

THE NORTH CAROLINA STATE BAR

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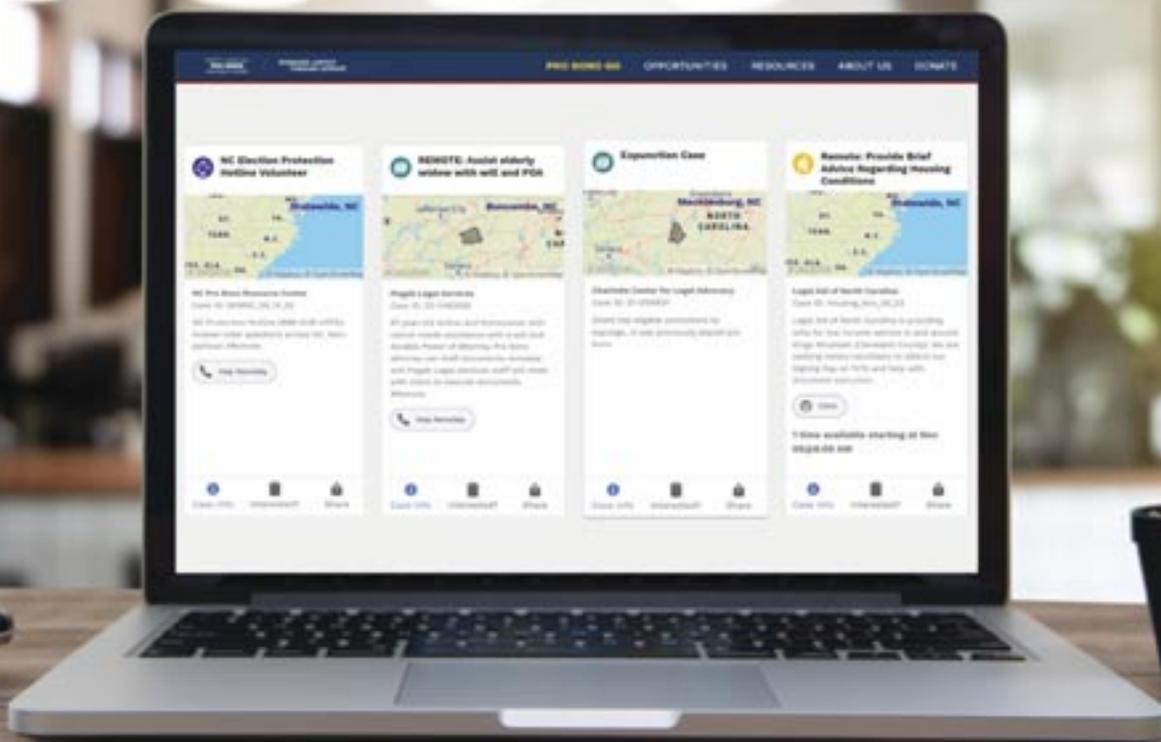


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*Publication of an article in the Journal is not an endorsement by the North Carolina State Bar of the views expressed therein.*

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# A New Chapter for the State Bar's Office of Counsel

BY A. TODD BROWN

"The greatest danger in times of turbulence is not the turbulence—it is to act with yesterday's logic." - Peter Drucker

Our society, our State, and our legal profession have changed dramatically since the North Carolina State Bar was founded in 1933. As we approach the quarter-mark of the 21st century, the State Bar Council and agency staff are increasingly populated by Gen X and Millennials. These younger generations of professionals bring technological aptitude and a diplomatic willingness to question the status quo to their work. The resulting appetite for adaptive change is evident throughout the State Bar's operations. For example, just last year we overhauled our CLE requirements to create a more flexible and streamlined two-year reporting period and redesigned the selection process for random audits of attorney trust accounts to be more equitable and straightforward.

## Change in the Office of Counsel

The State Bar's most visible and labor-intensive function—enforcement of the North Carolina Rules of Professional Conduct—is also undergoing a period of unprecedented change and modernization.

### New General Counsel

The counsel of the State Bar is tasked with a vast number of responsibilities.

- Most notably, the counsel—under the guidance and at the direction of the State Bar Council's Grievance Committee—oversees the investigation and potential prosecution of grievance complaints filed against

lawyers for the protection of the public.

In carrying out this responsibility, the counsel supervises the State Bar's Office of Counsel (OOC), consisting of approximately 50 employees including lawyers, paralegals, investigators (typically retired law enforcement), and administrative personnel who "do the work" of the disciplinary process.



After 17 years of excellent service to the public and the profession, Katherine Jean stepped down from her position as counsel and assumed an of counsel position with the State Bar. In this role,

Katherine will remain a valuable asset to the State Bar's work as both a contributor to the disciplinary process and a source of wisdom, mentorship, and institutional knowledge.

The profession and the public owe Katherine a great debt. Katherine brought integrity and consistency to the Office of Counsel as it nearly doubled in size and handled increasingly complex investigations and litigation. Katherine's effective and compassionate leadership earned the intense loyalty of those she supervised and inspired true investment in—and commitment to—the mission of the State Bar.

On December 19, 2023, the State Bar Council appointed Carmen Bannon to succeed Katherine Jean as counsel. Carmen joined the State Bar staff in 2006 (coincidentally, as Katherine's first hire in her then-new role as counsel) and has become known throughout the legal profession as a fair, reasonable, good-humored, intelligent, and fierce advocate for the integrity of the legal profession and the protection of the public.

## Office of Counsel Staff

Carmen arrives in this position of leadership at a time of great change within the OOC and the legal profession at large.

Before 2020, it was virtually unheard of for a lawyer to leave the Office of Counsel. Most lawyers who joined the staff remained with the State Bar for many years until their retirement.

In 2020, Root Edmonson, a mainstay in the North Carolina legal profession, retired after 41 years on staff with the State Bar.

In 2021, Fern Gunn retired after 36 years at the State Bar and Margaret Cloutier retired after 17 years.

In 2023, David Johnson retired after two stints in the OOC totaling 27 years of service to the State Bar.

Between retirements and several newer lawyers on the State Bar's staff departing for the more lucrative pastures of private practice, the OOC has said goodbye to 11 lawyers over the past three years. Turnover of this magnitude—no matter how amicable the reasons—has the potential to significantly disrupt the work product and culture of any organization.

Thankfully, I can bear witness to the exemplary leadership and stellar quality of work coming from the Office of Counsel over these tumultuous years. And I am happy, proud, and resolute in saying that Carmen is the leader the State Bar, the profession, and the public needs at this juncture to continue a tradition of excellence. Carmen has the integrity and ability to ensure all who are interested in and connected to the disciplinary process of the State Bar will be heard, will receive the highest quality of work from any public agency in our state, and, importantly, will be treated fairly and with the utmost professionalism.

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### Changes in the Legal Profession

The practice of law itself is also rapidly evolving and the effects of that transformation have impacted the Office of Counsel just as they have every other legal workplace.

Notable changes during the last two decades include shifting work culture and expectations and heightened complexity of matters.

For example, trials before the Disciplinary Hearing Commission, which traditionally lasted one to two days, currently often involve intensive discovery and pretrial motions practice, and take three to five days to complete.

Technology has brought both benefits and challenges.

**Benefits**—Lawyers can now pay their dues, apply for specialty certification, and check their CLE records online. In the disciplinary department, records are almost entirely digital and are maintained in a sophisticated database rather than rows of filing cabinets.

**Challenges**—Technology creates the impression that everything, and everyone, is constantly accessible. Gone are the days when correspondence about an investigation or litigation was meted out at a pace set by the US Postal Service.

The State Bar now accepts grievances electronically, and the annual number of grievances is on the rise. In 2023, the OOC processed over 1,500 grievance complaints, a significant increase from the pre-pandemic average of approximately 1,250 per year. In addition, the Attorney-Client Assistance Program handles over 10,000 annual inquiries.

Expanded accessibility via email has

sharply increased the amount of correspondence received by the OOC and heightened the demand for immediate response. The State Bar staff spends more time than ever on correspondence in an effort to remain an accessible public agency.

Dutifully, the dedicated staff of the State Bar navigate these challenges with a positive attitude and continue to perform at a high level for the protection of the public.

### Time for Change

The State Bar's system for processing grievances has remained relatively static for 30-plus years. In 1994, the North Carolina State Bar had 13,671 active members. Today, it has 32,781. Given the expansion of the profession, the challenges accompanying new technology, and increased demands on State Bar staff from lawyers and the public alike, it is time to reexamine and reimagine the agency's processes to ensure its continued ability to regulate the profession for the protection of the public. Rightly, Carmen believes that "because we've always done it this way" is not a reason to preserve any convention or process that no longer serves our mission. She and other State Bar staff have already begun upgrading and modernizing the OOC's operations and will continue to work with the State Bar Council in vetting and implementing changes for the benefit of lawyers and the public.

### Process Improvement

Recognizing that many systems and conventions for processing grievances established in the pre-digital age are no longer effective, in 2023 the State Bar invested in intensive process improvement and project manage-

ment training for the OOC, equipping many of the staff with tools to increase efficiency and improve stakeholder experience.

With the support of Lean Six Sigma experts who specialize in project management for legal organizations, the OOC is now applying its new knowledge and tools to improve its operations.

Current initiatives stemming from the process improvement training include:

- Reexamination of all standard letters, forms, and published information about the grievance process to ensure they are consistent and accurately reflect current operations.
- Redesign of the online interface through which grievances can be submitted.
- Reallocation of staff resources and minimization of waiting and waste to reduce grievance backlog and shorten processing time for future grievances.
- Implementation of a robust screening and assignment process for incoming grievances.
- Development of areas of specialization for lawyers within the OOC, which will decrease processing time and increase consistency.

### The Future

The future of the State Bar is bright. Carmen's thoughtful, innovative leadership as counsel ushers in an era of modernizing our approach to the disciplinary process and organizing the talent within the OOC to meet the challenges of a rapidly changing society and legal profession. ■

*Mr. Brown is a partner with Hunton Andrews Kurth in Charlotte.*



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# To Appeal or Not to Appeal? Ten Considerations Guiding Whether to Appeal from the Trial Court in North Carolina

BY LORIN J. LAPIDUS AND D. MARTIN WARF

**C**ountless articles have been published over the years—in North

Carolina and beyond—advising practitioners about the latest case law updates or appellate rule amendments. Resources providing appellate prac-

tice tips about writing effective briefs or delivering a compelling oral argument are similarly widespread. But it appears that the appellate literature is thin on whether filing an appeal from the trial court is a good idea in the first instance. It is this threshold inquiry that is the focus of this article. While there is no magical appellate formula, exploring the answers to the following ten questions should provide helpful insight to assist lawyers and clients alike to make an informed decision about whether to file an appeal.



*alexskopje1/stockphoto.com*

## 1. Is there a right to appeal?

The right to appeal a ruling on the merits after entry of a final judgment is generally understood. But the right to file an immediate appeal in the middle of the case (an interlocutory appeal) is a more nuanced right: Aside from a statute granting an interlocutory appeal, “appeals from interlocutory orders are only permitted in exceptional cases where a party can demonstrate that the order affects a substantial right under N.C. Gen. Stat. § 1-277,” or in narrow instances approved by the appellate court in which there is a Rule 54(b) certification by the trial court. *Ford v. Mann*, 201 N.C. App. 690, 716-17, 690 S.E.2d 281, 283 (2010) (cleaned up). If your appeal has to be made mid-litigation, you will generally have to persuade a court that one of these two reasons exists to even begin an appeal.

In the rarer of the two—Rule 54(b) certification—the trial court certifies that there is no just reason to delay the appeal until after it enters a final judgment as to fewer than all of the claims or parties in an action under N.C. Gen. Stat. § 1A-1, Rule 54(b) (2023). Counsel may ask the trial court to add certification under Rule 54(b), but the certification must be in the judgment appealed, not a separate order.

The second more common exception is known as the substantial right doctrine. Under this doctrine, immediate review of an interlocutory order is permitted “if such order affects a substantial right of the parties involved.” *RPR & Assocs. Inc. v. UNC - Chapel Hill*, 153 N.C. App. 342, 347, 570 S.E.2d 510, 514 (2002). This, of course, requires that a would-be appellant must (1) convince a court that the right identified is substantial and (2) “clearly articulate,” *Mann*, 201 N.C. App. at 717, 690 S.E.2d at 283, why that right would be affected by delay, *Boyce & Isley PLLC v. Cooper*, 169 N.C. App. 572, 574, 611 S.E.2d 175, 177 (2005) (party must show that “deprivation of that substantial right must potentially work injury to plaintiff if not corrected before appeal from final judgment”).

Thus, in matters in which no final judgment has been entered, careful research should be undertaken to determine whether the interlocutory order sought to be appealed affects (or likely affects) a substantial right under *stare decisis*, or at least, whether a compelling argument exists to support a logical extension of such right in a

given case. This threshold inquiry determines whether the resources expended will likely result in an appellate decision on the merits as opposed to the dismissal of the appeal as premature.

## 2. Were key issues properly preserved for appellate review in the trial tribunal?

Certainly, a party unsuccessful before the trial court might later devise a new theory that would have been successful if presented below. But if the issues sought to be appealed were not first raised in the trial court, the chances that the appellate court will address such arguments for the first time on appeal are small. “It is a well-established rule in our appellate courts that a contention not raised and argued in the trial court may not be raised and argued for the first time on appeal.” *In re Hutchinson*, 218 N.C. App. 443, 445, 723 S.E.2d 131, 133 (2012); *see also* N.C. R. App. P. 10 (“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.”) This general rule is subject to exceptions, but they are few. Rule 2 permits the appellate courts to excuse a party’s default in both civil and criminal appeals when necessary to “prevent manifest injustice to a party” or to “expedite decision in the public interest,” but Appellate Rule 2 is sparingly used.

Consequently, a potential appellant should carefully review the trial record and determine whether the issues sought to be appealed were properly preserved. If they were not raised below, then a substantial amount of time and resources may be spent pursuing but having very little hope of receiving a decision on the merits.

## 3. Does the applicable standard of review increase or decrease the chances of success on appeal?

It is axiomatic that “[t]he proper standard to be applied depends on the issue presented on appeal.” *Brooks v. Rebarco Inc.*, 91 N.C. App. 459, 463, 372 S.E.2d 342, 344 (1988). Pursuant to *de novo* review, which is typical for reviewing conclusions of law and matters of statutory construction, *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011); *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010), “the appellate

court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008). In contrast, “where matters are left to the discretion of the trial court, appellate review is limited to a determination of whether there was a clear abuse of discretion.” *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985). Thus, the substance of the alleged error, be it an evidentiary ruling or a determination of statutory construction for instance, dramatically affects the likelihood of success.

The standard of review probably has the largest impact on the appellate court’s merits determinations. A careful study of all proposed issues sought to be argued on appeal can provide a basic gauge as to the likelihood of success on appeal.

## 4. Does the financial cost of appeal warrant proceeding?

In high stakes litigation, including complex commercial or healthcare matters, the amount of money at stake far exceeds the cost of prosecuting an appeal. However, in a fair number of smaller matters, the costs and attorney’s fees associated with appealing can be significant. It is advisable, therefore, to run the numbers before proceeding with an appeal. For example, if the cost of an appeal eats up half or more of the potential recovery in a case, it may lead to an unsatisfactory final outcome even if the appeal is successful. It is the attorney’s duty to discuss with the client how much appellate attorney’s fees and costs could be, and how they are generally only recoverable from the opposing party if the underlying case had statutorily-approved fee shifting. Additional fees and costs can be a real concern to clients in situations of smaller award judgments or interlocutory appeals, where litigation and an appeal may be going simultaneously.

## 5. Does the proposed matter on appeal present an opportunity to establish beneficial or prevent detrimental precedent in future cases?

For institutional clients who generate a sizeable number of matters, it is important to examine the broad effect that a published decision might create on future cases. Even where a given argument on appeal appears as if it will likely prevail, the appellate practitioner should consider whether winning this

particular battle could result in greater global loss. The risk of an appellate decision that makes it more difficult for an institutional client to find success in future cases is a realistic concern.

### **6. Does an appeal present an opportunity to leverage a mutually beneficial settlement?**

Sometimes an appeal after final judgment or an immediately appealable interlocutory order may dishearten some litigants and encourage the parties to lay down their arms. If the parties recognize that a meritorious interlocutory appeal could extend further disposition of the action for a year or more and may further result in an unfavorable ruling, it may present a good opportunity to discuss a mutually agreeable resolution.

### **7. Does the proposed appeal present unique facts or an issue of first impression that is likely to garner the attention of the court of appeals?**

If the matter on appeal involves a novel legal issue, perhaps even one of first impression, the court of appeals may necessarily have some unanswered questions that would be suited for oral argument. These types of issues may also be ripe for further appellate review at the Supreme Court of North Carolina.

An oral argument is generally viewed as a constructive development for an appellant in North Carolina, as that party has an additional opportunity to communicate with the Court and provide essential information that may help cure any doubts as to the legal correctness of that party's position. If the issue

being raised on appeal does not have a readily apparent answer, the likelihood of oral argument increases and may provide a chance to give the appeal more attention at the Court.

Further, a dissenting opinion from a judge on the court of appeals will no longer provide further appellate review as of right at the Supreme Court of North Carolina. Therefore, substantial constitutional questions or questions that would generate granting a petition for discretionary review are the most likely ways of getting further appellate review. Novel issues, unique facts, or matters of first impression may aid a petitioner in making a case for appellate review beyond the court of appeals.

### **8. When an interlocutory order that does not affect a substantial right is appealed, does the trial court retain jurisdiction to proceed with a trial on the merits?**

What if the case in the trial court continued at the same time as the appeal progressed? Do you and the client have the resources for that? "As a general rule, once a party gives notice of appeal, such appeal divests the trial court of its jurisdiction [to proceed with the matter], and the trial judge becomes *functus officio*." *RPR & Assocs. Inc.*, 153 N.C. App. at 347, 570 S.E.2d at 514; N.C. Gen. Stat. § 1-294 (2023). However, "[w]here a party appeals from a non-appealable interlocutory order, such appeal does not deprive the trial court of jurisdiction, and thus the court may properly proceed with the case." *RPR & Assocs. Inc.*, 153 N.C. App. at 347, 570 S.E.2d at 514. In other words, "a litigant cannot deprive the trial court of jurisdiction to determine a case on its merits by appealing from a non-appealable interlocutory order of the trial court." *Id.* Note that the law on the jurisdiction of the trial court during an appeal of an interlocutory order is quite complex, so a careful analysis of this issue is warranted.

As the trial court is empowered to make a preliminary assessment of whether an interlocutory order affects a substantial right, which is often made in the context of determining whether to grant a stay, that assessment can have a profound effect on the forward progress of the matter. If the trial court determines that the interlocutory order does not affect a substantial right, it may proceed with a trial on the merits while the appeal is

pending. A potential appellant should carefully think about whether fighting a battle on two fronts may be self-defeating.

### **9. Can the order be effectively stayed pending disposition of the appeal, thereby preventing execution of the order while the appeal is pending?**

It is axiomatic that a judgment entered in North Carolina for, among other things, payment of money or directing the delivery of real property is not stayed unless a bond of some type, with sufficient surety, is posted with the applicable clerk of court. *See e.g.* N.C. Gen. Stat. §§ 1-289, 1-290, 1-291, 1-292; N.C. R. App. P. 8 (2014). If the stay is not entered, the appellee is free to execute on the judgment to satisfy it while the appeal is pending. Several considerations may affect whether a stay is feasible, but an appeal may be a feckless endeavor if the appellee is able to satisfy the judgment by procuring the appellant's assets while the appeal is pending.

### **10. Does the subject matter of the appeal involve issues that the appellant wishes to prevent from being publicized to a statewide audience?**

In most instances, appeals involve issues which are not terribly exciting or sensational. Some cases, though, may contain sensitive information or publicly charged matters that a potential appellant would not want to publicize to a statewide or national audience. In these instances, proceeding with an appeal can do more lasting damage than dealing with a losing judgment or order below. Because an appellate decision is published in different ways, in most respects, than a trial court decision, it is important to discuss with one's client how raising the visibility of the appellate issue—good or bad—may impact them apart from a favorable or unfavorable ruling. ■

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

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# Letters of a Lawyer to His Son

BY EWART HARRIS OF THE ILLINOIS BAR

*The following is from the book Letters of a Lawyer to His Son, which was published in 1956 by West Publishing.*

In your last year of law school, you might be interested in some of the things that 35 years in the active practice of law have taught me. Much you have learned from your books and lectures, and much more you will learn in this last year of law school, but there are some things that only life and old lawyers can tell you. It occurred to me that in my weekly letter for the next few months, I may be able to give you some hints from personal experience that you can add to your book learning and your class instruction.

First, about lawyers. Are they the parasites that they are so frequently said to be, feeding on the body politic, and contributing nothing to production, the idol of the technological age? Or are they essential to a civilization or a society ruled by law?

You may remember from your English classes, Jack out of Shakespeare's *Henry the VI* complaining about lawyers and their work in these words: "Is not this a lamentable thing, that out of the skin of an innocent lamb should be made parchment? That parchment, be scribbled o'er should undo a man? Some say the bee stings; but I say, is the beeswax; I did, but seal once to a thing, and I was never mine man since."

An exaggeration, perhaps, of the evil that conniving lawyers can do, but not entirely a caricature. The opportunity to do evil, which comes from a lawyer's knowledge of what can be done with paper and ink, has on too many occasions been used for the client's or the lawyer's unfair advantage, and this is one of the causes of the unfavorable opinion of lawyers as a class which some people have.

What then of the good lawyer, the honest lawyer, the lawyer who is sufficiently numerous

that he can usually be found without the aid of the lantern at noonday? The good lawyer in our present state of civilization and manners which, with its irritations, tensions and insecurities, is prolific of disputes, does indeed perform a very valuable and necessary service. Outstanding among the opportunities of the lawyer, to serve society is the opportunity for conciliation, settling the business and domestic disputes of the producers.

The lawyer can be a minister of justice and a promoter of fair dealing between men. He touches pain and anger and fear as he goes about his work, and he can be kind and helpful. In his dealings with the truth, the whole truth, and nothing but the truth which the clerk calls upon the witnesses to tell, the lawyer can be free from guile and refuse to distort the truth in its presentation to the court. As an officer of the court, he must always remember that he has a higher duty than the winning of a case for his client. His duty is to make a truthful presentation of the facts, as he knows them, and to aid the court to come to a right decision, as far as it is within the power of the court to do so.

