



MECKLENBURG BAR NEWS

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FELLOW BAR MEMBERS,

By Lori Keeton

As we near the end of 2019, some of the more organized among us have likely already started- or perhaps finished- their holiday shopping. For others, Amazon Prime and extended shopping hours will become our new best friends in the not too distant future.

As we think about gifts for family and friends, let us also not forget about those in our community who benefit from the donations we make to the Lawyers' Impact Fund.

The Lawyers' Impact Fund is the unrestricted giving fund of the Mecklenburg Bar Foundation (MBF). Gifts to this fund provide grants that support and enhance projects and organizations that have a legal nexus in our community as well as support the day-to-day operations of the Foundation.

Thank you to those of you who have already made the MBF part of your annual charitable giving. If you have not yet made a gift or pledge, please do so. Your gift to the 2019-20 Lawyers' Impact Fund can help us fund important projects and meet critical gap needs of legal organizations doing important work in our community. Over the last two years, your donations have provided nearly \$150,000 of support to educate and advocate for people within our community and within our Bar who will in turn benefit our community. By way of example, I offer a few of the groups and projects we have supported in the last couple of years:

Assistance League of Charlotte:

To support its Mecklenburg County Teen Court program. The Teen Court program is an alternative justice system that offers youthful offenders ages 12-17 with no previous convictions an opportunity to avoid a permanent criminal record and take responsibility for their actions before a jury of their peers.



Lori Keeton, 2019-20 MBF President

Charlotte Center for Legal Advocacy:

To support the pro bono program to provide legal services; to engage, train and support attorneys in pro bono opportunities; and to recognize the contributions of these attorneys. The program is dedicated to providing high-quality legal services to help underserved clients meet their most important needs for income, shelter, safety from violence, health care, education of children, fair treatment as consumers and equitable access to public and private benefits.

GenerationNation: To support expansion of GenerationNation's law-related education project. GenerationNation uses best practices to increase student knowledge and understanding of the law through hands-on activity and application. GenerationNation offers professional development, classroom curriculum and afterschool activities to

continued on page 15



Chris Lam,
2019-20 President

A Bar For All Seasons

On the heels of my prescient reference to Cam Newton in last issue's column, I can only hope Kyle Allen is still performing as well

as he did in his first two games when this issue is published a few weeks from now.

The MCB has been busy in the last couple of months. On October 9, 68 new members were sworn in to our state and federal courts during our annual ceremony. That event always makes me reflect on my own swearing-in over 17 years ago in Spirit Square and the years of practice since taking the oath. The ceremony also represents the promise of the careers of each of these new lawyers and the contributions they will make to our profession and community.

Speaking of contributions by fellow lawyers, I had the privilege of attending the MCB Past Presidents' Luncheon on October 11. Rather than have a group support session about writing the President's Column, I instead thanked this august group for their past service as well as their continued leadership within their own firms and the Bar. It is humbling to share membership in that group given their respective contributions to the practice.

We also enjoyed one of the annual MCB highlights at the Law & Society Luncheon on October 31. Not only did we get to hear inspiring remarks from Eric McElvenny, a veteran amputee endurance athlete, but we recognized two of our own: Jonathan E. Buchan, Jr., of *Essex Richards*, was presented with the 2019 Ayscue Professionalism Award and John R. Wester, of *Robinson Bradshaw*, was presented with the John B. McMillan Distinguished Service Award by the North Carolina State Bar. Being in a room with a few hundred lawyers might

be some people's version of hell, but for me, it is a vivid reminder of the amazing collection of citizens, advocates and counselors we have in the MCB.

For those of you who share this appreciation for fellowship with your colleagues, I invite you to attend the MCB Holiday Party on December 5 at 5:30 p.m. You can register at MeckBar.org.

As you know, MCB staff and leadership are continuing to implement recommendations by the Membership Value Task Force (MVTf). One of its primary recommendations was the goal of reducing the price of the Courthouse Access Card and increasing the scope of access it affords. Although we sent a Bar Blast about this issue, I want to highlight that new Administrative Order for everyone. Courthouse Access Cards, which are held by almost 1,000 members of the MCB, allow cardholders to enter the Mecklenburg County Courthouse through the employee screening line and otherwise indicate the bearer as an attorney. The terms (including pricing) and scope of the cards were prescribed in an August 2012 Administrative Order entered by the then Senior Resident Superior Court Judge.

We are proud to announce that a new Courthouse Access Cards Administrative Order was entered on October 2, 2019, that now provides:


- New (and replacement) Courthouse Access Cards are now \$30 instead of \$40.
- Annual renewal stickers for Courthouse Access Cards are now \$5 instead of \$20.
- All courtrooms scheduled for use each day will now be open at 8:30 a.m.
- All conference rooms outside of the courtrooms scheduled for use each day will now be open at 7:30 a.m.

The following rooms will be designated by signage for use by attorneys only: Workroom 4228, Attorney Workroom in Suite 6000, and the conference rooms to

the left of 4222, 4224, 4226 and 4227.

We believe this increased access to the courtrooms and conference rooms will make it easier for attorneys and their clients to prepare and set-up for hearings and trials and otherwise improve the courthouse experience. Due to security needs and the inability of the existing courthouse card reader system to differentiate among cardholders, access to the private corridors within the Courthouse is not available.

We express our thanks and appreciation to Judge Bob Bell; Charleston Carter, Trial Court Administrator; and the Mecklenburg County Sheriff's Office for their efforts to make these changes for the benefit of the MCB members.

Finally, we expect to announce the hiring of a permanent Executive Director before the end of the year, so stay tuned! 

Editorial Policy and Disclaimer

The Mecklenburg County Bar (MCB) accepts editorial material of general legal interest to the practicing Bar of the 26th Judicial District for inclusion in the *Mecklenburg Bar News*, MeckBar.org, Bar Blasts and related methods of communication. The implicit purposes of the *Mecklenburg Bar News*, MeckBar.org, Bar Blasts and related methods of communication are to educate members of the MCB and to create and maintain shared communication with its members. The Communications Committee, MCB Executive Director and/or MCB Executive Committee reserve the right to accept, reject or edit all material. The MCB Executive Director is the editor of all MCB communications.

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

Communications Committee: Jeremy Sugg, Chair, Caitlin Walton, Vice-Chair, Meredith Barnette, Derek Bast, Shantia Coley, Bethany Corbin, Ross Fulton, Lauren Hunstad, Jeff Poulsen, Nathan Viebrock, Caitlin Walton, Danielle Walle, Leah Campbell, Staff Liaison.

