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## Charlottean Sarah Parker Becomes Chief Justice

BY ROBERT P. JOHNSTON

Sarah Parker as Chief Justice of the North Carolina Supreme Court now has three full-time jobs: continuing her work on the Supreme Court, overseeing administration of the North Carolina court system, and campaigning for election as Chief Justice this November.

The Presbyterian Hospital-born Charlotte native is the third woman among North Carolina's 27 chief justices and only the second chief justice from Charlotte. The other Chief Justice from Charlotte was William Bobbitt.

The Chief Justice maintains a home in Charlotte, is a member of Christ Episcopal Church, and still belongs to the Mecklenburg County Bar. "I don't get back here as often as I'd like," says the Chief, but she gets back with some regularity.

Sarah Parker's first two years of high school were at the old Central; her senior year was at Garinger, where she was in the first graduating class with future attorney Ralph Kinsey.

After her freshman and sophomore years at Meredith College, she transferred to the University of North Carolina (UNC) at Chapel Hill as a junior, graduating in 1964 with a bachelor's degree in English education. She was certified to teach and did just that from 1964-66 as a Peace Corps Volunteer at Middle East



*Chief Justice Parker leading the Court into the chamber for the first time.*

Technical University in Ankara, Turkey, where she taught students English during a year of intensive study. "The Peace Corps recruited heavily on campus then, and I decided it was something I wanted to do," recalls Justice Parker. "It was a fascinating experience and an opportunity for tremendous personal growth."

During this period the Chief Justice decided to go to law school. "I took the LSAT in a doctor's office in Ankara and filled out the one or two-page application I had requested. There were only about 10 questions, and I was initially concerned that someone might be playing a joke with me."

It wasn't a joke, and she entered law school about two weeks after returning from Turkey. Classmates included Jim Allison,

Jamie Bryant, Ralph Harris, Neill McBryde, Jack Sullivan, Drew Taylor, Sam Woodard as well as the late Mike Schumlinson and David Underwood.

The Chief Justice received her juris doctor in 1969 from the UNC School of Law, where she was a member of the Law Review, and commenced practicing here with Cansler Lockart. There were only five or six women practicing in Charlotte at the time.

The Chief Justice practiced law here from 1969-84. "Ours was a general business practice,

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www.meckbar.org



*The Chief is sworn in.*

**From the President**



*Shirley Fulton, MCB President*

Last November, I wrote my President's column about life as a lawyer. In that column, I asked you whether you would be interested in a series on the "whole lawyer." Although formal responses did not overwhelm my mailbox, informal responses and comments keep coming

in. Work/life balance is a topic that I hear about more and more. In fact, something about this topic comes to my attention almost daily. It used to be that work balance and healthy decisions were discussed in the context of those dreaded billable hours. The conversation almost always included comments like: "I never thought being an attorney would be like this." "No one told me that I would not have a life." "If I do not work through lunch and late into the night, will I never make partner?" "How can anyone bill 2100 hours in a year?"

Even if we do not admit it out loud, many of us have had these thoughts and others like them. How do we balance our lives? How do we know if we need to balance our lives? Asked another way, how do we know if our life is out of balance? Why is it so hard for many of us to achieve balance?

Check for signs in your own life. Are you in sync or are you constantly syncing? Literally, are you plugged in to your laptop, Palm Pilot, BlackBerry nonstop? Are you a perfected "multi-tasker"? Do you check e-mails while on the phone or in a meeting? Do you work late more than not? Are you drinking more than you used to? Are you getting enough exercise? Do you feel grumpy? Are you constantly battling colds? Do you attend meetings and only dedicate part of yourself to the conversation because the other part of you is on your BlackBerry?

If you are one of the guilty ones, like I am, and find that some of the above examples may apply to you from time to time, how do we get the balance back? Is it as simple as recognizing that each of us is in charge of our decisions? Is it that easy? What would happen if we just chose to unplug—just disconnect—from time to time in order to nurture ourselves, to refresh our heart, soul, mind, and body? The demands on our time will be never ending. Are we better prepared to handle the constant demand if we take better care of ourselves? Can we define limits out of respect for our well being and stick to them?

If it is that simple. Why is it such a struggle for so many of us? Is this topic unique to the lawyer? What do we do as individuals and mentors to encourage young people to think for themselves and make decisions about the quality of their life and their work? Do the young lawyers in your firm fear that if they go to the gym during lunch that their career will be in danger? Do we contribute to the myth that you must work 80 hours a week to be successful?

*continued on page 3*



**Lawyers in the News** by Robert P. Johnston

**Three to Plan Courthouse Grand Opening**

**Doug Ey, Mark Merritt, and Judge Nancy Norelli** have agreed to co-chair an *ad hoc* committee to plan the opening of the new Mecklenburg County Courthouse. The



*Ey, Merritt, and Norelli head up planning for new courthouse opening celebration*

nine-story structure is on schedule, and a move-in date of late December or early 2007 is anticipated.

"This is a once-in-a-lifetime opportunity to celebrate our justice system in Mecklenburg County. We look forward to involving the entire community," says Norelli, a past Bar president who was co-chair of the committee that planned the North Carolina Bar Association's 100th Anniversary celebration about five years ago.

Ey recently organized the visit to Charlotte by the North Carolina Court of Appeals and the

accompanying reception. Judge John Martin, Chief Judge of the Court of Appeals, has expressed a willingness to schedule further arguments here in conjunction with the new

Courthouse's opening.

Treasurer of the Courthouse Bond Campaign Committee, Merritt is a past Bar president who has served—together with **Bill Elam**—as co-chair of the Courthouse Facilities Committee "since the beginning." He is also currently coordinating this year's Bar Leadership Institute.

Anyone wishing to serve on the planning committee or to share suggestions for what will probably be a week-long celebration should contact one of the committee co-chairs. **MCB**

**Charlotte Lawyers Fare Well in Survey**

Charlotte lawyers were represented well in a recent survey by Law & Politics to determine 2006's Super Lawyers—the top five percent in the state. The results were published in the February issue of *Charlotte Magazine*.

