

# The Gavel

Fall 2013



*UND School of Law panel discussion on October 14,  
regarding Rural Justice Program*

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## PRESIDENT'S MESSAGE



**Nancy J Morris**  
President, SBAND

Fall is the best. The crisp, cool air is invigorating. The array of golds, reds and browns are spectacular. And why is it that the smells of fall are so powerful at evoking memories? Because fall is a time of change.

For me it is time to embrace the changes that come with a new school year, a new routine, and quite frankly a renewed sense of purpose. Ok, maybe that was a bit deep. What I am really talking about is the fact that we have all moved back indoors and are ready to get some serious work done, right?

It has certainly been a busy fall at SBAND. Tony has quickly become the Judicial Nominating Committee Secretary Extraordinaire, attending to numerous appointments in less than four months, with at least one more in the hopper! All this in addition to learning the day to day operations, attending local bar meetings, welcoming new bar admittees, and answering a constant barrage of emails from me. These first four months have certainly gone fast.

While we have been busy, my goals as president have remained foremost in my mind, and we have made great strides toward addressing some of SBAND's important issues. I am pleased to announce the launch of the Justice for All Pro Bono Recognition program, championed by the Pro Bono Working Group. This program is a way to encourage lawyers to be recognized for the good work they do every day. Check out this

link: <http://www.sband.org/News/News-Detail.aspx?NewsID=703>. And did you know that SBAND pays for malpractice insurance for lawyers engaged in Pro Bono service? Any pro bono work done under the Volunteer Lawyer Program is covered up to \$1 million! I am hopeful that we can get the word out to encourage in-house counsel and non-traditional lawyers to take on pro bono work. Call Carrie at SBAND to find out how to take advantage of this well-kept member benefit secret.

Again this year you will have an opportunity to make a direct donation to the Pro Bono fund in your license dues statement. All funds received will go directly to LSND to help finance the private attorney fund. I encourage you to read Jim Fitzsimmons' recent memo to his staff in the fall LSND newsletter for a better understanding of the grim financial situation facing legal services. <http://www.legalassist.org/?id=29>. The donations you make have a direct and immediate impact.

On a different note, I must admit that I had no idea when I signed up for this "gig" the number of committee appointments I was tasked to make. I approached this task with the goal of inclusiveness in mind, and truly enjoyed the chance to personally call and connect with so many enthusiastic lawyers willing to serve our association. A big thank you to all of the dedicated volunteers. The next step is to actively engage all of the committee members, in furtherance of the omnipresent goal of relevance. To that end, we have begun evaluating the missions of each committee. It is very possible some committees will be merged in an attempt to eliminate duplication, and in furtherance of the goal to make your volunteer time worthwhile.

Change is in the air! I am pleased to announce that SBAND has engaged experience cultivator Greg Tehven to help revitalize the annual meeting in downtown Fargo in June 2014. Any and

all suggestions are welcomed and appreciated, including and especially speaker nominations and topics.

“ **Be a part of your bar** ”  
**association annual**  
**meeting!**  
**Be a part of the change!**

## CALENDAR OF EVENTS & CLE SEMINARS

### November 14-15

Family Law Seminar  
Fargo

### December 5-6

Real Property, Probate  
& Trust Seminar  
Bismarck

### December 11

Fundamentals of Law Webinar  
TBA

*Additional Seminars will be added  
throughout the year. All dates subject  
to change.*

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# The Gavel

Official Publication of the State Bar Association of North Dakota

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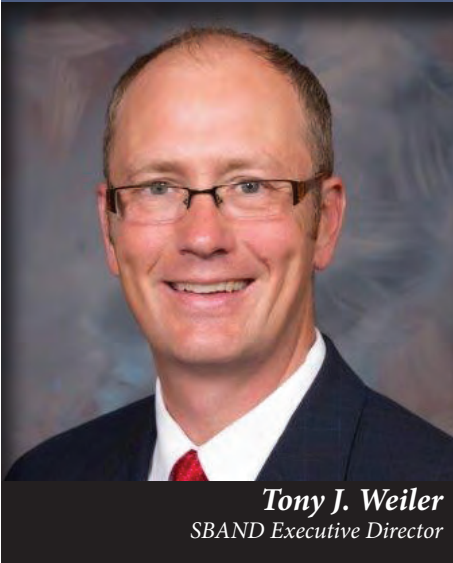
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## SBAND EXECUTIVE DIRECTOR



**Tony J. Weiler**  
SBAND Executive Director

Fast, busy, rewarding – all words I use to describe my first five months as executive director of the State Bar Association of North Dakota (SBAND). I am humbled by the opportunity to serve as executive director, and I look forward to the challenges members of our profession are facing and will face in the future. I will need the help of the SBAND membership in continuing SBAND's tradition of service.

I'm guided by SBAND's mission:

*The mission of the Association is to serve the lawyers and people of North Dakota, to improve professional competence, promote the administration of justice, uphold the honor of the profession of law, and encourage cordial relations among members of the State Bar.*

As an Association, we're growing. We now have more than 2,600 members, with more than 1,500 living in North Dakota. We are in an era of new opportunities and potential for great rewards. SBAND will play a pivotal role in assisting members and preparing for changes in the manner in which law is practiced.

The mission statement guides the decisions made by those in leadership positions in SBAND. It sets lofty goals. SBAND is governed by a 14-member Board of Governors (BOG) – hard-working, dedicated attorneys. The Board sets policy and it is my job to work with the SBAND staff to carry out policy decisions and serve members of the

Association.

SBAND works through a number of committees with leadership provided by SBAND members. President Nancy Morris has set a goal of revitalizing committees, appointing members with a desire to serve and the ability to make a difference. Nancy has been busy working on committee appointments, and under her direction, the SBAND staff is working to make each and every committee active and relevant. In doing this, we're studying the responsibilities of each committee, the structure of the committee system, and whether committees and their assignments should be re-aligned. President Nancy is determined that we will make good use of the time members of our association give to SBAND.

SBAND has programs that serve our state. The Volunteer Lawyer Program provides an opportunity for lawyers to help those in need. The Pro Bono Task Force worked hard to find ways to continue providing service and also provide service beyond what is typically thought of as pro bono work. Pro bono work isn't charity – it is part of our obligation as a profession.

SBAND will not diminish the service we provide our membership. The SBAND staff is determined to add value to Bar membership, and we're open to your suggestions about how we can do so. Please feel free to contact me with suggestions and comments!

While change is a given, there is a constant for lawyers. We make decisions every day which impact clients and shape us as lawyers. Professionalism and ethics are not only important tenants of those decision, they make us who we are as lawyers. Striving to do the right thing

is often difficult, but it is necessary in all our dealings, professional and personal.

“ I'm proud to be a lawyer, ”  
and I hope you are, too.  
I appreciate the opportunity to serve as your executive director.



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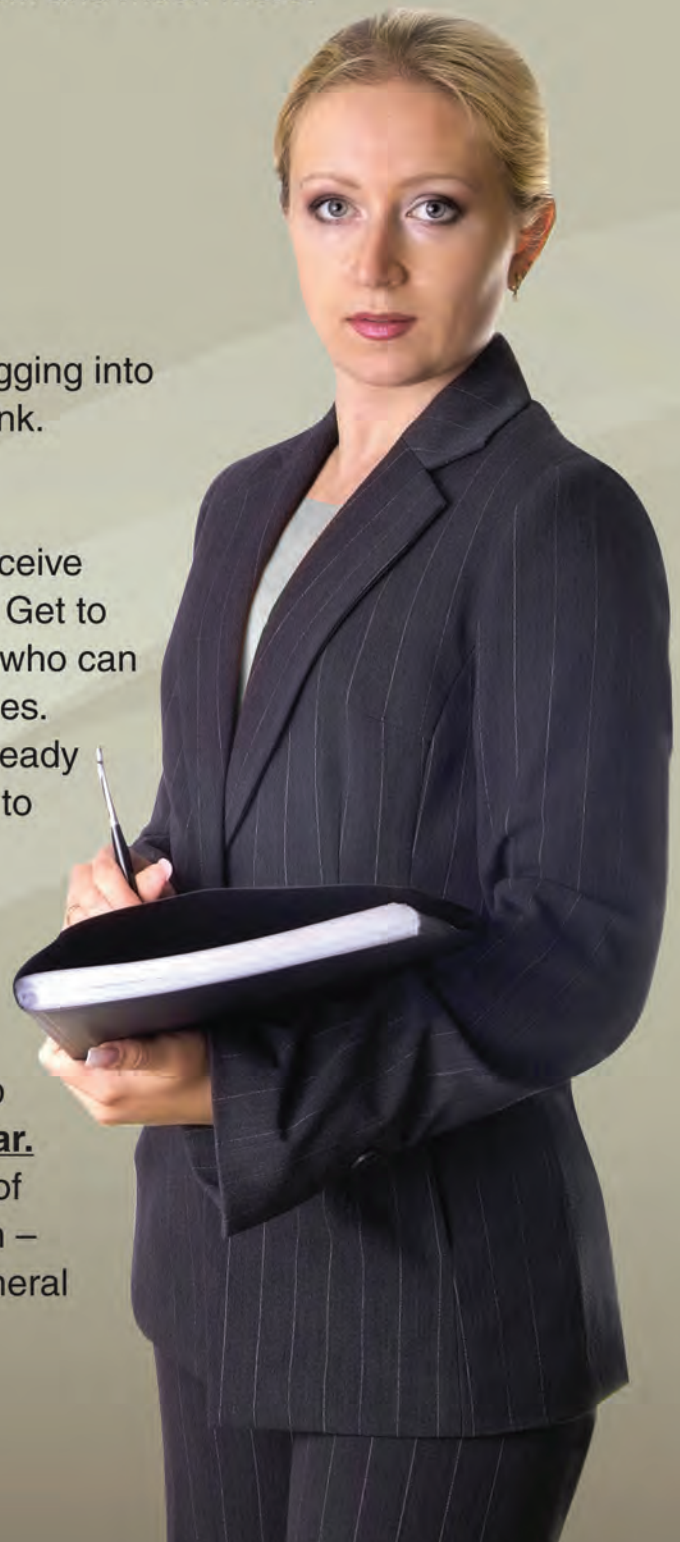
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### ENDURANCE COMPETITIONS KEEP SCOTT JENSEN FIT AND FOCUSED



Extreme sport competitions have grown in popularity across the country. In North Dakota, Grand Forks lawyer Scott Jensen is among those who have embraced the challenge that they bring.

Jensen's day job is managing partner at the Camrud, Maddock, Olson & Larson law firm, where he practices litigation, divorce and health care law. Outside of the office, he is an endurance athlete who regularly trains for upcoming competitions.

He swam competitively while in high school in Bismarck in the 1970s. Following a 25-year break, at the age of 42 Jensen says he started swimming again to lose weight and improve his strength and stamina. In the 10 years since, he has been competing in events like sprint duathlons, that typically feature six miles of running and 15 miles of biking, and sprint triathlons, generally a third of a mile of swimming, 12 miles of biking and 3 miles of running.

His longest triathlon was Ironman Canada that involved 2.4 miles of swimming, 112 miles of biking and 26.2 miles of running. Last January he competed in the Arrowhead 135 in International Falls, Minnesota, biking across the snow for 135 miles.

For the past two years, Jensen has com-

peted in the Extreme North Dakota Adventure Race swim in Grand Forks, which is one of the longest marathon swims in the world.

