

THE NORTH CAROLINA STATE BAR

JOURNAL

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Jennifer R. Duncan

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An Interview with New President John M. Silverstein

Q: What can you tell us about your upbringing?

I grew up in Charleston, WV, during the 1950s. My father and grandfather worked in a family business that operated in Charleston for over 100 years. In those days, Charleston was idyllic, but isolated, and in 1960 my parents sent me to the Gilman School in Baltimore, which was my mother's home town. Following four years at Gilman, I attended Colgate University in Hamilton, New York.

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

It was more an evolutionary process than an early decision. Some events I remember from my youth portended an inclination toward issues of public interest. I recall the day the principal announced the integration of my elementary school, which occurred without incident. I also remember riding my bike to see Senator John F. Kennedy campaign during the 1960 West Virginia primary, which he won to the surprise of pundits who predicted his Catholicism would impact his ability to attract votes in the Bible belt. However, my actual decision to attend law school was not made until relatively late in my college career.

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

I spent almost five years in the Attorney General's Office at the beginning of my career. When I was hired, Robert Morgan was the AG, and I also worked under Jim Carson and Rufus Edmisten. It was a great place to work. When I started, former Chief Justices I. Beverly Lake Jr. and Burley Mitchell were on the staff, as were future Chief Judge Sid Eagles, the first woman to be president of the State Bar, Ann Reed, and my future law partner, Howard Satsky. Former Chief Judge Gerald Arnold—Robert Morgan's law partner—was a frequent pres-



John M. Silverstein is sworn in as president by Supreme Court Justice Mark Martin, with his wife, Leslie, looking on.

ence, and NC Court of Appeals Judge Bob Hunter came to the office with Jim Carson. I was also involved in the summer internship program, which included Associate Justice Jimmy Ervin and former Superior Court Judges Jody Turner and Allen Cobb. Howard and I formed Satsky & Silverstein in 1976, and I did a little bit of everything before concentrating mostly in real estate and administrative law. Howard's son Keith joined us almost 25 years ago, and David Gadd took over my real estate practice when he joined the firm in February 2016. Presently I continue to represent the NC Board of Physical Therapy Examiners, which has been a client for over 40 years, and I also represent town councils and boards of adjustment in quasi-judicial hearings.

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

The "why" is easier than the "how." My partner, Howard Satsky, was a councilor in the 1990s, and I attended a few State Bar meetings when I was president of the 10th District Bar in 1994. I was impressed with the people I met, and knew from Howard's description of his experience that I would also enjoy being involved with the State Bar. In 2007 there were three positions on the council to be filled from Wake County. After a series of elections and a resignation, I was elected to the third of the three spots.

Q: How has the work of the State Bar changed since you first became involved?

While the focus of the State Bar remains centered on the implementation and enforce-

ment of the Rules of Professional Conduct, the work of the State Bar now includes responding to developments in the delivery of legal services—a more consistent presence in the General Assembly—and greater efforts to improve communications with the public and stakeholders.

Q: A few years ago, during the construction of the State Bar's new headquarters, you chaired the Facilities Committee. What was that experience like? What do you think about the building itself? Is it too nice?

I am glad you asked about the Facilities Committee. I had the good fortune to be the final chair of that committee, but others did much more than I did to envision and complete the project. Past-Presidents Hank Hankins and John McMillan were the driving forces behind securing the land for the new building, and giving life to the project. Past-Presidents Bonnie Weyher and Keith Kapp preceded me as chairs of the committee during the planning stages. Past-President Tony di Santi shepherded the approval through the Council of State, and Past-Presidents Jim Fox and Ron Baker served while the building was being constructed. By the time I became chair, the building was well under construction.

I believe the building is exactly what we needed and what we intended it to be. The two upper floors house staff offices, work areas, and files arranged in a manner conducive to the efficient completion of the work of the State Bar. The lower two floors are primarily public areas, except the LAP offices, which have a separate entrance. In addition to two courtrooms and meeting rooms, there is an area on the first floor for use by any member of the State Bar who needs conference or meeting facilities, or a quiet place to work.

Several features that have enhanced the aesthetics, efficiency, and use of the building—including a fine collection of works in various media by NC artists, upgrades to aesthetics and technology in the courtrooms, and upgrades in furnishings and fixtures—were funded solely by contributions to the NC State Bar Foundation, and were not financed by dues or public monies.

I am proud of the building and my small role in its completion. It has not only replaced the woefully inadequate space formerly occupied by the State Bar staff, the new space is also truly a public building, having already served as the site of many public meetings and functions in addition to serving the

administrative needs of the State Bar.

Finally, the building occupies a prominent location in the Capitol Square district near the Governor's Mansion, Legislative Building, buildings housing the North Carolina Supreme Court and North Carolina Court of Appeals, and the Capitol. The State Bar is pleased to have been granted a parcel located in the heart of the governmental complex, and I believe we have a headquarters that symbolizes the strength and importance of the legal profession while also serving as a building for the people.

Q: You also chaired the Grievance Committee, which some people regard as the most important job at the State Bar. What did that involve and what did you learn from your work with the disciplinary program?

There are three grievance subcommittees, each with 12-15 members, all of whom are thoroughly prepared to discuss the cases on their agendas each quarter. I spent seven years on a Grievance subcommittee before serving two years as chair. The administrative rules give the chair significant responsibilities. The chair must approve all complaints filed in the Disciplinary Hearing Commission, as well as all settlements with respondents. The chair signs all letters of caution, letters of warning, admonitions, reprimands, and censures issued by the Grievance Committee. Finally, all outright dismissals must first be approved by the chair. With approximately 1,300 grievances filed each year, it is a time-consuming position. It was also rewarding to be able to work directly with the staff attorneys responsible for handling grievance investigations, all of whom I found to be dedicated to making the process as fair as possible to both complainants and respondents.

Q: In your opinion, does it make sense for lawyers to be regulating themselves? Is it good public policy? Do we deserve the public's trust?

I am a proponent of professional self-regulation. While public members provide valuable perspectives and checks on unnecessary regulation, I do not believe the public would be served any better by the Rules of Professional Conduct being interpreted and enforced by nonlawyers than it would be by allowing people who are not licensed attorneys to serve as judges. The State Bar Council consists of 65 attorneys from diverse geographic and practice areas and three public members who work together to craft solu-

tions related to issues arising from the practice of law. We strive to improve, but we have done a credible job for 84 years, and there is no reason to believe we will not continue to do so.

Q: Your predecessor put a great deal of emphasis on increasing the State Bar's "engagement" with its constituent lawyers and various other "stakeholders." Why is that important and what would you like to see happen in that regard?

A recent survey conducted by the State Bar's Publications Committee revealed that only a small percentage of NC attorneys wish to be treated by the State Bar with benign neglect, and that most others, one way or another, wish to be apprised on a regular basis of the activities of the State Bar. While the State Bar *Journal* remains a popular and effective way to communicate with members regarding, among other subjects, amendments to rules, disciplinary actions, and proposed ethics opinions, in this age of the 24-hour news cycle, the *Journal* is not designed to be nimble or timely. Under Mark Merritt's leadership, the council voted to establish a Communications Committee to oversee publications, social media, and technology. We are committed to create platforms for the public and lawyers to engage with the State Bar on matters of mutual interest, and to provide information on significant issues on a more regular and timely basis.

Another prong of Mark's initiative was to propose regular meetings with stakeholder groups to exchange information. Earlier this year we hosted the judges of the court of appeals at the State Bar headquarters for our first session. We heard from Chief Judge Linda McGee regarding plans for the celebration of the 50th anniversary of the court of appeals, and State Bar officers and staff explained the workings of the State Bar through its committees, boards, and commissions. It was extremely well received by both groups, and Mark has agreed to help plan further similar initiatives, which we hope will eventually be scheduled on a regular basis.

Q: This past year the State Bar appointed a member of its staff to act as "legislative liaison." Does this foreshadow the agency's increased involvement in legislative matters? If so, how can the State Bar and its membership be most effective in promoting its agenda?

Most importantly, the State Bar does not have an agenda. State agencies—and the

State Bar is a state agency—are permitted to designate an employee as a “legislative liaison,” and Tom Lunsford has wisely designated Peter Bolac to this position. Rather than functioning as a lobbyist, Peter serves as the eyes and ears of the State Bar in the General Assembly, and advises us when legislation is being considered that impacts the practice of law. There are limits on the State Bar’s involvement. Unless legislation would impact Chapter 84 of the General Statutes, as a state agency whose revenues are provided by mandatory dues, we are prohibited from taking positions on issues deemed political. For example, in the last session of the General Assembly, a bill was introduced to reduce State Bar dues to a level that would have, within one year, eliminated the resources necessary to investigate grievance complaints. Mark Merritt, Peter, and councilors were active and effective in explaining the ramifications of such a proposal to the members of the committee to which the bill was assigned, and it did not receive a favorable report. On the other hand, redistricting proposals that would directly impact the number of bar councilors have been introduced, but that is not a subject we can address because it is a political issue. As the General Assembly becomes more active in oversight activities, we can expect Peter to spend an increasing amount of time at the legislature. Bar councilors will also continue efforts to contact individual legislators to provide relevant information on issues that impact the practice of law.

Q: Recently, the State Bar approved rules proposed by the Board of Law Examiners to implement the Uniform Bar Examination (UBE). Those rules are presently being reviewed by the Supreme Court. What is the UBE? Do you have an opinion as to whether it ought to supplant the bar examination as we now know it? What role, if any, will the State Bar play in determining how applicants to the Bar will be tested in the future?

The Uniform Bar Exam consists of three parts: two multi-state performance tasks (MPT), a multi-state essay exam (MEE), and a multi-state bar exam (MBE). Some states also include a state-specific component, as the NC Board of Law Examiners (BOLE) intends to do. More than half the states have adopted the UBE.

I support the UBE because I believe its portability removes unnecessary restrictions

on the ability of prospective attorneys to become licensed by making it more efficient for them to choose among several jurisdictions without having to commit to a particular state before taking its bar exam. I further believe that better organized mentor programs can provide practice aids that are not tested in bar exams.

Rules regarding the implementation of the UBE in North Carolina were proposed by the BOLE and published in the *Bar Journal*. No adverse comments were received. In general, rules regarding the implementation of or changes in examinations are proposed by the BOLE, then considered by the State Bar Council before being submitted to the Supreme Court for approval. That is the process that was followed for the rules related to the UBE.

Q: The State Bar’s current executive director will be retiring at the end of 2018 and will be succeeded by the long-time assistant director Alice Mine. Can you tell us how and why that decision was made? What will happen in the transition? What can we expect from the new executive director?

The selection of Alice Mine to succeed Tom Lunsford was proposed by Tom, and has been endorsed by virtually everyone who has been advised of Tom’s retirement, including past and present councilors, officers, and staff. As assistant executive director for nearly 25 years, Alice is already committed to the State Bar’s mission to protect the public, and understands how that mission has been implemented. She is not only admired and respected throughout the state, she also enjoys a national reputation as an expert in professional responsibility. As far as transitions and expectations are concerned, it is a bit premature to include specifics, but those issues will be a primary focus for the State

Bar officers and councilors this year.

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

Initially, teaching.

Q: Tell us about your family.

I married Leslie at the break between semesters during my second year in law school. We have known each other all our lives. Her grandmother played the piano at my grandparents’ wedding in 1910. We have two daughters. Amy lives in Chevy Chase, MD, with our son-in-law, Adam, and our granddaughter, Ellie. Amy is vice president of marketing and communications for KaBOOM!, a nonprofit that builds play areas for children in areas where opportunities for play are limited. Adam is founder and executive director of Critical Exposure, a DC nonprofit that teaches advocacy and photography skills to students, who use those skills to seek improvements to their schools. Ellie started school this year. Our other daughter, Beth, lives in Charlotte, and is human resources manager and Chief Financial Officer for Bank of America Merrill Lynch. I also have a sister and brother-in-law who live in Raleigh, as do their two children and four grandchildren. My niece is married to the son of our councilor from the 5th district, Allen Cobb.

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

My predecessor, Mark Merritt, and my successor, Gray Wilson, are both acknowledged to be among the best and brightest attorneys in our state. They are also good people. Sandwiched between those artisanal administrations, I hope my administration is remembered as the slab of bologna that tasted pretty good. ■

2018 Meeting Schedule

Below are the 2018 dates of the quarterly State Bar Council meetings.

January 23-26

NC State Bar Headquarters, Raleigh

April 17-20

NC State Bar Headquarters, Raleigh

July 24-27

Carolina Hotel, Pinehurst

October 23-26

NC State Bar Headquarters, Raleigh

(Election of officers on October 25, 2018, at 11:45 am)

Flood of New Court Fees Drown Indigent Defendants

BY DAVID E. CLARK AND KEVIN J. MURTAGH

“Do not accustom yourself to consider debt only as an inconvenience; you will find it a calamity.”—Samuel Johnson¹

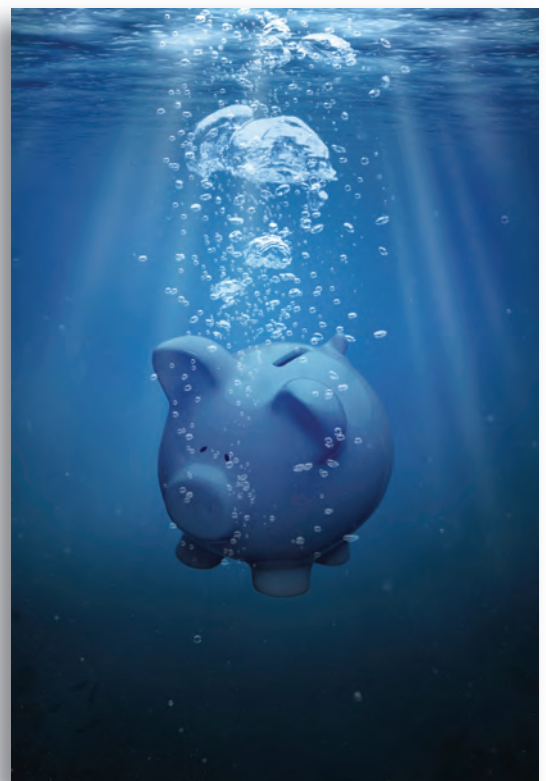
The North Carolina criminal justice system shackles defendants with monetary costs at nearly every stage of the criminal process from arrest² to incarceration.³ Since 2011, the vast majority of these costs apply automatically in every criminal case.⁴ For indigent defendants—those who a court has determined are too poor to contribute to their representation—these court costs quickly turn to state-owed debt. This subjects indigent defendants to arrest and incarceration in modern day debtor’s prisons for failure to pay debts the court has already concluded the defendant cannot afford.⁵ In addition to fines,⁶ interest,⁷ and penalties for not being able to pay immediately,⁸ defendants are required to pay “user fees”⁹ to keep the court system operating.

In North Carolina, criminal court costs and user fees have been steadily rising, far outpacing the rate of inflation,¹⁰ over the past two decades. For example, between 1995 and 2015, criminal court costs rose at approximately five times the rate of inflation.

(Average yearly inflation in the US from 1995-2015 was 2.7%, while the average NC criminal court costs increased in the same period by 15.3%.)

Not only has the monetary cost of these fees increased exponentially, but the number

of fees has grown as well. Upon conviction, criminal defendants—including the indigent—are required to pay a litany of fees to support causes ranging from “supplemental pension benefits of sheriffs”¹¹ to “staffing and operations of the Criminal Justice Education



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and Standards Commission.”¹²

In years past, trial judges were allowed to waive some fees for defendants too poor to pay them if the court found “just cause” and issued a “written order, supported by findings of fact and conclusions of law.”¹³ Starting in 2014, the Administrative Office of the Courts has been statutorily mandated to produce an annual report that aggregates “the waivers by the district in which the waiver or waivers were granted and by the name of each judge granting a waiver or waivers.”¹⁴ Still, judges willing to weather the scrutiny (some may say shaming) engendered by this report could exercise their discretion to waive fees in appropriate cases. However, in June of this year the North Carolina legislature passed a bill aimed at making waiving criminal court fees nearly impossible. The new statute requires that trial judges give 15 days notice via first class mail prior to the hearing date to all “government entities” potentially affected by court fees before they are allowed to waive any court fee.¹⁵ Of course, when court calendars can consist of hundreds of defendants each day in the larger cities, divining whether any particular defendant will ask for a fee waiver and then notifying all interested parties 15 days in advance of that defendant requesting a waiver is impossible. Notifying all interested parties by first class mail for every defendant in every courtroom on every day of court is not only contrary to reason, but also thoroughly impractical in execution. For example, in cases where a defendant requests a fee waiver, the court will have only two bad choices: (1) Summarily deny the defendant’s request without argument, a probable Sixth Amendment violation;¹⁶ or (2) continue the sentencing hearing so the court may notify all affected “government entities,” further straining limited resources and delaying cases in an already overworked court system.

The increasing burden that criminal court fees place on indigent defendants often results in punishment more severe than wealthier defendants, and even incarceration for no reason other than that their poverty prevents payment. Take, for example, two typical high school students—one from an indigent family, the other from a family with resources. Both students are arrested on the same day for possessing an unprescribed Ritalin pill to help them stay awake in class.¹⁷ Neither has a record and both plead guilty. In an attempt to be fair, the State offers both the first offender’s

program.¹⁸ Upon completion of this program, the State will dismiss the defendant’s criminal charge. In Guilford County, the program has a mandatory \$200 admission fee.¹⁹ The student with the means to pay does so and, after completing the program, walks away with no criminal record. The poor student, with no means to pay for the program, is saddled with a conviction and, typically, placed on probation for a year with a 45-day sentence hanging over his head. If he doesn’t find some way to pay all the standard court costs,²⁰ attorney fees,²¹ and probation fees,²² the State may attempt to revoke his probation and send him to jail for the 45-day term.²³ One student can buy his way out of the criminal charge; the other is shackled with a criminal record and possible jail time. The only difference: poverty.

Because the numerous criminal court costs are scattered throughout the General Statutes, the easiest way to see their true scope is to consult the “Court Costs and Fees Chart” from the Administrative Office of the Courts.²⁴ Each defendant who is convicted or pleads guilty is charged a fee that is statutorily mandated to support various entities within the criminal justice system.²⁵ The minimum costs in district court for infractions and misdemeanors are \$178 and \$180, respectively. In superior court, the minimum costs are \$205.²⁶ If a defendant makes a first appearance in district court and the rest of her case is handled in superior court, she may be charged both district and superior court fees, resulting in a total minimum cost of \$352.50. Appealing a district court conviction to superior court for a trial *de novo*²⁷ may result in being double-charged for the minimum court fees. These ever-increasing fees are indicative of the substantial efforts the North Carolina legislature has made to place an increasingly large burden on criminal defendants to fund the day-to-day operation of the court system.

Beyond these charges, which themselves can be highly burdensome to indigent defendants, dozens of other criminal fees can raise a defendant’s debt burden substantially. These include a \$60 non-waivable Appointment of Counsel Fee for Indigent Defendants,²⁸ a Community Service Supervision Fee of \$250,²⁹ and a Probation Supervision Fee of \$40 per month.³⁰ A Crime Lab Fee of \$600 is charged to a defendant who is convicted or pleads guilty when the State Crime Laboratory or another

North Carolina Court Costs

Year	District Court	Superior Court
2015	\$173	\$198
2014	\$173	\$198
2013	\$173	\$198
2012	\$173	\$198
2011	\$173	\$198
2010	\$126	\$146
2009	\$120	\$145
2008	\$116	\$141
2007	\$115	\$140
2006	\$115	\$140
2005	\$105	\$130
2004	\$95	\$120
2003	\$95	\$120
2002	\$95	\$120
2001	\$85	\$110
2000	\$85	\$110
1999	\$81	\$106
1998	\$61	\$68
1997	\$61	\$68
1996	\$46	\$53
1995	\$41	\$48

facility performs forensic testing. If that case goes to trial and the laboratory analyst is called as an expert witness, the defendant is charged an additional \$600 for the witness’ services.³¹

Before the passage of this year’s Appropriations Act, the \$600 fee was limited to “cases in which...the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant’s agent.”³² However, now a \$600 fee may also be charged in “cases in which...the laboratories have performed digital forensics, including the seizure, forensic imaging, and acquisition and analysis of digital media.”³³ Given the wide scope of the phrase “digital media”—text messages, social media messages, digital photographs, audio and video recordings, to name a few types—this new law has the potential to exponentially increase the number of defendants who have to pay laboratory fees.

As illustrated, these costs can result in substantial burdens on indigent defendants that go beyond the obvious effects of taking money out of the hands of people who are

already struggling to make ends meet. On top of the prospect of getting a criminal record or being incarcerated for failure to pay court debts, North Carolina allows some criminal justice debt to be collected in the same manner as civil judgments.³⁴ This results in the debt being filed with the county clerk and becoming available to credit reporting agencies,³⁵ which can result in substantial damage to credit scores, thereby minimizing prospects to obtain housing and employment.³⁶

Even after a defendant's court date, the State continues to exact payments from poor

individuals found guilty. Payment of these court costs is a regular condition of probation.³⁷ Defendants who are found to have willfully failed to pay are subject to incarceration. Under federal law, those who violate a term of their probation become ineligible for Temporary Assistance to Needy Families, Supplemental Nutrition Assistance Program benefits (formerly known as Food Stamps), low-income housing and housing assistance, and Supplemental Security Income for the Aged, Blind, and Disabled (Social Security).³⁸ While many states allow individuals with criminal justice debt to work it off

through community service, North Carolina does not present this as an option.³⁹ This leaves indigent defendants—many of whom have mental and/or physical impairments, limited education, and no significant job skills—with almost no way to get out from under these court debts and the threat of incarceration.

In examining the issue of criminal court costs and fees in North Carolina, it is instructive to keep in mind the national and international context, as well as the staggering financial costs of mass incarceration. The United States has less than 5% of the world's population, but almost 25% of the world's prisoners.⁴⁰ Per capita, this imprisonment rate is about six times higher than Canada and three times higher than Mexico.⁴¹ About one in every 120, or 54,300 individuals,⁴² are incarcerated at any given time in North Carolina.⁴³ 53% of them are incarcerated for non-violent offenses like drug possession or fraud.⁴⁴

NC Office of State Budget and Management

The cost to incarcerate these individuals in the state's prisons varies between \$64 and \$94 per day and averages \$29,965 a year per inmate.⁴⁵ All told, North Carolina spends more than \$1.2 billion dollars each year, or about 6% of the entire state budget,⁴⁶ operating the prison system.⁴⁷ Another \$463.8 million is spent to operate the judicial system.⁴⁸ An additional \$125 million is dedicated to Indigent Defense Services, whose main mission is providing constitutionally mandated legal services to impoverished defendants.⁴⁹

In North Carolina, the General Assembly funds the court system, known as the General Court of Justice. Historically, funding was provided by taxes collected from all North Carolinians. Over the last several decades, however, the legislature has made a determined effort to shift the cost of running the judicial system from taxpayers in general to court system users.

This shifting of costs in criminal court, charged in large part to indigent criminal defendants with almost no ability to pay,⁵⁰ has the effect of criminalizing poverty. It also makes a mockery of North Carolina's guarantee of Equal Protection of the Laws⁵¹ and does almost nothing to pay for "a fair, independent, and accessible forum for the just, timely, and economical resolution of their

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legal affairs.”⁵²

In 2014, 55% of all criminal defendants in North Carolina were determined, after an in-court indigency hearing, to be too impoverished to contribute to their representation.⁵³ 71% of the criminal cases handled in superior court involved indigent defendants.⁵⁴ Notwithstanding their destitute circumstances, judges often issue court fee judgments against indigent individuals imposing debts that can run into the thousands of dollars.⁵⁵

The legislative theory hinges on the notion that all this money will eventually be funneled back “[f]or support of the General Court of Justice.”⁵⁶ In the real world, however, the cost of collecting outstanding fees from indigent defendants is often greater than the amount of money collected. For example, in 2009 Mecklenburg County found itself with a significant budget deficit. A decision was made to aggressively attempt to collect outstanding court debt. 564 individuals who had fallen behind on their court debt were arrested, and 246 people who couldn’t pay in full right away were incarcerated. They were told that they would be released from jail if they paid the full amount of their debt. If they couldn’t pay the full debt, they would have to remain in jail until a judge decided whether to release them. The 246 people who couldn’t pay were held in jail for an average of four days before seeing a judge. These detentions cost the county in excess of \$40,000. Meanwhile, the county managed to collect a little more than \$33,000 from all the individuals who were arrested, resulting in a loss to the county of about \$7,000.⁵⁷

In criminal court, all court fee judgments carry the threat of incarceration. In theory, this isn’t an equal protection issue: pay the fee and no jail time for failure to pay. But in reality, it often works out as a prime example of treating one group completely differently than another. Take the case of community service: according to the statute, community service is available to anyone ordered to participate and who has the \$250 admission fee.⁵⁸ So when two individuals from opposite ends of the income spectrum are negotiating plea bargain terms, community service instead of jail as a punishment is only realistically available to the person with the money to pay for admission. With no money to purchase the community service option, the indigent person often winds up losing her freedom by doing a short active sentence, like

weekends in the local jail, which is seen as equalizing the punishments.⁵⁹ Even judges who recognize the futility of issuing monetary judgments against people with no ability to pay are stymied by fees, like the community service fee, which the North Carolina statute makes unwaivable.⁶⁰

In the past few decades, there has been a dramatic increase in criminal court costs and fees in North Carolina. Because most criminal defendants in North Carolina are indigent, they are often unable to pay these costs and fees, which then turn into state-owned debt. The recent changes to the law that introduced the notice provision for waivers and expand lab fees to cover “digital forensics” promise to substantially increase the debt burden on indigent defendants. While people of different political viewpoints may have diverging views on the fairness of increasing criminal court costs and fees, trapping defendants in a perpetual cycle of debt is unwise if we wish to reduce crime. When people are drowning in debt and unable to keep their heads above water, it should be no surprise that their prospects for reintegration decrease and their prospects for recidivism increase. Rolling back the recent increases in criminal court costs and fees is a cause that should have wide appeal. ■

David Clark is the senior assistant public defender for the Guilford County public defender. He earned a Rotary International scholarship to study law at Hertford College, Oxford University, UK. Upon returning to the United States, he enrolled at UNC School of Law where he graduated in 1986 and was commissioned as a first lieutenant in the United States Air Force. He came off active duty in 1991 but remained in the air force reserve until his retirement in 2009. He joined the Guilford County Public Defender’s staff in 1991. Over the years he’s tried in excess of 150 jury trials including eight fully litigated capital cases. He has also presented on a variety of legal subjects at numerous CLEs and educational events.

Endnotes

1. James Boswell, *The Life of Samuel Johnson, LLD*, 1185 (1791). Johnson knew about the evils of state power to enforce debt first hand. He was arrested multiple times for failure to pay very small debts, and in 1743 he watched his friend, fellow poet Richard Savage, die in a debtor’s prison for failure to pay a debt of £8.
2. See N.C. Gen. Stat. § 7A-304(a)(1), imposing a \$5 “service fee” for each arrest.



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3. See N.C. Gen. Stat. § 7A-313 & 128-49, imposing a \$10 fee for each day in jail pre-trial and \$40 post trial.
4. N.C. Gen. Stat. § 7A-304(a)(1), “In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or *nolo contendere*, or when costs are assessed against the prosecuting witness, the following costs *shall be assessed and collected*” (emphasis added).
5. Before criminal defendants may be represented by a public defender in North Carolina, they must fill out AOC form CR-226, an “Affidavit of Indigency,” in which they swear, “under penalty of perjury,” that they have no, or extremely limited, resources.
6. For example, North Carolina imposes a \$25.50 fine for every front-seat seat belt violation. See N.C. Gen. Stat. § 20-135.2A.
7. See N.C. Gen. Stat. § 24-1, imposing 8% interest rate on civil debt owed to the state.
8. See N.C. Gen. Stat. § 7A-304(f)
9. See N.C. Gen. Stat. § 7A-304.

