature and academically gifted. Of equal importance, however, is finding clerks with a sense of humor to offset the challenging and seriousness nature of the work. The clerks are heavily involved in the research and drafting process, which often includes dozens of drafts. Judge Schroeder admits that among the most challenging aspects of his work as a federal judge are dealing with criminal sentencing and striving to reach decisions that are the best he can achieve within the confines of the law.

As an experienced trial lawyer himself, Judge Schroeder believes in letting attorneys try their own cases and, "do what they're supposed to do," but he asks that they do so within realistic time limits. While he consults with attorneys, ultimately he provides them with a time limit in which to present their case. Attorneys are then free to use their time for any purpose from opening statements, direct and cross examinations, or closing arguments. He schedules hearings on summary judgment motions if there are issues that attorneys have not addressed in their written briefs, or if he has questions or issues that need to be further developed. Judge Schroeder supports the mediation program and is willing to work with attorneys in the context of settlement conferences in jury cases. Attorneys with questions should coordinate with Judge Schroeder's case manager. Attorneys should also take note: Do not talk with associate counsel while the judge is asking questions. Be respectful to court personnel. Do not file motions with emails attached. And always take the "high road."

Judge Schroeder is undoubtedly serious and focused on the responsibilities that come with his position as a federal district judge. However, his activities outside the court reflect his versatility and his willingness to find and pursue a variety of challenges and

CONTINUED ON PAGE 21

Attorneys Making House Calls

BY CAROL ANN ZANONI

A

ttorneys around the country make house calls.¹ Most of the attorneys who make house calls focus on wills and other estate planning services. Kathryn S. Kabat's firm

“Wills-on-Wheels” works out of Cary, North Carolina. She targets her service to those who have difficulty leaving their homes, such as the elderly and disabled.

In some areas around the country, making house calls is a common practice. Most of the firms found for this article were located in the northern Midwest, such as Wisconsin. However, it is not uncommon elsewhere. Christina McPherson of McPherson Law Group in Dublin, California, says she makes home visits to almost half of her estate planning clients. She does not charge for making a house call. She brings retainer agreements and her “Square” for taking credit card payments. Ms. McPherson said she started making house calls because it was a customary service in her father's practice, which she joined. She added that it was also a common practice in the area.

The Law Office of John C. Dearie is unique in its mobile capabilities.² According to his website, he has three mobile offices—converted buses—which he has used for at least 12 years. The buses are fully furnished offices, with at least one bus equipped with video conferencing capabilities. The mobile units travel throughout the boroughs of Manhattan. His practice is focused on per-

sonal injury, medical malpractice, and related areas.

The mobile offices are an efficient way to attract potential clients who are not necessarily motivated to seek legal counsel. They are also three-dimensional traveling billboards. The buses communicate the availability of legal services to potential clients, and can instantly service that need. Mr. Dearie provides a valuable service to his clients by offering ready access to a lawyer. The mobile offices serve his needs as well as those in need of legal services.

Personal injury and bankruptcy attorneys have additional reasons for making house calls. Clients are more comfortable in their own home, and can be more forthcoming in interviews in their own environment.

Some attorneys like to make house calls because it gets them out of the office. It provides a refreshing change to their environment. Still other attorneys make house calls because it's difficult for clients to call on the attorney during business hours, or have other conflicts such as unavailability of child care.

Some practitioners say their clients can-



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not afford to take time off from work and lose income. Admitting to meeting with an attorney might also be embarrassing for the client. For example, an employee might not want to reveal to his or her employer that time off is needed to meet with a bankruptcy attorney.

A couple of attorneys I spoke to mentioned that safety is as an issue to consider before making a house call. One firm sends two attorneys to conduct initial interviews. Another attorney mentioned that he would not go to certain areas of Milwaukee after dark.

Out of Office Consultations in North Carolina

North Carolina lawyers are not required to have a physical office.³ We are free of the bonds that chain us to a physical office. The North Carolina State Bar permits attorneys

to meet with clients in places other than an office. We can also charge a fee for the expense of making out of office visits. The North Carolina State Bar uses the term “out of office” consultation or visit to cover the practice of making house calls and meeting with clients in places other than the attorney’s office.

The North Carolina State Bar tells us that we must clearly disclose any fees associated with an out of office visit. 2010 FEO 10 says that it would be misleading for a firm to advertise that it will provide out of office consultations, and that the consultations are free, if the firm intends to charge clients for expenses related to the out of office visit.⁴

Expanding My Service Delivery System as a Solo Bankruptcy Attorney

I am not new to making house calls or meeting with clients in other locations. In my two previous work lives, I called on clients at their homes and at their places of business. I learned more about people and what they value from meeting them in locations that were important to them than if we met in a location that was comfortable and convenient only to me. Observing where people function and how they function in their environment makes me more aware of how I can best interact with them.

I have consulted with a few law clients in their homes and at neutral private locations. Now more than in the recent past, consulting with clients in their homes seems to be a more efficient way to prepare a bankruptcy case. The bankruptcy process demands a substantial amount of verification of the debtor’s circumstances. Debtors are required to show proof of income, validation of their assets and liabilities, title documents, domestic obligations, and loan documents. The validation process can be overwhelming.

All documents filed with the bankruptcy court, the bankruptcy administrator, and with the trustees are done electronically. Few debtors have easy and inexpensive access to scanners and facsimile machines. Some debtors do not have access to the Internet. The attorney can scan the verifications into a laptop or portable scanner in only one visit to the client’s home. This saves at least one step in the process of getting the information from the client to the attorney, and then to the bankruptcy court system. It minimizes the chance the debtor cannot supply a document at the time of the visit. It also elimi-

nates the time the attorney waits for copies to arrive in the mail.

My Mobile Office

I have armed myself with the equipment to efficiently conduct successful out of office consultations. I will be traveling with a MacBook Air and a Fujitsu Scan Snap S 1300i. The Fujitsu quickly and easily scans duplex pages directly into my MacBook. It works with my PC, too.

I have a portable printer—the Canon PIXMA 110—which I do not typically use, but it is available if I need it. The only document I would complete and print at a client’s home is the retainer agreement. As Ms. McPherson does, I bring the retainer and other forms required by the bankruptcy code to the initial client meeting.

I have experimented with iPad signing applications. I have found the Adobe Fill & Sign DC the most useful of all the signing applications available on iTunes. It is free, and it does not require upgrades and additional fees to use any proprietary documents. I can upload my own documents to the software and keep them on file. However, the time and effort it takes to complete a form retainer on the iPad outweighs its usefulness.

My next step is to communicate my out of office consultation capabilities to my client base. I will be offering it on my website and on additional marketing platforms. I can envision offering services from my “legal limo” parked near food trucks at corporate parks during lunch hours, and near hot dog stands beside courthouses.

I carry two print publications with me on the road—throwbacks to the age before smart phones, Google maps, and GPS systems. I carry an Atlas and a folding road map (YES! The ones you can NEVER refold correctly) with me when I travel. They are indispensable for those times when there is not a cell tower around, and you are detoured to a road that Google never saw. ■

Carol Ann Zaroni is a solo attorney in downtown Raleigh. Her practice is devoted to bankruptcy, consumer protection, and criminal law.

Endnotes

1. Ms. Kabat and Ms. McPherson are the only two attorneys who returned my correspondence. The information I tell about attorneys making house calls was obtained through published articles on specific law

firms and various firms’ websites.

2. dearielaw.com.

3. 2012 Formal Ethics Opinion 6, October 26, 2012, tells us that lawyers may use time-shared office addresses, post office addresses on letterheads and in advertising. The lawyer may not mislead the public into believing that the address or telephone number refers to the actual location of the law firm.

4. *Id.* at Opinion #3 referring to 2004 FEO 8.

Judge Schroeder (cont.)

interests. Music is still important, and he is known from time-to-time to play his trumpet or guitar. He is also still an avid runner, participating in the annual run to the top of Grandfather Mountain (“The Bear”)—which both of his clerks joined him in this year—and in the Blue Ridge Relay consisting of a 208 mile run over a period of two days. His team—all over 40—come from a variety of backgrounds including an FBI agent and several attorneys. He enjoys reading everything from historical to adventure novels, particularly works by James Patterson, Nelson deMille, Pat Conroy, and David McCullough. He admits to playing golf “poorly.”

Every judge brings to the bench a unique background and experiences, and Judge Schroeder is no exception. Rarely, however, does that background and experience include so much of both the ordinary and the extraordinary. As his law clerks, his staff, his and court personnel will attest, he is as easy, as likable, and as comfortable to be around as one might expect from a caring friend. Yet here is a man whose discipline and determination—and talent—provided him with the opportunity to pursue a musical career at a prestigious college and a legal career at a prestigious law school, to practice law with a prestigious law firm, and then to achieve a position as a federal district judge with all the challenges and responsibilities inherent in the position. And throughout it all, while he acknowledges his accomplishments and the work that it has taken to achieve them, one has the sense that he has truly enjoyed and continues to enjoy the journey. ■

Michelle Rippon is of counsel with Constangy Brooks & Smith in Asheville. She is also an adjunct professor in the Business Management Department at UNC-Asheville.

How I Learned to Stop Worrying and Love the Lawyer Referral Service

BY STEVE PALME

A couple of years after I started practicing, my wife, Alison, told me that she wasn't going to put up with our kitchen table for another minute.

"What's wrong with the table?" I asked her.

"Well, for starters, it's not a table. It's a door propped up on bookshelves."

"I thought the bookshelves were pretty clever. You said yourself that we didn't have enough cabinet space in here."

Sure it was a door, but it was a door that I had sanded and stained to look like a table. I was a little wounded that she thought it wasn't good enough. Alison wasn't much interested in my pride. She was intently focused on the fact that we had a door propped up on bookshelves in the kitchen, and this situation was not going to be allowed to continue.

Later that day we were strolling through the fifth furniture store that I had been to since breakfast when I spotted a desk. It was a beautiful desk—big, oak, L-shaped—and it weighed about 200 pounds. I figured it was at least nicer than the door if Alison didn't find a table she liked. She didn't think my suggestion about the desk was amusing, but she agreed that if she found a kitchen table then I could buy that desk.

Two months later not only did we have a kitchen table that was indeed a table, but I had my desk, had rented an office for it, and had bought a chair. That, along with some business cards, a computer, and a phone, and

I had my own family law practice. I also had to figure out how to make that phone ring.

It is no easy task for most of us—especially when you first decide to hang out that shingle—to make the phone ring. I started joining a few groups and trying to network with other attorneys. I found myself sitting in some rather odd business gatherings, and even stumbled across a meeting that was designed to hawk some sort of pyramid scheme. I did end up with a few clients in those first months, but they certainly weren't beating down the door. I was getting anxious. I had to make payments on that desk, along with the rent and the phone bill for the office.

One afternoon I was talking to a friend who had, years prior to me, started her own practice right out of law school. She suggested that I sign up for the Lawyer Referral Service (LRS). I didn't really know anything about it other than it cost \$150 for the year to sign up, and I needed clients. If the Lawyer Referral Service would refer clients to me, I'd do it. About a week after I signed up, I started getting the LRS emails with the names of people who were referred to me, and they started calling. Some just wanted advice, some needed representation, and I was more than happy to help each one.

Every state has some version of a Lawyer Referral Service program that is offered by the individual state bar or bar association. In North Carolina, the Lawyer Referral Service has been funded, staffed, and run by the North Carolina Bar Association for over 30 years. Even though it has been around for more than three decades and is



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paid for largely by members of the bar, a surprising number of practicing attorneys have little or no idea that the LRS exists or how it functions.

The Lawyer Referral Service is not intended to solicit attorneys to do *pro bono* work, or to provide indigent representation. The preamble to the LRS Charter says, "The North Carolina Bar Association Foundation recognizes that there are a large number of people of moderate means who have felt that legal services are not readily available. In order to respond to those persons, the North Carolina Bar Association Foundation establishes a Lawyer Referral Service." That, at

least, was the original intent. In practice, the LRS isn't just for people of moderate means, it is available to anyone who is looking for an attorney. There are plenty of people in our state who have the money to hire a lawyer; however, they simply don't know how to go about doing it. The LRS has stepped in to help them connect with an attorney.

While there is no expectation of *pro bono* work from the attorneys who are participants in the LRS, there is certainly an element of public service intended in the program. The NCBA runs the program with the intention to offer the public greater access to competent legal services. It does this by vetting the attorneys to make sure participants carry insurance, are in good standing with the NC State Bar, and have no public discipline on record. There is also a hope that the participating attorneys will try to work with clients of limited or moderate means through payment plans or other arrangements that will both allow the attorney to collect his or her fees, and also let the clients secure representation.

The service functions in a straightforward manner. Each attorney who signs up for the LRS designates from which county he or she wants to take referrals, and selects practice areas from an extensive list. A referral list for each county is created and maintained. The Lawyer Referral Service has a toll-free phone number that it operates from the bar center in Cary and a webpage (ncfindalawyer.org). When a call or inquiry comes in, one of the people who screens the case determines what practice area fits, and then refers the potential client to an LRS attorney in the county where the person lives. It's a pretty simple setup, and the call screeners are very adept at sorting through the information that they get in those brief calls, figuring out whether the call is legitimate, and knowing which practice area best applies. They would have to be, because they receive in excess of 70,000 calls a year.

The county-by-county referral system is an effective way to connect clients to the right lawyer for the job. However, there are entire practice areas with no attorneys at all on the LRS list. Primarily, rural counties have a shortage of lawyers signing up for the LRS and, unfortunately, when potential clients call to find an attorney to help them with a child custody problem or a DWI, there is simply no attorney to whom the client can be referred. There are other coun-

ties that have only a couple of attorneys on the referral list. Those couple attorneys draw a pretty extensive number of referrals from the LRS each year. The bar is trying to recruit more attorneys in underserved areas to sign up for the LRS so that the referral system can function in every county the way it was intended. Until more attorneys join the LRS in the rural counties of the state, however, there will remain "dead zones" for people trying to use the referral service.

There are rules for the attorneys who want to be part of the referral service. Each attorney has to be in good standing with the State Bar and has to carry malpractice insurance. The lawyer who is on the referral list agrees that he will only charge \$50 for the first half hour of a consult, and that attorney agrees to contact the referral and set an appointment for a consultation as soon as practical after receiving the referral. An attorney can reject a referral if there is an ethical conflict or if the client was referred for a legal issue or practice area that the attorney didn't designate in the LRS application. Since the referrals are distributed in a rotation among the attorneys on the list, rejecting a referral for any reason other than a conflict or incorrect practice area automatically sends the attorney to the bottom of the list.

There are plenty of attorneys who see that \$50 for the first half hour consult fee and won't look any further. The LRS rules, however, only limit the fee for that first 30 minutes. After that, a lawyer can charge whatever his or her regular hourly rate happens to be. It isn't that 30 minute consult that is the goal of the LRS referral, however. It's the paying client that is the goal. Once a consult turns into a retained client, the discounted half hour goes by the wayside pretty quickly.

Aside from the consultation rules that apply to LRS referrals, there are no other requirements placed on the attorneys who participate. The service does ask for a quick online survey so it can keep statistics on whether or not referrals show up for consultations, and how many of these potential clients retain the attorney. There is also an option to pay the LRS 10% of any fees in excess of \$1,000 that are earned from a case, but it is entirely voluntary and not required under the current service rules. There are no requirements that an attorney remain an LRS member or commit anything other than the \$150 fee each year. That fee struc-



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ture may change in the future, but for now it is as simple as one membership fee to be on the list for the calendar year. A lawyer can withdraw from the LRS at any time, and can turn around and rejoin without penalty.

All in all, it is a pretty good deal. One that a new attorney, or someone just opening his own practice, couldn't afford to pass up. At least, I didn't think I could afford to pass it up as I sat in my office, behind my very nice desk, watching dust motes float on the late afternoon sun filtering through the blinds because I had nothing else to do at the time. If it would make the phone ring, then it was worth a try. At least if it didn't work, the most I would lose is \$150. So I

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Legal Aid Collaborative Addresses Foreclosure Crisis

BY EVELYN PURSLEY

Though there may still be debate as to the exact scale and timing of the Great Recession, most would agree with the International Monetary

Fund assessment that, in terms of overall impact, it was the worst global recession since World War II.¹ Seismic shifts occurred in

professions, cultural groups, companies, state and local governments, neighborhoods, and for individuals. And, though many sectors were affected, it has been called the worst housing recession anyone but survivors of the Great Depression can remember.² For the first time in more than four decades of record keeping, home prices posted consecutive annual declines. A staggering \$4 trillion in home equity was wiped out, and millions of Americans lost their homes through foreclosure.³

Furthermore, the problem of foreclosures doesn't only affect individuals, it elicits a cost from cities and communities. It has been found that homes in foreclosure that become vacant provide sites for crime or other neighborhood problems. One foreclosure can impose up to \$34,000 in direct costs on local government agencies.⁴ In addition to the families directly hurt, tens of millions of neighboring families see the value of their homes fall hundreds of billions

of dollars just because they live near foreclosed properties. One foreclosure can result in as much as an additional \$220,000 in reduced property value and home equity for nearby homes.⁵

As Jim Barrett, director of Pisgah Legal Services in Asheville, saw, "The effects of so many foreclosures on millions of people are deeply adverse and widespread. Families who had worked for years to become homeowners found themselves 'under water' or forced

to sell their homes at prices that caused them to lose potential equity. Children had to change schools mid-year, causing them to lose an average of four months' progress in school per change. It would be difficult to overstate the upheaval to households that were foreclosed upon—the financial distress as well as the emotional distress."

From September 2008 to September 2012, there were approximately 4 million completed foreclosures in the US.⁶ And,



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while the volume and pace have decreased, foreclosures are still a real problem.

Legal Aid Responds with Home Defense Project

In North Carolina, a collaborative group of our legal aid programs has been working on saving family homes with government and nonprofit partners supported by a variety of funding sources specifically directed towards the foreclosure problem throughout the crisis. The project still serves thousands of clients each year, but directed funding for 2015 and the future is either diminishing or speculative.

Legal aid programs began seeing an influx of clients with problematic home loans as early as 2002, even before the fallout from adjustable rate mortgages and other exotic loan products had become apparent. “In December 2004, our advocates told the Legal Aid of NC Board of Directors that we thought our clients were the canary in the proverbial coal mine, and we were only seeing the tip of the iceberg in regards to foreclosures. Unfortunately, we were right,” says Hazel Mack, director of the Mortgage Foreclosure Prevention Project at Legal Aid of North Carolina.

For example, Legal Services of Southern Piedmont (LSSP) assisted a couple who were both disabled. They had a pre-fab home built to their special needs, on property given to them by the husband’s family. They were sold an adjustable rate mortgage at the time the home was constructed—a product inappropriate for the couple who were receiving social security disability and, therefore, were on fixed incomes. When the first increase to their mortgage placed them behind in payments, LSSP assisted them in using the Home Affordable Modification Program to modify the monthly mortgage obligation to an amount they can afford on their fixed incomes.

After 2008, the number of foreclosure cases exploded. And, by 2009, the country’s growing unemployment was overtaking subprime mortgages as the main driver of foreclosures, according to bankers and economists, sending even higher the number of borrowers who would lose their homes and making the foreclosure crisis far more complicated to unwind.⁷ The unemployment rate peaked at 10% (in October 2009). Compared with previous recessions, the higher proportion of long-term unemployed

Why We Do the Work—One Woman’s Story

When 85-year-old Mildred Hart was at risk of losing her house as the result of a mortgage refinancing scam, she turned to Pisgah Legal Services for help.

“I think Mildred came to us sometime in 2010,” said Tom Gallagher, an attorney at Pisgah Legal, which provides free legal services to its clients. Living on a small monthly check from Social Security, “She was running into difficulty,” Gallagher said. “She had never missed a payment, but she had found out that there was a company down in Florida that was advertising that if she worked with them, they could get her a mortgage modification, lowering the monthly mortgage payments.”

Hart had very little to hand over to the Florida company, but once she did, she discovered they had scammed her. When Hart, who moved into her Asheville home in 1982 and raised five children, became Gallagher’s client, he began work to get her a real mortgage modification. “Since this scam artist down in Florida had already put her into default, she was at risk of losing her home,” said Gallagher, who’s been working with Pisgah Legal since 2010. The initial modification cost Hart almost her entire Social Security benefit every month.

Gallagher said he finally was able to find a sustainable agreement that left Hart with a little more money each month. “Under the prior loan agreement she had, she did not have enough money to eat a meal after paying her mortgage, and now she has sufficient money to make sure that she can eat and she is taken care of. She can pay her electric bill and she can pay

her phone bill,” Gallagher said. “Her needs are very, very nominal.”

Hart said she does not know where she would be now had it not been for Gallagher, who earned a place in Hart’s “cake bunch.” “Everybody’s been great to me. Tom, I make him a cake...whenever I go back over there,” Hart said.

Gallagher said working closely with community members like Hart is a reward in and of itself, cake or no cake. “We have been rewarded by her smiles. She works hard. She’s done everything that she should throughout life. She’s a good, good person, and she just found herself victimized by someone who wanted to run a scam down in Florida,” he said. “She also makes a cake that’d make Betty Crocker proud.”

Gallagher said legitimate companies who provide loan or mortgage modifications do not request money, and there are often ways to avoid foreclosure in those situations. “We deal with [mortgage scams] more often than I wish we did. There are a lot of people who are out there looking to take advantage,” Gallagher said.

“This is a success story because we have been able to get this loan modified, we were able to push back on foreclosure issues so she didn’t end up having her house foreclosed in court, and we were also able to get her some additional benefits, so it was a win, win, win all around.” ■

Excerpted from “Pisgah Legal Services Helps Woman Stay in Her Asheville House,” Shanee Simboni, CitizenTimes, January 3, 2014, citizen-times.com/story/news/2014/01/03/pisgah-legal-services-helps-woman-stay-in-her-asheville-house/4297673.

(those unemployed for 27 weeks or longer) is also notable.⁸ And a new job often comes with lower pay, making it more difficult for struggling homeowners to catch up.⁹

Pisgah Legal Services assisted a couple in danger of losing their house where they were raising their three children when the paint-contracting business they had built from the ground up failed. Pisgah Legal Services stopped the foreclosure action and secured a loan modification. In the mean-

time, the father went to AB-Tech’s culinary school and now works as a cook at a child care center.

Initially, as the need for foreclosure defense increased, a request was made to the Z. Smith Reynolds Foundation to fund robust representation to save homes. The foundation has been making grants to a collaborative of legal aid programs doing foreclosure work known as the Home Defense Project (HDP) since 2004. The HDP is a

collaboration of seven nonprofit organizations: Legal Aid of North Carolina (LANC), the NC Justice Center, Legal Services of Southern Piedmont, Pisgah Legal Services, the Land Loss Prevention Project, the Financial Protection Law Center, and the NC Housing Coalition.

Legal aid partners in the HDP use their legal skills and resources to seek reasonable loan modifications and provide high-quality foreclosure defense work in every county of North Carolina. In addition, the NC Justice Center and the Financial Protection Law Center provide litigation support and analysis on impact cases. The Justice Center also assists with training and the implementation of best practices, tactics and strategies for individual cases. Using advice and brief services, loan modifications, litigation in multiple jurisdictions, class actions, and bankruptcies, the project has an enviable track record of saving homes.

The NC Housing Coalition designs and coordinates outreach and education in support of the project by holding community forums to educate consumers, link them with legal advocates, and engage community members in articulating policy solutions.

State Home Foreclosure Prevention Project

Beginning in late 2008, the State Home Foreclosure Prevention Project (SHFPP), a partnership led by the North Carolina Office of the Commissioner of Banks, was established by the General Assembly to combat the problem. The Office of the Commissioner of Banks reviewed sub-prime loans closed from 2005 to 2007. And, foreclosures registered in the State Home Foreclosure Prevention Program database by the loan servicer could get a one-time 30 day extension, which could be used to negotiate with the homeowner and mortgage holder to establish a more affordable loan interest rate and payments. The goal of the program was to help bring borrowers and lenders together so that the family gets to keep their home and the bank does not lose money on the loan.

The project also coordinated HUD-approved housing counseling agencies, state and federal agencies, legal aid organizations, mortgage servicers, and community organizations to provide the resources needed to avoid foreclosure. North Carolina homeowners having trouble remaining current on

their mortgages were able to call a toll-free number to begin the process of receiving assistance. Funding for the project came from fees assessed on foreclosure filings. The NC Housing Finance Agency assumed oversight responsibility for this funding in 2011.