Jensen says many people are surprised to hear that he swims the Red River, which is not known as a popular destination for swimmers. "They think it's dirty and dangerous, but I have no problem with it," he says. In preparation for the race the past two years, he trained by swimming in the river for a month, pulling a swimming buoy with him. "Before each training swim, I had to notify the area sheriff, police and fire departments, in case they might get a 911 call about someone in the Red River."

This year's race on July 13 started at Cabela's in East Grand Forks, where he and the other competitors swam to the dam near the North Dakota Mill and Elevator. There, competitors ran around the dam and re-entered the water with a kayaker following alongside providing food and water. They then swam north to Oslo, Minnesota.

In 2012, Jensen competed with 12 swimmers, and this year that number doubled to 25. "They come from all over the world and are very experienced. Some have even swum the English Channel," he says. This year only Jensen and another swimmer were from Grand Forks. The top three

finishers were women, two of them from the Minneapolis area.

In his first year competing Jensen finished fourth, with a time of 9 hours and 40 minutes. This year he finished fifth, but had a better time of 7:23. "I was pleased with my results both times," he says.

Following the August competition, Jensen began training for a 12-hour bike race scheduled for the end of October. Other upcoming competitions for Jensen include another attempt at the Arrowhead, where he will try to improve on last year's time of 52 hours, 18 minutes.

"I feel good about what I do," says Jensen of his athletic pursuits. "Everybody needs a focus, and this does it for me. It clears my head, I feel fit and I have a feeling of satisfaction when I'm done."



## RURAL JUSTICE PROGRAM



*October 14 panelists at the UND School of Law  
Judge Gail Hagerty, Ted Seibel and Phyllis Ratcliffe*

**By Gail Hagerty, Judge of the South Central District Court**

Summer 2014 will see the advent of a Rural Justice Program which will pair three student law clerks with judges chambered in rural counties. A proposal made by the State Bar Association of North Dakota, the North Dakota Court System, and the University of North Dakota Law School was presented to the 2013 legislature. The program was funded, allowing for a stipend to be paid to student law clerks selected for the program during the summers of 2014 and 2015.

An introduction to the rewards and challenges of rural practice was presented at the University of North Dakota in October. Panelists were candid in their descriptions of the joys and challenges of practicing law in rural North Dakota. They discussed ethical issues which may be unique to rural practice and told a few war stories.

The panel included Judge James Hovey of New Rockford; Darcie Einarson, who practices family law in Grafton and serves on the SBAND Board of Governors; Robin Huseby, who works as executive director of the North Dakota Commission of Legal Counsel for Indigent Defense and is based in Valley City; Ted Seibel, who practices in Harvey; and Phyllis Ratcliffe, who practices in Cooperstown. The panel was moderated by Judge Gail Hagerty, past president of SBAND.

This is the text of the proposal for the project:

### RURAL JUSTICE PROPOSAL

Rural counties in North Dakota are facing a crisis in terms of availability of legal services. In 2012, there are four counties with no resident attorneys. There are six counties with only one attorney, and four of those attorneys are over 60. There are eight counties with only two attorneys. Nine of the 16 attorneys in those counties are over 60. There

are three counties with only three attorneys, five counties with four attorneys, and six counties with five attorneys.

This phenomenon is not unique to North Dakota. The American Bar Association House of Delegates passed a resolution urging states to support efforts to “address the decline in the number of lawyers practicing in rural areas and to address access to justice issues for residents in rural America.” (Resolution 10B, adopted in August, 2012)

Dean Kathryn Rand of the University of North Dakota School of Law has indicated the Law School is currently exploring ways in which the law school can support and facilitate the administration of justice in western North Dakota and in rural North Dakota. She has volunteered to work with the State Bar Association of North Dakota in exploring possibilities including: assisting in lawyer referrals; working with the courts and state agencies to develop student externship programs, perhaps via distance technology; expanding current programs, such as Attorney Services and Central Legal Research, to better serve needs in western North Dakota; and providing research and administrative assistance, office space, or other support to attorneys and organizations that serve low-income clients.

The State Bar Association recognized the need to address a shortage of lawyers in the energy-impacted areas of North Dakota in its Justice System Energy Impact Task Force Report.

### PROPOSAL

As a first step in addressing the need to recruit attorneys to the rural areas of North Dakota, it is proposed that the North Dakota judicial system provide for two or three summer clerkships for law students with judges who are chambered in and live in rural communities – communities of 15,000 or fewer residents. A \$4,000 stipend for the clerkships was suggested by Dean Rand. The law clerks would have an opportunity to reside in a rural community and work with a judge who would most likely travel to other rural communities.

In addition to the summer clerkship, opportunities for a continued working relationship with the judge could be provided by the Law School. When the law clerk returns to school, research and writing could be done for the judge and possibly the student could receive credit or receive other incentives to continue to provide services.

The State Bar Association could assist in hosting recruiting sessions with students. Members of the Bar who practice in rural communities could interact with students to provide information about their practice. Members of the Bar Association could also mentor students during the summer clerkships and on their return to the Law School.

The cost of the program would be modest. If there were three clerkships funded for a biennium, the stipends would total \$24,000. There may be some minimal expense involved in interviewing and selecting law clerks. The Law School may have some expense if incentives are provided to continue the working relationship with judges when students return to school.

### GOAL

The goal of the program would be to encourage students to consider rural practice. While not all students involved in the program would decide to work in rural North Dakota, it is likely that at least some would do so. If this program by the judiciary is successful, others may consider implementing clerkships in State’s Attorney’s offices and in private practices.





**Kathryn Rand**  
Dean, UND School of Law

## Planning for the future: The Law School Building Project

With North Dakota's historic investment in the future of the UND School of Law and the legal profession in our state, we've spent our Fall semester knee-deep in building design planning. The design process has required our entire law school community, with help from our bench and bar, to envision a UND School of Law for the 21st century. As I write this in October, we are only through the first significant steps; by the time you read this, we will be working to translate the design programming into construction plans. (Please check our building project web page (<http://law.und.edu/build/>) for the latest updates.)

- UND President Kelley appointed a **Building Planning Committee**, co-chaired by Professor Paul LeBel, former Dean and former Provost & Vice President for Academic Affairs, and myself. President Kelley charged the Committee with responsibility for leading the various phases of the building project, as well as for ensuring effective coordination, implementation, and communication throughout the project.

Additionally, the Committee benefits from the input of several advisors, including several UND employees with specific areas of expertise, as well as representatives of our state bench and bar—

- Gerald W. VandeWalle, Chief Justice, North Dakota Supreme Court

- Nancy Morris, Attorney, Erik R. Johnson & Associates, Ltd., Fargo, N.D. and State Bar Association of North Dakota President, 2013-14
- William Guy, Attorney, Fredrikson & Byron, P.A., Fargo, N.D.
- Levi Andrist, Attorney, Vogel Law Firm, Bismarck, N.D.
- The School of Law implemented an innovative **Design Focus Team** structure. The intent is to have a structure for the Committee's work that is effective, efficient, and inclusive, and toward that end, the President endorsed the concept of Design Focus Teams to serve as liaisons with stakeholders within the School of Law community and with the Building Planning Committee.

The purpose of the Design Focus Teams is to ensure that (a) the design phase of the building project is as fully participatory and informed as possible, and (b) information is accessible to and shared widely within the School of Law community. The Design Focus Teams liaison with their designated stakeholders within the School of Law community and with the Building Planning Committee.

Each Team has a Team Leader who serves on the Building Planning Committee and is charged with coordinating the Team's work. Each Team facilitates robust and informed input of and communication with their designated stakeholders during the planning process, with the goal of maximizing opportunities for stakeholders to provide perspectives, insights, needs, and requests to inform the architectural design process.

The Teams also work together to provide opportunities for design input to every member of the School of Law community and to encourage collaborative input among stakeholders. The Design Focus Team areas are **Student Life & Student Experience**, with focus on student study and work space, student experience of operational and educational space, student services, including Student Life, Admissions & Records, Career Services,

Law Library, etc., and student co-curricular and extra-curricular organizations; **Faculty & Educational Program**, with focus on the first-year and upper-level curriculum, experiential learning and skills instruction, academic and co-curricular programs, faculty resources and workspace, and classrooms and other educational space; **Administrative & Support Services**, with focus on administrative space, staff resources and workspace, team-based and collaborative environments, and special programs space; and **Law Library/Information Technology & Services**, with focus on law library services and space, instructional technology and distance learning, student, staff, and faculty technology and information resources, and public information resources.

- We selected an **architectural team**. The University appointed an Agency Selection Committee pursuant to state law (ND Century Code 48-01.2; ND Century Code 54-44.7; SBHE Policy 902.5) to solicit proposals to provide architectural services for the law school building project. The selection committee interviewed three architect firms and recommended that the University employ **ICON Architectural Group of Grand Forks, ND, in partnership with SHW Group** as the architects. SHW Group has extensive law school design experience and has worked with law schools at Washburn University, Wayne State University, Texas Tech University, Michigan State University, and others.

- The **design planning process** is underway. Each of our Design Focus Teams gathered input and information to assist in the design process, and we surveyed our entire law school community for their opinions and ideas. Our architectural team, with representatives from both ICON and SHW Group, conducted two **design workshops** at the School of Law, one in September and another in October. During the workshops, we held focus group meetings, brainstorming



sessions, informational town halls, and other events to ensure widespread participation in our planning process. We also are working with the University on plans for **relocating law school operations** during construction.

We anticipate that the design planning process will continue through the fall, with construction documents completed over the winter. If all goes well, we believe we will be breaking ground in May 2014.

We are so excited about this new era for UND School of Law!

We hope you share our enthusiasm, and we again invite you to visit our building project web page (<http://law.und.edu/build/>) for the latest updates. Thank you for being part of the future of North Dakota's law school!

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# Benson Psychological Services

## Benson Psychological Services, PC Introduces Kristy Kiland



Kristy Kiland is a North Dakota native with diverse experience working in the Red River Valley. Having worked for years as a Social Worker in Child Protective Services, and a case manager for individuals with serious mental illness and substance abuse, Kristy went back to school to earn her PhD in Clinical Psychology. Her anticipated graduation date is December 2013.

Kristy brings with her years of experience working with children, adolescents and adults.

Her areas of clinical practice include working with High Conflict Couples in Separation and Divorce from a Collaborative Practice standpoint.

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## MELVIN WEBSTER: PIONEERING THE USE OF RULE 3.1 TO GIVE BACK

by University of North Dakota School of Law students Magdaleno Gutierrez, Brittany Wollin, Austin Lafferty



UND School of Law students Magdaleno Gutierrez, Brittany Wollin, Austin Lafferty wrote this piece as part of UND School of Law's Professional Writing & Communication class. This article was a joint project between the law school and SBAND.

When Melvin Webster retired from his legal practice, he did not envision returning to work. But Webster's desire to give back to his community made him search for a way to remain involved. Rule 3.1 of the North Dakota Admission to Practice Rules gave Webster that opportunity. Rule 3.1 became effective on March 15, 2009. The Rule authorizes a lawyer to volunteer to provide civil legal assistance, under the supervision of an approved legal services organization, to individuals who are unable to pay for such services. On September 20 of this year Webster became the first lawyer authorized to practice under the Rule.