Top point-getter was **Norfleet Pruden**. Others Charlotteans in the top ten were **Jeff Davis, Ed Hinson, and Russell Robinson**.

Thirty-five additional Charlotte lawyers were among the top 100. They include **John Baron, Everett Bowman, Peter Buck, Tom Cannon, Nelson Casstevens, Jim Cooney, Peter Covington, Larry Dagenhart, Al Durham, David Eades, Mark Edwards, Brian Evans, Doug Ey, Ray Farris, James Ferguson, Debra Foster, James Hardin, Ben Hawfield, Fred Hicks, Wayne**

**Huckel, Lou Lesesne, Neill McBryde, Mike McCoy, Kiran Mehta, Mark Merritt, Ray Owens, Jerry Parnell, Allen Prichard, Bill Raper, Rick Rayburn, William Rikard, Rich Stephens, Charlie Tompkins, John Wester, and James Wyatt.**



*Super Lawyer Norfleet Pruden*

Ten from Charlotte were among the top 50 female attorneys. They include **Lynn Chandler, Debra Foster, Shirley Fulton, Julie Griggs, Mary Mandeville, Gena Morris, Christy Reid, Alice Carmichael Richey, Geraldine Sumter, and Judy Thompson.** **MCB**

**Moore Helps in Katrina Cleanup**



*Alice Moore*

While her mission to the Gulf Coast was short, **Alice Moore's** memories of complete devastation will be long-lasting. An attorney with **Johnston, Allison and Hord**, Moore left Charlotte on an early morning flight January 29 and returned February 3. She got off the airplane in Biloxi and went directly to a project in Waveland, MS.

Moore and five others from First Presbyterian Church partnered with St. John's Episcopal Church in Ocean Springs, MS, to help with the post-Katrina cleanup. "Everything in Waveland is basically gone. The amount of damage is amazing," Moore reports.

Her biggest project involved working on a house for two days. "It was a two-story home, and there was a watermark two feet into the second level," says Moore. "Nothing had been removed from the home since the storm. It was filled with mud, and mold was abundant. We removed everything from the house that could be removed and basically took the house down to the studs."

Nearby Camp Coast Care provided everything needed for the cleanup—shovels, picks, wheelbarrows, gloves, respirator, etc. The camp is a hurricane-relief facility operating under the direction of the Episcopal Diocese of Mississippi, which maintains a long registry of projects requiring work.

"I'd encourage people to go," says Moore. "There's such a need and there's such a vast variety of work that anybody can make a contribution." She reports that residents of the area are concerned about being forgotten. "With the current level of volunteers, it's estimated it will take 15 years to rebuild. If there are fewer volunteers, the period of recovery will be extended."

Part of the reason Moore went on the trip was that her brother and his family lived in Ocean Springs, which is on the Gulf Coast. "Their house overlooked the water, and it was washed/blown away," Moore recalls. "They packed knapsacks, got the animals, and left. They lost everything, and their children have been in five different schools since Katrina."

Her sibling, an environmental geologist, has returned to the area and hopes to rebuild. **MCB**

*continued on page 5*



## CLE Courses

### Live Programs

#### Getting Paid: What Works and What You Ethically and Legally Can and Cannot Do—

*Sponsored by the MCB Family Law Section*

CLE Credit: 1.0 hour Ethics

Date: Thursday, March 16, 2006

Time: Reg./Lunch 12:15–12:45 p.m.  
Program 12:45–1:45 p.m.

Location: MCB Center, 438 Queens Road

Fees: \$10 lunch/\$35 lunch plus CLE credit Family Law Section Member, \$15 lunch/\$40 lunch plus CLE credit non-Family Law Section Member

#### Have You Lost Your Appeal?

CLE Credit: 1.5 hours General

Date: Friday, March 17, 2006

Time: Reg. 11:45 a.m.  
Program 12:00–1:30 p.m.

Location: MCB Center, 438 Queens Road

Fee: \$35 attorney rate, \$25 paralegal rate

#### Business Torts

CLE Credit: 3.0 hours

Date: Friday, April 21, 2006

Time: Reg. 8:30 a.m.  
Program 9:00 a.m.–12:00 p.m.

Location: MCB Center, 438 Queens Road

Fees: \$115 attorney rate,  
\$55 paralegal rate

#### Landlord Tenant Issues

CLE Credit: 4.0 total hours (3.0 General and 1.0 Ethics)

Date: Friday, June 2, 2006

Time: Reg. 8:30 a.m.  
Program 9:00 a.m.–2:00 p.m.—lunch included

Location: MCB Center, 438 Queens Road

Fee: \$119 attorney rate

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### Continuing Legal Education Recruitment

*The MCB Continuing Legal Education Committee is recruiting committee members and program planners. If interested, please contact John Buric ([jburic@jmdlw.com](mailto:jburic@jmdlw.com)) or Lisa Armanini ([larmanini@meckbar.org](mailto:larmanini@meckbar.org)). The Committee meets the third Tuesday of each month at 8:00 a.m. at the Bar Center, 438 Queens Road.*

### EDITORIAL POLICY

*The Mecklenburg Bar News accepts editorial and advertising material of general legal interest to the practicing Bar of the 26th Judicial District. The implicit purposes of the newsletter, website, and related methods of communication are to educate members of the Mecklenburg County Bar and to create and maintain shared communication with its members. The Communications Committee reserves the right to accept, reject, or edit all material.*

**DISCLAIMER** Efforts will be made to provide information of interest that is timely, accurate, and relevant to the legal community. The Mecklenburg County Bar is not responsible for misprints, typographical errors, or misinformation in *The Mecklenburg Bar News*. The views and opinions are not necessarily those of the 26th Judicial District Bar.

