NCPA FORUM

SPRUMMER 2018
(SPRING&SUMMER)

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NALA

NCPA is an affiliate member of the National Association of Legal Assistants

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To submit materials for publication or to advertise, please contact our Editorial Staff at ncpaforum@ncparalegal.org

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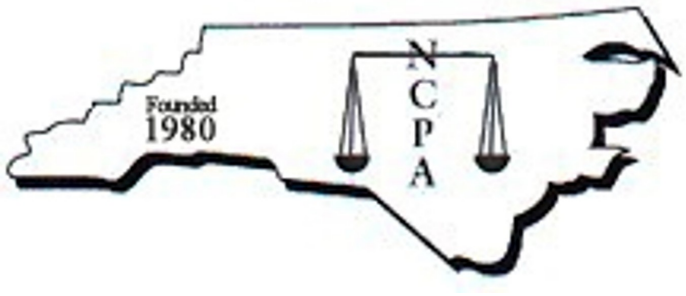


Have you moved? Please login to your profile and check your contact information. We use email as our primary means to contact members. Please be sure your information is up to date!

President's Message
Beverly K. Moore, NCCP

The sun is shining and the temps have finally warmed up – well at least for today! I am ready for it to stay warm (not hot), just warm so I can wear the spring clothes.

I am writing this after NCPA's first Board/Executive Committee meeting for the 2018-2019 year. We have a great group of volunteers who are ready and excited to make 2018-2019 an outstanding year for NCPA. Thank you to the Board/Executive Committee that served for 2017-2018. I enjoyed working with you all.

Are you are planning to take the NALA CP or ACP exam or the October NCCP exam? The scholarship essay contests for these exams are now open!

The Meredith R. Pollette, CLA Scholarship awards one application fee for the CP exam and one application fee for the ACP Exam.

The Mary F. Haggerty, CLA, NCCP Scholarship awards up to 5 application fees for the October 2018 NCCP exam.

Complete details on deadlines and essay topics are available on NCPA's website.

I want to take a minute to send a big THANK YOU to everyone that organized (Lakisha, Kaye, Crystal, Michele, Jennifer, Paulene and Patti) and everyone that attended the 2018 Annual Seminar and Meeting. I got to learn, ask questions, make new paralegal connections and see friends. Live seminars are the best!

As school is starting to end and vacations begin, please stay safe and enjoy. Hope to see you at an NCPA event soon.

If you have any comments or suggestions, please do not hesitate to contact me. I love hearing from NCPA members!

Beverly K. Moore, NCCP

Membership Report
Patricia F Clapper, ACP, NCCP
2nd Vice President

Membership Per Membership Level:

177 General

26 Associate

45 Student

5 Sustaining – Courtlogic (Gold), Ruffin Consulting (Gold), Lawyers Mutual Insurance (Bronze), Registered Agent Solutions (Bronze) and Alliant National Title (Bronze)

2 Education – Carteret Community College and Meredith College

Membership Per District:

District 1: 15

District 2: 82

District 3: 13

District 4: 65

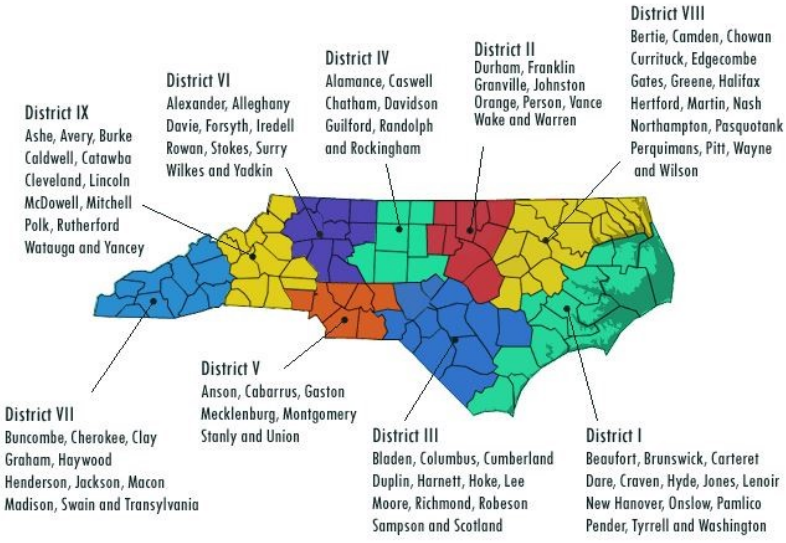
District 5: 36

District 6: 20

District 7: 6

District 8: 6

District 9: 10



Patti Clapper, ACP, NCCP
Second Vice President

NCPA NEWS

SAVE THE DATE

July 11-13, 2018
NALA's Annual Seminar & Meeting
St. Louis, MO

@ the Hilton St. Louis at the Ballpark

For more information, or to register, click on the following link:

https://nala.org/conferences/nala-conference-expo

&&&&&

We're going back to the BEACH!!!

SAVE THE DATE

April 11 – April 13, 2019

NCPA's 39th Annual Seminar & Meeting

Courtyard Carolina Beach Ocean-front

COURTYARD By MARRIOTT

100 Charlotte Avenue, Carolina Beach, NC

NCPA appreciates the support of its Sustaining Members! Please check out their services and let them know you heard about them from NCPA!

CourtLogic
Ruffin Consulting
Lawyers Mutual
Registered Agent Solutions
Alliant National Title Insurance Company

Did you know that many of our annual seminar sessions are available online, on demand for CPE credit? Each session is 1 hour of CPE credit. Registration information is on our website.

DISTRICT HAPPENINGS NEWS

Chairman's Message
Heather Padgett, NCCP

Happy spring! Although the calendar tells us that winter has been over for quite a few weeks, it seemed that Mother Nature was not quite ready to move into warmer temperatures. However, at least here on the coast, we are finally into blue skies, warm afternoons, and beautiful flowers. I will once again delude myself into thinking I have a green thumb and buy pots of lovely spring flowers, determined that this year will be the year I keep them all alive. Hope springs eternal, right?

An enormous THANK YOU! to all of the members who worked to put on a great Annual Meeting & Seminar in Greensboro. We had interesting speakers, good food, and great opportunities to connect with friends, both old and new. Behind the scenes work is already under way for next year's Annual, and I think we have a Save the Date somewhere in this issue about the location. Be sure to get the date on your calendars – you won't want to miss out!

We have a few new District Directors and I want to thank them for stepping up to volunteer. NCPA only gets stronger as we get new ideas and energy in the mix. At our recent board meeting I heard exciting plans about meet and greets and potential CPE opportunities within the districts, so keep in touch with your District Director and check in with NCPA's Facebook page. If you don't know who your District Director is, I challenge you to find out. Send an email and introduce yourself and let them know what would interest you as far as speaker topics, meet & greet locations, and volunteer opportunities. Make the most out of your membership with NCPA!

I also want to take this opportunity to say thank you for the chance to once again serve as your Chairman of the Board. It has been an honor to serve with this Board and Executive Committee, and I'm looking forward to the upcoming year. NCPA has a dedicated and enthusiastic group of volunteers and working with them and learning from them has been an incredible opportunity for me.

I hope everyone has the chance to get outside and enjoy the beautiful weather. I know sometimes in our daily realities of deadlines, difficult attorneys, and family responsibilities, it is challenging to find time for yourself, but I hope each of you will do so - even if it's just for a couple of minutes, sitting in the sunshine and admiring the flowers.

Heather Padgett

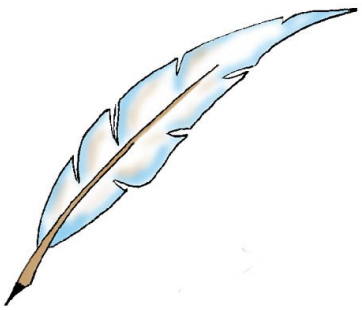
ESSAY SCHOLARSHIP WINNERS

1st: Leigh Steinbacher –Meredith College

2nd: Kali Mallory—Meredith College

3rd: Katherine Benson—Western Piedmont Community College

4th: Jasmin Pride—Meredith College



1st Place
Leigh Steinbacher
Meredith College

To be simple and concise, I have chosen to become a paralegal because of my passion for and interest in social justice. Since my time as an undergraduate I have known that I wanted to help people, but I did not know how or in what capacity. I have always possessed natural strengths in various forms of communication, organization, and research. In addition to these more academic skills, I have honed the ability to relate to others from different life circumstances, no matter how different those circumstances may be from my own. While it took me some time, I came to the realization that working in the legal profession, more specifically as a paralegal, would be a well-suited and fulfilling fit for me.

I chose to become a paralegal because I know that I am a good communicator and enjoy writing, calendaring, and organizing. I have enjoyed working in supportive roles to maintain records, schedules, and client correspondence. I also enjoy working on projects with various phases and deadlines, and helping team members stay on schedule to make sure deadlines are met. I find research and compiling and condensing information from a variety of sources to be very satisfying tasks. I think using these skills as a paralegal will be very fulfilling, knowing the benefit the end product will bring for attorneys and their clients.

For a long time I knew that I was passionate about social justice and the idea of helping people. I chose to become a paralegal because I think it will be very satisfying to help people on an individual basis, while at the same time having the opportunity to help people on a broader scale by working on cases affecting laws and policy. I have always enjoyed working with people with different backgrounds and perspectives from my own and pride myself in

1st Place
Leigh Steinbacher
Meredith College

Continued

being able to communicate effectively regardless of these differences. I look forward to using the skills I have developed in my customer service experience to relate to clients and make them feel heard, understood, and valued. Outside of working directly with clients, I look forward to working in a supportive role on cases that influence policy to ensure equality and justice for underrepresented populations.

I look forward to a career that is both intellectually challenging and emotionally satisfying. I want to help better the lives of individuals and communities through my work, while exercising my academic and clerical skills. The unique combination of clerical and interpersonal duties the paralegal profession requires will be a welcome and satisfying challenge for me.