### Applying for Authorization Under Rule 3.1

A lawyer seeking authorization to practice under the Rule must file an application with the State Board of Law Examiners, certifying that the lawyer is either presently licensed to practice law or has been licensed for at least five of the 10 years preceding the application and that he is not been disbarred or suspended from the practice of law. Certification must come from each jurisdiction in which the applicant has been admitted to the bar. The application must also include

a signed statement by an authorized representative of the approved legal services organization that the applicant will be an unpaid volunteer, working under the supervision of the organization, and a sworn statement by the applicant that he understands the standards applied to lawyers practicing in North Dakota.

### An Overwhelming Workload

Rule 3.1 allows lawyers to give back to the community by volunteering their services to bolster the limited resources of important legal services organizations. One such organization is Legal Services of North Dakota. Due to funding cuts, Legal Services is facing an ongoing struggle to staff its multiple locations across North Dakota. In key cities such as Grand Forks, for example, the Legal Services' office stands vacant. So, in August, Legal Services became an "approved legal services organization" under the Rule.

Jim Fitzsimmons, the executive director of Legal Services, sees Rule 3.1 as providing retired lawyers the opportunity to contribute their legal experience and expertise to organizations in need. Fitzsimmons states the Rule was aimed mainly toward retired lawyers, although it

allows any lawyer who has been licensed for at least five years to practice under the limited circumstances of the Rule. By providing retired lawyers an easier avenue to volunteer their valuable knowledge, Rule 3.1 encourages them to lend their time and skills to legal services organizations in need of assistance.

### A Lifetime of Experience

Webster was born and raised in North Dakota. After working on his family farm, and later as a teacher, he decided to pursue a law degree at the University of North Dakota School of Law. Webster views his experiences on the farm and as a teacher as instrumental in shaping the way he sees the legal profession. He believes working hard is the way to improve one's lot in life and help better others' lives.

When he retired in 2010, Webster decided not to maintain his license as a practicing lawyer, explaining: "Either you are an active attorney . . . or you quit, and I decided to quit." After retiring, Webster felt he owed something back to the community. He found volunteering with Legal Services was his way to give back. Webster worked as a legal intern for Legal Services for two summers during law school, focusing primarily on guardianship matters. His work with Legal Services provided the stepping-stone for his legal career. Now, Webster's volunteer work with the organization will again include guardianship cases, bringing him full circle back to the work that launched his career as a lawyer.

### A Restricted Practice

Lawyers authorized to practice under Rule 3.1 are indivisibly linked to a specific legal services organization. The lawyer's authorization to practice under the Rule expires when the lawyer "ceases to be supervised" by the organization. In this instance, Fitzsimmons clarified Legal Services' supervision would cease when

*continued on pg. 30*

## PRESIDENT AND CEO: ALPS

### Q&A WITH ALPS PRESIDENT AND CEO DAVID BELL

*You've lived all over the country and as far away as Bermuda. What brought you to Missoula, Montana?*

I fell in love with the west when I was young. I came to the University of Montana as a teenager and knew right away that Montana was a special place. I met my wife, Brittany, while we were both attending UM. She's from Conrad, so as we moved to different parts of the country and internationally, Montana was always "home base" and we knew we would return. When I met ALPS Founder Bob Minto on one of my trips back to Montana, we made a connection and as the opportunity at ALPS unfolded, I knew it was time to come back home.

*What drew you to the insurance industry originally? What has kept you there?*

Like many others in senior positions I found the industry (or it found me) by

accident. I went to work for Chubb out of college, mainly because it was a large, highly reputable organization with an international footprint, and that was the experience I was looking for out of school. The "trade" of insurance – focused on the transfer of risk from one corporate balance sheet to another – was fascinating. It has been called the DNA of capitalism. It's also an industry full of good people. In my experience, compared to other financial service industries, it seems to have a higher concentration of leaders who came from humble means and are committed to giving back to the industry and their communities.

*How does the lawyers' professional liability insurance line differ from your previous experiences in the industry?*

It has been fun to focus on a single industry niche. In my previous role as COO

of Allied World, a large public company, we had significant resources and more than 40 different coverage lines. That did have its advantages, but I was never able to get "in the trenches" as ideas were first incubated. At ALPS, our mission is to provide the best coverage protection to the legal community. Because of our niche focus, we have been able to successfully build a culture focused on customer service and ease of doing business. I am now able to participate at the grass roots level to help ensure we live up to the faith our policyholders place in us.

*ALPS was started in 1988. Now, 25 years later as you are taking the helm, how has the company changed?*

As I learned about the ALPS story it became clear that some things have changed a lot, and some things not at all. What has changed is the utilization of technol-



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*David Bell, President & CEO  
ALPS Corporation*

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ogy, policyholder expectations regarding customer service and a general business model that has evolved over a quarter century. ALPS has done a fantastic job of staying ahead of the curve, and is regularly out front as the innovation thought leader. What hasn't changed is the hallmark of the ALPS value proposition. We are a "by lawyers, for lawyers" professional liability carrier committed to making the legal profession better through risk management and stable risk transfer. From the beginning when Bob Minto and his colleagues started this company, ALPS made a commitment to provide the broadest coverage in the marketplace at a reasonable price. ALPS made a promise to our policyholders that if you have a claim it will be handled honestly, promptly and professionally. Those values are the same today as in 1988, and will be the same for many years to come.

*As a non-lawyer, how do you view the challenges and opportunities facing the legal community of today?*

New issues in the legal community are constantly emerging. At ALPS, we have the good fortune to have longstanding affiliations and endorsements from more state and local bar associations than any other insurance carrier. As a non-lawyer myself, these relationships are truly valuable for me to gain a better understanding of what today's lawyers are grappling with and to be able to offer real solutions.

For example, right now, we have law school students emerging with significant debt and fewer opportunities. With less "big firm" options they are increasingly hanging a solo shingle. On the flip side we have our baby boomer lawyers reaching retirement age. As they leave the practice of law, with them goes some of our most experienced and knowledgeable legal prac-

tioners. ALPS is responding by launching ALPSLegalMatch.com, a new tool that will pair "new" lawyers with soon-to-be retiring lawyers. This tool will help retiring lawyers identify a successor. It will help new lawyers find a practice, and will partner them with a mentor during the transition. The result: for ALPS we have our best lawyers training our newest lawyers, which make the new lawyers a better risk for us to insure. For retiring lawyers, they will have a succession plan using a process that allows them to pick the right person without months of painstaking diligence. For the new lawyer, nothing takes the place of experience and this provides an opportunity to work with someone and gain the benefit of that experience...as well as potentially take over a practice.

I view this challenge and others like it as opportunities, and there are plenty of both on the horizon.

*David Bell, ALPS President & CEO*

*In May of 2012 David Bell came to ALPS from Allied World Assurance Company (AWAC), a global insurance company founded in the wake of 9/11 by AIE, Chubb and Goldman Sachs. Bell served as the company's Senior Vice President and Global Professional Lines Manager before becoming COO, a role in which he served for four years in AWAC's Bermuda offices.*

*Bell brings extensive knowledge and experience in the insurance industry to ALPS. He began his professional career with The Chubb Corporation as Underwriting Manager-Executive Protection/Assistant Vice President specializing in a number of product lines including public and private D&O insurance and EPL. Bell moved on within Chubb to serve as the Florida Legislative Liaison for the company.*

*Concurrently Bell emerged as a resource for the ever-changing D&O industry. He penned several articles on industry trends including "The Ups & Downs (Mostly Downs) of the D&O Rate Cycle," in The Professional Liability Underwriting Society Journal, and "Probing The D&O Market," PriceWaterhouseCoopers Bermuda InsuranceQuarterly.*

*Bell's diverse knowledge ranging from underwriting to government relations to being a founding executive of a global insurance corporation serve ALPS Corporation well.*

*A University of Montana graduate, Bell now serves on the Board of Directors for The Maureen & Mike Mansfield Center, an organization dedicated to promoting a better understanding of U.S. and Asia relations. The Center was founded in the spirit of Montana Senator and former U.S. Ambassador to Japan, Mike Mansfield (1903-2001).*

*Bell also founded and serves on the Board of Grateful Nation, a Montana-based organization founded in 2007 that provides college education for the children of Montana soldiers killed in active duty in Iraq and Afghanistan. Montana has the highest number of soldiers killed in action per capita and the state has been the blueprint for the Grateful Nation program with a vision to expand into more states throughout the country.*

## NEW BAR ADMITTEES

### NEW LAWYERS WELCOMED TO NORTH DAKOTA BAR IN SEPTEMBER CEREMONY

In a September 27 ceremony in the House Chambers at the North Dakota State Capitol, 50 lawyers were admitted to the North Dakota Bar and welcomed by state officials, fellow lawyers and family and friends.

Chief Justice Gerald VandeWalle told them they are entering a changing profession. "It always has been a changing profession but it continues to change at a more rapid pace. Two engines driving change are technology and the globalization of the practice of law. But there is one thing that should not, must not change. That is your -- our -- dedication to core values of the legal profession. Those values are generally held to include honesty, integrity, competence, client confidentiality. And civility."

Other speakers were State Board of Law Examiners member Lawrence King, SBAND member Lt. Gov. Drew Wrigley, Attorney General Wayne Stenehjem, University of North Dakota Law School Professor Margaret Moore Jackson, and State Bar Association president-elect Jack McDonald.

"The need to keep balance in one's life is critical," King told the new lawyers. "Balance professionally, personally and with community involvement."

"The practice of law will present you with a variety of challenges, both large and small," said Wrigley, who brought greetings from Governor Jack Dalrymple. "Keep in mind that the meaningful triumphs in this profession are made on behalf of others."

Speaking on behalf of the University of North Dakota School of Law, Jackson said, "Now that you're on your own, released from school and newly licensed, my advice to you is that you learn to learn from experience -- because there are more challenges ahead and additional goals to accomplish. As you begin your career as a lawyer, examine your preparation, your methods, your habits, your processes; then reflect upon your results."

She encouraged the new lawyers to engage in constructive self-critique. "Pay attention to how others navigate the terrain, noting and incorporating some of what they do well and making sure to sidestep their pitfalls."

"Each time you work through a new problem, or complete a negotiation or a hearing, ask yourself, 'What did I learn this time? What will I do differently next time? And what will I be sure to do again, because it worked for me?'" she said.

Stenehjem told the new lawyers that they need to consider themselves members of both their legal community and their local community. "In your future, you will certainly be called upon to give back to your community. North Dakota has many outstanding civic leaders, but never enough."

He said volunteer groups, civic organizations and non-profit corporations will seek them out for involvement because of their unique training and knowledge. "Serve on a board of charity. Join a service club. Run for public office. I believe it is your obligation as a lawyer to become involved in such causes. You will be much richer for it, and so will your city and the state where you live."

McDonald encouraged the new admittees to take their new profession seriously and to take part in their local and state bar association activities. "It is important to the legal profession in North Dakota that lawyers take an active role on both the county bar association level and the state bar association level in furthering the goals of our profession," he said. "The hallmark of a professional is giving back to that profession."