Knowing, as I do, that you will be an honest lawyer, let me give you some hints as to how you may, perhaps, become a successful one.

The space between failure and success is sometimes very narrow. The course of action that once begun, and then persisted in, would lead to success, may result in defeat and failure if it is abandoned before reaching the intended conclusion. So, the individual piece of work, which, upon completion, might have brought you a sense of victorious achievement may, by your scamping some part of it, by your faulty performance of some detail, produce, indeed, a sense of failure in the satisfaction. The omission, for instance, of thorough preparation of every part of the case—a witness not interviewed in time, a line of authorities not completely explored, a motion not made soon enough, a pleading deficient in an allegation

essential to the foundation of your proof—may have serious consequences and diminish your success. In any event, these omissions put difficulties in your way that otherwise you would have avoided.

There is no time better spent than the time spent in quietly reviewing your preparation before you begin your courtroom presentation. This should be done at a time close to the trial, but far enough from it to permit deficiencies in the preparation to be remedied. Full preparation permits you to do those things on the trial, with ease which lack of preparation will compel you to do with difficulty and with a sense of being oppressed by external, unfavorable circumstance.

Preparation makes the difference between control of your circumstances, in some instances, and being controlled by them. In the one event, you are the master, in the other, the slave. Thorough preparation makes for ease and calmness at the trial, for speed and accuracy in the presentation of your case, for the remembrance of important details, and for the elimination of loose ends. There will always be the unexpected, but there will be much less of it if you are well prepared, and when it comes it is less likely to knock you off your feet.

You will usually feel frightened on the eve of a trial. If it is common stagefright, or butterflies in the stomach, it will often clear up as soon as the words, "If the court please" have passed through your dry lips. There is a more dangerous fear, bred of a sense of inadequacy to the task in hand, which, if it persists after the most thorough preparation for trial, and if it occurs again and again, may indicate that your talents as a lawyer will be put to better use elsewhere than in a courtroom. You may have the temperament of the office lawyer, at home in conferences, and in the preparation of documents; you may be the perfect brief

CONTINUED ON PAGE 43

# Weaponizing the First Amendment

BY JOHN I. WINN

**A**lmost everyone today can video-record on mobile phones or devices. Using this technology, social activists calling themselves “First Amendment Auditors” adopt a strategy of goading police and local government employees into overreactions to generate monetized content on social media sites like YouTube or to bring law-



*larryshul/istockphoto.com*

suits against municipalities in federal court. Federal courts consistently recognize these rights resulting in judgments or settlements in favor of these activists. This article suggests commonsense strategies to diffuse these efforts and minimize public liability.

First Amendment “auditing” is a type of social activism that assesses community responses to constitutionally protected video recording in public spaces. Self-identified “independent journalists”<sup>1</sup> film inside post offices,<sup>2</sup> police parking lots, DMV waiting rooms, or other public spaces<sup>3</sup> invoking “government transparency” or “police accountability.” Auditors also seek out and record police traffic stops and crime scene investigations. Communities “fail” audits if police

impede, restrict, detain, or make arrests. While some auditors may well be acting in good faith,<sup>4</sup> increasing numbers appear to be seeking opportunities to “monetize” the reactions of police for ad revenue from the traffic the videos generated or for donations from online subscribers. At \$18 per 1,000 views on YouTube,<sup>5</sup> auditors provoke police responses by feigning panhandling,<sup>6</sup> displaying offensive signage, or donning outrageous apparel.<sup>7</sup>

Some auditors deliberately court arrest by

engaging in conduct bordering on obstruction of law enforcement activities,<sup>8</sup> resisting arrest,<sup>9</sup> or disorderly conduct.<sup>10</sup> More aggressive practitioners openly carry firearms,<sup>11</sup> or use profane language<sup>12</sup> and gestures towards police. If police refuse to take the bait and choose to deescalate, they are berated as “tyrants” or “cowards.” Described as “protected cyberbullying,”<sup>13</sup> First Amendment audits share three common elements (1) conspicuous public recording; (2) attempts to

provoke police; and (3) passive or belligerent refusal to cooperate by refusing to answer questions or provide identification.<sup>14</sup> Even short audit recordings capturing merely an ID refusal and subsequent police disengagement (i.e. the police “Walk of Shame”) may garner half a million views on YouTube as provocation is turned into a sport. When undertrained<sup>15</sup> or unsuspecting police take the bait, demanding identification or press credentials, auditors respond by goading police into unlawful detentions, arrests, or using unnecessary force.<sup>16</sup> Police also are recorded sharing incorrect interpretations of the law (e.g. “You can’t stand on the sidewalk with that sign”) or demanding identification “because filming is suspicious.” Many officers confuse or conflate lawful distinctions between public and private property. In short, recordings will take place and be posted online unless police display scrupulous compliance with auditor rights; otherwise, an alarming cascade of negative consequences follows.

Minutes after an online upload, triggered subscribers inundate police and municipal offices with angry calls and emails.<sup>17</sup> Social media sites maintained by local officials fill with indignant, profane, or threatening comments (mostly from non-residents) disparaging the conduct of police or other government employees. With limited social media moderation authority,<sup>18</sup> public officials are forced to disable commenting or simply choose to shut the account down entirely.<sup>19</sup> Auditors freeze-frame images of police and public employees with badge numbers, salaries, public email accounts, and phone numbers. Third parties routinely track police officers or employees to their private social media accounts for more harassment. Home addresses and phone numbers are “doxed” (published online) while auditors carefully distance themselves from threatening or unlawful behavior by third parties. Likewise, private businesses identified as initiators of a 911 call on auditors filing in public will also encounter retaliation. These establishments will be targeted with scathing Yelp, Google, or Tripadvisor online reviews.<sup>20</sup> One “negative” audit inevitably attracts follow-on auditors who will test whether previously targeted communities have properly ‘learned their lessons.’ To go “viral,” auditors often share content with traditional print and television media.<sup>21</sup>

As criminal justice matters, arrests and

citations provoked by auditors are routinely dismissed.<sup>22</sup> From the perspective of auditors, however, *nolle prosequis* and judicial dismissals are online “gold.” For the handful of cases that move forward to trial, auditors (and their allies) file countless open-records requests<sup>23</sup> for bodycam videos, 911 recordings, police logs, and other public information. If responding police fail to meet the mark,<sup>24</sup> internal affairs investigations and disciplinary action can tarnish the records of otherwise dedicated officers. When municipalities respond by disciplining officers, the officers file labor grievances, pursue administrative appeals, or file wrongful termination lawsuits.<sup>25</sup> Police officers for whom claims of misconduct are sustained can face limitations on their ability to testify because of questions regarding reliability or truthfulness after constitutionally mandated disclosures under *Brady v. Maryland*,<sup>26</sup> *United States v. Giglio*, or *United States v. Henthorn*.<sup>27</sup>

When auditors file civil rights lawsuits, municipalities can find themselves in federal court defending vicarious liability claims against police (or public employees) under 42 U.S.C. Section §1983.<sup>28</sup> In many instances, because video and bodycam recordings foreclose credibility-based defenses, municipalities must adopt a two-phased defense strategy. First, they must invoke qualified immunity on behalf of police.<sup>29</sup> If immunity fails to attach, they should seek monetary settlements. The qualified immunity doctrine insulates government officials from personal liability unless their conduct violates “clearly established law.”<sup>30</sup> The doctrine affords generous deference to police acting in good faith when making split second decisions in the line of duty. To overcome qualified immunity, plaintiffs must (1) allege facts amounting to a constitutional violation, and (2) establish that the constitutional right in question was “clearly established” under previous (federal) precedent.<sup>31</sup> While qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law,”<sup>32</sup> filming in public and filming police are generally recognized in federal courts as “clearly protected” rights. In one of the first of these cases, *Glik v. Cunniffe*,<sup>33</sup> the First Circuit held the “right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well-established liberty safeguarded by the First Amendment.”<sup>34</sup> Since the *Glik* decision in 2011, seven (of 12) federal Circuit Courts

of Appeal as well (as the US Department of Justice)<sup>35</sup> have ruled accordingly.<sup>36</sup>

Auditors also file direct liability federal lawsuits against states and municipalities. Section §1983 creates an additional right of action under the “Monell doctrine.”<sup>37</sup> Monell circumvents qualified immunity by allowing plaintiffs to sue states or cities for supervisory and management shortcomings underlying constitutional violations committed by agents and employees. Monell is premised upon unlawful policies, unofficial customs, deliberate indifference, or failures to train. Under Monell, local government liability is premised upon customs or policies “whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflict(s) the injury that the government as an entity is responsible under §1983.”<sup>38</sup>

While Monell claims are more likely to be dismissed than vicarious liability §1983 lawsuits, Monell is not insurmountable. Until recently, there was no binding Fourth Circuit precedent on publicly recording police.<sup>39</sup> However, in February 2023, in *Sharpe v. Winterville (NC) Police Department*,<sup>40</sup> the Fourth Circuit ruled that while qualified immunity shielded the individual officers, plaintiffs (livestreaming a traffic stop) could continue their claims against the city under *Monell*.<sup>41</sup> In view of *Monell*, when police respond in force, invoke questionable policies, misstate the law, and/or invoke questionable policies, they lay the foundation for both vicarious and direct liability under Section §1983.

Pending resolution of these auditor lawsuits, every intervening step in litigation forms the basis for an auditor “update” for curious subscribers and followers, monetizing civil litigation like a serialized novel. Actual settlements guarantee the most lucrative returns on social media. As more jurisdictions are brought into federal court by auditors, municipal liability insurers are dropping coverages,<sup>42</sup> increasing premiums, raising deductibles, and demanding changes in law enforcement policies.<sup>43</sup> Some aggrieved plaintiffs are insisting upon personal financial contribution from individually named defendants.<sup>44</sup> Ultimately, even when cities prevail and lawsuits are dismissed, taxpayers bear costs of months and years of litigation.<sup>45</sup>

Audits are obviously controversial, especially when auditors exploit the law to provoke the police and city officials. The First Amend-

## Suggested Municipal Public Photography Signage

THE CITY OF \_\_\_\_\_ RESPECTS THE RIGHT TO PEACEFULLY RECORD/FILM IN PUBLIC. DO NOT INTERFERE WITH TRAFFIC, PEDESTRIANS, BUSINESSES, OR PUBLIC SERVICES. IF YOU FILM ON-DUTY POLICE, FIREFIGHTERS, OR OTHER PUBLIC SAFETY PERSONNEL, MAINTAIN A SAFE DISTANCE. DO NOT INTERFERE. WHEN LAWFULLY DIRECTED TO DO SO, MOVE AWAY TO A SAFE DISTANCE. IF YOU HAVE A COMPLAINT REGARDING A PUBLIC EMPLOYEE, CONTACT \_\_\_\_\_ (OR ACCESS ONLINE AT \_\_\_\_\_). IF YOU HAVE A COMPLAINT ABOUT A LAW ENFORCEMENT OFFICER OR OTHER PUBLIC SAFETY RESPONDER, CONTACT \_\_\_\_\_ (OR ACCESS ONLINE AT \_\_\_\_\_).

ment is not absolute, and auditors do occasionally exceed the boundaries of the law. Unfair as audits may be to affected communities, reasonable access to government functions remains a vital and necessary right. The Supreme Court recognizes the “paramount public interest in a free flow of information to the people concerning public officials.”<sup>46</sup> All reasonable persons understand the need for accountability and transparency. Furthermore, most police officers today understand that being recorded on duty is an expected consequence of their profession. Given conflicting and contradictory interests surrounding these confrontations, all public-facing employees should be familiar with First Amendment audits and how to respond appropriately. One response strategy is too often overlooked. When auditors are treated with courtesy (or simply ignored), they always move on elsewhere, usually without repercussions. To ensure your community “passes” its audit test, the following practices are suggested.

1. Training police and public employees should incorporate YouTube audits, especially audits capturing employee and police overre-

actions.<sup>47</sup> Emphasize “P.C.R.” (Professional, Courteous, and Respectful). Ensure public employees understand public recording is generally permissible. If requested, public employees should generally not refuse to disclose names and official titles.

2. Police encounters with auditors, when appropriate, should begin with (verbal) disclosure of name, rank, and badge number. Offering a (police) business card enhances perceptions of courtesy and professionalism. Maintaining “conversational” law enforcement protocols<sup>48</sup> should be emphasized.

3. Do not engage in legal debates with auditors. Auditors are well prepared to articulate their legal rights. Police are expected to know the law and rely upon their training.

4. Avoid requesting (or demanding) identification without articulable suspicion of criminality *independent of public filming*. Do not ask auditors for press credentials. The First Amendment treats all “newsgathering” equally.<sup>49</sup> Absent exigent circumstances, avoid seizing cameras, phones, or other private property.

5. Review municipal signage regarding public recording. Overly restrictive signage attracts auditors. If recording needs to be limited within or upon municipal property, restrict public access and post conspicuous signage.

6. Avoid ‘flock of seagulls’ 911 dispatching. “Cop-heavy” responses facilitate monetization, attract curiosity, and waste resources.

7. Do not detain, frisk, or arrest auditors absent clear legal authority. Avoid police behaviors portrayed online as “escalations” such as donning tactical gloves, laying hands on holstered weapons, or placing hands defensively behind body armor.<sup>50</sup> Absent disruptive conduct, do not solicit third parties to initiate trespass orders.<sup>51</sup>

8. Bodycams (including audio) must remain on. Muting, lens-covering, and deletions are perceived as unprofessional (or whitewashing). Muting or deletion may also justify unfavorable (spoliation<sup>52</sup>) jury instructions in subsequent civil litigation.

9. Remind police officers they are expected to remain immune from personal insult. Stress the negative consequences associated with unprofessional conduct (i.e., discipline, personal civil liability, increased municipal insurance costs, and possible testimonial disqualification).

10. Dishabituate officers from counterproductive or repetitive questioning.<sup>53</sup> Avoid

ruses or deceptions.<sup>54</sup> False or questionable remarks by police recorded on video (or entered in reports) will be highlighted as evidence of “corruption.”

11. Once assured an auditor is not breaking the law, politely disengage. If there is a possibility for bystanders to overreact, take steps to deescalate. Inform third parties that public recording is lawful and those not wishing to be recorded should move on.

12. Ensure complaint procedures for police and public employees are readily accessible. All complaints should be acknowledged and resolved promptly. If shortcomings occur, transparency<sup>55</sup> can serve to minimize negative online reactions. ■

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## Endnotes

1. The question of “credentialing” of reporters is unclear. See Jeffrey Hermes, John Whibey, Reynol Junco and Osman Tolga Aricak, *Who Gets a Press Pass? Media Credentialing Practices in the United States*, Kennedy School, Harvard, (June 2022).
2. Recording for “news purposes” is authorized in publicly accessible areas of United States Post Offices. See POSTER 7, *Rules and Regulations Governing Conduct on Postal Service Property*, August 2016 PSN 7690-03-000-9181.
3. See Kristi Nickodem and Kristina Wilson, *Responding to First Amendment Audits: Is Filming Protected by the First Amendment?*, Coates’ Canons NC Local Government Law, 11/14/22.
4. See e.g. *Gray v. Wright* (5:23-cv-00007) (July 6, 2023) (S.D. Georgia) in which Mr. Gray sued the City of Blackshear, Georgia, for issuing him a criminal summons for displaying his “God Bless Homeless Veterans” sign on the courthouse steps. The city subsequently rescinded its parade permitting ordinance, rescinded Mr. Gray’s citation, implemented corrective training for police, and donated \$1791 to charity.
5. In 2022, typical compensation for active YouTube content creators was \$1,154 per week. See Werner Geysler, *How Much do YouTubers Make? – A YouTuber’s Pocket Guide* [Calculator], Influencer Marketing Hub at [influencermarketinghub.com/how-much-do-youtubers-make](https://influencermarketinghub.com/how-much-do-youtubers-make).
6. NCGS § 20-1(b). So-called “panhandling” laws and ordinances are subject to strict Constitutional scrutiny. See also *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) and *Reynolds v. Middleton*, 779 F. 3d 222 (4th Cir. 2015).
7. Flex Your Freedoms Audits features a bearded man who affects a ‘Grandma’ persona wearing a poorly fitting wig,

- ingham dress, and splotched lipstick. See *Snitches Call Cops on Grandma For Filming! Funny 1A Audit! BCNN Real News Only! Webster City, IA*, at youtube.com/watch?v=ggRz1iyoGHY.
8. NCGS § 14-223.
  9. *Id.*
  10. NCGS § 14-288.4.
  11. North Carolina generally allows otherwise qualified persons to openly (visibly) carry firearms in most public places. See *State v. Kerner*, 181 N.C. 574 (1921). Additionally, openly carrying a firearm alone does not (emphasis added) constitute “reasonable suspicion” to initiate “Terry” stops or detentions. See *United States v. Black*, 707 F.3d 531, 540 (4th Cir. 2013). See also Jeff Welty, *Open Carry and Reasonable Suspicion*, UNC School of Government (Blogs), (May 15, 2023) at sog.unc.edu/blogs/nc-criminal-law/open-carry-and-reasonable-suspicion.
  12. See *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).
  13. See Elizabeth M. Jaffe, *Caution Social Media Cyberbullies: Identifying New Harms and Liabilities*, 66 Wayne L. Rev. 381, 396 (2021).
  14. North Carolina is not a “stop and identify” jurisdiction. But see *State v. Friend*, 237 N.C. App. 490 (2014) and *State v. Harper*, \_\_, \_\_ N.C. App. \_\_, 877 S.E.2d 771 (2022).
  15. See Brett Wolff, *Inadequate Training or Inadequate Law? How American Policing and Jurisprudence Tag Team to Resist Change in Officer Training Practices*, Seton Hall Law Student Scholarship (2002).
  16. See J. Michael McGuinness, *A Primer on North Carolina and Federal Use of Force Law: Trends in Fourth Amendment Doctrine, Qualified Immunity, and State Law Issues*, 31 Campbell L. Rev. 431 (2009).
  17. “When hundreds and hundreds of the same people keep calling over and over again, it is not helping. It’s just complicating matters. And the language being used against the young ladies who answer these calls is not appreciated.” Noah Noble, *Activist claims rights violations after encounters with police at city halls in Waveland, Ocean Springs*, WLOX (Biloxi Mississippi), June 5, 2023.
  18. See NC Department of Administration, Social Media Policy, 1-01-19, at files.nc.gov/ncdoa/COI/documents/Social-Media-Policy.pdf. See also *Packingham v. North Carolina*, 582 US 98 (2017).
  19. See e.g. Alan Mauldin, *Civil rights investigator’s visit to Moultrie sparks backlash*, Albany Herald (Georgia) Online, Jul 16, 2019, updated August 20, 2020.
  20. See e.g. Christian McKearney, *Fallout continues from the “Banned From Town Milledgeville Ga. viral YouTube video*, Baldwin 2K News, February 16, 2023.
  21. See e.g. Pete O’Cain, *El Dope Dogg’ goes to court | 1st Amendment auditor arrested 4 times this year in Wenatchee*, August 2, 2023, The Wenatchee World (Washington State).
  22. Prosecutors who file last minute *nolle prosequi* or suffer an acquittal involving an auditor can expect a flood of phone complaints and emails and even negative Avvo reviews.
  23. NCGS § 132-1.
  24. See, Associated Press, *Manchester pays \$275,000 to settle lawsuit over filming of police*, Boston.Com, November 29, 2017.
  25. One study from 2012 fixed average payouts to police for wrongful termination lawsuits in Florida at \$40,000.
- The authors posited that firing problematic officers results in long-term savings compared to the costs of defending third party civil lawsuits. See Cutting Edge Recruiting Solutions, *Officer Lawsuits*, Boca Raton, FL: CERS, 2012.
26. See American College of Trial Lawyers, *Brady-Giglio Guide for Prosecutors*, September 2021.
  27. 931 F.2d 29 (9th Cir. 1991).
  28. 42 U.S.C. § 1983 (1976).
  29. *Pierson v. Ray*, 386 U.S. 547 (1967).
  30. Qualified immunity does not require a case directly on point. *Id.* But the right’s contours must be “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Cannon v. Vill. of Bald Head Island*, 891 F.3d 489, 497 (4th Cir. 2018) (quoting *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 313 (4th Cir. 2006)).
  31. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). See also E. Lee Whitwell, *How Qualified is Qualified Immunity: Adding a Third Prong to the Qualified Immunity Analysis*, 43 Campbell L. Rev. 403 (2021).
  32. *Malley v. Briggs*, 475 U.S. 335, 343 (1986).
  33. 655 F.3d 78 (1st Cir. 2011).
  34. *Id.* at 88.
  35. See Statement of Interest of the United States (No. 1:11-cv-02888-BEL D. Md.) Statement of Interest filed January 10, 2012.
  36. *Gericke v. Begin*, 753 F.3d 1 (1st Cir. 2014); *Fields v. City of Philadelphia*, 862 F.3d 353 (3rd Cir. 2017); *Turner v. Lieutenant Driver*, 848 F.3d 678 (5th Cir. 2017); *American Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995); *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000); *Irizarry v. Yehia*, No. 21-1247, (10th Cir. 2022) in which the court noted that because six previous federal circuits were all in accord, the ‘magic number’ had been reached in which “[T]he weight of authority from other circuits may clearly establish the law when at least six other circuits have recognized the right at issue.” (p. 21).
  37. *Monell v. Department of Social Services of the City of New York* (436 U.S. 658 (1978)).
  38. *Id.* at 694.
  39. In *Szymecni v. Houck*, 353 F. App’x 852 (4th Cir. 2009), the court issued an unpublished per curiam opinion summarily concluding the “right to record police activities on public property was not (emphasis added) clearly established in this circuit at the time of the alleged conduct.” *Id.* at 853; but “[u]npublished opinions have no precedential value.” *United States v. Stewart*, 595 F.3d 197, 199 n.1 (4th Cir. 2010). And see *Sharpe v. Winterville Police Department* (2023) No. 21-1827 (4th Cir. 2023).
  40. *Sharpe v. Winterville*, *supra*.
  41. *Monell*, *supra*, note 42 at 28.
  42. See Jake Shore, *Frequent misbehavior by Camden deputies leads to dropped insurance coverage*, The Current (Coastal Georgia) June 14, 2023.
  43. See Kimberly Kindy, *Insurers force change on police departments long resistant to it*, Washington Post, September 14, 2022.
  44. See Rueven Blau and Yoav Gonen, *City to Pay Protester Shoved by Cop \$387K, Officer Contributes \$3,000*, The City (New York City), February 1, 2022. See also Steve Mills, *Rare legal settlements demand officers pay too, City usually pays when a police misconduct suit is settled – but some defendants want cops punished*, Chicago Tribune: April 15, 2012.
  45. See Richard D. Johnson, *Estimating the Cost of a Problem Officer*, Dolan Consulting (Research Brief), August 2017.
  46. *Pell v. Procnier*, 417 U.S. 817, 832 (1974).
  47. Some well-informed content and commentary are available on YouTube at *The Civil Rights Lawyer* (John H. Bryan, Attorney at Law); *Audit the Audit*; and *Lackluster Media*. Sean Patrick Reyes (d.b.a. Long Island Audits) with over 570,000 subscribers is an adept and litigious provocateur. See youtube.com/LongIslandAudit.
  48. Voluntary contact protocols are based on the presumption that the individual is not under any reasonable suspicion of criminal activity. See *Voluntary Contacts, Investigatory Detentions, Pat-Downs, and Arrests*, IACP Law Enforcement Policy Center, Model Policy (2019).
  49. See *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972) and *Citizens United v. FEC*, 130 S. Ct. 876, 906 (2010) (“[D]ifferential treatment [between media and non-media corporations] cannot be squared with the First Amendment” (at XXX)).
  50. See Justin Freeman, *5 things police officers should know about their body language*, Police-1 by Lexipol, Sep 25, 2019, police1.com/patrol-issues/articles/5-things-police-officers-should-know-about-their-body-language-Y1LQ18dUEHPABCoq.
  51. N.C.G.S § 14-159.13(a)(1).
  52. “Where a party fails to introduce in evidence documents that are relevant to the matter in question and within his control...there is...an inference that the evidence withheld, if forthcoming, would injure his case.” *McLain v. Taco Bell Corp.*, 137 N.C. App. 179, 183, 527 S.E.2d 712, 715 (2000), rev. denied, 352 N.C. 357, 544 S.E.2d 563 (2000).
  53. E.g. “Why are you so nervous?” “Are you on drugs?”; “Are you carrying any weapons? The Oregon Supreme Court ruled in 2019 that police were forthwith prohibited from asking questions not “reasonably related” to stops. *Oregon v. Arreola-Botello*, 365 Or. 695, 451 P.3d 939 (2019).
  54. See L.B. Gibert, *New ‘first-in-the-nation’ policy limits Seattle police from knowingly lying*, My Northwest News (online), November 2, 2023.
  55. See *Cops Refuse to Talk | Handcuffs Instead*, The Random Patriot, May 1, 2023, in which a Conway, Arkansas police officer detains and cuffs an auditor (standing on courthouse steps) in less than 30 seconds. After the incident received widespread exposure in media and online, the Conway chief of police called the auditor personally, initiated department wide retraining, and imposed unspecified disciplinary action. See *Update/Follow Up/Recap | Retraining & Discipline | Plus SURPRISE Videos Towards the end! | Conway PD*, April 2, 2023, youtube.com/watch?v=BrJs6S-raf0.

