

Oliver Max Gardner III



OLIVER MAX GARDNER III

PERSONAL:

Date of Birth - October 6, 1945.

Marital Status - Married to Victoria Harwell Gardner, February 28, 1982.

Children - Oliver Max Gardner IV, Sarah Olivia Gardner Naftolin, and Ralph Webb Gardner II. Step-Children - Christopher Van Perry. Grandchildren: Zane Naftolin, Oliver Perry Gardner II.

Family History - Grandson of Oliver Maxwell Gardner, State Senator, Lt. Governor of North Carolina (1916-20), Governor of North Carolina (1929-33), Under Secretary of the United States Treasury (1946), and United States Ambassador to Great Britain (1947). Grandnephew of Clyde Roark Hoey, Member of the United States House of Representatives (1919-23); Member of the N.C. House and Senate (1924 to 1936); Governor of North Carolina (1937-41); and, United States Senator from North Carolina (1944-53).

Church Affiliation - First Baptist Church of Shelby.

Home Address - 403 S. Washington Street, Shelby, NC 28150.

Farm Address - 267 Melwood Drive, Casar, Cleveland County, NC 28020. Office Address - 1410 College Avenue, Shelby, NC 28152

Mailing Address - Post Office Box 1000, Shelby, NC 28151-1000.

EDUCATION:

Preparatory:

Fork Union Military Academy (1960-61), Fork Union, Virginia. Maintained "A" Average.

Shelby High School (1961-64), Shelby, North Carolina. Graduated "B+" Average. Activities: Basketball, Track, Spanish Club (President), Sophomore Class President, Second Vice President Student Body, Student Body Social Chairman, State Student Council Convention.

College:

University of North Carolina at Chapel Hill (1965-69). Major: Political Science, B.A. Degree. Graduated 3.25 Average. Honors: Dean's List. Activities: Pi Kappa Alpha, University Student Party.

Legal:

Graduated with honors from the University of North Carolina School of Law, Chapel Hill, class of 1974. Class Rank: 8th out of 245. Honors and Activities: Order of Coif, North Carolina Law Review, Chief Justice Walter Clark Award, Phi Delta Phi - Outstanding Law Graduate of 1974, President - UNC Student Bar Foundation, Member - Morehead Law Fellowship Selection Committee.

MEMBERSHIPS:

Legal Organizations (Present and Former):

North Carolina State Bar; North Carolina Bar Association; North Carolina Academy of Trial Lawyers; American Bar Association; American Bar Institute; American Trial Lawyers Association; National Association of Criminal Defense Lawyers; Southern Trial Lawyers Association; National Association of Consumer Bankruptcy Attorneys; National Association of Consumer Advocates; National Association of Chapter 13 Trustees; Civil Justice Foundation; National Consumer Law Center; Cleveland County Bar Association; and 27-B Judicial District Bar Association.

Legal Committees (Present and Former):

AIDS Task Force (NCBA); Committee for Continuing Legal Education (NCBA); Practical Training Committee (NCBA); Committee on Lawyer Referral Services (NCBA); Committee on Legal Economics (NCBA); Committee on Consumer Bankruptcies (ABI), National Consumer Law Center (NCLS); Southeastern Bankruptcy Law Institute (SBLI); Fourth Circuit Committee on Banking and Bankruptcy (ABA); Committee on Claimant's Rights in Social Security Matters; National Organization of Social Security Claims Representatives (NOSSCR); Local Rules Committee for the U.S. Bankruptcy Court (WDNC); Chairperson, Bankruptcy Section (NC Academy of Trial Lawyers).

Legal Sections (Present and Former):

American Bankruptcy Institute (Consumer Rights Section); Bankruptcy Section (NCBA); Litigation Section (NCBA); Family Law Section (NCBA); Criminal Justice Section (NCBA); Law Office Management Section (NCBA); General Practice Section (NCBA); Section of Solo Practitioners and Small Firms (ABA).

Continuing Legal Education:

Past and present speaking engagements include: Recent speaker and presenter on the CARES Act and Forbearances under Section 4022 for the National Association of Consumer Advocates (NACA), Modifications and Forbearance Options Under the CARES Act (NACA); CARES Act and Chapter 13 for The National Association of

Chapter Thirteen Trustees (NACTT), the National Association of Consumer Bankruptcy Attorneys (NACBA) and the Eastern District of California Bankruptcy Bar. COVID-19 Forbearance What Next? For NACA and NACBA. Frequent Moderator and National Lecturer for numerous CLE programs sponsored by NACA, the NACBA, and NACTT, The American Bankruptcy Institute, the North Carolina Bar Association, the North Carolina Bar Foundation, the South Carolina Bar Association

(Bankruptcy Section), the Mecklenburg County Bar Association, and the United States Bankruptcy Court for the Western District of North Carolina.

Gardner has been conducting his Consumer Bankruptcy Seminar series for lawyers across the United States for fifteen years, including his intensive 4+ day Bankruptcy Litigation Model Boot Camp, 2-Day Regulations X and Z Boot Camps, 2 day Debt Buyer Boot Camps, and others. Gardner's Boot Camps have been among the most successful and intensive lawyer-training seminars in the history of consumer bankruptcy law, with over 2,500 full-training graduates.