NOW ACCEPTING NOMINATIONS JULIUS L. CHAMBERS DIVERSITY CHAMPION AWARD

NOMINATIONS ARE DUE ON OR BEFORE NOVEMBER 12, 2019
AND SENT TO CHAMBERSAWARD@MECKBAR.ORG



CHAMBERS DIVERSITY CHAMPION AWARD NOMINATIONS SOUGHT

Nominations are now being sought for the Mecklenburg County Bar Julius L. Chambers Diversity Champion Award. Nominee names and information supporting how the nominee reflects the criteria of the award should be sent by **Tuesday, November 12, 2019**, via e-mail at ChambersAward@meckbar.org or sent to the Mecklenburg County Bar & Foundation, 2850 Zebulon Avenue, Charlotte, NC 28208.

The Julius L. Chambers Diversity Champion Award is presented each year by the Mecklenburg County Bar's Diversity & Inclusion Committee. Its purpose is to recognize an attorney who champions diversity and inclusion in the Charlotte-Mecklenburg area while embodying high ethical standards, unquestioned integrity and consistent competence. Nominees must be attorneys based in Mecklenburg County who have demonstrated exemplary leadership and impact in the following areas:

- Diversity within the Bar – through facilitation of recruitment, hiring, retention and promotion of diverse individuals in the legal profession.
- Community Service – through provision of outstanding service and education to the community about diversity and inclusion.
- Ambassador for Diversity and Inclusion Programs – through promotion of behaviors and initiatives associated with diversity and inclusion in the legal profession and through the Mecklenburg County Bar.
- Advancement in Law – through legal work that has embraced and propelled the ideals of diversity and inclusion.

The award will be presented at the Hon. James B. McMillan Fellowship Dinner held Thursday, February 27, 2020. **MCB**

Upcoming Events

Details and registration information
at MeckBar.org or 704/375-8624

Thurs., Nov. 7

Lawyers' Luncheon Series: Planes, Trains & Automobiles

Get an update on the transit system, including construction on the new street car lines that impact Trade Street near the Bar Center.

Bar & Foundation Center, 12:15 p.m.

Thurs., Dec. 5

MCB Holiday Party

Join us for some fun and cheer, as the holidays will soon be here! Don't miss this festive MCB gathering. The event cost is \$25 (includes two drink tickets and heavy appetizers).

Bar & Foundation Center, 5:30 p.m.

Thurs., Feb. 6

Lawyers' Luncheon Series

Join your colleagues at this regular monthly luncheon to eat, network and hear remarks from a speaker.

Location TBD, 12:15 p.m.

Thurs., Feb. 6

Bar Leadership Dinner

The kickoff for the 2019-20 Bar Leadership Institute program and a celebration of outstanding MCB and MBF volunteer service.

Bar & Foundation Center, 6:30 p.m.

Thurs., Feb. 27

McMillan Fellowship Dinner

This annual dinner supports the MBF's McMillan Fellowship Fund, which promotes justice and innovation within our local legal system by awarding paid fellowships to law students to work with local nonprofit and governmental agencies. The dinner also includes the presentation of the Julius Chambers Diversity Champion Award.

Byron's South End, 101 W.

Worthington Ave., 6 p.m. **MCB**

2019 BAR LEADERSHIP DINNER

The Bar Leadership Dinner of the Mecklenburg County Bar (MCB) and Mecklenburg Bar Foundation (MBF) will be held at 6:30 p.m. on Thursday, February 6 at the Mecklenburg County Bar & Foundation Center. The evening will feature a cocktail reception and dinner, a keynote address and the presentation of the Bar Leadership Institute (BLI) Class of 2020. To register for the Bar Leadership Dinner or for more details on how to sponsor this event, please visit www.MeckBar.org or contact Shannon R. Reid, MCB Director of Compliance, Ethics & HR, at sreid@meckbar.org or 704/375-8624. **MCB**

Call for Newsletter Article Ideas & Authors

If you have a suggestion for an article and/or would be willing to write the article, please contact MCB Communications Committee Chair Jeremy Sugg at jeremy.sugg@lincolnderr.com or MCB Interim Executive Director Leah Campbell at lcampbell@meckbar.org.

Diane's Deli RENOVATIONS

By Julie Adams

The Honorable James B. McMillan served as a federal judge on the U.S. District Court for the Western District of North Carolina for more than 20 years. Appointed to the bench in 1968 by President Lyndon B. Johnson, Judge McMillan received national recognition for his role in desegregating public schools in the South. In the *Swann v. Mecklenburg* case, Judge McMillan issued an order for black students to be bused to white schools after the school board was unable to submit an acceptable integration plan. This change was not embraced with open arms, however. Following the famous *Swann* decision, Judge McMillan received death threats and protesters picketed outside of his Plaza-Midwood home. Although the McMillans sold their home two decades ago, you will still find many tributes to the legal icon in his former residence, which is now owned by current Mecklenburg County Bar member Justin Agans and his wife (Lauren). I learned about the Agans when I read about the renovation of their historic home and its



Justin Agans

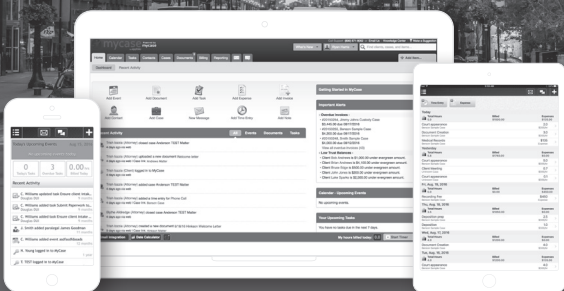
selection as a finalist in *Charlotte Agenda's* 2019 Home of the Year Awards. In the spirit of swapping stories and words of wisdom at "Diane's Deli," I recently talked with Justin about his home and his practice as Charlotte's "Startup and Business Lawyer." Here are some highlights from that conversation, edited lightly for brevity and clarity:

Julie: I note in your bio that you are originally from Chicago. How did you end up in Charlotte?

Justin: Yes, I am originally from Chicago. In 2011, I summered with SPX, headquartered in Ballantyne, in a non-legal role while pursuing my JD/MBA. In that position, I focused on marketing strategy and business intelligence, reporting to the Chief Marketing Officer. During that time, I met my future wife, who is a Charlotte native, and that is how I made my way back here from Chicago.