2nd Place
Kali Mallory
Meredith College

I was in high school when I decided that I wanted a career in the legal profession. From an early age, I have always appreciated the concepts of morality, justice, fairness, equality. I always strove to carry out those attributes in everything I did. Thus, as I began to ponder what I wanted to make a career out of, I knew that I had to be involved in the law. I had developed a love for law related films, dilemmas, and principles and individuals within the profession, but the paralegal program exposed me to legal issues that I wanted to know more about or did not know anything about. I am highly interested in criminal law and family law, however; my paralegal program has enhanced my interest in subjects that I never thought would interest me—such as business law and property law. I am well pleased with the legal background that the paralegal program has given me. As a result, I find myself researching legal topics and issues that I otherwise would have not researched. In all, the paralegal program has increased my admiration for the law and has ensured me that I am entering the right profession.

I possess many qualities that will ensure my success in the paralegal field. I am a goal-oriented worker. Not only have I always strived to complete my goals in a timely matter, but I always try to outdo myself with every new goal. I also have an eye for detail, which ensures that my work is carefully produced, analyzed, and edited. I love completing research. Whenever there is an issue that needs to be analyzed, I dive into my research

The paralegal field also encompasses what I want in a career. Paralegals will always be needed because they are essentially the backbone of the law office. Thus, the field provides stability. I know that there will always be a demand in this field. Also, the paralegal field is versatile. I love that I can work in different areas of the law and acquire knowledge and experience

2nd Place
Kali Mallory
Meredith College

Continued

in these various areas. I have always enjoyed holding a supporting role in my academic, volunteer, and work experiences. I do not have to be in the spotlight or steering the ship in order to be fulfilled and feel successful. Rather, I enjoy contributing to others' success by working hard and being dependable.

I also want to become a paralegal to have an impact on people. Since researching, interviewing, drafting, corresponding, etc. are essential functions of a paralegal, I understand that my work will have an impact on individual cases and case outcomes. Thus, I have a chance to contribute to the successful resolution of a case by doing my due-diligence as a paralegal. I would be the face of the firm. I'd have the duty of greeting each client, listening to their needs, and serving as a liaison between the client and the attorney. Although I know that I will not establish the attorney-client relationship, I am happy that I can make things runs more smoothly between the both sides.

Even though I plan to attend law school within the next 2-3 years, I believe that becoming a paralegal is the best stepping stone for me. The thought of initially going to law school made me anxious and lack confidence – something paralegal school has cured for me. My professors have thoroughly introduced the law and how paralegals operate in the law office. They have ensured me that I have what it takes to thrive in the legal field and I feel fully prepared and capable of becoming a paralegal.

3rd Place
Katherine Benson
Western Piedmont Community College

I wish to become a paralegal because I watched too much Scooby Doo growing up. As a little girl, I loved watching the antics of a crime fighting group of teenagers and their dog as they tried to solve mysteries each week in this classic cartoon series. Despite the often-bumbling efforts of the protagonists Freddie, Daphne, Velma, Shaggy, and their Great Dane Scooby Doo, they were able to solve the crime, even if it was by accident. Those "meddling kids" taught me several important life lessons that continue to influence me beyond sheer entertainment. The first lesson being about how most monsters end up being something much more mundane. The things we should be afraid of aren't the mummies or vampires lurking in the dark but rather the criminals who put their own desires and goals before others. At the end of nearly every episode the plot would come to a conclusion and after capturing whatever creature that had been terrorizing them. Having caught the culprit, one of the gang would remove the costume hiding the real source of their troubles. Inevitably, under the mask would be a shady businessman trying to scare off the competition or a land speculator trying to decrease the property value through scaring the locals. These supernatural elements ended up having a rational explanation and mysteries could be solved through effort and persistence. This sparked in my young mind both a love of mysteries and puzzles and a belief in the criminal justice system. As I got older, I began to learn more about how the world really operated. Turns out that most crimes are not thwarted by vigilante teenagers in a colorful van with their talking dog. Rather the guilty are punished and the innocent protected by dedicated men and women across the justice system who help it run. I began to dream, as many kids do, of being a crime fighter. Instead of being a superhero or cartoon character, I wanted to help people in a more realistic way that uses my own unique skills. From the time I was a young girl I had an intense love of learning and solving problems. From

3rd Place
Katherine Benson
Western Piedmont Community College

Continued

jigsaw puzzles to brain teasers, I loved and continue to love all kinds of mysteries that stretch my mind. In my undergraduate studies, I was able to translate this love of mysteries into something far more consequential, namely a love of academic research. As a history major I had the pleasure of doing original research and being allowed to comb through the university archives for answers to complex questions. I gained invaluable skills and all the while I continued to be fascinated by true crime documentaries like *Making a Murderer* and TV series like *Law and Order*. After graduation, I began to search for a career in which I could both utilize my love of research and the have sense of fulfillment that comes from helping people. Due to my interest in the legal system and my desire for a career I could jump into without the time and expense of law school, I happened to stumble upon the idea of becoming a paralegal. What paralegals do is exactly what I am interested in doing with my life. Getting to work one on one with clients, doing a great deal of research into topics surrounding the law, and in general being an invaluable part of a team fighting for justice appeals to every facet of my personality. I relish the opportunity to be a part of such a growing field in which there is so much opportunity for professional development. I am looking forward to the day that I can get my paralegal certification and get that sense of accomplishment that comes with it. Ultimately it is my longing for a career that is challenging and fulfilling that makes me want to be a paralegal.

4th Place
Jasmin Pride

Meredith College

I have chosen to be a paralegal simply for the purpose of helping people. The satisfaction of being able to work with something or someone from the beginning to the end is important. Paralegals are the hands and feet of law firms making sure the scheduling happens and information gets filed on time, they keep everything running smoothly. That is one of the most appealing parts for me, that I will be an essential part to the things happening around me. Once I started the paralegal program and truly learned the importance of paralegals, I knew that I had made a great decision for my future. The entirety of a case from beginning to end is important, and knowing that I will be doing critical work to benefit someone else makes me find the reward in every case. Even though it won't be an easy task and it will take true dedication, I am fully dedicated to being an essential part of the process.

The law is the only career sector that intersects into a person's life from the time they are conceived until after their death, which is something I find intriguing. The law gives me an opportunity to help make a difference in the lives of so many without even knowing. My goal is to make a positive impact on the world in whatever way I can. Becoming a paralegal gives me that opportunity to be helpful in the many different ages and levels when they need assistance.

Additionally, the educational growth that comes from being a paralegal would be indispensable. Paralegals become well versed in the area that they are working in and they also learn the legal process. The ins and outs become a part of the daily ritual. This gives an elite education that many will not ever know and hopefully not experience.

The paralegal profession gives me the opportunity to branch into the legal profession and set myself up to be an essential part of any law firm. Knowing that I will be making a difference in the lives of people is more than enough to keep me doing my best in this field.

NCPA 38th Annual Seminar

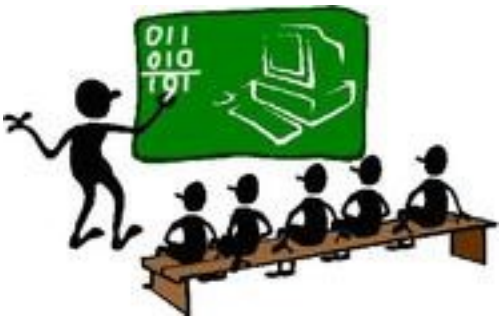
Lakisha Chichester

NCPA's 38th Annual Meeting and Seminar was held March 22-24, 2018, at the Wyndham Gardens in Greensboro, North Carolina. Presenters from across the state provided content-rich sessions on cyber fraud, adoption law, risk management, fiduciary litigation, e-closings, e-notary, and recent changes related to appellate procedures, power of attorney rules and expunction statutes. The general sessions, which focused on compassion and professionalism, left paralegals energized and ready to look at our work and careers in different ways.

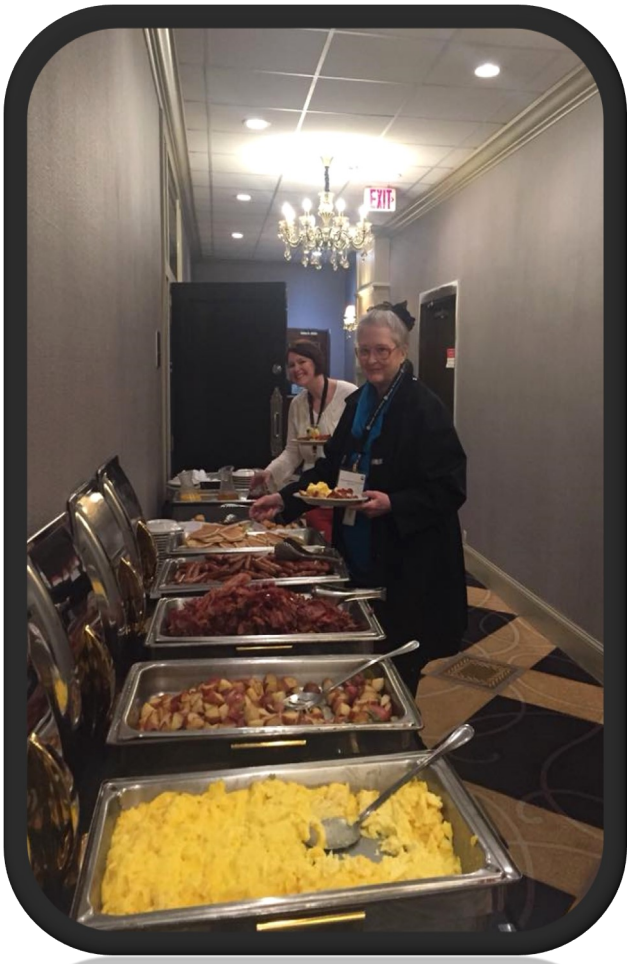
The North Carolina State Bar Board of Paralegal Certification and NALA approved the program for six hours of CPE credit. A grant from the NC State Bar Board of Paralegal Certification was used to record the sessions, which will be added to NCPA's on-demand CPE options.