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# Federal Student Loan Relief

BY HEATHER CULP

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“Sallie Mae sounds like a naive and barefoot hillbilly girl but in fact they are a ruthless and aggressive conglomeration of bullies located in a tall brick building somewhere in Kansas. I picture it to be the tallest building in that state and I have decided they hire their employees straight out of prison.” – David Sedaris, *Holidays on Ice*

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With 43.4 million Americans owing \$1.6338 billion in federal student loan debt, odds are good that you, a client, or someone you love owes money to the US Department of Education.<sup>1</sup> After completing more than 20 hours of education this year on the topic of student loan law and reading a lot of student loan news, I’ve realized that federal borrowers face a fundamental choice: whether to repay as little as possible on the debt in reliance on promised government relief, or pay as much as possible, as fast as possible, to get out from under the burden of student loan debt. By way of example, borrowers who relied on the promise to cancel \$10,000 or \$20,000 of student debt that the Supreme Court later struck down may not have made any student loan payments in hopes of seeing their balances cancelled, while other borrowers paid as much as they could during the 0% interest payment pause to decrease their balances.<sup>2</sup> While there are no easy answers to the student debt crisis and plenty of uncertainty given the shifting political winds, here are ten tips to help your clients obtain relief from their federal student loan debt.

1. Everything starts with knowing whether a loan is federal or private. There are two types of loans available to finance



Bet\_Noire/istockphoto.com

qualified educational expenses at colleges, universities, and trade schools: federal and private. The federal government issues federal student loans and therefore has the authority to cancel, forgive, and otherwise mandate relief from federal student loans.<sup>3</sup> In contrast, private student loans are issued by a private lender such as a bank, credit union, or other private individual or entity.<sup>4</sup> Federal

student loan borrowers can download their loan history by obtaining their NSLDS.txt file.<sup>5</sup> This file includes itemized details of each of the borrower’s federal loans and grants (such as outstanding principal, outstanding interest, interest rate history, disbursement, cancellation, loan repayment type, cumulative amount repaid, and type of loan). If a borrower doesn’t see a particular

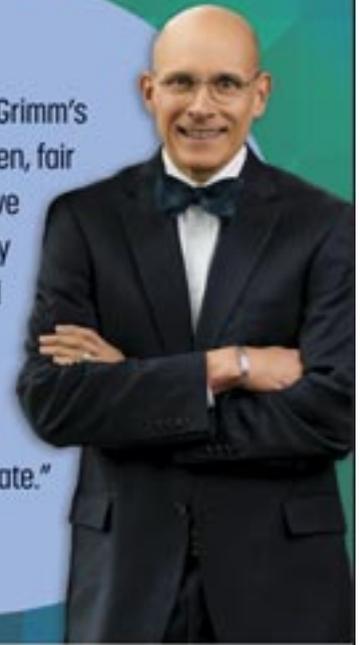
JAMS WELCOMES

# Hon. Paul W. Grimm (Ret.)

During 25 years on the U.S. District Court, District of Maryland, Judge Grimm served as a magistrate judge and later as a district court judge, presiding over a wide range of complex litigation and handling over 1,000 settlement conferences. He is a nationally recognized authority on **electronic discovery and electronically stored information (ESI)**, as well as **evidentiary issues involving digital media, including AI**. At JAMS, he will serve as a mediator, special master/referee and neutral evaluator in **business/commercial, class action, civil rights, construction, employment, insurance, intellectual property and personal injury matters**. Scan the QR code or visit [jamsadr.com/grimm](https://jamsadr.com/grimm) to learn more.



Attorneys say Judge Grimm's "judicial manner was even, fair and just; he always gave each side a full opportunity to present its case" and he "was tenacious in his efforts to resolve cases amicably, with a phenomenal success rate."



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loan in the txt file, then it is a private loan.

2. Employers can offer prospective and current employees tax-free federal student loan repayment assistance of up to \$5,250 annually as a recruiting and retention tool. Thanks to the Consolidated Appropriations Act of 2021, employers can deduct up to \$5,250 per employee, per year, as a business expense, and eligible employees can enjoy up to \$5,250 per year without paying federal income tax on it.<sup>6</sup> This benefit is available until January 1, 2026, and extends to all "eligible education expenses," expanded to include student loan repayment assistance.<sup>7</sup>

3. Loan obligations that were combined via joint spousal consolidation can now be split. Joint spousal consolidation loans were available between 1993 and 2006 and permitted married couples to consolidate their student loan debt into one monthly payment at a lower interest rate—but once done, there was no escape (not even in the event of domestic violence or divorce).<sup>8</sup> The Joint Consolidation Loan Separation Act enacted in October 2022 provides for two avenues to this relief: a joint application and a separate application, the latter of which is available when a

spouse is missing or uncooperative, or when contact would place the applicant in danger. The Department of Education is still formulating the process for implementing this relief, and it will not be available until late 2024, at the earliest. In the meantime, contact the ombudsman to be notified once the application process is available and request a forbearance until the process is implemented.<sup>9</sup>

4. There are now four income-driven repayment plans: SAVE, PAYE, IBR, and ICR.<sup>10</sup> The Biden Administration's Savings on Valuable Education Plan (SAVE) program, announced in August 2023, is the newest option. The Pay as You Earn (PAYE) program was first offered in 2012; the deadline to enroll is June 30, 2024.<sup>11</sup> Income-Based Repayment (IBR) and Income-Contingent Repayment (ICR) have been around quite a while. Use the Loan Simulator tool to estimate monthly payments and compare plans.<sup>12</sup> Apply for an income-driven repayment plan at [studentaid.gov/idr](https://studentaid.gov/idr). There is no cost to apply.

5. Since November 2022, there has been a streamlined process for student loan bankruptcy discharge cases. At that time, the Department of Justice issued a memorandum

directing its attorneys on the handling of bankruptcy court actions seeking to discharge federal student loan debt.<sup>13</sup> Under the Bankruptcy Code, most student loan debt is not dischargeable in bankruptcy absent "undue hardship."<sup>14</sup> In a majority of circuits including the Fourth Circuit, courts use the *Brunner* test to determine whether there is an undue hardship, and *Brunner* is associated with the dreaded "certainty of hopelessness" test.<sup>15</sup> The *Brunner* test evolved to place a bankruptcy discharge, partial or complete, of student debt out of reach for all but the most desperate debtors. The November 2022 DOJ guidance requires its attorneys to use a standard attestation form to collect relevant facts from a bankruptcy debtor and make a recommendation to the federal government regarding the borrower's eligibility for a discharge based on facts about the present ability to pay, future ability to pay, and good-faith efforts to repay.<sup>16</sup> Because this process is simply a directive from the executive branch on how the DOJ is to proceed in student loan dischargeability actions in bankruptcy court, the guidance and DOJ's position may change after the next presidential election.

6. Administrative discharges do not require a bankruptcy filing.

**Borrower defense and closed school loan discharges:** As part of a class action settlement granted final approval in November 2022 in *Sweet v. Cardona*, borrowers who attended certain schools, programs, and school groups are eligible for debt forgiveness.<sup>17</sup> Most of those schools, programs, and school groups were for-profit and are now closed. There are other grounds for borrower defense discharge, and they generally arise from certain misconduct by the school.<sup>18</sup>

**Discharges due to death or total and permanent disability:** A federal student loan is discharged upon the borrower's death. This includes discharge upon the death of the *student* whose loan is in repayment (i.e., the family or heirs are not responsible for the loan) and discharge of a parent PLUS loan upon the death of the *parent or the student* on whose behalf the parent obtained the loan.<sup>19</sup> Further, a federal student loan can be discharged because of a US Department of Veterans Affairs disability determination, a Social Security Administration disability determination or compassion allowance, or appropriate certification by a specific type of medical professional.<sup>20</sup>

7. Public Service Loan Forgiveness and Teacher Loan Forgiveness are still available. Under the PSLF Program, borrowers may qualify for forgiveness of their Direct Loans if they made 120 qualifying monthly payments under a qualifying repayment plan while working full-time for a qualified employer on or after October 1, 2007.<sup>21</sup> Qualifying employment generally means working for a nonprofit or public or government entity and can include law enforcement, public interest law, military service, and emergency management.<sup>22</sup> Under the TLF Program, borrowers may qualify for forgiveness of certain federal loans if they taught full-time for five complete and consecutive academic years in a low-income school or educational service agency and meet certain other requirements.<sup>23</sup>

8. Until June 30, 2024, sign up for the Fresh Start Program providing automatic benefits for borrowers whose federal loans are in default. The United States has powerful tools for collecting defaulted federal loans, including wage garnishment, offset of Social Security benefits and tax refunds, higher collection fees, federal judgment liens, and ineligibility for additional student

loans.<sup>24</sup> Prior to the Fresh Start Program, the only ways to cure defaulted federal loans were consolidation, rehabilitation, and settlement. The Fresh Start Program is a temporary, one-time program that, upon application, will trigger the transfer of a defaulted federal loan from the government's Default Resolution Group to a loan servicer, return the defaulted loans to "repayment status," and remove the default from credit reports.<sup>25</sup>

9. The "temporary on-ramp period:" federal loans that were eligible for the COVID-19 payment pause are eligible for protection from the consequences of default through September 30, 2024.<sup>26</sup> Thanks to the CARES Act, for most federal student loans, no payment was required, and no interest accrued, from March 13, 2020, until September 1, 2023.<sup>27</sup> Monthly payments became due again in October 2023. The temporary on-ramp period prevents borrowers from immediately going into default.

10. Regularly check for communications from your servicer and do not fall for scams. Federal student loan servicers work with their borrowers free of charge. Legitimate federal student loan communications come from the limited email addresses and text addresses listed on the Department of Education's website.<sup>28</sup> Red flags signaling fraud include a request for the borrower's log-in credentials and high-pressure tactics such as "act now!" The other side of avoiding scams is being sure to regularly log into your servicer account to check for messages left there or in your email. There are reports of borrower notification of forgiveness or cancellation by only internal messages left on their servicer's website.<sup>29</sup>

In conclusion, the biggest constant in student loan law is *change*. News of the latest guidance, policy, and decisions comes across my desk daily. With 2024 being an election year, who knows what may happen. Boston attorney Adam Minsky limits his law practice to student loan relief. He is a senior contributor to Forbes.com and worth following to keep up with developments. For North Carolina specific relief, contact an attorney with student loan law experience, and know that time is of the essence. Unique opportunities for student loan relief could evaporate at any moment. ■

*Heather Culp is an attorney at Essex Richards, P.A., in Charlotte. She practices in the areas of bankruptcy and insolvency law and*

*commercial litigation, and she is vice-chair of the North Carolina State Bar IOLTA Board of Trustees.*

## Endnotes

1. As of the third quarter of 2023. National Student Loan Data System (NSLDS) Federal Student Aid Portfolio Summary.
2. *Biden v. Nebraska*, 143 S. Ct. 2355 (June 30, 2023).
3. Federal student loan borrowers do not necessarily pay the US Department of Education directly. Federal student loans are serviced by private companies such as MOHELA (Missouri Office of Higher Education Loan Assistance) and NelNet, Inc.
4. Discover, PNC Bank, and Citizens Bank are among the banks in the regular business of issuing private student loans. SoFi—short for Social Finance, Inc.—is a publicly traded company whose financial products include student loan refinancing. Even individuals and married couples can issue or refinance qualified educational debt of the type that is not dischargeable in bankruptcy. *Juber v. Conklin (In re Conklin)*, 2020 US Dist. LEXIS 59888, 2020 WL 1672786 (W.D.N.C. April 6, 2020).
5. The US Department of Education maintains the National Student Loan Data System (NSLDS), which is a centralized database for federal student loan data. NSLDS.txt files are a treasure trove of a borrower's raw federal loan data in downloadable form. Borrowers can obtain their NSLDS.txt file by (1) creating and logging into their account at studentaid.gov, (2) accepting a warning to third parties that the unauthorized use of NSLDS data is a federal crime, (3) clicking on "View Details" on the dashboard, (4) clicking on "Download My Aid Data" on the borrower loan details page, and (5) clicking on "Continue" after reviewing a warning that the text file that you are about to download contains personally identifiable information and should therefore be accessed over a secure Internet connection and not saved to a public computer.
6. *The Why and How of Tax-Free Employer Student Loan Assistance*, April 8, 2021, Forbes magazine, [bit.ly/3vF3f8u](https://www.forbes.com/sites/3vF3f8u) (last visited 12/10/23). Employers and employees should consult a tax professional regarding tax matters.
7. *Id.*, citing Internal Code Section 127.
8. The Department of Education has made the draft application and instructions available for comment through March 12, 2024: [regulations.gov/document/ED-2024-SCC-0005-0003](https://www.regulations.gov/document/ED-2024-SCC-0005-0003) (last visited 1/22/24).
9. *Id.* Contact the Federal Student Aid Ombudsman Group online ([studentaid.gov/feedback-center](https://studentaid.gov/feedback-center)), by mail to US Department of Education, FSA Ombudsman Group, PO Box 1854, Monticello, KY 42633, or phone at 1-800-433-3243. Source and additional information: [bit.ly/48OFgTi](https://www.fsa.gov/ombudsman) (last visited 12/10/23).
10. 7 FAQs About Income-Driven Repayment Plans, [studentaid.gov/articles/faqs-idr-plan](https://studentaid.gov/articles/faqs-idr-plan) (last visited 12/10/23).
11. *Id.*
12. *Calculate Your Federal Student Loan Repayment Options with Loan Simulator*, [studentaid.gov/loan-simulator](https://studentaid.gov/loan-simulator) (last visited 12/10/23).
13. *Guidance for Department Attorneys Regarding Student Loan Bankruptcy Litigation*, dated November 17, 2022,

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## IMPORTANT NOTICE REGARDING STATE BAR EMAILS

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

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Thank you for your attention to this important matter.



# Collegiality and Professionalism Down East—The Eastern North Carolina Inn of Court

BY THE HONORABLE JEFFERY B. FOSTER

In early 1992, several leaders of the state's legal community, the North Carolina State Bar, and the North Carolina Bar Association<sup>1</sup> undertook to improve civility in our courts. Many believed that there was a need for an organization that would give attorneys and judges the opportunity to interact within the ethical bounds of The Rules of Professional Conduct governing lawyers and the Judicial Standards to which judges are held.

Then-NCBA President Elect Donald Cowan proposed that Inns of Court be the vehicle best suited to lead this effort. Cowan recruited the Hon. Malcom Howard, US District Court judge for the Eastern District of North Carolina, and the Hon. W. Russell Duke Jr., the senior resident superior court judge of Judicial District 3A, Pitt County, to lead the effort to create an inn in eastern North Carolina. Cowan believed one of the best methods to create these opportunities was "the application of American ingenuity to the ancient English system" of Inns of Court.<sup>2</sup>

At that time there were chartered inns in Winston-Salem, which affiliated with Wake Forest School of Law, and Durham, which was affiliated with Duke University School of Law. Attorneys and judges involved in those inns offered to serve as consultants to assist in the formation of an inn in the east.

In June 1993, Judge Howard and Judge Duke invited Cowan to a dinner in Greenville to assist him in the effort to form an inn. Judge Howard and Judge Duke set about identifying those lawyers who best exemplified the ideals of the American Inns

of Court: excellence in the practice of law, collegiality, and professionalism. These efforts resulted in a list of some of the finest lawyers in the state, all of whom practiced primarily in eastern North Carolina.<sup>3</sup>

At the organizational meeting of the Eastern North Carolina Inn of Court, held in the home of Judge Duke, the foundation and framework for the new inn was established. The proposed structure consisted of three categories of attorneys who would receive initial invitations to join the inn: masters, barristers, and associates. Membership of an associate would be through nomination by the masters, and upon approval of the group, an invitation would be issued to the prospective lawyer to attend the next meeting. Nick Ellis of the firm Poyner and Spruill was a member of the Bench and Bar Committee of the NCBA. He was instrumental in drafting the initial organizational documents and was one of the founding members of the inn. Ellis said, "I met with Judges Howard and Duke, and they had put a list together of lawyers they considered to be 'masters of the bar' in our 12-county area....I was the junior attorney at this meeting and just sat back and listened to the wisdom and experiences from these judges and senior lawyers. I felt honored to be included in this group and gladly accepted the task of creating our Inn of Court's organizational documents."

The first official meeting of the Eastern North Carolina Inn of Court was held at the New Bern Country Club in September 1993. The inn established the following as

its objectives:

1. To promote excellence, civility, professionalism, and ethics in the legal profession and in legal advocacy.

2. To foster greater understanding of, and appreciation for, the adversary system of dispute resolution in American law, with particular emphasis on ethics and professional standards of excellence.

3. To provide significant educational experiences that will improve and enhance the skills of lawyers as counselors and advocates, and of judges as adjudicators and judicial administrators.

4. To promote interaction among members of all categories in order to minimize misapprehensions, misconceptions, and failures of communication that obstruct the effective practice of law.

5. To facilitate the development of law students, recent law school graduates, and less experienced lawyers as skilled participants in the American court system.

6. To build upon the genius and strengths of the common law and the English Inns of Court, and to renew and inspire joy and zeal in legal advocacy as a service worthy of constant effort and learning.

7. To promote collegiality among professionals and to transmit ethical values from one professional generation to another.<sup>4</sup>

The inn has held true to its goal to "provide significant educational experiences that will improve and enhance the skills of lawyers as counselors and advocates and of judges as adjudicators and judicial administrators." Under the guidance of Judge

Howard and Judge Duke, members of the inn have enjoyed opportunities to participate in significant events that have developed the members' love and appreciation for the law.

One of the most memorable events occurred on August 19, 1997, when United States Supreme Court Justice Antonin Scalia, at the invitation of Judge Howard, who was a personal friend of Justice Scalia, addressed the inn at a banquet given in his honor. Justice Scalia was cordial and generous with his time as he met with many of the members and delivered an address to members and guests. The United States Army Chorus entertained at the event.

The inn also enjoyed a trip to the United States Supreme Court in Washington, DC, where a dinner and reception was held. Members who had not been admitted to the Supreme Court Bar were admitted during the trip. The members had the opportunity to build relationships with their fellow members and enjoy the historical and cultural treasures of Washington.

The inn hosted the entire North Carolina Supreme Court for a visit to eastern North Carolina. This event gave members the opportunity to interact with justices of the state's highest court. At each meeting, leadership of the inn attempts to have interesting speakers on relevant topics of interest. These events, the regular meetings, and the annual Christmas dinner give lawyers, both young and old, the chance to develop relationships and enjoy experiences that they may not otherwise have enjoyed.

As a young lawyer I was invited to join the inn shortly after its founding and was provided opportunities that were very meaningful to my professional development as a lawyer. The relationships made and the wisdom imparted to me through the years have positively impacted my practice of law and ultimately my opportunity to serve on the superior court bench. As Nick Ellis said, "Honestly, the highlight for me is just being with lawyers from my part of the state whom I have not seen for a while. It is seeing colleagues who I admire and respect from Carteret County, New Bern, Kinston, Greenville, Goldsboro, Wilson, Nashville, and Rocky Mount, and talking with judges from our area. And knowing that when I have cases with these lawyers and judges, I will be practicing law at the highest level, both sides zealously advocating for their clients, but doing so without fear of being

ambushed or taken advantage of, and feeling that this is what we all dream the practice of law can and should be. I feel a real sense of pride in being a trial attorney when leaving our meetings and knowing these colleagues all play a part in that feeling."