Julie: How did you and your wife end up purchasing Judge McMillan's former residence? Was it advertised that way or did you uncover *continued on next page*

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the history some other way?

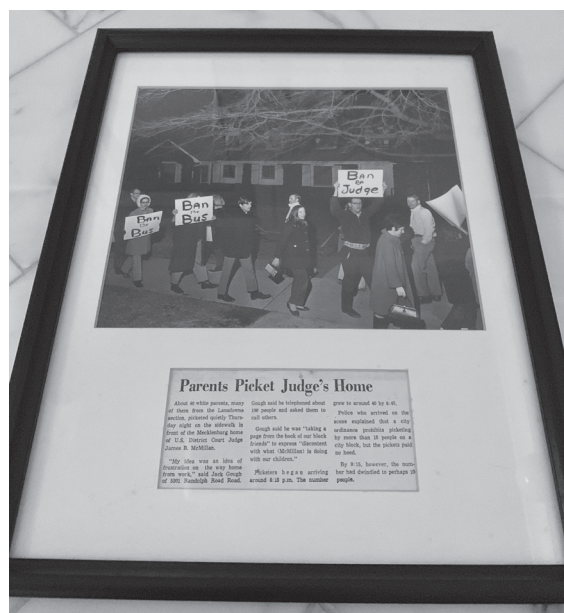
Justin: It was not advertised – it was total luck – but it sealed the deal. By way of background, we bought the home in February 2015, and I had lived in Charlotte not quite three years at that point. We were heading out of town for a family vacation and had decided that we would start house-hunting when we returned. Four days before we left, my wife went on some home tours without me. She convinced me to go look at the house. Not only was the home in the neighborhood where we wanted to be (Plaza-Midwood) and adjacent to Midwood Park, I learned that it was a historical home: Judge McMillan's house – the judge who desegregated schools in Charlotte, which was upheld by the Supreme Court in 1971. That history was the “cherry on top.” I still have Judge McMillan's law books, which were sitting on the shelf above the desk in the great room during our initial house tour. Also, when we first toured the home, there was a picture of angry parents picketing out front, along with the related *Charlotte Observer* article, hanging on the wall. We still have that displayed to this day.

Julie: I understand that shortly after you purchased the house, you and your wife undertook an extensive renovation aimed at preserving the historical details of the house. Tell me about that.

Justin: From the day we saw the house, we had a vision of what the home could be. The McMillans had done two or three renovations in the 1970s, primarily adding rooms to the back of the house. Interestingly, while we rearranged some things and connected several spaces, we only added 200 square feet to the home. Overall, the renovation took about seven months.

Julie: You had a lot of “irons in the fire” in 2015, because not long before you bought the home, you started your own law practice.

Justin: Yes, I opened Spengler & Agans



Agans still displays the *Charlotte Observer* article and photo in Judge McMillan's former home.

with my law partner, Eric Spengler, in 2013. 2018 was also quite a year for us, with the home renovation and moving the law office from Dilworth to Elizabeth.

Julie: Based on the firm's website, you are still capitalizing on that dual business and legal training in that your firm focuses on startups and entrepreneurs.

Justin: Correct. Our ideal clients are companies that view themselves as startups and have high growth potential, meaning they are scalable and usually technology enabled. I focus on helping people form companies, draft their key contracts, and help them with early stage funding.

Julie: That is great - establishing an expertise that you can turn into a market niche helped many lawyers survive the 2008 recession and, for others, allowed them to reinvent themselves. I still find that most lawyers – expertise or not – struggle to effectively respond to the dreaded question, “What do you do?” I stick with the K.I.S.S. approach and describe myself as an “HR Lawyer.” Along those lines, I note that you describe yourself as a “Startup and Business Lawyer.” I assume that is by design? Your brand, if you will?

Justin: Lawyers are not known to be the savviest individuals when it comes to marketing. For my business, I have leveraged my marketing background to be

very clear about what I do. If you tell someone that you're a “startup lawyer,” they usually easily connect with that concept and think, “Oh, okay, so you are looking to help the next Facebook.” That is exactly what I want people to think when they think about me or our firm. For my existing clients, they know that I can help other friends of theirs that are starting a business. By branding myself as a “Startup Lawyer,” I've become the “go-to” person in the community here and it's been a lot of fun. For example, I helped Ted [Williams] when he was starting the *Agenda*. . . . that is actually a funny story. [Ted] walked into my office one day without an appointment. Initially, I thought he was going to try to sell me

printer paper or something, but that was not the case. I ended up playing a small role in the *Agenda*'s story, and it has been fun to see how successful it has become...and I get to do that for a lot of clients around town.

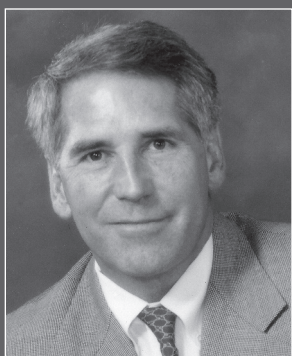
Julie: Speaking of the *Charlotte Agenda*, you were featured in an article in 2015, and you cited the following as the best job advice you have received: “You can't ensure that you're always the smartest person in the room. But it's in your power to always be the hardest working.” Having owned your own firm for several years, do you still ascribe to this mantra?

Justin: That's a good question. I agree with that sentiment but would add that being the hardest working person is not enough. You have to work smarter. As I have grown in running my business, I would say that being *hard-working* and *smart enough* are pre-requisites but as you grow, understanding how to prioritize what is important is a superpower. I am better at that some days than others.

Julie: Any final thoughts or words of wisdom?

Justin: One other fun fact about our house: in each of the three families to own the house (including Judge McMillan and me), one of the spouses has been a lawyer. MCB

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- Named a 2011 through 2018 *NC Super Lawyer* and to the 2012 through 2018 American Registries' list of "Top Attorneys in NC"

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EARN. LEARN. NETWORK. UPCOMING CLEs

Member Value Mondays: Need that new technology credit hour? Video Replays of Data Privacy & Cybersecurity 101: Cyber Issue Spotting for Lawyers are included with your membership! The upcoming video replay dates are:

- December 9, 2019
- February 10, 2020
- April 6, 2020

The course is also available on-demand as part of your membership.

