

THE NORTH CAROLINA STATE BAR

# JOURNAL

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**Rx Pharmacy**

1234 Main Street  
Anytown, USA 11111

**Rx No: 860015-5578**

**SMITH, JOHN**

1236 Any Boulevard, Mytown, US 1111

**HYDROCODONE/APAP**  
**TAKE 1-2 TABLETS BY MOUTH**  
**HOURS AS NEEDED FOR PAIN**

**Qty: 50 TABS**

**Dr. Smith, Joe - No Refills**

**DRUG EXP: 1/19**



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# Murder on Birchleaf Drive: A Book Review

BY JUSTICE ROBERT EDMUNDS JR.

Steve Epstein is known as a speedy runner (frequently winning the Bar Association's run at its annual convention) and as a talented litigator. He can now add "accomplished writer" to his resume.

The broad outline of the story he tells in *Murder on Birchleaf Drive* is familiar to most North Carolina lawyers, especially those in the Triangle, where it was front-page news for the years it took the case to wend its way through the legal system. While Jason Young was away on a business trip, his pregnant wife Michelle Young was savagely beaten to death in their home. Their two-year old daughter, Cassidy, was discovered unharmed, nestled beside her mother's body. "She's got boo boos everywhere," Cassidy said when found.

Circumstantial evidence pointed toward Jason as the perpetrator. Investigators theorized that he had checked into a Hampton Inn in western Virginia, propped open one of the hotel's side doors so he could slip in and out unseen, disabled the security camera, drove back to Raleigh, killed Michelle, then returned to the hotel in time for his scheduled meetings the next day. In light of Jason's volcanic temper, his dalliances with other women, and his potential gain from a large double-indemnity insurance policy on Michelle's life, the evidence detailed in Epstein's recitation looked strong.

But the case was hardly airtight. Despite extensive searching, no blood was found in Jason's car and no fibers from the hotel car-

peting were found at the murder scene. Though Michelle had been struck numerous times with something like a baseball bat or a pipe, no murder weapon was ever recovered. Michelle's body bore unmistakable signs of resistance, but no marks were found on Jason other than a bruise on his toe.

DNA from cigarettes found in the Young home matched no one, and witnesses claimed to have seen unidentified vehicles at the scene around the time of the crime.

The portions of Epstein's narrative relating to the legal proceedings will be catnip for North Carolina lawyers. Jason was charged with first-degree non-capital murder. Veteran Wake County Judge Don Stephens presided. Jason was represented by then-Public Defender Bryan Collins along

with veteran criminal attorney Mike Klinkosum. The prosecutors were Wake County Assistant District Attorneys Becky Holt and David Saacks. Other familiar names involved at various points in the case were Alice Stubbs, Roger Smith Jr., Sheriff Donnie Harrison, Joe Zeszotarski, and Judge Paul Ridgeway.

The trial unfolded predictably until the end, when, to the surprise of the prosecutors, Jason testified on his own behalf. He proved to be an effective witness as he denied any part in the crime. Caught off guard and given little time to prepare, the prosecution's cross examination was ineffective. In closing arguments, defense counsel hammered on the loose ends in the state's circumstantial case. The jury hung 8-4 in favor of acquittal.

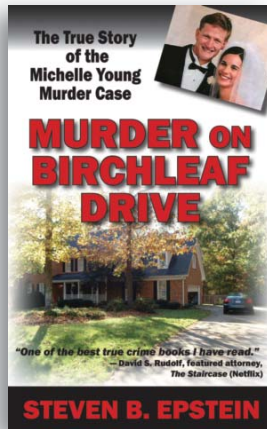
Judge Stephens presided over the retrial. The state's lead counsel for the retrial was veteran Assistant District Attorney Howard Cummings, teamed with Becky Holt. Bryan Collins and Mike Klinkosum again represented Jason. New evidence was presented. Though Jason did not testify in the retrial, the prosecution played to the jury a video of his testimony at the first trial, then systematically demolished several of the claims he made.

Perhaps most sensationally, the state presented for the first time evidence of a parallel wrongful death case Michelle's mother had brought pursuant to the "slayer statute" to preclude Jason from recovering over \$4 million in life insurance proceeds. The jury heard that Jason had defaulted and that Judge Stephens, also presiding over that civil matter, had entered a judgment declaring that Jason killed Michelle.

The second jury found Jason guilty. On appeal, Jason's new counsel cited for the first time an 1868 statute apparently limiting the use of civil pleadings in a criminal case. The court of appeals ordered a third trial. The Supreme Court of North Carolina, however, allowed discretionary review and reversed the court of appeals. Judge Paul Ridgeway heard and denied Jason's claims of ineffective assistance of counsel. Jason is now serving his life sentence.

In this maiden effort, Epstein brings a litigator's sensibilities to one of the state's most notorious murder cases. We see through his eyes the strengths and weaknesses of the case with which both the prosecutors and the defense attorneys had to contend. Though a trial is designed to be a search for truth,

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other financially-related digital assets.

