

WAKE BAR Flyer

Wake County Bar Association
Est. 1925

Vol. XXXV, Number 9

September 2009

Message From The President

E.D. Gaskins, Jr., President
Wake County Bar Association



Representatives of our Professionalism Committee have talked recently with the Erie County (Buffalo) New York Bar to assist in its effort to revitalize its professionalism committee and encourage more courtesy and collegialism among members of the Bar. One of the questions which the Erie County representatives raised was how we “enforced” professionalism in Wake County. We explained that we don’t have “enforcement” mechanisms. Rather, we rely on the positive recognition of professionalism, such as with our annual Professionalism Award. We also pointed to our Professionalism Support Initiative, which has a mechanism for visiting with lawyers and judges perceived by their peers as exhibiting unprofessional conduct. We explained that our efforts are supported by our state-wide Chief Justice’s Commission on Professionalism. However, we observed that the primary reason our professionalism effort has succeeded is because it is widely supported by the lawyers of Wake County and by the judiciary. We identified the support and encouragement of the judiciary as key.

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Upcoming Meetings

LOOKING AHEAD: WCBA Meeting Schedule

September	No Meeting	
October 6	12:30 p.m.	Woman’s Club
November 3	12:30 p.m.	Woman’s Club
December 1	12:15 p.m.	North Raleigh Hilton

Please check the *Bar Flyer* to confirm the meeting location.

October

On Oct. 6, join us at the Woman’s Club for lunch and another Professionalism roundtable discussion.

Tennis Tournament Oct. 2

The annual Wake County Bar Association Tennis Tournament will be held at the Carolina Country Club on Friday, Oct. 2, 2009, beginning at 1:00 p.m. Lawyers Mutual and Attorneys Title will sponsor the tournament this year. Trophies will be provided to champions and runners up. Refreshments and sandwiches will be served on the patio beside the courts. The entry form is on page 7.



Reminder

As in past years, there will be no luncheon meeting of the Wake County Bar Association in September. WCBA members and their families are encouraged to attend the Family Celebration on September 11 at Pullen Park. (See page 4 for additional information and a sign-up form.)



Wake County
Bar Association
Tenth Judicial
District Bar

Swearing-In Ceremony

September 21, 2009
2:00 p.m.
Meymandi Concert Hall
at
Progress Energy Center
for the Performing Arts
Downtown Raleigh

See the article on page 3
for additional information.

Please Note!

DEADLINE October Issue Sept. 15, 2009

Please note: If materials are received after the deadline, they may be published in a subsequent issue of the Wake Bar Flyer.

Send news and articles to:

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ADDITIONAL DEADLINES

Issue Date	Submission Deadline
November 2009	Oct. 6
December 2009	Nov. 10

Typography:

Capital Letters, Inc. (481-1011)

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Now the 11th Circuit Court of Appeals has articulated professionalism standards and has backed those standards up. That occurred as the 11th Circuit reviewed a matter from the District Court for the Middle District of Florida in Sahyers v. Prugh, Holliday and Karatinos, P.L., 560 F.3d 1241 (11th Cir. 2009).

In the District Court, a paralegal sued her former law firm for violations of the federal Fair Labor Standards Act ("FLSA"). She directed her attorneys to file suit without making a demand on the defendant law firm or giving that law firm notice that the suit was to be filed. She eventually accepted an offer of judgment for \$3,500.00. She then became the "prevailing party." Under the FLSA, the prevailing party is entitled to a "reasonable attorney fee."

The District Court found that a reasonable fee under the circumstances of this case was no fee at all. In affirming that decision, the Court of Appeals observed that the court has "inherent powers to supervise the conduct of the lawyers who come before it and to keep in proper condition the legal community of which the courts are a leading part." *Id.* at 1244. Those powers encompass "among other things, the authority to police lawyer conduct and to guard and to promote civility and collegiality among the members of its bar." *Id.* Courts did so because when one becomes a member of the Bar, the lawyer also becomes "an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *Id.* at 1245 n.4 (quoting People ex rel. Karlin v. Culkin, 162 N.E. 487 (N.Y. 1928) (Cardozo, C.J.)).

The Court of Appeals affirmed that, "We believe and defend the idea that maintaining a bar that promotes civility and collegiality is in the public interest and greatly advances judicial efficiency: better 'to secure the just, speedy, and inexpensive determination of every action and proceeding,' as Rule 1 [of the Federal Rules of Civil Procedure] demands." Sahyers, 560 F.3d at 1245 n.5 (emphasis in original). "In exercising its powers, a court need not free a client from the acts of his lawyer, especially when the client is aware of or directs those acts." Sahyers, 560 F.3d *Id.* at 1245. In this case, this lawyer "slavishly followed" his client's instruction to file suit against fellow lawyers without a word in advance. *Id.* The Court of Appeals quoted the District Court with approval: "This court will not permit lawyers to file unnecessary litigation and palm it off on their clients." *Id.* at 1246 n.8. The

Court of Appeals also quoted the District Court's observation that "prior to filing suit in this local area, it is still reasonable to pick up the telephone and call another lawyer so it won't be necessary to file suit." *Id.*

The Court of Appeals applauded the fact that the District Court "refused to reward – and thereby to encourage – uncivil conduct by awarding Plaintiff attorney's fees or costs." *Id.* at 1245. According to the Court of Appeals, "a lawyer's duties as a member of the bar – an officer of the court – are generally greater than a lawyer's duties to the client." *Id.* at 1246 n.7. The attorney has duties not only to the client, but, as officers of the court, to the system of justice as a whole, such that "independent judgment is an essential ingredient of good lawyering." *Id.* at 1246.

The Court of Appeals concluded by observing that the District Court's refusal to award a fee was appropriate even if "bad faith" was required to support that result: "We conclude that the conscious indifference to lawyer-to-lawyer collegiality and civility exhibited by Plaintiff's lawyer (per his client's request) amounted to harassing Defendants' lawyers by causing them unnecessary trouble and expense and satisfied the bad faith standard." *Id.* at 1246 n.9.

Although the Court of Appeals cautioned against reading too much into this decision, at least in the 11th Circuit, professionalism is alive and well and if enforcement is appropriate, the courts are well equipped to do so! 