

2020 CLE Program  
February 12-13, 2020  
Rhythms Live Music Hall



### **Wednesday, February 12, 2020**

8:00 – 8:30	Registration
8:30 – 9:30	<b>Joseph O'Donnell:</b> Metadata & Client Data Protection (1-hour Technology Credit)
9:30 – 9:45	Break
9:45 – 10:45	<b>Tucker Charns:</b> Client Interviewing for Criminal & Civil Cases
10:45 – 11:45	<b>Hannah Autry &amp; Erica Washington:</b> How to Make Effective Batson Challenges
11:45 – 1:00	Lunch (Food Truck Fare, Catered: Bo's Kitchen & So Good Pupasas)
12:45 – 1:00	Afternoon-only Registration
1:00 – 2:00	<b>Alicia Journey:</b> Avoiding Burnout: Maintaining Mental Health in the High-Pressure Practice of Law (1-hour SA/MH credit)
2:00 – 3:00	<b>Uta Zacharias, Lawyers Mutual:</b> Lawyers and Social Media: Maintaining an Ethically-Sound Digital Presence (1-hour Ethics credit)
3:00 – 3:15	Break
3:15 – 4:15	<b>Warren Savage, Lawyers Mutual:</b> Emerging Ethics (1-hour credit)
4:15 – 5:15	<b>Daniel Read &amp; Scott Holmes:</b> Putting your Religion to Work in your Law Practice

### **Thursday, February 13, 2020**

8:00 – 8:30	Registration
8:30 – 9:30	<b>Lisa Gordon Stella:</b> Hot Topics in Employment Law
9:30 – 9:45	Break
9:45 – 10:45	<b>Finesse Couch:</b> Small Office Law Practice
10:45 – 11:45	<b>Representative Marcia Morey:</b> Raising the Age, Legislative Update
11:45 – 1:00	Lunch (Food Truck Fare, Catered: American Meltdown & Chick-N-Que)
12:45 – 1:00	Afternoon-only Registration
1:00 – 2:00	<b>Kimberly Rehberg &amp; Lowell Siler:</b> An Introduction to the City & County Attorney's Offices
2:00 – 2:15	Break
2:15 – 3:15	<b>Adam Hopler:</b> Intestate Succession
3:15 – 4:15	<b>Craig Shapiro:</b> Fair Debt Collection Practices Act

**Total Hours = 13    All Credit Hours Pending**  
**Partial Credit forms are available at the Registration Desk.**

## PROGRAM RULES & FAQ

1. This Eighth Annual CLE Event is a function of the **Durham County Bar Association**. The DCBA is the voluntary Bar in Durham and is joined separately from the Sixteenth Judicial District Bar.
2. The Registrar for the CLE Event is the Executive Director of the Durham County Bar Association, Bonnie Biggs. There is a registration table at the event for your questions.
3. Partial CLE Credit Forms are available *for those who need them*. They will be collected by the Registrar when you leave. All Partial Credit Forms must be turned in by 5:00 on February 13.
4. Members must remain in a session for which they wish to receive credit. Restrooms are conveniently adjacent to the meeting area, and breaks will be provided, with coffee and snacks. Any phone calls should be handled very briefly, just outside the door of the session, to allow quick return.
5. Lunch breaks will take place each day per the schedule provided herein.
6. Speakers are encouraged to stay on task and finish on time, so that the day's schedule is met.
7. The NC State Bar has issued CLE attendance rules as well as rules for question time. All rules will be adhered to by the program administration and by all speakers.
8. Members failing to follow attendance rules, will not have credit requested on their behalf for that session.
9. An auditor from the NC State Bar CLE Department may appear at any time during the event to verify that all rules and requirements are being met.
10. Members can receive as many as thirteen (13) total hours of CLE credit for this event, *including* two (2) Ethics/Professional Responsibility and one (1) Substance Abuse/Mental Health as well as one (1) Technology. Credit hours are "pending approval," however, many instructors have received credit for their material from previous presentations.
11. Materials for the CLE are downloadable from the web site at [durhambar.net](http://durhambar.net) prior to and during the event. **No** handouts will be provided by each speaker. Please note this important paper-saving change and **print any documents you wish to use during the CLE, beforehand**.
12. Members of the DCBA may attend any or all sessions free of charge, as the program is paid for via membership dues. **However, each member is responsible for the \$3.50 per hour CLE fee owed to the NC State Bar Department of CLE, which bills members directly once credit has been applied. Bills for February 2020 will be sent in March 2021.**

## FROM THE NCAC – RULES AND REQUIREMENTS

1. An active member of the North Carolina State Bar who does not qualify for an exemption must take 12 hours of approved CLE per calendar year.
2. Of these 12 hours, two must be in the area of professional responsibility or professionalism or any combination thereof, and effective in 2019, at least one hour shall be devoted to technology training.
3. At least once every three calendar years, each lawyer must complete an additional hour of professional responsibility devoted exclusively to instruction in substance abuse awareness or debilitating mental conditions, and a lawyer's professional responsibilities.
4. If a lawyer takes more than the required 12 hours in a calendar year, up to two additional hours of professional responsibility and up to ten additional hours of general education may be carried over to the next calendar year. There is no provision to carry hours over multiple years.
5. Using your State Bar member number and password, you may [login on the CLE website](#) to view your CLE transcript. If you don't have internet access, call the CLE department at (919) 733-0123.
6. If you have a deficit that is cured in January or February of the subsequent year, there is no penalty. If the deficit is not cured within this time frame, you may be subject to monetary penalties or suspension.

## CLE CONTENT AND TIME REQUIREMENTS – FROM THE CLE APPLICATION

1. North Carolina uses a 60-minute hour: 60 minutes are required to equal one CLE credit hour.
2. Only the time of actual instruction counts toward CLE credit hours.
3. Question and answer sessions are considered actual instruction provided such question and answer sessions do not exceed 15 minutes per CLE credit hour.
4. CLE credit, when converted from minutes to hours, will be rounded **down** to the nearest quarter-hour.
5. CLE credit is not given for introductory remarks or breaks.
6. Members may attend partial sessions and receive partial credit. Obtain a partial credit form from the check in desk if this applies to you.

## INSTRUCTOR INFORMATION AND CONTENT SUMMARIES

**Wednesday, February 12, 2020**

8:30 – 9:30

**Joseph O'Donnell:** Metadata & Client Data Protection  
(1-hour Technology)

**SUMMARY:** Metadata is information about one or more aspects of a document. The legal implications of sharing such information will be the foundation of our session. While metadata can and does exist for most kinds of legal documents, it is most common that it will be important in relation to Microsoft Word, so we will focus much of our time there. Metadata is contained within a file such that it is not always visible to the person creating it, but it can be found by anyone receiving and viewing the document. Comments, track changes, previous authors, and versions are all examples of metadata. Organizations consider such information to be sensitive and want to prevent staff from accidentally sharing it. In this session, we will discuss what data needs to be protected as well as best practices for doing so. We will also review several terrible, and therefore excellent, examples of metadata revealed.

**INSTRUCTOR:** Joseph O'Donnell is a Technical Engineer and Instructor for Terrapin Technologies. He has an impressive IT background, most recently serving as the senior technical support technician and training coordinator for the law firm of McDonough Holland & Allen PC in Sacramento, CA. He has strong technical expertise, combined with excellent communication skills. Joe is extremely knowledgeable about desktop, mobile, server and network technologies. He holds the CompTIA A+, Microsoft Certified Professional: Technology Associate & Application Specialist, Microsoft Certified Trainer and Worldox certifications. Joe has provided support and training for programs such as LegalKey, CompuLaw, Microsoft Dynamics CRM for Legal, Carpe Diem, Workshare Professional, iBlaze Summation, Sanction, Adobe Acrobat, and additional programs specific to real estate, probate and estate planning practice groups.

9:45 – 10:45

**Tucker Charns:** Client Interviewing for Criminal & Civil Cases

**SUMMARY:** By training and experience, attorneys seek out facts and use persuasion. Why is it then that clients who are protected from telling the truth to us are not always convinced that they can? In this interactive talk, Tucker discusses the blocks to trust and how an attorney can overcome those issues and develop a more effective and productive case with a realistic and step-by-step approach.

**INSTRUCTOR:** Tucker Charns began her legal career as an assistant public defender in Cumberland County and Durham County, followed by a private practice doing capital trial work, court-appointed direct appeals and capital post-conviction litigation, as an attorney at Prisoner Legal Services and now as Chief Regional Defender at Indigent Defense Services. As a Regional Defender, she assists attorneys with one-on-one consults, skill development and client-centered advocacy in 18 counties. Tucker participates as faculty for the New Misdemeanor Training, New Felony Defender Training and the Trial School at the UNC School of Government and the National Institute of Trial Advocacy's Building Trial Skills program. Tucker is a NC native and a graduate of UNC-Chapel Hill School of Law. She has received additional training through Gideon's Promise and is a NC State Bar Certified Specialist in state criminal law. She is a contributing editor for the fourth edition of Klinkosum on Criminal Defense Motions manual. Tucker is passionate about client-centered advocacy, family and ice hockey.

10:45 – 11:45

**Hannah Autry & Erica Washington:** How to Make Effective  
Batson Challenges

**SUMMARY:** A Batson challenge is a challenge made by one party in a case to the other party's use of peremptory challenges to eliminate potential jurors from the jury on the basis of sex, race, ethnicity, or religion. It's an exciting time for Batson in North Carolina, as the NC Supreme Court is reviewing two Batson cases this year and we are hoping for favorable rulings. During this presentation, we will share the history behind the Batson v. Kentucky decision and walk practitioners through the Batson framework in

an effort to teach attorneys how to effectively object to and preserve objections to race-based & gendered-based peremptory strikes and to reduce race /gender discrimination against potential jurors.

**INSTRUCTORS:** Hannah Autry joined the Center for Death Penalty Litigation in February 2017. She represents death-sentenced clients in state and federal post-conviction proceedings and clients charged with first degree murder at the trial level. Hannah's research and litigation interests include the jury formation process in North Carolina and how it comports with a person's constitutional right to have a jury drawn from a fair cross-section of their community, as well as issues related to forensic sciences. She regularly attends national and North Carolina conferences focused on issues surrounding the death penalty, death penalty litigation, forensic sciences, and race. She was a member of the 2017-2018 cohort of the Racial Equity Network, and regularly participates in the Durham Racial Equity Network, a group of attorneys promoting a more racially equitable justice system in Durham County. Before joining CDPL, Hannah practiced in the public defender's office in Frankfort, Kentucky, where she represented clients facing charges ranging from misdemeanors to murder. A native of Cumberland County, Hannah received her undergraduate degree at UNC Chapel Hill and graduated with honors from North Carolina Central University School of Law in May 2013. During law school, she formed a student death penalty project and organized events and programs highlighting death penalty reform efforts.

Erica Washington joined CDPL as a staff attorney in 2017 after graduating from New York University School of Law. Prior to law school, Erica spent two years working on issues of fair housing, disability rights and police misconduct with the Washington Lawyers' Committee for Civil Rights and Urban Affairs. In law school, Erica worked with the Equal Justice Initiative to provide post-conviction legal support to prisoners on Alabama's death row. Erica was a Root-Tilden-Kern Public-Interest Scholar at NYU and received her BA from the University of Virginia in 2012.

1:00 – 2:00

**Alicia Journey:** Avoiding Burnout: Maintaining Mental Health in the High-Pressure Practice of Law (1-hour SA/MH)

**SUMMARY:** The practice of law is not something that we are taught in law school. In fact, there is nothing 'practical' about law school. So when we enter into the 'practice' of law we are expected to know how to handle the balance of client demands, time deadlines, personal demands, constant fires that are not our own that must be put out and It is inevitable to become overwhelmed if we are not careful. But burnout is not the only option for practicing attorneys. There is another way. This session focuses on helping lawyers understand what burnout is, how to recognize its signs and symptoms and addresses the consequences of burnout professionally and personally if left unaddressed. Specifically, the intersection between mental health, stress and burnout. In addition, the speaker shares personal and anecdotal experiences surrounding burnout, mental health, professionalism and stress. This session will then shift to mindfulness and other tactics for addressing the situations negatively impacting the lawyer, and recommendations on overcoming obstacles and achieving satisfaction with your chosen profession.

**INSTRUCTOR:** Alicia Journey is a United States Supreme Court attorney. She is also a member of the California State Bar and will be taking the North Carolina State Bar in July. She graduated from the prestigious Pepperdine School of Law in 2009 with her Juris Doctorate. In the same year, she received a degree in Dispute Resolution from the world-renowned Straus Institute in Dispute Resolution. She was a prosecutor for the Riverside (California) District Attorney's office specializing in Domestic Violence, Sexual Assault, Child Abuse and Elder Abuse and tried 34 trials from misdemeanors to three- strike prison cases & attempted murders. She also spent time training law enforcement to investigate crimes.

After leaving the District Attorney's office she opened her own law practice focused on helping women and men in business, family and estate planning law. She also started her own non-profit for survivors of Domestic Violence and Sexual Assault called Beyond the Bruises. After a personal health crisis, she found her mission to transform the way attorneys treat themselves, their clients and the law through the practice of mindfulness, balance and resiliency. She is also a Senior Associate with the DiLeone Law Group in Raleigh, North Carolina specializing in Business, Corporate and Estate Planning Law.



2:00 – 3:00      **Uta Zacharias, Lawyers Mutual:** Lawyers and Social Media: Maintaining an Ethically-Sound Digital Presence (1-hour)

**SUMMARY:** Social media can be a great way for attorneys to gather and share information. It also presents many ethical traps. How can attorneys use Facebook and other social media platforms in their practice in a way that complies with the Rules of Professional Conduct? Through a discussion of recent case law, ethics opinions and hypotheticals, we'll address this issue and more. Program topics include effectively counseling clients about the legal ramifications of social media, protecting client confidentiality, managing professional networking websites and online client reviews, ensuring social media posts comply with advertising requirements, and understanding new and pending NC State Bar ethics opinions.

**INSTRUCTOR:** Lawyers Mutual welcomed Uta Zacharias in 2018. Prior to joining Lawyers Mutual, Uta worked as Senior Subrogation Counsel at Investors Title Insurance Company since 2010. She came to Investors Title from LandAmerica in Richmond, Virginia, where she served six years as Associate Claims Counsel. Uta also practiced for several years in law firms in Charlotte, N.C. and Richmond, V.A., where she focused on real estate, general business transactional matters, employment and immigration law. Uta is licensed in North Carolina and Virginia. She is a member of the Wake County Real Property Lawyers Association.

3:15 – 4:15      **Warren Savage, Lawyers Mutual:** Emerging Ethics (1-hour)

**SUMMARY:** Through a discussion of recent case law, ethics opinions and hypotheticals, this program provides an overview of NC State Bar and quarterly results, new and pending NC State Bar ethics opinions, an update on technology, advertising, and social media ethics opinions, and best practices on how to avoid cyber scams and wire fraud.

**INSTRUCTOR:** Warren Savage joined Lawyers Mutual as claims counsel in 2005 and was named Senior Claims Counsel in May 2018. He focuses on litigation, insurance law, appellate advocacy, criminal matters and professional responsibility in his work with Lawyers Mutual. A former partner with the law firm of Bailey & Dixon, Warren graduated from the University of Virginia and earned a Master of Arts in Teaching at the University of North Carolina at Chapel Hill before graduating magna cum laude from Campbell University School of Law. He spent several years as a high school English teacher and junior varsity basketball coach before entering the legal profession. Warren currently serves as NC State Bar Councilor for District 10 and speaks frequently at CLEs around the state about professional responsibility and malpractice claims avoidance.

4:15 – 5:15      **Daniel Read & Scott Holmes:** Putting your Religion to Work in your Law Practice

**SUMMARY:** Practicing law is stressful—substance abuse, depression, social isolation, and suicide result. Programs abound—LAP, mindfulness seminars, and more. Virtually absent in the professional help literature is religion. This will be a session led by serious religious people about how they use their religion to (1) establish goals for their personal and professional lives, (2) help them organize and run their businesses, (3) decide what kinds of cases they will do, and (4) deal with clients and stress. Obviously, there are many religions with many perspectives. The session will however run in the Quaker tradition, which is Christian in origin. There will be references to the teachings of Jesus.

**INSTRUCTORS:** Dan Read (JD UNC 1983) has done just about everything in the 33 years he has practiced in Durham, including criminal defense, child support, family law, PI, and real estate. In recent years his practice has come to focus on federal workers compensation law and associated issues. He has been a solo practitioner in several office-sharing arrangements since 1992. As of October 2019, he began working as a lawyer three days a week and taking care of his grandson JB the other two days. Dan and his wife Maria Mangano (JD UNC 1982) moved to Durham shortly after they got married in 1985. They have two children and two grandchildren. When their kids were little Maria worked three days a week and Dan

worked four days a week. They both love home life, traveling together, and reading. Their goal for 2020 is to read Anna Karenina out loud together. Maria is a cradle Catholic and they have attended Immaculate Conception since 1986; Dan is now a member of Durham Friends Meeting (Quaker) although he still is very active at IC. “For a Protestant,” he says, “I am a pretty good Catholic.”

Scott Holmes is an Associate Clinical Professor of Law at North Carolina Central University in Durham, where he supervises the Civil Litigation Clinic, and teaches Trial Practice, Appellate Advocacy, Criminal Procedure, Legal Problems of the Poor, and Restorative Justice. His clinic handles civil matters related to prison conditions, fair housing, police misconduct, and evictions. His research and writing focus on how racial inequity impacts the rule of law. He investigates and researches issues of free speech and assembly. He also organizes and explores restorative justice approaches to conflict. Before joining the faculty, he was a partner at the law Lockamy firm where he handled serious criminal cases in state and federal court, at trial and on appeal. He went to UNC School of Law and completed the Friday Fellowship for Human Relations. He clerked Judge John Martin at the North Carolina Court of Appeals and worked as a Public Defender in Durham for a few years before moving to private practice. He has worked as a trial lawyer and appellate attorney in civil rights and criminal defense cases, representing Anti-racism protesters who removed the confederate monument in Durham and Chapel Hill, Jail conditions protesters, Black Lives Matter protesters, Moral Monday protesters, panhandlers, Immigration and Dreamer activists, and Occupy Protesters. He has assisted victims of police misconduct.

Scott is concerned with the way our justice system harms poor and vulnerable members of our community including children, immigrants, and the mentally ill. He also works to challenge racial disparities in law enforcement, criminal justice, and housing practices. Having represented protesters, preachers, and panhandlers, he works to empower and amplify marginalized voices in our community.

#### **Thursday, February 13, 2020**

8:30 – 9:30

**Lisa Gordon Stella:** Hot Topics in Employment Law

**SUMMARY:** This presentation will begin with a discussion of the Fair Labor Standards Act, including the new regulations that go into effect on January 1, 2020. Then we will move into hiring and termination as well as harassment and discrimination. This area will include offer letters, payroll deductions and valuable information about social media as it relates to HR. We will also discuss record keeping and personnel files, including information protected by the ADA/FMLA.

**INSTRUCTOR:** For over twenty years, Lisa Gordon Stella has represented clients in litigation, negotiation, business formation, employee relations and stakeholder/crisis management and communications. Following her federal clerkship, Lisa worked as attorney in Los Angeles, relocating to North Carolina in 2001 and working as a litigator at the large Raleigh law firms Kilpatrick Townsend and Nelson Mullins. After seven years litigating cases in state and federal court and in administrative proceedings, for clients worldwide, she became general counsel for a French technology company. In that capacity, she was charged with overseeing and directing all legal matters in the United States, including all employee relation matters, contract negotiation, and compliance. In 2009, leveraging her experience as a former litigator and general counsel, Lisa formed her own firm focused on providing organizations with legal and strategic advice with employment and human resources matters, contract, business entity formation, prelitigation counseling, employee training, and policy development. As part of her practice, Lisa is a DRC certified mediator. She also serves as special counsel to multinational corporations, large law firms, small businesses and non-profit organizations, investigating allegations of harassment, discrimination, retaliation, misconduct, conflicts of interest and whistleblower complaints. In her capacity as special counsel, Lisa has investigated a wide range of matters often involving those in the highest levels of leadership.

Passionate about serving her clients and her community, Lisa has received numerous pro bono awards for her work on International Child Abduction cases. She also currently serves as Co-Chair of the North Carolina Association for Public Charter Schools and is past-President of the Elna B. Spaulding Conflict

Resolution Center, and past-Vice President of Maureen Joy Charter School. She received her A.B from the University of California at Davis, Phi Beta Kappa, Summa Cum Laude, her law degree from the University of Minnesota, Order of the Coif, Magna Cum Laude, and served as a judicial clerk for Michael Daly Hawkins of the Ninth Circuit Court of Appeals.

9:45 – 10:45

**Finesse Couch: Small Office Law Practice**

**SUMMARY:** This presentation will cover the Small Office Law Practice (Rather than Small Law Office Practice). There is quite a difference. We will discuss this difference as well as some national statistics about small office law practices. Further topics will include client management, the business of law, winning strategies, and trends that we should all be watching in order to ensure our success in the future.

**INSTRUCTOR:** Finesse has practiced and taught law in North Carolina for twenty-five years. She has researched and written legal articles for publication on the topics of public education reform and crime prevention through "tough love." She practices primarily in the areas of torts, contracts and mediation. Also a motivational speaker, Finesse has conducted seminars nationally, statewide and locally on her published topics. She has also presented at conventions, conferences and churches across the country. Finesse's awards and recognitions are numerous. She earned her JD from Duke University School of Law and her undergraduate degree from North Carolina State University.