Although the program has not been able to help everyone, Mark Pearce, then deputy commissioner of banks, noted that research shows that around two out of three homeowners can avoid foreclosure by seeking the advice of a counselor. By late 2009, officials found the State Home Foreclosure Prevention Project had helped prevent 2,040 foreclosures, and provided foreclosure prevention and budgeting advice to more than 6,000 homeowners. Officials estimated the impact of avoiding foreclosures on these homes prevented \$175 million in declining neighboring property values and financial system losses.¹⁰ Chris Kukla, senior counsel for government affairs at the Center for Responsible Lending in Durham, called it "...one of the leading programs in the country dealing with this issue."¹¹

National Settlement Funds Support Foreclosure Relief

In early 2012, after more than a year of negotiations, state and federal government officials announced a record settlement over foreclosure abuses—more than \$26 billion—with five of the country's biggest banks (Bank of America, J.P. Morgan Chase, Citigroup, Wells Fargo, and Ally Financial Inc., formerly known as GMAC). State attorneys general and federal officials challenged the banks over "robo-signing"—the practice of assigning bank employees to rapidly approve numerous foreclosures with only cursory glances at paperwork to determine if all the documents were in order. In the end, 49 states participated in the settlement.¹²

In addition to funds provided to borrowers for restitution, some funds went to the states to be used for their own mortgage assistance programs. In North Carolina, Attorney General Roy Cooper determined that legal aid should receive some of the funds (over \$6 million) over a period of several years to work in collaboration with designated housing counseling agencies. All of these funds were to be administered by the NC Housing Finance Agency, which already was providing oversight on the foreclosure fees funding the State Home Foreclosure

Prevention Project.

As funding from these sources decreases or comes to an end, we are pleased to learn that additional funds from a recently concluded national settlement will come to NC IOLTA specifically to support foreclosure work by legal aid organizations.

Funding for IOLTA programs was included in the settlement with Bank of America announced by the Department of Justice in August 2014. Of the \$7 billion allocated to consumer relief, a minimum of \$30 million is allocated to IOLTA programs across the country for the provision of foreclosure prevention and community redevelopment legal services. Each program will receive \$200,000, and the remainder of the \$30 million will be distributed based on poverty population. NC IOLTA has received \$842,896.15 to support this work.

"We are very pleased to be asked to administer these funds that are designated to provide support for the foreclosure work of our legal aid programs," said Evelyn Pursley, executive director of NC IOLTA, "especially since the funds are coming at a time when they can shore up these ongoing projects that are receiving decreasing funds from other sources."

In addition, there are two other settlement provisions that have the potential to provide funding to IOLTA programs in the future:

- If by December 31, 2018, there are funds that have not been distributed from the consumer relief allocation, 75% of those "liquidated damages" will be distributed to IOLTA programs (based on poverty population and for the same purposes listed above).
- Another portion of the settlement sets aside over \$400 million in a tax relief fund for those borrowers who have added tax liability due to their mortgage debt being eliminated. Whatever remains in this fund will be allocated 75% to IOLTAs (based on poverty population and for the same purposes listed above).

From 2004 through June 2014, the collaborative group of legal aid programs has saved over 2,300 homes from foreclosure, and well over \$100 million has been achieved in cumulative monetary relief.

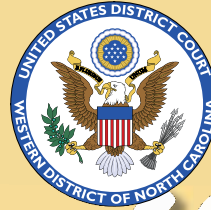
As noted in Legal Aid of North Carolina's report on their foreclosure work, a home provides for some of a person's most fundamental needs. While on the most basic level it provides shelter from the elements,

emotionally it is the center of family life, and financially it is where the majority of a family's wealth resides. For low-income people, foreclosures have a devastating effect on families that can be much more than an enormous financial loss. A foreclosure can damage a person's credit rating and make renting a serious challenge. Homelessness or displacement, sometimes combined with job loss or insecurity, can inflict tremendous stress on the emotional health of a family, particularly children. North Carolina's legal aid programs, therefore, will continue to work to keep families in their homes. ■

Evelyn Pursley has been the executive director of NC IOLTA since July 1997.

Endnotes

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8. *The Recession of 2007–2009*, US Bureau of Labor Statistics, BLS Spotlight on Statistics, February 2012.
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11. *Ibid.*
12. Ronald D. Orol, *Banks, States Reach \$26 Billion Foreclosure Deal*, marketwatch.com/story/banks-states-reach-26-billion-settlement-2012-02-09.



Thank You

The Judges of the Western District of North Carolina would like to express their appreciation to the many attorneys who have volunteered and participated in our Pro Se Settlement Assistance Program over the past several years.

The U.S. District Court for the Western District of N.C. established a Pro Se Settlement Assistance Program to assist in the administration of justice by providing civil pro se litigants with limited advice and representation at settlement conferences. The program is available for voluntary application to all civil cases in which any party appears pro se with the exception of civil rights cases, cases filed under 28 USC Sect. 2254 or 2255, bankruptcy appeals, social security cases, and any case in which the U.S. government is a party. At the conclusion of the settlement conference the attorney's representation concludes.

The Court is grateful to the volunteer lawyers who provide their time and resources to preserve access to justice for those unable to afford an attorney. If you have not applied for this opportunity we encourage you to please consider doing so. For more information on the program and to sign up please visit this link: www.ncwd.uscourts.gov/pro-se-settlement-assistance-program

Lawyer Referral Service (cont.)

signed up. It only took about two weeks for me to recoup my \$150, and pick up a paying client who put a \$2,500 trust deposit down to handle a child support case. That was 2007. I have long since paid off that desk, moved to larger offices, and hired some staff. I have

remained a member of the LRS for all the intervening years and continue to receive referrals. About a third of those quick consults become clients, which is always well worth the discounted 30 minutes I put in at the beginning of the case. It is a given that not everyone referred by the LRS can afford to pay a trust deposit, or invest significant money in their case at all, but that isn't unusual with the people who find their way to my office from any

other source. The Lawyer Referral Service turned out to be a worthwhile investment back in 2007, and it continues to be a good investment even today. ■

Steve Palme graduated from Tulane School of Law in New Orleans in 2005 and was licensed in North Carolina that same year. He opened The Palme Law Firm in Raleigh in 2009 and focuses exclusively on family law.

An Interview with New President Margaret M. Hunt

Q: What can you tell us about your upbringing and your family?

I was born in Hartford Connecticut, the third of seven children. When I was four my father's business took us to southern Maryland where my brothers and sisters and I had what at the time would have been considered a traditional childhood. I graduated from the University of Maryland at College Park with a degree in English. I met my husband Jeff during our first year of law school at Wake Forest and we married the year after graduation. He started out in private practice, then was District Attorney for our District [29B] for 18 years and is currently a Superior Court judge. We have two children who are both lawyers. Our son is an Assistant District Attorney in Charlotte and his wife is also a lawyer in private practice there, and they are the parents of our two grandchildren. Our daughter is a lawyer in New York City.

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

My grandfather studied law, but he went into business so I did not have any family members as legal role models and no particular event was a deciding factor in my decision to become a lawyer. However, all I had read about the profession caused me to think I would like to be a lawyer, and because I wanted to be sure I had a realistic picture of what lawyers did before I invested three years in law school, I worked in a law office for a year. I thought the work of the lawyers in the firm was both interesting and challenging and they were very encouraging of my goal of becoming a lawyer. I started law school at Wake Forest in 1972.

Q: What was it like in 1975 to break into the profession as a woman in a small town like Brevard?

I was hired by a four member firm in Brevard to take over their litigation. At that



Margaret M. Hunt is sworn in as president by Supreme Court Justice Mark Martin, with her husband, Jeff, looking on.

time there were no women lawyers in my County or the surrounding counties and very few women lawyers anywhere in the State doing litigation. The firm did a great job preparing the way for me by talking with their clients, the local lawyers and judges, and with people in the community about my employment. As a result, I received a very warm welcome when I arrived in Brevard. I gradually assumed the responsibility for the firm's litigation and also began to acquire clients of my own, as any new lawyer would. The reception I received from the community and getting settled into practice were very positive experiences, and I give a lot of the credit to the members of the firm for the efforts they made to make that happen.

Q: Your daughter and daughter-in-law are lawyers. How do you think their experience as women in the profession has differed from yours?

Their experiences are very similar to one another's, but different from mine primarily in that it is now routine for women today to be admitted to law school and to be hired for any law related position without regard to their gender.

Q: What's your practice like now and how did it evolve?

Once our children started school, I realized that I wanted a more flexible schedule than litigation allows, so I began the transition into an office practice. Brevard and the surrounding areas are very popular second home and retirement destinations, which

presented the opportunity to handle many residential real estate transactions. This quickly lead me into estate planning and administration as retirees moving into the area asked me to review their current estate plans prepared in other states and to make changes consistent with North Carolina law. For some time now my practice has been limited almost exclusively to estate planning and administration.

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

About 15 or 16 years ago, Bud Siler, a law school classmate and former State Bar President, asked me to serve on the State Bar's CLE Board. I enjoyed very much working with the lawyers on the Board and the State Bar staff, so when my district had a councilor vacancy I ran and was elected. My nine years as a councilor and two years as an officer of the State Bar have been the most interesting and worthwhile professional undertaking of my entire career.

Q: What do you think are the biggest challenges facing the council?

I believe there are three significant challenges that will continue to confront the State Bar in the future.

Many of our citizens, rightly or wrongly, question whether our institutions are functioning properly, and I think that questioning extends to the State Bar and to the legal profession. We have an ongoing obligation to educate the public about what the State Bar does and the benefits that accrue to them when we regulate the profession appropriately. In addition, we have to be more engaged with our legislators to assure that they understand the tools we need to properly protect the public through our regulation of the profession.

The second challenge involves how to regulate our profession in the future. The State Bar has what appears to be a very straightforward statutory directive to regulate the legal profession for the protection of the public, but that task has become significantly more complex when you take into account the rapid increase in the number of lawyers in our State, the significant increase in lawyer specialization, the new and developing methods and models of delivering legal services, the new technological advances being unveiled almost on a daily basis, and the continuing development of new areas of law. North Carolina lawyers, using a vast array of methods,

technologies and procedures, provide a wide range of legal services to clients every day, from preparing durable powers of attorney, to giving advice on highly technical and specialized areas of the law, to representing clients in complex litigation. Crafting new rules or revisions to existing rules, and interpreting those rules through our ethics opinions so that all the lawyers in our State—regardless of the type or method of their practices—are able to provide the excellent legal services that the clients need and demand while still remaining true to the core ethical principles of our profession, are and will continue to be, significant challenges for the State Bar.

The third challenge facing the State Bar is not new, and it is a challenge facing all lawyers individually as well as all organized Bars. This is the challenge of providing meaningful access to the justice system for all citizens. We have to continue to encourage all North Carolina lawyers, individually and through participation in legal services organizations, to provide *pro bono* services to insure that all our citizens enjoy the benefits of access to justice.

Q: What is the status of the LegalZoom case?

The current litigation with LegalZoom has been resolved by the entry of a Consent Judgement that includes important consumer protections for two years in order to give the General Assembly the opportunity to address possible changes to the statutory definition of the practice of law. In the event the General Assembly does not amend the definition, the parties return to the positions each held just prior to the entry of the Consent Judgement.

Q: Are there any other cases in which the State Bar is involved that could have far-

reaching consequences?

The case filed by Capital Associated Industries, Inc. against the Attorney General and two elected District Attorneys is pending in the Middle District and is of great significance as it seeks, among other relief, to overturn Section 84-5 of the General Statutes which prohibits corporations from practicing law. CAI is a trade association with individual businesses as members. It employs staff lawyers and CAI's goal is to allow its staff lawyers to provide legal services to its various members. CAI has argued that it has a constitutional right to practice law in this way. Because of the serious ethical issues arising from corporations practicing law, the State Bar asked and was permitted to intervene.

Q: The State Bar has now been using its new headquarters for a few years. Is the building fulfilling its promise?

The State Bar building has more than fulfilled its promise. It is a very impressive structure that reflects the importance of the role our profession plays in our State. It also provides a pleasant and modern working environment for our staff, as well as conference rooms and meeting spaces for use by attorneys from all across the State who have business in Raleigh. We all owe a debt of gratitude to Past President Hank Hankins who had the foresight to appoint a Facilities Committee in 2007 to examine the need for a new building and to plan for its construction; to Past-President Keith Kapp and current Vice-President John Silverstein who oversaw the actual construction; and to Past-President John McMillan who was instrumental in the formation and work of the State Bar Foundation which raised the additional funds for upgrading the building. ■

2016 Meeting Schedule

Below are the 2016 dates of the quarterly State Bar Council meetings.

January 19-22	NC State Bar Headquarters, Raleigh
April 19-22	NC State Bar Headquarters, Raleigh
July - 19-22	Chetola Resort, Blowing Rock
October 25-28	NC State Bar Headquarters, Raleigh <i>(Election of officers on October 27, 2016, at 11:45 am)</i>

Profiles in Specialization—James Angell

BY LANICE HEIDBRINK

One look at James Angell's history with the NC State Bar specialization program and it is clear that he is dedicated.

Jim has been an integral part of the specialization program since he became certified in 1993. He began by serving on the Bankruptcy Law Specialty Committee in 2002, became chair of the committee in 2004, and remained as chair until his term expired in 2008.

Jim was appointed to the Board of Legal Specialization in 2008 and served as chair of the board from July 2014 to July 2015, his last year on the board.

Jim is currently on the Specialization Long Range Planning Committee.

I recently had the pleasure of talking with Jim about his experiences and views on the specialization program.

Q: What originally motivated you to become a specialist?

Practicing law is a competitive business. There are hundreds of lawyers who seek the same type of work across the state. I have always believed that it is important to find something that distinguishes you from other lawyers in your field—to raise your head up above the crowd. As a young lawyer trying to earn a reputation (which I was then), specialization was a means of demonstrating my proficiency as a business bankruptcy lawyer to my colleagues and to potential clients who needed to confidently choose a lawyer equipped to represent them.

Q: You recently finished your term as chair and as a member of the Board of Legal Specialization. What will you miss most? What will you miss the least?

What I will miss the most is the camaraderie of the volunteers and State Bar staff that make the program function. Although the board members sometimes disagree, the dedication that each member has to the goals of the program frequently results in consensus in decision making. The staff—com-

prised of Alice Mine, Denise Mullen, and Lanice Heidbrink—is a dedicated and well-oiled machine that is able to routinely process a large number of applications, and oversee writing, grading, and appeals of examinations, while constantly implementing improvements to the program. Through the efforts of its volunteers, it has been gratifying to see the program develop in its scope and its sophistication.

I will miss the least the task of fudging parliamentary procedure at board meetings, of which I admittedly had a weak grasp.

Q: What was your focus or initiative during your term as chair of the board?

Bringing the program into the future. Through Alice Mine's leadership, we have been able to implement better procedures and avoid mistakes based on the experiences of larger programs in our sister states, such as Texas and California. As we approach 1,000 specialists, it is more and more important to ensure fair testing, peer review, and determinations of substantial compliance in evaluating applicants.

Q: What piece of advice would you give lawyers who are interested in pursuing certification?

Go for it. You will learn a lot about your chosen field of practice by preparing to sit for the exam. You will have the honor of holding yourself out as a specialist in your field. You will be recognized for your achievement in having attained the specialist designation. You will be part of a great program with the opportunity to engage with other specialists.

Q: What would you tell someone who is intimidated by the thought of sitting for a certification exam?

Get over it. The exam tests proficiency and, except for publishing the list of newly admitted specialists (who passed the exam), the results are confidential. You will learn a lot by studying for the exam, and you will see that the exam tests things that you already

know due to your substantial involvement in the field. Like anything else in life, "no guts, no glory."

Q: How would you explain the benefits of specialization to someone who says, "I've been practicing for years in my area of practice, why do I need to get certified now? Certification is for new lawyers.?"

The specialization program is at a tipping point. It has been in effect over 25 years. At this point, most experienced lawyers who devote a substantial amount of their time to a field of practice are specialists—this was not the case 20 years ago. Specialization in some areas of practice is a considered a normal step in developing the practice, and it shows dedication and competency. I have seen experienced lawyers apply and obtain specialization because they are aware that this is something they are missing on their resumes. The potential client may weigh having a less experienced certified specialist against a more experienced uncertified practitioner—you don't want them to have to make that choice.

Q: Are there any hot topics in bankruptcy law right now?

The Supreme Court issued a series of decisions that question whether bankruptcy judges, who are Article I judges, can enter final orders in determining state law issues. Both the bankruptcy judges and the appellate courts have been struggling to address the impact of these decisions. Also, there are new official forms that are being implemented in the next few months and others under discussion that will dramatically change the practice. Practitioners will need to learn to use them.

As long as I have been practicing, I run across bankruptcy statutes or rules that take on a new light under different circumstances. Although much of bankruptcy practice is applying existing standards to facts, there are vast areas of bankruptcy law that



Angell

CONTINUED ON PAGE 33

Lawyers Receive Professional Discipline

Disbarments

Garey M. Ballance of Henderson filed an affidavit of surrender of his law license and was disbarred by the Disciplinary Hearing Commission. Ballance acknowledged that he misappropriated entrusted funds by failing to deposit into his trust account funds received from clients for costs, fines, and other obligations and by writing trust account checks to or for clients for whose benefit no funds were held in the trust account.

L.J. Blackwood of Greensboro surrendered his license and was disbarred by the State Bar Council at its October 2015 meeting. Blackwood acknowledged that he misappropriated entrusted funds totaling at least \$87,938.

Donald H. Bumgardner of Gastonia surrendered his license and was disbarred by the Wake County Superior Court. Bumgardner acknowledged that he misappropriated entrusted funds totaling in excess of \$1,000,000.

Greenville lawyer **Adrian A. Garcia** surrendered his law license and was disbarred by the State Bar Council at its October 2015 meeting. Garcia admitted that he abandoned his law practice and misappropriated entrusted funds totaling approximately \$4,000.

Franklin McDevin Huggins of Trenton surrendered his license and was disbarred by the Wake County Superior Court. Huggins acknowledged that he misappropriated entrusted funds totaling at least \$8,960.

Andrew Patterson, previously of Sylva and currently of Jacksonville, engaged in a pattern of abusive and disruptive conduct toward courts, opposing counsel and clients, neglected multiple clients, forged a falsely notarized verification, and did not timely respond to the State Bar. He was disbarred by the DHC.

William Sage of Oriental surrendered his license and was disbarred by the State Bar Council at its October 2015 meeting. Sage acknowledged that he misappropriated entrusted funds totaling approximately \$43,500.

Suspensions & Stayed Suspensions

Jeffrey Baker of Wilmington signed two clients' names to a verification without getting permission from both clients to do so, notarized his own "signature" of the clients' names, and filed the verification with the court. He also returned a client file by taping it to his exterior office door, did not communicate with clients, and was not diligent. He was suspended for one year.

Durham lawyer **Paul Brock** engaged in a sexual relationship with a client and made false and misleading statements to the Grievance Committee in an effort to undermine the client's credibility. The DHC suspended him for two years. After serving one year of the suspension, Brock will be eligible to petition for a stay of the remaining suspension upon showing compliance with enumerated conditions.

Steve Combs of Cary did not maintain proper trust account records and did not timely pay title insurance premiums. The DHC suspended him for three years. After serving one year of the suspension, Combs will be eligible to petition for a stay of the balance upon showing compliance with numerous conditions.

Jeffrey Smith of Charlotte did not conduct monthly and quarterly reconciliations of his trust account, disbursed more entrusted funds for clients than he held on their behalf, and wrote a check payable to cash from his trust account. The DHC suspended him for two years. The suspension is stayed for three years conditioned upon Smith's compliance with numerous conditions.

Interim Suspensions

The chair of the DHC entered an order of interim suspension in the case of Durham lawyer **Warren Ballentine**. Ballentine was convicted in the United States District Court for the Northern District of Illinois of one count of mail fraud affecting a financial institution in violation of 18 U.S.C. § 1341, one count of

wire fraud affecting a financial institution in violation of 18 U.S.C. § 1343, two counts of bank fraud in violation of 18 U.S.C. § 1344, and two counts of making false statements to financial institutions in violation of 18 U.S.C. § 1014.

The Wake County Superior Court suspended Rutherfordton lawyer **Marvin Ray Sparrow** pending an investigation into allegations of professional misconduct.

Censures

Sara Jones of Huntsville, Alabama was censured by the Grievance Committee. Jones submitted a false annual report form to the North Carolina Board of Continuing Legal Education in support of her request to waive a late filing fee.

The Grievance Committee censured **John Miller** of Cary. Miller acted as an "independent contractor" providing legal services as a representative of an out-of-state law firm not authorized to provide legal services in North Carolina. He also participated as an attorney in an unregistered prepaid legal services plan. In his relationships with both organizations, Miller assisted others in the unauthorized practice of law and shared fees with nonlawyers.

Moshera Mills of Greensboro was censured by the Grievance Committee. Her client's petition for resolution of disputed fee was closed because Mills did not participate in the process in good faith. When the client filed a court action for return of legal fees, Mills represented to the court that the client's fee dispute petition had been dismissed. Mills led the court to believe the State Bar had considered and rejected the client's contentions, which was not true.

Timothy Mullinax of Hendersonville was censured by the Grievance Committee for leading his client to believe that pleadings were filed in the client's case, when Mullinax had not filed pleadings. He also failed to respond promptly to follow-up questions posed by the staff attorney during the investigation of the grievance.

Reprimands

The Grievance Committee reprimanded **Hiram Bell** of Jacksonville. Bell did not properly supervise an employee, did not properly supervise the recordkeeping of his firm's trust account, and did not conduct quarterly and monthly reconciliations of his firm's trust account. The lack of supervision made it possible for an employee to steal cash delivered to the firm in trust.

The Grievance Committee reprimanded **Stephen Corby** of Charlotte. Corby made false representations to his client and misled his client to believe Corby had filed a complaint on his behalf when he had not done so. When he did eventually file the complaint, Corby did not make diligent efforts to obtain service, did not monitor the case, and did not inform his client that the lawsuit was dismissed for failure to prosecute.

James L. Goldsmith of Zirconia was reprimanded by the Grievance Committee. Goldsmith agreed to serve as "of counsel" for an out-of-state law firm not authorized to provide legal services in North Carolina, thereby assisting others in the unauthorized practice of law. Goldsmith also shared a fee with a nonlawyer and made false or misleading statements about his services.

Stephen Holton of Lexington was reprimanded by the Grievance Committee. Holton did not properly reconcile his trust account, did not render written accountings for entrusted funds, and maintained inadequate trust account documentation. Holton delegated responsibility for trust accounting to a nonlawyer assistant whom he did not adequately supervise. The lack of supervision made it possible for the employee to embezzle entrusted funds. In determining that a reprimand was the appropriate discipline, the committee considered Holton's lack of prior discipline, his cooperation with the State Bar, and the corrective measures he took after the theft was discovered.

Joan Mitchell of Durham was reprimanded by the Grievance Committee. Mitchell undertook to pursue a medical malpractice claim on behalf of an estate. After she obtained an extension of the statute of limitations to gather medical records and identify a medical expert, Mitchell did not obtain medical records and did not make a genuine effort to locate a qualified medical expert willing to testify in support of the claim. Mitchell did not notify her client of

this deficiency and instead filed a frivolous complaint.

Raleigh lawyer **Renorda Pryor** was reprimanded by the Grievance Committee. When Pryor left the law firm where she practiced law, she did not take appropriate steps to ensure that her clients' interests were protected. In one case, she undertook to file but did not file a Rule 59 motion on behalf of her clients. In another case, Pryor did not obtain the court's leave to withdraw from representing another client but did not appear in court on that client's behalf.

James Reaves of Reidsville was reprimanded by the Grievance Committee. Reaves represented a client who was convicted on criminal charges. A judge granted the client's motion for appropriate relief, concluding that Reaves rendered ineffective assistance of counsel. The judge also removed Reaves from the court appointed list for felony cases for at least one year.

Charlotte lawyer **Brian Schrimsher** was reprimanded by the Grievance Committee. Schrimsher qualified as the administrator of an estate but did not timely file a final accounting despite orders from the clerk of court to do so. Schrimsher also did not comply with the clerk's order to appear and show cause why he did not file the final accounting.

The Grievance Committee reprimanded **Sean Soboleski** of Asheville. Soboleski attempted to collect an illegal fee by asserting to his client that a charging lien existed when no judgment had been entered in his client's lemon law case. Soboleski also disbursed to himself, against his client's wishes, entrusted funds belonging to his client in purported payment of fees owed to Soboleski's wife for legal work she performed in an unrelated matter.

The Grievance Committee reprimanded **Stephen Turner** of Raleigh. Turner called his client's sister as a witness in a criminal case. Turner knew the sister was also charged with a crime arising out of the incident and that she was represented by counsel who was not present. Turner did not advise the witness of her right not to incriminate herself. When the court realized that the witness had pending related charges, Turner falsely represented to the court that the witness's counsel consented for her to testify in his absence.

