

# Put Into Practice: Risk Management Tips for Your Firm

OCTOBER 20, 2016 - ASHEVILLE

OCTOBER 21, 2016 - GREENSBORO

NOVEMBER 17, 2016 - CLEMMONS

NOVEMBER 18, 2016 - CONCORD

JANUARY 13, 2017 - CARY (AM & PM SESSIONS)

JANUARY 26, 2017 - NEW BERN

JANUARY 27, 2017 - GREENVILLE

FEBRUARY 10, 2017 - WRIGHTSVILLE BEACH



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MUTUAL**

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# Put Into Practice: Risk Management Tips for Your Firm

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# Put Into Practice: Risk Management Tips for Your Firm

## AGENDA

### ■ Registration

### ■ Managing Your Trust Account

Did you know the North Carolina State Bar approved new trust account rules in 2016? Including a requirement for those attorneys who maintain trust account to obtain a CLE hour devoted to trust accounts?

Join a panel of Lawyers Mutual Claims Attorneys and Tom Boyle, CPA, and owner of Trust Books, as they discuss the Trust Handbook and walk through an in-depth example of performing a quarterly trust reconciliation to meet Rule 1.15-3(d)(1)). Topics include:

- Overview of trust accounts
- Breaking down the Key Concepts
- Deposits – funds received
- Payments – funds paid
- Recordkeeping
- Overview of new trust requirements
- Trust reconciliations

(1 hour Ethics CLE, qualifies for trust account requirement)

### ■ Break

### ■ Getting By With A Little Help from Our Friends

The ABA and Hazelden Foundation recently conducted a nationwide study confirming that lawyers struggle with depression, anxiety and alcoholism at rates that far exceed rates found in the general population and other professions. We all know the risks. We often see colleagues in trouble but are unsure exactly what to do about it. This presentation will highlight real-world strategies that lawyers and law firms can use to: 1) identify colleagues at risk, 2) create a culture of safety that will reduce barriers for those in need to asking for and receiving help, and 3) intervene when it is clear a colleague needs assistance.

(1 hour Substance Abuse/Mental Health CLE)

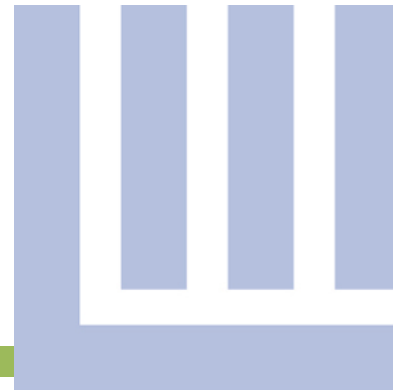
### ■ Break

### ■ Cyber Safeguards and Procedures

Who better to offer risk management advice than a panel of defense attorneys who have handled hundreds of malpractice cases? Topics include:

- Best practices for protecting data and confidential information.
- Internal threats.
- Mobile devices.
- Encryption: What is it and do you need it?

(1 hour General CLE)



## Managing Your Trust Account



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# CLE: Managing Your Trust Account

## PRESENTER

### **Tom Boyle, CPA**

Co-Founder of TrustBooks

[tom@trustbooks.com](mailto:tom@trustbooks.com)

[www.trustbooks.com](http://www.trustbooks.com)

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## Who Is Tom Boyle?

- Certified Public Accountant
- Started Boyle CPA in 2010 that focused on outsourced accounting for small law firms.
- Trust accounting expert
- Presenter of continuing legal education on trust accounting
- Steph Curry's #1 Fan
- Loves making waffles



# Accounting Humor!

Wednesday September 12, 2001



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## Why Do We Need This Class?

### Reporting from 2015 Winter Bar Journal

- Reported 7 disbarments – guess how many were disbarred for misappropriation of entrusted funds?
- 57 reviews conducted covering 123 attorneys during Q3 2015.
  - 47% failed to conduct 3 Way reconciliation each quarter
  - 39% failed to maintain front and back images of cleared checks
  - 28% failed to indicate on face of each check from which client balance funds were withdrawn
  - 26% failed to conduct bank statement reconciliations each month
  - 10% advanced funds from the account resulting in negative balances
  - Only 6 of the 57 trust account reviews had zero deficiencies

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# Trust Accounts

**Definition:** A bank account maintained by a lawyer in which the lawyer must hold funds received in a fiduciary capacity on behalf of or belonging to a client or third party.

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## Who Needs a Trust Account?

Any lawyer who receives funds in a fiduciary capacity in the context of his or her law practice, even if for a brief period of time, must have access to or maintain a trust account. A lawyer must have access to a trust account before receiving such funds.

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# Lawyer's Responsibility

- Has a fiduciary duty to safeguard funds received.
- Must segregate funds or property from his or her personal or business assets.
- Hold funds in trust is a non-delegable, personal fiduciary responsibility.
- Responsibility cannot be transferred and is not excused by ignorance, inattention, or incompetence of the lawyer or by the lawyer's associates or non-lawyer employees.

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## Before Accepting Trust Funds...

### Step #1: Choosing an approved bank.

- Must be a bank located in NC.
- Must report to the NC State Bar when an item is drawn for insufficient funds.
- Must provide you with all cancelled checks or printed digital images.
- Must agree to pay IOLTA accounts the highest interest rate available to other accounts with similar qualifications.

### Step #2: Opening the trust bank account.

- Send a directive the bank.
- Proper labeling of the trust account.
- Use proper checks

### Step #3: Developing internal process for managing your trust account.

- Safeguarding of trust funds.
- Signature authority.
- Recording transactions.
- Documentation and retention policy.

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## 7 Key Concepts of Trust Management

1. Segregation of Client Funds
2. Do Not Bring Client Ledgers Into the Red
3. There's No Such Thing as a Negative Balance
4. Timing is Everything
5. Timely Recordkeeping
6. Final Client Balance Should Always Be Zero
7. Always Maintain an Audit Trail

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## 1. Segregation of Client Funds

A lawyer may maintain one trust account for all his or her clients' trust funds; however, no client's funds should be used on behalf of another client. A lawyer is NEVER allowed to use one client's trust funds to pay another client's or his or her own obligations.

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## 2. Do Not Bring Client Ledgers Into the Red

A lawyer cannot bring a client's ledger below a zero balance regardless of how much money is in the general trust account.

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## 3. There's No Such Thing as a Negative Balance

A lawyer cannot write checks against funds that have either not been deposited or have not cleared the bank.

Only three possibilities:

1. Client ledger has a positive balance
2. Client ledger has a zero balance
3. Negative balance – PROBLEM!

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## 4. Timing is Everything

When a deposit is made at a bank, funds typically take between a day to several days to become available for use. Until these funds have been made available in the trust account, a lawyer cannot use these funds on behalf of a client.

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## 5. Timely Recordkeeping

To ensure that a lawyer does not violate any of the 7 Key Concepts, the lawyer must record the deposits and disbursements to and from the lawyer's trust account in a timely manner.

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## 6. Final Client Balance Should Always Be Zero

The goal in client trust accounting is to make sure that every dollar a lawyer receives on behalf of a client is ultimately paid out. What comes in for each client must eventually equal what goes out for that client; no more, no less.

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## 7. Always Maintain an Audit Trail

With the transactions flowing in and out of a lawyer's trust account, it is important to maintain proper documentation. Documentation creates an audit trail that generates transparency.

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# Deposits – Funds Received

## What goes into the trust account?

- All funds received or held for the benefit of a client or third party.

## What does not go into the trust account?

- No funds belonging to the lawyer, except...
  - Disputed funds
  - Mixed funds
  - Funds sufficient to open or maintain the trust account

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# Deposit Example

## 4. DEPOSIT SLIP FOR MULTIPLE CLIENTS

0051013124  
 ARCTIC Trust Firm  
 P.O. Box 100  
 Anchorage, AK 99501  
 Tel: 313-456-789

PLEASE ENDORSE ALL CHECKS		
DATE: 05/15/2009		
CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE RULES AND REGULATIONS OF THIS INSTITUTION.		
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.		
PLEASE LIST EACH CHECK SEPARATELY.		
CURRENCY	DOLLARS	CENTS
COIN		
1 Beta	\$1,500	00
2 Gamma	\$1,450	00
3 Delta	\$5,100	00
4 Epsilon	\$2,000	00
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
FRONT SIDE TOTAL	\$10,500	00
REVERSE SIDE TOTAL	0	00
TOTAL DEPOSIT	\$10,500	00

List client names instead of check routing numbers.

\*\*\*\*\*  
 Deposit slips should always be printed with the name of the lawyer or law firm, IOLTA or Trust Account Designation, account number, and routing number.  
 \*\*\*\*\*

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# Payments – Funds Paid

## What are acceptable payments from trust?

- Payments made on behalf of clients or third parties.
- For example:
  - Client costs
  - Settlements
  - Earned Fees

## What are inappropriate payments from trust?

- Immediate disbursements
- Bank charges

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# Check Example

2. TRUST ACCOUNT CHECK

INFORMATION AND  
FIELDS REQUIRED BY THE RULES

Trust Account Designation      Pre-Numbered Check

Payee Name

Dee Fender, Esq.  
Trust Account  
Raleigh, NC 27808      Date: May 23, 2009

PAY TO THE ORDER OF      ABCXYZ Chiropractic Center      \$ 1,500.00

Fifteen hundred and no/100 ..... DOLLARS

Wegottayourmoney  
BANK

MEMO Omega (12345) – full and final payment      Dee Fender

00000101 8 031202084 000-123-12345678

Auxiliary On-U's      Client Matter & Purpose      Account Number

LONGER THAN 6"

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# Recordkeeping

A lawyer must maintain a record of all receipt of funds and payment of funds for each client.

The following items must be maintained:

- Bank statements or documents from bank
- Instructions from client to transfer, disburse or withdraw funds
- Client ledgers for each client
- All records for quarterly and monthly trust reconciliations

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## Recordkeeping – Best Practices...

1. Develop a process for recording trust activity.
2. Ability to generate reports (internal and external).
3. Use a system for completing monthly/quarterly reconciliations.
4. Implement controls to safeguard assets.
5. Maintain compliance with NC State Bar.
6. Keep process efficient and simple!

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# Goal of New Trust Rules

1. Facilitate the early detection of internal theft and errors.
2. Accommodate 'paperless' work environments.
3. Add clarity to the existing trust requirements.
4. Provide opportunity for multi-member firms to ensure that it is properly maintaining its trust accounts.

Note: Approved by Supreme Court in June 2016

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# Overview of New Rules

- Monthly and quarterly reviews
- Restriction on signature authority
- Restriction on withdrawal of funds
- Trust Account Oversight Officer (TAOO)
- Duty to report misappropriation

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# Monthly Reviews

## Current Requirement

- Reconcile the trust account balance to the bank statement.

## New rules (in addition to current requirement)

- Requires lawyer to review the bank statement and cancelled checks for the month covered by the bank statement.
- Requires a lawyer to review, sign, date and retain a printed copy of the monthly reconciliation.

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# Quarterly Reviews

## Current Requirement

- The individual client balances shown on the ledger of a general trust account must be totaled and reconciled with the current bank statement balance for the trust account. This is known as a Three-Way Reconciliation.

## New rules (in addition to current requirement)

- Requires lawyer to review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made.
- A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.
- Requires a lawyer to review, sign, date and retain a printed copy of the monthly reconciliation.

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# Example of a Three-Way Trust Reconciliation

## THREE-WAY RECONCILIATION SUMMARY

Raleigh Law Firm, PLLC | General Trust Account | 06/30/2015

Bank Activity	
Bank Balance @ 06/30/2015	\$59,401.86
Reconciling Items:	
Plus: Outstanding Deposits	\$0.00
Minus: Outstanding Payments	\$(23,960.35)
Adjusted Bank Balance	\$35,441.51

Client Ledger Balances @ 06/30/2015	
Larry Bird   Real Estate Closing	\$508.15
Jon Deer Restaurant   Chapter 11	\$579.00
Jon Doe Restaurant   Chapter 11	\$5,000.00
Shaq O'Neill   Tax Representation	\$11,988.90
Chicago Bulls   General Legal Representation	\$7,541.71
Magic Johnson   Real Estate Closing	\$249.25
Charlotte Hornets   Lease Review	\$4,574.50
Golden State Warriors   Bankruptcy	\$5,000.00
Total Client Balance @ 06/30/2015	\$35,441.51
Trust Account Ledger Balance	\$35,441.51

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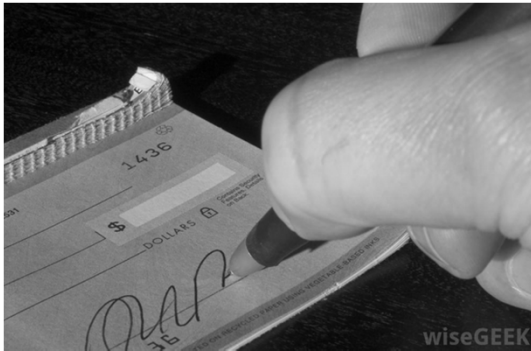
## Restriction on Signature Authority

### New Rule:

- Checks drawn on a trust account must be signed by a lawyer or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer.
- All persons exercising signature authority will be required to take a 1 hour CLE course on trust accounting.
- Signature stamps, preprinted signature lines on checks, or electronic signatures may not be used.

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# Restriction on Signature Authority



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# Restriction on Withdrawal of Funds

## **New Rule:**

- No bearer items
  - Shall not make a trust check payable to cash or bearer.
  - No cash shall be withdrawn from a trust account by any means.
- Debit cards prohibited

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# Management in Multi-Member Firms

## Trust Account Oversight Officer (TAOO)

- May designate a partner in a multi-member firm as the TAOO
- Responsibility of the TAOO:
  - Designation must be made in writing (performed annually)
  - More than one partner may be designated as the TAOO
  - Additional training required of the TAOO
  - Annual certification from the TAOO
  - Firm must maintain a written policy detailing the firm's trust account management procedures and will be reviewed and signed annually

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# Duty to Report Misappropriation

## New Rule:

- Requires a lawyer to immediately report to the NC State Bar any intentional theft or fraud when discovered.
- If misapplication is discovered and rectified on or before the lawyer's next required quarterly reconciliation, there is no duty to report.

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# Trust Reconciliations

- Basics of a trust reconciliation
- What is the difference between monthly and quarterly requirements?
- Example

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## Three Parts to Trust Reconciliation

### Client Ledger Activity:

Client VV Balance @ 9/30/14 \$ 2,750.00  
 Client WW Balance @ 9/30/14 \$ 50,000.00  
 Client XX Balance @ 9/30/14: \$ 2,000.00  
 Client YY Balance @ 9/30/14: \$ 5,724.50  
 Client ZZ Balance @ 9/30/14: \$ 4,500.00

Total Client Balances @ 9/30/14: **\$64,974.50**

### FIRM TRUST LEDGER

Date	Check #	Matter #	Payee Name	Description	Funds Received	Funds Disbursed	Current Balance
BALANCE AT 8/31/2014							54,349.50
9/1/14	Wire Transfer	1002.000	TrustBooks Trust Account	Retainer	10,000.00		64,349.50
9/1/14	50012	1004.000	TrustBooks	Payment for Invoice #1042		500.00	63,849.50
9/2/14	50013	1003.000	Wake Co. Clerk of Court	Court Fees		125.00	63,724.50
9/2/14	50014	1003.000	Wake Co. Register of Deeds	Filing Fees		250.00	63,474.50
9/5/14	50015	1001.000	TrustBooks	Payment for Invoice #1039		2,500.00	60,974.50
9/5/14	50016	1005.000	TrustBooks	Payment for Invoice #1042		4,500.00	56,474.50
9/20/14	2555	1003.000	TrustBooks Trust Account	Retainer	2,500.00		58,974.50
9/21/14	3850	1001.000	TrustBooks Trust Account	Retainer	2,500.00		61,474.50
9/21/14	85012	1005.000	TrustBooks Trust Account	Retainer	2,500.00		63,974.50
9/25/14	50017	1003.000	TrustBooks	Payment for Invoice #1040		3,750.00	60,224.50
9/26/14	Wire Transfer	1002.000	TrustBooks Trust Account	Retainer	10,000.00		70,224.50
9/28/14	450090	1004.000	TrustBooks Trust Account	Retainer	750.00		70,974.50
9/30/14	50018	1003.000	TrustBooks	Payment for Invoice #1045		1,250.00	69,724.50
9/30/14	50019	1004.000	US Patent Office	Patent Filing Fees		250.00	69,474.50
9/30/14	50020	1004.000	TrustBooks	Payment for Invoice #1050		1,000.00	68,474.50
9/30/14	50021	1005.000	ABC Corporation	Settlement Distribution		3,500.00	64,974.50
BALANCE AT 9/30/14							<b>64,974.50</b>

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BANK NAME

TrustBooks, LLC  
 250 Berryhill Road, Suite 502  
 Columbia, SC 29210

Your account statement  
 For 9/30/14

Website: www.bankname.com  
 Phone: (800) 555-5555

\* Business Value Account: 102 599 100 201

### Account Summary

Your previous balance as of 8/31/14 \$ 55,599.50  
 Checks -12,375.00  
 Other withdrawals, debits, and service charges 0.00  
 Deposits, credits, and interest 28,250.00  
 Your new balance as of 9/30/14 = \$ 71,474.50

### Checks

Date	Check #	Amount (\$)	Date	Check #	Amount (\$)
9/2/2014	50012	500.00	9/20/2014	50016	4,500.00
9/5/2014	50013	125.00	9/28/2014	50017	3,750.00
9/5/2014	* 50015	3,500.00	9/30/2014	* 50019	1,000.00
* indicates a skip in sequential check numbers			Total checks		= \$ 12,375.00

### Deposits, credits, and interest

Date	Description	Amount (\$)
9/1/2014	Incoming Wire Transfer - Ref #100025000101	10,000.00
9/20/2014	Counter Deposit	2,500.00
9/21/2014	Counter Deposit	5,000.00
9/28/2014	Incoming Wire Transfer - Ref #100025000222	10,000.00
9/28/2014	Counter Deposit	750.00
Total deposits, credits, and interest		= \$ 28,250.00

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## Client Ledger Examples

Client: VV		Matter: 1001.000			
Date	Check #	Payee Name	Description	Funds Received	Funds Disbursed
8/16/14	3015	TrustBooks Trust Account	Retainer	4,000.00	
8/25/14	50010	John Smith	Expert Witness - Invoice #65010		1,250.00
9/5/14	50015	TrustBooks	Payment for Invoice #1039		2,500.00
9/21/14	3050	TrustBooks Trust Account	Retainer	2,500.00	
TOTAL				6,500.00	3,750.00
TOTAL CLIENT FUNDS IN TRUST BANK ACCOUNT AS OF: 09/30/14				2,750.00	

Client: XX		Matter: 1009.000			
Date	Check #	Payee Name	Description	Funds Received	Funds Disbursed
7/25/14	2040	TrustBooks Trust Account	Retainer	5,000.00	
7/30/14	49850	Wake Co. Clerk of Court	Court Fees		125.00
9/2/14	50013	Wake Co. Clerk of Court	Court Fees		125.00
9/2/14	50014	Wake Co. Register of Deeds	Filing Fees		250.00
9/20/14	2055	TrustBooks Trust Account	Retainer	2,500.00	
9/25/14	50017	TrustBooks	Payment for Invoice #1040		3,750.00
9/30/14	50018	TrustBooks	Payment for Invoice #1045		1,250.00
TOTAL				7,500.00	5,500.00
TOTAL CLIENT FUNDS IN TRUST BANK ACCOUNT AS OF: 09/30/14				2,000.00	

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## Step #1

Start with the  
Ending Balance per  
Bank Statement

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BANK NAME

TrustBooks, LLC  
250 Berryhill Road, Suite 502  
Columbia, SC 29210

Your account statement  
For 9/30/14

Website: www.bankname.com  
Phone: (800) 555-5555

\* Business Value Account: 102 599 100 201

### Account Summary

Your previous balance as of 8/31/14	\$ 55,599.50
Checks	-12,375.00
Other withdrawals, debits, and service charges	0.00
Deposits, credits, and interest	28,250.00
Your new balance as of 9/30/14	= \$ 71,474.50

### Checks

Date	Check #	Amount (\$)
9/2/2014	50012	500.00
9/5/2014	50013	125.00
9/5/2014	* 50015	2,500.00

\* indicates a skip in sequential check numbers

Date	Check #	Amount (\$)
9/20/2014	50016	4,500.00
9/28/2014	50017	3,750.00
9/30/2014	* 50020	1,000.00
Total checks		= \$ 12,375.00

### Deposits, credits, and interest

Date	Description	Amount (\$)
9/1/2014	Incoming Wire Transfer - Ref #100025000101	10,000.00
9/20/2014	Counter Deposit	2,500.00
9/21/2014	Counter Deposit	5,000.00
9/28/2014	Incoming Wire Transfer - Ref #100025000222	10,000.00
9/28/2014	Counter Deposit	750.00
Total deposits, credits, and interest		= \$ 28,250.00

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## Step #2

Compare or reconcile checks or payments that have cleared the bank statement to the trust ledger.

### Checks

Date	Check #	Amount (\$)
9/2/2014	50012	500.00
9/5/2014	50013	125.00
9/5/2014	* 50015	2,500.00

\* indicates a skip in sequential check numbers

Date	Check #	Amount (\$)
9/20/2014	50016	4,500.00
9/28/2014	50017	3,750.00
9/30/2014	* 50020	1,000.00
Total checks		= \$ 12,375.00

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## Step #3

Switch to deposits and compare or reconcile all deposits that have cleared the bank statement to the trust ledger.

### Deposits, credits, and interest

Date	Description	Amount (\$)
9/1/2014	Incoming Wire Transfer - Ref #100025000101	10,000.00
9/20/2014	Counter Deposit	2,500.00
9/21/2014	Counter Deposit	5,000.00
9/28/2014	Incoming Wire Transfer - Ref #100025000222	10,000.00
9/28/2014	Counter Deposit	750.00
Total deposits, credits, and interest		= \$ 28,250.00

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## Cleared Transactions

Once you've identified all the transactions on your trust ledger that cleared the bank statement, your trust ledger should look like this. Notice that I've matched all the transactions from the bank statement to my trust ledger.