She was Law Professor of the Year Award three consecutive years at North Carolina Central University School of Law, and received the 1994 Business Associate of the Year Award from the Tarheel Branch of the American Business Women's Association in Raleigh, as well as the Governor's Award for Excellence Nomination in 1995. Finesse also served as the President of the Durham County Bar Association. She is a member of the North Carolina Academy of Trial Lawyers, the North Carolina Association of Black Attorneys and the Association of Trial Lawyers of America. Finesse also served as the Chair of the NC Bar Association's Local Bar Services Committee and is a member of the Durham Mayor's Restoration Leadership Institute for Youth.

10:45 – 11:45

**Representative Marcia Morey: Raising the Age**

**SUMMARY:** What does NC's new Raise the Age law mean? It means helping 16- and 17-year olds, not criminalizing them. On Dec 1, 2019, the age of juvenile jurisdiction was raised from 16 to 18. North Carolina was the last state to stop criminalizing kids as if they were adult criminals. This talk will look at the juvenile justice system in North Carolina and what the new legislation means to prosecuting and defending teenagers. Among other items, we will discuss whether Durham is ready for this change, and what school justice partnerships look like. We will talk about reverse transfers and where youth are currently held in detention. We'll look at whether there is adequate funding to serve 16- and 17-year olds and examine the next steps for what's ahead. Time permitting I will also provide an update on criminal justice legislation including but not limited to: Second Chance Act, Marsy's Law Constitutional Amendment, Proposed legislation on mandatory first appearances for misdemeanors, Raising the minimum age of juvenile jurisdiction from 6 to 10, and other possible criminal justice reform legislation.

**INSTRUCTOR:** Marcia Morey is a Democratic member of the North Carolina House of Representatives, representing District 30 in Durham County. She was appointed on April 5, 2017. During the 2017 legislative session, Morey was a honorary co-sponsor of House Bill 280, which raises the age of juvenile jurisdiction from 16 to 18. She has been a key player in a bi-partisan effort to make this happen. She currently serves on the Finance, Environment, Judiciary III, State & Local Government, and Pensions Committees. She served the 14th Judicial District Court as a district court judge for 18 years and as Chief District Court Judge for 5 years. Morey worked with law enforcement, defense attorneys, and prosecutors to develop new ways to deal with 16 and 17-year-olds who had been charged with a crime. She spearheaded a program, called the "Misdemeanor Diversion Program (MDP)," that diverts these youths to education and community service programs that allows the teens to avoid a criminal record which enables them to find jobs and receive financial aid for college. MDP has helped over 300 youth and is now a model that has been copied across North Carolina.

In 1998, Governor Jim Hunt appointed Morey as the executive director of the Governor's Commission on Juvenile Crime and Justice to reform North Carolina's juvenile justice system. During her tenure juvenile crime rates were reduced by approximately 40%. She previously served as an assistant district attorney in Durham and created the first diversionary program in the state (and second in the nation) for first-time youthful offenders charged with misdemeanors. Morey earned her undergraduate degree from Millikin University in Illinois, her master's degree in education from Reed College, and her J.D. from Northwestern University Law School.

1:00 – 2:00

**Kimberly Rehberg & Lowell Siler:** An Introduction to the City & County Attorney's Offices

**SUMMARY:** Local governments are large entities that engage in a wide array of legal activities within our community, ranging from real estate transactions, to large construction projects, public-private partnerships, service contracting, operating public facilities, providing services to residents, litigating disputes, and more. But, do you know who advises and represents them? Who is that lawyer on the other end of the phone when you call a local government office? And how do you work with that lawyer to get your client's matter addressed, approved, and/or resolved when dealing with the County or the City? In this session, hear from the County Attorney and the City Attorney about the lawyers who work in their offices, the types of work that they do, and who handles what in the County Administration Building and City Hall.

**INSTRUCTORS:** Kimberly Martin Rehberg has served as an in-house attorney for the City of Durham, North Carolina, since April 2005. After serving as litigation manager and lead attorney in all litigated tort matters for the first 14 years of her tenure with the City, she was appointed City Attorney by the Durham City Council in June 2019. Prior to joining the Durham City Attorney's Office, Kim served stints as Assistant General Counsel for the North Carolina Association of County Commissioners, as an Assistant County Attorney for Durham County, and as an Assistant Professor of Public Law and Government at the UNC School of Government. The daughter of a career officer in the U.S. Marine Corps and a nurse administrator, Kim spent the bulk of her youth in Onslow County, North Carolina. Having moved to North Carolina at age 5, she considers herself to be a North Carolinian for life. After graduating from Jacksonville High School, she subsequently obtained degrees from the University of North Carolina (Psychology, 1991) and Duke University School of Law (Juris Doctor, 1994).

Lowell L. Siler became County Attorney for Durham County Government in August 2009. Attorney Siler is a native of Goldsboro, North Carolina. He graduated from Goldsboro High School. Siler earned his degree in Public Administration and a Juris Doctorate degree from North Carolina Central University, located in Durham, North Carolina. The primary function of the position is to serve as legal counsel to the County Commissioners, County Managers, County boards and commissions and other officials of the County. He supervises a staff of 11 attorneys and multiple support staff. In addition to drafting or supervising the drafting of all contracts, deeds, leases, releases, franchises, and other legal documents on behalf of the County, he also represents the County in legal matters, brings suits as necessary to be instituted by the County and defends the County in suits brought against it, and handles appellate litigation. The County Attorney decides major legal questions in litigation, claims, leases and contracts, land titles and related legal matters, as well as prepare and supervise the preparations of formal legal opinions upon request of Commission members and the administration. Attorney Siler was the 2013 County Attorney of the Year for the State of North Carolina. He is also a Past President of the North Carolina County Attorneys' Association and the Durham County Bar Association/14th Judicial District Bar. He has also chaired the Bar Candidate Committee for the 14th Judicial District/NC Board of Law Examiners. His community service history includes serving as a Board Member for Legal Services, Duke-Durham Partnership for Youth, and Durham Mentors for Youth. He is a member of Sigma Pi Phi Fraternity/Alpha Tau Boulé, and Omega Psi Phi Fraternity, Inc.

2:15 – 3:15

**Adam Hopler:** Intestate Succession

**SUMMARY:** This session will discuss who can inherit, that is, degrees of kinship and order of inheritance, as well as determining the share size. We will also discuss elective share and life estates, and cover some of the most common bars to inheritance including slayers, illegitimacy, spouses and parents.

**INSTRUCTOR:** Adam Hopler is a lifelong resident of North Carolina, originally from Salisbury, NC, and a graduate of West Rowan high school. He earned his undergraduate degree in American History from the University of North Carolina at Chapel Hill back in 2005. He wrestled throughout high school and college and now enjoys watching his kids wrestle and take part in many other sports. Adam started his career as a teacher at Cresset Christian Academy before going on Campbell University's Norman Adrian Wiggins School of Law. Adam is now a licensed attorney with the North Carolina State Bar, a member of the North Carolina Bar Association where he serves as Chair of the Middle School Mock Trial subcommittee of the Civic Education & Community Engagement Committee, the Durham County Bar Association, the Durham-Orange County Estate Planning Council and the Triangle Business Builders Chapter of BNI. He is an active member of the Downtown Durham Campus of the Summit Church which meets in the Historic Carolina Theatre in Durham where he serves with the Embrace Ministry that focuses on adoptive and foster care.

Adam has lived in north Durham with his spouse, Alaina, and their five children for the past 13 years. Adam's practice includes Wills and Trusts, Guardianship processes, and Estate Litigation. Adam also works closely with his law partner Peter Hanna and local financial planners to provide comprehensive retirement planning for business owners. While Adam prefers to help his clients avoid future legal issues through proper planning, that doesn't stop him from working with those in contentious situations that come about due to lack of planning, and sometimes despite even the most well-intentioned plans.

3:15 – 4:15

#### **Craig Shapiro: Fair Debt Collection Practices Act**

**SUMMARY:** Many practitioners outside of consumer protection practices have clients that are being hounded by debt collectors or receiving letters from debt collectors. I could do a session on something like, "The ABCs of the FDCPA," which would cover the more traditional cases involving harassment and other illegal conduct, as well as violations that arise solely from the content of collection letters. The FDCPA is fee-shifting and provides for actual and statutory damages, making it an effective tool both to stop collectors from harassing clients and to provide a monetary remedy to clients (as well as attorney fees). FDCPA Basics that Every Attorney Should Know.

Every attorney that represents a living, breathing human is representing a consumer that has incurred consumer debts. What happens when those debts go unpaid forms the basis of scores of federal lawsuits every year, nationwide? While every attorney does not have to become an expert in the area of consumer law, some basics are important. This session will dive into the Fair Debt Collection Practices Act so that you can adequately counsel your client as to whether a potential claim exists, or at least if your client should take the time to speak to an attorney that knows more.

**INSTRUCTOR:** Craig Shapiro is originally from Northbrook, Illinois, a suburb of Chicago. After attending Northern Illinois University, he obtained his juris doctor from Chicago-Kent College of Law. While there he obtained a Certificate in Litigation and Alternative Dispute Resolution, was awarded the CALI Excellence for the Future Award in Trial Advocacy and was a certified mediator for the Center for Conflict Resolution. After clerking during law school for Rand Bragg, a member of Horwitz, Horwitz & Associates' consumer protection department, Mr. Shapiro joined the firm full time. After six years at Horwitz, Mr. Shapiro left to join Keogh Law, a boutique class action firm in Chicago advancing the rights of consumers. After deciding to relocate to Raleigh, Mr. Shapiro joined the Law Offices of John T. Orcutt as the head of its consumer rights department.

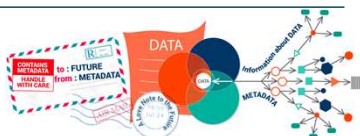
He has spent his career litigating cases involving unlawful debt collection practices and credit reporting, usurious lending, and wrongful mortgage practices. He has been appointed class counsel in numerous class actions certified in Arizona, California, Florida, Illinois, Indiana, and North Carolina, and is licensed to practice in the State of Illinois, the State of North Carolina, United States Courts of Appeals for the

Fourth and Seventh Circuits, and United States District Courts for the Northern, Central, and Southern Districts of Illinois, Northern District of Indiana, the Western District of Michigan, and the Eastern, Middle, and Western Districts of North Carolina.

Koury L. Hicks is a Board-Certified Specialist in Consumer Bankruptcy Law and has been practicing bankruptcy law with the Law Offices of John T. Orcutt since 2008. He is a member of the Bankruptcy Section of the North Carolina Bar Association and the National Association of Consumer Bankruptcy Attorneys. He co-authored the 2012 and 2017 editions of the North Carolina Bankruptcy Practice Manual chapter on Means Testing. He received his B.S. degree from the University of New Mexico in 2001 and his J.D. degree from the University of New Mexico in 2006.

## Presented by Joseph O'Donnell

Durham County Bar CLE Event  
February 12, 2020



## In the News...

**D Google:** Private financial forecasting revealed when hidden data was left in a PowerPoint presentation before posting it for Wall Street.

Microsoft was member of their PR firm.

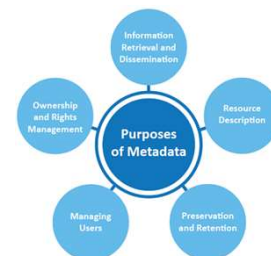


“What is metadata and how can I keep it to myself?”

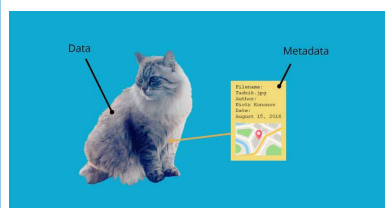


## Good vs. Bad

Yes – there is good metadata!



“What is good metadata?”



## Examples of good metadata - eDiscovery

Source (Metadata) Field
Application Version
Author
Byte Count
Category
Comment
Company
Creation Date/Time
Document Type
Filename
Filepath
Hidden_Content_Flags
Ingestion ID

- Last Saved By
- Last Saved Date/Time
- Mail Attachment Count
- Mail Attachments
- Mail BCC
- Mail Body/Extracted Text
- Mail Categories
- Mail CC
- Mail Conversation ID
- Mail Creation Date/Time
- Mail Delivery Report Requested
- Mail DTEND
- Mail DTSTART
- Mail From

- Mail Importance
- Mail Location
- Mail Msg Flag
- Mail Priority
- Mail Read Receipt Requested
- Mail Received Date/Time
- Mail Reply Requested
- Mail Sender Email Address
- Mail Sensitivity
- Mail Sent Date/Time
- Mail To
- Native PageCnt
- Revision Number
- Source
- Subject
- Title



6

### Examples of good metadata - eDiscovery

The screenshot shows two views of search results in an eDiscovery application. The top view shows a list of records with columns: BagDoc, EndDoc, Mail To, and Mail From. The bottom view shows a similar list with an additional 'Search Expression' column. Red arrows point from the top view to the bottom view, highlighting the transition between different search filters or views.

7

“What is bad metadata?”

8

“How can I securely share files with my client?”

9

The screenshot shows the Microsoft Word 365 interface. The 'Review' tab is active, and the 'Track Changes' option is highlighted with a red arrow. The 'Track Changes' option is currently set to 'Off'.

10

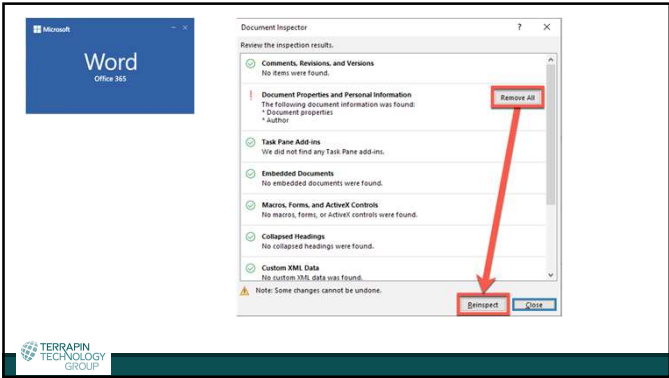
The screenshot shows the Microsoft Word 365 interface. The 'Info' pane is open, and the 'Inspect Document' option is highlighted with a red arrow. The 'Inspect Document' option is currently set to 'Off'.

11

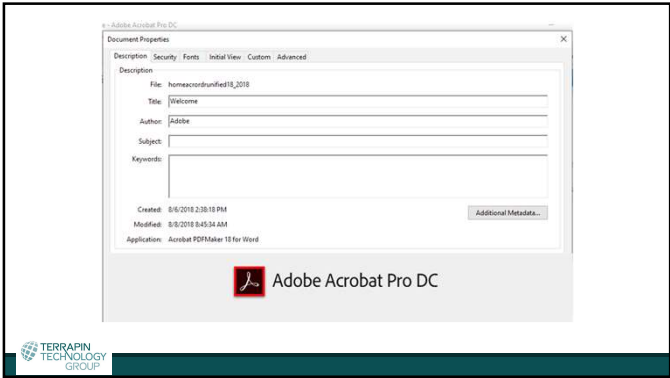
The screenshot shows the 'Document Inspector' window in Microsoft Word 365. The window lists various inspection options, including 'Comments, Revisions, and Versions', 'Document Properties and Personal Information', 'Task Pane Add-ins', 'Embedded Documents', 'Macros, Forms, and ActiveX Controls', 'Ink', and 'Collapsed Headings'. The 'Inspect' button is highlighted with a red arrow.

12





13



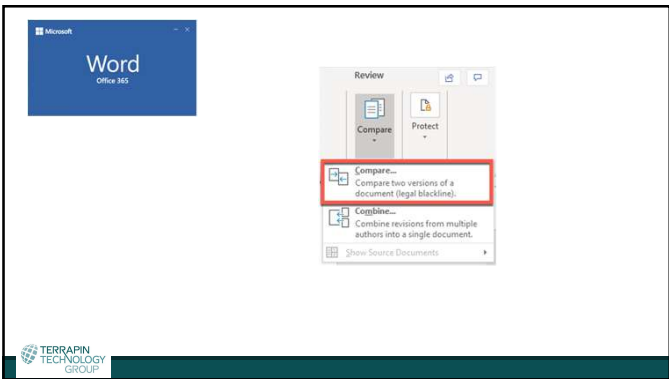
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15



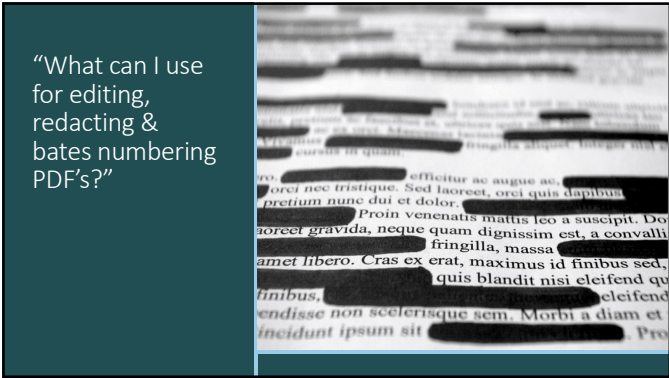
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17



18



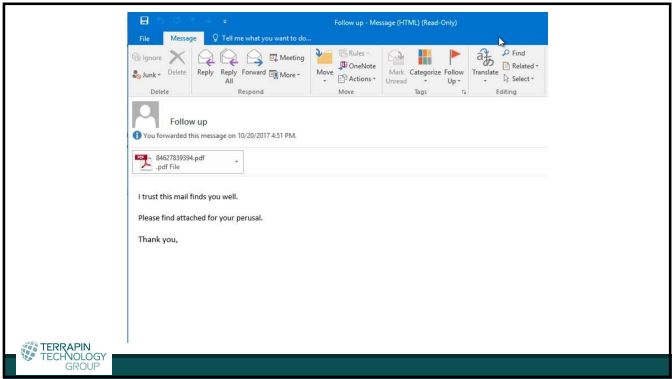
19



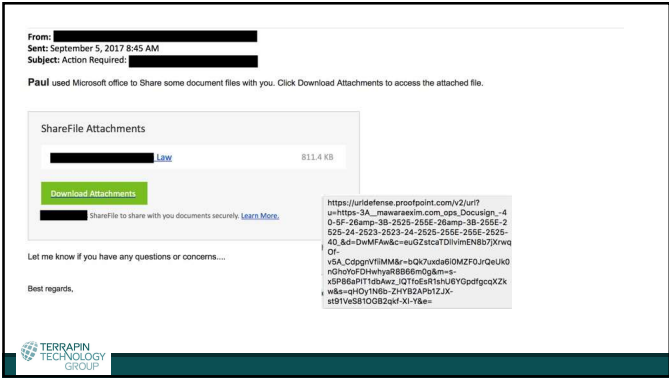
20



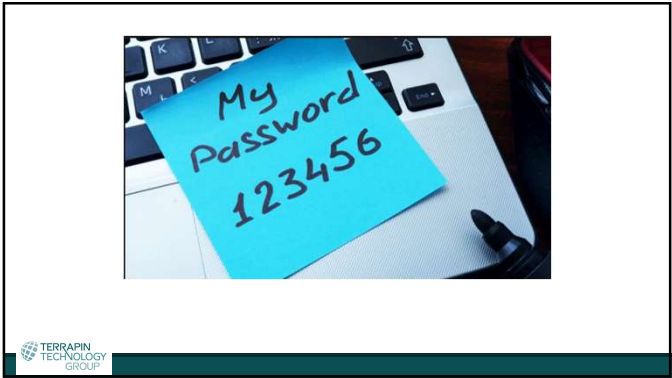
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22



23



24



25

2020 – Metadata & Client Data Protection

Presented by Joseph O'Donnell

Durham County Bar CLE Event

February 12, 2020

26

# METADATA

## Quick Reference Card



### What is metadata?

Information you don't normally see when opening a document but can be disclosed. Reveals information about electronic documents beyond the printable text. Of Most documents in circulation, 90% began as something else. (Vanson Bourne study, "Cost of Sharing").

#### • 3 common types in files (DOC/PDF)

- Properties – visible (example of subjective metadata: Authors, storage path, computer used, software used, date printed, number of works in a document, firm or organization name, name of hard drive or network server, name and type of printer, names of previous document, document versions, information about the template used to create file and comments)
- Track Changes - visible
- Embedded electronic data created
- Invisible until exposed manually
- Useful for finding documents, reviewing, and sharing, especially for profiling and searching as part of discovery or litigation
- Can provide extensive information for building an electronic paper trail as to who created, read, or even deleted text from a particular document, whose computer it was stored on

### Metadata – Friend or Foe?

We're all aware that internal Metadata from markups on documents should always be scrubbed (removed) from the documents prior to hitting send, but did you know how helpful metadata can be in a lawsuit? Often the biggest question is:

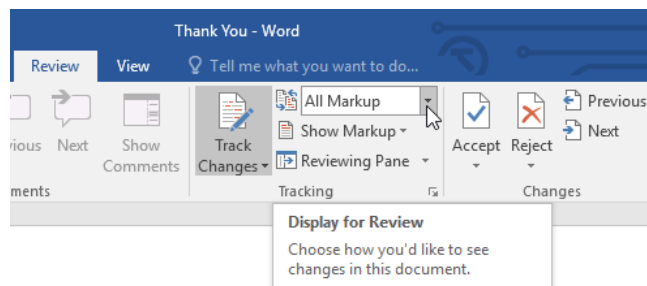
#### How Will I know If I Need To Collect Metadata From My Client?

- Do you need to sort through your documents by date or subject?
- Do you need similar searches as you do in Westlaw and Lexis (search connectors)?
- Do you need to filter documents based on a specific person, date or subject/topic?
- Do you need a binder of your client documents?

**If you answered yes to any of these questions, you SHOULD collect metadata.**  
Please refer to the Discovery Reference Guide for details, and Bill or Kahea for questions.