Transfers to Disability Inactive Status

Clinton Orville Light of Eden was trans-

ferred to disability inactive status by the DHC.

Stays of Existing Suspensions

In June 2014 the DHC suspended **William T. Batchelor** of Wilmington for three years. The DHC found that Batchelor collected excessive funds for expenses and mismanaged his trust account by commingling funds, failing to properly identify entrusted funds, failing to list the sources of cash deposits, failing to properly document expenses paid from his trust account, and failing to reconcile. The order provided that after serving one year of the suspension, Batchelor could petition for a stay of the balance. The DHC granted his petition for stay on September 9, 2015.

In September 2013 the DHC suspended **Jason A.M. Gold** of Raleigh for five years. Gold represented a couple in an unusual commercial loan transaction. After his clients left the closing, Gold discovered that one of the clients had not signed all closing documents and, with her consent, Gold notarized or acknowledged her purported signature on five closing documents despite the fact that she was not present and did not sign those documents in his presence. Thereafter, Gold made false statements to the Notary Enforcement Section of the Secretary of State's Office and signed an affidavit containing false statements that his clients' adversary used in support of summary judgment against Gold's clients. The order provided that after serving two years of the suspension, Gold could petition for a stay of the balance. On September 28, 2015, the Secretary signed an order staying the remaining period of suspension.

Reinstatements

Jeffrey S. Berman of Greensboro was suspended for one year in May 2013. The DHC found that Berman brought a frivolous custody action, made a false representation to the court, and concealed material information from the court while requesting ex parte relief. The order was stayed until September 19, 2014 while Berman appealed the order of discipline and petitioned the Supreme Court unsuccessfully for a writ of supersedeas. On September 28, 2015, the secretary signed an order reinstating Berman to active status.

In July 2012, **Benjamin S. Small** of

Concord was suspended for two years. The DHC found that he had ex parte communications with the court, filed frivolous claims, and engaged in conduct prejudicial to the administration of justice, all in an effort to collect a guardian ad litem fee. The DHC also found that, in a separate criminal case, Small filed a frivolous motion and took other actions that had no substantial purpose other than to embarrass or burden a third party. On July 20, 2015, the secretary signed an order reinstating Small to the practice of law in North Carolina.

In December 2014 the DHC suspended **Paul L. Whitfield** of Charlotte for two years for refusing to withdraw from a personal injury case after the client terminated the representation, filing an improper incompetency petition against his former client, issuing improper subpoenas and deposition notices, and filing a frivolous lawsuit against his former client's new attorney. The order provided that after serving six months of the suspension, Whitfield could petition for a stay of the balance. On September 2, 2015, the secretary signed an order staying

the remaining period of suspension.

Stays and Reinstatements Denied

On September 20, 2012, the DHC suspended **Dawn Johnson** of Mebane for three years for numerous Rule violations including engaging in dishonest conduct. After serving one year of the suspension, Johnson was eligible to petition for a stay of the balance. On July 31, 2015, the hearing panel denied Johnson's petition.

Dismissals

It was alleged that **Charles Edwards** of Winston-Salem engaged in a conflict of interest, attempted to delete email related to the conflict from his employer's server, and created documents for use in litigation that he knew contained false information. He died on September 10, 2015. The State Bar filed a notice of dismissal in the pending DHC action.

It was alleged that **Gretchen Engel** of Durham prepared, or reviewed and approved, affidavits she should have known contained inaccurate information that were submitted to the court by another lawyer.

The DHC did not find a Rule violation and dismissed the complaint.

Notice of Intent to Seek Reinstatement

Individuals who wish to note their concurrence with or opposition to this petition should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC, 27611, before February 1, 2016.

In the Matter of Richard S. Poe

Notice is hereby given that Richard S. Poe of Charlotte, North Carolina, intends to file a petition for reinstatement before the Disciplinary Hearing Commission of the North Carolina State Bar. Poe surrendered his license and was disbarred June 30, 2010, for accepting checks for certain legal work that he performed, failing to turn over the checks or the proceeds of these checks to his law firm, and endorsing these checks and depositing them into his personal account, including in some instances endorsing the name of one of the firm members without the firm member's authorization or consent. ■

Specialization (cont.)

rely on tradition that may not even be the subject of a reported decision. Application of the bankruptcy law as written, or as it applies to different federal and state laws, is always a fertile ground for argument.

Q: How does certification benefit the public?

Most people only encounter lawyers when they draw up a will, get a traffic ticket, have a traffic accident, get a divorce, or administer an estate. Even in those instances, they do not know which lawyers are competent to handle their particular legal needs. Specialization provides a series of standards administered by the State Bar to show that the specialist has been substantially involved in the area of practice for a number of years, has taken a focused curriculum of continuing legal education over time, has the endorsement of his or her peers, and has passed an examination designed to test his or her proficiency. A law license is one "shingle," but the specialization certificate is a second "shingle" for the lawyer to hang out to show that the lawyer has met these standards.

Q: How has specialization changed in your 22 years as a specialist?

It has become more accepted and it has grown. The testing process is more sophisticated thanks to the assistance of Dr. Terry Ackerman, a psychometrician (a five-syllable word that means a guy who knows a lot about tests) from UNC-Greensboro, who has generously donated his time to assist the specialty committees with writing and grading examinations that will fairly test applicants. The State Bar has implemented procedures and standards for the board to follow so that its implementation of the program is consistent despite changes on the board or in the committees.

Q: Finish this sentence—"I'm excited about the future of legal specialization because..."

...specialization is the future of the profession. As lawyers are under siege from cookie cutter quasi-legal service firms that provide form documents in lieu of documents designed for a client's specific needs, the profession will need to designate amongst itself lawyers who can handle sophisticated cases in every legal field. Young lawyers who concentrate their practices in a particular area

recognize this and view specialization as a part of maturing as a lawyer and developing a career. The board is now asked to approve new specialties on a constant basis, so lawyers see the benefit of it. The learning curve for the public regarding specialization is a short one, in light of the use of specialties in the medical profession. Specialization is firmly rooted in North Carolina and is just beginning to take off.

Q: Name the top three benefits you've experienced as a result of becoming a specialist.

1. Assurance to prospective clients that I am proficient in my field;
2. Respect among my peers and judges because certification demonstrates that I am knowledgeable about my area of practice;
3. Particularly when I was younger, self-confidence that I could stand my ground against more experienced practitioners. ■

Lanice Heidbrink is executive assistant to Alice Mine and administrative assistant to the specialization board.

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

The Dirty Not-So-Secret Ashley Madison Affair

BY CATHY KILLIAN

“Life is short. Have an affair.” You might also want to have a good lawyer. And if you are a lawyer, you might want to “drop, cover, and hold on.” Ken Metcalf, chief technology officer for a prominent security provider, recently compared the Ashley Madison (AM) security breach to an earthquake and its aftershocks. It seems his analogy has proven to be quite accurate as the layers of impact continue to surface.

The creator of Ashley Madison, the “most recognized and reputable website for finding an affair and cheating partners,” is lawyer Noel Biderman. He began his career as a sports attorney, working as an agent for professional athletes. According to Biderman, he was spending more of his time helping his clients juggle their wives and mistresses, and less on practicing law. He once commented, “One player I represented called and said, ‘My wife wants to come visit me in Milan!’ I said, ‘Okay, what’s wrong with that?’ The guy said, ‘My Italian wife won’t like it.’”

Biderman claimed that his having to deal with the numerous affairs of his clients was one of the major initiatives for the creation of Ashley Madison. As some lawyers do, Biderman branched out into another career path. He launched the AM website in 2001, sold it to Avid Life Media in 2007, and became the CEO. The site’s basic membership fee is \$49. Its most expensive membership is the “Affair Guarantee Package” which costs \$249, but offers a refund if the user does not find someone within three months. They also charge \$19 if a user wants to have personal data deleted. With over 37 million users since its inception, it is not surprising that revenues last year alone were \$115 million.

On July 15th of this year, the site was hacked by a group identifying itself as “The Impact Team.” The hackers claimed to have stolen all of AM’s customer data, including names, addresses, emails, search histories, credit card information/purchases, as well as

their sexual activities and fantasies. The hackers demanded that AM be permanently closed or they would post all the data online. Their demand was driven by the site’s policy of not deleting users’ personal information following a request and payment to do so. With no compliance from AM, the hackers began releasing data on August 18th, and thus the earthquake occurred.

The aftershocks began almost immediately. From law suits, extortion attempts, divorce proceedings, celebrity shaming, public outings, and even suicide, the repercussions seem endless. These aftereffects pose enormous personal, social, and professional repercussions for all walks of life and professional careers. However, the potential impact on lawyers, whether directly or indirectly, seems particularly substantial. Because lawyers supposedly have the highest rate of sex addiction of any profession, the chances of some lawyers being “outed” by the data are great. This would likely have the obvious personal repercussions to marriages, relationships, families, and reputations within the community. But it can likely bleed into professional lives as well, resulting in anything from public shaming and/or embarrassment to a law firm or company, or to a more severe discovery of sexual relations with clients.

On a strictly professional level, some lawyers will become even busier than they are now, because this release of data has created a storm of repercussions in the legal arena. The initial aftershock, which literally happened within moments after the hackers posted the first wave of data, came when law firms everywhere began posting announcements that they were starting investigations for class action law suits. At least four lawsuits have now been filed in the US, each battling for class-action status. Many legal experts, however, believe that the character issue hanging over the people involved will limit the probability of a big damage award from a jury. Despite the fact these US law firms will have to get in line behind an already filed \$576 mil-



lion class-action lawsuit from law firms in Canada, the class-action lawyers are still lining up. There are also potential claims for “invasion of privacy” and “publication of private facts” in some but not all states.

The next big aftershock came less than a week later from digital extortionists using the list to take advantage of people exposed by the data hack. Extortionists sent emails to AM users that said, “Unfortunately, your data was leaked in the recent hacking of Ashley Madison and I now have your information.” They gave the person seven days to pay roughly \$225, or they would release the information to the person’s significant other. Because the list was initially on the Dark Web, where few people could access the information, and because it was a minimal amount of money, many people just paid it. Authorities believe they can identify these cybercriminals, so enter the need for criminal defense attorneys and prosecutors.

Millions of AM customers used their work email domains to register on the site. From religious institutions; to the military; to the highest offices of the White House, Congress, and Homeland Security; to the private sector; to state agencies and local city and county agencies and governments across NC, no sector has been left unscathed. An entire article could be written about the employment ramifications for current employers as well as future employability of those on the list. Add

to that a layer of legal complexity resulting from the fact that AM did not require users to verify their email addresses. This means there is no way to conclusively prove that the person who set up the AM account under the email address given is the actual person assigned to that email, or whether an account was set up out of humor or spite. All of this will keep the labor and employment attorneys hopping.

However, given the traditional focus of the typical LAP column, we now turn to those aftershocks related to mental health impacts and the ramifications for NC attorneys.

The most immediate and apparent impact on North Carolina lawyers will be for those practicing family law, in terms of divorce, custody, or other relationship-oriented law suits. As one reporter stated, "Divorce lawyers are celebrating like it's Christmas!" It took less than a week for the first divorce filing related to the AM incident. Virginia attorney Van Smith says he gets as many as ten calls a day from people seeking a divorce as a result of the AM information release. Some law firms and solo practitioners are posting specific information related to the AM data release on their websites and in advertising material in order to attract clients.

While more clients might be good for business, these clients won't necessarily be good for the lawyer who is dealing with them. Family law practitioners already deal with some of the most difficult and emotionally challenging clients. Research has shown that exposure to these clients can create compassion fatigue in lawyers themselves. But this AM scandal raises the stakes in ways not immediately obvious. AM clients are likely to have even more powerful emotions at play, partly due to the "public" aspect of the scandal, and partly due to unique aspects associated with "virtual infidelity." These undercurrents create a new and different emotional dynamic from the "traditional affair" for both parties concerned.

Historically an affair has been considered a sexual relationship with someone other than your spouse or committed partner. Many of the AM users only had "virtual sex," or shared sexual fantasies. For some it was an emotional infidelity, which can be even more damaging to a relationship than a physical infidelity. Traditional affairs offer numerous ways to be detected, while online infidelity can be hidden very easily and for a long period of time. Even when confronted with behavioral evidence, the unfaithful partner can adamantly deny

any wrongdoing because there is no definitive physical evidence to the contrary. This thinking is akin to someone refusing a breathalyzer when charged with a DWI, and works about as well.

For both partners involved in the AM scandal, the public aspect will increase the shame, embarrassment, and humiliation already felt. There is no putting this genie back in the bottle. So the extent and range of friends, family, co-workers, employers, or almost anyone knowing about it is limitless. This means the emotional turmoil for the couple will feel limitless as well, making it extremely difficult to repair the relationship or to find closure if ending it. Public knowledge also creates a public opinion, which translates into feelings of being judged. Because opinions vary, it's a no-win situation whether the person leaves or stays in the relationship. The seemingly endless amount of people who know of the cheating can create a continued sense of violation, stripping away even more intimacy from the couple while also increasing feelings of vulnerability.

In this kind of virtual infidelity, secrecy and deception happen on a much deeper level than with a traditional affair. Moreover, the impact is deeper and further reaching for the spouse or partner of an AM user. A traditional affair typically begins at work, while online encounters typically happen at home—right under the nose of the spouse or partner. There may also be a sense of betrayal financially from the money spent, or the nature of how it was spent. Users of AM and other online infidelity sites frequently establish credit cards, bank accounts, and cell phone accounts that are separate and unknown to their significant others. Due to the heightened ability to hide the behavior, the infidelity will seemingly come out of the blue in a marriage or relationship the spouse or partner thought was good. All of this creates a level of betrayal that goes to the spouse or partner's very core, leaving them feeling foolish and naïve, and questioning their ability to judge reality. They struggle to define their feelings for the AM user, because they no longer trust that they actually know who that person really is.

These dynamics translate into stronger emotions, more demands, and unrealistic expectations in an area of law that already deals heavily in that trade. Clients will not be driven by the realities of the law, but by their own feelings of hurt and betrayal. They will not be looking for a fair settlement; they will

PI Junior Associate Attorney (Jacksonville, FL) Law Firm of Military Veterans is seeking Veterans for their growing law firm. PI Jr Associate Attorneys (0-3 years' experience and recent grads). Salary commensurate with experience. Please send cover letter and resume with references to Ron@youhurtwefight.com.

be looking for emotional revenge and payback for damages to their own psyche, all the while knowing it cannot possibly be righted or fairly compensated. And they are looking to their lawyer to get it for them.

As if family law weren't stressful enough, these cases will be exceptionally difficult to manage. Family law attorneys will need to tighten their boundaries and brush up on their counseling skills. The first step to managing these situations is for the lawyer to meticulously clarify expectations, both of their role and that of the client. Due to the intense emotionality these clients are experiencing, their ability to retain information and think logically, or at times even rationally, has been compromised. Therefore, expectations should be provided to clients orally and in writing. Specific attention should be given to expectations around communications. Clients need to be instructed as to what is an acceptable or preferred method of communication, response time, and working hours. Despite what actual hours the lawyer might be working, they should not respond to these clients outside of standard work days and times. While these clients are experiencing feelings of hurt, rejection, betrayal, and powerlessness, what they will display is a great amount of anger. They use anger as a way to keep the more painful feelings at bay, and as an immediate emotional release from those underlying and overwhelming feelings. This kind of anger may be stronger than they have ever experienced, and it may be difficult for them to control. Inevitably, the lawyer will be the recipient of this anger and needs to remember that while it is *directed at* them, it's not *about* them. The intensity and range of emotions will result in clients with mood swings that can change in an instant, and thus cause them to change their minds in an instant—and then back again—numerous times. The lawyer should anticipate these constant changes and either roll with them or draw a firm line in the

sand. Validating the client's feelings, having an abundance of patience, setting clear and precise expectations and boundaries, and not allowing themselves to become reactive with the client will be essential "survival skills" for any family law lawyer.

Ironically—maybe surprisingly—being on the AM list doesn't necessarily constitute "phishing," or perhaps anything other than fantasizing. According to extensive research conducted by Annalee Newitz, there were only about 12,000 real women participating in AM. The other female profiles were created by AM for "amusement purposes only." So as Newitz states, "Ashley Madison is a site where tens of millions of men write mail, chat, and spend money for women who aren't there. When you look at the evidence, it's hard to deny that the overwhelming majority of men using Ashley Madison weren't having affairs. They were paying for a fantasy."

Fantasy, however, may actually be the biggest bang for the buck, and is certainly a huge factor in online affairs. It provides the

freedom to fantasize without the intrusion of reality. An AM user enters a world where sexual fantasy varieties and possibilities are endless without the burden of responsibility toward another, burden of consequences for the secret behavior, or risk of rejection. To further enhance the fantasy, the person "dissociates," meaning they move away from their feelings. Through this emotional disconnection, the fantasy can feel intensely real, while it is actually further distorting the AM user's perception and distancing them from reality.

This emotional and mental escape, combined with the ability to manipulate one's identity, is a great "disinhibitor." This disinhibited landscape increases the pace of self-disclosure and sexual expression, thus creating an accelerated sense of intimacy. This results in "relationships" that move faster and are much more intense on one hand, while simultaneously allowing them to remain detached from the online "person" with whom they are interacting. Separated from the real world, they create justifications and rationalizations need-

ed to convince themselves and others that their behavior is both victimless and harmless. Escaping into the fantasy creates an uncanny ability to compartmentalize, where they come to view their identity and activities displayed online as a total separate entity. Of course, this virtual scenario is the exact opposite of true intimacy where partners are emotionally present with each other's feelings and experiences.

Understanding these emotional dynamics and repercussions can help lawyers better handle their clients, and walk away with less emotional collateral damage to themselves in the process of navigating claims stemming from the AM scandal. Even if you are in an area of law that isn't impacted directly, the public's interpretation of this being a feeding frenzy for lawyers is giving all lawyers' images a huge beating. The press is adding fuel to the fire by being quick to identify those on the list who are working in the legal field. Unfortunately there are many. It seems as though the majority of people outed were either celebrities or lawyers. Somehow it seems to add to the popularity of the celebrities, but the opposite is true for lawyers.

The true human cost in terms of extortion, divorces, shattered families, job consequences, witch hunts, violent retributions, suicides, and legal proceedings of the AM earthquake will not be known for years to come. What seemed to begin as an issue of infidelity has quickly become a matter of security. Not just in the traditional sense, but in a far reaching emotional sense as well. ■

Cathy Killian is the clinical director of the NC Lawyer Assistance Program. She is a Licensed Professional Counselor, Licensed Clinical Addictions Specialist, and Certified Clinical Supervisor. Cathy has worked in a variety of mental health and substance abuse areas, including private practice. Her area of expertise is with trauma-based disorders, specifically substance abuse and process addictions.

The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer's ability to practice. If you would like more information, go to nclap.org or call: Cathy Killian (for Charlotte and areas west) at 704-910-2310, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.

In Memoriam

Gabriel Andrew Avram
Winston-Salem, NC

Hal LaVaughn Beverly Jr.
Columbia, SC

James D. Blount Jr.
Raleigh, NC

Robert Cavanaugh Bryan
Dunn, NC

Hugh Brown Campbell Jr.
Charlotte, NC

James Holmes Carson Jr.
Charlotte, NC

William H. Collier
Cary, NC

Janet H. Downing
Fayetteville, NC

Charles Archibald Edwards
Winston-Salem, NC

Ralph Cornelius Gingles Jr.
Gastonia, NC

Edward Whitaker Grannis Jr.
Fayetteville, NC

Thomas Battle Griffin
Kinston, NC

Lewin Worth Holleman Jr.
Greensboro, NC

James McDaniel Johnson
Dunn, NC

Thomas David Johnston
Chapel Hill, NC

Hurshell Halton Keener
Hickory, NC

Neil Ray McLean
Buies Creek, NC

Mary Beirne Minor Harding
Winston-Salem, NC

Carl S. Shabica
Paw Creek, NC

Barbara Anne Smith
Beaufort, NC

Jerry B. Stone
Hillsborough, NC

Christian Riley Troy
Indian Land, SC

William R. White
Brevard, NC

An Interview with State Bar Auditor Anne Parkin

BY PETER BOLAC, TRUST ACCOUNT COMPLIANCE COUNSEL

In this edition of Top Tips, I checked in with our State Bar auditor, Anne Parkin, and asked her some questions about what she sees while traveling the state auditing lawyers' trust accounts. The interview has been lightly edited for clarity. The 3rd Quarter Auditor's Report follows the interview.

Q: Anne, as you finish another year on the road, what is the most common issue you are finding when reviewing lawyers' trust accounts?

Many lawyers/staff/accountants do not understand that there are two separate reconciliation requirements. Most lawyers perform the monthly reconciliations (balancing the bank account balance to the checkbook/general ledger balance), but many do not perform quarterly reconciliations (balancing the bank account balance to the checkbook/general ledger balance to the client ledger balances).

Q: Have you noticed any areas of improvement over the course of your time auditing accounts?

Sadly, I haven't yet found many noteworthy improvements. I've found fewer instances of unexplained negative balances as well as fewer instances of unidentified funds. Overall, I find the same deficiencies audit after audit.

Q: What are some common misconceptions about the audit process?

Lawyers don't seem to understand that all of the trust accounts and fiduciary accounts of a firm become subject to the random audit when a lawyer associated with the firm is selected.

They do not realize that the review period is of the most recent 12 months, not for a shorter or longer period of time. And finally, they don't realize that the State Bar has a staff attorney who regulates compliance with the deficiencies found during the audits.

Q: What are some of the most frequently asked questions you are asked by lawyers?

Is the random selection really random? I think they often expect just a yes or no

answer, but I go into detail and unintentionally cause them to regret having asked.

What do I do with aged funds and outstanding checks? Most lawyers/staff are unaware of the abandonment laws and the process for escheating funds.

Many lawyers ask how to better manage the trust records. I always recommend they download and read the *Lawyer's Trust Account Handbook* from our website, ncbar.gov.

Q: Do you notice any differences between the audits you perform in small towns versus the audits performed in bigger cities?

Not really. I've found that the good audits, those where little or no deficiencies were found, were due to the lawyer/staff/accountant being fully knowledgeable of the rules and having strong procedures in place. That can happen in a big city or small town, or in a solo practice or large firm.

Q: What's your best piece of advice for a lawyer who was just selected for random audit?

Read the audit checklist section of the *Lawyer's Trust Account Handbook*.

2015 Third Quarter Audit Report

Random Audits of Judicial Districts 11B and 22A

1. Lawyers randomly selected for audit are drawn from a list generated from the State Bar's database based upon judicial district membership designations in the database.

2. Judicial District 11B, composed of Johnston County, and Judicial District 22A, composed of Alexander and Iredell Counties, were randomly selected for review during the third quarter of 2015.

3. District 11B was previously audited in 1991, 1994, 1998, 2003, and 2010. District 11B has 160 lawyers. 21 reviews were conducted, collectively representing 47 lawyers.

4. District 22A was previously audited in 1985, 1993, 1999, 2006, and 2009. District

22A has 253 lawyers. 36 reviews were conducted, collectively representing 76 lawyers. One firm in the district was exempt from random audit through certification of voluntary audit.

5. Areas of common rule deficiencies:

CONTINUED ON PAGE 39

Are Your
Trust Accounts
in Accordance with
Rule 1.15?



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Hear No Evil...Speak No Evil...Have No Conflict?

BY SUZANNE LEVER

An opinion adopted in 2013 discusses the precautions a law firm must take when the firm hires a lawyer who formerly defended workers' compensation cases on behalf of a manufacturer that is a frequent opposing party to the hiring firm. 2012 FEO 4 provides that the lawyer must be screened from participation in any matter, or any matter substantially related thereto, in which the lawyer previously represented the manufacturer. In addition, the lawyer must be screened from any matter against the manufacturer if the lawyer acquired confidential information of the manufacturer that is relevant to the matter and that has not become generally known.

Given the adoption of 2012 FEO 4, a refresher course on "screening" seems appropriate.

Traditionally referred to as a "Chinese Wall" (a nod to the Great Wall of China), various other terms have recently been adopted by the legal community to refer to information barriers within an organization erected to prevent exchanges of information. Common terms now include ethical wall, ethical screen, cone of silence, firewall, or simply "screen."

According to the terminology section of the North Carolina Rules of Professional Conduct, "screening" denotes the "isolation of a lawyer from any participation in a professional matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." Rule 1.0(l).

Screening is an important mechanism for practicing lawyers as well as for potential legal clients. There was a time when confidences obtained by a single lawyer in an adverse representation would disqualify every member of a law firm because of the presumption that confidential information is imputed to all of the lawyers in the firm. Screening is a means

of allowing a law firm to rebut the presumption of imputed knowledge.

