



January 2012

## Bar Briefs

### Calendar:

- **Executive Committee meets Mon, Jan 9, 12:30 at Pisgah Legal**
- **Bar Luncheon Wed., Jan 11, 12:30 p.m. at The Venue, 21 N. Market St.**

### Holiday Celebration Provides Cheer, Food & Toys

An evening of celebration gave hope for the needy, with Bar members bringing donations of food and toys to the annual holiday party in early December. Donations of more than 250 pounds of food were collected at the event and later given to Manna Food Bank. Toys for needy children, with a value estimated at \$1500, were collected that night and given to local children through Santa Pal. In addition, a total of \$850 in cash was donated by Bar members for the two charities.

More than 200 members attended the event, held at The Venue, and enjoyed the company of their colleagues as well as excellent food, drink and music.

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## President's Perspective



I had a colleague years ago who would come in on the first day after New Year's and proudly proclaim "New Year, New Attitude." It seemed to make sense. It had a nice ring to it. Why not? But is it really that easy?

In law school the New Year brought a new semester. Fall finals and research papers were finished prior to the holiday break. There were enough football games and mom's cooking to take your mind off that exam question that only the gunner on the front row could figure out. What was the Rule in Shelley's case and didn't the legislature abolish it anyway? Grades were posted and you calculated your GPA and class rank to see if you could update your resume or contact that firm you still wanted to hear from.

And with New Year's came those damn resolutions. And of course, because we all wanted to improve class rank or GPA, we resolved to be more prepared for class, study harder, and prepare our outlines earlier. It was a New Year, a new semester and a new attitude.

For some of us those law school days were, as George Lucas put it, "a long time ago in a galaxy far, far away." For those who were just sworn in it must seem like it was just yesterday. I know I haven't had exam dreams in years, but they still lasted much longer than I wished.

It was easy to have that "new attitude." There was the break between exams and that first day back to revive and rejuvenate. Plus the past was the past. It was done. The blue books were closed and the pens put down. The semester was over. And everything that started in January was new. New books, new classes and finals were four months off.

Some of us are smart enough to take some time off during the holidays and enjoy friends and family just like we did in law school. There really isn't court the week before New Year's anyway. Some of us use the week to catch up on matters. Others of us because of the nature of our practices can't. That closing has to occur by the end of the year. It just has to.

Yet, unfortunately, the cases and files we had on December 23<sup>rd</sup> are the same cases and files we have on December 27<sup>th</sup> and more importantly, the same cases and files we have on January 3<sup>rd</sup>. The case didn't end just because the calendar year ended. The file is still sitting on our desk, on the floor or in the file cabinet . . . waiting. And it hasn't gotten any better. It no longer looks like the bright new shiny penny it was in July. It's like when your car loses that "new car" smell. Instead of something new to look forward to, we come back to the same stuff we left. So much for a "new attitude."

So how can we get that "new attitude"? Is it really as easy as just proclaiming it like my former colleague did? I know you can't just "declare" bankruptcy. You actually have to go down to the courthouse and fill out a bunch of forms and pay a filing fee.

Maybe it's as easy as going back to the time before law school when we thought of joining the legal profession. Sure there was the promise of long hours and great pay. And there was the intellectual stimulation of applying law to facts. But hopefully the decision to join the legal profession was deeper than that.

For many of you, I hope all of you, there was an element of service in your decision to join the legal profession. It was the idea of solving someone else's problems to make their life a little better. And maybe not just solving a problem but facilitating the purchase of a home or the application for a patent on some new machine that will save the world. Nevertheless it's all about service.

I have figured out over the last few months that service in the legal profession takes many forms. We all know about service to clients. Most of us serve the community whether it is through elected office or non-profit boards. And there is service to the profession itself by serving the Bar. But it is also service to one another. Whether it's getting a lawyer help with addiction or depression or it's helping a fellow lawyer with a speeding ticket or a separation agreement, we all serve each other too.

So if you can't find a reason when looking at your desk this morning to have a "new attitude," think about why you got into the legal profession in the first place. And then look around at all the services lawyers perform for clients, community, the bar, and more importantly, for each other. Look back and look around, and you will be inspired. I know I am. I think if you do, you will have a reason to proclaim, "New Year, New Attitude."