Communications Committee: John Lassiter, Chair, Judge Bob Johnston, Corby Anderson, Mike Daisley, Porter Durham, Alan Edmonds, Will Esser, Allison Karp, Charles Keller, Brandon Lofton, Valerie Munei, Nancy Roberson

# 2006 Silent Partners Program Kicks Off

BY STEPHEN E. GRUENDEL, CHAIR,  
SILENT PARTNERS PROGRAM, PROFESSIONALISM COMMITTEE

The 2006 Silent Partners Program sponsored by the MCB's Professionalism Committee kicked off January 24, 2006, with a breakfast at the Bar Center. This program pairs the Bar's newest members—attorneys in their first three years of practice—with the Bar's most experienced and distinguished lawyers and judges—the so-called "Silent Partners." This year's class paired 20 newly minted lawyers—from solo practitioners to associates at small, medium, and large firms to public interest lawyers—with five judges and 15 lawyers embodying more than 500 years of legal experience between them.

E. Osborne (Ozzie) Ayscue, Jr., of Helms, Mullis & Wicker, delivered remarks to the attendees at the opening breakfast. He spoke eloquently about the current challenges of

practicing law and reminded the mentees that, although the practice of law has become more and more of a business in recent years, they had "signed on to a profession." They had a duty to subordinate their own economic self-interest to their "duty to clients and to the profession." An excerpt of Ozzie's remarks are included below (the full text of his speech is at [www.meckbar.org](http://www.meckbar.org) in Event Speeches under the Resources menu).

The program runs officially for one year, until next year's "crop" of mentees is paired with another group of Silent Partners, although relationships developed through the program have been known to last long thereafter. For more information about the program or if you have interest in participating in the future, please contact Steve Gruendel of Moore & Van Allen PLLC.

### Excerpt from Ozzie Ayscue's Silent Partner Breakfast Remarks

*You probably did not get taught about law firm economics in law school. If you did, you may have heard law practice referred to as a business, rather than a profession. But you have signed on to a profession. A part of that is the obligation to subordinate your own economic self-interest to your duty to clients, to the profession.*

*Nothing in this world is all good or all bad. These are the moral ambiguities we all have to wrestle with. If we ignore them, we do so at our peril, both individually and as a profession. They will not go away. How each of us resolves them on a personal level, and how we influence others to resolve them, will ultimately be the measure of our professional stature. If we deal with them forthrightly and objectively, if we chart a course that preserves the fundamental values on which our profession is built, then we will leave something worthwhile behind.*

*If you keep all these things in front of you, if you take the time to think about them, if you talk through the tough issues you face with your peers and with your seniors, all of this will come. It will come more rapidly than you could ever expect because unfortunately these are rare qualities today.*

*I tell each group of summer associates in my firm when they arrive, "My door is always open if you have any questions you are too embarrassed to ask anyone else." Indeed, one of the great traditions of the law is passing the torch from each generation to the next. It is in keeping with that tradition that your Bar created this program to give you someone to talk with in confidence about whatever is on your mind as you grow into the practicing Bar as you wrestle with those challenges. **MCB***

## Liberty Bell Award Nominations Sought

The Law Day Committee is accepting nominations for the 2006 Liberty Bell Award. The award, which will be presented at the Law Day Luncheon on May 3, 2006, is our Bar's highest honor for a non-lawyer. The purpose of the award is to recognize community service that has strengthened the American system of freedom under law. The following criteria govern consideration by the committee to recognize outstanding service by a non-lawyer in one of these areas:

1. promoting a better understanding of our Constitution and the Bill of Rights,
2. encouraging respect for law and the courts,

3. stimulating a deeper sense of individual responsibility so that citizens recognize their duties as well as their rights,
4. contributing to the effective functioning of our institutions of government, or
5. fostering a better understanding and appreciation of the rule of law.

Please forward your nominations, including supporting materials and résumé of the nominee (if possible), by April 10, 2006, to "Law Day Committee" by mail at 438 Queens Rd., Charlotte, NC 28207, or by fax at 704/333-6209. All nominations will be held in confidence. **MCB**

### Court Reporters

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# Developing Pattern Jury Instructions

BY BEVERLY T. BEAL, SUPERIOR COURT JUDGE, CALDWELL COUNTY



Judge Beverly Beal

Before beginning what I hope will be some thoughts useful to the members of the Mecklenburg County Bar, I want to thank the members for the lovely and gracious dinner on November 17, 2005, to honor

the Seventh Division Judiciary. My wife and I greatly enjoyed the meal, the fellowship, and the entertainment. The event rivaled any I have attended presented by the American Bar Association or the North Carolina Bar Association. This event was meaningful in fostering an appropriate congeniality between the Bench and the Bar.

I admit that I enjoy my duties as a judge. Among those duties is service on the Pattern Jury Instruction Committee of the Conference of Superior Court Judges. I am a member of the civil subcommittee. There are six members of this subcommittee, including one District Court judge. There is a criminal subcommittee also. Each subcommittee has a "reporter" and a law student assistant. The chair of the civil subcommittee is the Honorable Robert Hobgood. The reporter for the civil subcommittee is the Honorable Joe John, retired Judge of the Court of Appeals. The Committee meets in Chapel Hill nine times a year. Each meeting begins at two o'clock on Friday afternoon and continues on Saturday morning. Our purposes are to compose and edit pattern jury instructions for use by all judges in the North Carolina state judicial system.

I fervently hope that all attorneys are familiar with the pattern jury instructions. I suggest that even lawyers who do not practice in the trial courts would benefit from knowing and understanding the instructions. They are voluminous. The footnotes constitute a wealth of information. Significantly, they reflect the essence of that which the judges deem important to adequately explain to the jury the law of each case.

Not only may lawyers purchase these instructions in printed or electronic form, all members of the North Carolina Bar Association have access to them by the internet.

At the committee meeting held on the weekend of February 3 and 4, the Committee paused from editorial work to hear a presentation by Professor Steve Stark. He is an attorney as well as an author and teacher in the field of legal writing. His career has included lecturing at Harvard Law and writing speeches for President Jimmy Carter.