In the absence of screening, a client's right to the counsel of his or her choice would be restricted. In addition, imputing knowledge of confidential information to all those associated with a firm would restrict the mobility of lawyers. Comment [4] to Rule 1.9, which relates to lawyers moving between firms, elucidates the policy considerations justifying the use of screens:

When lawyers have been associated with a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Similarly, comment [4] to Rule 1.11, which specifically relates to government lawyers, provides that:

[T]he rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified

lawyers as well as to maintain high ethical standards. The provisions for screening... are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

Screening is not a viable option to prevent the imputation of a conflict in every fact scenario, however. In fact, screening is only relevant in five potential conflict scenarios. Three of these scenarios involve lawyer mobility. Under Rule 1.11(b), screening is permitted when a lawyer moves between government employment and private practice. Screening is also possible when lawyers move between private law firms. *See* Rule 1.10(c). Pursuant to Rule 1.12(c), screening is permitted when a lawyer joins a firm after being involved in a matter as a former judge, arbitrator, mediator, or other third-party neutral. A fourth scenario is incorporated into Rule 1.18, which deals with prospective clients. Comment [4] to Rule 1.10 discusses screening in the context of nonlawyer employees and new lawyers who may be disqualified based on work performed while a law student. The comment provides that while Rule 1.10(a) does not prohibit representation by others in the law firm based on conflicts of these individuals, nonlawyer employees and new lawyers should be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information.

Please note that screening will not help a firm avoid disqualification in the following scenario:

Client X is a former client of Firm ABC. Client X was represented by Lawyer A. Client Y wants Lawyer B to represent him in a matter against Client X. During the representation of Client X, Lawyer A obtained confidential client information that is relevant to the current matter involving Client Y. Lawyer B had no involvement in the prior representation of Client X.

The information Lawyer A obtained from Client X is imputed to Lawyer B and, therefore, Lawyer B has a conflict. Lawyer A and Lawyer B were both associated with Firm ABC when Client X was represented, and both lawyers continue to be associated with the firm. This type of conflict does not fall within one of the categories discussed above and cannot be cured by screening Lawyer A from the matter.

Pursuant to each of the rule provisions allowing screening, in addition to the isolation of the lawyer, *notice* must be “promptly” given to the affected party (former or prospective client, government agency, parties to mediation, tribunal) so that compliance with the screening requirements can be ascertained. Comment [10] to Rule 1.0 provides that, “to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.” 2003 FEO 8 states that notice should be given “before any confidential information is leaked, even inadvertently, to the other lawyers in the firm.” In the context of hiring a new law school graduate who should be screened from a matter, 2010 FEO 12 states that “[i]f the screen is implemented prior to any participation by the law graduate in the matter and prior to the communication of any confidential information, the purpose for the screening procedure will have been

effectuated.”

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. Therefore, the notice should include a description of the screened lawyer’s prior representation and of the screening procedures employed. Rule 1.18, cmt. [8].

An effective screen will prevent other lawyers in the firm from learning client confidences held by the disqualified lawyer. Screening procedures may include the following: the screened lawyer will acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter; other lawyers in the firm will be informed not to communicate with the screened lawyer concerning the matter; the firm will employ special procedures to ensure the screened lawyer has no contact with other personnel, firm files, or other materials associated with the matter; and there will be periodic reminders of the screen to all members of the firm. Rule 1.0, cmt. [9].

As noted above, a law firm needs to employ procedures to ensure that the screened lawyer has no contact with firm files or other materials associated with the matter. Because technology has changed the ways in which information is managed by law firms, an evolving ethical issue is the need to create a screen that protects elec-

tronic client information. The comments suggest that it may be appropriate for the firm to obtain an acknowledgment of ethical screening and undertaking by the screened lawyer. In addition, the law firm may need to implement electronic security procedures to restrict the conflicted lawyer’s ability to access relevant electronic files and documents.

A note of caution: Lawyers should keep in mind that the Rules of Professional Conduct vary from state to state. Some Bars do not allow screening in each of these four scenarios. Specifically, the jurisdictions are split on whether to allow screening when lawyers move between private law firms.

More importantly, lawyers need to realize that the risk of disclosure or misuse of confidences is a question of fact. Even when screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation (for example: firm size, time lapse between matters, extent of the disqualified lawyer’s involvement). That means that compliance with the screening provisions in the ethics rules may protect a lawyer from professional discipline, but does not guarantee that the firm can defeat a motion for disqualification. ■

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

Trust Accounting (cont.)

- (a) 47% failed to conduct three-way reconciliations each quarter.
- (b) 42% failed to identify the client and source of funds, if the source was not the client, on the original deposit slip.
- (c) 39% failed to maintain front and back images of cleared checks.
- (d) 32% failed to provide a copy of the Bank Directive regarding checks presented against insufficient funds.
- (e) 28% failed to:
 - indicate on the face of each check from which client balance funds were withdrawn,
 - failed to escheat unidentified/abandoned funds as required by GS 116B-53.
- (f) 26% failed to conduct bank state-

ment reconciliations each month.

(g) 16% failed to identify the client on confirmations of funds received/dispensed by wire/electronic transfers.

(h) 10% and less:

- advanced funds from the account resulting in negative balances,
- did not properly maintain a ledger for each person or entity from whom or for whom trust money was received,
- did not remove earned fees or cost reimbursement promptly,
- failed to stop bank service fees being paid with trust funds,
- did not use business-sized checks containing the auxiliary On-U’s field,
- did not maintain a ledger of lawyer’s funds used to offset bank service fees,
- did not provide written accountings

to clients at the conclusion of representation or at least annually if funds were held more than 12 months.

6. Area(s) of consistent rule compliance:

- properly recorded the bank date of deposit on the client’s ledger,
- properly deposited funds received with a mix of trust and nontrust funds into the trust account,
- promptly remitted to clients funds in possession of the lawyer belonging to the clients, and to which the clients were entitled.

7. There were no deficiencies found in 6 of the 57 lawyers/firms audited.

8. Judicial districts randomly selected for audit for the fourth quarter of 2015 are District 16A, composed of Hoke and Scotland counties, and District 26 composed of Mecklenburg County. ■

Settlement Funds Will Benefit Grant Making

Income

As previously reported, total 2014 income was under \$2 million as income from IOLTA accounts continued to decrease (by 5%), and we did not receive any significant funds from court awards designated to legal aid for 2014 as we had in the previous two years. For the first time in many years, however, the 2015 monthly IOLTA income from accounts is not decreasing over that time period from last year, leading us to hope that we have finally “hit bottom” and will not continue the precipitous decreases.

The better news is that we have received the funding that was included in the Department of Justice settlement with Bank of America allocated to IOLTA programs around the country for the provision of foreclosure prevention and community redevelopment legal services. NC IOLTA has received \$842,896.15. Though these funds are restricted, there are a number of legal aid programs that have been doing significant foreclosure work. As other funds for this work are decreasing or ending, these funds will provide significant support to continue this important work.

In the bad news category, we have learned that NC IOLTA will not be among the state IOLTA programs to receive similar settlement funds from the Department of Justice settlement with Citibank that included a minimum of \$15 million to be paid to state-based IOLTA programs. That settlement does not specify how these funds are to be allocated, and five attorneys general did participate in that settlement. Those states and several other large states with significant Citibank presence have been notified that they will receive the funds.

Grants

Beginning with 2010 grants, we have limited our grant-making to a core group of (mainly) legal aid providers. Even with that restriction and using almost \$3 million in reserve funds over five years, grants had dramatically decreased (by over 40%). For three years, from 2012 through 2014, we were able

to keep grants steady at ~\$2.3 million using funds from reserve and from court awards designated for civil legal aid. For 2015, the trustees had to reduce grants further to ~\$1.9 million. We are using two thirds of our remaining reserve to make those grants, leaving approximately \$245,000 in reserve for 2016 grant making. The Bank of America funds for foreclosure work will make a significant difference to NC IOLTA's ability to make grants in 2016.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for legal aid on behalf of the NC State Bar. Total state funding distributed for the 2013-14 state fiscal year was just over \$3.5 million.

The state budget adjustments for 2014-15 eliminated the appropriation for legal aid work (\$671,250). Though the proposed Senate budget had also eliminated the Access to Civil Justice funding from court fees (~\$1.7 million), that funding was continued in the final budget, with significant additional reporting requirements for Legal Aid of NC. Total funding for the 2014-15 state fiscal year was under \$2.8 million.

The new state budget for 2015-16 includes no changes in funding to legal aid. The Equal Access to Justice Commission and the NCBA continue to work to sustain and improve the funding for legal aid.

Access to Justice Commission Funding Committee Report

For 30 years, NC IOLTA has served through the NC State Bar as the program dedicated to providing grant funding for civil legal aid and administration of justice in North Carolina using funds generated from lawyer trust accounts. The program now also administers state funding and cy pres funds for legal aid that pass through the State Bar. Many IOLTA programs, particularly in states with a strong access to justice commission, have actively sought other sources of income to administer and distribute for civil legal aid. In response to a request from NC IOLTA, the



NC Equal Access to Justice Commission (Commission) appointed an Ad-hoc Funding Committee (Committee) to review various ideas for increasing income for civil legal aid and to recommend a work plan to move forward on the ideas that seem promising for implementation in our state.

The committee, chaired by Evelyn Pursley of NC IOLTA, found that many of the innovative, alternative funding methods being used by some other states that it reviewed—such as *pro hac vice* funds, dues add-ons, state settlement funds—were in North Carolina, established and regulated by statute rather than by court order. The Committee will forward that information to the Commission's legislative committee for careful consideration to determine if and when statute changes could be pursued to avoid competition with requests for legal aid funding through appropriation or court filing fees.

The Committee determined that the most effective ways to increase funding for legal aid that are significant and consistent are to focus on 1) improving fund-raising capability throughout the state and 2) the continued pursuit of state funding through appropriation and court filing fees. The committee hopes to see the CLE fee (\$.50 per credit hour) that funds the Commission increased to \$1 per credit hour, providing parity with the CLE fee paid to the Commission on Professionalism. Some of the additional funds generated could then be used to provide for an enhanced communications/development strategy to raise visibility for legal aid and for improved and increased statewide fundraising. ■

Opinion Holds that Lawyer Who Does Not Have Equity in Firm May Be Called Partner

Council Actions

At its meeting on October 23, 2015, the State Bar Council adopted the ethics opinions summarized below:

2015 Formal Ethics Opinion 5

Authority to Discuss Former Client's Appellate Case with Successor Lawyer

Opinion provides that in post-conviction or appellate proceedings, a discharged lawyer may discuss a former client's case, and turn over the former client's file to successor counsel, if the former client consents or the disclosure is impliedly authorized.

2015 Formal Ethics Opinion 6

Lawyer's Professional Responsibility When Third Party Steals Funds from Trust Account

Opinion rules that when funds are stolen from a lawyer's trust account by a third party who is not employed or supervised by the lawyer and the lawyer was managing the trust account in compliance with the Rules of Professional Conduct, the lawyer is not professionally responsible for replacing the funds stolen from the account. Prior to adoption, a footnote was added to Inquiry #5 to clarify that the opinion does not address the issues of professional responsibility raised when a lawyer knowingly makes disbursements contrary to a settlement statement.

2015 Formal Ethics Opinion 7

Prior Business Relationships Permit In-Person Solicitation

Opinion rules that the business relationships with health care professionals created by a lawyer previously employed as a health care consultant constitute prior professional relationships within the meaning of Rule 7.3(a), thus permitting the lawyer to directly solicit legal employment by in-person, live telephone, or real-time electronic contact with the health care professionals.

Ethics Committee Actions

At its meeting on October 22, 2015, the Ethics Committee sent proposed 2015 FEO 8, *Representing One Spouse on Domestic and*

Estate Matters after Representing Both Spouses Jointly, to a subcommittee for study. The committee also voted to publish one new proposed opinion and to republish proposed 2014 FEO 1, *Protecting Confidential Client Information When Mentoring*.

The comments of readers on proposed opinions are welcomed. Comments received before December 30, 2015, will be considered at the next meeting of the Ethics Committee. Comments may be emailed to ethicsadvice@ncbar.gov.

Proposed 2014 Formal Ethics Opinion 1

Protecting Confidential Client Information When Mentoring October 22, 2015

Proposed opinion encourages lawyers to become mentors to law students and new lawyers ("protégés") who are not employees of the mentor's firm, and examines the application of the duty of confidentiality to client communications to which a protégé maybe privy.

Note: This opinion does not apply to law students certified pursuant to the Rules Governing the Practical Training of Law Students (27 N.C.A.C 1C, Section .0200) or to law students who are participating in formal law school *pro bono* programs, externship programs, and clinics in which students participate in client representation under the supervision of a lawyer. In addition, the opinion does not apply to lawyers, employees, or law clerks (paid or volunteer) being mentored or supervised by a lawyer *within the same firm*. This opinion addresses issues pertaining to informal mentoring relationships between lawyers, or between a lawyer and a law student, as well as to established bar and/or law school mentoring programs. Mentoring relationships between a lawyer and a college or a high school student are not addressed by this opinion because such relationships require more restrictive measures due to these students' presumed inexperience and lack of understanding of a lawyer's profes-

Public Information

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

Captions and Headnotes

A caption and a short description of each of the proposed opinions precedes the statement of the inquiry. The captions and descriptions are provided as research aids and are not official statements of the Ethics Committee or the council.

sional responsibilities, particularly the professional duty of confidentiality.

Inquiry #1:

May a lawyer who is mentoring a law student ("protégé") allow the student to observe confidential client consultations between the lawyer and the lawyer's client?

Opinion #1:

Yes, if the client gives informed consent.

The duty of confidentiality is set forth in Rule 1.6. It provides that all communications relative to a client's matter are confidential and cannot be disclosed unless the client consents, the client's consent is implied as necessary to carry out the representation, or one of the specific exceptions to the duty of confidentiality in

Rule 1.6(b) applies. If a law student/protégé is not an agent of the lawyer for the purpose of representing the client, there is no implied client consent to disclosure of the client's confidential information to the student. Moreover, none of the specific exceptions to the duty of confidentiality apply in this situation. Only the express informed consent of the client will permit disclosure of confidential client information to a law student/protégé.

"Informed consent," as defined in Rule 1.0, *Terminology*, "denotes the agreement by the person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate under the circumstances." Rule 1.0(f). Informed consent must be given in writing by the client or confirmed in writing by the lawyer. See Rule 1.0(c). In the mentoring situation, obtaining the client's informed consent requires the lawyer to explain the risks to the representation of the client that will be presented by the law student's knowledge of client confidential information and the law student's presence during client consultations.

One such risk is the possibility that the law student, who is not subject to the Rules of Professional Conduct, will intentionally or unintentionally reveal the client's confidential information to unauthorized persons. To minimize this risk, it is recommended that the law student be required to sign a confidentiality agreement that emphasizes the duty not to disclose any client confidential information unless the client and the lawyer give express consent.

The lawyer should also explain to the client any risk that the attorney-client privilege¹ will not attach to client communications with the lawyer because of the presence of the law student during the lawyer's consultation with the client. If the lawyer concludes that the student's presence will jeopardize the attachment of the privilege and the resulting harm to the client's interests is substantial, the lawyer should consider carefully whether it is appropriate to ask the client to consent to the student's presence during the consultation.

Inquiry #2:

A lawyer wants to be a mentor to a new lawyer ("protégé") who is not employed by or affiliated with the lawyer/mentor's law firm. The lawyer/mentor wants to allow the new lawyer to observe his consultations with clients and he also wants to observe the new lawyer's consultations with the new lawyer's clients in order to critique and advise the new lawyer.

May the lawyer/mentor allow the lawyer/protégé to observe confidential client consultations between the lawyer/mentor and his client? May the lawyer/protégé allow the lawyer/mentor to observe confidential client consultations between the lawyer/protégé and his client?

Opinion #2:

Yes, these observations are allowed with the client's informed consent. See Opinion #1. The observing lawyer should sign an agreement to maintain the confidentiality of the information of the other lawyer's client, in accordance with Rule 1.6, and to avoid representations adverse to the client in accordance with Rule 1.7 and Rule 1.9.

Both the lawyer/protégé and the lawyer/mentor should avoid the creation of a conflict of interest with any existing or former clients by virtue of the mentoring relationship. For example, the lawyer/protégé should not consult with a lawyer he knows has represented the opposing party in the past without first ascertaining that the matters are not substantially related and that the opposing party is not represented in the current matter by the lawyer/mentor. Similarly, the lawyer/mentor should obtain information sufficient to determine that the lawyer/protégé's matter is not one affecting the interests of an existing or former client. Rule 1.7 and Rule 1.9.

Inquiry #3:

When a lawyer seeks advice from a lawyer/mentor, what actions should be taken to protect confidential client information?

Opinion #3:

If possible, the lawyer/protégé should try to obtain guidance from the lawyer/mentor without disclosing identifying client information. This can often be done by using a hypothetical. If the consultation is general and does not involve the disclosure of identifying client information, client consent is unnecessary.

If the consultation is intended to help the lawyer/protégé comply with the ethics rules, client consent is not required because Rule 1.6(b)(5) allows a lawyer to reveal protected client information to the extent that the lawyer reasonably believes necessary "to secure legal advice about the lawyer's compliance with [the Rules of Professional Conduct]." Pursuant to Comment [10] to Rule 1.6:

A lawyer's confidentiality obligations do not preclude a lawyer from securing confi-

dential legal advice about the lawyer's personal responsibility to comply with [the Rules of Professional Conduct.] In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

If the consultation is for the client's benefit, limited disclosure of client information may be "impliedly authorized to carry out the representation." See Rule 1.6(a). The lawyer should only disclose client information to a colleague if the lawyer has determined that the confidentiality of the consultation is adequately protected. Once the lawyer makes that determination, the client's express consent is unnecessary.

If the consultation does not involve advice about the lawyer's compliance with the Rules of Professional Conduct, a hypothetical is not practical, or the consultation is not for the client's benefit, the lawyer/protégé must obtain client consent. See Opinion #2.

Under all circumstances, the lawyer/protégé and the lawyer/mentor should avoid the creation of a conflict of interest with any existing or former clients by virtue of the mentoring relationship. See Opinion #2; Rule 1.7 and Rule 1.9.

Endnote

1. The attorney-client evidentiary privilege to avoid compelled testimony applies to client communications with a lawyer if (1) the relation of attorney and client existed at the time the communication was made, (2) the communication was made in confidence, (3) the communication relates to a matter about which the attorney is being professionally consulted, (4) the communication was made in the course of giving or seeking legal advice for a proper purpose although litigation need not be contemplated, and (5) the client has not waived the privilege. *State v. McIntosh*, 336 N.C. 517, 444 S.E.2d 438 (1994).

Proposed 2015 Formal Ethics

Opinion 9

Holding Out Non-Equity Firm Lawyers as "Partners"

October 22, 2015

Proposed opinion rules that lawyers who do not own equity in a law firm may be held out to the public by any appropriate designation, including "partner," provided the criteria for holding out the lawyer by the designation is

CONTINUED ON PAGE 57

Amendments Approved by the Supreme Court

On September 24, 2015, the North Carolina Supreme Court approved the following amendments to the rules of the North Carolina State Bar (for the complete text see the Spring 2015 and Summer 2015 editions of the *Journal* or visit the State Bar website):

Rules to Create a Procedure for Permanent Relinquishment of Membership in the State Bar

27 N.C.A.C. 1A, Section .0300, Permanent Relinquishment of Membership in the State Bar; Section .0400, Election, Succession, and Duties of Officers

The new rules create a procedure for relinquishing membership in the State Bar. The effect of relinquishment is the loss of all privileges of membership in the State Bar and, should the person desire to practice law in North Carolina again, the requirement that the person apply to the North Carolina Board of Law Examiners as if for the first time. To include the relinquishment rules in an appropriate location within Subchapter 1A of the State Bar rules, the rules in Section .0300 were moved to the beginning of Section .0400 and both sections were renamed.

Amendments to the Rules Governing the Training of Law Students

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

The rule amendments eliminate the requirement that supervising lawyers in a law school clinic be full-time faculty members. This allows law schools to employ, on a part-time basis, adjunct faculty to supervise students in a clinic.

Amendments to the Rule on *Pro Bono* Practice by Out-of-State Lawyers

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

The amendments allow an out-of-state lawyer employed by a nonprofit corporation rendering legal services to indigent persons to obtain *pro bono* practice status during the pendency of the lawyer's application for admission to the North Carolina State Bar.

Amendments to the Rules of the Board of Legal Specialization

27 N.C.A.C. 1D, Section .1800, Hearing and Appeal Rules of the Board of Legal Specialization; Section .1900, Rules Concerning the Accreditation of Continuing Legal Education for the Purposes of the Board of Legal Specialization

The amendments to the specialization hearing and appeal rules explain that an "incomplete application" does not include an application with respect to which fewer than five completed peer review forms have been timely filed with the Board of Legal Specialization; increase the time an applicant has to review a failed examination after receiving notice of failure; and shorten the

time an applicant has to file a petition for grade review.

The amendments to the specialization CLE rules make the rules consistent with the general CLE accreditation rules by allowing an applicant for specialty certification or recertification to satisfy the CLE requirements by attending prerecorded, simultaneously broadcast, and online programs.

Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 5.3, *Responsibility Regarding Nonlawyer Assistance*, Rule 5.5, *Unauthorized Practice of Law*; *Multijurisdictional Practice of Law*; Rule 5.6, *Restrictions on Right to Practice*, Rule 7.3, *Solicitation of Clients*

Amendments to the titles of Rule 5.3, Rule 5.5, and Rule 7.3 of the Rules of Professional Conduct correspond to amendments to the text of these rules that were approved by the Court on October 2, 2014.

The amendments to Rule 5.6, *Restrictions on Right to Practice*, clarify that the prohibition on participation in a settlement agreement that restricts a lawyer's right to practice applies to settlement agreements between private parties and the government, not just to agreements between private parties. The amendment to the official comment explains that the prohibition does not apply to a plea agreement or other settlement of a criminal matter or a disciplinary case in which the accused is a lawyer.

Amendments Pending Approval by the Supreme Court

At its meeting on October 23, 2015, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text of all proposed rule amendments see the Fall 2015 edition of the *Journal* unless otherwise indicated):

Proposed Amendments to the Rules Governing the Board of Law Examiners

27 N.C.A.C. 1C, Section .0100, Board of Law Examiners

Proposed amendments to Rule .0101, *Election*, are recommended by the North Carolina Board of Law Examiners to modernize the outdated rule and to conform

provisions of the rule to current practice in regard to the appointment of members of the board. Proposed amendments to Rule .0105, *Approval of Law Schools*, are recommended by the Board of Law Examiners to eliminate the experience requirement from the rule. The rule was amended last year to allow a graduate of a non-ABA accredited

law school to be considered for admission to the State Bar if the graduate was previously admitted to the bar of another jurisdiction and remained in good standing with that bar for ten years.

Proposed Amendments to the Rules and Regulations Governing the Administration of the CLE Program

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

A proposed amendment to Rule .1517, *Exemptions*, clarifies that the exemption from CLE requirements for members who teach law-related courses at professional schools has reference only to graduate level courses. Proposed amendments to Rule .1513, *Fiscal Responsibility*, and Rule .1606, *Fees*, increase the CLE credit hour fee (the attendee or sponsor fee) from \$3 to

\$3.50 per hour of approved credit, and allocate the additional \$0.50/credit hour to the North Carolina Equal Access to Justice Commission to support the administration of the activities of the commission. Subject to the Court's approval, the effective date of the amendments is January 1, 2016.

Proposed Amendments to the Rules on Certification of Paralegals

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

Proposed amendments to the standards for certification of paralegals add the disciplinary suspension or revocation of an occupational or professional (nonlegal) license and the unauthorized practice of law to the list of conduct that may be considered by the board when determining whether an applicant is honest, trustworthy, and fit to be certified as a paralegal.

Proposed Amendments to the Trust Accounting Rule in the Rules of Professional Conduct

27 N.C.A.C. 2, Rules of Professional Conduct, Rule 1.15, *Safekeeping Property*

In the Spring, Summer, and Fall 2015 editions of the *Journal*, proposed amendments to Rule 1.15, *Safekeeping Property* (and its subparts, Rule 1.15-1, Rule 1.15-2, and Rule 1.15-3) and to Rule 8.5, *Misconduct*, were published. The proposed amendments add requirements that will facilitate the early detection of internal theft and errors, and adjust the recordkeeping requirements to accommodate "paperless" work environments. A new subpart, Rule 1.15-4, *Alternative Trust Account Management Procedure for Multiple-Member Firm*, was proposed to create a procedure whereby a firm with two or more lawyers may designate a firm principal to serve as the "trust account oversight officer" to oversee the administration of the firm's general trust accounts in conformity with the requirements of Rule 1.15.