***Douglas J. Tate, President***

### **2011-2012 Executive Committee**

***President:*** Douglas J. Tate

***President Elect:*** Ingrid Friesen

***Immediate Past President:*** Bill Christy

***Vice President:*** James Ellis

***Treasurer:*** Ryan Beadle

***Secretary:*** Mae Creadick

***State Bar Councilor:*** Howard Gum

***Pro Bono Chair:*** Tikkun Gottschalk

***At-Large Members:*** Courtney Booth, Alan

Coxie, Michael Drye, Jason Gast, Carol

Goins, Eileen McMinn, Jason Peltz, Brad

Stark and Holly Stiles

## Councilor's Connection

### Judicial District 28 Councilor's report

*This October, I had the honor of representing this judicial district at the State Bar Council's annual 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 annual meeting and to spend a minute reviewing the additional material. I hope you find it informative.*

**Howard L. Gum**

### October Council Meeting

Access the link below for a full synopsis of the October 2011 meeting of the State Bar Council.

<http://www.ncbar.com/PDFs/synopsis.pdf>

### Annual Membership Dues and Client Security Fund Assessment

The Council decided that the amount of the annual membership fee (dues) for 2012 should remain at the current level, \$300. Additionally, the Council decided to recommend to the Supreme Court that the amount of the annual assessment in support of the Client Security Fund remain at \$25. To pay your 2012 dues online, please access your membership page here:

[https://www.ncbar.com/ssl/member\\_login.asp](https://www.ncbar.com/ssl/member_login.asp)

### Revised Trust Account Handbook

A fully revised version of the North Carolina Lawyer's Trust Account Handbook is available online and can be downloaded for free. There are currently no hard copies available.

### New Ethics Opinions Adopted

Upon the recommendation of the Ethics Committee, the Council adopted four ethics opinions: **2011 FEO 10**, which addresses advertising on daily discount websites; **2011 FEO 12**, which rules that a lawyer must notify the court when a clerk of court mistakenly dismisses a client's charges; **2011 FEO 13**, which addresses when a lawyer may hold client or third party funds in a trust account as disputed funds to which the lawyer may be entitled; and **2011 FEO 15**, which addresses a lawyer's communications with custodians of public records when the custodian is an adverse party, or an employee of an adverse party, whose lawyer does not consent to the communication. Access the link below for the full titles and text of these four new opinions.

<http://www.ncbar.com/ethics/propeth.asp>

### Proposed Ethics Opinion

The Ethics Committee decided to publish for comment one new proposed opinion. **Proposed 2011 FEO 16** rules that a 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.

Three proposed opinions were revised and republished for comment: **Proposed 2009 FEO 7**, which addresses interviews with child witnesses in physical and sexual abuse cases without parental consent.; **Proposed 2011 FEO 6**, which rules that a law firm may contract with a vendor of "software as a service" provided the lawyer uses reasonable care to safeguard confidential client information; and **Proposed 2011 FEO 7**, which rules that a law firm may use on-line banking to manage its trust accounts, provided the firm's managing lawyers are regularly educated on the security risks and actively maintain end-user security. Access the link below for the full titles and texts of these proposed opinions. <http://www.ncbar.com/ethics/propeth.asp>

### Revised Authorized Practice Opinion on Real Estate Closings

As a result of a review of the activities of more than 50 nonlawyer service providers since the adoption of the authorized practice advisory opinion on nonlawyer real estate closings in 2003, including injunctions issued against two companies, proposed revisions to the advisory opinion have been published for comment. Access the revisions at the bottom of the page provided via the link below.

<http://www.ncbar.com/ethics/propeth.asp>

## Councilor's Connection, continued

### Grievance Committee Report

During the quarter the Grievance Committee considered 347 cases. Three lawyers received letters of caution, six lawyers received letters of warning, nine lawyers received admonitions, six lawyers received reprimands, seven lawyers received censures, one lawyer was referred to the Lawyer's Assistance Program, and seventeen lawyers were referred to the Disciplinary Hearing Commission. Access the link below for disciplinary actions, hearings, schedules and information regarding preliminary injunctions.