### FIRM TRUST LEDGER

Date	Check #	Matter #	Payee Name	Description	Deposits	Payments	Current Balance
BALANCE AT 8/31/2014							54,349.50
9/1/14	Wire Transfer	1002.000	TrustBooks Trust Account	Retainer	10,000.00		64,349.50
9/1/14	50012	1004.000	TrustBooks	Payment for Invoice #1042		500.00	63,849.50
9/2/14	50013	1003.000	Wake Co. Clerk of Court	Court Fees		125.00	63,724.50
9/2/14	50014	1003.000	Wake Co. Register of Deeds	Filing Fees		250.00	63,474.50
9/5/14	50015	1001.000	TrustBooks	Payment for Invoice #1039		2,500.00	60,974.50
9/5/14	50016	1005.000	TrustBooks	Payment for Invoice #1042		4,500.00	56,474.50
9/20/14	2055	1003.000	TrustBooks Trust Account	Retainer	2,500.00		58,974.50
9/21/14	3050	1001.000	TrustBooks Trust Account	Retainer	2,500.00		61,474.50
9/21/14	85012	1005.000	TrustBooks Trust Account	Retainer	2,500.00		63,974.50
9/25/14	50017	1003.000	TrustBooks	Payment for Invoice #1040		3,750.00	60,224.50
9/28/14	Wire Transfer	1002.000	TrustBooks Trust Account	Retainer	10,000.00		70,224.50
9/28/14	450090	1004.000	TrustBooks Trust Account	Retainer	750.00		70,974.50
9/30/14	50018	1003.000	TrustBooks	Payment for Invoice #1045		1,250.00	69,724.50
9/30/14	50019	1004.000	US Patent Office	Patent Filing Fees		250.00	69,474.50
9/30/14	50020	1004.000	TrustBooks	Payment for Invoice #1050		1,000.00	68,474.50
9/30/14	50021	1005.000	ABC Corporation	Settlement Distribution		3,500.00	64,974.50
BALANCE AT 9/30/14							64,974.50

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## Step #4

Identify any uncleared transactions.

### Outstanding Check List:

Date	Check #	Client / Matter	Amount
8/25/2014	50010	Client VV	1,250.00
9/2/2014	50014	Client XX	250.00
9/30/2014	50018	Client XX	1,250.00
9/30/2014	50019	Client YY	250.00
9/30/2014	50021	Client ZZ	3,500.00
Total outstanding checks			\$ 6,500.00

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## Step #5

Compile the trust reconciliation based on previous steps.

### TRUST RECONCILIATION

Month-End: September 30, 2014

#### Bank Activity:

Bank Balance @ 9/30/14: \$ 71,474.50

#### Reconciling Items:

Plus: Deposits in Transit \$0.00

Minus: Outstanding Checks \$ (6,500.00)

Adjusted Bank Balance @ 9/30/14: \$64,974.50

#### Client Ledger Activity:

Client VV Balance @ 9/30/14 \$ 2,750.00

Client WW Balance @ 9/30/14 \$ 50,000.00

Client XX Balance @ 9/30/14 \$ 2,000.00

Client YY Balance @ 9/30/14 \$ 5,724.50

Client ZZ Balance @ 9/30/14 \$ 4,500.00

Total Client Balances @ 9/30/14: \$64,974.50

Trust Ledger Balance @ 9/30/14: \$64,974.50

Is the Adjusted Bank Balance & Client Balances Reconciled?

YES

#### Outstanding Check List:

Date	Check #	Client / Matter	Amount
8/25/2014	50010	Client VV	1,250.00
9/2/2014	50014	Client XX	250.00
9/30/2014	50018	Client XX	1,250.00
9/30/2014	50019	Client YY	250.00
9/30/2014	50021	Client ZZ	3,500.00
Total outstanding checks			\$ 6,500.00

41

## Final Thoughts...

- Trust accounting rules are important... just ask those that are disbarred because of them.
- Action items for your firm:
  - Read the Bar Journals.
  - Read the Trust Handbook.
  - Team effort. Hold a meeting with all staff members to stress the importance of good trust accounting and the new trust requirements.
  - Be proactive... this is too important a topic to wait till next month to make changes. Don't procrastinate.

42

# QUESTIONS?



43

## Contact Information:

**Tom Boyle**

Email: [tom@trustbooks.com](mailto:tom@trustbooks.com)

[www.trustbooks.com](http://www.trustbooks.com)

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**Quarterly Trust Account Review Report**

Rule 1.15-3(i) Random Transaction Review

REPORT DATE: \_\_\_\_\_ 20\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

**GENERAL INFORMATION**

- Complete one form for *each* general trust account, dedicated trust account, and fiduciary account
- Attach the following for each transaction: statement of costs and receipts, client ledger, cancelled checks or images thereof, any other documentation necessary to complete review, and any required explanations
- At least three transactions shall satisfy the requirement in Rule 1.15-3(i), but a larger sample may be advisable

**Transaction #1**

1. Client Name/Matter: \_\_\_\_\_/\_\_\_\_\_ Date Range of Disbursement(s) \_\_\_\_\_:
2. Does client ledger show a negative balance? ☐ Yes ☐ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following:
 

Statement of Costs and Receipts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Client Ledger	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Cancelled Checks (or images thereof)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

 (Attach to Report)
4. Did the transaction involve multiple disbursements? ☐ Yes ☐ No Number of disbursements \_\_\_\_\_
5. Are any disbursements outstanding? ☐ Yes ☐ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? ☐ Yes ☐ No If yes, attach explanation and corrective action.

**Transaction #2**

1. Client Name/Matter: \_\_\_\_\_/\_\_\_\_\_ Date Range of Disbursement(s) \_\_\_\_\_:
2. Does client ledger show a negative balance? ☐ Yes ☐ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following:
 

Statement of Costs and Receipts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Client Ledger	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Cancelled Checks (or images thereof)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

 (Attach to Report)
4. Did the transaction involve multiple disbursements? ☐ Yes ☐ No Number of disbursements \_\_\_\_\_
5. Are any disbursements outstanding? ☐ Yes ☐ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? ☐ Yes ☐ No If yes, attach explanation and corrective action.

**Transaction #3**

1. Client Name/Matter: \_\_\_\_\_/\_\_\_\_\_ Date Range of Disbursement(s) \_\_\_\_\_:
2. Does client ledger show a negative balance? ☐ Yes ☐ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following:
 

Statement of Costs and Receipts	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Client Ledger	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Cancelled Checks (or images thereof)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No

 (Attach to Report)
4. Did the transaction involve multiple disbursements? ☐ Yes ☐ No Number of disbursements \_\_\_\_\_
5. Are any disbursements outstanding? ☐ Yes ☐ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? ☐ Yes ☐ No If yes, attach explanation and corrective action.

**Lawyer Certification**

I certify that I personally randomly selected the above transactions, that I personally conducted the review, and that all discrepancies shall be investigated, identified, and resolved within ten days of this review.

\_\_\_\_\_  
Lawyer Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Firm Name

## Compliance Checklist

- \_\_\_ 1. All trust account checks are signed by a lawyer, or by an employee who is not responsible for reconciling the trust account and who is supervised by a lawyer.
- \_\_\_ 2. Any person with signatory authority on the trust account has taken a one-hour trust account management CLE (within the last three years).

***NOTE: Proof of completion of the CLE requirement will not need to be sent to the State Bar, but should be retained and will be checked during a random audit.***

- \_\_\_ 3. No trust account checks are signed using signature stamps, pre-printed signature lines, or electronic signatures.
- \_\_\_ 4. All reconciliations are reviewed, signed, and dated by a lawyer.
- \_\_\_ 5. A lawyer reviews the bank statements and cancelled checks for all trust and fiduciary accounts on a monthly basis and a report is created documenting the review.
- \_\_\_ 6. At least quarterly, a lawyer reviews a random sample of at least three transactions (selected by the lawyer) to ensure that disbursements were properly made by reviewing the statement of costs and receipts, client ledgers, and cancelled checks for each transaction. Transactions should include multiple disbursements where available. A report is created documenting the lawyer's review.
- \_\_\_ 7. All reports are signed and dated by a lawyer.
- \_\_\_ 8. Any discrepancy discovered during reconciliations or reviews is investigated and resolved within 10 days.

# Bank Directive on NSF Trust Checks

Rule 1.15-2(k) of the Rules of Professional Conduct requires a lawyer to direct each bank where he or she maintains a trust account to notify the State Bar when any item<sup>1</sup> drawn on the trust account is **presented for payment** against insufficient funds. To comply with the rule, every lawyer or law firm that maintains a trust account must file a directive with the bank where the account is maintained instructing the bank to notify the Executive Director of the State Bar when any item drawn on the trust account is presented for payment against insufficient funds. The notice form below should be used for this purpose.

## Notice and Authorization: Concerning Attorney Trust Account Checks Presented Against Insufficient Funds

To: \_\_\_\_\_  
Financial Institution

Pursuant to Rule 1.15-2(k), of the North Carolina State Bar Rules of Professional Conduct, you are hereby authorized and directed to transmit immediate notice to the executive director of the North Carolina State Bar of any item drawn on the trust account(s) or fiduciary account(s) listed below which is presented for payment against insufficient funds.

Acct. No. _____	Acct. Name. _____
Acct. No. _____	Acct. Name. _____
Acct. No. _____	Acct. Name. _____

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

North Carolina State Bar  
PO Box 25908  
Raleigh, NC 27611

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(print full name)

<sup>1</sup> Rule 1.15-1(i): "Item" denotes any means or method by which funds are credited to or debited from an account; for example: a check, substitute check, remotely created check, draft, withdrawal order, automated clearinghouse (ACH) or electronic transfer, electronic or wire funds transfer, electronic image of an item and/or information in electronic form describing an item, or instructions given in person or by telephone, mail, or computer.

Revised July, 2015

**Monthly Trust Account Report**

Monthly Reconciliation and Review

Pursuant to Rules 1.15-3(d)(2) and 1.15-3(i)(1)

REPORT DATE: \_\_\_\_\_ 20\_\_\_\_

Account Name: \_\_\_\_\_

Account #: \_\_\_\_\_

**GENERAL INFORMATION**

- Complete one form for *each* general trust account
- **Attach the following:** copy of general ledger/checkbook register, list of outstanding deposits, list of outstanding checks, corresponding bank statement, cancelled checks or images thereof

**Reconciliation of Lawyer's Trust Account Records**

1. **General ledger/checkbook register balance** as of last day of bank statement..... \$ \_\_\_\_\_  
(Attach copy of general ledger/checkbook register)

**Bank Statement Reconciliation**

2. **Account Ending Balance** as of \_\_\_\_\_ (per attached bank statement)..... \$ \_\_\_\_\_

**Plus:** Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) ..... + \_\_\_\_\_

Number of deposits in transit .....  
(attach list of outstanding deposits)

**Less:** Outstanding (uncleared) disbursements (disbursements made through end of month not reflected in bank statement)..... - \_\_\_\_\_

Number of outstanding disbursements.....  
(attach list of outstanding disbursements)

3. **Adjusted Trust Account Bank Balance** (as of end of report month)..... \$ \_\_\_\_\_

4. The balance on line #3 ☐ *agreed* ☐ *did not agree* with the balance reflected in line #1. If different, attach explanation and corrective action.

Report prepared by a non-lawyer? ☐ Yes ☐ No

If yes, does non-lawyer have trust account check signature authority? ☐ Yes ☐ No

Report prepared by: \_\_\_\_\_  
Name and position Signature Date

**Lawyer Certification**

I certify that I personally reviewed the above report, personally reviewed the monthly bank statement and cancelled checks for each general trust account, dedicated trust account, and fiduciary account, and that all discrepancies shall be investigated, identified, and resolved within ten days of this review.

\_\_\_\_\_  
Lawyer Name\_\_\_\_\_  
Signature\_\_\_\_\_  
Date\_\_\_\_\_  
Firm Name

**Trust Account Reconciliation Sheet****GENERAL INFORMATION**

- Complete one form for *each* trust account
- Attach the following: list of clients with corresponding balances, copy of general ledger/checkbook register, list of outstanding deposits, list of outstanding checks, corresponding bank statement

**Reconciliation of Lawyer's Trust Account Records**

1. **Total of positive client ledger balances** as of \_\_\_\_\_ ..... \$ \_\_\_\_\_  
(Attach a list of clients with corresponding balances)

Do any clients show a negative balance? ☐ Yes ☐ No If yes, attach explanation and corrective action.

2. **General ledger/checkbook register balance** as of \_\_\_\_\_ ..... \$ \_\_\_\_\_  
(Attach copy of general ledger/checkbook register)

**Bank Statement Reconciliation**

3. **Account Balance** as of \_\_\_\_\_ (per appended bank statement)..... \$ \_\_\_\_\_

**Plus:** Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) ..... + \_\_\_\_\_

Number of deposits in transit .....  
(attach list of outstanding deposits)

**Less:** Outstanding (uncleared) checks (checks issued through end of month not reflected in bank statement)..... - \_\_\_\_\_

Number of outstanding checks.....  
(attach list of outstanding checks)

4. **Subtotal** ..... \_\_\_\_\_

5. **Other Adjustments (describe and attach supporting documentation)** .....  
\_\_\_\_\_

6. **Adjusted Trust Account Bank Balance** (as of end of report month)..... \$ \_\_\_\_\_

7. The balance on line #6 ☐ *agreed* ☐ *did not agree* with the balances reflected in lines #1 and #2. If different, attach explanation and corrective action.

Reconciliation prepared by: \_\_\_\_\_

Name and Position

\_\_\_\_\_

Signature

Reconciliation reviewed by: \_\_\_\_\_

Lawyer Name

\_\_\_\_\_

Signature

## **Trust Account Oversight Officer Initial Agreement**

\_\_\_\_ {Law Firm} \_\_\_\_\_ (“firm”) does hereby designate the following partner(s) in the firm to serve as the trust account oversight officer (“TAOO”) for any general trust account into which more than one firm lawyer deposits trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), do hereby agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4.

Partner(s) designated as TAOO: \_\_\_\_\_

\_\_\_\_\_.

Firm and TAOO agree that within the six months prior to beginning service as a TAOO, the partner shall:

1. Read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar *Trust Account Handbook*;
2. Complete one hour of accredited continuing legal education (“CLE”) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;
3. Complete two hours of training (live, online, or self-guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics;
4. Become familiar with the law firm’s accounting system for trust accounts;
5. During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited CLE on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in 1.15-4(c)(1)(C).

Certification:

1. The TAOO agrees to oversee the operation of the firm’s general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in 1.15-4(e);
2. The trust accounts that the TAOO will oversee are as follows:



<u>Financial Institution</u>	<u>Account Name</u>	<u>Account Number</u>

3. The TAOO acknowledges that they have completed the training described in 1.15-4(c)(1) and the qualifying courses are as follows:

<u>Date</u>	<u>Course Name</u>	<u>Sponsor</u>	<u>Hours</u>	<u>Topic</u>

4. The TAOO understands the law firm's accounting system for trust accounts; and
5. It is acknowledged by the firm and TAOO that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

It is further understood that in addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm's trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).

This agreement designating a TAOO is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

TAOO:

Managing Lawyers:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

## **Trust Account Oversight Officer Continuing Designation Agreement**

\_\_\_\_ {Law Firm} \_\_\_\_\_ (“firm”) does hereby confirm the continuing designation of the following partner(s) in the firm to serve as the trust account oversight officer (“TAOO”) for any general trust account into which more than one firm lawyer deposits trust funds, pursuant to the initial agreement appointing the TAOO entered into on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), do hereby certify they are in compliance with the requirements of Rule 1.15, including, specifically, the requirements of Rule 1.15-4.

Partner(s) continuing to be designated as TAOO: \_\_\_\_\_

\_\_\_\_\_.

### **Certification:**

1. The TAOO agrees to oversee the operation of the firm’s general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in 1.15-4(e);
2. The trust accounts that the TAOO will oversee are as follows:

<b><u>Financial Institution</u></b>	<b><u>Account Name</u></b>	<b><u>Account Number</u></b>

3. The TAOO acknowledges they attended at least one hour of accredited continuing legal education (“CLE”) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph 1.15-4(c)(1)(C). The qualifying courses are as follows:

<b><u>Date</u></b>	<b><u>Course Name</u></b>	<b><u>Sponsor</u></b>	<b><u>Hours</u></b>	<b><u>Topic</u></b>

4. The TAOO understands the law firm’s accounting system for trust accounts; and

5. It is acknowledged by the firm and TAOO that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

This statement confirming the continuing designation of a TAOO is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

TAOO:

Managing Lawyers:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

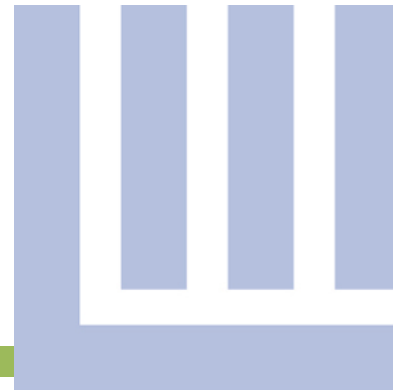
\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_



## Getting By With A Little Help from Our Friends

## Getting By with a Little Help From Our Friends

Camille Stell, Mark Scruggs, Warren Savage  
Lawyers Mutual

Robynn Moraites  
Executive Director  
NC Lawyer Assistance Program

[Video]

## Landmark National ABA Study



- ABA, CoLAP and Hazelden Foundation partnered for the first national study on lawyer mental health.
- Large, reliable data set. Diverse in every way.
- Culled over 2,000 responses to retain only responses from currently employed attorneys.
- Findings published in the peer reviewed Journal of Addiction Medicine.
- And the results are in...

## Problematic Drinking



## Problematic Drinking

- AUDIT-10 revealed 21% at levels considered harmful or dependent, and the AUDIT-3 revealed:

**36%**

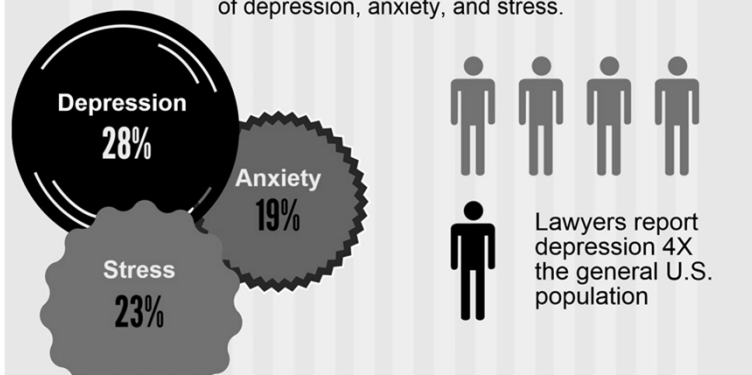
Problematic drinking based on quantity and frequency alone.

\* Physicians came in at 15% using same screening measure.

## Mental Health

### Mental Health Symptoms

Lawyers with alcohol use disorders also had highest rates of depression, anxiety, and stress.



## Translation...

- We know what the statistics are, but what does that “look like on the ground?”
  - There are very identifiable signs, both personally and professionally, that something is wrong, if we are paying attention.



## Quick Look Signs - Personal

### Relationship Problems

- Complaints from clients
- Problems with supervisors
- Disagreements or inability to work with colleagues
- Avoidance of others
- Irritable, impatient
- Angry outbursts, combative
- Inconsistencies or discrepancies in describing events
- Hostile attitude
- Overreacts to criticism
- Unpredictable, rapid mood swings
- Non-responsive communication

### Personal Problems

- Legal separation or divorce; custody issues
- No family support
- Children won't speak to them
- Living outside financial means
- Credit problems, judgments, tax liens, bankruptcy
- Frequent illnesses or odd accidents
- Arrests
- Isolating from friends, family
- Avoids social activities
- Personal life very intertwined with practice
- Handling their own legal problems
- Chaotic personal life/lots of drama





## Quick Look Signs - Professional

### Attendance Problems

- Arrive late / leaving early
- Taking "long lunches"
- No return to work after lunch
- Missing appointments
- Unable to be located
- Ill with vague ailments
- Absent (especially Mon/Fri)
- Frequent rest room breaks
- Improbable excuses for absences
- Last minute cancellations
- Can't get a meeting with them

### Performance Problems

- Missed deadlines
- Decreased efficiency
- Decreased performance after lunch
- Inadequate follow through
- Lack of attention
- Poor judgment
- Inability to concentrate
- General difficulty with recall
- Blaming or making excuses for poor performance
- Erratic work patterns
- Non responsive
- Failure to show up in court



## Additional Professional Cues

- So depressed can't open mail – mail piling up
- Inability to see big picture
- Refuse to stop working because they need the money
- Paralyzed in decision making
- Knows what needs to happen but can't make it happen
- Personality change – not the lawyer you used to know



Trust your gut. If you suspect something is wrong, it probably is.

These signs are huge red flags.

Once the professional façade is cracked, it is the last domino to fall, not the first.

## Quick Look Signs - Firms

- Firm was aware of depression and was supportive but not aware of what straw might break the individual's back
- Multi-lawyer firm, silo practices, no communication among the lawyers
- Lawyers do not share trusts accounts so they don't see red flags with the trust money

## Creating a Culture of Safety

- It is up to each of us to bring an attitude of acceptance and openness
- Notice your internal response if someone admits they have received help (example)
- Examine our own attitudes; WE each shape the profession, not THEM

## Creating a Culture of Safety

- Don't gossip
- Culture of safety with opposing counsel and court staff, not just in firm

## Creating a Culture of Safety

- Firms can put best practices into place
  - Internal designated LAP contact
  - Have a clear drug and alcohol and mental health policy (model policy in your materials)
  - Create an agenda item (15-20 minutes) to address mental health related issues at annual partnership meetings; model that this is important to firm leadership

## Creating a Culture of Safety

- Have LAP give a live presentation
- New associate orientation at larger firms
- Host a live CLE for the MH/SA hour at your firm
- Subscribe all lawyers in your firm to Sidebar
- Highlight some aspect/article of Sidebar on your firm's intranet page or email it
- Find ways to create authentic community and connection within the firm
- Check in with your colleagues to see how they are doing (really doing)

## Lawyer at Your Firm

- See guidance for law firms in packets
- Last clear chance agreements
- These conversations are never easy, but they are essential.