In addition to professional education, the seminar also provided networking opportunities, great food, and good fun. Congratulations to the lucky paralegals who won one of the many door prizes provided by NCPA sponsors and exhibitors.

Special thanks to Kaye Hare, NCCP, ACP; Crystal Robinson, NCCP; Beverly King, NCCP; Heather Padgett, NCCP; Michele Bryant, NCCP, CP; Patti Clapper, NCCP, ACP; and a host of other hardworking and knowledgeable paralegals for another great seminar!



NCPA's 38th Annual Seminar


EXIT


NETWORKING, FUN, & FELLOWSHIP
31ST ANNUAL MEETING & SEMINAR

Helpful Links

NCPA — www.ncparalegal.org

NALA - www.nala.org

NC State Bar Board of Paralegal Certification - www.nccertifiedparalegal.org

NC State Bar — www.ncbar.gov

ETHICS CORNER

NCCPs can now access an online, interactive, one-hour trust account management continuing legal education course on the North Carolina Bar Association's website. The program, a joint project of the North Carolina State Bar and the North Carolina Bar Association, provides the most current explanation of the management duties for a lawyer's trust account, and satisfies the provision in Rule 1.15-2 (s) of the Rules of Professional Conduct requiring anyone with trust account signatory authority to complete a one-hour trust account management CLE course. Each one-hour program includes great content and helpful resources and is available **free of charge to North Carolina State Bar licensed lawyers until February 2018, and until further notice for certified paralegals**. These high quality online trust account management programs were produced by the North Carolina Bar Association and the State Bar and are sponsored in part by Lawyers Mutual Insurance Company, Old Republic National Title Insurance Company, and the Board of Paralegal Certification.

https://www.ncbar.gov/news-and-publications/news-notices/2017/10/free-trust-account-management-cle-course-available-to-members-paralegals/

2018 MEREDITH R. POLLETTE, CLAS

NALA CERTIFIED PARALEGAL OR ADVANCED

CERTIFIED PARALEGAL SCHOLARSHIP AWARD

THINKING ABOUT TAKING THE NALA CP OR APC EXAM • ••

WORRIED ABOUT THE APPLICATION FEE? THIS IS FOR YOU • ••

TWO AWARD SCHOLARSHIPS ARE NOW AVAILABLE!

One for the NALA CP application fee AND one for the APC application fee!!

NALA CP APPLICATION FEE AWARD

Submit an essay on one of the following two topics:

"Discuss the Advantages and Disadvantages of Certification and Licensure for the Legal Assistant Profession"

or

"What the CP Designation and the CP Program mean to Me".

NALA ACP APPLICATION FEE AWARD

Submit an essay on:

"I am pursuing the ACP designation because ..."

All essays must be 1,000 to 1,500 words in length, typewritten and emailed on or before August 15, 2018 to info@ncparalegal.org.

Participants do not need to be NALA members, but must be NCPA members in good standing and meet the eligibility criteria for sitting for the CP or ACP Exam. Finalists will be notified by September 15, 2018. Scholarship fees will be paid directly to NALA and the finalists will have one year from the date of the awards to sit for the exams. The fees will be refunded to NCPA if the finalists do not sit for the exam within the one-year time requirement. All test site fees are responsible of winner..

NALA is the nation's leading professional association for paralegals. As a non-profit organization, NALA provides continuing education and professional development programs for paralegals - from novice to experienced professionals.

CHECK IT OUT!!

2018 - 2019 NCPA Pro Bono Opportunities

"Thanks again for the supplies you have sent my troops and I. It means so much when groups like you support us in every way possible. As you may know we are from NC and this makes it even more special when it comes from our Home State. Thanks again.....1SG Howell."

"I am Captain Heiderman, the Headquarters Company Commander for the 449th Combat Aviation Brigade. We recently received several boxes of treats, hygiene items, and holiday decorations thanks to generous donations from your organizations!

. . . I just wanted to send a quick message to express a sincere THANK YOU to all of you that helped put this together. We can tell that it was no small effort and my soldiers and I appreciate it very much.
Thank you all for what you do. "

For several years, NCPA has supported Military Missions in Action, a North Carolina based non-profit. We have collected care package items and traveled to Fuquay-Varina to sort items and fill the care packages for overseas personnel.

As your new Pro Bono Chair, I want to energize us to continue our support of MMIA and to expand our efforts to show appreciation to active service members and veterans.

We will have opportunities to make and address Thank You cards and Christmas cards for overseas military servicemen and women, and to prepare "Valentines for Veterans" for patients in North Carolina's four Veterans Administration hospitals.

We'll also have opportunities to collect donations to pay for shipping care packages to troops outside the U.S. and to provide specific items needed by patients in VA hospitals.

Please contact me if you would like to learn more about making thoughtful, appreciated contributions to our military personnel and veterans.

Elizabeth Vance, ACP, NCCP
Email: paralegal878@earthlink.net
Telephone: 336-686-6847

Appellate Procedure

E L A M I C U S C U R I A E R
X C A K T N D N A V B N Y E P
T R K E N P O N R F O R C Y Y
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Retirement…Really?

By Belinda Ann Thomas, ACP, NCCP

After 28 very happy years with the Vernon Law Firm in Burlington, North Carolina, I retired on December 29, 2017. My supervising attorney, Wiley P. Wooten, was semi-retired for most of 2017 and instead of billing 6.5 to 7 hours a day, I was staring at the walls a major portion of my time. Never did I think I would complain about being idle, but I found I had worked too hard for too long to learn how to relax.

So, on January 2, 2018, a new chapter in my life began. My plan was to work on the home that I had purchased with my son and daughter-in-law which was the original home place where I grew up. I wanted to do volunteer work in the community and in my church. Learning to play the autoharp has always been a dream so I found a place where I could take lessons. Several of my family members are not well so I knew there would be help needed in that area. I advertised my services to help with discovery, equitable distribution pretrial orders and mediation documents with local sole practitioners. And last, but not least, I have my own Social Security Disability business which brings in a little extra money for me. Sounds easy, right?

Beginning the day I retired, all Hades broke loose! My aunt was diagnosed with dementia. Guess who holds her Power of Attorney? I've spent the last few months, helping her granddaughter set up sitters, home health care, taking her to doctor appointments and being with her during eye surgeries to have cataracts removed. She's been in the hospital twice and in rehab once. She's 83.

I've worked on one equitable distribution case. The attorney does not return calls or emails. Sound familiar?

Autoharp lessons started for me on January 22nd. The instrument was very easy for me to learn to play as I have played piano since I was a child. I love playing it so much. The odd thing is I had been taking classes along with 5 other ladies for about 3 weeks when the teacher fell face down in the floor during class. She called me before the 4th lesson and asked me to teach. I took the instruction book and prepared lesson plans and guess what has been going on since February? You guessed it! I've been teaching the class ever since. We're planning our first visit to a nursing home next month to play. How DID this happen?

February, March and April, I volunteered with United Way in the VITA program which is Volunteer Income Tax Assistance. I had to be certified in income tax preparation. Most of the clients were elderly or indigent. I met so many wonderful people. Everyone was so very grateful and were willing to wait as long as necessary to receive the free tax service.

Retirement…Really? By Belinda Ann Thomas, ACP, NCCP, continued

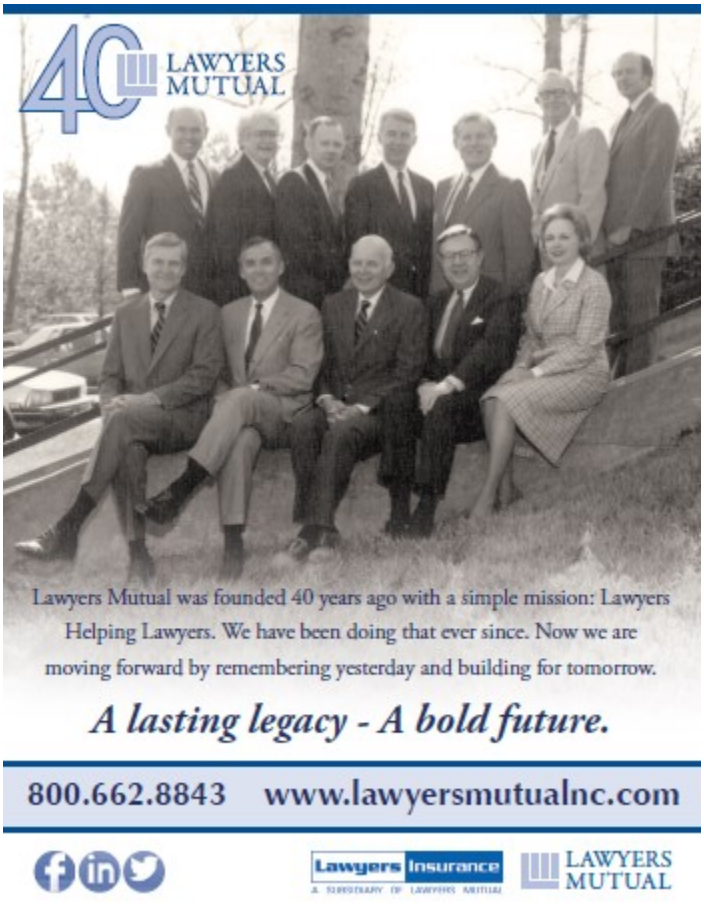
For the church, I am part of the "Dove Notes" ministry. We write anonymous notes to those who are sick, lost loved ones or are just in need of prayer. This is something I can do from home.

I campaigned and worked the polls on election day for a dear friend who was running for Clerk of Court in the Republican Primary. When the day was over, I was sunburned, tired and thirsty. The other candidate representatives were super nice people and we partied more than anything. By the way, my friend won.