James "Jimbo" Perry, executive director of the Chief Justice's Commission on Professionalism, agrees. "Law schools teach students how to think and develop practical skills. However, being an attorney also involves developing a professional identity, i.e., a sense of our public purpose. Our Inn of Court has given me the opportunity to observe and learn from lawyers who are living out a life of service to clients and their communities."

Jenny McKeller is legal counsel for East Carolina University and is the current president of the Eastern North Carolina Inn of Court. Her experiences with the inn mirror those of many members. When asked about her experiences, McKeller said, "The inn is comprised of the best of the best of the eastern North Carolina Bar—the judges, district attorneys, and clerks who run our courts; sophisticated and accomplished litigators; and the brightest young lawyers. I remember how I felt appearing in court for the first time in superior court in Edgecombe County at 25 years old after spending seven years in school in Chapel Hill. Even though I had excelled in law school and had excellent mentors at my firm, I was nervous, unsure of myself and the professional norms of the courtroom, and I felt alone in a room full of older male litigators who all seemed to know one another. Over time, I was able to learn from many of the members of the inn by observing them take a deposition, argue a motion for summary judgment, or make a closing argument when we had cases together. The ability to then connect with them on a more personal level in the collegial atmosphere created by the Inn of Court gave me confidence and a sense of connection."

Judge Duke and Judge Howard agree with Myron Hill, who practices federal and state criminal law and who was a charter member of the inn, that the well-structured meetings have provided "an opportunity to get around quality lawyers. It reinforces that what you are doing is worthwhile...you're not just a cog in the wheel but you're making a difference in the lives of your clients."

The Eastern North Carolina Inn of Court continues to be healthy and active. The real challenge is encouraging young

lawyers to get involved and stay involved, so that they can learn what I learned: being around successful lawyers encouraged me to be a successful lawyer. I learned how to ethically handle difficult cases and how to react to courtroom and practice adversity through the stories and advice of lawyers who had already experienced many times what I was experiencing for the first time.

There is no substitute for good old fashion human contact and interaction for developing the ethical, communication, and relational skills that make you a good lawyer. There is no better tool than the Inn of Court to foster these skills. Through many years, collegiality and relationships were the polar stars of success in the practice of law. And they still are. The Eastern North Carolina Inn of Court will continue to build those relationships, share knowledge and experience, and build solid, ethical lawyers. That was the goal from the beginning. According to Nick Ellis, "It has now been 30 years that the Eastern North Carolina Inn of Court has been in existence, and I can say without a doubt that the goals of an inn articulated by Don Cowan, Judge Howard, Judge Duke, and the original group of master attorneys have all been met." ■

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## Endnotes

1. Those initially involved were: Rhoda Billings, president NCBA; Donald Cowan, president-elect, NCBA; Allan B. Head, executive director, NCBA; Bobby E. James, NC State Bar; John H. Vernon III, president, NC State Bar; Tommy W. Jarrett, past-president, NC State Bar; Adam Stein, president-elect, NC Academy of Trial Lawyers; and deans of the NC Law Schools: Patti Solari, NC Central School of Law; Patrick Hetrick, Campbell University School of Law; Robert K. Walsh, Wake Forest School of Law; Judith Wegner, University of North Carolina School of Law, and Hon. Robinson O. Everett, representing Duke University School of Law and the American Inns of Court.
2. Letter to Hon. Malcom J. Howard from the NC Bar Association, June 4, 1992.
3. The initial attorneys invited to participate were: Henson Barnes of Goldsboro; Louis Gaylord Jr. of Greenville; Norman Kellum of New Bern; Thomas Morris of Kinston; Carl Tilghman of Beaufort; James Vosburg of Washington; J. Nicholas Ellis of Rocky Mount; P.C. Barwick of Kinston; Clifton Everett of Greenville; David Ward of New Bern; Mark Owens Jr. of Greenville; John Hooten of Kinston; Tommy Jarrett of Goldsboro; John Nobles of New Bern; Charles Vincent of Greenville; Trawick Stubbs of New Bern; and Claude Whearty Jr. of Beaufort.
4. Initial Charter, Eastern North Carolina Inn of Court, Art. 1 (Feb. 17, 1994).

# Facing Down Bears

BY JERRY CASH MARTIN

**B**ears! That is all they wanted to talk about. I wanted to tell my

friends how hard the trip would be, how long, and how few people had ever tried it. I



Gerald Corsik 25201istockphoto.com

planned to ride a bicycle solo 5,000 miles from North Carolina to Alaska, but all they wanted to talk about was bears: black ones, grizzlies, kodaks. So finally I told them straight out: “I’m not afraid of any bears.” As you will soon find out, that is not the way it went at all.

Bicycling for me started long ago. When I was six years old, my parents bought me a little 20-inch red bicycle. My whole world changed even though I could not figure out how to balance that thing. To this day, I can still visualize the bruises on my legs as I fell off over and over again. Finally, the bicycle was shaky but it stayed erect.

With those little wheels singing, I learned I could go five miles with the same energy it took to walk one mile. On the bike I was about four inches off the ground but felt as if I was barely tethered to earth. I was free. I could go. And I did. For me, the bike became a magical hovercraft.

Later, at 14, I cycled up and over the Blue

Ridge Mountains. It was about 25 miles. I had a bigger bike then—26-inch, one speed—so it seemed like a gargantuan feat. A few years later I cycled across North Carolina north to south in one day. It was about 100 miles. I was not just playing adventurer; I had become the captain of my destiny.

Around this time, I read an article in a magazine about cycle touring. I had never heard of cycle touring. It was the same thing I was doing but with saddlebags stuffed with everything one needs to stay gone longer. So, I rode my bike about 275 miles to the North Carolina coast in four days with my saddlebags stuffed. Then for my next trip, I pulled out half of the stuff I had put in my saddle-

bags and cycled to Washington, DC, for about 350 miles. Then I went from Florida to NC (500 miles), NC to Canada (900 miles), then Mexico to NC...you get my drift.

The one thing that has stayed with me the most from the article is this maxim: cycling is 5% equipment and 95% perspiration. Since then, I have owned 50-75 bicycles and usually paid about \$100 or less for them. At the end of each trip, I donate the bicycle to the Red Cross, Salvation Army, a Scout troop, or any kid who looks like he would like a bike. One time I donated my bike to a senior citizens organization in Los Angeles. They made me stay for lunch and put my picture in their magazine.

One thing I had to learn the hard way—when I cycled to the NC coast on that first cycle tour, my hands and bottom were killing me. For the next trip, I bought padded cycling gloves and padded cycling shorts. I never went anywhere without padding again.

I have been a lawyer for 51 years, 45 of which I have served as a trial judge. I have enjoyed it, and for some reason it suited me. I tried very hard to be fair. Fair and firm, as I said when I ran for election the first time. It was a highly stressful position, especially with an explosion of new laws each year and a courtroom full of people with complicated, sometimes insoluble, problems almost every week. I really believe I survived—even thrived—because of cycling.

After each capital case or after a week of heart wrenching sentencing hearings, I would get on the bike. All I would think about was spinning those wheels and wondering what was beyond the far blue mountain. I hope that all lawyers and judges who have a stressful lifestyle also have an activity that completely absorbs their mind and energy. It does not have to be cycling, but hopefully something physical that becomes a career saver and possibly a lifesaver.

I am not sure why I started thinking about Alaska, but that thought hooked me like a grizzly catching a salmon. The first thing that pulled me in was the distance: 5,000 miles, one-fifth of the way around the world. I had never cycled that far before. The next thing was the mystery. I knew very little about Alaska. I had heard old-timers talking about “going up the Al-Can.” That is the Alaska-Canada highway built in World War II. One old man told me the road was so rough, it wore a hole in the bottom of his battery. Others said it was constantly in a state of repair in the summer. I dislike cold weather so I knew I would not go any other time than summer.

Finally, I decided I would go. Alone. In May and June. On a bike I bought at Walmart: a Schwinn Sidewinder for \$129. The plan was to try to stay in hotels (I hate camping), and carry light saddlebags (I’d buy clothes and food along the way). I never had a second thought about a bear encounter.

Somewhere along the way I changed my mind about a trip from North Carolina to Alaska. I started thinking I would go to Alaska and cycle back to North Carolina. Possibly I looked at a map and saw Ketchikan, Alaska, was only 3,500 miles from

North Carolina, or perhaps I thought it would be easier since, as everyone joked, “It’s all downhill that way.”

So, with all preparations made, I flew to Vancouver, Canada, then to Prince Rupert, Canada. I caught a cruise ship from Prince Rupert to Ketchikan, Alaska. As I cruised up the Canadian shoreline to Ketchikan, I met a lawyer and his son who were going into the bush to work on a cabin. Suddenly I saw a bald eagle on a stack of containers at a fish processing plant. I remarked in awe, “That is the first bald eagle I have ever seen. Isn’t it beautiful?” The man said, “Not so much. We call them bald-headed buzzards up here since they eat the processed fish guts. Not too regal, huh?”

The next day I went back to Prince Rupert and started cycling up the Skeena River. I stayed wet and cold for several days. This discomfort was measured against the pleasure of seeing 50 or more bald eagles as they fished, fought, glided, and put on a great show. I thought, “Pretty regal, huh!” Wow, what a sight.

The road became pretty remote. I did not see very many people. Very little traffic. Incessant rain. Then, through the mist, I saw my first black bear as it ran across the road in front of me. It was 30 feet away, but it did not seem to notice me. The bear ran down the embankment and disappeared. I waited awhile—okay, maybe a long time. After all, it was just the bear and me out there. Finally, I cycled on.

As I passed the area where the bear had crossed, I saw him right beside the road. He had not gone anywhere. I cycled like a mad man. I wasn’t scared—well, maybe a little. The bear ran away from me and hid behind a bush. I finally stopped and watched him. He would squat and peep over the bush several times to see what I was doing. It was almost comical. So, I went on and thought that is the way it is going to be: nothing to worry about. As you will see, I was indeed wrong.

After that sighting I mostly saw bears at a distance. They were black bears. No grizzlies. For the most part I saw a lot of moose, occasionally a wolf and some deer and elk. As I finished that trip, I learned that I loved the remoteness. And I enjoyed the Daniel Boone approach: just the wilderness and me.

A couple of years later I decided I would take on the Al-Can. It would be 5,000 miles from NC to Alaska. The trip would take about two months. I bought another

Walmart bike, put very little in my panniers (that is what I called them now instead of saddlebags), and headed out. My first mountains were the Blue Ridge—the same mountains I had crossed so many years ago as a child. Later the Rockies and the Cascades awaited, but for now, rolling country toward the Mississippi River was the route, then the Plains. When I made it to the Canadian border in North Dakota, I was a little less than half way there. No bears, just dogs and border patrol agents.

The border patrol agents gave me a hard time. I think they could not accept that I was riding a bike that far. They took me inside, grilled me, asked me if I had ever been in jail or prison. Since I was a lawyer and a judge, I replied, “Well, I have sent people to prison but never served time myself.” With no sense of humor whatsoever, they sent me to their supervisor. I was questioned again for about 30 to 40 minutes, and after checking criminal records, they sent me on my way. Now I was worried about getting back into the United States when I entered Alaska from the Yukon.

The cycling across the Canadian provinces of Saskatoon, Alberta, and lower British Columbia was somewhat nondescript long pulls over rolling land. By the time I reached Dawson Creek, the beginning of the Alaska-Canada Highway, the world had changed over to wilderness. The Al-Can is a road across remote sections of British Columbia, the Yukon, and eastern Alaska consisting of 1,387 miles with intermittent services.

At Dawson Creek, everyone wanted to talk about bears. There had been a bear attack in which four people ran from a bear. The slowest of the four climbed a tree. The bear pulled the unfortunate person down, mauled, and killed him. I remember one lady asked me, “You aren’t really going out there. All by yourself. On that bike?” I was and I did, but I will say I was beginning to feel a little trepidation.

As I cycled out of Dawson Creek that early morning in the mist, I saw a bull moose standing in a pond eating vegetation. It looked at me as I passed as if it were thinking, “Are you really going out there?” Later that day I saw a wolf cross in front of me. Although it fled, it gave me a double-take. Even the wolf seemed puzzled to see me “out there.”

My cycling was strong, but my willpower quivered a bit. I saw a lot of animals in this



very remote area along the border between the Yukon and British Columbia: black bison, sheep, elk, deer, and occasionally a bear at a distance. Occasionally someone would drive by and warn me of a bear up ahead. Most of my contacts were at a distance though, and I became a little more confident. Then I started following fresh grizzly tracks along the road. As they got fresher, I got nervous. After a couple miles, the tracks left the road, and I felt a little better. I told myself, “I’m not afraid of any bears.”

When I reached the border with Alaska, I was still concerned that I would have trouble getting back into the United States. I cycled to the remote entry site through Beaver Creek. An official waited and watched as I approached. He asked, “Where are you coming from?” I told him with some pride that I had ridden my bicycle from North Carolina to Alaska. He responded with a smile. “Well, come on in.” And I did. I thought I had worried too much about crossing the border and everything else including bears, but a few miles into Alaska, that thinking changed.

I finished the Al-Can at Delta Junction, and I was glad that part was over. More services and civilization lay ahead; however, people in Fort Nelson were talking about a grizzly attack. Two surveyors had stumbled into a grizzly, and after a vicious mauling, one of the surveyors had died. Then someone said, “You know it is still very remote out there, that is, the road to Fairbanks.” Here we go

again. Bears, bears, bears.

With a lot more confidence, I pushed on. Outside of Tok, a small village, I saw a bear or two, but they were not interested in me. I came upon a small field beside the road. A mother sow bear and three little cubs were watching me. I thought this may be my last chance to get a picture so I stopped and pulled my camera from my panniers. As I did, the mother bear quietly ushered the three little ones to the edge of the woods. When they were safe, she turned on me, teeth bared, ferociously angry, growling, and charging at full speed. I ran to my bike and sped away. She would not stop. She was close. I thought she had me. She chased me a long way, but kept looking back at her cubs. Finally, she stopped. I did not. I do not know how far I cycled at high speed.

It was my fault. I was too confident and too close. And I learned a valuable lesson: I am afraid of bears. I also learned another valuable lesson. Work hard, but do not let hard work get you. There is another “bear” out there—a stressful life filled with deadlines, tension, and long hours. I got past that “bear” with the all-absorbing activity of cycling. I wish the same for all my fellow lawyers and judges.

Presently, I am packing my panniers for a cycling trip in Bucamaranga, Colombia. No bears. However, I did hear there were cats there—big cats. I am not afraid of any cats—well, maybe a little. ■

## Student Loan Relief (cont.)

- [bit.ly/3ucWIH8](https://bit.ly/3ucWIH8) (last visited 12/10/23).
14. 11 U.S.C. § 523(a)(8).
  15. *Brunner v. N.Y. State Higher Educ. Servs. Corp.* (In re *Brunner*), 831 F.2d 395 (2d Cir. 1987); *Educational Credit Mgmt. Corp. v. Frushour* (In re *Frushour*), 433 F.3d 393, 400 (4th Cir. 2005) (adopting the *Brunner* test); *Briscoe v. Bank of New York* (In re *Briscoe*), 16 B.R. 128, 131 (Bankr. S.D.N.Y. 1982) (“For purposes of 11 U.S.C. 523, the dischargeability of student loans should be based upon the certainty of hopelessness, not simply a present inability to fulfill financial commitment.”)
  16. *At a Glance: Department of Justice’s New Process for Student Loan Bankruptcy Discharge Cases*, [bit.ly/3OcuE8o](https://bit.ly/3OcuE8o) (last visited 12/10/23).
  17. The list of schools, programs, and school groups is attached as Exhibit C to the proposed settlement agreement in *Sweet v. Cardona*, N.D.Ca. no. 3:19-cv-03674-WHA (ECF Doc. 317) and, as revised, can be accessed at [bit.ly/3OcuE8o](https://bit.ly/3OcuE8o) (last visited 12/10/23). Charlotte School of Law is on the list. Details of the status and implementation of the settlement can be accessed at [studentaid.gov/announcements-events/sweet-settlement](https://studentaid.gov/announcements-events/sweet-settlement) (“*Sweet v. Cardona Settlement*”) (last visited 12/10/23).
  18. More information at “Borrower Defense Loan Discharge,” [bit.ly/3UaQeOd](https://bit.ly/3UaQeOd) (last visited 12/10/23).
  19. *Discharge Due to Death*, [studentaid.gov/manage-loans/forgiveness-cancellation/death](https://studentaid.gov/manage-loans/forgiveness-cancellation/death) (last visited 12/10/23).
  20. *Total and Permanent Disability Discharge*, [studentaid.gov/articles/3-ways-qualify-total-permanent-disability-discharge/](https://studentaid.gov/articles/3-ways-qualify-total-permanent-disability-discharge/) (last visited 12/10/23).
  21. *Public Service Loan Forgiveness (PSLF)*, [studentaid.gov/manage-loans/forgiveness-cancellation/public-service](https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service) (last visited 12/10/23). There are internal links to determine whether the borrower paid under an “accepted repayment plan” and “eligible employers.”
  22. Use the PSLF Help Tool Ninja to navigate the qualifications (plus, it is fun to say “ninja.”) [studentaid.gov/articles/become-a-pslf-help-tool-ninja](https://studentaid.gov/articles/become-a-pslf-help-tool-ninja) (last visited 12/10/23).
  23. *Teacher Loan Forgiveness*, [studentaid.gov/manage-loans/forgiveness-cancellation/teacher](https://studentaid.gov/manage-loans/forgiveness-cancellation/teacher) (last visited 12/10/23).
  24. See Federal Debt Collection Procedure Act, 28 U.S.C. § 176 and N.C. Gen. Stat. § 1C-1601(e)(1).
  25. *Get Out of Default with Fresh Start*, [studentaid.gov/announcements-events/default-fresh-start](https://studentaid.gov/announcements-events/default-fresh-start) (last visited 12/10/23).
  26. *Prepare for Student Loan Repayments to Restart*, [studentaid.gov/manage-loans/repayment/prepare-payments-restart/#questions](https://studentaid.gov/manage-loans/repayment/prepare-payments-restart/#questions) (last visited 12/10/23).
  27. Coronavirus Aid, Relief, and Economic Security Act, signed into law March 27, 2020, 15 U.S.C. § 9001 *et seq.*
  28. As of this writing, emails come only from [noreply@studentaid.gov](mailto:noreply@studentaid.gov), [noreply@debtreliief.studentaid.gov](mailto:noreply@debtreliief.studentaid.gov), and [ed.gov@public.govdelivery.com](mailto:ed.gov@public.govdelivery.com) and texts only from 227722 and 51592. Source: [studentaid.gov/articles/avoid-student-loan-forgiveness-scams/](https://studentaid.gov/articles/avoid-student-loan-forgiveness-scams/) (last visited 12/10/23).
  29. Identify your servicer by creating or logging into your account at [bit.ly/4b3F6c3](https://bit.ly/4b3F6c3) (last visited 12/10/23).

# BEFORE THE COUNCIL OF THE NORTH CAROLINA STATE BAR

## Service by Publication Pursuant to 27 N.C.A.C. 1D, Rule .0903(C)

### Notice to Comply or Show Cause In Re: Membership, IOLTA, and Continuing Legal Education Requirements

Bar ID	Name	Last Known City	Requirements	Amount Owed
#22847	John Christopher Lattanza	Richmond, VA	Dues/CLE since 2001	Excess of \$8,000
#16209	Christina Elisa K. Cuenat	Virginia Beach, VA	Dues/CLE since 2005	Excess of \$7,000
#10991	Frances Kate McNair Mitchell	Richmond, TX	Dues/CLE since 2006	Excess of \$7,000
#26075	Klaus Johannes Buchstab	Smyrna, GA	Dues/CLE since 2007	Excess of \$7,000
#30006	Christopher Robert Barron	Winchester, VA	Dues/CLE since 2008	Excess of \$7,000
#20569	Allison M. Mathews	Dallas, TX	Dues/CLE since 2011	Excess of \$6,000
#22202	Alice L. McNeer	Durham, NC	Dues/CLE since 2012	Excess of \$5,000
#39178	Kenya Davis Rogers	Hickory, NC	Dues/CLE since 2012	Excess of \$5,000
#42358	Daniel Edward Wall	Gastonia, NC	Dues/CLE since 2012	Excess of \$5,000
#16777	Joon Kook Park	Seoul, Korea	Dues/CLE since 2013	Excess of \$5,000
#12155	Lawrence L. Friedman	Arverne, NY	Dues/CLE since 2015	Excess of \$4,000
#40994	Jeffrey Stewart Marvin	Chapel Hill, NC	Dues/CLE since 2015	Excess of \$4,000
#34171	Joshua Mark Reed	Beaufort, NC	Dues/CLE since 2016	Excess of \$3,000
#13749	Mark D. Welch	Webster, NC	Dues/CLE since 2017	Excess of \$3,000
#14057	Thomas Wiley Brudney	Washington, DC	Dues/CLE since 2017	Excess of \$3,000
#13781	Charles R. Holloman, Jr.	Denver, CO	Dues/CLE since 2018	Excess of \$3,000
#22377	Renee N. White	Dallas, TX	Dues/CLE since 2018	Excess of \$3,000
#10659	Robert Dixon Floyd	Bolivia, NC	Dues/CLE since 2019	Excess of \$2,000
#19378	Thomas David Higgins, Jr.	Matthews, NC	Dues/CLE since 2019	Excess of \$2,000
#27053	Earl T. Dempster	Acworth, GA	Dues/CLE since 2019	Excess of \$2,000
#33608	Jeffrey Raymond Worley	Oakland, TN	Dues/CLE since 2019	Excess of \$2,000
#3671	Charles R. Rhodes	Greensboro, NC	Dues/CLE since 2019	Excess of \$2,000
#6324	Michael F. Parrish	Middleburg, VA	Dues/CLE since 2020	Excess of \$2,000
#22819	James N. Jorgensen	Cleveland, OH	Dues/CLE since 2020	Excess of \$2,000
#25636	Aaron J. Kowan	Atlanta, GA	Dues/CLE since 2020	Excess of \$2,000
#25684	Jennifer L. Lilly	Street, MD	Dues/CLE since 2020	Excess of \$2,000
#30073	Michael Lawrence Smith	Lake Ann, MI	Dues/CLE since 2020	Excess of \$2,000
#32398	Matthew James Middleton	Tulsa, OK	Dues/CLE since 2020	Excess of \$2,000
#38277	Nicole Steinke Jasen	Tampa, FL	Dues/CLE since 2020	Excess of \$2,000
#51146	Bhavin Patel	Alexandria, VA	Dues/CLE since 2020	Excess of \$2,000
#54093	Marquis Raynard Bradshaw	Brooklyn, NY	Dues/CLE since 2020	Excess of \$2,000

WHEREAS, the records of the North Carolina State Bar show that the above named lawyers failed to fulfill the noted requirements of membership pursuant to the administrative rules of the North Carolina State Bar.

