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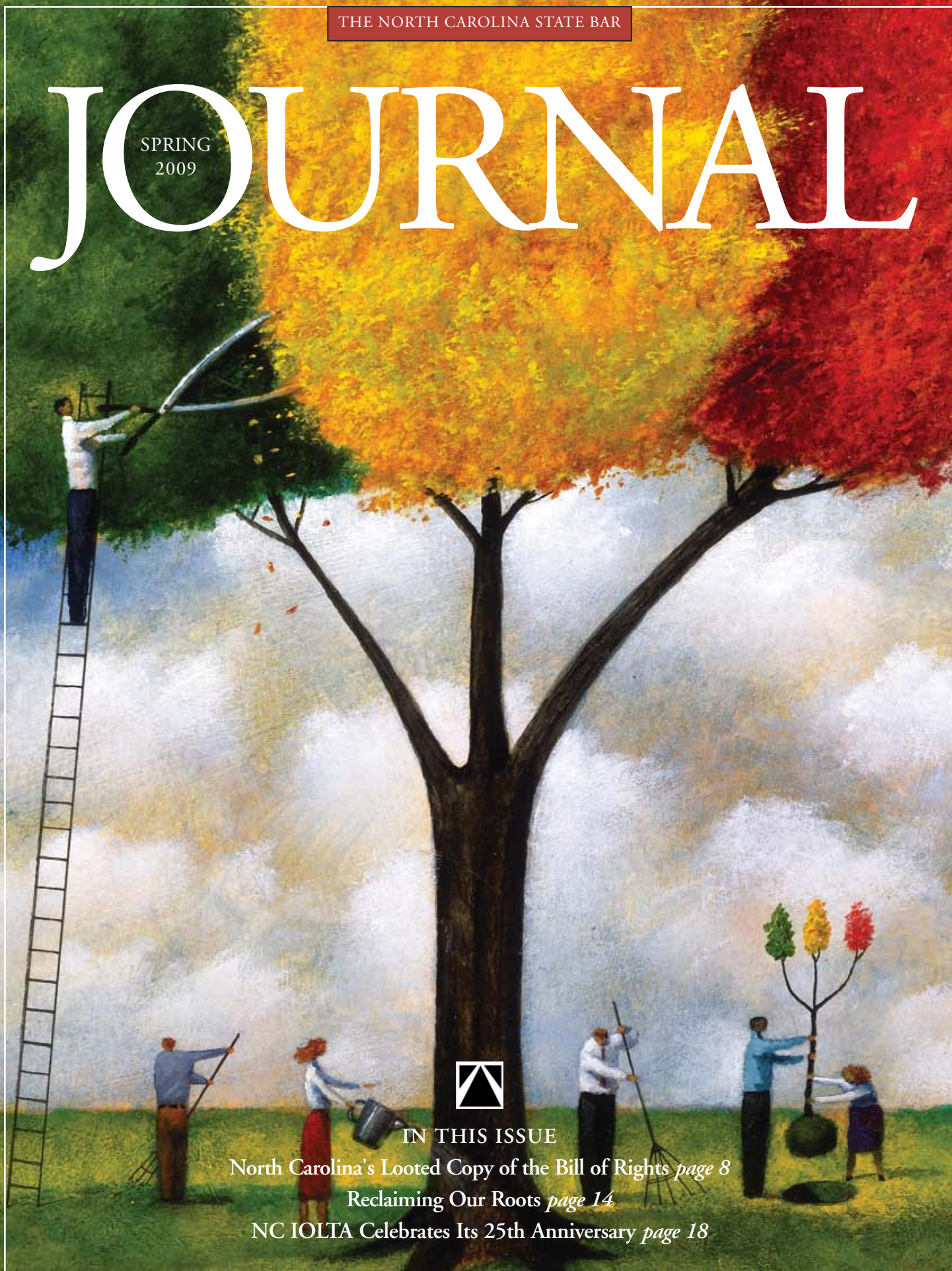


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Lost and Found: The Curious Journey of North Carolina's Looted Copy of the Bill of Rights

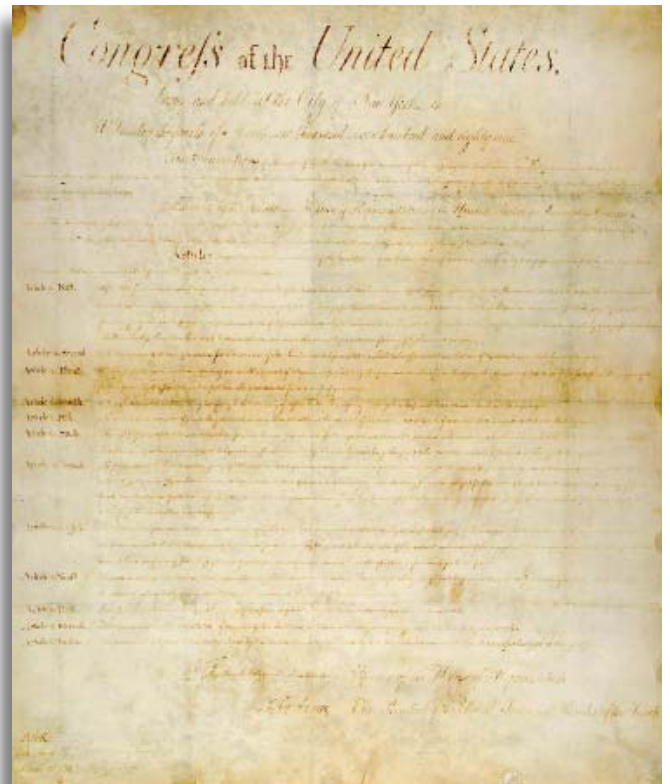
BY GOVERNOR MIKE EASLEY

"The document you are attempting to sell, though clearly the property of the State

of North Carolina, is not important enough to engage in controversy over. So long as it remains away from the official custody of North Carolina, it will serve as a memorial of individual theft. Since this fact must be clear to anyone acquainted with history and law, not to mention honor, it is interesting to note the present whereabouts of the

document and to speculate on how long the joy of illegitimate possession can hold out against scruples arising from intelligent consideration of the facts involved."

—Robert B. House, NC Historical Commission Secretary,
to a broker wanting to sell North Carolina
its original copy of the Bill of Rights, 1925



On a chilly February afternoon in 2003 the only scheming on my mind was how to balance the state budget and bring North Carolina out of its economic slump. It was a Friday. I was working hard to write a strong and convincing State of the State address.

When I got off the telephone with Pennsylvania Gov. Ed Rendell, there was a new challenge for North Carolina to pursue. It would take more than five years, but

in the end a team of state and federal lawyers and law enforcement officials would win the return of North Carolina's copy of the original Bill of Rights. It had been stolen away from the Capitol during Gen. William Sherman's April 1865 Union occupation of Raleigh.

It might have been a "ripped from the headlines" plot for a TV drama. There was a mysterious disappearance, a series of shady contacts, characters entangled in corruption investigations, a dramatic undercover sting operation, and impassioned courtroom battles. But I am getting a little ahead of the story.

At the dawn of the American democracy, with a letter from President George Washington dated October 2, 1789, each of the original 13 states received a handwritten copy of the original first 12 constitutional amendments passed by Congress. Ten of those, which became the Bill of Rights, were ratified by the states.

Two hundred four years later Rendell, who had barely been governor a month, was calling me on behalf of the National Constitution Center in Philadelphia. He was a board member and said the center had been offered an opportunity to buy an original copy of the Bill of Rights. A handwriting expert had earlier determined that the Bill of Rights in question had probably been North Carolina's original copy. But Pennsylvania had no interest in paying \$5 million for the document if North Carolina was going to claim rightful ownership.

Did North Carolina want to share in the purchase of the purloined parchment? No, and history made clear what course to take. I wanted our Bill of Rights returned to North Carolina where it rightfully belonged. I waited several days to call him back as I set in motion what I considered the best option to make sure we recovered our Bill of Rights.

Civil War Theft

During the 1865 Union occupation of Raleigh, William Sherman's army showed contempt for the North Carolina Capitol, galloping through the halls on horseback and destroying nearly everything they did not steal or plunder. One Union soldier from Ohio snatched the Bill of Rights from the wall of what later became my office. He took it, not to protect the sanctity of the document, but to personally cash in on its

value. The occupiers tried to burn the historic Capitol, setting fires in the rotunda. Since it was rebuilt completely of stone, following a devastating fire about 30 years earlier, the Capitol still survives today.

This was not the first time North Carolina had been offered the opportunity to buy our own property. In 1897 Charles Shotwell, an Indiana businessman who said he purchased North Carolina's Bill of Rights from that Union soldier some 30 years earlier, offered to sell it back to North Carolina. While the state did respond, Shotwell and the state could not agree to terms.

In 1925 Mr. Shotwell, apparently in need of cash, approached state officials again with an offer to sell the Bill of Rights. Robert B. House, secretary of the state Historical Commission who would later lead the University of North Carolina, replied unflinchingly that the state would never pay for something that rightfully belongs to all North Carolinians. "So long as it remains away from the official custody of North Carolina, it will serve as a memorial of individual theft," House replied to the New York City broker in the scheme.

For another 75 years the document disappeared into obscurity. Then, in October 1995, a Washington, DC, lawyer contacted then Cultural Resources Secretary Betty McCain with a breathless offer to have the state buy its Bill of Rights, with an asking price of between \$3 million and \$10 million. If the state did not act quickly, those who had the Bill of Rights had other "alternatives available to them." Those alternatives included wealthy collectors in Hong Kong and the Middle East with "the kind of money... that is burning holes in people's pockets—people for whom possession of a historic US document would be like a small military victory."

While there was brief consideration of using private funds to make the purchase, the state's previous stand of refusing to pay for its own property prevailed.

Scheme is Hatched

After I received the initial call from Gov. Rendell, I decided it was time to bring these offers to an end. Once and for all this founding document of our democracy needed to be declared North Carolina's own and returned to the place from where it had been unlawfully taken.

On the table were three options: have the National Constitution Center purchase the Bill of Rights with North Carolina's agreement and arrange to have the document displayed in the state on a regular basis while the center would be its permanent home; have North Carolina contribute to the purchase and work out display and other arrangements; or have North Carolina claim rightful ownership and devise a method to bring the Bill of Rights back to the people of the state, no charge.

I could not stop thinking of my days prosecuting drug traffickers when we used "sting operations." I assembled my legal team, determined we would not buy back our own public record. But we might pretend to buy it. We would enlist the help of the National Constitution Center, Pennsylvania and federal officials, and set out to bring our Bill of Rights home. Like me, Gov. Rendell had once been a district attorney. I knew he shared my sense of justice but I was reluctant to involve him since it would put him in an awkward position with his board, and his state.

We brought together Reuben Young, Andy Vanore, and other lawyers from my office, the NC Attorney General's Office, the US Attorney's Office, the FBI, and the US Marshal's Service. In 1977 the NC Supreme Court ruled, in *North Carolina v. B.C. West Jr.*, that public ownership of records could never be broken. Because of that decision, an August 26, 1790, letter from President George Washington to the governor and NC Council of State welcoming North Carolina into the Union upon ratification of the Constitution, was returned to the state. The law was on our side.

We wanted to set up a sting, to be planned and executed by federal agents, but there was some initial trepidation on the part of the National Constitution Center staff. There was little question that the offer was genuine and they did not want to scare off the sellers. I made it clear: "Under no circumstance will North Carolina transfer title of the document to anyone," I instructed my legal staff.

Within just a few days the plan was ready to go into action with the federal authorities, state officials in Pennsylvania and the National Constitution Center, which agreed to pose as the willing buyer. Everyone had a role to play, especially the US Attorney's Office and the FBI.

The Sting

Early on the afternoon of Tuesday, March 18, 2003, in the law offices of Dilworth Paxson on the 32nd floor of the Mellon Bank Center, a 54-story skyscraper in downtown Philadelphia, the deal went down. FBI Agent Bob Wittman, a documents expert, posed as a wealthy philanthropist who made millions on the Internet, wanting to buy an original copy of the Bill of Rights and make it the crowning icon for the soon-to-open National Constitution Center. Nobody did a better job of role playing than FBI Agent Wittman. Although he was not an expert in ancient or archived historical pieces, he knew more than enough to play the part of a knowledgeable collector. Dealers at this level are sophisticated and could easily be spooked by even a legitimate buyer. One slip of the tongue, a wrong gesture or a slight pause could give the plot away. Wittman, as good as he was, had to feel the pressure knowing that if he made even a tiny mistake, the original copy of the Bill of Rights might not surface again during his lifetime.