Professor Stark had reviewed our North Carolina patterns and provided some relevant comments on style and form. Some of his comments are not only applicable to the oral presentation of judges, but are pertinent to oral arguments of lawyers. In the next few paragraphs I hope to share some of Professor Stark's observations and add a few of my own.

The oral presentation differs from the

written. Jurors are called upon to listen and absorb. This is not a time for the lawyer to think of a legal brief. As Professor Stark puts it, "The written word is the medium of complexity. The spoken word is not." Short sentences, short words, use of literary devices ("if the glove does not fit, you must acquit"), and clearly identifiable themes are the hallmarks of oral argument. Another interesting insight from Professor Stark was that adjectives and adverbs are useful when the speaker wants to be vague; they should be eschewed when the message is certainty and lack of equivocation. Thus, "defendant was traveling about 70 miles an hour at the time of the collision" might be used in one situation, and "about" would be omitted in another.

The Pattern Jury Instruction Committee is concerned with the adequacy of our work. The guiding principles of our work do not always lead to words and phrases coming from the vernacular. Accurate statements of the law are often the language of an appellate court from the first half of the twentieth century (or earlier!). It is impossible to convert those statements to today's conversational English. However, as a result of Professor Stark's presentation, the Committee has renewed efforts to scrutinize the form and the content of our instructions. (I am happy to report that Professor Stark expressed praise for North Carolina's instructions. Notice that I did not say "some praise" or "a bit of praise.")

Here are some thoughts from my perspective on the relationship between the oral arguments and the jury instructions.

There is a reason why the charge conference occurs before the closing arguments. Attorneys know in advance of arguments the content of the instructions. If the lawyer feels that words and phrases to be heard from the judge will be confusing or foreign to the ear, the opportunity presents itself to explain what the jury will be hearing. Terrific closing arguments I have heard consist of such explanations and the application of them to the argued evidence.

If concerned about the retention level of jurors, lawyers can encourage note taking. Some judges automatically instruct jurors that they may take notes during a trial. Some do not. A lawyer can ask for an instruction to jurors about note taking. (See Civil PJI 100.70, and Criminal PJI 100.30, and N.C.Gen. Stat. sec. 15A-1228).

Lawyers can ask the judge to consider instructions other than those in the patterns. (See Rule of Civil Procedure 51(b), and N.C. Gen. Stat. sec. 15A-1231.) In addition, attorneys should not hesitate to send proposed pattern instructions to the Committee. To that end, here are some e-mail addresses for your use: Judge Joe John (civil reporter) at Jo638sr@aol.com, Professor Alan Woodlief (criminal reporter) at awoodlief@elon.edu, and myself at Beverly.T.Beal@nccourts.org.

A closing thought: Whether the lawyer is in the trial forum or in the office serving business or personal legal needs, I commend to you that which Dean Carroll Weather imparted to Wake Forest third-year students at the end of the last semester. He admonished each of us to go out from the law school as lawyers, "to make a good living and to make a good life." **MCB**

with emphasis on litigation, generally representing the defense," she said. I had a exposure to many different areas of the law. My practice provided excellent experience and good preparation for the Bench."

In December of 1984 Justice Parker was appointed to the North Carolina Court of Appeals and served on that court from January 1985 through December 1992. In 1992 she was elected to the Supreme Court of North Carolina and was sworn in as the 81st associate justice in January 1993. She has served on the Court continuously since that time.

Since going on the Bench, the Chief has run in six general elections. This will be her seventh race. In the 2004 campaign—her first non-partisan one—Justice Parker's percentage margin of victory was the largest of those on the ballot in the state races.

While there have been many changes since she joined the Court, Chief Justice Parker says that she is "pleased that we have been able to maintain good personal relationships and a collegial Court.

"I am looking forward to the challenge. It's a daunting task, but after a lot of thought I decided my becoming Chief Justice was the right thing for me and the right thing for the Court." **MCB**

## President's Letter continued from page 1

Do I truly believe that exercise, eating right and quality time for me help me to be a better person, better parent, better friend, better lawyer for my clients? Do I believe that giving to the community is as important as the billable hour? Do I strive to contribute to my profession and always strive to be ethical in my approach to others?

More questions than answers, but important questions as we seek the balance together. **MCB**

## Save the Date

April 27

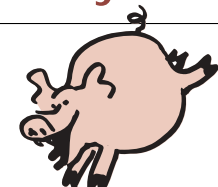
Spring 2006 Swearing-In Ceremony for State and Federal Courts

2:30 p.m.  
Thursday, April 27, 2006  
Theatre Charlotte  
501 Queens Rd.

Reception immediately following ceremony.

More information coming soon!

May 25



MCB Annual Meeting

12:00 noon  
Thursday, May 25, 2006  
Marshall Park  
Corner of 3rd & McDowell Streets

More information coming soon!



## Couple Finds True Love While on Jury Duty

"Jury duty is not all bad!" stated Robert Seymour, Jr., who recently served as a juror at the Mecklenburg County Courthouse. In addition to receiving \$12 for his day of service, Seymour met his future wife three years ago while serving jury duty. In fact, his date of service (January 11, 2006) was only three days shy of the previous service date, January 14, 2003, when he met his bride to be.

"It was fate," said Seymour. "I was going through a separation and performing jury service was the last thing on my mind." But when his future wife, Glenda Ollis, caught his attention that morning, he was glad he had received the summons.

"We had been noticing each other in the jury assembly room throughout the morning, and I was trying to figure out a way to approach her," said Seymour. "At lunchtime, I used the old 'do you know a good place to eat lunch around here?' line." He and Ollis, along with a few others, proceeded to Green's Lunch, a local lunch

landmark and favorite of jurors. "We went to Green's as a group, but she and I ended up sitting at table by the window together. The rest is history!"