### How to Remove Metadata

- Make sure **Track Changes** is turned off and "**All Markup**" is selected
- Properly **accept/reject tracked changes** one by one or all at once
- Use **metadata scrubbing software**
- **Scrub** before or during conversion to portal document format (PDF)



### Potential Pitfalls

You could voluntarily, but unknowingly, send confidential client communication to the opposing side

- Unwanted information that is included and delivered within files could be detrimental to court cases or contract negotiations
- Sharing documents containing metadata can lead to the disclosure of confidential client information and the breach of client/attorney confidentiality
- Potential for malpractice claims increases
- Can be a source of evidence

### Metadata Ethics Opinions

#### What is the Sender's Duty When Transmitting Metadata?

No explicit duty regarding metadata is imposed, but a number of methods for eliminating metadata (including "scrubbing," negotiating a confidentiality agreement, or sending the file in a different format) are suggested for attorneys who are "concerned about the possibility of sending, producing, or providing to opposing counsel a document that contains or might contain metadata." [06-442] Presumably, a lawyer's general duties with regard to the confidentiality of client information under Rule 1.6 apply to metadata.

#### May the Recipient Review or "Mine" Metadata?

YES. After noting that some authorities have found metadata mining "ethically impermissible," the Committee states that it "does not share such a view, but instead reads the recent addition of Rule 4.4(b) identifying the sole requirement of providing notice to the sender of the receipt of inadvertently sent information, as evidence of the intention to set no other specific restrictions on receiving lawyer's conduct found in other Rules." [06-442]

#### Must the Recipient Notify Sender if Metadata is Found?

YES, if lawyer knows or reasonably should know that transmission was inadvertent. ABA Formal Opinion 05-437 cites the Rule 4.4(b) provision that a "lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." [05-437] The Opinion goes on to state that Rule 4.4(b) "obligates the receiving lawyer to notify the sender of the inadvertent transmission promptly" but "does not require the receiving lawyer either to refrain from examining the materials or to abide by the instructions of the sending lawyer." [05-437]

# Client

# Interviewing

D. Tucker Charns  
Chief Regional Defender  
Indigent Defense Services



## CLIENT INTERVIEW CHECK LIST

### BEFORE THE INTERVIEW

- ☐ Check custody status
- ☐ Review warrants and affidavit
- ☐ Review for conflicts with witnesses
- ☐ Review for conflicts with co-defendants
- ☐ Look for indications that client may need an interpreter for interview
- ☐ Check for any other pending charges
- ☐ If there was a prior attorney on this charge, ask for file (client may need waiver)
- ☐ Print out/know the elements of the offenses
- ☐ Print out/know the defenses to the charges
- ☐ Print out/know the sentences of the offenses
- ☐ Print out/know the collateral consequences
- ☐ Know the next court date
- ☐ Know the conditions of release

- ☐ Introduce yourself and explain confidentiality

## THE INTERVIEW

- ☐ Go over the elements of the offenses
- ☐ Go over lesser-included charges and the defenses of the charges
- ☐ Go over possible sentences
- ☐ Go over range of collateral consequences
- ☐ Discover immigration status
- ☐ Go over any court orders/conditions of bond
- ☐ Discuss client's personal information, story of the case, concerns, best outcome
- ☐ Discuss fines, costs, fees and ability to pay
- ☐ Discuss any further investigation/waivers
- ☐ Discuss not contacting witnesses, officers
- ☐ Discuss policy on calls from them, family, friends
- ☐ Go over the process in court
  - ☐ what time to arrive
  - ☐ what to wear/not wear
  - ☐ what to bring/not bring
  - ☐ what to expect when name called
  - ☐ what it means to wait for attorney/remain and attorney will find client
  - ☐ if another attorney calls client's name
  - ☐ don't leave the court room unless a break/time expectations
  - ☐ will the witness be there/what to do if the client sees the witness
  - ☐ how to contact attorney if client is late/will miss court
  - ☐ what happens if client is late/does not appear

## AFTER THE INTERVIEW

- ☐ Have client sign up court date notification service:  
<https://www.nccourts.gov/court-dates>
- ☐ Consider if you need to get funds for expert/fact investigator
- ☐ Consider if you need to contact IDS for an immigration consult
- ☐ Synopsis for yourself or any substitute counsel
- ☐ Understand and record the client's goal at this point
- ☐ Calendar any ticklers
- ☐ Keep any promises



## CLIENT QUESTIONNAIRE

**THIS INFORMATION IS CONFIDENTIAL AND PROTECTED BY ATTORNEY-CLIENT PRIVILEGE.**

### YOUR INFORMATION

Your full name: \_\_\_\_\_

Race/Ethnicity: \_\_\_\_\_ Your age: \_\_\_\_\_ Your date of birth: \_\_\_\_\_

Where you live: \_\_\_\_\_ How long have you lived there? \_\_\_\_\_

Phone number: \_\_\_\_\_

Available for texting? \_\_\_\_\_

Email addresses: \_\_\_\_\_

Best way to get a message to you: \_\_\_\_\_

### YOUR FAMILY

Are you (circle one)    Single            Engaged            Married            Living with a Partner            Separated  
    Divorced

If you are engaged/married/living together, name of spouse/partner: \_\_\_\_\_

If you have children, please complete this information:

Name	Age	If under 21, where do they live and with whom
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do you pay child support or does someone pay child support to you? YES    NO

If you pay child support, how much do you pay each month? \$ \_\_\_\_\_

If you pay, is it a court-ordered payment? YES    NO

For any of your children, has the other parent lost parental rights or missing, dead or incarcerated?

YES    NO

If yes, please give details:

\_\_\_\_\_

\_\_\_\_\_

Is there any pending action to terminate your parental rights or any DSS involvement? YES    NO

Have you lost your parental rights? YES    NO

If so, please list the names of the children for which your parental rights have been terminated:

\_\_\_\_\_

\_\_\_\_\_

[Type here]

Will you need to make child care arrangements when you go to court? YES NO

If you have sisters and/or brothers, please complete this information:

Name	Age	Occupation:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Complete this information about your parents or guardians:

Mother's name: \_\_\_\_\_ Age or date deceased: \_\_\_\_\_

Mother's work: \_\_\_\_\_

Father's name: \_\_\_\_\_ Age or date deceased: \_\_\_\_\_

Father's work: \_\_\_\_\_

Were you raised primarily by one parent or both? One Both Neither

If you were raised primarily by one parent, which one? Mother Father Other

If you were raised by someone other than your parents, please complete this information:

Name: \_\_\_\_\_ Age or date deceased: \_\_\_\_\_

Relationship to you: \_\_\_\_\_ Their work: \_\_\_\_\_

Name: \_\_\_\_\_ Age or date deceased: \_\_\_\_\_

Relationship to you: \_\_\_\_\_ Their work: \_\_\_\_\_

Do any of your family members have a health condition for which you provide care? YES NO

If yes, who is it, what is the condition and how do you care for them? \_\_\_\_\_

\_\_\_\_\_

## YOUR WORK HISTORY

What kind of work do you do? \_\_\_\_\_

If you are working now, where do you work? \_\_\_\_\_

How much are you paid weekly or monthly? \_\_\_\_\_

[Type here]

What are the days and times you usually work: \_\_\_\_\_

How long have you had this job? \_\_\_\_\_

Does your employer know you have been arrested/charged? YES NO

May we contact your employer? YES NO

If you are not working now, how are you supporting yourself? \_\_\_\_\_

List your past jobs and when you worked there:

Where	What you did	When
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

NOTE: Certain criminal convictions can prevent you from working in a particular job or from getting or keeping an occupational license.

If you have any kind of occupational license, such as barber or health care, what is it? \_\_\_\_\_

Do you now or do you plan to work in the following (circle all that apply):

- |   |   |
|---|---|
| <input type="radio"/> schools or school services                  | <input type="radio"/> airlines                          |
| <input type="radio"/> healthcare                                  | <input type="radio"/> transportation                    |
| <input type="radio"/> a place that cares for the elderly/disabled | <input type="radio"/> child care                        |
| <input type="radio"/> private security                            | <input type="radio"/> government employment             |
|   | <input type="radio"/> military/tribal or tribal casinos |

NOTE: If you work in schools, long-term care, transportation, child care, elderly care and certain other fields, you may be required to report your arrest or any conviction to your employer. Other employers may have these requirements in your work contract.

## HOUSING

Who lives with you? \_\_\_\_\_

\_\_\_\_\_

In your house, who pays or helps pay the rent, utilities, living expenses (such as food, cell phone)?

\_\_\_\_\_

\_\_\_\_\_

[Type here]

NOTE: If you are convicted of a criminal offense, depending on the conviction, you and/or your family can be evicted or have problems renting any kind of housing in the future. If you live in subsidized housing, you could lose that funding.

If you rent, do you have a lease? YES NO If yes, when is your lease up? \_\_\_\_\_  
 Do you live in subsidized housing? YES NO  
 Have you been threatened with eviction? YES NO

If you are convicted of certain sex offenses, you may not be able to live within 1000 feet of a school, daycare or other places with children, even if you or the person with who you live owns the home. Is your home within 1000 feet of such a place? YES NO

## ► EDUCATION

How far did you go in school/last school attended? \_\_\_\_\_  
 If you are attending school now, what is the name of the school and your current grade? \_\_\_\_\_

NOTE: If you are convicted of certain crimes, like possession of a weapon at school or committing sex crimes or arson at a school, you will be expelled from school. Other crimes, such as assault or bomb threats, can also result in suspension or expulsion. You may be able to petition to get back into school after a period of time has passed.

Are you in school? YES NO  
 Have you talked to any school officials about your case or received any communication about your case from them? YES NO

If you have, to whom did you speak or what was the communication? \_\_\_\_\_

## ► STUDENT LOANS

In many cases, a drug conviction while a student is receiving student loans will affect the loan and the ability to get student loans will likely be suspended for at least a year. You should check with your loan advisor at school.

Are you receiving student loans? YES NO  
 Will you need student loans in the future? YES NO

## ► YOUR HEALTH

Do you have any physical illness or disabilities? YES NO

[Type here]

If yes, describe the condition, how you are being treated and how they affect you:

---



---



---

Are you taking any prescribed medicine?

YES NO

If yes, what is it? \_\_\_\_\_

Are you being treated for any mental health condition, including addiction?

YES NO

If yes, describe the condition(s) and how you are being treated: \_\_\_\_\_

---



---



---

Do you have/ever been told that you have addiction issues, including alcohol?

YES NO

If yes, have you ever received treatment?

YES NO

If yes, when and where? \_\_\_\_\_

Are you interested in treatment now? YES NO

## PUBLIC BENEFITS

NOTE: In many states, including North Carolina, if you are convicted of a drug-related felony you will be unable to receive cash assistance, like TANF (Temporary Assistance for Needy Families, also called WF, Work First). Some other convictions and time in custody may affect other public benefits.

Do you receive public assistance, including SSI:

YES NO

If yes, list them and how much you receive:

---



---

## YOUR CITIZENSHIP

[Type here]

If you are not a U.S. citizen, a plea or a criminal conviction could lead to your removal from the United States. This office has access to consults with immigration lawyers through Indigent Defense Services. Please answer these questions:

Where were you born? \_\_\_\_\_

Are you aware of any immigration proceedings pending and, if so, what are they?

\_\_\_\_\_

### **MILITARY SERVICE:**

Have you ever served in the military? YES NO

If yes, which branch of the military? \_\_\_\_\_

If yes, when did you serve? \_\_\_\_\_

If yes, what type of discharge did you receive? \_\_\_\_\_

NOTE: Men age 18-26 must register for the Selective Service. Failure to register can result in denial of certain types of government loans and benefits. If you are a man over 18 and have not registered and are likely to be incarcerated until after your 26<sup>th</sup> birthday, you should try to register now.

If you are a man between the ages of 18-26, are have you registered? YES NO

### **TRANSPORTATION**

What transportation do you use most? BUS I DRIVE SOMEONE DRIVES ME

Other: \_\_\_\_\_ How will you get to court? \_\_\_\_\_

### **DRIVER'S LICENSE**

NOTE: Certain drug and alcohol convictions can affect your ability to get or keep a driver's license.

Do you have a driver's license? YES NO

If yes, in which state? \_\_\_\_\_

If your driving record is relevant to the charges, your attorney will review it with you.

### **PROPERTY TAKEN**

If the police took any of your personal property, such as a cell phone, car or computer, it may not be possible to have it returned until after the case is concluded. Your attorney may seek a return before or at the time of disposition. Your attorney will not be able to do this after the conviction. Was any property taken from you? YES NO

If yes, do you have the receipt/return of service for that property? YES NO

What property was taken? \_\_\_\_\_

[Type here]

---

**▶ ANY CONVICTIONS**

If you have any prior convictions, list them below and include the county or state and the dates of the convictions. Your attorney will review your record as provided by the State with you.

---

---

---

---

---

---

---

---

---

---

[Type here]

Are you on probation or post-supervision release?      NO

YES- PROBATION      YES- POST-SUPERVISION RELEASE

If you are on probation or post-supervision release, does your probation officer know about these new charges?

YES   NO

### ANY OTHER PENDING CHARGES

Do you have any other charges pending anywhere?

YES   NO

If yes, what are the other charges? \_\_\_\_\_

\_\_\_\_\_

If yes, in which county or State are you charged? \_\_\_\_\_

If yes, who is your attorney for the other charges? \_\_\_\_\_

### THE PRESENT CHARGES

Date of arrest: \_\_\_\_\_

Location of the arrest: \_\_\_\_\_

Officer/Agency: \_\_\_\_\_

Were you or your house or car searched? YES   NO

Was there a search warrant? YES   NO

Do you recall signing anything? YES   NO

Will the officer say you said something? YES   NO

Will the officer say they took something from you or from your car or house? YES   NO

Client's memory of arrest, search, statements, witnesses, character witnesses:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Type here]



[Type here]

\*\*\*\*\*DO NOT WRITE BELOW THIS LINE: ATTORNEY SECTION ONLY\*\*\*\*\*

What does the client want/client's best possible outcome? \_\_\_\_\_

Attorney's analysis of an evaluation of the case, defense, need for investigation and next steps (add dates): \_\_\_\_\_

[Type here]

# “OBJECT ANYWAY”: Effective *Batson* Objections

Erica Washington & Hannah Autry  
Center for Death Penalty Litigation  
Durham County Bar Association Eighth Annual CLE Event  
February 12, 2020

1

## Goal

Eliminate discrimination against jurors by not engaging in race or gendered-based strikes, and having the confidence to speak up when you see it.

2

“[W]hen you see that [the defendant is] going to get stuck being judged by middle-aged white women, middle-aged white men, as a black man, I didn’t feel like that was—it kind of hurt me that I didn’t get picked. ”

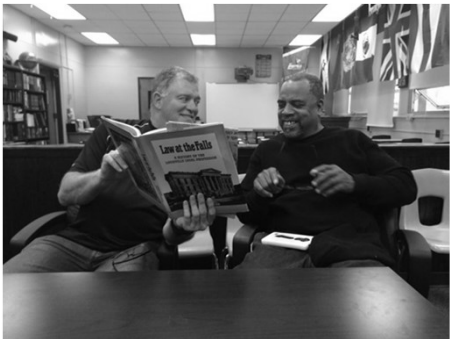


3

### Reasons why *Batson* challenges aren’t being made

- 1. Didn’t think of it at the time
- 2. Didn’t know the law well enough
- 3. Didn’t think the judge would grant it

4



Podcast Episode:  
“Object Anyway”  
More Perfect  
WNYC Radio  
July 16, 2016

5

### Batson v. Kentucky (1986)

• “[S]election procedures that purposefully exclude black persons from juries **undermine public confidence in the fairness of our system of justice.**”

6



7

**WFU Jury Sunshine Project**

Black/White Removal Ratios for Largest Cities in NC

Winston-Salem (Forsyth)	3.0
Durham (Durham)	2.6
Charlotte (Mecklenburg)	2.5
Raleigh (Wake)	1.7
Greensboro (Guilford)	1.7
Fayetteville (Cumberland)	1.7

8



9

7-3 DECISION FOR BATSON  
MAJORITY OPINION BY LEWIS F. POWELL, JR.

Marshall

Brennan

Blackmun

Stevens

Powell

White

O'Connor

Burger

Rehnquist

6-3 DECISION FOR THOMAS JOE MILLER-EL  
MAJORITY OPINION BY DAVID H. SOUTER

Ginsburg

Breyer

Kennedy

Scalia

Stevens

Souter

O'Connor

Rehnquist

Thomas

10

7-3 DECISION FOR ALLEN SNYDER  
MAJORITY OPINION BY SAMUEL A. ALITO, JR.

Ginsburg

Breyer

Roberts

Scalia

Stevens

Souter

Kennedy

Alito

Thomas

7-1 DECISION FOR FOSTER  
MAJORITY OPINION BY JOHN G. ROBERTS, JR.  
Foster showed purposeful discrimination in his Batson challenge.

Ginsburg

Breyer

Roberts

Thomas

Sotomayor

Kagan

Kennedy

Alito

11

7-2 DECISION FOR FLOWERS  
MAJORITY OPINION BY BRETT M. KAVANAUGH  
The trial court committed clear error in concluding that the State's peremptory strike of a particular black prospective juror was not motivated in substantial part by discriminatory intent.

Ginsburg

Alito

Sotomayor

Thomas

Kavanaugh

Roberts

Breyer

Kagan

Gorsuch

12

Applies to Civil cases too!

- *Jackson v. Housing Authority of the City of High Point*, 321 N.C. 584 (1988)
- BUT – no adequate record because did not record jury selection/provide it to the court for the appeal

13

Still on the fence?

- Create appellate issue (no need to exhaust peremptories)
- Get future jurors passed
- Strengthen later *Batson* objections
- Educate the court/prosecutor
- Help everyone check implicit bias
- Work for your client
- Alert attentive jurors to flawed, racially biased system
- Right thing to do

So, object anyway!

14

When to use Batson?

ALWAYS

15

Batson Objections

A Quick Guide

2018

OBJECT

to any strike you think was made based on race, gender, religion, or ethnicity

"This motion is made under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution, Art. 1, Sec. 19 and 23 of the N.C. Constitution, and my client's rights to due process and a fair trial."

- You can object to the first strike. "Constitution forbids striking even a single prospective juror for a discriminatory purpose." *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008).
- Your client does not have to be member of same cognizable class as juror. *Powers v. Ohio*, 499 U.S. 400 (1991).
- You do not need to exhaust your peremptory challenges to preserve a *Batson* claim.

AVOID "REVERSE BATSON"

- Select jurors based on their answers, not stereotypes
- Check your own implicit biases
  - What assumptions am I making about this juror?
  - How would I interpret that answer if it were given by a juror of another race?

16

STEP ONE: PRIMA FACIE CASE

You have burden to show an inference of discrimination

*Johnson v. California*, 545 U.S. 162, 170 (2005).

"Not intended to be a high hurdle for defendants to cross." *State v. Hoffman*, 348 N.C. 548, 553 (1998).

Establishing a *Batson* violation does not require direct evidence of discrimination. *Batson v. Kentucky*, 476 U.S. 79, 93 (1986) ("Circumstantial evidence of invidious intent may include proof of disproportionate impact.")

"All circumstances" are relevant. *Snyder*, 552 U.S. at 478.

- Calculate and give the strike pattern/disparity. *Miller-El v. Dretke*, 545 U.S. 231, 240-41 (2005).

"\_\_\_% of the State's strikes have been against African Americans." and/or

"The State has struck \_\_\_% of African Americans and \_\_\_% of whites"

- Give the history of strike disparities and *Batson* violations in this DA's office/prosecutor. *Miller-El*, 545 U.S. at 254, 264. (Contact CDPL for data on your county to reference.)
- State questioned juror differently or very little. *Miller-El*, 545 U.S. at 241, 246, 255.
- Juror is similar to white jurors passed (describe how). *Foster v. Chatman*, 136 S.Ct. 1737, 1750 (2016); *Snyder*, 552 U.S. at 483-85.
- State the racial factors in case (race of Defendant, victim, any specific facts of crime).
- No apparent reason for strike.

17

Example of objection at Step 1

Scenario: 28 year old black woman was struck. The only black person in the panel. Had 3 young children at home, grandmother helped take care of them. Worked as a technician at time warner cable. Questionnaire indicates had a brother with a criminal history. She grew up in the county, but had some dealings with an apartment complex where she was evicted. The state asked basic questions of the juror and did not follow up much. Like nearly every other juror, says she can be fair.

My objection: Your honor, the defense objects to the strike of this juror under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> amendments to the constitution, article 1, sec 19 and 23 of the NC constitution, and my client's rights to due process and a fair trial. My client is black, the victim is white, and this juror is black. She is the only black woman who has been questioned by the state, and the state exercised it's only peremptory strike on this juror. Therefore, the state has struck 100% of available black jurors and 0% of available white jurors. The state barely asked this juror any questions, and there is no apparent reason for the strike. This first step of the *Batson* analysis is not intended to be a high hurdle for the defendant to cross, and we ask that you make a finding of a prima facie case of discrimination in striking this juror.

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Black Jurors Struck

Black Jurors Available

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Non-Black Jurors Struck

Non-Black Jurors Available

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"STRIKE RATIO"

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"STRIKE RATIO"

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2

(66.67%)

(33.33%)

21

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2/1

22

STEP TWO: RACE-NEUTRAL EXPLANATION

Burden shifts to State to explain strike

If the State volunteers reasons without prompting from the Court, the prima facie showing is assumed; move to step 3.  
*Hernandez v. New York*, 500 U.S. 352, 359 (1991).

- Keep your ears open for reasons that are not truly race-neutral (ex: member of NAACP).
- Prosecutor must actually give a reason. *State v. Wright*, 189 N.C. App. 346 (2008).
- Court cannot suggest its own reason for the strike. *Miller-El*, 545 U.S. at 252.

23

STEP THREE: PURPOSEFUL DISCRIMINATION

You now have burden to prove race was a significant factor

Argue the State's stated reasons are pretextual

Race does not have to be the only factor. It need only be "significant" in determining who was challenged and who was not. *Miller-El*, 545 U.S. at 252.  
The defendant does not bear the burden of disproving each and every reason proffered by the State. *Foster*, 136 S. Ct. at 1754 (finding purposeful discrimination after debunking only three of eleven reasons given).