Beat the rush! Register now for upcoming CLEs in November and December to avoid the February rush.

Upcoming CLEs

November:

- 1:** MCB Fundamental Friday: Nuts & Bolts of Defending a White-Collar Criminal Case
(1 General Hour)
- 5:** MCB Tech Tuesday: Using Technology and Social Media in Your Law Practice
(1 Technology Hour)
- 6 & 7:** Professionalism for New Attorneys
(12 Total Hours: 10 Ethics, 1 Mental Health/Substance Abuse, and 1 Technology)
- 12:** The *Kaestner Decision*: Hosted by the MCB Tax and Estate Planning & Probate Sections
(1 General Credit; qualifies for Estate Planning & Probate Specialization)
- 13:** MCB Wellness Wednesday: Stress Reduction Tips and Tricks for Lawyers
(1 Mental Health/Substance Abuse Hour; *optional yoga session*)
- 14:** The Exum Court and the Expansion of Individual Rights in North Carolina
(1 General Hour)
- 18:** Creative Motions in District Court (1.5 General Hours)
- 21:** MCB Top Ten Thursday: The Top 10 Perils of Law Practice
(1 Ethics Hour)
- 22:** 19th Annual Banking & Finance Forum
(6 Total Hours: 5 General, 1 Technology)

December:

- 6:** 2019 Residential & Commercial Landlord-Tenant Law: Practical & Ethical Concerns
(4 Total Hours: 1 Ethics, 3 General)
- 9:** MCB Member Value Monday: Video Replay: Data Privacy & Cybersecurity 101: Cyber Issue Spotting for Lawyers
(1 Technology Hour; *included in your membership!*)
- 10:** Judge Kenneth D. Bell – A Conversation with the Federal Bench (1 Ethics Hour)
- 17 & 18:** Video Replay: Professionalism for Attorneys
(12 Total Hours: 10 Ethics, 1 Mental Health/Substance Abuse, and 1 Technology)
- 19 & 20:** Video Replay: 2019 Annual Review
(12 Total Hours: 2 Ethics, 8 General, 1 Mental Health/Substance Abuse, 1 Technology; *fulfill all of your credit requirements in one course!*) **MCB**

MCB Holiday Party You're Invited

*Join us for the Mecklenburg County Bar Holiday Party!
Please say you will be here to help
celebrate the season with good friends and good cheer!*

SAVE THE DATE

Thursday, December 5, 2019

5:30 - 8:00 p.m.

Bar and Foundation Center • 2850 Zebulon Avenue

Cost is \$25/Person & includes heavy appetizers and two drinks tickets

Please register online no later than **NOVEMBER 29, 2019.**

For more information, visit MeckBar.org or contact Chastity Gamble-Julg
(events@meckbar.org or 704/375-8624, ext. 124).

CHANGES COMING TO MCB DIRECTORY

Starting this fiscal year, we are making significant changes to the way we produce and distribute MCB publications. With publication costs continuing to rise, these changes allow us to make a significant impact (for the better) on our Bar's budget while still being responsive to the needs of our members. Please head to MeckBar.org/Publications to complete the Publications Survey to help us better serve you. **The survey will be open until December 13 at 5 p.m.**

Please note: there will be a significant change to the way the print version of the membership directory is handled this year. **The directory will only be printed in a limited run this year for those who respond to this survey indicating they would like to continue receiving it in hard copy form.** The MCB will also no longer be mailing these copies. 2019-20 member directories must be picked up at the Bar & Foundation Center. **MCB**

26TH JUDICIAL DISTRICT RECEIVES THE BUSINESS CASE FOR BREASTFEEDING AWARD

The North Carolina Breastfeeding Coalition has awarded the 26th Judicial District's Worksite Wellness Committee at the Mecklenburg County Courthouse the Business Case for Breastfeeding Award. Nursing mothers who also have courthouse business have the convenience of a private space.

The lactation room is located on the Fifth Floor of the courthouse. It features a counter and cabinets, a sink with a "hot shot" water dispenser for sanitizing, a changing table, refrigerator and a rocking chair. To access the lactation room, please see one of the Jury Coordinators.

The North Carolina Breastfeeding Coalition (NCBC) has been a proud participant in the national effort to increase breastfeeding-friendliness in the workplace. Breastfeeding-friendly employers benefit from lower health care costs, lower turnover and absenteeism rates, higher productivity and morale. It also creates a positive image



The Mecklenburg County Courthouse's lactation room is located on the Fifth Floor of the courthouse.

in the community as a "family friendly" business. NCBC recognizes local companies that support breastfeeding families.

The Mecklenburg County Courthouse has had a lactation room for jurors, courthouse personnel and the public since 2007. The 26th Judicial District is thankful for the recognition for breastfeeding-friendliness in the workplace and as a business. **MCB**

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w/secretarial area.

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IT CAN'T HURT TO ASK (AND IT MIGHT EVEN HELP)

By Suzanne Lever, NC State Bar Ethics Counsel

This article was originally printed in the North Carolina State Bar Journal, Fall 2019.

It has come to my attention that some North Carolina lawyers are unaware of (or apprehensive about) the North Carolina State Bar's "ethics hotline." This is entirely unacceptable.

There are three lawyers on the staff who answer ethics questions: Nichole McLaughlin, Suzanne Lever and Brian Oten. (I only list Brian's name last because, in addition to serving as ethics counsel, he also serves as director of legal specialization and director of paralegal certification-he gets busy).

Any member of the Bar can seek informal ethics advice on his or her own contemplated professional conduct from State Bar ethics counsel. Lawyers may email inquiries to ethicsadvice@ncbar.gov or call the Bar and tell the receptionist that they have an ethics question. It's as easy as that.

Almost every jurisdiction has a service

that provides informal ethics advisories to inquiring lawyers. Interestingly, some of these Bar programs are staffed entirely, or in part, by lawyers who also work on discipline cases. That is not the case in North Carolina. Our program for providing informal ethics advisories to lawyers is a designated lawyers' assistance program staffed only by lawyers who work in the ethics department. Information received by ethics counsel from a lawyer seeking an informal ethics advisory is confidential information pursuant to Rule 1.6(c) of the Rules of Professional Conduct. Such information may only be disclosed as allowed by Rule 1.6(6), or if a lawyer's response to a grievance proceeding relies upon the receipt of an informal ethics advisory. See 27 N.C.A.C. ID, .0103(6). Because the communication is confidential, lawyers do not have to present the inquiry to the ethics lawyer in a hypothetical or to otherwise attempt to obscure client information: just present the facts in a manner that is clear, concise and identifies the ethical dilemma.