Seymour recalled that after lunch, he and his future bride shared popcorn together as they watched the afternoon movie, *Miss Congeniality*, in the jury assembly room. "I asked her if she wanted to have dinner that night and she said yes. It was more like a date than jury duty!"

He added that jury duty was actually a good place to meet someone because "you know the people are not there looking for a date, like a club or bar. They're there to perform a civic duty." The comfortable, relaxed atmosphere in the jury assembly room made it easy to talk to people and made serving much more pleasant.

To add another twist of fate to this love story, Seymour recalled that his original 2003 summons went to his ex-wife's address. She purposefully hid the summons in a box with some of his belongings, then tucked it away in the attic. "I

think she hoped I would get in trouble for not coming!" stated Seymour. It was not until he was moving his things that he discovered the summons. Seymour then called the jury office and discovered he had been issued a Failure to Appear Letter. He rescheduled his duty to January 14, 2003: the day he would meet his future wife.

When he received the summons to serve on January 11 of this year, Seymour was excited and reminisced about his service, nearly three years ago to the date. While serving, his wife called him and joked, "I guess you'll find somebody new at jury duty!" Not so. Seymour said he and his wife are soul mates and share many common interests. They each have two children from previous marriages and have managed to meld into a wonderful family.

What can be learned from this? Love can strike in any place, even the jury assembly room. **MCB**



## Volunteer Lawyers Program Every Lawyer for the Good

### Rookie Attorney Wins

By JEN HOWLE, VOLUNTEER LAWYER PROGRAM COORDINATOR

"Not bad for her first court appearance," joked Tony Lathrop about Erin Maxon, a new associate at Moore and Van Allen (MVA). Erin Maxon joined the Mecklenburg County Bar in April 2005 and took on her first pro bono case for Legal Aid of North Carolina (LANC) in September 2005. She won a substantial judgment against a landlord for a tenant who has severe health problems and who is unemployed.

The tenant moved into the property in 2001. There was no commode, no kitchen faucet, and in 2005 the City inspector found numerous serious code violations, including lead-based paint hazards that she had been living with for years. The tenant did many of the repairs herself, even though they were the responsibility of the landlord. There are still items that have never been corrected.

The City inspector ruled the dwelling was imminently dangerous on August 29, 2005. It was unlawful for the landlord to collect any rent until the issues identified had been corrected.

Yet the landlord sued for summary ejectment in September 2005 for non-payment of rent. The tenant had lost her job and was suffering from serious health problems.

Erin Maxon took the case for LANC in September 2005. By this time, the tenant had appeared *pro se* at the ejectment hearing and lost.

The tenant had filed a notice of appeal and needed help quickly. Erin Maxon stepped in and filed an answer and counterclaim. The plaintiff filed for a continuance.



Erin Maxon

The trial was at the end of February 2006. Erin won the suit against the landlord and received a judgment of \$55,125, a sum that could help her client with a new place to live and a new start.

"It's a big victory, especially since this is her first trial!" said Ted Fillette of LANC. Erin mentioned she was glad to have an experienced litigator like Tony Lathrop there as her mentor for her first court appearance.

"I could not have done this without the help and guidance of Ted Fillette at LANC, Amy Cox Gruendel at LANC, and my mentor from MVA, Tony Lathrop," said Maxon, who became interested in doing pro bono work at a workshop held by Legal Aid in the summer of 2005.

"I thought it sounded like a great opportunity to get involved. Our client had been through so much in the last few years, and I was happy to help her out by taking on her case. I would recommend pro bono work to all attorneys and encourage everyone to get involved."

The VLP can find pro bono opportunities that are meaningful to you. Contact us at [VLP@meckbar.org](mailto:VLP@meckbar.org) **MCB**

### Dean Finalist to Be Law Day/McMillan Speaker

Erwin Chemerinsky, one of the three final candidates for Dean of the University of North Carolina School of Law and currently the Alston & Bird Professor of Law at Duke University Law School, will be the keynote speaker at our Law Day celebration and the guest speaker at the McMillan Fellowship Dinner in May. Professor Chemerinsky is a constitutional law scholar who has argued cases before the Supreme Court as recently as March 2005 (*Van Orden v. Perry* and *Tory v. Cochran*). He earned his bachelor of science from Northwestern University and his juris doctor from Harvard Law School. He has written four books, authored numerous law review articles, and is a regular columnist on Supreme Court topics for *California Lawyer*, *Los Angeles Daily Journal*, and *Trial Magazine*. Professor Chemerinsky will speak on the American Bar Association Law Day theme "Liberty Under Law: Separate Branches, Balanced Powers."

This year's Law Day Luncheon will be held on **Wednesday, May 3**, at the Hilton Charlotte Center City (Please also see "Liberty Bell Award Nominations Sought" on page 2). The McMillan Fellowship Dinner, which is a fundraiser for the James B. McMillan Fellowship Fund that promotes justice and innovation within our local legal system by awarding law students summer fellowships in not-for-profit and governmental agencies, will celebrate the fellowship program's 10th anniversary on **Tuesday evening, May 2**. More information about both events will come in April. **MCB**

### 2005-06 Access to Justice Campaign Surpasses Goal!

The 2005-06 Access to Justice Campaign has surpassed its goal of \$300,000. Thank you to the many Mecklenburg County attorneys who generously gave donations and the Mecklenburg County attorneys who served as volunteers for the Campaign, under the leadership of Campaign Chair Jon Buchan of Helms, Mulliss & Wicker. All funds raised through the Campaign support the services of Legal Services of Southern

Piedmont, Legal Aid of North Carolina, and Legal Services for the Elderly. If you have not yet given, it is not too late to support this important work. You may send your donation to: Access to Justice Campaign, 1431 Elizabeth Avenue, Charlotte, NC 28204. Secure online donations are also accepted at [www.lssp.org](http://www.lssp.org). For more information, please contact 704/971-2588 or [jennifers@lssp.org](mailto:jennifers@lssp.org) **MCB**

**Owens and Asheville Lawyer Make CD**

Ray Owens, an attorney with Kennedy Covington, and Marc Rudow, an Asheville attorney, have made their first CD, entitled *Midnight on the Water*.