AND WHEREAS, a diligent but unsuccessful effort has been made to serve these lawyers by registered or certified mail, designated delivery service, personal service, and/or email.

NOW THEREFORE, pursuant to 27 N.C.A.C. 1D, Rules .0903, these lawyers are hereby given notice to comply or show cause in writing within 30 days of service of

this notice why their licenses to practice law should not be suspended for failure to comply with these mandatory requirements.

The above-named lawyers are further advised that their failure to comply will be considered for action by the Administrative Committee of the North Carolina State Bar Council at its meeting on April 17, 2024, in Raleigh, North Carolina. For any of the above-named lawyers who fail to comply or to show satisfactory cause, upon the recommendation of the Administrative Committee, the council will take such action as it deems necessary at its meeting on April 19, 2024, in accordance with Chapter

84 of the General Statutes and may enter an order suspending your license to practice law.

If an above-named lawyers complies with all the mandatory requirements within 30 days from the service of this notice, the lawyer need not appear, respond, or take any further action by way of response to return to good standing. The above-named lawyers are encouraged to contact the Membership Department at (919) 828-4620 for additional information.

This the 5th day of February, 2024.  
Alice Neece Mine, Secretary  
The North Carolina State Bar

# Honoring Our Past—50 Year Lawyers in Their Own Words

**E**ach year during the North Carolina State Bar’s Annual Meeting, members who are celebrating the 50th anniversary of their admission to practice are honored during the 50-Year Lawyers Luncheon. Each of the honorees is asked to submit a bio of their life and career in the law, and these are published in a program for the event. In the Winter 2023 edition of the *Journal* we fea-

tured four essays from the class of 1973. This quarter, we’re going back to those honored 15 years prior, the class of 1958.

## Giles R. Clark

I was born and reared in rural Elizabethtown, NC, and my aspirations for the practice of law evolved at an early age. The county courthouse lay on the route between the schoolhouse and my home, and being a son of the county sheriff I was privileged to sit on the floor of the crowded courtroom in front of the jury box and observe the proceedings of the court. In those days a session of Superior Court was a matter of great import and was well attended by the general public. Early on I became enamored with the attorneys and the judges, their eloquence, knowledge, and advocacy as well as the respect and admiration given them by court officials and the general public. Members of the local bar were friends and acquaintances of my family, and relationships with them further engendered an affinity for the legal profession. The seeds for my growth into the practice of law were planted at an early age and fortunately allowed to germinate through the years of

my life and grow to maturity upon my admission to practice.

At East Carolina University I obtained a BS degree in social studies and English, as it was advised such curriculum would prepare for study of the law. Then I served in the US Army during the Korean War, and believe it or not, that was even further inspiration for the practice of law. I served in the Counterintelligence Corps, and most all of my fellow soldiers were from Ivy League schools up north. Many of them were planning a career in law and greatly encouraged me to pursue the same. My legal study actually began at night school at the Washington School of Law in Washington, DC, while still in the army. Upon completion of military duty I was accepted at the UNC School of Law and obtained the coveted LLB in 1958. My license to practice law was issued August 19, 1958. Then came marriage to Dottie Matthews and our family of three children, Giles, Martin, and Catherine, the latter of which

followed her dad to practice law, as well.

My practice began as a staff attorney for the NC attorney general, which involved traveling throughout the state, appearing in many Superior Courts and before the Industrial Commission defending tort and workers’ compensation claims against the state. In 1961 I returned home and achieved a long sought goal of engaging in the practice of law with a firm in my hometown of Elizabethtown, NC. This was a typical county lawyer practice where you just took whatever case walked in the door. Real estate, criminal and civil trials, contracts, and domestic relation matters were of primary concern, but many other intriguing cases, claims, and personalities were frequently encountered. The practice was enjoyable and rewarding.

For many years I had leaned toward a judicial career as a result of the admiration and respect of judges obtained from study of the writings and opinions of the judiciary. Witnessing the character, ability, and

integrity of those serving in the Superior Court and those who sat on the appellate bench was also inspiring to me. I accepted an appointment to serve as judge of the local recorders court in 1966, was elected to the district court in 1968, and served until 1975. Perhaps the proudest moment of my career was taking the oath as judge of Superior Court in February 1975. I continued to hold this office until retirement in 1993. Service as a member of the judiciary was certainly the high point of my legal tenure and this career continued after retirement through service as an emergency, retired, and recalled judge until 2007. Additionally rewarding has been a second career in the alternate dispute resolution fields of arbitration and mediation. Participation in hundreds of ADR procedures has resulted in bringing closure to many claims and their removal from the active trial dockets of our busy court system.

My legal and judicial career has afforded a good life for my family which includes my present wife, Rachel Peterson Clark. I have no regrets for having chosen this path for my life and cherish the many friendships that have arisen from my life in the law. I can only hope that the service which I have been allowed to render as a lawyer and judge has been beneficial to the legal profession as well as the judicial system and the citizens of this state. It has certainly been most rewarding and satisfying to me.

Fifty years is usually regarded as a very long period of time. That, I think, is when you are looking ahead. When you are looking back it is almost impossible to believe that so much time, so many events, so much progress, and so many associations have passed so very fast. Law school, the bar exam, beginning practice, the practice itself, and the many innovations that constantly improve legal professionalism have literally flown past. With the continued dedication of those in the profession, as well as a desire to improve and expand service to all having need, the practice of law and the legal profession can only get better. And it will.

#### **John G. Lewis Jr.**

I have lived all of my life in Statesville, North Carolina, and have long practiced with my partner, Walter B. Patterson. My father, John G. Lewis Sr., received his law license in 1909 and practiced in Statesville until his death in 1962. A large part of his

practice was with his brother, Henry E. Lewis. Family members have been lawyers in Statesville for almost 100 years.

It is difficult to pick out my proudest moment, but I have thoroughly enjoyed serving my clients here in Statesville and Iredell County and still look forward to serving them.

Life moves very swiftly for all of us and it hardly seems possible that we have been working for almost 50 years. I have, like most of you, been active in the community and church affairs in my town. I have particularly enjoyed serving on the Historic Preservation Committee and being active in Preservation North Carolina. I have been married to the former Linda Loven of Concord for 38 very happy years. Though we do not have children, we both enjoy working with children. My wife is a former teacher.

So many changes have occurred during the last 50 years in the practice. When I started, the local register of deeds was still typing out deeds in the books; that eventually changed to photocopying, and now all the deeds are recorded via computers. In the beginning we looked at all of the books and pulled them off of the shelves, both in the registry and the clerk's office. Now, everything is on our computer screens. Computers have not always been with us. We started off with IBM Selective typewriters, then moved to Brother typewriters with memory, and then came the early computers which are, of course, being constantly updated. We can do so many things "online."

Certainly in the political sphere we have seen great changes. The Civil Rights movement and the advancement of women through the ERA movement have changed not only the face of politics but everyday life for many people. In recent years, all of us have been affected by the changes necessitated by 9/11. Communication has become so much easier and quicker and almost worldwide. It is difficult to contemplate the changes we will see in the future.

I think the future of lawyers in this state is good, as problems in our society are becoming more complex and require a well-rounded education, not just in the law alone. It has been my privilege to watch many more ladies and minority members become part of our profession. They have been so well received. The future looks bright.

#### **Jim Richmond**

I was a draftee enlisted man serving my country in the US Army, stationed in Germany, wondering how I might make a living. I decided to go to law school when I was released and applied for admission to the UNC Law School. After an all night ride in a deuce and a half truck, I took the LSAT in Nuremberg at the site where the war crimes trials were held. The army released me 11 days early so I could enroll on time. I enjoyed law school, met my future wife, got married, graduated, passed the bar exam, and got a job as research assistant to J. Wallace Winborne, chief justice of the North Carolina Supreme Court. The justices, secretaries, and research assistants were a congenial group but I particularly remember Ed Cannon, Dillard Gardner, and Adrian Newton, secretary to the Board of Law Examiners, librarian, and marshall of the Supreme Court, and Adrian Newton, clerk of the Supreme Court. They gathered every morning in the chief justice's office. Three more different personalities I cannot imagine. Adrian Newton had a great sense of humor. Once he introduced me to a pompous legislator as "Mr. Richmond, legal advisor to the Supreme Court." I tried not to let it go to my head.

Next I was an associate with a law firm in Asheville, spending all of my time and energy in the courthouse searching mainly country titles. After almost nine years of exclusively such work and no other in sight, I heeded what a wino shouted at me one day on Pack Square when I didn't give him 50 cents because that was all I had for my lunch: "You ain't no real lawyer." I decided to try to become some semblance of a lawyer, left many good friends in Asheville, and returned to my roots in Orange County to set up a solo law office in Chapel Hill. I doubt there was a more fun place on earth to practice law than Chapel Hill in the late 1960s. First of all there was culture shock—the miniskirt had not caught on in Asheville, but it had in Chapel Hill. The local lawyers would send me a matter now and then, but I didn't have much to do at first except talk to my part-time secretary, the bored wife of a professor. She was the first secretarial assistance I had ever had and quite a luxury. We worked on making a form book. Then I was invited to become Stanly Peele's law partner. Judge Phipps, his former law partner, had become Orange County's first dis-

trict court judge. I welcomed the chance and he and I were law partners until Judge Phipps died unexpectedly and Stanly Peele succeeded him. I continued the practice, mostly winding up old estates that had somehow gotten neglected. I wasn't getting much new business, needed a steady income to make house payments, saw the handwriting on the wall, and applied to the attorney general's office for a position. I was hired and assigned to the section that represented the Department of Transportation, where I remained for 22 years until I retired.

My real estate experience paid off helping the department acquire rights of way by negotiation or eminent domain and this was a major part of my work while I was there. When I arrived the environmental suits were being brought against the department. Being the new man in the barrel, they were assigned to me. Going from never having been in court before, except for one uncontested divorce, suddenly I was in every federal district court in North Carolina trying to defend the department's failure to comply with the new environmental laws. No amount of prior experience would have helped the day Judge McMillan granted a preliminary injunction for every highway construction project in Charlotte save one. He told the Sugar Creek Businessman's association that he hadn't the power to speed up construction, only to stop it, but maybe since he had stopped the other projects the department would hasten to finish the one in front of their businesses. There were other lawsuits to halt construction of highways all over the state, from the Cherokee Indian Reservation to the bridge at Sunset Beach. All of these construction projects finally got built. There were interesting eminent domain cases as well, such as the ones arising out of an entire mountain sloughing off in a rainstorm from the tail of a hurricane, which silted, scoured, and flooded the pastures, ponds, and swimming pools of the residents of Tryon. Condemning the private road from Duck to Corolla comes to mind as well.

I enjoyed the work while I was in the attorney general's office. My attorney colleagues were first rate people, if sometimes underappreciated. As to the highlights, almost getting to argue a case in the Supreme Court of the United States that I got it to accept is one. Rank has its privileges. I did get to sit at the council table in front of

the "Supremes" and watch the argument. I think my body language helped us win. Helping relocate the Crest Street Community intact from the path of an expressway in my adopted hometown of Durham was satisfying as well.

Especially I have enjoyed my 15 years of retirement.

### **Richard M. Wiggins**

I was born in Cumberland County and went to public schools in Cumberland County. After graduation from high school I attended the University of North Carolina at Chapel Hill, graduating in 1955. I wasn't sure what I wanted to do after graduation, but my parents taught me that it was important to help other people and my father told me that I could help more people if I were a lawyer. While that was always in the back of my mind, during my senior year I had accepted a job as town manager for the little community of Winterville. Just before graduation, while sitting on the steps of Murphy Hall waiting for my next class, Richie Smith and Harold Downing came by and I asked where they might be headed and they said they were going over to apply for law school and suggested that I come along. I said "sure" and that's how I happened to apply for law school. I was then married and my parents and my in-laws agreed to help subsidize my law school education. Of course, I graduated in 1958.

Prior to graduation from law school I had clerked in the office of Sanford, Phillips and Weaver. I spent that summer learning to search titles and driving Terry to political events as he was beginning to gear up for the gubernatorial race of 1960. After graduation I was invited to join that firm as an associate. Dick Phillips was my first mentor and he taught me many things, including the need to be as technically correct as possible and to pursue every avenue in trying to solve a legal problem, both of which were invaluable lessons. Then Don McCoy and Stacy Weaver, both outstanding lawyers with great client relationships and legal skills, were of great help to me. After Terry was elected governor in 1960, Dick soon left to become an associate professor at the law school and Don, Stacy, and I formed a new firm. While the firm name has changed somewhat over the years, I have spent 50 years with the same firm.

During my first few years in practice I did what all country lawyers did: I tried drunken driving cases, petty misdemeanors, personal injury cases, and searched many titles. Some of my proudest moments as a lawyer were having served on the capital appointment list for my district and having defended five or six death penalty cases and, while most of my clients in those cases were convicted, none ever received the death penalty. My practice evolved to doing defense work for several insurance companies and eventually becoming trial counsel for Mid-South Insurance Company, a health insurance carrier then based in Fayetteville. During the course of that representation I traveled throughout Texas, Louisiana, Alabama, and Mississippi trying bad faith insurance cases. One case that I defended was a bad faith insurance case filed in Gulfport, Mississippi, and the plaintiff was represented by Will Denton, who happened to be a law school classmate of John Grisham. That case had many twists and turns and after the case was over Will Denton turned over parts of his file to John Grisham, who was writing a book about a bad faith insurance claim. When Grisham's book *The Rainmaker* was published several months later, many of the events that occurred in our case were chronologized in that book.

I have tried many cases over my career and, hopefully, have done what good trial lawyers do and that is to dedicate themselves to assisting the poor, the injured, and those who have been cheated. The cases that I am most proud of arose out of my representation of several elderly persons who had been cheated out of their life savings by a scheming, self-styled investment advisor who had bilked money out of them by promising unrealistic returns on their retirement savings. The defendant happened to have been licensed by two insurance companies and by reason of that agency relationship they had liability for his actions and we were able to recover most, if not all, of the money that those folks had lost when the defendant's ponzi scheme eventually collapsed.

I have greatly enjoyed my legal career. I love what I do and I dread the day that I no longer will be physically able to continue on in the practice, but I have great hope for the profession. The lawyers coming out of law school today have a great opportunity and my only hope is that they love the challenge as much as I have. ■

# Grievance Committee and DHC Actions

NOTE: More than 32,500 people are licensed to practice law in North Carolina. Some share the same or similar names. All discipline reports may be checked on the State Bar's website at [ncbar.gov/dhccorders](http://ncbar.gov/dhccorders).

## Disbarments

**Julia Olson-Boseman** of Wilmington surrendered her law license and was disbarred by the State Bar Council at its January meeting. Boseman misappropriated entrusted funds, grossly abdicated her trust account management obligations, made misrepresentations to the State Bar during a grievance investigation, made a misrepresentation to the court, engaged in contempt of court, engaged in a conflict of interest, collected clearly excessive fees, and neglected a client.

**Nathanael Pendley** of Clemmons surrendered his law license and was disbarred by the State Bar Council at its January meeting. Pendley pled guilty to one count of conspiracy to commit mail fraud and make false statements to an agency of the federal government in the United States District Court for the Eastern District of Wisconsin.

**Jonathan Washburn** of Wilmington surrendered his law license and was disbarred by the State Bar Council at its January meeting. Washburn misappropriated entrusted funds, grossly abdicated his trust account management obligations, made misrepresentations to financial institutions in connection with obtaining a residential mortgage, made misrepresentations to civil judgment creditors in sworn discovery responses, made misrepresentations under oath in connection with a bankruptcy proceeding, and made misrepresentations to the State Bar during a grievance investigation.

## Dismissals

**Frank Chut Jr.**, an assistant United States attorney in Greensboro, was before the DHC because he rejected proposed discipline from the Grievance Committee in favor of a hearing on the allegations. After a Grievance Review Panel reviewed the underlying grievance, Chut

accepted the Grievance Committee's disposition of the matter. As a result, the State Bar filed a Notice of Voluntary Dismissal of the DHC case.

## Completed Grievance Review Panels

A Grievance Review Panel reviewed one matter on January 19. At its April 2024 meeting, the Grievance Committee will consider the Review Panel's recommendation and determine the committee's final disposition of the matter.

## Interim Suspensions

The DHC entered an order placing **Kevin L. Wingate** of Raleigh on interim suspension based upon his convictions of criminal offenses showing professional unfitness: to wit, one count of First Degree Statutory Sexual Offense, a Class B1 felony, and four counts of Indecent Liberties with a Child, a Class F felony. Wingate did not respond to the State Bar's petition seeking interim suspension of his license to practice law or otherwise contest entry of the order by the DHC.

## Censures

**Peter Henry** of Arden was censured by the Grievance Committee. Henry did not respond to client inquiries, failed to provide the client with an accounting of entrusted funds provided to him as an advance deposit for hourly fees, and failed to perform additional legal work after agreeing to do so.

**Rita Henry** of Raleigh was censured by the Grievance Committee. In multiple client matters, Henry failed to act with reasonable diligence and promptness, failed to keep clients reasonably informed about the status of their matters, failed to promptly comply with reasonable requests for information, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions regarding the representation, failed to withdraw from representing clients when it became apparent her ability to represent them was materially impaired, and failed to participate in the fee dispute resolution program.

## Reprimands

**Adam McBroom** of Charlotte was reprimanded by the Grievance Committee for failure to timely respond to a Letter of Notice regarding a grievance investigation.

**Daniel Ryan Moose** of Raleigh was reprimanded by the Grievance Committee. Moose failed to act with reasonable diligence or adequately communicate with an incarcerated client. Despite being on notice that the client had severe mental health issues potentially warranting a capacity evaluation, Moose did not visit or otherwise communicate with the client, resulting in multiple continuances and delay.

## Completed Petitions for Reinstatement/Stay – Uncontested

**Lloyd T. Kelso** of Gastonia was suspended by the DHC for one year beginning December 2022 for trust account mismanagement and attempt to have sex with a client. The Office of Counsel consented to his reinstatement, which will be subject to certain conditions for one year after he resumes practicing.

**Kelly R. Routh** of Charlotte diverted to herself a cash payment of a fee to which her law firm employer was entitled. In November 2022 the DHC suspended Routh for five years but allowed her to apply for a stay after serving one year of active suspension and complying with various conditions. The Office of Counsel consented to a DHC order staying Routh's suspension.

## Notice of Intent to Seek Reinstatement

### In the Matter of Mildred A. Akachukwu

Notice is hereby given that Mildred A. Akachukwu of Durham, NC, intends to file a Petition for Reinstatement before the Disciplinary Hearing Commission of The North Carolina State Bar. Mrs. Akachukwu was disbarred effective January 12, 2011, by the Disciplinary Hearing Commission for misappropriating client funds.

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# Somatic Tools for Legal Success

BY LAURA MAHR

In today's fast-paced legal landscape, the tools for success go beyond negotiation skills, business acumen, research competency, and courtroom expertise. Professional success also necessitates that attorneys cultivate resilience and self-regulation. In my experience as a resilience coach and well-being trainer, the ideal way to develop professional mastery and personal satisfaction is to understand the intricate interplay between the mind and the body—specifically, how to harness the mind-body connection to engage *all our intelligences* and put them to work. Last winter, for six consecutive weeks members of the Buncombe County Bar (BCB) in Asheville gathered virtually to learn the foundational tenets of building resilience in the practice of law using the wisdom of the body (soma). “Tuning Into the Wisdom of the Body to Optimize Your Legal Practice” focused on scientifically studied somatic practices that regulate the nervous system when stressed. Each week the participating attorneys learned cutting-edge tools that develop mind-body connection, somatic intelligence, and self-compassion. We discussed ways to apply the concepts to more effectively practice law, including practical ways to maximize resilience and minimize stress during the workday using somatic practices, and how to bring the nervous system back to regulation when emotionally, mentally, and/or physically dysregulated.

The purpose of developing the mind-body connection and somatic intelligence is to grow the skills needed to become an “active operator of one’s own nervous system.” The concept of being an active operator of one’s own nervous system is a Polyvagal Theory term that refers to one’s ability to return the nervous system to a state of regulation after becoming dysregulated.<sup>1</sup> For example, being able to consciously come back to a state of emotional calm after getting frustrated with a client or being able to reinstate



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mental clarity after getting thrown a confusing curveball in court. Opportunities for nervous system dysregulation happen constantly in the practice of law; countless situations occur throughout the course of a lawyer’s day that potentially cause mental and/or emotional reactivity. And yet, most of us were never formally taught the tools we need to become active operators of our own nervous systems in our personal lives—let alone in our legal careers. We are, therefore, oftentimes at a loss for how to return to an ideal professional demeanor when emotionally triggered or mentally rattled.

When lawyers have the tools to become active operators of their own nervous systems, they find that they get triggered less often, and when they do get triggered, they more easily and quickly return to their “window of tolerance.” This means *more time actually practicing law and less time ruminating about the mistakes we think we made or will make*. Attorneys that are regulated and working inside their “window of tolerance” have better control of their thoughts and emotions; they then show up with clients, in court, and during interactions with colleagues and opposing counsel in a regulated state.

Every time I present a new course I’m curious to hear participants’ feedback. I want to understand what is most meaningful about the course and which aspects of the theory are most helpful. In particular: What is the impact of the course both on the participants’ ability to more effectively practice law and their sense of resilience in their lives in general? The feedback and the course evaluations from this series brought to light several themes, four of which I’ll share below (participants’ comments shared with permission).