Informal ethics opinions are intended

to provide feedback and guidance to lawyers who are trying to deal with difficult ethical dilemmas in their own practices. The advice is considered an informal, or unofficial, opinion of the State Bar because it is not reviewed or approved by the Ethics Committee. An opinion of a State Bar ethics lawyer is not binding upon the Grievance Committee if a grievance is subsequently filed. Nevertheless, if a grievance is subsequently filed against you, the fact that you sought and followed the advice of a State Bar ethics lawyer will be evidence of your good faith effort to comply with the Rules.

Don't be Shy

Last year ethics counsel responded to over 4,000 ethics inquiries. In some years we answered more than 5,000. We answer questions pertaining to every Rule of Professional Conduct. However, some topics get more attention than others. Here are the top ten topics (in descending order) from last year: Conflicts (by a wide margin), Advertising, Trust Accounting, Confidentiality, Unauthorized Practice of Law, Fees, Withdrawal, Firm Dissolution, Client Files and Communication with Represented Person. Honorable mentions go to Candor to the Tribunal, Duty to Report Misconduct and Client with Diminished Capacity. We answer these calls in the order in which they are received, and some seasons are busier than others. Still, whether by email or return phone call, we will get back to you as quickly as possible.

Don't be Intimidated

There are no stupid questions. There are some days when I just wish someone would ask me if they can have sex with a current client. (Spoiler alert: the answer is "no.") Honestly, if the question pertains to the Rules of Professional Conduct, ask away.

Keep in mind, however, that there are questions to which ethics counsel cannot provide informal ethics advice. If the inquiry relates to the conduct of another lawyer, the inquiring lawyer must write to

continued on next page

MECKLENBURG COUNTY BAR
MCB
EST. 1912

APPLICATION OPENS DECEMBER 2ND

CHARLOTTE LEGAL DIVERSITY CLERKSHIP

APPLICATION DEADLINE: JANUARY 24, 2020

FOR MORE INFORMATION, VISIT WWW.MECKBAR.ORG OR
CONTACT ANGELICA GUMUCIO AT AGUMUCIO@MECKBAR.ORG

SPECIAL THANK YOU




Erin Illman



Alicia Netterville

We would like to extend a special thank you to Erin Illman and Alicia Netterville of *Bradley* for their pro bono service to the Mecklenburg County Bar & Mecklenburg Bar Foundation. Erin is a Board-Certified Specialist in Privacy and Information Security Law in North Carolina, and Alicia practices Cybersecurity and

Privacy Law with *Bradley's* Mississippi office. Erin and Alicia generously devoted their time and talents to the Bar and Foundation by drafting a privacy policy to document how members' data is gathered, used, protected and managed. Thank you, Erin and Alicia! 

It Doesn't Hurt to Ask

continued from previous page

the State Bar for a response and send a copy of the communication to the lawyer whose conduct is at issue. This will give the other lawyer an opportunity to comment upon the inquiry.

Also, inquiries that involve novel or controversial questions of legal ethics will not be answered with informal ethics advice. The lawyer will be asked to put the question in writing and submit it to the Ethics Committee for its consideration at its next quarterly meeting. Unlike information received by ethics counsel from a lawyer seeking informal ethics advice, the records of the Ethics Committee are public. Therefore, the inquiring lawyer may need to express the ethics question in a hypothetical format.

In addition, there are questions to which ethics counsel cannot provide informal or formal ethics advice. Ethics advice will not be provided if the inquiry requires an interpretation of law rather than legal ethics (attorney-client privilege, statutory interpretation, rules of procedure). An opinion will not be provided if the material facts of the inquiry are in dispute. Also, inquiries relative to a conflict of interest that is the subject of a motion to disqualify pending before a tribunal will not be

answered unless the tribunal requests the opinion of the Bar.

If you are unsure whether your question is one that ethics counsel can answer, ask it anyway.

Do Educate your Employees

Every summer I receive inquiries from legal interns on behalf of their employer. I think this is a great way for new lawyers to become comfortable with the Bar's ethics hotline. I encourage every firm to give their legal interns and new associates at least one project that requires them to contact the ethics hotline. The issue can be something simple. You might already know the answer. It doesn't matter. Hopefully, a lawyer that has already gone through the process of contacting the ethics hotline will not hesitate to reach out to ethics counsel when a real ethics issue arises. (But please don't have your interns ask the sex with a client question because that is just wrong.)

Do Write This Down

Contact information for the
State Bar ethics staff:
Nichole McLaughlin
nmclaughlin@ncbar.gov
Suzanne Lever slever@ncbar.gov
Brian Oten boten@ncbar.gov
Designated ethics email address
ethicsadvice@ncbar.gov
Telephone 919-828-4620 . 



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HOW TO PROTECT YOUR FIRM FROM PAYMENT FRAUD

By Andy Shene, First Citizens Bank

Seventy-four percent of finance professionals say their companies were victims of payment fraud in 2016, more than in any other year, according to the Payments Fraud and Control Survey by the Association for Financial Professionals (AFP). Of this targeted group, three in 10 had losses of at least \$250,000.

Along with this direct financial hit, companies also faced hefty legal fees and administrative costs to sort out the aftermath.

What can you do to protect your firm? A key starting point is understanding the prevalent risks and how to respond so you can recover quickly.

Types of Payment Fraud

Thieves have devised creative ways to attack almost all types of transactions. Common schemes include:

Checks

Three-quarters of companies that fell victim to payment fraud in 2016 experienced at least one instance of check fraud, the AFP study revealed. Common check fraud schemes include:

- **Altered checks:** This occurs when a check has already been issued, but data fields on the check are changed to reflect alternate, fraudulent amounts and payee names.
- **Counterfeit checks:** Advances in software applications and printers have given fraudsters a way to create imitation checks if they have a company's bank account information.
- **Forgeries:** Often involving stolen checks, forgeries occur when there is an unauthorized signature from the payer or endorsement from the payee.

Electronic payments

Wire transfers and Automated Clearing House (ACH) transactions — both of which involve moving funds between bank accounts — are increasingly targeted,

coming in at the second and fourth highest forms of fraud, respectively, according to the AFP report.