2. In light of the abundance of information available on the topics of virtual currency and blockchain technology, this opinion will not recite a detailed overview of technological backgrounds or technical operations of these topics, but instead will presume a basic level of familiarity and understanding with the topic by the reader. For background information on these topics, consider the following resources:

1. Nebraska Ethics Advisory Opinion No. 17-03 (2017);
2. Deidre A. Liedel, *The Taxation of Bitcoin: How the IRS Views Cryptocurrencies*, 66 Drake L. Rev. 107, 111-12 (2018);
3. Lisa Miller, *Getting Paid in Bitcoin*, 41 Los Angeles Lawyer 18, 19-20 (December 2018); and
4. Carol Goforth, *The Lawyer's Cryptionary: A Resource for Talking to Clients about Crypto-transactions*, 41 Campbell L. Rev. 47, 112-13 (2019).

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## Proposed 2019 Formal Ethics Opinion 6 Offering Incentive to Engage with Law Practice's Social Networking Sites July 18, 2019

*Proposed opinion rules that, depending on the function of the social media platform, offering an incentive to engage with a law practice's social media account is misleading and constitutes an improper exchange for a recommendation of the law practice's services.*

### Inquiry:

Lawyer maintains an account for his law practice on various social media platforms. These platforms allow social media users to “connect” with other users, including both individuals and business-related entities, through the use of “likes,” “follows,” and “subscriptions.” Some platforms also allow users to comment on posted content or share posted content on their own social networks.

To increase his social media exposure, Lawyer wants to offer a prize incentive to anyone who connects or interacts with any of his social media platforms. All users who connect or interact with Lawyer's law practice social media account will be entered into a drawing for a prize. The giveaway is open to all users of the social media platform used by Lawyer.

May Lawyer offer an incentive to all social media users to connect or interact with Lawyer's law practice social media account?

### Opinion:

No. If a social media platform will broadcast or display a user's connection or interaction with Lawyer's law practice social media account to other users of the platform, Lawyer may not offer prize chances in

exchange for activity on or with his social media accounts.

Generally, lawyers may not give anything of value to a person for recommending the lawyer's services. Rule 7.2(b). Certain social media platforms, such as Facebook, allow users to connect with or otherwise follow a business or service entity's social media account by “liking” the entity on the social media platform. Similarly, users may also comment on or share social media posts made by the business or service entity's account. The user's decision to “like” or follow the entity, and the user's comments on the entity's posts, are then displayed not only within the user's social media feed, but can also be displayed on the feeds of other users who have previously connected with that user. Also, when an individual “likes” a business's social media page, that business's posts/advertisements may appear in the individual's social media feed and may appear in the news feeds of the individual's other “friends” or connections with a caption such as “Jane Smith likes No Name law firm.”

Without further context, other users could interpret an individual “liking” a law practice as a personal endorsement and recommendation of that law practice. If the social media platform broadcasts the user's “like” of the law practice on other users' social media feeds, Lawyer's offer of an entry in a giveaway for a prize to social media users in exchange for the user “liking” the law practice's social media account violates Rule 7.2(b).

Additionally, a lawyer may not make a false or misleading communication about the lawyer or the lawyer's services. Rule 7.1(a). A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading. *Id.* The purpose behind Rule 7.2(b)'s prohibition on offering something of value in exchange for recommending services is to ensure that recommendations for a lawyer's services are based upon actual experiences or legitimate opinions of the lawyer's service, rather than financial incentive. The displayed “like” of a law practice may indicate some prior experience with the law practice or the personnel associated with the practice upon which the user's “liking” of the practice is based. Similarly, the credibility attributed to a particular social media account could be influenced by the number of account follow-

ers or subscribers. When the “like” or follow of a law practice's social media account is based upon the user's interest in a prize giveaway, the incentivized “like,” follow, or other interaction received by Lawyer and displayed on social media is misleading in violation of Rule 7.1(a).

This opinion does not prohibit a lawyer or law firm from having a social media presence, or encouraging or inviting other users to like, share, follow, or otherwise interact with the lawyer's or law firm's social media account. Non-incentivized social media interactions are not prohibited. ■

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## Murder on Birchleaf Drive (cont.)

Epstein shows the impact that skilled lawyering and sound trial strategy can have on that search. Cases and appellate opinions from the distant past cast long shadows.

Epstein proves to be a valuable and reliable guide through the many twists and turns of this case. The complex investigation and intertwined story lines are carefully and intelligibly presented. His discussions of the decisions that litigators on both sides had to make are even-handed. Lay readers and lawyers alike will find his analysis of non-intuitive evidentiary issues helpful. Epstein's respect and affection for his colleagues in the Wake County Bar as they work through this most difficult of cases is apparent throughout the book.

Most of all, though, the story Epstein relates is compelling, heartbreaking, and unforgettable. Don't start reading unless you anticipate a few uninterrupted hours. As with *Fatal Vision*, a similar book about a ghastly family murder in North Carolina, the story grabs and doesn't let go. Was Jason, a serial philanderer of volatile temperament and the apparent emotional development of an eighth grader, but with a scanty record of violence, responsible for beating his pregnant wife to death and leaving his beloved daughter to track blood around the house? Epstein concludes that the system worked. Do yourself a favor. Read this book. ■

*Judge Robert Edmunds is a former justice on the North Carolina Supreme Court.*