## Theme #1: Somatic Tools are Effective for Understanding How to Return to Regulation if Dysregulated when Practicing Law

As described above, the course centered around the use of somatic tools for “self-regulation” (i.e., how to actively return your dysregulated nervous system back to a state of regulation). Many participants, including David Irvine, owner-partner of Irvine Law Firm PLLC, shared how beneficial somatic tools are for client-facing work. “I have seen in real time that my self-regulation had a positive effect on clients, opposing counsel, and family members. When in a regulated state, I expe-

rience increased clarity and creativity. Indeed, I am a better person for knowing the lessons learned in this course.” David’s law partner and wife, Stephanie Irvine, remarked, “Attorneys need all of the tools they can get to not only deal with their own stress, but also to understand and address what their clients are going through.” Attorney Matt Lee expressed, “Attorneys don’t have to be at the mercy of high stress and nervous system dysregulation. There are somatic awareness tools available and accessible for improved mental and emotional states, physical health, and greater overall well-being.” One of the most satisfying things about teaching the CLE courses for the BCB is that the six-week program allows the participants to learn a variety of tools and practice them over time, providing the opportunity to “stack” the tools during the workday—applying different tools to different situations. Having time to put tools from their toolbox into action and then ask questions and share ideas the following week builds competence and confidence around self-regulation.

### **Theme #2: Somatic Tools are Effective for Optimizing Efficacy and Building Skills Necessary for Law Practice**

The demands of the legal profession involve high levels of stress, emotional intensity, and the need for effective communication under pressure. Somatic self-regulation tools can enhance an attorney’s ability to navigate challenging clients, opposing counsel, and courtroom dynamics. When we are active operators of our own nervous system, we have more control over our emotional responses, which can both prevent impulsive reactions and promote clear headed decision making. Stephanie Irvine noted, “I have taken this course for three years now and enjoyed every minute of it. I can read about the new laws, but this course teaches new skills. I learned the importance of taking the time to connect my brain, my body, and my emotions. I realized that I could do it and I enjoyed it, and I could see immediate results. The fact that I really enjoyed it was meaningful because now I am more likely to practice and use what I learned.” These tools also cultivate the kind of focused concentration necessary to be effective at legal work. As Katherine Langley from Partner, Burt Langley, PC, explained, “The information covered in this course helps increase awareness by learning how to stay in your window of tolerance. If you can be aware

of what you are feeling and how to calm stressful feelings, you can devote your brain power to the work in front of you and function on a higher plane.” David Irvine remarked, “Learning about the two-way street that is the mind-body connection has been important for me. I am now using my body to regulate my mind and using my mind to regulate my body. Courses like this should be a required part of the legal education of young lawyers and law students.”

### **Theme #3: Somatic Tools are Effective for Managing Stress Associated with Practicing Law**

While many of us are getting accustomed to living in a world of compounded stress, it takes a toll on our energy and enthusiasm for life and the practice of law. One participant shared how helpful it was to learn “a diverse range of new tools for managing the stressors inherent in law practice.” Another participant noted, “Practicing law is a stressful occupation, and not all attorneys have been exposed to the methods contained in the course that address stress management techniques through developing somatic intelligence. It is most meaningful to have the opportunity to learn and develop new skills that have daily applications. We’re so steeped in our brains that we’re missing the forest for the trees in terms of being well-functioning human beings (with the concomitant loss in effectiveness in our profession).”

Attorney and author Bill Auman said, “It’s important for attorneys to learn about somatic intelligence because attorneys have a relatively high level of stress and generally an overactive mindset that can be tempered and managed beneficially through the tools and concepts learned in this training.” He added that one of the most meaningful things about participating in the course was “learning about neuroplasticity and how practicing mindfulness can serve as a means to raise my level of consciousness in how I respond to adversity and function on a daily basis.”

### **Theme #4: Somatic Tools are Effective for Creating Opportunities for Healthy Interactions and Connections with Other Attorneys**

Connection with other attorneys is beneficial for lawyers; connecting in healthy ways helps to build collegiality, professionalism, and resilience. In our day-to-day profession as attorneys, we are often across the table from

each other in adversarial positions. Interacting through opposition puts us at odds with our peers: instead of seeing each other as a collegial community of professionals who support each other, we may see each other as rivals. This is very taxing on our emotional well-being and challenging for our professional resilience. On the other hand, resilience increases if we have high caliber professional relationships. Matt Lee shared that one of the most meaningful things about participating in the course was “Meditating with others and sharing personal experiences and insights.” Attorney Scott Lamb echoed Matt’s reflection, sharing that “Connecting with other attorneys in the course” was the most meaningful aspect to class for him. “We are all humans with bodies, nervous systems, feelings, and needs,” he said, “Deepening our awareness of ourselves and each other can only help us serve others better.” For me as the instructor, the opportunity to provide a forum where many kinds of attorneys can put their minds together for the united purpose of building resilience is particularly gratifying and is one of my favorite reasons for teaching these courses.

I have been teaching multi-week mindfulness and neuroscience based mental health CLE courses for the BCB since 2017. Each year I appreciate the depth of the participants’ interest in the subject matter and their willingness to try cutting-edge, science-based practices to improve their professional skills. The BCB and its membership is on the mark in understanding that building resilient nervous systems—and resilient bar associations—takes time...multiple weeks at a time over numerous years. One participant commented in the course evaluation, “I’ve attended these sessions with Laura Mahr for six years running; I do that because this is very much a ‘practice’ and not something you hear once and retain. I appreciate the nuances and welcome more variations on the general theme of mindfulness vis-à-vis neuroscience.” This participant’s keen observation mimics the findings of neuroscience on cultivating resilience: repetition grows new neural pathways that allow us to form new, more resilient habits. Over time, and with practice, we can all learn to respond to stress as active operators of our own nervous system.

Thank you once again to the course participants and the BCB leadership for the

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# Informed Consent Update

BY SUZANNE LEVER, ASSISTANT ETHICS COUNSEL

Rule 1.4(a)(1) requires a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's "informed consent" is required by the Rules of Professional Conduct. How likely are you to find yourself in a scenario where the rules require you to obtain a client's informed consent? Considering the phrase "informed consent" is referenced in 17 rules or comments throughout the North Carolina Rules of Professional Conduct, I would say it is pretty likely. Given the numerous occurrences of this prerequisite in the rules, and considering the frequency of questions we receive at the State Bar about the term, it seems prudent for lawyers to understand the requirements for obtaining a client's informed consent.

Interestingly, the phrase "informed consent" became a part of the North Carolina Rules of Professional Conduct in February 2003, when many of the rules were revised. Following this revision, former ethics counsel and current Executive Director Alice Neece Mine wrote an ethics article explaining why the prior rule language "consent after consultation" was replaced with the current "informed consent." In that article, Ms. Mine also set out the information that a lawyer must ordinarily disclose to the client to obtain informed consent, and the factors the lawyer should consider when determining what information and explanation are reasonably adequate for obtaining informed consent in each unique scenario. Ms. Mine's article remains accurate and helpful today and is reproduced below.

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## Obtaining Informed Consent

By Alice Neece Mine

(This article appeared in Journal 8,3; September 2003)

The Rules of Professional Conduct ("the Rules") allow a client (or a former or

prospective client) to consent to situations that would otherwise disqualify the lawyer from the representation or prohibit the lawyer from pursuing a course of conduct. When the Rules were revised this past spring, the standard for obtaining client consent was significantly clarified and a requirement for documenting the consent was added. Lawyers should take note of these global revisions to the Rules.

### Why informed consent?

Throughout the Rules, as revised this spring [in 2003], the phrase "consent after consultation" was replaced with "gives informed consent." Before revision, the Rules allowed client consent to a conflict of interest following "consultation" with the client which included an "explanation of the implications of the common representation and the advantages and risks involved." Rule 1.7, 1997 Rules of Professional Conduct. The terminology section of the 1997 Rules added little clarification of the duty to consult before asking a client to agree to an arrangement that would probably be beneficial to the lawyer and might be harmful to the client's interests. "Consultation" was defined as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." Rule 0.3, Terminology, 1997 Rules of Professional Conduct. As noted in the Report to the ABA House of Delegates of the ABA Ethics 2000 Commission on the Evaluation of the Rules of Professional Conduct, May 2001,

... "consultation" is a term that is not well understood and does not sufficiently indicate the extent to which clients must be given information and explanation in order to make reasonably informed decisions. The term "informed consent," which is familiar from its use in other contexts, is more likely to convey to lawyers what is required under the Rules. The numerous cases on informed consent

to medical treatment help explain what is expected in the legal context.<sup>1</sup> In *McPherson v. Ellis*, 305 N.C. 266, 270, 287 S.E.2d 892, 895 (1982), for example, the North Carolina Supreme Court observed,

Consent to a proposed medical procedure is meaningless if given without adequate information and understanding of the risks involved. Therefore, the standard of professional competence prescribes that a physician or surgeon properly apprise a potential patient of the risks of a particular treatment before obtaining his consent. ... [A] physician "violates his duty to his patient and subjects himself to liability if he withholds any facts which are necessary to form the basis of an intelligent consent by the patient to the proposed treatment." (Quoting *Salgo v. Leland Stanford, Jr. University Board of Trustees*, 154 Cal. App. 2d 560, 578, 317 P.2d 170, 181 (1957)).

### How much information and explanation is required?

"Informed consent" is described in Rule 1.0(f), Terminology, of the [ ] Rules as "denot[ing] the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation appropriate to the circumstances." Comment [6] to Rule 1.0 states that the lawyer must only make "reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision." Information that must ordinarily be disclosed to the client includes the following:

- the facts and circumstances giving rise to the situation,
- an explanation of the material advantages and disadvantages of the proposed course of conduct,
- a discussion of options and alternatives, and
- in some circumstances, a recommendation to seek the advice of other counsel.

Rule 1.0, Cmt. [6].

Although the information and explanation given need only be “reasonably adequate” under the circumstances, adequacy is judged subjectively by considering the sophistication of the particular person who must make an informed decision. The “relevant factors” to this determination include:

- whether the client or other person is experienced in legal matters generally,
- whether the client or other person is experienced in making decisions of the type involved, and
- whether the client or other person is independently represented by other counsel in giving the consent.

**What documentation is required?**

Another global revision to the Rules of

Professional Conduct requires most consents to be “confirmed in writing.” *See e.g.*, Rule 1.7(b)(4), Rule 1.9(a) and (b), Rule 1.10(d), Rule 1.18(d). As explained in Rule 1.0(c), this requirement can be satisfied with a written statement from the affected client or person or “a writing that a lawyer promptly transmits to the person confirming an oral informed consent.” Paragraph (o) of the same rule explains that an email will suffice. The Rules must be read carefully, however, because some consents require more than a written confirmation from the lawyer. When the importance of the consent must be emphasized to the person giving the consent or when a consent may be subject to later dispute, as when a client consents to a business transaction with the lawyer, the Rules

may require the consent to be confirmed in a writing signed by the client. *See e.g.*, Rule 1.8(a) and (g). ■

**Endnote**

1. In 1976, the General Assembly enacted specific legislation, codified as G.S. 90-21.13, on consent to medical treatment that utilizes an objective test for determining whether the consent was informed:

A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities.

N.C. Gen. Stat. § 90-21.13(a)(2) (2024).

**In Memoriam**

**Stanley Lee Allen**  
Wentworth, NC

**William Clarence Brewer Jr.**  
Greenville, NC

**Leslie E. Browder**  
Holly Springs, NC

**Samuel Jerome Crow**  
Boynton Beach, FL

**Deborah Lloyd Darter**  
Raleigh, NC

**Elizabeth Fay Dierauf**  
Hendersonville, NC

**Leonard Michael Dodd**  
Raleigh, NC

**James Henry Dooley Jr.**  
Salisbury, NC

**John Randall Groves Jr.**  
Waxhaw, NC

**Larry Sylvester Height**  
Raleigh, NC

**George Dudley Humphrey Jr.**  
Winston-Salem, NC

**Faith Elizabeth Kelleher**  
Charlotte, NC

**Horace M. Kimel Jr.**  
Greensboro, NC

**David Vernon Liner**  
Advance, NC

**John Carlton Lovett**  
Wilmington, NC

**Martha Wray Lowrance**  
Raleigh, NC

**John R. Mayer**  
Highlands, NC

**Steven Hamilton Messick**  
Burlington, NC

**Martha New Milam**  
Durham, NC

**John Malcolm Murchison Jr.**  
Charlotte, NC

**Hugh F. Oates Jr.**  
Cape Coral, FL

**Thomas LaFontine Odom Sr.**  
Charlotte, NC

**Richard E. Panosh**  
Reidsville, NC

**John Silas Parton**  
Whittier, NC

**Jerome Lee Peace**  
Thomasville, NC

**Ann B. Petersen**  
Chapel Hill, NC

**Jimmie C. Proctor**  
New Bern, NC

**Robert Kendrick Rice**  
Holly Springs, NC

**David Travis Robinson**  
Research Triangle Park, NC

**William Robert Shell**  
Wilmington, NC

**William R. Sigmon**  
Hickory, NC

**William Frederick Simpson Jr.**  
Kinston, NC

**Nathan Richard Skipper Jr.**  
Trent Woods, NC

**Wyatt Shorter Stevens**  
Asheville, NC

**Clarence Richard Tate Jr.**  
High Point, NC

**David R. Waters**  
Oxford, NC

**Julian Bunn Wray**  
Shelby, NC

# Zaneta M. Robinson, Board Certified Specialist in Trademark Law

BY SHEILA SAUCIER, CERTIFICATION COORDINATOR, BOARD OF LEGAL SPECIALIZATION

I recently had an opportunity to talk with Zaneta Robinson, a board certified specialist in trademark law. Zaneta is an associate clinical professor and the founding director of the Intellectual Property (IP) Law Clinic at Wake Forest University School of Law in Winston-Salem. She previously directed the Intellectual Property Clinic at the UNC-Chapel Hill School of Law Institute for Innovation. Upper-level law students enroll in law school clinics for course credit and provide free legal services under the supervision of a licensed attorney. Before transitioning to academia, Professor Robinson managed domestic and international trademark portfolios and counseled clients on IP rights protection and enforcement strategies.



Robinson

Professor Robinson earned her JD from Wake Forest University School of Law and her BS from James Madison University. She is a member of the North Carolina State Bar, all North Carolina Federal District Courts, and the Supreme Court of the United States.

**Q: Please tell me a little bit about the path to your career in intellectual property?**

I had an idea when I entered law school that I wanted to focus on intellectual property, largely because I took some time off to work between undergrad and law school. One of my first jobs after college was in the corporate office of a company exploring new ways to provide cardiovascular care. It was fascinating to me because the company was in growth mode and a lot of what they were planning at that time had not been done before. It was there that I was first exposed to the inner workings of a complex business—the role of investors, human resources and employment, accounting, advertising, and

marketing...you name it. To this day it is one of the coolest places I have ever worked, but not because my roles had anything to do with intellectual property. I loved it because I had mentors that were willing to help me understand not only the how, but the why. I felt like I was in the mix.

When I talk to my students about what it is like to be an IP lawyer, I describe it as always being in the mix. What does being in the mix look like? If your client makes widgets and happens to develop a novel and non-obvious widget, if you are a patent attorney you are probably going to be the first to know about it. If your client is about to drop a new product or clothing line and you are a trademark attorney, you will probably know about the product before the general public even knows it is coming because someone (you) will need to clear the brand. And the copyright attorneys? They work with the creatives—artists, designers, photographers, musicians, authors, programmers, writers, and so on. Basically, most of the things that we may want to purchase, events we may want to attend, experiences or restaurants we may want to indulge in, devices we may use—nearly all of it is governed by some aspect of intellectual property law. As IP attorneys, we usually have a front row seat for all of the things that go on behind the scenes, from starts to finishes, collaborations, mergers and acquisitions (or breakups), and the disputes or rights transfers that may be sprinkled throughout the representation. That's the mix. Whether you are working with literal creatives like artists or people with a creative new startup, law practice doesn't get any more real world than IP.

**Q: What inspired you to pursue board certification as a specialist in trademark law?**

Certification in any field usually signifies that something or someone is of high caliber. So, I would probably pursue certification in whatever area of law I focused on to make my services stand out among others.

**Q: What aspect of the daily job of being a professor is the most rewarding and/or challenging?**

The classroom component is the most rewarding aspect of my daily job. By the time students get to law school, they already know what it is like to work hard or get good grades or excel in any given subject. In law school, everyone works hard, everyone is capable of making good grades, but everyone can't get excellent grades. That can be destabilizing, especially in the first year of law school. Because I primarily teach second-year and third-year students, I usually get them after that period of destabilization, and probably after a bit of a reset. In an in-house law school clinic, students often get their first opportunity to apply what they've learned in a real legal scenario with a real person. That can be scary! But once they've gone through the experience and have some time to reflect, they realize that finally, after grade school, undergrad, and at least a year of law school, they can actually do the thing they've spent all their lives working towards. Good grades and recognition are great, but nothing beats confidence. Nothing beats knowing you actually did the thing, whatever it is, because then you know it is doable.

**Q: Tell us about your work founding and running the Intellectual Property Law Clinic at Wake Forest University School of Law?**

Starting the Intellectual Property Law Clinic at Wake Forest has been surreal. I graduated from Wake Law, and while I was a student, I took every intellectual property law course that Professor Simone Rose

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# NC IOLTA Awards \$9.5 Million in Grants for 2024

North Carolina Interest on Lawyers' Trust Accounts (NC IOLTA) will distribute roughly \$9.5 million in 2024 to organizations providing free civil legal services and other programs designed to improve the administration of justice.

Established in 1983 as the philanthropic focus of the North Carolina State Bar, NC IOLTA envisions a North Carolina where all people can effectively meet their legal needs.

Funds from NC IOLTA currently support 28 organizations providing legal services in all 100 North Carolina counties. These grants support victims of domestic violence, families facing eviction and property loss, disabled seniors, and countless other North Carolinians in need of legal assistance to protect their rights and ensure their basic needs can be met.

"We are committed to ensuring equal access to justice across the state," says Shelby Duffy Benton, chair of the North Carolina IOLTA Board of Trustees, which finalized 2024 grant awards at its meeting in early December. "In partnership with North Carolina lawyers, banks, and grantee organizations, we work together to see that legal services are provided to people who otherwise would not be able to afford them."

With additional funds available for 2024 due to the increased income being generated on general trust accounts held by North Carolina lawyers, NC IOLTA was able to increase grant awards for many grantees, support identified gaps in funding, and fund new programs.

Mary Irvine, NC IOLTA executive director, is pleased that available funds can offset revenue lost by grantee programs from other sources. For example, funding from the federal Victims of Crimes Act has decreased substantially in recent years and is expected to continue to decrease in 2024.

"This year, several legal aid programs that provide life-saving legal services to families experiencing domestic violence will be losing

federal funding restricted for this purpose due to a change in the allocation of funds at the national level," Irvine said. "Fortunately, with additional funding from NC IOLTA and other sources, legal aid providers in NC will be able to continue their critical work in this important area."

In addition to its regular annual grants, the NC IOLTA Board recently approved funding of a three-year grant program to offer summer stipends for law students who work in public interest internships in one of the 45 North Carolina counties that have been classified as "legal deserts" (i.e., counties with less than one lawyer per 1,000 residents). The IOLTA Public Interest Internship Program is being reestablished after the program was discontinued during the recession due to decreased funding.

The IOLTA Public Interest Internship Program is designed to expose law students of all backgrounds to the practice of law in the public interest, particularly in areas of the state with limited access to legal professionals. Stipends will support law students working for judges, public defenders, district attorneys, and organizations providing free civil legal services.

Benton shared her perspective on the opportunity to engage law students early in their careers to use their skills to contribute to the legal needs of underserved communities.

"Particularly as a lawyer coming from a rural community, I acknowledge the continued need for resources to support access to legal services in legal deserts and other underserved areas. The board approved the Public Interest Internship Program to support students who wish to return home or make roots

in counties with a real need for lawyers that may struggle to compete with more populous areas of the state."

The creation of IOLTA programs across the country came at a time of dire need, Irvine said, but the need continues. "Without access to legal services, the legal system does not work for everyone. NC IOLTA values the support of all of our partners to help all North Carolinians fairly navigate the justice system, making our communities stronger and more equitable."

Since inception, NC IOLTA has awarded more than \$120 million to organizations that provide legal aid to individuals, families, and children. ■

## NC IOLTA Program Updates

- 2024 grant awards totaling \$9.5 million were approved in December. For a full list of 2024 grant awards, visit [nciolta.org](http://nciolta.org).
- NC IOLTA recently released the 2022-23 report on funding administered under the Domestic Violence Victim Assistance Act. In 2022-23, NC IOLTA administered \$854,380 in funding to Legal Aid of North Carolina and Pisgah Legal Services for legal services for domestic violence victims.
- Though income has not been fully finalized, NC IOLTA anticipates 2023 interest earned on lawyers' general pooled trust accounts will exceed \$15.5 million.

# Retiring Gratefully and (Fairly) Gracefully

BY ANONYMOUS

Allow me to jump to the end and tell you retirement from private practice is good, enjoyable, and filled with as much as I choose. Looking back, I see how the tools I learned in recovery over the years, and the principles taught in recovery, helped me make the transition from active practice to retirement. I'd like to share my story and how I used some of those tools with the hope it might help someone else.

Sometime during my 35th or 36th year of law practice, I started thinking more regularly about retirement. I hadn't set a date, and my physical and mental capabilities were not pushing me toward retirement. But I was not like a few colleagues I'd heard over the years who wanted, they said, to practice until they died. One lawyer friend attributed this desire to his deep love of the practice.

I'm not sure I believed them, but even if it was true for them, it wasn't for me. To cut to the nub, I didn't want to be defined, beginning to end, as a lawyer. I felt privileged to be a lawyer and to have enjoyed my career as a private practice attorney. Lawyering was my profession, but lawyering is not my total identity. I am more than a lawyer. One way for me to realize this rebellious inclination was to retire and let the rest of my life unfold. Also, I wanted to be young enough to do what I chose without significant physical limitations that often come with living into your 70s and 80s.

To state the obvious, this would be a big change for me. I don't like change! In his book *The Way of Transition*, Bill Bridges proposes that it is *transition* we don't like, rather than change because transition involves letting go of a piece of ourselves or part of our identity, whereas change is a situational shift. Well, I didn't like either one. I'd learned through my years in recovery that when I'm resistant to things like change, I need to start looking for *fear*—there's something I'm afraid of that is holding me back.

The first fear I identified was what we call

the “fear of financial insecurity.” Using the recovery tool of doing the next right thing, I made a simple strategy that allowed me to transition into retirement gradually. I was able to join a small firm (back then I had been practicing solo) as a non-equity partner with the expectation that, over a few years, I would slow down my practice until I retired. It was a good fit with respect to personalities and practice areas. I was quite fortunate.