In some cases, all that is needed to initiate the fraud is an organization's bank account information. A primary reason for the recent spike in electronic payment fraud is from wholesale hacking schemes known as "imposter fraud," which target company employees who have access to sensitive and financial data.

Credit cards

Thirty-two percent of companies reported at least one instance of corporate credit card fraud in 2016, according to the AFP. Unauthorized users, whether an employee or outside individual, commit this type of fraud by using a corporate credit card to make unapproved purchases.

Credit card fraud can occur when company cards are lost, stolen or duplicated as counterfeit cards. Credit cards can also be obtained through "account takeover" in which a fraudster gathers company financial data and contacts the bank to report a change of address and lost card. They are then sent a replacement card, giving them access to a company's finances.

Merchant services

Merchant services fraud, or debit and credit card processing fraud, has decreased in recent years thanks to the adoption of EMV chip cards. However, since liability for this type of fraud now lies with businesses that have not yet implemented EMV acceptance technology, they are more prone to counterfeit card use. Fraudsters can create a counterfeit card simply by capturing card information embedded within the magnetic strip.

Take preventative steps

Preventative steps can go a long way toward sidestepping attacks. If you don't already use these best practices, be sure to implement them:

Train your staff. Teach your associates to recognize the signs of payment fraud. For example, fraudulent checks may have a missing or poor-quality watermark or microprint, which is a small line of print that is difficult to photocopy and can be read only when magnified. Credit card fraudsters may buy many expensive things and attempt multiple transactions, even in a single visit. Offer guidance on how associates can report any fraudulent activity they notice.

Use EMV terminals. Minimize the likelihood that counterfeit cards can be used at checkout by updating your system to support payments through an EMV system. If you don't have an EMV terminal already, think about upgrading.

Verify card not present transactions.

Have strong verification processes in place when customers pay by mail, phone or online, known as card not present (CNP) transactions. Always use address verification (AVS) to confirm that the billing address they provide matches the address on file with their credit card provider. Also, request the three- or four-digit code, known as the card verification value (CVV), which helps to verify the buyer has physical possession of the card.

Strengthen internal safeguards. Be sure you have a dual-approval process in place for payments, in which one person initiates a transaction and another approves it. For large-dollar check payments, require more than one signature. Also, consider using a dedicated computer for banking transactions to limit access to sensitive financial information.

Understand the rules. Businesses typically have shorter windows for disputing transactions than do consumers. For example, companies have 24 hours to alert their bank to an unauthorized ACH

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How to Protect

continued from previous page

transaction once it has posted, compared with a 60-day time frame for consumer transactions. Reach out to your business banker or merchant services provider to clarify how you should respond to suspect transactions.

Monitor account activity. Make a point of reviewing your transactions daily so that you can spot fraudulent payments right away. This can improve your chances of having these charges cleared. Sign up for account alerts that can help you monitor activity more closely.

Talk with your insurance agent. Check whether your current policies would cover losses resulting from payment fraud. This type of coverage is fairly new, so it may not be included in a long-held policy. Many commercial crime policies, for instance, cover losses when funds are taken by a third party, but may not cover losses when associates are tricked into initiating a transfer, as in an imposter fraud scheme. Specialized coverage may help to fill in gaps.

Tap bank services. Some banks offer services that can protect against potential fraud. For instance, Positive Pay and Reverse Positive Pay are services that can ensure checks issued from your firm are matching up with the ones being processed. An ACH monitoring service can closely watch your accounts and block any unauthorized transactions.

First Citizens can help you maintain control of your practice's financial security and reduce your risk of payment fraud. For more information, contact Andy Shene, Charlotte Metro Area Executive for First Citizens Bank, 704/338-3926.

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FALL 2019 SWEARING-IN CEREMONY

Congratulations to the 68 new attorneys who were sworn-in on October 9, 2019, at the Fairfield Inn & Suites. Superior Court Judge George Bell presided over the state portion of the ceremonial court session and United States District Judge Robert Conrad, Jr. presided over the federal portion. Mecklenburg County Bar (MCB) President-Elect Heath Gilbert welcomed the new admittees, attorney sponsors and guests and spoke on the importance of involvement with the MCB & MBF MCB Young Lawyers Division Vice Chair Anna LeBlanc called each new admittee and their sponsor to the front to be formally introduced to the Bar and Bench.

The MCB thanks the sponsors of the Fall 2019 Swearing-In Ceremony: Carolina Legal Staffing and the North Carolina Bar Association. The MCB would like to extend a special thanks to the Federal Clerks for the Western District of North Carolina for their continued support of the MCB's Swearing-In Ceremonies.

Please visit MCB's Facebook page for photos from the Fall 2019 Swearing-In Ceremony



CONGRATULATIONS TO THE 2019 MCB SOFTBALL CHAMPIONS!



Above: Robinson Bradshaw - 2019 Lawyers' League Champs

Below: Judge's Chambers - 2019 Co-Ed League Champs



ACCESS TO JUSTICE KICKS OFF 2019-20 CAMPAIGN

By Charlotte Center for Legal Advocacy

Our community has a problem with ACCESS. Too many neighbors struggle to access critical resources that ensure their safety, economic security and family stability.

Last year, seven in 10 low-income Mecklenburg County residents experienced a civil legal problem that significantly impacted their daily life, but only 14 percent of those individuals had access to the legal assistance they needed to address their problems.

Charlotte Center for Legal Advocacy and Legal Aid of North Carolina-Charlotte believe all people deserve access to legal assistance when basic needs are on the line, not just those who can afford it. These organizations are at the forefront of local issues that restrict economic mobility and opportunity in our community, fighting poverty at its core.

However, with limited resources between these two organizations, there is one legal aid attorney for every 11,500 low-income residents.

Lawyers and the legal system are key players in the issues that are so dominant for us today: access, equity and mobility.

When access to legal assistance is not available for everyone, the outcome is unsettling for our entire community. We cannot ignore the increasing number of families here in Mecklenburg County who need a level playing field to meet their basic needs.

That's why members of the Mecklenburg County Bar are encouraged to generously support these organizations through the annual Access to Justice giving campaign.

The Access to Justice Campaign, which kicked off October 23, at the Justice for ALL breakfast, is the most stable funding source these organizations rely on, allowing them to continue serving the community when traditional funding goes away. By supporting the Access to Justice Campaign, you personally ensure safety, security and stability for your neighbors, which in turn promotes opportunity that is accessible to all in our community.