<http://www.ncbar.com/menu/discipline.asp>

### State Bar Officer Elections

James R. Fox, corporate counsel for Pike Electric, Inc. in Mount Airy, was installed as president; M. Keith Kapp from the law firm of Williams Mullen in Raleigh, was elected president-elect; Ronald G. Baker Sr. from the law firm of Baker, Jones, Daly & Carter in Ahoskie, was elected vice president; and L. Thomas Lunsford II was re-elected secretary-treasurer.

### Trust Account Audits

Judicial districts randomly selected for audit during the fourth quarter of 2011 are District 22B, consisting of Davidson and Davie Counties, and District 29B, consisting of Henderson, Polk, and Transylvania Counties. Access the State Bar Auditor's third quarter report via the link below.

[http://www.ncbar.gov/PDFs/Q3\\_2011.pdf](http://www.ncbar.gov/PDFs/Q3_2011.pdf)

### Rule Amendments

At its meeting on October 21, 2011, the Council adopted, subject to the Supreme Court's approval, amendments to the rules regarding specialization and the IOLTA program. These amendments will be submitted to the Court for approval. Further, the Council voted to publish a number of proposed amendments for public comment. The amendments relate to good standing, reinstatement, specialization, and prepaid legal service plans. Access these adopted and proposed rule amendments via the link below.

<http://www.ncbar.com/rules/proprul.asp>

### Upcoming Meeting Schedule

The State Bar Council will be holding its next quarterly meeting January 24-27, 2012 at the Marriott Hotel in downtown Raleigh, NC. Access the annual meeting schedule via the State Bar homepage.

<http://www.ncbar.gov>

### What's Happening in the Legislature

Access the link below for a list of bills passed by the General Assembly in 2011 with effective dates from July 1, 2011 through January 1, 2012.

<http://www.ncga.state.nc.us/documentsites/legislativepublications/2011%20Effective%20Dates/2011EffectiveDates.pdf>

### Seeking Distinguished Service Award Nominations

The John B. McMillan Distinguished Service Award program honors current and retired members of the North Carolina State Bar throughout the state who have demonstrated exemplary service to the legal profession. Members of the Bar are encouraged to nominate colleagues who have demonstrated outstanding service to the profession. The [nomination form is available here](#). Please direct questions to Peter Bolac at the State Bar office in Raleigh, (919) 828-4620.

### Responsibilities when Sponsoring Pro Hac Vice Lawyer

If you are the North Carolina lawyer sponsoring an out-of-state lawyer seeking admission pro hac vice, you must file a [registration statement](#) with the NC State Bar within 30 days of the entry of the order granting PHV admission. Additionally, as required on the registration statement, you must notify the NC State Bar upon conclusion of the case. The registration form and other important information related to pro hac vice admission can be found on the [FAQ page](#) of the State Bar website.

Member News



Ingrid Friesen P.A. is proud to announce that **Shannan Barclay** has joined the firm as an associate in the family law practice. Shannan is a graduate of Ithaca College and received her Juris Doctorate Degree from Vermont Law School in 2009.

Drawn to Western North Carolina, Shannan first discovered Asheville in 2005 where she lived and worked for a year before attending law school. She returned in the summer of 2008 and interned with Pisgah Legal Services' Mountain Violence Prevention Project. She stayed through the fall of 2008 and had the opportunity to clerk for the Honorable Rebecca Knight in Family Court. Since her admission to the North Carolina Bar in the fall of 2009, Shannan has focused her practice in the area of family law. She offers clients several years of experience working exclusively in family law, including divorce, custody, child support, equitable distribution of property, and modification and enforcement of decrees.

Shannan currently serves as the Secretary for the local Chapter of the North Carolina Association of Women Attorneys, is a member of the North Carolina Bar Association Young Lawyers, and also volunteers with Pisgah Legal Services' Mountain Area Volunteer Lawyer Program. Shannan is presently accepting new clients. She can be reached at 254-0565, or [shannanbarclay@charter.net](mailto:shannanbarclay@charter.net).