My Social Security Disability cases have doubled since I retired. God told me one night that I would not have to worry about money. I didn't realize that He intended to work my fingers to the bone! But I am so thankful to have work (and money!!) and to see people who truly need disability survive and receive the help they need.

Whew!! Retirement has been very tiring. I have been back to Court with Mr. Wooten one time since my retirement to finish an outstanding case. With all I'm doing, I'm finding it hard to figure out where I worked in the time to go to Court. The biggest mystery has been how I did a lot of these activities when I was still working at the law firm.

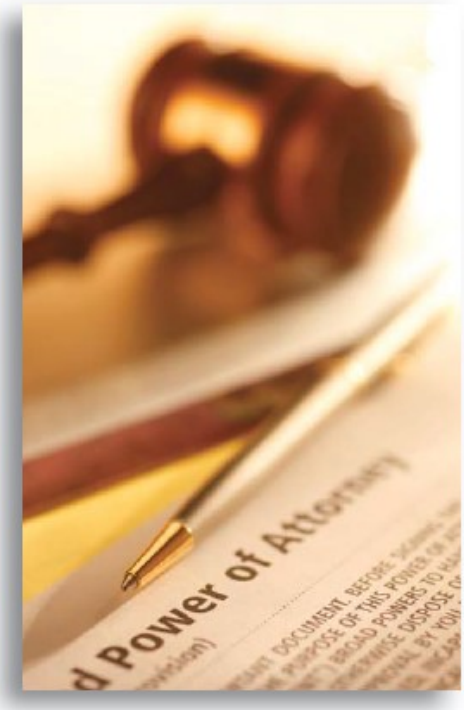
The best advice I can give to anyone planning on retiring is to think twice about doing it. The month is only May. I'm seriously considering going back to work…



The North Carolina Uniform Power of Attorney Act: A Practical Introduction for Real Estate Practitioners

By James E. Creekman

Can we all agree that dealing with a power of attorney in North Carolina has long been, at best, a frustrating experience? Well, help is on the way! On July 20, 2017, Governor Cooper signed Senate Bill 569, "An Act to Adopt the Uniform Power of Attorney Act in this State," into law as Session Law 2017-153. It took effect on January 1, 2018, and if you haven't already done so, you need to read it if you practice real estate law or are called upon to consider powers of attorney.



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At the 10,000 foot level, the new law repeals or amends many of the existing statutes dealing with powers of attorney and adopts the Uniform Power of Attorney Act as drafted by the National Conference of Commissioners on Uniform State Laws, albeit with a multitude of tweaks and modifications tailored specifically to our needs in North Carolina.

The effort to get the legislation introduced and passed was admirably undertaken by the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association, which was very careful in its drafting efforts to invite comments, suggestions, and input from a wide variety of interested groups, including the North Carolina Bankers Association, clerks of court, registers of deeds, advocates for the elderly, the North Carolina Department of Justice, and other sections of the North Carolina Bar Association.

Just so we're clear on terminology—for ease of reference in this Article:

- The "Act" refers to the North Carolina Uniform Power of Attorney Act, codified as Chapter 32C of the North Carolina General Statutes.
- A "POA" is a power of attorney—that is, a document signed by the principal that appoints and empowers the attorney-in-fact.
- The "principal" is the individual who grants authority to an attorney-in-fact in a POA.
- The "agent" is the attorney-in-fact named in a POA and authorized by the POA

to act on behalf of the principal. "Agent" is the term used throughout the Act in lieu of "attorney-in-fact."

• The "existing law" refers to statutes currently in effect regarding powers of attorney, many of which are amended or repealed and replaced by the Act.

As happens with many complex pieces of legislation, changes made to a bill during the legislative process can result in minor inconsistencies or incorrect cross-references in the bill as finally enacted. That happened here. As a result, minor technical corrections to the Act will likely be forthcoming, probably during next year's legislative session.

No effort will be made here to provide a detailed analysis of the new law; delve into the rights, duties, and obligations of an agent named in a POA; or identify needed technical corrections. Instead, after a brief overview of the Act, this article focuses on some critical things that you as a real estate practitioner need to know about the Act and its interface with existing law.

A Brief Overview of Organization and Purpose

As a practical matter, existing law provides little more than a template for a North Carolina short form POA, rigid rules regarding durable POAs and an agent's authority to make gifts from the principal's estate, and limited guidance for third parties dealing with an agent.

The Act covers much more territory. It is rationally organized, relatively straight-forward, and divided into four Articles:

• Article 1 contains definitions and general provisions covering the scope of the Act, when a POA is considered durable, the requirements for executing a POA, how the law that governs the meaning and effect of a POA is determined, the relationship between an agent and a court-appointed fiduciary, when a POA becomes effective, how a POA may be terminated, rules relating to the agent, guidance for third parties dealing with agents, and the relationship of the Act to other laws.

• Article 2 sets forth detailed descriptions of an agent's authority relating to specific subjects such as "real property," "tangible personal property," and "banks and other financial institutions." In addition, Article 2 addresses concerns that an agent's authority might be used to dissipate the principal's property or alter the principal's estate plan by listing specific categories of authority that cannot be implied from a grant of general authority—they can only be granted by express language in a POA.

• Article 3 offers three statutory forms: a statutory form POA, an agent's certification, and a limited POA for real property transactions.

• Article 4 clarifies the relationship of the Act to other law and pre-existing powers of attorney.

The Key Things You Need To Know

1. Effective January 1, 2018, the existing law is (mostly) out and the Act is (mostly) in.

While the transition from old to new is fairly smooth, it is not entirely seamless. Residuals of the existing law will continue in effect even after being repealed and replaced.

Chapter 32A of the North Carolina General Statutes is the existing law that governs POAs. Beginning January 1, 2018, only Article 3 (Health Care Powers of Attorney) and Article 4 (Consent to Health Care for Minor) remained in effect—the rest of Chapter 32A was repealed and replaced by the Act. Or so it seems.

According to new § 32C-4-403(a) of the Act:

• The Act applies to a POA created before, on, or after January 1, 2018, unless (i) the POA contains a clear indication of a contrary intent, or (ii) the application of a particular provision of the Act would substantially impair the rights of a party.

• A rule of construction or presumption provided by the Act applies to POAs executed before January 1, 2018, unless (i) the POA contains a clear indication of a contrary intent, or (ii) the application of the rule of construction or presumption would substantially impair the rights of a party created under North Carolina law in effect prior to January 1, 2018, in which case the Act's rule of construction or presumption does not apply and the superseded rule of construction or presumption applies.

In short, the Act (including the presumption of durability discussed below) applies to POAs signed before January 1, 2018. So far, so good.

But there is one glaring exception to this: If you are dealing with a Statutory Short Form POA signed before January 1, 2018, under the authority of existing § 32A-1, then new § 32C-4-403(d) states that the authority of the agent must be determined by reference to the powers described in existing § 32A-2—not the much more broadly defined powers contained in Article 2 of the Act. As a practical matter, this means that when you evaluate the authority of an agent under a Statutory Short Form POA signed before January 1, 2018, § 32A-1 is still alive and well, and you must determine the agent's authority under existing § 32A-2, not Chapter 32C.

2. The rules regarding durability have been greatly refined and turned topsy-turvy.

The Act redefines incapacity and changes the rules regarding the durability of a POA and the requirements for registering a POA.

First a review of existing law:

• An agent cannot act on behalf of a principal after the principal becomes "incapacitated" or "mentally incompetent" unless the POA is a "durable" POA. The terms "incapacitated" and "mentally incompetent" are not defined, and, with one exception, there is no clear mechanism to determine whether a principal has become incapacitated or mentally incompetent. The exception relates to a POA that becomes effective only when the principal becomes incapacitated or mentally incompetent (i.e., it is a "springing" POA triggered by the principal's subsequent incapacity or mental incompetence). In that case, existing § 32A-8 provides that, unless a third person dealing with an agent has actual knowledge to the contrary, the third person can rely on an affidavit executed by the agent setting forth that such condition exists as conclusive proof that the principal is incapacitated or mentally incompetent.

• A POA is not a "durable" POA unless it says it is, either by indicating it has been signed pursuant to Article 2 of Chapter 32A, by including the phrase, "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence," or, "This power of attorney shall become effective after I become incapacitated or mentally incompetent," or by including similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity or mental incompetence.

• Also, there are two separate but related rules under existing law regarding the registration (i.e., recording) of a durable POA in the office of the register of deeds:

• A durable POA can be registered in the register of deeds office before or after the

principal becomes incapacitated or mentally incompetent. However, a durable POA that has not been registered ceases to be valid when the principal becomes incapacitated or mentally incompetent unless (and until) it is duly registered in the appropriate register of deeds office.

• Once a durable POA has been duly registered in the appropriate register of deeds office, then all acts performed thereafter by the agent pursuant to the durable POA during any period of incapacity or mental incompetence of the principal have the same effect as, and are fully binding to the same extent as, would be the case were the principal not incapacitated or mentally incompetent.

The practical implications of these two existing rules are as follows:

• As long as the principal is fully competent to act on the principal's own behalf (i.e., the principal is neither incapacitated nor mentally incompetent), a durable POA does not have to be registered.

• If a durable POA is duly registered in the appropriate register of deeds office before the principal becomes incapacitated or mentally incompetent, the agent can continue to act without interruption after the principal becomes incapacitated or mentally incompetent.

• If the durable POA has not been duly registered in the appropriate register of deeds office before the principal becomes incapacitated or mentally incompetent, the agent cannot act on behalf of the principal after the principal becomes incapacitated or mentally incompetent unless and until the POA is duly registered in the appropriate register of deeds office. Once the POA is duly registered, the agent can resume acting on behalf of the principal. Stated more simply, the authority of the agent to act is automatically suspended when the principal becomes incapacitated or mentally incompetent, but is restored from the date of registration if the durable POA is subsequently properly registered. However, actions taken by the agent during the period of suspension are not validated by the subsequent registration of the POA.