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10. In 1995 the "General Court of Justice" fee, N.C. Gen. Stat. § 7A-304(4), was \$41; 20 years later it was \$147.50. This is an increase of 260%, or almost five times the rate of inflation in the United States, which rose 54% during the same period.
11. N.C. Gen. Stat. § 7A-304(3a).
12. N.C. Gen. Stat. § 7A-304(3b).
13. See N.C. Gen. Stat. § 7A-304.
14. N.C. Gen. Stat. § 7A-350. The 2017 Report on Criminal Costs Waivers can be found here: unc.live/2zdXUmX.
15. Appropriations Act of 2017, N.C. Sess. Laws 2017-57, § 18B.6. Under this act, N.C. Gen. Stat. § 7A-304 is amended to read: "[n]o court may waive or remit all or part of any court fines or costs without providing notice and opportunity to be heard by all government entities directly affected."
16. Although this specific issue has not been addressed in North Carolina courts, other states have concluded that not holding an "ability to pay" hearing before imposing criminal court fees is unconstitutional. See, *State v. Morgan*, 173 Vt. 533, 536, 789 A.2d 928, 931 (Vt. 2001) ("[W]e hold that, under the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount ordered...."); C.f., *State v. Blazina*, 344 P.3d 680, 685 (Wash. 2015) The sentencing judge must make "an individualized inquiry into the defendant's current and future ability to pay before the court imposes [criminal court debt]."
17. This is a class one misdemeanor in North Carolina. N.C. Gen. Stat. § 90-95.
18. N.C. Gen. Stat. § 15A-1341(a4).
19. Outer Limits (outerlimitsprogram.org), the deferral program approved by the district attorney of Guilford County, sets the rate for admission at \$200.
20. \$180 in district court in 2017. See "Court Costs and Fees Chart," Administrative Office of the Courts, available at bit.ly/2yDamjk.
21. \$55 per hour for a public defender in district court. See Memorandum, "IDS Policies Governing Attorney Fee and Expense Applications in Non-Capital Criminal and Non-Criminal Cases at the Trial Level," available at bit.ly/2yDN8JG.
22. \$40 per month. N.C. Gen. Stat. § 15A-1343.
23. If the probation was violated and the suspended sentence activated, the student would be charged a "jail fee" for her own incarceration of \$40 per day. See N.C. Gen. Stat. §§ 7A-313 and 148-29.
24. "Court Costs and Fees Chart," *supra* note 21.
25. *Id.* In addition to the General Court of Justice fee, defendants are charged a Facilities fee, Telecommunications and Data Connectivity fee, Law Enforcement Officer Retirement/Insurance and Training and Certification fees, Service of Criminal Process fee, and, for misdemeanor and felony defendants, a DNA fee.
26. *Id.* See "Appendix – Criminal Costs Summary."
27. In North Carolina, misdemeanors are first tried before a judge in district court. If the defendant is acquitted, the case is over. If the defendant is convicted, he/she may appeal to superior court for a trial *de novo*, with a jury as fact-finder. See N.C. Const. art. I, § 24, Right of jury trial in criminal cases "...The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial *de novo*."
28. N.C. Gen. Stat. § 7A-455.1.
29. N.C. Gen. Stat. § 143B-708.
30. N.C. Gen. Stat. § 15A-1343.
31. N.C. Gen. Stat. § 7A-304.
32. N.C. Gen. Stat. § 7A-304(7).
33. Appropriations Act of 2017, NC Sess. Laws 2017-57, § 18B.5(a).
34. See N.C. Gen. Stat. § 15A-1365. "When a defendant has defaulted in payment of a fine or costs, the judge may order that the judgment be docketed. Upon being docketed, the judgment becomes a lien on the real estate of the defendant in the same manner as do judgments in civil actions." See also N.C. Gen. Stat. § 24-1, imposing a mandatory 8% interest rate on civil debt owed to the state.
35. Alicia Bannon et al., Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry* 27 (2010), available at bit.ly/2yezrlr.
36. *Id.*
37. N.C. Gen. Stat. § 15A-1343.
38. Bannon et al., *supra* note 36, at 28.
39. *Id.* at 15.
40. Summary, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 2 (Jeremy Travis & Bruce Western eds.) (2014), bit.ly/2fnuGtS.
41. See Roy Walmsley, Institute for Criminal Policy Research, World Prison Population List 5 (11th ed. 2015), bit.ly/2ye7CHs.
42. About 40,200 of these individuals are in Department of Adult Corrections facilities. See Vera Institute for Justice, *The Price of Prisons: North Carolina* (2012), bit.ly/2g0woRx. The remainder are in local facilities.
43. Danielle Kaeble et al., Bureau of Justice Statistics, *US Department of Justice, Correctional Populations in the United States*, 2014 (revised 2016), bit.ly/2i2L32J.
44. North Carolina Department of Public Safety, research bulletin, February 2017, bit.ly/2gth68D.
45. See *The Price of Prisons*, *supra* note 43. Costs for inmates on death row are two to three times higher. See Ed Barnes, *Just or Not, Cost of Death Penalty Is a Killer for State Budgets*, Fox News, March 27, 2010, <http://fxn.ws/2hzRxm9> ("just keeping prisoners on death row costs \$90,000 more per prisoner per year than regular confinement, because the inmates are housed in single rooms and the prisons are staffed with extra guards"), and Maurice Chamamah, *Six Reasons the Death Penalty is Becoming More Expensive, The Marshall Project*, Dec. 17, 2014, bit.ly/2yeAfo7 ("A 2014 study out of Kansas reported that a death row prisoner costs \$49,380 to house per year, whereas a general population prisoner costs \$24,690.").
46. \$1.2 billion is 5.7% of the \$21-billion state budget. See Annual Report of the North Carolina Judicial Branch: July 1, 2014-June 30, 2015, 11, bit.ly/2gytPH.
47. See *The Price of Prisons*, *supra* note 43.
48. Annual Report, *supra* note 47, at 11.
49. William Childs, Fiscal Research Division, North Carolina General Assembly, The Office of Indigent Defense Services 2 (2015), bit.ly/2xw3Omn. Additional expenditures are statutorily mandated to be paid by counties and municipalities for physical facilities occupied by judicial personnel and for law enforcement personnel, equipment, and facilities. See, e.g., N.C. Gen. Stat. § 7A-302.
50. Beth A. Wood, Office of the State Auditor, Performance Audit: Judicial Department – Court-Ordered Fines, Fees, and Restitution 20 (2011), bit.ly/2g1qSOK (stating that criminal defendants come "from a population often representing the very poorest and most destitute in the state").
51. N.C. Const. art. I, § 19: "No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin."
52. See Annual Report, *supra* note 47 (quotation from the mission statement of the North Carolina Judicial Branch).
53. See North Carolina Office of Indigent Defense Services, *Indigency Screening and Recoupment* (2016), bit.ly/2xxNc8N. See also North Carolina Office of Indigent Defense Services, *North Carolina's Criminal Justice System: A Comparison of Prosecution and Indigent Defense Resources* (2011), bit.ly/2wLwa7J.
54. *N.C.'s Criminal Justice System*, *supra* note 55, at 2.
55. See "Court Costs and Fees Chart," *supra* note 21.
56. N.C. Gen. Stat. § 7A-304(a)(4).
57. Bannon et al., *supra* note 36, at 26. See also Council of Economic Advisers, *Executive Office of the President, Fines, Fees, and Bail* 4 (2015), bit.ly/1NwFTyE ("[G]rowing evaluation evidence suggests that a policy that funds government through criminal justice fees and fines is often ineffective. State and local governments are likely to collect fines and fees at low rates, in large part because of low incomes among many offenders, making them unable to pay court debts assigned without consideration for ability to pay.").
58. Normally this fee is required to be paid "in full" before participating in the community service program, but under some circumstances the trial judge may allow the fee to be paid after the defendant has begun the program. James Markham, *Waiving Community Service Fees*, NC Criminal Law (Jan. 15, 2014), unc.live/2yeDb4o.
59. Post-conviction time spent in the local jail is billed back to the defendant at a rate of \$40 per day. See Jamie Markham, *Jail Fees*, North Carolina Criminal Law Blog (Jan. 4, 2012), unc.live/2yWuij.
60. N.C. Gen. Stat. § 143B-708(c). (The \$250 community service fee "shall be paid by all persons who participate in the program or receive services from the program staff."). See also Markham, *supra* note 60.



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Understanding the National Vaccine Injury Compensation Program

BY CECELIA HAGAN STULTZ AND JESSICA A. OLINS

Jane Doe calls your law firm, explaining that she believes she may have suffered a vaccine-related injury.

Would you know what to do next? Many would not. It is important to understand what steps need to be



taken when vetting a potential vaccine injury claim, how and where to file that claim, and to consider referring out the potential case to an attorney experienced in vaccine litigation.

NVICP and the Office of Special Masters

In 1986 Congress created the National Vaccine Injury Compensation Program (NVICP), a no-fault compensation program for persons who have suffered a vaccine-related injury or death.¹ Although originally

intended to benefit children, more adults than children are now receiving compensation under the NVICP. By shifting liability from vaccine manufacturers to the federal government, the NVICP allows those injured as a result of a vaccine to receive compensation without having a chilling effect on the

development of vaccines.

All vaccine injury claims must be filed through the NVICP in the United States Court of Federal Claims in Washington, DC. Petitions for compensation under the NVICP are heard by special masters, and the Department of Justice defends these claims



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on behalf of the secretary of Health and Human Services. The Office of Special Masters has exclusive and nationwide jurisdiction over vaccine-related claims under the NVICP. If the decision of a special master is appealed, it is heard by the Court of Federal Claims and the United States Court of Appeals for the Federal Circuit.

Cases filed in the NVICP are typically bifurcated, with the initial phase devoted to determining whether the petitioner is entitled to compensation, and the second phase focusing on the assessment of damages. Due to the sometimes extreme complexity of proving causation, medical experts from the fields of immunology, neurology, rheumatology, and vaccinology are often required in cases that go to trial. Invariably, a substantial amount of medical literature is analyzed by these experts. Special masters are left to decide a case after reviewing the expert testimony, keeping in mind that science and law have two varying concepts of evidence and proof.

Table Injuries vs. Non-Table Injuries

With the addition of the influenza vaccine as a covered vaccine in 2005, the num-

ber of vaccine injury cases filed annually has more than doubled. When the NVICP was created, the expectation was that most cases would involve so-called “Table” injuries, and in the early days of the NVICP, that expectation was borne out. Most Table cases are quickly resolved, in keeping with the congressional intent that vaccine injured persons be compensated quickly, easily, and with generosity.²

The majority of vaccine injury petitions involve Off-Table (causation-in-fact) cases. In these cases, petitioners must prove by preponderant evidence that a covered vaccine caused their injuries. Such proof generally includes the opinion of a highly accomplished expert witness or team of experts. While a treating physician’s statements or conclusions regarding causation are entitled to careful consideration, such statements often do not address all the *Althen* factors necessary to establish causation.³ Treating physicians often focus on the “Did it cause?” question, without addressing the medical theory or biological mechanism by which causation likely occurred and the issue of appropriate timing.

Statute of Limitations

There is a short statute of limitations for vaccine injury claims—just three years. Additionally, minority tolling does not apply in NVICP claims. If a death occurs as a result of the administration of a vaccine, no petition may be filed under the NVICP after the expiration of two years from the date of the death; and no petition may be filed more than four years after the date of the first symptom of the injury from which the death resulted.⁴ Unfortunately, the statute of limitations often passes before an injured individual begins to suspect that his or her injury was vaccine-related.

Damages Under the NVICP

Under the NVICP, damages fall generally into four categories: (1) pain and suffering, (2) lost wages, (3) past out-of-pocket medical expenses (those not reimbursable by insurance), and, (4) actual future medical needs (those not reimbursable by any other source). Future medical needs are often compensated through an annuity. *See generally* 42 USCA §300aa-15(a). One drawback of the NVICP is that damages for pain and suffering are

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capped at \$250,000. Compensation for a vaccine-related death is likewise capped at \$250,000. This was set by Congress in 1986 and has not been increased since. Awards in vaccine cases can range greatly, from ten thousand to tens of millions of dollars, depending on the severity of the injury.

The Number of Petitions Filed Each Year is Steadily Increasing

As awareness of the NVICP has grown and more vaccines become covered, the number of petitions filed has increased and impacted the demographics of vaccine injured claimants. In 2016, vaccine petitions increased by approximately 40%, and many were of increased complexity and national significance. The NVICP, as drafted, limits the number of special masters to eight, which has led to overloaded dockets and delays in adjudicating claims as the number of filed cases has increased.

The Length of a Case Can Vary Drastically

Although Congress intended the petitioners to receive awards generously and quickly under the NVICP, claims are defended vigorously by the Department of Justice on behalf of the secretary of Health and Human Services. The majority of vaccine claims are resolved through informal settlement. Some cases are referred for mediation, while others are tried before a special master with expert witnesses testifying as to the causation issue. If a claimant is dissatisfied with the progression of their claim under the NVICP, there is an opt-out provision which allows the claimant to seek legal redress in the traditional court system, but it is used extremely infrequently.

On average, it takes two to three years to adjudicate a petition after it is filed. However, unique complexities of individual cases may extend that timeframe. One vaccine case that

the authors' firm handled took over 15 years to reach final adjudication.

Attorneys' Fees and Costs under the NVICP

Finally, the issue of attorney fees and costs must be resolved. Careful and contemporaneous documentation of the hours spent on the case, broken down by individual tasks performed and an indication of who performed them, is required to establish that the fees and costs claimed are reasonable. Unlike the contingent fee system prevailing in most other tort litigation, petitioners' reasonable attorneys' fees and costs are paid by the NVICP, including, in most cases, fees and costs for unsuccessful litigants. Attorneys' fees are limited only to fees awarded by the court; it is a violation of 42 USC § 300aa-15(e)(3) to charge anything in place or beyond what the court awards. In order to obtain fees and costs when a petitioner is unsuccessful, the petitioner must establish that the petition for compensation was brought and maintained in good faith and with a reasonable basis. If the special master determines there was no reasonable basis to bring the claim, attorney's fees and costs, even though already expended, will not be reimbursed.

Other Concerns

A petitioner need not be a citizen of the United States to file a claim for a vaccine-related injury. Typically though, the vaccine must have been administered in the United States or one of its territories. In order to be covered by the NVICP when the vaccine was given overseas, the injured person must have been a US citizen serving in the military or a US government employee, or have been a dependent of such a citizen; or the injured person must have received a vaccine manufactured in the US and returned to the US within six months after the date of vaccine.

Certain vaccines are not currently covered by the NVICP, such as the shingles and certain pneumococcal vaccines. These particular vaccines are not recommended vaccines for children, thus they are excluded from coverage. Unfortunately, this leaves many individuals with vaccine injuries and with no recourse in the NVICP.

Consider Referring Out Vaccine Injury Cases

Vaccine litigation is a specialty practice in

which relatively few attorneys are engaged due to its unique complexities. There is a steep learning curve involved in these cases, as the subject matter often involves emerging issues in areas such as neurology, immunology, vaccinology, and life care planning. Vaccine injury cases are defended vigorously, resulting in complex and protracted litigation, and often involve multiple expert witnesses and high upfront costs. Often, it is in the best interests of the client suffering from injuries related to a vaccine reaction to refer them to an experienced vaccine injury attorney.

The US Court of Federal Claims maintains a list of attorneys who are willing to accept vaccine injury cases. The most recent version of this list may be found at bit.ly/2kyv1ie. *Pro se* petitioners and potential petitioners are not limited to retaining attorneys on this list, and the court does not endorse representation by attorneys on the list. Attorneys on the list are not required to accept all clients who contact them. Another valuable source of information for petitioners is the Vaccine Injured Petitioners Bar Association at vipbar.org. ■

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Endnotes

- 42 USC §§ 300aa-1-34.
- 42 USC § 300aa-1.
- See *Althen v. Sec'y*, HHS, 418 F.3d 1274, 1278 (Fed. Cir. 2005).
- 42 USC § 300aa-16(a)(3).

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The Trial of the Century: Kids, Climate, and Law's Role in Allocating Responsibility for Harm

BY STEVE OWEN AND AUDREY KONCSOL

The “trial of the century”¹ is scheduled for early 2018. That’s what a Vermont Law School

professor calls a lawsuit a small group of youth ranging in age from 9 to 21 (now) from the far-flung reaches of America filed in 2015 in



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the US District Court for the District of Oregon claiming “through the government’s affirmative actions that cause climate change, it has violated the youngest generation’s constitutional rights to life, liberty, and property, as well as failed to protect essential public trust resources.”²

With super storms and unprecedented wildfires as reminders of the increasing threat of climate change, the courts are an important venue in which to defend these basic rights. “In face of this unprecedented ‘planetary emergency,’ environmental law hasn’t changed that much” notes Mary Christina Wood, law professor and atmospheric trust litigation scholar at the University of Oregon School of Law.

“When it comes to saving civilization, law should have a role to play. The very essence of the law is allocating responsibility for harm.”³

Attorneys in 50 states have filed climate-related public trust cases, but one in federal court is advancing toward trial and drawing international attention at this unprecedented juncture in the arc of human and ecological history.

Juliana vs. United States: No ordinary Lawsuit

One of the most prominent legal theories involved in the case is that of the atmospheric trust doctrine—a modern application of the public trust doctrine.⁴ This doctrine stands for the idea that the atmosphere, along with other natural resources, is held in trust for the public and especially future generations; therefore, government uses of the atmosphere should be

limited to uses that are consistent with this idea.⁵ Incorporated by Our Children's Trust in multiple instances of litigation, the doctrine has experienced mixed results in the United States.⁶ In lawsuits filed in Alaska, Iowa, and Pennsylvania, the atmospheric trust doctrine was raised and rejected; however, in Arizona, Washington, and in an Iowa concurrence, it has received more favorable treatment, and in many states it has not yet been addressed.⁷ What is remarkable about the use of the doctrine in the *Juliana* case is both its reach and that it has survived a motion to dismiss.⁸

Although this article deals with climate change—an allergen to some—we want to focus on law in the defense of a right that is fundamental to all life. In fact, the *Juliana* parties agree that climate change exists and is human caused. The thrust of this article, then, is about youth, their rights and future, and society's ability to discuss climate damages and solutions in courts of law, and in the public square where civil, reasoned, critical discourse has been rendered virtually “undiscussable” by politeness, fear, lack of awareness, or conflict fatigue. Professor Wood is correct; law should play a fundamental role in mediating matters of such global, temporal, and existential consequence that have no historical analog. *Juliana* may be the first case to test whether or not the law and those who practice it are up to the task.

Indeed, the judge in the *Juliana* case noted that:

This is no ordinary lawsuit. Plaintiffs challenge the policies, acts, and omissions of the president of the United States, the Council on Environmental Quality, the Office of Management and Budget, the Office of Science and Technology Policy, the Department of Energy, the Department of the Interior, the Department of Transportation (DOT), the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of State, and the Environmental Protection Agency (EPA).⁹ (emphasis added)

The “Exxon knew” investigation¹⁰ revealed that Exxon's own researchers understood as early as 1970 that rising CO2 emissions from fossil fuel would cause a warming climate. And recently, a study exposed that the electric utilities similarly knew that the “greenhouse effect” was real and that coal-fired electricity generation contributed.¹¹ The fossil fuel industry is regulated and supported by various agencies, policies, and

incentive structures at federal and state levels. Armed with such knowledge, more specifically, the *Juliana* plaintiffs claim that:

[d]efendants have known for more than 50 years that the carbon dioxide (CO2) produced by burning fossil fuels was destabilizing the climate system in a way that would “significantly endanger plaintiffs, with the damage persisting for millennia.”...Despite that knowledge, plaintiffs assert defendants, “[b]y their exercise of sovereign authority over our country's atmosphere and fossil fuel resources,... permitted, encouraged, and otherwise enabled continued exploitation, production, and combustion of fossil fuels,... deliberately allow[ing] atmospheric CO2 concentrations to escalate to levels unprecedented in human history[.]”

Legal scholars probably thought a group of kids suing these major federal institutions was a long shot, grandstanding, disrespectful, or maybe even adorable. The *Juliana* kids themselves seemed astonished:

“You're suing Trump!” Avery [Avery McRae, 11 year-old plaintiff] recalls her classmates said when they flocked her at school on November 9. “I'm like, ‘Yep.’ What did I get myself into?”¹²

From a legal standpoint, one aspect of the litigation that may make it a “long shot” is the potential barrier of standing. While *Massachusetts v. EPA* seemed to establish citizen standing for climate change litigation, subsequent cases have narrowed this holding almost to nullification.¹³ Climate change litigation is often constrained by difficulty in achieving the necessary causation and redressability to establish standing, as well as the existence of a particularized harm that affects the plaintiff individually.¹⁴ Climate change is caused by a number of actors and has a global effect; consequently, courts have been reluctant to allow any individual actor to bear responsibility for the effects of climate change or to find that a remedy against a particular actor would provide redress.¹⁵ In the same vein, the global nature of climate change has made it difficult to establish that an individual plaintiff is harmed in a way that differs from all other inhabitants of this planet.¹⁶

Yet in recent years, scientific advancements in detection have potentially provided a solution to these standing barriers.¹⁷ It is now possible to more accurately localize the contributions of specific actors to climate change, as well as its harmful effects.¹⁸ Contributors to



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climate change can be assigned a fractional share of the blame, and climate change is now more easily linked to specific injuries such as “algae blooms harming the local water supply.”¹⁹ In addition to the benefits of these scientific advancements, the *Juliana* plaintiffs have the advantage of sweeping with a broader stroke.²⁰ Instead of targeting individual corporate defendants, they are suing the entirety of the United States federal government—the government of a country with a roughly 25% responsibility in causing climate change.²¹ This aggregation, combined with the unique responsibilities held by the government and access to scientific advancements, may explain in part the continued survival of the case.²²

When the fossil fuel industry piled on, intervening as defendants in the case, even a

long shot may have seemed hopelessly optimistic. These big league defendants asked for a dismissal “for lack of subject matter jurisdiction and failure to state a claim,”²³ but a US magistrate judge denied their request, which was upheld by a US District Court judge, whose writing and ruling should be of interest to attorneys for its rigorous craft and the extraordinary claims with which it dealt. Dr. James Hansen, the former director of NASA’s Goddard Institute for Space Studies, Columbia University professor, and plaintiff intervener for future generations, lauded the document this way:

Judge Ann Aiken, in the United States District Court in Eugene Oregon, yesterday issued an emphatic ruling in favor of the plaintiffs in the case of *Juliana et al. versus the United States*. In a remarkable 54-page Opinion and Order, which, for its clarity and scholarship, will surely be a historical document, Judge Aiken rejected the request by the Federal Government and fossil fuel interveners to dismiss the case.²⁴ (emphasis added)

After Judge Aiken’s ruling, the fossil fuel industry interveners reversed their zeal to participate, petitioned for and were granted dismissals as defendant interveners. The American Petroleum Institute, National Association of Manufacturers, and the American Fuel & Petrochemical Manufacturers had lost a round to the kids. Subsequent petitions and maneuvers to dismiss the case have thus far been denied, and transcending partisan politics, the youth plaintiffs scratched President Obama and inserted President Trump as the top defendant. The trial of the century is set for February 2018.²⁵ “The planet is on the docket... This is the biggest case on the planet.”²⁶

Why *Juliana* Matters

Despite broad scientific and international agreement on the urgency of climate action, political and ideological lines couldn’t be more starkly drawn as they are now in the United States with the current federal administration rapidly dismantling environmental regulations, suppressing scientific research and dissemination, aggressively promoting coal and gas, exploiting federal lands to deplete remaining fossil fuel reserves, and the public spectacle of the Paris Climate Accord withdrawal. Even though such optics throw shade on important critical civic discourse, fascinating legal, moral, and theoretical questions lie beneath the

hyperbole. Law is one of the important sites for engaging these questions, for mediating conflict, and for averting mutual disaster. What makes this case so interesting and important is that the global climate system is a commons like no other (the oceans being an equal element in the global climate system). Even the defendants’ counterclaim that the climate system is inherently vast in scope to manage with a system of federal laws, observers at Stanford note that it is implicit that a government would not destroy resources held in public trust.²⁷

Excepting the fact that the US is by far the largest historical carbon emitter, climate has no national boundaries nor private property lines as intimated by businessman Peter Barnes’ rhetorically titled book *Who Owns the Sky?*²⁸ Yet legal scholars and practitioners have resolved vexing issues before and will have the opportunity to apply those precedents and create new ones that are more equipped for the scale of the challenge. As Judge Aiken stated in her opinion, “[t]here is no need to step outside the core role of the judiciary to decide this case. At its heart, this lawsuit asks the court to determine whether defendants have violated plaintiffs’ constitutional rights.”²⁹

Accountability will have to transcend many boundaries—jurisdictional, professional, moral, epistemological, species, and belief systems—to become a collective effort globally and locally. The *Juliana* plaintiffs have made their claim that they and future generations have a constitutional right to a climate system capable of supporting life and have turned to the judiciary for help. The courts alone cannot remedy this grievance; however, the significance of the institution cannot be overstated.

If the federal government continues to abandon efforts to reduce greenhouse gas emissions, as now seems inevitable, local governments and states will increasingly become sites of contestation and solution-based initiatives. Though the case was dismissed, North Carolina is one of 50 states that have already had atmospheric trust cases in its courts.³⁰ Due to this dismissal, atmospheric trust doctrine has not specifically been resolved one way or another in North Carolina. Given the increase in attention to atmospheric trust litigation, it is quite possibly an issue that North Carolina courts will have to grapple with in the future.³¹

If atmospheric trust cases gain more traction, the judiciary will be one of several insti-

tutions that will play a role in climate change mitigation and adaptation. It will not be the only one. For market determinists, the evidence is that fossil fuels are, aptly so, dinosaurs. Bloomberg New Energy Finance explained why: “creating guaranteed demand for obsolete technologies has never ended well.”³² Headlines in the business press provide further evidence. “Fossil fuels are dead’ says rail baron who hauls 800,000 carloads of coal a year,” reads a headline quoting the CEO of CSX freight railroad.³³ The Bloomberg piece goes on to say that coal train destinations, “[coal plants] will not reopen whatever anything President Trump does... nor do we see much appetite among investors for ploughing money into US coal extraction—stranded asset risk will trump rhetoric.” Conversely, investors are bullish on renewables.³⁴

Yet, despite uncritical claims to the contrary, markets are imperfect and rely on government regulation for proper function. This has always been the case, and with an invigorated anti-regulation wave crashing on all things environmental, faith in “the market” alone leaves too much to risk when the consequences are so high. Climate change has proven to be “the greatest market failure in history.”³⁵ What other institutions will matter? Social movements and solutions-oriented local actions are important, and there are many examples. Maybe these forces will coalesce to decarbonize economy and society very rapidly. Still, will it be in time to avert runaway climate change? All of these fronts will look to the law as a mediating, synergistic partner. These democratic institutions together have the power to shape a better future and avert the worst of the warming scenarios. But, the point is nearing when the future collapses into the present. Why then would the courts decline an opportunity to be so relevant as a venue for this debate?