*The individuals who met all of the requirements for admission based on the bar examination are:*

Alyssa Albus  
Stephen Baird  
Matthew Barber  
Sarah Barry  
William Behrmann

Brittany Bergstrom  
Brittney Blake  
Marquis Bradshaw  
Zachary Burmeister  
Christel Croxen  
Andrew Eyre  
Margaret Eyre  
Austin Fauske  
Stephen Fetch  
Jacob Geiermann  
Raymond Grabanski  
Kirby Graff  
Erich Grant  
Brittany Hatting  
Charlie Hendrix  
Jared Hines  
Seung Mi Hong  
Stacey Hummel  
Christopher Joseph  
Thomas Kading  
Anne Lawrence  
Christopher LeCates  
Megan Lindquist  
Michael Mahlen  
Michelle Mahlen  
Tyler Malm  
Casey Moen  
Ashlei Neufeld  
Aaron Nicholson  
Amy Pikovsky  
Brandon Pittenger  
Steven Podoll  
Andrew Pritchard  
Morgan Reinke  
Shannon Rogers  
Angela Simerly  
James Thompson  
Leslie Weigel  
William Wiebolt  
Isaac Zimmerman

*The following individuals were admitted having met all of the requirements for admission based on eligibility by practice or test score:*

Kathleen Barrow  
Kelly Fancher  
Kristen Galster  
Seth Thompson  
Janna Wittenberg





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## FAMILY LAW SECTION QUIZ

1. After they are married, William and Marla decide to sign a “post-nuptial agreement.” William is represented by an attorney who drafted the agreement. Although she knew she had the right to representation, Marla decides not to hire a lawyer, and waived her right to do so. As part of the document they both completed long schedules outlining their income, assets and debts. Both William and Marla sign the document in the office of Jack’s attorney and their signatures are notarized and witnessed. Assuming that the requirements for procedural and substantive fairness are satisfied, is the agreement otherwise valid?

- a. No, because Marla was not represented by an attorney.
- b. No, because North Dakota law does not recognize the validity of post-nuptial agreements.
- c. No, because the financial disclosures were not verified by an independent accountant.
- d. Yes.

**ANSWER: d.** *Effective August 1, 2013 North Dakota adopted North Dakota Century Code Chapter 14-03.2, which provides for a “marriage agreement” between a husband and wife. That contract allows the parties to address issues relating to spousal support, rights and responsibilities as to property and debts and award of attorney fees and costs. The statute provides that each party must have reasonable time to decide whether or not to retain a lawyer and that a specific waiver be included in the agreement indicating what rights you may be giving up by signing the agreement.*

2. David and Kate have been married for four years. Kate comes to see you about a possible divorce. You routinely check social media for public information about your clients and your clients’ spouses. David has a private profile on Facebook. Should you have your assistant attempt to add him as a friend so that you can see what he has been posting about your client?

- a. Yes.

- b. No.
- c. If Kate authorizes it.
- d. Yes, but you can’t use anything you find out in court.

**ANSWER: b.** *Rule 4.2 of the North Dakota Rules of Professional Conduct prohibits an attorney from communicating with a person who is known to be represented by another lawyer without that lawyer’s consent or court order. A friend request is such a communication. Even if the party is unrepresented, the request may violate Rule 4.3, which requires the attorney to clearly indicate the attorney’s role and lack of impartiality.*

3. Jack and Diane have a 10-year-old daughter. They were divorced over two years ago after a three day trial. An order was issued granting joint decision making and primary residential responsibility to Diane. The order gave Jack parenting time one night per week and every other weekend. Now that the child is older, she wants to spend more time with Jack, who wants to spend more time with her as well. If Jack brings a motion to modify the parenting time schedule, what standard will the court apply?

- a. Endangerment.
- b. Best interests of the child.
- c. Material change in circumstances
- d. Modified best interest standard, with emphasis on child’s preference.

**ANSWER: c.** *The district court has continuing jurisdiction to modify parenting time after an initial judgment is entered. N.D.C.C. § 14-05-22; see also Prchal v. Prchal, 2011 ND 62, ¶ 10, 795 N.W.2d 693. Modifications of parenting time are governed by N.D.C.C. § 14-05-22(2) and standards set forth in caselaw. Prchal, at ¶ 11. “To modify parenting time, the moving party must demonstrate a material change in circumstances has occurred since entry of the previous parenting time order and that the modification is in the best interests of the child.” Id. (quoting Dufner v. Trottier, 2010 ND 31, ¶ 6, 778 N.W.2d 586). A “material change in circumstances” for purposes of*

*modifying parenting time is an important new fact that was unknown at the time of the prior custody decree or parenting time order. Wolt v. Wolt, 2011 ND 170, ¶ 19, 803 N.W.2d 534.*

4. Bill and Hillary were divorced five years ago. They share joint residential responsibility of their daughter, Chelsea, who is 14, but the parenting time division is more like 60/40, with Hillary having more parenting time. The decree awards Bill the child dependency exemption in even years and the exemption to Hillary in odd years. Bill was ordered to provide health insurance coverage for Chelsea, but he was laid off 18 months ago and his COBRA just ran out. Hillary comes to you for advice. What can you tell her about how the Federal Affordable Care Act will impact her given the existing facts regarding Chelsea’s health insurance?

- a. Hillary may be subject to an IRS penalty if she does not provide health insurance for Chelsea through her employer, or through an insurance exchange in odd years beginning 2015, regardless of the fact that Bill is ordered to provide the coverage.
- b. Hillary may receive a subsidy for payment of Chelsea’s health insurance coverage, but only in odd years.
- c. If Hillary wants to return to court to have this straightened out, she may have a hard time because the change in the law is not a substantial change for purposes of modification of these issues.
- d. All of the above.

**ANSWER: d.** *The Federal Affordable Care Act (“ACA”), effective January 1, 2014, holds the parent who claims the child as a dependent as responsible for securing the child’s health insurance. The ACA institutes a penalty for tax payers who do not have coverage for their dependents. The ACA also provides subsidies for the cost of health insurance premiums to individuals who qualify financially. However, if coverage is “unaffordable” – more than 8% of the house-*



hold income, the taxpayer will be exempt from the penalty. The implementation of ACA won't necessarily constitute grounds for modifying the order. (Sandstad, 2013).

5. Fred buys Wilma a beautiful engagement ring for \$megabucks. The parties marry and have a child together. Five years later, Wilma starts a divorce action. Fred hires you and asks whether or not he can get the engagement ring back. What do you tell Fred?

- a. Wilma must return the ring.
- b. Wilma gets to keep the ring.
- c. The ring must be counted as a marital asset and counted in an equitable division
- d. The child gets the ring.

**ANSWER: c.** "Gifts" are marital, not separate property. *Gaulrapp v. Gaulrapp*, 510 N.W.2d 620, 621 (ND 1994). In dividing marital property, "the trial court must consider all of the real and personal property accumulated by the parties as part of their marital estate, regardless of the source...." *Anderson v. Anderson*, 368 N.W.2d 566, 568 (N.D. 1985). The origin of the property owned by the parties can be considered by the trial court. *Winter v. Winter*, 338 N.W.2d 819, 822 (N.D. 1983). The length of the marriage is relevant to the distribution of gifts and inherited property, and redistribution of gifted property may often be equitable in long-term marriages. *Behm v. Behm*, 427 N.W.2d 332, 336-37 (N.D. 1988)

6. Mary and Tom are getting divorce. Mary is a state employee with a Teacher's Retirement Annuity. She refuses to give Tom a copy of her retirement plan description. Does she have to provide it?

- a. Yes Mary must provide it within 30 days of service of the Summons.
- b. Yes but only after service of a subpoena
- c. Yes, but only if Mary authorizes its release.
- d. Mary does not have to provide it.

**ANSWER: a.** N.D.R.Ct 8.3 (a) provides that within 30 days after service of the complaint, the parties and their attorneys must meet in person or by electronic means to prepare a joint information statement; "the parties must exchange information

and documentary evidence relating to the existence and valuation of assets and liabilities. At a minimum, the parties must be prepared to exchange current paystubs, employment and income information, tax returns, preliminary pension information, and asset, debt and expense documentation." (emphasis added)

7. Bob and Mary are in the middle of an ugly custody case. Bob is certain that Mary is manipulating their daughter and trying to turn her against him. He starts taping his calls with their daughter and Mary finds out. She calls the police. What will happen to Bob?

- a. He will be immediately arrested for felony wiretapping and could face prison time.
- b. He will be given a misdemeanor ticket for wiretapping and pay a small fine.
- c. He faces sanctions by the Court in the dissolution action.
- d. Nothing.

**ANSWER: d.** Although N.D.C.C. §12.1-15-02(1) provides that a person is guilty of a class C felony if he or she intentionally intercepts any wire or oral communication by use of any electronic, mechanical, or other device; subd. N.D.C.C. § 12.1-15-02(3) provides that it is a defense to a prosecution under subsection 1 that: "The actor was a party to the communication... and (2) such communication was not intercepted for the purpose of committing a crime or other unlawful harm."

8. Rob and Michelle have never been married but have five-year-old twin daughters who live with Michelle in Grand Forks, North Dakota. Rob lives in the state of Wisconsin and sees his daughters around once a year. There is no court order regarding residential responsibility, parenting time, or child support. Rob's mother, Irene, lives in East Grand Forks, Minnesota. Irene is very close to her granddaughters and until they reached school age provided daycare for them while Michelle worked. Michelle has recently become engaged to Tom, a recovering addict who has spent time in prison for drug dealing. Irene does not like Tom and has been very outspoken to Michelle about her feelings. As a result,

Michelle has decided that Irene can no longer see her her granddaughters. Irene comes to your office asking if she has a right to obtain visitation with her granddaughters. What do you tell her?

- a. Because Rob and Michelle have never been married, Irene has no standing to seek visitation.
- b. Irene can petition for visitation and a court has to grant her request if it finds that the visitation is in the twins' best interests.
- c. Irene can petition for visitation and the district court may grant her request if it finds that visitation with their grandmother is in the twins' best interests and that it will not interfere with their relationship with their mother.
- d. Irene cannot petition for visitation unless she first tries to mediate the dispute with Michelle.

**ANSWER: c.** N.D.C.C. § 14-09-05.1(1) provides that "[t]he grandparents and great-grandparents of an unmarried minor child may be granted reasonable visitation rights to the child by the district court upon a finding that visitation would be in the best interests of the child and would not interfere with the parent-child relationship." Although N.D.C.C. § 14-09-05.1(5) provides that "[t]he district court may require mediation of the matter," the statute does not require the grandparent to mediate before making the request to the district court.

9. Dave and Denise divorce when their sons, Dick and Harry, are 5 and 7 years old. Dave is awarded primary residential responsibility and Denise is awarded parenting time. Two years later Denise marries Ralph and they have a daughter together. When Dick and Harry are 14 and 16 years old, Dave dies after a five year battle with cancer. Dave's parents, Marge and Bill, live a half mile from Dave's house and Dick and Harry have spent a lot of time there. While Dave was ill, Marge and Bill took care of Dick and Harry, cooking for them, doing their laundry, and staying overnight with them when Dave was hospitalized. Now that their father is deceased, Dick and Harry want to live with their paternal grandparents, Marge and Bill, instead of with their mother. Marge

## FAMILY LAW SECTION QUIZ, *continued*

and Bill start a custody proceeding to gain custody of Dick and Harry. Do Marge and Bill have any chance of prevailing in this proceeding?

- a. No, because they have no standing to bring such a proceeding.
- b. No, because Denise, Dick and Harry's mother, has a constitutional right to the custody and companionship of her children.
- c. Yes, because Dick and Harry are teenagers and they want to live with Marge and Bill instead of with their mother.
- d. Yes, but only if the court finds that exceptional circumstances exist such that Marge and Bill must be awarded primary residential responsibility for Dick and Harry to prevent serious harm or detriment to them.