The rules regarding durable POAs are entirely different under the Act, and the Act is much cleaner and clearer in its approach to durability:

• A "durable" POA is defined in § 32C-1-102(2) as one in which the "incapacity of the principal does not terminate" the POA. "Incapacity," in turn, is precisely defined as follows in § 32C-1-102(6):

Incapacity. – The inability of an individual to manage property or business affairs because the individual has any of the following statuses:

1. An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
2. Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return.

• According to § 32C-1-104, a POA is a durable POA unless it "expressly provides that it is terminated by the incapacity of the principal." This is the complete opposite of existing law, which says a POA is not a "durable" POA unless it says it is.

However, as is the case under existing law, it is important to remember that if a POA is NOT a durable POA, the agent's authority to act on the principal's behalf automatically terminates when the principal becomes incapacitated.

• The Act does not require a POA (whether or not it is durable) to be registered (i.e., recorded) in the office of the register of deeds.

However, it is important to remember that existing G.S. 47-28 continues to require a POA involved in a real estate transaction to be registered (i.e., recorded) in the office of the register of deeds, regardless of whether or not it is durable.

• If the POA is what is commonly known as a "springing" or contingent POA—that is, one that becomes effective at a future date or upon the occurrence of a future event or contingency such as the principal's incapacity—new § 32C-1-109(b) permits the principal to authorize the agent or someone else to provide written verification that the event or contingency has occurred.

If the principal's incapacity is the trigger for a springing POA and the principal has not authorized anyone to make that determination or the authorized person is unable or unwilling to make the determination, new § 32C-1-109(c) provides a default mechanism for each category of incapacity to verify the principal's incapacity:

• Incapacity based on the principal's impairment may be verified by two physicians or licensed psychologists after they have personally examined the principal.

• Incapacity based on the principal's unavailability may be verified by an attorney at law, a judge, or an appropriate governmental official (such as an officer acting under the authority of the US Department of State, a military officer, or a sworn federal or state law enforcement officer).

An agent's authority to act on behalf of an incapacitated principal under a springing durable POA does not automatically terminate when the principal regains capacity—the POA and the agent's authority continue in effect until formally terminated.

3. The Act covers more than North Carolina POAs.

The Act is much broader in its scope than existing law—pursuant to § 32C-1-103, the Act covers all POAs (including POAs from other states and foreign countries) except for the following:

• A power to the extent it is coupled with an interest, including a power given to or for the benefit of a creditor in connection with a credit transaction. A "power coupled with an interest" frequently appears in loan agreements, security instruments, and other commercial contracts—these powers are not governed by the Act.

• A power to make health care decisions. An effective health care POA must still comply with Article 3 of Chapter 32A, and an effective consent to provide health care for a minor must still comply with Article 4 of Chapter 32A.

• A proxy or other delegation to exercise voting rights or management rights with respect to an entity. To give a simple example of this exception, assume the president of a corporation signs a general POA authorizing his son to act as the president's agent. While the president can give broad authority to the son to act on behalf of the president as an individual, the president cannot give an agent authority to act on president's behalf as president of the company—only the company can confer that authority. Thus, the Act does not apply to the extent a POA purports to delegate management rights with respect to an entity.

• A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

4. The Act provides clarity regarding the execution and validity of a POA.

Here are the basic rules regarding the execution and validity of a POA according

to new § 32C-1-105 and § 32C-1-106 of the Act:

- A POA signed in North Carolina before January 1, 2018, is valid if its execution complied with the North Carolina law in effect at the time the POA was signed.
- A POA signed in North Carolina on or after January 1, 2018, is valid if it is (i) signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the POA, and (ii) acknowledged (i.e., notarized).

These signing requirements are new and warrant further comment. Without doubt, the principal must be legally competent at the time the POA is signed. So here's the rub: How do you actually have the principal sign the POA and have the principal's signature duly acknowledged when the principal, although mentally competent and not incapacitated, is physically unable to sign his or her name, but can either sign with a "mark" or direct someone to sign the principal's name on the principal's behalf? The answer is embedded in G.S. 10B-20(d) and (e):

> (d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:
>
> (1) The mark is affixed in the presence of the notary;
>
> (2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and
>
> (3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.
>
> (e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:
>
> (1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;
>
> (2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;
>
> (3) Both witnesses sign their own names to the record near the principal's signature;
>
> (4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and
>
> (5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

If the POA will be signed by the principal by using a "mark" or by someone else on behalf of the principal at the principal's direction, you need to pay careful attention to the requirements in G.S. 10B-20. If you don't, you run the risk that the POA will be invalid.

- A POA signed outside North Carolina is valid in North Carolina if, when the POA was executed, the execution complied with either (i) the law of the jurisdiction that determines the "meaning and effect" of the POA (as discussed below), or (ii) the federal requirements for a military POA.

Two final comments regarding these issues are significant. First, a signature on a POA is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgements. Second, unless there is a statute that provides otherwise, a photocopy or electronically transmitted copy of an original POA has the same effect as the original.

5. The Act clarifies which law controls.

According to § 32C-1-107 of the Act, the "meaning and effect" of a POA is determined by (i) the law of the jurisdiction indicated in the POA, or (ii) in the absence of any such indication, the law of the jurisdiction in which the POA was executed. The Official Commentary to the Uniform Power of Attorney Act contains the following observation:

> The phrase, "the law of the jurisdiction indicated in the power of attorney," is intentionally broad, and includes any statement or reference in a power of attorney that indicates the principal's choice of law. Examples of an indication of jurisdiction include a reference to the name of the jurisdiction in the title or body of the power of attorney, citation to the jurisdiction's power of attorney statute, or an explicit statement that the power of attorney is created or executed under the laws of a particular jurisdiction.

The following examples may help illustrate this rule:

- A POA identified as a "North Carolina Statutory Short Form Power of Attorney" is signed by the principal and acknowledged before a notary public. It doesn't matter when or where the POA was signed and acknowledged. The meaning and effect of the POA will be determined by North Carolina law.
- A POA indicates that it is governed by Kansas law. It doesn't matter when or where the POA was signed and acknowledged. The meaning and effect of the POA will be determined by Kansas law.
- A POA makes no mention of any state and is absolutely silent as to what law controls. The meaning and effect of the POA will be determined by the law of the state in which the POA was signed and acknowledged.

6. The Act's rules governing termination of a POA are more comprehensive than in the existing law.

The revocation of a POA under existing law is governed by § 32A-13. The corresponding provision in the Act is § 32C-1-110. Unlike under existing law, the Act draws a clear distinction between the termination of a POA and termination of the agent's authority under the POA.

Under the Act, a POA terminates when any of the following occur:

- The principal dies.
- If the POA is not durable, the principal becomes incapacitated.
- The principal revokes the POA.
- The POA provides that it terminates.
- The purpose of the POA is accomplished.
- The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the POA does not provide for another agent to act under the POA.
- A guardian of the principal's estate or general guardian terminates the POA.

Under the Act, an agent's authority under a POA terminates when any of the following occur:

- The principal revokes the authority in writing.
- The agent dies, becomes incapacitated, resigns, or is removed.
- The court enters a decree of divorce between the principal and the agent, unless the POA provides otherwise.
- The POA terminates.
- A guardian of the principal's estate or general guardian terminates the agent's authority.

There are also several ancillary "rules" in § 32C-1-110 of the Act relating to termination worthy of mention:

- A POA does not become "stale"—unless a POA provides for termination upon a certain date or after the passage of a period of time, lapse of time since execution is irrelevant to the POA's validity. This provision validates old POAs that have not been terminated.
- A new POA doesn't automatically terminate an old POA. To effect a revocation, a subsequently executed POA must expressly revoke a previously executed POA or state that all other POAs are revoked. The requirement for express revocation prevents inadvertent revocation when the principal intends for one agent to have limited authority that overlaps with broader authority held by another agent.

Section 32C-1-110 of the Act has two very important "savings" provisions:

- A termination event is not effective as to the agent or any person dealing with the agent who, without actual knowledge of the termination event, acts in good faith under the POA.
- If the POA is a non-durable POA, the incapacity of the principal is not effective as to the agent or any person dealing with the agent who, without actual knowledge of principal's incapacity, acts in good faith under the POA.

In either case, an act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Section 32C-1-110(g) of the Act also provides specific guidance as to how a principal may revoke a POA:

- If the POA has been registered in an office of the register of deeds, the principal must register an "instrument of revocation" in that office executed and acknowledged by the principal while the principal is not incapacitated, together with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure.
- If the POA has not been registered in an office of the register of deeds, it may be revoked by one of the following methods:
  - A subsequent written revocatory document executed and acknowledged by the principal while the principal is not incapacitated.
  - Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal or by another person in the principal's presence and at the principal's direction, while the principal is not incapacitated.

7. Section 32C-1-111 of the Act addresses coagents and successor agents.

A principal may (i) designate two or more persons in a single POA to act as coagents, (ii) designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is for some reason not qualified to act, or declines to serve, and/or (iii) grant authority to designate one or more successor agents to an agent or other person designated by name, office or functions.

- Unless the POA expressly requires coagents to act jointly, each coagent may exercise the coagents' authority independently without the knowledge, consent, or joinder of any other coagent or coagents.
- Unless the POA provides otherwise, if any one or more coagents resigns, dies, becomes incapacitated, or otherwise fails to act, the remaining agent or coagents may continue to act.
- Unless the POA provides otherwise, a successor agent has the same authority as that granted to the original agent. However, a successor agent may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

8. What are the "safe harbors" you can rely on when presented with a POA, and what can you request from the agent?

Article 5 of existing Chapter 32A (§ 32A-40 through § 32A-43) addresses the frequently encountered problem of persons refusing to accept a POA. These issues are addressed in considerable detail in § 32C-1-119 and § 32C-1-120 of the Act.