The Kids Can’t Wait

The evidence is mounting that, indeed “the kids can’t wait.”³⁶ It follows then, as Hansen notes; the climate problem is now the “young people’s burden.” The essence of law is, as Professor Wood notes, to justly allocate liability for those damages. To their credit, the *Juliana* kids are asking for responsible, comprehensive solutions and not punishments. Solutions may perhaps include the need for negative CO₂ emissions, not just a marginal slowing in the growth rate of emis-

sions. The magnitude of the challenge, including the well-informed warning that options are rapidly narrowing, is specifically described by Hansen:

An appropriate goal is to return global temperature to the Holocene range within a century. Such a goal was still achievable in 2013 if rapid emission reductions had begun at that time and if there were a global program for reforestation and improved agricultural and forestry practices. Now climate restoration this century would also require substantial technological extraction of CO₂ from the air. If rapid emission reductions do not begin soon, the burden placed on young people to extract CO₂ emitted by prior generations may become implausibly difficult and costly.³⁷

Costs could reach \$7 trillion annually for the next 80 years to bring carbon levels back to life sustaining levels. As recent hurricanes Harvey and Irma remind us, this is on top of the losses and damages that the insurance industry and others expect. Some of the CO₂ reduction methods are technologies that do not yet exist, at least at the necessary scale. Rapid reforestation is one thing, but hastily developed and deployed technologies that alter the atmosphere come with risks and unknowns.

The *Juliana* plaintiff's lead attorney, Julia Olson, has merged many identities, foremost as a lawyer and constitutional scholar, but also as a mother. This has driven her to elevate her craft out of a deep sense of purpose. Law Professor Woods has called this the "primal urge."³⁸ It has compelled her to ask climate denials to reflect on "what if all the world's scientists are right and you are wrong?"³⁹ And it has forced her to expand her knowledge of climate research. Most of all, it has mandated her to confront the trauma that comes with this knowledge in a constructive way as an advocate in one of the country's pillars of democracy—the judiciary. Olson says, "It's really hard to sit with the devastation of climate change. But if we can't sit with it and feel it on a deep level and then have vision and hope for the world that we want to create and set that intention, we won't solve the problem."⁴⁰

The *Juliana* lawsuit was filed in 2015. That same year the earth's atmospheric carbon dioxide level went above 400ppm for the first time in recorded history. In the previous 650,000 years, it had never been above 300ppm and for the last 50,000 years it aver-

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aged about 200ppm, until the dawn of the Industrial Revolution.⁴¹

Without question, the oil age and Fordist production and consumption after WWII drove the growth in America's standard of living during the 20th century. But by 1950, developed countries, especially the United States,⁴² began "boiling the frog." With its foot still on the gas, humanity breached a more menacing threshold in September 2016 when it again exceeded 400ppm, only this time permanently.⁴³ Scientists say 350ppm is

the red line.

The burden has been shifted to youth and future generations. There is a world of forest fires and extreme weather⁴⁴—which by now can no longer be classified as entirely "natural" disasters—and the consequences that accompany them—property loss, crop failures, national security threats, loss of life, displacement of human settlements, and the "sixth mass extinction."⁴⁵ Unlike in the past, these cataclysmic descriptions are presently both polemic and real.

Juliana kids contend that, “Executive agencies such as the EPA...have thus far pursued only small-bore measures that are piecemeal and ineffectual. Legislative paralysis, induced by climate-change deniers, compounds the problem.”⁴⁶ Meanwhile, we’re racing to 450ppm and a climate incapable of sustaining human civilization.

Will lawyers respond? The kids can’t wait. ■

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Audrey Koncsol is a third year student at Wake Forest University School of Law and an intern at the Community Law and Business Clinic. She developed a strong interest in the intersections of environmental law and human rights law through a variety of employment and organizational experiences. The authors would also like to acknowledge Taylor Anderson, a 2016 Wake Law graduate, for his preliminary research on this topic during his internship with the Community Law and Business Clinic.

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Book Review: The Barrowfields

BY JOSHUA B. DURHAM

In the beginning of *The Barrowfields*, the story's narrator, Henry Aster, studies his father's desk. We know immediately that this space was so loved by his father, and that he was consumed here by his desire to create something great. We learn, too, that these efforts seem to have been in vain. As he examines the books, pictures, and empty bottle of wine that are exactly as his father abandoned them some time ago, Henry thinks, simply, "I am beginning to understand."

So begins this very moving and impressive debut novel from Phillip Lewis, an attorney with Horack Talley Pharr & Lowndes in Charlotte. In the pages that follow, Henry tries to do just that: To understand his father, his homeplace, and the many long-ago circumstances that have made him who he is.

Set in the fictional Old Buckram, North Carolina, a town "high in the belly of the Appalachian Mountains," Henry tells the story of the Aster family, beginning with his grandparents, "good, kind people" who were "plenty smart" and "clever in the way that all mountain people are." The story begins with them because how their ancestors might have come to Old Buckram is only told in stories that "have long since been silenced by many steady turns of the imperturbable clock." Into this family his father, also named Henry, is born. He's an oddity, consumed by books, and it is unheard of for anyone in town to go to college, which is exactly what he does. He becomes a lawyer, but every free moment is spent in pursuit of what he believes to be his true calling—to write something for the ages. But try as he might to make his life elsewhere, his dying mother compels his return to Old Buckram.

Upon his return he purchases an abandoned, yet enormous, house of "black iron and glass" on the edge of town. It's an "architectural curiosity" that, no matter its decor, always "had a way of communicating its chronic malaise." Here, in the years that fol-

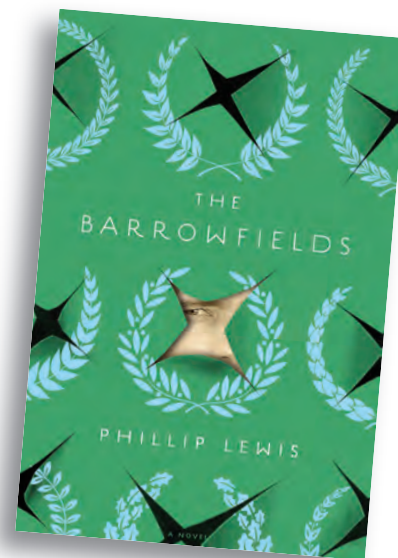
low, the elder Henry nearly drives himself mad in his attempt to write something great of his own. Outside, though, loom the Barrowfields, "where, by some mystery, nothing of natural origin will grow except a creeping gray moss which climbs over mounds of rock and petrified stumps that the more credulous locals believe are grave markers from an age before time."

This is the world into which the younger Henry is born, and it is a world that Lewis vividly describes. We are there with Henry in the many rooms of the "vulture house," we hear the classical music that radiates from the great room into the rest of the house, we are witness to his father's drinking, and we are kept company by the innumerable rare books that fill the home and occupy so much of Henry's childhood.

And we are there when Henry becomes an attorney, when he hopes to make a life elsewhere, and when he finds that, just like his father, a return to Old Buckram is unavoidable.

Lewis drew deeply from his experiences in writing *The Barrowfields*. He was raised in West Jefferson, North Carolina, a place which he says offered little in the way of opportunity. "You look around and all you see are mountains. They mark an abridged horizon, and that's your limited universe," Lewis said in our recent interview. Despite his father's advice not to do "anything with long-term consequences," Lewis became a father at 16. Whatever horizon one might have been able to see despite the surrounding mountains, it was quickly disappearing. The mountains were closing in and, like the Aster men, Lewis wondered what might become of his life.

He also wondered what he was supposed to do whenever he was left alone with his baby girl. He decided to share with her the things that had meant so much to him—books, beginning with *The Hobbit*. "Reading those books to her became the foundation for our



relationship going forward," Lewis told me. "Our circumstances were so much different than everyone else's. It bound us together, and we essentially grew up together." Lewis pays tribute to their relationship in his novel when describing Henry's relationship with his little sister, affectionately nicknamed Bird. This "wonderful child," Henry says, "more than anything else in the world, loved books and stories. It didn't matter what time it was or what the circumstances were. Her most-asked questions, day or night, were, 'Will you tell me a story?' and 'Will you read me a book?'" I found myself wanting much more of their relationship, but as Henry abandons Old Buckram, so, too, does he abandon Bird.

Lewis also pays tribute to his fellow members of the bar, particularly the attorney who helped him navigate child visitation agreements when he was a teenager (an attorney who, Lewis recalls, never charged him a dime), and the attorneys who later mentored him as he began his own legal career in Hickory. To this day Lewis still speaks so highly of the attorney who gave him one of his first legal jobs after graduating from Campbell Law School. "He took me under his wing, and he showed me how to be a lawyer," Lewis

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NC IOLTA Executive Director Retires after 20 Years of Service

BY MARY IRVINE

On September 13, 2017, current and former trustees, grantees, and staff of NC IOLTA (the North Carolina Interest on Lawyers' Trust Account program) gathered with colleagues from across the legal community to honor Evelyn Pursley, former executive director, upon her retirement. Evelyn Pursley completed her



Evelyn Pursley visiting with Chief Justice Mark Martin of the North Carolina Supreme Court during Pursley's retirement celebration.

20th year as executive director of NC IOLTA this summer and retired at the end of August.

During her tenure, she saw many changes at the program—both positive and negative. For example, she remembers, “When I started at IOLTA, the concept—using the interest from lawyers’ general pooled trust accounts for grants to support access to justice—was in the midst of a court challenge in another state. After making its way to the United States Supreme Court twice, it was decided in 2003 that the concept is not unconstitutional.”

John McMillan, former chair of the Board of Trustees, unveiled artwork which has been donated to the State Bar’s art collection in Pursley’s honor. The artwork was secured with the generous contributions of many attendees assembled as well as other supporters of the

program. The piece, *Sedimentary: Johnston Canyon*, is a hand-dyed and woven tapestry by North Carolina fiber artist Mary Kircher. The artwork was recently installed on the first floor of the State Bar building.

In remarks at the event, Celia Pistolis, Equal Justice Alliance chair, a coalition of the legal aid organizations across the state, thanked Evelyn for her involvement in the legal services community and her instrumental role in the formation of the alliance. “It was always clear that the work we were engaged in was just as important to Evelyn as it was to us.”

Increasing Program Participation

NC IOLTA was not a mandatory program

at the time Pursley was hired. The trustees asked that Pursley work on increasing the number of lawyers with IOLTA accounts. “I believe that one reason I was selected for the position was that I was doing some fundraising and public relations work, and working with volunteers, at my former position with Duke Law School,” Pursley said.

Pursley recognizes the assistance of IOLTA trustees as well as various State Bar councilors and other bar leaders who made personal contacts with non-participants. Former IOLTA trustees remember how rewarding and yet time-consuming it was to reach out to law firms to take part in the program prior to it becoming mandatory.

She notes that her office also worked to raise visibility of the program by putting regular updates in the State Bar *Journal*, by speaking to law students, by participating in continuing legal education programs, and by making reports at State Bar meetings as well as meetings of other voluntary bar groups.

“The program did well in signing up attorneys and, prior to going mandatory, had almost all the largest firms in the state participating,” she said.

Moving to a Mandatory Program

By 2007, participation of eligible attorneys had increased from 59% to 75%, and North Carolina seemed ready to move to a mandatory program. In August 2007 the North Carolina State Bar Council, with support from the North Carolina Equal Access to Justice Commission and the North Carolina Bar Association, petitioned the North Carolina Supreme Court to direct the State Bar to implement a mandatory IOLTA program. In October of that year, the NC Supreme Court did just that—and the IOLTA program registered more than 3,300 new IOLTA accounts.

Ed Aycock, trustee from 1999 to 2005, reflected on one result of this change in 2009 upon IOLTA’s 25th anniversary. “Mandatory participation eliminated the need for trustees to devote time, energy, and resources to achieving full participation in the program by eligible lawyers, thereby enabling them to focus on enhancing revenue and effectively allocating funds to grant recipients,” he said.

“As it turns out, we made the change to a mandatory program at a particularly good time, as the economic crisis that hit in 2008 meant that IOLTA programs immediately saw serious declines in IOLTA income,” said Pursley.

In North Carolina, however, the IOLTA program’s income surpassed \$5 million for the first time in 2008, increasing by 16% over 2007. The 2008 income allowed more than \$4.1 million in grant money to be awarded in the next calendar year, an NC IOLTA record for most money granted in a year.

“If we had not gone to mandatory, we figure our IOLTA account income would have decreased by 13% that year,” Pursley said. “Approximately 25% of our total income in 2008 came from the new IOLTA accounts recorded from November 2007 through June 2008.”

Though the income downturn that began

with the economic recession and continued as interest rates remained low is the longest downturn suffered by IOLTA programs, there has always been fluctuation in income as interest rates paid by banks on the accounts vary over time. “Because our grants often support operating expenses, it affects individuals’ salaries as well as the financial health of grantee organizations and their ability to provide equal access to justice,” Pursley said. “So, grant decreases are particularly difficult for everyone.”

In an effort to have funds available to keep grant-making as steady as possible, the reserve fund was established in 1996 at the urging of Ward Hendon, an Asheville attorney who served as a trustee from 1993 to 1999. Though grants have decreased by more than 50% during the long downturn in interest rates, the reserve fund has allowed for a more measured decrease than would have been possible otherwise.

Grantmaking

Since its first grants were awarded in 1984, the NC IOLTA program has administered over \$83 million in grants for legal assistance for at-risk children, the elderly, the disabled, and the poor in need of basic necessities. In addition, the program has helped lawyers connect with those who need their *pro bono* assistance.

The majority of NC IOLTA grants—89%—have always gone to support legal aid organizations. These grants became more important after the 2008 downturn when many more people were in need of legal aid services. As previously noted, the IOLTA trustees were forced to dramatically reduce the number and size of grants beginning in 2010 to respond to a significantly changed income environment due to the economic downturn. The trustees decided to focus grant-making on organizations providing core legal aid services.

Steve Michael, former NC State Bar president and current NC IOLTA trustee, finds it appropriate that most of the grant money goes to legal services for the poor, noting “IOLTA grants help us fulfill our responsibilities as outlined in the Rules of Professional Responsibility. Providing access to justice is one of the big obligations we assume, and this is one method of fulfilling those obligations.”

NC IOLTA has also been an active participant in determining how providing access to justice in our state should be addressed. For

instance, recognizing a need for more collaboration among legal aid entities, IOLTA was instrumental in creating the Equal Justice Alliance as a forum for civil legal aid providers who receive IOLTA funding to discuss coordination of legal services and efforts to increase resources. That group now meets regularly.

IOLTA also funded staffing and activities of the NC Equal Access to Justice Commission when it was launched by then NC Supreme Court Chief Justice I. Beverly Lake Jr. Now the commission receives funding through the State Bar.

Working with Banks

Since the NC IOLTA program is not part of a bar foundation, nor does it take part in fundraising, the income for grants comes from the interest remitted from IOLTA accounts. Over the last 20 years, Pursley has worked to improve the connection with North Carolina banks. “I always saw the program as a partnering of lawyers and bankers to do something good for the people of North Carolina, and we have worked hard to connect with the North Carolina Bankers Association and individual bankers.”

Including trustees from the banking industry has been particularly useful. Ed Aycock, who was counsel at the Bankers Association when he served on the IOLTA Board, thought it essential that the board include a representative of the banking industry. He found that such representatives act as liaison to the banking industry, helping bankers understand IOLTA and helping IOLTA trustees understand banking procedures.

Having a good rapport with the Bankers Association has been very helpful in working through changes like the move to a mandatory program and the subsequent move to requiring lawyers to hold accounts only at banks that agree to pay a comparable rate to that paid on similar accounts, known as comparability.

“We were able to meet with staff at the Bankers Association to work through these changes in the most efficient way, and to communicate with the banks about the changes,” says Pursley. “And more recently, we have been providing information on the work of the program at least annually through their publications, which came about when one of our banker trustees said that she had always been aware of IOLTA, but had not known how much good was being done with the funds before serving on

the board. We decided we needed to get that information disseminated more widely to bankers, and we appreciate the assistance of the Bankers Association in doing so.”

Even given the comparability requirement, NC IOLTA encourages banks to provide the very best policies for IOLTA and become “Prime Partner” banks, which pay 75% of the fed rate, or currently 0.75. “We highlight the banks that give us the best policies on our bank list, which is on the IOLTA website, and we publish good news about changes to bank policies in the *Journal*,” says Pursley.

IOLTA staff members are also working with the Bankers Association to make presentations regarding trust accounting policies and procedures so banks can better serve their attorney customers.

Administration of Other Funding

In addition to its own funds, NC IOLTA has been administering the state funding provided for legal aid (access to civil legal assistance and domestic violence work) in North Carolina that passes through the NC State Bar since 2004. That funding has also fluctuated over time since it began in 1989, and has come from both appropriated funds and court filing fees. It reached a peak of \$6 million in 2008 before decreasing to \$2 million in 2016. Unfortunately, the General Assembly ended the funding for legal aid work (excepting domestic violence funding) in its last session.

During the long downturn in income from IOLTA accounts, the program has relied heavily on cy pres and other court awards designated for the provision of civil legal aid to the poor. Since 2007 the program has received over \$2 million from class action residual funds. Over a half million of that has arrived in accordance with the provisions of NCGS 1-267.10, the statute that sets out a procedure by which the court enters an order directing payment of the sum of the unpaid residue from class action settlements to be divided equally to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents. The State Bar has asked IOLTA to administer these funds.

Beginning in 2015, IOLTA programs around the country received funding from the Bank of America settlement with the Justice Department, specifically for the provision of funding to civil legal aid programs for legal assistance with foreclosure prevention and community redevelopment work. NC

IOLTA received just over \$12 million. Not only were these funds crucial to our ability to continue grant-making in 2016 and 2017, but the IOLTA trustees decided to open a separate grant cycle in 2016-17 to make (\$5 million) multi-year grants for community redevelopment projects.

Leadership Transition

The IOLTA Board of Trustees planned for transition as Pursley retired. In 2014, Mary Irvine began working with IOLTA, the Equal Justice Alliance, and the Equal Access to Justice Commission. Irvine brought significant experience in access to justice and philanthropy issues having served as a program associate for both the UNC Center on Poverty, Work, and Opportunity and the NC Network of Grantmakers. The trustees were delighted to learn that Mary Irvine was interested in moving to the IOLTA directorship upon Evelyn Pursley's retirement. They believed that the opportunity she had to learn

IOLTA from the ground up and to establish relationships with IOLTA grantees, trustees, and with other bar leaders would be invaluable to her and to the program.

“I predict great success for Mary in this position as she is proactive and energetic in planning, and methodical and meticulous in execution; and she is unfailingly pleasant,” says Pursley.

As the interest rate climate improves, Irvine will strengthen IOLTA's relationship with banks to encourage policies most favorable to IOLTA and ensure IOLTA is receiving a comparable interest rate on accounts. She also plans to work with other philanthropic organizations in North Carolina to educate them as to the benefits that legal aid organizations bring to our state, having received a grant from the National Association of IOLTA Programs for that purpose. ■

Mary Irvine is the executive director of IOLTA.

The Barrowfields (cont.)

said. That often meant telling clients the hard truth about their cases, which sometimes stunned Lewis as a newbie lawyer. “How are we ever going to get any cases?” Lewis wondered. Of attorneys like these, Henry says they “quietly do more good for people and communities than probably anyone would ever realize. They try like hell to achieve justice. They take clients who cannot hope to pay the full value of the legal services they'll receive, and spend their own time and their own money helping clients who at the end of the day will not be the least bit grateful for the help. And they tell their clients the truth, even when the truth is not what the clients want to hear.” Lawyers picking up *The Barrowfields* will certainly appreciate that, and they'll enjoy Henry's tales of law school.

Lawyers, and others, will also appreciate and enjoy so much more in Lewis's novel. Literary references and influences abound. We see Thomas Wolfe in the book's mountain setting, Pat Conroy in Henry's travels to the low-country in pursuit of Story, his romantic interest, and Daniel Wallace in a tale Henry spins for Bird one night at bedtime. The books Lewis has read and the many nights spent reading to his daughter have clearly made him the writer he is.

Lewis's real gift to readers, though, is that his book is so easily relatable. A town deep in the Appalachian Mountains and a gothic house may be unfamiliar territory to us, but we know well the race against that “imperturbable clock.” There is in all of us an urgent desire to do something great, to leave our mark in this place before our allotted time runs out. We know well the struggle facing Henry's father.

And, of course, so many of us have such complicated feelings about a father or mother. It seems rare that anyone reaches pure, unwavering gratitude for what their parents did and the sacrifices they surely made, and, if we're honest, we know that our criticisms of their choices are often undeserved. We have similar feelings about the places that are so much a part of who we are. Too many are remembered with unearned fondness, and others are despised for no rational reason.

The Barrowfields' greatest lesson may therefore be this: We may never be able to reconcile exactly how we feel about our parents and our homeplace; the best we may ever do is simply to understand them. ■

Josh Durham is with Bell, Davis & Pitt's Charlotte office, where he handles complex business litigation cases, real property disputes, and general commercial matters.

50 Years—With a Heavy Sigh

BY JAMES T. RUSHER

For me, this year marks my 50th year as an attorney. That long! How could it be so? A long career gives one an opportunity to tell others what it was at once like. My career was as a state court criminal prosecutor. For 34 and a half years I served as district attorney or assistant district attorney. Let me take you back to criminal law as I remember it 50 years ago.

The district court was part of the uniform court system in North Carolina, whose anniversary was celebrated in 2016. District court was set up in three stages with approximately one third of the judicial districts undergoing the transformation every two years. Fifty years ago the justices of the peace still held court in some areas of North Carolina, since the uniform court system was not completed until 1970.

Whether the trial court was a justice of the peace, a district court judge, or one of the inferior judges that existed before full implementation of the uniform court system, public drunkenness cases were regular entries on all calendars. N.C.G.S. 14-335 provided: "If any person shall be found drunk or intoxicated in any public place, he shall be guilty of a misdemeanor and upon conviction or plea of guilty shall be punished by a fine of not more than \$50 or by imprisonment for not more than 20 days in the county jail." Enlarged terms of imprisonment could be handed out for persons having multiple convictions. Every misdemeanor trial court calendar always had multiple charges of public drunkenness. It was Otis Campbell of the *Andy Griffith Show*. It was Soapy in O Henry's, "The Cop and the Anthem." It was every day and it displayed the tragedy of addiction. In dry counties, the

problem may have been more lethal. Some drank shoe polish, some shaving lotion, and some sterno. Joe Driver of Durham is memorable because he had a case that ultimately went to the United States Court of Appeals for the Fourth Circuit. The court noted; "Driver was 59 years old. His first conviction of public intoxication occurred at 24. Since then he has been convicted of this offense more than 200 times. For nearly two-thirds of his life he has been incarcerated for these infractions. Indeed, while enlarged on bail pending determination of this appeal, he has been twice convicted for like violations."¹ Driver required that North Carolina provide for the affirmative defense of chronic alcoholism, which the legislature did in 1967. The number of convictions for Joe Driver seems astounding, but others had similar or maybe greater numbers.

Fifty years ago misdemeanor court was composed of a large number of nonsupport cases and nonsupport of illegitimate children cases. Criminal law at that time was deemed the best means of enforcing support. DNA evidence analysis was not yet discovered, and, in many paternity cases, placing the child into evidence so that the trier of fact could see the resemblance was often the best evidence. The offense of communicating a threat did not exist, but peace bonds were frequent. This

was a quasi-criminal case prosecuted by the solicitor and involved requiring the respondent to make a bond to insure that person kept the peace.

Fifty years ago a police officer could arrest for a misdemeanor without a warrant only if the misdemeanor was committed in his presence.² This limitation required a cumbersome procedure in instances when the officer investigated a traffic accident he did not observe. In such a case, the officer may have determined the driver to be intoxicated, but was powerless to arrest for driving under the influence of intoxicating liquor. Usually the officer would arrest for public drunkenness and then, before the justice of the peace or the newly created magistrate, ask for a warrant for driving under the influence. The offense of public drunkenness often allowed the officer to arrest not only the suspected driver, but all of the passengers. This limited power of arrest caused harm in domestic violence cases. Usually an officer would tell a complaining victim to get a warrant and law enforcement would then serve it. Rarely did law enforcement respond to a locale based on alleged domestic violence.

Fifty years ago an order of arrest was a *capias*, an order of forfeiture was a judgment *nisi*, the district attorney was the solicitor, a dismissal was a *nolle prosequi*, a dismissal by the court was a non suit, and a motion to dismiss was a motion for non suit or a demurrer to the evidence.

Fifty years ago many persons were prosecuted for misdemeanors who had no attorney. *Gideon vs. Wainwright*³ was decided in 1963, but that decision spoke of "serious offenses." Our supreme court interpreted the words "serious offense" to mean crimes where the maximum sentence could exceed six months active.⁴ Thereafter, several general misdemeanors (those punishable by two years imprisonment) were made six month misdemeanors. For instance, driving under the

influence of intoxicating liquor was made a six month misdemeanor instead of a general misdemeanor. No one was deemed entitled to have a court appointed attorney if charged with an offense where the maximum punishment could not exceed six months imprisonment. In 1971 the United States Supreme Court clarified that all persons charged with criminal offenses who might be subjected to incarceration are entitled to counsel.⁵

Fifty years ago many convictions were being overturned based on *Gideon* and other constitutional grounds. In some instances when a new trial was granted and a second conviction obtained, the sentencing judge imposed a greater sentence at retrial than the original sentencing judge had imposed. Some defendants in those situations queried whether the second judge could constitutionally impose a greater sentence. The argument was made that the imposition of the greater sentence was meant to chill a defendant's exercise of constitutional rights. The North Carolina Supreme Court ruled that the trial was *de novo* and the second sentencing judge was empowered with judicial discretion to impose any sentence which did not exceed the maximum possible sentence. The Fourth Circuit Court of Appeals sided with defendants in those cases and ruled that due process of law forbade the second judge from imposing a greater sentence. The disagreement continued unabated for some time until the United States Supreme Court decided *North Carolina vs. Pearce*.⁶ As an aftermath of this controversy, ultimately, N.C.G.S. 15A-1335 was passed.

Fifty years ago some superior court judges—after a conviction in superior court, in some instances—imposed a more severe sentence than had been given in the lower court for misdemeanants who appealed. This also had to be decided by the United States Supreme Court.⁷

Fifty years ago, one accused of murder had the burden of proving that the killing was in self defense or in the heat of passion based on adequate provocation. Effectively, this required defendants to testify in their own defense when they wanted to claim self defense, or assert that the killing was non malicious but in heat of passion. Judges routinely charged jurors that, upon proof by the state that defendant intentionally used a deadly instrument to inflict a wound which proximately resulted in death, then there was a *presumption that the killing was unlawful*

and with malice. Defendants were required to come forth with some evidence rebutting the presumption—not beyond reasonable doubt, but to the jury's satisfaction. Legal presumptions benefitting the state were not deemed invalid.

Fifty years ago kidnapping necessarily involved a taking and carrying away of an individual and could not be based on restraint or confinement, and there were no degrees of kidnapping. Fifty years ago rape was not divided into degrees, and all rape was punishable by death.

Fifty years ago four crimes were punishable by death—first degree murder, first degree arson, first degree burglary, and rape. No one was being executed. Ultimately the United States Supreme Court declared all capital sentencing laws in the United States to be unconstitutional. At the time, North Carolina's law authorized the jury, in its unfettered discretion, to recommend mercy in a single trial. Upon a recommendation by a jury for mercy, the judge was obliged to sentence the defendant to life imprisonment. Earlier the United States Supreme Court had declared unconstitutional North Carolina's procedure that mandated a sentence of life imprisonment if defendant plead guilty in a capital case with the consent of the prosecutor and the judge. Such an arrangement gave defendants a cruel choice.⁸

Fifty years ago North Carolina had a statutory rape crime reading: "If any male person shall carnally know or abuse any female child, over 12 and under 16 years of age, who has never before had sexual intercourse with any person, he shall be guilty of a felony and shall be fined or imprisoned in the discretion of the court; and any female person who shall carnally know any male child under the age of 16 years shall be guilty of a misdemeanor..." Fifty years ago as the above statute demonstrates, our law often made distinctions based on sex.