**ANSWER: d.** *N.D.C.C. § 14-09-29, subd. 1 provides in relevant part that "[a] court issuing an order that deals with parenting rights and responsibilities of a child entered under this chapter shall award the parental rights and responsibilities concerning the child to a person, agency, organization, or institution as will, in the opinion of the court, promote the best interest and welfare of the child." The North Dakota Supreme Court has stated, however, that "parents have a paramount and constitutional right to the custody and companionship of their children superior to that of any other person" and that custody may be awarded to a third party only in exceptional circumstances in order to prevent serious harm or detriment to a child." The Court has further noted that in each case in which it has upheld a third party custody placement, the child had developed "a psychological parent relationship with the third party." Edwards v. Edwards, 2010 ND 2, ¶ 8, 777 N.W.2d 606, quoting Hamers v. Guttormson, 2000 ND 93, 610 N.W.2d 758.*

10. Mary and John married, had two daughters, Jill and Joni, and then divorced. Mary has residential responsibility for Jill and Joni. John visits Jill and Joni sporadically and pays child support sporadically.

He has significant child support arrears. Three years ago, Mary married Jeff, who gets along very well with Jill and Joni. Jeff now wants to adopt Jill and Joni, who are 8 and 9 years old. John has indicated that he will consent to his parental rights being terminated so that Jeff can adopt Jill and Joni. Which of the following statements is true?

- a. Jeff cannot adopt Jill and Joni because John still owes back child support.
- b. If Jeff adopts Jill and Joni, John won't have to pay child support after the adoption but will still be responsible for his child support arrears, unless Mary and any assignee of Mary's consent in writing to waive the past due support and the court approves the agreement.
- c. If Jeff adopts Jill and Joni, John will not have to pay future child support and his arrears will be forgiven.
- d. If Jeff adopts Jill and Joni, John will still be responsible for future child support and his child support arrears.

**ANSWER: b.** *Under N.D.C.C. §14-09-08.21, a termination of parental rights terminates that parent's duty to support the child once the child is adopted, but does not relieve the parent of the duty to pay any unpaid child support. N.D.C.C. §14-09-09.32 provides in relevant part that "[a]n agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction."*

11. In number 3 above, which individuals must consent to Jeff adopting Jill and Joni?
- a. Only John
  - b. Only Mary
  - c. John and Mary
  - d. John, Mary, Jill, and Joni

**ANSWER: c.** *N.D.C.C. § 14-15-05 provides that the mother and father of the minor child to be adopted must consent and that*

*the minor child must consent if more than ten years of age, unless the court dispenses with the minor child's consent. Jill and Joni do not have to consent because they are not more than ten years of age.*

12. Dick and Jane were high school sweethearts. Jane became pregnant and during the summer between her junior and senior year of high school gave birth to a boy. Dick, who was 17 years old, signed a Recognition of Parentage shortly before the baby's birth and attended the baby's birth. Upon the baby's birth, the hospital where the baby was born immediately filed the Recognition of Parentage with the North Dakota Department of Health. The baby lived with Jane and her parents until Jane graduated from high school, at which time she moved out of her parents' home, got her own apartment, and applied for services at Regional Child Support, naming Dick as the baby's father. Dick has started to wonder if his son is really his child since both he and Jane have dark hair and brown eyes and the baby has red hair and green eyes, just like Dick's best friend Jake. Dick confronts Jake who acknowledges that he had sexual relations with Jane approximately 9 months before the baby was born. Dick wants to rescind his acknowledgment of paternity and comes to you for advice. What do you tell him?

- a. The acknowledgment of paternity is invalid since Dick was only 17 when he signed it.
- b. The acknowledgment of paternity is invalid since Dick signed it before the baby was born.
- c. Dick cannot rescind the Acknowledgment of Paternity because it has been more than sixty days since its effective date.
- d. Dick can commence an action to rescind the Acknowledgment of Paternity as long as he does it before the date of the first hearing on Jane's child support motion.

**ANSWER: c.** *An acknowledgment of pa-*



ternity may be signed before the birth of the child, may be signed by a minor, and takes effect upon the birth of the child or the filing of the documents with the state department of health, whichever occurs later. N.D.C.C. §14-20-14. A signatory may rescind an acknowledgment of paternity by commencing a proceeding to rescind before the earlier of sixty days after the effective date of the acknowledgment or the date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding to establish child support. N.D.C.C. § 14-20-17. Since Dick's acknowledgment of paternity became effective when the hospital filed it with the state department of health on the day of the child's birth, and more than sixty days have passed, it is too late for Dick to commence an action to rescind his acknowledgment. Under N.D.C.C. § 14-20-18, however, after the period for rescission has expired, Dick may bring an action to challenge the acknowledgment on the basis of fraud, duress, or material mistake of fact as long as he does it within two years after his acknowledgment was filed with the state department of health. Dick would have the burden of proof.

13. Kate and Mark are married but having been living apart for five years. Kate wishes to remain married to Mark because she is covered on his health insurance and has a serious, chronic health condition. Kate agrees to a legal separation on the grounds of irreconcilable differences and a Judgment of Legal Separation is entered dividing all of Kate and Mark's property and debt. Neither party is ordered to pay spousal support but Kate does not waive the issue. In the fall of 2013, Mark informs Kate that since her pre-existing conditions will not prevent her from purchasing her own health insurance under the Affordable Care Act, he intends to ask the court to revoke the legal separation and grant him a divorce on the grounds of irreconcilable differences. What do you tell Kate?

- a. If Bill can prove that there are irreconcilable differences in his marriage, his request for a divorce will be granted.
- b. The court may order Bill to pay spousal support.

- c. The court can revisit the property division in the judgment of legal separation if either party failed to disclose or comply with the court's order distributing property and debts.
- d. All of the above

**ANSWER: d.** N.D.C.C. § 14-05-29 provides that any time after a decree for separation has been granted, the court may revoke the decree and "if it appears to the court that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and in lieu of the decree shall render a decree divorcing the parties." N.D.C.C. § 14-05-29 provides that in a proceeding to revoke a legal separation and grant a divorce, "if the court has not previously done so" it "may provide for the payment of support to either party by the other." N.D.C.C. § 14-05-27 provides in relevant part that "subject to section 14-05-24" a decree of legal separation "may provide for the equitable division of the property and debts of the parties." N.D.C.C. §14-05-24 provides that a court may redistribute property and debt in a post judgment proceeding if a party has failed to disclose or failed to comply with a court order distributing property and debt.

14. In their divorce, Liz received \$50,000 from Richard's IRA. Richard established his IRA account after he left his job at Walmart and rolled over his 401(k) into a new Fidelity IRA. What is needed in order to transfer the money to Liz with no adverse tax consequences?

- a. Just a Qualified Domestic Relations Order
- b. Simply a letter directing that the money be transferred.
- c. QDRO and certified copy of the divorce judgment.
- d. A copy of the divorce judgment.

**ANSWER: d.** Individual retirement accounts are not qualified plans governed by ERISA but instead are governed by the provisions of I.R.C. § 408. Thus, to transfer fund tax free from an IRA to a spouse or former spouse, even if it is a rollover IRA from a qualified plan, a QDRO is not required and the QDRO rules do not apply. Instead, all that is needed is a judgment or decree of divorce or a written instrument

incident to such a decree.

15. During their divorce negotiations, Liz and Richard recognized that Liz would need \$1,000 per month in permanent spousal maintenance. Liz also received the marital home in the divorce, on which there is a mortgage payment of \$1,000 per month. Bob was concerned about Liz's financial management skills and the parties agree that as spousal maintenance Richard would be required to pay Liz's monthly mortgage payment until the mortgage was fully paid off. The judgment also requires Richard to maintain sufficient life insurance on his life to pay off the mortgage in the event he dies before the mortgage is paid in full. Is this payment deductible to Bob and taxable in Liz's income as spousal maintenance?

- a. Yes.
- b. No, because maintenance must be paid directly to the obligee.
- c. No, because the maintenance does not terminate with Richard's death.
- d. No, because you can't pay the obligee's bills in lieu of maintenance.

**ANSWER: c.** To be tax deductible, spousal maintenance must satisfy the requirements of I.R.C. §71. Under that section, the liability for payments, or for making other payments as substitution for those payments, must cease upon the death of the payee. I.R.C. §71(b)(1)(D).

## YOUNG LAWYER'S SHOWCASE



**LINDSAY M. HARRIS** is an associate at Maring Williams Law Office in Bismarck. Lindsay is licensed to practice law in North Dakota and Montana, and she focuses her practice on plaintiff's personal injury and wrongful death law.

Lindsay grew up in Bismarck. After graduating from Bismarck High School, she attended North Dakota State University and graduated magna cum laude with a Bachelor of Science in statistics and a minor in mathematics.

After receiving her undergraduate education, Lindsay attended the University of North Dakota School of Law. While in law school, Lindsay served as the co-captain of the law school trial team, Symposium Editor of the North Dakota Law Review, and teaching assistant for Trial Advocacy.

In recognition of her oral advocacy skills, Lindsay was elected to the Order of Barristers. Lindsay earned her law degree in 2012, graduating cum laude.

Following law school, Lindsay returned to Bismarck and served as a Law Clerk to the Honorable Mary Muehlen Maring of the North Dakota Supreme Court.

Lindsay is also active in the community. While attending NDSU, she volunteered as an ARC Buddy in the Fargo-Moorhead area. Currently, she volunteers with Junior Achievement and serves as co-chair for the Community Service Committee of the Young Lawyer's Section. In her free time, Lindsay enjoys golfing, reading, and spending time with family and friends.



**TAYLOR OLSON** is a shareholder at Furuseth, Kalil, Olson & Evert in Williston. She practices in municipal law, oil and gas law, probate, estate planning, and real estate. Taylor is currently the city prosecutor for the City of Williston and works for other various municipalities. She is also currently working as the Interim McKenzie County State's Attorney.

Taylor grew up in Williston. She graduated with a Bachelor of Science in Accounting from St. Cloud State University in 2005. She worked in public accounting for 3 years before attending law school. She graduated law school from the University of North Dakota with distinction in 2011 where she participated in Law Review, Moot Court, and the internship program. Taylor is currently licensed in North Dakota and Montana.

Taylor resides in Williston with her husband, Jordon Evert, and their yellow lab, Cooper. She spends her extra time sitting on various committees and volunteering whenever possible.





## YOUNG LAWYERS SHOWCASE

**TONYA DUFFY** is the owner and sole practitioner at Duffy Law Office, PC in LaMoure. Her practice areas include collections, criminal defense, estate planning, real estate, and probate. Tonya is also the City Attorney for LaMoure.

Tonya grew up in Valley City, where she worked in a family property management position for many years. She attended Valley City State University earning a degree in English. She graduated from the University of North Dakota School of Law, where she was a member of the Environmental Law Society.

Currently, Tonya is a member of the Women Lawyers section of the State Bar Association. She is licensed in North Dakota and plans to be licensed in Minnesota in the upcoming year.

In her spare time, she enjoys spending time with her husband, Benjamin, her two children, Bailee and Brody, spending time at the lake, running, and spending time with friends and family.



"The North Dakota Young Lawyer Section (YLS) is enjoying continued success in its support and programming for and by young lawyers. The YLS is continuing its assistance with the development of a state-wide mentorship program, it will be kicking off a new season of webinars this fall addressing the fundamentals of various practice areas and topics, and it continues its work to plan community service projects in the four corners of the state.