For this first meeting, lawyers for Dilworth Paxson drew up stacks of legal documents for transfer of the Bill of Rights to make the charade appear even more authentic. Wittman and the other federal agents in the suite were armed with a \$4 million cashiers check and a civil seizure warrant, ready to spring as soon as the Bill of Rights appeared. John L. Richardson, representing Wayne L. Pratt, Inc., a prominent antiques dealer, looked over the check and dialed up a courier who was in a nearby coffee shop, to bring the document, uncereemoniously stuffed into a plain cardboard box, up to the office. Pratt was well known to even amateur document enthusiasts for his appearances as an appraiser on the popular PBS feature "Antiques Roadshow."

The document was delivered to the meeting room. Steve Harmelin, a lawyer who represented the Constitution Center, along with one of the center's document experts, examined the parchment and summoned Wittman into the room. Everyone was surprised that any document appeared at the initial meeting. Playing the part to the hilt, Wittman spoke admiringly of how delighted he was to have such a treasure to mark the center's opening. It was the authentic Bill of Rights, right there on the table in front of him.

As the "buy" was about to take place, Wittman made sure he was in a position to block anyone from escaping or damaging the document. Harmelin made an excuse to leave the room and knocked on the door of the office where the FBI agents were ensconced. With that signal the other FBI agents stormed into the room. There were no shots and no arrests. The only thing taken into custody was the Bill of Rights. Back in Raleigh at the executive mansion, the intercom suddenly squawked: "Governor, Reuben Young on line three, Young on three." I ended the call I was on and picked up the phone. "Governor, we got it," Young said. "What, got what?" I asked. "The document, they brought the document and the FBI seized it right there on the spot."

"Naw," I replied. "You know they weren't crazy enough to bring it to the first meeting." Reuben confirmed: "Apparently so. But we still have a long way to go. The US Attorney's Office and Attorney General Cooper say this will take a while to get sorted out on the legal side." It seemed to me that it was our Bill of Rights. Nobody could dispute that! "It's not like there are 10,000 of these documents being sold on Ebay. They know it's ours so why don't they just give it to us?" Reuben calmly assured me that it would all work out and I would do well to show some patience.

With great fanfare, we all announced the successful sting the next day. News releases came from my office, the US Attorney's Office in Raleigh, and the FBI in Philadelphia. We all took credit and nobody seemed to mind. The television reports and newspaper headlines declared "Bill of Rights Recovered." Everyone involved will have their own special version of the success of that day. None of us had every detail for all the events, each of which was critical to the success. There was much celebration and plenty of well-deserved credit to go around. "North Carolina's stolen Bill of Rights has been out of state for nearly 140 years, but never out of mind," I said at the announcement of the successful recovery. "It is a historic document and its return is a historic occasion. I just want to make sure every North Carolina child has a chance to see it." Attorney General Roy Cooper echoed the creed that we had steadfastly adhered to since 1897. "North Carolinians should not have to pay a penny for what is rightfully

ours. It'll be nice to put it back where it belongs." In Philadelphia, Gov. Rendell, FBI Agent Jeffrey Lampinski, and US Attorney Patrick Meehan posed for a photo-op with our Bill of Rights. But it was the US Attorney in North Carolina that was going to have to do the heavy lifting.

Legal Battles Continue

The dramatic events of that March day were not an end, but only another skirmish. Those who thought they had claim to our Bill of Rights fought it out in court to try to get some cash from their ill gotten booty.

But for Pratt and his partner Robert Matthews, other unrelated events would soon make their legal challenges for the Bill of Rights more difficult. Pratt, who had shops in Woodbury, Connecticut, and Nantucket, Massachusetts, was a bit more than the cheerful antiques dealer and history buff he seemed. Soon after the Bill of Rights was seized, he got into trouble with the federal government on tax charges connected with the purchase of a Washington, DC, condominium that belonged to former Republican Connecticut Gov. John G. Rowland. The related corruption scandal forced Rowland from office. Pratt pleaded guilty to the federal tax charges. In July 2007 Pratt, 64, died of complications following heart surgery. Matthews, a wealthy real estate developer, also was embroiled in the troubles of Gov. Rowland. He was a close friend of Rowland's and, according to news reports, had received millions in contracts from the Connecticut state government.

Initially both Pratt and Matthews challenged the government's action in seizing the Bill of Rights and North Carolina's claim of rightful ownership and even its authenticity. "Whatever the document is, and wherever it has been, its authenticity and ownership have yet to be established," said a prepared March 28, 2003, statement from Hugh Stevens and Amanda Martin, Raleigh lawyers who represented Pratt. "We and our client look forward to the resolution of these important questions." In September 2003 Pratt withdrew his claim and agreed to donate the Bill of Rights to the state. Matthews and his lawyer argued that the document was the spoils of war and North Carolina, by joining the Confederacy, could no longer claim ownership. The arguments never found favor in the courts.

Handwriting Deciphered

So, how to authenticate the document? North Carolina had an ace in the hole, our archivist George Stevenson. By April the Bill of Rights was in Raleigh, under federal custody. Stevenson is an expert in colonial and post-Revolutionary War documents and familiar with the handwriting at the time, particularly the script of key North Carolina figures of the day. It seems that both the letter from President Washington that accompanied the Bill of Rights and the Bill of Rights were endorsed by the same person. At the time, official documents usually were endorsed to mark the date of their official receipt. Stevenson noted that back in those days it would have been endorsed by either John Hunt, the principal clerk of the NC House of Commons, or Sherwood Haywood, the principal clerk of the state Senate. But, when he reviewed the Bill of Rights that first week of April, the handwriting did not match either. Stevenson went back to the archives and found an endorsement by a clerk on a 1794 copy of the 11th amendment to the US Constitution and another notation on a letter from Washington to Gov. Samuel Johnston. They were all the same. The handwriting belonged to Pleasant Henderson, who in 1789 was the engrossing clerk for the state House and had been private secretary to Alexander Martin (who served as governor from 1789 through 1792). Stevenson swore in an affidavit that it was Henderson who signed the Bill of Rights and was "without question the original copy of the Bill of Rights received by the state."

Victories in the Courtroom

By September 2003 Pratt decided his legal challenges to North Carolina's claim on our Bill of Rights were not worth continuing. He cut a deal with the feds and dropped his claim. But Matthews did not want any part of the deal. Through his lawyers, Matthews said he deserved a \$15 million tax deduction for a charitable contribution. While Matthews continued to file legal actions to stake his claim, none found any traction. At one point two Raleigh lawyers representing Matthews came to meet with me. They wanted to know what the state wanted out of the matter. I told them, as far as I was concerned, I just wanted the Bill of Rights back for the state. If there was to be



Governor Mike Easley poses with North Carolina's original copy of the Bill of Rights. Photo courtesy NC Department of Cultural Resources.

any further legal action, that was up to the US Attorney's Office and our attorney general.

On August 4, 2005, US District Judge Terrence W. Boyle put the case to rest. "The United States Marshal for the Eastern District of North Carolina, the present custodian of the document, is hereby ORDERED to return possession of the copy of the Bill of Rights to the state of North Carolina by immediately delivering it to the governor of North Carolina or his legal designee. Any other issues pending before the court are rendered moot." On June 22, 2006, the Fourth Circuit Court of Appeals upheld the order. But that was not the end, and legal challenges moved to the North Carolina courts. The legal cloud over ownership of North Carolina's copy of the Bill of Rights finally was lifted by state superior court judge Henry W. Hight Jr. on March 24, 2008, with an order of summary judgment. "North Carolina's original copy of the Bill of Rights is a public record of the state of North Carolina, that the state has never abandoned, conveyed, or in any way relinquished its ownership."

Finally, the Bill of Rights

For years we had fought, thought, and schemed to retrieve that document that we call the Bill of Rights. And I did it because it was ours, we were entitled to it, and it was

my responsibility as governor. But the day in 2005 when the judge ordered that "it be returned by the court to the governor of North Carolina immediately" was special. I was in Raleigh at the executive mansion and received a call that US Attorney Frank Whitney was bringing me the Bill of Rights. We met at the state Capitol from which it was stolen 140 years prior. My son was visiting from college. I fetched him, state Senate President Pro Tempore Marc Basnight of Manteo, and the state's Speaker of the House of Representatives, to accept the document with me. As the FBI agents uncovered the document it reminded me, more vividly than ever, how precious these rights are. My eyes washed over the calligraphy, the elaborate pen and ink work, and I began to read "The right of the people to be secure in their persons, houses, papers, and effects. ..." I was humbled by thoughts of how many had sacrificed so much, at home and abroad, to guarantee these unusually broad freedoms. I thought about the courage it took to guarantee these rights in unpopular causes, the judges, lawyers, soldiers, and ordinary citizens, so many who had suffered ridicule in defense of these rights. Then I reached slowly and touched it, the same Bill of Rights that George Washington touched. I was filled with a sense of pride and patriotism. I was momentarily motionless. "Governor, please,



State Archivist Dick Lankford smiles in the background as young and old alike enjoy a glimpse of North Carolina's original copy of the Bill of Rights.

the acid from your finger is bad for the document," an agent admonished me, as he placed it in a special case for display. As we walked with the Bill of Rights into the old Senate Chamber in the historic Capitol, where the news media had been hurriedly assembled, I thought: "This is special. Everybody should be able to see this and think about what it means."

"Every Child has a Chance to See It"

If rock stars and Broadway shows can go on the road, why not North Carolina's copy of the Bill of Rights? We did not go through an elaborate sting and all of this legal wrangling to have this cornerstone of our history, our liberty, gathering dust in a hermetically sealed archival shelf. Let's put the Bill of Rights on tour. And that is what we did. In 2007 the Bill of Rights hit the road for a tour of seven North Carolina cities. The state Department of Cultural Resources prepared lesson plans to enhance the experience for school children and also produced a special DVD for classroom use.

The document traveled with the tightest security, accompanied by officers of the Highway Patrol. Each location of the tour was selected to highlight the freedoms the Bill of Rights guaranteed and thousands turned out to see this wonderful document. At each site, the display was accompanied by a lecture highlighting certain aspects of the Bill of Rights.

- Wilmington, home of the state's and one of the nation's oldest synagogues, to highlight freedom of religion.

- Fayetteville, displayed in the 82nd Airborne Museum, a location that was once the site of the *Fayetteville Observer*, North Carolina's oldest continually published daily newspaper (freedom of the press).

- Edenton, displayed in North Carolina's oldest courthouse and where, on October 25, 1774, Penelope Barker organized the Edenton Tea Party, one of the earliest organized women's political actions in United States history. At the home of Elizabeth King, 51 women protested "taxation without representation" (freedom of speech).

- Greensboro, near the site of the historic battle of Guilford Courthouse (the right to bear arms).

- Charlotte, where on May 31, 1775, the Mecklenburg Resolves declared independence from Britain and allegiance to the Continental Congress (the rights to assemble and petition the government).

- Asheville, at the UNC-Asheville campus where former Supreme Court Justice Willis Whichard talked about the right to a jury trial and due process.

- Raleigh, displayed at the state History Museum where former US Solicitor General Walter Dellinger wrapped up the tour with a discussion of the Ninth Amendment, the non-enumerated rights.

The parchment document, about 31-3/8 inches by 26-1/2 inches, is fragile. After we recovered it, the Department of Cultural

Resources had it professionally conserved. Today it resides in the state archives in our capital city, where it was sent in 1789 by President Washington. Then, as now, the intent was to display the Bill of Rights to be reviewed by the people of North Carolina. Today we still are conducting a great experiment in democracy that continues to evolve and energize our citizens. We were aggressive in bringing these rights back to North Carolina. We must be equally vigilant to insure that these rights are a genuine part of the life of every citizen.

Acknowledgements

I express my thanks and appreciation to the following for their efforts in retrieving North Carolina's Bill of Rights and whose research and recollections contributed to this article:

The staff of the National Constitution Center, without whose initial action the retrieval would not have been possible, particularly CEO Joseph Torsella, Executive Vice-President Laura Linton, lawyer Stephen Harmelin and Pennsylvania Gov. Ed Rendell; Reuben Young, Andy Vanore, and Hampton Dellinger of my legal staff; Attorney General Roy Cooper, Chief Deputy Attorney General Grayson Kelley, Special Deputy Attorney General Dale Talbert, Assistant Attorney General Karen Blum, and former Chief Deputy Attorney General Eddie Speas of the NC Department of Justice; Deputy Cultural Resources Secretaries Pam Young and Staci Meyer, Deputy Secretary of Archives and History Jeffrey Crow, David Olson, archivist George Stevenson, and archivist Catherine Morris; US Attorneys Frank D. Whitney, Patrick Meehan, and Bobby Higdon; FBI agents Jeffery Lampinski, Robert Wittman, Chris Swecker, and Paul Minella; and US Marshal Charles Reavis. ■

Mike Easley was elected to two terms as North Carolina Governor, serving from 2001 through 2008. Prior to that he was the state's attorney general from 1993 through 2000. Easley was elected district attorney for the 13th Judicial District in Brunswick, Bladen, and Columbus Counties in 1982. He received his law degree from the North Carolina Central School of Law in 1975 and a bachelor's degree in political science from the University of North Carolina in 1972. He was born and raised in Nash County.