Throughout their 50-year history, Charlotte Center for Legal Advocacy and Legal Aid have assisted more than 100,000 families who needed critical legal assistance to make ends meet, providing access to health care, income, housing, safety and peace of mind, all with a mission to end the cycle of poverty.

This work is critical for those who face barriers to access and for our broader community. When we collectively seek solutions that improve equity, promote opportunity and celebrate Charlotte's diversity, we all benefit.

Our community must value and support the role that Charlotte Center for Legal Advocacy and Legal Aid play as they provide access to critical services that ensure a more just community for all people, regardless of income.

This year's Access to Justice Campaign goal is \$500,000. That amount translates to two dollars for each low-income family who could be served by your gift.

If every member of the Mecklenburg County Bar gave at least \$100, not even the standard hourly rate for billing, these organizations would have more than enough money to continue this critical work for another year. Consider a leadership gift of \$1,000 or more, which could provide legal assistance for a family facing eviction and homelessness.

Charlotte Center for Legal Advocacy and Legal Aid are lean, efficient organizations working together to provide hours of expert representation and advice to clients. Your support of this work makes a real and lasting impact on lives in this community.

Thank you to those who have already taken a stand for ACCESS by contributing to this year's campaign.

The Access to Justice Campaign is currently underway and runs through the end of the year. Those who contribute a leadership gift of \$1,000 or more by November 30 will be recognized as Access to Justice Champions during #GivingTuesdayCLT 2019 on December 3.

Join the movement to build a more just community in which all know stability and are empowered to find opportunity. To learn more about the Access to Justice Campaign and contribute, visit charlottelegaladvocacy.org/ATJ. 



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IN WITH THE NEW

By Michael Harman, YLD Chair



Michael Harman

On October 9, the YLD assisted with the Fall Swearing-In Ceremony, where the next wave of new attorneys were sworn into the Bar. On behalf of the YLD, I want

to again extend our congratulations to all of you who were recently sworn-in or will be sworn-in in the near future. I also want to encourage you to make time to get involved in the YLD and take advantage of the opportunities available through this membership. The YLD has lots to offer young lawyers and, best of all, membership in the YLD is free to all new admittees for their first year of practice.

There are a number of ways to get involved, and there's no better time than now to do so. Although we should have a heart to serve year-round, there's just something about this time of year that seems to make us more appreciative of what we have and cognizant of how many others are less fortunate than us. That's why, in addition to providing opportunities for our members to network and grow professionally, the YLD strives to provide opportunities for members to serve our

peers and those in need in our community.

The YLD has been hard at work creating opportunities for members to grow professionally and personally. Already this fall, the YLD held an interest meeting where members of the Bar could come to network and learn about the YLD and how to get involved. We participated in a service project with Habitat for Humanity, where YLD members spent a day painting a newly constructed Habitat house, and we hosted a clinic where members drafted wills for new Habitat homeowners.

We are planning some exciting things in the coming months too. The YLD will once again be participating in the Salvation Army Angel Tree program this holiday season, which distributes toys and necessities to local underprivileged children. I strongly encourage all MCB members to take part in this effort to provide joy to some who are in the most need in our community. Be on the lookout for information about how you can pick-up "ornaments" that list the needs of specific children. In conjunction with that project, the YLD Legal Assistance Committee will be coordinating an Ask-A-Lawyer Day. During this event, our members volunteer to have brief, one-on-one consultations with members of the public to discuss simple legal issues. This is an excellent chance to help people who may not know where else to go to

get the information they need. I hope you'll consider volunteering for this event. Don't worry if you feel you don't have the knowledge and experience to provide this sort of assistance. Volunteers are supplied with primers on these areas of law and information about agencies and other sources of legal information to pass on to the attendees.

To accommodate your networking desires, the YLD Social Committee is planning a fun Fall social that you won't want to miss! Also, don't miss the Mecklenburg County Bar Holiday Party at the Bar & Foundation Center. Like last year, the YLD is proud to offer a \$15 discount on ticket prices to the first 30 YLD members who register.

I know this is a very busy time of the year for everyone, but please take time to participate in a few YLD events and volunteer opportunities. If you have never attended a YLD event or have contemplated joining but have yet to do so, now is the time. Remember to check your Bar Blast emails and our Facebook page for announcements about what is happening with the YLD and upcoming opportunities to get involved.

And as always, don't hesitate to contact me directly at michael@harmanlawnc.com if you want to learn about upcoming events or how to get involved with the YLD.

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THE CONTROL ENTHUSIAST

By Cathy Killian



Cathy Killian

Actor Patrick Warburton, who bears a striking resemblance to Clark Kent/Superman, (in the neurotic world of Seinfeld he was the only mechanic that could maintain

Jerry's Saab), is the latest spokesperson for National Car Rental. He swaggers through the airport saying that some folks refer to him as a control freak, but he prefers to think of himself as a "Control Enthusiast." He is happy to be able to go straight to his car, and not to have to talk to any humans unless he wants to—and he doesn't want to.

National Car Rental is highlighting its "commitment to providing time-sensitive frequent airport travelers with unmatched control throughout their rental experience" because people want to "be in charge at all times." In our world that moves faster than ever, the ideal of control is difficult to resist.

Controlling people have extremely high

expectations, rigid routines and schedules, and their obsessive behaviors can border on being pathological. They have to plot and plan everything. They expend a tremendous amount of energy trying to plan, predict, and prevent things that they cannot possibly plan, predict, or prevent.

This controlling behavior is likely innate, from an evolutionary standpoint—if we are in control of our environment we have a better chance of survival. Research has shown that most people believe they have control over certain aspects of or events in their lives, even when such control is impossible or doesn't exist. One of the best examples is that no matter how bad a driver someone may be, most people firmly believe they are less likely to be in a car accident if they are the one driving.

Controlling behavior is really about trying to manage fear and anxiety. Our emotions are fueled by insecurities and an absolute terror of being vulnerable. We cannot risk having any flaws or weaknesses exposed, whether real or imagined. We are attached to a specific outcome. We believe we can protect ourselves by staying in control of every aspect of our lives and creating a rigid sense of order. "The irony is that often those that feel the most need for control, are themselves the ones being controlled by their own fears, insecurities, and doubts," says Carlos Felfoldi.