Section 32C-1-119(b) and (c) provide two important safe harbor protections for you if you accept a POA:

- If you in good faith accept an acknowledged (i.e., notarized) POA without actual knowledge that the principal's signature is not genuine, you may rely upon the presumption that the principal's signature is genuine. This provision restates the safe harbor that appears in § 32C-1-105 of the Act.
- If you in good faith accept a POA without actual knowledge that the POA is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority, (i) you may rely upon the POA as being valid and still in effect, the agent's authority as being genuine, valid, and still in effect, and the agent as not having exceeded and having properly exercised the agent's authority; and (ii) you will not be responsible for any breach of fiduciary duty by the agent, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by the agent. This safe harbor applies without regard to whether or not you demand or receive a certification from the agent (as discussed below).

When you are asked to accept a POA, existing § 32A-40(b) permits you to require an affidavit from the agent stating that the agent has no actual knowledge of the revocation of the POA or facts that would cause the agent to question the authenticity or validity of the POA—in short, that the POA is valid and in effect according to its terms. You are entitled to rely on that affidavit as long as you are acting in good faith and have no actual knowledge to the contrary.

Section 32C-1-119(d) goes far beyond existing § 32A-40(b). If you are presented with, and asked to accept, a POA, you may request, and, as long as you are acting in good faith and without actual knowledge to the contrary, you may rely without further investigation upon, any one or more of the following:

- A certification executed by the agent to the effect that the agent did not have actual knowledge at the time of the POA is presented to you (i) that the POA is void, invalid, or terminated, (ii) that the agent's authority is void, invalid, or terminated, or (iii) of facts that would cause the agent to question the authenticity or validity of the POA. A certification meeting these requirements is sufficient proof to you that (i) the POA is authentic and valid and has not been terminated, (ii) the agent's authority is valid and has not been terminated, and (iii) other factual matters stated in the certification regarding the principal, agent, or POA are true.

If the exercise of the POA requires execution and delivery of an instrument that is recordable, you may require that the certification be prepared and executed so as to be recordable—i.e., acknowledged or in the form of an affidavit with an appropriate jurat. Section 32C-3-302 provides a statutory form that, if used, satisfies the require-

ments for an agent's certification.

• An English translation of the POA if the POA contains, in whole or in part, language other than English.

• An opinion of counsel as to any matter of law concerning the POA if you provide in a writing or other record the reason for your request. This provision may be particularly useful when a POA is presented to you that is not a standard North Carolina POA. For example, when presented with a POA that appears to be a Kansas POA, you may request an opinion from a Kansas attorney confirming that (i) the POA was validly executed under Kansas law, (ii) the POA has been properly acknowledged, (iii) the POA is a durable POA, and (iv) after describing or identifying the transaction to be undertaken by the agent on the principal's behalf, the agent has appropriate authority under the POA and Kansas law to effect the transaction without exceeding or improperly exercising the agent's powers.

The principal is responsible for the expense of an English translation or an opinion of counsel requested under § 32C-1-120 unless the request is made more than seven business days after the POA is presented for acceptance.

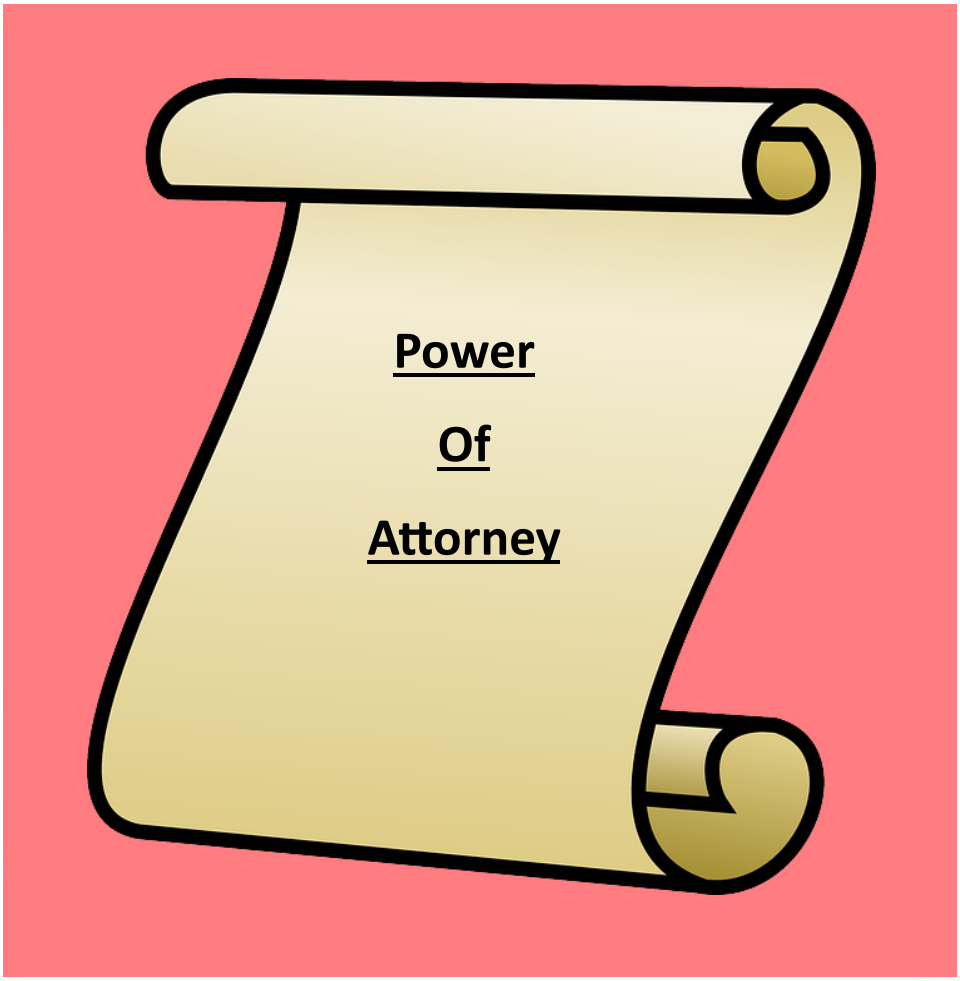
9. When may you be liable for refusing to accept a POA?

As is currently the case under existing § 32A-41, a person who unreasonably refuses to accept a POA is exposed to potential liability under § 32C-1-120(e) of the Act. Patterned in part after existing § 32A-42, new § 32C-1-120 contains a laundry list of statutory exceptions that permit you to refuse to accept a POA without incurring liability.

However, to avoid potential liability, there are some timelines you need to observe carefully when presented with a POA:

• No later than seven business days after being presented with an acknowledged POA and being asked to accept it, you must accept the POA, refuse to accept the POA for one of the reasons discussed below, or request a certification, a translation, or an opinion of counsel from the agent (as discussed in #8 above).

• If you request a certification, a translation, or an opinion of counsel, then within five business days after your receipt of the requested items in reasonably satisfactory form, you must either accept the POA or refuse to accept the POA for one of the reasons discussed below.



In addition, you are not authorized to require an additional or different form of POA if the POA you are presented reasonably appears to authorize the agent to conduct the business the agent desires to conduct.

You are not required to accept a POA if any of the following circumstances exist, and you are not exposed to liability if you refuse to accept it for one of the following reasons:

• The POA has not been duly acknowledged.

• You are not otherwise required to engage in a transaction with the principal in the same circumstances.

• Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with applicable federal law.

• You have actual knowledge of the termination of the agent's authority or of the POA before exercise of the power.

• Your request for a certification, a translation, or an opinion of counsel is refused.

• You did not receive a certification, translation, or opinion of counsel you requested in reasonably satisfactory form within a reasonable period of time.

• You believe in good faith that the POA is not valid or that the agent does not have the authority to perform the act requested, whether or not you have requested or have been provided a certification, a translation, or an opinion of counsel.

• You have reasonable cause to question the authenticity or validity of the POA or the appropriateness of its exercise by the agent.

• The agent or principal has previously breached any agreement with you, whether in an individual or fiduciary capacity.

• You make, or have actual knowledge that another person has made, a report to the local adult protective services office or law enforcement stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

There are three additional grounds for refusing to accept a POA that are specifically intended to protect banks and other financial

institutions, but which may apply to others as well. A person asked to accept a POA is not required to do any of the following:

- Open an account for a principal at the request of an agent if the principal is not currently a customer of the person asked to accept the POA.
- Make a loan to the principal at the request of the agent.
- Permit an agent to conduct business not authorized by the terms of the POA, or otherwise not permitted by applicable statute or regulation.

If you are presented with a POA, you will not be "deemed" to have unreasonably refused to accept the POA solely on the basis of your failure to accept the POA within seven business days or, if you have promptly requested a certification, a translation, or an opinion of counsel, prior to your receipt of requested items in reasonably acceptable form.

10. How does the Act guard against abuse on the part of an agent?

At the outset, it is important to remember that an agent appointed under a POA is a fiduciary. According to § 32C-1-114 of the Act, the agent must always act (i) in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest, (ii) in good faith, (iii) loyally for the principal's benefit, (iv) only within the scope of authority granted in the POA, and (v) in a manner so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

In exchange for mandated acceptance of an agent's authority, the Act does not require persons dealing with an agent to investigate the agent or the agent's actions. However, safeguards against abuse by the agent are provided by creating what is essentially a two-tier system when granting an agent authority. Section 32C-1-201 of the Act draws a sharp distinction between acts that may be performed by an agent under a "general" grant of authority and acts that require a "specific" grant of authority.

General Grant of Authority

Let's talk first about what may be performed by an agent under a "general" grant of authority. As noted earlier, Article 2 of the Act addresses the authority of an agent under a POA. More specifically, § 32C-2-203 addresses general issues relating to authority, while § 32C-2-204 through § 32C-2-217 provide detailed descriptions of general authority relating to specific subjects such as "real property," "tangible personal property," and "banks and other financial institutions."