Reclaiming Our Roots—

Understanding Law as a "Learned Profession" and "High Calling"

BY CARL HORN III

As Bob Dylan crooned—or as one of our kids irreverently described it, "croaked"—in the sixties, "the times they are a-changin'." Or, more accurately, they have "a-changed."

When I graduated from law school in 1976, I joined what was then considered one of Charlotte's four "large firms," known at the time as Grier Parker (now as Parker Poe). With my addition, we were 17 in number, 14 of whom were partners. William Rikard had just finished his fourth year and made partner; Billy Farthing, Hank Hankins, and I were the three associates.

There were only three other firms in Charlotte in 1976 with more than 15 lawyers; most of our colleagues were practicing in firms numbering four or less.

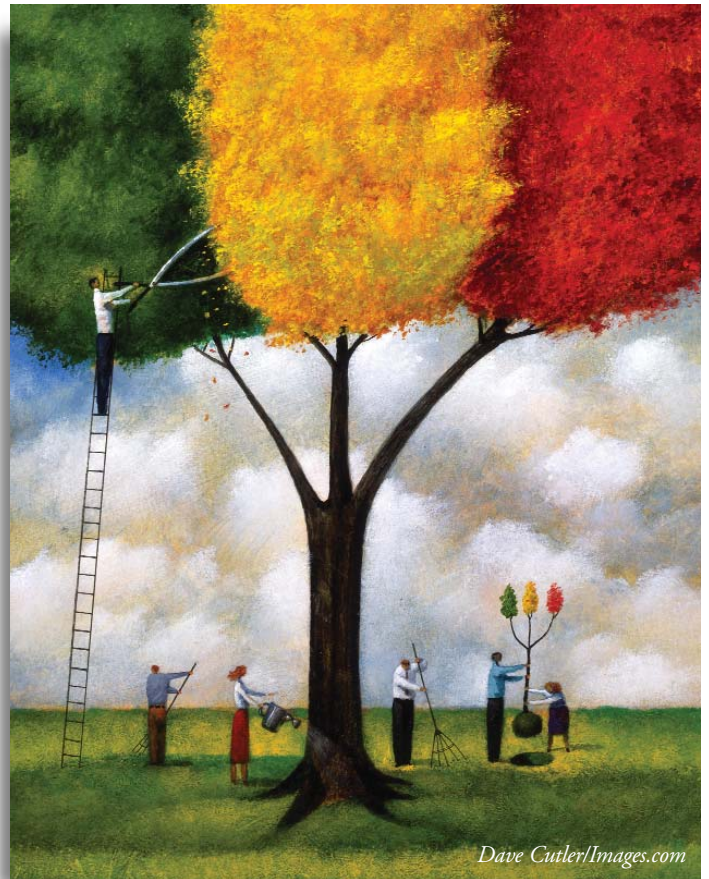
We now swear in hundreds of lawyers in Charlotte each year—more new lawyers annually than there were in the entire Mecklenburg County Bar when my father graduated from Duke Law School and began practicing in the late 1940s. There are now over 4,000 lawyers in Mecklenburg County, at least five Charlotte-based firms now have more than

100 lawyers, and there are an increasing number of large regional or national firms with a substantial local presence.

In my father's day and continuing into the '60s, most lawyers in Charlotte had their offices in a single place—the Law Building (which, with a touch of irony, was torn down to make room for an expanded jail). In those days the lawyers in Charlotte not only knew each other, but many were close personal friends. Today, it is safe to say that it is the rare lawyer who would recognize the face or even the written name of 10% of their theoretical brothers and sisters at the bar. Indeed, a Charlotte lawyer who is a partner

in a truly large firm confided in me several years ago that he regularly encounters lawyers he doesn't know *in his own firm*. He recognizes them only because they have the same firm identification card necessary to operate the elevator.

For decades and well into the '80s, lawyers in Charlotte and elsewhere somehow found time for busy and thriving practices and for seemingly limitless public



service. For example, the 16 lawyers ahead of me at Grier Parker collectively served as chairmen of the boards of Queens College, the Charlotte YMCA, our Symphony Orchestra, Opera, and Arts & Science Council, and as chairmen of the county Democratic and Republican parties. One served for a time as one of the highest ranking laymen in the Presbyterian Church, another as president of his synagogue. Two served as chairmen of the Charlotte-Mecklenburg Board of Education.

The times *have* changed, particularly in large firm practice in more urban areas like Charlotte—and these are realities we have to take into account as we think about the lack of satisfaction a significant percentage of lawyers have reported in polls and surveys beginning in the 1980s.

I hope most of you deep down are proud to be lawyers, that you have a sense of being part of a profession with a storied past, and notwithstanding all the lawyer jokes and bashing, a profession which continues to play a crucial role in our relatively free and orderly society. But I also assume it doesn't hurt to be reminded of our notable heritage from time to time.

Professor Carl T. Bogus, who practiced law in Philadelphia before entering academia, accurately summarized our professional roots in a 1996 article which he titled—we hope *inaccurately*—"The Death of an Honorable Profession." Quoting Professor Bogus:

[L]awyers enjoyed a special status from the very beginning of the Republic. Twenty-five of the 52 men who signed the Declaration of Independence were lawyers. Many highly regarded—even revered—figures were lawyers, among them [Thomas] Jefferson, [Alexander] Hamilton, [John] Marshall, John Adams, and Daniel Webster. From 1790 to 1930, two-thirds of all US senators and roughly half of all members of the House of Representatives were lawyers; since 1937, lawyers have made up between half and three-quarters of the Senate, more than half of the House, and more than 70% of all presidents, vice-presidents, and members of the cabinet.

Even our vocal critics often concede the immense contribution lawyers have made historically. For example, there is Professor Deborah Rhode who directs the Stanford

Law School Center on Legal Ethics and the Legal Profession, is a past-president of the Association of American Law Schools and former chair of the ABA's Commission on Women in the Profession. An unapologetic advocate of radical reform, Professor Rhode tempers her criticism of contemporary practice by conceding what she calls "a broader truth," namely that "[l]awyers have been architects of a governmental structure that is a model for much of the world [and have been] leaders in virtually all major movements for social justice in the nation's history." And of course there are the countless contributions lawyers have made—and continue to make—providing critical assistance to individuals, businesses, and non-profit organizations, serving in local and state government, and generally enriching communities across the nation and around the world.

On the other hand, the critics are partly right: all is not well with the contemporary practice. For several decades now, surveys and studies have shown that a substantial percentage of lawyers are at least somewhat dissatisfied professionally, that a lesser number are downright miserable, and that public respect for our profession has significantly fallen since the '50s and '60s—when the typical view of lawyers was not inconsistent with the portrayal of Atticus Finch in *To Kill A Mockingbird*.

In sharp contrast, according to a *National Law Journal*-West Publishing Company poll, by 1993 almost a third of the public believed lawyers were "less honest than most people," and an ABA poll conducted the same year found that only one in five Americans considered lawyers to be "honest and ethical." Although we can take issue with the accuracy of these subjective beliefs—and we should—we cannot disregard the fact that this is how we are regarded by many outsiders looking in.

The survey data on lawyer satisfaction is also troubling. "Miserable with the legal life" was how a front-page *Los Angeles Times* article described many California lawyers in 1995. The article reported that 25% of the lawyers in that state were then on inactive status. The next year, 3,000 miles away in Boston, the Women's Bar Association of Massachusetts chose "The Misery Factor" as the theme for their annual meeting.

The *Times* article and the Boston meeting were preceded by ABA surveys in 1984 and 1990 which found a 20% drop—during those six years alone—in the number of lawyers describing themselves as "very satisfied" professionally. In the 1990 survey, those reporting that they were "very dissatisfied" included 22% of all male partners and 43% of all female partners.

The ABA data was supported by research at Johns Hopkins University, also reported in 1990, which examined the prevalence of "major depressive disorder" in 104 different occupations (including the major professions). The research found only five of the 104 occupations in which the occurrence of major depression exceeded ten percent—and lawyers topped even this list, suffering from major depression at a rate 3.6 times higher than nonlawyers with the same sociodemographic traits.

An extensive survey conducted in 1989 by our State Bar Association, prompted in part by the tragic suicides of eight Mecklenburg County lawyers in a seven year period, similarly found that one in four North Carolina lawyers were then struggling with serious depression. Some of you may have known well a highly-regarded Charlotte lawyer who only recently took his life.

Reading the ABA's monthly e-magazine, which includes a blog, suggests that not much has changed in the interim. Recent articles and comments have featured firms that have rescinded offers or reduced staff, and lawyers who have left the traditional practice to go in various directions—including the lawyer who made a YouTube video of burning his Harvard Law School diploma. He was opting for "a simpler life," he said.

What happened? How did our learned profession, embraced for generations as a "calling" and found to be profoundly satisfying by most who entered it, come to be dissatisfying and even depressing to many contemporary practitioners? And how did the esteem in which the legal profession has traditionally been held sink to the point that only one in five Americans believes the typical lawyer is honest and ethical?

Are the roots of the answer to be found, ironically, in our unparalleled *success*—at least, our financial success? As legal fees soared and partners enjoyed unprecedented profits in the 1970s and 1980s, could it

We take a major step in the right direction if we simply commit to applying the Golden Rule in our professional lives: treating others—including our clients, opposing counsel, and their clients—as we ourselves wish to be treated. It perhaps goes without saying that this implies civility, honesty, and unimpeachable ethics, including scrupulous honesty in our billing practices.

be that lawyers in increasing numbers lost sight of the law as a calling and began to see it more as a highly profitable business? Was that not also the point when associate salaries rose sharply—as did ever higher billable hours requirements—making a balanced life far more difficult?

The first scholarly book to address these issues was Yale Law School Dean Anthony Kronman's *The Lost Lawyer: Failing Ideals of the Legal Profession*, published by Harvard University Press in 1993. In words usually reserved for the pulpit, Dean Kronman pronounced that what we are facing is a "spiritual crisis" in which "the profession now stands in danger of losing its soul."

What is of such great concern to the dean of Yale Law School that he would choose religious language to describe it; and to Ambassador Sol Linowitz, the late Wall Street lawyer, chairman of Xerox Corporation, and author of *The Betrayed Profession*; and to lawyer/psychotherapist Benjamin Sells, author of *The Soul of the Law*, and to Harvard Law Professor Mary Ann Glendon, who had similarly bold words for our profession in her 1994 book, *A Nation of Lawyers*?

In one way or another, at the heart of the concerns expressed by these accomplished commentators is the devolution of our understanding of law as an honorable profession—as a "high calling"—into little more than a pragmatic, dollar-driven business.

To escape naivete, or worse, I offer three caveats at this point. First, there is a big difference between practicing law in a business-like manner—which is commendable—and allowing money-making to become our overwhelmingly dominant motivation, which is the intended target of the more persuasive criticism. Second, in a day when overhead in some firms exceeds 50%, when many clients are demanding almost immediate responses and at reduced rates, and lawyers and clients readily move from firm to firm, tough busi-

ness—and balance—decisions are inevitable. And third, however much we embrace law as a calling or as a grand opportunity for public service, it is also hard and challenging work; in fact, anyone who enters the profession expecting a predictable 40-hour work week and consistently high income is unrealistic and probably destined for disappointment.

But with those caveats, Dean Kronman is on the mark when he exhorts the profession to return to what he calls an "older set of values." And at the heart of this "older set of values" was an *assumption* that the best lawyer was "not simply an accomplished technician but a person of prudence and practical wisdom as well...a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess."

This is certainly the tradition to which the great lawyers of yesteryear adhered. Consider the refreshingly straightforward advice the great Elihu Root gave one of his clients. "The law lets you do it," he counseled, "but don't.... It's a rotten thing to do." In fact, Elihu Root, a prominent New York lawyer who received a Nobel Prize for his service as Theodore Roosevelt's Secretary of State, once opined that: "About half the practice of a decent lawyer consists in telling would-be clients they are damned fools and should stop."

Although I discuss the subject more systematically in my book, I would like to briefly mention a few of the steps we as individuals and as a profession can and should be taking. I package them in *LawyerLife*, somewhat tongue in cheek, as "the world's first 12-step program for lawyers."

The first ingredient toward healing is to assess candidly where we are (individually and as a profession) and to agree on where it is we want to go. As the Proverb instructs, "Where there is no vision, the people perish." The same is true of a profession.