## Risk Management

- Establish Clear Policies
  - Alcohol and Drug/Mental Health Policy (model in packet)
  - Trust Account Policy – LM provides an hour CLE on this item
    - State Bar's Website has a Trust Account Handbook:
    - <https://www.ncbar.gov/media/283992/lawyer-trust-account-handbook.pdf>

## Why we don't act

- Worried about reputation of firm
- Human nature to avoid dealing with problems
- Time constraint to meet frequently, communicate with staff, monitor behavior

## Reasons to Act

- 2013 FEO 8 – Ethical Responsibility
  - Recognize and respond
- Authorized practice issues
- State Bar grievance process
- Rules of Professional Conduct require it
- Threat of malpractice
- Potential loss of malpractice coverage
- Time spent now saves time and money in the long run
- Emotional wear and tear
- Financial issues / bankruptcy

## Fears & Misconceptions (LAP)

- LAP will report me to State Bar or my firm
- I will be disbarred/fired if I work w/ LAP
- Not really confidential (stigma)
  - My firm/someone somewhere will find out
- LAP only deals with drinking problems
- LAP will make me tell my story at a CLE
- LAP will make me go to treatment

## Fears & Misconceptions (LM)

- Premiums will go up
- A claim will be opened
  - Call sooner rather than later
- I will be “on the radar” and coverage would be negatively affected
- I will lose coverage
- I will be reported to the State Bar

## Resources at LM

- Claims avoidance
- HELP team
- Claims repair
  - Rule 60(b) example
- Additional benefits
- Don't think of us like your auto carrier

## Additional Resources

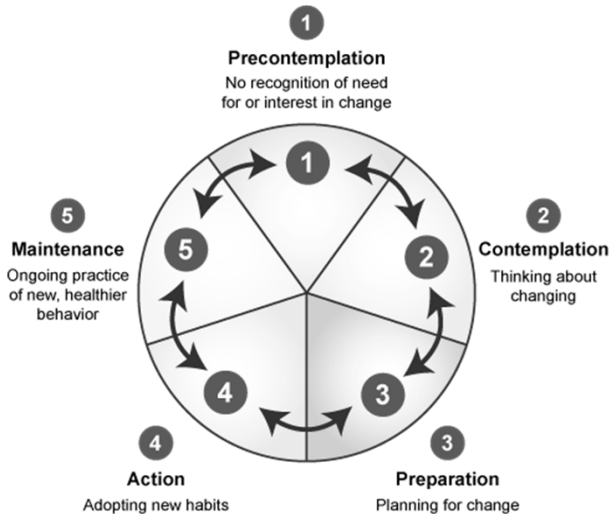
- TLC – Transitioning Lawyer Commission thru the Bar Association
- LAP – Lawyer Assistance Program thru the State Bar
- CJCP – Chief Justice’s Commission on Professionalism

## Interventional Strategies

- Call LAP for guidance
- Factors we will consider
  - Relationship (friend, partner, opposing counsel)
  - History with the person
  - Leverage
- Variety of strategies available



# Psychological Stages of Change



## Stage 1 – Precontemplation

- “Not ready” or avoidance - The change is not on the person’s radar screen yet.
  - Not speaking circumstantially here, we’re speaking psychologically
- If approached about a possible change, the person will typically (unconsciously) underestimate the pros and overestimate the cons with little to no actual information

## Stage 2 – Contemplation

- “Getting Ready” or overcoming ambivalence
- On the radar screen, starting to gather information
- Pros and cons are about equal as they are weighed
- Ambivalence can lead to long delays of months or years before taking action

## In Person Colleague

- Best to take 2 people who the lawyer respects and trusts
- Start by discussing concern and care, history and respect
- Give specific examples of troubling or questionable behavior
- Encourage person to be willing to take a look and explore what is happening

## In Person Colleague

- If you can get the person to call LAP in that moment with you, you can call and then step out and let the lawyer speak to one of our counselors privately.
- If not, keep the door open. Reiterate that you are available and willing to listen.
- When the lawyer reaches out to you, you may have to “walk the line” (i.e. be compassionate but don’t enable).

## In Person Colleague

- Why LAP sends volunteers; the power of story; no one telling the lawyer what to do
- Do not define “success” too narrowly; planting seeds (examples)
- Do not underestimate the power of acknowledgment (of elephant in room)
- Carrot and stick approach goes further

## Take Aways

- We are one of the most at-risk professions
- There are meaningful steps each one of us can take to create a culture of safety in our firms and in our profession
- NC is a national leader in addressing these issues and you have a treasure trove of resources available (truly)

## Not a helpful approach...



...Whether for you or a colleague.

## Take Aways

- Interventions work
- You are in a unique position to help or get something on the radar so that others can help
- If you see something, say something – even if you simply make an anonymous call to LAP.

[Video]

## If you need to reach us:

**Robynn Moraites**

Executive Director

704-892-5699

Robynn@nclap.org

**Cathy Killian**

Charlotte and Areas West

704-910-2310

Cathy@nclap.org

**Nicole Ellington**

Raleigh and Areas East

919-719-9267

Nicole@nclap.org

**Towanda Garner**

Piedmont Triad Area

919-719-9290

Towanda@nclap.org

## Thank you!

# What's All the Buzz About?

BY ROBYNN MORAITES

A recent national ABA study on attorney mental health and drinking has been getting a lot of buzz. Pun intended. Based on some small, historic studies and anecdotally, to be sure, we have known for years that attorneys are at greater risk for depression, anxiety, and alcohol problems than the general public and even other professionals. This landmark study, however, is the first to ever bring into sharp focus, with hard data and real numbers, what we are facing in our profession across a spectrum of mental health issues. The study was conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs. The findings were published in the peer-reviewed *Journal of Addiction Medicine* in February 2016.

Over 15,000 attorneys participated in the national study, and the dataset was culled to retain only currently licensed and employed attorneys. Responses from attorneys who were retired, unemployed, working outside of the legal profession, suspended, or otherwise on any form of inactive status were eliminated, leaving approximately 12,800 responses. Demographics were diverse in both gender and race and captured a robust range of practice settings, practice areas, years in practice, and positions held. This is the most comprehensive data ever collected regarding attorney mental health, and the single largest dataset.

## Drinking: 21% Drinking at Harmful or Dependent Levels and 36% Drinking at Problematic Levels

Study participants completed a ten-question instrument known as the Alcohol Use Disorders Identification Test (AUDIT-10), which screens for different levels of

problematic alcohol use, including hazardous use, harmful use, and possible alcohol dependence. The test asks about quantity and frequency of use and includes questions as to whether an individual has experienced consequences from drinking. The study found that 21% scored at levels consistent with harmful use including possible alcohol dependence. Males scored higher at 25%, compared to 16% for women. When examining responses purely for quantity and frequency of use (known as the AUDIT-3), the study found an astonishing 36% of respondents drinking at problematic levels. While there is no hard and fast line to define “problematic” levels, problematic drinking behaviors can include drinking at lunch or regularly binge drinking. Binge drinking is typically defined as consuming enough to have a blood alcohol content level of 0.08. That’s about four drinks for women and five drinks for men in a two hour timeframe. When the same AUDIT-3 screening measure was used in a comprehensive survey of physicians, 15% of physicians reported use at this level—less than half of the number of attorneys reporting such use. It appears that more than one in three attorneys are crossing the line from social drinking to using alcohol as a coping mechanism.

## Shocking Reversal of Earlier Findings: Today's Younger Lawyers at Far Greater Risk

In a significant reversal of a conclusion reached by the last documented, statistically valid study—a 1990 study out of Washington State—the study found that younger lawyers struggle the most with alcohol abuse. Respondents identified as 30 years or younger had a 32% rate of problem drinking, almost one in three, higher than any other age group. This finding directly contradicts the Washington study that found the longer an

attorney practiced, the greater the risk of developing problems with alcohol. That data reversal is very significant, signaling major changes in the profession in the last 20 to 30 years. And with job prospects at an all-time low, and student debt at an all-time high, these younger lawyers who are most in need of treatment are least able to afford it. The LAP Foundation of NC, Inc. is working to bridge that gap. Please see page 20 for the story.

## Depression, Stress, and Anxiety: 28% Report Concerns with Depression

Depression and anxiety often go hand in hand. The study found that 28% of attorneys, more than one in four, struggle with some level of depression, representing almost a ten percent increase from the 1990 Washington study. Males reported at a higher rate than females for depression. Nineteen percent reported mild or high levels of anxiety, with females reporting at a higher rate than males. Interestingly, when examining the full span of one’s career, approximately 61% and 46% reported experiencing concerns with anxiety and depression, respectively, at some point in their career. Respondents also reported experiencing unreasonably high levels of stress (23%), social anxiety (16%), attention deficit hyperactivity disorder (12.5%), panic disorder (8%), and bipolar disorder (2.4%). More than 11% reported suicidal thoughts during their career. Three percent reported self-injurious behavior, and 0.7% reported at least one suicide attempt during the course of their career.

Like the findings associated with alcohol use, mental health conditions were higher in younger, less experienced attorneys and generally decreased as age and years of experience increased. The study also revealed significantly higher levels of anxiety, depression, and stress among those with problematic alcohol use, meaning mental health concerns often co-

occurred with an alcohol use disorder.

### Barriers to Seeking Help – No Surprises

As part of the study, participants were asked to identify the biggest barriers to seeking treatment or assistance. Categorically, fear of being “found out” or stigmatized was the overwhelming first choice response. Regarding alcohol use, 67.5% said they didn’t want others to find out, and 64% identified privacy and confidentiality as a major barrier. The responses for mental health concerns for these same two reasons were 55% and 47%, respectively. Additional reasons included concerns about losing their law license, not knowing who to ask for help, and not having insurance or money for treatment.

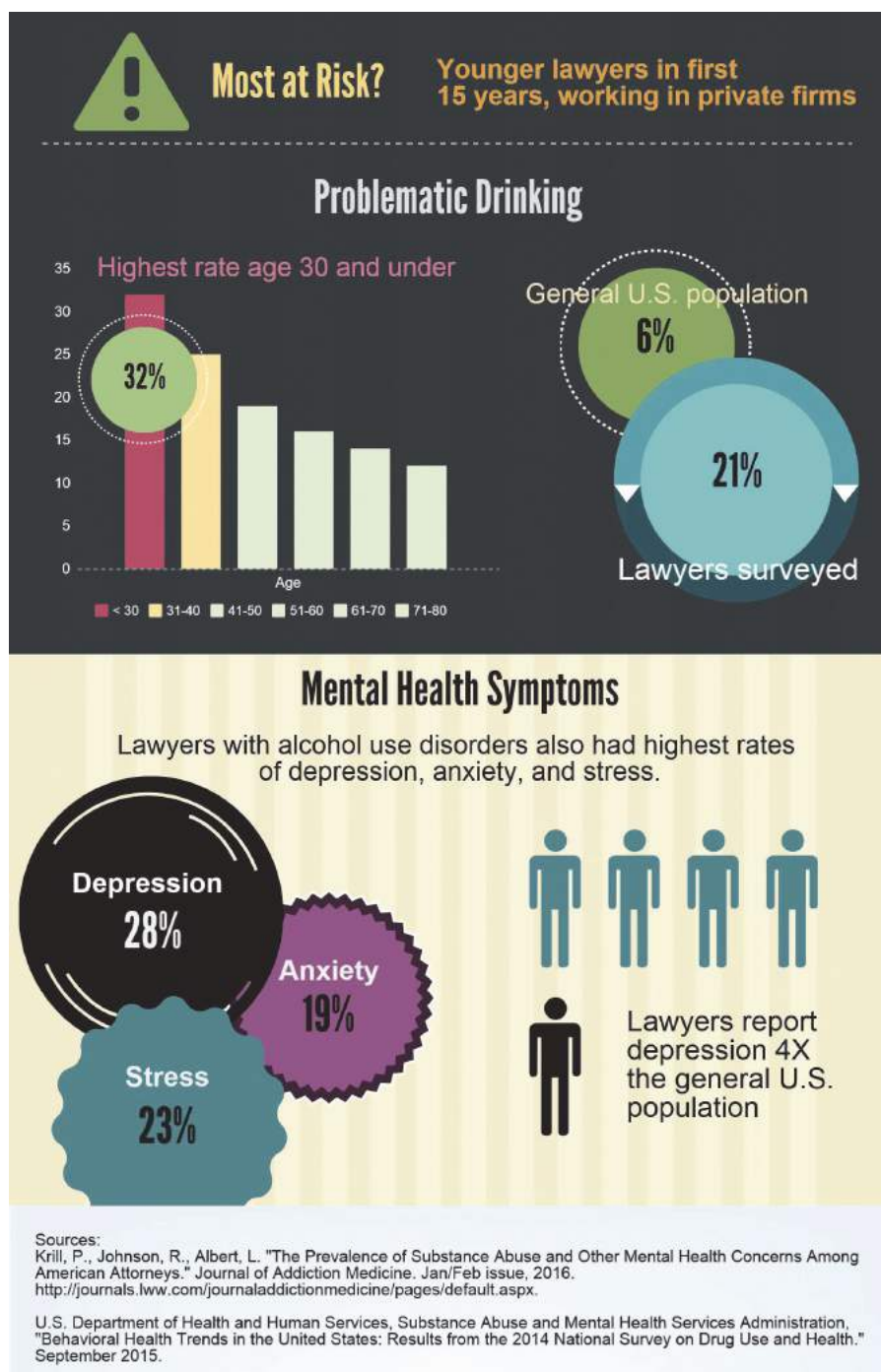
A surprising 84% indicated awareness and knowledge of lawyer assistance programs (LAPs), but only 40% would be likely to utilize the services of a LAP with privacy and confidentiality concerns again cited as the major barrier to seeking help through LAP programs.

### Help and Hope

The data is far more extensive than can be outlined in this short article. There are telling findings about drug use, including use of prescription stimulants. Rates of depression, anxiety, and problematic drinking were also correlated to practice setting, with large firms and bar associations ranking highest. We can slice the data and analyze it extensively for years to come. But the key takeaway is that we now have hard data showing that one in three-to-four of us are at real risk and are not likely to seek out assistance.

Only 7% of participants reported that they obtained treatment for alcohol or drug use, and only 22% of those respondents went through programs tailored to legal professionals. Participants who sought help from programs tailored specifically for legal professionals had significantly better outcomes and lower (healthier) scores than those who sought treatment elsewhere. This suggests that programs with a unique understanding of lawyers and their work can better address the problems.

When I first took this job as director of our NC LAP, I met a lawyer in a spin class. She was sitting on the bike next to me and recognized me because my photo had appeared in a local bar newsletter. She said, “I hope I never have to call you or have need for your program’s services.” I thought about her com-



ment for a moment and said, “Our volunteers are some of the happiest, most balanced, most resilient lawyers—people—you could ever hope to meet. They don’t come to us that way. But if they follow our suggestions, they become so. And they even like being lawyers again.” She said, “Wow. That’s cool. I never thought about it like that.” Because we are confidential, most lawyers never see the miracles of healing and regeneration that take place every day in the transformed lives of those

who are willing to pocket their pride and simply ask for help. There is help and there is hope, and plenty of it. ■

*Robynn Moraites is the executive director of the North Carolina Lawyer Assistance Program.*

*Infographic reprinted with permission from the February 2016 Wisconsin Lawyer article, “Landmark Study: US Lawyers Face High Rates of Problem Drinking and Mental Health Issues,” published by the State Bar of Wisconsin.*





**NCLAP**  
NORTH CAROLINA  
LAWYER ASSISTANCE PROGRAM

## Identifying Illness Based Impairment in Colleagues

Depression, Anxiety and Stress

Alcoholism and Substance Abuse

Every aspect of an addicted or depressed attorney's life is affected. When there are problems at work or home, with health or finances, or there is police involvement, chances are the attorney is suffering from a medically based illness which can be successfully treated. If you recognize the following warning signs in a colleague, call us. ***We can help.*** Visit [NCLAP.org](http://NCLAP.org)

### Relationship Problems

- ☐ Complaints from clients
- ☐ Problems with supervisors
- ☐ Disagreements or inability to work with colleagues
- ☐ Avoidance of others
- ☐ Irritable, impatient
- ☐ Angry outbursts
- ☐ Inconsistencies or discrepancies in describing events
- ☐ Hostile attitude
- ☐ Overreacts to criticism
- ☐ Unpredictable, rapid mood swings
- ☐ Non-responsive communication

### Performance Problems

- ☐ Missed deadlines
- ☐ Decreased efficiency
- ☐ Decreased performance after long lunches involving alcohol
- ☐ Inadequate follow through
- ☐ Lack of attention
- ☐ Poor judgment
- ☐ Inability to concentrate
- ☐ Difficulty remembering details or instructions
- ☐ General difficulty with recall
- ☐ Blaming or making excuses for poor performance
- ☐ Erratic work patterns

### Personal Problems

- ☐ Legal separation or divorce
- ☐ Credit problems, judgments, tax liens, bankruptcy
- ☐ Decreased performance after lunches involving alcohol
- ☐ Frequent illnesses or accidents
- ☐ Arrests or warnings while under the influence of alcohol or drugs
- ☐ Isolating from friends, family and social activities

### Attendance Problems

- ☐ Arrive late and/or leaving early
- ☐ Taking "long lunches"
- ☐ Not returning to work after lunch
- ☐ Missing appointments
- ☐ Unable to be located
- ☐ Ill with vague ailments
- ☐ Absent (especially Mondays/Fridays)
- ☐ Frequent rest room breaks
- ☐ Improbable excuses for absences
- ☐ Last minute cancellations

## **North Carolina State Bar's Model Law Firm Alcohol and Drug and Mental Health Policy**

The firm regards depression, anxiety, alcoholism, and drug addiction as illnesses and desires to assist employees suffering from such illnesses to obtain effective treatment.

The firm regards the unauthorized possession or distribution of controlled substances as crimes and will discipline any employee proved to be involved in such a crime whether or not such employee is addicted to drugs.

The impairment of any employee's performance due to mental illness or drug or alcohol addiction is deemed to be the firm's business, not a reserved aspect of one's private life. It is the firm's policy to encourage and offer qualified medical assistance to any employee who appears to the firm management to suffer from such illnesses.

No employees will be disciplined solely for impairment due to any illness, so long as the employee cooperates with a qualified treatment program agreed to by the firm and the employee, preferably in consultation with the NC Lawyer Assistance Program. The employee's choice of treatment will be accepted only if approved by a specialist retained by the firm, which may include the NC Lawyer Assistance Program, after consultation with the employee's personal physician. Any treatment undertaken in accordance with this policy shall be entirely confidential and no disclosure by an employee to any treatment personnel will be reported to the firm nor will any such disclosure be available to any legal authority whatever except in accordance with the requirements of applicable law.

The firm will name a supervisory employee as administrator of this policy and as the firm's representative in all matters pertaining to its execution. This person shall be a firm liaison with the Lawyer Assistance Program, and no other person within the firm shall be informed of any consultation or referral under this policy without the consent of the affected employee except as necessary to complete the ongoing work of the employee.

## **North Carolina Model Law Firm Alcohol and Drug Policy Explanatory Statement**

A law firm desiring to provide appropriate assistance to employees suffering from alcohol or drug problems or mental health issues should consider doing three things: (1) adopt a policy, (2) implement the policy, and (3) educate the members and employees of the firm.

The North Carolina State Bar has recommended to its membership a law firm policy which recognizes that depression, other mental health issues, alcoholism and drug addiction are treatable illnesses; however, the policy condones neither impaired job performance nor illegal conduct.

The model policy provides for the establishment of an understanding and supportive atmosphere within which lawyers and employees may seek personal help or express concern about a colleague or other employee.

The two major obstacles to reaching out for help for oneself or another are based on the fear of being punished (losing a job) and the fear of causing harm to one's reputation (stigma).

These can be overcome by express recognition of the medical models of addiction and mental health issues and the establishment of appropriate safeguards as to confidentiality.

The firm's partners should fully understand the model policy before adopting it. Representatives from the LAP Committee are available to assist them in its understanding.

It is very important for the partners to understand that the firm should not ignore impaired job performance. Work-related problems are a major indicator that "something" may be wrong. If that "something" is alcohol or drug related, or related to depression or other mental illness, then trying to protect the employee from the consequences of his/her own action is harmful, not helpful to the employee. This is called "enabling" and it is the direct result of not understanding the disease process.

Existing policies or Employee Assistance Programs (EAP) should be reviewed and any real or potential conflicts should be identified and resolved.

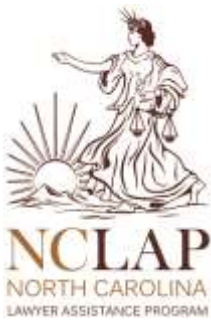
The partners need to agree on who will handle these matters and establish appropriate safeguards for confidentiality.

They may wish to retain an independent provider of EAP services. Be advised, however, that many lawyers will not use firm sponsored EAP services due to the fear of information about utilization being provided to the law firm as plan administrator. Law firm sponsored medical insurance needs to be reviewed to verify what is covered by the insurance before a need arises.

Once a policy is adopted, the firm should announce it and visibly post it. LAP is available to conduct educational programs, at no charge, for the benefit of the firm's lawyers and employees.

These programs discuss the prevalence and impact of the problem in the workplace, explain the progressive and the harmful nature of these conditions, teach how to identify job related symptoms, explore how supervisors and co-workers enable sick colleagues, and explain how to appropriately respond to a possible problem using the firm's policy.