Pursuant to § 32C-2-202, a principal may incorporate any or all of the powers listed in § 32C-2-204 through § 32C-2-117 in full into the POA either by a reference to the short descriptive term for the subject used in the Act or to the section number. In addition, § 32C-2-202 permits a principal to modify any authority incorporated by reference in a POA. If a POA grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in § 32C-2-204 through § 32C-2-216 (but not § 32C-2-217, which addresses the agent's authority to make gifts on behalf of the principal—as noted below, the authority to make gifts on behalf of the principal requires specific authority).

Specific Grant of Authority

Now let's shift to acts that require a "specific" grant of authority. § 32C-2-201 provides heightened requirements for granting authority for actions that could dissipate the principal's property or alter the principal's estate plan. More specifically, § 32C-2-201(a) lists the following specific categories of authority that cannot be implied from any grant of general authority, but which may be granted only through express language in the POA:

- An agent may not do any of the following on behalf of the principal or with the principal's property unless the POA *expressly* grants the agent that authority:
  - Make a gift. However, even if the agent is expressly authorized to make a gift, that right is limited by § 32C-2-201(b) and (c) and by § 32C-2-217.
  - Create or change rights of survivorship.
  - Create or change a beneficiary designation.
  - Delegate authority granted under the POA.
  - Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
  - Exercise fiduciary powers that the principal has authority to delegate.
  - Renounce or disclaim property, including a power of appointment.
  - Exercise authority over the content of electronic communication, as defined in 18 U.S.C. § 2510(12), sent or received by the principal.
- In matters relating to revocable and irrevocable trusts created by the principal as settlor, an agent may not do either of the following unless the POA or the terms of the trust *expressly* grants the agent that authority:
  - Exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36C-6-602.1.
  - Exercise the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a).

And here's a related, but incredibly important, rule against self-dealing that appears in § 32C-2-201(c): Even if the POA authorizes the agent to do any of the specific actions identified above, unless the POA provides otherwise, the agent may not exercise "general" or "specific" authority under a POA to create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise. This rule can be very important in real estate transactions.

So what does all of this mean in practical terms? When trying to determine whether an agent's action will be within the scope of the agent's authority and consistent with the agent's fiduciary duty to the principal, here are questions you need to consider:

- Is the proposed action within the scope of the general authority granted to the agent?
- Is the proposed action one which requires specific authority? If so, does the POA expressly grant that specific authority?
- Will the proposed action create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise? If so, does the POA expressly authorize such self-dealing?
- Even if the proposed action is authorized by the POA, is the proposed action consistent with the agent's fiduciary duty to the principal?

11. So what are the categories of authority listed in Article 2 of the Act?

No attempt will be made here to discuss in detail any of the categories of authority listed in Article 2 of the Act. For our purposes here, a listing of the section titles is sufficient:

§ 32C-2-204. Real property
§ 32C-2-205. Tangible personal property
§ 32C-2-206. Stocks and bonds
§ 32C-2-207. Commodities and options
§ 32C-2-208. Banks and other financial institutions
§ 32C-2-209. Operation of entity
§ 32C-2-210. Insurance and annuities
§ 32C-2-211. Estates, trusts, and other beneficial interests
§ 32C-2-212. Claims and litigation
§ 32C-2-213. Personal and family maintenance
§ 32C-2-214. Benefits from governmental programs or civil or military service
§ 32C-2-215. Retirement plans
§ 32C-2-216. Taxes
§ 32C-2-217. Gifts authorized by general authority
§ 32C-2-218. Gifts authorized by court order
§ 32C-2-219. Certain acts authorized by the court

Real estate practitioners will need to become intimately familiar with the authorities listed in § 32C-2-204 (real property), § 32C-2-205 (tangible personal property), and § 32C-2-208 (banks and other financial institutions).

12. The new statutory short form POA will be very useful.

Article 3 of the Act provides three statutory forms:

1. § 32C-3-301. Statutory form power of attorney
2. § 32C-3-302. Agent's certification
3. § 32C-3-303. Limited power of attorney for real property.

The "North Carolina Statutory Short Form Power of Attorney" in § 32C-3-301 of the Act is the updated counterpart to the existing § 32A-1 statutory short form general POA. It contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent and successor agents and the grant of general and specific authority. In the section of the form addressing general authority, the principal must initial the subjects for which the principal wishes to delegate general authority to the agent. In the section of the form addressing specific authority, certain categories of specific authority are listed, preceded by a warning to the principal about the potential consequences of granting such authority to an agent. The principal is instructed to initial only the specific categories of actions that the principal intends to authorize.

As you review the new North Carolina Statutory Short Form Power of Attorney form, keep in mind that the POA is durable, effective immediately, and does not revoke any existing POAs.

Also, the section of the form addressing specific authority very intentionally does not cover two trust-related matters: whether the agent can exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36-6-602.1, or the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a). The drafters of the legislation properly believed that these trust-related provisions should not be included in a "boiler-plate" statutory form, but rather should be included in a POA only after thoughtful consideration by the trust settlor with the advice of competent counsel.

The introductory language in § 32C-3-301 indicates that the new form is a "nonexclusive method to grant a power of attorney" and that a document "substantially" in the form of the one set forth in § 32C-3-301 "may be used to create a statutory form power of attorney that has the meaning and effect prescribed by [Chapter 32C]." This leaves ample wiggle room for the short form POA to be "tweaked." It is not identical to the statutory short form POA appearing in § 32C-3-301.

13. The "Agent's Certification" should be routinely used in real estate transactions.

The second statutory form, the "Agent's Certification as to the Validity of Power of Attorney and Agent's Authority," appears in § 32C-3-302. This form is patterned after the Affidavit of Attorney-in-Fact set forth in existing § 32A-40(d). According to § 32C-1-119(d)(1), if you are asked to accept a POA, you may rely on the accuracy of the statements contained in the certification without further investigation if you are acting in good faith and have no actual knowledge to the contrary. You should routinely require an Agent's Certification in every real estate transaction.

14. The new "Limited Power of Attorney for Real Property" will prove very useful for real estate attorneys.

The third statutory form, "North Carolina Limited Power of Attorney for Real Property," appears in § 32C-3-303. There is no corresponding statutory form under existing law.

This new form was the product of close collaboration between the Estate Planning and Fiduciary Law Section of the NCBA, the Real Property Section of the NCBA, and the North Carolina Bankers Association to help resolve a persistent problem: whether the authority granted to the agent in a limited POA presented at or immediately before the closing of a real estate transaction is sufficiently specific to the transaction and sufficiently broad in its scope, particularly when financing is involved. The related question is critical: Should the agent be permitted to execute transaction-related documents on the principal's behalf?

The new statutory form will hopefully be used widely as a standard limited POA that provides great flexibility for an agent to handle real estate closings on behalf of the principal. The new form:

- Grants the agent full authority to act on behalf of the principal with respect to certain identified real property, all tangible personal property related to the property, and all financial transactions relating to the property.
- Incorporates by reference the general authority to act with respect to real property as set forth in § 32C-2-204, tangible personal property as set forth in § 32C-2-205, and banks and other financial institutions as set forth in § 32C-2-208.
- Specifically states the authority granted to the agent may be exercised by the agent even though the exercise of that authority may benefit the agent or a person to whom the agent owes an obligation of support, thereby resolving the potential problem of self-dealing.

Unless an expiration date is specified in the POA, the authority of the agent automatically expires one year from the date of the POA. Actions taken by the agent while the POA remains in effect continue to bind the principal even after the agent's authority expires.

There is one small issue that may require your thoughtful attention. The introductory language in the form's Grant of Authority authorizes the agent to act for the principal with respect to "all financial transactions relating to the Property," and the authority granted expressly includes the authority to act with respect to banks and other financial institutions as set forth in § 32C-2-208.

That section applies only to dealing with banks and other financial institutions.

The unresolved question is this: Is the general language that authorizes the agent to act for the principal with respect to "all financial transactions relating to the Property" sufficient to cover private financing that does not involve a bank or other financial institution?

If private financing is anticipated, you should consider adding appropriate language to the limited POA.

15. On the subject of self-dealing, here's another thing you need to think about.

Let's assume that Ma signs a POA appointing Pa as her agent, granting Pa general authority to do all acts that Ma could do. The POA expressly authorizes Pa to make gifts (including to himself) and to exercise authority that may benefit Pa. It's a very broad POA. Ma is now incapacitated and in a nursing home. Pa wants to borrow money from the bank and use the family home as collateral. In the following scenarios, keep in mind new § 32C-1-114(d):

When exercising a power under the power of attorney, an act by an agent that is in good faith for the best interest of the principal is not voidable and the agent is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

Now consider the following situations: Ma either owns the house or the house is owned by Ma and Pa as tenants by the entirety. Can Pa use the POA to sign Ma's name to a deed of trust encumbering Ma's house to secure his debt to the bank?

Despite § 32C-1-114(d), this should cause you heartburn, particularly if Ma will not derive any apparent benefit from the loan. However, if the purpose of the loan is to fix up the home or to help pay Ma's nursing homes bill, a strong argument can be made that Pa can execute the deed of trust on Ma's behalf as her agent. That argument becomes even stronger if Ma is a co-borrower on the note.

Now let's change the facts a bit. The home is titled in Pa's name, which means that Ma has only an inchoate marital interest in the property. Let's further assume that Ma will not derive any benefit from the proceeds of the loan. Can Pa use the POA to sign Ma's name to a deed of trust encumbering their home when Pa will be the only one signing the promissory note to the bank and will be the only one benefitting from the loan?

Under the Act, the answer is apparently "yes." New § 32C-204(10) was drafted expressly to address this situation: With respect to any real property owned or claimed to be owned by the principal's spouse and in which the principal's only interest is a marital interest, [the agent may] waive, release, or subordinate the principal's inchoate right pursuant to G.S. 29-30 to claim an elective life estate in the real property, regardless of whether the waiver, release, or subordination will benefit the agent or a person to whom the agent owes an obligation of support.