- The reason applies equally to white jurors the State has passed. *Miller-El*, 545 U.S. at 247, n.6. Jurors don't have to be identical; "would leave Batson inoperable;" "potential jurors are not products of a set of cookie cutters."
- The reason is not supported by the record. *Foster*, 136 S.Ct. 1737, 1749.
- The reason is nonsensical or fantastic. *Foster*, 136 S.Ct. at 1752.
- The prosecutor failed to ask the juror any questions about the topic that the State now claims disqualified them. *Miller-El*, 545 U.S. at 241.
- State's reliance on juror's demeanor is inherently suspect. *Snyder*, 552 U.S. at 479, 488.
- A laundry list of reasons is inherently suspect. *Foster*, 136 S.Ct. at 1748.
- Shifting reasons are inherently suspect. *Foster*, 136 S.Ct. at 1754.
- State's reliance on juror's expression of hardship or reluctance to serve is inherently suspect. *Snyder*, 552 U.S. at 482 (hardship and reluctance does not bias the juror against any one side; only causes them to prefer quick resolution, which might in fact favor the State).
- Differential questioning is evidence of racial bias. *Miller-El*, 545 U.S. at 255.
- Prosecutor training and prior practices are relevant. *Miller-El*, 545 U.S. at 263-64.

24

Example of objection at Step 1

**Scenario:** The state gives the reasons as 1. not grounded in the community; 2. dishonest on questionnaire because said she had never been a civil defendant, but she's had eviction dealings; 3. has a brother with a criminal history, and 4. did not make good eye contact with me.

**MY OBJECTION:** Your honor, the state's stated reasons for this strike are pretextual and the record is clear that race is a significant factor in the prosecutor's strikes. First, the prosecutor says that he struck the juror because her being evicted from apartments shows she is not grounded in the community. However, she is one of the few jurors who was actually born and raised in this county, whereas nearly every white juror passed by the state moved here upon retirement and has only lived here a few years. Furthermore, her dishonesty on the juror questionnaire is not supported by the record, because the questionnaire asked if she was a witness in a civil case, not if she had ever been a civil defendant. Next, even though the state says that a reason is that she has a brother with a criminal history, the state failed to ask her any questions about this. Additionally, as *Snyder* and *Foster* show, citing to juror demeanor (eye contact) and giving a laundry list of reasons is inherently suspect. This juror should be seated.

25

JUDGE GRANTS YOUR OBJECTION: REMEDY

In judge's discretion to:

- Dismiss the venire and start again OR
- Seat the improperly struck juror(s) *State v. McCollum*, 334 N.C. 208 (1993).

26

Batson Motions 101 - Essentials

- Record jury selection
- Record juror race

27

Importance of creating the record

- *North Carolina v. Campbell*, No. COA18-998 (Jan. 21, 2020)
- Issue: Did trial court err by finding no prima facie case? Answer: No.
- Filed a motion for complete recordation, but did not ask to record jury selection ☹
- State used 3 of its 4 strikes against African American jurors
- "[I]f a defendant anticipates making a *Batson* discrimination argument, it is extremely difficult to prevail on such grounds without a transcript of jury selection."
- Court pointed out that based on record: did not know victim's race, race of key witnesses, questions and statements of prosecutor that support discriminatory intent, the acceptance rate of potential African American jurors, or the final racial composition of jury
- "Without such information, it is highly improbable that such a challenge will succeed."

28

Batson Motions 201

- Notice of intent to object to *Batson* violations
- Discovery motion – training materials
- Memorandum in support of *Batson* objection
- Preserve opposing party's notes

29

The future looks bright!

- Washington Rule 37
  - Implicit bias
  - Factors that correlate with race
- Current NCSC cases
  - Hobbs & Bennett

➡ "If the court determines that an objective observer could view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory challenge shall be denied. *The court need not find purposeful discrimination to deny the peremptory challenge.*"

30

PRESENTED BY ALICIA J JOURNEY, ESQ.

**Avoiding Burnout: Maintaining Mental Health  
in the High Pressure Practice of Law**

1

**WHAT IS BURNOUT?**

- "A state of physical, emotional, and mental exhaustion caused by long term involvement in emotionally demanding situations."- Ayala Pines and Elliot Aronson.

"A state of fatigue or frustration brought about by devotion to a cause, way of life, or relationship that failed to produce the expected reward."- Herbert J. Freudenberger.

2

**THE DIFFERENCE BETWEEN BURNOUT AND EXHAUSTION**

- Burnout occurs when you were lit up to begin with;
- Burnout is not remedied with rest;
- There is a sense of hopelessness that accompanies burnout that is not visible in exhaustion;
- Burnout is an emotional, mental and spiritual fatigue where exhaustion is mostly physical.

3

**SIGNS AND SYMPTOMS OF BURNOUT**

PHOTO BY ZSV3207/ADOBE STOCK

4

**1.Physical signs and symptoms of burnout**

- Feeling tired and drained most of the time
- Lowered immunity, frequent illnesses
- Frequent headaches or muscle pain
- Change in appetite or sleep habits

5

**Emotional signs and symptoms of burnout**

- Sense of failure and self-doubt
- Feeling helpless, trapped, and defeated
- Detachment, feeling alone in the world
- Loss of motivation
- Increasingly cynical and negative outlook
- Decreased satisfaction and sense of accomplishment

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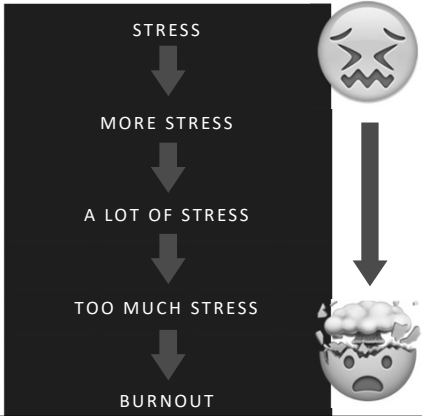


Behavioral signs and symptoms of burnout

- Withdrawing from responsibilities
- Isolating yourself from others
- Procrastinating, taking longer to get things done
- Using food, drugs, or alcohol to cope
- Taking out your frustrations on others
- Skipping work or coming in late and leaving early

7

The Difference between BEING STRESSED and BEING BURNED OUT



8

Work-related Causes of Burnout

- Feeling like you have little or no control over your work
- Lack of recognition or reward for good work
- Unclear or overly demanding job expectations
- Doing work that’s monotonous or unchallenging
- Working in a chaotic or high-pressure environment

9

Lifestyle causes of burnout

- Working too much, without enough time for socializing or relaxing
- Lack of close, supportive relationships
- Taking on too many responsibilities, without enough help from others
- Not getting enough sleep

10

Personality traits can contribute to burnout

- Perfectionistic tendencies; nothing is ever good enough
- Pessimistic view of yourself and the world
- The need to be in control; reluctance to delegate to others
- High-achieving, Type A personality

11

CONSEQUENCES OF BURNOUT


12

<ul style="list-style-type: none"><li>▪ Obesity</li><li>▪ Hyperlipidemia</li><li>▪ Type 2 Diabetes*</li><li>▪ Large waist circumference, high body mass index, metabolic syndrome, hypertension, high triglycerides, low HDL cholesterol, high LDL cholesterol and impaired fasting glucose</li><li>▪ Hypercholesterolemia (total cholesterol)*</li><li>▪ Coronary heart disease*</li><li>▪ Hospitalization for cardiovascular disease*</li><li>▪ Hospitalization for musculoskeletal disorder</li><li>▪ Musculoskeletal pain*</li><li>▪ Changes in pain experiences (overall pain*, neck-shoulder pain*, back pain*, pain-related disability*, headache, pain in the entire body, pain intensity and frequency)</li><li>▪ Prolonged fatigue*</li><li>▪ Headaches*, respiratory infections*, and gastrointestinal problems*</li><li>▪ Severe injuries*</li><li>▪ Mortality below 45 years*</li></ul>
<b>PSYCHOLOGICAL CONSEQUENCES</b> <ul style="list-style-type: none"><li>▪ Insomnia*, changes in levels of insomnia*</li><li>▪ Incidence of insomnia, persistence of insomnia and sleep disturbances</li><li>▪ Depressive symptoms*</li><li>▪ Psychotropic and antidepressant treatment*</li><li>▪ Hospitalization for mental disorders*</li><li>▪ Psychological ill-health symptoms*</li></ul>
<b>OCCUPATIONAL CONSEQUENCES</b> <ul style="list-style-type: none"><li>▪ Job dissatisfaction*</li><li>▪ Absenteeism*</li><li>▪ New disability pension*</li><li>▪ Job demands*, job resources*</li><li>▪ Presenteeism*</li></ul>

13

HOW TO AVOID BURNOUT IN THE PRACTICE OF LAW?

DO AN AUDIT



14

THE FOUR PILLARS OF WELL-BEING



Non-negotiables

15

DEVELOPING SKILLS TO AVOID BURNOUT ONE MICRO-HABIT AT A TIME.

START WITH .1 INCREMENT PER DAY FOR 7 DAYS CHOOSING ONE OF YOUR NON-NEGOTIABLES.

THAT’S 1/10 OF A BILLABLE HOUR.

YOU WILL SEE A RETURN ON THAT INVEST.

16

TIME BLOCK INTENDING

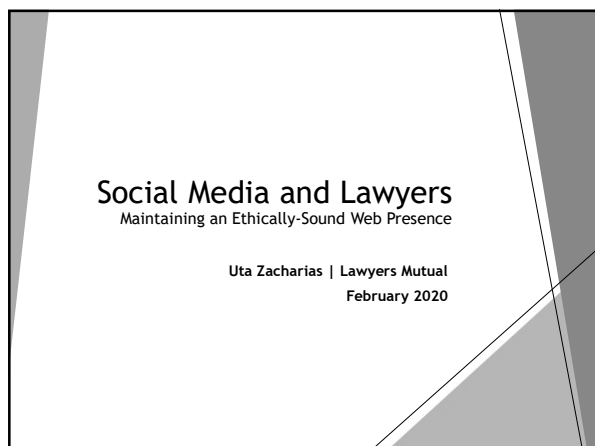
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“If you do not make time for your wellness, you will be forced to make time for your illness.”

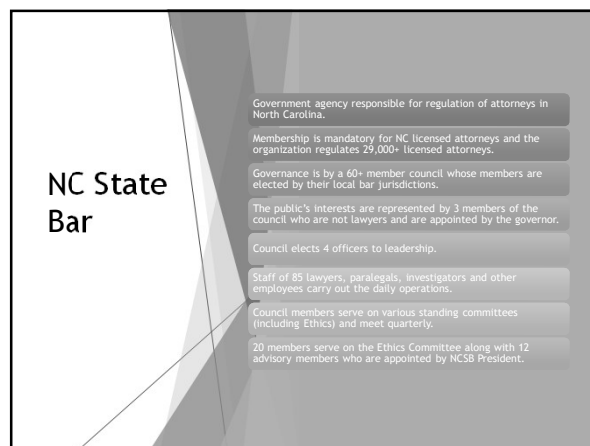
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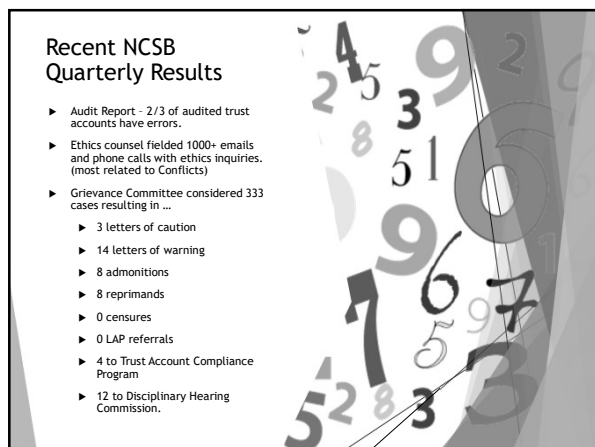
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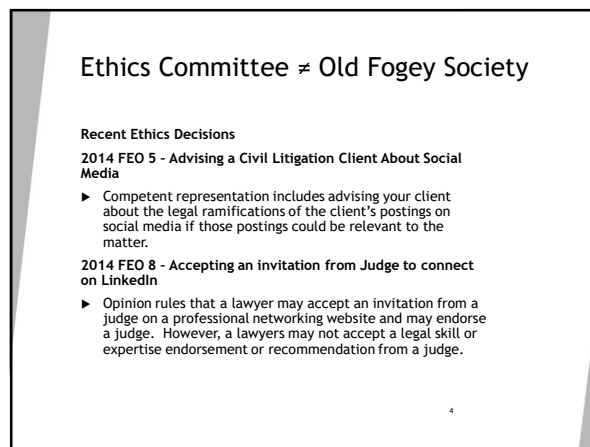
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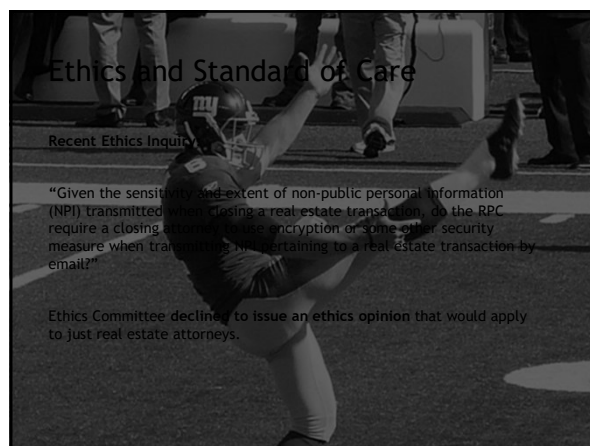
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## AVVO

Subcommittee appointed.

7 meetings since December 2017.

Proposed opinion published for comment in July 2019 resulted in 30 comments.

### Issues implicated in Proposed Opinion:

- ▶ Rule 5.4 (a) - prohibition on fee-splitting with non-lawyer
- ▶ Rule 7.2 (d) - conditions for participating in a lawyer referral service (including the requirement that the service not be operated for a profit)
- ▶ Rule 7.2(b) - prohibition on giving anything of value to a person for recommending the lawyer's services
- ▶ Rule 7.1(a) - Requirement that advertising be truthful and not misleading
- ▶ Rule 5.5 (f) - prohibition on assisting another person in the unauthorized practice of law (including the unauthorized practice of law by a corporation)

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## Technology: New in 2019

- ▶ NC Rules of Professional Conduct Rule 1.1, Comment [8]
- ▶ "[A] lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with the technology relevant to the lawyer's practice."
- ▶ One of twelve CLE hours every year must be devoted to technology training.

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Accessing Social  
Network  
Presence of  
Represented  
or  
Unrepresented  
Party



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## New 2018 FEO 5

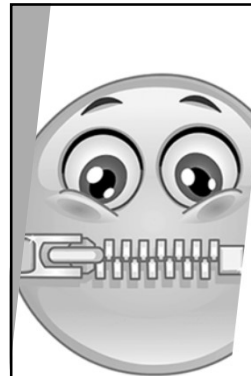
- ▶ Nothing in the Rules prohibits a lawyer from accessing publicly available information.
- ▶ Lawyers must never use deception, dishonesty, or pretext to gain access to a person's restricted social network presence.
- ▶ A lawyer, using his/her true identity, may request access to the restricted portions of an unrepresented person's social network presence.
- ▶ A lawyer, using his/her true identity, may NOT request access to the restricted portions of a represented person's social network presence.
- ▶ Lawyer may ask a 3<sup>rd</sup> party who already has access to restricted portions of a represented or unrepresented party's social network presence to provide helpful info from the site if not deceitful.
- ▶ Rare instance where the full Bar Council overrode a recommendation of the Ethics Committee.
- ▶ Criminal defense, domestic law, and personal injury plaintiff and defense lawyers all have different perspectives.

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## Social Media and Client Confidentiality

- ▶ Rule 1.6 Confidentiality of Information.
- ▶ California Formal Opinion Interim No. 13-0005.
- ▶ Hypotheticals.



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## Social Media and Attorney-Client Relationships

- Unintended Attorney-Client Relationships (at least from your standpoint)
- Bottom line: Do not give legal advice on social media

13

## Under consideration/In the pipeline...

Proposed 2018 FEO 8, Advertising Membership in Marketing Company with Misleading Title



Lawyers of Distinction Members have been selected based upon a review and vetting process by our Selection Committee utilizing U.S. Provisional Patent # 62/743,254. The platform generates a numerical score of 1 to 5 for each of the 12 enumerated factors which are meant to recognize the applicant's achievements and peer recognition. Members are then subject to a final review for ethical violations within the past ten years before confirmation of Membership. Nomination does not guarantee membership and attorneys may not pay a fee to be nominated. Attorneys may nominate their peers whom they feel warrant consideration. The determination of whether an attorney qualifies for Membership is based upon the aforementioned proprietary analysis discussed above. Membership is not meant to infer any endorsement of Lawyers of Distinction by any of the 50 United States Bar Associations or The District of Columbia Bar Association. Any references to "excellent," "excellence," or "distinguished" are meant to refer to the Lawyers of Distinction organization only and not to any named member individually.

14

## 2018 FEO 7

### Online Review Solicitation Service

- Proposed opinion rules that, subject to certain conditions, a lawyer may participate in an online service for soliciting client reviews that collects and posts positive reviews to increase the lawyer's ranking on internet search engines.
- Repsight.com -- online service offers to help lawyers accumulate more positive client reviews on Google.
- Repsight will contact clients via text or email to solicit reviews. If 4 or 5 stars, the client will be directed to lawyer's Google review page.
- If review is 3 stars or less, the client will be redirected to a private feedback form for the lawyer to review.
- Ethics Committee equated Repsight to a customer service survey.
- Must get client's informed consent to provide contact info to Repsight. Rule 1.6(a).

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## Proposed 2020 FEO 1


### Responding to Negative Online Reviews

- Lawyer may post a proportional and restrained response to a negative online review as long it does not disclose confidential client information.
- Pennsylvania Proposed Generic Response: "A lawyer's duty to keep client confidences has few exceptions and in an abundance of caution I do not feel at liberty to respond in a point-by-point fashion in this forum. Suffice it to say that I do not believe that the post presents a fair and accurate picture of the events."
- Texas State Bar and San Francisco Bar adopted similar responses.

16

## Beware -- Wire Fraud and Scams

- Beware of wire fraud scams and other evolving scams. While we see this most often in real estate cases, frauds often move from one practice area to another.
- Use Lawyers Mutual resources: newsletter, alerts, Lending Library (see website).
- Staff education is critical - invite LM for a Lunch & Learn.
- See cyber / crime insurance products from Lawyers Insurance.



17

## Beware -- Wire Fraud and Scams

- Secured Email.
- Always use a secure domain. Email services such as AOL, Gmail and Yahoo are easy targets for hackers.
- Check email addresses for accuracy. In many cases, a fraudulent email is close, but not the correct address. Hover over email address and links to ensure accuracy before clicking.
- Do not accept changes in wire instructions sent via email. ALWAYS assume the request is fraudulent.
- All wiring instructions should be verified, preferably in person or by a telephone call that you initiate using contact information from your file (not from an email or fax that maybe fraudulent).

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## Beware --Wire Fraud and Scams

**Sample Disclaimers**

#1 - If you receive **NEW** wiring instructions on this transaction, please contact (name) immediately via phone. The Smith Jones Law Firm **DOES NOT** alter its wire instructions.


#2 - Before sending any wire, call our office at 555-555-5555 to verify the instructions as previously agreed upon. We will not change wiring instructions. If you receive new wiring instructions via email or fax for a different bank, branch location, account name or account number, please presume it is fraudulent. Do not send funds and call our office immediately.



19

## Outgoing Wires


- ▶ Receipt of wiring instructions.
  - ▶ Original signed, notarized directive
  - ▶ No email delivery -- assume fraudulent
  - ▶ Faxed instructions no safer than email
- ▶ **EVERY** wire request needs to be verified and make it personal.
- ▶ Do not accept changes to wire instructions.
- ▶ Be very suspicious of wires going to account that is not in the exact name of the client or party to the transaction.
- ▶ Be suspicious of any account with an address listed in a geographic location different from the intended recipient.
- ▶ Do not send wires overseas.
- ▶ After initiating wire transfer, telephone the recipient and provide the details and request confirmation of receipt.
- ▶ Educate clients on wire fraud concerns early in the process.



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## Beware - - Scams and Schemes

- ▶ NC State Bar now reprimanding attorneys for failure to keep client's property safe.
- ▶ Most E&O policies do not cover wire fraud.
- ▶ Criminals are staying one step ahead of efforts to prevent wire fraud.
- ▶ Be aware of other financial fraud - fraudulent cashier's check schemes are making a comeback.