Always keep in mind that LAP is a ready and willing resource to help your firm, using recovering lawyer volunteers and referral to treatment professionals. LAP exists to serve and save lives and help your firm remain productive.



[NCLAP.org](http://NCLAP.org)

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*A program of the  
North Carolina State Bar*

## Guidance for Law Firms

You have invested a lot of time, money, and sweat equity in the ongoing operation and success of your law firm. We all know that good quality work is key, yet it remains only part of the equation. It is hard to overstate the value of a great reputation of not only your firm as a whole but also of the lawyers who work there.

When an [attorney](#) is impaired due to an issue like [depression](#), bipolar disorder or [substance abuse](#), the law firm begins to suffer the consequences. The costs can be as obscure as lost opportunity costs of clients taking future work to another firm or as concrete as a drop in billable hours and revenue, professional malpractice claims or discipline resulting from ethical violations. Lawyer impairment impacts both work quality and law firm reputation. In short, lawyer impairment affects your firm's bottom line.

And as any good business owner knows, the success of your firm has also depended upon your on-going investment in your lawyers. It is for this reason that most law firms contact the [Lawyer Assistance Program](#). When a law firm's management team or managing partner becomes aware of an issue of impairment with an attorney within the firm – a long-time friend, a trusted colleague, and a valued member of the team – the almost universal response is to figure out a way to help the attorney and to keep him or her at the firm.

The biggest mistake most firms make is waiting too long to take action after an issue has come to their attention. Usually, because the attorney is so well liked and respected, the partners do not want to embarrass the attorney. They hope the issue will resolve itself without a conversation, much less an informal intervention which can feel like a confrontation or an accusation. But rarely does the issue go away or resolve itself. It almost always gets worse over time. In fact, by the time partners become aware of a situation, it means the lawyer's impairment is very far advanced. Lawyers are masters of maintaining a professional persona and image, regardless of what is happening behind the scenes. One of the last dominoes to fall is the all-is-well-lawyer façade. Law firms should read this sign as it is: a huge red flag that a lawyer is in real trouble.

The Lawyer Assistance Program has worked with law firms across the state, from large, multi-national firms, to small, closely-held firms. We educate partners about the nature of the impairment and associated issues and offer guidance about what to expect behaviorally and symptomatically if the impairment is not addressed. Sometimes law firms decide to require an impaired attorney to agree to enter into and comply with a "last clear chance"

agreement – providing the attorney an opportunity to get the help he or she needs – as a condition of maintaining employment at the firm. NC LAP guides firms and partners through this process. If the lawyer is willing to accept help, NC LAP assists the lawyer and can put accountability tools in place to assure the law firm the lawyer is continuing to follow clinical recommendations and to address whatever issues he or she needs to address.

If you are concerned about a lawyer in your firm, [please call us today](#). Your communication will remain confidential. Let us work with you so that together we can save a lawyer's life and livelihood.

# 2013 FORMAL ETHICS OPINION 8

## Search Adopted Opinions

### RESPONDING TO THE MENTAL IMPAIRMENT OF FIRM LAWYER

*Adopted: July 25, 2014*

*Opinion analyzes the responsibilities of the partners and supervisory lawyers in a firm when another firm lawyer has a mental impairment.*

#### Introduction:

As the lawyers from the “Baby Boomer” generation advance in years, there will be more instances of lawyers who suffer from mental impairment or diminished capacity due to age. In addition, lawyers suffer from depression and substance abuse at approximately twice the rate of the general population.<sup>1</sup> This opinion examines the obligations of lawyers in a firm who learn that another firm lawyer suffers from a mental condition that impairs the lawyer’s ability to practice law or has resulted in a violation of a Rule of Professional Conduct. This opinion relies upon ABA Commission on Ethics and Professional Responsibility, Formal Opinion 03-429 (2003) [hereinafter ABA Formal Op. 03-429] for its approach to the issues raised by the mental impairment of a lawyer in a firm. For further guidance, readers are encouraged to refer to the ABA opinion.

#### Inquiry #1:

Attorney X has been practicing law successfully for over 40 years and is a prominent lawyer in his community. In recent years, his ability to remember has diminished and he has become confused on occasion. The other lawyers in his firm are concerned that he may be suffering from the early stages of Alzheimer’s disease or dementia.

What are the professional responsibilities<sup>2</sup> of the other lawyers in the firm?<sup>3</sup>

#### Opinion #1:

The partners<sup>4</sup> in the firm must make reasonable efforts to ensure that Attorney X does not violate the Rules of Professional Conduct.

Mental impairment may lead to inability to competently represent a client as required by Rule 1.1, inability to complete tasks in a diligent manner as required by Rule 1.3, and inability to communicate with clients about their representation as required by Rule 1.4. Although a consequence of the lawyer’s impairment, these are violations of the Rules of Professional Conduct nonetheless. As noted in ABA Formal Op. 03-429, “[i]mpaired lawyers have the same obligations under the [Rules of Professional Conduct] as other lawyers. Simply stated, mental impairment does not lessen a lawyer’s obligation to provide clients with competent representation.” Under Rule 1.16(a)(2), a lawyer is prohibited from representing a client and, where representation has commenced, required to withdraw if “the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.” Unfortunately, an impaired lawyer may not be aware or may deny that his impairment is negatively impacting his ability to represent clients. ABA Formal Op. 03-429.

Rule 5.1(a) requires partners in a firm and all lawyers with comparable managerial authority in the firm to “make reasonable efforts to ensure that the firm or the organization has in effect measures giving reasonable assurance that all lawyers in the firm or the organization conform to the Rules of Professional Conduct.” Similarly, Rule 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to “make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” Taken together, these provisions require a managerial or supervisory lawyer who suspects or knows that a lawyer is impaired to closely supervise<sup>5</sup> the conduct of the impaired lawyer because of the risk that the impairment will result in violations of the Rules.

When deciding what should be done in response to a lawyer’s apparent mental impairment, it may be helpful to partners and supervising lawyers to consult a mental health professional for advice about identifying mental impairment and assistance for the impaired lawyer.

Id. As observed in ABA Formal Op. 03-429,

[t]he firm’s paramount obligation is to take steps to protect the interest of its clients. The first step may be to confront the impaired lawyer with the facts of his impairment and insist upon steps to assure that clients are represented appropriately notwithstanding the lawyer’s impairment. Other steps include forcefully urging the impaired lawyer to accept assistance to prevent future violations or limiting the ability of the impaired lawyer to handle legal matters or deal with clients.

Id. If the lawyer's mental impairment can be accommodated by changing the lawyer's work environment or the type of work that the lawyer performs, such steps also should be taken.<sup>6</sup> "Depending on the nature, severity, and permanence (or likelihood of periodic recurrence) of the lawyer's impairment, management of the firm has an obligation to supervise the legal services performed by the lawyer and, in an appropriate case, prevent the lawyer from rendering legal services to clients of the firm." Id. Making a confidential report to the State Bar's Lawyer Assistance Program (LAP) (or to another lawyers assistance program approved by the State Bar<sup>7</sup>) would also be an appropriate step. The LAP can provide the impaired lawyer with confidential advice, referrals, and other assistance.

#### Inquiry #2:

Attorney X's mental capacity continues to diminish. Apparently as a consequence of mental impairment, Attorney X failed to deliver client funds to the office manager for deposit in the trust account. It is believed that he converted the funds to his own use. In addition, Attorney X failed to complete discovery for a number of clients although he declined assistance from the other lawyers in the firm. Some clients may face court sanctions as a consequence. Although Attorney X is engaging and articulate when he meets with clients, he no longer seems able to prepare for litigation and, on more than one occasion, Attorney X's presentation in court was muddled, meandering, and confused.

What are the professional responsibilities of the other lawyers in the firm?

#### Opinion #2:

Attorney X has violated Rule 1.15 by failing to place entrusted funds in the firm trust account. He has also violated Rule 1.1 and Rule 1.3 by providing incompetent representation and by failing to act with reasonable promptness in completing discovery. These are violations of the Rules of Professional Conduct that may have to be reported to the State Bar or to the court. In addition, steps may have to be taken to provide additional ongoing supervision for Attorney X or to change the circumstances or type of work that he performs to avoid additional violations of his professional duties. The other lawyers in the firm must also take steps to mitigate the adverse consequences of Attorney X's past conduct including replacing client funds.

Rule 8.3(a) requires a lawyer "who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects [to] inform the North Carolina State Bar or the court having jurisdiction over the matter." Only misconduct that raises a "substantial question" as to the lawyer's honesty, trustworthiness, or fitness must be reported. As noted in the Comment,

[t]his Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware.

Rule 8.3, cmt. [4].

If an impaired lawyer's misconduct is isolated and unlikely to recur because the mental impairment has ended or is controlled by medication or treatment, no report of incompetent or delinquent representation may be required. See RPC 243 (an "isolated incident resulting from a momentary lapse of judgment" does not raise a substantial question about honesty, trustworthiness, or fitness). "Similarly, if the firm is able to eliminate the risk of future violations of the duties of competence and diligence under the [Rules] through close supervision of the lawyer's work, it would not be required to report the impaired lawyer's violation." ABA Formal Op. 03-429.

However, reporting is required if the misconduct is serious, such as the violation of the trust accounting rules described in this inquiry, or the lawyer insists upon continuing to practice although his mental impairment has rendered him unable to represent clients as required by the Rules of Professional Conduct.<sup>8</sup>In either situation, a report of misconduct may not be made if it would require the disclosure of confidential client information in violation of Rule 1.6, and the client does not consent to disclosure. See Rule 8.3(c).

Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." If the managing lawyers determine that the impaired lawyer cannot provide competent and diligent representation and should be removed from a client's case, the situation must be explained to the client so that the client can decide whether to agree to be represented by another lawyer in the firm or to seek other legal counsel.

Rule 5.1(c) requires a partner or a lawyer with comparable managerial authority or with supervisory authority over another lawyer to take reasonable remedial action to avoid the consequences of the lawyer's violation of the Rules. Even if the impaired lawyer is removed from a representation, the firm lawyers must make every effort to mitigate any adverse consequences of the impaired lawyer's prior representation of the client.

#### Inquiry #3:

If the firm partners determine that Attorney X has violated the Rules and there is a duty to report under Rule 8.3, may they fulfill the duty by reporting Attorney X to the State Bar's Lawyer Assistance Program (LAP)?

#### Opinion #3:



No. 2003 Formal Ethics Opinion 2 addressed this issue in the context of reporting opposing counsel as follows:

The report of misconduct should be made to the Grievance Committee of the State Bar if a lawyer's impairment results in a violation of the Rules that is sufficient to trigger the reporting requirement. The lawyer must be held professionally accountable. See, e.g., Rule .0130(e) of the Rules on Discipline and Disability of Attorneys, 27 N.C.A.C. 1B, Section .0100 (information regarding a member's alleged drug use will be referred to LAP; information regarding the member's alleged additional misconduct will be reported to the chair of the Grievance Committee).

Making a report to the State Bar, as required under Rule 8.3(a), does not diminish the appropriateness of also making a confidential report to LAP. The Bar's disciplinary program and LAP often deal with the same lawyer and are not mutually exclusive. The discipline program addresses conduct; LAP addresses the underlying illness that may have caused the conduct. Both programs, in the long run, protect the public interest.

Inquiry #4:

Attorney X announces his intent to leave the firm to set up his own solo practice and to take all of his client files with him. The other lawyers in the firm are concerned that, absent any supervision or assistance, Attorney X will be unable to competently represent clients because of his mental impairment.

What are the duties of the remaining lawyers in the firm if Attorney X leaves and sets up his own practice?

Opinion #4:

In addition to any duty to report, the remaining lawyers may have a duty to any current client of Attorney X to ensure that the client has sufficient information to make an informed decision about continuing to be represented by Attorney X.

As noted in Opinion #2, Rule 1.4(b) requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." The clients of an impaired lawyer who leaves a firm must decide whether to follow the departed lawyer to his new law practice. To make an informed decision, the clients must be informed of "the facts surrounding the withdrawal to the extent disclosure is reasonably necessary for those clients to make an informed decision about the selection of counsel." ABA Formal Op. 03-429.<sup>9</sup> There is no comparable duty to former clients of the impaired lawyer as long as the firm avoids any action that might be interpreted as an endorsement of the services of the departed, impaired lawyer, including sending a joint letter regarding the lawyer's departure from the firm.

The remaining lawyers in the firm may conclude that, while under their supervision and support, the impaired lawyer did not violate the Rules and, therefore, there is no duty to report to the State Bar under Rule 8.3. Nevertheless, subject to the duty of confidentiality to clients under Rule 1.6, voluntarily reporting the impaired lawyer to LAP (or another lawyer assistance program approved by the State Bar) would be appropriate. The impaired lawyer will receive assistance and support from LAP and this may help to prevent harm to the interests of the impaired lawyer's clients.

Inquiry #5:

Associate lawyers and staff members are often the first to observe behavior indicating that a lawyer has a mental impairment. If an associate lawyer or a staff member reports behavior by Attorney X that indicates that Attorney X is impaired and may be unable to represent clients competently and diligently, what is a partner's or supervising lawyer's duty upon receiving such a report?

Opinion #5:

If a partner or supervising lawyer receives a report of impairment from an associate lawyer or a staff member, regardless of whether the lawyer suspected of impairment is a senior partner or an associate, the partner or supervising lawyer must investigate and, if it appears that the report is meritorious, take appropriate measures to ensure that the impaired lawyer's conduct conforms to the Rules of Professional Conduct. See Opinion #1 and Rule 5.1(a). It is never appropriate to protect the impaired lawyer by refusing to act upon or ignoring a report of impairment or by attempting to cover up the lawyer's impairment.

Inquiry #6:

If an associate lawyer in the firm observes behavior by Attorney X that indicates that Attorney X is not competent to represent clients, what should the associate lawyer do?

Opinion #6:

The associate lawyer must report his or her observations to a supervising lawyer or the senior management of the firm as necessary to bring the situation to the attention of lawyers in the firm who can take action.

Inquiry #7:

An associate lawyer in the firm reports to his supervising lawyer that he suspects that Attorney X is mentally impaired. He also describes to the supervising lawyer conduct by Attorney X that violated Rules 1.1 and 1.3. The supervising lawyer tells the associate to ignore the situation and to not say anything to anyone about his observations including clients, other lawyers in the firm, or staff members. The associate concludes that no action will be taken to investigate or address Attorney X's behavior. Does the associate lawyer have any further obligation?

Opinion #7:

A subordinate lawyer is bound by the Rules of Professional Conduct notwithstanding that the subordinate lawyer acts at the direction of another lawyer in the firm. Rule 5.2(a). If the associate lawyer believes that the duty to report professional misconduct under Rule 8.3 may be triggered by the conduct of Attorney X, the associate lawyer should discuss this concern with his supervising lawyer. If the supervising lawyer declines to address the situation, the associate lawyer should seek guidance as to his professional responsibilities from the lawyers at the State Bar who provide informal ethics advice.

Inquiry #8:

Assume that Attorney X is the sole principal in the firm and there is one associate lawyer. Attorney X displays behavior that may indicate that he is in the early stages of Alzheimer's disease or dementia. There is no senior management to whom the associate lawyer can report. What should the associate lawyer do?

Opinion #8:

If the associate lawyer believes that the duty to report professional misconduct under Rule 8.3 may be triggered by the conduct of Attorney X, the associate lawyer should seek guidance as to his professional responsibilities from the lawyers at the State Bar who provide informal ethics advice. See Opinion #7. Regardless of whether Attorney X's conduct triggers the duty to report, the associate lawyer may seek advice and assistance from the LAP or from another approved lawyer assistance program, or may contact a trusted, more experienced lawyer in another firm to serve as a mentor or advisor on how to address the situation.

Inquiry #9:

Assume Attorney X is a sole practitioner and the lawyers in his community observe behavior that may indicate that he is in the early stages of Alzheimer's disease or dementia. What is the responsibility of the lawyers in the community?

Opinion #9:

The Rules of Professional Conduct impose no specific duty on other members of the bar to take action relative to a potentially impaired fellow lawyer except the duty to report to the State Bar if the other lawyer's conduct raises a substantial question about his honesty, trustworthiness, or fitness to practice law and the information about the lawyer is not confidential client information. See Opinion #7. Nevertheless, as a matter of professional responsibility, attendant to the duties to seek to improve the legal profession and to protect the interests of the public that are articulated in the Preamble to the Rules of Professional Conduct, the lawyers in the community are encouraged to assist the potentially impaired lawyer to find treatment or to transition from the practice of law. A mental health professional, the LAP, or another lawyer assistance program can be consulted for advice and assistance.

Inquiry #10:

Do the responses to any of the inquiries above change if the lawyer's impairment is due to some other reason such as substance abuse or mental illness?

Opinion #10:

No.

## Endnotes

1. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 03-429 (2003) (citing George Edward Bailly, *Impairment, the Profession, and Your Law Partner*, 11 No.1 Prof. Law. 2 (1999)) [hereinafter ABA Formal Op. 03-429].
2. This opinion does not address the issues that may arise under the Americans with Disabilities Act of 1990, 42 US C. §§12101 et seq. (2003) (the ADA) relative to an employer's legal responsibilities to an impaired lawyer. Lawyers are advised to consult the ADA and the Equal Employment Opportunity Commission's website, [eeoc.gov](http://eeoc.gov), for guidance.
3. "Firm" as used in the Rules of Professional Conduct and this opinion denotes "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation, government entity, or other organization." Rule 1.0(d).

4. “Partner” as used in the Rules of Professional Conduct and this opinion denotes “a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.” Rule 1.0(h).
5. It is improper for a firm to charge a client for additional supervision for an impaired lawyer if the supervision exceeds what is normally required to ensure competent representation unless the client is advised of the reason for the additional supervision and agrees to the charges. See Rule 1.5(a).
6. ABA Formal Op. 03-429 provides the following examples of accommodation: A lawyer who, because of his mental impairment, is unable to perform tasks under strict deadlines or other pressures, might be able to function in compliance with the [Rules] if he can work in an unpressured environment. In addition, the type of work involved, as opposed to the circumstances under which the work occurs, might need to be examined when considering the effect that an impairment might have on a lawyer's performance. For example, an impairment may make it impossible for a lawyer to handle a jury trial or hostile takeover competently, but not interfere at all with his performing legal research or drafting transaction documents.
7. One such program is the Transitioning Lawyers Commission (or “TLC”) of the North Carolina Bar Association, which considers issues of aging and cognitive impairment and helps lawyers to wind down their law practices to “retire gracefully.” See more at: [tlc.ncbar.org](http://tlc.ncbar.org).
8. ABA Formal Op. 03-429 cautions that when reporting an impaired lawyer pursuant to Rule 8.3, disclosure of the impairment may be necessary; however, the reporting lawyer should be careful to avoid violating the ADA.
9. ABA Formal Op. 03-429 counsels that, when providing a client with information about the departed lawyer, a firm lawyer “must be careful to limit any statement to ones for which there is a reasonable factual foundation.” This will avoid violating the prohibition on false and misleading communications in Rule 7.1 and the prohibition on deceit and misrepresentation in Rule 8.4(c).

# When “Helping” Hurts—A Guide for Law Firms and Families, Part 1

BY ROBYNN MORAITES

Most lawyers, regardless of practice area, are accustomed to solving others' problems and providing solutions. Lawyers are helpers by nature. While many of us may try to project a certain image, and despite whatever lawyer-joke-du-jour may be fashionable, most lawyers have big hearts and want to help people. It only makes sense that when a colleague or family member is struggling with alcoholism or addiction in any form, we want to help. But if we do not understand the disease of addiction (to alcohol or any other substance or process), our help can become a hindrance.

Do you remember “Opposite Day” as a child? When I was growing up, once a year all the elementary school kids and our teachers had an Opposite Day. It was great fun. The teacher would dramatically pronounce, “OK class, line up at the door,” and we would settle down at our desks. When she said, “Let’s settle down,” we’d all run to the door and line up to go outside to play. It always made for a fun day trying to figure out the coded messages of our teachers and friends.

Alcoholism is like Opposite Day. It turns everything on its head. Helping an alcoholic by enabling an alcoholic to avoid the consequences of addiction may feel like helping, but it actually hurts him and his chance of recovery. What feels to us like hurting or betrayal, actually helps an alcoholic find recovery. Let’s consider some real world examples.

When a non-alcoholic family member is in the middle of a contentious divorce (with lots of fighting at home), we may offer to have the kids stay over for a while and take them to school. When a non-alcoholic colleague has an unexpected family emergency, we may offer to cover for her and handle some work in the immediate short term. If a non-alcoholic friend suddenly became unemployed, we might be willing to lend money to

cover living expenses for a few months until he got back on his feet. If a non-alcoholic lawyer recently suffered a personal family loss and is grieving, judges and opposing counsel might go to great lengths to have cases continued. None of these helping impulses is wrong or misplaced. In fact, these are the very types of interactions that build connections and strengthen community, all of which are imperative for maintaining good mental health as a lawyer.

When carrying out these very loving, helpful actions while dealing with an alcoholic or addicted lawyer, however, suddenly “helping” becomes “hurting,” although it does not seem like it or feel like it to the one offering the help. Often, when family and friends try to help alcoholic or addicted lawyers, they are actually—albeit unwittingly—making it easier for the lawyer to continue in the progression of the disease. Whatever form of conventional help (as described above) we provide to someone who is engaged in the disease of addiction, that help often boomerangs and begins to hurt the addicted person (and us) because it allows him or her to avoid the consequences of the disease. The specific word for the phenomenon when help has crossed the line and starts to hurt is “enabling” because the help provided enables the disease to continue unimpeded.