Hopefully we will agree with Dean

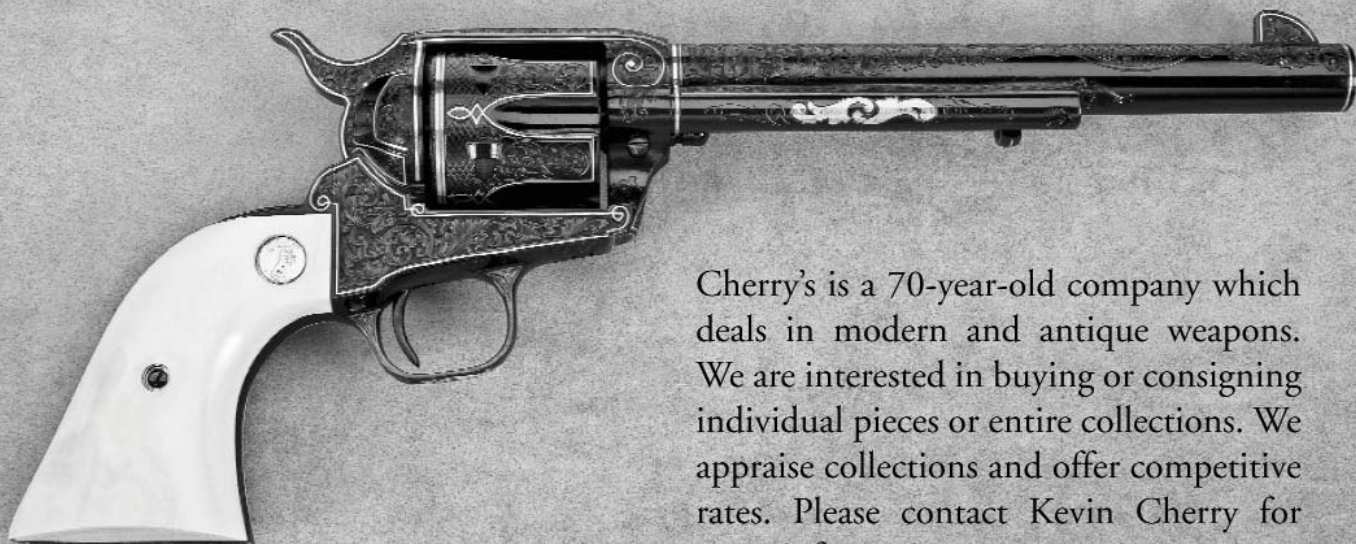
Kronman that what he calls "an older set of values" should be reinvigorated, including the pursuit of "wisdom about human beings and their tangled affairs." *Wisdom!* And while we're at it, can we agree that we should care, as individuals and as a profession, more about *justice* and *truth* than about winning at any cost or maximizing our bottom lines?

Next let us ask ourselves what we individually and collectively *value*, or to use a more old-fashioned "v word," what we consider *virtuous*. Those who are charitable with their time and resources, perhaps? Those who are passionate about a cause and sacrifice to advance it? Those who transcend narrow self interest, reaching out helping hands or giving in a meaningful way to those who are less fortunate? And of course let us never lose sight of the central importance of making the nurture of our families and close friendships a clear, and life-long, priority.

Sometimes we need a wake-up call before we understand the importance of this last point. I recall a conversation in chambers with Keith Tart, then a partner in a large North Carolina firm who had a national toxic torts practice and had been admitted *pro hac vice* in over 30 state and federal courts—so you can imagine how much time he was spending at home. Keith told me that he got his wake-up call when his first-grade daughter was asked in school to draw a picture of her family. He wasn't in the picture! The family dog was, but he wasn't.

We take a major step in the right direction if we simply commit to applying the Golden Rule in our professional lives: treating others—including our clients, opposing counsel, and their clients—as we ourselves wish to be treated. It perhaps goes without saying that this implies civility, honesty, and unimpeachable ethics, including scrupulous honesty in our billing practices.

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should give special attention to emotional balance, that is, to balance between the rational/cognitive left-brain elements of human experience—where many lawyers are at their best—and the "softer" right-brain elements, including feelings, imagination, and what we collectively refer to as "heart." Lawyer-turned-psychotherapist Benjamin Sells makes this point very effectively in his book, *The Soul of the Law*, attributing the loneliness and depression experienced by many of his lawyer patients primarily to the absence of emotional balance and health.

There are also a number of more pragmatic steps we can take to make our professional lives more fulfilling. Among these would be practicing good time management; implementing healthy lifestyle practices, including regular exercise; watching our consumer spending, living beneath our means; resisting the push of technology to control our lives 24/7; and being more circumspect about which clients we agree to represent. For more of my thoughts on these and other "steps" you will have to

read *LawyerLife*.

Which brings me to my last suggestion: avail yourselves of the growing literature expounding on these themes. Several years ago a group of us put together an annotated bibliography for the ABA's Commission on Lawyer Assistance Programs (send me an e-mail at Carl_Horn@ncwd.uscourts.gov and I'll mail you a copy). I suggest that you start with Steven Keeva's inspiring book, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*. Keeva, a non-lawyer legal journalist, draws the reader in with compelling anecdotal stories about lawyers from a variety of backgrounds who have found the kind of professional and personal equilibrium for which we should each strive. *Transforming Practices* is one of those rare books that both stimulates the mind and warms the heart.

One hundred and eighty years ago Justice Joseph Story penned his often quoted observation that "the law is a jealous mistress." The remainder of his reflection, which points to the focused passion which is required if we are to renew our profes-

sion, is less well-known. Included in an article published in 1829 and titled "The Value and Importance of Legal Studies," Justice Story wrote:

[The Law] is a jealous mistress, and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage.

In other words, as we lawyers pursue "balanced excellence," aware of those on whose shoulders we stand, a key component must be that our priorities and actions unequivocally show that we love the profession we have chosen. My hope and prayer is that we, individually and collectively, are up to the task. ■

Carl Horn III served as US Magistrate Judge for the Western District of North Carolina from 1993 until April 2009 and as chief assistant US Attorney for six years preceding his appointment to the bench. He is the author of numerous books and articles, including LawyerLife (ABA Publishing 2003), and is a frequent speaker at bar functions on the issues addressed in this article.

NC IOLTA Celebrates Its 25th Anniversary

BY CLIFTON BARNES

Throughout 2009, we will be celebrating the 25th anniversary of the Plan for Interest on Lawyers Trust Accounts—more popularly known as NC IOLTA. Established in 1983, the program was implemented during 1984. In celebration, the Journal will publish a three-part series on NC IOLTA during 2009. This first article focuses on the program's establishment and its exceptional leadership throughout its history. Future articles will discuss the ups and downs of IOLTA income over the years and highlight some of the program's grantmaking.

Having graduated from law school 70 years ago, respected North Carolina attorney Bill

Womble Sr. admittedly doesn't remember everything about his career. But he does recall a good deal about his involvement with the IOLTA program.

The NC Interest on Lawyers' Trust Accounts program is celebrating its 25th anniversary throughout 2009 and many of those trustees who have been involved seem to remember a lot about their service, in part, because of the importance they place on IOLTA.

"I think all of us enjoyed working together on the board," said Womble, who served on the initial board. "We felt we were working for a good, worthwhile cause—of benefit to the public, the administration of justice, and our calling as lawyers."

In 1983, the North Carolina State Bar Council approved formation of the voluntary

program and the NC Supreme Court approved changes to the Code of Professional Responsibility allowing IOLTA accounts. While there was hesitancy among some, including Womble, the program has enjoyed support from the legal community from the very beginning.

By April of 1984, when the NC program was officially implemented, the NC Bar Association, the NC Academy of Trial Lawyers, the NC Association of Women Attorneys, the NC Association of Black Lawyers, and Legal Services of North Carolina had all enthusiastically endorsed IOLTA.

The idea is for interest income generated

from lawyers' pooled trust accounts to be used to fund grants to providers of civil legal services for the indigent and to programs that further the administration of justice.

Womble said that he was volunteering with the American Bar Association when he first heard about the concept of IOLTA. "My initial reaction was that since lawyers' trust funds were clients' money, any interest earned belonged to the client for whom the money was held," he said. "However, as I learned more about it, I was satisfied that the idea was a good one."

He said it didn't make practical sense to try to account to each client the interest earned from miscellaneous, short-term funds.



NC IOLTA trustees and staff members proudly accepted the award for Outstanding Philanthropic Organization of 2005. (Left to right) James M. Talley Jr., 2005-06 chair of the IOLTA Board; Claire Mills, accounts manager; Evelyn Pursley, executive director; Sonja Puryear, administrative assistant; Michael C. Miller; and Marion A. Cowell.

And since it wasn't the lawyer's money, the lawyer was not entitled to the interest. "Furthermore, if interest could be earned, it would be better to use the interest for a worthwhile, law-related cause than to have the bank in which the money was deposited benefit from it," Womble said.

As a result, the NC IOLTA program has awarded over \$55 million in grants to worthy programs over the last 25 years.

Tom Lunsford, the executive director of the North Carolina State Bar, said that he attends law-related meetings throughout the country and he often hears flattering references to North Carolina's IOLTA program.

"I believe our program is simply much better than average," Lunsford said. "It has historically raised a disproportionately large amount of money while keeping its own expenses extremely low. And it has managed to do a tremendous amount of good in the process."

"Those of us on the original board were intent on establishing sound policies and procedures," Womble said. "We wanted to ensure that all funds would be properly handled and accounted for, that all grants would be to responsible organizations, that grants would be applied for appropriate purposes, and that overhead would be kept as low as reasonably possible."

Womble said the original board of trustees had a general goal of keeping overhead under 10% so that 90% could be used for grants. That goal holds today as more than 90% of IOLTA income is available for funding. IOLTA income still pays for the operating expenses and still no funds from State Bar dues are used to support the program.

That stewardship from the nine-member board, which is appointed by the State Bar Council, resulted in the NC IOLTA program becoming the nation's largest non-mandatory program—that is, until North Carolina moved to a mandatory program itself by order of the NC Supreme Court in 2008. While a voluntary program, 75% of eligible North Carolina attorneys participated. As a result of becoming mandatory, generated income and grant money are expected to rise considerably beginning this year.

The program has certainly come a long way since State Bar staff attorney David Johnson first helped set up the program and became the first executive director.

"I spent considerable time traveling to local bar meetings and explaining the program," Johnson said. "I also attended the annual meet-

ings of the Bar Association and the Academy as a 'vendor' with a station to meet with attorneys one on one."

In May of 1984, Bobby James, then executive director of the State Bar, hired Martha Lowrance to market the new program. She developed the logo and formed a working relationship with the Young Lawyers Division of the NC Bar Association.

"I worked with the Young Lawyers Division in the larger cities and got them to market the program to the law firms and to financial institutions," Lowrance said. "We were successful with this plan in some of the larger cities."

Lowrance and her volunteers had to overcome misperceptions, including the fear that those who participated in IOLTA would be subject to more audits by the State Bar. In addition, Lowrance said, they had to overcome the problem that attorneys associated IOLTA with the Client Security Fund.

"They thought if they signed up for the IOLTA program they would somehow be involved with the Client Security Fund, which was unpopular," Lowrance said.

Though there were many questions, and although IOLTA programs were new throughout the country, Johnson said he doesn't remember ever considering the possibility of failure. "We simply kept promoting the program whenever there was an opportunity," he said. "We publicized participation by both the banks and attorneys in hopes that they would receive recognition and those who had concerns would see that there were those who had overcome those concerns."

While some of the concerns could be attributed to a general resistance to change and some attributed to a principled objection that the state was "taking" client property, many of the concerns were practical.

"One legitimate concern for lawyers was whether the IRS would deem their clients to have constructively received the interest generated by the account," Johnson said. The

Past IOLTA Board Members	
ORIGINAL BOARD	
Beverly C. Moore Sr. *	1983-1985
Naomi E. Morris *	1983-1985
James P. Crews *	1983-1987
Clifton W. Everett Sr.*	1983-1990
Charles L. Becton	1983-1991
Robinson O. Everett	1983-1991
William F. Womble Sr.	1983-1991
Jeff D. Batts	1983-1992
C. Woodrow Teague	1983-1993
Thomas C. Duncan	1985-1992
Lillian B. O'Briant	1985-1992
Roy W. Davis Jr.	1987-1993
Ray S. Farris	1988-1996
Tommy W. Jarrett	1991-1997
George B. Mast	1991-1997
Geraldine Sumter	1991-1997
Clifton E. Johnson	1992-1998
Scott M. Saylor	1992-1998
John H. Vernon III	1992-1998
Rhoda B. Billings	1993-1999
George W. Hendon	1993-1999
Raymond E. Owens Jr.	1996-2002
William H. Lambe Jr.	1997-2003
Robert J. Robinson	1997-2003
Lila E. Washington	1997-2003
Louis P. Hornthal	1999-2003
Nancy E. Hannah	1998-2004
James P. Hutcherson	1998-2004
James Y. Preston	1998-2004
Edmund D. Aycock	1999-2005
James A. Wynn Jr.	2003-2005
James M. Talley Jr.	2002-2008
• Deceased	

Current IOLTA Board Members	
Robert F. Baker	2003-2009
Marion A. Cowell	2003-2009
Michael C. Miller	2003-2009
Jean P. Hollowell	2004-2010
Larry S. McDevitt	2004-2010
Robert A. Wicker	2004-2010
Robert G. Baynes	2005-2011
Brenda B. Becton	2005-2011
Linda M. McGee	2008-2011

IRS, however, issued a revenue ruling that they would not require clients to recognize income "through constructive receipt" for interest generated by an IOLTA program.