**Jack S. Stevens**, attorney and founder of Roberts & Stevens Attorneys at Law, has practiced at Roberts & Stevens and given back to the community for 50 years. The firm congratulates him and looks forward to many more successful years.

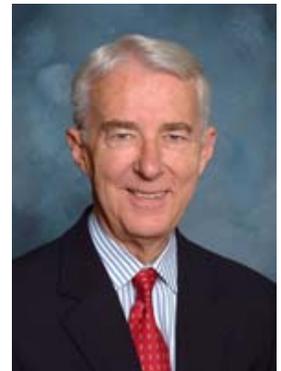
Stevens has a distinguished legal career representing large municipal corporations, the State of North Carolina in insurance matters, private schools and colleges, and family-owned businesses. Stevens remains an active partner who is credited with shaping the approachable culture of the firm. His areas of focus include business/corporate law and higher education.

In his early career, Stevens served four terms in the North Carolina House of Representatives General Assembly (1969–1976) and was Chairman of the House Rules Committee during the 1975 session. Over the years, he has continued to be active in the North Carolina Bar Association, including a term as President.

Stevens has served locally as President of Mission Hospital, former Board of Trustees and Chairman of the Board of Mission-St. Joseph Health Systems, and former Chairman of the Asheville Area Chamber of Commerce. Statewide, Stevens has served as President of UNC Hospitals, Board of Trustees and Chairman of the Board of the UNC Healthcare System, Board of Trustees of the University of North Carolina at Chapel Hill, Director of NC Lawyers Mutual Insurance Company, and the Chairman of the Governor's Task Force on Drunken Drivers.

Currently he is a member of the Board of Directors of the North Carolina Foundation for Advanced Health Programs, Attorneys for Family-Held Enterprises and the North Carolina Parks and Recreation Authority. Among his accomplishments, Stevens is AV Preeminent Peer Review Rated lawyer by Martindale-Hubbell, named to *The Best Lawyers in America* in Corporate Law since 2008, named a *North Carolina Super Lawyer* and has received the North Carolina Bar Association Centennial Award.

As an Asheville native, he is proud to have had the opportunity to build a law firm and, of equal importance, raise a family in Asheville.



## Member News

The **Roberts & Stevens Law Firm** has been recognized in the 2011-2012 U.S. News- Best Lawyers “Best Law Firm” rankings. As a National Tier Two Firm- Roberts & Stevens has been recognized in the category of Trusts & Estates Litigation. In consideration with other Asheville Law Firms, Roberts & Stevens has been named a Tier One Firm in 18 categories. They include: Administrative/Regulatory Law; Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law; Commercial Litigation; Corporate Law; Education Law; Environmental Law and Litigation; Land Use & Zoning Law; Medical Malpractice Law-Defendants; Mergers & Acquisitions Law, Natural Resources Law; Personal Injury Litigation-Defendants; Real Estate Law and Litigation; Tax Law and Litigation; and Trusts & Estates Law and Litigation. Also in consideration with other Asheville Law Firms, Roberts & Stevens has been named a Tier Two Law Firm in Employment Law-Management and Land Use & Zoning Litigation

The U.S. News & World Report and Best Lawyers 2011-2012 “Best Law Firms” rankings, mark the second year of this annual analysis. These rankings, which are presented in tiers, showcase 9,633 different law firms ranked nationally in one or more of 75 major legal practice areas and in metropolitan or state rankings in one or more of 119 major legal practice areas. The Roberts & Stevens rankings are for the Metropolitan Area of Asheville. Achieving a high ranking is a special distinction that signals a unique combination of excellence and breadth of expertise.

**Historic Gudger House For Sale:** Pisgah Legal Services has historic Queen Anne Victorian building for sale along with adjacent .37 lot. Usable as office or converted to residential. \$450,000 Visit <http://www.pisgahlegal.org/historic-gudger-house-for-sale> for more information. Contact Pisgah Legal Services Executive Director Jim Barrett at 210-3408 for more information.