The disease of addiction is progressive in nature; it builds up over time and gains momentum. Over any considerable period of time it gets worse, not better. What started out as the one-time lending of money or continuing of cases gradually turns into a pattern of behavior. Our first response is to give the lawyer the benefit of the doubt: “Joe is in a rough patch. Give him some time.” But usually a precedent has been set, so if Joe is an alcoholic or addict, he knows you are willing to cover for him in whatever way you have done so in the past. So he continues to come to you—maybe more frequently now— for



help. This help in turn allows him to continue to engage in the destructive behavior of his addiction while simultaneously avoiding the consequences. The person giving help (or even the law firm that continues to look the other way) has unknowingly and unconsciously become an ally of the disease. Wikipedia describes an ally as, “...people, groups, or nations that have joined in an association for mutual benefit or to achieve some common purpose, whether or not explicit agreement has been worked out between them.” Ouch. For those of us who only sincerely wanted to help, it can be a devastating blow to learn that we have been assisting the disease of addiction, not the lawyer who suffers from it. If we step out of the helper role, the alcoholic lawyer is forced to face consequences and may find recovery sooner. It can be hard to discover we have been actually hurting the alcoholic lawyer’s chance for recovery.

As long as the alcoholic lawyer has enabling devices and people in place, it is easy for him to continue to deny he has a problem, because most of his problems are being solved by those around him. Only when he is forced to face the consequences of his own actions and inactions will it finally begin to sink in how deep his problem has become.

Some of these choices are not easy for the friends or families of alcoholics. For example, if the alcoholic drinks up the money that was supposed to pay the utility bill, he is not the only one who will be living in a dark, cold, or sweltering house. The rest of the family will suffer right along with him. If the alcoholic lawyer is a high-profile, high-functioning lawyer with a reputable practice, the law firm may not want to suffer a revenue loss or reputational harm. (Not to mention, it is just plain hard emotionally for all of us to talk about these things.) So the firm as a whole may ignore a known, growing problem until one day a catastrophe happens in a public forum. Often times the firm is left with no choice but to fire the lawyer. But it does not need to happen this way.<sup>1</sup>

### When “Hurting” Helps

So let’s change the verbiage and now discuss what I will call “unconventional help,” which, to be frank, will feel to the helper like nothing less than a betrayal of the alcoholic lawyer friend or colleague. Unconventional help is an action (or a refusal to act) we take in response to requests for help from the alco-

holic lawyer that does not shield him or her from the consequences of the disease. In almost all cases, only when faced with consequences is an alcoholic or addicted lawyer able to begin to gain some clarity about the nature of the impairment.

The acts that truly help an alcoholic or addict are those actions (or inactions) which point the alcoholic in the direction of recovery. We may refuse to lend money, except to help pay for treatment (always give the money directly to the treatment center, not to the alcoholic or the family of the alcoholic). We may refuse to cover a case load or to have cases continued, unless it is because the lawyer goes to treatment. We may agree to represent the lawyer in a contempt hearing before a judge or a discipline matter before the State Bar on the condition that the lawyer agrees to get help and follows all directives from the EAP, LAP, or treatment center.<sup>2</sup> Saying “no” or setting these conditions can be very difficult for us (the helpers) emotionally, particularly because we can see so clearly what the impaired attorney cannot—the almost sure consequences coming down the pipeline. These actions can be very painful for us to carry out, and our

every instinct urges us to try to prevent those consequences and pain that he or she will face as a result. But remember, we’re living in Opposite Day when dealing with alcoholism or addiction. Sometimes when we cannot help an alcoholic up, we need to step out of the way as he or she falls down. It is sometimes only in that falling down that an alcoholic or addicted attorney can then begin to wake up to the situation and ask for help.

It may feel to us like we are hurting the alcoholic when we stop helping. In fact, depending upon how close we are to the addicted lawyer, he may actually accuse us of hurting him or of causing the consequences. If we are very tied to the person emotionally, while we understand intellectually we are not causing consequences, it can feel like we are because we are not preventing them from occurring. It is so important to remember that when the alcoholic lawyer is blaming us or others, it is just the disease talking. Because it is hard to remember this and not take the blaming personally, often the person who has been put into the helping role needs support of his own in order to stand his ground. The LAP offers this kind of support.

*The following short story is from one of our volunteers.*

Years ago when I lived in another state and before I enrolled in law school I began dating a man who lived downstairs from me in my quadraplex. He was a very successful computer engineer. One day he was unexpectedly fired from his job. He downplayed the incident and obtained another job of equal stature quickly. Then one day he was very late in meeting me for an event. When he arrived he seemed rushed and preoccupied. He said he had been tied up at work. I had no reason not to believe him. Soon after, he asked me for money so that he could make his car payment. I asked him why he needed it and he told me that he had some old debts he was paying off and had come up short that particular month. I was uneasy, but I lent him the money against my better judgment. Within the next few months things unraveled very quickly for him. I learned that he was a cocaine

addict, but he had managed to keep it hidden for years, even from me. I sincerely cared for this man, and we had been in a relationship for a few years at that point. I began attending Al-Anon meetings and open AA meetings to learn about the disease of addiction. In the few months that followed, he had four different jobs, eventually working part-time at a fast food burger place. He parked his car several blocks away from the quadraplex in an attempt to avoid repossession of the vehicle. He had been spending all of his money on cocaine and had not paid rent for many months. An eviction notice was served on him. At this point we were broken up, but I lived right upstairs and had helped him before. He continued to ask me for money to pay for his car and rent. I started saying no and it was incredibly difficult. He began blaming me, telling me that if he was evicted or had his car repossessed it would be my fault. I leaned heavily on my friends in Al-Anon for support during this time. Then the day came

that the car was repossessed. Soon after, he was evicted and asked if he could sleep on my couch. I said no. That was one of the hardest days for me, but it turned out to be the day he got sober. He had been attending AA off and on for the prior months, but that night he slept outside of an AA room, leaned up against the door. When the person came to make coffee for the 7 AM meeting, he was let in the AA room, and he spent the day there attending a bunch of meetings. He began a sincere program of recovery that day. He has not had a drink since and is now about 15 years sober. He is married with two children and is back to being a successful computer engineer. There was certainly no guarantee he would get sober if I said no to his request, but it was very clear to me he most assuredly would not have gotten sober had I said yes. I got out of the way and he was able to face his disease and recover. I do not take credit for him getting sober, I take credit for getting out of the way so that he could get sober. ■

If you know an attorney who you suspect may be an alcoholic or addicted, give the LAP a call. We can help guide and support you as you navigate what kind of help to offer. ■

*The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (for*

*Charlotte and areas west) at 704-892-5699, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.*

### Endnotes

1. Please tune in next quarter when we will be interviewing a managing partner who orchestrated an intervention some years ago with a leading lawyer in the firm.
2. Requiring treatment as a condition of representation is a practice known as therapeutic jurisprudence. There is a growing body of academic research in this area with guidance for lawyers, particularly in criminal practice. See David Wexler's work.

## New Look, New Logo, Same Program

This quarter marks the first official publication use of our new logo for the NC Lawyer Assistance Program ("LAP"). We will continue to roll out the new brand, logo, and look via a new website and updated collateral and print materials. I have now been the director of the LAP for a year and a half. After getting to know the program from the inside out, meeting with our dedicated volunteers across the state, and working with the LAP Board and staff, we have determined that due to the size of our program and its increasing diversity, we need to streamline and consolidate some aspects of our program.

### LAP History at a Glance

The Positive Action for Lawyers with Substance Abuse Subcommittee ("PALS") was formed in 1979 as a purely volunteer-run organization, formed to help alcoholic lawyers. PALS has been extremely successful. Then in 1998, several lawyers committed suicide. These suicides were not related to alcoholism or substance abuse. In response, the leadership of the Bar recognized the need to broaden PALS' mission to include issues of depression, anxiety, burnout, and other mental health issues. By that time, however, the PALS "brand" was totally associated with alcoholism and substance abuse. So an altogether new program was created to address depression, anxiety, and mental health issues: the FRIENDS program. The FRIENDS program developed its own logo and its own brand. The FRIENDS program was launched in 1999-2000 to widespread acceptance and success.

### Reorganization – Same Services and Same Program

The LAP is experiencing quite a bit of brand confusion. Lawyers do not realize PALS and FRIENDS are programs of the LAP. Because of this brand confusion, current and expected trends in our client base, and the need to offer targeted programs based on the broader role we now play, the LAP Board and staff are in the process of reorganizing and rebranding the LAP as a single program with a single name to address all issues that may be impairing to lawyers. *The LAP mission, approach, and services will remain the same.* Moreover, our active volunteer base is and will continue to be comprised of lawyers helping other lawyers overcome whatever impairing issues and challenges they face.

### New Logo and Symbolism

The new logo is based on Adolph A. Weinman's image for the "Walking Liberty" half dollar issued by the United States Mint from 1916 to 1947. The image has been modified, however, to remove her Depression-era hat, the drape of the flag, and her flowers. Those elements have been replaced with a crown of liberty and scales of justice, creating the more-familiar and widely-accepted image of the Lady of Justice. She strides towards the sun, with her hand extended. For lawyers dealing with depression, anxiety, alcoholism, or other impairments, the journey of recovery is one from despair to hope and is often described by many lawyers as moving out of the darkness into the light. Her extended hand represents the work that the LAP and its volunteers have done for four decades: reach-

Have you ever called in sick for the alcoholic because he or she was too hung over to go to work or school?

Do you ever make excuses for the alcoholic's drinking or behavior?

Have you ever lied to ANYONE (friends, family, neighbors, co-workers, bosses) to cover up for the alcoholic?

Have you bailed the alcoholic out of jail or paid his or her legal fees?

Have you accepted part of the blame for the alcoholic's drinking, behavior, or consequences?

Do you avoid talking about the alcoholic's drinking with him or her out of fear of the response?

Have you paid bills that the alcoholic was supposed to have paid?

Have you loaned the alcoholic money?

Have you tried drinking with the alcoholic in hopes of strengthening the relationship?

Have you given the alcoholic "one more chance" and then another and another?

Have you threatened to leave if the alcoholic didn't stop drinking and then did not leave?

Have you finished a job or project that the alcoholic failed to complete himself?

If you answered "Yes" to any of these questions you may have enabled the alcoholic or addict to avoid the consequences of his or her own actions.

ing out a helping hand to those who need it. And finally, she is not blindfolded. Instead, she sees those to whom she reaches while she also looks to the horizon and the path to be taken. It is a dynamic image that we hope conveys the compassion and strength that the Lawyer Assistance Program has come to be known for over its many years of assisting lawyers. ■



# When “Helping” Hurts—A Guide for Law Firms and Families, Part 2

BY ROBYNN MORAITES

*The LAP recently conducted an interview with a managing partner of a firm who years ago orchestrated an intervention with a leading lawyer in the firm. This example illustrates how a law firm can proactively address an issue of impairment. The following is taken from that interview and told from the point of view of the managing partner. In order to maintain the highest level of confidentiality, all gender-related personal pronouns have been removed.*

We have an attorney who started as an associate and came to us as a young lateral. The attorney worked with us for years without incident. The only thing we noticed was that the attorney partied a lot and bragged about it, but it was nothing too out of the ordinary. I did question the attorney’s judgment when the attorney got drunk at some firm functions early on, but the attorney’s performance was very competent. We had a lot of confidence in that attorney, and so did the clients. After the attorney had been with us for about seven years we were comfortable making the attorney a partner based on excellent work performance.

I never worked with the attorney personally; our practice areas did not overlap. But I always saw the attorney at our firm’s social events. Several years went on without incident, and then I started receiving reports occasionally from younger associate attorneys with whom the attorney worked. The reports at first were that the attorney wasn’t showing up to meetings with them or replying to their emails. They couldn’t get in touch. There was no oversight or supervision. No mentoring was occurring. Assignments would be made and that would be it. When they needed assistance, the attorney wasn’t available.

The attorney’s secretary brought to my

attention that the attorney had started changing and cancelling client appointments. The attorney was calling in sick a lot. I would have never known because we really didn’t see a significant drop in billable hours. There was nothing happening other than these reports that would have raised concern.

Then I noticed that the attorney did not look well and appeared hung over, but the attorney would always attribute it to something else. The attorney began looking pale and clammy, with circles under the eyes, and started to look disheveled. Interestingly, I never smelled alcohol. Soon we were all noticing the deteriorating health and learned of significant marital and financial issues. The attorney talked with some of the partners about these various issues, but never mentioned problems with drinking, nor did we ask about it.

About a year before the firm decided to take action, I talked to the then-current LAP chair about what to do. I decided to wait and watch. I didn’t want to be wrong. The attorney was still doing competent work, trying cases and winning them, so I was comfortable knowing clients were not being hurt. I wanted to give the attorney the benefit of the doubt. Everybody liked each other at the firm, but the attorney didn’t have any real social friends within the firm.

The situation deteriorated over the year with more of the same kind of reports, so I approached the partners individually. They had noticed some things as well, though nobody had the concerns I had. To their credit, they did not dismiss my concerns, and when I suggested I would call the LAP, they thought that was a good idea.

I went over the history and the signs with a LAP staff member who confirmed my suspicions and told me that we were going to need to confront the attorney to seek recovery. I was warned going into the



intervention, “The attorney will deny it and lie about it. That’s the pattern. Don’t tolerate it.”

We gathered all the partners together and brought the attorney in to talk. The attorney admitted the drinking problem, but thought it was something that could be handled without help. We told the attorney to get an evaluation from the LAP and if the LAP gave a clean bill of health, we would accept it. The attorney agreed to do this and met with a LAP staff person. The LAP concluded that there was a need for in-patient treatment, with the recommended length of stay of 90 days given the condition of the attorney.

We had another firm meeting then, and the attorney reported that the LAP staff person had recommended 90-day in-patient treatment. We all agreed with the recommendation. We told the attorney to follow what was recommended by LAP. The attorney understood our position but respectfully declined because of the financial consequences of taking three months off from work and the cost of treatment. The attorney claimed that family obligations precluded in-patient treatment and was also worried that clients would find out the reason for the departure.

We told the attorney that the firm would

lend money for treatment, but the response was that the attorney did not want to be in debt to us. The LAP staffer had alerted us that this was the likely response, so we were ready. We said—and this was the hardest part—that we wanted the attorney to get better, that the attorney was a valuable member of the firm, that we'd lend the money for treatment, that we'd pay for whatever the insurance wouldn't pay, but if the attorney didn't go to treatment then there would be no job at the firm. We threw the hammer down. The reaction was anger; in fact, extreme anger. But within a day or two, it sunk in that treatment wasn't optional. There was no choice and there were no other options. The attorney borrowed money from the firm to cover what the insurance would not cover and went to treatment.

While the attorney was in treatment, the partners obviously knew about it. In order to cover the workload, we had to tell some of the associates about the attorney's treatment because they were the ones who had to cover the work for three months. It was our understanding that the attorney would be completely incommunicado, so this had to be done. We didn't have any problems with continuances or the local bar, and we never had to tell opposing counsel anything specific. We said there were some personal issues that were keeping the attorney away from the office. No one asked any questions and we did not tell any clients.

There was a real willingness on the part of our partners to step in and provide help. No one even questioned it. We opted to continue to pay salary and insurance benefits during treatment. Everyone supported that decision and supported the attorney during this time.

When in-patient treatment was finished, the attorney came back into the practice. The attorney continued in a recovery program as well. The attorney doesn't talk about it much, except on the sobriety anniversary day. The attorney doesn't come to many firm social gatherings these days. We always drink at these events, so the attorney won't come to a firm cocktail party, but will attend a firm holiday dinner for a few hours. The loan was repaid, an action recommended by the LAP as an important part of the recovery process. It was an investment for the firm, but an extremely good one. Our attorney is one of our most successful and productive lawyers.

Over the years, I have seen a complete transformation. All aspects of the life of this attorney in recovery seem to be incredible these days. I have no idea how, but somehow the broken family life was repaired. Involvement with children increased. Physical fitness returned. Vacations are taken. Balance has been restored.

The attorney became an incredible mentor to young lawyers. Absence and a lack of instruction or guidance have been replaced by teaching, and very good teaching at that. The attorney is far more reliable and congenial and much more of a team player now within the firm.

The most amazing part is witnessing how a good practice has become an amazing practice. I was concerned initially because of the levels of stress at our firm and in that practice area in particular. It's stressful for the most stable of us, much less someone coming out of treatment. I worried it was too much to take on all at once. But the attorney stepped up to the challenge, and has had success like never before. The attorney is very skilled at winning really difficult cases, is in high demand, has brought tremendous success to the firm, and has great prospects. We always knew this attorney was an asset that we wanted to get better, and this attorney in recovery has exceeded our expectations in the process.

Best of all, the anger is gone. The anger turned into appreciation. The attorney's predominant emotion is one of extreme gratitude that everything happened the way it did. We all just have an incredible respect for what has been accomplished. It takes an extremely strong person to overcome alcoholism and battle for recovery.

My advice to a partner at a firm in a similar situation would be that if you see red flags and you're unsure if they're meaningful, call the LAP. Advice and guidance are sitting there waiting to be given. I didn't want to open up a can of worms if it wasn't necessary. The LAP staff person hit the nail on the head right away and really helped pull it all together for me. The LAP staff person said the LAP was there not just supporting our partner, but supporting the firm as well.

I understand more now that when red flags start to show up at work, that's usually the last domino to fall. When you see something, you need to take action right when you see it. I should have acted earlier when I started receiving those early reports of the attorney not working with the associates and

calling in sick a lot. Pay attention to those kinds of reports and listen to the people who work the most closely with the lawyer.

There was one time about a year after the attorney returned from treatment that I became concerned. I forget now exactly the incident or reason for my concern. I knew that because of confidentiality the LAP couldn't talk to me, but I could talk to the LAP. So I called and told the LAP staff person about my concerns. The LAP staffer listened and said, "Let me make some calls. I'll get back to you." I received a call a few days later assuring me that the LAP staffer had spoken to some of the volunteers who were mentoring the attorney and that there was nothing to worry about. It was suggested that in this scenario I should let the incident pass and not confront the attorney. The LAP staff person said that sometimes a confrontation might be called for, but that in this case with whatever my concern was, all was well. And it was.

Looking back, I feel like I should have done something sooner. But then again, people have to be ready for help. It has all worked out well and I am grateful for the guidance the LAP gave me and our firm along the way. ■

*The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may lead to impairing a lawyer's ability to practice. If you would like more information, go to [nclap.org](http://nclap.org) or call: Cathy Killian (for Charlotte and areas west) at 704-892-5699, Towanda Garner (in the Piedmont area) at 919-719-9290, or Nicole Ellington (for Raleigh and down east) at 919-719-9267.*

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## Transitioning Lawyers Commission

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Request a consult online  
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# TLC

## Transitioning Lawyers Commission

NORTH CAROLINA  
BAR ASSOCIATION  
SEEKING LIBERTY & JUSTICE

The Transitioning Lawyers Commission presents  
a multidisciplinary approach to planning and  
preparing for retirement, a period of transition  
which we all hope to face. The TLC is:

- A state bar-designated lawyer assistance program
- Completely confidential
- Part of the North Carolina Bar Association, a  
voluntary organization with no regulatory authority



## What is the Transitioning Lawyers Commission (TLC)?

We are members of the North Carolina Bar Association (NCBA) who want to work with lawyers in deciding on the best way to slow down and ultimately retire with dignity and grace. A project originated by the Senior Lawyers Division, our purpose is to provide support to lawyers as they wind down their active career in the law.

## What do we mean by "Transitioning"?

Life is filled with transitions, all of which signify the end of one phase of life and the beginning of another. Society has given some transitions a more positive connotation than others. TLC recognizes that the word "retirement" is too often viewed as a dead end. Retirement is actually just another transitional phase in life. Those who "retire" from the practice of law can still find activities which use their knowledge and skills to benefit society, but which impose less pressure in terms of deadlines and stress. And, maybe most important, many lawyers find ways to slow and wind down a practice as opposed to stopping cold turkey. TLC provides educational support as well as the support of other lawyers in working through the transitional process.

## What is "Transitional Support"?

TLC has been designated as a lawyer assistance program (LAP) by the North Carolina State Bar. Therefore, when a referral is made to TLC requesting transitional support for a lawyer evidencing cognitive impairment or similar issues impacting their ability to practice law, a team leader (a trained volunteer, experienced lawyer) is designated to work with the lawyer, family and colleagues to help identify the underlying issues leading to the referral. The team leader then works with the lawyer to determine the best next step for the lawyer, the public and the profession.

## What is "Transitional Support"? (continued)

The LAP designation provides an exemption to the team leader from the duty to report ethical violations to the State Bar. This designation permits individuals, including the attorney, to speak freely with the team leader so that an accurate understanding of the challenges being seen can be formulated.

Working with the neuropsychologists at Behavioral Health & Psychiatry, PA (HRC), along with help from the referral source, family and colleagues, the team leader will formulate a strategy to support the attorney. Support will include access to cognitive testing, an opportunity for consultation with a neuropsychologist and, if desired, a referral for a full cognitive assessment.

Our goal is to help lawyers explore their options. Whether they want to transition out of practice and don't know how to, or need to transition because of possible cognitive impairment, TLC stands ready to help protect their law firms and their reputations.

## Why the NCBA?

This program is available to all lawyers and judges in North Carolina. The Senior Lawyers Division began this program and TLC is building on its work. As members of a voluntary organization, the TLC team leaders approach the process extending the right hand of friendship and the respect of a colleague in working to address concerns that a lawyer who has had a distinguished career might be hanging on longer than is prudent. The NCBA has no regulatory authority. Our goal and purpose is to protect the public, protect the lawyer, and make every effort to encourage a graceful, professional transition from the practice of law to life's next phase.

For help or information, please call

**1.800.662.7407** and ask for TLC. To request a consult online, visit [tinyurl.com/TLCNCBA](http://tinyurl.com/TLCNCBA).



# An Important Free Resource for Lawyers

One of the free resources available to you as a State Bar member is the **Lawyer Assistance Program (LAP)**. From time to time, lawyers encounter a personal issue that, left unaddressed, could impair his or her ability to practice law. Accordingly, the LAP was created by lawyers for lawyers to assure that free, confidential assistance is available for any problem or issue that is impairing or might lead to impairment.