"We sought and received a private letter ruling from the IRS that the North Carolina IOLTA program qualified under that revenue ruling," Johnson said.

Once the program was on good footing, Johnson returned to his staff attorney duties in 1985, but he remembers his time as executive director fondly. "I felt privileged to work with some of the best lawyers in the state who served on the board."

Four members of the original board of trustees are now deceased—James P. Crews, Clifton W. Everett Sr., Beverly C. Moore Sr., and Naomi E. Morris. Others on the first board were Womble, Robinson O. Everett, Jeff D. Batts, C. Woodrow Teague, and Charles L. Becton.

"I recall being pleasantly surprised by the unanimity of commitment and sensitivity to the needs of the less fortunate demonstrated by members of the initial board of trustees," Becton said. "I, of course, was honored that I had been asked to serve. I viewed service on the board as an opportunity—the best opportunity—to provide equal access to the courts for deserving litigants who would not otherwise have been able to afford a lawyer, and to help fund worthy recipients in their *pro bono* or public service efforts."

While he is most proud of the grants that the board made, there's something else that comes to mind when he thinks of IOLTA. "I am pleased that I had the opportunity to renew, in some instances, and create, in other instances,

very good and lasting professional friendships with giants in our profession."

In addition, Becton, who served from 1983-1991, has a close continuing interest in the happenings of the IOLTA Board of Trustees through good friends Geraldine Sumter and Clifton E. Johnson, who served on the board in the 1990s, and through his wife Brenda, who currently serves on the board.

The board now consists of two past presidents of the NC State Bar, two past presidents of the NC Bar Association, a judge on the NC Court of Appeals, a former general counsel to one of the largest banks in the state, and a former president of the North Carolina Bankers Association.

"They are as fine a group of dedicated people with whom I have ever served on any board or committee," said Robert F. Baker of Durham, one of the former presidents of the NC Bar Association who serves on the board. "All of these members are dedicated to the work of IOLTA and very regular in attendance at board meetings."

In making appointments to the board, the State Bar Council looks for diversity, including size of firm, geography, gender, and race. "We also try to have judicial experience," said Evelyn Pursley, who has served as executive director since 1997. "We have been blessed by having trustees who have had significant experience as bar leaders."

In addition, Pursley said that IOLTA has benefited greatly from having trustees with ties to the banking industry. "They help us understand how to talk to the banks when we need to work with them regarding administrative matters or to encourage them to improve the poli-

cies provided on IOLTA accounts," she said.

Pursley said the board has lively discussions. "I appreciate that because it means that they are truly engaged and care about the program," she said. "There is also a lot of good fellowship; they enjoy each other's company."

There is also a fair amount of good-natured ribbing. Jim Talley, who served on the board from 2002-2008, said he was a main proponent of getting his friend Larry McDevitt of Asheville on the board to help balance the geography. "Having gotten McDevitt on there, sometimes it was a challenge to deal with his thought processes," Talley said with a laugh. "When I left the board, not only did I get this wonderful certificate for my work, McDevitt also had another certificate made up that said, 'Good Riddance.'"

Talley said the great thing about the board is that the trustees have a sense of commitment but at the same time approach the work with a great deal of personality. "These are private meetings and hardly anything ever leaves the meeting, so there is great dialogue," he said. "It's a wonderful mixture of people who over time become a very cohesive group."

He particularly points to Baker, McDevitt, and Marion Cowell as trustees who have a great sense of humor. "They're getting old enough now that they open up and say about anything they want to," he said.

Three trustees are appointed by the State Bar Council each July to staggered three-year terms and are entitled to serve a second three-year term. The council also selects a chairperson and a vice-chairperson for one-year terms. By rule, at least six of the nine trustees must be licensed North Carolina attorneys in good standing,

IOLTA Timeline

January 1983	The North Carolina State Bar Council approves a proposal for a voluntary IOLTA program.	July 1983	Original IOLTA Board of Trustees is appointed by the NC State Bar.	July 1985	First IOLTA grants are awarded in the amount of \$200,000.	1987-88	1987 income and 1988 grants surpass \$1 million.
June 1983	NC Supreme Court approves changes in Code of Professional Responsibility allowing IOLTA accounts.	1984	NC becomes 15th state to implement IOLTA program. NC Bar Association, NC Academy of Trial Lawyers, NC Association of Women Attorneys, NC Association of Black Lawyers and Legal Services of NC endorse IOLTA.	1987	IOLTA Board establishes summer public service internship program for North Carolina Law Schools.	1991	IOLTA Board adopts funding formula to encourage development of Volunteer Lawyer Programs across the state.

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though to date all trustees have been attorneys. As the current State Bar President, John McMillan puts it, "the IOLTA Board is composed of the best people the State Bar can find."

"I believe the affiliation between IOLTA and the State Bar makes a lot of sense and has heightened the effectiveness of the program," Lunsford said. "The connection has engendered

significant administrative efficiencies. It has also enabled the profession as a whole to respond to a chronic social problem in a meaningful and coherent fashion."

As a program of the one professional organization to which all lawyers must belong, Lunsford said, IOLTA has been a "mighty expression of our collective responsibility" to

increase access to justice.

In fact, Marion Cowell, who leaves the board this year after two terms, said that's what he'll remember most. "My fondest memory is in seeing what we are doing for legal services and related activities that benefit those who need legal services and cannot pay for it," he said. "Also, I'll remember helping law students intern

June 1993

The North Carolina IOLTA Program celebrates its ten-year anniversary and Governor Hunt proclaims week of June 21, 1993, as "IOLTA Appreciation Week."

October 1994

The NC State Bar asks NC IOLTA to administer the state funding for legal aid that passes through the State Bar.

August 2007

NC State Bar Council petitions the NC Supreme Court to enter an order directing the State Bar to implement a comprehensive or mandatory IOLTA program.

March 2008

Court approves rule revisions to administer mandatory program. All IOLTA rules are moved to Chapter 1 Subchapter D of the Rules and Regulations of the NC State Bar.

2008

December 1995

NC IOLTA Trustees establish a reserve fund to stabilize grants in times of income decreases (used for the first and, so far, only time to supplement 2005 grants).

2005

NC IOLTA named Outstanding Philanthropic Organization for 2005 by Association of Fundraising Professionals.

October 2007

The NC Supreme Court issues order to State Bar to implement mandatory IOLTA program - all active NC attorneys maintaining general trust accounts in NC must establish accounts as interest-bearing IOLTA accounts. The order is effective January 1, 2008.

2008

IOLTA fully implementing a mandatory program with an annual certification requirement tied to payment of NC State Bar dues by June 30. Over 3,000 IOLTA accounts added, 2008 income surpasses \$5 million.

in public service areas during their summers."

Talley, who now serves as IOLTA liaison to the NC Equal Access to Justice Commission, said when his term on the IOLTA Board of Trustees ended, he left with a good feeling that they have served an element of the state which would not otherwise be served.

He said that when the program was voluntary, the board members used to make direct contact with their colleagues who were in firms that were not members of IOLTA. "Every time I did that, I pointed out specifically what services were being funded in their community by IOLTA," Talley said. "Any time a lawyer asked why should I be doing that, they could see what those grants do and who they help in their area."

While the board did ample legwork, Talley credits the IOLTA staff. "The staff of the IOLTA program is magnificent," he said. "The dedication they have to their work and the leadership of Evelyn helps the IOLTA Board stay on the ball with what's going on."

Lunsford agrees and said that the 25th anniversary is a good time to pay tribute to

those who work with the IOLTA program. "I believe that the lawyers and the people of North Carolina owe the IOLTA Trustees and Evelyn Pursley and her staff a debt of gratitude for their outstanding work on behalf of the legal profession and in support of fellow citizens who, in the absence of IOLTA, might not be able to obtain legal representation," he said.

Pursley heads the staff, which also consists of Claire Mills, accounts manager, and Sonja Puryear, administrative assistant. Pam Smith, a former employee (2000-03), rejoined the program as a part-time administrative assistant in February. Pursley believes, "Staff longevity also benefits the program." All current staff have been with the program for over ten years (as was previous director Martha Lowrance). Says Pursley, "Every member of the IOLTA staff really identifies with the program and believes in what we do. I sometimes hear Claire and Sonja talking on the phone with attorneys and bank staff. They often talk to them about how important IOLTA funds are for the state of North Carolina."

Pursley said that the trustees spend a good deal of time keeping up-to-date on issues involving legal aid, access to justice, and the banking industry.

"They work very hard—particularly at grant-making time when they review dozens of grant applications," Pursley said. "I am amazed by the time that our trustees, all of whom are busy people, spend on IOLTA matters. Service on this board is certainly not a 'resume line.'"

Lowrance, who served as executive director of IOLTA from 1985-1995 and who like so many others worked long hours, summed up her experience in a way that seems universal among those associated with IOLTA. "I loved doing it because I knew I was making a difference in the lives of poor people in my state." ■

Clifton Barnes, who majored in journalism and political science at UNC-Chapel Hill, served as director of communications of the North Carolina Bar Association from 1987-2002. He now runs his own writing, editing, and web development business named cb3media.com.

What IOLTA Has Meant to Me

BY RYAN CONNELLY

Due to the generosity of IOLTA, I spent last summer interning at the Wake County Public Defender's Office. Fresh out of my first year of law school at UNC, I was eager to put my newly acquired legal knowledge to use and gain practical experience in the courtroom. Yet taking an unpaid position in a government office was financially impossible for my wife and me, being full-time students who require a summer income to supplement our student loans. The grant I received from IOLTA enabled me to work in the public defender's office without being burdened by an additional summer job.

My summer position was unique in that the attorneys gave me both responsibility to interact with clients and freedom to learn about the inner workings of each aspect of the criminal justice system. They were consistently available to answer my questions and willing to guide me through any task I was not equipped to undertake on my own.

Throughout the summer I helped man-

age cases in district and superior court, interviewed clients and police officers, examined criminal records, performed legal research, and even negotiated plea arrangements with prosecutors. The majority of my time was spent in the courthouse, and I was able to engage with a wide variety of criminal defense procedures. The hands-on experience and learning I gained in Wake County enabled me to connect the abstract ideas I learned in my first year of law school to tangible realities.

More meaningful, however, was the fact that I was exposed to the pressing need for access to competent legal services, regardless of income, and this will undoubtedly affect the decisions I make throughout the course of my career. I think specifically of a man I met this summer; I will call him James. James had his license revoked for an unpaid traffic ticket. However, the traffic ticket was on his record because someone had stolen his identity, created a false ID, and was charged with a traffic violation under his name. James needed to drive to work to support his wife and three kids, yet under

these circumstances, he would likely lose his job. I was able to work with other lawyers on his case to prove that James was innocent and enable him to keep his license and his job. Though this was only a minor task, our efforts had an enormous effect on the lives of James and his family. In my future career, albeit in the public or private sector, I will be inclined to support legislation and programming that makes justice more accessible to individuals like James.

I am convinced that there is a great need in our state for access to justice, regardless of one's ability to pay. The time I spent at the Wake County Public Defender's Office was truly valuable, and I felt honored to work in such an organization. I am grateful to IOLTA for providing me with such a generous grant. ■

Ryan Connelly is a second year law student at the University of North Carolina School of Law. He is currently the 2008-2009 Durham Bar Association Scholar. During the summer of 2008, he received an IOLTA grant for his work.

Review—*North Carolina Juvenile Defender Manual*

BY CHRISTINE UNDERWOOD

Anyone practicing in juvenile delinquency court should make room for one more tool in their arsenal.

The *North Carolina Juvenile Defender Manual* is the first-ever manual specific to North Carolina law and practice in this field. Chock full of practice tips, statutory and case law references, and samples, this manual is a field guide to delinquency court. The manual's organization makes it an easy go-to guide even in the midst of the most hectic courtroom situations.

Although juvenile delinquency court has many of the same procedural requirements of adult criminal court, there are complexities unique to the juvenile system. The *North Carolina Juvenile Defender Manual* addresses important issues such as the role of counsel in a juvenile proceeding, a juvenile's capacity to proceed, communicating with a juvenile client, and the unique problems associated with motions to suppress statements made by a juvenile.

Separate chapters, tabbed for easy access, take the practitioner through every stage of a delinquency proceeding, from the intake process through the adjudication and disposition hearings and beyond.

The chapter on petitions and summons not only outlines the procedural requirements of these documents, but identifies fatal defects and variances in petitions and summonses and assists the juvenile defender with evaluations of these common defects.