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## Lawyers Mutual Resources

More than 50 Practice Guides and Tool Kits on our website: [www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)

- Opening a Law Firm
- Attorney - Client Relationships
- Attorney - Client Agreements
- Unbundled services, confirm scope of work
- Planning Ahead: Protecting Your Clients in Event of Your Disability or Death
- I Made a Mistake, Now What?
- Records Retention (electronic and paper)
- Planning Ahead for Closing a Law Practice
- Buying or Selling a Law Practice
- Data Security Policy

22

## Connect + Contact

Lawyers Mutual Liability Insurance Company of North Carolina  
 P. O. Box 1929  
 Cary NC 27512-1929  
 T: 919.677.8900 | 800.662.8843  
[www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)



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## EMERGING ETHICS

**Durham County Bar Association**  
Rhythms Live Music Hall

February 12, 2020

Warren Savage, Sr. Claims Attorney

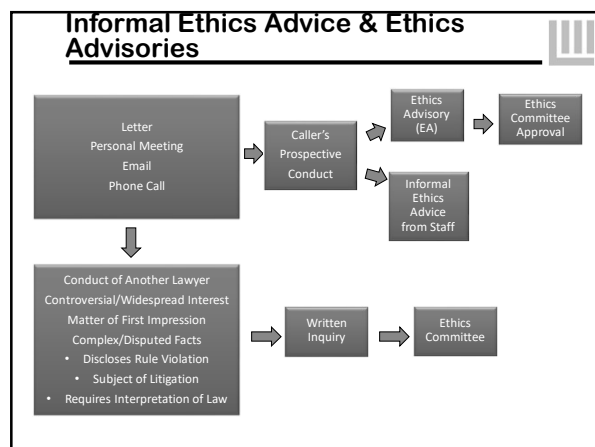


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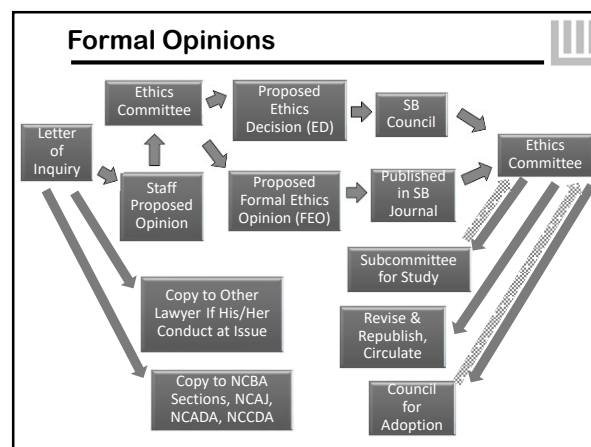
## NC STATE BAR – LAST GREAT DEBATING SOCIETY

- Government agency responsible for regulation of attorneys in NC
- Membership is mandatory and the organization regulates 27,000+ licensed attorneys
- Governance is by a 60+ member council whose members are elected by their local bar jurisdictions
- The public's interests are represented by 3 members of the council who are not lawyers and are appointed by the governor
- Council elects 4 officers to leadership
- Staff of 85 lawyers, paralegals, investigators and other employees carry out the daily operations
- Council members serve on various standing committees (including Ethics) and meet quarterly
- 22 members serve on the Ethics Committee along with 12 advisory members who are appointed by NCSB President

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## DISHONEST LAWYERS?

- **2014 FEO 9 USE OF TESTER IN AN INVESTIGATION THAT SERVES A PUBLIC INTEREST** – *Opinion rules that a private lawyer may supervise an investigation involving misrepresentation if done in pursuit of a public interest and certain conditions are satisfied.*
- **This opinion does not apply to the conduct of a government lawyer.**
- In addition, this opinion is limited to private lawyers who advise, direct, or supervise conduct involving dishonesty, deceit, or misrepresentation as opposed to a lawyer who personally participates in such conduct.
- A lawyer may not advise, direct, or supervise the use of misrepresentation to pursue the purely personal interests of the lawyer's client, where there is no public policy purpose, **such as the interests of the principal in a family law matter.**

5

## ETHICAL DUTY WHEN WRONGFUL CONVICTION

- Amendments to the RPC require a prosecutor or a lawyer to disclose post-conviction information or evidence that may exonerate a convicted defendant.
- **New Rule 3.8(g) for Prosecutors** – *When prosecutor knows of new, credible evidence or information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall promptly disclose that evidence to the defendant, the defendant's counsel, or NC Office of IDS.*
- **New Rule 8.6 for All Lawyers** – *When a lawyer knows of credible evidence or information (even if protected confidential information), that creates a reasonable likelihood that a defendant did not commit an offense for which the defendant was convicted, the lawyer shall promptly disclose that evidence to the appropriate prosecutor and to the NC Office of IDS.*
  - **Exception** – Shall NOT disclose if disclosure would criminally implicate a present or former client or would violate the attorney-client privilege.

6

### RESPONDING TO INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM QUESTIONING REPRESENTATION

- 2011 FEO 16 -- Criminal defense lawyer accused of ineffective assistance of counsel by a former client may share confidential client information with prosecutors to help establish a defense to the claim so long as the lawyer reasonably believes a response is necessary and the response is narrowly tailored to respond to the allegations.
- Common question to Lawyers Mutual -- We treat this like a subpoena for lawyer's testimony or file
- NC ethics opinion declines to adopt ABA Formal Op. 10-456
  - ABA only allows disclosure in "court-supervised setting."

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### 2019 FEO 5 -- BITCOIN FOR LAWYERS



Lawyer Beware! -- Virtual currency is yours for the losing

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### MENTORING

- 2014 FEO 1 Protecting Confidential Client Information When Mentoring

*Opinion encourages lawyers to become mentors to law students and new lawyers (protégé) who are not employees of the mentor's firm and examines the application of the duty of confidentiality to client communications to which a protégé may be privy.*

9

### DISCLOSING POTENTIAL MALPRACTICE

- 2015 FEO 4 Disclosing Potential Malpractice to Client -- *Opinion analyzes a lawyer's professional responsibilities when she discovers that she made an error that may adversely impact client's case.*
  - Material Error vs. Harmless Error -- a spectrum
  - If it is a material error, lawyer is not required to withdraw unless error creates an unwaivable conflict
  - Lawyer must inform client of the facts surrounding the mistake and its effects on representation, and that client has right to seek new counsel.
  - Lawyer should not advise client about whether client has a malpractice claim against her.
  - Lawyer not required to disclose malpractice carrier or limits.
  - Lawyer should call her malpractice carrier.

10

### THIRD PARTY THEFT FROM TRUST ACCOUNT

- 2015 FEO 6 Lawyer's Professional Responsibility When Third Party Steals Funds from Trust Account
  - *Opinion rules that when funds are stolen from a lawyer's trust account by a third party who is not employed or supervised by the lawyer, and the lawyer was managing the trust account in compliance with the Rules of Professional Conduct, the lawyer is not professionally responsible for replacing the funds stolen from the account.*
  - **NOTE:** This opinion is limited to a lawyer's professional responsibilities and is not intended to opine on a lawyer's legal liability.

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### 2018 FEO 2 -- DUTY TO DISCLOSE ADVERSE LEGAL AUTHORITY

- Opinion rules that pursuant to Rule 3.3(a)(2) a lawyer has a duty to disclose to a tribunal adverse legal authority that is controlling as to that tribunal if the legal authority is known to the lawyer and is not disclosed by opposing counsel.
- Does not have a duty to inform the tribunal of authority that is not controlling.
- Unanimous assent by all interested parties.

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**2019 FEO 1 – LAWYER AS AN INTERMEDIARY**

- Opinion rules that a lawyer may not jointly represent clients and prepare a separation agreement.



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**NO HANKY-PANKY BETWEEN OPPOSING COUNSEL**

- 2019 FEO 3 – Opinion rules that “ongoing” sexual relationship between opposing counsel creates a conflict of interest
- Duh
- Started as inquiry re an ADA and a PD atty.
- Opinion applies to all attorneys
- Ongoing? Sexual? Stay tuned for future inquiries exploring boundaries
- May hank and pank with informed consent from both attorneys' clients – Good luck with that

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**CURRENTLY-PENDING ETHICS INQUIRY**

Currently assigned to subcommittee for further study:

Inquiry of Staff – Advancing Client Portion of Settlement  
*Opinion will determine if the Rules of Professional Conduct permit a lawyer to advance the client's portion of settlement funds prior to actually receiving the funds.*



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15

**CONSIDERATION OF OVERHAUL OF ADVERTISING RULES**

- New Special Committee to Study the Advertising Rules 7.1 through 7.5.
- In response to ABA House of Delegates official Resolution to amend the Model Rules on Advertising.
- National study of states' advertising rules found:
  - Insignificant, technical reqmts. overshadow guiding principle of advertising rules that lawyers must avoid false or misleading communications.
  - Also noted that most complaints to regulatory agencies about lawyer advertising are filed by other lawyers, not members of the public.

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**PROACTIVE MANAGEMENT BASED REGULATION (PMBR) –  
PUBLIC PROTECTION BEFORE REACTIVE DISCIPLINE**

- The State Bar should design measures to complement traditional, reactive disciplinary processes, usually through the use of 'self-assessment tools.'
- The State Bar should educate lawyer/firm management to develop and employ an ethical 'infrastructure' of policies, programs, and systems to prevent misconduct and unsatisfactory service.
- **Illinois PMBR Program** – Required for all solo practitioners that do not carry legal malpractice insurance. 41% of private practice, solos in Illinois are uninsured.
- Required 4 hours of CLE provided free by the Illinois State Bar through interactive online self-assessment tools.
- Self-assessment requires lawyers to demonstrate that they have reviewed the operations of their firm based upon lawyer ethics rules and best business practices.
- Self-assessments are confidential and not discoverable.
- NC State Bar Study-Committee formed to study Illinois experience.

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## Putting your religion to work in your law practice

Course Outline by Dan Read

Wednesday, February 12, 2020

Practicing law is stressful—substance abuse, depression, social isolation, and suicide result. Programs abound—LAP, mindfulness seminars, and more. Virtually absent in the professional help literature is religion. This will be a session led by serious religious people about how they use their religion to (1) establish goals for their personal and professional lives, (2) help them organize and run their businesses, (3) decide what kinds of cases they will do, and (4) deal with clients and stress. Obviously there are many religions with many perspectives. The session will however in the Quaker tradition, which is Christian in origin. There will be references to the teachings of Jesus.

The Problem: mental health and associated problems

Solutions in place—are they working?

Rarely do you hear that religion can be a solution—why?

For us it starts with not being afraid. If there is one thing Jesus said often, is “Be not afraid.”

Basic concept: What is religion?

This session will be from a Quaker Christian perspective, that is who we are

What do Quakers do?

How do you apply religion to law practice—four main areas

- Setting goals

- Business practices

- Case selection

- Treating clients/others

SETTING GOALS

What is the goal of your life?  
What kind of person do you want to be?  
What kind of lawyer do you want to be?  
How do you share your goals?

#### BUSINESS PRACTICES

Treatment of Employees  
Setting Fees  
Borrowing and Paying Debts  
Purchasing Decisions

#### CASE SELECTION

#### TREATING CLIENTS/OTHERS

CASE STUDY: Scott Holmes on Why I Do not Wear a Tie

## How Quakers Worship

Quakerism does not consist of accepting specific beliefs or of engaging in certain practices; it involves each person's direct experience of God. Worship begins when the first person enters the room and takes a seat. The practice of sitting together in silence is often called "expectant waiting." It is a time when Friends become inwardly still and clear aside the activities of mind and body that usually fill our attention in order to create an opportunity to experience the presence of the Holy Spirit. It is not a time for "thinking," for deliberate, intellectual exercise. It is a time for spiritual receptivity, so it is important not to clog one's mind with its own busy activities. Nonetheless, thoughts will occur in the silence. Some thoughts or images or feelings may arise that seem to come from a deeper source and merit attention. If you are visited by a spiritual presence, if you seem to experience perceptions that are drawn from a deeper well or are illuminated with a brighter light, then let those impressions dwell in you and be receptive to the Inward Teacher. Each person finds his or her own ways of "centering down," or entering deep stillness during meeting. From time to time, an individual may be moved to offer a "message" (or "spoken ministry") to the group. Spoken messages may occur many times during a meeting, or there may be none at all. Such a message is delivered by an individual, but is understood to be coming through that person from God. When such a message is delivered, no outward response is expected from you--in fact, it is not Friends' practice to offer vocal approvals, or even turn around in one's seat to look at the speaker. There may be a kernel of truth in it that will speak to you. If that does not happen, trust that the message was meant for others, and return to your own worship.

## Internet Resources

How I Practice Quakerism Through the Week

[https://www.youtube.com/watch?time\\_continue=302&v=69w47fjisns&feature=emb\\_title](https://www.youtube.com/watch?time_continue=302&v=69w47fjisns&feature=emb_title)

Lloyd Lee Wilson on Quaker Faith and Practice

<https://www.youtube.com/watch?v=0PjQNV13088>

British Quakers Talking about how Business is done

<https://www.youtube.com/watch?v=CHSOdM70gjs>

Religion in the workplace from a management perspective

<https://hbswk.hbs.edu/item/religion-in-the-workplace-what-managers-need-to-know>

## Supreme Court Cases

EEOC v. Abercrombie & Fitch

[https://www.supremecourt.gov/opinions/14pdf/14-86\\_p86b.pdf](https://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf)

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission

<https://www.scotusblog.com/case-files/cases/masterpiece-cakeshop-ltd-v-colorado-civil-rights-commn/>

## S.P.I.C.E.S.

Quaker Testimonies: Simplicity, Peace, Integrity, Community, Equality, and Stewardship - or S.P.I.C.E.S. as we like to call it..

### *Simplicity*

The testimony of simplicity is about arranging one's life so that the inner light is unobstructed.

### *Peace*

The testimony of peace focuses on the importance of creating harmony within oneself and within one's community.

### *Integrity*

The testimony of integrity calls for truth and honesty in all of one's dealings.

### *Community*

The testimony of community speaks to the power that emerges when individuals are united in purpose.

### *Equality*

The testimony of equality stems from the Quaker belief that there is that of God in everyone.

### *Stewardship*

Implicit in all the Quaker testimonies is the importance of caring for what has been given us by God including our possessions, our talents, and our natural environment.

## **The Golden Rule—Examples from Around the World**

### **Christianity**

Matthew 7:12

In everything, do unto others what you would have them do to you. For this sums up the law and the prophets.

### **Buddhism**

Udanavarga 5:18

Do not offend others as you would not want to be offended.

### **Islam**

Prophet Muhammad

None of you are true believers until you love for your brother what you love for yourself.

### **Judaism**

Hillel, Talmud, Shabbat 31a

What is hateful to you, do not do to your neighbor. This is the whole Torah; all the rest is commentary.

### **Confucianism**

Analects 15:23

Tzu-kung asked, “Is there one word which can serve as the guiding principle for conduct throughout life?” Confucius said, “It is the word altruism (shu). Do not do to others what you do not want them to do to you.”

### **Sikhism**

Guru Granth Sahib, pg. 1299

I am a stranger to no one; and no one is a stranger to me. Indeed, I am a friend to all.

### **Taoism**

T'ai Shang Kan Ying P'ien, 213–218

Regard your neighbor's gain as your own gain and your neighbor's loss as your own loss.

### **Jainism**

Mahavira, Sutrakritanga

One should treat all creatures in the world as one would like to be treated.

### **Aboriginal Spirituality**

Chief Dan George

We are much alive as we keep the Earth alive.

The Legal Implications of Witnessing at Work  
 Christian Law Association (David Gibbs)

<https://www1.cbn.com/legal-implications-witnessing-work-1>

If you've ever wondered "Will I get into trouble for witnessing at work?" you are not alone. Realizing that full-time American workers spend an average of 8.3 hours a day on the job, many believers recognize that their workplaces provide an obvious venue for sharing the gospel. But, such Christians are facing increasing opposition from employers for engaging in such witnessing activities.

Often company officials do not understand their employees' religious rights, and sometimes they wrongfully discipline them for activities that are entirely appropriate. Far too often, employers mistakenly treat religious speech like sexual harassment and create a "zero tolerance" policy for religion that is similar to policies for sexual harassment. Religious speech and sexual harassment are worlds apart, though. Religious speech enjoys both constitutional and statutory protections that have never been granted for sexual harassment.

More and more, Christians are being told that religion has no place in the workplace. Some employees have even been terminated for exercising their right to religious expression. Here are a few examples:

A state university department supervisor faced disciplinary action for violating the university's "harassment" policy. Human Resources personnel informed him that because he was a supervisor, he could never talk about religion to another employee. This interpretation of the law was incorrect.

An employee of a large retail establishment in Illinois frequently shared her faith with coworkers. Because this employee knew the laws regarding religious speech, she always made a point to ask her coworkers to tell her if they did not want to discuss religion. None of her colleagues ever complained to her, yet she was terminated for violating the store's "harassment policy."

The employer of a Florida man warned him to cease all voluntary religious discussions with coworkers. Employees who consistently violated the company's profanity policy, however, were not disciplined.

As these individuals learned, one key to being an effective witness in the workplace is to understand exactly what your rights are. Some important questions to consider are:

When does sharing your faith constitute harassment?

Are there greater restrictions on religious expression for supervisors?

Does it matter if you are witnessing to your company's customers or to your coworkers?

Do the laws vary depending on whether you are employed in the private sector or by the government?

Religious Discussions with Coworkers



Title VII Civil Rights Act of 1964 provides general rules for all private workplaces employing fifteen or more people. It stipulates that a company that allows employees to engage in non-work related conversations, such as those about politics, family, sports or other such topics, may not prohibit voluntary religious discussions between employees either. The water cooler and employee lunchroom are a type of public forum where citizens share ideas and interact at a variety of levels. In informal settings, such as break rooms or hallways, and at times when workers voluntarily interact about non-work issues, employees may discuss their religious views or voluntarily pray together. The same rules apply as would to any other private conversation.

Other employees may not stop religious exchanges simply because they overhear a religious conversation. For example, at a large retail store in Indiana, an employee and several coworkers met informally and as privately as possible each day for a brief word of prayer before clocking in for work. They asked God to bless their supervisors and colleagues and prayed for other needs. One day, company management asked the group to stop because another employee had been offended when she saw them quietly praying. The employee contacted Christian attorneys who informed store management that another worker's offense at this quiet religious activity did not justify prohibiting it. If the workers had been discussing the previous night's TV programming, no question would have been raised.

Despite clear legal protections, Christian employees often face discipline for sharing their faith. Incredibly, some employers will allow non-Christian religious expression yet forbid religious expression from Christians. For example, an employee was disciplined for sharing his Christian perspective on suicide and salvation with a coworker who had just expressed his belief in reincarnation and stated that he was contemplating suicide. The Christian was fired for sharing the hope of life found in Jesus Christ and for pleading with his coworker not to commit suicide!

### Limits on Religious Discussions with Coworkers

While Christian employees have broad rights to express their faith to coworkers, there are two legal limitations.

An employee must not allow religious discussions to interfere with work. Stated differently, an employer has the right to insist on the employee's full attention during working hours. Therefore, a Christian employee should be careful not to create even the perception that religious discussions are interfering with job performance. Also, it is easier to prove that talking about religion is the reason for discipline if the employee has a good work reputation and a clean record as an excellent, dedicated employee. In one case, a Christian employee's attorney was able to point to the employee's glowing performance evaluations (copies of which he always kept at home) when management insisted the employee was not a victim of religious discrimination, but rather was being disciplined for poor work performance.

If a coworker indicates directly or indirectly that she does not wish to discuss matters of religion, the Christian employee should immediately stop discussing it with her. If the Christian does not stop, he can be disciplined for harassment. This rule is legitimate. Think of this limitation in terms of "the shoe being on the other foot." If a Christian works with a Satanist, that Christian worker has the right to prevent the Satanist from talking to him about occultist practices. This

precaution does not mean, however, that every time someone who has asked you not to talk about religion walks into the room, your conversation with others must stop. But, you should be sure not to direct the religious conversation to the employee who has objected. Religious conversations at work should take place privately and voluntarily. In fact, it may be wise to take a conversation elsewhere when a person who has objected comes on the scene, since this type of person would be most likely to press the issue.

### Religious Discussions with Customers

Although nothing prevents Christians from discussing faith with coworkers during free time on the job, any employer—public or private—may restrict employee conversations with clients, patients or customers about religion. On the other hand, a business owner may also choose to permit such religious conversations—and many do. The decision regarding religious conversations with clients rests with the private employer and not with the employee.

We recently handled a case in which a California employer terminated an employee for engaging in a religious conversation with a client. The employee had inquired about a mutual acquaintance who happened to be a pastor. The client shared how the pastor encouraged her and her children to attend church and how excited she was to have her children learning about the Bible. A coworker reported this completely voluntary conversation to a supervisor, who fired the Christian. This termination was unlawful, because the Christian employee had never been instructed not to discuss religion with customers, and because it was the client who brought religion into the conversation.

### Christian Employers Who Witness

There are no limitations concerning the right of a Christian employer to witness to his customer base. In fact, many Christian employers regularly incorporate witnessing into their business practices. For example, Christian employers may place a gospel tract in outgoing mail and print Bible verses on company invoices, purchase orders or other commercial documents. They may answer the phone with Christian greetings, either on a regular basis or on religious holidays, such as Christmas.

Despite the right Christian employers have to share their faith with customers, federal and state laws regulate the rights of Christian business owners to witness to their employees. Many Christian employers desire to witness to the spiritual needs of their employees, but at the same time, want to comply with employment laws to avoid being sued.

It is important for Christian employers and supervisors to become familiar with their obligations under Title VII law. While Title VII law only applies to government employers and private businesses with fifteen or more employees, companies with fewer than fifteen employees may be subject to state requirements that make it unlawful to discriminate against employees on the basis of religion. Religious organizations, such as churches and ministries, are generally exempt from Title VII religious requirements.

Under Title VII, business owners or supervisors are permitted to communicate their religious

beliefs through their company policies and practices provided that 1) they do not give prospective or current employees the perception that employment or advancement requires workers to adopt a certain religious belief, 2) they accommodate employee objections, and 3) they do not require employees to participate in religious worship experiences.

In short, an employer or supervisor may witness to employees so long as he is careful to accommodate employees who object to any of the company's religious practices, and as long as employees are clearly informed that their religious beliefs or non-beliefs play no role in hiring, termination, promotion, or in the terms, conditions or privileges of employment.

As the above examples show, there is growing hostility in modern America to religious speech at work. Despite some employers' desire to create a "religion free workplace," Christians have the right to witness in the workplace—subject to certain limitations. If you face difficulties for sharing your faith in the workplace, contact a Christian attorney who specializes in religious discrimination. Such an attorney can provide information regarding your rights and assist you if you are disciplined or terminated for sharing your faith at work.