## Lawyers at Particular Risk

Of all professionals, lawyers are at the greatest risk for anxiety, depression, alcoholism, drug addiction, and even suicide. As many as one in four lawyers are affected. This means it is likely that you, an associate, a partner, or one of your best lawyer friends will encounter one of these issues. Whether you need to call the LAP for yourself or to refer a colleague, all communications are completely confidential.

## Anxiety and Depression

Anxiety and depression often go hand-in-hand. These conditions can be incapacitating and can develop so gradually that a lawyer is often unaware of the cumulative effect on his or her mood, habits, and lifestyle. Each condition is highly treatable, especially in the early stages. Asking for help, however, runs counter to our legal training and instincts. Most lawyers enter the profession to help others and believe they themselves should not need help.

The good news is that all it takes is a phone call. The LAP works with lawyers exclusively. The LAP has been a trusted resource for thousands of lawyers in overcoming these conditions.

## Alcohol and Other Substances

Often a lawyer will get depressed and self-medicate the depression with alcohol. Alcohol is a central nervous system depressant but acts like a stimulant in the first hour or two of consumption. The worse you feel, the more you drink initially to feel better, but the more you drink, the worse you feel. A vicious cycle begins. On the other hand, many alcoholic lawyers who have not had depression report that their drinking started normally at social events and increased slowly over time.

There is no perfect picture of the alcoholic or addicted lawyer. It may be surprising to learn that he or she probably graduated in the top one-third of the class. Also surprising, lawyers may find themselves in trouble with addiction due to the overuse or misuse of certain prescription medications that were originally prescribed to address a temporary condition. Use of these kinds of medications, combined with moderate amounts of alcohol, greatly increases the chances of severe impairment requiring treatment. The LAP knows the best treatment options available, guides lawyers through this entire process, and provides on-going support at every stage.



## Confidentiality

All communications with the LAP are **strictly confidential** and subject to the attorney-client privilege. If you call to seek help for yourself, your inquiry is confidential. If you call as the spouse, child, law partner, or friend of a lawyer whom you suspect may need help, your communication is also treated confidentially and is never relayed without your permission to the lawyer for whom you are seeking help. The LAP has a committee of trained lawyer volunteers who have personally overcome these issues and are committed to helping other lawyers overcome them. If you call a LAP volunteer, your communication is also treated as confidential.

The LAP is completely separate from the disciplinary arm of the State Bar. If you disclose to LAP staff or to a LAP volunteer any misconduct or ethical violations, it is confidential and cannot be disclosed. See Rules 1.6(c) and 8.3(c) of the Rules of Professional Conduct and 2001 FEO 5. The LAP works because it provides an opportunity for a lawyer to get **safe, free, confidential** help before the consequences of any impairment become irreversible.

---

*LAP recognizes alcoholism, addiction, and mental illness as diseases, not moral failures. The only stigma attached to these illnesses is the refusal to seek or accept help.*

---

[www.NCLAP.org](http://www.NCLAP.org)

FREE • SAFE • CONFIDENTIAL

*Know the signs. Make the call.  
You could save a colleague's life.*



### TAKE THE TEST FOR DEPRESSION

YES NO

- ☐ ☐ 1. Do you feel a deep sense of depression, sadness, or hopelessness most of the day?
- ☐ ☐ 2. Have you experienced diminished interest in most or all activities?
- ☐ ☐ 3. Have you experienced significant appetite or weight change when not dieting?
- ☐ ☐ 4. Have you experienced a significant change in sleeping patterns?
- ☐ ☐ 5. Do you feel unusually restless...or unusually sluggish?
- ☐ ☐ 6. Do you feel unduly fatigued?
- ☐ ☐ 7. Do you experience persistent feelings of hopelessness or inappropriate feelings of guilt?
- ☐ ☐ 8. Have you experienced a diminished ability to think or concentrate?
- ☐ ☐ 9. Do you have recurrent thoughts of death or suicide?

If you answer yes to five or more of these questions (including questions #1 or #2), and if the symptoms described have been present nearly every day for two weeks or more, you should consider speaking to a health care professional about treatment options for depression.

Other explanations for these symptoms may need to be considered. Call the Lawyer Assistance Program.

Adapted from *American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders*. Fourth Edition. Washington, DC. American Psychiatric Association: 1994.

### TAKE THE TEST FOR ALCOHOLISM

YES NO

- ☐ ☐ 1. Do you get to work late or leave early due to drinking?
- ☐ ☐ 2. Is drinking disturbing your home life?
- ☐ ☐ 3. Do you drink because you are shy with other people?
- ☐ ☐ 4. Do you wonder if drinking is affecting your reputation?
- ☐ ☐ 5. Have you gotten into financial difficulties as a result of drinking?
- ☐ ☐ 6. Does drinking make you neglect your family or family activities?
- ☐ ☐ 7. Has your ambition decreased since drinking?
- ☐ ☐ 8. Do you often drink alone?
- ☐ ☐ 9. Does drinking determine the people you tend to be with?
- ☐ ☐ 10. Do you want a drink at a certain time of day?
- ☐ ☐ 11. Do you want a drink the next morning?
- ☐ ☐ 12. Does drinking cause you to have difficulty sleeping?
- ☐ ☐ 13. Do you drink to build up your confidence?
- ☐ ☐ 14. Have you ever been to a hospital or institution because of drinking?
- ☐ ☐ 15. Do family or friends ever question the amount you drink?

If your answer is yes to two or more of these questions you may have a problem. Call the Lawyer Assistance Program.

FREE • SAFE • CONFIDENTIAL

Western Region

Cathy Killian 704.910.2310

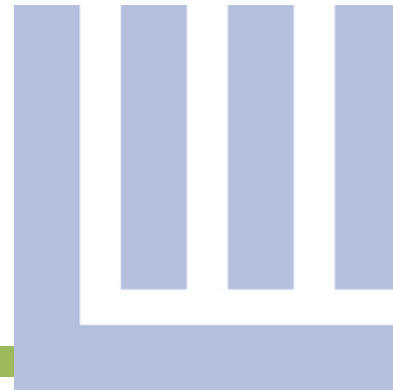
Piedmont Region

Towanda Garner 919.719.9290

Eastern Region

Nicole Ellington 919.719.9267





# Cyber Safeguards and Procedures



**LAWYERS  
MUTUAL**

LIABILITY INSURANCE  
COMPANY OF  
NORTH CAROLINA

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Post Office Box 1929, Cary, North Carolina 27512-1929

919.677.8900 800.662.8843 919.677.9641 FAX [www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)



[www.LawyersMutualNC.com](http://www.LawyersMutualNC.com)

🐦 @CamilleStell  
🐦 @LawyersMutualNC  
🐦 @SRC\_LM

## PROGRAM ROADMAP



- Threats
- Best Practices
  - Employee Training
  - Mobile Device Policies
  - Encryption
  - Email Security
  - Evolving nature of Insurance Products
- Q&A







Robert S. Mueller  
Director – FBI  
March 1, 2012

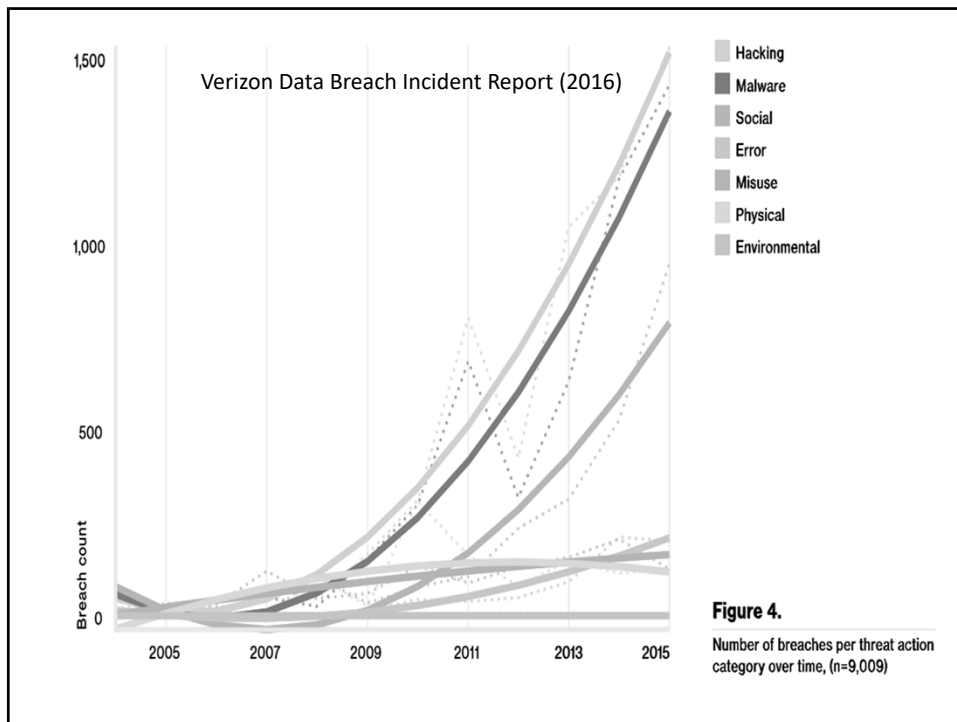
- I am convinced that there are only two types of companies: those that have been hacked and those that will be . . .



Robert S. Mueller  
Director – FBI  
March 1, 2012

- . . . . And even they are converging into one category: companies that have been hacked and will be hacked again.





## RPC 1.1 - COMPETENCE

- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with the technology relevant to the lawyer's practice*, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.
- Quoted directly from ABA Model Rule 1.1



## BUSINESS EMAIL COMPROMISE 'BEC SCAMS'

- FBI reports \$2.3 Billion in losses for October 2013 – February 2016, “though these figures probably underestimate the problem.”
- 270% increase in the last 18 months.
- Multiple instances involving North Carolina attorneys



## RISK MANAGEMENT ALERT

[WEBSITE](#) [YOUR POLICY](#) [RISK MANAGEMENT](#) [CLE](#) [CLAIMS](#) [ABOUT US](#)

August 2016

### WIRE INSTRUCTION FRAUD CONTINUES TO PLAGUE NORTH CAROLINA LAWYERS

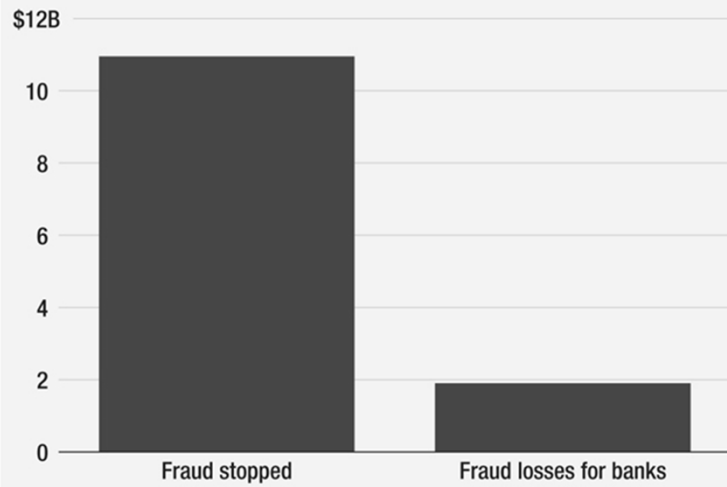
Over the last two weeks, Lawyers Mutual has received multiple reports of North Carolina attorneys who were targeted by scammers attempting to divert seller closing proceeds following real estate transactions. Unfortunately, several of these attacks were successful and hundreds of thousands of dollars were stolen and are very unlikely to be recovered. However, several attacks were foiled by attorneys and staff members who approached transactions with a high degree of skepticism.

- 3a) Faxed Wiring Instructions are not immune from fraud
- 8.) Charge to send wires
- 9.) Confirm transmission to the recipient



## Fraud Fighters

Banks have been getting better at detecting and thwarting attacks on deposit accounts, according to the ABA's latest Deposit Account Fraud Survey Report on incidents from 2014



Source: American Bankers Association

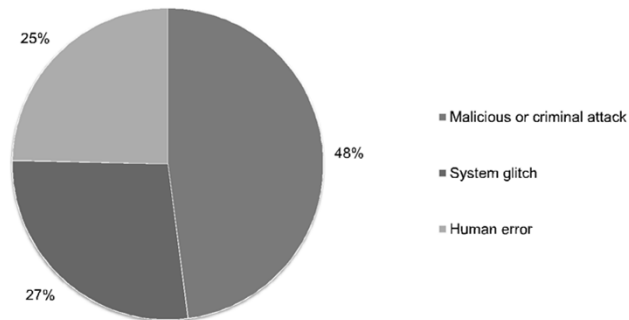


## THE 'CIA' DATA TRIAD



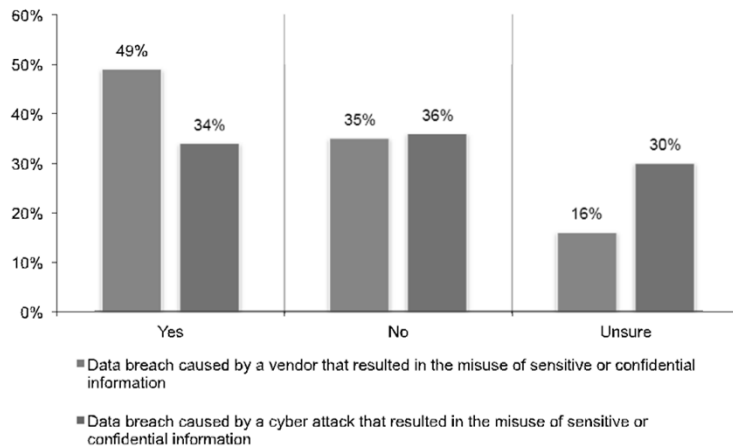
## THE 'B' WORD

**Distribution of the benchmark sample by root cause of the data breach**  
Consolidated view (n=383)



## THE 'B' WORD

**Figure 2. Has your organization experienced a data breach or cyber attack?**



Ponemon Institute: Data Risk in the Third-Party Ecosystem (April 2016)



## COST OF A DATA “INCIDENT”

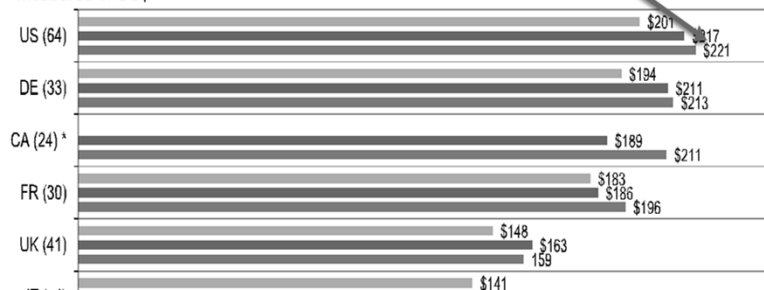
### Per capita cost over three years

Grand average for FY 2016=\$158, FY 2015=\$154, FY 2014=\$145

\*Historical data is not available in all years

(FY 2016=383, FY 2015=350, FY 2014=315)

Measured in US\$



Ponemon  
INSTITUTE



Robert S. Mueller  
Director – FBI  
March 1, 2012

- limit the data that can be gleaned from any compromise.
- segregate mission-centric data from routine information.
- incorporate layers of protection and layers of access

## ARE YOU READY?

- What data do you have?
- Where is that data stored?
- Who has access to the data?
- What data can be destroyed?



## ARE YOU READY?

- Where is your data stored?
  - Desktop or laptop
  - Cloud
  - Removable devices



## WHY DESTROY DATA?

- Expense of Storage
  - Server space (relatively minimal)
  - Employee time – KPMG calculates employees spend 30 minutes everyday searching through documents
- Contractual Obligations
- Litigation considerations
- Statutory or regulatory considerations



## REGULATIONS

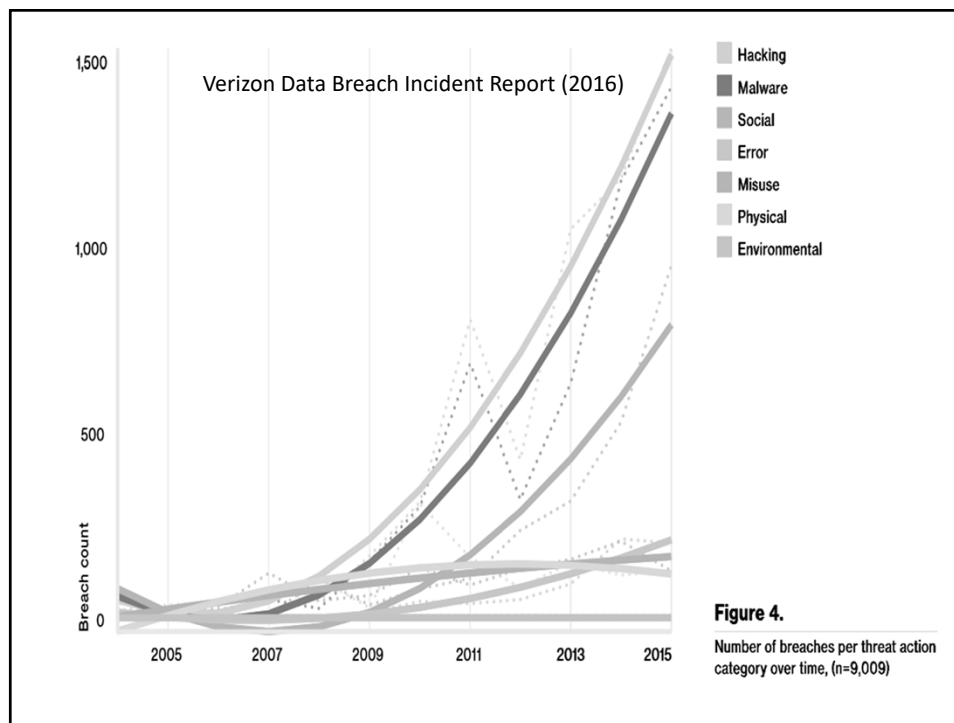
- N.C. Gen. Stat. § 75-65.
  - Notify the Consumer Protection Division of the Attorney General's office without unreasonable delay if notice is given to individuals.
  - Additional reporting requirements if notice is given to more than 1,000 individuals.





## DATA BACKUPS (AVAILABILITY AND INTEGRITY)

- Protects against:
  - hardware failure
  - data loss
  - data corruption
  - ransomware
- Many options for backing up data
  - Tape / DVD Backup
  - External Hard Drives
  - Cloud Storage
- TEST !!



## BEST PRACTICES – USER AUTHENTICATION

- Unique logins
- Strong Passwords
- Multi-Factor Authentication



### MULTIFACTOR AUTHENTICATION



## PASSWORD SECURITY

- Passwords
  - Quarterly updates
  - Alphabet soup



- Example:  
nWsibupcsbOoaAmnd:4USC
  - Hint: NSA proof



## EMPLOYEE TRAINING

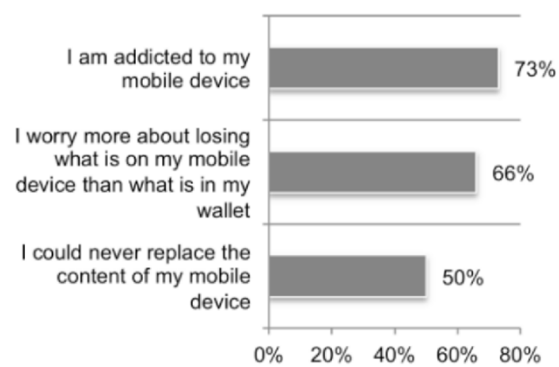


## MOBILE TECHNOLOGY



## USE OF MOBILE TECHNOLOGY

**Figure 1. Mobile devices are increasingly important to us**  
Strongly agree and agree responses combined



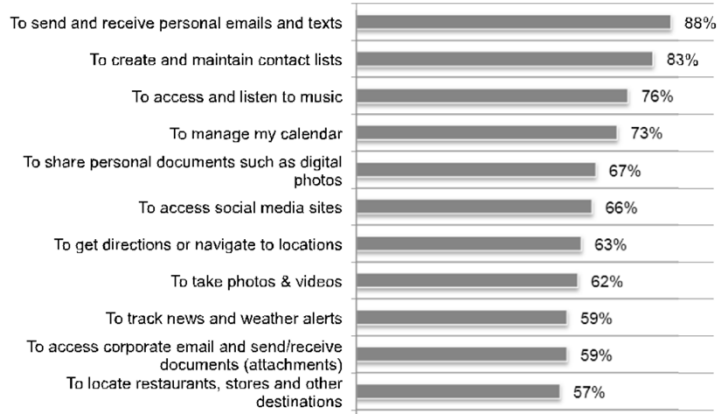
Ponemon Institute: How much is the Data on Your Mobile Telephone Worth?  
(January 2016)



## USE OF MOBILE TECHNOLOGY

**Figure 2. Primary uses of mobile devices**

More than one response permitted

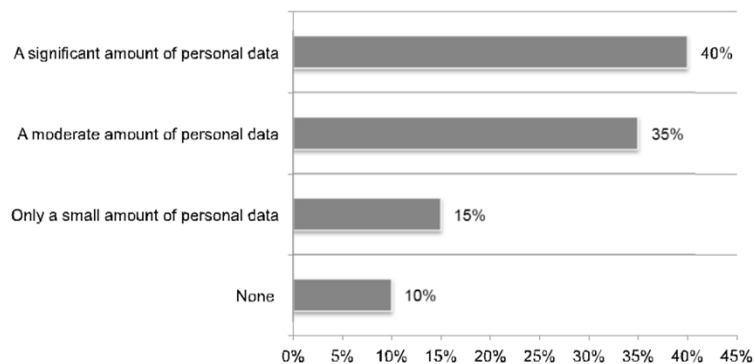


Ponemon Institute: How much is the Data on Your Mobile Telephone Worth?  
(January 2016)



## USE OF MOBILE TECHNOLOGY

**Figure 4. How much personal data do you store on your mobile device**



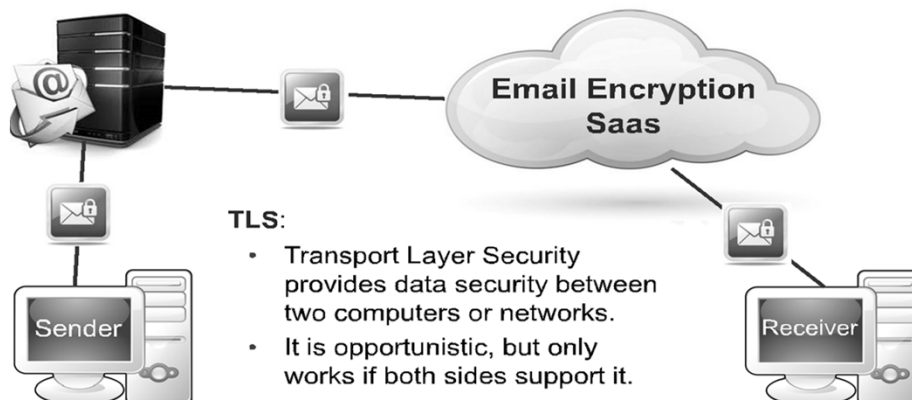
Ponemon Institute: How much is the Data on Your Mobile Telephone Worth?  
(January 2016)



- Identify the devices in use
- Limit the types of devices that can be used
- Encryption
- Ability to wipe remotely
- Provide support
- Policies and procedures



Email encryption protects the contents of email from being read by entities other than the intended recipient.