16. Finally, let's talk about "seal."

In years gone by, a deed was not a deed unless it was "executed under seal." While purists may have blanched, others rejoiced when the requirement for a conveyance of real property to be executed under seal was abolished in 1999 with the passage of G.S. 39-6.5.

Unfortunately, G.S. 39-6.5 didn't fully resolve the seal issue, at least insofar as it involved an instrument signed by an agent under the authority of a POA. Existing G.S. 47-43.1 currently provides as follows:

> When an instrument purports to be executed by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or attorney-in-fact signs such instrument either in the name of the principal by the attorney or attorney-in-fact or signs as attorney or attorney-in-fact for the principal; and if such instrument purports to be under seal, the seal of the attorney-in-fact shall be sufficient. For such instrument to be executed under seal, the power of attorney must have been executed under seal. (Emphasis added)

This statute, which is now almost 70 years old, has long harbored risk for real estate practitioners.

Consider, for example, a pre-printed deed or deed of trust form that indicates it is being executed under seal and the word "seal" appears after the grantor's name in the signature block. If the deed or deed of trust says it is being executed under seal (even if it is no longer *required* to be executed under seal), is the signature of the agent on behalf of the principal sufficient if the POA was not executed by the principal under seal? According to G.S. 47-43.1, the authority of the agent signing a deed or deed of trust on behalf of the principal that purports to be under seal is called into question unless the POA was executed by the principal under seal.

Fortunately, SL 2017-153 fully resolves this issue:

- The Act does not require a POA to be executed under seal, and it is worth noting that the statutory POA forms set forth in § 32C-3-301and § 32C-3-303 of the Act do not indicate that they are under seal.
- Section 32C-2-203(3) expressly authorizes an agent to "[e]xecute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction...." (Emphasis added)
- Section 2.3 of SL 2017-153 amends G.S. 47-43.1 by changing the phrase "attorney-in-fact" to "agent" each time it appears and by deleting the last sentence of the statute. Effective January 1, 2018, G.S. 47-43.1 will read as follows:

> § 47-43.1. Execution and acknowledgment of instruments by attorneys or attorneys-in-fact.
>
> When an instrument purports to be executed by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or agent signs such instrument either in the name of the principal by the attorney or agent or signs as attorney or agent for the principal; and if such instrument purports to be under seal, the seal of the agent shall be sufficient.

The elimination of the last sentence of G.S. 47-43.1 permits an agent to sign an instrument under seal on behalf of the principal as of January 1, 2018, regardless of whether the POA was signed by the principal under seal.

A Parting Observation

Dealing with POAs will still be difficult and challenging, particularly in real estate transactions. However, many of the frustrations we have endured in recent years will eventually evaporate, provided we take time to become familiar with the Act and begin using the new statutory forms, particularly the new limited POA for real property transactions. Good luck! ■

Prior to his recent retirement, James E. Creekman was with Ward and Smith, PA, in Raleigh.

Board of Legal Specialization Launches A New Specialty in 2018

By Denise Mullen, Assistant Director of Legal Specialization


Cordell


Johnson


McGinnis


Standley


Wall

The Privacy and Information Security Law Specialty Committee of the State Bar Board of Legal Specialization is at the cutting edge of a rapidly changing legal landscape. Committee members (see sidebar) are set to launch the new specialty certification in 2018, building upon an existing national certificate offered by the International Association of Privacy Professionals (IAPP). IAPP offers a Certified Information Privacy Professional-US (CIIP/US) training program and exam to applicants throughout the United States and beyond. The North Carolina specialty will utilize the IAPP certificate to qualify applicants for a short exam that will focus on state as well as the interpretation of federal and international law.

Rapidly evolving technologies affect many NC companies, particularly those in specialized fields like pharmaceuticals and sustainable energy. As technology further advances, these companies face big challenges in protecting their corporate and employee data. We have all seen the effects of massive data breaches over the last several years. Privacy lawyers handle those unfortunate situations as well as many other corporate technological and security issues on a daily basis. Lawyers who are able to assist clients in successfully navigating these fast moving business and legal waters are in high demand. This new specialty certification will help clients locate qualified counsel, and also provide all North Carolina lawyers with referral options when the need arises.

The committee members were asked to share their experience and perspectives on practicing privacy and information security law, and on how the new certification can benefit lawyers throughout the state.

Q: What sets this practice area apart?

Privacy law is a cutting edge area. It is constantly evolving and it impacts almost every aspect of our lives. Every time we pick up our smart phone we are implicating some aspect of privacy law. —F. Marshall Wall

Q; Did your interest in privacy law begin in law school?

My interest actually began with pre-law school employment in financial services where data privacy was engrained in the business model. I learned that I really enjoyed helping clients with cutting edge issues in a rapidly evolving topic area. —Nathan Standley

Q: Have you already attained the IAPP CIPP/US certification? If so, why did you pursue that?

I became IAPP CIPP/US certified in 2015 because I had been actively practicing privacy and information security law and I hoped that the CIPP/US certification would help demonstrate to clients and prospective clients that I was knowledgeable in the law, in technology, and in customs relevant to privacy and information security. At the time, neither the ABA nor any state bar recognized a specialization in privacy or information security law, and there was not any other widely-recognized, credible certification authority. —Matthew Cordell

Q: Describe a typical client or client situation.

The situations that our clients face vary significantly. Currently we are seeing a fair number of clients with business email compromise (BEC) or "spoofing" issues. Data incidents involving the insertion of malware into a client's system to scrape personal data and data incidents involving employee error (such as a lost laptop) are not uncommon. But privacy and information security is much more than just cybersecurity and data breaches. Clients face privacy issues in dealing with employee and customer personal information, monitoring others, recording calls, sending documents containing social security numbers, conducting background checks and drug testing, designing legally adequate data security plans, and providing adequate notice to consumers of collection and use of their personal data. GDPR (the EU General Data

Privacy and Information Security Specialty Committee

Matthew A. Cordell, Chair
Elizabeth H. Johnson, Vice Chair
Alicia A. Gilleski
Karin M. McGinnis
Elizabeth E. Spainhour
Nathan E. Standley
F. Marshall Wall
Clark C. Walton

Protection Regulation, which will be enforced beginning May 25, 2018) is a priority for many companies right now. —Karin McGinnis

Q: What's the most interesting/difficult/challenging information security legal issue you have handled?

The large-scale data security incident responses that I have worked on over the years have consistently been the most challenging, because there are so many applicable laws, regulatory bodies, contract and insurance requirements, law enforcement concerns, and reputational risks, all of which must be handled in a very compressed timeframe. —Matthew Cordell

Q: How has the practice changed in the past five years?

The biggest challenges in this practice are keeping up with developments and conforming my advice to the needs of dynamic, fast-paced situations. When I started, my firm had just handed out Blackberries for the first time, MySpace was making more news than Facebook, and there were relatively few privacy laws. The practice changes weekly, not yearly, in terms of new technology, emerging security threats, new case law, and new or amended statutes and regulations. To be successful in this practice, you must be willing to devote substantial time to maintaining expertise because, even though the area is maturing, it will never be static. On this point, having a team of devoted practitioners is a significant advantage.

Clients' sophistication and knowledge of the subject matter also has increased significantly in the last five years. What has not changed, and likely will never change, is their expectation that our advice will be clear, practical, responsive, and actionable. In this practice, when applicable laws may be out of date with technology or must be applied to unanticipated situations, a depth and variety of experience is really critical to meet client needs and expectations, more so now than five or ten years ago. —Elizabeth H. Johnson

Q: What gives you the most satisfaction about practicing privacy and information security law?

I enjoy helping clients through what can be an extremely stressful and difficult time, for example when a data breach hits and the client needs quick and clear guidance on how to proceed. It is satisfying to see clients gain more confidence that the situation can be resolved and that there is a team I can bring to the table to help the current situation and help minimize the risk of future incidents. I also enjoy the challenge of staying on top of changes in the law and practicing in an area where the new legal theories are being developed and tested, such as legal claims by consumers for data breach violations. It is never boring or routine. —Karin McGinnis

Q: Does a lawyer need to be technologically proficient to practice in this specialty area?

Not necessarily as there are numerous aspects to this practice area that do not involve technology; however, technology prowess is always beneficial. —Nathan Standley

Q: How do you keep up with the changes in technology that affect your clients?

I subscribe to a number of blogs and email updates, follow industry leaders on social media, and am a member of several technology associations that send updates about the industry. —F. Marshall Wall

When I come across a technology I don't understand, I set aside some time to dig into the topic and educate myself about it—sometimes by simply Googling it and reading for an hour or two. One of the benefits of being an in-house lawyer at a large company with hundreds of technology professionals is that I can call in one of my (internal) clients who has some level of expertise in the technology and ask them to explain it to me until I'm confident that I understand the terminology, mechanics, and applications of the technology. —Matthew Cordell

Q: How do you envision the NC certification affecting your practice or career?

Certification should help differentiate those who have knowledge and experience in this area, which is very specialized and becoming more so. I am excited to be one of those folks. —F. Marshall Wall

Q: What would you say to encourage other lawyers to become board certified specialists in this field?

One of my mentors told me many years ago that in order to be a great lawyer, you must love the law. I would say that if you want to be a great privacy and data security lawyer, you need to love both the law and computer technology. —Matthew Cordell

For more information on specialty certification in Privacy and Information Security Law visit us online at nclawspecialists.gov/for-lawyers/certification-standards/privacy-and-information-security-law. Application deadline: July 2, 2018. ■

Calendar of Events

EXAM DEADLINES

- August 23, 3018 – Application Deadline for October Exam
- October 13, 2018 – NCCP Exam

UPCOMING NCPA CALENDAR EVENTS 2018

- July 11-13, 2018—NALA Conference @ St. Louis, Missouri
- April 11-13, 2019—NCPA 39th Annual Seminar @ Carolina Beach (woohoo!!)

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