Ray Owen's first music CD

The title song is played in memory of their mutual friend, the late Judge Julia Jones.

Owens and Rudow play the guitar and fiddle, respectively, on each of the songs. Owens' sister, Anna, and his son, Wilson, also perform, as do members of Rudow's family.

"About half the songs are Irish and the remainder is traditional mountain music," says Owens, who has been performing with Rudow since both were at the University of North Carolina Law School in the late '70s.

The CD was released in mid-December and has already been played by the venerable WNCW, 100.3 or 88.7 FM. It is currently being sold for \$15 by Owens and Rudow, who anticipate CD-release parties in Asheville and Charlotte this spring. "The CD is our way of introducing this music to our friends who wouldn't otherwise hear it," says Owens. (MCB)

**Local Lawyers Help in State Mock Trial Competition**

Local lawyers donated portions of their weekend on January 21 and 22 to help in the Wade Edwards High School Mock Trial State Championship sponsored by the North Carolina Academy of Trial Lawyers.

Greenville's J.H. Rose High School won the competition for the second straight year after besting 15 other state finalists. Students from East Chapel Hill placed second.

Attorney volunteers included Alandrea Anderson, John Ayers, John Barrett, John Barringer, Mike Bednarik, Tamara Blankenship, Judge Richard Boner, Morris Caddell, Judge Hugh Campbell, Cameron Caudle, Howard Cohen, Janice Coulter, Judge Albert Diaz, Joe Downer, Judge Yvonne Mims Evans, Julie Fosbinder, Lisa Godfrey, Gary Hemric, Will Holman, Judge Robert Johnston, Eddie Knox, Frances Knox, Sandy Knox, Robyn Lacy, Ashley Lamm, Seth Langson, Dean Loven, Judge Regan Miller, Charles Monnett, Sherry Murdock, Pete McArdle, Kara McIvor, Anna Morrison, Christopher Rawls, Michael Rousseaux, Katie Short, Ben Smith, Mark Sumwalt, Jason Taylor, Judge Lou Trosch, Tom Williams, and James Wyatt. (MCB)



Seven Robinson, Bradshaw & Hinson attorneys ran in the "Cupid's Cup 5k" to raise money for the Center for Cardiovascular Health at Carolinas Medical Center. They are, from the left, Richard Dunn, Mark Merritt, Erin Palmer, Julian Wright, Alice Adams, David Schilli, and Heyward Bouknight. Non-lawyer Harden Minor was "Cupid." (MCB)

Young Lawyers Section

**Young Lawyers Hold Winter Social**

BY JOHN NIPP, CHAIR,  
YOUNG LAWYERS SECTION

The Mecklenburg County Bar Young Lawyers Section (YLS) held its Winter Social on January 26. The gathering was open to all Mecklenburg attorneys age 36 and under. Attendees gathered after work at Emerson Joseph ([www.emersonjoseph.com](http://www.emersonjoseph.com)), the new

men's grooming salon on Tryon Street uptown. They enjoyed food from McCormick & Schmick's and wine from Vino 100.

The YLS organizes several socials during the course of the year under the direction of Social Committee Co-chairs Anne Randall and Collin Brown. The socials are part of the YLS's mission to promote a sense of community among younger attorneys. (MCB)



The Winter Social is just one of several events organized by the YLS each year.

Young lawyers mix and mingle at the YLS Winter Social. The Emerson Joseph men's grooming salon provided a stylish setting for the event.

Jason Witt and Audrey Page at the YLS Winter Social.



**Young Lawyers Needed for Trial of the Big Bad Wolf**

Throughout March, April, and May of this year, the Young Lawyers Section will be conducting its Education Committee Project involving two one-hour lessons in certain third grade classrooms. One lesson involves allowing students to play roles in the Trial of the Big Bad Wolf. In order to make this annual project successful, we need your help in serving as "teachers" for these fun lessons. Please volunteer in this great effort to help students explore the law. Please e-mail Andy Habenicht at [AHabenicht@KennedyCovington.com](mailto:AHabenicht@KennedyCovington.com) if you are interested. (MCB)

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# New Fee Structure Begins to Streamline LRS

Beginning February 1, 2006, the Lawyer Referral Service (LRS) underwent exciting and promising changes. After significant panel member feedback and the consensus of the LRS Committee, it was determined that a change in how LRS processes its consultation fees was necessary. Prior to February 1, 2006, after a client received a referral from LRS, he or she was required to pay the \$50.00 consultation fee directly to the attorney. This process was shown to be inefficient and burdensome for the LRS staff and our panel member attorneys. In order to improve efficiency, LRS now requires the \$50.00 fee paid directly to LRS prior to the client receiving the attorney referral. After the consultation occurs and is confirmed by the attorney, the panel member receives the \$25.00 portion of the consultation fee. There are no changes as far as commissions or

panel member dues are concerned.

In the initial days after implementation, LRS staff noticed a drop off in the number of clients receiving referrals. Now numbers suggest that the number of clients who *follow through* with their attorneys is as high, if not higher than before the process changed. This new system helps LRS staff to readily identify eligible and serious clients and refer them to our panel members. LRS also guides callers to other agencies when appropriate.

LRS is excited about these changes and believes it provides a more streamlined service to clients and panel members. If you have questions about Lawyer Referral Service, please feel free to contact LRS Coordinator Sally Larsen at 704/375-8624, extension 115, LRS Co-Chair Lina James at 704/333-7800, or LRS Co-Chair George Pappas at 704/509-6711. **MCB**

# Nominating Committee Meeting Notice

The Nominating Committee (Chair Jonathan E. Buchan, Tyywadi Baker, Peter C. Buck, Robert C. Dortch, Ana Flynn, Ronald L. Gibson, George V. Hanna III, Mark Weston Johnson, Judge Robert P. Johnston, K. Mitchell Kelling, Judge Nancy Black Norelli, Catherine E. Thompson, and John Mark Wilson) will meet at 5:00 p.m. on **March 27, 2006**, in the CLE room of the MCB Center, 438 Queens Road.