Proposed Amendments

At its meeting on October 23, 2015, the council voted to publish the following proposed rule amendments for comment from the members of the bar:

Proposed Amendments to the Discipline and Disability Rules

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

The proposed amendments to the Discipline and Disability Rules separate Rule .0114, *Formal Hearing*, into five shorter rules, to wit: Rule .0114, *Proceedings before the Disciplinary Hearing Commission: General Rules Applicable to All Proceedings*; Rule .0115, *Proceedings before the Disciplinary Hearing Commission: Pleadings and Prehearing Procedure*; Rule .0116, *Proceedings before the Disciplinary Hearing Commission: Formal Hearing*; Rule .0117, *Proceedings before the Disciplinary Hearing Commission: Posttrial Motions*; and Rule .0118, *Proceedings before the Disciplinary Hearing Commission: Stayed Suspensions*. In addition, the content of existing Rule .0114 is reorganized within this five-rule structure, and numerous substantive changes are proposed, including amendments

to the provisions on mandatory scheduling conferences, settlement conferences, default, sanctions, and post hearing procedures relative to stayed suspensions. To make the proposed amendments more readable, only substantive changes are shown with underlining and strikethroughs; the amendments necessary to reorganize the content of Rule .0114 are not shown. Proposed amendments to the substance of existing Rule .0115, *Effect of a Finding of Guilt in Any Criminal Case*, (renumbered as Rule .0119) explain the documents constituting conclusive evidence of conviction of a crime and the procedure for obtaining an interim suspension.

With the division of existing Rule .0114 into five shorter rules, existing Rule .0115 and all subsequent rules in this section will be renumbered and cross references to other rules throughout the section will be renumbered accordingly.

.0114 Formal Hearing Proceedings before the Disciplinary Hearing Commission: General Rules Applicable to All Proceedings

(a) Procedure - Except where specific procedures are provided by these rules, pleadings

and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of nonjury civil causes in the superior courts. **Any specific procedure set out in these rules controls, and where specific procedures are set out in these rules, the Rules of Civil Procedure will be supplemental only.**

(b) **Service** - Service of complaints and summonses and other documents or papers will be accomplished as set forth in the North Carolina Rules of Civil Procedure.

(c) **Continuances** - The chairperson of the hearing panel may continue any hearing for good cause shown. After a hearing has commenced, no continuances other than an adjournment from day to day will be granted except under extraordinary circumstances.

(d) **Appearance by or for the Defendant** - The defendant may appear *pro se* or may be represented by counsel. **The defendant may not act pro se if he or she is represented by counsel.**

(1) **Pro Se Defendant's Address** - When a defendant appears in his or her own behalf in a proceeding, the defendant will file

with the ~~secretary clerk~~, with proof of delivery of a copy to the counsel, an address at which any notice or other written communication required to be served upon the defendant may be sent, if such address differs from ~~that last reported to the secretary by the defendant~~ the address on record with the State Bar's membership department.

(2) **Notice of Appearance** - When a defendant is represented by ~~counsel~~ an attorney in a proceeding, ~~counsel~~ the attorney will file with the clerk a written notice of such appearance which will state his or her name, address and telephone number, the name and address of the defendant on whose behalf he or she appears, and the caption and docket number of the proceeding. Any additional notice or other written communication required to be served on or furnished to a defendant during the pendency of the hearing will be sent to ~~the counsel of record for such defendant~~ defendant's attorney of record in lieu of transmission to the defendant.

(e) **Filing Time Limits** - Pleadings or other documents in formal proceedings required or permitted to be filed under these rules must be received for filing by the clerk of the commission within the time limits, if any, for such filing. The date of receipt by the clerk, and not the date of deposit in the mail, is determinative.

(f) **Form of Papers** - All papers presented to the commission for filing will be on letter size paper (8 1/2 x 11 inches) with the exception of exhibits. The clerk will require a party to refile any paper that does not conform to this size.

(g) **Subpoenas** - The hearing panel will have the power to subpoena witnesses and compel their attendance, and to compel the production of books, papers, and other documents deemed necessary or material to any hearing, as permitted in civil cases under the North Carolina Rules of Civil Procedure. Such process will be issued in the name of the hearing panel by its chairperson, or the chairperson may designate the secretary of the North Carolina State Bar to issue such process. The plaintiff and the defendant have the right to invoke the powers of the panel with respect to compulsory process for witnesses and for the production of books, papers, and other writings and documents.

(h) **Admissibility of Evidence** - In any hearing admissibility of evidence will be gov-

erned by the rules of evidence applicable in the superior court of North Carolina at the time of the hearing. The chairperson of the hearing panel will rule on the admissibility of evidence, subject to the right of any member of the panel to challenge a ruling relating to admissibility of evidence, the question will be decided by majority vote of the hearing panel.

.0115 Proceedings before the Disciplinary Hearing Commission: Pleadings and Prehearing Procedure

(a) **Applicable Procedure** - Except where specific procedures are provided by these rules, pleadings and proceedings before a hearing panel will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trial of non-jury civil causes in the superior courts. Any specific procedure set out in these rules controls, and where specific procedures are set out in these rules, the Rules of Civil Procedure will be supplemental only.

(b) **Complaint and Service** - ~~Complaints will be filed with the secretary.~~ The counsel will file the complaint with the clerk of the commission. The ~~secretary~~ counsel will cause a summons and a copy of the complaint to be served upon the defendant, ~~and thereafter a copy of the complaint will be delivered to the chairperson of the commission informing the chairperson of the date service on the defendant was effected and will inform the clerk of the date of service. The clerk will deliver a copy of the complaint to the chairperson of the commission and will inform the chairperson of the date service on the defendant was effected.~~ Service of complaints and summonses and other documents or papers will be accomplished as set forth in the North Carolina Rules of Civil Procedure.

(c) Complaints in disciplinary actions will allege the charges with sufficient precision to clearly apprise the defendant of the conduct which is the subject of the complaint.

(d) **Answer** - Within 20 days after the service of the complaint, unless further time is allowed by the chairperson of the commission or of the hearing panel upon good cause shown, the defendant will file an answer to the complaint with the clerk of the commission and will serve a copy on the counsel.

~~(d) Designation of Hearing Committee and Date of Hearing~~ - Within 20 days of the receipt of return of service of a complaint by ~~the secretary, the chairperson of the commis-~~

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. Amendments become effective upon approval by the Court. **Unless otherwise noted, proposed additions to rules are printed in bold and underlined; deletions are interlined.**

Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments to L. Thomas Lunsford II, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

~~tion will designate a hearing panel from among the commission members. The chairperson will notify the counsel and the defendant of the composition of the hearing panel. Such notice will also contain the time and place determined by the chairperson for the hearing to commence. The commencement of the hearing will be initially scheduled not less than 90 nor more than 150 days from the date of service of the complaint upon the defendant, unless one or more subsequent complaints have been served on the defendant within 90 days from the date of service of the first or a preceding complaint. When one or more subsequent complaints have been served on the defendant within 90 days from the date of service of the first or a preceding complaint, the chairperson of the commission may consolidate the cases for hearing, and the hearing will be initially scheduled not less than 90 nor more than 150 days from the date of service of the last complaint upon the defendant. By agreement between the parties and with the consent of the chair, the date for the initial setting of the hearing may be set less than 90 days after the date of service on the defendant.~~

(e) Designation of Hearing Panel -

Within 20 days after service of the complaint upon the defendant, the chairperson of the commission will designate a hearing panel from among the commission members. The chairperson will notify the counsel and the defendant of the composition of the hearing panel.

(f) Scheduling Conference – The chairperson of the hearing panel will hold a scheduling conference with the parties within 20 days after the filing of the answer by the defendant unless another time is set by the chairperson of the commission. The chairperson of the hearing panel will notify the counsel and the defendant of the date, time, and venue (e.g. in person, telephone, video conference) of the scheduling conference. At the scheduling conference, the parties will discuss anticipated issues, amendments, motions, any settlement conference, and discovery. The chairperson of the hearing panel will set dates for the completion of discovery and depositions, for the filing of motions, for the pre-hearing conference, for the filing of the stipulation on the pre-hearing conference, and for the hearing, and may order a settlement conference. The hearing date shall be not less than 60 days from the final date for discovery and depositions unless otherwise consented to by the parties. The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in the scheduling conference or willfully fails to comply with a scheduling order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the N.C. Rules of Civil Procedure.

~~(f) Default – Failure to file an answer admitting, denying or explaining the complaint or asserting the grounds for failing to do so, within the time limited or extended, will be grounds for entry of the defendant's default and in such case the allegations contained in the complaint will be deemed admitted. The secretary will enter the defendant's default when the fact of default is made to appear by motion of the counsel or otherwise. The counsel may thereupon apply to the hearing panel for a default order imposing discipline, and the hearing panel will thereupon enter an order, make findings of fact and conclusions of law based on the admissions, and order the discipline deemed appropriate. The hearing panel may, in its discretion, hear such additional evidence as it deems necessary prior to~~

~~entering the order of discipline. For good cause shown, the hearing panel may set aside the secretary's entry of default. After an order imposing discipline has been entered by the hearing panel upon the defendant's default, the hearing panel may set aside the order in accordance with Rule 60(b) of the North Carolina Rules of Civil Procedure.~~

(g) Default

(1) The clerk will enter the defendant's default when the fact of default is made to appear by motion of the counsel or otherwise.

(2) The counsel may thereupon apply to the hearing panel for default orders as follows:

(A) For an order making findings of fact and conclusions of law. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. The hearing panel shall then set a date for hearing at which the sole issue shall be the discipline to be imposed.

(B) For an order of discipline. Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. If such facts provide sufficient basis, the hearing panel shall enter an order imposing the discipline determined to be appropriate. The hearing panel may, in its discretion, set a hearing date and hear such additional evidence as it deems necessary to determine appropriate discipline prior to entering the order of discipline.

(3) For good cause shown, the hearing panel may set aside the entry of default.

(4) After an order imposing discipline has been entered by the hearing panel upon the defendant's default, the hearing panel may set aside the order in accordance with Rule 60(b) of the North Carolina Rules of Civil Procedure.

(h) Discovery - Discovery will be available to the parties in accordance with the North Carolina Rules of Civil Procedure. Any discovery undertaken must be completed by the date set in the scheduling order unless the time for discovery is extended by the chairperson of the hearing panel for good cause shown. Upon a showing of good cause, the chairperson of the hearing panel may reschedule the hearing to accommodate completion

of reasonable discovery.

(i) Settlement - The parties may meet by mutual consent prior to the hearing to discuss the possibility of settlement of the case or the stipulation of any issues, facts, or matters of law. Any proposed settlement of the case will be subject to the approval of the hearing panel. If the panel rejects a proposed settlement, another hearing panel must be empaneled to try the case, unless all parties consent to proceed with the original panel. The parties may submit a proposed settlement to a second hearing panel, but the parties shall not have the right to request a third hearing panel if the settlement order is rejected by the second hearing panel. The second hearing panel shall either accept the settlement proposal or hold a hearing upon the allegations of the complaint.

(j) Settlement Conference - Either party may request, or the chair of the hearing panel may order, appointment of a commission member to conduct a settlement conference.

(1) Such request shall be filed with the clerk of the commission and must be made no later than 60 days prior to the date set for hearing.

(2) Upon such request, the chairperson of the commission shall select and assign a commission member not assigned to the hearing panel in the case to conduct a settlement conference, and shall notify the parties of the commission member assigned and the date by which the settlement conference must be held. The settlement conference must be no later than 30 days prior to the date set for hearing.

(3) The commission member conducting the settlement conference will set the date, time, and manner.

(4) At the settlement conference, the parties will discuss their positions and desired resolution, and the commission member will provide input regarding the case and resolution.

(5) The commission member's evaluation and input shall be advisory only and not binding.

(6) All statements and/or admissions made at the settlement conference shall be for settlement purposes only and shall not be admissible at any hearing in the case. Evidence that is otherwise discoverable, however, shall not be excluded from admission at hearing merely because it is presented in the course of the settlement conference.

~~(i) Pre-Hearing Conference – At the dis-~~

erection of the chairperson of the hearing panel, and upon five days' notice to parties, a conference may be ordered before the date set for commencement of the hearing for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Such conference may be held before any member of the panel designated by its chairperson, who shall have the power to issue such orders as may be appropriate. At any conference which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement or proposals of adjustment, the following:-

- (1) the simplification of the issues;
- (2) the exchange of exhibits proposed to be offered in evidence;
- (3) the stipulation of facts not remaining in dispute or the authenticity of documents;
- (4) the limitation of the number of witnesses;
- (5) the discovery or production of data;
- (6) such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

The chairperson may impose sanctions as set out in Rule 37(b) of the N.C. Rules of Civil Procedure against any party who willfully fails to comply with a prehearing order issued pursuant to this section:

(k) Prehearing Conference and Order

- (1) Unless default has been entered by the clerk, the parties shall hold a prehearing conference. The prehearing conference shall be arranged and held by the dates established in the scheduling order.
- (2) Prior to or during the prehearing conference, the parties shall: exchange witness and exhibit lists; discuss stipulations of undisputed facts; discuss the issues for determination by the hearing panel; and exchange contested issues lists if the parties identify differing contested issues.
- (3) Within five days after the date of the prehearing conference, each party shall provide the other with any documents or items identified as exhibits but not previously provided to the other party.
- (4) The parties shall memorialize the prehearing conference in a document titled "Stipulation on Prehearing Conference" that shall address the items and utilize the format in the sample provided to the parties by the clerk. By the date set in the scheduling order, the parties shall submit the Stipulation on Prehearing

Conference to the clerk to provide to the hearing panel.

(5) Upon five days' notice to the parties, at the discretion of the chairperson of the hearing panel, the chairperson may order the parties to meet with the chairperson or any designated member of the hearing panel for the purpose of promoting the efficiency of the hearing. The participating member of the panel shall have the power to issue such orders as may be appropriate. The venue (e.g. telephone, videoconference, in person) shall be set by the hearing panel member.

(6) The chairperson of the hearing panel may impose sanctions against any party who willfully fails to participate in good faith in a prehearing conference or hearing or who willfully fails to comply with a prehearing order issued pursuant to this section. The sanctions which may be imposed include but are not limited to those enumerated in Rule 37(b) of the N.C. Rules of Civil Procedure.

(7) Evidence or witnesses not included in the Stipulation on Prehearing Conference may be excluded from admission or consideration at the hearing.

(l) Pretrial Prehearing Motions - The chairperson of the hearing panel, without consulting the other panel members, may hear and dispose of all prehearing motions except motions the granting of which would result in dismissal of the charges or final judgment for either party. All motions which could result in dismissal of the charges or final judgment for either party will be decided by a majority of the members of the hearing panel. The following procedures shall apply to all prehearing motions, including motions which could result in dismissal of all or any of the allegations or could result in final judgment for either party on all or any claims:

(1) Parties shall file motions with the clerk of the commission. Parties may submit motions by regular mail, overnight mail, or in person. Motions transmitted by facsimile or by email will not be accepted for filing except with the advance written permission of the chairperson of the hearing panel. Parties shall not deliver motions or other communications directly to members of the hearing panel unless expressly directed in writing to do so by the chairperson of the hearing panel.

(2) Motions shall be served as provided in

the N.C. Rules of Civil Procedure.

(3) The nonmoving party shall have 10 days from the filing of the motion to respond. If the motion is served upon the nonmoving party by regular mail only, then the nonmoving party shall have 13 days from the filing of the motion to respond. Upon good cause shown, the chairperson of the hearing panel may shorten or extend the time period for response.

(4) Any prehearing motion may be decided on the basis of the parties' written submissions. Oral argument may be allowed in the discretion of the chairperson of the hearing panel. The chairperson shall set the time, date, and manner of oral argument. The chairperson may order that argument on any prehearing motion may be heard in person or by telephone or electronic means of communication.

(5) Any motion included in or with a defendant's answer will not be acted upon, and no response from the nonmoving party will be due, unless and until a party files a notice requesting action by the deadline for filing motions set in the scheduling order. The due date for response by the nonmoving party will run from the date of the filing of the notice.

(m) Continuance of Hearing Date - The initial hearing date as set by the chairperson in accordance with Rule .0115(f) above may be reset by the chairperson, and said initial hearing or reset hearing may be continued by the chairperson of the hearing panel for good cause shown.

.0116 Proceedings before the Disciplinary Hearing Commission: Formal Hearing

(a) Public Hearing - The defendant will appear in person before the hearing panel at the time and place named by the chairperson. The hearing will be open to the public except that for good cause shown the chairperson of the hearing panel may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing will be closed to the public over the objection of the defendant.

(b) Continuance After a Hearing Has Commenced - After a hearing has commenced, no continuances other than an adjournment from day to day will be granted, except to await the filing of a controlling decision of an appellate court, by consent of all

parties, or where extreme hardship would result in the absence of a continuance.

(c) Burden of Proof

(1) Unless otherwise provided in these rules, the State Bar shall have the burden of proving that the defendant violated the Rules of Professional Conduct by clear, cogent, and convincing evidence.

(2) In any complaint or other pleading or in any trial, hearing, or other proceeding, the State Bar is not required to prove the nonexistence of any exemption or exception contained in the Rules of Professional Conduct. The burden of proving any exemption or exception shall be upon the person claiming its benefit.

~~(c) Orders - If the hearing panel finds that the charges of misconduct are not established by clear, cogent, and convincing evidence, it will enter an order dismissing the complaint. If the hearing panel finds that the charges of misconduct are established by clear, cogent, and convincing evidence, the hearing panel will enter an order of discipline. In either instance, the panel will file an order which will include the panel's findings of fact and conclusions of law.~~

(d) Orders - At the conclusion of any disciplinary case, the hearing panel will file an order which will include the panel's findings of fact and conclusions of law. When one or more rule violations has been established by summary judgment, the order of discipline will set out the undisputed material facts and conclusions of law established by virtue of summary judgment, any additional facts and conclusions of law pertaining to discipline, and the disposition. All final orders will be signed by the members of the panel, or by the chairperson of the panel on behalf of the panel, and will be filed with the clerk.

(e) Preservation of the Record - The clerk secretary will ensure that a complete record is made of the evidence received during the course of all hearings before the commission as provided by G.S. 7A-95 for trials in the superior court. The **clerk secretary** will preserve the record and the pleadings, exhibits, and briefs of the parties.

(f) Discipline - If the charges of misconduct are established, the hearing panel will ~~then~~ consider any evidence relevant to the discipline to be imposed.

(1) Suspension or disbarment is appropriate where there is evidence that the defendant's actions resulted in significant harm or potential significant harm to the

clients, the public, the administration of justice, or the legal profession, and lesser discipline is insufficient to adequately protect the public. The following factors shall be considered in imposing suspension or disbarment:

- (A) intent of the defendant to cause the resulting harm or potential harm;
- (B) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (D) elevation of the defendant's own interest above that of the client;
- (E) negative impact of defendant's actions on client's or public's perception of the profession;
- (F) negative impact of the defendant's actions on the administration of justice;
- (G) impairment of the client's ability to achieve the goals of the representation;
- (H) effect of defendant's conduct on third parties;
- (I) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (J) multiple instances of failure to participate in the legal profession's self-regulation process.

(2) Disbarment shall be considered where the defendant is found to engage in:

- (A) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (B) impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts;
- (C) misappropriation or conversion of assets of any kind to which the defendant or recipient is not entitled, whether from a client or any other source;
- (D) commission of a felony.

(3) In all cases, any or all of the following factors shall be considered in imposing the appropriate discipline:

- (A) prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
- (B) remoteness of prior offenses;
- (C) dishonest or selfish motive, or the absence thereof;
- (D) timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (E) indifference to making restitution;
- (F) a pattern of misconduct;
- (G) multiple offenses;

- (H) effect of any personal or emotional problems on the conduct in question;
- (I) effect of any physical or mental disability or impairment on the conduct in question;
- (J) interim rehabilitation;
- (K) full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- (L) delay in disciplinary proceedings through no fault of the defendant attorney;
- (M) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
- (N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (O) refusal to acknowledge wrongful nature of conduct;
- (P) remorse;
- (Q) character or reputation;
- (R) vulnerability of victim;
- (S) degree of experience in the practice of law;
- (T) issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint;
- (U) imposition of other penalties or sanctions;
- (V) any other factors found to be pertinent to the consideration of the discipline to be imposed.

~~(c) Service of Orders - All reports and orders of the hearing panel will be signed by the members of the panel, or by the chairperson of the panel on behalf of the panel, and will be filed with the secretary. The copy to the defendant will be served by certified mail, return receipt requested or personal service.~~

~~A defendant who cannot, with due diligence, be served by certified mail or personal service shall be deemed served by the mailing of a copy of the order to the defendant's last known address on file with the N.C. State Bar.~~

~~Service by mail shall be deemed complete upon deposit of the report or order enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service.~~

(g) Service of Final Orders - The clerk will serve the defendant with the final order of the hearing panel by certified mail, return receipt requested, or by personal service. A

defendant who cannot, with reasonable diligence, be served by certified mail or personal service shall be deemed served when the clerk deposits a copy of the order enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service addressed to the defendant's last known address on file with the NC State Bar.

.0117 Proceedings before the Disciplinary Hearing Commission: Posttrial Motions

~~(1) Consent Orders After Trial~~—At any time after a disciplinary hearing and prior to the execution of the panel's final order pursuant to Rule .0114(y) above, the panel may, with the consent of the parties, amend its decision regarding the findings of fact, conclusions of law, or the disciplinary sanction imposed.

(a) New Trials and Amendment of Judgments (Rule 59)

~~(1) As provided in Rule .0114(z)(2)(B) below, following a disciplinary hearing before the commission, e~~Either party may request a new trial or amendment of the hearing panel's final order, based on any of the grounds set out in Rule 59 of the North Carolina Rules of Civil Procedure.

~~(2) A motion for a new trial or amendment of judgment will be served, in writing, on the chairperson of the hearing panel which heard the disciplinary case filed with the clerk~~ no later than 20 days after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities, will be filed with the motion.

~~(3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.~~

~~(4) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, permit the parties to present~~ oral argument.

(b) Relief from Judgment or Order (Rule 60)

~~(1) Following a disciplinary proceeding before the commission, either party may file a motion for relief from the final judgment or order, based on any of the grounds set out in Rule 60 of the North Carolina Rules of Civil Procedure.~~

~~(2) Motions made under Rule .0114(z)(2)(B) above will be made no later than one year after the effective date of the order from which relief is sought. Motions pursuant to this section will be heard and decided in the same manner as motions submitted pursuant to Rule .0114(z)(2) above.~~

~~(1) Either party may file a motion for relief from the final judgment or order, based on any of the grounds set out in Rule 60 of the North Carolina Rules of Civil Procedure.~~

~~(2) A motion for relief from the final judgment or order will be filed with the clerk no later than one year after service of the final order upon the defendant. Supporting affidavits, if any, and a memorandum setting forth the basis of the motion together with supporting authorities will be filed with the motion.~~

~~(3) The opposing party will have 20 days from service of the motion to file a written response, any reply affidavits, and a memorandum with supporting authorities.~~

~~(4) The clerk will promptly transmit the motion and any response to the chairperson of the commission, who will appoint a hearing panel. The chairperson will appoint the members of the hearing panel that originally heard the matter wherever practicable.~~

~~(5) The hearing panel may rule on the motion based on the parties' written submissions or may, in its discretion, order oral argument.~~

~~(c) Effect of Filing Motion~~ - The filing of a motion under Rule .0114(z)(2) above or Rule .0114(z)(3) above requesting a new trial, amendment of the judgment, or relief from the final judgment or order under this section will not automatically stay or otherwise affect the effective date of an order of the commission.

.0118 Proceedings before the Disciplinary Hearing Commission: Stayed Suspensions

~~(x) Stayed Suspensions~~—In any case in which a period of suspension is stayed upon compliance by the defendant with conditions, the commission will retain jurisdiction of the matter until all conditions are satisfied. If, during the period the stay is in effect, the counsel receives information tending to show that a condition has been violated, the counsel may, with the consent of the chairperson of the

Grievance Committee, file a motion in the cause with the secretary specifying the violation and seeking an order requiring the defendant to show cause why the stay should not be lifted and the suspension activated for violation of the condition. The counsel will also serve a copy of any such motion upon the defendant. The secretary will promptly transmit the motion to the chairperson of the commission who, if he or she enters an order to show cause, will appoint a hearing panel as provided in Rule .0108(a)(2) of this subchapter, appointing the members of the hearing panel that originally heard the matter wherever practicable. The chairperson of the commission will also schedule a time and a place for a hearing and notify the counsel and the defendant of the composition of the hearing panel and the time and place for the hearing. After such a hearing, the hearing panel may enter an order lifting the stay and activating the suspension, or any portion thereof, and taxing the defendant with the costs, if it finds that the North Carolina State Bar has proven, by the greater weight of the evidence, that the defendant has violated a condition. If the hearing panel finds that the North Carolina State Bar has not carried its burden, then it will enter an order continuing the stay. In any event, the hearing panel will include in its order findings of fact and conclusions of law in support of its decision.