David Gibbs is the president of the Christian Law

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Reflection: [Vocation »](#)



# Scott Holmes: Lawyering, the Quaker way

*A Durham lawyer says his faith changed the course of his career, transforming his legal practice into a vocation -- a true calling filled with joy, integrity and love.*

by [Scott Holmes](#)

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iStock/DNY59

*July 30, 2013*

It's no secret that for many lawyers today, legal practice is a miserable existence. With high rates of depression and substance abuse and a suicide rate reportedly higher than in many other fields, lawyers can struggle to find meaning, clarity and joy in their work.

As a trial lawyer, specializing in criminal defense and civil trials, I know the stress and pressures inherent in the legal profession. I have experienced them myself, and I have seen the damage they can cause in my colleagues -- and, earlier in my career, the damage they caused me.

[Lawyers](#) are asked to carry virtually alone the most difficult problems of our clients. Various codes of professional conduct discourage and even prohibit lawyers from talking about their clients' problems except in the most limited circumstances -- generally, in meetings with opposing attorneys.

Clients expect their attorneys to produce a near-magical outcome from what are almost always horrible circumstances. And, as in most other professions today, new technologies have made the volume of work -- information to be collected and shared, communications to be made among multiple parties, conferences to be held -- grow like an avalanche. Legal practice now moves at a pace that would have been unimaginable a generation ago.

But those are just the superficial trappings of lawyering today. At a deeper level, the legal profession requires lawyers to wear masks and armor that distance us from our clients and dehumanize both us and them. Our clients are "defendants" or "plaintiffs." Their problems are "cases" to be "disposed" or "settled."

In a profoundly adversarial system, lawyers often have to make difficult, even questionable, choices. Eventually, if not sustained and nurtured by other resources, if not offered other models and ways of practice, lawyers can find that their professional masks become emotional and moral prisons.

As a Quaker, I found such a resource and a model in my faith. It seems obvious now, but it wasn't always clear to me that my faith could shape how I practice law. Fortunately, I realized many years

ago that my faith and my profession were not separate realms. My spiritual practice as a Quaker changed the course of my career, transforming my legal practice into a vocation, into a true calling.

I did not always feel that way. Just out of law school, I worked as a public defender -- and within months of starting, was profoundly depressed. I was drowning in the deep end, ill-equipped to handle either my clients' legal issues or the complex and overwhelming social circumstances in which they found themselves.

After leaving the public defender's office to start my own practice, I began handling some civil litigation in addition to my criminal cases. But even then, when litigating over money and property, I sometimes found myself an instrument of interests that I didn't agree with.

I was a hired gun. The long hours spent preparing and trying a case and the high stakes that were riding on my skills as a lawyer -- from money to an individual's freedom or even life -- created great stress. Practicing law put tremendous pressure on my marriage and made me emotionally unavailable to my children.

But slowly, I began to realize that as a Quaker, I was called to a different way of legal practice. My Quaker faith is grounded in a belief that there is something of the Divine within each person. From that flows a belief in radical equality, generosity, peace, integrity and the importance of a loving and inclusive community. Though they're not usually associated with the legal profession, I found myself wondering whether these core beliefs could indeed reshape the way I practice law.

The more I thought about it, the more I realized that my faith could guide my path as a lawyer. My Quaker beliefs were not essential just to my home life but to how I practice law.

Integrity, for example, is central to Quaker practice -- and to the law. For Quakers, integrity means more than telling the truth and being honorable and trustworthy. It also means being "integrated" -- being a whole person. Integrity rejects the fragmentation of professional lives. Integrity means discerning my most central values and living them in the world, however difficult that might be.

Jesus taught me that the most central value is love. And so for me, as a Quaker lawyer, integrity requires me to take off my professional mask and experience and share in the suffering of my clients, my opponents, and everyone else caught up in the conflicts that I try to help resolve. In a legal practice shaped by Quaker values of integrity, I no longer keep a professional distance but bring my whole self to the whole situation. What previously were "conflicts" to be "disposed" are now opportunities for healing and deeper community.

Equality is another Quaker practice that helped me rethink my life as a lawyer. We are all children of God, with a divine spark in our hearts -- even my clients who are charged with murder. This deep belief in equality has helped me escape some of the unhealthy hierarchical and demeaning behaviors that often characterize my profession and the justice system.

I see God at work not only in my poor client but also in the judge, the prosecutor, the bailiff, the clerk of court and the juror. I am no better and no worse than any of them. We are all human beings struggling to figure out how to handle difficult conflicts together. We are in a community together, trying to figure out hard things.

This more holistic way of practicing law is liberating me from the prison of my professional mask. In my work as a trial lawyer, I experience the loving presence of God as I serve my clients, who are caught in a demeaning system that aims to take their freedom or resources.

I represent all kinds of people -- drug addicts, immigrants, people who are homeless, people charged with a variety of crimes, including murder. Even my most "hardened" clients are afraid, lost, remorseful and in great need. All of them have the spark.

In my Quaker-shaped practice of law, I am not only their advocate; I am their guide, walking with them on their journey. Through them and in my relationship with them, I meet God. I share information and develop choices to help them make the decision between bad and worse. I am their guide, their counselor, their advocate and, when necessary, their fighter.

Thanks to this more spiritual approach to practicing law, I now begin each day with joy, opening a space for the Divine to work in my life and to help me be an instrument of love and compassion. I am less weighed down by pressure, by attachment to outcomes and by the suffering around me.

The suffering, of course, is still there. But rather than distance myself from it, I embrace it. I "suffer with" -- I have compassion for -- my clients. This shared suffering itself is redemptive and helps awaken me to community, the kingdom here and now.

My teacher and guide, Jesus, ended his time as a criminal, tried and convicted, crucified on a cross, along with two other criminals. He cultivated loving relationships with thieves, prostitutes and outcasts. He taught in his life the healing and transformative power of suffering sacrificial service. As strange as it might sound, my work -- my calling -- as a lawyer is to follow a similar path.

As a Quaker lawyer, I am called to make my work the loving of the world by serving folks in trouble. When I fail, it isn't because I didn't keep the right professional distance but because I have not loved enough. It is because I have not brought love into the world. My spiritual path has helped transform what was for me a miserable profession into a calling, one that wraps me in a tapestry of community and Spirit.

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## Hot Topics In Employment Law

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## Topics Covered

1. The Fair Labor Standards Act
2. Hiring and Termination
3. Recordkeeping and Personnel Files

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## The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes:

- minimum wage,
- overtime pay,
- recordkeeping, and
- child labor standards

The FLSA affects full-time and part-time workers in the private sector and in Federal, State, and local governments.

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## Basics of FLSA

- Federal minimum wage is \$7.25/hour
- Generally, non-exempt workers get time and a half for any hours worked over 40 in a week.
- Law makes a distinction between exempt and non-exempt employees.
- Wages required by the FLSA are due on the regular payday for the pay period covered.

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## Two Positions: Is Overtime Required?

Your receptionist's regular hours are 8-5pm, M-F. She also works as an occasional delivery driver, on evenings and weekends.

- If she works more than 40 hours in a week between the two positions, do you have to pay her overtime?
- Could you classify her as having two different jobs to avoid overtime?
- Could you classify her time as a deliver driver as an independent contractor?

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## Answer

The Fair Labor Standards Act (FLSA) requires that all of a worker's hours, including hours worked at a different location or in a different position, be counted toward when determining overtime pay. Even if an employee is performing two different kinds of work with different pay rates, the hours must be combined for overtime pay purposes.

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## Joint Employment

- If two or more companies are both controlling the worker (i.e. they are "joint employers") the hours worked for all joint employers during the workweek must be counted for overtime purposes.
- According to the Department of Labor, joint employment is most likely to exist when: (1) an employee has two or more separate but related or associated employers; or (2) one employer provides labor to another employer and the workers are economically dependent on both employers.
- This type of joint employer relationship are common in the construction business between General Contractors and subs and/or staffing agencies.

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## Minors

- Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;
- Minors 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and
- Minors 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions:
  - no more than 3 hours on a school day,
  - 18 hours in a school week,
  - 8 hours on a non-school day, or
  - 40 hours in a non-school week.
- Work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.

Note: there are special rules for minors performing farm/agriculture jobs

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## The Chipotle Case

- Three year investigation following the complaint of a parent.
- "Routinely" violating child labor laws between 2015 and 2019 at more than 50 Chipotle locations. Teenagers under 18 years old were forced to work without proper work permits, late into the night and for too many hours per day and week, according to the state.
- Chipotle agreed to pay a \$1.3 million fine for more than 13,000 child labor violations at several of its Massachusetts locations.
- The largest child labor penalty in Massachusetts's history.

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## Recovering Wages Owed

- Wage and Hour Division of the DOL may supervise payment of back wages.
- The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.
- An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.
- The Secretary of Labor may obtain an injunction to restrain any person from violating the FLSA, including the unlawful withholding of proper minimum wage and overtime pay.
- Statute of Limitations is 2 years unless willful, then 3 years.

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## Penalties for OT Violations

- Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a **civil money penalty** of up to \$1,000 for each such violation.
- Violators of the child labor provisions are subject to a **civil money penalty** of up to \$10,000 for each young worker who was employed in violation.
- Willful violations of the FLSA may result in **criminal** prosecution and the violator fined up to \$10,000. A second conviction may result in imprisonment.

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## Pay Deductions Limitations

- Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are NOT legal to the extent that they reduce the wages of employees below the minimum rate required by the FLSA or reduce the amount of overtime pay due under the FLSA.
- Pay deductions must be specifically authorized by the employee in writing for a specific amount (required by NC DOL).
  - Can't use a blanket authorization.
  - Employee can revoke authorization.

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## Tipped Employees

- The employer may consider tips as part of wages, but the employer must pay at least \$2.13 an hour in direct wages.
- The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the applicable minimum wage when direct wages and the tip credit allowance are combined.
- If an employee's tips combined with the employer's direct wages of at least \$2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference.
- Employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

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## Comp Time

Comp time: when an employee is given time off instead of overtime.

- Only applies to government employers, state, local and federal.
- Private employers including non-profits cannot use comp time in lieu of overtime.

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## FLSA Does Not Require

- Vacation, holiday, severance, or sick pay;
- Meal or rest periods, holidays off, or vacations;
- Premium pay for weekend or holiday work;
- Pay raises or fringe benefits;
- A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees; and
- Does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

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## Types of Workers

- Exempt vs. Non-Exempt
  - Legally defined
- Independent Contractors
- Full-time, part-time, temporary, seasonal, probationary
  - Largely defined by employer

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## Exempt vs. Non-Exempt

- Nonexempt employees are entitled to overtime pay; exempt employees are not.
- For most employees, to be exempt depends on:
  - **how much they are paid (\$684/week or \$35,568/year)**
  - how they are paid (on salary basis), and
  - what kind of work they do (perform exempt job duties)
- 5 categories of exempt employees:
  1. executive,
  2. administrative,
  3. professional,
  4. outside sales employees and
  5. some computer employees

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## Executive Exemption

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

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## Administrative Exemption

The administrative exemption is designed for relatively high-level employees whose main job is to "keep the business running."

1. office or nonmanual work,
2. which is directly related to management or general business operations of the employer or the employer's customers, and
3. a primary component of which involves the exercise of independent judgment and discretion
4. about matters of significance.

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## Professional Exemption

### 1. Learned Professional:

- The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment;
- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

### 2. Creative Professional:

- The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

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## Outside Sales Exemption

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

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## Computer Based Exemption

The employee must be employed as a computer systems analyst, computer programmer, software engineer or other similarly skilled worker in the computer field performing the duties described below.

The employee's primary duty must consist of:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

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## Blue Collar Rule

- The exemptions provided by FLSA apply only to "white-collar" employees who meet the salary and duties tests.
- The exemptions do not apply to manual laborers or other "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy.
- Non-management employees in production, maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime pay under the FLSA, and are not exempt no matter how highly paid they might be.

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## Steady Paycheck?

Terrance, a front office employee who handles mail, answering phones, attending to customer who come through the door and occasionally troubleshooting IT issues, would like to be paid on a salary basis rather than hourly?

1. Is Terrance a non-exempt employee?
2. Can you pay him on a salary basis? If so, how?

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## Answer

- Non-exempt employee because does not fit into any of the exceptions including administrative. Not exercising discretion about matters of significance to the company.
- You can't pay him on a salary basis but can pay him a steady amount but still must:
  - Track time every day (in, out, breaks)
  - Pay an hourly wage and overtime if over 40 hours in a week
  - Have clear and consistent policy regarding time off

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## Contractor Rules

FLSA applies to employees, not independent contractors

There is no one test for whether someone is an independent contractor but both the DOL and the IRS consider certain factors, including:

- The extent to which the services rendered are an integral part of the principal's business.
- The permanency of the relationship.
- The amount of the alleged contractor's investment in facilities and equipment.
- **The nature and degree of control by the principal.**
- The alleged contractor's opportunities for profit and loss.
- The amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent contractor.
- The degree of independent business organization and operation.

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## Misclassification Liability

If unintentional

- A \$50 fee for each W-2 that was not filed
- 1.5% of the employee's wages, plus interest
- 40% of the employee's FICA (Social Security and Medicare) contributions

If intentional

- 100% of the employer's matching FICA contributions
- 20% of all employee wages paid
- 100% of FICA contributions for both employee and employer
- Up to \$1,000 in criminal penalties per misclassified employee
- Up to 1 year in prison
- Individual liability

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## Hiring

A single bad hire

can cost an

employer more

than \$50,000

- Create consistent interview process and stick with it.
  - Don't just hire a warm body
- Ask the Right Questions within the confines of the law.
- Start with an accurate, clear job description.
- Make sure your interview process looks for a "cultural fit."
- Be sure to check references and former employers.

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## Do NOT Ask About

- |                                |   |
|--------------------------------|---|
| • Age                          | • Physical Data                         |
| • Arrest Record                | • Gender                                |
| • Children/Family              | • Race/Ancstry/National Origin/Religion |
| • Marital Status               | • English Language Skills               |
| • Credit Rating/Financial Data | • Type of Military Discharge            |
| • Disability                   | • Affiliation in Organizations          |

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## Interview Questions

- Limit questions to those essential for determining if a person is qualified for the job; information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.
- The ADA prohibits making pre-offer inquiries about disability.
- Avoid questions that may indicate an applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, such as club affiliations, and societies.
- Employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.
- Questions about marital status and number and ages of children are frequently used to discriminate against women and may violate Title VII if used to deny or limit employment opportunities.

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## Clear and Accurate Job Descriptions

- Include skills, training and education that are needed
- Address all aspects of the position
- Use job description to assess and document employee performance
- Job descriptions are used for both ADA and FMLA

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## Performance: Treat Every Infraction as Important

- Performance review system
- Correction plans for performance improvement
- Address issues that arise immediately
- Don't be afraid to be honest-be direct and don't sugarcoat issues
- Document all performance issues
  - Important for regular employee reviews/feedback
  - Key in government investigations or lawsuits

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## Termination Considerations

- Confirm employment is at-will
  - Can be modified by contract, offer letter or law
- Is employee a member of a protected class?
  - Examine termination patterns
- Does employee have an outstanding complaint? What about retaliation?
- Share only enough to terminate; limit long explanations
- Consider offering employee the option to resign
- Consider separation agreement and release of claims

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## Return of Company Property

- The employer should take care to ensure that the employee has returned all confidential information and company property\*, and has not downloaded confidential and sensitive information.
- Employers may, for example, wish to consider disabling the employee's access to its computer systems and other property just as the termination is being implemented.

Note: Does employer have authority to deduct from employee's paycheck?

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## Documentation/Files

- Personal files
- Confidential files
- Medical Files
- FLSA

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## Personnel Files

- Recruiting/screening documents: applications, resumes and educational transcripts
- Employee offer letters and contracts
- Job Description
- Performance Reviews
- Disciplinary Issues and Improvement Plans
- Records relating to job offers, promotion, demotion, transfer and layoffs
- Pay and compensation information
- Handbook and policy acknowledgments
- Termination notice and documentation

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## Confidential File

- Drug testing/screening
- Requests for employment/payroll verification
- Workplace investigation records
- Litigation documents
- Child support/garnishments
- Background checks
- Reference checks

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## Medical File

- ADA and FMLA paperwork
- Medical records (medical questionnaires, benefit claims, doctor's notes, accommodation requests, medical leave records, workers' compensation claims)

Note: Immigration (I-9) should be in an Immigration file

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## FLSA Required Recordkeeping

- Personal information, including employee's name, home address, occupation, sex, and birth date if employee is under 19 years of age;
- Hour and day when workweek begins;
- Total hours worked each workday and each workweek;
- Total daily or weekly straight-time earnings;
- Regular hourly pay rate for any week when overtime is worked;
- Total overtime pay for the workweek;
- Deductions from or additions to wages;
- Total wages paid each pay period; and
- Date of payment and pay period covered.

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SMALL OFFICE  
LAW PRACTICE

FINESSE G. COUCH  
C.DESTINE COUCH

1

1

RATHER THAN **SMALL LAW** OFFICE PRACTICE

2

2

WHAT DO WE MEAN BY THIS TERM?

◦ WHAT DO WE MEAN BY

◦ GLAD YOU ASKED!

3

3

LAW FIRM SIZE

% of law firms with...	1980	1991	2000	2005
2 – 5 lawyers	81%	75%	76%	76%
6 – 10 lawyers	12%	13%	13%	13%
11 – 20 lawyers	4%	7%	6%	6%
21 – 50 lawyers	2%	3%	3%	3%
51 – 100 lawyers	1%	1%	1%	1%
101 + lawyers	*	1%	1%	1%
Total # firms	38,482	42,513	47,563	47,562

Sources: *The Lawyer Statistical Report*, American Bar Foundation, 1985, 1994, 2004, 2012 editions

\* Largest firm size for 1980 data was 51+ lawyers.

SURPRISED???

4

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NATIONAL STATISTICS

Lawyer Growth: 1900 - 2019

Year	Lawyer Count
1900	114,460
1910	
1920	
1930	
1940	
1950	
1960	
1970	
1980	574,810
1990	
2000	
2010	
2019	1,352,027

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LEGAL TECHNOLOGY

Mobile Devices and Telecommuting

Fewer lawyers use laptops, tablets and cellphones to telecommute to work, according to the ABA 2018 Legal Technology Survey Report. The percentage of lawyers who said they telecommute dropped from 79% in 2017 to 72% in 2018.

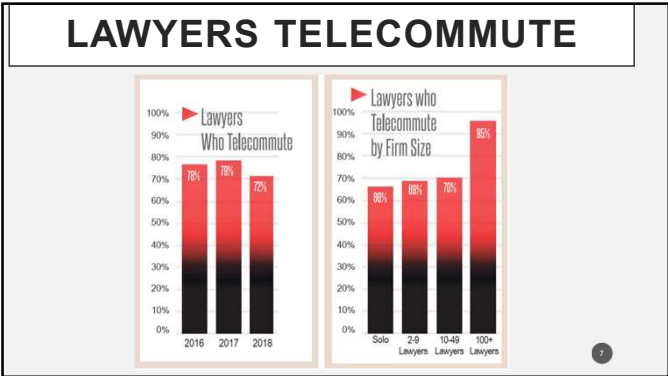
Nearly all lawyers in large firms of 100 lawyers or more (95%) report that they sometimes telecommute, but only two-thirds of solo practitioners (66%) do it.

On average, the typical lawyer telecommutes 40 times a year, according to the survey. A third of all lawyers who telecommute (33%) do it one to three days a month. Nearly another third of lawyers who telecommute (29%) do it just three to 11 times a year.

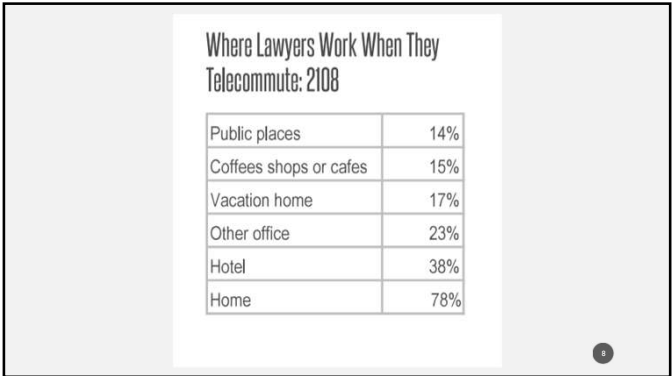
Nearly all lawyers who work away from the office use a smartphone (95%) and the vast majority use laptops (81%). About half (49%) use a tablet. A third of all lawyers say their law firms have policies regarding the use of mobile devices outside of the main workplace.

