



September 2012

Bar Briefs

Calendar:

- **Executive Committee meets Mon, Sept. 10, 12:30 at Pisgah Legal**
- **Bar Luncheon Wed., September 12, 12:30 at The Venue, 21 North Market Street**
- **Fall Potluck Picnic, Thurs, Sept. 20, 5:30–7:30, Carrier Park**

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Election Meeting Recommends Three Candidates

The Bar held a special election on August 16 to recommend candidates for the seat of retired District Court Judge Rebecca Knight. Bar members packed the 5th floor courtroom to hear candidates campaign for the seat in brief speeches. Candidates were introduced by colleagues, and spoke for up to three minutes about their qualifications, background, and interest in the judicial bench. Candidates were N. Thomas Amburgey, Susan "Smitty" Dotson-Smith, Dennis Gibson, Joseph C. Knight, Suzanne Nelson, and Cynthia Vardiman. After the secret ballots were counted by members of the Bar's Executive Committee, Dotson-Smith, Amburgey and Knight received the most votes. Their names have been forwarded to Gov. Beverly Perdue for her review and appointment to the vacant seat.

There was one provisional vote out of 238 votes cast, but it was cleared the next morning by the NC State Bar. A provisional vote results from a member presenting themselves to vote, but their name not appearing on the member list provided by the State Bar. In this case, the State Bar found a computer error resulting in the member being assigned to the wrong district.



Above, President Ingrid Friesen convenes special meeting. Left, members listen to speeches. Right, speakers await their turn at the podium.



Above, Dave Hillier checks in with Jack Poisson. Left, The Honorable Rebecca Knight waits to vote. Right, members of the Bar vote for three candidates.



President's Perspective



Ingrid Friesen

School bells are ringing at this time of year, and for the children life is filled with possibilities. Children are excited to be in a new classroom, with a new teacher, learning new things. Off they go, into the unknown, adjusting to the new teachers' rules, making new friends. We watch in awe as they try, fail, and try again with ease. As we get older, we tend to want to stay in our comfort zone. Are we in the groove, or is it really a rut?

This month, the Bar bells (not barbells!) are ringing out a warning, to change the way we work in our profession. Two articles appeared last week: one, an article by R. Michael Wells Sr., current NCBA president, in the August 2012 "Lawyer" magazine, the other, in the Fall 2012 issue of the Journal of the North Carolina Bar written by Raleigh attorney Andrew Cioffi. Both predict a gloomy future for the legal profession, unless we change how we practice law. The task seems daunting. What changes do we need to make? What new skills do we need? Change is such hard work, said Billy Crystal.

According to Cioffi and Wells, many things factor into the loss of legal jobs and the profitability of law firms, not just our current economy. Some of the changes include the number of new graduates, changes in technology, outsourcing of jobs, and client demands

for lower cost services. Joseph Campbell said we must be willing to get rid of the life we've planned, so as to have the life that is waiting for us. Is this the life we planned?

Clients too, have changed. They sometimes now arrive at my office with separation agreements that have been cut and pasted together from clauses provided on the internet. They come only for advice on how the law is to be applied to their circumstances, and assurance that they have done a good job with their agreement. Many have already been through a mediation process and only want a scrivener to complete the process. The costs of litigation have increased and must be considered. More and more clients are eager to settle their disputes without litigation, but they will still need expertise and guidance. They trust us, and rely on our judgment.

What do clients want from us today? Counsel and advice is the service they seek. We must continue to strive for excellence in our knowledge of the law, and CLE is the best way to stay current and informed. Are you considering learning a new area of the law? Our bar will again provide low cost local CLE this year, so please let us know what topics you are interested in. It is our ethical obligation to be competent, but we should strive for much more than mere competence. We need to earn our clients' trust each and every day.