~~(a) Procedures~~ - In any case in which a period of suspension is stayed upon compliance by the defendant with conditions, the commission will retain jurisdiction of the matter until all conditions are satisfied. The following procedures apply during a stayed suspension:

(1) Noncompliance with conditions

(A) If, during the period the stay is in effect, the counsel receives information tending to show that a condition has been violated, the counsel may, with the consent of the chairperson of the Grievance Committee, file a motion in the cause with the clerk of the commission specifying the violation and seeking an order lifting the stay and activating the suspension. The counsel will serve a copy of the motion upon the defendant.
(B) The clerk will promptly transmit the motion to the chairperson of the commission. The chairperson will appoint a hearing panel to hold a hearing, appointing the members of the hearing panel that originally heard the

matter wherever practicable. The chairperson of the commission will notify the counsel and the defendant of the composition of the hearing panel and the time and place for the hearing.

(C) At the hearing, the State Bar will have the burden of proving by the greater weight of the evidence that the defendant violated a condition of the stay.

(D) If the hearing panel finds by the greater weight of the evidence that the defendant violated a condition of the stay, the panel may enter an order lifting the stay and activating the suspension, or any portion thereof. Alternatively, the panel may allow the stay to remain in effect for the original term of the stay, may extend the term of the stay, and/or may include modified or additional conditions for the suspension to remain stayed. If the panel finds that the defendant violated a condition of the stay, the panel may tax the defendant with administrative fees and costs.

(i) In any order lifting a stay and activating a suspension in whole or in part, the panel may include a provision allowing the defendant to apply for a stay of the activated suspension on such terms and conditions as the panel concludes are appropriate.

(ii) The panel may impose modified or additional conditions: (a) which the defendant must satisfy to obtain a stay of an activated suspension; (b) with which the defendant must comply during the stay of an activated suspension; and/or (c) which the defendant must satisfy to be reinstated to active status at the end of the activated suspension period.

(iii) If the panel activated the entire period of suspension, in order to be reinstated at the end of the activated suspension the defendant must comply with the requirements of Rule .0129(b) of this subchapter and with any requirements imposed in previous orders entered by the commission.

(iv) If the panel activated only a portion of the suspension, in order to be returned to active status at the end of the period of activated suspension the defendant must file a motion with the commission seeking a stay of the remainder of the original term of sus-

pension. If the defendant is granted a stay of the remainder of the original term of suspension, the panel may impose modified or additional conditions with which the defendant is required to comply during the stayed suspension.

(E) If the panel finds that the greater weight of the evidence does not establish that the defendant violated a condition of the stay, it will enter an order continuing the stay.

(F) In any event, the panel will include in its order findings of fact and conclusions of law in support of its decision.

(b) Completion of Stayed Suspension; Continuation of Stay if Motion Alleging Lack of Compliance is Pending

(1) Unless there is pending a motion or proceeding in which it is alleged that the defendant failed to comply with the conditions of the stay, the defendant's obligations under an order of discipline end upon expiration of the period of the stay.

(2) When the period of the stay of the suspension would otherwise have terminated, if a motion or proceeding is pending in which it is alleged that the defendant failed to comply with the conditions of the stay, the commission retains jurisdiction to lift the stay and activate all or any part of the suspension. The defendant's obligation to comply with the conditions of the existing stay remain in effect until any such pending motion or proceeding is resolved.

(c) Applying for Stay of Suspension – The following procedures apply to a motion to stay a suspension:

(1) The defendant shall file a motion for stay with the clerk and serve a copy of the motion and all attachments upon the counsel. Such motion shall be filed no earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion filed earlier than 60 days before the first date of eligibility to apply for a stay. The commission will not consider any motion unless it is delivered to the commission and served upon the counsel contemporaneously.

(2) The motion must identify each condition the order of discipline requires the defendant to meet to be eligible for a stay and must explain how the defendant has met each condition. The defendant shall

attach supporting documentation establishing compliance with each condition. The defendant has the burden of proving compliance with each condition by clear, cogent, and convincing evidence.

(3) The counsel shall have 30 days after the motion is filed to file a response.

(4) The clerk shall transmit the motion and the counsel's response to the chairperson of the commission. Within 14 days of transmittal of the motion and the response, the chairperson shall issue an order appointing a hearing panel and setting the date, time, and location for the hearing. Whenever practicable, the chairperson shall appoint the members of the hearing panel that entered the order of discipline.

(d) Hearing on Motion for Stay

(1) The defendant bears the burden of proving compliance with all conditions for a stay by clear, cogent, and convincing evidence.

(2) Any hearing on a motion for stay will conform as nearly as practicable with the requirements of the North Carolina Rules of Civil Procedure and for trials of non-jury civil causes in the superior courts.

(3) The decision to grant or deny a defendant's motion to stay a suspension is discretionary. The panel should consider whether the defendant has complied with Rule .0128 and Rule .0129 of this section, and any conditions in the order of discipline, as well as whether reinstatement of the defendant will cause harm or potential harm to clients, the profession, the public, or the administration of justice.

(e) Order on the Motion for Stay – The hearing panel will determine whether the defendant has established compliance with all conditions for a stay by clear, cogent, and convincing evidence. The hearing panel must enter an order including findings of fact and conclusions of law. The hearing panel may impose modified or additional conditions: (a) for the suspension to remain stayed; (b) for eligibility for a stay during the suspension; and/or (c) for reinstatement to active status at the end of the suspension period. The hearing panel may tax costs and administrative fees in connection with the motion.

~~.0115~~ .0119 Effect of a Finding of Guilt in Any Criminal Case

(a) ~~Criminal Offense Showing~~

~~Professional Unfitness~~—Any member who has been found guilty of or has tendered and has had accepted a plea of guilty or no contest to a criminal offense showing professional unfitness in any state or federal court, may be suspended from the practice of law as set out in Rule .0115(d) below.

(a) ~~(b) Conclusive Evidence of Guilt~~ - A certified copy certificate of the conviction of an attorney for any crime or a certified copy certificate of the a judgment entered against an attorney where a plea of guilty, nolo contendere, or no contest has been accepted by a court will be conclusive evidence of guilt of that crime in any disciplinary proceeding instituted against a member. For purposes of any disciplinary proceeding against a member, such conviction or judgment shall conclusively establish all elements of the criminal offense and shall conclusively establish all facts set out in the document charging the member with the criminal offense.

(b) Interim Suspension - Any member who has been convicted of, pleads guilty to, pleads no contest to, or is found guilty by a jury of a criminal offense showing professional unfitness in any state or federal court, may be suspended from the practice of law as set out below.

(1) The counsel shall file and serve upon the member a motion for interim suspension accompanied by proof of the conviction, plea, or verdict;

(2) The member shall have 10 days in which to file a response;

(3) The chairperson may hold a hearing to determine whether the criminal offense is one showing professional unfitness and whether, in the chairperson's discretion, interim suspension is warranted. In determining whether interim suspension is warranted, the chairperson may consider harm or potential harm to a client, the administration of justice, the profession, or members of the public, and impact on the public's perception of the profession. The parties may present additional evidence pertaining to harm or to the circumstances surrounding the offense, but the member may not collaterally attack the conviction, plea, or verdict.

(4) The chairperson shall issue an order containing findings of fact and conclusions of law addressing whether there is a qualifying conviction, plea, or verdict, and whether interim suspension is war-

ranted, and either granting or denying the motion.

(5) If the member consents to entry of an order of interim suspension, the parties may submit a consent order of interim suspension to the chairperson of the commission.

(6) The provisions of Rule .0128(c) of this subchapter will apply to the interim suspension.

~~(c) Discipline Based on Criminal Conviction~~—Upon the receipt of a certified copy of a jury verdict showing a verdict of guilty, a certificate of the conviction of a member of a criminal offense showing professional unfitness, or a certificate of the judgment entered against an attorney where a plea of nolo contendere or no contest has been accepted by a court, the Grievance Committee, at its next meeting following notification of the conviction, may authorize the filing of a complaint if one is not pending. In the hearing on such complaint, the sole issue to be determined will be the extent of the discipline to be imposed. The attorney may be disciplined based upon the conviction without awaiting the outcome of any appeals of the conviction or judgment, unless the attorney has obtained a stay of the disciplinary action as set out in G.S. §84-28(d1). Such a stay shall not prevent the North Carolina State Bar from proceeding with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

~~(d) Interim Suspension~~—Upon the receipt of a certificate of conviction of a member of a criminal offense showing professional unfitness, or a certified copy of a plea of guilty or no contest to such an offense, or a certified copy of a jury verdict showing a verdict of guilty to such an offense, the commission chairperson may, in the chairperson's discretion, enter an order suspending the member pending the disposition of the disciplinary proceeding against the member before the commission. The provisions of Rule .0124(c) of this subchapter will apply to the suspension.

~~(e) Criminal Offense Which Does Not Show Professional Unfitness~~—Upon the receipt of a certificate of conviction of a member of a criminal offense which does not show professional unfitness, or a certificate of judgment against a member upon a plea of no contest to such an offense, or a certified copy of a jury verdict showing a verdict of guilty to such an offense, the Grievance Committee will take

whatever action, including authorizing the filing of a complaint, it may deem appropriate. In a hearing on any such complaint, the sole issue to be determined will be the extent of the discipline to be imposed. The attorney may be disciplined based upon the conviction without awaiting the outcome of any appeals of the conviction or judgment, unless the attorney has obtained a stay of the disciplinary action as set out in G.S. §84-28(d1). Such a stay shall not prevent the North Carolina State Bar from proceeding with a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

~~.0116~~ .0120 Reciprocal Discipline & Disability Proceedings

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[Renumbering remaining rules in section and correcting cross references to other rules throughout the section accordingly.]

Proposed Amendments to the Rules and Regulations Governing the Administration of the CLE Program

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

The proposed amendments to Rule .1518 require a sponsor of a Professionalism for New Attorneys Program to be an accredited sponsor. The proposed amendments to Rule .1602 allow credit to be granted to private/in-house CLE programs concerning professional responsibility and professional negligence/malpractice presented live by providers that are not affiliated with the host law firm or law department and that have been pre-qualified to present such programs.

.1518 Continuing Legal Education Program

(a) Annual Requirement.

...

(b) Carryover.

...

(c) Professionalism Requirement for New Members. Except as provided in paragraph (d)(1), each active member admitted to the North Carolina State Bar after January 1, 2011, must complete the North Carolina State Bar Professionalism for New Attorneys Program (PNA Program)...

(1) Content and Accreditation. The State Bar PNA Program shall consist of 12 hours of training in subjects designated by the State Bar including, but not limited to, professional responsibility, professionalism, and law office management....To be approved as a PNA Program, the program must be provided by an accredited sponsor under Rule .1603 of this subchapter and the a sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval. ~~At~~ at least 45 days prior to the presentation, ~~of a PNA Program, a sponsor must submit a detailed description of the program to the board for approval. Accredited sponsors shall not be exempt from the prior submission requirement and~~ A sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no course that is not so designated shall satisfy the PNA Program requirement for new members.

(2) Evaluation ...

(d) Exemptions from Professionalism Requirement for New Members.

...

.1602 Course Content Requirements

(a) Professional Responsibility Courses on Stress, Substance Abuse, Chemical Dependency, and Debilitating Mental Conditions

...

(h) In-House CLE and Self-Study. No approval will be provided for in-house CLE or self-study by attorneys, except as follows:

(1) ~~those~~ programs exempted by the board under Rule .1501(c)(10) of this subchapter;

(2) ~~or~~ as provided in Rule .1604(e) of this subchapter; and

(3) live programs on professional responsibility, professionalism, or professional negligence/malpractice presented by a person or organization that is not affiliated with the lawyers attending the program or their law firms and that has demonstrated qualification to present such programs through experience and knowledge.

Proposed Amendments to the Standards for the Estate Planning and Probate Law Specialty

27 N.C.A.C. 1D, Section .2300,

Certification Standards for the Estate Planning and Probate Law Specialty

The proposed amendments to the standards for the estate planning specialty eliminate the subject matter listings for related-field CLE and for the exam and explain that the listings are posted on the specialization program's website.

.2305 Standards for Certification as a Specialist in Estate Planning and Probate Law

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

(a) Licensure and Practice -

...

(c) Continuing Legal Education - An applicant must have earned no less than 72 hours of accredited continuing legal education (CLE) credits in estate planning and probate law during the three years preceding application. Of the 72 hours of CLE, at least 45 hours shall be in estate planning and probate law (provided, however, that eight of the 45 hours may be in the related areas of elder law, Medicaid planning, and guardianship), and the balance may be in ~~the designated related fields areas. A list of the topics that qualify as related-field CLE shall be maintained by the board on its official~~ website ~~of taxation, business organizations, real property, family law, elder law, Medicaid planning, and guardianship.~~

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review.

...

(e) Examination - The applicant must pass a written examination designed to test the applicant's knowledge and ability in estate planning and probate law.

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

(2) Subject Matter - The examination shall ~~cover~~ test the applicant's knowledge and application of the law ~~in the following topics of estate planning and probate.~~ A list of the topics covered on the exam shall be maintained by the board on its official website.

- ~~(A) federal and North Carolina gift taxes;~~
- ~~(B) federal estate tax;~~
- ~~(C) North Carolina inheritance tax;~~
- ~~(D) federal and North Carolina fiduciary income taxes;~~
- ~~(E) federal and North Carolina income taxes as they apply to the final returns of the decedent and his or her surviving spouse;~~
- ~~(F) North Carolina law of wills and trusts;~~
- ~~(G) North Carolina probate law, including fiduciary accounting;~~
- ~~(H) federal and North Carolina income and gift tax laws as they apply to revocable and irrevocable inter vivos trusts;~~
- ~~(I) North Carolina law of business organizations, family law, and property law as they may be applicable to estate planning transactions;~~
- ~~(J) federal and North Carolina tax law applicable to partnerships and corporations (including S corporations) which may be encountered in estate planning and administration.~~

Proposed Standards for a New Specialty in Utilities Law

27 N.C.A.C. 1D, Section .3200, Certification Standards for Utilities Law Specialty

A new specialty in utilities law is proposed by the Board of Legal Specialization upon its determination that representation of clients in utilities law matters requires knowledge of the law, procedures, and forums unique to this practice area. This proposed new section of the rules for the specialization program sets forth standards for the new specialty which are comparable to the standards for the other areas of specialty certification. Because this is an entirely new section, bold, underlined print is not used to identify new material.

.3201 Establishment of Specialty Field

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

.3202 Definition of Specialty

The specialty of utilities law is the practice of law focusing on the North Carolina Public Utilities Act (Chapter 62 of the North Carolina General Statutes) and practice before

the North Carolina Utilities Commission (the Commission) and related state and federal regulatory bodies.

.3203 Recognition as a Specialist in Utilities Law

If a lawyer qualifies as a specialist in utilities law by meeting the standards set for the specialty, the lawyer shall be entitled to represent that he or she is a “Board Certified Specialist in Utilities Law.”

.3204 Applicability of Provisions of the North Carolina Plan of Legal Specialization

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

.3205 Standards for Certification as a Specialist in Utilities Law

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

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

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

(1) Substantial involvement shall mean that during the five years immediately preceding the application, the applicant devoted an average of at least 500 hours a year to the practice of utilities law but not less than 400 hours in any one year.

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

(3) Substantive legal work in utilities law includes, but is not limited to, practice before or representation in matters relative to the Commission, Federal Energy Regulatory Commission (FERC), Federal

Communications Commission (FCC), Nuclear Regulatory Commission (NRC), Pipeline and Hazardous Materials Safety Administration (PHMSA), North Carolina Department of Environment and Natural Resources (NCDENR), North American Electric Reliability Corporation, utilities commissions of other states, and related state and federal regulatory bodies as well as participation in committee work of organizations or continuing legal education programs that are focused on subject matter involved in practice before the Commission or related state and federal regulatory bodies.

(4) “Practice equivalent” shall mean:

(A) Each year of service as a commissioner on the Commission during the five years prior to application may be substituted for a year of the experience necessary to meet the five-year requirement set forth in Rule .3205(b)(1).

(B) Each year of service on the legal staff of the Commission or of the Public Staff during the five years prior to application may be substituted for a year of the experience necessary to meet the five-year requirement set forth in Rule .3205(b)(1).

(c) Continuing Legal Education - To be certified as a specialist in utilities law, an applicant must have earned no less than 36 hours of accredited continuing legal education credits in utilities law and related fields during the three years preceding application. The 36 hours must include at least 18 hours in utilities law; the remaining 18 hours may be in related-field CLE. Utilities law CLE includes but is not limited to courses on the subjects identified in Rule .3202 and Rule .3205(b)(3) of this subchapter. A list of the topics that qualify as related-field CLE shall be maintained by the board on its official website.

(d) Peer Review - An applicant must make a satisfactory showing of qualification through peer review. An applicant must provide the names of ten lawyers or judges who are familiar with the competence and qualification of the applicant in the specialty field. Written peer reference forms will be sent by the board or the specialty committee to each of the references. Completed peer reference forms must be received from at least five of the references. All references must be licensed and in good standing to practice law and must have significant legal or judicial experience in utilities law. An applicant consents to confidential

inquiry by the board or the specialty committee to the submitted references and other persons concerning the applicant’s competence and qualification.

(1) A reference may not be related by blood or marriage to the applicant nor may the reference be a colleague at the applicant’s place of employment at the time of the application.

(2) The references shall be given on standardized forms mailed by the board to each reference. These forms shall be returned to the board and forwarded by the board to the specialty committee.

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

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

(2) Subject Matter - The examination shall test the applicant’s knowledge and application of utilities law.

.3206 Standards for Continued Certification as a Specialist

The period of certification is five years. Prior to the expiration of the certification period, a certified specialist who desires continued certification must apply for continued certification within the time limit described in Rule .3206(d) below. No examination will be required for continued certification. However, each applicant for continued certification as a specialist shall comply with the specific requirements set forth below in addition to any general standards required by the board of all applicants for continued certification.

(a) Substantial Involvement - The specialist must demonstrate that, for each of the five years preceding application for continuing certification, he or she has had substantial involvement in the specialty as defined in Rule .3205(b) of this subchapter.

(b) Continuing Legal Education - The specialist must earn no less than 60 hours of accredited CLE credits in utilities law and related fields during the five years preceding application for continuing certification. Of the 60 hours of CLE, at least 30 hours shall be in utilities law, and the balance of 30 hours

CONTINUED ON PAGE 60

State Bar Swears in New Officers



Hunt



Merritt



Silverstein

Hunt Installed as President

Brevard attorney Margaret McDermott Hunt was sworn in as president of the North Carolina State Bar. She was sworn in by Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 22, 2015.

Hunt is a graduate of the University of Maryland. She earned her law degree in 1975 from Wake Forest Law School. Since being admitted to the Bar that same year she has practiced law continuously in Brevard.

Her professional activities include service as president of the Transylvania County Bar, member of the State Bar's Continuing Legal Education Board, and member of the Chief Justice's Commission on Professionalism. While a councilor she has served as a member of the Grievance, Issues, Facilities, Legislative, Administrative, and

Executive Committees and chaired the Administrative Committee, co-chaired the Program Evaluation Committee, served as vice-chair of the Grievance Committee for two years, and chaired the Grievance Committee in 2012-2013.

She was a founding member and served as secretary for the Transylvania Endowment, served as chair of the Transylvania County Chamber of Commerce, and was a member of the board of directors of Heart of Brevard and the Transylvania County Boys and Girls Club.

Merritt Elected President-Elect

Charlotte attorney Mark Merritt was sworn in as president-elect of the North Carolina State Bar. He was sworn in by Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 22, 2015.

Merritt is a graduate of the University of North Carolina where he was a Morehead Scholar and a member of Phi Beta Kappa. He earned his law degree in 1982 from the University of Virginia and served as editor in chief of the Virginia Law Review. After law school he clerked on the Fifth Circuit Court of Appeals for Judge John M. Wisdom. He returned to Charlotte and has practiced law at Robinson Bradshaw & Hinson since 1983.

His professional activities include serving as treasurer and president of the Mecklenburg County Bar, serving on the Board of Directors and as president of Legal Services of Southern Piedmont, and serving as chair of the North Carolina Bar Association Antitrust Section Council. While a State Bar councilor he has served as chair of the Ethics Committee and of the Lawyers Assistance Program. He has served

as a member of the Facilities, Grievance, Issues, and Authorized Practice Committees. He also served as chair of the Special Committee on Ethics 2020.

Mark is a member of the American College of Trial Lawyers and the International Society of Barristers.

He is married to Lindsay Merritt and has three children, Alex, Elizabeth, and Jay.

Silverstein Elected Vice-President

Raleigh attorney John M. Silverstein was sworn in as vice-president of the North Carolina State Bar. He was sworn in by Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 22, 2015.

A native of Charleston, West Virginia, Silverstein is a graduate of Colgate University. He earned his law degree in 1972 from the University of North Carolina School of Law. From 1972-1976 he worked in the Attorney General's Office. Since 1976 he has practiced with the Raleigh firm of Satsky & Silverstein, LLP.

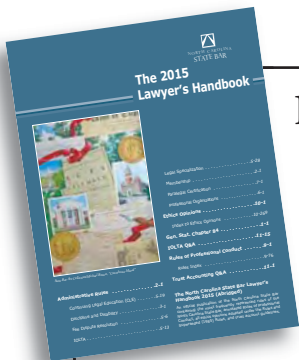
His professional activities include membership in the Wake County Bar Association and the Wake County Real Property Lawyers Association. He served as president of the 10th Judicial District Bar in 1994.

In addition to his professional activities, John is involved in his community. Twice he has served as president of Temple Beth Or and is currently a life trustee. He is on the Lineberger Comprehensive Cancer Center Board of Visitors, was chair of the Raleigh Board of Adjustment, and is a youth soccer coach.

While a State Bar councilor he has served as chair of the Facilities Committee, Attorney/Client Assistance Committee, and the Grievance Committee.

In 2002 John was a recipient of the Wake County Bar Association's Joseph Branch Professionalism Award. He has also received the President's Award and the Outstanding Volunteer Lawyer Award.

He is married to Leslie, and they have two daughters, Amy and Elizabeth. ■



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Resolution of Appreciation for Ronald L. Gibson

WHEREAS, Ronald L. Gibson was elected by his fellow lawyers from Judicial District 26 in January 1986 to serve as their representative in this body. He served until 1990; and

WHEREAS, Ronald L. Gibson was elected by his fellow lawyers from Judicial District 26 in January 2004 to serve again as their representative in this body. Thereafter, he was re-elected for two additional successive three-year terms as councilor; and

WHEREAS, in October 2012 Mr. Gibson was elected vice-president, and in October 2013 he was elected president-elect. On October 23, 2014, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. Gibson has served on the following committees: Client Assistance, Grievance, Authorized Practice, Executive, Disciplinary Advisory, Administrative, Appointments Advisory, Ethics, Facilities, Finance & Audit, Issues, Issues Outreach, Legislative, and Program Evaluation, and

WHEREAS, during the course of his presidency, the State Bar was faced with an unprecedented amount of extraordinary and complex litigation. These cases, involving issues of existential significance to the legal profession as we know it, and touching upon such fundamental matters as the definition of the practice of law and the legitimacy of corporate law practice, required deft and wise management. Fortunately the State Bar had, in the person of Ronald L. Gibson, precisely the right man for the job. He relieved the Office of Counsel of some of the most burdensome responsibilities associated with those cases and engaged outside counsel of the highest quality, at once enabling the staff to concentrate on the administration of professional discipline and bringing to bear exceptional legal expertise in the extraordinary litigation. He rationalized the management of the cases internally and he dedicated vast amounts of his personal and professional time to developing and implementing effective strategies for litigation and settlement. Remarkably, as his term as president comes to an end, it appears that Mr. Gibson has succeeded in resolving the most vexing and costly of these disputes; and

WHEREAS, Ron Gibson as president has also been engaged with the North Carolina General Assembly to an unprecedented extent. Early in the legislative session, he organized a reception at the State Bar's headquarters for members of the General Assembly. Then, convinced that the interests of the public and the legal profession coincide in regard to the maintenance of a coherent statutory scheme whereby the practice of law is appropriately defined and only persons possessing the highest character and the best training are licensed to participate in it, Mr. Gibson personally advocated for the enactment of a bill that would have modernized and improved the statute defining the practice of law, particularly insofar as the provision of legal services by means of the internet is concerned. This legislative initiative would also have had the salutary effect of fostering the settlement of much of the aforementioned litigation. Unfortunately, the proposed legislation was not passed, in spite of Mr. Gibson's heroic efforts in regard thereto; and,

WHEREAS, Ron Gibson has been ubiquitous throughout the State of North Carolina as the principal spokesman and public "face" of the North Carolina State Bar. In countless meetings, conferences, and professional events, he has been reliably present and impressively representative of the North Carolina State Bar. In so doing, Ron Gibson has been the best possible ambassador for the agency and for the principal of self regulation. Perhaps more importantly, by his example and personal testimony, he has encouraged us all to reflect upon the significance of our professional undertaking and to join him in his oft-repeated declaration that we are and should always be "damn proud to be lawyers,"

NOW, THEREFORE, BE IT RESOLVED that the council of the North Carolina State Bar does hereby publicly and with deep appreciation acknowledge the strong, effective, and unselfish leadership of Ronald L. Gibson, and expresses to him its debt for his personal service and dedication to the principles of integrity, trust, honesty, and fidelity.