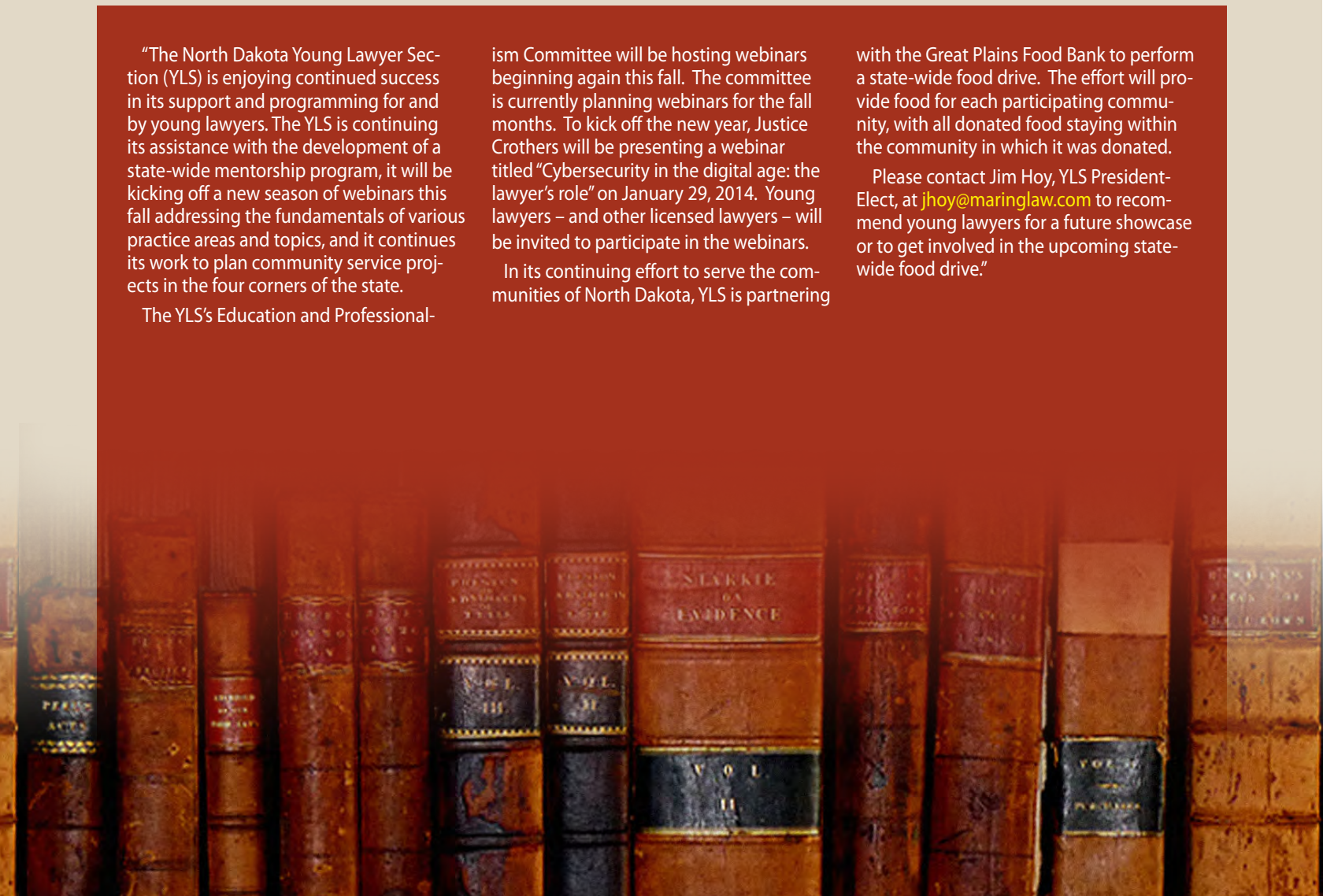
The YLS's Education and Professional-

ism Committee will be hosting webinars beginning again this fall. The committee is currently planning webinars for the fall months. To kick off the new year, Justice Crothers will be presenting a webinar titled "Cybersecurity in the digital age: the lawyer's role" on January 29, 2014. Young lawyers – and other licensed lawyers – will be invited to participate in the webinars.

In its continuing effort to serve the communities of North Dakota, YLS is partnering

with the Great Plains Food Bank to perform a state-wide food drive. The effort will provide food for each participating community, with all donated food staying within the community in which it was donated.

Please contact Jim Hoy, YLS President-Elect, at [jhoy@maringlaw.com](mailto:jhoy@maringlaw.com) to recommend young lawyers for a future showcase or to get involved in the upcoming state-wide food drive."



## SBAND PRO BONO HEROES

*A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or to charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, or by financial support for organizations that provide legal services to persons of limited means. Rule 6.1, North Dakota Rules of Professional Conduct.*

### PRO BONO SERVICE CONTRIBUTIONS

The following members have rendered professional services to persons of limited means between July 2013 – September 2013 by accepting a case, or cases, through SBAND's Volunteer Lawyer Program.

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## MEMORIALS

*The North Dakota Bar Foundation has received the following memorial contributions:*

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The State Bar Association of North Dakota

**In memory of Alan Duppler**  
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**In memory of John Peter Dosland**  
The State Bar Association of North Dakota

**In memory of Wayne T. Anderson**  
David S. Maring and the Hon. Mary Maring

**In memory of Erick J. Bohlman**  
Chief Justice Gerald W. VandeWalle

**In memory of Max Rosenberg**  
Hon. Carol Kapsner, Richard Thomas,  
Robert Thomas and Benjamin Thomas  
The State Bar Association of North Dakota

## PRO BONO FUND

Jeffrey Gold  
Hon. Carol Kapsner  
Levi Andrist

## SBAND PRO BONO RECOGNITION PROGRAM

SBAND conducted a contest of the members to name the recognition program for SBAND's volunteer lawyers who donate 50 or more hours of service. The Board of Governors selected "Justice For All" Lawyers Program submitted by **Rick Johnson, Fargo**. He will receive a certificate for free attendance to the SBAND 2014 Annual Meeting in Fargo, June 11-13.

## NORTH DAKOTA BAR FOUNDATION OUTSTANDING STUDENT AWARDS



*These awards were presented at UND Homecoming in October. Pictured from left are Joshua Frey, Andrew Smith, Zachary Eiken, and Jack McDonald Chair of the NDBF Board of Directors.*

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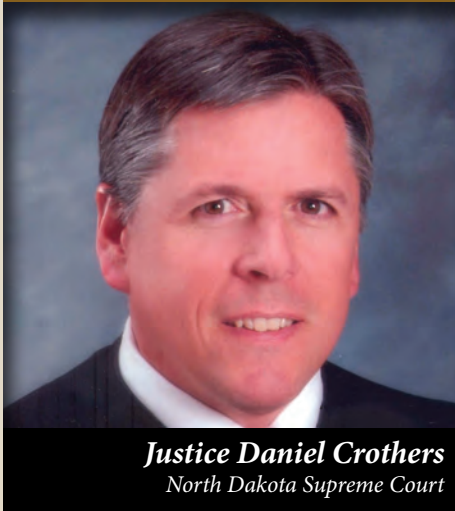
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**Justice Daniel Crothers**  
North Dakota Supreme Court

## SOCIAL NETWORKING AND LAWYER ADVERTISING REGULATION

specialties in patent, admiralty, or other “course field” areas.<sup>6</sup>

Comment to our Rule 7.4 notes:

Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer’s recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding certification.<sup>7</sup>

The Philadelphia Bar Ethics Committee opinion considered this same rule in the context of a lawyer’s posting on the social media site LinkedIn.<sup>8</sup> It concluded, “[I]t is clear that any statements on LinkedIn, or on any other website, must be truthful, may not mislead the public, and should convey only objective verifiable information.”<sup>9</sup>

Regarding advertising specialties on LinkedIn by listing areas of practice under “skills and expertise, the Philadelphia Bar opinion noted:

The format of LinkedIn creates ambiguity. While LinkedIn does not include the word “specialist” on a profile, the inquirer is concerned about listing practice areas in the “Skills and Expertise” section since use of the term “expertise” might be considered akin to use of “specialist.” The Committee finds that listing under that heading, which cannot be changed by an individual placing a profile there, is merely listing the areas in which an attorney practices, similar to such listings on many law firm websites.<sup>10</sup>

The opinion addressed specific categories of expertise, explaining:

However, turning to the specific

categories under that listing, in which the inquirer can specifically indicate that she is an “expert” in a certain field, the Committee finds that this could reasonably lead a consumer to believe that the lawyer is a “specialist,” despite the fact that the lawyer’s expertise does not invoke any of the provisions of Rule 7.4a which would allow such a description by the inquirer of herself. Thus, while the inquirer may list her practice area under the general category of “Skills and Expertise” the Committee finds that the inquirer may not categorize herself as expert or herself as an “expert” or for that matter “experienced” outside of the parameters of Rule 7.4.<sup>11</sup>

Finally, the ethics opinion addressed posts made by others, explaining:

In addition, since third parties are permitted to post comments about an individual on that individual’s linked in page, the Committee cautions that the inquirer must monitor those posting[s] to assure that any statements about her qualifications are truthful, do not convey unreasonable or unquantifiable expectations, and are not misleading. If any of them are, the inquirer should immediately remove them from her LinkedIn page.<sup>12</sup>

In sum, the Philadelphia Bar Ethics Opinion interprets Rules of Professional Conduct similar to North Dakota’s advertising and solicitation rules. Because legal advertising gives rise to requirements including accuracy and retention, The Philadelphia Bar’s ethics opinion may provide guidance to lawyers who use LinkedIn or other similar social networking websites.

<sup>1</sup> Philadelphia Bar Ethics Opinion 2012-08.

<sup>2</sup> N.D.R. Prof. Conduct 7.1.

<sup>3</sup> N.D.R. Prof. Conduct 7.2(a).

<sup>4</sup> N.D.R. Prof. Conduct 7.2 cmt. 2.

<sup>5</sup> N.D.R. Prof. Conduct 7.4(a)-(c).

<sup>6</sup> N.D.R. Prof. Conduct 7.4 cmt. 3.

<sup>7</sup> Philadelphia Bar Ethics Opinion 2012-08.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Can internet social network postings become regulated lawyer advertising? At least one bar ethics opinion says “yes.”<sup>1</sup>

North Dakota has not addressed this question by ethics opinion or by known or reported litigation. North Dakota’s general rule on communications about lawyer services is based on the ABA Model Rules of Professional Conduct and provides: “A lawyer shall not make a false or misleading communication about the lawyer, a person professionally associated with the lawyer, or their services.”<sup>2</sup>

Our advertising rule imposes additional restrictions on advertising, providing among other things:

Subject to the requirements of Rule 7.1 and 7.3, a lawyer may market and advertise legal services through media, including published and on-line directories; newspapers, newsletters and other periodicals; outdoor advertising; electronic advertising, including radio, television, video and the Internet; and through text-based communications including written correspondence and e-mail.<sup>3</sup>

Comment 2 to Rule 7.2 notes: “[E]lectronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule.”<sup>4</sup>

North Dakota’s Rules also address advertising fields of practice, stating: “A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.”<sup>5</sup> This rule allows advertising





## KNOW YOUR BOARD OF GOVERNORS: ZACHARY EVAN PELHAM

### **Current position:**

Partner, Pearce & Durick, Bismarck  
*Hometown, college attended, law school attended:*

I grew up in Romeo, Michigan, a suburb of Detroit. I attended Taylor University in Upland, Indiana—where I received History and International Studies degrees and met my wonderful wife (a North Dakota girl). I am proud to have graduated from the University of North Dakota School of Law in Grand Forks.  
*Any professional work prior to law school?*

I substitute taught for a year after graduating from college. I currently volunteer with several programs that allow me to return to a

classroom. I often find I learn just as much as the students.