The next step was to meet with a financial planner to be sure I had not missed anything in my own analysis and that I could, in retirement, continue to live the way my wife and I wished. We are not lavish spenders, but we do like to travel, and we feel an obligation to give part of our income to our church and a number of local and national non-profits.

Of course, looking at the financial side of retirement is a prudent thing to do. It's something I'd recommend to any client of mine in a similar situation. But it also preempted any fear I might have of economic insecurity. One of the “promises” associated with the ninth step set forth in the book *Alcoholics Anonymous* is the assurance that the fear of economic insecurity will leave us, and it did leave me for the most part. But these insecurities have a way of coming back sometimes, particularly in the face of such a substantive change.

I have a friend who is a retired lawyer, and when he retired from his insurance defense practice, he just walked out of the office on the agreed upon Friday, and the next week his partners and associates took over every case without missing a beat. My practice was different: business law and estate planning. No one else in my office handled those areas. If my clients wanted it, I felt obligated to introduce them to another lawyer who could handle their affairs.

So, I set a date to stop practicing one year out and spent that last year finishing up matters, referring clients to other attorneys, delivering original documents to their owners, and



tying up loose ends. I knew I excelled in procrastination when fear was involved, so it was important to set that calendar date, announce it, and stick to it.

During that last year, I thought more and more about what life would be like after my last day in the office. I believe my higher power was looking after me in a number of ways throughout this transition, including direct advice from a psychologist I did not know.

It came out of the blue after a yoga class in which we both participated. I was talking to our instructor about my upcoming retirement when the psychologist, who had overheard me, came up and asked if she could give me some advice. She told me that after I retired, I would be uncomfortable and disoriented for some period of time. It could be a couple of months or longer. *Don't try to fix it*, she said. Live with the discomfort and know that it is normal. Things will sort out in time the way they should.

And she was spot on. That was some of the best advice I have ever received. That first morning I had the entire day with no client to call, no LLC to form, no estate planning docs to draft, no associate knocking on my door with a question, no Bar Association committee meeting to prepare for, no unpaid receivable to pursue, it was empty! And I was

uncomfortable.

Here is where *trust* came in. A tough act for me, to trust. I want to know the deal, how things will turn out, what the alternatives are, the worst-case scenario. I don't want any surprises. Suddenly I had a day, a week, and I didn't know what I'd do or how it would unfold.

Every morning during my meditation routine I recite the "Third Step Prayer." I'm offering myself to my Higher Power to build with me and do with me as it wants. Do I mean it? If I do, I told myself, I just need to be attentive to opportunities and signals for the next right thing to do and do it. The action part is essential, but sometimes it must be preceded by patient waiting (and talking to my sponsor or other trusted person in my life).

One of the most important truths recovery taught me is that my real purpose is to be of maximum service to God and the people about me. Years before I retired, I'd found myself unhappy with my practice. I was in a medium-sized firm and my partners were good lawyers and fine people. But the focus to maximize return, measuring time in tenths of an hour, plus firm management duties made my law practice burdensome and unenjoyable. So, I went solo (leaving on good terms I might add).

It was what I needed at the time. Law practice still frustrated me until one day a voice in my head (I am not crazy) said: go into each client relationship asking *how can I be of service*. Then do excellent legal work at a fair price and things will work out. They did. Granted, I made less money solo than if I'd stayed in that firm, but I was much happier and, dare I say it, fulfilled.

Heading into retirement, that suggestion about being of service continued to guide me. I looked for opportunities to "be of maximum service" in the relationships I had, the communities I was a part of (church, AA, golfing cronies, non-profits, etc.). Somewhere along the way I was asked to chair a committee and to join a non-profit board (they love lawyers on their boards). Little by little my time began to fill up. I had scoffed when I had heard retired people say, "I don't know how I had time to practice law, my days in retirement are so full!" Now it had become true for me.

Did I miss anything? Absolutely. I sorely missed people in need of help asking me for help. Asking for my advice. Often making very important decisions in their lives based on what I told them. What a privilege that is.

What a gift! We take it for granted when we are practicing. But when it ended, I missed it, and I realized again how grateful I was to have been in the role of *counselor* to many people.

That loss was balanced by relief granted from the stress of always having to be right. Not 70% or 80% right, but completely right, day after day, in advice given and documents prepared. *Always*. That is a lot of stress that we accept because it just comes with our profession. One morning some months after I retired, as I sat with a second cup of coffee and watched cardinals out back, I realized that stress was gone.

I waited a few years before petitioning the State Bar to allow me to go inactive. Before that, occasionally I'd have the opportunity to respond to a question or situation *as a lawyer*, and it was essential, of course, that I be licensed. But truthfully, I think it was a little like Linus' blanket—keeping my license active provided a little security, whether real or imagined.

My life now and since retirement has been full, fun, humbling, and rewarding. Of course, it's life so there have been ups and downs, sorrows and joys. But I am both grateful I was privileged to be a practicing lawyer and I am grateful I no longer practice.

If you told me you're thinking of retiring and you invited my input, here's some of what I would say.

Stay connected with your communities all the way through and into retirement. And have communities! Don't isolate or you'll miss opportunities to be of service. Be intentional about meeting with friends and colleagues for lunch, to work out, or whatever your preference is. But stay actively in touch with people you can talk to and who know you.

Trust. Trust that things will go well, and when (not if) you hit a bump or a wall, trust that you will be able to navigate over or around it.

Stay in shape, physically and spiritually. Whether walking in the neighborhood or training for a senior iron man, be active. And stay connected to the spiritual part of living and, if it is your practice, to the spiritual part of your faith tradition. And if you have no spiritual part of your day-to-day living, get one, in whatever form is right for you.

Be hopeful and optimistic. I've learned in my latter years that being hopeful takes work and practice.

Be grateful. Gratitude is a superpower. At least that is my experience. And there is

always, in *every* situation, something for which to be grateful.

And be of service, in whatever form that takes for you. You are needed. You have unique-to-you life experiences which need to be shared for the good of us all. Don't hide them away.

I could go on, but I bet I'm telling you what you already know. ■

*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. For more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.*

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## Pathways to Well-being (cont.)

willingness to experiment with new course material year after year. The success of the course is a testament to the courage and trust it takes to blaze a trail locally so that others can follow nationally. A deep bow of gratitude to each of you for leading the way to a more successful, self-regulated future in law. ■

*Laura Mahr is a North Carolina and Oregon lawyer and the founder of Conscious Legal Minds LLC, providing well-being consulting, training, and resilience coaching for attorneys and law offices nationwide. Through the lens of neurobiology, Laura helps build strong leaders, happy lawyers, and effective teams. Her work is informed by 13 years of practice as a civil sexual assault attorney, 25 years as a teacher and student of mindfulness and yoga, and eight years studying neurobiology and neuropsychology with clinical pioneers. If you are interested in learning more about burnout and how to upgrade burnout beliefs and positively transform your personal or organizational experience, contact Laura through [consciouslegalminds.com](http://consciouslegalminds.com).*

## Endnotes

1. See Deb Dana, *Become an Active Operator of Your Nervous System, Ten Percent Happier* podcast November 23, 2023; [youtube.com/watch?v=4S\\_8Z8LSLSCM](https://www.youtube.com/watch?v=4S_8Z8LSLSCM).

# Committee Publishes New Opinion on a Lawyer's Use of Artificial Intelligence

## Council Actions

At its meeting on January 19, 2024, the State Bar Council adopted the ethics opinion summarized below:

### 2023 Formal Ethics Opinion 4

#### *Use of a Lawyer's Trade Name for Keyword Advertisements in an Internet Search Engine*

Proposed opinion rules that the intentional selection of another lawyer's unique firm trade name in a keyword advertisement campaign is prohibited, but that prohibition does not apply when the trade name is also a common search term.

## Ethics Committee Actions

At its meeting on January 18, 2024, the Ethics Committee considered a total of six inquiries, including the opinion noted above. Four inquiries were sent or returned to subcommittee for further study, including an inquiry addressing a lawyer's ability to obligate a client's estate to pay the lawyer for any time spent defending the lawyer's work in drafting and executing the client's will and an inquiry exploring a lawyer's duty of confidentiality when inheriting confidential client information. Additionally, in October 2023 the Ethics Committee published Proposed 2023 Formal Ethics Opinion 3, Installation of Third Party's Self-Service Kiosk in Lawyer's Office and Inclusion of Lawyer in Third Party's Advertising Efforts; based on comments received during publication, the committee voted to return the inquiry to subcommittee for further study. The committee also approved the publication of one new proposed formal ethics opinion on a lawyer's use of artificial intelligence in a law practice, which appears below.

### Proposed 2024 Formal Ethics Opinion 1 Use of Artificial Intelligence in a Law Practice January 18, 2024

*Proposed opinion discusses a lawyer's profes-*

*sional responsibility when using artificial intelligence in a law practice.*

**Editor's Note:** There is an increasingly vast number of helpful resources on understanding Artificial Intelligence and the technology's interaction with the legal profession. The resources referenced in this opinion are not exhaustive but are intended to serve as a starting point for a lawyer's understanding of the topic. Over time, this editor's note may be updated as additional resources are published that staff concludes would be beneficial to lawyers.

## Background

"Artificial intelligence" (hereinafter, "AI") is a broad and evolving term encompassing myriad programs and processes with myriad capabilities. While a single definition of AI is not yet settled (and likely impossible), for the purposes of this opinion, the term "AI" refers to "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments." Nat'l Artificial Intelligence Initiative Act of 2020, Div. E, sec. 5002(3) (2021). Said in another, over-simplified way, AI is the use of computer science and extensive data sets to enable problem solving or decision-making, often through the implementation of sophisticated algorithms. AI encompasses, but is not limited to, both extractive and generative AI,<sup>1</sup> natural language processing, large language models, and any number of machine learning processes.<sup>2</sup> Examples of law-related AI programs range from online electronic legal research and case management software to e-discovery tools and programs that draft legal documents (e.g., a trial brief, will, etc.) based upon the lawyer's input of information that may or may not be client-specific.

Most lawyers have likely used some form of AI when practicing law, even if they didn't realize it (e.g., widely used online legal

## Rules, Procedure, Comments

All opinions of the Ethics Committee are predicated upon the North Carolina Rules of Professional Conduct. Any interested person or group may submit a written comment—including comments in support of or against the proposed opinion—or request to be heard concerning a proposed opinion. The Ethics Committee welcomes and encourages the submission of comments, and all comments are considered by the committee at its next quarterly meeting. Any comment or request should be directed to the Ethics Committee at [ethicscomments@ncbar.gov](mailto:ethicscomments@ncbar.gov) no later than March 30, 2024.

## Public Information

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

research subscription services utilize a type of extractive AI, or a program that "extracts" information relevant to the user's inquiry from a large set of existing data upon which the program has been trained). Within the year preceding the date of this opinion, generative AI programs that *create* products in

response to a user's request based upon a large set of existing data upon which the program has been trained (e.g., Chat-GPT) have grown in capability and popularity, generating both positive and negative reactions regarding the integration of these technological breakthroughs in the legal profession.<sup>3</sup> It is unquestioned that AI can be used in the practice of law to increase efficiency and consistency in the provision of legal services. However, AI and its work product can be inaccurate or unreliable despite its appearance of reliability when used during the provision of legal services.<sup>4</sup>

#### **Inquiry #1:**

Considering the advantages and disadvantages of using AI in the provision of legal services, is a lawyer permitted to use AI in a law practice?

#### **Opinion #1:**

Yes, provided the lawyer uses any AI program, tool, or resource competently, securely to protect client confidentiality, and with proper supervision when relying upon or implementing the AI's work product in the provision of legal services.

On the spectrum of law practice resources, AI falls somewhere between programs, tools, and processes readily used in law practice today (e.g. case management systems, trust account management programs, electronic legal research, etc.) and nonlawyer support staff (e.g. paralegals, summer associates, IT professionals, etc.). Nothing in the Rules of Professional Conduct specifically addresses, let alone prohibits, a lawyer's use of AI in a law practice. However, should a lawyer choose to employ AI in a practice, the lawyer must do so competently, the lawyer must do so securely, and the lawyer must exercise independent judgment in supervising the use of such processes.

Rule 1.1 prohibits lawyers from "handl[ing] a legal matter that the lawyer knows or should know he or she is not competent to handle[.]" and goes on to note that "[c]ompetent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Comment 8 to Rule 1.1 recognizes the reality of advancements in technology impacting a lawyer's practice, and states that part of a lawyer's duty of competency is to "keep abreast of changes in the law and its

practice, including the benefits and risks associated with the technology relevant to the lawyer's practice[.]" Rule 1.6(c) requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Rule 5.3 requires a lawyer to "make reasonable efforts to ensure that the firm or organization has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer[.]" and further requires that "a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer[.]" Rules 5.3(a) and (b). The requirements articulated in Rule 5.3 apply to nonlawyer assistants within a law firm as well as those outside of a law firm that are engaged to provide assistance in the lawyer's provision of legal services to clients, such as third-party software companies. *See* 2011 FEO 6 ("Although a lawyer may use nonlawyers outside of the firm to assist in rendering legal services to clients, Rule 5.3(a) requires the lawyer to make reasonable efforts to ensure that the services are provided in a manner that is compatible with the professional obligations of the lawyer.").

A lawyer may use AI in a variety of manners in connection with a law practice, and it is a lawyer's responsibility to exercise independent professional judgment in determining how (or if) to use the product of an AI tool in furtherance of the representation of a client. From discovery and document review to legal research, drafting contracts, and aggregating/analyzing data trends, the possibilities for employing AI in a law practice are increasingly present and constantly evolving. A lawyer's decision to use and rely upon AI to assist in the lawyer's representation of a client is generally hers alone and one to be determined depending upon a number of factors, including the impact of such services, the cost of such services, and the reliability of the processes.<sup>5</sup> This opinion does not attempt to dictate when and how AI is appropriate for a law practice.

Should a lawyer decide to employ AI in the representation of a client, however, the lawyer is fully responsible for the use and impact of AI in the client's case. The lawyer must use the AI tool in a way that meets the competency standard set out in Rule 1.1.

Like other software, the lawyer employing an AI tool must educate herself on the benefits and risks associated with the tool, as well as the impact of using the tool on the client's case. Educational efforts include, but are not limited to, reviewing current and relevant resources on AI broadly and on the specific program intended for use during the provision of legal services. A lawyer that inputs confidential client information into an AI tool must take steps to ensure the information remains secure and protected from unauthorized access or inadvertent disclosure per Rule 1.6(c). Additionally, a lawyer utilizing an outside third-party company's AI program or service must make reasonable efforts to ensure that the program or service used is compatible with the lawyer's responsibilities under the Rules of Professional Conduct pursuant to Rule 5.3. Whether the lawyer is reviewing the results of a legal research program, a keyword search of emails for production during discovery, proposed reconciliations of the lawyer's trust account prepared by a long-time assistant, or a risk analysis of potential borrowers for a lender-client produced by an AI process, the lawyer is individually responsible for reviewing, evaluating, and ultimately relying upon the work produced by someone—or something—other than the lawyer.

#### **Inquiry #2:**

May a lawyer provide or input a client's documents, data, or other information to a third-party company's AI program for assistance in the provision of legal services?

#### **Opinion #2:**

Yes, provided the lawyer has satisfied herself that the third-party company's AI program is sufficiently secure and complies with the lawyer's obligations to ensure any client information will not be inadvertently disclosed or accessed by unauthorized individuals pursuant to Rule 1.6(c).

At the outset, the Ethics Committee does not opine on whether the information shared with an AI tool violates the attorney-client privilege, as the issue is a legal question and outside the scope of the Rules of Professional Conduct. A lawyer should research and resolve any question on privilege prior to engaging with a third-party company's AI program for use in the provision of legal services to a client, particularly if client-specific information will be provided to the AI program.

This inquiry is akin to any lawyer providing confidential information to a third-party software program (practice management, cloud storage, etc.), on which the Ethics Committee has previously opined. As noted above, a lawyer has an obligation to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of the client.” Rule 1.6(c). What constitutes “reasonable efforts” will vary depending on the circumstances related to the practice and representation, as well as a variety of factors including the sensitivity of the information and the cost or benefit of employing additional security measures to protect the information. Rule 1.6, cmt. [19]. Ultimately, “[a] lawyer must take steps to minimize the risk that confidential client information will be disclosed to other clients or to third parties” when using technology to handle, communicate, analyze, or otherwise interact with confidential client information. 2008 FEO 5; *see also* 2005 FEO 10; 2011 FEO 6.

The Ethics Committee in 2011 FEO 6 recognized that employing a third-party company’s services/technology with regards to confidential client information requires a lawyer to exercise reasonable care when selecting a vendor. The opinion states:

[W]hile the duty of confidentiality applies to lawyers who choose to use technology to communicate, this obligation does not require that a lawyer use only infallibly secure methods of communication. Rather, the lawyer must use reasonable care to select a mode of communication that, in light of the circumstances, will best protect confidential client information and the lawyer must advise effected parties if there is reason to believe that the chosen communications technology presents an unreasonable risk to confidentiality....A lawyer must fulfill the duties to protect confidential client information and to safeguard client files by applying the same diligence and competency to manage the risks of [technology] that the lawyer is required to apply when representing clients.

2011 FEO 6 (internal citations omitted). In exercising reasonable care, the opinion discusses a sample of considerations for evaluating whether a particular third-party company’s services are compatible with the lawyer’s professional responsibility, including:

- The experience, reputation, and stability

of the company;

- Whether the terms of service include an agreement on how the company will handle confidential client information, including security measures employed by the company to safeguard information provided by the lawyer; and
- Whether the terms of service clarify how information provided to the company will be retrieved by the lawyer or otherwise safely destroyed if not retrieved should the company go out of business, change ownership, or if services are terminated.

2011 FEO 6; *see* Rule 5.3. A proposed ethics opinion from the Florida Bar on a lawyer’s use of AI adds that lawyers should “[d]etermine whether the provider retains information submitted by the lawyer before and after the discontinuation of services or asserts proprietary rights to the information” when determining whether a third-party company’s technological services are compatible with the lawyer’s duty of confidentiality. *See* Florida Bar Proposed Advisory Opinion 24-1 (published Nov. 13, 2023).

Furthermore, this duty of reasonable care continues beyond initial selection of a service, program, or tool and extends throughout the lawyer’s use of the service. A lawyer should continuously educate herself on the selected technology and developments thereto—both individually and by “consult[ing] periodically with professionals competent in the area of online security”—and make necessary adjustments (including abandonment, if necessary) when discoveries are made that call into question services previously thought to be secure. 2011 FEO 6.

The aforementioned considerations—including the consideration regarding ownership of information articulated by the Florida Bar opinion—are equally applicable to a lawyer’s selection and use of a third-party company’s AI service/program. Just as with any third-party service, a lawyer has a duty under Rule 5.3 to make reasonable efforts to ensure the third-party AI program or service is compatible with the lawyer’s professional responsibility, particularly with regards to the lawyer’s duty of confidentiality pursuant to Rule 1.6. Importantly, some current AI programs are publicly available to all consumers/users, and the nature of these AI programs are to retain and train itself based on the information provided by any user of its program. Lawyers should educate themselves on the nature of any publicly available AI

program intended to be used in the provision of legal services, with particular focus on whether the AI program will retain and subsequently use the information provided by the user. Generally, and as of the date of this opinion, lawyers should avoid inputting client-specific information into publicly available AI resources.

### **Inquiry #3:**

If a firm were to have an AI software tool initially developed by a third-party but then used the AI tool in-house using law firm owned servers and related infrastructure, does that change the data security requirement analysis in Opinion #2?

### **Opinion #3:**

No. Lawyer remains responsible for keeping the information secure pursuant to Rule 1.6(c) regardless of the program’s location. While an in-house program may seem more secure because the program is maintained and run using local servers, those servers may be more vulnerable to attack because a lawyer acting independently may not be able to match the security features typically employed by larger companies whose reputations are built in part on security and customer service. A lawyer who plans to independently store client information should consult an information technology/cybersecurity expert about steps needed to adequately protect the information stored on local servers.

Relatedly, AI programs developed for use in-house or by a particular law practice may also be derivatives of a single, publicly available AI program; as such, some of these customized programs may continue to send information inputted into the firm-specific program back to the central program for additional use or training. Again, prior to using such a program, a lawyer must educate herself on the nuances and operation of the program to ensure client information will remain protected in accordance with the lawyer’s professional responsibility. The list of considerations found in Opinion #2 offers a starting point for questions to explore when identifying, evaluating, and selecting a vendor.

### **Inquiry #4:**

If a lawyer signs a pleading based on information generated from AI, is there variation from traditional or existing ethical obligations and expectations placed on lawyers signing

pleadings absent AI involvement?

#### Opinion #4:

No. A lawyer may not abrogate her responsibilities under the Rules of Professional Conduct by relying upon AI. Per Rule 3.1, a lawyer is prohibited from bringing or defending “a proceeding, or assert[ing] or controvert[ing] an issue therein, unless there is a basis in law and fact for doing so that is not frivolous[.]” A lawyer’s signature on a pleading also certifies the lawyer’s good faith belief as to the factual and legal assertions therein. *See* N.C. R. Civ. Pro. 11 (“The signature of an attorney...constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.”). If the lawyer employs AI in her practice and adopts the tool’s product as her own, the lawyer is professionally responsible for the use of the tool’s product. *See* Opinion #1.

#### Inquiry #5:

If a lawyer uses AI to assist in the representation of a client, is the lawyer under any obligation to inform the client that the lawyer has used AI in furtherance of the representation or legal services provided?

#### Opinion #5:

The answer to this question depends on the type of technology used, the intended product from the technology, and the level of reliance placed upon the technology/technology’s product. Ultimately, the attorney/firm will need to evaluate each case and each client individually. Rule 1.4(b) requires an attorney to explain a matter to her client “to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” Generally, a lawyer need not inform her client that she is using an AI tool to complete ordinary tasks, such as conducting legal research or generic case/practice management. However, if a lawyer delegates substantive tasks in furtherance of the representation to an AI tool, the lawyer’s use of the tool is akin to outsourcing legal work to a nonlawyer, for which the client’s advanced

informed consent is required. *See* 2007 FEO 12. Additionally, if the decision to use or not use an AI tool in the case requires the client’s input with regard to fees, the lawyer must inform and seek input from the client.