Cioffi and Wells recommend work and life balance, which I guess means less work and more play. Service to our clients declines when we no longer feel fulfilled in what we do. For those of us who are seriously in need of help in finding the "life that is waiting for us," our bar now provides the Bar Cares program: free confidential short term counseling. Or consider creating your favorite food dish and bringing it to the therapeutic potluck picnic on September 20th at Carrier Park.

One thing we don't want to change is our local bar's reputation for civility and congeniality. We will soon greet new members of the bar at the swearing in ceremony on September 28th. Please consider accepting an opportunity for mentoring with new attorneys. Sometimes we get back more than we give away. Stay tuned for the kickoff of our Habitat for Humanity house project. Who knows what awaits?

Ingrid Friesen, President

2012-2013 Executive Committee

President: Ingrid Friesen

President Elect: James Ellis

Vice President: Jacqueline Grant

Treasurer: James Baley

Secretary: Annika Brock

Immediate Past President: Douglas J. Tate

State Bar Councilor: Howard Gum

Pro Bono Chair: Tikkun Gottschalk

At-Large Members: Michael Drye, Carol Goins, Marion Groat, Eileen McMinn, Pat Patton, Jason Peltz, Jack Poisson, Brad Stark and Holly Stiles

Member News

Former 28th Judicial District Chief District Court Judge **Gary Cash**, now doing mediation and arbitration with Fisher Stark Cash, Attorneys in Asheville, has just been appointed by N.C. Supreme Court Chief Justice Sarah Parker to a three-year term on the North Carolina Dispute Resolution Commission.

The North Carolina Dispute Resolution Commission was established in October of 1995, pursuant to [N.C. Gen. Stat. § 7A-38.2](#). The Commission is charged primarily with certifying and regulating private mediators who serve the courts of this State. The Commission also recommends policy, rules, and rule revisions relating to dispute resolution in North Carolina's courts; provides support to court-based mediation programs; certifies mediation training programs; serves as a clearinghouse for information about court-based mediation programs; assists other State agencies interested in or providing dispute resolution services to their constituencies; publishes a newsletter, and maintains a web site.



Carole Spainhour is a new member of the 28th JDB. She is the principal of ElderLaw Carolina and has offices in Asheville and Greenville SC. She practices in the areas of estate planning and elder law.

For the past three years she was of counsel with Love Thornton Arnold & Thomason PA in Greenville, SC. Her primary practice was in the Blowing Rock and Boone NC area for over 16 years prior to her move to Asheville. She is a graduate of UNC-Law and immediate past president of the Elder Law Section of the NC Bar Association.

David Gantt, Asheville lawyer and Buncombe County Commission Chair, gave a speech to the National Association of Counties (NACO) convention in Pittsburgh, PA on July 15, 2012. Gantt spoke on the benefits of open spaces to communities.

Gantt initiated the Buncombe County initiative that has permanently preserved and protected over 5,000 acres of farmland and mountain top land in the past 10 years. He is a strong advocate for land conservation easements, greenways, and parks in Western North Carolina.



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YOU ARE NOT ALONE!

The **North Carolina Association of Women Attorneys** is excited to host its 34th annual conference in Asheville on October 5th and 6th at the Renaissance Asheville Hotel. NCAWA members and guests will receive a discounted rate if reservations are made on or before September 5. Please register online or call the Renaissance at (800) 266-9432 and reserve your spot as soon as possible.

This year's conference agenda will include 6.25 hours of CLE credit. This year's conference will feature special guest speaker New York Times Best Selling Author Sharyn McCrumb who will speak on her novel *The Ballad of Tom Dooley*.

Complete information on this year's conference is available at the NCAWA website at <http://www.ncawa.org/2012-annual-conference/>.