### *What led you to a career in law?*

I am the first lawyer in my family and my parents encouraged me to consider a career in law.

*Year admitted to bar:* 2004

### *Nature of your practice:*

My practice is focused on personal injury and negligence defense, oil and gas law, administrative and government law, and employment and labor law.

### *Length of time on SBAND Board:*

I joined the Board in July 2013.

### *Other involvement with SBAND prior to being on the Board:*

I am the current chair of the Law Related Education Committee and also serve on the Ethics Committee. I have also served on three annual meeting planning committees.

*Particular areas of interest regarding SBAND or legal profession in North Dakota:*

I am interested in increasing involvement in SBAND, as well as other legal organizations in our state. The self-governance of our profession is only as good as those who are involved. Being involved fosters civility by the “rubbing of shoulders” at committee meetings, allows for networking opportunities, ensures the continuity of institutional knowledge, and gives our association willing persons to help make important decisions. There are numerous committee and leadership positions in SBAND (and other organizations) for the taking. While we are all extremely busy, becoming involved ensures that we remain extremely busy.

*Favorite quote:* Fortune favors the bold.

### *Last book read (good or bad):*

I have two (soon to be 3) children four and under -- Curious George is on my top list right now.

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## A SNAPSHOT ON NOTETAKING

by David Chapman

Mark Twain said, "If you tell the truth then you don't need to remember anything." Wonderful advice, but for lawyers the effective, but not so catchy phrase should be, "Refer to your notes and you don't need to remember anything."

Why are notes important to the ethical practice of law? Where do I begin? There are a multitude of very good reasons for lawyers to take very detailed notes. Addressing all of the reasons goes well beyond the scope of this brief article, but there are two important functions of careful note taking: (1) protection of the client's interests; (2) protection of the lawyer.

Lawyers should meticulously take notes on our cases because our credibility is one of our main assets. We are poor lawyers without credibility. As a lawyer with the short term memory of an old mosquito, I take notes on everything. Phrases like "I think so," "if I remember correctly," and "the way I remember it" are not confidence building phrases for a client and can show a certain measure of disorganization if you are defending against a bar complaint.

First, our notes serve the client well. Lawyers are required to provide competent representation under Rule 1.1. With cell phones, text messaging, email and news at the speed of a mouse click, lawyers are increasingly under pressure to provide rapid fire services for clients. Lawyers may view note taking as detrimental to the effort to satisfy the client's need for rapid fire service, but to skip careful note taking in favor fast food legal

services is both dangerous for the lawyer and not good for the client. Many legal issues are complex and require methodical analysis and careful deliberation.

In one of my practice areas shooting from the hip can have dangerous consequences for the client including the possibility of deportation. The U.S. Court of Appeals for the Ninth Circuit has stated that: "[w]ith only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in complexity.' A lawyer is often the only person who could thread the labyrinth."<sup>1</sup> Rapid fire law is not conducive to the careful consideration of any complex legal issue. I find that my notes help me be more contemplative and competent.

The methodical contemplation that good note taking encourages also furthers our duty to be diligent under Rule 1.3. Diligence does not mean acting with such speed that the client's interests are jeopardized. Taking and reviewing notes help cement the steps of the case and the research done in your mind and, thus, promote overall diligence. It also helps one maintain focus and drive to see the case through to a successful conclusion and promotes a sense of organization about our work.

Lawyers are also required under Rule 3.2 to use "reasonable efforts to expedite litigation consistent with the interests of the client." Mistaken memory can create distrust in opposing counsel, harm your client's interests and bog down litigation. Opposing counsel will have much more respect for your word if you are accurate and your positions on issues will have the strength of conviction if you are consistent. A careful diary of the case helps you steam onward.

Another value to good notes lies in the future. Lawyers need to think about succession planning for their practice. If you die or are incapacitated and leave a confused and disorganized file with no

notes to chart the way, how is a new attorney supposed to pick up where you left off without slowing down the process? How is the client to avoid paying twice for the same work? It may be next to impossible. You can expedite the litigation consistent with Rule 3.2 beyond your role in the case and do so consistent with the financial interests of the client by leaving a well documented file for new counsel to review. New counsel should be able to pick up where you left off in the same manner as a relay runner having been passed the baton.

Finally, note taking helps manage a case which can prevent violation of other rules through acts of negligence. Although broadly written rules such as Rules 1.1 and 1.3 may not be violated by one single act of negligence, the North Dakota Supreme Court has stated that nothing prevents discipline for single acts of negligence that implicate a rule that "expressly mandates or proscribes specific, defined conduct."<sup>2</sup> Your notes really will help you to keep the case on the rails and avoid mistakes.

The second aspect of note taking that holds importance is that they are our first line of defense. No matter how competent, diligent and professional you are at handling the business of your client, everyone finds the ornery client at some point. We have all had that client where nothing pleases them. They are going to be disagreeable no matter what you do.

If you get the ornery client who files a complaint, you should operate under the premise that responding to a complaint is not a closed book exam. This is not law school and the bar is not investigating the complaint to test your mental acuity. Think of the response as an open book practical exam that tests what you did, when you did it and why you did it. Always remember that a disciplinary complaint must be proven by clear and convincing evidence.<sup>3</sup> If you are not at fault ethically then careful notes can turn the case in your favor. Your notes are your



friend.

If a client complains that you were not diligent under Rule 1.3 in pursuing their interests, or did not act competently under Rule 1.1 then your notes should reflect when you communicated with a client, when you received information or documents, and when you acted upon information or documents. Those same notes should also reflect why you acted as you did or why you advised as you did.

Use of careful notes can make life so much easier and also protect your client's interest; employ and refer to them often.

<sup>1</sup> *U.S. v. Ahamada-Aguilar*, 295 F.3d 943, 950 (9th Cir. 2002).

<sup>2</sup> *In re Disciplinary Action Against Feland*, 2012 °ND 174, ¶36-37 (ND 2012).

<sup>3</sup> *In re Disciplinary Action Against Seaworth*, 603 N.W.2d 176, 181 (1999).

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## ***Supreme Court to expand funded mediation program***

Effective January 1, 2014, North Dakota's court funded mediation program will expand to include post-judgment mediation in family law and probate cases. New N.D. Rule of Appellate Procedure 5 provides details on how post-judgment mediation will operate.

Under Rule 5(d)(1), "[a]ny party contemplating an appeal" in an eligible case may submit a request for post-judgment mediation to the Court's mediation program administrator within 60 days after service of notice of entry of judgment or within seven days after service of a notice of appeal. Rule 5(d)(2) lists types of cases eligible for post-judgment mediation: divorce cases involving property or spousal support; any case involving parenting rights, except for termination of parental rights cases; any case involving residential responsibilities or support of minor children; any case involving grandparent visitation; and any case under the Uniform Probate Code or the Uniform Trust Code.

The case types eligible for post-judgment mediation are essentially the same as those that have been eligible for court-funded family mediation since 2008, with the addition of probate cases. The members of the Joint Alternative Dispute Resolution Committee, which developed Rule 5, believed that mediation would be helpful in probate cases because these often stem from family disputes.

Under Rule 5(d)(3), eligible cases will

be referred to post-judgment mediation on request of any party. If another party objects, the party may seek exemption from mediation, which can be granted if: the issues raised are limited to a question of law; prior post-judgment mediation has been attempted in an attempt to resolve substantially similar issues; or other good cause is shown.

Post-judgment mediation is generally excluded in cases in which there is a protection order between the parties.

Rule 5(d)(7) allows up to six court-funded hours of mediation if a case is accepted for post-judgment mediation. If parties need more time, they can purchase it from the mediator. Parties may be eligible for additional reduced fee or free mediation depending on their income.

N.D. Rule of Court 8.9, which establishes a roster of alternative dispute resolution neutrals, has been amended to include standards for post-judgment domestic relations and estate mediators. Under Rule 5(e), mediators qualified as post-judgment mediators under Rule 8.9's new provisions may be assigned to provide court-funded mediation.

Assignment to post-judgment mediation does not toll the deadline for filing a notice of appeal and does not automatically toll deadlines for filing appellate briefs, although Rule 5(d)(6) does extend the deadline for ordering transcripts. Under Rule 5(d)(5), mediation must be completed within 45 days of the assignment of the post-judgment mediator.

Meanwhile, the family mediation program that has been in place since 2008 will shed its pilot project status and become permanent under the framework set out in new N.D. Rule of Court 8.1.

Supreme Court Administrative Order 17, which created the family mediation pilot project, will be repealed on January 1, 2014, and Rule 8.1 will be put in place to govern family mediation. A new Appendix I will be added to the Rules of Court to support the family mediation program, containing

forms and supplements provided for the convenience of mediation program users. Over the course of the pilot project, court funded family mediation proved effective in helping parties resolve issues. A recent analysis of program data reveals that parties taking advantage of the program were able to resolve 51 percent of parenting time disputes through mediation. In addition, in 75 percent of mediations parties agree to address issues beyond parenting time and were able to resolve those other issues 42 percent of the time.

Participating in family mediation seems to increase parties' general satisfaction with the ultimate outcome of the process. In the South Central Judicial District, the average number of post-decree filings per case fell by 86 percent in cases mediated during the first year of the pilot project compared to cases filed the year before. In other districts where the program was used, the drop in post decree filings average approximately 50 percent.





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## IT'S YOUR MEMBERSHIP ASSISTANCE PROGRAM – WHAT YOU NEED TO KNOW ABOUT IT



Since January 2008, SBAND has offered a member assistance program for its members and their families. More information on the program is available at the SBAND website, <http://www.sband.org>.

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To learn more about Medical Malpractice Law go to  
[www.mymedicalcase.com](http://www.mymedicalcase.com)

## MELVIN WEBSTER RULE 3.1

*continued from pg. 9*

Webster no longer volunteers for the organization or when the organization no longer requires his services. Rule 3.1 requires that a lawyer not be paid for his work, but allows the legal services organization to cover the volunteer's actual expenses, if it so chooses.

While Rule 3.1 restricts a lawyer's ability to practice, other requirements normally imposed on lawyers in active status are lifted. For example, there is no fee imposed on lawyers applying to practice under the Rule. Also, lawyers admitted under Rule 3.1 are not required to undertake Continuing Legal Education courses unless the legal services organization for

which they volunteer requires it. In this instance, Webster will be encouraged to attend the two CLE seminars offered by Legal Services each year.

Rule 3.1 gave Webster a chance to return to his roots and give back to the legal services organization that helped start his legal career. The Rule provides experienced lawyers an opportunity to volunteer their time without having to go through the long process of bar re-admittance. Legal services organizations will benefit from the much-needed aid these lawyers can provide. And hopefully, Webster is the first of many to take advantage of the Rule and provide an immeasurable benefit to their communities and to the State Bar Association of North Dakota.

“ *Either your an active attorney...or you quit, and I decided to quit.* ”

# Lawyer Assistance Program

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## DOCS, CROCS & FROCKS



*Some of this year's team are shown here from left Leslie Bakken Oliver; Jackie Stebbins (and daughter Kennedy); Matthew Arthurs; Jack Zuger and Dante Tomassoni.*

Eight Bismarck lawyers again joined with doctors and clergy in a friendly biking, running, walking and swimming competition to raise funds for a program that provides services for homeless families.