In 1971, Leonard H. Cutshall was tried for first degree murder. My participation was minor, but the trial was memorable. Judge Grist from Charlotte presided. Fifty years ago North Carolina lawyers used *North Carolina Manual of Law and Forms* by Simms and Simms. This manual had been through at least nine editions. Cutshall was arraigned before the jury according to the procedure set forth in Simms' manual.

The *prisoner* was directed to stand and hold up his right hand. The clerk then read the indictment verbatim and directed the

prisoner to enter a plea. When Cutshall pleaded not guilty, he was asked, "How will you be tried? To which, Cutshall's attorney responded, "By God and my country."

The clerk then stated, "May God send you a true deliverance." The clerk then stated to Cutshall, "These good men that you shall now hear called are to pass between the state and you upon your life and death..." Jury selection and the trial ensued. Cutshall was found guilty and before sentencing, the judge reminded Cutshall that he had said he would be tried by God and country. His country had found him guilty and what did he then have to say regarding sentencing.

The Simms procedure was regularly used throughout North Carolina, but 50 years ago the use of this procedure was already becoming obsolete. Cutshall's trial may well have been the last time such a procedure was used. The criminal procedure act takes arraignment totally outside the presence of the jury. It was widely discussed that some solicitors arraigned defendants with such flair and flamboyance that the commission wanted juries not to see defendants entering their plea.

The foregoing discussion demonstrates two points. First, 50 years ago the word *prisoner* was often used to describe criminal defendants. Second, 50 years ago courts still allowed references to and solicitations to the christian God.

As Cronkite would say, "And that's the way it was—50 years ago." ■

James Rusher, a native of Salisbury, earned his undergraduate and law degrees from UNC-Chapel Hill. He was elected to five terms as district attorney, and served a total of 32 years as either an assistant or elected district attorney in the 24th judicial district. This year he and others were honored by the State Bar as 50 Year Lawyers. To read about this year's entire 50 Year Class, see page 52 of this Journal.

Endnotes

1. *Driver v. Hinnant*, 356 F.2d761 (a966)
2. N.C.G.S. 15-41 (Repealed 1973)
3. 372 US 335(1963)
4. *State v. Morris*, 275 NC 50 (1969)
5. *Argersinger v. Hamlin*, 407 US 25(1971)
6. 395 US 711 (1969)
7. *Blackledge v. Perry*, 417 US 21(1974)
8. *North Carolina v. Alford*, 400 US 25(1970)

2017 Third Quarter Random Audit Report

BY PETER BOLAC, TRUST ACCOUNT COMPLIANCE COUNSEL

Each quarter two judicial districts are selected for audits. The judicial district selection, as well as the list of lawyers selected in each district, are randomly generated. The findings below are being published to bring awareness to lawyers of the violations found and the pervasiveness of those violations. You should take time to identify violations within your office and correct them immediately.

Quarterly Audit Report - Judicial Districts 16B and 19B

Judicial District 16B, composed of Robeson County, was previously audited in 1986, 1992, 1994, 1997, 2007, and 2010. District 16B has a listing of 109 lawyers. Twenty-one audits were conducted collectively representing 25 lawyers. One lawyer/firm was exempt from random audit through certification of voluntary audit. Judicial District 19B, composed of Montgomery and Randolph Counties, was previously audited in 1988, 1993, 1997, 2002, 2009, and 2012. District 19B has a listing of 113 lawyers. Twenty-three audits were conducted collectively representing 44 lawyers. One lawyer/firm was exempt from random audit through certification of voluntary audit. Additionally, one new State Bar Councilor was audited.

Following are the areas of rule violations:

- (a) 47% failed to perform quarterly transaction reviews.
- (b) 38% failed to sign, date, and/or maintain reconciliation reports.
- (c) 25% failed to:
 - indicate on the face of each check the client from whose balance the funds were withdrawn,
 - identify the client and source of funds, if the source was not the client, on the original deposit slip,
 - identify the client on confirmations of funds received/dispensed by wire/electronic/online transfers.
- (d) 22% failed to:
 - perform three-way reconciliations each quarter,

- provide a copy of the Bank Directive regarding checks presented against insufficient funds.

(e) 20% failed to provide written accountings to clients at the conclusion of representation, or at least annually if funds were held more than 12 months.

(f) 18% failed to maintain images of cleared checks, or failed to maintain them in the required format.

(g) 13% of lawyers/employees with check signing authority failed to take a required one-hour trust account management CLE course.

- (h) 11% failed to:
 - perform bank statement reconciliations each month,
 - escheat unidentified/abandoned funds as required by GS 116B-53.
- (i) 10% and less failed to:
 - prevent over-disbursing funds from the trust account resulting in negative client balances,
 - properly record the bank date of deposit on the client's ledger,
 - properly maintain a ledger of lawyer's funds used to offset bank service fees,
 - use business size checks containing the Auxiliary On-U's field,
 - remove earned fees or cost reimbursement promptly,
 - promptly remit to clients funds in possession of the lawyer belonging to the clients, to which the clients are entitled,
 - remove signature authority from employee(s) responsible for performing monthly or quarterly reconciliations.

Areas of consistent rule compliance:

- properly maintained a ledger for each person or entity from whom or for whom trust money was received,
- prevented bank service fees being paid with trust funds,
- signed trust account checks (did not use a signature stamp or electronic signature),
- properly deposited funds received with a mix of trust and non-trust funds into the

trust account,

- reviewed bank statements and cancelled checks each month,
- properly maintained records that are retained only in electronic format.

Fourth Quarter Random Audits

Judicial Districts randomly selected for audit for the fourth quarter of 2017 are District 11A, composed of Harnett and Lee Counties, and District 22B, composed of David and Davidson Counties.

Free CLE

Members of the North Carolina State Bar and certified paralegals can now access part 2 of an online, interactive, one-hour trust account management continuing legal education course on the North Carolina Bar Association's website. The program—a joint project of the North Carolina State Bar and the North Carolina Bar Association—provides the most current explanation of the management duties for a lawyer's trust account, and satisfies the provision in Rule 1.15-2(s) of the Rules of Professional Conduct requiring anyone with trust account signatory authority to complete a one-hour trust account management CLE course. Each one-hour program includes great content and helpful resources and is available free of charge to North Carolina State Bar licensed lawyers until February 2018, and until further notice for certified paralegals. These high quality online trust account management programs were produced by the North Carolina Bar Association and the State Bar and are sponsored in part by Lawyers Mutual Insurance Company, Old Republic National Title Insurance Company, and the Board of Paralegal Certification.

Updated Trust Account Handbook

A revised version of the Lawyer's Trust Account Handbook is available on the State Bar website at ncbar.gov/for-lawyers/trust-accounting. ■

Grievance Committee and DHC Actions

Disbarments

Scott S. Dorman of Las Vegas, Nevada, embezzled entrusted funds, did not deposit entrusted funds into a trust account, neglected and did not communicate with clients, did not respond to the Grievance Committee, and gave legal advice to an unrepresented opposing party. He was disbarred by the Disciplinary Hearing Commission.

Durham lawyer **Steven Troy Harris** did not inform his clients that his law license was administratively suspended, did not withdraw from representation, did not refund unearned fees, provided false status updates to his clients, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaged in the unauthorized practice of law, and did not respond to the Grievance Committee. He was disbarred by the DHC.

Michael A. Johnson of Thomasville surrendered his law license and was disbarred by the Wake County Superior Court. Johnson entered into a plea agreement acknowledging that he made false statements on a loan application and committed bank fraud in violation of 18 U.S.C. § 1344.

Christian Scott Mathis of Wilmington surrendered his law license and was disbarred by the Brunswick County Superior Court. Mathis pled guilty to one count each of forgery, uttering, and attempted notary fraud.

Eric Winston Stiles of Murphy surrendered his law license and was disbarred by the Cherokee County Superior Court. Stiles pled guilty to one felony count of knowingly possessing one or more firearms while being an unlawful user of a controlled substance. He also neglected and failed to communicate with numerous clients.

Edna R. Walker of Rutherfordton willfully failed to file and pay her personal income taxes and willfully failed to report and to pay over to the IRS funds withheld from her employees' paychecks. She was disbarred by the DHC.

Suspensions & Stayed Suspensions

Jerry Braswell of Goldsboro had sexual

relations with a client, did not properly terminate his representation of a second client, and filed a motion on behalf of but failed to take further action on behalf of a third client. He was suspended by the DHC for five years.

Clay A. Collier of Wilmington pled guilty to willfully failing to file individual state income tax returns for several years. On a few occasions, more was disbursed from his firm's trust account for a client than was in the trust account for that client, errors Collier corrected when he discovered them. He was suspended by the DHC for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Charlotte lawyer **Robert Donlon** threatened to publicize embarrassing or recriminating information about members of a law firm which represented the plaintiff in a malpractice action against Donlon. He was suspended by the DHC for one year. The suspension is stayed for two years upon his compliance with numerous conditions.

Andrew J. Hanley of Wilmington pled guilty to willfully failing to file individual state income tax returns for several years. On a few occasions, more was disbursed from his firm's trust account for a client than was in the trust account for that client, errors Hanley corrected when he discovered them. He was suspended by the DHC for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Pedro Krompecher of Raleigh, who is not licensed to practice law in Virginia, held himself out to third parties as able to provide legal services in Virginia, and engaged in the unauthorized practice of law in Virginia, a misdemeanor criminal offense. The DHC imposed a one-year stayed suspension.

Interim Suspensions

The chair of the DHC entered an interim suspension of the law license of **Craig M. Blitzer** of Reidsville. Blitzer pled guilty to the misdemeanor offense of willful failure to discharge duties in violation of N.C. Gen. Stat. § 14-230.

The chair of the DHC entered an interim

suspension of the law license of **Phillip H. Hayes Jr.** of Point Harbor. Hayes pled guilty to the felony offense of possession of a schedule II controlled substance in violation of N.C. Gen. Stat. § 90-95(A)(3).

Censures

Robert Weckworth of Guilford County was censured by the DHC. Weckworth communicated with a person known to be represented by counsel and engaged in an improper *ex parte* communication.

W. Andrew LeLiever of Sanford was censured by the Grievance Committee. LeLiever neglected his client's personal injury case and did not timely inform his client of the opposing party's settlement offer. As a result of this neglect, his client's case was dismissed. LeLiever then did not inform his client that the case was dismissed, and instead falsely represented that the case was still pending.

The Grievance Committee censured **W. Travis Barkley** of Raleigh. Barkley provided legal services to North Carolina residents as a local counsel of "BK Net Legal Services," an out-of-state entity not authorized to provide legal services in North Carolina. In doing so, Barkley assisted others in the unauthorized practice of law and made false or misleading statements about his services.

The Grievance Committee censured **Junius Allen Crumpler** of Raleigh. While he was administratively suspended, Crumpler continued to engage in the practice of law, hold himself out to others as a licensed attorney, and collect legal fees.

Reprimands

Shannon Reid of Gastonia was reprimanded by the Grievance Committee. Reid accepted fees and court costs for a client's traffic ticket but did not resolve the ticket or pay the court costs. As a result, the driver's license of the client was suspended. Reid did not answer the client's phone calls requesting information about the ticket and the license suspension. Reid did not participate in mandatory fee dispute resolution and, after initially responding to the Grievance

Committee, did not respond to follow-up questions.

The Grievance Committee reprimanded **Eric Ellison** of Winston-Salem. Ellison undertook to represent a client in traffic court and agreed to seek a limited driving privilege. Ellison's client made a partial payment of the agreed-upon fee. Ellison did not communicate with the client for two months and did not advise the client in preparation for a court date. When Ellison was late for the client's court date, the court appointed substitute counsel. Ellison did not participate in the State Bar's mandatory fee dispute resolution program. Ellison eventually provided a full refund to the client, after the State Bar opened a grievance file.

Samuel Popkin of Jacksonville was reprimanded by the Grievance Committee. Popkin was appointed to represent a parent in a termination of parental rights case. He did not respond to the client's telephone calls requesting information about the case. Popkin also submitted a late response to the grievance.

John J. Peck of Wilmington was reprimanded by the Grievance Committee. Peck agreed to provide estate and Medicaid planning services to an elderly client with profound dementia and his wife. Peck prepared documents for the diminished-capacity client to sign based entirely on consultation with the wife and step-daughter, and did not obtain written confirmation of any party's consent to the potential conflict of interest inherent in the representation.

Jamal M. Summey of Scotland Neck was reprimanded by the Grievance Committee. In a homicide case in which Summey's law partner represented the defendant, Summey advised a potentially critical State's witness to plead the Fifth Amendment. As a result, the court declared a mistrial.

Russell Bowling of Franklin was reprimanded by the Grievance Committee. He did not promptly disburse funds collected for payment of medical liens and did not promptly disburse his legal fee from the trust account. Bowling also made a loan to his client without advising his client in writing of the desirability of seeking the advice of independent legal counsel, without giving the client the opportunity to seek such counsel, and without the client's informed consent.

Clegg Wayne Mabry Jr. of Albemarle was reprimanded by the Grievance Committee. Mabry did not promptly remove his earned

fees and cost reimbursements from the trust account, did not promptly disburse to clients entrusted funds to which they were then entitled, disbursed more funds from the trust account on behalf of clients than the balance of funds maintained in trust for such clients, and did not escheat unidentified or abandoned funds as required by statute.

Craig Asbill of Charlotte was reprimanded by the Grievance Committee. He did not communicate with his client about her personal injury case.

Hendersonville attorney **J. Michael Edney** was reprimanded by the Grievance Committee. He neglected an estate, did not communicate with the estate's beneficiaries, and did not hold funds paid to the estate in a trust or fiduciary account.

The Grievance Committee reprimanded **Sonia Privette** of Washington. In a family law case, she did not communicate with her client and did not promptly deliver the file to her client upon request. In an unrelated case, she undertook representation for which she lacked the necessary competence.

Stephanie Villaver of Jacksonville was reprimanded by the Grievance Committee. Privette, who is not certified as a specialist by the Board of Legal Specialization, advertised on social media that she is a specialist in various areas of law.

Rudolph A. Bata Jr. of Murphy was reprimanded by the Grievance Committee. Bata advised his client, a homeowner, that he was obligated to pay financial obligations only on the number of lots existing after multiple lots he owned were combined. Thereafter, Bata undertook to represent the homeowners association. In that capacity, Bata wrote a letter to the board of directors of the homeowners association expressing his opinion that the homeowners association could not waive a homeowner's obligation to pay financial obligations on the number of lots the homeowner owned before lots were combined. When the conflict of interest was brought to Bata's attention, he failed to recognize the conflict and continued to communicate with the former client's new lawyer on behalf of the homeowners association. Bata's conflicts check system was deficient.

Jonathan Washburn of Wilmington was reprimanded by the Grievance Committee. Washburn did not timely conduct monthly and quarterly reconciliations of his trust accounts in the form and manner required by Rule 1.15-3(d).

Jo Ann DeJournette of Thurmond was reprimanded by the Grievance Committee. She failed to act with diligence and competence while serving as administratrix of an estate.

Reinstatements

Jonathan A. McCollum of Cary surrendered his license in October 2010 and was disbarred. McCollum acknowledged that he forged two documents purporting to be judicial orders, made misrepresentations to his clients about those documents, and initially made false statements to the Grievance Committee. At its July 2017 quarterly meeting, the State Bar Council voted to reinstate McCollum conditionally. After McCollum satisfied two conditions precedent, President Merritt entered an order reinstating McCollum's license so long as he remains in compliance with a third condition.

Stays of Existing Suspensions

In January 2016 the DHC suspended **Jonathan Silverman** of Sanford for three years. Silverman engaged in sexual intercourse with his current client and engaged in a conflict of interest by resuming the representation after initially withdrawing because of the sexual relationship. After he served 18 months of the suspension, Silverman was eligible to petition for a stay of the balance upon showing compliance with specified conditions. In August the DHC granted his petition for a stay of the remaining suspension so long as he continues to comply with stated conditions.

In July 2013 the DHC concluded that **Steven B. DeCillis**, formerly of Oxford and now of Charlotte, did all of the following simultaneously: sued L.H. in a personal injury case, represented L.H. in three matters that were unrelated to the personal injury case, and engaged in a sexual relationship with L.H. He was suspended for five years. After he served three years of the suspension, DeCillis was eligible to apply for a stay. On October 18 the DHC announced that it will stay the balance of the suspension so long as DeCillis complies with stated conditions.

Stayed Suspensions Activated

In July 2015 the DHC suspended **Robert M. Gallant** of Charlotte for two years because he did not timely file federal and state income

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An Interview with E. Cordell Avery, Certified Specialist in Residential Real Property Law

BY LANICE HEIDBRINK, EXECUTIVE ASSISTANT FOR THE SPECIALIZATION PROGRAM

“Cordell is an excellent lawyer, always attentive to the details of a transaction. He cares about the profession and professionalism of those who practice law, and is never reserved in expressing his concerns. I learned so much from him, especially in my first few years of practice.”

—Nancy Ferguson, vice-president, Chicago Title, board certified specialist in real property law

As the specialization program celebrates and reflects on 30 successful years, it’s important to express gratitude to the pioneer specialists who always believed in the importance of board certification and played an integral part in the growth of the program. E. Cordell Avery is one of these pioneer specialists. Avery was certified in residential real property law in 1987 and was part of the first class of lawyers certified by the North Carolina State Bar.

Avery earned his law degree from the University of North Carolina in 1976. During the course of his career, Avery was heavily involved in several professional associations and organizations. He served as president of the Pitt County Bar Association from 1985 to 1989. He served in various capacities with the North Carolina Bar Association including a term on the Real Property Law Section Council and as chair of the Real Property Law Membership and Diversity Committee.

Q: Why and when did you decide to focus on real property law as your field of practice?

During the summer breaks from law school I worked as an intern for a Greenville law firm. The firm offered legal services in several practice areas, including real property law. Most of my assignments involved searching titles and performing legal research on real property matters for Kenneth Hite, a skilled and respected Pitt County real property attorney. This introduc-

tion to the practical applications of the real property law being taught in law school was key to my decision to focus my practice on real property. After graduating from law school in 1976, I went to work as an associate with the same firm and was privileged to have Kenneth as my mentor and role model as I developed my real property practice.

Q: What career accomplishments are you most proud of and why?

Being in the first class of board certified specialists—it was very satisfying to be among the first North Carolina attorneys to be recognized as a specialist in an area of the practice.

Also, providing legal services to Pitt County and the City of Greenville for the flood buy-out

program after Hurricane Floyd. So many people lost their homes and otherwise had their lives turned upside down as a result of that 500-year flood event. I was fortunate to be able to assist many of them with closing the sale of their damaged or destroyed homes to the county or city. My goal was to help the flood victims in some small way so they could have funds to build or purchase a home outside of flood prone areas.

Another accomplishment was performing the title work for the construction of the Pitt County Court House Addition. The tract of land for the addition consisted of several former residential and commercial lots, which eventually became a parking lot for the original court house in the 1920s and 1930s. Bond counsel for the addition project required a full 60-year title examination, necessitating searching titles of the various parcels that eventually became the parking lot. The title examination took several weeks to complete. The addition is directly across the street from my office and is a tangible reminder of the small part I played in its completion.



Avery

Finally, in the mid-1990s I was privileged to serve on the council of the Real Property Section of the NC Bar Association. Challenges to what had been understood to constitute the practice of law, particularly with regard to the residential real property practice, began to intensify. The Real Property Section looked to the council for recommendations on how to better educate the public on the importance of legal representation for their home purchase and mortgage transactions. Also during this period the section council was asked for input on the drafting of The Good Funds Settlement Act codified in Chapter 45A of the North Carolina General Statutes. To be able to exchange ideas on the challenges facing the residential real property practice with dedicated real property attorneys from across the state was one of the best experiences of my professional life.

Q: What motivated you to get certified as a specialist in real property law?

The more my practice focused on real property matters, the more convinced I became that attorneys should have the same opportunity to obtain certification in a specialty as physicians had enjoyed for decades. Specialization would enhance my ability to stay abreast of constant changes in the practice area. Also, my clients could regard my certification as some assurance that they were receiving the best possible representation for their closing or other real property matter. Once the specialization option became available, I decided to go for it.

Q: What’s something that most people don’t know about you?

Most people don’t know that I love gadgets and gizmos. I’m a sucker for the latest cell phone, household tool, or automobile technology option. My latest acquisition is an ash vacuum cleaner I found for \$29.99. It’s great for cleaning a fireplace or fire pit without the fog of ashes and soot.

Q: What are your reflections on real property law now that you are stepping back from full-

time practice?

Thanks for underscoring that I am not retiring from the practice, but rather I am practicing on a limited basis for the foreseeable future. I continue to work with the City of Greenville and Pitt County on certain legal matters as well as with some of my regular clients.

When I began practicing in 1976, the pace of title examinations and preparing for a closing was much slower. We didn't use computers or fax machines, and we had at least 30 days, from opening a file for a purchase or refinance to the closing. The closing package from the lender consisted of little more than a note, deed of trust, and title opinion form. The closing statement was prepared by the lender. Since that time, changes in lending regulations resulted in more complex closing instructions and shifted more of the paperwork burden to the closing attorney. The advent of the fax machine, widespread use of overnight delivery services, and in the last 25 years the computerization of offices and communications have challenged the attorney to do more in a shorter period of time without sacrificing adherence to professional standards and quality representation of the client. Just in the short period between 2010 and 2014 we saw a major amendment to the old HUD-1 form, and the advent of the Consumer Financial Protection Bureau and its elimination of the HUD-1 and the Truth in Lending Disclosure form through integration in the Closing Disclosure. During the same period we experienced the implementation of the American Land Title Association Best Practices. I am honored to know many real property attorneys from across the state who meet these challenges daily with professionalism and with the best interests of their clients in mind. North Carolina consumers are fortunate to live in an approved attorney state.

Q: What advice would you give to lawyers who are just beginning their career and want to practice real property law?

Don't think of the practice of residential real property law as an easy source of fees requiring little effort on the attorney's part. Your clients are paying your fee with the expectation that you will protect their interests, as is true for any practice area. Some of your clients may question why they need an attorney for their closings and what value are they getting for your fee. These questions particularly come from people relocating from areas where an attorney is not involved in the closing process. Educate them on what you do for your fee

through an engagement letter prior to the closing, and by a professional delivery of your services from the title examination through the closing meeting. An attorney may concentrate in more than one area of the practice, but don't "dabble" in real property law just because you may want to help out a buddy or a family member, or because the office budget is a little tight that month. Real property law is complex and ever-changing. Anyone practicing in the field must keep up with those changes as well as be willing to invest in the ever-evolving technology required for maintaining the practice. Finally, remember that attorneys, as human beings, make mistakes. Don't schedule more closings per day than you can handle without sacrificing attention to detail and accuracy in providing your services. It is difficult to convince lenders, title insurance companies, and your clients of the value of your involvement in the process if you are regularly correcting errors for failing to follow closing instructions, missing something critical in the title search, or rerecording/reaffirming documents due to careless mistakes.

Q: Has specialization been good for the practice of real property law? If so, how?

Based on my experience, yes. No doubt I have attracted some clients because of my specialty being noted on the firm website and stationery, by word of mouth, or through recognition in the annual specialization directory. More importantly, I believe my status as a certified specialist in residential real estate law has reinforced the confidence of my clients that they have received the best quality service with the highest degree of professionalism. Being a certified specialist impressed on me the importance of staying current on any changes in the law and with technological innovations. I encourage those concentrating their practices in real estate law—either residential or commercial—to consider certification as a tangible way to underscore the benefits of attorney representation for residential closings and other real property matters.

Q: What are you happiest doing when you're not working?

Spending time with my children and grandchildren, reading anything from John Grisham novels to history, and traveling with my wife, Debby. To date Debby and I have seen much of the US and have traveled to 32 countries throughout Europe, North America, South America, and Africa. I plan all of our trips including flights, trains, hotels, and side excursions. Planning trips is my hobby like golf and

fishing are for others.

Q: What are you looking forward to doing once your practice winds down?

More traveling! Debby and I would like to see more of the US, and we still have some places in Europe on our bucket list to visit. I am particularly proud that we have traveled to most of the micro countries in Europe including Vatican City, Luxembourg, Liechtenstein, and Monaco. We just need to visit Andorra and San Marino to round out the micro list.

Q: What would your colleagues say you're most passionate about?

My colleagues will say that once I undertake a commitment on behalf of my community, church, or profession, I will give it my all and see it to the end. As to the practice of real property law, I have voiced strong opinions on several issues facing the real property practice, including a challenge by the FTC to the North Carolina statutory definition of the practice of law, the incursions of LegalZoom and non-lawyers into the practice of law, the value of attorney involvement in the closing process, and the necessity for real property attorneys to observe the highest professional and ethical standards. My directness in most of those opinions has raised the angst of some of my colleagues at the State Bar and the NC Bar Association. They and others who know me know that I don't mince words. I'm a "cut to the chase" kind of guy. ■

For more information on real property law specialists or to learn how to become certified, visit our website at nclawspecialists.gov.

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Thinking Like a Lawyer is a Technique—Not a Lifestyle.

BY CATHY KILLIAN AND ROBYNN MORAITEs

The forecast was rainy and cold, but Sunday afternoon turns out to be beautiful. Excitedly your spouse suggests you pack a picnic and go to the park. Thinking out loud you begin a laundry list of possible scenarios from, “It could still possibly rain,” to, “The bright red picnic blanket would make you a more prominent target for birds, bums, and burglars.” Your exasperated spouse snappily says, “Never mind! I should never have married a lawyer,” while you look on in puzzlement. Another personal casualty brought on by thinking like a lawyer.

From the first day of law school, students are taught how to think in a very precise manner. As Professor Kingsfield of *The Paper Chase* said, “You come in here with a head full of mush and you leave thinking like a lawyer.” Students quickly learn to identify issues, decide the applicable rules, analyze possibilities, and arrive at a conclusion, knowing that failing to recognize all possibilities is in itself a form of failure, notwithstanding any impact to a client. Add to that a forced hierarchy grounded in extreme competition in an environment with constant challenges by professors and peers. For law students—high achievers who consistently push themselves to exceed expectations—the ability to think like a lawyer becomes ingrained and automatic.

Legal education is grounded in logic. Students develop a very logical and rational way to reach conclusions. It requires a specific and unique skill set, primarily grounded in deductive reasoning. This critical thinking process not only identifies all variables, but then strategically maps out three or four steps ahead. As the landscape or fact patterns shift, the analysis also shifts to compensate for the new variables and information, all the while navigating towards the desired outcome or solution. Law schools convey this as a superior way of thinking, and it certainly proves invaluable in a lawyer’s professional life.

What serves us well in one context, however, only serves to harm us in another. Those of us who find it difficult to step out of the professional role or who wrap our identity too tightly around being a lawyer find that, while an unconscious process, “lawyerly thinking” and subsequent behaviors can become detrimental to our personal lives. For some, this thinking process can hijack our personality rather than remain “an important but strictly limited legal tool.” This mode of thinking can overly influence our personal lives by changing our view of the world and how we relate to it, in no small part because it also requires that we ignore feelings and focus on facts. As Kate Galloway says, “The law will take your brain apart and repackage it so you see the world differently.” And indeed we do.

There are numerous ways these positive professional attributes become negative personal impediments. Here are some of the most common manifestations:

- One of our most valuable skills as lawyers—our ability to find the flaws, pitfalls, and potential problems and to be skeptical about all possible solutions—comes across as very negative and pessimistic when we engage in this type of thinking outside of the office. It is off-putting and people may begin to avoid us. Trained as defensive thinkers in this way, we appear “disagreeable” by nature.