Small Asheville law firm needs associate attorney for busy litigation practice. Focus is on complex civil litigation. Ideal candidate will have 2-3 years of private practice experience and excellent research and writing skills. Please send resume and writing sample (if available) to mwimer@wimerandassociates.com

Member News

Report from State Bar Councilor

*This July, I had the honor of representing the 28th Judicial District at the State Bar Council's quarterly meeting. This newsletter contains brief articles on some of the significant matters that were addressed at the meeting and other important State Bar news. I urge you to read the synopsis of the quarterly meeting and to spend a minute reviewing the additional material. I hope you find it informative. As always, if you have any questions or concerns regarding the N.C. State Bar, please contact me. **Howard L. Gum***



July Council Meeting

Access this [link](#) for a full synopsis of the July 2012 meeting of the State Bar Council.

NCBA Judicial Performance Evaluation

In advance of the Nov. 6 general election, the NCBA is providing single-sheet reports for contested trial court races in which both candidates have been evaluated. In the coming weeks, you will be able to access the separate sheet for each contested election in District 28, at www.ElectNCJudges.com.

New Ethics Opinions Adopted

Upon the recommendation of the Ethics Committee, the Council adopted two new ethics opinions: **2012 FEO 1**, which rules that testimonials that discuss characteristics of a lawyer's client service may be used in lawyer advertising without the use of a disclaimer. Testimonials that refer generally to results may be used so long as they are accompanied by appropriate disclaimers. The reference to specific dollar amounts in client testimonials is prohibited; and **2012 FEO 3**, which rules that a lawyer may charge interest on a delinquent client account, without an advance agreement with the client, to the extent and in the manner permitted by law. Access this [link](#) for the full titles and text of these three new opinions.

Proposed Ethics Opinions

The Ethics Committee decided to publish for comment four new proposed ethics opinions: **Proposed 2012 FEO 5**, which rules that a lawyer representing an employer must evaluate whether email messages an employee sent to and received from the employee's lawyer using the employer's business email system are protected by the attorney-client privilege and, if so, decline to review or use the messages unless a court determines that the messages are not privileged; **Proposed 2012 FEO 6**, which rules that a law firm may use a leased time-shared office address or a post office address to satisfy the address disclosure requirement for advertising communications in Rule 7.2(c) so long as certain requirements are met; **Proposed 2012 FEO 7**, which rules that Rule 4.2 requires a lawyer to have the express consent of a represented person's lawyer prior to sending the represented person a copy of an email communication; and **Proposed 2012 FEO 8**, which rules that a lawyer may ask a former client for a recommendation to be posted on the lawyer's profile on a professional networking website, and may accept the recommendation if certain conditions are met. Access this [link](#) for the full titles and texts of these proposed opinions.

Grievance Committee Report

During the quarter the Grievance Committee considered 320 cases. Five lawyers received letters of caution, fourteen lawyers received letters of warning, eight lawyers received admonitions, five lawyers received reprimands, four lawyers received censures, and twelve lawyers were referred to the Disciplinary Hearing Commission. Access this [link](#) for disciplinary actions, hearings, schedules and information regarding preliminary injunctions.

Awards and Recognition

Seventeen attorneys at Roberts & Stevens Law Firm have been honored by their peers in *The Best Lawyers in America*® 2013:

Sarah Patterson “Patsy” Brison in Administrative/Regulatory Law and Land Use & Zoning Law and Litigation;
Vincent D. Childress, Jr. in Corporate Law and Health Care Law;
William Clarke in Environmental Law and Litigation and Natural Resources Law;
David L. English in Corporate Law and Real Estate Law;
Jacqueline D. Grant in Medical Malpractice Law- Defendants;
Jackson D. Hamilton in Tax Law and Litigation & Controversy-Tax;
Kenneth R. Hunt in Insurance Law;
Gregory D. Hutchins in Corporate Law, Health Care Law, and Trusts & Estates;
Mark C. Kurdys in Commercial Litigation, Construction Litigation, Real Estate Litigation and Transportation Law;
Marjorie R. Mann in Arbitration, Banking and Finance Law and Litigation, Bankruptcy Creditor Debtor Rights/Insolvency and Reorganization Law and Litigation;
John W. Mason in Trusts and Estates Law and Litigation;
Marc S. Rudow in Real Estate Law;
John S. Stevens in Corporate Law;
Wyatt S. Stevens in Commercial Litigation, Trusts & Estates Litigation, Personal Injury Litigation-Defendants;
James W. Williams in Medical Malpractice Law and Personal Injury Litigation- Defendants;
Sheryl H. Williams in Real Estate Law and Litigation;
Lachicotte “Lach” F. Zemp, Jr. in Eminent Domain & Condemnation Law, Transportation Law;