The second annual Docs, Crocs and Frocks competition August 17 raised nearly \$30,000 for the Welcome House, which provides short-term housing and assists homeless families obtain permanent housing.

This year's team of lawyers were Matthew Arthurs and Justin Vinje, swimming; Jack

Zuger and Dante Tomassoni, biking; Paul Forster and Rebecca Binstock, running, and Leslie Oliver and Jackie Stebbins, walking. They competed against 12 members on the other two teams.

"The competition took place on a wonderfully crisp morning," said Stebbins. "The idea behind Docs, Crocs and Frocks is really wonderful. It puts together healers, justice seekers and people of faith with the common goal to raise money for a homeless transitional shelter in the Bismarck-Mandan area."

Stebbins described participating in events like this good for the professionals in her community. "We must never forget that there is great need surrounding us. An event like Docs, Crocs and Frocks is a fun way to meet other professionals and use our contacts to raise money for people who are need of food and shelter. This was a very humbling event for me personally, and I hope to continue to participate in the future," she said.

Treva Beard, board president of Welcome House, organized this year's competition and said Docs, Crocs and Frocks was successful for many reasons. "It raised enough money to provide more than 275 families throughout the year with food, shelter and case management," she said. "It also put a lot of people into the community to advocate for Welcome House. And, it brought in some very generous donations."

Welcome House director Brenda Kriedeman said the support from this competition is very welcome as the program is expanding. "We are acquiring a building in Mandan to house six to eight families. The demand for our services is growing every year, to the point that we have had to turn away more than 40 families in both of the past two months."

More information on Welcome House can be found at [www.welcome-house.net](http://www.welcome-house.net).

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## ETHICS & DISCIPLINE

*Disciplinary Board of the Supreme Court of the State of North Dakota, Petitioner v. Ervin J. Lee, Respondent No. 20130017*

A hearing panel of the Disciplinary Board found that Ervin J. Lee violated N.D.R.

Prof. Conduct 1.5(b) and (c), Fees; and N.D.R. Prof. Conduct 1.15(a), (d), and (e), Safekeeping Property and Professional Liability Insurance Disclosure. The hearing panel recommended that Lee be suspended from the practice of law for 60 days and pay the costs of the disciplinary proceeding in the amount of \$7,147.51.

The Supreme Court found the evi-

dence clearly and convincingly established that Lee violated N.D.R. Prof. Conduct 1.5(b) and (c), Fees; and N.D.R. Prof. Conduct 1.15(a), (d), and (e), Safekeeping Property and Professional Liability Insurance Disclosure. The Court ordered that Lee be suspended from the practice of law for 60 days and pay the costs of the disciplinary proceeding in the amount of \$7,147.51.



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## NORTH DAKOTA ATTORNEY AUTHORS PARALEGAL TEXTBOOK

By Jean Hannig

Richard N. Jeffries, an adjunct professor in the Paralegal Department at Minnesota State University Moorhead, has authored a revolutionary new textbook on torts and personal injury. The textbook, published by Pearson Education, became available nationwide in April. The textbook goes far beyond the traditional approach of just teaching the black letter law of torts. The book includes practical hands-on assignments, extensive appendices for use by the student, a discussion of medical issues and a discussion of insurance issues with related documents. A particularly unique and helpful aspect of the book includes a multitude of “workplace skills tips” throughout each chapter.

An event to celebrate the launch of the textbook was held at Minnesota State University Moorhead in April. The Paralegal Department is in the School of Business and

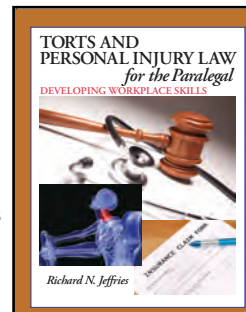
Innovation.

Jeffries received his B.A. in Business Administration from MSUM in 1965 and his Juris Doctorate with distinction from the University of North Dakota. He spent 37 years practicing law in Fargo and Moorhead concentrating his practice in the areas of civil litigation personal injury. He practiced law in Fargo as a partner in the law firm of Jeffries, Olson and Flom until his retirement in 2007. He was named a Leading Minnesota Attorney, and received an “av” rating (the highest available) from Martindale Hubbell. Jeffries is licensed to practice law in Minnesota, North Dakota, and Florida. He plans to be admitted to practice in Arizona.

Jeffries has recently completed another new book. This is an e-book that will be available through Amazon.com. The title of the book is “Injured in a Car Accident? Answers

You Need to Get the Money You Deserve.” This book is intended as a guide to assist consumers with the medical and legal challenges of a personal injury lawsuit. The book is available for distribution this fall after November 1.

Jeffries continues to teach law at Minnesota State University Moorhead. He is co-teaching the Personal Injury class with his former long-time paralegal, Terri Bourcy Smith.



## NORTH DAKOTA JUDICIAL INVESTITURES



*Robin Schmidt is sworn in as a Judge of the Northwest Judicial District by Chief Presiding Judge William McLees on September 13, 2013. Holding the Bible is her father, Donald Schmidt.*



*Right: Judge Schmidt and her daughter, Ella.*



*Left: Northwest Judicial District Judge Jacobson and his wife, Toni.*

*Right: Paul Jacobson takes the oath of office from Judge David Nelson on October 25, 2013.*



## PRO BONO FEATURE

### GROWING A PRO BONO CULTURE IN NORTH DAKOTA

While it is a good to serve on the boards of the local food pantry or school, North Dakota lawyers are not providing pro bono services by doing so. This is the one of the messages the members of the recently reactivated State Bar Association of North Dakota Pro Bono Task Force wants to share with state lawyers.

“There is a pretty big misunderstanding in North Dakota that pro bono is the same as community service,” says Levi Andrist, Bismarck, who heads the Pro Bono Task Force. “It’s important for state lawyers to be good people and to volunteer for community service, but pro bono work involves lawyers providing services to individuals or groups who are unable to pay with no expectation of getting paid.” The goal of the task force is to build a culture of pro bono in the state that focuses on manpower and money, says Andrist. In building this culture, more lawyers would step up to provide services, more lawyers would contribute funds to the Bar Foundation, and state lawyers would support state and national legislation that would increase funding for Legal Services of North Dakota.

The North Dakota Supreme Court’s Rules of Professional Conduct define Pro Bono Publico Service in Rule 6.1.

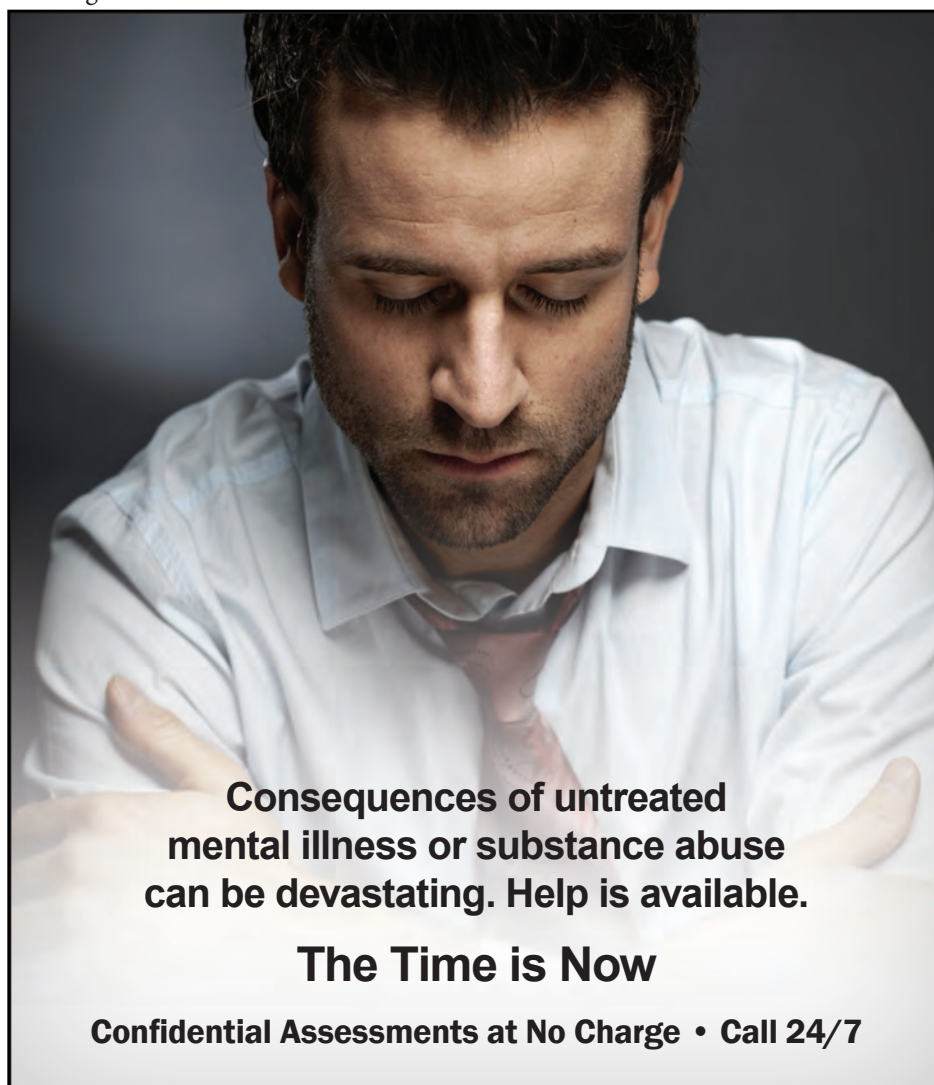
It says, “A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, or by financial support for organizations that provide legal services to persons of limited means.”

Unlike in some state where the obligation to provide pro bono services is mandatory, Andrist says North Dakota’s requirement to provide services is aspirational. And, while it continues to stress the need for more involvement, SBAND is working to provide better reporting and recognitions services.

“Reporting is important because it elevates services to a next level,” says Andrist. “It also provides data for SBAND to leverage services and make a much bigger statement about what the state’s lawyers are doing”

#### New recognition program launched

During the week of October 21, which was National Celebrate Pro Bono Week, SBAND launched its Justice of All Lawyer Program.



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Starting in 2014, SBAND will give special recognition to members who provided 50 hours or more of legal services in the previous calendar year to low-income individuals at no fee and without expectation of fee.

The lawyers who report this voluntary service will be recognized as a Justice for All Lawyer and included on the annual roster published in *The Gavel*. They will also receive a certificate suitable for framing and will be invited to a gala event honoring all the Justice for All Lawyers. More information on this program is available on the Justice for All Lawyer page at [www.sband.org](http://www.sband.org).

SBAND President Nancy Morris says this new program is one of the ways to move forward with lawyer recognition. "We need to do more to recognize state lawyers for the good work they are doing," she says. "While it is a professional responsibility to provide pro bono services, we also want state lawyers to understand what a benefit this work is to them and their communities."

For non-traditional lawyers who do not carry malpractice insurance, Morris says SBAND is able to help with providing coverage for the pro bono work they do.

For lawyers new to pro bono work, SBAND staff offers support and resources about needs and opportunities for providing services across the state. Contact Tony Weiler, executive director at 701-258-1404 or [tony@sband.org](mailto:tony@sband.org).

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