BE IT FURTHER RESOLVED that a copy of this resolution be made a part of the minutes of the Annual Meeting of the North Carolina State Bar and that a copy be delivered to Ronald L. Gibson.

Consent Judgment in LegalZoom Litigation

On October 22, 2015, the North Carolina Business Court entered a Consent Judgment in litigation between the North Carolina State Bar and LegalZoom.com, Inc., Wake County Superior Court file no. 11 CVS 15111. LegalZoom filed that lawsuit seeking a declaratory judgment that it is not engaged in the unauthorized practice of law in violation of Chapter 84 of the North Carolina General Statutes. The State Bar filed a counterclaim alleging that LegalZoom's activities constituted the unauthorized practice of law in violation of Chapter 84. Under the Consent Judgment, for two years or such shorter time as may elapse until the enactment of legislation revising the statutory definition of the practice of law, LegalZoom has agreed to abide by the following consumer protection measures in its dealings with North Carolina consumers:

(a) LegalZoom shall provide to any consumer purchasing a North Carolina product (a North Carolina Consumer) a means to see the blank template or the final, completed document before finalizing a purchase of that document;

(b) An attorney licensed to practice law in the state of North Carolina has reviewed each blank template offered to North Carolina Consumers, including each and every potential part thereof that may appear in the completed document. The name and address of each reviewing attorney must be kept on file by LegalZoom and provided to the North Carolina Consumer upon written request;

(c) LegalZoom must communicate to the North Carolina Consumer that the forms or templates are not a substitute for the advice or services of an attorney;

(d) LegalZoom discloses its legal name and physical location and address to the North Carolina Consumer;

(e) LegalZoom does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the North Carolina Consumer; and

(f) LegalZoom does not require any North Carolina Consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between LegalZoom and the North Carolina Consumer.

The State Bar and LegalZoom have also agreed to work to obtain passage in the North Carolina General Assembly of House Bill 436, currently pending in House Judiciary Committee I. If the General Assembly has not modified the definition of the practice of law as contemplated by HB 436 at the end of two years, the parties can agree to seek extension of the Consent Judgment or can resume the litigation. If the parties resume litigation, they will be free to pursue all claims and defenses that were available to them before the Consent Judgment was entered. The Consent Judgment also reflects that the Authorized Practice Committee of the State Bar will reconsider LegalZoom's two modified pre-paid legal services plans, upon the resubmission of those plans, and that LegalZoom will dismiss without prejudice all claims it asserted in a second lawsuit in the United States District Court for the Middle District of North Carolina, No. 1:15-CV-439, against the State Bar, its employees, and its representatives in their official capacities, and will dismiss with prejudice all claims against the State Bar's employees and representatives in their individual capacities.

The State Bar's officers and Executive Committee carefully considered the issues raised in the litigation with LegalZoom and whether the resolution of the litigation as set forth above was in the best interests of the people of North Carolina. After much discussion and deliberation, the State Bar concluded that entering into the Consent Judgment at this time, and in these circumstances, fulfills its statutory duties as an agency of the state of North Carolina to the state, the public-at-large, and the State Bar's members.

The State Bar is an agency of the state of North Carolina, created by statute and charged with regulating the practice of law and the unauthorized practice of law for the protection of the people of North Carolina. ■

To read the entire consent judgment, go to ncbar.com/PDFs/consent_judgment.pdf.



Fifty-Year Lawyers Honored

As is traditional, members of the North Carolina State Bar who are celebrating the 50th anniversary of their admission to practice were honored during the State Bar's Annual Meeting at the 50-Year Lawyers Luncheon. One of the honorees, N. Leo Daughtry, addressed the attendees, and each honoree was presented a certificate by the president of the State Bar, Ronald L. Gibson, in recognition of his service. After the ceremonies were concluded, the honorees in attendance sat for the photograph below. ■



First row (left to right): William Warren Sparrow, Larry G. Ford, Willis P. Whichard, Roy H. Michaux Jr., Daniel A. Manning, Charles W. Ogletree, Norman B. Kellum Jr., Jefferson H. Bruton, James D. Renger, Ralph K. Frasier, Norman B. Smith, A. Larkin Kirkman, N. Leo Daughtry, Eugene A. Steffen, Jimmy H. Barnhill *Second row (left to right)* William Stafford Jr., Louis H. Fogleman Jr., Robert L. Edwards, William G. Robinson, Jerry L. Eagle, Malcolm E. Osborn, W. Tom Harris Jr., Robert B. Long Jr., Robert C. Hord Jr., Michael S. Kennedy, Robert C. Sink, Joe D. Floyd, James R. Van Camp, Marcus Hudson *Third row (left to right)* Jimmie C. Proctor, Frank B. Aycock III, John F. Morrow Sr., James R. Nance Jr., Jack A. Thompson, Thomas P. McNamara, Harold M. Robinson Jr., Paul D. Freedle, Robert E. Smith, Clyde A. Wootton III

Proposed Ethics Opinions (cont.)

legitimate, the designation is not misleading, and the lawyer complies with the professional responsibilities arising from the designation.

Inquiry:

ABC Law Firm is a North Carolina professional corporation. Three lawyers, A, B, and C, are shareholders in the firm and own all of the equity of the firm. In the firm's communications, Lawyers A, B, and C are held out as "partners"; internally at the firm, they are referred to as "equity partners."

Lawyers E and F also work for the firm, but they do not own any interest in the firm and are not shareholders. However, Lawyers A, B, and C consider Lawyers E and F to be "partners in every sense of the word except actual ownership." Lawyers E and F have the authority to bind the firm and to sign opinion letters on behalf of the firm, but they do not vote on matters of corporate governance. Within the firm, Lawyers E and F are referred to as "income partners."

The firm would like to hold Lawyers E and F out to the public as "partners" or "income partners." May the firm do so?

Opinion:

Yes. A law firm may use whatever design-

ation it chooses to identify its lawyers in external and internal communications provided the criteria for holding a lawyer out by a certain designation is legitimate and the designation is not misleading in violation of Rule 7.1. Rule 1.7(a)(1) states that a communication is false or misleading if it "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." Any firm lawyer who is identified as a "partner" shall be held to the professional responsibilities in the Rules of Professional Conduct that arise from that designation. *See, e.g.,* Rule 5.1. ■

Law School Briefs

All of the law schools located in North Carolina are invited to provide material for this column. Below are the submissions we received this quarter.

Campbell University School of Law

Boyce Center of Advocacy established with largest-ever gift to Campbell Law—With a gift exceeding \$8 million dollars, prominent Raleigh attorney G. Eugene “Gene” Boyce has cemented the future success of student advocates at Campbell Law School. Boyce’s gift—a combination of cash and property—establishes The G. Eugene Boyce Center of Advocacy at the law school’s downtown Raleigh campus. Boyce’s contribution marks the biggest ever gift to Campbell Law, and one of the largest in Campbell University history, and he will have practitioner in residence status at the law school and office space in the Boyce Center.

Campbell Law ranked 8th nationally for best value, 23rd for small law—The National Jurist has ranked Campbell Law School eighth nationally for best value among private law schools, and 23rd nationally for small law. The best value ranking marks Campbell Law’s second appearance on the list in as many years.

Dean Leonard to serve on commission appointed by NC Chief Justice Martin—Campbell Law School Dean J. Rich Leonard has joined the newly created North Carolina Commission on the Administration of Law and Justice at the request of North Carolina Supreme Court Chief Justice Mark Martin. Dean Leonard will serve on the Technology Committee.

Campbell Law selected for prestigious National Civil Trial Contest—Campbell Law School’s advocacy program is one of just 16 selected to participate in this year’s 14th-annual National Civil Trial Competition in Los Angeles, California. More than 50 law school advocacy programs applied for a spot in the prestigious competition. The competition is scheduled for November 15-17.

Charlotte School of Law

Societal impact fair—On September 17,

CharlotteLaw hosted an event meant to increase community awareness of practice-ready programs. All 17 clinics, *pro bono*, and Small Practice Center programs were displayed using poster board sessions. Faculty, staff, students, and clients were on hand to speak to members of local nonprofits, business, and community leaders, as well as Charlotte citizens about the programs. The fair brought in over 80 external constituents to the school as well as a local news station.

CharlotteLaw and NASCAR Collaboration—NASCAR and Charlotte School of Law are proud to co-host the inaugural NASCAR Negotiation Competition in North Carolina (NC3) from November 13-15, 2015. Students from regional law schools will be invited to participate in this first-of-its-kind legal negotiation competition. The competition will focus on legal and business issues that arise frequently in NASCAR and motorsports generally. Some of the most experienced and respected motorsports attorneys in America will serve as the competition judges, and there will be networking opportunities available to participating students, including a NASCAR reception on the evening of the 13th.

Dean Camille Davidson and Professor Kama Pierce receive research award—The study entitled “Are You on the Right Track? A New Approach to Faculty Status in the Changing Legal Environment” was selected for The Collaborative Research Paper Award by the International Association of Law Schools (IALS). The award was presented at the 2015 IALS Annual Meeting to be held in October 2015 at the IE University Law School in Segovia, Spain.

Paralegal program approved for real-time—CharlotteLaw becomes one of only two paralegal programs that offer a “real-time” modality in the state of North Carolina. Offering paralegal courses in “real time” means that students have the option of participating through their laptop or mobile device simultaneously with students on-site. This innovative expansion is part of CharlotteLaw’s mission to become the

benchmark for legal education in the 21st Century.

Duke Law School

New scholarship fund honors students’ military service—A \$1 million gift from the Kathrine Robinson Everett Charitable Trust will create a new scholarship fund at Duke Law School to support students who are serving, have served, or will serve in the US military. The Kathrine R. and Robinson O. Everett Scholarship Fund recognizes the late Robinson Everett’s commitment to men and women in military service and to the military court system. A Duke Law faculty member for 51 years and a Korean War veteran, Everett served as chief judge of the United States Court of Military Appeals, the highest civilian court in the military justice system, which he had helped to establish.

Children’s Law Clinic secures \$25K SSI award for disabled child—A Duke Law Children’s Law Clinic client was recently awarded more than \$25,000 in back benefits and monthly benefits going forward when an administrative law judge found that the Social Security Administration wrongfully denied the child’s application for Supplemental Security Income (SSI) benefits. The client is an adolescent boy suffering from multiple mental health issues relating to abuse and neglect as well as sickle cell disease. His case was handled by two clinic students during the 2014-2015 academic year, Sarah Sheridan ‘15 and James Lambert ‘15, under the supervision of supervising attorney Brenda Berlin.

Purdy publishes *After Nature*—Jedediah Purdy, Duke’s Robinson O. Everett professor of law, calls for a new way of thinking about political, legal, and cultural solutions to environmental problems in his new book, *After Nature: A Politics for the Anthropocene* (Harvard University Press, 2015). The book has been praised by critics for its depth and urgency; a review in *Open Letters Monthly* said that *After Nature* “may very well be the *Silent Spring* of the 21st century.” It has been nominated for the Pulitzer Prize.

Elon University School of Law

Entering class demonstrates strong interest in new curriculum—Elon Law's 2015 enrolling class of 132 students was selected from an applicant pool 16% higher than 2014, indicating a strong endorsement of the school's groundbreaking new curriculum which guarantees full-time residencies-in-practice in a 2.5-year program that lowers tuition and permits graduates early entry into their careers.

Anthony Foxx challenges students to use law for good—Delivering the Call to Honor at Elon Law's new student convocation, US Transportation Secretary Anthony Foxx told students that they could use the law to benefit society and improve the lives of their fellow citizens.

Elon Law Professor Exum honored for impacts on law and policy—Elon Law professor and retired Supreme Court Chief Justice James G. Exum Jr. was recognized for improving the state's justice system, developing alternatives to litigation, and advancing the idea of lawyers as peacemakers at the October 13 unveiling of his official portrait to be hung inside the NC Supreme Court.

Leslie J. Winner recognized with Elon Law's Leadership in the Law Award—Elon Law presented Leslie J. Winner, executive director of the Z. Smith Reynolds Foundation, with the law school's highest professional honor, the Leadership in the Law Award, recognizing Winner's significant contributions to law, the legal profession, and society.

Governor Jennifer Granholm: Be obsessed about helping others—Delivering Elon Law's Fall 2015 Distinguished Leadership Lecture presented by The Joseph M. Bryan Foundation, two-term Michigan Governor Jennifer Granholm encouraged future leaders to find their passion and commit themselves fully to it. The ticket reservation process will open on December 1 for the February 9 Leadership Lecture by *New York Times* Supreme Court Correspondent Adam Liptak, and on March 1 for the April 18 Leadership Lecture by ESPN broadcaster, attorney, and author Jay Bilas. Reserve tickets online at law.elon.edu/DLLS.

North Carolina Central School of Law

US Attorney General Loretta E. Lynch holds civil rights round table at NCCU Law—On her first official visit to Durham,

NC, Attorney General Loretta E. Lynch attended meetings with civil rights leaders and individuals combatting human trafficking. During the roundtable, she noted that recent events in the South have brought back painful memories of the past for many.

"These are in fact challenging times as we all know," the attorney general told those assembled. "You've alluded to the recent events that have traumatized many of our houses of worship. There have also been events traumatizing many of our individuals of color. Also, of course, the events just a few weeks ago in Charleston highlight days that I think many of us thought were behind us."

National Bar Association hosts Wiley A. Branton Symposium at NCCU School of Law—In October 2015 the National Bar Association (NBA) held the 25th Annual Wiley A. Branton Symposium at NCCU. The NBA is the oldest and largest national association of predominantly African-American lawyers, judges, educators, and law students, and represents over 60,000 members.

Panelists included NBA President, Benjamin L. Crump, Sheryl Underwood, Rev. Al Sharpton, Cornell Brooks, Ed Gordon, Willie Gary, Charles Ogletree, Sybrina Fulton, and more. The symposium's focal point was preserving the NBA's legacy and protecting the minority community through voter's rights.

National Conference of Black Lawyers convened at NCCU School of Law—The National Conference of Black Lawyers (NCBL) came to Durham, NC, in 2015 to address the ongoing assault on the civil and human rights of African Americans. NCBL's presence at NCCU School of Law was a testament to the historic role that NC communities have played in the civil rights movement, and served to honor our forebears who took part in the struggle.

University of North Carolina School of Law

UNC grads achieve 83% NC bar passage rate—Nearly 83% of UNC School of Law graduates who took the North Carolina bar exam for the first time in July 2015 passed, according to the official exam results released by the state's Board of Law Examiners. UNC graduates' actual bar passage rate was 82.8%.

Festival of Legal Learning—UNC School of Law's largest continuing legal education program will be held February 12-13 at the

Friday Center in Chapel Hill. The Festival of Legal Learning is designed to build basics, sharpen skills, provide perspectives, and highlight new developments in the field of law. Participants may earn up to 12 hours of CLE credit, including professional responsibility, substance abuse, and mental health courses. Registration opens in December at law.unc.edu/cle.

Seven UNC Law alumni honored with NC Lawyers Weekly 2015 Leaders in the Law Award—Seven UNC School of Law alumni have been named as "2015 Leaders in the Law" by *North Carolina Lawyers Weekly*. The award honors licensed attorneys and practicing lawyers who are among the most influential individuals in the state's legal community.

Graduate programs—UNC School of Law was ranked one of the top five law schools in the nation by current students and recent graduates, according to GraduatePrograms.com "Fall 2015 Law School Rankings."

Wake Forest University School of Law

Health Law and Policy Program—Wake Forest Law introduces its Health Law and Policy Program, which is designed to strengthen students' knowledge and engagement to prepare them to enter the fields of health law and public policy, in fall 2015. The program targets three core goals: educating and motivating students to become involved with the improvement of health care delivery; informing lawmakers, public officials, and professionals and assisting them with active health policy issues; and engaging and educating the public at large on critical issues about health care. Professor Mark Hall, who is one of the nation's leading scholars in the areas of health care law, public policy, and bioethics, is the inaugural program director. The author or editor of 20 books, including *Making Medical Spending Decisions* (Oxford University Press), and *Health Care Law and Ethics* (Aspen), he is currently engaged in research in the areas of health care reform, access to care by the uninsured, and insurance regulation. Professor Hall is a member of the National Academy of Sciences, and has published scholarship in the law reviews at Berkeley, Chicago, Duke, Michigan, Pennsylvania, and Stanford Universities. He also teaches in WFU's graduate programs for bioethics and its MBA

CONTINUED ON PAGE 65

John B. McMillan Distinguished Service Award

Lillian B. Jordan

Ms. Jordan obtained her undergraduate degree from Guilford College in 1961 and, after serving as a teacher for several years, obtained her law degree from Wake Forest University School of Law in 1979. Ms. Jordan specialized in family law with the firm of O'Briant, O'Briant, Bunch, Whatley and Robins until 1997, when she was appointed as a district court judge for Judicial District 19B. She continued to serve as a district court judge until 2002, when she was appointed as an emergency judge. Ms. Jordan has devoted herself to the administration of justice her entire career, serving as president of the NC Association of Women Attorneys, the Randolph County Bar Association, and of Legal Services of North

Carolina. At the State Bar, Ms. Jordan served on the IOLTA Board of Trustees and on the Board of Law Examiners. Ms. Jordan also served on the Board of Governors and numerous other committees for the North Carolina Bar Association. In 2011, Chief Justice Sarah Parker presented Ms. Jordan with the Chief Justice's Professionalism Award for her selfless dedication and commitment to the principles of professionalism and public service in North Carolina. Throughout her career, Ms. Jordan has used her influence to ensure equal access to justice for all and has furthered the public's confidence in lawyers and the rule of law.

Seeking Award Nominations

The John B. McMillan Distinguished

Service Award honors current and retired members of the North Carolina State Bar who have demonstrated exemplary service to the legal profession. Awards will be presented in recipients' districts, with the State Bar councilor from the recipient's district introducing the recipient and presenting the certificate. Recipients will also be recognized in the *Journal* and honored at the State Bar's annual meeting in Raleigh.

Members of the bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The nomination form is available on the State Bar's website, ncbar.gov. Please direct questions to Peter Bolac, PBolac@ncbar.gov ■

Proposed Amendments (cont.)

may be in the related fields set forth in Rule .3205(c).

(c) Peer Review - The specialist must comply with the requirements of Rule .3205(d) of this subchapter.

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

(e) Lapse of Certification - Failure of a specialist to apply for continued certification in a timely fashion will result in a lapse of certification. Following such a lapse, recertification will require compliance with all requirements of Rule .3205 of this subchapter, including the examination.

(f) Suspension or Revocation of Certification - If an applicant's certification has been suspended or revoked during the period of certification, the application shall be treated as if it were for initial certification

under Rule .3205 of this subchapter.

.3207 Applicability of Other Requirements

The specific standards set forth herein for certification of specialists in utilities law are subject to any general requirement, standard, or procedure adopted by the board applicable to all applicants for certification or continued certification.

Proposed Amendment to The Plan for Paralegal Certification

27 N.C.A.C. 1G, Section .0200, Rules Governing Continuing Paralegal Education

The proposed amendment to the rules on paralegal continuing education eliminates the \$75 accreditation fee for any continuing paralegal education program that is presented without charge to attendees.

.0204 Fees

Accredited Program Fee – Sponsors seeking accreditation for a particular program (whether or not the sponsor itself is accredited by the North Carolina State Bar Board of

Continuing Legal Education), that has not already been approved or accredited by the North Carolina State Bar Board of Continuing Legal Education, shall pay a non-refundable fee of \$75.00. **However, no fee shall be charged for any program that is offered without charge to attendees. The All programs program** must be approved in accordance with Rule .0203(1). An accredited program may be advertised by the sponsor in accordance with Rule .0203(2). ■

Thank You to Our Meeting Sponsors

Lawyers Mutual Liability Insurance
Company for sponsoring the
Annual Reception and Dinner

Margaret M. Hunt for sponsoring the
Annual Reception

2016 Appointments to Boards and Commissions

January Council Meeting

Lawyer Assistance Program Board (3-year terms) – There are three appointments to be made. Jerry Jernigan, Christopher K. Budnick, and Darrin D. Jordan (chair) are eligible for reappointment.

Judicial Nominating Commission (4-year terms) – The council must make one recommendation to the governor for appointment to this commission. Anthony S. di Santi is not eligible for reappointment.

April Council Meeting

American Bar Association Delegates (2-year terms) – There are three appointments to be made. Barbara B. Weyher, Anthony S. di Santi, and James R. Fox are not eligible for reappointment.

NC General Statutes Commission (2-year terms) – The president must make one appointment to this commission. Starkey Sharp is eligible for reappointment.

Legal Services of Southern Piedmont (LSS) (3-year terms) – The president must make one appointment to this board. Calvin E. Murphy is not eligible for reappointment.

Disciplinary Hearing Commission (3-year terms) – There are six appointments to be made. Donald C. Prentiss and Beverly T. Beal are eligible for reappointment. Michael S. Edwards (public member) and Christopher R. Bruffey (public member) are eligible for reappointment. Fred M. Morelock and Patricia Head (public member) are not eligible for reappointment.

July Council Meeting

Board of Legal Specialization (3-year terms) – There are two appointments to be made. Robert A. Mason and Dr. Andrew J. Ghio (public member) are eligible for reappointment. Laura D. Burton (chair) is not eligible for reappointment.

IOLTA Board of Trustees (3-year terms) – There are three appointments to be made. Edward C. Winslow III is eligible for reappointment. Charles E. Burgin (chair) and Janice M. Cole are not eligible for reappointment.

NC Dispute Resolution Commission (3-year terms) – The president must make one appointment to this commission. Robert A. Ponton Jr. is eligible for reappointment.

October Council Meeting

Client Security Fund Board of Trustees (5-year terms) – There is one appointment to be made. Charles M. Davis (chair) is not eligible for reappointment.

Board of Law Examiners (3-year terms) – There are five appointments to be made. Randel L. Phillips (chair), Kimberly A. Herrick, D. Clark Smith, Elizabeth C. Bunting, and Beth R. Fleishman are eligible for reappointment.

Board of Continuing Legal Education (3-year terms) – There are three appointments to be made. Amy H. Hunt (chair), James A. Davis, and Judge Margaret P. Eagles are not eligible for reappointment.

NC LEAF (1-year terms) – There is one appointment to be made. William R. Purcell is eligible for reappointment.

Board of Paralegal Certification (3-year terms) – There are three appointments to be made. G. Gray Wilson (Chair) is eligible for reappointment. Lisa M. Robinson (Vice Chair) and Belinda Thomas are not eligible for reappointment.

Grand Juries (cont.)

nonwaivable conflicts of interest.⁸ The bar to representation does not cast any aspersions on the integrity of the attorney involved; whether or not the attorney's representation would actually be compromised, public trust in the legal profession requires the attorney to step aside for this entire category of clients.

The same would be true of an automatic special prosecutor law for officer-involved killings. As with any nonwaivable conflict rule, this one would be overbroad. Local prosecutors might convince the voters in a particular case that they made a proper decision to use a grand jury, or to charge (or not to charge) the police officer on their own.

The overbroad conflicts rule, however, serves a purpose.

The appearances do not favor the prosecutor in these cases. When viewed from the outside, the prosecutor faces conflicting loyalties when a law enforcement officer is involved in a killing. A categorical rule that gives this type of case automatically to special prosecutors would avoid any tricky case-by-case questions about the local prosecutor's motives and competence. Prosecutor-police relations do not suffer and the public receives a transparently independent voice. A revised special prosecutor law might restore the grand jury to its historical function. ■

Ronald Wright is the Needham Y. Gulley Professor of Criminal Law at Wake Forest University.