There will be an initial open session, followed by a closed executive session of the meeting. Members may elect to appear at 5:00 p.m. to submit nominations; thereafter the Committee will meet in closed executive session. A list of the persons nominated by the committee shall be published on the MCB website and in the next newsletter and will be presented to the

membership for vote at the Annual Meeting of the MCB. Additional nominations may also be made from the floor at the Annual Meeting.

Each member whose name is submitted for consideration of a nomination must indicate his or her willingness to serve if elected. The Committee shall nominate persons to serve in the following offices for the 2006-07 term:

- President-Elect (one-year term)
- Vice President (one-year term)
- Secretary (one-year term)
- Treasurer (one-year term)
- Board of Directors (six members—three-year terms)
- American Bar Association Delegate (two-year term) **MCB**

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# Bar Leadership Institute Report

BY MARK W. MERRITT, CHAIR,  
BAR LEADERSHIP INSTITUTE

The fifth class of the Bar Leadership Institute (BLI) was kicked off with a dinner at Byron's South End on January 26, 2006. Our featured speaker was E. Osborne (Ozzie) Ayscue, Jr., of Helms, Mulliss & Wicker, PLLC, who shared with us insights from the various leadership roles he has held in the Bar and community to eloquently illustrate the importance and many facets of leadership to our Bar and community. (For Ozzie's full BLI Dinner speech, please go to Event Speeches in the Resources menu of [www.meckbar.org](http://www.meckbar.org).) We were honored to have in attendance Judge Graham C. Mullen from the Western District of North Carolina, Chief Resident Superior Court Judge Robert P. Johnston, and Chief Resident Superior Court Judge Fritz Mercer. Former Bar presidents Francis M. Pinckney, Hamlin L. Wade, and David B. Hamilton were in attendance along with current Mecklenburg Bar Foundation President Marion Cowell.

The Bar Leadership Institute is designed to identify, encourage, and train leaders within the Mecklenburg County Bar. After the kickoff dinner, this year's participants attended an intensive weekend of leadership training at Highland Lake Inn under the direction of facilitator Mike Whitehead of Whitehead Associates. Various Bar and community leaders will then lead six leadership training sessions at the Bar Center. The BLI program is funded by tuition and the generous support of the Mecklenburg Bar Foundation and Mecklenburg County Bar.

This year's participants in the BLI are: Tyyawdi M. Baker, Baker & Blake, LLP  
Joseph W. Beach, Dechert, LLP  
Christy-Anne V. Betler, Mayer, Brown, Rowe & Maw

Selina M. Brooks, Clerk of Superior Court  
Nicole A. Epstein, Katten Muchin  
Rosenman, LLC

Jonathan D. Feit, James, McElroy & Diehl,  
PA

Charles J. Harris, Moore & Van Allen, PLLC  
Joy M. Hord, Parker Poe Adams & Bernstein,  
LLP

Natalie Renee Hughes, Moore & Van Allen,  
PLLC

Michelle C. Hunt, Poyner & Spruill, LLP  
James L. Kiser, Rexam, Inc

Roxanne M. Lucy, Hamilton Fay Moon  
Stephens Steele & Martin, PLLC

Lawana M. McAllister, City of Charlotte  
Steven T. Meier, Maloney and Meier, LLC

Lori R. Patton, Womble Carlyle Sandridge &  
Rice, PLLC

Kevin M. Profit, Hamilton Fay Moon  
Stephens Steele & Martin, PLLC

Samuel T. Reaves, Kennedy Covington  
Kristoffer B. Shepard, Robinson, Bradshaw &  
Hinson, PA

Heather L. Taraska, Mecklenburg County  
District Attorney's Office

Richard W. Viola, Helms Mulliss & Wicker,  
PLLC

We are excited about the 2006 BLI, and we look forward to the same high level of leadership from the Class of 2006 that has been demonstrated by their predecessors. **MCB**



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# Electronic Discovery—Are You Ready?

BY JOSEPHINE H. HICKS

## What's All the Buzz About?

For starters, some eye-popping sanctions resulting from e-discovery “abuses,” including a \$1.45 billion jury award against Morgan Stanley following an adverse jury instruction for “thwarting” e-mail discovery.<sup>1</sup> Aside from sanctions, the explosion of electronic information has added new dimensions to the discovery process for a number of reasons.

**Volume.** Businesses now rely on e-mail as the primary means of communication, and e-mails are sent and forwarded to multiple recipients. Beyond e-mail, so much information is now created, processed, and maintained electronically rather than in paper form.

**“Destruction.”** E-mail may be automatically deleted after a certain time, but “deleting” electronic information does not always mean it cannot be retrieved and produced.

**Metadata and electronic-dependent data.** Paper printouts may not capture everything for two reasons: First, electronic versions of documents contain metadata (information about the data) that can provide key information, such as when the document was first created or who edited it and when. Second, some electronically maintained information may be incomprehensible when removed from the software in which it was created.

**Cost.** The cost of capturing and restoring vast amounts of data can be enormous.

**Rules, rules, rules.** Courts are issuing decisions about electronic discovery, and the Federal Rules of Civil Procedure will likely be amended in 2006. The courts and rules of procedure will soon be ahead of any lawyers and litigants who are not prepared to engage in electronic discovery.

## How Do You Prepare?

**1. Preservation obligations.** In the electronic world, efforts to preserve evidence must take into account automatic deletion of e-mails and other documents, recycling of backup tapes, and other technical aspects of the client's information system. The lawyer must understand the client's information system to be certain that all sources of discoverable data are preserved and searched.