- Somewhat paradoxically, we are able to anticipate and discern things about which others could care less, yet even with a fuller range of knowledge and awareness (and often preparedness) we remain uncertain when others feel assured. This leads those outside the profession to see us as “different” or “difficult.”

- Many lawyers are adept at looking at issues from all perspectives and scrutinizing them, but find it difficult to form their own opinions or make decisions in a personal context. To others this may seem a sign of avoidance or insecurity.



- In our work, we seek a clear precedent and are reluctant to proceed without one. When this trait is generalized to our personal lives, we begin to dislike situations of uncertainty, so we lack spontaneity, avoid taking risks, and seem extraordinarily rigid.

- Sometimes deductive reasoning goes awry and we try to use it as a cure-all for emotionally untenable situations. When lawyers are disconnected from their own feelings and from their “authentic self,” they may find themselves in situations and relationships that seem like they should be good, at least intellectually, but are anything but, emotionally. When lawyers are detached from what they really want and what is best for them emotionally, they may spin their wheels for some time rationalizing that a situation or relationship should be something it clearly is not.

- As advocates we are constantly looking to negotiate, renegotiate, amend, or convince others that our perspective is correct. What may merely be an automatic cognitive exercise on our part, can be seen as controlling and condescending to someone on the receiving end. On the other hand, we can be very sly—shielding our true goal—and begin to deploy advocacy tactics in what we think is a subtle yet friendly way. Others perceive it for what it is:

manipulation.

- Lawyers are very good at active listening and excellent at focusing on what appears to be the other person's primary point. This may initially be interpreted as engagement and even respect. But it takes a dark turn if we disagree, as we are adept at using our critical thinking skills to utilize that as an entry point for destruction like Luke entering the Deathstar.

- We question everything. We are simply gathering facts and information, but as one lawyer puts it, "The way in which I constantly questioned everything was deemed to be an argumentative and adversarial (and therefore undesirable) mode of personal engagement." He was specifically talking about his wife...ex-wife, that is.

- The precision of our thinking is also conveyed in the way we communicate. We choose our words carefully and structure verbal and written communication to narrow and intensify the focus of what we want to convey. While choosing words carefully can be an art form of articulation, it can also be used as an effective means of manipulation, which can morph into dishonesty (including by omission) or denial (including to ourselves). It's a slippery slope, as we say, because we generally operate in the absence of absolute certainty. Fulfilling our ethical requirement of "zealous advocacy" requires us to argue from the client's perspective—however implausible—not from the perspective of an objective *truth*.

This skillful analytical approach requires focusing on real and tangible facts while putting aside our own emotional opinions or reactions. It is a purposeful discounting of our own morals and values. Yale Law School Professor Stephen Wizner states, "The process of teaching law students to think like lawyers causes them to suppress the very feelings and moral concerns that they brought with them to law school, and...that brought them to law school." Not only do we learn to dismiss our own emotions, we must also be able to help clients dismiss theirs and navigate through a decision-making process that transforms their often overwhelming outpour of emotions into concrete decisions and definitive actions.

Many believe this exclusion of emotions and specific personal aspects occurs because it is viewed as "inconsistent with legal thinking." Lawyer Jordan Furlong states that a purely analytical approach can "drown out your instincts, stifle your emotions, and numb your heart, but frequently neglects to enlighten and illuminate your soul." It sets the

Mindful Moment

Everyone has what neuroscientists call a "negativity bias." In order to survive physically, our brains evolved such that we remember negative experiences more intensely than positive ones. Every moment, our brains scan for threats. Anything that causes us to feel fear, anxiety, or discomfort, the brain easily records. Conversely, anything the brain registers as positive is quickly discarded. Practicing law fortifies our negativity bias more than most professions: lawyering requires us to pay continuous attention to copious details that may threaten our client's case. Our lawyer brains are trained and paid to stay alert to what could go wrong. However, constantly focusing on what might go wrong has consequences. We miss opportunities and underestimate resources, and over time, may feel pessimistic, jaded, and/or depressed, inside or outside of our practice. Fortunately, mindfulness—paying attention to what is happening in the present moment without judgement—can help shift our attention away from what is bad or wrong and toward what is good and right. This shift in focus will train our brains to remember positive experiences, thereby promoting creative problem solving, clearer thinking, and more ease in our professions and lives.

Here's how:

1. In any moment during your day, pause.
2. Ask yourself, "What am I thinking right now?"
3. If it's a negative thought, notice what it feels like in your body (ex: stomach is tight, breathing is shallow).
4. Ask yourself, "What's good here?" or "What's right here?" or "What do I like about this?" (ex: I enjoy working with this client, I have had positive experiences appearing before this judge, I like legal writing...I'm good at it.)
5. Notice what it feels like to think that thought (ex: stomach is relaxed, breathing is deeper, feel more calm).
6. Stay with the positive thought and feelings as long as you can, at least 15 seconds.

Try this mindfulness practice as many times a day as you can. The more you practice, the easier it is and the more lasting impact it will have.

Laura Mahr is a NC lawyer and the owner of Conscious Legal Minds LLC. She conducts CLEs and coaches individual lawyers on using mindfulness and neuroscience to build resilience to stress, address secondary trauma, foster work-life balance, and prevent professional burnout. Contact Laura at laura@consciouslegalminds.com; find out more about her practice at consciouslegalminds.com.

stage for lawyers to measure our worth in terms of what we have achieved as lawyers, rather than value ourselves as people. Anthropologist and Law Professor Elizabeth Mertz discovered that this detachment from emotions and values increases a lawyer's tendency to isolate and makes us less likely to ask for support or help from others. When compelled to seek professional help, we utilize these very same "intellectually defensive" skills to resist and inhibit therapy or treatment. Perhaps it also helps to explain why even though medical students and doctors have competitive environments, enormous stress, and high educational debt, it is lawyers who have the highest rate of alcoholism, depression, and anxiety.

Avoiding over-identification with our professional side allows for balance and more fluidity in thinking and behaviors. Thinking like a lawyer can be a positive quality if viewed and deliberately used as a "legal skill," not a catch-all "life skill." These intellectual abilities should serve as a complement to the way we think as lawyers, not as a replacement for how we think and who we are as human beings. By keeping this perspective, we can inspire people instead of manipulate them. We can respond to change rather than resist it. We can stretch our comfort zone and make some creative choices instead of strictly calculated ones. We can relax a little and let down our guard. As we

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Fixed Fee Legal Services Online—What is the State Bar Doing about AVVO?

BY SUZANNE LEVER

At its meeting on October 26, 2017, the Ethics Committee voted to return Proposed 2017 Formal Ethics Opinion 6, regarding participation in Avvo Legal Services, to a subcommittee for further study. Why? To give the subcommittee time to consider the comments in opposition to the proposed opinion received from North Carolina lawyers.

Background Information on Avvo Legal Services

Avvo.com offers “fixed fee legal services from local lawyers” on its website. Known as Avvo Legal Services (ALS), this service allows consumers to select and employ a lawyer to perform an “unbundled” or discrete legal service.

Legal services available on the ALS platform include advice sessions, document reviews, document drafting, and, in some practice areas, a “start to finish” service such as a simple divorce. The legal fee for each service is displayed on the website together with a description of the legal service that identifies “what’s included” and “what’s not included.” After a consumer selects a legal service, the consumer clicks on the “choose a lawyer” button and is prompted to provide a zip code. The profiles of participating lawyers in or near the provided zip code appear. The consumer can then “select” one of the lawyers from the list to perform the legal service.

Avvo determines the fee that will be charged for each service and also charges participating lawyers a fee. The fee charged to the lawyer, which varies depending on the particular legal service, is called a “marketing fee.” Avvo initially collects the entire legal fee from the consumer via a credit card and deposits the funds in an Avvo bank account. On a monthly basis, Avvo pays the participating lawyer the entire amount of legal fees generated by the lawyer in the preceding

month. In a separate transaction, Avvo collects its marketing fees for these legal services by debiting the lawyer’s operating account. Avvo represents that it will refund the fee paid by a consumer if the legal services are not delivered or the consumer is not satisfied with the service.

History of Inquiry

ALS came to the attention of the Ethics Committee in October 2016 when State Bar ethics counsel began receiving inquiries from lawyers asking whether participation in ALS was permissible under the Rules of Professional Conduct. Because ALS presented a unique business model, the matter was assigned to an ethics subcommittee for study and evaluation.

Subcommittee Process

The appointed subcommittee consists of five lawyers from large and small firms as well as a nonlawyer advisory member from Lawyer’s Mutual Insurance Company. The lawyers appointed to the subcommittee were selected, in part, based on their initial reactions to ALS. At least three members of the subcommittee were adamantly opposed to the business model.

The chair, vice-chair, and legal counsel to the Authorized Practice Committee also participated in the subcommittee meetings. The subcommittee meetings were attended by numerous guests including State Bar councilors, in-house legal counsel for Avvo, and, most recently, representatives of the Real Estate Lawyers Association of North Carolina (RELANC). The subcommittee also invited a North Carolina lawyer currently participating in ALS to describe her experience to the subcommittee.

The subcommittee met a total of six times in 2017, and spent countless hours researching ALS and discussing the many ethics rules potentially implicated. (The pro-

posed opinion cites 13 Rules of Professional Conduct.) Because of the number of ethics issues involved, the subcommittee recognized early on that Avvo’s rating service should be examined separately from the actual platform for obtaining legal counsel. Therefore, the subcommittee decided to draft a separate proposed ethics opinion addressing the ratings issues. (That proposed opinion has yet to be published for comment.)

After extensive research, each of the subcommittee members arrived at the conclusion that an ethics opinion should not prohibit lawyers from participating in ALS. Throughout these meetings, the subcommittee members were guided by three assumptions: that the marketplace for legal services is changing, the role of the North Carolina State Bar is to protect the consumer of legal services, and there is undeniably a gap in the need and availability of affordable legal services.

The Proposed Opinion

The result of the subcommittee’s hard work is Proposed 2017 Formal Ethics Opinion 6. This opinion provides that lawyers may participate in ALS subject to certain conditions. Most notably, the opinion concludes that, “if there is no interference by Avvo in the independent professional judgement of a participating lawyer and the percentage marketing fees paid by the lawyer to Avvo are reasonable costs of advertising...the lawyer is not prohibited from participating in ALS on the basis of the fee-sharing prohibition [set out in Rule 5.4(a)].” I say “most notably” because, at present, six states have issued ethics opinions on the ALS business model and have concluded that lawyers cannot participate in the business model primarily on the grounds that the model involves prohibited fee-sharing.

The subcommittee carefully reviewed

each opinion from the other State Bars and concluded that Proposed 2017 Formal Ethics Opinion 6 is the correct application of Rule 5.4(a), which is specifically intended to protect the lawyer's professional independence of judgment. *See* Rule 5.4, cmt. [1]. Indeed, taking payment by credit card, which many lawyers do, is already a form of fee-sharing, since the credit card fee is a percentage of the amount paid. In reaching the conclusions set out in the proposed opinion, the subcommittee members carefully considered the purpose of the rules relative to the State Bar's duty to protect the public.

North Carolina Lawyer Comments

Following publication of the proposed opinion, we received approximately 30 comments opposing the proposed opinion. (We also received one comment in favor of the opinion.) Pursuant to the process for adopting formal ethics opinions, if *even one* comment is received about a proposed formal ethics opinion, the proposed opinion is reconsidered by the Ethics Committee at its next quarterly meeting after publication. The comments on Proposed 2017 Formal Ethics Opinion 6 were carefully considered at the committee's meeting on October 26. As a result of this reconsideration process, the Ethics Committee voted to return Proposed 2017 Formal Ethics Opinion 6 to the subcommittee for further study.

The comments received primarily focus on one aspect of the multi-faceted proposed opinion: the discussion of fee sharing with a nonlawyer. Other comments generally suggested that these types of online services allow unqualified lawyers to provide legal services (i.e., lawyers just out of law school working out of a parent's basement), and diminish the legal profession by emphasizing business rather than professionalism.

The favorable comment commends the Ethics Committee for "prioritizing consumer interests in drafting the proposed opinion," and states that the result "is a reasonable set of guidelines that maintain the consumer protection principles behind the Rules of Professional Conduct and will maintain their relevance as technology, legal business models, and consumer expectations evolve, rather than making bright-line rules based on current models that may not be a good fit for unforeseen future circumstances." It concludes that, by engaging in analysis of the actual impact on consumers of online plat-

forms, the Ethics Committee has drafted an ethics opinion that protects consumers while fostering an environment in which access to the legal system will improve for North Carolinians.

What Happens Now

The subcommittee will meet during the upcoming quarter to further consider the comments received in opposition to the proposed opinion, and to consider withdrawing the proposed opinion or revising and republishing it for comment.

Regardless of the future actions of the ethics subcommittee, companies providing online legal services are not going away. As noted by the ABA Commission on Ethics 20/20:

Technology has irrevocably changed and continues to alter the practice of law in fundamental ways. Legal work can be, and is, more easily disaggregated; business development can be done with new tools; and new processes facilitate legal work and communication with clients. Lawyers must understand technology in order to provide clients with the competent and cost-effective services that they expect and deserve.

The State Bar's role in this legal marketplace is to protect the consumers of these new types of legal services. It is not the role, or the aspiration, of the State Bar to restrict consumers' access to affordable legal services. Similarly, it is not the role of the State Bar to unnecessarily restrict the right of North Carolina lawyers to participate in a potentially profitable business venture. The Rules of Professional Conduct are not intended to prevent "new and useful ways" of providing legal services. *See* 2001 FEO 2 (contracting with management firm to administer law office).

Navigating these new legal waters is not easy. The subcommittee members digested information on ALS and other types of online legal platforms for a year before publishing the proposed opinion for comment. The proposed opinion is still a work in progress and we request your participation in the reconsideration process. The subcommittee members specifically request that lawyers writing to express dissatisfaction with the proposed opinion also include in their comments viable solutions or alternatives. What measures do you recommend to protect consumers? To protect the integrity of the legal

profession?

Subcommittee Meetings are Open to the Public

A great way to become educated on the issues involved in services like ALS and to be involved in the reconsideration process is to attend the subcommittee meetings on the proposed opinion. The subcommittee meetings are open public meetings and generally take place by conference call. The dates of the meeting are posted on the State Bar website: nbar.gov/about-us/upcoming-events/. The dates are also posted on the television monitors throughout the State Bar building. In addition, you may also email me if you would like to be notified of the date and time of the next subcommittee meeting: slever@nbar.gov. ■

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

LAP (cont.)

deepen our awareness of our inherent value separate and apart from our professional achievements, we begin to live a life reflective of that. We begin to separate what we do from who we are.

Lawyer Steven Radke's words to entering Marquette Law School students summarizes it well. "Over the next few years, you will develop a highly tuned ability to make distinctions that do not make a difference to most people, a capacity to see ambiguity where others see things as crystal clear, and an ability to see issues from all sides. You will be able to artfully manipulate facts and sharply and persuasively argue any point...[But] your spouse is not the appropriate person on whom you should practice any of these skills." ■

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 (western areas of the state) at 704-910-2310, or Nicole Ellington (for eastern areas of the state) at 919-719-9267.

ABC's of the PCC

BY ERICA MCADOO

Ever heard of the PCC? How about the NC Certified Paralegal (NCCP) exam? Well, turns out the PCC has quite a bit to do with the NCCP exam. What's even better is that you may be able to get involved.

PCC is an acronym for Paralegal Certification Committee. The PCC was created under 27 NCAC 1G .0118 and was tasked with items such as drafting and revising the NCCP exam. It is comprised of seven members, all of whom are either licensed attorneys in good standing or certified paralegals.

The PCC meets via teleconference once a month for approximately two hours. During that time, committee members review, discuss, and revise potential NCCP exam questions. Other topics of conversation may include NCCP exam results, recent exam administration, and the overall state of the paralegal profession.

Here's where you come in. As mentioned, the PCC reviews, discusses, and revises potential NCCP exam questions; however, the PCC does not write the exam questions—item writers do. Item writers are NC certified paralegals working in various areas of law who are willing to commit to drafting and submitting at least ten potential NCCP exam questions. The PCC provides a brief training session for item writers to go over requirements, guidelines, etc. Item writers are also provided with written guides and assigned a mentor. Most item writers report that the process of drafting questions is an enjoyable and challenging mental exercise that doesn't take up much of their time, yet allows them to make an additional contribution to the paralegal profession.

After all of the questions have been submitted, the PCC invites all item writers to attend a Friday workshop that is usually held in March or April at a hotel in or around Raleigh. During the workshop the PCC talks with item writers about their experience with

drafting questions. All questions are combined into a single document with the author of each question undisclosed. The PCC then works through some of the questions out loud. The primary purpose of this activity is to give item writers feedback on things such as question formatting, topics, content, and level of difficulty. At the end of the day on Friday, the item writers are dismissed, and the PCC continues working through mid-day Saturday.

One of the main goals of the PCC is to make sure that the questions approved for inclusion on the NCCP exam are fair, consistent, and diverse with correct grammar and punctuation, and of an appropriate level of difficulty. The PCC also reviews potential exam questions to ensure that an appropriate domain and task is assigned to each question. Domains include communication, organization, documentation, analysis, and research. There are also numerous subparts, or tasks, under each domain. Utilizing domains and tasks helps ensure that the final version of the exam is comprised of fair and diverse questions.

Most, if not all, of the PCC members started out as item writers. PCC members have term limits, so openings do arise. When a PCC member is due to rotate off the committee, item writers are often considered as potentials to fill the vacancy. Item writers are usually able to transition onto the PCC smoothly, as their experience tends to have imparted valuable knowledge of the processes, purpose, and goals of the PCC.

The item writing process typically takes place early in the year. With 2018 quickly approaching, it is time to start looking for item writers. For more information on how to become an item writer, please contact Joy C. Belk via email at jbelk@ncbar.gov. For more information on the paralegal certification process, including a study guide for the NCCP exam, visit nccertifiedparalegal.gov. ■

Erica McAdoo currently serves as co-chair of

the PCC and is the firm manager for The Paynter Law Firm PLLC in Hillsborough, NC.

Discipline Department (cont.)

tax returns from 2007 through 2013. The suspension was stayed for two years upon Gallant's compliance with multiple conditions. In October 2017 the DHC concluded that Gallant did not comply with all conditions, lifted the stay, and activated the suspension.

Orders of Reciprocal Discipline

The chair of the Grievance Committee issued an order of reciprocal discipline disbaring **Gregory Robert Noonan** of Norristown, Pennsylvania. Noonan was disbarred in October 2016 by the Supreme Court of New Jersey based on his guilty pleas to two counts of possession of a controlled substance with the intent to distribute within 8,000 feet of a school zone, and one count each of criminal use of a communications facility, dealing in unlawful proceeds, forgery, and theft by deception.

The chair of the Grievance Committee issued an order of reciprocal discipline suspending **John R. Hibner** of Hempsted, New York, for four years. In March 2010 the Supreme Court of New York suspended Hibner for professional misconduct relating to his business transaction with clients. The court concluded that Hibner did not obtain the client's written, informed consent to the transaction; that Hibner intentionally prejudiced or damaged the clients; and that Hibner engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct prejudicial to the administration of justice, and conduct that adversely reflects on Hibner's professional fitness. ■

NC IOLTA Experiences Slight Increases in Income

Income

Participant income through August 2017 was up by nearly 3% compared to the same period in 2016. The increase can be attributed to slight increases in interest rates at some banks, including one of our larger banks. We will continue to work with banks as the interest rate climate changes. We remain hopeful that a rise in interest rates will bring income levels from the accounts back to more normal levels.

Grants

As previously reported, the IOLTA trustees dramatically reduced the number of grants beginning in 2010 as we dealt with a significantly changed income environment due to the economic downturn. The trustees decided to focus grant-making on organizations providing core legal aid services. Even with that change, IOLTA grants have dramatically decreased by over 50% from their highest level of just over \$4 million in 2008 and 2009.

In 2017, regular IOLTA grants totaled just over \$2 million: \$1,682,615 to support providers of direct civil legal services, \$274,440 to volunteer lawyer programs, and \$95,280 to projects to improve the administration of justice.

During this downturn in income from IOLTA accounts, IOLTA has relied heavily on cy pres and other court awards designated for the provision of civil legal aid to the poor. As such, for those programs that provide foreclosure prevention legal services, the IOLTA trustees allocated a portion of their regular 2016 and 2017 IOLTA grants to this restricted purpose funded by the monies from the Bank of America settlement. In 2017-2018, NC IOLTA will make the second year of grant payments approved in October 2016 for community redevelopment projects funded by the Bank of America settlement.

State Funds

In addition to its own funds, NC IOLTA administers the state funding for

legal aid on behalf of the NC State Bar. In June, the Access to Civil Justice Act was repealed and associated funding was eliminated. This amounts to a loss of \$1.7 million in funding for three organizations—Legal Aid of North Carolina, Charlotte Center for Legal Advocacy (formerly Legal Services of Southern Piedmont), and Pisgah Legal Services—to provide general civil legal services.

NC IOLTA will continue to administer funding from filing fees specifically earmarked for domestic violence legal services, which total approximately \$1 million annually.

Grantee Spotlight

Each year, one in four women will report violence at the hands of an intimate partner during her lifetime. Funding from North Carolina's Domestic Violence Victim Assistance Act provides legal aid to help more than 4,850 domestic violence victims and their children escape abuse and rebuild their lives. Together with other sources, Legal Aid of North Carolina and Pisgah Legal Services utilize funding through the Domestic Violence Victim Assistance Act to provide domestic violence legal services statewide.

Legal aid plays a pivotal role in helping victims of domestic violence escape abuse. Caroline's story provides just one example of

the many North Carolinians served each year due in part to this critical funding source. After years of enduring isolation, physical violence, and threats that he would kill them all, Caroline left the father of her three girls and got a protection order. Unfortunately the abuse didn't end there.

One night, her abuser saw them driving through town. He began to tailgate them dangerously as Caroline tried desperately to get them to her parents' house. She says, "He was trying to spin us out by hitting my back tire." One of her daughters cried, "Daddy is going to kill us!" Caroline managed to get them all to safety, then she called 911.

Caroline knew she had to do more to protect her girls. She came to Pisgah Legal Services for help. Attorney Julia Horrocks helped Caroline get sole legal custody of the girls. "It felt good to have the support of an attorney." Their abuser was convicted of assault with a deadly weapon and violating the protection order. He went to jail.

Today the girls are doing better in school, attending church, and joining after-school activities—things their father never allowed. Caroline is starting a new chapter, too. She credits her strong faith for helping her get through difficult times. "I used to pray that someday I would have the strength to get away from him. My attorney made me feel like I wasn't alone." ■



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Proposed Opinion on Participation in Avvo Legal Services Returned to Subcommittee for Further Study

Council Actions

At its meeting on October 27, 2017, the State Bar Council adopted the ethics opinions summarized below:

2017 Formal Ethics Opinion 2

Maintaining Fiduciary Account in

Accordance with Rule 1.15

Opinion rules that a lawyer representing an estate must maintain the checking account for the estate in accordance with Rule 1.15 consistent with the extent to which the lawyer has control over the account.

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.

In Memoriam

Susan Vardell Anderson
Boone, NC

John M. Bahner Jr.
Albemarle, NC

Donna E. Bennick
Chapel Hill, NC

Henry C. Boshamer
Morehead City, NC

Edgar H. Bridger
Cary, NC

John Wishart Campbell
Lumberton, NC

Berlin H. Carpenter Jr.
Gastonia, NC

Andrew Cookson
Raleigh, NC

William Andrew Copenhaver
Winston-Salem, NC

Ernest S. DeLaney III
Charlotte, NC

Allen Holt Gwyn
Greensboro, NC

John W. Herron
Raleigh, NC

Edward Shelton Holmes
Pittsboro, NC

Samuel H. Johnson
Raleigh, NC

James Monroe
Long Blanch, NC

Joseph Francis McNulty Jr.
Greensboro, NC

Michael Ward Mewborn
Swansboro, NC

Haywood Vernon Norwood Jr.
Charlotte, NC

William Douglas Parsons
Clinton, NC

James Dickson Phillips Jr.
Chapel Hill, NC

James Dennis Rash
Charlotte, NC

Karl H. Straus
Asheville, NC

Henry Monroe Whitesides Sr.
Gastonia, NC

Jamie Avril Wilkerson
Norlina, NC

Gerald W. Wilson
Boone, NC

2017 Formal Ethics Opinion 5

Agreement Not to Solicit or Hire Lawyers from Another Firm as Part of Merger Negotiations

Opinion rules that an agreement between law firms engaged in merger negotiations not to solicit or hire lawyers from the other firm for a relatively short period of time after expiration of the term of the agreement is permissible because it is a *de minimis* restriction on lawyer mobility that does not impair client choice and is reasonable under the circumstances.

Ethics Committee Actions

At its meeting on October 26, 2017, the Ethics Committee voted to continue to table Proposed 2016 Formal Ethics Opinion 1, Contesting Opposing Counsel's Fee Request to Industrial Commission, pending the conclusion of appellate action in a case that is relevant to the proposed opinion. The committee also voted to return Proposed 2017 Formal Ethics Opinion 6, Participation in Platform for Finding and Employing a Lawyer, to a subcommittee for further study. No new proposed opinions were approved for publication. ■

Amendments Approved by the Supreme Court

On September 28, 2017, 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 2017 and Summer 2017 editions of the *Journal*, unless otherwise noted, or visit the State Bar website):

Amendments to the Rule on Prehearing Procedure in Proceedings Before the DHC

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

The amendments require a settlement conference with the parties before a DHC panel may reject a proposed settlement agreement.

Amendment to IOLTA's Fiscal Responsibility Rule

27 N.C.A.C. 1D, Section .1300, Rules Governing the Administration of the Plan for Interest on Lawyers' Trust Accounts (IOLTA)

The amendment clarifies that the funds of IOLTA may only be used for the purposes specified in the IOLTA rules.

Amendment to the Rule on Uses of the Client Security Fund

27 N.C.A.C. 1D, Section .1400, Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar

The amendment clarifies that the Client Security Fund may only be used for the purposes specified in the Client Security Fund

rules.

Amendments to The Plan of Legal Specialization

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

A new rule in The Plan of Legal Specialization allows certified specialists with special circumstances to be placed on inactive status for a period of time and to regain their status as certified specialists upon satisfying certain conditions. An amendment to the rule on the annual meeting of the Board of Legal Specialization changes the date for the meeting to the date of the board's spring retreat.

Standards for New Specialty in Privacy and Information Security Law

27 N.C.A.C. 1D, Section .3300, Certification Standards for the Privacy and Information Security Law Specialty

A new section of the specialization rules creates a specialty in privacy and information security law and establishes the standards for certification in that specialty.

Amendments to the Rules of Professional Conduct

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

Amendments to Rule 1.3, Diligence, and Rule 8.4, Misconduct, of the Rules of Professional Conduct clarify the standards for imposition of professional discipline under each rule. The amendments to the

Highlights

- Proposed amendments to Rule of Professional Conduct 5.4, which would add an additional exemption to the prohibition on fee-splitting, returned to Ethics Committee for further study.
- Designation "accredited sponsor" currently allowed in the CLE rules changed to a "registered sponsor" designation to avoid misleading lawyers.

comments to Rule 7.2, Advertising, and Rule 7.3, Direct Contact with Potential Clients, explain the terms "electronic communication(s)" and "real-time electronic contact" as used in the rules, and alert lawyers to state and federal regulation of electronic communications.

Amendments to the Rules Governing Admission to the Practice of Law

These amendments were approved by the Supreme Court on November 8, 2017. The comprehensive rewrite by the Board of Law Examiners of the Rules Governing the Admission to the Practice of Law includes amendments expressly adopting the Uniform Bar Examination as the official bar examination for general applicants to the North Carolina bar.