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### Average Annual Pro Bono Hours Worked by Firm Size: 2018

Firm Size	Average Annual Pro Bono Hours
1 lawyer	44.7
2-5 lawyers	36.1
6-10 lawyers	27.8
11-20 lawyers	29.7
21-50 lawyers	28
51-100 lawyers	31.8
101-300 lawyers	48.1
301 lawyers or more	72.8

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### PRO BONO HOURS

#### Pro Bono Legal Tasks Performed: 2018

Task	Percentage
Provided advice	74.1%
Reviewed or drafted documents	66.2%
Interviewed or met with client	63.7%
Wrote letter	35.6%
Spoke with other attorney	34.6%
Provided full representation in court	29.0%
Negotiated a settlement	18.0%
Referred to other organization	13.6%
Limited scope representation in court	6.8%
Represented in administrative proceeding	8.5%
Represented before legislative body	0.8%
Other	7.2%

Source: ABA Supporting Justice: A Report on the Pro Bono Work of America's Lawyers

#### Pro Bono Clients: 2018

Client Type	Percentage
Ethnic minority	30.4%
Single parent	25.6%
Disabled person	25.5%
Elderly person	23.8%
Non- or Limited-English speaker	22.5%
Student	16.5%
Victim of domestic violence	15.0%
Child	14.8%
Veteran	13.8%
Rural resident	11.6%
Undocumented immigrant	11.4%
Documented immigrant	11.4%
Homeless	9.9%
Incarcerated person	9.0%
Victim of consumer fraud	8.2%
LGBT person	7.4%
Migrant worker	1.8%

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### Lawyers Who Say Their Law Firm Has Ever Experienced a Security Breach

Year	Law Firm Size				
	Solo	2-9 lawyers	10-49 lawyers	100-499 lawyers	500 or more
2015	11%	16%	14%	23%	23%
2016	8%	11%	25%	16%	26%
2017	11%	27%	35%	17%	23%
2018	14%	24%	25%	31%	31%

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# CLIENT MANAGEMENT

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ETHICS	
OFFICE MANAGEMENT	
CASE MANAGEMENT	
CALENDAR CONTROL	
CONFLICTS OF INTEREST	
TIME AND BILLING	
TRUST ACCOUNTS	
CLIENT RELATIONS	
CONTINUING EDUCATION	
SELF	
TOTAL SCORE	

THE BUSINESS OF LAW

13

WINNING STRATEGIES

In the bottom-left quadrant are new firms or firms that have either struggled or have yet to achieve the success they want. Firms that progress along the client-experience axis are those that become responsive to client needs. These are the firms that know how to attract new business and earn strong satisfaction among their clients. Firms that progress along the firm-performance axis put more time toward revenue-generating tasks for clients, while keeping overhead costs low and investing in productivity initiatives. Thriving firms progress along both axes. These firms consistently increase the amount of business they bring in while capturing the full value from all of the client-facing, revenue-generating work they perform.

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WINNING STRATEGIES - 2

*Training and experience brings confidence*

- As it turns out, those who are confident are much more likely to have some prior business training or experience, which may include
  - having an MBA (14%)
  - taking business-management classes in law school (14%)
  - owning or running a business prior to becoming a lawyer (21%)
  - majoring in business in college (22%)
  - taking business classes outside a formal school setting (25%)
  - (41%) say they have no prior training or experience.

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WINNING STRATEGIES - 3

- Of those who aren't confident in running the business side of their firm,
  - 69% report having no business training at all.
  - 72% say they don't know enough about running a business.
- Those confident in running the business side of their practice are also much more prepared and more likely to invest time and resources into their learning.
  - 62% of those confident in managing the business side of their firm frequently read books or articles related to running or growing a business
  - 36% frequently take courses.
  - Only 43% of those not confident spend time reading about running their business better
  - Only 18% take courses

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WINNING STRATEGIES - 4

Education and experience

Category	Confident (%)	Not confident (%)
None of the above	40	68
Business classes outside of school	25	10
Business degree	22	10
Owned or managed a business before becoming a lawyer	22	10
Law school business classes	15	10
MBA	15	10

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WINNING STRATEGIES - 5

*What differentiates those who know how to run a business?*

- Lawyers who are confident about managing the business side of their firm tend to worry a lot less about it.
- Only 32% are worried about something falling through the cracks compared to 78% who aren't confident about their business.

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WINNING STRATEGIES - 6

To get a better sense of how lawyers prioritize their work in managing their firm, we asked lawyers how often they perform various tasks or duties and compared responses **between those confident in running their firms to those who aren't.**

- Lawyers **confident** in running their firm are **more engaged** in some key **business aspects** of their firm than lawyers who aren't confident in managing the business aspects of their firm.
- Two areas in particular show a significant disparity in how attorneys who are confident spend their time compared to attorneys who are not confident.

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WINNING STRATEGIES - 7

- Long-term financial planning: Even though both cohorts indicated they spend generally less time on long-term financial planning, **46%** of those confident in running their business confident did at least sometimes, compared to **25%** of those not confident in running their business.
- Marketing: 70% of more confident lawyers indicated spending time, compared to 49% for lawyers not confident.

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WINNING STRATEGIES - 7

Business areas firm managers often engage in

Business Area	Confident (%)	Not Confident (%)
Consultations	85	80
Office management	80	75
Networking	75	70
Marketing	70	65
Day-to-day accounting	65	60
IT	60	55
Long-term financial planning	45	25

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LAWYER SURVEYS AND DATA TRENDS - 1

- **LEGAL TRENDS REPORT—GROUNDBREAKING INSIGHTS INTO BUSINESS OF LEGAL PRACTICE IN THE 21<sup>ST</sup> CENTURY!**
- **Determining what drives law firm success**
  - Longitudinal data analysis determined how thriving firms achieve consistent, long-term growth in revenue over time, and what distinguishes them from firms that haven't seen any growth or have shrunk over the same period. By comparing growing, stable, and shrinking firms over a five-year period, we're able to show how key performance metrics impact success.
- **What clients really look for when hiring a lawyer**
  - Surveyed consumers to shed more light on how they look for a lawyer; what they expect when reaching out, and what drives them away. Referrals are not the only means clients use to seek a lawyer; clients have a high bar for deciding who to reach out to—and who to ultimately hire.
- **Putting law firm responsiveness to the test**
  - Shopping for a lawyer in 2019? Company emailed 1,000 law firms, and phoned 500 from the same group, to determine just how prepared lawyers are to earn the business of potential clients when they reach out. Thereby a collection of the largest primary data set on law firm responsiveness, putting a spotlight on key opportunities for law firms to be truly competitive in acquiring new clients.

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LAWYER SURVEYS AND DATA TRENDS - 2

- **Clio data** The Legal Trends Report uses aggregated and anonymized data from tens of thousands of legal professionals in the United States. This includes data from January 1, 2013 to December 31, 2017, which was used to conduct our longitudinal analysis of law firm success. In reviewing actual usage data, we identify large-scale industry trends that would otherwise be invisible to law firms.
- **Law firm survey** We surveyed 2,507 legal professionals, representing both Clio users and non-Clio users. By assessing the existing needs and strategies of law firms, we're able to better align our data analyses with real law firm goals.
- **Consumer survey** We surveyed 2,000 consumers to understand what they look for when searching for professional legal services and what types of experiences they expect. Our sample was representative across all adult age groups, genders, and geographic regions in the United States.
- **Email and phone outreach** We emailed a random sample of 1,000 law firms in the United States, and then phoned 500 of these firms, to assess responsiveness and quality of service. Our sample had equal representation across five practice areas, including Family, Criminal, Bankruptcy, Business Formation, and Employment, and comprised firms of all sizes.
- **Aggregated and anonymized data from tens of thousands of legal professionals 2,507 legal professionals surveyed 2,000 consumers surveyed 1,000 law firms emailed for legal services 500 law firms phoned for legal services**

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FINDINGS

24

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CONCLUSION - 1

- A famous study showed that **93%** of Americans believe they are above average when it comes to driving ability (an obvious statistical impossibility, since only **50%** can be above average. The study is illustrative of a cognitive bias known as illusory superiority, which sees individuals overestimate their own abilities in relation to others.
- While **73%** of lawyers agree that they're different than most lawyers, only **56%** agree that they are better than most lawyers. In an industry where success is often dictated by the facts of a case and the judicial system outside of any one lawyer's control, it's often most practical to focus on what a lawyer can control: achieving the best possible outcome for a matter.
- The same goes for running a successful business. While **87%** of lawyers want to see their firm grow over the next three years, not every lawyer knows how.

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CONCLUSION - 2

- Focusing on success and increasing revenues on their own are outcomes that may be at least partially outside of the firm's control. Instead, focusing on key inputs discussed in this report provide important leverage points that are both controllable and impactful. The client experience and firm performance axes within the Law Firm Maturity Model provide two critical vectors to prioritize.
- As discussed in the first section of this report, some firms know how to achieve year-over-year growth, while others see their prospects dwindle. Knowing how to earn clients and maintain high standards for business are two key factors to success.
- Sections 2 and 3 in this report outline a comprehensive look at how clients shop for a lawyer and what they look for when they reach out. Ultimately they're looking for clear information and responsiveness. As Section 4 shows, these are qualities that many firms lack.

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CONCLUSION - 3

- Managing a business effectively means getting the most opportunity out of the resources available. Those who have training or experience in running a business are much more prepared to spend time learning about and applying themselves to the business side of their firm—for the betterment of both the firm and their clients.
- Confidence alone may not be enough to grow a firm's business, but there's a good chance that future analysis will show that improving the business side of a law firm—not just the ability to practice law—leads to greater firm success in the long term.
- Those confident in running their firm are more engaged in the business
- Key business inputs are both controllable and impactful

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CONCLUSION - 4

- The market for legal services faces a critical paradox. On one hand, the vast majority of law firms say they want to increase their revenues, yet they have trouble finding business. On the other, clients struggle to get help with their legal problems.
- This paradox represents a market gap that shouldn't exist—and one that presents an enormous opportunity for firms that can build a strong business approach for their legal practice.
- Many high-growth firms are getting it right. We call these "thriving" firms because they've been able to achieve substantial year-over-year revenue growth that is both consistent and predictable. We believe these firms have achieved high growth over a sustained period of time due to two critical factors: a focus on client experience and firm efficiency. We've illustrated the growth path in a new format: the Law Firm Maturity Model.

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### **SHERRI ZANN ROSENTHAL**



- Has worked for the City of Durham for over 30 Years
- Was appointed Deputy City Attorney in January 2019
- Joined the Durham City Attorney's Office
- Will retire from the City effective April 1, 2020
- Graduated from Duke University (B.A., History and Journalism, 1979) and University of North Carolina School of Law (J.D., 1985) and
- Created two real estate businesses and has experience as a real estate developer



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### **FRED LAMAR**



- Fred has been with the Durham City Attorney's Office since 2006
- Grew up in the Greater Charleston, SC area, where his extended family still resides
- Earned degrees from the University of South Carolina (B.S. Chemical Engineering, 1988) and the Chicago-Kent College of Law (J.D., 1994)
- Fred is a registered patent attorney
- Has lived in Durham since 1997



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### **JOHN ROSEBORO**



- Joined the City Attorney's Office in November 2019
- Was born and raised in Winston-Salem, North Carolina
- Graduated from North Carolina A&T State University (B.A. History, 1995) and UNC School of Law (J.D., 1999)
- Has lived in the Raleigh-Durham area since 1999



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### **TONI RUSS**



- Toni has been an attorney with the City of Durham for over 23 years
- Was raised in Durham since the age of 5, and her family continues to reside here
- Attended the University of North Carolina for both undergrad and law school (B.A. International Studies, 1991 and J.D., 1995)



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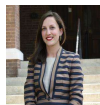
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### **CRISTA CUCCARO**



- Joined the City Attorney's Office in September 2018
- Prior to joining the City of Durham, Crista was a Staff Attorney in Knoxville, Tennessee
- Graduated from the University of North Carolina (B.A. Sociology and Minor in Women's Studies and Social and Economic Justice, 2008) and the University of Tennessee College of Law (J.D. 2013).



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### **ANNA DAVIS**



- Joined the City Attorney's Office in January 2020
- Grew up in Greensboro, North Carolina.
- Graduated from the University of North Carolina (B.A. History and Communication, 2002) and North Carolina Central University School of Law (J.D., 2010)
- Is currently pursuing a Master's Degree in Human Resources Management from Georgetown University (expected graduation 2021)



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### SOFIA HERNANDEZ



- Joined the Durham City Attorney's Office in September 2018
- Earned degrees from Seattle University (B.A. English, 2006) and Duke University School of Law (J.D. 2009)
- Born in Honduras and immigrated to the U.S. at the age of 7
- Has lived in Durham for over 10 years and is proud to call the Bull City home



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### ADMINISTRATIVE STAFF



Kimberly Belmonte  
Administrative  
Coordinator



Minerva Council  
Senior Administrative  
Technician



Kelly Troy  
Paralegal



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### ATTORNEY ASSIGNMENTS

#### **Crista M. Cuccaro, Assistant City Attorney**

- Board of Adjustment
- Community Development
- Finance, including:
  - Bond Issuances
  - Collections, Purchasing, Procurement, Treasury
- Fleet and Radio Maintenance
- General Code Drafting and Codification
- Historic Preservation Commission
- Legislative Agenda Resource and Liaison
- Sales & Solicitation and Business Regulation
- Resident Calls

#### **Anna Davis, Assistant City Attorney**

- Human Resources
- Employee Privacy Issues
- Employee Training and Development
- Employment Law
- Legal Support for Employee Relations Investigations
- Liaison to Civilian Police Review Board
- Personnel Policies Consult, Review and Development
- Title VII, FMLA, FLSA, ADA (Title I), OSHA, REDA
- Resident Calls
- Litigation, especially employment related



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### ATTORNEY ASSIGNMENTS

#### **Sofia Hernandez, Assistant City Attorney**

- Cemeteries
- Emergency Communications
- Emergency Management
- Equity & Inclusion (Racial Equity Division)
- Fire Department
- Intellectual Property Issues
- Neighborhood Improvement Services
- Parks and Recreation
- CAO's Intern/Extern Program Coordinator
- Resident Calls

#### **Frederick C. Lamar, Senior Assistant City Attorney**

- Contracts for Construction and Design Services
- Economic Development Initiatives
- Eminent Domain/Condemnations
- Equity & Inclusion (Contract & Compliance Division)
- General Services, including:
  - Construction & Design Contracts
- Public Art & Contracts
  - Durham Performing Arts Center (DPAC)
  - Durham Bulls Athletic Park (DBAP)
- Non-City Agency Grants
- NC DOT Contracts
- Office of Economic and Workforce Development
- Transportation, including:
  - DATA/GoTriangle
- Taxi Cabs/Passenger Vehicles for Hire



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### ATTORNEY ASSIGNMENTS

#### **Donald T. O'Toole, Deputy City Attorney**

- Inspections (Other than Neighborhood Improvement Services enforcement actions)
- Planning (Excluding Historic Preservation Commission and Board of Adjustment)
- Public Works (Excluding Construction and Design Contracts), including:
  - Assessments (Other than Assessment Collections)
  - Development Review
  - Franchises, Licenses, and Permits for Work Conducted in City Right-of-Way
  - Stormwater
- Water Management (Excluding Construction and Design Contracts, and Customer Billing and Collections)
- Use of City-Owned Property by Private Development

#### **Kimberly M. Rehberg, City Attorney**

- Bond Issuances
- Budget & Management Services
- City Clerk
- City College
- City Council
- City Manager
- Internal Audit
- Open Meetings Law (Council)
- Public Records (Council)
- Public Information



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### ATTORNEY ASSIGNMENTS

#### **John Roseboro, Senior Assistant City Attorney**

- Litigation and Litigation Coordination
- Risk Management Division
- Petitions for Custodial Law Enforcement Recordings
- Bankruptcy Issues/Litigation
- Nuisance Abatement (NIS Related)
- Nuisance Abatement (Police Related)
- Eminent Domain/Condemnations

#### **Sherri Zann Rosenthal, Deputy City Attorney**

- Customer Billing Services (Other than Collections)
- General Services (Excluding Construction, Design, and Public Art Contracts)
- North Carolina Utility Commission
- Real Estate Issues, including:
  - Carolina Theater
  - Durham Armory
  - Durham Convention Center
  - Easement and Greenway Acquisition
  - Hillandale Golf Course
  - Leases
- Solid Waste
- Special Projects—CAO and City-Wide
- Sustainability Issues
- Technology Solutions




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### ATTORNEY ASSIGNMENTS

**Toni Russ, Senior Assistant City Attorney**

- Police Legal Counsel
- Police Legal Training
- Alcoholic Beverage Control
- Noise Ordinance Enforcement
- Towing Committee



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### Interfacing with the CAO on . . . a land use issue

City Departments Involved:

- Planning
- Public Works
- Water Management
- Inspections

An attorney representing a developer or property owner may contact our office because the client takes issue with the manner in which a City department is applying a specific standard

Standards originate from multiple sources: federal and state laws, administrative code provisions, permits, the City Code, the City-County Unified Development Ordinance (UDO), and the City's Reference Guide for Development

To resolve issues:

- Get the facts straight—Seek face-time (w/ City staff, developer, contractors)
- Remember that if the City is applying a state or federal requirement, then staff typically has less flexibility in the application of the requirement to the project in question.
- Conversely, if a City requirement is at issue, staff may have more flexibility **if it can be demonstrated that an alternative approach will achieve the purpose of the City requirement.**



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### Interfacing with the CAO on . . . a police-related issue

Are you seeking a certain record and cannot figure out where to send your request? Do you need to better understand why a record cannot simply be released upon request or subpoena? Talk to the Police Attorney.

### Interfacing with the CAO on . . . Community development issues

If you're trying to negotiate deal points for a transaction with Community Development, recognize that the City has common standard provisions. If you're challenging such a provision, be prepared to help us understand fully why a standard City provision won't work for your client.

Recognize that your client may have had a good deal of interaction with City staff without you involved. Make sure that you're clear on what those background interactions entailed, and what your client understood the deal to be.



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### Interfacing with the CAO on . . . Code enforcement

If you're representing a client before the Housing Appeals Board or in Community Life Court, reach out to the CAO early. Often code enforcement issues can be resolved (including obtaining extensions for compliance) before the matter gets to HAB or CLC, if the CAO hears from the property owner or counsel PRIOR TO the hearing date.

### Interfacing with the CAO on . . . subpoenas for City employees

- Copy the CAO on subpoenas served on City employees
- The CAO helps City employees to understand what the matter involves and what information the employee needs to review to prepare for the deposition or hearing.
- Recognize that City employees—particularly Police Officers, Fire Fighters, Code Inspectors, etc.—respond to many calls and incidents each year. If you want their testimony to be helpful in your matter at all, it is critical that you 1) be specific about the matter that you're handling and 2) allow sufficient time for the City witness to locate incident reports, files, etc. and familiarize themselves with the issues.



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### Interfacing with the CAO on . . . Claims

Do NOT call the CAO!

### Risk Management Division – Finance Department

Ryan Wilson, Claims Administrator

919-354-2740 ext. 18333

[Ryan.Wilson@durhamnc.gov](mailto:Ryan.Wilson@durhamnc.gov)



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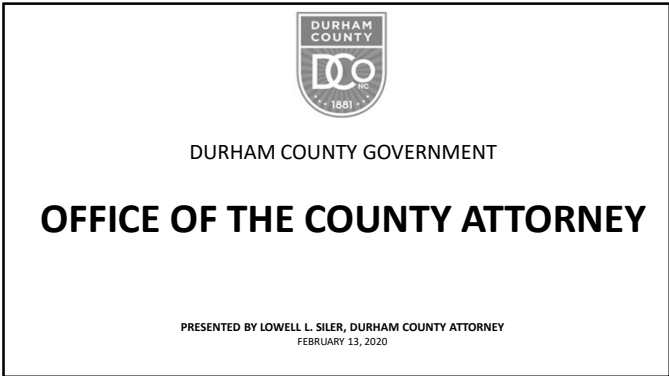
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### THANK YOU FOR THE INVITATION TO INTRODUCE YOU TO THE OFFICE OF THE CITY ATTORNEY!

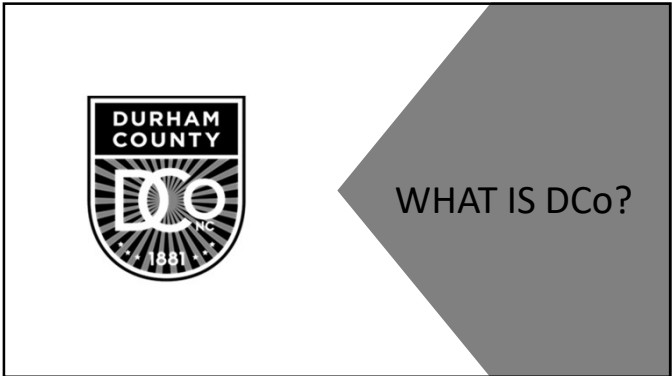
Kimberly Rehberg, City Attorney  
City Hall, 2<sup>nd</sup> Floor, Suite 2200  
[Kimberly.Rehberg@durhamnc.gov](mailto:Kimberly.Rehberg@durhamnc.gov)  
919-560-4158



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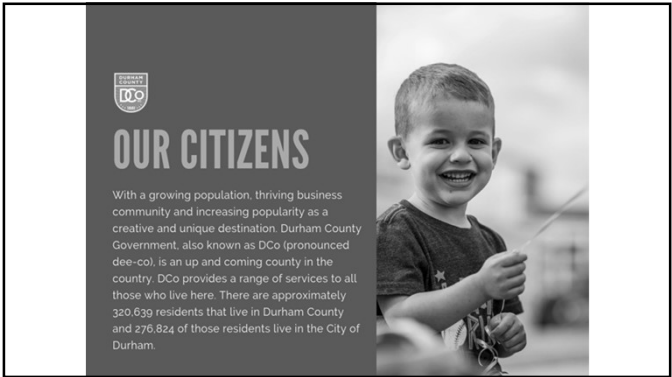
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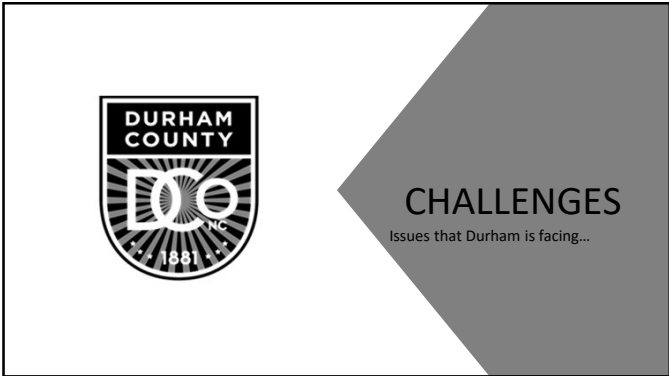
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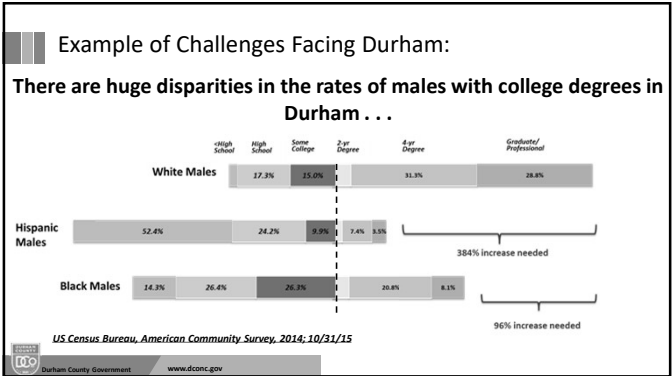
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Example of Challenges Facing Durham:


As the Economic Development boom continues, so will a rise in homelessness...