Juvenile defenders often face the touchy subject of whether or not their client has the capacity to proceed. A significant number of juveniles who find themselves in delinquency court have mental health issues that affect their ability to understand what is going on and to assist their attorney with their defense. The chapter on capacity to proceed gives practice

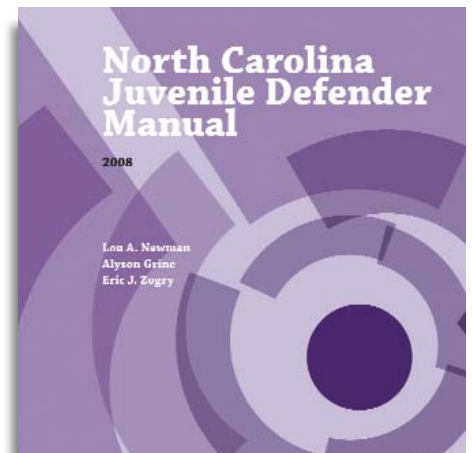
points on investigating capacity and the consequences of questioning that capacity.

Few things affect a juvenile defender more than the sight of his or her young client in shackles and handcuffs. Juveniles in custody typically have one focus - when am I going to be allowed to go home? The chapter on custody and custody hearings takes the juvenile defender step by step through the three types of custody in juvenile delinquency proceedings—temporary custody, secure custody, and nonsecure custody. The chapter discusses when a juvenile can be placed in custody, the procedures for custody both prior to and following adjudication, and the requirements for a hearing before a juvenile may be brought into a courtroom in shackles.

Chapters on probable cause and transfer hearings, discovery, and motions to suppress give the attorney a practical guide to these often overlooked, but very important, aspects of juvenile defense. From a list of sample questions which guides counsel into thinking about what to consider at a probable cause hearing, to procedures for obtaining discovery and sample discovery motions, these chapters take the practitioner from start to finish in pre-adjudicatory investigation of the quality of the state's case against their client.

The role of attorneys representing minors mirrors their role in adult court. Juvenile defenders have the responsibility of discussing with their juvenile clients the benefits and risks of proceeding to a hearing at adjudication or negotiating a plea agreement. The chapter on adjudicatory hearings outlines the responsibilities of counsel and how these hearings are specifically geared toward the juvenile client.

One of the biggest questions all juveniles in delinquency proceedings have is "What is my punishment going to be?" The chapter on dispositional hearings explains to the juvenile defender the predisposition investigation



process and walks the practitioner through the dispositional hearings and assists them with understanding delinquency history levels and classification of offenses. The chapter discusses the importance of dispositional alternatives available to the court and the standards for modifications of the dispositional orders.

Chapters on probation, commitment to the Department of Juvenile Justice and Delinquency Prevention, appeals, and expunction wrap up this comprehensive guide to defending the juvenile delinquent.

Whether you are walking into delinquency court for the first time or are a seasoned practitioner, the *North Carolina Juvenile Defender Manual* is one tool the juvenile defender cannot afford to leave in the office. This manual, published by the University of North Carolina School of Government, is part of the North Carolina Indigent Defense Manual Series. It is one guide that will not gather dust on your office bookshelf. ■

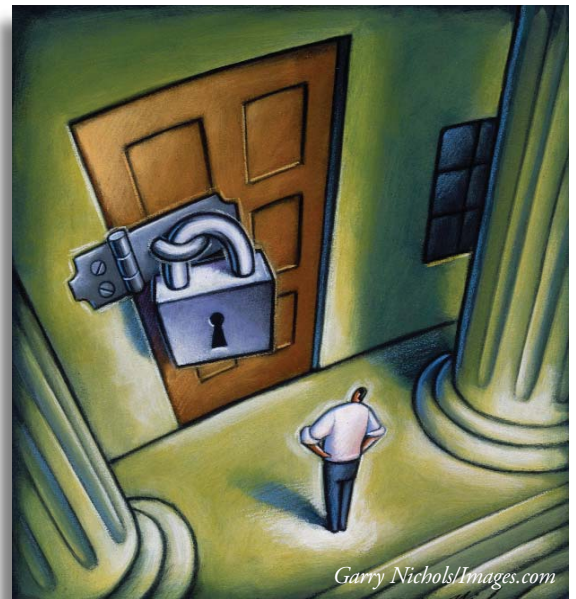
North Carolina Juvenile Defender Manual, UNC School of Government, \$60.

Christine Underwood was recently sworn in as a district court judge in District 22A. While in private practice, she was a contract juvenile defender for Indigent Defense Services and was the CLE Chair for the Juvenile Defense Executive Committee of the North Carolina Advocates for Justice (formerly the North Carolina Academy of Trial Lawyers).

How to Initiate Foreclosure of a Law License

BY KATHERINE JEAN

Following the collapse of the housing market, the State Bar Office of Counsel thought our readers might be interested to learn what happens to lawyers who participate in fraudulent real estate transactions. Lawyers can participate in several ways, including as buyers or sellers. This article will focus on closing lawyers who facilitate fraudulent real estate transactions. Often their participation takes the form of false statements on HUD-1 Settlement Statements.



12 U.S.C. § 3500.8 provides that "[t]he settlement agent shall use the HUD-1 Settlement Statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller." The HUD-1 must reflect all receipts and disbursements connected with a "federally related" loan. The definition of a "federally related mortgage loan" is expansive and, with limited exceptions, includes all mortgage loans obtained in connection with the purchase of residential real estate. 12 USC § 2602(1). It is a crime to knowingly make false statements on a HUD-1. Title 18 U.S. Code Section 1001 and Section 1010.

Fraudulent conduct by closing lawyers comes in many varieties, including the following:

Phantom Down Payments

The buyer's loan application indicates that the buyer is borrowing 80% of the purchase price of the property and is bringing 20% of the purchase price to closing from her own money. In fact, the buyer does not contribute any money to the purchase price, 100% of which comes from the loan. This means that the actual purchase price is only 80% of the "contract sales price" shown on page one of the HUD-1. It also means that any representation at the bottom of page one that the transaction included "cash from borrower" is false. One lawyer told us she put false information about cash from buyers on HUD-1s because the seller told her he had "forgiven" the buyers' down payments. A private agreement between buyer and seller does not excuse false representations on a HUD-1. If the seller

is willing to sell the property for 80% of the "contract sales price," the property is almost certainly worth no more than 80% of the contract sales price. The fact that the lender's collateral is worth substantially less than the lender was led to believe must be disclosed on the HUD-1. The lender also requires the buyer to put some of his own money into the transaction so the buyer will be more personally invested and thus less likely to default on the loan. The HUD-1 must accurately reflect actual receipt and disbursement of the buyer's money and cannot falsely state that money changed hands when it didn't.

"Payoffs" of Non-Existent Mortgages

The HUD-1 indicates that some portion of the loan proceeds are used to pay off an existing first or second mortgage, but no such

mortgage exists. Instead, those funds are given to a third party who has no legitimate role in the transaction. The third party is often the person orchestrating the fraudulent transaction and arranging for the financing. The lender must be notified and any payment to a third party must be reflected on the HUD-1. The HUD-1 cannot reflect that money is being disbursed to satisfy a mortgage that doesn't exist.

Loan Proceeds Routed to Third Parties

The HUD-1 shows a disbursement of \$80,000 to the seller as net sales proceeds. From his trust account, the closing lawyer instead issues one check for \$20,000 to the seller and another check for \$60,000 to a third party whose name does not appear on the HUD-1. The fact that the seller is giving away \$60,000 of his net sales proceeds to a third party is a strong indication that the property is worth \$60,000 less than the buyer is paying. The lender's collateral is also worth \$60,000 less than the HUD-1 represents. The closing lawyer may even receive an invoice purporting to show that the seller owes \$60,000 to the third party. The closing lawyer may think that because it is the seller's money, the seller can direct that it be paid to whomever the seller wishes. However, the lender must be notified and the HUD-1 must reflect the actual recipients of loan proceeds. If the seller and the third party do not want payment to a third party listed on the HUD-1, it is because the payment is not legitimate.

Insta-Flips

A lawyer closes the sale of a house from A to B for \$50,000. Ten minutes or an hour or a day later, the same lawyer closes the sale of the same house by B to C for \$100,000. This is a "flip." The lawyer has undertaken to represent B in the first transaction and to represent C and C's lender in the second transaction. The fact that A was willing to sell the house at noon for \$50,000 is a pretty strong indicator that the property was not worth \$100,000 at 12:10 p.m. This is material information both C and C's lender are entitled to receive from the closing lawyer, but which the lawyer conceals. In this situation, the Rules of Professional Conduct would prevent the lawyer from actually representing all of these parties, but by undertaking to do so the lawyer assumes clear duties, one of which is to disclose to his clients all material information about the representa-

tion. The lawyer cannot defend criminal charges or charges of professional misconduct on grounds that material information was withheld because it was confidential client information belonging to another client.

Title Opinions Showing Would-Be Owner

In the previous example, the closing lawyer prepares a preliminary opinion of title for the title insurer who will insure the interests of C and C's lender. The opinion falsely states that B is the owner of the property. A is still the owner of the property when the opinion is prepared. The lawyer's final opinion of title fails to disclose B's recent purchase of the property. These omissions are intended to conceal the fact that the transaction is a flip.

False Promises to Occupy the Premises

A lawyer closes the purchase of two or more houses by the same buyer in a short period of time. It is perfectly clear that the buyer does not intend to occupy both or all of the houses simultaneously. However, the lender in each transaction requires the lawyer to obtain the buyer's affidavit swearing that she intends to occupy the premises as her primary residence. The deed of trust in each transaction requires the buyer to use the property as her primary residence. The lender cares about this because it knows a buyer is less likely to default on her mortgage if the consequence of default and foreclosure is to lose her home. Also, interest rates and closing costs are generally higher on mortgages for second homes or investment properties and a buyer who does not intend to occupy the premises as her primary residence would not qualify for the loan the lawyer is closing.

Another red flag is a discrepancy in real estate commissions. When the HUD-1 reflects a purchase price of \$300,000 but the real estate commissions on page two are calculated as a percentage of \$225,000, this is a red flag that the actual price the seller is receiving may be \$75,000 less than the "contract sales price" reflected on page one and \$75,000 less than the price the buyer is paying, in which case the \$75,000 goes to a third party who is not identified on the HUD-1. A closing lawyer would be wise to require legitimate explanation and documentation of such a discrepancy.

For the past two years, the Office of Counsel and the United States Attorneys in North Carolina have devoted particular attention to investigating and prosecuting fraudu-

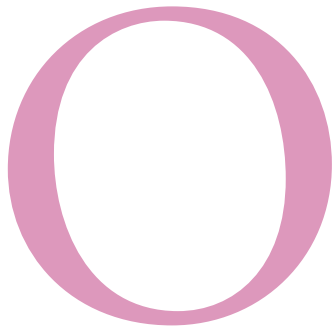
lent real estate transactions. A lawyer who knowingly facilitated fraudulent transactions will be disbarred and will also likely go to prison. Materiality of a false statement is not a defense in prosecutions under 18 U.S.C. 1010 and 1014. *United States v. Wells*, 519 U.S. 482 (1997); *United States v. Castro*, 113 F.3d 176 (11th Cir. 1997). It is not a defense to criminal charges or to charges of professional misconduct that the buyer, the mortgage broker or the lender's loan officer knew about the fraud. That information just confirms the lawyer's status as a co-conspirator. A lawyer can be prosecuted for averting her eyes from red flags that a transaction is fraudulent, even when direct knowledge of fraud cannot be proven. In an unpublished opinion, the 4th Circuit Court of Appeals affirmed Frederick Lutz' conviction and sentence of imprisonment on a theory of "willful blindness" to a real estate flipping scheme. *United States v. Lutz*, 237 Fed. Appx. 849, 851 (4th Cir. N.C. 2007). Finally, after forfeiting her livelihood and serving time in prison, the lawyer is liable in civil court for actual and punitive damages. All legal malpractice policies exclude coverage for fraud and other intentionally dishonest behavior. Banks and title insurers no longer feel any reluctance to sue lawyers, whether they have malpractice insurance or not. A lawyer can avoid these disastrous outcomes by simply refusing to participate in any real estate transaction in which she either knows or suspects that the paperwork contains false information.

A quick review of the State Bar's website shows the following lawyers who have been disbarred for their roles in fraudulent real estate transactions: Neil G. O'Rourke of Apex; Anthony G. Young of Charlotte; Dwayne A. Bennett of Chester, Virginia; Michael King of East Spencer; S. Allen Patterson of Cary; Frederick Lutz of High Point; Robert Maggiolo of Durham; McArthur Mitchell of Charlotte; Thomas W. Jones of Sylva; Mark Lattimore of Greenville, South Carolina; J. Daniel Pike of Raleigh; Armina Swittenberg of Thomasville; Amy Robinson of Rolesville; and Calvin Finger of Forsyth County. Many of these lawyers are also convicted felons and have served or will serve time in prison. We sadly anticipate more disbarments in the near future. ■

Katherine Jean, who earned a BA and JD from the University of North Carolina at Chapel Hill, is counsel and assistant executive director of the North Carolina State Bar.