Endnotes

1. See Ronald F. Wright, *Grand Jury 2.0: Modern Perspectives on the Grand Jury*, 293-322 (Roger Fairfax, ed. 2010).
2. N.C.G.S. §15A-621 ("impaneled by a superior court and constituting a part of such court").
3. N.C.G.S. §15A-623(d) (providing for presence of witness, interpreter, and law enforcement officer when witness is in custody).
4. N.C.G.S. §15A-626(b).
5. See nccriminallaw.sog.unc.edu/ferguson-and-the-prosecutors-approach-to-the-grand-jury/.
6. See Zusha Elinson, "Police Reviews in Deaths Scrutinized," *Wall Street Journal*, January 11, 2015 (reviewing new statutes and legislative proposals to designate outside investigators and prosecutors in officer-involved fatalities).
7. N.C.G.S. §114-11.6.
8. NC Rule of Professional Conduct 1.7(b), Comments 14-17.

Client Security Fund Reimburses Victims

At its October 22, 2015, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$524,151.04 to 11 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$225 to a former client of Robert A. Bell of Fayetteville. The board determined that Bell was retained to handle a client's domestic matter. Although he provided some legal services, Bell failed to file the complaint and did not refund the separate filing fee paid. Bell was transferred to disability inactive status on April 10, 2015. The board previously reimbursed two other Bell clients a total of \$5,950.

2. An award of \$3,000 to a former client of Robert A. Bell. The board determined that Bell was retained to secure the client's brother's release from prison to visit his dying mother. Bell provided no valuable legal services for the fee paid.

3. An award of \$100,000 to an estate formerly represented by William S. Britt of Lumberton. The board determined that Britt was retained by the administrator of the estate to bring civil actions against two healthcare facilities due to poor care which led to decedent's death. Britt settled the matters, but failed to fully disburse the amounts due to the estate prior to being disbarred. Due to misappropriation, Britt's trust account balance was not sufficient to cover all his client obligations. Britt was disbarred on June 12, 2014. The board previously reimbursed one other Britt client a total of \$22,880.95.

4. An award of \$1,100 to a former client of Derek R. Fletcher of Charlotte. The board determined that Fletcher was retained to handle a client's pending foreclosure matter. At the time, Fletcher was administratively suspended for failing to complete CLE and not allowed to take on new cases. Fletcher failed to provide valuable legal services for the client. Fletcher was suspended on December 1, 2014.

5. An award of \$63,706 to a trust where

Thomas F. Foster of High Point was the appointed trustee. The board determined that Foster misappropriated funds from the trust. Foster was disbarred on April 17, 2015.

6. An award of \$100,000 to a trust created by the husband of a client of L. Pendleton Hayes of Pinehurst. The board determined that Hayes handled the client's husband's trust and estate. Hayes deposited trust assets into her various accounts and appropriated some of the trust's assets for her own use. Hayes was disbarred on November 21, 2014. The board previously reimbursed five other Hayes clients a total of \$60,308.57.

7. An award of \$850 to a former client of Reid C. James of Gastonia. The board determined that James was retained to handle a client's custody matter. James failed to provide any valuable legal services for the fee paid prior to being suspended from the practice of law. James was disbarred on April 27, 2015.

8. An award of \$75,000 to a former client of Freddie Lane Jr. of Fayetteville. The board determined that Lane was retained to handle a client's equitable distribution (ED) claim. That client had a workers' compensation claim being handled by a different attorney. When the workers' compensation case settled, the court ordered the settlement proceeds to be deposited into Lane's trust account until resolution of the ED case. Lane was authorized to disburse \$500/month to each of the parties as long as the balance of at least \$70,000 remained. Lane disbursed nine checks to the client and seven checks to the client's former spouse leaving a balance of \$75,000. Due to misappropriation, Lane's trust account balance is insufficient to pay all of his client obligations. Lane was disbarred on November 20, 2014. The board previously reimbursed two other Lane clients a total of \$105,000.

9. An award of \$44,000 to a former client of Clinton Orville Light of Eden. The board determined that Light was retained to handle estate and guardianship matters for a client and the client's family members. Light was paid a fee by the client for the preparation of

a POA for a family member that the family member was incompetent to sign. Light was paid to prepare a guardianship petition for the client's family member that he failed to prepare in time for the petition to be filed. Light charged the client \$10,000 to find a family member's bank account that he could have found, or discovered did not exist, with one phone call. Light charged the client exorbitant fees to handle his brother's estate, and failed to provide valuable services for the fee paid. Light concealed fees paid to him by his client by making false statements about why payments were made to his client from the estate in filings with the clerk. Eventually, the clerk did not approve of Light's fees and ordered him to reimburse the estate. Light then filed bankruptcy to avoid reimbursing the fees to the estate. Light was transferred to disability inactive status on September 9, 2015.

10. An award of \$36,270.04 to the estate of a former client of Hugh F. McManus IV of Wilmington. The board determined that McManus was retained to file a wrongful death claim on behalf of a client's brother. McManus settled the matter, but failed to make all the proper disbursements after taking his fee from the funds. McManus' client died after the settlement. Due to misappropriation, McManus' trust account balance is insufficient to cover all of his client obligations. McManus was suspended on November 3, 2014. The board previously reimbursed one other McManus client a total of \$6,112.04.

11. An award of \$100,000 to former clients of Kevin Strickland of Burgaw. The board determined that Strickland represented the clients in a real estate transaction. Strickland represented to the clients that he could act as a qualified intermediary holding their sale proceeds for future investments to avoid the tax consequences of the real estate sales by investing them in a like-kind exchange. Strickland misappropriated the clients' funds. Strickland was disbarred on December 31, 2008. The board previously reimbursed three other clients a total of \$112,000. ■

Annual Reports of State Bar Boards

Board of Legal Specialization

Submitted by Laura D. Burton, Chair

With the addition of 74 new specialists last November, there are now 958 certified legal specialists in North Carolina. The State Bar's specialization program certifies lawyers in 11 specialties (listed on the addendum to this report). This spring we received 96 applications from lawyers seeking certification. Of the 2015 applicants, 87 met the substantial involvement, CLE, and peer review standards for certification and were approved to sit for the specialty exams, which are being administered in the State Bar building this month and next. Administering the specialization exams in the State Bar building continues to be a great benefit to our program. The building provides a comfortable, quiet, and cost-free location for exams and an opportunity for many State Bar members to become acquainted with "their" State Bar building for the first time.

In May of this year, the Board of Legal Specialization held its annual luncheon to honor 25-year and newly certified specialists at the new Mecklenburg County Bar Building in Charlotte. The Mecklenburg County Bar Building is a fine facility and a great resource for the members of the 26th Judicial District Bar. At the lunch, the specialists who were certified in November 2014 were recognized and presented with specialization lapel pins. The board also recognized 11 specialists who were originally certified in 1990 and who have maintained their certifications for 25 years. I also had the honor of presenting the board's three special recognition awards named in honor of past chairs of the board. The Howard L. Gum Excellence in Committee Service Award was given to John J. Korzen, an appellate practice specialist, for his considerable knowledge and leadership in the annual revision of the appellate practice examination. The James E. Cross Leadership Award was presented to Wade Harrison, who is a family law specialist with a long history as an esteemed CLE presenter, leader of the American Academy of

Matrimonial Lawyers, and planner of the annual convention of North Carolina and South Carolina family law sections. The Sara H. Davis Excellence Award was presented to Kenneth Shanklin, certified in real property law, for serving as an exceptional role model for other lawyers, practicing with the highest ethical standards, and consistent willingness to share his knowledge and experience with other lawyers.

In conjunction with the luncheon, the board held its annual retreat in the Mecklenburg County Bar building with 15 specialty committee members in attendance. We also presented a CLE program for the specialists attending the luncheon. The CLE was a two-hour program with presentations on "What an Elder Law Specialist Can Teach a Non-Elder Law Attorney," instructed by elder law specialist Lisa Salines-Mondello, and "Getting Lost in Our Own Lives," instructed by Robynn Moraites, director of the State Bar Lawyer Assistance Program. This free CLE program was very well received. We look forward to providing additional limited-scope educational programming for specialists in the future.

At the annual retreat, the board considered an application to create a specialty in utilities law and determined that this is an appropriate practice area for specialty certification. Seven lawyers were appointed to the initial Utilities Law Specialty Committee, and five lawyers were appointed to an advisory committee. The committee is chaired by Henry C. Campen Jr., who has practiced in the area of utilities law for over 25 years. (A list of all committee members is included in the addendum to this report.) The 12 volunteer lawyers drafted proposed standards for the new specialty which are before the council today with a request to publish for comment. We hope that the council will look favorably on this important new specialty.

I am happy to report on the success of the Jeri L. Whitfield Legal Specialty Certification Scholarship Fund established last year to provide scholarships for specialization application

fees for prosecutors, public defenders, and nonprofit public interest lawyers who wish to become certified specialists. The scholarship fund was created to help eliminate costs as a barrier to certification for public interest lawyers. The fund is administered by the North Carolina Legal Education Assistance Foundation (NC LEAF). We received several donations during the specialists' luncheon in May, and several specialists made donations when paying their annual specialization fees. There was also a heartfelt donation made in memory of estate planning law specialist and former specialization board chair Christy Reid, who passed away in 2014. The total amount donated in 2015 was \$1,335. All contributions are tax-deductible and can be made through NC LEAF. I am pleased to report that three applicants received scholarships this year.

Also in this year's specialization news, Alice Mine, the director of our program, finished her term as chair of the ABA Standing Committee on Specialization, the leading national proponent of lawyer specialty certification. In the area of communications, the board launched a Twitter account and the State Bar *Journal* featured interviews with Afi Johnson-Parris, family law specialist and 18th Judicial District Bar president from Greensboro; Lisa Salines-Mondello, an elder law specialist practicing in Wilmington; and Kimberly R. Coward, real property specialist and new specialization board member practicing in Cashiers. The board also began to study whether an emeritus status for inactive and retired specialists should be created and, if so, the parameters for this status. Finally, the board approved the use of ExamSoft, an efficient, secure, cloud-based software for the administration of the specialty exams. The new software will allow applicants to take the exams online. It will also allow online grading of the specialty exams, and exam question "banking" for easy archiving and retrieval of exam questions. The addition of this software is an important turning point for the administration and grading of the

certification exams.

Jim Angell's term as board member and chair ended this year. During his term as chair of the Board of Legal Specialization from 2014 to 2015, Jim set visionary goals for the specialization program including enhanced efforts to reach the benchmark of 1,000 certified specialists (which is within reach this year); the creation of a handbook for the specialty committees in which the procedures for reviewing applications will be specified; and continued progress toward standardizing the format of the exams and the process for establishing the cut scores for the exams. Throughout his chairmanship, Jim used his enthusiasm for specialization, together with gentle persuasion, personal integrity, and an open mind, to guide the board and the staff through important decisions regarding the hearing and appeals rules, exam guidelines, long range planning, and marketing for the specialization program. Jim's unselfish dedication to the specialization program will be sorely missed by the members of the board and by the staff.

On behalf of the board, I want to express my sincere appreciation to the members of the council for your continuing support of the specialty certification program.

Board of Continuing Legal Education

Submitted by Amy P. Hunt, Chair

Lawyers continue to meet and exceed their mandatory CLE requirements. By mid-March 2015, the CLE department processed and filed over 24,800 annual report forms for the 2014 compliance year. I am pleased to report that 99% of the active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2014. The report forms show that North Carolina lawyers took a total of 355,475 hours of CLE in 2014, or 15 CLE hours on average per active member of the State Bar. This is three hours above the mandated 12 CLE hours per year.

The CLE program continues to operate on a sound financial footing, supporting the administration of the CLE program with the revenue from the attendee and noncompliance fees that it collects, while generating additional funds to support three programs that are fundamental to the administration of justice and the promotion of the professional conduct of lawyers in North Carolina. The program's total 2014 contribution to the operation of the Lawyers Assistance

Program (LAP) was \$198,243 with \$118,321 paid in 2014 and \$79,922 paid in early 2015. To date in 2015, the board has collected and distributed \$125,596 to support the work of the Equal Access to Justice Commission and \$166,288 to support the work of the Chief Justice's Commission on Professionalism. The board also contributed \$51,553 to the State Bar to cover the cost of administering the CLE-generated funds for these other programs.

In our annual report last year, we informed the council of the hundreds of requests for exemptions from the CLE requirements that the board receives every spring. The Exemptions Committee, comprised of one board member, is appointed to hear these requests. A committee of one has the flexibility to resolve these requests in a timely and efficient manner. Given the magnitude of this voluntary assignment, we respect the board member's desire to remain anonymous and thereby avoid personal requests (or recriminations). This year the Exemptions Committee has heard and decided 560 requests for exemptions. As we did last year, the members of the board want to express our great appreciation for the work of this committee.

This year the CLE Board reconsidered the prohibition in the CLE rules on granting CLE credit to "in-house" CLE programs at law firms. It also studied the requirements for accredited sponsor status and concluded that the requirements should include a more meaningful assessment of the quality of programming presented by a sponsor seeking accredited status. Rule amendments on accreditation of sponsors will be proposed next year. The board's deliberations led to several proposed amendments to the rules governing the program including amendments to Rule .1517(e) to clarify the meaning of "professional school" in the exemptions for members who teach law-related courses; amendments to Rules .1513 and .1606 to increase the attendance fee to \$3.50 per credit hour to provide additional financial support to the Equal Access to Justice Commission; amendments to Rule .1518 to require presenters of Professionalism for New Attorneys programs to be accredited sponsors; and, finally, amendments to Rule .1602 to allow private/in-house CLE on professional responsibility and professional negligence if the presenters are pre-qualified.

Regrettably, the board term of Judge Julius

J. Corpening II, the chief district court judge in New Hanover County, has come to an end. Judge Corpening has been an insightful member of the board and will be missed.

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

Board of Paralegal Certification

Submitted by G. Gray Wilson, Chair

I start with the end of the year for the paralegal certification program rather than the beginning because we had an auspicious ending. Last Friday the Board of Paralegal Certification celebrated its tenth year of certifying paralegals with a luncheon honoring the first 200 certified paralegals. The first application for certification was accepted by the board on July 1, 2005. Since that date, 7,069 applications have been received by the board, and I am proud to report that there are currently 4,123 North Carolina State Bar certified paralegals. At the luncheon, CPs number 1 and 2, Tammy Moldovan and Sherri Wall, spoke to the audience of 70 about the genesis of paralegal certification in North Carolina. They told how an ad hoc group of paralegals representing various paralegal organizations got together over 20 years ago to form the Alliance for Paralegal Professional Standards to plan how to take their profession to the next level. Mike Booe, the chair of the State Bar committee that studied whether and how to create a certification program, and who then went on to serve as the first chair of the inaugural Board of Paralegal Certification, shared his reflections on the importance of paralegal certification to both the paralegal profession in North Carolina and to the State Bar—reminding the audience that the program has contributed over \$600,000 for the construction of the State Bar building and for IOLTA. The luncheon was a reunion for many CPs and lawyers who were involved in the early years of the program, and both speakers and guests shared memories and congratulations. More than a few in attendance had moist eyes.

In spring 2015, following the April certifi-

cation exam, the board granted 91 new paralegal certificates. This fall, 160 applicants registered to take the October certification exam; the results of the October exam will be released following the November meeting of the board. During the past 12 months, the board administered the exam to approximately 300 applicants for certification. Also in 2015, the paralegal department processed 4,008 recertification applications, and the board qualified or reapproved five paralegal studies programs.

To maintain certification, a certified paralegal must earn six hours of continuing paralegal education (CPE) credits, including one hour of ethics, every 12 months. I am pleased to report that certified paralegals have continued to improve their competency by taking over 24,000 hours of CPE in the last 12 months.

The board held its annual retreat in May at the Grandover Hotel in Greensboro. As in every year since the board was created in 2004, all board members were present for the retreat. At the meeting, in its continuing effort to enhance the character and fitness requirements for certification, the board agreed to propose a revision to the standards for certification, set forth in Rule .0119 of the Plan for Certification of Paralegals, to specify that an individual who has engaged in the unauthorized practice of law or who has had a state or federal occupational or professional license suspended or revoked for misconduct, cannot be certified. Also at the retreat, the board continued its study of Washington State's Limited License Legal Technician Program (LLLT program). At the request of the officers last year, the board has been monitoring the LLLT program to determine whether it is beneficial to the citizens of Washington and should be considered in NC. To date, only one class of LLLTs has graduated from the required educational program, and it is yet to be determined whether these graduates will provide limited legal services directly to the public at a reduced cost in accordance with the goals of the program. The board has not reached any conclusions about the LLLT program, and will continue to monitor it and to report to the officers.

Like many State Bar programs, paralegal certification relies on dedicated volunteers who serve on the board and its committees. The Certification Committee writes the exam, and the Item Writing Workshop generates ideas for exam questions.

The Board of Paralegal Certification looks forward to its second decade of success certifying qualified paralegals to help with the delivery of legal services to the citizens of North Carolina.

Lawyer Assistance Program

Submitted by Robynn Moraites, Director

The Lawyer Assistance Program (LAP) has had a busy year. A comprehensive annual report can be found at nclap.org/wp-content/uploads/2015/09/2014-2015-LAP-Annual-Report.pdf. We currently have 494 open and active cases, having opened 135 client files and closed 69 files in the 2014-2015 reporting year. We currently have just over 200 active volunteers across the state who are invaluable in the accomplishment of our mission. The ratio of addiction to mental health cases remains fairly consistent with alcoholism and depression remaining the two most prevalent issues with which lawyers struggle. The percentage of lawyers who refer themselves to our program remains very high (52% this year), an indicator that our CLE and outreach efforts are effective. LAP gave at least 89 live CLE presentations this year.

We welcomed Nicole "Nicki" Ellington to our staff in October 2014 to serve as our eastern region clinical coordinator. Nicki has been a counselor since 2005. She is a Licensed Professional Counselor (LPC) and Licensed Clinical Addictions Specialist (LCAS). She came to us with a background that includes assisting our military men and women, specializing in working with members of elite forces with substance abuse and mental health issues. She has been a quick study of the dynamics of working with our clients.

LAP has furthered the initiatives begun in previous years. Sidebar, our quarterly e-newsletter, continues to receive positive reviews and to grow its subscriber base. The LAP Minority Outreach Conference, held in February in Chapel Hill, remains one of our most popular offerings and consistently fills to capacity. LAP remains the official provider of the work-life balance CLE credit hour as part of the mandatory, state-wide Professionalism for New Admittees (PNA) program.

LAP's collaborative partnership with the NC Bar Association's Transitioning Lawyer Commission (TLC) (for older lawyers needing to transition out of practice) continues as well. The LAP recommended, and the State Bar Council granted, a five-year extension of

the TLC's status as a lawyer assistance program. The TLC and LAP will continue to cross refer and work together on cases involving lawyers who need to transition out of practice in a supportive way.

LAP has also developed a speakers' bureau comprised of 43 volunteers across the state who have been trained to give certain high-demand CLE programs in addition to the 100 or so volunteers who currently present personal recovery stories at CLE presentations. As part of that effort, we had an additional 25 LAP volunteers attend training this year to be specialized speakers for the presentation entitled, "Getting Lost in Our Own Lives." This program is a general CLE program that is always in demand and has been adapted for use at PNA programs. With this training, our LAP presentation and information is consistent across presentations, and we reached every newly admitted lawyer in NC in the 2014-2015 admissions year.

As we have seen over and over again in the 36 years since our inception, lawyers who reach out to our program and follow our suggestions become the most emotionally resilient, happiest, and balanced lawyers in the state. We at LAP have been fortunate to witness countless lives transformed as well as the resulting community and fellowship that has emerged out of this shared journey of personal transformation. Amazing things are possible when one lawyer shares experience, strength, and hope with another. For this reason, our outreach efforts will always remain a top priority. ■

Law School Briefs (cont.)

program, and he is on the research faculty at the medical school. Edwin Shoaf (JD '14) is the program's initial administrator and research fellow. He was recently the lead author of a policy brief discussing Medicaid reform in North Carolina, which was featured in the *Charlotte Observer* and *Bloomberg Business*, among other media. He is currently involved in research in the areas of health care reform, Medicaid expansion, and the Patient Protection and Affordable Care Act. The Health Law and Policy Program is being launched with the support of Charlie Trefzger (JD '84), a leader in the long-term care industry and a member of the Law Board of Visitors. ■

February 2016 Bar Exam Applicants

The February 2016 bar examination will be held in Raleigh on February 23 and 24, 2016. Published below are the names of the applicants whose applications were received on or before October 31, 2015. Members are requested to examine it and notify the board in a signed letter of any information which might influence the board in considering the general fitness of any applicant for admission. Correspondence should be directed to Lee A. Vlahos, Executive Director, Board of Law Examiners, 5510 Six Forks Rd., Suite 300, Raleigh, NC 27609.

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James Alexander Charlotte, NC	Truman Barker Thomasville, NC	Kendall Bourdon Charlotte, NC	John Cargill Raleigh, NC	Paul Cox Sanford, NC
Noah Allen Charlotte, NC	David Barnes Raleigh, NC	Brittany Bowab Charlotte, NC	Jonathan Carnes Rolesville, NC	Jason Craig Elon, NC
Ryan Ames Charlotte, NC	Derek Bast Charlotte, NC	Tamara Bowles Cary, NC	Whitley Carpenter Raleigh, NC	Brentley Cronquist Baltimore, MD
Lucy Anderson Midland, NC	Zachary Beasley Currituck, NC	Marla Bowman Wilson, NC	Dillon Carter Raleigh, NC	Lindsay Curtis Raleigh, NC
Scott Anderson Durham, NC	Daniel Beaulieu Durham, NC	William Boyer Greensboro, NC	Brittany Cartner Charlotte, NC	Blinn Cushman Greensboro, NC
Alexandria Andresen Charlotte, NC	John Beck Norwalk, CT	Chadwick Boykin Raleigh, NC	Dylan Castellino Chapel Hill, NC	Katherine Custis Knightdale, NC
Matthew Andrews Galax, VA	Michael Becker Charlotte, NC	Daniel Brader Raleigh, NC	Christopher Castro-Rapp Raleigh, NC	Alexandra Davis Raleigh, NC
Scott Andron Ft. Lauderdale, FL	Joshua Bell Dallas, NC	Ellen Bragg Monroe, NC	Kristopher Caudle Raleigh, NC	Justin Davis Davidson, NC
Erika Angles Winston-Salem, NC	Alisha Benjamin Raleigh, NC	Megan Bramhall Fuquay Varina, NC	David Caulder Rutherfordton, NC	Kali Davis Clayton, NC
Christie Anthony Raleigh, NC	Daniel Bensley Raleigh, NC	Thomas Bridges Shelby, NC	Lisa Chadderdon Charlotte, NC	Nicholas Davis Cornelius, NC
Brianne Appnel Charlotte, NC	Frederick Benz Durham, NC	Benjamin Brodish Raleigh, NC	Tien Cheng Philadelphia, PA	Joshua Dearman Statesville, NC
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Tricia Argentine Bryson City, NC	Karen Bestman Salisbury, NC	Terry Brown Charlotte, NC	Brady Ciepielinski Charlotte, NC	Sjaan Demmink Raleigh, NC
Marcia Armstrong Four Oaks, NC	Ian Biggs Greensboro, NC	Tyler Bruce Pickens, SC	Justin Ckezepis Cornelius, NC	Damjan Denoble Durham, NC
Leah Arnold New Bern, NC	Jonathan Billak Charlotte, NC	Amanda Bryan Hillsborough, NC	Jaqueline Cobb Raleigh, NC	Kristen Dewar Charlotte, NC
Max Ashworth Fuquay-Varina, NC	Elizabeth Binion Charlotte, NC	Melissa Bryson Charlotte, NC	Matthew Cockman Graham, NC	Gabriel Diaz Cary, NC
Vera Attaway Raleigh, NC	William Blackton Cary, NC	Dylan Buffum Durham, NC	Ashley Coghill Raleigh, NC	LaRita Dingle Summerton, SC
Brandon Atwood Fayetteville, NC	Zachary Blackwell Durham, NC	Jaimee Bullock Pollocksville, NC	Daniel Cole Chapel Hill, NC	Richard Dingus Durham, NC
Elizabeth Austin Raleigh, NC	Hilary Blackwood Mt. Holly, NC	Hailey Bunce Stedman, NC	Michael Coletta Siler City, NC	Andrew Dinkelacker Charlotte, NC
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Robinson Williams
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