Amendments Pending Supreme Court Approval

At its meetings on July 28, 2017, and October 27, 2017 (unless otherwise noted), the council of the North Carolina State Bar voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for approval (for the complete text of the proposed rule amendments see the Summer 2017 and Fall 2017 editions of the

Journal or visit the State Bar website):

Proposed Amendments to the Rule on Standing Committees of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The proposed amendments eliminate the

Technology and Social Media Committee and establish the Communications Committee as a standing committee of the State Bar Council.

Proposed Amendments to the Plan for Certification of Paralegals

27 N.C.A.C. 1G, Section .0100, The

Plan for Certification of Paralegals

The proposed amendments to Rule .0119 allow applicants for paralegal certification who hold national certifications from qualified national paralegal organizations (including the CLA/CP certification from the National Association of Paralegals and the PACE-Registered Paralegal Certification from the National Federation of Paralegal Associations) to sit for the certification exam although the applicants have not satisfied the educational requirement for certification. The proposed amendments also delete a provision that allowed alternative qualifications for certification during the first two years of the program. Another proposed amendment requires certain qualified paralegal studies programs to include the equivalent of one semester's credit in legal ethics.

New Retired Status Rule in The Plan for Certification of Paralegals

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

The proposed new rule creates a retired status for certified paralegals subject to certain conditions. This proposed rule amendment was approved by the council at its meeting on April 21, 2017, and was published for comment in the Spring 2017 edition of the *Journal*.

Proposed Amendments to the Rules of Professional Conduct

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

Proposed amendments to Rule 1.15, Safekeeping Property, and its subparts specify that certain restrictions on the authority to sign trust account checks also apply to the initiation of electronic transfers from trust

accounts. The proposed amendments define "electronic transfer" and make clear that lawyers are permitted to sign trust account checks using a "digital signature" as defined in the Code of Federal Regulations. In addition, further proposed amendments to Rule 1.15 reduce the number of quarterly reviews of fiduciary accounts that must be performed by lawyers who manage more than ten fiduciary accounts on the assumption that the accounts are managed in the same manner and reviews of a random sample of the accounts is sufficient to facilitate the early detection of internal theft and correction of errors.

A proposed comprehensive revision of Rule 3.5, Impartiality and Decorum of the Tribunal, improves the clarity of the rule overall and provides better guidance on the prohibition on *ex parte* communications with a judge.

Amendments Returned to Ethics Committee for Further Study

In the Fall edition of the *Journal*, a proposed new comment to Rule 1.15, Safekeeping Property, was published. The new comment would explain the due diligence required if a lawyer uses an intermediary (such as a bank, credit card processor, or litigation funding entity) to collect a fee. Also published

for comment in the Fall *Journal* were proposed amendments to Rule 5.4, Professional Independence of Lawyer. These proposed amendments add an exception to the prohibition on fee-sharing that allows a lawyer to pay a portion of a legal fee to a credit card processor, group advertising provider, or online plat-

form for hiring a lawyer if the business relationship will not interfere with the lawyer's professional judgment. At the October 26, 2017, meeting of the Executive Committee of the council, it was determined that both proposed rule amendments should be returned to the Ethics Committee for further study.

Amendments Pending Supreme Court Approval

At its meeting on October 27, 2017, the council voted to publish the following proposed amendments to the governing rules of the State Bar for comment from the members of the Bar:

Proposed Amendments to the Rules on Meetings of the North Carolina State Bar

27 N.C.A.C. 1A, Section .0500, Meetings of the North Carolina State Bar

The proposed amendments revamp the manner and method of giving notice of the

annual meeting of the State Bar. The proposed amendments also clarify the manner and method for calling a special meeting of the State Bar.

.0501 Annual Meetings

The annual meeting of the North Carolina State Bar shall be held at such time and place within the state of North Carolina, ~~after such notice (but not less than 30 days)~~ as the council may determine.

.0502 Special Meetings

(a) ~~A special~~ A special meetings of the

North Carolina State Bar may be called to address specific subjects ~~may be called upon 30 days notice~~, as follows:

(1) ~~by the secretary~~, upon direction of the council; or

(2) ~~by the secretary~~, upon delivery to the secretary of a written request by no fewer than ~~upon the call addressed to the council, of not less than~~ 25% of the active members of the North Carolina State Bar setting forth the subject(s) to be addressed.

(b) ~~At a special meetings, only no~~ sub-

jects ~~specified in the notice~~ shall be ~~held~~ with other than those specified in the ~~notice addressed~~.

(c) Any special meeting of the North Carolina State Bar will be held at such time and place within the state of North Carolina as the council or president may determine.

.0503 Notice of Meetings

(a) Notice of any meeting of the North Carolina State Bar shall be given by the secretary by posting a notice at the State Bar headquarters and on the State Bar website or as otherwise directed by the council. Notice shall also be provided as required by N.C. Gen. Stat. § 143-318.12 and by any other statutory provision regulating notice of public meetings of agencies of the state.

(b) Notice of the annual meeting will be given at least 30 days before the meeting. Notice of any special meeting will be given at least 48 hours before the meeting or as otherwise required by law. ~~Notice of all meetings shall be given by publication in such newspapers of general circulation as the council may select, or, in the discretion of the council, by mailing notice to the secretary of the several district bars or to the individual active members of the North Carolina State Bar.~~

.0504 Quorum

At ~~all~~ any annual ~~and or~~ special meetings of the North Carolina State Bar those active members of the North Carolina State Bar present shall constitute a quorum. ~~There~~ and there shall be no voting by proxy or by absentee ballot.

Proposed Amendments to the Rules on Meetings of the Council

27 N.C.A.C. 1A, Section .0600, Meetings of the Council

The proposed amendments revamp the manner and method for giving notice of regular meetings of the State Bar Council. They also clarify the manner and method for calling a special meeting of the council, including allowing notice to be given by email or other electronic means. The proposed amendments allow members to participate in special meetings by audio or video conferencing or other electronic method, and give the president authority to

allow attendance at regular meetings by audio or video conferencing on a discretionary basis.

.0601 Regular Meetings

Regular meetings of the council shall be held each year in each of the months of January, April, and July, at such time and place after such notice (but not less than 30 days) as the council may determine. A regular meeting of the council shall also be held each year, and on the day before in conjunction with the annual meeting of the North Carolina State Bar, at the location of ~~said~~ the annual meeting. Any regular meeting may be adjourned from time to time as a majority of members of the council present may determine.

.0602 Special and Emergency Meetings

(a) A special meeting of the council may be called to address specified subjects as follows:

(1) by the president in his or her discretion; or

(2) by a written request, delivered to the secretary, by eight councilors setting forth the subject(s) to be addressed at the meeting. The secretary will schedule a special meeting to be held no more than 30 days after receipt of the request.

(b) An emergency meeting of the council may be called by the president to address circumstances that require immediate consideration by the council.

(c) In the event of incapacity or recusal of the president, the president-elect or the vice-president may call a special or emergency meeting. In the event of incapacity or recusal of the president-elect or the vice-president, the immediate past president or secretary may call a special or emergency meeting. In the event of incapacity or recusal of all officers, any member of the council who has served at least two terms may call a special or emergency meeting.

~~The president in his or her discretion may call special meetings of the council. Upon written request of eight councilors, filed with the secretary requesting the president to call a special meeting of the council, the secretary shall, within five days thereafter, call such special meeting. The date fixed for such meeting shall not be less than five days nor more than ten days from the date of such call.~~

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.

The Process

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

.0603 Notice of ~~Called~~ Special Meetings

(a) Notice of any regular meeting of the council will be given by the secretary by posting a notice at the State Bar headquarters and on the State Bar website or as otherwise directed by the council. Notice of any regular meeting will also be provided as required by N.C. Gen. Stat. § 143-318.12 and any other statutory provision regulating notice of public meetings of agencies of the state. Unless otherwise required by law, the secretary will issue notice of any regular meeting of the council at least 30 days before the meeting. ~~Notice of called special meetings shall be signed by the secretary. The notice shall set forth the day and hour of the meeting and the place for holding the same. Any business may be presented for consideration at such special meeting.~~

(b) The secretary will issue notice of any special meeting of the council at least 48 hours before the meeting, or as otherwise required by law. Notices of any special meeting will be sent to each councilor by email, or other electronic means intended to be individually received by each coun-

cilor, to the most recent address of record provided to the State Bar by each councilor for such communications. Notice will be given to any councilor who has not provided an email address, or other electronic means to receive notices, by regular mail. Notice may be sent, but is not required to be sent, by any means authorized for service under the Rules of Civil Procedure. Such notice must be given to each councilor unless waived by him or her. A written waiver signed by any councilor shall be equivalent to notice as herein provided. Notice to councilors not waiving as aforesaid shall be in writing and may be communicated by telegraph, or by letter through the United States Mail in the usual course, addressed to each of said councilors at his or her law office address. Notice by telegraph shall be filed with the telegraph carrier for transmission at least three days, and notice by mail shall be deposited in the United States Post Office at least five days, before the day fixed for the special meeting.

(c) The secretary will issue reasonable notice of any emergency meeting in a manner consistent with the purpose of the meeting. Such notice may be given through any appropriate means by which each councilor may receive notice on an expedited basis, including telephone, email, or other electronic means.

(d) The notice for any council meeting shall set forth the day, hour, and location of the meeting.

.0604 Quorum at Meeting of Council

At a meetings of the council the presence of ten councilors shall constitute a quorum. There shall be no voting by proxy or by absentee ballot.

.0605 Manner of Meeting of Council

The council will assemble at the time and place provided in the meeting notice. Attendance at a special or emergency council meeting may be by electronic means such as audio or video conferencing. Attendance at a regular council meeting by electronic means may be authorized for an individual councilor in the discretion of the president.

.0606 Parliamentary Rules

Proceedings at any meeting of the council shall be governed by Roberts' Rules of Order.

Proposed Amendments to the Rules on Standing Committees of the Council

27 N.C.A.C. 1A, Section .0700, Standing Committees of the Council

The proposed amendment to the rule setting forth the standing committees of the council eliminates a provision in the rule defining the authority of the Administrative Committee relative to a "Publications Board." A rule amendment that is currently before the Supreme Court for approval will create a "Communications Committee" that will coordinate all of the State Bar's media and messaging. It is contemplated that the State Bar's Publications Board will function under the auspices of the Communications Committee going forward.

.0701 Standing Committees and Boards

(a) Standing Committees. Promptly after his or her election, the president shall appoint members to the standing committees identified below...

(1) Executive Committee...

(5) Administrative Committee. It shall be the duty of the Administrative Committee to study and make recommendations on policies concerning the administration of the State Bar, including the administration of the State Bar's facilities, automation, personnel, retirement plan, publications, and district bars; to oversee the membership functions of the State Bar, including the collection of dues, the suspension of members for failure to pay dues and other fees, and the transfer of members to active or inactive status in accordance with the provisions of Sections .0900 and .1000 of Subchapter 1D of these rules; and to perform such other duties and consider such other matters as the council or the president may designate. ~~The committee may establish a Publications Board to oversee the regular publications of the State Bar.~~

(6)...

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

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

Section .1600, Regulations Governing the Administration of the Continuing Legal Education Program

The proposed amendments replace the designation "accredited sponsor," a designation that is potentially misleading as to the extent to which such sponsors are vetted by the Board of Continuing Legal Education, with the designation "registered sponsor" and reconcile the requirements for designation as a registered CLE sponsor with current practice.

.1501 Scope, Purpose and Definitions

(a) Scope...

(c) Definitions

~~(1) "Accredited sponsor" shall mean an organization whose entire continuing legal education program has been accredited by the Board of Continuing Legal Education.~~

~~(2) "Active member" shall include any person who is licensed to practice law in the state of North Carolina and who is an active member of the North Carolina State Bar.~~

~~(3)(2)...~~

~~(4)(3) "Approved activity program" shall mean a specific, individual legal educational activity program presented by an accredited sponsor or presented by other than an accredited sponsor if such activity is approved as a continuing legal education activity program under these rules by the Board of Continuing Legal Education.~~

~~(5)(4)...~~ [re-numbering subsequent paragraphs]

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

(15)...

.1512 Source of Funds

(a) Funding for the program carried out by the board shall come from sponsor's fees and attendee's fees as provided below, as well as from duly assessed penalties for non-compliance and from reinstatement fees.

(1) ~~Accredited~~ Registered sponsors located in North Carolina (for ~~course~~

programs offered ~~within in~~ or outside North Carolina), ~~or accredited registered~~ sponsors not located in North Carolina (for ~~course programs given offered~~ in North Carolina), ~~or and unaccredited all other~~ sponsors located ~~with in~~ in or outside of North Carolina (for ~~accredited courses programs within offered in~~ North Carolina) shall, as a condition of conducting an approved activity program, agree to remit a list of North Carolina attendees and to pay a fee for each active member of the North Carolina State Bar who attends the program for CLE credit. The sponsor's fee shall be based on each credit hour of attendance, with a proportional fee for portions of a program lasting less than an hour. The fee shall be set by the board upon approval of the council. Any sponsor, including ~~an accredited a registered~~ sponsor, ~~which that~~ conducts an approved activity program which is offered without charge to attendees shall not be required to remit the fee under this section. Attendees who wish to receive credit for attending such an approved activity program shall comply with ~~Rule .1512 paragraph (a)(2) below of this rule.~~

(2)...

.1518 Continuing Legal Education Program

(a) Annual Requirement...

(c) Professionalism Requirement for New Members...

(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. The chairs of the Ethics and Grievance Committees, in consultation with the chief counsel to those committees, shall annually establish the content of the program and shall publish the required content on or before January 1 of each year. To be approved as a PNA Program, the program must be provided by ~~an accredited a~~ sponsor registered under Rule .1603 of this subchapter and the sponsor must satisfy the annual content requirements, and submit a detailed description of the program to the board for approval at least 45 days prior to the

presentation. A registered sponsor may not advertise a PNA Program until approved by the board. PNA Programs shall be specially designated by the board and no course program that is not so designated shall satisfy the PNA Program requirement for new members. (2)...

.1519 Accreditation Standards

The board shall approve continuing legal education ~~activities programs which that~~ meet the following standards and provisions.

(a)...

(g) ~~Any accredited A~~ sponsor of an approved program must remit fees as required and keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the board in accordance with regulations.

(h)...

.1520 Accreditation Registration of Sponsors and Program Approval

(a) ~~Accreditation Registration of Sponsors.~~ An organization desiring ~~accreditation to be designated as an accredited a~~ registered sponsor of courses, programs, or other continuing legal education activities may apply ~~for accredited sponsor status to the board for registered sponsor status.~~ The board shall ~~approve a sponsor as an accredited register a~~ sponsor if it is satisfied that the sponsor's programs have met the accreditation standards set forth in Rule .1519 of this subchapter and the application requirements set forth in Rule .1603 of this subchapter ~~regulations established by the board.~~

(1) Duration of Status. Registered sponsor status shall be granted for a period of five years. At the end of the five-year period, the sponsor must apply to renew its registration pursuant to Rule .1603(b) of this subchapter.

(2) Accredited Sponsors. A sponsor that was previously designated by the board as an "accredited sponsor" shall, on the effective date of paragraph (a)(1) of this rule [DATE], be re-designated as a "registered sponsor." Each such registered sponsor shall subsequently be required to apply for renewal of registration according to a schedule to be adopted by the board. The schedule

shall stagger the submission date for such applications over a three-year period after the effective date of this paragraph (a)(2).

(b) Program Approval for ~~Accredited Registered~~ Sponsors.

(1) Once an organization is approved as ~~an accredited a~~ registered sponsor, the continuing legal education programs sponsored by that organization are presumptively approved for credit; however, application must still be made to the board for approval of each program. At least 50 days prior to the presentation of a program, ~~an accredited a~~ registered sponsor shall file an application, on a form prescribed by the board, notifying the board of the dates and locations of presentations of the program and the sponsor's calculation of the CLE credit hours for the program.

(2) ~~The board may at any time revoke the accreditation of an accredited sponsor for failure to satisfy the requirements of Rule .1512 and Rule .1519 of this subchapter, and for failure to satisfy the Regulations Governing the Administration of the Continuing Legal Education Program set forth in Section .1600 of this subchapter.~~

(3)(2) The board shall evaluate a program presented by ~~an accredited a~~ registered sponsor and, upon a determination that the program does not satisfy the requirements of Rule .1519, notify the ~~accredited registered~~ sponsor that the program is not approved for credit. Such notice shall be sent by the board to the ~~accredited registered~~ sponsor within 45 days after the receipt of the application. If notice is not sent to the ~~accredited registered~~ sponsor within the 45-day period, the program shall be presumed to be approved. The ~~accredited registered~~ sponsor may request reconsideration of an unfavorable accreditation decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.

(c) ~~Unaccredited~~ Sponsor Request for Program Approval.

(1) Any organization not ~~accredited designated as an accredited a~~ registered sponsor that desires approval of a ~~course or~~ program shall apply to the board. ~~The board shall adopt regulations to admin-~~

~~ister the accreditation of such programs consistent with the provisions of Rule .1519 of this subchapter. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of receipt of the notice of disapproval. The decision by the board on an appeal is final.~~

~~(2) The board may at any time decline to accredit CLE programs offered by a non-accredited a sponsor that is not registered for a specified period of time, as determined by the board, for failure to comply with the requirements of Rule .1512, Rule .1519 and Section .1600 of this subchapter.~~

~~(d) Member Request for Program Approval. An active member desiring approval of a course or program that has not otherwise been approved shall apply to the board. The board that shall adopt regulations to administer approval requests consistent with the requirements Rule .1519 of this subchapter. Applicants denied approval of a program for failure to satisfy the accreditation standards in Rule .1519 of this subchapter may request reconsideration of such a decision by submitting a letter of appeal to the board within 15 days of the receipt of the notice of disapproval. The decision by the board on an appeal is final.~~

~~(e) Records. The board may provide by regulation for the accredited sponsor, unaccredited sponsor, or active member for whom a continuing legal education program has been approved to maintain and provide such records as required by the board.~~

.1526 Effective Date

~~(a) The effective date of these rules shall be January 1, 1988 unless otherwise stated in a particular rule.~~

Section .1600 Regulations Governing the Administration of the Continuing Legal Education Program

.1601 General Requirements for Course Program Approval

~~(a) Approval. CLE activities programs may be approved upon the written application of a sponsor, other than an accredited including a registered sponsor, or of an~~

active member on an individual program basis. An application for such CLE ~~course program~~ approval shall meet the following requirements:

~~(1) ...~~

~~(b) Course Program Quality and Materials. The application and materials provided shall reflect that the program to be offered meets the requirements of Rule .1519 of this subchapter. Sponsors, including accredited registered sponsors, and active members seeking credit for an approved activity program shall furnish, upon request of the board, a copy of all materials presented and distributed at a CLE course or program. Written materials consisting merely of an outline without citation or explanatory notations generally will not be sufficient for approval. Any sponsor, including an accredited a registered sponsor, who that expects to conduct a CLE activity program for which suitable written materials will not be made available to all attendees may obtain approval for that activity program only by application to the board at least 50 days in advance of the presentation showing why written materials are not suitable or readily available for such a program.~~

~~(c) Facilities ...~~

~~(e) Records. Sponsors, including accredited registered sponsors, shall within 30 days after the course program is concluded~~

~~(1) furnish to the board a list in alphabetical order, in an electronic format if available, of the names of all North Carolina attendees together with and their North Carolina State Bar membership numbers; the list shall be in alphabetical order and in a format prescribed by the board;~~

~~(2) ...~~

~~(f) Announcement. Accredited sponsors and sponsors who Sponsors that have advanced approval for course programs may include in their brochures or other course program descriptions the information contained in the following illustration:~~

~~This [course, for seminar, or program] has been approved by the Board of Continuing Legal Education of the North Carolina State Bar for continuing legal education credit in the amount of ___ hours, of which ___ hours will also apply in the area of professional responsibility. This course is not sponsored by the board.~~

~~(g) Notice ...~~

.1603 Accredited Registered Sponsors

~~(a) Application for Registered Sponsor Status. In order to To be designated receive designation as an accredited a registered sponsor of courses, programs or other continuing legal education activities under Rule .1520(a) of this subchapter, the application of the a sponsor must meet satisfy the following requirements:~~

~~(1) The File a completed application for accredited registered sponsor status shall be submitted on a form furnished by the board.~~

~~(2) During the three years prior to application, present at least five original programs that were approved for CLE credit by the board.~~

~~(3) During the three years prior to application, substantially comply with the requirements in Rule .1601(a) and (e) of this subchapter on application for program approval, remitting sponsor fees, and reporting attendance for every program approved for credit.~~

~~(2) The application shall contain all information requested on the form.~~

~~(3) The application shall be accompanied by course outlines or brochures that describe the content, identify the instructors, list the time devoted to each topic, show each date and location at which three programs have been sponsored in each of the last three consecutive years, and enclose the actual course materials.~~

~~(4) The application shall include a detailed calculation of the total CLE hours specified in each of the programs sponsored by the organization.~~

~~(5) The application shall reflect that the previous programs offered by the organization in continuing legal education have been of consistently high quality and would otherwise meet the standards set forth in Rule .1519 of this subchapter.~~

~~(6) Notwithstanding the provisions of Rule .1603 (3),(4) and(5) above, any law school which has been approved by the North Carolina State Bar for purposes of qualifying its graduates for the North Carolina bar examination, may become an accredited sponsor upon application to the board.~~

~~(b) Renewal of Registration.~~

~~To retain registered sponsor status, a sponsor must apply for renewal every five~~

years, as required by Rule .1520(a)(1), and must satisfy the requirements of paragraphs (a) of this rule. To facilitate staggered renewal applications, at the time that this rule becomes effective, any sponsor previously designated as an “accredited sponsor” shall be designated a registered sponsor and shall be assigned an initial renewal year which shall be not more than three years later.

(c) Revocation of Registered Sponsor Status. The board may at any time revoke the registration of a registered sponsor for failure to satisfy the requirements of Section .1500 and Section .1600 of this subchapter.

.1606 Fees

(a) Sponsor Fee. The sponsor fee, a charge paid directly by the sponsor, shall be paid by all sponsors of approved activities programs presented in North Carolina and by accredited registered sponsors located in North Carolina for approved activities programs wherever presented, except that no sponsor fee is required where approved activities programs are offered without charge to attendees. In any other instance, payment of the fee by the sponsor is optional. The amount of the fee, per approved CLE hour per active member of the North Carolina State Bar in attendance, is \$3.50....

(b) ...

Proposed Amendments to the Rules for the Specialization Program

27 N.C.A.C. 1D, Section .1700, The Plan of Legal Specialization; and Section .2300, Certification Standards for the Estate Planning and Probate Law Specialty

A number of amendments are proposed to The Plan of Legal Specialization. Proposed amendments to the rule on mandatory revocation and suspension of certification due to professional discipline will provide for the automatic revocation of specialty certification if any part of a disciplinary suspension is active; if the entire disciplinary suspension is stayed, certification is suspended and shall not be reinstated until the completion of the entire stayed disciplinary suspension. For specialty certification to be reinstated after suspension, the specialist must apply for and satisfy all requirements for recertification. Proposed amendments to the rule on areas of practice

add specialties recently approved by the Supreme Court to the list of recognized specialties and correct an oversight in the list relative to the criminal law specialty.

Proposed amendments to the standards for the estate planning and probate law specialty allow service as a trust officer, gift planning officer, or other employment that is outside private practice to satisfy the substantial involvement standard for recertification, provided the specialist's work duties are primarily in the area of estate planning or trust administration.

.1723 Revocation or Suspension of Certification as a Specialist

(a) Automatic Revocation or Suspension of Specialty Certification Following Professional Discipline.

The board shall revoke its certification of a lawyer as a specialist if the lawyer is disbarred or receives a disciplinary suspension, any part of which is or subsequently becomes active, from the North Carolina State Bar Disciplinary Hearing Commission, a North Carolina court of law, or, if the lawyer is licensed in another jurisdiction in the United States, from a court of law or the regulatory authority of that jurisdiction. The board shall suspend its certification of a lawyer as a specialist if the lawyer receives a disciplinary suspension, all of which is stayed. If a stayed disciplinary suspension ends without becoming active, the lawyer may be reinstated as a specialist if the lawyer applies for recertification and satisfies all of the requirements for recertification as set forth in the recertification standards for the relevant specialty. During a suspension from specialty certification, application for recertification shall be deferred until the end of the suspension. Revocation shall be automatic without regard for any stay of the suspension period granted by the disciplinary authority. This provision, and any amendment thereto, shall apply to discipline received on or after the effective date of this the provision or the amendment as appropriate.

(b) Discretionary Revocation or Suspension...

.1725, Areas of Practice

There are hereby recognized the following specialties:

(1) bankruptcy law

- (a) consumer bankruptcy law
- (b) business bankruptcy law
- (2) estate planning and probate law
- (3) real property law
 - (a) real property - residential
 - (b) real property - business, commercial, and industrial
- (4) family law
- (5) criminal law
 - (a) federal and state criminal law
 - (b) state criminal law
 - ~~(b)(c)~~ juvenile delinquency law
- (6) immigration law
- (7) workers' compensation
- (8) Social Security disability law
- (9) elder law
- (10) appellate practice
- (11) trademark law
- (12) utilities law
- (13) privacy and information security law

Section .2300 Certification Standards for Estate Planning and Probate Law Specialist

.2306 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 .2306(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, he or she has had substantial involvement in the specialty as defined in Rule .2305(b) of this subchapter; however, for the purpose of continued certification as a specialist, service outside private practice, during which the specialist had duties primarily in the areas of estate planning, estate administration, and/or trust administration, may be substituted for the equivalent years of experience toward the five-year requirement, as determined by the board in its discretion.

(b) Continuing Legal Education ... ■

Client Security Fund Reimburses Victims

At its October 26, 2017, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$57,070 to 13 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$3,000 to a former client of Dee W. Bray Jr. of Fayetteville. The board determined that Bray was retained to represent a client charged with first degree murder. The client made payments towards a \$45,000 fee. Shortly thereafter, Bray was placed on disability inactive status by the senior resident judge prior to performing any legal services on the client's behalf. Bray was placed on disability inactive status on February 2, 2017. The board previously reimbursed one other applicant a total of \$3,000.

2. An award of \$13,700 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client on a charge of being an accessory after a murder. The client made payments towards a \$20,000 fee. Bray was placed on disability inactive status prior to performing any meaningful legal services on the client's behalf.

3. An award of \$1,000 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client during his interview with a deputy police officer. The client made payments towards a \$1,500 fee. When the client and the deputy showed up on January 30, 2017, for the interview that was to be held at Bray's office, they found the office was closed. Bray was placed on disability inactive status prior to performing any meaningful legal services on the client's behalf.

4. An award of \$750 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to defend a client against a charge of assault. Bray failed to appear in court on the client's behalf. Bray was thereafter placed on disability inactive status without providing any meaningful

legal services on the client's behalf.

5. An award of \$750 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to defend another client against a charge of assault. Bray failed to appear in court on the client's behalf. Bray was thereafter placed on disability inactive status without providing any meaningful legal services on the client's behalf.

6. An award of \$5,000 to a former client of Dee W. Bray Jr. The board determined that Bray was retained to represent a client charged with second degree rape. The client made payments towards a \$12,000 fee. Bray was placed on disability inactive status prior to performing any meaningful legal services on the client's behalf.

7. An award of \$12,000 to an applicant who suffered a loss because of Dee W. Bray Jr. The board determined that Bray was retained to represent the applicant's son on charges of felony breaking and entering, felony larceny, and murder. The applicant paid Bray a fee for district court that Bray earned. The applicant also paid Bray a considerable portion of his superior court fee. The applicant agreed that Bray could remove some of the superior court fee from trust. However, Bray failed to provide meaningful services for the \$12,000 balance of the superior court fee.