Source – Investors Title Insurance Company



## REMOTE ACCESS

- Public Wi-Fi is just that – public
- Require use of a VPN



- Industry is chaotic and not standardized
- Remediation Assistance
- 1<sup>st</sup> Party / 3<sup>rd</sup> Party Loss Distinction
- Frequently Law Firms weave together coverage of cyber and crime policies with appropriate riders
- Be careful of exclusions



## IMMEDIATE ACTION PLAN

- Encrypt all Laptops
- Encrypt all Mobile Devices
- Encrypt all Removable Media
- Stop using Free Email services
- Schedule Employee Training



## CONTACT US

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Tele: 919.677.8900 | 800.662.8843  
[www.lawyersmutualinc.com](http://www.lawyersmutualinc.com)

Follow us on Twitter at **@LawyersMutualINC**, **@LMLNC\_SRC**,

Like Us on Facebook  
Connect with us on LinkedIn





## Wire Instruction Fraud Continues to Plague NC Lawyers

Recently, Lawyers Mutual has received multiple reports of North Carolina attorneys who were targeted by scammers attempting to divert seller closing proceeds following real estate transactions. Unfortunately, several of these attacks were successful and hundreds of thousands of dollars were stolen and are very unlikely to be recovered. However, several attacks were foiled by attorneys and staff members who approached transactions with a high degree of skepticism.

While the details of the recent scams are emerging, it appears hackers first became aware of the closing by compromising email accounts of differing parties. Sometimes the attorney account was compromised, sometimes the Seller's account was compromised but the most common scenario was the Realtor's account was being monitored by international criminal organizations. The foreign-based hackers would observe the account, likely for several weeks, and only actively intervene once an understanding of the business practices were obtained and a significant wire was to be produced. In the interim, the unsuspecting Realtor would continue to use the account unaware his or her client and the closing attorney were being set up to be robbed.

Below are some tips which will help your office avoid falling victim to the latest series of scams.

### Best Practices to Avoid Falling Victim:

1. EVERY wire request should be verified and the more personal the verification, the better.

The best way to verify wiring instructions is to have the Seller sign the wiring instructions at the closing ceremony in the presence of the attorney. We know of no wire fraud which has taken place when this has occurred, and even if it did, the closing attorney would likely be insulated from liability by the doctrine of contributory negligence.

If the Seller is unable to attend the ceremony, we recommend the wiring instructions be included in the same package in which the deed is delivered. In these situations, have the Seller sign wiring instructions and have the signature notarized, if possible. Even then, we recommend the Seller verify the closing instructions over the telephone via a call initiated by the law office, using contact information from very early in the file prior to any discussion of proceeds and wires.

Confirming a telephone call verification via email is a good practice and a great way to document the file. **However, an email verification alone is inadequate.**

2. Do not accept changes to wiring instructions.

3. If wiring instructions are attached to an email from a free email service (gmail, yahoo, aol.com, nc.rr.com, etc.) they should be assumed to be fraudulent and extra diligence should be taken in the verifying their authenticity. Sometimes hackers will set up an alias account with a very similar name (frequently dropping or swapping letters) to send modified instructions so the authentic user is not aware of their presence. Examining the account name in detail is a good idea; however, as the hacker already has access to the original account, he or she may be not take this step and will use the same account that all other correspondence used.
4. Real Estate attorneys should not be using free email accounts. These accounts have major security concerns and are likely being mined for data by their providers in violation of Rule 1.6 of the Rules of Professional Conduct. In addition, these are very unlikely to be compliant with the ALTA Best Practices.

If you are currently using a free service, immediate action should be taken to find a more secure and professional alternative. In the interim, it is possible to see when and from where the free account was recently accessed. Here is a link explaining how to do it for gmail accounts: <http://www.groovypost.com/howto/check-gmail-login-activity/>. Other services should have similar abilities. If you see suspicious activity, please immediately change account passwords and contact your professional liability carrier along with your cyber or crime carrier.

5. Be very suspicious of wires going to any account that is not in the name of the Seller. Also, be suspicious of any account with a geographic location different than the Seller. Why is a North Carolina Seller relocating to New York sending a wire to Wisconsin? There are some reasons for the different names and odd locations, but these are red flags which should be explored in detail (and not via email).
6. Do NOT send wires overseas. Once money leaves the United States, it is likely gone forever.
7. Regularly change your passwords.

We understand these policies appear harsh and some pushback may occur. However, hacking crimes can be devastating to a law firm's finances and reputation. Explaining the policy up front is a good way to limit negative actions. Below is sample language I recommend to be included in your Seller engagement letter:

#### Funds Availability Policy.

It is our goal to make real estate commission checks and funds available as soon as practical following closing. However, NC State Bar Rules expressly prohibit disbursing any closing funds prior to recording. Should you request funds be wired, our office can accommodate the request for a fee of \$\_\_\_\_.00. In order to prevent fraud and protect your proceeds, all wiring instructions will be verified and you will be required to sign the instructions at the closing ceremony. **THIS OFFICE WILL NOT ACCEPT CHANGES TO WIRING INSTRUCTIONS.**

**§ 75-65. Protection from security breaches.**

- (a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.
- (b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.
- (c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.
- (d) The notice shall be clear and conspicuous. The notice shall include all of the following:
  - (1) A description of the incident in general terms.
  - (2) A description of the type of personal information that was subject to the unauthorized access and acquisition.
  - (3) A description of the general acts of the business to protect the personal information from further unauthorized access.
  - (4) A telephone number for the business that the person may call for further information and assistance, if one exists.

- (5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.
  - (6) The toll-free numbers and addresses for the major consumer reporting agencies.
  - (7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.
- (e) For purposes of this section, notice to affected persons may be provided by one of the following methods:
- (1) Written notice.
  - (2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.
  - (3) Telephonic notice provided that contact is made directly with the affected persons.
  - (4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:
    - a. E-mail notice when the business has an electronic mail address for the subject persons.
    - b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.
    - c. Notification to major statewide media.
- (e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.

- (f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.
- (g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.
- (h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision; or a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration; and any revisions, additions, or substitutions relating to any of the said interagency guidance, shall be deemed to be in compliance with this section.
- (i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.
- (j) Causes of action arising under this Article may not be assigned. (2005-414, s. 1; 2009-355, s. 2; 2009-573, s. 10.)

# Incident Response Plan

## Policies & Procedures For Incident Response

Organization: \_\_\_\_\_

Serial Number: \_\_\_\_\_

Date: \_\_\_\_\_

**Confidential**  
Not for Disclosure  
Without Written  
Permission



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## Approval Signature

I have approved this Incident Response Plan as reasonably designed to enable our Company to meet its compliance requirements as well as our continuing service commitments to our members in an incident.

Signed: \_\_\_\_\_

Title: (Chairman, President, etc....)

Date: \_\_\_\_\_

## Introduction

Our incident response plan has been developed to reduce the exposures to our organization, our customers/employees, and our partners that arise out of a data theft or data loss incident. We have an affirmative duty to protect our customer information and to properly respond to an incident that is both part of our Security Plan and that is required by law. **(Your State Law)**

In order to comply with **(Your State Law)** and following our Security Plan, our incident response plan specifically includes policies and procedures to:

- Assess the nature and scope of an incident, and identify what customer information systems and types of customer/employee information have been accessed or misused
- Contain and control the incident to prevent further unauthorized access to, or misuse of, customer information, while preserving records and other evidence
- Notify appropriate law enforcement agency
- Maintain or Restore Business Continuity
- Notify customers/employees when warranted

This plan further outlines procedures that we will implement and/or consider in the event an incident occurs. All staff is required to be familiar with this plan and supervisors have been instructed to share this plan with their staff.

It is important to note that our obligations under this plan extend to the information shared with and/or managed by our vendors. Therefore, it is our policy to monitor and review what third party vendors have our information and how we and/or they will respond to an incident occurring in their operations.



## Incident Response Team

Considering the size of our **Company**, we have set forth the following procedures in our Security Plan and at the direction of management responsible for overseeing its development, we have created an incident response team or have appointed a **Company** individual that is assigned with the duties to implement, review, test, and modify the incident response plan, as appropriate.

While developing our team, we have considered the size of our organization, available staff, staff expertise, budget resources and exposures to incidents. Where we have determined that we lack any specific expertise or other internal resources that are needed to carry out team assignments, we have considered the value of and made preparations for using third party experts. It is our policy and goal to be prepared for and competently respond to an incident.

The team's roles and responsibilities are communicated to all **Company** staff. Similar communication is provided if, and when, there are changes to the team, or its roles and responsibilities.

In order to measure the effectiveness of the team, it is our policy to evaluate the team's performance and preparedness, at least annually. While our evaluation may be conducted by management, staff, outside experts, and/or by the team's self assessment, the evaluation will consider the following:

- Benchmarking or comparing to other Incident Response Teams
- General discussions with management, team members and staff
- Surveys dispersed to management, team members and staff
- An audit by a third party knowledgeable in incident response plans, policies and procedures and actual incidents

Additional information that may be made available during the evaluation process may include:

- Number of reported incidents
- Response time
- Number of incidents successfully resolved
- Information or updates that have been supplied to the organization
- Whether or not security issues remain within the organization and what they are
- Preventive measures or practices in place, are being implemented, or pending further review

In an effort to maintain awareness of the incident response plan and its team, it is our policy to distribute the following team member contact sheet to all staff and to post the contact sheet in a convenient and conspicuous location.

## Incident Response Contact Sheet

Date:

Incident Response Manager: (name)

(telephone)

(mobile)

(email)

Responsibility: \_\_\_\_\_

\_\_\_\_\_

Incident Response Manager: (name)

(telephone)

(mobile)

(email)

Responsibility: \_\_\_\_\_

\_\_\_\_\_

Incident Response Manager: (name)

(telephone)

(mobile)

(email)

Responsibility: \_\_\_\_\_

\_\_\_\_\_

Incident Response Manager: (name)

(telephone)

(mobile)

(email)

Responsibility: \_\_\_\_\_

\_\_\_\_\_

**Confidential**  
**Not for Disclosure Without**  
**Written Permission**

## Suspecting or Detecting an Incident

In the event an incident is suspected, is actually occurring, or has actually occurred, it is our policy to have the staff member that becomes aware of the circumstance to report the event as an incident to their immediate supervisor. In the event a staff member is unable to communicate with their supervisor, contact is to be escalated to any one of the Incident Response Team Members, as identified in the Incident Response Contact Sheet.

The following definitions are adopted to interpret what constitutes an incident:

### Incident

Any perceived, actual, or successful attempt to gain unauthorized access to or use of customer/employee information that could result in substantial harm or serious inconvenience to a customer.

(Incidents may arise out of or include breach of data confidentiality, stolen computer, laptop, PDA, or storage device, data modification / destruction, unauthorized use of data, computers or changes to computers and any attempts of the above, a computer virus, computer spyware, burglary, pre-text calls, and more. Incidents may also be detected based on anomalies in information, unusual behavior by customers or staff, and notification by a customer, vendor, or law enforcement, etc.)

### Customer/Employee Information:

Any record containing nonpublic personal information about a customer/employee, whether in paper, electronic, or other form, maintained by or on behalf of the **Company**.

Employee/customer information that is considered sensitive in nature is as follows:

Name, address, or telephone number, social security number, financial institution account numbers, a personal identification number or password that would permit access to the customer's or employee's account. Sensitive customer's and employee's information also includes any combination of components of customer's and employee's information that would allow someone to log onto or access the customer's and employee's account, such as a user name and password or password and account number.

Following the detection of an actual or perceived incident, staff is instructed to complete the following Incident Response Discovery Form and forward it to their supervisor or an incident response team member, as appropriate.

## Incident Response Discovery Form

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Your Name: \_\_\_\_\_

Dept: \_\_\_\_\_

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

Location Where Occurred: \_\_\_\_\_

Date Discovered: \_\_\_\_\_

Time Discovered: \_\_\_\_\_

Who Discovered: \_\_\_\_\_

Please Provide A Description Of The Incident Below:

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Name of Supervisor Contacted: \_\_\_\_\_

Contact Number of Supervisor: \_\_\_\_\_

Incident Response Manger Contacted: \_\_\_\_\_

Contact Number of Incident Manager: \_\_\_\_\_

## Incident Assessment and Analysis

The internal and external environment of our **Company** is subject to constant change. Therefore, it is our policy to assess each incident based on its own unique merits and characteristics.

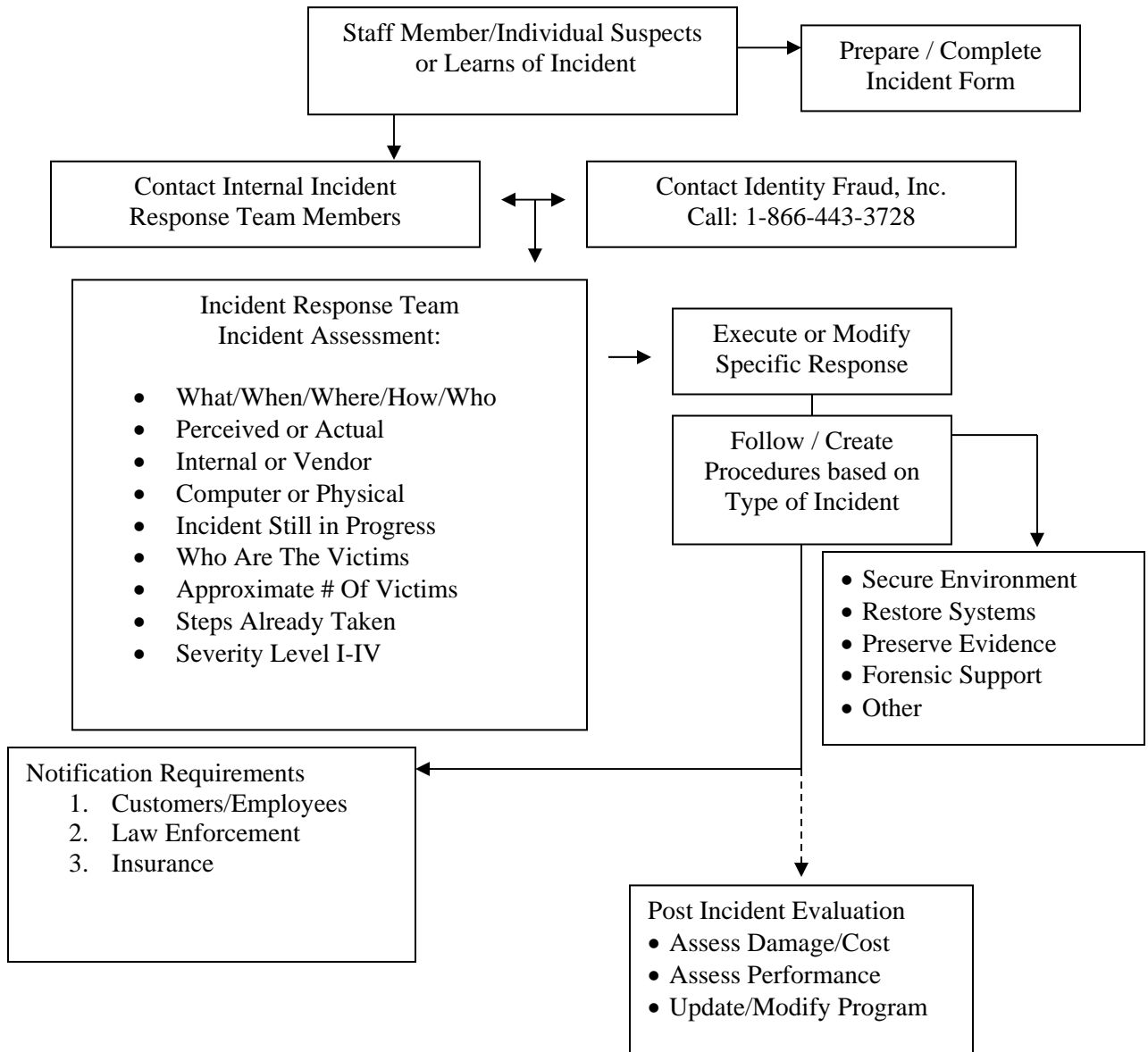
Upon assessing the incident, we shall consider the following:

1. Is the incident perceived or real?
2. Is the incident arising internally? Or, externally at a vendor?
3. Is the incident “live” and still in progress?
4. What is the threat targeting?
5. What type of incident is it?
6. Is the incident singular or part of a multi-faceted attack?
7. What evidence exists?
8. Will evidence be preserved?
9. What steps have already been taken to remedy the incident?
10. What is the estimated severity?
  - a. Level 1 – Life Threatening?
  - b. Level 2 – Threat to Customer/Employee (Sensitive) Data?
  - c. Level 3 – Threat to Operating or Computer Systems?
  - d. Level 4 – Will Services be Disrupted?
11. Can the incident be contained?
12. Will containment efforts alert the attacker?
13. How might the incident evolve?
14. Can the incident reoccur?
15. What are worst-case & reasonable scenarios?
16. Is the incident an emergency?
17. Is outside assistance to assess or remedy the incident justified?
18. How will normal operations resume?
19. What additional assessment criteria are needed?

Following the incident assessment, team members will create an incident response strategy and will carry out duties to execute the incident response strategy according to established and/or new policies and procedures. For illustration and reference purposes only, the following flow chart is provided.

## Data Breach Incident Response Flow Chart

Sample Only



## Notification

As a business subject to regulations and laws, and as a business that emphasizes the value of customer/employee trust and loyalty, it is our policy to notify the following parties in the event of an incident.

1. Our President, CEO, Board of Directors and our Security Division
2. Appropriate law enforcement authorities
3. Customers and employees, when warranted

We are given a reasonable time to investigate. A determination will need to be made regarding the likelihood that information has been or will be misused or is reasonably possible to be misused. While notice to customers/employees may also be delayed if law enforcement is involved in an investigation and if such notice will interfere with the investigation, it is our policy to provide notice to customers/employees as soon as notification will no longer interfere with such investigation.

During our investigation of an incident, we will need to determine which customer/employee information has been improperly accessed, if any. In the event we are able to determine that a group of files has been improperly accessed, but are unable to identify which specific customer/employee information has been accessed, notification will be made to all customers/employees in the group if we determine that misuse of the information is reasonably possible.

## Customer/Employee Notice Content

The content of the customer/employee notification will be given in a clear and conspicuous manner that provides a description of the incident, including the type of customer/employee information that is the subject of unauthorized access or use. Other content that we will consider includes:

- What the **Company** has done to protect the information from further unauthorized access or use
- A telephone number the customers/employees may call for further information and assistance
- A reminder that customers/employees should remain vigilant over the next twelve to twenty-four months and to promptly report incidents of suspected identity theft to their financial institution(s) and law enforcement
- Recommendations that the customer/employee review account statements and report suspicious activity
- A description of credit bureau fraud alerts and how they may be obtained
- Recommendations that the customer/employee periodically obtain credit reports and have information relating to fraudulent transactions deleted from their records
- An explanation of how to obtain credit reports free of charge

- Information about the Federal Trade Commission's website, phone number, and online identity theft resources and guidance on preventing identity theft
- Other customer/employee remedies provided by the (Company) at no cost to the member

Customer/employee notice will be delivered in a manner designed to ensure that a customer/employee can reasonably be expected to receive it, either by phone, letter, email, or similar communication.

## Customer/Employee Notification Letter

### Sample Only

The following notification letter illustrates content that we may include in a response.

-----

Date

First Name Last Name

Address

City, State, Zip Code

RE: Incident Subject / Your Personal Information

Dear First Name Last Name:

We are writing to let you know that as a result of the recent **data breach** and attempt to misappropriate your personal information, **(Company's Name)** is taking steps to help protect your identity.

The personal data that was potentially exposed includes **your name, address, telephone number, account number, social security number .....**

Although we have no indication that your personal information has been abused, we take the protection of your account information and your identity very seriously. Therefore, we are implementing the following precautionary measures to protect you.