**Office Space Available:** Pisgah Legal Services has 377 square feet available for lease at 62 Charlotte Street in its new office building. Space is available now. This office suite includes a bathroom and break area. The space consists of two offices – all on the ground floor adjacent to Starbucks. Use of some furniture provided is an option. For more information, contact Pisgah Legal Services Executive Director Jim Barrett at 210-3408.

**Office space available for sublet:** 4 private furnished offices and lobby space, share conference room and kitchen. Ample parking in desirable West Asheville location. Contact Angeleigh Dorsey at 828-239-2984 for additional information.

**For Sale:** Current published N.C. Reports, volumes 2-364 (except for a few prior to vol. 91), and N.C. App., volumes 1-199. Both sets are current as published by AOC. \$2,500.00. Call 281-8127 for more information.

You are invited to attend a free CLE Seminar on **Charitable Lead Trusts: Structure, Taxation and Regulation**, hosted by The American Red Cross on Friday, January 27, 2012, from 12 noon to 1:15 pm. This CLE is approved for 1 hour, a brown bag lunch is provided, and it is held at Red Cross Headquarters, 100 Edgewood Rd., Asheville. For reservations call Marie McMahan, 828-258-3888, ext. 202; or email [McMahanm@usa.redcross.org](mailto:McMahanm@usa.redcross.org). For more info, click here: <http://www.redcrosswnc.org/general.asp?SN=6975&OP=14211&IDCapitulo=88Q98LOCME>

## Member News

**McGuire, Wood & Bisette, P.A.**, with offices in Asheville and Brevard, North Carolina, has been named to *U.S. News & World Report's* 2011-2012 Metropolitan First-Tier ranking of the nation's "Best Law Firms", in the areas of Administrative/Regulatory Law and Land Use and Zoning Law. Firm President W. Louis Bisette, Jr. was also recently selected by his peers for inclusion in Best Lawyers 2012 in the fields of Administrative/Regulatory Law, Commercial Litigation, and Land Use and Zoning. *Best Law Firms* contains national rankings of 583 law firms in 39 legal practice areas. These rankings have been highly anticipated by many in the legal industry.

McGuire, Wood & Bisette, P.A. is the oldest law firm in Asheville, North Carolina continuously in the practice of law since 1894. Since its inception, the firm has engaged in a general civil practice geared toward commerce and industry. McGuire, Wood & Bisette, P.A. is committed to serving its clients' best interests with effective legal services of the highest quality at a reasonable cost, while adhering to the highest ethical standards and contributing to the well-being of the community.

Fourteen Ward and Smith, P.A. attorneys were selected for inclusion in *Business North Carolina's* "Legal Elite." Asheville attorney, **Derek J. Allen**, was recognized in the category of Real Estate. Also, **Michael L. Miller** of Ward and Smith, P.A. has been selected as the leader of the Firm's Employee Benefits Practice Group. Mr. Miller can be reached at 828-348-6015 or [mlm@wardandsmith.com](mailto:mlm@wardandsmith.com).

**Jason M. Peltz** of the Peltz Law Firm, PLLC was selected as a member of *Business North Carolina's* "Legal Elite" in the Real Property category.

**Jonathan Yarbrough**, a partner with **Constangy Brooks & Smith, LLP** is serving as co-chair of the Ticket Committee for the Southern Conference Basketball tournament which Asheville will host March 2-5, 2012. Jon invites all local lawyers to buy tickets for the tournament so we can ensure good crowds as we seek to keep the tournament in Asheville beyond its three year run. The men's and women's tournaments are expected to have an impact of \$4 million in our community. Tickets are available at the Civic Center Box Office, Kimmel Arena at UNCA and online at Ticketmaster. If interested in group tickets, contact Ben VanCamp at [ben@ashevillesports.org](mailto:ben@ashevillesports.org)

Atlanta-based national labor and employment law firm **Constangy, Brooks & Smith, LLP** has been named as a "2012 Go-To Law Firm for the Top 500 Companies" a national reference guide for corporate law departments published by *Corporate Counsel* magazine.