8. An award of \$3,400 to an applicant who suffered a loss because of Dee W. Bray Jr. The board determined that Bray was retained by an applicant to represent her son on serious felony charges. The applicant made payments towards Bray's quoted fee. Bray was placed on disability inactive status before he provided the applicant's son with any meaningful legal services.

9. An award of \$11,000 to an applicant who suffered a loss because of Dee W. Bray Jr. The board determined that Bray was retained by an applicant to represent his son charged with first degree murder. The applicant made payments towards Bray's quoted fee. Bray was placed on disability inactive status prior to performing any meaningful

legal services on the applicant's son's behalf.

10. An award of \$1,680 to a former client of Christopher E. Greene of Charlotte. The board determined that Greene was retained to file immigration applications on a client's behalf. Greene failed to provide any meaningful legal services for the fee paid. Greene surrendered his law license and was disbarred on February 11, 2017. The board previously paid one other client a total of \$6,340.

11. An award of \$2,390 to a former client of Christopher E. Greene. The board determined that Greene was retained to file a marriage based petition and adjustment of status application for a client with the immigration court. Greene failed to provide any meaningful legal services for the fee paid.

12. An award of \$900 to a former client of Christopher E. Greene. The board determined that Greene was retained to submit a petition on a client's behalf for non-immigrant status for a witness to criminal activity. Greene failed to provide any meaningful legal services for the fee paid.

13. An award of \$1,500 to a former client of Christopher E. Greene. The board determined that Greene was retained to move to reopen a client's immigration removal decision. Green failed to provide any meaningful legal services for the fee paid. ■

Thank You to Our Meeting Sponsors

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**Lawyers Mutual Liability
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John & Leslie Silverstein

State Bar Swears In New Officers



Silverstein



Wilson



Willoughby

Silverstein Installed as President

Raleigh attorney John M. Silverstein has been sworn in as president of the North Carolina State Bar. He was sworn in by North Carolina Supreme Court Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 26, 2017.

A native of Charleston, West Virginia, Silverstein is a graduate of Colgate University. He earned his law degree in 1971 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 Wake County Bar Association and the 10th Judicial District Bar in 1994.

In addition to his professional activities, Silverstein 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 was 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 Silverstein was a recipient of the Wake County Bar Association's Joseph Branch Professionalism Award. He has also received the President's Award and the Out-

standing Volunteer Lawyer Award.

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

Wilson Elected President-Elect

Winston-Salem attorney G. Gray

Wilson has been sworn in as president-elect of the North Carolina State Bar. He was sworn in by North Carolina Supreme Court Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 26, 2017.

Wilson is a *cum laude* graduate of Davidson College, and earned his law degree from Duke University School of Law. He was admitted to the practice of law in North Carolina in 1976. He is currently a partner with the Winston-Salem office Nelson Mullins Riley & Scarborough.

Wilson's professional activities include being a fellow in the American College of Trial Lawyers. He also served the North Carolina Bar Association on its Board of Governors, and was president from 2004-2005. Since 2006 he has served on the Board of Directors of Lawyers Mutual Liability Insurance Company, and has been chair of the board since 2015.

Wilson was a North Carolina State Bar councilor from 2007-2015, during which time he was vice-chair of the Grievance Committee, and chair of the Board of Paralegal Certification and Publications Committee.

In addition to his numerous professional activities, Wilson is also involved with his community, serving his church as a deacon, and working with the Old Hickory Council of the Boy Scouts of America.

Willoughby Elected Vice-President

Raleigh Attorney C. Colon Willoughby

has been sworn in as vice-president of the North Carolina State Bar. He was sworn in by North Carolina Supreme Court Chief Justice Mark Martin at the State Bar's Annual Dinner on Thursday, October 26, 2017.

Willoughby earned an undergraduate degree in business administration from the University of North Carolina at Chapel Hill, and an MBA from East Carolina University. In 1979 he graduated from Campbell University's Norman Adrian Wiggins School of Law.

Willoughby is a partner with the Raleigh firm McGuireWoods, where he focuses his practice on government, regulation, and criminal investigations. Prior to joining McGuireWoods, he worked as a mortgage banker, as a member of the faculty at Peace College, as a private practitioner, and served as the elected district attorney in Wake County for 27 years.

His other professional activities have included serving as president of the Wake County Academy of Trial Lawyers, director of the Wake County Bar Association, president of North Carolina Conference of District Attorneys, and a member of the Board of Directors of the National District Attorney's Association.

Willoughby served as a State Bar councilor from 1998-2006, and was elected again in 2014. During his time as a councilor he has served as chair of the Authorized Practice Committee, and as vice-chair of the Grievance Committee.

Willoughby has been extensively involved in the community. He has served on the Board of Governors of Summit House, Inc., as director of Artspace, Inc., as a member of the Raleigh Rotary Club, on the Triangle YMCA Board of Directors, and on the Board of Directors for NCLEAF. He also is an active member of White Memorial Presbyterian Church, where he serves as an Elder. ■

Resolution of Appreciation for Mark W. Merritt

WHEREAS, Mark W. Merritt was elected by his fellow lawyers from Judicial District 26 in 2006 to serve as their representative in this body. Thereafter, he was elected for three successive three-year terms as councilor; and

WHEREAS, in October 2014 Mr. Merritt was elected vice-president, and in October 2015 he was elected president-elect. On October 27, 2016, he was sworn in as president of the North Carolina State Bar; and

WHEREAS, during his service to the North Carolina State Bar, Mr. Merritt has served on the following committees: Ad Hoc Trust Accounting, Appointments Advisory, Authorized Practice, Ethics, Executive, Grievance, Issues, Issues Special Committee to Review AP Advisory Opinion 2002-1, Issues Outreach Sub-Committee, Facilities, Finance & Audit, LAP Board, Legislative, Program Evaluation, Program Evaluation LAP/Grievance Sub-Committee, Special Litigation, Special Committee on the Dental Board Case, Special Committee to Study Ethics 20/20 Resolution, and Social Media; and

WHEREAS, although Mark Merritt has during his service as a councilor and an officer become familiar with and sought to improve virtually every aspect of the State Bar's regulatory undertaking, it is likely that he will be remembered best for his insistence that the agency become more thoroughly engaged with the people it regulates and the citizens whose interests are advanced and protected by that regulation. Throughout his year as president, Mr. Merritt tirelessly advocated for the development of a plan by means of which key stakeholders might be identified, educated, and persuaded as to the advisability and effectiveness of professional self-regulation. Realizing that the State Bar must in the current political environment publicly and continually justify the public's trust, Mark Merritt has sagely prescribed uncommon doses of information and communication; and

WHEREAS, perceiving that communication is too important to be uncoordinated, random, or haphazard, Mark Merritt has taken measures to rationalize and broaden the State Bar's messaging. To this end, he has pushed for the establishment of a standing Communications Committee which will unify and amplify the State Bar's narrative; and

WHEREAS, Mark Merritt has also personified the agency's intention to communicate more effectively. He has on countless occasions throughout the state of North Carolina personally explained the purpose and importance of self-regulation by and through the State Bar, all the while insuring that his interpretations of our efforts have been and are being informed by his extraordinary ability to hear, comprehend, acknowledge, and respond constructively to his audience; and

WHEREAS, the North Carolina State Bar has seldom, if ever, been led by a person of such surpassing talent and commitment. His rising to a position of leadership at this challenging time in our history has been most propitious and, perhaps, providential. In any case, it cannot be gainsaid that Mark Merritt has been precisely the right man for this situation, at this time, and in this place.

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 Mark W. Merritt, 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 Mark W. Merritt.

Transition at the State Bar



Lunsford



Mine

After 26 years as the North Carolina State Bar's executive director, Tom Lunsford has given notice of his intention to resign, effective December 31, 2018. In a September letter to then State Bar President Mark Merritt, Lunsford advised that his decision to retire resulted from, "my desire to try to be useful in a different way in my

seniority, and my feeling that, going forward, the State Bar will be best served administratively by my stepping aside in favor of someone else with more energy and a fresh perspective."

No official decision has yet been made as to Mr. Lunsford's successor. However, the State Bar's officers have reached a consensus that the agency's long-time assistant director, Alice Neece Mine, is the right person for the job and will be submitting her name for approval by the State Bar Council early next year. In addition to her extensive administrative responsibilities, Ms. Mine is the State Bar's ethics counsel and a leading authority on the law of professional responsibility. She joined the State Bar's professional staff in 1993 as assistant director and has been intimately involved in all aspects of the agency's

administration ever since. Having presented dozens of CLE programs on the Rules of Professional Conduct and answered thousands of ethics calls during her tenure at the State Bar, Ms. Mine is well-known to and respected by lawyers across the state.

In his remarks on the occasion of his recent installation as president of the North Carolina State Bar, John M. Silverstein praised Ms. Mine as a "nationally recognized Bar leader" and expressed the officers' "great delight" that she has indicated her willingness to serve as executive director. Crediting Lunsford with doing a "magnificent job of assembling a loyal and dedicated staff," he noted that his "departure after more than 37 years of service to the State Bar will provide us with an opportunity to examine our organizational structure in a new light." ■

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(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	32,528	32,645
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17. Publication of Statement of Ownership
 If the publication is a general publication, publication of this statement is required. Will be printed in the Winter 2017 (Dec.) issue of this publication. Publication not required.

18. Signature and Title of Editor, Publisher, Business Manager, or Owner: Jennifer Duncan, Date: 11-9-2017

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

PS Form 3526, July 2014 (Page 2 of 4)

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, John B. McMillan, addressed the attendees, and each honoree was presented a certificate by the president of the State Bar, Mark Merritt, in recognition of his or her service. After the ceremonies were concluded, the honorees in attendance sat for the photograph below. ■



First row (left to right): Everette L. Wooten Jr., Ronald I. Kirschbaum, Larry D. Johnson, W. Britton Smith Jr., James B. Craven III, Joseph G. Maddrey, John C. Martin, J. Mac Boxley, Ray S. Farris, Steven Alan Bernholz, John B. McMillan, David W. Long, Charles W. Wilkinson Jr., Melzer A. Morgan Jr., Philip A. Baddour Jr., *Second row (left to right)* Herbert J. Edwards, James R. Slate, Tommy W. Jarrett, Jerry L. Spivey, R. Kenneth Babb, Reginald Woodrow Harrison Jr., John R. Jolly Jr., Harold Martin Lancaster, Joe P. McCollum Jr., C. Preston Cornelius, Neil D. Beach, Mason H. Anderson, Rufus L. Edmisten, Bobby H. Griffin *Third row (left to right)* William F. Dickens Jr., Doyle Early Jr., John H. Vernon III, James C. Spencer Jr., James S. Liverman Jr., Wilbert M. Faircloth, William F. Moser, C. Mac Hunter, Wendell G. Sigmon, William J. Morgan, Edward L. Powell, James T. Rusher

John B. McMillan Distinguished Service Award

Charles M. Davis

Charles M. Davis received the John B. McMillan Distinguished Service Award on August 25, 2017, in Louisburg, North Carolina. State Bar President-Elect John Silverstein presented the award.

Mr. Davis received his bachelor's degree in history from the University of North Carolina in 1958 and his law degree from Wake Forest School of Law in 1961. Following law school, Mr. Davis returned to Louisburg, where he

practiced law for over 50 years.

From 1986-1996, Mr. Davis served as councilor to the State Bar, and served the Bar as president from 1995 to 1996. He also was a member of the State Bar's Disciplinary Hearing Commission from 2003 to 2007. Mr. Davis was a member of the North Carolina Judicial Standards Commission from 1997 to 2003, serving as the vice-chair in 2003. He was inducted into the North Carolina Bar Association General Practice Hall of Fame in 2007. Also

in 2007, he was awarded North Carolina's Order of the Longleaf Pine. Mr. Davis is a fellow of the American Bar Foundation, a member of the American Bar Association House of Delegates, a member of the Chief Justice's Commission on Professionalism, and serves as a certified mediator for the North Carolina Dispute Resolution Commission.

Justice Patricia Timmons-Goodson

Justice Patricia Timmons-Goodson

received her BA and JD from the University of North Carolina at Chapel Hill and her L.L.M. from Duke University Law School. She began her career working for the United States Census Bureau. She went on to serve as an ADA for the Twelfth Judicial District in Fayetteville and as a staff attorney for Lumbee River Legal Services.

In 1984 Justice Timmons-Goodson began a 28-year tenure on the bench on three different courts. She was a district judge in the Twelfth Judicial District from 1984 to 1997, associate judge of the NC Court of Appeals from 1997 to 2005, and associate justice of the NC Supreme Court from 2006 to 2012. Upon taking her seat in February 2006, she was the first African American woman to serve on the Supreme Court.

Her years of judicial service have been recognized with awards such as the Order of the Long Leaf Pine, the Liberty Bell, Appellate Justice of the Year, three honorary degrees, and induction into the North Carolina Women's Hall of Fame. She also received the National Bar Association's Wiley A. Branton Award, the William R. Davie Award from UNC-Chapel Hill, the Order of the Valkyries (UNC's highest women's honorary recognizing scholarship and leadership), and the Order of the Old Well.

In 2014 Justice Timmons-Goodson was appointed to the United States Commission on Civil Rights by President Barack Obama. She has served as the vice chair of that commission since 2015.

Justice Timmons-Goodson is an active member of the American Bar Association, where she serves on the Editorial Board of the ABA Journal and the ABA Law School Accreditation Committee. She serves on the Guilford College Board of Trustees, the Fayetteville Chapter of Links, Incorporated, and the Board of Directors of the North Carolina Civil War Center.

Justice Timmons-Goodson's unquestionable commitment to the principles and goals stated in the preamble to the Rules of Professional Conduct make her a most deserving recipient of the John B. McMillan Distinguished Service Award.

Judge Paul L. Jones

Judge Paul L. Jones received the John B. McMillan Distinguished Service Award on September 14, 2017, at a meeting of the Eastern North Carolina Inn of Court in Kinston. North Carolina State Bar President

Mark Merritt presented the award.

Judge Jones earned his bachelor of science degree from North Carolina A&T and his law degree from North Carolina Central University School of Law. He served in the United States Army from 1971 to 2000, when he retired with the rank of colonel. He received numerous military awards and was inducted in the A&T Army ROTC Hall of Fame in 2003.

During his legal career, Judge Jones was a staff attorney and assistant clerk of court for the US Supreme Court. He also served as a JAG officer in the US Army and army reserves. Notably, in the early 80s Judge Jones was a member of the advisory board that formed the first regional Legal Services office covering six counties, and later served two years as the managing attorney of Eastern Carolina Legal Services.

From 1992 to 1998, Judge Jones served as a supervising attorney at NC Central Law School's Civil Rights Litigation Clinic. He left that position in 1996 to begin his service on the bench. He served as a district court judge from 1996 to 1999, and as a superior court judge from 1999 to 2016.

Judge Jones has served on the Judicial Standards Commission, the NC Equal Access to Justice Commission, the NC State Banking Commission, the NC Judicial Council, and the State Bar's Disciplinary Hearing Commission. He also served as vice-president of the North Carolina Bar Association, president of the Lenoir County Bar Association, president of the Eighth Judicial District Bar Association, and on the executive committee of the NC Conference of Bar Presidents.

Judge Howard E. Manning Jr.

Judge Howard E. Manning received the John B. McMillan Distinguished Service Award on September 29, 2017. North Carolina State Bar President Mark Merritt presented the award.

Judge Manning obtained his bachelor's degree in history and his law degree from the University of North Carolina at Chapel Hill. He began his legal career in 1968 with the law firm Manning Fulton & Skinner. He left the firm to serve four years as a navy judge advocate general officer. He returned to the firm and practiced law for 16 years before becoming a superior court judge.

Judge Manning served on the North Carolina Superior Court from 1988-1990

and again from 1996-2015—a combined service of over 14 years as a superior court judge. He has heard a broad range of criminal and civil cases in his career and was often chosen to oversee complicated judicial cases. Most notably, Judge Manning was chosen by Supreme Court Chief Justice Burley Mitchell to preside over *Leandro vs. State of North Carolina*, a lawsuit filed in 1994 on behalf of students and parents from five low-wealth counties. Judge Manning presided over the *Leandro* case until he retired as judge in 2015 at the mandatory age of 72.

In addition to his work on the bench, Judge Manning has presented countless lectures and CLEs. Judge Manning was involved in the student mentor program at UNC School of Law. He also served on the North Carolina State Bar's Executive Committee from 1997 to 2000 and chaired the study committee appointed by the Board of Legal Specialization of the North Carolina State Bar to study the issue of specialization in personal injury law. In addition, he served as co-chair of the Wake County Bar Association's Professionalism Committee which developed the Creed of Professionalism.

Judge Manning has given so much of himself to our country, our profession, our state, and our children. He is a most deserving recipient of the John B. McMillan Distinguished Service Award.

Rudolph G. Singleton Jr.

Rudolph G. Singleton Jr. received his undergraduate degree from Wake Forest University in 1952 and his law degree from the Wake Forest School of Law in 1954.

Mr. Singleton spent two years serving our country as a member of the United States Army Counter Intelligence Corps. After his discharge from the army, Mr. Singleton embarked on a legal career spanning almost 60 years. During that time he has worked as an assistant district attorney, as the Fayetteville City attorney, and in private practice.

Mr. Singleton is particularly well known for representing Fayetteville and Cumberland Counties in successful litigation pertaining to the Jordan Dam/Cape Fear River watershed impoundment case. That victory gained the consent to build the New Hope Dam and give the down-stream river basin area of the Cape Fear River control of water levels, additional water supply, and safer recreation.

CONTINUED ON PAGE 55

Law School Briefs

Campbell University School of Law

Campbell Law places third overall on July 2017 NC bar exam—Campbell Law School offered the third best overall showing in the state, and its best institutional performance since 2014, on the July 2017 North Carolina bar exam. Recording an 81.34% overall mark, 109 of the 134 overall test takers successfully navigated their way through the exam. With regard to first time testers, Campbell Law graduates passed at an 83.33% clip, with 100 out of 120 graduates succeeding. Nine of the 14 repeat testers passed.

Dean Leonard writes op-ed on merit selection of judges—Campbell Law Dean J. Rich Leonard authored an op-ed discussing his idea for the selection of judges in North Carolina based on merit. The op-ed was published in *The News & Observer* on Thursday, September 14. “It is an elegantly simple procedure that would work efficiently and put our state in the creative forefront of solving the age-old issue of how to pick judges,” writes Leonard.

Campbell Law holds screening of In Pursuit of Justice—The Campbell Law Innocence Project and the North Carolina Center on Actual Innocence partnered to provide a work-in-progress screening of the documentary *In Pursuit of Justice* at the law school on September 21.

In Pursuit of Justice is a harrowing documentary focused on Raleigh native Greg Taylor, who spent 17 years in prison for a murder he did not commit. The film closely tracks Taylor’s fight for justice and exoneration, featuring family and witness interviews, and area news coverage from the initial arrest onward. Taylor’s case forever changed the North Carolina criminal justice system and the state’s legal landscape. The special hearing which ultimately resulted in Taylor becoming a free man was held at Campbell Law.

Duke Law School

Fundraising campaign raises \$132.4 million—Duke Law School raised \$132.4 million during the seven-year Duke Forward

fundraising campaign that ended on June 30, making it the most successful in the law school’s history, and exceeding the goal of \$85 million by more than 50%. Thirteen new professorships and 71 new financial aid funds were endowed during the campaign in which more than 50% of alumni participated.

New faculty—Ben Grunwald, a scholar of criminal law, criminal procedure, and criminology, has joined the governing faculty as an assistant professor of law. His recent work has examined the capacity of open-file discovery to check prosecutorial power, the relationship between sentencing guidelines and the fairness of sentences, and the optimal age of majority for separating the juvenile and adult justice systems. He previously was a Bigelow Teaching Fellow and lecturer at the University of Chicago Law School and clerked for Judge Thomas Ambro of the United States Court of Appeals for the Third Circuit.

New books from Duke Law scholars—In *Stateless Commerce: The Diamond Network and the Persistence of Relational Exchange* (Harvard University Press, 2017), Professor Barak Richman takes an in-depth look at the diamond trade, examining the tight ethnic, social, and familial networks that make it “the paradigmatic example of a stateless economy.”

In *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice* (Oxford University Press, 2017), Professor Laurence Helfer and co-author Karen Alter of Northwestern University provide a deep, systematic investigation of the most active and successful transplants of the European Court of Justice.

Elon University School of Law

North Carolina’s top jurist to address Elon Law graduates—North Carolina Supreme Court Chief Justice Mark Martin will deliver Elon Law’s commencement address at 11 AM on December 16, 2017, as the university graduates its first class enrolled in a 2.5-year program defined by an emphasis on experiential learning and practical training. Martin’s distinguished career has focused on making improvements to the rule of law and the

administration of justice, themes that have long been emphasized at Elon Law through an ABA-recognized leadership program.

Elon Law honors NC Court of Appeals judge with leadership award—The Hon. Robert N. Hunter Jr. of the North Carolina Court of Appeals, a highly respected jurist known for his longtime efforts to ensure fairness in the courts and access to legal services for people of all backgrounds, received Elon Law’s highest professional honor in September at an annual leadership event led by *North Carolina Lawyers Weekly* in partnership with Elon Law. Elon Law’s Leadership in the Law Award was presented during *Lawyers Weekly’s* Leaders in the Law program that showcased 30 of the state’s most accomplished attorneys for their own leadership in the profession.

preLaw Magazine names Elon Law among 20 Most Innovative Law Schools—Elon Law’s approach to practical training and “learning by doing” through its Residency-in-Practice Program earned recognition this fall by *preLaw Magazine* in its first issue of the 2017 academic year. Published by The National Jurist, preLaw’s “20 Most Innovative Law Schools” highlighted programs with curricula, programs, and approaches that better position law students for legal careers in a rapidly changing world.

North Carolina Central School of Law

North Carolina Central University School of Law Constitution Day Program was held on Friday, September 15, 2017. The program featured four panels. The Intellectual Property Panel, moderated by 3L DeShantell Singleton, included NCCU Law Professor Brenda-Reddix-Small, and Intellectual Patent Law Institute Fellows Shelly Fullwood and Alicia Williams.

The Racial Disparities in Policing panelists were NCCU Law Professor Scott Holmes, and Durham County Sheriff Department’s Captain Raheem Aleem and Deputy Brian Cyre, moderated by 3L Aviance Brown.

The Right to Vote and Redistricting panel was moderated by 3L Patrice Goldman; and panelists Jaclyn Maffetore, Southern

Coalition for Social Justice; Representative R. Mickey Michaux; Democracy North Carolina's Isela Gutierrez; and NCCU Law Professor Irving Joyner.

The Confederate Monuments Panel was moderated by 3L Mariel Kirby, and included retired UNC History Professor Reginald Hildebrand, NCCU Professor Jarvis Hall, Attorney Nisha Williams, and NCCU Law Professor Lydia Lavelle.

On September 20, 2017, NCCU School of Law's Virtual Justice Project hosted a panel discussion on the Educational Plans in the School System. The panel discussion was moderated by NCCU Law Professor Dorothy Hairston Mitchell. Featured panelists included Kristin Bell, executive director of Durham Public School System's Exceptional Children's Department, Legal Aid of North Carolina Attorneys Cari Carson and Jasmina Nogo, and parent advocate Nadiyah Porter.

The Raíces Latino/Hispanic Organization hosted "Students Defend DACA," a panel discussion with professionals, community members, and students at NCCU School of Law on September 26. NCCU Law Professor Irving L. Joyner was keynote speaker. Panelists addressed policy and personal questions. The panel was facilitated by Office of Diversity

and Inclusion Director Emily Guzman.

NCCU Law Alumnus James S. Walker ('88) was appointed to the Board of Trustees of North Carolina Central University. Attorney Walker is a member of the NC Turnpike Authority Board. His term expires on June 30, 2021.

University of North Carolina School of Law

UNC School of Law graduates achieve 85% bar passage rate—Eighty-five percent of the 124 UNC School of Law graduates who took the North Carolina bar exam for the first time in July 2017 passed. The school's Academic Excellence Program provides all students with resources to aid their legal study, including one-on-one bar preparation for 3L students. The Class of 2017 was the first to graduate under a formalized academic success policy that empowers students to receive individualized assistance during the final two years of school. UNC's total 2017 passage rate, including first-time and repeat takers, was 80%, which is higher than the past three years.

Pro Bono Program celebrates 20 years, launches endowment—Hundreds of students have provided free legal assistance while learn-

ing practical skills through the school's *Pro Bono* Program. Students, faculty, staff, and alumni celebrated the program's 20th anniversary, which has seen student participation above 90% in the past two graduating classes. The program's newly-created endowment fund will support future projects and trips during fall, winter, and spring breaks.

Graham Dean 3L wins IADC National Writing Contest—Dean's paper about regulating self-driving vehicles won first place. Dean is institute editor of the North Carolina Banking Institute *Journal* and serves as a corporate/securities appellate advocacy team member in Holderness Moot Court.

2Ls Tyra Pearson and Joscelyn Solomon receive McGuireWoods Diversity Scholarships—Solomon is vice president of the Black Law Students Association (BLSA), a staff member of the *First Amendment Law Review*, and a competing member on the civil rights team for Holderness Moot Court. Pearson is a member of BLSA, the *First Amendment Law Review*, and is on the national team for Holderness Moot Court. McGuireWoods awards diversity scholarships to diverse first-year law students who are committed to supporting diversity within the legal profession. ■

DSA Awards (cont.)

Mr. Singleton has served as the president of the Cumberland County Bar Association, as a panel member for the American Arbitration Association, and on the Board of Governors for the North Carolina Academy of Trial Lawyers. In recognition of these and other contributions, Mr. Singleton was inducted to the NCBA General Practice Hall of Fame.

Mr. Singleton is known for being generous with his time and advice for young lawyers. He is also known for generously sharing his knowledge, experience, and practice pointers with all lawyers, new and old. Mr. Singleton is the embodiment of the high ideals of the legal profession and has demonstrated consistent service to his profession, his community, his church, and his nation.

Gary B. Tash

Gary B. Tash received the John B. McMillan Distinguished Service Award on September 11, 2017, in Winston-Salem. The

presentation was held as the Milton Rhodes Center for the Arts. North Carolina State Bar President Mark Merritt presented the award.

Mr. Tash received his BA in history from the University of Virginia in 1968 and his JD from Wake Forest University Law School in 1971. He served as an assistant district attorney from 1973 to 1976, and then as a district court judge from 1976 to 1983. Mr. Tash was a founding member of Tash & Kurtz Family Law Attorneys in Winston-Salem where he worked until he retired from the practice of law in 2015.

Mr. Tash served as an adjunct professor of law at Wake Forest University School of Law, teaching in the areas of juvenile law and family law. He is a board certified specialist in family law who has spoken at numerous CLEs over the years with particular focus on children and custody issues. In addition to being a highly accomplished family law practitioner, Mr. Tash is also a certified family law arbitrator who has worked hard to resolve family law disputes through alternate dispute methods.

Mr. Tash has a long history of service and leadership with the North Carolina State Bar, the North Carolina Bar Association, and the 21st Judicial District Bar.

Mr. Tash was very involved in the Wake Forest Chapter of the Sigma Pi Fraternity. He has served as a trustee, chapter director, member of the alumni advisory board, and as the fraternity's international president. In 2002 he was awarded the Founders' Award by the Sigma Pi Fraternity.

Nominations Sought

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.