- In 2017, 1,200 people passed through Durham shelters and transitional housing
- Almost 300 people had no housing at all at some point during the year
- Efforts to provide affordable housing in a market where the cost of living is skyrocketing are underway by City and County leaders.



Herald Sun, "As Durham Grows, so will homelessness..."; 3/13/18



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Example of Challenges Facing Durham:


Increased strain on resources for Durham County's Services...

Rapid increases in the population/growth creates a strain on various County Departments, Programs and Services:

- Emergency Medical Services
- Department of Social Services (DSS)
- Tax Administration
- Public Health
- Etc.

This in turn creates increases in workloads for internal services departments:


- County Attorney
- Human Resources
- Etc.



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DCo Strategic Plan

Plan to address current challenges...


9

The Mission

Durham County provides fiscally responsible, quality services necessary to promote a healthy, safe and vibrant community.

The Vision

Durham County: a thriving, vibrant, diverse community with abundant opportunity for all residents to live, work, learn, play and grow.




DURHAM COUNTY STRATEGIC PLAN


2017 UPDATE

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Durham County Strategic Plan




GOAL 1 COMMUNITY EMPOWERMENT AND ENRICHMENT




GOAL 2 HEALTH AND WELL BEING FOR ALL



GOAL 3 SAFE COMMUNITY




GOAL 4 ENVIRONMENTAL STEWARDSHIP AND COMMUNITY PROSPERITY



GOAL 5 ACCOUNTABLE, EFFICIENT AND VISIONARY GOVERNMENT

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DCo ORGANIZATION

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### Board of County COMMISSIONERS

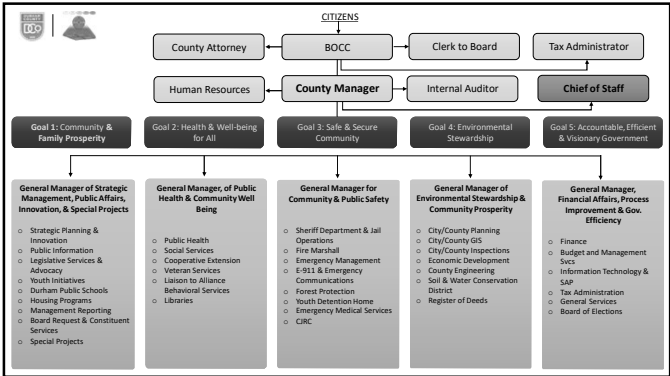
A 5 MEMBER BOARD  
ELECTIONS HELD EVERY FOUR YEARS

- Chair Wendy Jacobs
- Vice Chair James Hill
- Commissioner Heidi Carter
- Commissioner Brenda Howerton
- Commissioner Ellen Reckhow


Set property tax rate, adopt county budget, make policy  
appoint boards and commissions and appoint county  
manager, county attorney, tax administrator and clerk to the  
board.

BOCC work sessions are held on the first Monday monthly  
beginning at 9 a.m. and regular sessions on the second and  
fourth Mondays of each month beginning at 7 p.m.

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## County Attorney

### Role of the County Attorney's Office


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### LOWELL L. SILER, COUNTY ATTORNEY


Lowell L. Siler became County Attorney for Durham County Government in August 2009. Attorney Siler is a native of Goldsboro, North Carolina. He graduated from Goldsboro High School. Siler earned his degree in Public Administration and a Juris Doctorate degree from North Carolina Central University, located in Durham, North Carolina.

He serves as legal liaison for the County with state and federal governments. The primary function of the position is to serve as legal counsel to the County Commissioners, County Managers, County boards and commissions and other officials of the County. He supervises a staff of 12 attorneys, Risk Management and multiple support staff. In addition to drafting or supervising the drafting of all contracts, deeds, leases, releases, franchises, and other legal documents on behalf of the County, he also represents the County in legal matters, brings suits as necessary to be instituted by the County and defends the County in suits brought against it, and handles appellate litigation. The County Attorney decides major legal questions in litigation, claims, leases and contracts, land titles and related legal matters, as well as prepare and supervise the preparations of formal legal opinions upon request of Commission members and the administration.



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### Durham County Attorney's Office

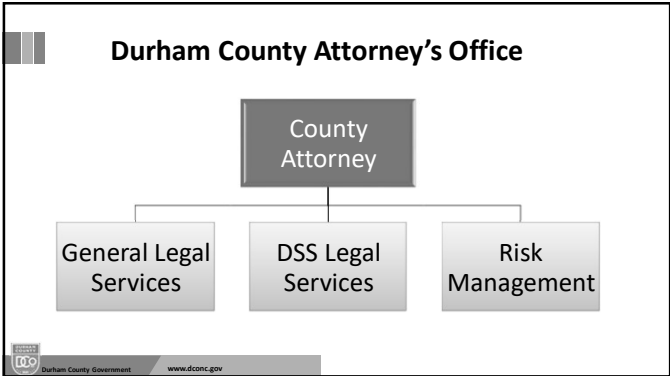
MISSION/DEPARTMENT DESCRIPTION

The County Attorney's Office serves as the legal advisor to and provides legal representation/defense (in matters other than workers' compensation) for the Board of County Commissioners, the County, and the agencies of the County from actions brought against them, to aid in carrying out the mission of the County.

Within the County Attorney's Office, the division of Risk Management serves to strategically address risks and provide a safe work environment for County employees by purchasing liability insurance, providing an occupational safety program, as well as handling claims against the County to resolve them prior to any court action being necessary.

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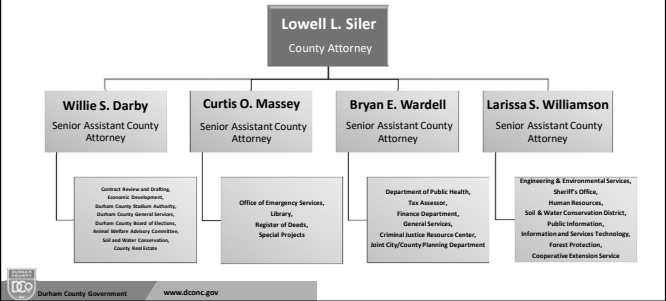


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General Legal Services Division

General Legal Services is a division of the Office of the County Attorney which provides legal advice/representation to the Board of Durham County Commissioners, the departments of Durham County Government, as well as various Boards and Commissions, in order to comply with laws and mitigate liability.

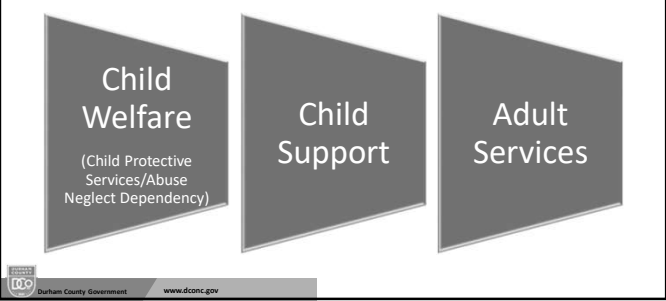
General Legal Services Division



DSS Legal Services Division

DSS Legal Services is a division of the Office of the County Attorney which provides legal advice and court representation to the Department of Social Services so that the Department can minimize liability and maximize effectiveness while addressing the needs of its target population.

DSS Legal Services

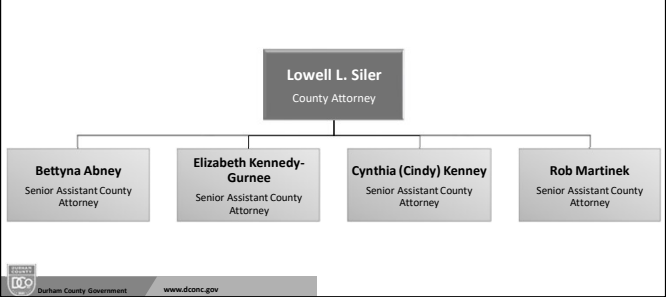


Child Welfare (CPS/AND)

This subdivision provides legal representation to the Department of Social Services (DSS) and their clients in all Abuse, Neglect and Dependency (AND) matters. Child Protective Services is legally mandated to conduct assessments of reports of suspected abuse and neglect as defined in Chapter 7B of the North Carolina General Statutes.

Without legal representation in the Court on these matters, DSS would be at a great disadvantage to intercede and protect children living in homes with reports of abuse and neglect. This function is essential in ensuring the health and well-being, as well as the safety and security, of our community's families.


Child Welfare (CPS/AND)



### Child Welfare (CPS/AND)

**Outstanding Issues:**

- Avg. 10% increase in caseloads annually (increase of 100+ cases annually)
- 2019 caseload totaled over 1,500 active cases
- Duration of active cases can last for years
- Complexity of cases is increasing for various reasons
- Urgency and nature of the cases is taxing



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### Child Support

This subdivision provides legal representation to the Child Support Services division of the Department of Social Services (DSS) which promotes parental responsibility by locating non-custodial parents, establishing paternity, medical obligations and support, enforcement of existing Child Support orders, and the collection and distribution of Child Support payments.

Without legal representation in the Court on these matters, DSS would be at a great disadvantage to intercede and collect monetary support for children with an absentee parent(s). This function is essential in ensuring the health and well-being, as well as the safety and security, of our community's families.

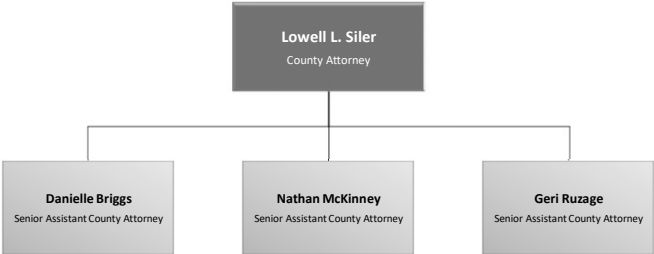


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### Child Support



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graph TD; LS[Lowell L. Siler  
County Attorney] --- DB[Danielle Briggs  
Senior Assistant County Attorney]; LS --- NM[Nathan McKinney  
Senior Assistant County Attorney]; LS --- GR[Geri Ruzage  
Senior Assistant County Attorney];
```



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### Child Support

**Outstanding Issues:**

- 2019 caseload totaled over 1,500 active cases
- Active cases usually last until the child reaches the age of 18
- Complexity of cases is increasing
- Collection target of \$17M+ annually



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### Adult Services

This subdivision provides legal representation to the Aging and Adult Services division of the Department of Social Services (DSS) which provides services to the elderly and/or disabled adult community in Durham County. This includes Adult Protective Services, Guardianships, etc.

Without legal representation in the Court on these matters, DSS would be at a great disadvantage to intercede provide protection to the elderly and/or disabled adult community. This function is essential in ensuring the health and well-being, as well as the safety and security, of our community's families.

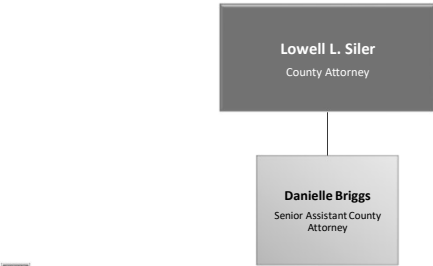


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### Adult Services



```
graph TD; LS[Lowell L. Siler  
County Attorney] --- DB[Danielle Briggs  
Senior Assistant County Attorney];
```



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Adult Services

**Outstanding Issues:**

- Caseloads increase annually
- Only have 0.5 of an attorney's position allocated to handle this case type for all of Durham County



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Risk Management Division

Durham County's Risk Management function is a coordinated and ongoing effort to assess and respond to risks which affect the achievement of the County' Strategic Plan. This is achieved through risk identification, assessment, and mitigation strategies to protect the County employees, assets, and operations from loss. The Risk Management function also recommends risk financing methods to ensure the financial integrity of the County is not impaired should a significant loss occur.

Risk Management's Occupational Safety Program is committed to providing a safe work environment for County employees. The program includes safety education through training and consultation, recognizing and controlling health and safety hazards, and minimizing future potential liabilities.



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Risk Management Division

Risk Financing

Claims

Safety

Compliance & Privacy



Durham County Government

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Risk Management Division

Lowell L. Siler  
County Attorney


Janelle Owens  
Risk Manager

Ngat Awass  
Asst. Risk Manager

Kierra Simmons, Esq.  
Compliance & Privacy Officer

Doug Gaylord  
Safety Specialist


Todd Andrews  
Safety Technician



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County Attorney

**Questions?**

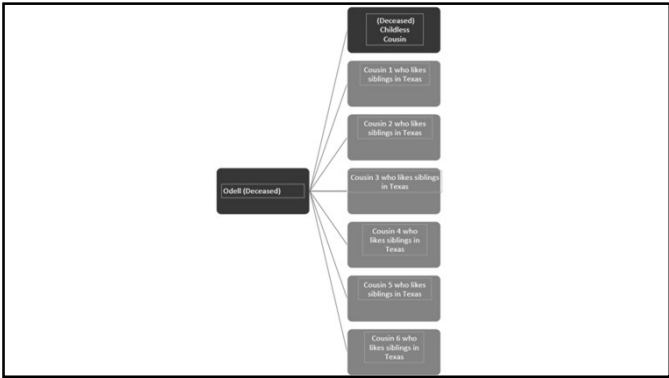
Visit us at [dconcg.gov](http://dconcg.gov)

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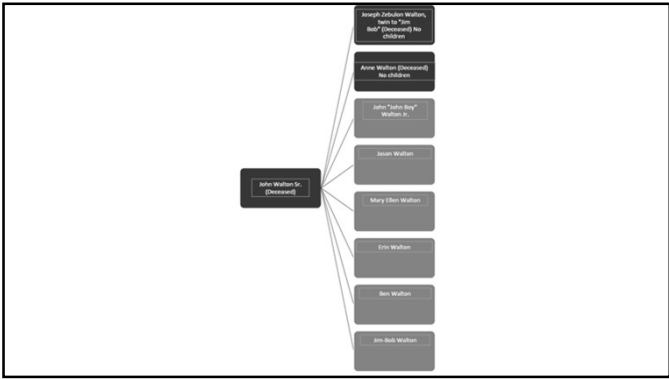




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1a. Last Name (Print Name)		1b. First Name		1c. Last Name	
BARACK		HUSSEIN		OBAMA, II	
2. Sex	3. This Birth	4. If Twin or Triplet, New Child Born	5a. Month	5b. Day	5c. Year
Male	Single	1st	August	4	1961
6a. Place of Birth, City, Town or Rural Location			6b. Island		
Honolulu			Oahu		
6c. Name of Hospital or Institution (If not in hospital or institution, give street address)			6d. In Place of Birth Inside City or Town Limits?		
Kapiolani Maternity & Gynecological Hospital			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
7a. Usual Residence of Mother: City, Town or Rural Location			7b. Island		
Honolulu			Oahu		
7c. Country and State or Foreign Country			Honolulu, Hawaii		
7d. Street Address			7e. In Residence Inside City or Town Limits?		
6085 Kalaniana'ole Highway			Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
7f. Mother's Mailing Address			7g. In Residence on a Farm or Plantation?		
			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Full Name of Father		9. Race of Father		10. Kind of Business or Industry	
BARACK HUSSEIN OBAMA		AFRICAN		University	
11. Birthplace (State, Town or Foreign Country)		12. Usual Occupation		13. Full Maiden Name of Mother	
25 Kenya, East Africa		Student		STANLEY ANN DUNHAM	
14. Age of Mother		15. Type of Occupation Outside Home During Pregnancy		16. Date Last Worked	
18		None			
17. Signature of Father or Other Informant		18a. Date of Signature		18b. Date of Signature	
Barack Obama		8-7-61		8-7-61	
19. Signature of Absentee		19a. Date of Signature		19b. Date of Signature	
Barack Obama		8-7-61		8-7-61	
20. Date Accepted by Local Reg.		21. Signature of Local Registrar		22. Date Accepted by Local Registrar	

11



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Questions ?



Adam J. Hopler

Hopler, Wilms, & Hanna, PLLC


[adam@hoplerwilms.com](mailto:adam@hoplerwilms.com)

(919) 244-2019


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## FDCPA Basics That Every Attorney Should Know




*The Durham Bar*  
2020 CLE Program




*Craig Shapiro*  
*Koury Hicks*




*Law Offices of*  
*John T. Orcutt, P.C.*



Durham, North Carolina



919.286.1695



cshapiro@johnorcutt.com  
khicks@johnorcutt.com

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## The Basic Law



Fair Debt Collection Practices Act - FDCPA



Enacted in 1977



Levels the playing field for consumers with debt collectors



Prohibits debt collectors from using harassing, oppressing, abusive, invasive, and deceptive collection practices in collecting consumer debts



One (1) year statute of limitations

2

## Four Reasons for Enactment of the FDCPA

**Jobs:** Loss of Employment

**Marriage:** Marital Instability and Divorce

**Bankruptcy:** Increase in Unnecessary Filings

**Privacy:** Invasions of Privacy

First Words of the Statute: There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. 15 U.S.C. 1692(a).

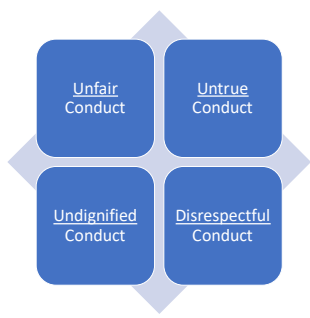
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## Four Requirements for Bringing an FDCPA Claim

- **Consumer:** Natural person alleged to owe a debt (or any person affected by a violation)
- **Consumer Debt:** Defaulted financial obligation (Personal/Family/Household purposes; but not taxes, alimony, traffic tickets...it must derive from a voluntary transaction)
- **Debt Collector:** Third party who regularly in the course of business collects the debts of another
- **Violation of the FDCPA**

4

## Four Basic Tests for an FDCPA Violation



Unfair Conduct


Untrue Conduct

Undignified Conduct

Disrespectful Conduct

5

## Four Benefits to Consumers



Statutory Damages up to \$1,000 (per case/defendant)

Actual Damages (if provable)

Costs Paid

Free Lawyer (fee-shifting)

6

## Who Has Liability?

- Third-Party Debt Collectors
- Lawyers: Covered when they are collecting consumer debts and if they do it regularly. Lawyers have been covered since 1986.
- “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” 15 U.S.C. 1692a(6)

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## Who Has Liability?

- Debt Buyers
- A debt buyer is not covered under the “regularly collects” prong of the definition of “debt collector,” because the debts are owned by the debt buyer and not “owed or due another”
- “principal purpose” prong of the definition not addressed by the Court; it remains and can include debt buyers
- *Henson v. Santander Consumer USA Inc.*, 582 U.S. \_\_\_, 137 S. Ct. 1718 (June 12, 2017)

8

## Who Does Not Have Liability?

- *Original Creditors*: Not covered by the FDCPA (unless they pretend to be a Debt Collector)
- *Servicers*: Not covered by the FDCPA (unless the debt was in Default when obtained – servicers step into the shoes of creditors if obtained before default)
- *Mortgage Servicers*: Only if they took over servicing after default of mortgage
- *Debt Buyers* (with a principle purpose other than debt collection)
- *Basic Rule*: Once a creditor, always a creditor; Once a debt collector, always a debt collector.

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## General Principles of Construction

- *Strict Liability*: Intent is irrelevant, with exception of the statutory defense found at 1692k(a)(3) and determining the amount of statutory damages.
- *Least Sophisticated Consumer Standard*: Violations are viewed from the perspective of the hypothetical least sophisticated consumer
  - The basic purpose of the least-sophisticated consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.
- The remedial nature of the FDCPA requires the Court to interpret it liberally

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## What Drives Collectors

- Fundamental Truth: Collectors want a payment or a promise to pay
- Payment: Mission Accomplished
- Promise: Overcomes obstacle of denial, not my debt, not me, etc. Most people keep promises.
- Broken Promise: Moral cudgel for collector

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## Most Common Violations

- Verbal abuse and harassment
- Failing to provide required notices
- Third-party collection contacts (family, coworkers, friends, neighbors)
- Illegal collection fees or “convenience” charges
- Robo-dialing cell phones (TCPA)
- Refusal to cease contact after written demand
- Threatening other unauthorized, illegal, or unintended actions

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## How A Contingency Fee FDCPA Attorney Can Help

- Counsel clients about their rights (they don't know them)
- Review collection letters and credit reports
- Monitor collection calls and messages
- Stop collection communications in their tracks
- File suit against abusive collectors & recover money
- Assist in correcting inaccurate credit reporting issues
- Potentially get debts settled or waived altogether

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## How Clients Can Help Themselves

- Save all collection letters and notices
- Save voicemails and other messages
- Take pictures of caller ID information on cell phones
- Document all conversations in writing
- Don't challenge collector or try to cite FDCPA
- Get help from an FDCPA lawyer as early as possible

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## QUESTIONS?

15

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Thank you!

Please do not hesitate to contact us with questions, suggestions, complaints, anything.



*Craig Shapiro  
Koury Hicks  
Law Offices of John T. Orcutt, P.C.  
Durham, North Carolina  
919.286.1695*

*cshapiro@johnorcutt.com  
khicks@johnorcutt.com*

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