At our core, the "control enthusiast" in us believes we can never let our guard down or relax our vigilance. Our insecurities and fear keep us from trusting others, both on a practical and emotional level. The downside of that is, if we have no trust in others on an emotional level, we can't open up and we continually keep people at arm's length. Life is always a struggle and a fight, and our lives become very restricted, very draining, and often very lonely.

We emotionally walk on eggshells as we struggle to deal with the substantial anxiety that accompanies this outlook.

Seeking control becomes an anxiety management tool utilized to try and ward off feelings of helplessness and inadequacy. It isn't necessarily a very effective tool, but it becomes our "go to" just the same, especially if we are subject to increasing stress.

We can move through the world in this way as a result of growing up in a chaotic, dysfunctional, and/or abusive environment. We become hypervigilant, always on high alert, always anticipating bad things. We develop the belief that there must be something wrong with us. That translates into very low self-worth.

As adults, this can create a lack of trust in others and ourselves, fear of abandonment, fear of failure, perfectionism, and the fear of experiencing painful emotions—or any emotions for that matter. It becomes a cycle—as these feelings increase, so does a need for the sense of control. We establish a pattern of controlling behavior and our world often rewards and reinforces these behaviors. We keep things consistent, complete tasks, and take care of things. We try to control our internal world (feelings) by controlling our external world.

We have specific emotional reactions when there is a perceived threat to our sense of control. As Dan Oestreich says, "These reactions are an effort to get things back in control as quickly as possible. I react with anger in order to restore the sense of safety and stability my control brings. I hold a grudge in order to avoid the unknown risks of trusting you again. I turn my back on you in order to regain the relationship the way it was or to end the relationship while protecting my version of events. I console myself by reminding myself how smart or right I am. Reactions are a way of holding onto what was, even if that always was a fantasy or an illusion."

When we project an image like Patrick Warburton we exhaust ourselves. Inner

continued on next page

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The Control Enthusiast

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peace does not depend on, nor can it be created by, external conditions.

We are better served focusing our energies on what we really have any control over, and that is ourselves. As Brian Kessler points out, “The closest to being in control we’ll ever be is in that moment when we realize that we’re not.” We are always capable of controlling our attitudes and actions, and thus our thoughts and behaviors. Letting go of expectations, being present and in the moment, reserving judgments, and accepting life on life’s terms, while difficult to achieve, is far easier than trying to micromanage the universe. To shift into this place of greater freedom requires a combination of surrender, acceptance, faith, and trust. It requires a firm belief that we will be OK no matter what. “It is after all, this internal control that has the power and influence to shape our life choices, decisions, actions and ultimate destiny.”

This article was originally published by the North Carolina Lawyer Assistance Program on May 6, 2019.

The Lawyer Assistance Program holds support groups across the state for lawyers who are actively engaged in a recovery process (recovery from all kinds of issues, not just drug or alcohol problems). Often these meetings are topic driven, providing lawyers an opportunity to uncover, examine, explore, and share their attitudes, thoughts, beliefs, and experiences on the given topic. It is always so interesting to hear how thinking, reactions, self-understanding, and self-mastery have evolved as these lawyers practice putting new recovery-based tools to use. The LAP sometimes sends out an article in advance of a meeting (our “Monday Article”), allowing the group participants an opportunity to reflect on the topic for that week before they meet to discuss it. We decided to publish this Monday Article because we received so much positive feedback on it, as it resonated with many of our clients and volunteers. 

Lawyers’ Impact Fund

continued from cover

educate teachers and students about the rule of law and the legal system.

International House: To expand the breadth of its start-up pro bono initiatives, enabling supervising attorneys to recruit and train pro bono attorneys, to evaluate cases for referral, and to mentor attorneys representing naturalization clients. The project benefits refugees, asylees and other underserved immigrants in Charlotte-Mecklenburg who qualify for naturalization.

Larry King’s Clubhouse: To provide professional support, including insurance costs and staff salaries. Larry King’s Clubhouse is a no-cost, drop-in childcare center located within Mecklenburg County Courthouse. The center provides a safe, secure and enriching place for children who must come to the courthouse as witnesses, as subjects of child neglect or abuse or custody proceedings, or accompanying parents or guardians who must come to court as witnesses, jurors, or litigants. The center offers quality care and developmentally appropriate activities for children.

Pat’s Place: To support a portion of the salary expense for a new forensic interviewer. Pat’s Place Child Advocacy Center coordinates the support and treatment of child survivors of the most serious cases of abuse in Charlotte and Mecklenburg County. The forensics interview is the foundation of child protection and criminal investigations.

Safe Alliance: To help fund the salary of the Director of the Legal Representation Project (LRP). The LRP provides free legal representation in hearings to obtain Domestic Violence Protective Orders and acts as a conduit to allow local attorneys to donate their time to victims who need legal services. The Director is one of three staff positions (one being part-time) at LRP and

is vital to fulfilling the agency’s mission of representing domestic violence victims.

MBF’s Professional Assistance Financial Fund:

To support five public interest agencies in Mecklenburg County (District Attorney’s Office, Public Defender’s Office, Legal Services of Southern Piedmont, Legal Aid of North Carolina, and Council for Children’s Rights) to help offset the financial hardship associated with rising professional development costs for qualifying attorneys.


MCB & MBF Bar Leadership Institute

Committee: To cultivate future leaders, with an emphasis on contributing time and talent to the Bar and to the community through involvement with the Mecklenburg County Bar and Mecklenburg Bar Foundation leadership projects.

MCB Diversity & Inclusion Committee:

To support the Increasing Diversity in the Legal Profession Conference (formerly known as Diversity Day), the annual one-day conference engaging minority students in a discussion about the legal profession and law-related careers. Students hear about the role those with legal training play in everyday society. These students meet with attorneys, judges, law school admissions officers, and others and have an opportunity to share their views of the law and lawyers.

Our community’s at-risk populations – children, the unemployed, the displaced, and all who are underserved – continue to benefit greatly from the generosity of our legal community. But the need is still great. With your support, we can continue to make a difference.

Again, thank you to those of you who have already given. If you have not yet pledged or donated to the Lawyers’ Impact Fund, we ask that you consider a personally meaningful gift to the 2019-20 campaign. You can give by returning the pledge envelope inserted here, donating online at MeckBar.org, or by emailing MBF Interim Executive Director Leah Campbell at lcampbell@meckbar.org. 

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