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, nbar.gov. Please direct questions to Suzanne Lever, SLever@nbar.gov. ■

Annual Reports of State Bar Boards

Board of Legal Specialization

Submitted by Robert A. Mason, Chair

In 1987, the Board of Legal Specialization certified 92 specialists in the brand-new specialty areas of real property, bankruptcy, and estate planning and probate law. Thirty years later, there are over 1,000 North Carolina board certified specialists who are certified in 12 designated specialties. Of the 92 inaugural specialists in 1987, 51 have maintained their specialty certification for over 30 years. This incredible achievement requires the specialist to demonstrate, every five years, that he or she remains substantially involved in practice of the specialty, has acquired an extraordinary number of CLE credits in the specialty, and continues to enjoy the approbation of his or her peers. In honor of their achievement, these specialists were recognized at the annual specialization luncheon with a “30-year specialist” logo that was created for their exclusive use.

Last November the board certified 56 new specialists in the 12 specialty areas. This number includes 15 lawyers who were the first to be certified in the utilities law specialty. In January the board recertified 164 specialists. In the 2017 application year, we received 86 applications from lawyers seeking board certification in ten specialty practice areas. Family law and estate planning and probate law continue to have the greatest number of applicants. Five public interest lawyers received application scholarships through our cooperative program with NC LEAF.

In 2016 the board was asked to create a new specialty in privacy and information security law. After studying the proposal, the board concluded that this is an important emerging practice area for which the identification of qualified practitioners is critical for both individuals and businesses. Proposed standards for the specialty were presented to the council at the January 2017 quarterly meeting; after publication for comment, the standards were adopted

by the council at the April 2017 quarterly meeting; and the standards were approved by the North Carolina Supreme Court last month. The specialty committee—composed of eight dynamic young lawyers on the cutting edge of this new practice area—will begin the process of drafting the specialty exam soon, and the board will offer the specialty—our 13th—in 2018. We thank the council for its support of this new specialty.

Last year we said good-bye to Dr. Terry Ackerman, associate dean and professor of educational research methodology at the University of North Carolina at Greensboro. Dr. A. (as the board and staff referred to him) served as the board’s psychometrician for many years. A psychometrician practices the science of measurement, or psychometrics, which is the field of science associated with the development of instruments (such as examinations) that measure knowledge, skills, and attributes. Dr. Ackerman was essential to our ceaseless endeavor to write exams that are valid and reliable—using volunteer lawyers who have no experience writing exams. Dr. Ackerman, a star in his field, left UNCG to become a research fellow at ACT, the college entrance exam standardized testing organization. But Dr. A. did not leave us bereft. His colleague at UNCG, Dr. Devdass Sunnassee, using four PhD. and masters degree students, is providing excellent guidance on drafting and grading exams to the specialty committees, and the students are performing statistical analyses of the exam results that will insure continued improvement from year to year. This is a “win-win” for the specialization program and for these graduate students: the specialization program gets professional assistance for a pittance compared to what a private firm would charge, and the graduate students gain the valuable “real world” experience that they crave.

We also continue to improve how the specialization exams are administered. Last year we implemented ExamSoft, a secure,

cloud-based software that is used by many law schools and on most bar exams. The benefits of ExamSoft for the specialization program are threefold: the ability to administer our exams online; the ability to “bank” exam questions to facilitate the creation of future exams; and the ability to perform statistical analyses of exam data. In the future, the use of ExamSoft may enable the board to offer “on-demand” examinations throughout the year.

At the annual luncheon honoring 25-year, 30-year, and newly certified specialists on March 10 at The Grandover Resort in Greensboro, the board’s three special recognition awards were presented. All of the awards are named in honor of past chairs of the board. The Howard L. Gum Committee Service Award was given to Henry Campen of Raleigh, a board certified specialist in utilities law, for his service as chair of the first utilities law specialty committee. The James E. Cross Leadership Award was presented to Judge John Tyson of Raleigh for his active leadership role in the specialty of real property law. The Sara H. Davis Excellence Award was presented to John Narron, certified family law specialist from Raleigh, for excellence in his daily work as a family lawyer and for serving as a model for other family lawyers.

Unfortunately, the terms of two valued board members ended this year. Laura Burton of Greensboro was appointed to the board in 2010 and served her last year on the board as chair. Laura’s unwavering support for the specialization program helped the board to overcome many hurdles. Judge Teresa Vincent, also of Greensboro, was appointed in 2010 to the “non-specialist” position on the board as required by the rules for the specialization program. Although not a specialist, Judge Vincent used the wisdom gained from her service on the bench to bring a fresh and insightful perspective to the board’s deliberations. Laura and Teresa made invaluable contributions to the specialization program and both will be missed.

In closing, on behalf of the board I am

pleased to report that the specialization program is prospering and continues to fulfill its two key objectives: assisting the public by identifying qualified practitioners who are proficient in specialty areas and improving the competency of the bar. With your support, the board will continue to establish specialties in areas appropriate for certification and to apply reasonable, objective standards for certification that protect the interests of the public.

Board of Continuing Legal Education

Submitted by George L. Jenkins Jr.

Thirty years ago, North Carolina lawyers were required, for the first time, to take continuing legal education as a condition of maintaining an active law license. Since 1987, those lawyers have taken over 8 million hours of CLE. Perhaps the most impressive thing about that number is not that thousands of lawyers were sitting down, quietly learning together for the equivalent of nine years, but that most of those CLE hours were taught—without compensation—by volunteer lawyers from all types of practices, all areas of practice, and from big cities and small towns across North Carolina. The CLE Board thinks that is something to celebrate. A 30th anniversary committee has been appointed by the board and it is making plans for, among other things, the creation of a “CLE Hall of Fame” to which the major, non-profit, North Carolina CLE sponsors will be invited to nominate lawyers they believe to have exemplified this spirit of giving back to the profession, and enhancing the protection of the public, by helping to make fellow lawyers more competent. More information on this initiative will be provided to the council as the protocol for naming a lawyer to the CLE Hall of Fame is finalized.

As the numbers show, lawyers continue to meet and exceed their mandatory continuing legal education requirements. By mid-March 2017 the CLE department processed and filed over 26,840 annual report forms for the 2016 compliance year. I am pleased to report that 99% active members of the North Carolina State Bar complied with the mandatory CLE requirements for 2016. The report forms show that North Carolina lawyers took a total of 380,937 hours of CLE in 2016, or 15 CLE hours on average per active member of the State Bar. This is three hours above the mandated 12 CLE hours per year.

The CLE program operates on a sound

financial footing and has done so almost from its inception over 30 years ago. Funds raised from attendee and non-compliance fees not only support the administration of the CLE program, but also support three programs that are fundamental to the administration of justice and the promotion of the professional conduct of lawyers in North Carolina. The program’s total 2016 contribution to the operation of the Lawyers Assistance Program (LAP) was \$125,000. To date in 2017, the board has also collected and distributed \$295,894 to support the work of the Equal Access to Justice Commission and \$302,688 to support the work of the Chief Justice’s Commission on Professionalism. In addition, the CLE program generated \$75,391 to cover the State Bar’s costs for administering the CLE-generated funds.

In our annual report last year we informed the council that the board was studying the requirements for the formal designation of a CLE provider as an “accredited sponsor.” The board was concerned that the designation, coming from the CLE board, implied that the programs presented by an accredited sponsor are of superior quality when, in fact, the status is granted to CLE sponsors that have been in operation for at least three years and have satisfied certain primarily bureaucratic requirements. The board examined whether the status should be more difficult to obtain, and should require demonstration of ongoing programmatic quality and periodic renewal. After much study, the board concluded that managing the quality of CLE programs was not something that the board could do effectively or fairly, and that competition in the CLE marketplace already performs this function. Therefore, the board voted to propose amendments to the CLE rules to replace the “accredited sponsor” designation with a “registered sponsor” designation, and to use the registration process as an opportunity to enforce sponsor requirements for reporting attendance and paying CLE attendee fees. The CLE board’s request to publish the proposed rule amendments for comment is before you today. The board appreciates your careful consideration of the proposed rule amendments.

As you know, the council amended the comment to Rule 1.1, Competence, in 2014 to state that maintaining competence requires a lawyer to stay abreast of changes in

the law and its practice, including the benefits and risks associated with technology. Technology is rapidly changing and is having an ever increasing impact on the practice of law. To maintain competence, it is critical that lawyers understand technology. To this end, the board is considering a proposal to amend the annual CLE requirements to require that one hour of the 12 mandatory CLE hours per year be devoted to technology education. If the board concludes that it should proceed with this proposal, it will recommend that the necessary rule amendments be in place in time to make the requirement effective on January 1, 2019.

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 Robert C. Bowers, Chair

Twelve years after the first application for paralegal certification was accepted by the board on July 1, 2005, there are today 4,112 North Carolina State Bar certified paralegals. This year, 408 paralegals applied for certification and we anticipate designating over 100 new CPs after the results of the October exam are released in November.

Also in 2017, the board considered 3,993 recertification applications. 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. On the agenda were two important policy questions. Whether to allow paralegals who are certified by qualified national organizations, such as the National Association of Legal Assistants and The National Federation of Paralegal Associations, to sit for the paralegal certification exam although the paralegals have not satisfied our educational requirement for certification was our first question.

After a lively hearing at which the viewpoints of many invited stakeholders were considered, the board voted to amend The Plan for Paralegal Certification to permit paralegals certified by qualified national organizations to sit for the North Carolina paralegal certification exam. The proposed rule amendment was published for comment following the council's July meeting and is before you today for adoption. The board studied the issue closely and carefully considered all points of view; it concluded that this change will enhance the program, not diminish it. We encourage the council to look favorably upon this proposed expansion of those who are eligible for paralegal certification by the State Bar.

The second policy question for consideration at the retreat was whether to designate as a "qualified paralegal studies program" any educational program that is offered entirely online. The existing standards require that no less than ten semester hours of the required coursework be completed in either a traditional classroom setting or by live simultaneous webcasting. The board received comments, especially from paralegal educators, on whether to permit our educational requirement to be satisfied by graduation from an entirely online paralegal certificate program. The board concluded that this change would dilute the standards of the program and declined to pursue a rule amendment. However, the board will continue to evaluate developments and evolutions in educational delivery methods that would further the program's objectives.

Also at the retreat, the board approved funding to allow certified paralegals to watch, without charge, two online, interactive, one-hour trust account management CLE courses hosted on the North Carolina Bar Association's website. These CLE courses were produced as a joint project of the State Bar and the Bar Association to educate lawyers, also free of charge, on the current management duties for a lawyer's trust account. The board will pay the Bar Association a hosting fee for any CP who completes one or both of the online courses. Because paralegals frequently assist with trust account management, the board believes that it is equally important for certified paralegals to have access to these courses free of charge.

Eight years ago, at the State Bar's October 2009 annual meeting, the board presented a check to then President John McMillan in

amount of \$500,000 as the contribution of the paralegal certification program to the State Bar Foundation for the construction of the new State Bar building. This contribution—which was the single largest—was possible because paralegals embraced the certification program from its inception, thereby enabling the program to operate "in the black" financially from the beginning. Prudent management of the finances of the program continues to allow the board, on occasion, to contribute excess funds to important initiatives. I am proud to announce contributions by the board to initiatives to improve lawyer competency and to advance the administration of justice. In the spring the board contributed \$1,500 to a law and humanities CLE seminar sponsored by the State Bar and planned and presented by President-Elect (and former chair of the Board of Paralegal Certification) Gray Wilson. Certified paralegals were invited to attend the program, which provided a unique perspective on the meaning of justice and the role of the lawyer. At the board retreat in May, following a presentation and request by Justice Robert Edmunds on behalf of the North Carolina Historical Society, the board voted to contribute \$25,000 to the production of a North Carolina Supreme Court 200th anniversary film documentary that will be used as an educational tool for the general public and also for continuing education programs for lawyers and paralegals. Both grants were authorized as required by the council's policy on the use of excess funds by a State Bar board or program.

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

Lawyer Assistance Program

Submitted by Robynn Moraites, Director

This has been an extraordinarily busy year for the Lawyer Assistance Program (LAP). The full, detailed annual report can be found at nclap.org/annual-report.

On the heels of the national ABA Hazelden study, the results of which were rolled out early last year, the ABA created a National Task Force on Lawyer Well-Being (Task Force) comprised of the Conference of Chief Justices, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the National Conference of Bar Examiners, and the Commission on Lawyer Assistance Programs. The Task Force released a comprehensive report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (which can be viewed online at bit.ly/2i0KGW0), aimed at addressing the problems faced by the profession. The report includes dozens of recommendations for stakeholder groups from law schools, to regulators, to law firms. It represents the most ambitious road map yet related to promoting the well-being of lawyers. The hope is that implementation of the recommendations will lead to a cultural shift within the profession.

With the increasing national focus on lawyer well-being, LAP fielded an unprecedented number of CLE speaking requests. LAP volunteers and staff provided 100 CLE presentations. The more CLE we provide, the more referrals we receive. Accordingly, we saw a dramatic jump in the number of referrals in the second half of this year. We have historically opened an average of 22-25 new files per quarter. In the final two quarters of this year, however, we opened 47 and 58 new files, respectively. Unfortunately, the cases continue to be increasingly clinically complex, putting increased pressure on our clinical staff. Problems with alcohol and depression remain the most prevalent problems.

One of our long-standing counselors, Towanda Garner, left our program in August 2017 to pursue additional graduate studies at Duke Divinity School. We were very sad to see her go. As of the writing of this report, we are actively engaged in a search for her successor.

LAP carried out several initiatives this year worth highlighting. In September 2016, LAP held a law school summit in conjunction with Lee Vlahos and the NC Board of Law Examiners. Each of North Carolina's law schools was represented, and we spent an afternoon discussing character and fitness

CONTINUED ON PAGE 61

February 2018 Bar Exam Applicants

The February 2018 bar examination will be held in Raleigh on February 27 and 28, 2018. Published below are the names of the applicants whose applications were received on or before October 31, 2017. 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.

Andrew Abbasi Moorestville, NC	Charlotte, NC	Frenchie Brown Charlotte, NC	Silver Spring, MD	Shanelle Edmonds Pittsboro, NC
Cory Adkins Charlotte, NC	Victoria Bennett Raleigh, NC	Joseph Brown Asheville, NC	Raemi Cobb High Point, NC	Chet Effler Old Fort, NC
Robert Adler Waxhaw, NC	Angela Berland Charlotte, NC	Shelia Brown Raleigh, NC	Phoenix Coleman Raleigh, NC	Jacques El-Chayeb Chapel Hill, NC
Allison Allen Charlotte, NC	Denise Bernard Charlotte, NC	Louise Brunson Raleigh, NC	Nicole Collier Charlotte, NC	Jennifer Eppick Wilmington, NC
Dawnwin Allen Charlotte, NC	Andre Best Durham, NC	Jennifer Bryan Bladenboro, NC	Roger Condrey Concord, NC	Alexander Esseesse Melbourne, FL
Katherine Allen Tarboro, NC	Kevena Bethune Hope Mills, NC	Brianna Buchanan Durham, NC	Birshari Cooper Cary, NC	Sarah Eysen Charlotte, NC
Kelvin Allen Durham, NC	Kimberley Beyer Glenville, NC	Alexander Buckley Southern Pines, NC	Joshua Cox Raleigh, NC	Alexandra Falls Lincolnton, NC
Markea Allen Charlotte, NC	Brandye Birdsall Elizabeth City, NC	Brian Buckley Durham, NC	Tanya Craig Waxhaw, NC	Robert Farias Newport, NC
Toya Allison Fayetteville, NC	Michael Birney Chapel Hill, NC	Jazzmine Burch Greensboro, NC	Phyllis Culbertson Winston-Salem, NC	Joshua Farkas Davie, FL
Emily Andrews Sparta, NC	Arthur Blanton Charlotte, NC	Kelly Burke Greenfield Center, NY	Reko Currie Greensboro, NC	Caitlin Farmer Raleigh, NC
Alisha Animashaun Greenville, NC	Sarah Blessing Raleigh, NC	David Busch Charlotte, NC	Jason Dangler Charlotte, NC	Kimberly Farr Cary, NC
Douglas Arborio Charlotte, NC	Ashley Boaz Christiansburg, VA	Micah Byrd Winston-Salem, NC	Monica DaSilva Raleigh, NC	Jennifer Farrell Jamestown, NC
Nicole Arrington Charlotte, NC	Britney Boles Greensboro, NC	Timothy Cain Smithfield, NC	Christopher Davidson Winston-Salem, NC	Annette Faw Wilksboro, NC
Christopher Ashley Durham, NC	Jonathon Boljesic Cary, NC	Anil Caleb Fayetteville, NC	James Davis Davidson, NC	Jennifer Feinstein Raleigh, NC
Ebony Austin Charlotte, NC	Paula Booth Winston-Salem, NC	Pardis Camarda Wurtsboro, NY	Jarryd de Boer Hickory, NC	Trina Fisher Cary, NC
Claudia Ayala Mountain City, TN	Sarah Bosse Charlotte, NC	Anthony Campbell Burlington, NC	Aundrea Dean Charlotte, NC	Tiffany Fitzgerald Mebane, NC
Timsha Ayers Charlotte, NC	Kevin Boston Chesapeake, VA	Kayla Campbell Boonville, NC	David Delaney Chapel Hill, NC	Alexa Flores Cary, NC
Anika Bailey Greensboro, NC	Tiina Bouyer Greensboro, NC	Natashia Cannedy Kings Mountain, NC	Sarah DePalma New Port Richey, FL	Tanisha Folks Fuquay Varina, NC
Reagan Bailey Pfafftown, NC	Carlton Bowers Mount Pleasant, SC	Habekah Cannon Charlotte, NC	Chauncey Depew Raleigh, NC	Ashley Foster Clayton, NC
Tameka Baldwin Raleigh, NC	Lena Bowman Winston-Salem, NC	James Capps Greensboro, NC	Eric Dittmore Linden, NC	Joshua Franks Raleigh, NC
Kimberly Balkcom Fayetteville, NC	Kelyn Brame Wilmington, NC	Karen Carpenter Indian Trail, NC	Bertha Dixon Browns Summit, NC	Montre Freeman Roanoke Rapids, NC
Thanasis Ballas Clemmons, NC	Daniel Braswell Durham, NC	Kerry Cassidy Raleigh, NC	Greg Dixon Elizabeth City, NC	Katherine French Apex, NC
Trisha Barfield Greensboro, NC	Danielle Brent-Bownes Greensboro, NC	Michael Casterlow Greensboro, NC	Jeffrey Dodson Nashville, NC	Ana Friedman Winston-Salem, NC
Artrice Barksdale Charlotte, NC	Matthew Brickey Advance, NC	James Chandler Charlotte, NC	James Doermann Greensboro, NC	Katherine Garcia Charlotte, NC
Sarah Beamer Charlotte, NC	Craig Brinckerhoff Winterville, NC	Yeama Charley Charlotte, NC	Christopher Dorsey Lynchburg, VA	Lisa Garner Greensboro, NC
Taylor Beamon Raleigh, NC	Robin Bronson Huntersville, NC	Megan Chavis Charlotte, NC	Jacqueline Douglas Greensboro, NC	Danielle Garon Charlotte, NC
Suad Bektic Richmond, VA	Alesha Brown Cayce, SC	Nalina Chinnasami HighPoint, NC	Lisbeth Driskill Charlotte, NC	Charmaine Gilmore Charlotte, NC
Latasha Bembury Durham, NC	Blakeney Brown Gastonia, NC	Nicholas Clark Virginia Beach, VA	Kristina Drozdowski Raleigh, NC	Jerrod Godwin Raleigh, NC
Luis Benavides	Carmen Brown Hickory, NC	Monica Cloud	Caleb Dunn Greensboro, NC	William Gordon

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Eboni Graham
Winston-Salem, NC
Sarah Greene
Chapel Hill, NC
Cody Griffin
Newton, NC
Whitney Griffin
Durham, NC
Khalil Haddad
Wake Forest, NC
Sandra Hagood
La Jolla, CA
Benjamin Hahn
Greenville, NC
Alexandra Haile
Greensboro, NC
Bethel Hailu
Charlotte, NC
Minard Halverson
Fayetteville, NC
Camekia Hammond
Charlotte, NC
Mallory Harper
Opelika, AL
Allison Harrell
Decatur, GA
Shontay Harris
Charlotte, NC
Brittany Hart
Greensboro, NC
Matthew Hartburg
Raleigh, NC
Adam Hartmann
Charlotte, NC
Kia Harvey
Winston-Salem, NC
Holly Hege
Lexington, NC
Christopher Heller
Winnabow, NC
Samuel Helton
Cary, NC
Jessica Henderson
Charlotte, NC
Shielke Hendricks
Norlina, NC
Paul Hester
Charlotte, NC
Kimberly Hicks
Seaboard, NC
Stephen Hodges
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Lauren Hossfeld
Kernersville, NC
Brittany Houston
Matthews, NC
Hugh Hudson
Durham, NC
Eric Hunt
Cary, NC
Carly Iddings
Walkertown, NC
Zachary Infinger
Raleigh, NC
Stuart Innes
Virginia Beach, VA
Michelle Iqbal
Charlotte, NC
Carl Ivarsson
Greensboro, NC
Dana Jamison
Riverside, CA

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Concord, NC
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LaTasha May
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Suzanne McArdle
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Kathryn McCullough
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Ebuni McFall-Roberts
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Samantha McHone
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Ian McIntyre
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Stephanie McKeon
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Lauren McKoy
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Molly McLawhorn
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Sean McLeod
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Maiysa Mesbah
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Heather Mitchell
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Sanyam Parikh
Raleigh, NC
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Seth Royster Portsmouth, VA	Emily Smith Peacock Raleigh, NC	Margaret Teich Asheville, NC	Elise Wall Pisgah Forest, NC	Yvette Wiltshire Charlotte, NC
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Johnya Sasso Durham, NC	Jasmine Spence Cary, NC	Ethan Timmins Raleigh, NC	Ashwini Kumar Wankhede Greensboro, NC	Laurie Woodham Charlotte, NC
Stephanie Sautelle Charlotte, NC	Sheila Spence Spring Lake, NC	Jessica Timmons Durham, NC	Austin Warner Atlanta, GA	Brian Wooten Winston-Salem, NC
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Abigail Schuette Charlotte, NC	Shemrico Stanley Charlotte, NC	Daphne Trevathan Rocky Mount, NC	Angela Watkins Monroe, NC	Shannon Wright Charlotte, NC
Brandon Scott Kings Mountain, NC	Amber Staples Huntington, WV	Robert Trimble Calabash, NC	Tamikiyo Watters Durham, NC	Tracy Wright Durham, NC
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Annual Reports (cont.)

issues and how LAP works with law students and the Board of Law Examiners. Seven LAP volunteer representatives from the LAP Steering Committee also attended, each as an assigned liaison to a particular law school.

LAP began a chronic illness support group conference call for lawyers who have been diagnosed with chronic conditions like MS. LAP shared the information and invitation nationally with LAP directors from other states and have had consistent participation so far from a small group of lawyers

from across the country.

The LAP director provided training in June for superior court judges on how to handle addicted and impaired lawyers using a judicial intervention process. A panel of judges who have worked with LAP in recent years helped explain procedures and to differentiate the role a judge may play as opposed to the role of the State Bar Office of Counsel.

And finally, LAP conducted a new volunteer training for 30 lawyers from across the state. LAP volunteers continue to provide hope, support, and direction for lawyers who are drawn to a better way to live

and practice law. LAP could not accomplish what it does without the enthusiasm of this incredible cadre of volunteers. They are quite literally a force (for good) to be reckoned with. Whether recovering from compassion fatigue, an alcohol problem, depression, childhood trauma, or any other life issue, LAP volunteers have found a way to live and practice that works. The gifts they offer are free for the taking and we are so fortunate to have them as a resource. It is the LAP volunteers' unique contribution that makes our program one of the best, most dynamic, most enviable programs in the country. ■

The North Carolina State Bar and Affiliated Entities

Selected Financial Data

The North Carolina State Bar			Operating expenses (8,146,807) (2,348,886)			Revenues and Expenses		
	2016	2015		2016	2015		2016	2015
Assets			Non-operating revenues <u>85,964</u> <u>8,434</u>			Operating revenues-specialization fees \$179,300 \$151,035		
Cash and cash equivalents	\$6,221,785	\$7,062,359	Net income (loss) \$5,978,944 \$457,359			Operating expenses (183,034) (149,452)		
Property and equipment, net	16,239,757	17,048,205	Board of Client Security Fund			Non-operating revenues <u>2</u> <u>2</u>		
Other assets	<u>1,009,676</u>	<u>1,057,694</u>				Net income \$(3,732) \$1,585		
	\$23,471,218	\$25,168,258	Assets			The Chief Justice's Commission on Professionalism		
Liabilities and Fund Equity			Cash and cash equivalents \$602,022 \$1,201,890					
Current liabilities	\$4,789,288	\$5,756,195	Other assets					
Long-term debt	<u>10,185,530</u>	<u>10,653,533</u>	-					
	14,974,818	16,409,728	\$602,022 \$1,201,890					
Fund equity-retained earnings	<u>8,496,400</u>	<u>8,758,530</u>	Liabilities and Fund Equity					
	\$23,471,218	\$25,168,258	Current liabilities \$59,649 \$71,205					
Revenues and Expenses			Fund equity-retained earnings <u>542,373</u> <u>1,130,685</u>					
Dues	\$8,239,550	\$8,080,785	\$602,022 \$1,201,890					
Other operating revenues	<u>996,582</u>	<u>1,178,959</u>	Revenues and Expenses					
Total operating revenues	9,236,132	9,259,744	Operating revenues \$730,556 \$788,236					
Operating expenses	(9,122,891)	(9,153,057)	Operating expenses (1,319,154) (709,376)					
Non-operating expenses	(375,371)	(389,862)	Non-operating revenues <u>286</u> <u>338</u>					
Net income	<u>\$(262,130)</u>	<u>\$(283,175)</u>	Net loss \$(588,312) \$79,198					
The NC State Bar Plan for Interest on Lawyers' Trust Accounts (IOLTA)			Board of Continuing Legal Education					
	2016	2015						
Assets			Assets					
Cash and cash equivalents	\$1,774,393	\$1,758,268	Cash and cash equivalents \$645,014 \$615,508					
Interest receivable	204,793	235,232	Other assets <u>9,393</u> <u>9,937</u>					
Other assets	11,637,546	1,073,101	\$654,407 \$625,445					
	<u>\$13,616,732</u>	<u>\$3,066,601</u>	Liabilities and Fund Equity					
Liabilities and Fund Equity			Current liabilities 309,268 293,009					
Grants approved but unpaid	\$2,032,335	\$2,015,225	Fund equity-retained earnings <u>345,139</u> <u>332,436</u>					
Other liabilities	4,820,397	266,320	\$654,407 \$625,445					
	<u>6,852,732</u>	<u>2,281,545</u>	Revenues and Expenses					
Fund equity-retained earnings	6,764,000	785,056	Operating revenues \$709,948 \$740,246					
	<u>\$13,616,732</u>	<u>\$3,066,601</u>	Operating expenses (697,249) (746,165)					
Revenues and Expenses			Non-operating revenues <u>4</u> <u>-</u>					
Interest from IOLTA participants, net	\$1,767,287	\$1,847,195	Net (loss) income \$12,703 \$(5,919)					
Other operating revenues	<u>12,272,500</u>	<u>950,616</u>	Board of Legal Specialization					
Total operating revenues	14,039,787	2,797,811						
			Assets					
			Cash and cash equivalents 180,694 185,496					
			Other assets <u>6,835</u> <u>5,217</u>					
			\$187,529 \$190,713					
			Liabilities and Fund Equity					
			Current liabilities 9,871 9,323					
			Fund equity-retained earnings <u>177,658</u> <u>181,390</u>					
			\$187,529 \$190,713					

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