First published in 1983, *Best Lawyers* is based on an exhaustive annual peer-review survey in which more than 36,000 leading attorneys cast almost 4.4 million votes on the legal abilities of other lawyers in their practice areas. Because lawyers are not required or allowed to pay a fee to be listed, inclusion in *Best Lawyers* is considered a singular honor.

Thirty-three lawyers from Ward and Smith, P.A. were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2013. Ward and Smith attorneys who are members of the 28th JDB, and recognized as 2013 Best Lawyers, are the following:

Derek J. Allen in Land Use and Zoning Law; Litigation - Land Use and Zoning
Michael L. Miller in Arbitration; Employee Benefits (ERISA) Law; Mediation; Tax Law; Trusts and Estates



McGuire, Wood & Bissette attorney Annika Brock has been named to the North Carolina Bar Association Real Estate Section Council for a three-year term. The council oversees the copyrighted real estate forms and five-volume book relating to real property law. The section is active in the area of consumer protection and has hired a contract attorney to investigate claims of unauthorized practice of law.



McGuire, Wood & Bissette attorney Mary E. Euler has been named to the North Carolina Bar Association Litigation Section Council for a three-year term. The council, consisting of both plaintiff and defense attorneys, examines litigation issues from a neutral perspective. The Litigation Section’s members include those with a substantial portion of their practice in civil litigation.

www.28thJDB.com

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**Bar Briefs is published
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Briefly... from the Bar Administrator

This year's Executive Committee has been working throughout the late summer to create interesting CLE, fine-tune the billing process for dues, and plan a great lineup of Bar Luncheons for the second Wednesday of each month. The leadership of this Bar is amazing!

Though I have only served in this role for four years, I have watched as the Executive Committee leadership has moved forward with great programs to benefit you, the member. The most exciting new programs, both new this year, are BarCares and the Mentoring Program.

BarCares provides crisis counseling for members at no charge. Call the toll-free number, and the BarCares advisor will find a local mental health counselor who will meet with you, free, for up to three sessions. It's confidential, and you can even talk to a counselor on the phone, if that is helpful.

The Mentoring Program begins this fall, and will assist new attorneys with guidance from local practitioners. A committee of three former district Bar Presidents is working now to match up attorney pairs according to interest and need.

Finally, the Bar has made it easier to pay for the monthly Bar luncheons, thereby shortening the check-in process. We now take credit cards at the door, and you can pre-pay for the year by giving us a check for \$80 at the September gathering.

Lisa-Gaye Hall

2012-2013 28th JDB Bar Dues

We are changing the billing process for the 28th Judicial District Bar dues. The dues amount remains at \$150, but will now be due earlier in the fiscal year. The invoice will be mailed to your address on October 1st. Payment will be due on December 1st. After December 1st, a late fee of \$15.00 will be assessed. Payment reminders will be sent via email. For additional information about local bars dues please see NCGS 84-18.1 (b).

The 2012 Orientation and Swearing-in for new attorneys will take place on Friday, September 28th. All attorneys who are new to the 28th JDB should contact Bar Administrator Lisa-Gaye Hall at admin@28thJDB.com or at 828-252-5733 to enroll. The orientation begins at 9 am, and includes both the federal and the state courts. The swearing-in begins at 4 pm in the 5th floor courtroom of Buncombe County Courthouse. CLE credits are pending approval.