According to Incisive Media, which publishes *Corporate Counsel*, this honor puts Constangy in an elite group of law firms that deliver exceptional work for the Fortune 500. This list will be featured in the 9th annual edition of *In-House Law Departments at the Top 500 Companies*, which will be published the last week of this month.

Go-To Law Firms are selected through surveys sent to each of the Fortune 500's general counsel asking them which outside law firms they turned to for assistance in the featured practice areas. Each December, the "In-House Law Departments at the Top 500 Companies Directory" is published, featuring the full list of Go-To Law Firms by company and practice area. The publication is distributed to general counsel at the Fortune 1000 companies, along with subscribers of *Corporate Counsel* magazine.

Also, Constangy, Brooks & Smith, LLP, has been recognized as a top firm for management-side labor and employment in the 2011 Best Law Firms rankings, a joint effort between U.S. News Media Group and Best Lawyers. The firm received 40 local rankings across its offices, recognizing them for their expertise in areas such as labor and employment law, employee benefits/ERISA and immigration law. Nationally, the firm was recognized as a leader in both employment and labor law as well. The **firm's Asheville offices** received top rankings in Employment Law – Management and Litigation - Labor & Employment.

More than 9,633 law firms were considered for the rankings, which will be featured in part in the U.S. News & World Report's Money issue on November 15. Rankings were determined through client and attorney rankings and input combined with millions of evaluations of individual lawyers in these firms in the most recent Best Lawyers survey of leading lawyers. Hard numbers were also used to develop the practice area rankings — data about numbers of lawyers and their previous experience, numbers of clients within different billing ranges, numbers of transactions and litigation matters at different dollar levels; pro-bono commitment, diversity, and other objective data.

[www.28thJDB.com](http://www.28thJDB.com)

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### Briefly... from the Bar Administrator

What will your legacy be? I was reminded of my great-grandfather's legacy of Cherokee traditions the other day, when I peeled an apple for my daughter. Like Papa, I peel from the top towards the bottom, in a thin line, making a corkscrew irresistible to a child. Unlike my Papa, I don't keep a metal bucket full of water on my front porch, with a dipper made of a whittled long-neck gourd to drink from. But I hope that a few Appalachian traditions can be passed along to my children, even though we live in a very different time. I don't ever remember my Papa getting angry at me, even when I snuck upstairs to eat the pieces of fruit he dried out in the attic on long boards. I can't hope for that with my children, but maybe next time they steal a fried apple pie I'll just look the other way.

*Lisa-Gaye Hall*

### NOMINATE DESERVING COLLEAGUES FOR 2012 PRO BONO AWARDS

The floor is open for nominations for the 2012 Pro Bono Awards, presented annually by the NCBA in conjunction with the Pro Bono Project. Recipients will be honored at the [2012 NCBA Annual Meeting](#), scheduled June 21-24 in Wilmington. Please take time to access the link below and consider placing nominations for William L. Thorp Pro Bono Attorney (of the Year) Award, the Deborah Greenblatt Outstanding Legal Services Attorney Award, the Chief Justice Award, the Large and Smaller Law Firm awards and the Law Student Group Project Award. Nominations for the YLD Younger Lawyer Pro Bono Award are also facilitated through this form. The deadline is Feb. 3.

[http://www.ncbar.org/media/20680143/2012\\_proBonoAwardForm.pdf](http://www.ncbar.org/media/20680143/2012_proBonoAwardForm.pdf)

### NCBA RELEASES JUDICIAL PERFORMANCE EVALUATION REPORT

The North Carolina Bar Association announced today the publication of the Judicial Performance Evaluation Report for District and Superior Court ([click here](#)) judges eligible for election in 2012. The report, accessible via the link below, is also prominently displayed on the homepage of the NCBA website, [www.ncbar.org](http://www.ncbar.org). More than 4,200 attorneys participated in the survey, administered by the NCBA's Judicial Performance Evaluation Committee, providing more than 27,700 individual judicial evaluations for 168 trial court judges. Access the link below for additional information.

<https://www.ncbar.org/about/communications/news/2012-news-articles/ncba-releases-judicial-performance-evaluation-report.aspx>