**2. E-discovery consultants.** E-discovery “experts” are popping up everywhere. Be careful, just as you would when selecting any expert. First, think about whether you need an e-discovery consultant. What volume of information will be gathered and reviewed? From how many sources? How accessible is it? Does the amount in dispute justify the cost?

If you decide to retain a consultant, check references to be sure of the consultant's expertise and experience. Set out clear expectations on the scope of what the consultant will do and how much it will cost.


**3. Pending changes to the Federal Rules of Civil Procedure.** Proposed amendments to the Federal Rules of Civil Procedure are scheduled to take effect on December 1, 2006. Some of the key amendments that impact electronic discovery include revisions to Rules 16(b) and 26(f) concerning the discovery conference and scheduling order, which will address issues relating to discovery of electronic information and agreements concerning privilege protections. Privilege issues can be daunting in electronic discovery because of the sheer volume of e-mails and other documents. Initial disclosures under Rule 26(a) will include “electronically stored information.” Electronically stored information will also be specifically within the scope of documents that may be requested under Rules 34 and 45.

A new provision under Rule 26(b) will allow a party to withhold electronically stored information from sources that are “not reasonably accessible because of undue burden or cost.” See Proposed Rule 26(b)(2)(B). The Rule then provides a mechanism for the requesting party to challenge that designation and get a court ruling.

**4. E-Discovery Agreements.** Cost concerns, technical issues, and the desire to avoid potential sanctions make it wise to consider entering into an electronic discovery agreement with the adverse party. This agreement may address a number of issues, including:

- The scope of electronic data to be preserved and produced (e.g., date range, types of data, the sources of data, and search terms).
- A definition of what the parties consider to be “reasonably accessible” data and the extent to which each side must search for or produce information of limited accessibility.
- A “claw-back” provision, which allows a producing party to request the return of privileged documents without waiving any privileges.
- Whether electronic information will be produced in paper or electronically. If electronic, will it be produced in native format, an image-based format, or some combination? What metadata will be produced?

As the rules and case law develop in this area, lawyers will adapt appropriately. In the meantime, approaching electronic discovery in a reasonable, proactive fashion, and reaching early agreements with opposing counsel when possible, will avoid many headaches and potentially costly disputes.

<sup>1</sup> *Coleman Holdings v. Morgan Stanley & Co.*, 2005 WL 679071 (Fla. Cir. Ct. Mar. 1, 2005). 

# Electronic Etiquette: Minding Your E-Mail Manner

BY BARBARA BUSEY

E-mail is so simple to write and send that it's easy to forget its impact as a form of written communication. The written word is a powerful medium. Recipients of your written message are going to form impressions about you based on what and how you write. Sloppy syntax (the way words are put together to form sentences) says sloppy person. Poor grammar says dumb person. Misspellings or typos say lazy, careless person. Even writing that is grammatically correct can come across as negative if it's too curt or too wordy, too stiff or too lax. Readers will naturally assume the quality and content of your writing will reflect the quality of your talents and capabilities.

Since e-mail has become the pervasive form of our written communication today, here are some guidelines to improve the quality and professionalism of your e-mail messages:

## E-Mail Guidelines

- Always include a specific subject line. This is helpful for your receiver to know at a glance what your message is going to be about and also to easily refer to it later.
- Be brief, but personable. While it's important to keep your message succinct and to the point, the greater problem with e-mail is that messages are often too brief—they can be perceived as curt and rude. Note the difference between:

*I haven't received your report yet. It's due today.*  
Versus:

*As you know, Tom, your report is due today. Will you have it to me by the end of the day? If you're having any problems with it,*

*please let me know how I can help you.*

Notice the second is longer, but also warmer and friendlier in tone. Sometimes just making a little extra effort to warm up a message will have a positive impact on the receiver.

- Treat your message like a mini letter. Use the recipient's name, and sign yours. A signature line is particularly helpful for messages that go outside your company. By including at least your name and phone number, you make it easy for someone to pick up the phone and call you.
- Check your spelling and grammar. If your e-mail program doesn't have spell check, and you're not the type to be conscientious about those details, compose your message in your word processing program that does check spelling. Then copy and paste it into your e-mail message.
- When replying to an e-mail, refer to the sender's text in your reply. Copy the sender's text that's relevant to your reply, and delete the rest. However, the key word here is *relevant*. There is no need to resend the entire message.
- Never send a message you wouldn't want made public. E-mail is not private. Whether it's deliberate or not, forwarding a message is as easy as a click of a button, so be careful what you say in cyberspace. You never know where it may end up.

## Usage Guidelines

- Use both upper- and lowercase. All caps or all lowercase style is difficult to read and makes you appear lazy. SEVERAL WORDS

IN ALL CAPS is considered the same as SHOUTING—it can be a little unnerving to read. On the other hand, I've also received messages in all lowercase, and I find those a little nerve-wracking to read.

- Sparingly use emoticons—the symbols that convey a happy face :-), frowning face :-(, laughter :-0, winking ;-), etc. They can be helpful to ensure that humor or sarcasm is not interpreted as criticism, but you should avoid being “cutesy.”
- Avoid acronyms that abbreviate some commonly used phrases (BTW = by the way, FWIW = for what it's worth, IMHO = in my humble/honest opinion) for business messages. They can be confusing and annoying if the receiver isn't familiar with them.

E-mail has been called “the kudzu of communications.” In no time at all, it can overwhelm your mailbox and eat up your productive work time. Technology and the “click culture” have created speed and ease in communications, but the fallout is a sense of impersonality that breeds rudeness. Do your part to make e-mail productive, professional, and a pleasure to read.

*Barbara Busey is the president of Presentation Dynamics (www.presentationdynamics.net), a training firm that specializes in the dynamics of how people present themselves. The author of Stand Out When You Stand Up—An A to Z Guide to Powerful Presentations, she has over 15 years experience training, speaking, and writing on professional development topics.* 