When Thank You Isn't Enough

BY CYNTHIA WITTMER



ne of the first social graces we are taught as children is to say "thank-you"—for presents, for candy, and for compliments from grandparents and other adults. That simple acknowledgment of appreciation suffices for most of the kindnesses shown to us in this life. But as we grow into adulthood, we occasionally encounter those situations where a

simple "thank-you" seems inadequate, where spoken words cannot capture the emotion that wells up at the mere thought of some blessing we have experienced. On those occasions, our own internal moral compasses expect, even demand, something more of us.

I experienced this reaction when each of my children was born. Despite difficult deliveries that would have likely killed me and both of them less than a century earlier, I ended up with two healthy, happy children, relatively unscarred by the circumstances of their births. The thought still overwhelms me—through no action deserving of such special good fortune, I was the lucky recipient of some of the best health care available anywhere in the world. I was acutely aware that many other mothers, equally deserving of the same standard of care, suffer the consequences of less adequate health care every day and in every part of the world. A mere thank-you for my unearned good fortune seemed grossly insensitive to the enormity of the benefit I had received. Perhaps it was runaway hormones, but I wanted nothing less than for every other



Cindy Wittmer participates in the survivors procession at the end of the 2008 Triangle Race for the Cure.

mother to share my experience—if not worldwide, at least in Raleigh, North Carolina.

Admittedly, it was an ambitious and naive goal (unaccomplished as of yet even by Congress), and my ideas for achieving it soon ran into obstacles, red-tape, and the

kind of thinking that often keeps our best instincts from reaching fruition. Ultimately, I adopted the more modest and personal challenges of combining motherhood and the practice of law—learning to accept the burped-up milk on my business suit as a

badge of honor for all I was able to juggle.


In the year I turned 50, however, I encountered a new and unexpected challenge—one that required even greater good fortune to address. I had a rather large lump in one breast, but having routinely had benign cysts for years, I was in no particular hurry to have it checked. I waited for my annual exam, and even cancelled one appointment in order to attend a CLE offering. When I eventually saw the doctor, some three months after noticing the lump, it only took seconds for his face to tell me that my assumption that this lump was simply another cyst had been ill-advised. "Cindy, I believe this is cancer," he said. The words reverberated inside my head; no one in my family had ever had breast cancer and I had never considered myself a candidate. The possibility began to seem more real, however, when later that day I also discovered a large lump under my arm. In addition to being scared, I felt exceedingly careless and naive.

Two days later, following mammograms, ultrasounds, and a needle biopsy at the surgeon's office, the diagnosis was confirmed. I did in fact have a two-inch diameter, cancerous tumor in my right breast and enlarged lymph nodes under my arm. Following more doctor visits, tests, and procedures, the cancer was ultimately "staged." Given the size and aggressiveness of the tumor, as well as the lymph node involvement, it was classified as a stage "3B" tumor out of a maximum of 4. It could only have been worse if it had spread beyond the lymph nodes to other organs.

From the first mention of the word "cancer," my driving concern was whether or not I was going to survive. With two children ages 13 and 15, I had to know the potential impact of my diagnosis on their lives. It was not easy to get an answer to the question, regardless of how many times I asked it. Statistical charts in a breast cancer book were not encouraging, but one doctor finally told me that my chances of surviving were "better than not." The answer was good enough—at least the odds were in my favor. As more tests came in, the answer became more detailed, but the big picture was the same.

Over the next three years, I underwent 18 weeks of chemotherapy, two separate mastectomies, ten weeks of daily radiation, weeks of self-administered shots to my stomach, two surgeries for reconstruction, and untold numbers of x-rays, CT scans, MRIs, procedures,

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injections, blood collections, and examinations. I got so I didn't even wince at the insertion of a needle into my vein. Now, four and a half years after that first procedure, I am alive, my hair has long since grown back, and—as best anyone can tell—I am well. Along the way, I came to value even more my family and friends, the poetry of life, the simplest of pleasures, and the glory of each day. Most importantly, I learned to let go—at least to some extent—of the things I could not change, and to accept that I would never be caught up on my "to do" list.

I believe that every one of my doctors is the greatest physician on earth. I trusted them with my life, and they didn't let me down. I have taken them food and gifts, written them, and thanked them, but those expressions of appreciation, measured against what I received, are akin to comparing an ant to an elephant—they aren't even in the same arena.

How does a person show appreciation for a life saved? There was nothing of equal value that I could do for the physicians, nurses, and technicians who so capably helped me. But I don't think they were looking for that kind of response. The one thing I could do, however,

was to "pay it forward" in some way, as urged by the angelic-faced young boy in the 2000 movie by the same name. So I have tried to find ways, even though they seem small, to help others who find themselves in the same position as I was. As a member of the Wake County Bar, I had a ready-made mechanism to increase the impact of my efforts.

My first challenge was to organize a team for the Susan Komen Foundation's Triangle Race for the Cure. My husband had formed a team in my name shortly after my diagnosis, so I had something to build upon. Friends, family, and law firm members were a great support, and I was encouraged. The next year, I first asked my law firm to be a sponsor, and the firm readily agreed. Emboldened, I then asked the Wake County Bar Association to be a sponsor, and the president readily agreed. However, we then had to raise the \$10,000 required for the Bar Association to meet that commitment. We divided up a list of the major firms, and began making calls. Within a few weeks, we had commitments for over \$13,000! I believe we raised over \$30,000 that

CONTINUED ON PAGE 30

Pro Bono Work and Community Service in North Carolina's Law Schools

BY KELLY GONDRING

My world is black and white, or so it seems most days. Law students seem to be on one of two tracks—private law firm or public interest organization—and the most extreme students on these two tracks appear to be diametrically opposed to one another. Not only is there a failure to understand the value of the work done by "the other side," but there is also a failure to respect the others' choice of a particular type of work. Even among my friends.

Susan and Allen are friends on different tracks. Susan came to law school knowing that she wanted to work in real estate finance at a big Charlotte firm. She is hard-working and enthusiastic about the work she will do. Allen, on the other hand, came to law school knowing that he wanted to be a public

defender. He is also hard-working and enthusiastic about the work he will do. However, despite the fact that they are friends, there is tension between them because Allen does not understand the work that Susan wants to do. It's not that he can't understand it on the intellectual level; it's that he doesn't under-

stand why someone would want to work in that area of the law or why Susan is "selling out."

What I wish Allen would see is the massive gray area that lies between him and Susan.

Susan has completed over 100 hours of pro bono work. She has participated in



research projects for Legal Aid and helped nonprofit organizations with transactional matters through the Pro Bono Project. She completed pro bono projects for the firm at which she worked during her first and second summers. These projects were not handed to her by the managing partner; she sought them out because she wanted to do them.

As wonderfully exemplified by Susan's dedication, pro bono work and community service by law students is the norm and not the exception. Not everyone comes to law school fresh out of the Peace Corps hoping to use their law degree to save the world and help the poor—and that is okay because law students choosing to pursue a career in the private sector are still able to connect to their communities and help those less fortunate than themselves.

Law schools in North Carolina continue to emphasize the importance of giving back to the community, encouraging all students to participate in pro bono work and community service projects. First-year students at the University of North Carolina School of Law are asked to sign a pro bono pledge, where incoming students pledge to complete a certain number of pro bono hours by the time of graduation. Last year, UNC law students completed 16,765 pro bono hours, not including the thousands of hours completed by third-year students participating in one of the school's four clinical programs. In fact, over winter break, 115 students participated in pro bono projects in 40 different organizations across 11 states. UNC also recognizes students who have completed more than 75 hours of pro bono work by indicating this accomplishment on student transcripts.

Similarly, during their three years in law school, the Class of 2007 at Duke University School of Law volunteered 19,168 hours of legal service through their clinical programs and various pro bono projects. Like the UNC School of Law, Duke Law also encourages its first-year students to sign a pro bono pledge and dedicate a certain number of hours to pro bono work during their law school career.

Law students attending Wake Forest School of Law volunteer as Guardians Ad Litem, tutor children at local elementary schools, represent victims of domestic violence, and serve as judges in Teen Court. Similarly, in the Juvenile Justice Mediation Program at Campbell School of Law, students mediate cases between juvenile defendants and their victims. The program's success

has led to its expansion, such that students also mediate problems between high school students prior to any criminal charges being filed. At North Carolina Central University School of Law, a total of 154 law students participated in pro bono projects last year, volunteering with 28 public interest organizations and governmental agencies, six student organizations, and nine public schools through their Street Law Program. During their second year, Elon students participate in the required Public Law and Leadership course, working in teams on legal projects for non-profit organizations. Elon students may choose a Public Service concentration for their upper level elective courses. During the third year, students have the option of undertaking a capstone leadership project to benefit the school, community, or the world. Finally, in order to successfully graduate from the law program at Charlotte School of Law, students are required to complete 20 hours of pro bono service and ten hours of community service. These law schools encourage their students to participate in pro bono work regardless of whether they choose to remain in North Carolina or leave for New York, whether they are exemplary or middle-of-the-road students, and whether they will pursue a career as a real estate finance associate or a public defender.

Like Susan, Allen has also completed over 100 hours of pro bono work. He has volunteered for pro bono projects each semester that he has been in law school, researching for a gay rights organization and helping victims of domestic violence obtain restraining orders against their alleged abusers. While Allen did not complete projects during his summer employment, he spent both summers working at the Public Defender's Office aiding indigent defendants in their legal defense.

For those of us who did come to law school with hopes of using our law degrees to help others fight for their constitutionally protected civil liberties or to help the poor and downtrodden, pro bono work and community service is an ever-present reminder of that original hope. Law school, especially the first year, is an overwhelming experience. As I worked to master a new language that felt funny on my tongue and sounded strange to my ears, even my most anxiety-ridden expectations were exceeded. I had expected difficult; I had not anticipated demoralizing.

When I began to learn the language of the law, it felt cold and impersonal. To think and

express myself as an attorney largely meant putting away my emotional feelings of fairness and equity and learning to express myself in terms of logic and precedent. After all, the reason the courts compensate tort victims has nothing to do with whether I think it is the "right thing to do," but rather whether the tortfeasor had a duty of care, whether she breached that duty, and whether this breach caused harm to the plaintiff. Not only did I have to alter the way I viewed the world, but as I learned about important concepts such as *in rem* jurisdiction, joint tenancy agreements, and contributory negligence countersuits, I rarely saw the faces of the people affected by these foreign concepts.

My solution was to further immerse myself in the law by reading more intently and joining a study group. Not surprisingly, I could not seem to find the answers in well-written cases about constructive possession or personal jurisdiction; instead, I found the faces I sought in my winter break pro bono project at Legal Aid.

While the legal issues of this project were neither profound nor complex, the experience changed the way I looked at the law and also validated my choice to attend law school. Ironically enough, I never met the client for whom I did all of this work, as it was a research project about the Indian Child Welfare Act. Nevertheless, I found it rewarding because I finally had a glimpse at the law as it affected real people. Because of this gratifying experience, I continued to work on pro bono projects. Staying connected gave me a way to see more clearly the people behind the logical thinking expressed in case law. While the law itself is not always compassionate on its face, the people who fight to have the law enforced or fight to change the law are logical, zealous, and compassionate advocates. Doing pro bono work not only reminds public interest-minded students that the law does not have to be strictly logical and impersonal, it also keeps them connected to the issues and people who live and breathe outside the law school bubble.

Regardless of a law student's long-term career goals, another realistic reason for all law students to participate in pro bono projects is to give them hands-on, practical experience. While there are many substantively interesting areas of the law, not everyone is cut out to practice every area of the law. Pro bono work gives students the opportunity to learn whether they would actually like to work in a

particular area of the law, or whether they should pursue an alternate field.

For example, I learned that while I find criminal law very interesting, I would prefer several painful deaths to being in a courtroom every day as a trial attorney. Working at the Office of the Colorado Public Defender during my 1L summer was an amazing, insightful experience, but I am not suited for that line of work. Volunteering at the Appellate Public Defender's Office, on the other hand, gave me the opportunity to work in criminal law without having to be in the courtroom as a trial attorney. Similarly, my friend Kate determined that she wanted to do policy work after completing an extensive pro bono project for an immigration firm. Even before participating in this project, she knew that she would like to work on immigration issues; however, she did not know in what capacity. Her experience provided her with much needed clarity into the career path she should pursue.

Part of the practical experience gained

from participating in pro bono work also includes learning how to undo some of what is learned in the classroom. Because law students are essentially learning a new language, they must practice in order to become comfortable and proficient in it. While this is undoubtedly important, once students become fluent in the language of the law, they often forget how to communicate in plain English with those who have not attended law school. Pro bono projects that place students in direct contact with real clients require the students to translate legalese into an understandable common language.