- We have placed a warning flag on your customer/employee file.
- We will take additional steps to confirm your identity as the customer/employee of the file whenever you contact us.
- We have established a dedicated phone number at **(Company's Name), (123) 456-7890 or toll-free (800) 456-7890**, to answer your questions and provide additional information. This number will be available **Monday through Friday from 8:00 am to 6:00 pm and Saturday from 9:00 am to 5:00 pm.**
- **(Company's Name)** will pay the cost of enrollment for a one-year membership in the **Identity Fraud, Inc. Identity Protection Plan**, customized especially for our members. This service, at no cost to you, starts today and provides:

**Confidential**  
**Not for Disclosure Without**  
**Written Permission**



- Access to VRS Elite™ fraud resolution counselors (24/7) to answer questions you have and to help resolve any circumstances relating to identity theft, whether simple or complex. Simply call IFI toll-free at **1-866-4-IDFRAUD** (1-866-443-3728).
- \$25,000 of identity insurance (\$0 deductible) to cover certain expenses you may incur as a result of identity theft.
- Credit Report Monitoring, which will monitor your Experian credit file and send an email to you of any unusual activity on your credit file. *(Your enrollment is required)*
- One free copy of your credit report
- Access to the IFI Members Section for additional benefits, including educational materials, newsletters, discounts on additional products, and more

To enroll in the Credit Monitoring program, please call Identity Fraud, Inc. at 1-866-443-3728 between the hours of 8:00 am to 5:00 pm, Monday through Friday, Pacific Standard Time.

**As an additional precaution, you may want to consider taking the following step:**

- You may want to place a FREE 90-day initial **Security Alert** on your credit bureau file. The Security Alert, which can be requested only by you, provides another significant layer of protection by flagging your credit file for additional scrutiny by potential lenders. If you choose to activate a Security Alert, you need to successfully activate the alert with only ONE of the three main credit reporting agencies listed below. The agency you report to will automatically notify the other two agencies, as required by law. Their contact information is:

**Equifax**  
1-888-766-0008

**Experian**  
1-888-397-3742

**TransUnion**  
1-800-680-7289

(Company's Name) is committed to protecting the confidentiality of our customer/employee personal information. While we regret any concern or inconvenience the recent incident may cause you, both **Identity Fraud, Inc.** and (Company's Name) believe the above items will help protect you from potential identity theft, no matter what type or how it may occur.

Please do not hesitate to contact us if we can assist you in any way.

Sincerely,

First Name Last Name

President and CEO

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**Not for Disclosure Without**  
**Written Permission**

## **Additional Policies and Procedures**

### ***Documentation***

Documentation of an actual or perceived incident will include but not be limited to information relating to the person(s) that discovered the incident, suspect(s), incident assessment, strategic response, hard copy evidence, electronic evidence (computer logs, emails, telephone recordings, etc.) meeting notes, damage, and costs.

### ***Damage / Cost Assessment***

Prior to an incident occurring and during and after an incident occurs, attempts will be made to quantify the potential damage to the **Company** and the associated costs to contain and remedy the incident.

### ***Insurance***

Insurance coverage may or may not apply to incidents. Therefore, we will conduct a review to better determine when insurance may or may not apply to various incidents and whether or not insurance applies to any specific incident that is occurring. We will consult our professional insurance advisor/broker and/or company, as necessary.

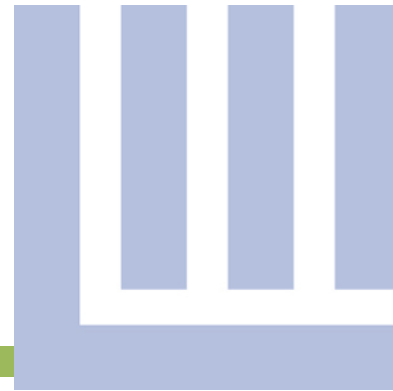
### ***Review and Adjust***

Following an incident, **Company** and incident response team will review its performance and take appropriate steps to improve its prevention and response efforts and to improve its policies and procedures to better avoid the recurrence of incidents.

### ***Board of Directors Management and Reporting***

It is our policy to provide a report, at least annually, to management and/or the Board of Directors regarding the status and condition of our incident response plan and team. Furthermore, following an actual incident or testing of an incident, a report will be prepared and distributed to the appropriate parties.

## **End of Document**



## Speaker Biographies

**Jonathan W. Biggs, Vice President – Director of Risk Management & Education; Investors Title Insurance Company**

Contact Info: [jbiggs@invtitle.com](mailto:jbiggs@invtitle.com) | 919.945.2597

Jon Biggs oversees risk management functions related to Investors Title's approved provider system. In this role, he oversees the approval process, develops educational seminars and communications-based initiatives involving approved providers and agents, and manages provider data and analysis related to the company's risk management efforts. Prior to joining Investors Title in 2012, he was partner at a firm in Durham, North Carolina where he practiced residential and commercial real estate law for more than 20 years. Mr. Biggs holds a bachelor's degree from Duke University and a Juris Doctor from Wake Forest University School of Law.

**Tom Boyle; TrustBooks**

Contact info: [tom@trustbooks.com](mailto:tom@trustbooks.com) | 844.256.8382

Tom Boyle is Co-Founder of TrustBooks, web-based software for managing trust activity in compliance with state bar requirements. TrustBooks is simple and intuitive, so trust accounting isn't intimidating. Prior to TrustBooks, Tom owned Boyle CPA, a CPA firm that provided accounting and consulting services to small businesses with a focus on law firms. TrustBooks offers a 30 day free trial at [www.trustbooks.com](http://www.trustbooks.com).

**Matt Cordell, Parter; Ward and Smith**

Contact info: [mac@wardandsmith.com](mailto:mac@wardandsmith.com) | 919.277.9196

Matt Cordell's practice encompasses a broad spectrum of business and regulatory matters, with a particular emphasis on financial institutions and financial services. He handles business transactions, securities offerings and reporting, mergers and acquisitions, corporate matters, lending and financing, consumer protection compliance, and privacy and information security issues, as well as a variety of matters involving government and quasi-governmental entities.

Mr. Cordell is leader of the Privacy and Information Security Practice Group, and is a Certified Information Privacy Professional. He has been a frequent writer and speaker on privacy and information security issues, as well as on corporate, banking and commercial law matters. Mr. Cordell has been rated by his peers as being "preeminent" in his fields of law, and has been recognized by a number of organizations and peer surveys. He is an active leader in the legal profession, serving in a number of statewide leadership roles, including as Chair of the North Carolina Bar Association's Young Lawyers Division.

In addition to his passion for helping his clients meet their goals, Mr. Cordell enjoys contributing to his communities. He devotes significant time to providing free ("pro bono publico") legal services for the benefit of those in his communities.

**Charles F. Marshall, Partner; Brooks Pierce**

Contact info: [CMARSHALL@brookspierce.com](mailto:CMARSHALL@brookspierce.com) | 919.573.6247

Charles Marshall has counseled companies responding to data breaches, including notifications to consumers, state regulators, insurers and vendors in various states. He also helps companies identify data privacy issues on the “front-end” and implement policies to reduce the risk of a future data breach. Charles also helps digital media and e-commerce companies draft privacy policies for online services and mobile applications and to avoid risks.

Charles draws on his media law experience to help clients identify and address digital and social media content, including copyright, trademark, right of publicity, and online marketing issues. He has worked with “start-up” online services, large media companies and even a national presidential campaign.

**Robynn Moraites, Executive Director; NC Lawyers Assistance Program**

Contact Info: [Robynn@nclap.org](mailto:Robynn@nclap.org) | 704.892.5699 (Charlotte Office) or 919.706.4992 (Raleigh Office)

Robynn Moraites is a medical educator and a lawyer. She graduated from Florida State University, *magna cum laude*, with a BS degree. Her work as a medical educator at the University of Miami School of Medicine included running a public health program where she developed continuing education programs for medical professionals and organized events for targeted, hard-to-reach professional populations.

Robynn attended the University of North Carolina School of Law and in 2004 earned her JD with honors along with a masters degree in city and regional planning. Her first position after law school was with what is now McGuire Woods, formerly Helms Mulliss & Wicker, where she worked with the litigation and environmental practice groups. From there she transitioned to an in-house counsel position with Premier, Inc., a national health care company. Subsequently, she joined the firm of Bringewatt & Snover, where she developed a general commercial practice, specializing in municipal, education, and health care law. She left Bringewatt & Snover in 2011 as a partner to take the position of director of the North Carolina Lawyer Assistance Program.

**Marc C. Tucker, Partner; Smith Moore Leatherwood**

Contact info: [Marc.Tucker@smithmoorelaw.com](mailto:Marc.Tucker@smithmoorelaw.com) | 919.755.8713

Marc Tucker, Marc is a member of the litigation team practicing in the Smith Moore Leatherwood’s Raleigh office. He advises and represents clients in state and federal court in a diverse range of litigation matters including transportation, business disputes, insurance coverage, and catastrophic injuries.

Marc is an active member of the firm's Data Management and Privacy Law group. He assists clients with the management and protection of sensitive personal and business data. Additionally, he advises clients in identifying, evaluating, and managing first- and third-party data privacy and security risks under ever-changing federal and state laws. In the context of data breach and cyber preparedness, he works to help ensure a client’s policies, procedures, and cyber crisis response plans are appropriate. Marc also regularly assists clients that do not have breach response plans in place prior to a breach occurrence. He is a frequent speaker on data security and data breach response issues.

**Marshall Wall, Partner; Cranfill Sumner & Hartzog**

Contact Info: [mwall@cshlaw.com](mailto:mwall@cshlaw.com) | 919.863.8743

A Raleigh native and Managing Partner at Cranfill Sumner & Hartzog, F. Marshall Wall represents clients in a wide range of disputes encompassing business, commercial, and intellectual property matters. Marshall counsels businesses on employment matters, corporate formation and governance issues. Marshall's clients include businesses of all types and sizes, municipalities and government entities, and individuals.

A seasoned trial attorney, Marshall also handles a variety of disputes involving trucking and transportation, employment matters, landlord/tenant issues, regulatory matters, and product liability. Marshall has handled a substantial number of catastrophic personal injury and wrongful death cases and has served as lead trial counsel in state and federal courts throughout North Carolina. He has been successful\* in obtaining favorable results for clients through mediation and other alternative dispute resolution forums.

**Clark Walton, JD, EnCE, CCME, Managing Director; Reliance Forensics, LLC**

Contact info: [clark@relianceforensics.com](mailto:clark@relianceforensics.com) | 980.335.0710

Clark Walton, Managing Director of Reliance Forensics, LLC has practiced law in Charlotte for over 10 years and has been involved in cybersecurity and digital evidence issues for over 15 years. He has personally led over 150 digital forensic investigations since co-founding Reliance. A former assistant district attorney and special federal prosecutor, he holds a Computer Science degree from the University of North Carolina at Chapel Hill and a law degree from Georgetown University Law Center.

A former CIA cyber threat analyst, Clark is a former member of the American Bar Association Advisory Committee on National Security and was a contributing author to the ABA Cybersecurity Handbook published in 2013. An adjunct law professor in the area of cybercrime, Clark was named the ABA National Outstanding Young Lawyer for 2012. He has also taught numerous CLE's and undergraduate courses, and has trained US military assets in computer forensics and digital security. He is an EnCase Certified Examiner and a Cellebrite Certified Mobile Examiner.

**Troy Crawford** joined Lawyers Mutual in 2010 as claims counsel. His primary area of work with Lawyers Mutual is real estate claims. Prior to joining Lawyers Mutual, he worked as subrogation counsel for Investors Title Insurance Company. Troy also co-founded the law firm of Crawford, Christopher & Parker, PA where he practiced civil litigation, estate planning, and real estate matters. He graduated cum laude from both North Carolina State University and Campbell University School of Law. Email: [tcrawford@lawyersmutualnc.com](mailto:tcrawford@lawyersmutualnc.com)

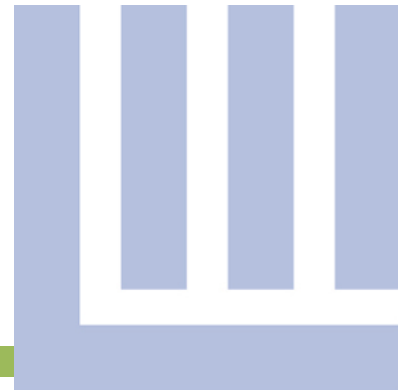
**Will Graebe** joined Lawyers Mutual in 1998 as claims counsel before being promoted to Vice President of Claims in 2009. He focuses his efforts at Lawyers Mutual on transactional matters and real estate. Prior to joining Lawyers Mutual, he worked at the law firm of Pinna, Johnston & Burwell. Will graduated from Stetson University and Wake Forest University School of Law. He is an avid swimmer, kayaker, fisherman and yogi. Email: [willg@lawyersmutualnc.com](mailto:willg@lawyersmutualnc.com)

**Warren Savage** joined Lawyers Mutual as claims counsel in 2005. He focuses on litigation, insurance law, appellate advocacy, criminal matters and professional responsibility in his work with Lawyers Mutual. A former partner with the law firm of Bailey & Dixon, Warren graduated from the University of Virginia and earned a Master of Arts in Teaching at the University of North Carolina at Chapel Hill before graduating magna cum laude from Campbell University School of Law. He spent several years as a high school English teacher and junior varsity basketball coach before entering the legal profession. Warren currently serves as an advisory member of the State Bar Ethics Committee and speaks frequently at CLEs around the state about professional responsibility and malpractice claims avoidance. Email: [wsavage@lawyersmutualnc.com](mailto:wsavage@lawyersmutualnc.com)

**Mark Scruggs** joined Lawyers Mutual in March 2001 as claims counsel. Formerly a partner with Spear, Barnes, Baker, Wainio & Scruggs, LLP in Durham, Mark has over 14 years' experience as a trial attorney concentrating in insurance defense litigation. For the last 15 years, Mark has worked with Lawyers Mutual primarily in litigation-related claims and workers compensation and family law matters. He is a 1986 cum laude graduate of Campbell University School of Law. Mark is a past chair of the Law Practice Management section of the North Carolina Bar Association. He has served as an Advisory Member of the State Bar Ethics Committee and is currently serving as an Advisory Member of the Authorized Practice Committee of the North Carolina State Bar. He also serves as c-chair of the North Carolina Bar Association's "Transitioning Lawyers Commission" working to address issues facing aging lawyers. Email: [mscruggs@lawyersmutualnc.com](mailto:mscruggs@lawyersmutualnc.com)

**Camille Stell** served as risk management paralegal for Lawyers Mutual from 1994 to 2000. She returned in 2009 as Director of Client Services before being promoted to Vice President of Client Services in 2013. She previously worked at the law firms of K&L Gates; Kennedy, Covington, Lobdell & Hickman and Young, Moore & Henderson as both a paralegal and as a recruiting and marketing professional. An accomplished speaker and author, she has spoken for legal professionals on a local, state and national level. Camille graduated from Meredith College and the Meredith College Paralegal Program. A past Chair of the Law Practice Management Section of the North Carolina Bar Association, she has served on the editorial board for *Legal Assistant Today* magazine, *Women's Edge* magazine, *Carolina Paralegal News* and as Supplements Editor for *North Carolina Lawyers Weekly*. Email: [camille@lawyersmutualnc.com](mailto:camille@lawyersmutualnc.com)

**Dan Zureich** has been President and CEO of Lawyers Mutual since January, 2010. He previously served as Senior Managing Director of Aon Benfield, a reinsurance intermediary and capital advisor, and as Vice President of Insurance Operations for The Bar Plan, a mutual insurance company endorsed by The Missouri Bar. In private practice, Dan concentrated on the defense of FELA, product liability, and civil rights claims. Dan graduated from the University of Missouri with a B.S. in Accounting and the University of Missouri - Kansas City School of Law. Email: [dzureich@lawyersmutualnc.com](mailto:dzureich@lawyersmutualnc.com)



## Forms



# CYBER — OR — CRIME?

# Security



## CYBER AND CRIME INSURANCE

Law Firms are increasingly becoming the targets of various fraud schemes and data breaches, and it doesn't appear this will go away anytime soon. Your professional liability policy is not designed to protect you from these types of risks. There are two insurance products we recommend to protect your firm from these situations.

**CRIME INSURANCE.** A crime policy protects you from the theft of funds from various types of crimes.

- **Employee Theft.** Broad coverage for theft or forgery by an employee
- **Computer Fraud.** Unlawful taking of money by a 3rd party from the unauthorized use of computer
- **Funds Transfer Fraud.** Fraudulent instruction to transfer or pay money by a 3rd party who is purporting to be the insured
- **Social Engineering Fraud.** Deceptively gaining the confidence of an employee to induce him or her to voluntarily part with money
- **Forgery and Alteration.** Forgery or alteration of a financial instrument committed by a 3rd party

**CYBER LIABILITY/DATA BREACH.** A cyber liability policy protects you in the event you have a data breach, and the personally identifiable information belonging to your clients is exposed.

- **Security and Privacy Liability** – Defense and damages from an event resulting in, or that could result in, the fraudulent use of private information in your care, custody or control
- **Regulatory Action** – Request for information, civil investigative demands and civil proceedings brought by a government agency
- **Website/Media Liability** – Infringement of copyright, plagiarism, invasion of privacy, defamation, slander, negligent infliction of emotional distress
- **Customer Notification and ID Monitoring Services** – Provides notification to those affected by the data breach, as well as credit and identity monitoring
- **Public Relations Support** – Support to minimize the damage done to your reputation due to data breach
- **IT Forensics and Data Reconstruction** – Forensic services to determine the cause of loss and restore data

**Please complete the questionnaire on the reverse side, and we will provide you with pricing indications for both crime and cyber policies.**

Name of Applicant: \_\_\_\_\_

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

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

Gross Annual Revenue: \_\_\_\_\_

Number of employees (including partners/owners): \_\_\_\_\_

**DO YOU HAVE:**

Antivirus software ☐ yes ☐ no

Firewall Protection ☐ yes ☐ no

Spy-ware/mal-ware Protection ☐ yes ☐ no

Access control to include password protection of all computers and mobile devices ☐ yes ☐ no

If any employees handle funds, are their segregation of duties in place regarding check signing/reconciliation/deposits, etc.? ☐ yes ☐ no

**If over 50 employees, please answer the following questions:**

Approximately what percentage of your gross annual revenue is from clients that are:

\_\_\_\_\_ % Individuals    \_\_\_\_\_ % Companies

If you store personally identifiable information on mobile devices such as laptops, smart phones, flash drives, etc., is that information encrypted? ☐ yes ☐ no

*Please note these questions are used solely for the purpose of providing quotes, which does not guarantee eligibility. The quote will be subject to review of a completed application, and could change depending on information provided on that application.*

**I WANT MORE INFORMATION**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

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

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

**Fax to 919.657.0316 or email to [LIA@lawyersmutualinc.com](mailto:LIA@lawyersmutualinc.com)****BENEFITS***Employee benefits no matter the size of your practice.*☐ **GROUP HEALTH****DIRECT CONTACT:**

Delores Hunter, Group Health Sales  
800-662-8843 ext. 128 | [dhunter@lawyersmutualinc.com](mailto:dhunter@lawyersmutualinc.com)  
\*Send census info to [dhunter@lawyersmutualinc.com](mailto:dhunter@lawyersmutualinc.com)

☐ **GROUP DISABILITY**☐ **GROUP DENTAL****DIRECT CONTACT:**

Ken Hudson, Life, Disability, Dental & Medicare Supplement  
800-662-8843 Ext. 126 | [khudson@lawyersmutualinc.com](mailto:khudson@lawyersmutualinc.com)  
\*Send census info to [khudson@lawyersmutualinc.com](mailto:khudson@lawyersmutualinc.com)

**BUSINESS***Protect your practice from the unexpected.*

- ☐ **BUSINESS INSURANCE**
- ☐ **WORKERS COMPENSATION**
- ☐ **BUSINESS AUTO**

**DIRECT CONTACTS:**

Kelly Gold, Property & Casualty Agent  
800-662-8843 Ext. 221 | [kelly@lawyersmutualinc.com](mailto:kelly@lawyersmutualinc.com)  
Adam Pierce, Property & Casualty Agent  
800-662-8843 Ext. 163 | [adam@lawyersmutualinc.com](mailto:adam@lawyersmutualinc.com)

**PERSONAL***We can handle your personal insurance needs as well.*☐ **PACKAGE HOME & AUTO****DIRECT CONTACTS:**

Kelly Gold, Property & Casualty Agent  
800-662-8843 Ext. 221 | [kelly@lawyersmutualinc.com](mailto:kelly@lawyersmutualinc.com)  
Adam Pierce, Property & Casualty Agent  
800-662-8843 Ext. 163 | [adam@lawyersmutualinc.com](mailto:adam@lawyersmutualinc.com)

☐ **INDIVIDUAL LIFE & DISABILITY**☐ **MEDICARE SUPPLEMENT****DIRECT CONTACT:**

Ken Hudson, Life, Disability, Dental & Medicare Supplement  
800-662-8843 Ext. 126 | [khudson@lawyersmutualinc.com](mailto:khudson@lawyersmutualinc.com)

**SPECIALTY***Expert knowledge in necessary and additional coverage.*

- ☐ **COURT & BONDS**
- ☐ **CYBER LIABILITY**
- ☐ **CRIME/FIDELITY**
- ☐ **OTHER (E&O, D&O, PROFESSIONAL LIABILITY)**

**DIRECT CONTACTS:**

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800-662-8843 Ext. 221 | [kelly@lawyersmutualinc.com](mailto:kelly@lawyersmutualinc.com)  
Adam Pierce, Property & Casualty Agent  
800-662-8843 Ext. 163 | [adam@lawyersmutualinc.com](mailto:adam@lawyersmutualinc.com)

**PLANNING***Let us help you navigate your options.*

- ☐ **PERSONAL INJURY STRUCTURED SETTLEMENT**
- ☐ **NON-PERSONAL INJURY STRUCTURED SETTLEMENT**
- ☐ **SETTLEMENT TRUST PLANNING**
- ☐ **RETIREMENT INCOME**

**DIRECT CONTACT:**

Tacker LeCarpentier, J.D., C.S.S.C.  
Director, Annuities & Structured Products  
Certified Structured Settlement Consultant  
866.450.4496 | [tacker@lawyersmutualinc.com](mailto:tacker@lawyersmutualinc.com)