#### Inquiry #6:

Lawyer has an estate planning practice and bills at the rate of \$300 per hour. Lawyer has integrated an AI program into the provision of legal services, resulting in increased efficiency and work output. For example, Lawyer previously spent approximately three hours drafting standard estate planning documents for a client; with the use of AI, Lawyer now spends only one hour preparing those same documents for a client. May Lawyer bill the client for the three hours of work that the prepared estate documents represent?

#### Opinion #6:

No, Lawyer may not bill a client for three hours of work when only one hour of work was actually experienced. A lawyer’s billing practices must be accurate, honest, and not clearly excessive. Rules 7.1, 8.4(c), and 1.5(a); *see also* 2022 FEO 4. If the use of AI in Lawyer’s practice results in greater efficiencies in providing legal services, Lawyer may enjoy the benefit of those new efficiencies by completing more work for more clients; Lawyer may not inaccurately bill a client based upon the “time-value represented” by the end product should Lawyer not have used AI when providing legal services.

Rather than billing on an hourly basis, Lawyer may consider billing clients a flat fee for the drafting of documents—even when using AI to assist in drafting—provided the flat fee charged is not clearly excessive and the client consents to the billing structure. *See* 2022 FEO 4.

Relatedly, Lawyer may also bill a client for actual expenses incurred when employing AI in the furtherance of a client’s legal services, provided the expenses charged are accurate, not clearly excessive, and the client consents to the charge, preferably in writing. *See* Rule 1.5(b). Lawyer may not bill a general “administrative fee” for the use of AI during the representation of a client; rather, any cost charged to a client based on Lawyer’s use of AI must be specifically identified and directly related to the legal services provided to the client during the representation. For example, if Lawyer has generally incorporated AI

into her law practice for the purpose of case management or drafting assistance upon which Lawyer may or may not rely when providing legal services to all clients, Lawyer may not bill clients a generic administrative fee to offset the costs Lawyer experiences related to her use of AI. However, if Lawyer employs AI on a limited basis for a single client to assist in the provision of legal services, Lawyer may charge those expenses to the client provided the expenses are accurate, not clearly excessive, and the client consents to the expense and charge, preferably in writing. ■

#### Endnotes

1. For a better understanding of the differences between extractive and generative AI, *see* Jake Nelson, *Combining Extractive and Generative AI for New Possibilities*, LexisNexis (June 6, 2023), [lexisnexis.com/community/insights/legal/b/thought-leadership/posts/combining-extractive-and-generative-ai-for-new-possibilities](https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/combining-extractive-and-generative-ai-for-new-possibilities) (last visited January 10, 2024).
2. For an overview of the state of AI as of the date of this opinion, *see* *What is Artificial Intelligence (AI)?*, IBM, [ibm.com/topics/artificial-intelligence](https://www.ibm.com/topics/artificial-intelligence) (last visited January 10, 2024). For information on how AI relates to the legal profession, *see* *AI Terms for Legal Professionals: Understanding What Powers Legal Tech*, LexisNexis (March 20, 2023), [lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ai-terms-for-legal-professionals-understanding-what-powers-legal-tech](https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/ai-terms-for-legal-professionals-understanding-what-powers-legal-tech) (last visited January 10, 2024).
3. John Villasenor, *How AI Will Revolutionize the Practice of Law*, Brookings Institution (March 20, 2023), [brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/](https://www.brookings.edu/articles/how-ai-will-revolutionize-the-practice-of-law/) (last visited January 10, 2024); Steve Lohr, *AI is Coming for Lawyers Again*, *New York Times* (April 10, 2023), [nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html](https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html) (last visited January 10, 2024).
4. Larry Neumeister, *Lawyers Blame ChatGPT for Tricking Them Into Citing Bogus Case Law*, AP News (June 8, 2023), [apnews.com/article/artificial-intelligence-chatgpt-courts-e15023d7e6f4f099aa122437dbb59b](https://apnews.com/article/artificial-intelligence-chatgpt-courts-e15023d7e6f4f099aa122437dbb59b) (last visited January 10, 2024).
5. In certain circumstances a lawyer may need to consult a client about employing AI in the provision of legal services to that client, *see* Opinion #5, below.

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## Disciplinary Department (cont.)

Individuals who wish to note their concurrence with or opposition to these petitions should file written notice with the secretary of the State Bar, PO Box 25908, Raleigh, NC, before May 1, 2024. ■

# Amendments Approved by the Supreme Court

On December 20, 2023, the North Carolina Supreme Court approved the following rule amendments. (For the complete text of the amendments, see the Fall and Winter 2023 editions of the *Journal* or visit the State Bar website: [ncbar.gov](http://ncbar.gov).)

## Amendments to the Discipline and Disability Rules

27 N.C.A.C. 1B, Section .0100, Discipline and Disability of Attorneys  
 Amendments to Discipline and Disability Rules .0105, .0106, and .0113 provide the procedural framework for grievance reviews

for discipline issued to a respondent by the Grievance Committee. Statutory amendments enacted last year required the establishment of the review procedure.

## Amendments to the CLE Rules and Regulations

27 N.C.A.C. 1D, Section .1500, Rules Governing the Administration of the Continuing Legal Education Program  
 The amendment to CLE Rule .1501 revises the definition of an “ethics program” and adds a new “Registered Sponsor” definition.

## Comments

The State Bar welcomes your comments regarding proposed amendments to the rules. Please send your written comments by March 30 to Alice Neece Mine, The North Carolina State Bar, PO Box 25908, Raleigh, NC 27611.

## The Process

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

# Amendments Pending Supreme Court Approval

At its meetings on July 22, 2023, October 27, 2023, and January 19, 2024, the North Carolina State Bar Council voted to adopt the following rule amendments for transmission to the North Carolina Supreme Court for its approval. (For the complete text of the rule amendments, see the Summer, Fall, and Winter 2023 editions of the *Journal* or visit the State Bar website: [ncbar.gov](http://ncbar.gov).)

## Proposed Amendments to the Duties of the Secretary

27 N.C.A.C. 1A, Section .0400, Election, Succession, and Duties of Officers  
 The proposed amendments permit the secretary of the State Bar to delegate ministerial tasks, such as the certification of copies of court records, to other State Bar employees.

## Proposed Amendments to the Rules Governing the Authorized Practice Committee

27 N.C.A.C. 1D, Section .0200, Procedures for the Authorized Practice

Committee

Proposed amendments to the rules governing the Authorized Practice Committee improve clarity and ensure that the rules reflect the current procedures of the committee.

## Proposed Amendments to the Procedures for Fee Dispute Resolution

27 N.C.A.C. 1D, Section .0700, Procedures for Fee Dispute Resolution  
 The proposed amendments permit multiple methods for service of process of a letter of notice on a fee dispute respondent.

## Proposed Amendments to the Rules Governing the Specialization Program

27 N.C.A.C. 1D, Section .3500, Certification Standards for the Employment Law Specialty  
 The proposed rules, which are all new, establish the standards for the new specialty in employment law.

## Proposed Amendments to the Rules of Professional Conduct

27 N.C.A.C. 2, Section .0100, Client-Lawyer Relationship  
 The proposed amendments allow a lawyer to provide modest gifts to the client for basic living expenses if the lawyer is representing an indigent client *pro bono*, a court-appointed client, an indigent client *pro bono* through a non-profit legal services or public interest organization, or an indigent client *pro bono* through a law school clinic or *pro bono* program, subject to certain conditions. The proposed rule amendments were submitted to the Supreme Court on September 18, 2023. The Court has requested further information on the proposal. ■

## 2023 Fourth Quarter Random Audits

Judicial Districts 3 and 10 were randomly selected for audit for the fourth quarter of 2023. Lawyers randomly selected for audit are drawn from a list generated from the State Bar's database based upon judicial district membership designations in the database.

Judicial District 3 is composed of Pitt County. Two lawyers/firms were audited in this district.

Judicial District 10 is composed of Wake County. Thirty-eight lawyers/firms were audited in this district.

Following are the results of the 40 audits;

1. 45% failed to review bank statements and cancelled checks each month;
2. 40% failed to complete quarterly transaction reviews;
3. 35% failed to sign, date, and/or maintain reconciliation reports;
4. 28% failed to identify the client and source of funds, when the source was not the client, on the original deposit slip;
5. 25% failed to maintain images of cleared checks or maintain them in the required format;
6. 23% failed to:

- complete quarterly reconciliations;
  - identify the client on confirmations of funds received/dispensed by wire/electronic/online transfers;
7. 20% failed to complete monthly bank statement reconciliations;
  8. 15% failed to escheat unidentified/abandoned funds as required by GS 116B-53;
  9. 13% failed to take the required one-hour trust account management CLE course;
  10. up to 10% failed to:
    - prevent over-disbursing funds from the trust account resulting in negative client balances;
    - prevent bank service fees being paid with entrusted funds;
    - remove signature authority from employee(s) responsible for performing monthly or quarterly reconciliations;
    - indicate on the face of each check the client from whose balance the funds were withdrawn;
    - promptly remove earned fees or cost reimbursements;
    - provide written accountings to clients at

the end of representation or at least annually if funds were held more than 12 months;

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

11. Areas of consistent rule compliance:

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

### Letters of a Lawyer (cont.)

writer, at home in a law library, or a fashioner of trial theories and pleadings, from facts that are available to you, which other men will use in action; or you may be a strategist at headquarters, a skillful interviewer of witnesses, an excellent man in settling cases. A lawyer plays many parts, of which that of trial advocate is perhaps the most glamorous one. This may be of diminishing importance in the profession, as the technique of pre-trial discovery, pre-trial conference and settlement procedure becomes increasingly important in the practice of law.

The lawyer in the library, in the office, in conference and in the out-of-court preparation for trial can be as much the artist as the skilled advocate in his presentation of evidence and cross-examination and argument to the court

and jury. A brief can be a work of art, while the carefully and imaginatively-drawn instrument, such as a will, or declaration of trust, may benefit generations yet unborn.

Preparation for trial can be as fascinating as detective work in the Sherlock Holmes manner. It involves the solution of problems of proof, the seeking for clues, the looking for witnesses and the interviews with them when found. It means asking the right questions and knowing the right questions to ask. It means the formation and discarding of theories of the case and the final establishment of the chosen theory from the facts solicited by the investigation and preparatory work, or, perhaps, the final discovery that your client has no case.

If you find that, after careful investigation and thorough shuffling of possible theories, your client has no case, you must be prepared

to give him the advice that his situation demands. If he is a claimant, you will advise him not to start a lawsuit. If he is a defendant, you will advise him, as a rule, to try and settle his case, or, rather, the case against him.

Not always, though, for there are some cases where the facts in the law seem to be against your client, and yet it will be better for him to take a chance with a jury or a court than to pay without a fight.

In all these, and similar cases where your client has a strong element of justice on his side, even though the law is against him, it might be well to let him have his day in court. It is in this type of case that the lawyer is called upon to exercise all the art of advocacy, and all the forensics skills that he possesses. It is this kind of case that you may make reputation of a young lawyer. ■

## Client Security Fund Reimburses Victims

At its January 16, 2024, meeting, the North Carolina State Bar Client Security Fund Board of Trustees approved payments of \$44,420.00 to 14 applicants who suffered financial losses due to the misconduct of North Carolina lawyers.

The payments authorized were:

1. An award of \$1,500 to a former client of Brooke M. Crump of Mount Gilead. The board determined that the client retained Crump for legal services regarding her mother's estate and to obtain cemetery privileges, but Crump failed to provide any meaningful services for the fee paid prior to her disbarment. Crump was disbarred on December 9, 2022. The board previously reimbursed 12 other Crump clients a total of \$37,430.

2. An award of \$1,500 to a former client of Charles M. Kunz of Durham. The board determined that the client retained Kunz to handle a DWI case. Kunz failed to make any filings on the client's behalf and failed to provide any meaningful legal services for the fee paid. Kunz knew or should have known that he could not complete the representation, knowing that he intended to surrender his license due to his misappropriation of entrusted funds and engaging in multiple instances of neglect and dishonesty. Kunz was disbarred on April 14, 2023, and then committed suicide on April 21, 2023. The board previously reimbursed ten other Kunz clients a total of \$60,890.

3. An award of \$6,500 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to assist his relative with her immigration case. Kunz was paid his \$8,000 quoted fee. Kunz filed the I-130, Petition for Alien Relative, but failed to provide any other meaningful legal services for the remainder of the fee paid prior to his disbarment and passing.

4. An award of \$200 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to handle a traffic ticket. The client paid a \$200 fee, but Kunz failed to appear at the court hearing

and failed to resolve the ticket. Kunz provided no meaningful legal services for the fee paid prior to his disbarment and passing.

5. An award of \$3,750 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to assist his fiancé in filing an immigration petition for alien fiancé and an application for permanent residence. Kunz charged a fee of \$6,500 for his services plus \$1,500 for his travel expenses to meet the couple in Cancun, Mexico. Kunz was paid \$3,000 towards the fee and \$1,500 for the travel expenses; however, Kunz failed to file anything on the client's behalf and failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

6. An award of \$4,435 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to assist him with his immigration status. The client paid the quoted legal fee and filing fee, but Kunz failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

7. An award of \$2,000 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to appeal her district court criminal matter to superior court. Kunz filed the notice of appeal, but it was dismissed due to the judgment never having been entered in district court. Kunz failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

8. An award of \$7,000 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to assist her with her immigration status. The client paid the quoted \$7,000 fee. Kunz filed an I-130, Petition for Alien Relative, which was approved, as well as an I-485, Application to Register Permanent Resident, and an I-765, Application for Employment Authorization, which were both denied. Subsequent counsel determined that the client was not eligible for permanent status or a work permit, so Kunz wasted the client's time and money by

filing the applications. Kunz engaged in dishonesty and failed to provide meaningful legal services for the fee paid prior to his disbarment and passing.

9. An award of \$1,000 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to petition for her removal from the sex offender registry in NC. The client paid the quoted \$1,000 fee. Kunz failed to perform any meaningful legal services for the fee paid and subsequent counsel discovered that the client was never placed on the NC sex offender registry. Kunz engaged in dishonest conduct and failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

10. An award of \$1,500 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to file suit and represent her in a small claims action seeking the return of her cat. Kunz charged and was paid an initial fee of \$350 for filing the small claims suit and paid \$1,500 to handle the trial. Kunz filed both the original complaint and the appeal and attended the arbitration hearing. The trial date was set for January 5, 2023, but Kunz insisted it was for a later date, causing the client and Kunz to miss the court date and the claim being closed. Kunz then lied to the client, stating the defendant would return her cat, and then became unresponsive. Kunz was dishonest with his client and failed to attend the trial for the \$1,500 fee, therefore providing no meaningful legal services for that portion of the fee paid prior to his disbarment and passing.

11. An award of \$8,000 to a former client of Charles M. Kunz. The board determined that the client's parents retained Kunz to handle his immigration violation related to criminal charges against him. Kunz failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

12. An award of \$500 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to prepare and file an expungement petition on his behalf.

Kunz charged and was paid the quoted \$500 fee. Kunz failed to follow through with the petition and agreed to refund the fee during the ACAP Fee Dispute process; but he passed away prior to making the reimbursement. Kunz failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

13. An award of \$1,035 to a former client of Charles M. Kunz. The board determined that the client retained Kunz to assist him with his wife's immigration status and filing of an I-130, Petition for Alien Relative. The client paid the quoted legal fee and filing fee. Kunz filed the petition and paid the fee, but failed to provide any supporting documentation or follow-up, so the application was

denied. Kunz failed to provide any meaningful legal services for the fee paid prior to his disbarment and passing.

14. An award of \$5,500 to former clients of Charles M. Kunz. The board determined that a couple retained Kunz to represent one partner at removal proceedings; to file an I-130, Petition for Alien Relative, plus permanent residency, work authorization, and other required documents; and to assist the other partner with a divorce from her former husband. The couple was charged and paid a fee of \$9,500 for the immigration services and \$1,500 for the divorce, with the USCIS fees and costs to be paid separately by them. Kunz handled the divorce and some of the immigration services, but failed to handle all

the immigration filings for the fee paid prior to his disbarment and passing.

### Funds Recovered

It is standard practice to send a demand letter to each current or former attorney whose misconduct results in any payment from the fund, seeking full reimbursement or a confession of judgment and agreement to a reasonable payment schedule. If the attorney fails or refuses to do either, counsel to the fund files a lawsuit seeking double damages pursuant to N.C. Gen. Stat. §84-13, unless the investigative file clearly establishes that it would be useless to do so. Through these efforts, the fund was able to recover a total of \$1,028.54 this past quarter. ■

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## Upcoming Appointments

Anyone interested in being appointed to serve on a State Bar board, commission, or committee should email State Bar Executive Director Alice Neece Mine at [amine@ncbar.gov](mailto:amine@ncbar.gov), or Lanice Heidbrink at [lheidbrink@ncbar.gov](mailto:lheidbrink@ncbar.gov), to express that interest, being sure to attach a current resume. Please submit before April 5, 2024. The council will make the following appointments at its January meeting:

**Disciplinary Hearing Commission** (three-year terms)—There are three appointments to be made by the State Bar Council. Maya Engle and Shannon Joseph are not eligible for reappointment. William Oden is eligible for reappointment.

The Disciplinary Hearing Commission (DHC) is an independent adjudicatory body that hears all contested disciplinary cases. It is composed of 18 North Carolina lawyers. Twelve of the lawyers are appointed by the State Bar Council; two are appointed by the General Assembly upon the recommendation of the president *pro tempore* of the Senate; two are appointed by the General Assembly upon the recommendation of speaker of the House; and two are appointed by the chief justice of the North Carolina Supreme Court. The eight public members of the DHC are appointed by the

governor and the General Assembly: four are appointed by the governor; two are appointed by the General Assembly upon the recommendation of the president *pro tempore* of the Senate; and two are appointed by the General Assembly upon the recommendation of speaker of the House. The DHC sits in panels of three: two lawyers and one public member. In addition to disciplinary cases, the DHC hears cases involving contested allegations that a lawyer is disabled and petitions from disbarred and suspended lawyers seeking reinstatement.

The statutory amendment adding the appointment of lawyers to the DHC by the General Assembly and the Chief Justice was recently enacted. To date, three appointments have been made by the General Assembly and one appointment has been made by the chief justice. The terms of four public members of the DHC will expire on June 30, 2024. Two of the public members are eligible for reappointment; two are not eligible. These appointments are made by the governor and the General Assembly upon the recommendations of the Senate president *pro tempore* and the speaker of the House. Letters will be sent to the offices of these officials to notify them of the upcoming appointments. ■



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# John B. McMillan Distinguished Service Award

## Paul A. Meggett

Paul A. Meggett received the John B. McMillan Distinguished Service Award on October 23, 2023, at the University of North Carolina System Attorneys' Conference in Boone, North Carolina. Past North Carolina State Bar President Darrin D. Jordan presented the award. Anthony di Santi, a previous recipient of the award and a past-president of the State Bar, also participated in the award presentation.

Mr. Meggett is a graduate of the sixth class of the North Carolina School of Science and Math. He earned his bachelor of science from North Carolina State University and his juris doctor from UNC School of Law. After graduating from law school, Mr. Meggett clerked for Chief Justice Burley B. Mitchell Jr. of the North Carolina Supreme Court. Mr. Meggett was one of the first African American law graduates to clerk on the North Carolina Supreme Court and helped lay the foundation for increasing opportunities for minorities.

During his legal career, Mr. Meggett has served in various in-house counsel roles for the University of North Carolina, the UNC Health Care System, and Appalachian State

University, where he currently serves as general counsel.

Mr. Meggett has devoted a substantial portion of his career to helping new members of the legal profession. He has taught law as an adjunct professor at the University of North Carolina School of Law and as an associate professor and interim dean for the Charlotte School of Law. He has worked to increase diversity and inclusion in the North Carolina Bar. He is a cornerstone member of the North Carolina Minority Executive Roundtable and a regular participant in the State Bar's Minority Outreach Conference.

Mr. Meggett served on the North Carolina State Bar's Diversity Task Force and was an advisory member of the Demographics and Outreach Subcommittees of the North Carolina State Bar's Issues Committee. Mr. Meggett has spent over two decades serving on committees and boards of the North Carolina Bar Association including the Judicial Independence and Integrity Committee, Legislative Advisory Committee, Law School Liaison Committee, Joint Diversity Task Force, Minorities in the Profession Committee, Effectiveness and Qual-

ity of Life Committee, and Board of Governors. He was presented with the Citizen Lawyer Award in 2009 by the NCBA.

Mr. Meggett is involved in public service and nonprofit work in the places where he lives. He has served as a hearing officer for the Charlotte Housing Authority, served and chaired the Town of Waxhaw Parks, Culture, and Recreation Advisory Board, and served on the boards of the Justice Initiatives, Orange Congregations in Mission, and Union Symphony Society, among others. He has served as a committee member of North Carolina State University's Park Scholarship Regional Selection Committee since 2001.

## Nominations Sought

Members of the State Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession for the John B. McMillan Distinguished Service Award. Information and the nomination form are available online: [ncbar.gov/bar-programs/distinguished-service-award](http://ncbar.gov/bar-programs/distinguished-service-award). Please direct questions to Suzanne Lever at [slever@ncbar.gov](mailto:slever@ncbar.gov). ■

## Legal Specialization Profile (cont.)

taught. At the time, she was the sole IP professor and remains largely responsible for growing Wake Forest's intellectual property curriculum. Now there are five faculty members that teach IP courses, including Professor Rose. Witnessing, and being part of, the growth of our IP offerings is nothing I could have imagined.

**Q: If you could go back and give your 18-year-old self one piece of advice, what would it be?**

Wow. There are so many things I would tell my 18-year-old self. If I had to choose only one piece of advice, it would be to trust your gut. You know yourself better than anyone else.

**Q: Tell me about some of the most influential people in your life and how they impacted you.**

There are too many influential people in my life to name. I've really been blessed in that way. What I will say is that the most influential people are those that seemed to take an interest in me or my career when they were under no obligation to do so. For those people, I will be eternally grateful.

**Q: Can you share any inspiring quotes or mantras that help keep you motivated?**

"So be it. See to it." Octavia Butler is responsible for that gem.

**Q: What is your next goal in life?**

There are too many to list. I just hope I have time to reach them.

**Q: Is there a question you wish I had asked you, and how would you have answered?**

Anything that can be answered with, "Go Deacs!" ■

*For more information on the State Bar's specialization programs, visit us on the web at [nclawspecialists.gov](http://nclawspecialists.gov).*

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