Perhaps the most important reason for law students to actively engage in pro bono work is also the most obvious reason: to help others. Clearly, pro bono work and community service in law school do more than just create commonalities between two friends' vastly different career paths. They create avenues for giving back and serving communities that cannot afford to pay for their very real legal needs. Even more than that, it reminds stu-

dents that success is not measured solely by a high grade point average or by being the best oral advocate in the school, but that success can be defined by our willingness to look past our own needs in order to offer those less fortunate than ourselves the tools to thrive. Life is not just about the quantitative measures of our abilities, but also the qualitative measures of our character. Besides a friendship, what Allen and Susan share is the gray area between his future job as a public defender and her future job as a real estate finance associate: they both find fulfillment when they are part of the reciprocity that comes with actively participating in pro bono work and community service projects. ■

Kelley Gondring is a third year law student at the University of North Carolina School of Law. She is a member of the North Carolina Law Review, serves as co-president of the Lambda Law Students Association, and hopes to practice law staying committed to the idea that one lawyer really can make a difference.

Thank You (cont.)

year, although I didn't have a reliable method of tracking the donations.

In 2007, I suggested forming a Wake County Bar Association team for the race. Although the association did not feel it could commit to being a sponsor for another year, Wake County attorneys were very supportive of the team. We had a t-shirt slogan contest, and Attorneys Title Insurance Company paid for the t-shirts in exchange for putting their name on the shirts. We selected a slogan ("Wake County Bar Association: We're Raising the Bar" with "Lawyers Helping in the Community" underneath) that wasn't identified with the Komen Race, so we could use the t-shirts at any of the WCBA's community service projects. Our bright green t-shirts were noticeable in the crowd on race day, and they make a memorable statement of the role lawyers play in the community whenever they are worn. We had 118 team members sign up and raised over \$23,000, including one law firm sponsorship.

In 2008, fewer attorneys signed up as members of the Wake Attorneys team, but there were many more law firms with their own teams and t-shirts, perhaps inspired by the success and fun experienced by the Wake

Attorneys team members. The WCBA appointed a coordinator to help with the project, and this time Chicago Title Insurance Company sponsored our t-shirts. The Wake Attorneys team itself had 44 members and raised almost \$9,000, but that was only part of the story. Four law firms were sponsors of the race, and collectively, all of the various Wake County attorney teams had 371 team members and raised almost \$53,000 for the fight against breast cancer!

My second project was to start a breast cancer support group for Wake County attorneys and/or relatives. Three people immediately expressed interest in a group after I ran an ad in the WCBA newsletter. We currently have eight participants, including one male who has had breast cancer and two members who come because of relatives who have had or currently have breast cancer. We meet once a month for lunch, and have an annual Christmas dinner hosted by one member of our group. Our purpose is to support new participants, share information on treatment or follow-up issues, try to respond to questions, help with various breast cancer efforts, and simply be present for each other in the experience of cancer. We have become good friends and our monthly lunches are more fun than they are serious.

Neither of these projects has changed the world. And what they have accomplished is less the result of my small efforts than the amazing response of other attorneys. The experience has taught me that the vast majority of attorneys are wonderful, caring people who rise quickly to any opportunity to be of service or meet a need. By their enthusiasm, ideas, skills, contacts, and efforts, they can broaden the scope and magnify the impact of any one person's ideas. It's easy to look around and feel that the problems are enormous and our own resources too small by comparison to make any difference. But I'm trying to learn that it's worth taking the first step, even if you can't see where the journey will end—you never know who may join you on the walk. And even if what is accomplished is small, it's okay. In the words of Mother Theresa: "In this life we cannot do great things; we can only do small things with great love." That's a challenge we all can meet. ■

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Overview of the Disciplinary Process

BY OFFICE OF COUNSEL, NORTH CAROLINA STATE BAR

The State Bar's Grievance Committee investigates and acts upon alleged violations of the North Carolina Rules of Professional Conduct. The Grievance Committee has 45 members, all appointed to serve on the committee by the president of the State Bar. Forty-two members of the committee are also members of the State Bar's governing body, called the Council. Of those, 40 are practicing lawyers elected by their peers from each judicial district and two are nonlawyers. There are also three advisory members of the Committee who are not lawyers and are not Bar Councilors.

The Grievance Committee is divided into three subcommittees. Each subcommittee has direct responsibility for investigating approximately 1/3 of the total grievances and recommending appropriate resolutions to the full Grievance Committee. The full committee votes upon the subcommittees' recommended resolutions. The State Bar's legal department, the Office of Counsel, serves as counsel to the Grievance Committee.

In addition to the State Bar's Grievance Committee, several judicial districts also have grievance committees. The district committees help the Grievance Committee by investigating some grievances filed against lawyers who practice in those particular judicial districts. Grievances are filed directly with the district committees or are referred to the districts after they are filed with the State Bar. The district committee submits a report to the Office of Counsel detailing its investigation and recommending whether the Grievance Committee should or should not find probable cause to believe the respondent lawyer violated a Rule. District committees do not impose discipline or dismiss grievances.

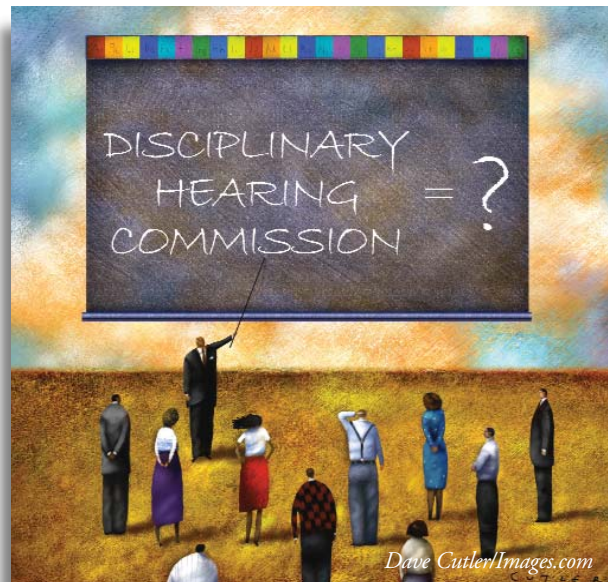
The Disciplinary Hearing Commission

(DHC) is an independent tribunal that hears all contested disciplinary cases. The DHC is composed of 12 lawyers, appointed by the State Bar Council, and eight nonlawyers, appointed by the governor and the General Assembly. The DHC sits in panels of three; two lawyers and one nonlawyer. In addition to disciplinary cases, the DHC hears cases involving allegations that a lawyer is disabled and petitions from disbarred lawyers seeking reinstatement.

The Process

Grievances may be filed by clients, judges, opposing parties, fellow lawyers, or members of the public. The Office of Counsel also opens grievance files on its own initiative when it learns of misconduct through the news media or other sources.

Rule 8.3 requires a lawyer to report to the State Bar when he or she knows of professional misconduct by another lawyer that "raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." However, the State Bar can keep confidential the identity of a lawyer or a judge who reports alleged misconduct of another lawyer. N.C. Admin. Code title 27, r. 1B.0111(d). The identity of a reporting lawyer or judge will only be revealed when disclosure is required by law or due process or when identification is essential to the respondent lawyer's ability to present a defense. A lawyer who fails to report misconduct as required by Rule 8.3 is subject to discipline.



Presently, a grievance must be filed within six years of the alleged misconduct, except when it is alleged that the respondent lawyer concealed the misconduct or when the alleged misconduct would constitute a felony. N.C. Admin. Code title 27, r. 1B.0111(e). A new rule governing the time within which a grievance must be initiated has been approved by the State Bar Council and will soon be submitted to the Supreme Court for final approval. The proposed new rule can be found on the State Bar website (www.ncbar.gov) and in the Fall 2008 State Bar Journal.

The Grievance Committee

Grievance proceedings are confidential unless a lawyer receives public discipline from the Grievance Committee or a formal disciplinary complaint is filed against the lawyer in the DHC. N.C. Admin. Code title 27, r. 1B.0129.

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Each grievance is assigned to a deputy counsel in the Office of Counsel. The deputy counsel investigates the allegations, often aided by State Bar investigators. All of the State Bar's investigators worked for state or federal investigative agencies, including the FBI, SBI, IRS, and Treasury Department, before joining the State Bar.

When the allegations of a grievance, even if true, fail to state a Rule violation or if available evidence conclusively disproves the allegations, the Office of Counsel submits a report to the chair of the Grievance Committee recommending dismissal with no further action. If the chair agrees with that recommendation, the grievance is dismissed. N.C. Admin. Code title 27, r. 1B.0105(a)(19). In such cases, the respondent lawyer is not asked to respond and is often not even aware that the grievance was filed.

When the allegations, if true, state a Rule violation and available evidence does not conclusively disprove the allegations, the Office of Counsel sends the respondent a Letter of Notice and accompanying Substance of Grievance detailing the allegations of misconduct. The respondent must submit a written response within 15 days from receipt of the Letter of Notice, although extensions of time to respond are regularly granted. After it receives the written response and conducts any necessary additional investigation, the Office of Counsel prepares a Report of Counsel to the Grievance Committee. The Report of Counsel contains summaries of the complaint and the response, analysis of the evidence, the respondent's disciplinary history, and a recommended resolution.

If the evidence does not support a finding that a Rule was violated, the Office of

Counsel recommends that the grievance be dismissed without further action. If the chair of the Grievance Committee and the chair of one subcommittee agree, the grievance is dismissed. N.C. Admin. Code title 27, r. 1B.0105(a)(20). If the Office of Counsel concludes there is probable cause to believe the respondent committed a Rule violation or if no rule violation occurred but the respondent should be cautioned about the conduct, the grievance will be considered by the full Grievance Committee through one of its three subcommittees and resolved in one of the following ways.

Sometimes the Grievance Committee disagrees with the Office of Counsel's recommendation and dismisses the grievance. The committee can also dismiss a grievance with a Letter of Caution when no Rule violation occurred but the lawyer's conduct was inconsistent with accepted professional practice or dismiss with a Letter of Warning when the respondent committed a technical or inadvertent Rule violation.

When it finds probable cause to believe that more than a technical or inadvertent Rule violation occurred, the committee can either impose discipline or refer the grievance to the DHC for trial. It is the Grievance Committee's policy to refer to the DHC only cases in which the committee believes the appropriate discipline may be suspension or disbarment. The Grievance Committee is not itself empowered to suspend or disbar a lawyer.

When it believes the appropriate discipline is less than suspension or disbarment, the Grievance Committee can impose three levels of discipline—admonitions, reprimands, and censures, in ascending order of severity. The respondent may reject an admonition or a reprimand and may, by failing affirmatively to accept it, also effectively reject a censure. If the respondent rejects discipline imposed by the Grievance Committee, the Office of Counsel files a complaint with the DHC and a formal hearing occurs. N.C. Admin. Code title 27, r. 1B.0113 and 1B.0114.

Admonitions are permanent, private discipline and do not appear on the judgment docket of the State Bar, although they may be considered in any later disciplinary proceedings against the respondent. Reprimands and censures are permanent discipline and are recorded in the State Bar's judgment book, posted on the State Bar's

website, and sent to the complainant. Censures are also filed with the clerk of superior court in the respondent's home county and filed with the clerks of the appellate courts. Notices of both reprimands and censures appear in the State Bar *Journal*.

Finally, the Grievance Committee can directly refer a grievance to the DHC. The cases most often referred to the DHC involve misappropriation of client or fiduciary funds, criminal acts or other acts of dishonesty, and repeated neglect of professional responsibilities, including failing to communicate with clients and failing to respond to inquiries from the State Bar.

The Disciplinary Hearing Commission

The Office of Counsel represents the State Bar in DHC proceedings. DHC trials are open to the public. They are conducted according to the North Carolina Rules of Civil Procedure and the North Carolina Rules of Evidence. DHC complaints look very similar to civil complaints filed in superior court. Hearings are divided into two phases. In phase one, the State Bar has the burden of proving each alleged Rule violation by clear, cogent, and convincing evidence. If the State Bar fails to carry its burden of proof in phase one, the case is dismissed. If the DHC finds that some or all of the alleged violations have been proven, the DHC moves immediately to phase two. In phase two, the DHC hears additional evidence and decides the appropriate discipline.

Like the Grievance Committee, the DHC can dismiss the charges or issue a letter of warning, admonition, reprimand, or censure. It can also suspend a law license for up to five years or disbar a lawyer. The DHC can stay all or a part of a suspension upon compliance with stated conditions. A disbarred lawyer is eligible to apply for reinstatement five years after the effective date of disbarment. The disbarred lawyer bears a heavy burden of proving reformation and rehabilitation, and reinstatement is very rare. No disbarred lawyer has been reinstated since 1994.

Either party can appeal a DHC order to the North Carolina Court of Appeals. N.C. Gen. Stat. § 84-28(h). Disbarments and suspensions exceeding 18 months are stayed on appeal only upon *writ of supersedeas*. N.C. Gen. Stat. § 84-28(h). All other discipline imposed by the DHC is automatically stayed on appeal. ■