Gardner is consistently rated as one of the very best lecturers by seminar participants across the United States.

COURTS:

Admitted to practice law in the following courts and jurisdictions: North Carolina District and Superior Courts; North Carolina Appellate Courts; United States District Court for the Eastern District of North Carolina; United States District Court for the Middle District of North Carolina; United States District Court for the Western District of North Carolina; United States Court of Appeals for the Fourth Judicial Circuit; United States Bankruptcy Court, Eastern District of North Carolina; United States Bankruptcy Court, Middle District of North Carolina; and, United States Bankruptcy Court, Western District of North Carolina.

EMPLOYMENT:

Research Assistant, Chief Justice William Bobbitt, Supreme Court of North Carolina,

September 1, 1974 to January 1, 1975 (Judge Bobbitt retired).

Research Assistant, Associate Justice William Copeland, Supreme Court of North Carolina, January 2, 1975 to July 31, 1975.

Smith Moore Smith Schell & Hunter, Attorneys and Counselors at Law, 500 NCNB Building, 101 West Friendly Avenue, Post Office Box 21927, Greensboro, North Carolina 27420, August 1, 1975 to August 1, 1977.

Sims, Walker & Steinfeld, P.C., 1275 K Street, NW, Suite No.875, Washington, D.C. 20005, Of Counsel to the Firm from January 1, 1989 to April 1, 1992.

The Democratic Party of North Carolina, Post Office Box 12196, Raleigh, North Carolina 27605, General Counsel to the State Party from October 1, 1989 to January 1, 1993.

Max Gardner Law, PLLC, PO Box 1000, 1410 College Avenue, Shelby, North Carolina 28150, August 7, 1977 to the present.

Max Gardner's Consumer Defense Academy Post Office Box 1000, 1410 College Avenue, Shelby, North Carolina, President and CEO 2006 to the present.

Maxinars, LLC. Post Office Box 1000, 1410 College Avenue, Shelby, North Carolina, President and CEO 2010 to the present.

Of Counsel to the law firm of Kellett and Bartholow, PLLC, of Dallas, Texas, 2015 to the present.

ORGANIZATIONS:

Present Charitable and Educational:

- O. Max Gardner Foundation, Inc., President and Director, Post Office Box 2286, Shelby, North Carolina 28151-1000, 1410 College Ave., Shelby, North Carolina 28152.

- Governor O. Max Gardner Historical Association, President and Director, 403 S. Washington Street, Shelby, North Carolina 28150.
- University of North Carolina, Law Alumni Association, Chapel Hill, North Carolina.
- General Alumni Association, Life Member, University of North Carolina, Chapel Hill, North Carolina.
- Gardner-Webb University, Board of Trustees (2019-2023), Boiling Springs, North Carolina.
- Gardner-Webb University, General Alumni Association Member, Boiling Springs, North Carolina.
- Gardner-Webb University, Bulldog Club Member, Boiling Springs, North Carolina.
- Governor Morehead Forum Foundation Board of Directors (20____ to present).
- N.C. Textile Workers Historical Legacy Foundation, Member of the Board of

Directors of the (2018 to the Present), Morganton, North Carolina. Former Civil and Educational Positions:

Former Civil and Educational Positions:

- National Chairman of Fund-Raising Drive for \$3.5 million Convocation and Special Events Center, Gardner-Webb University, Boiling Springs, North Carolina.
- Gardner-Webb University, Boiling Springs, North Carolina, Board of Trustees (1978 to 1981).
- Educational Foundation of the University of North Carolina, Member, Chapel Hill, North Carolina.
- Shelby Economic Development Commission, Board of Directors.
- Shelby Downtown Improvement Corporation, Board of Directors.
- Shelby Merchants Association, Board of Directors.
- Shelby Economic Development Commission, Chairman.
- Greater Shelby Chamber of Commerce, Board of Directors.
- Shelby Merchants Association, Chairman—Christmas Parade Committee.
- Rotary Club of Shelby, North Carolina.
- Cleveland County Chapter, American Cancer Society, Chairman - Annual Fund-Raising Drive.
- Cleveland County Chapter, American Cancer Society, Board of Directors.
- National Multiple Sclerosis Society, Greater Carolinas Chapter, Charlotte Division, Board of Directors.

POLITICAL:

- Campaign Treasurer, McNeill Smith for the United States Senate Campaign Committee.
- General Counsel, the Democratic Party of North Carolina.
- Parliamentarian, Democratic Party of Cleveland County.
- Precinct Officer and Delegate to County and State Conventions.

PUBLICATIONS:

In addition to notes and articles that have been published in *The North Carolina Law Review* and written materials prepared and published by various legal organizations and associations for seminars and other legal courses of study, regular articles have also been written for and published by *North Carolina Lawyers' Weekly*, *The Journal of the North Carolina Bar Association*, *The North Carolina State Bar*, and *The Mecklenburg County Bar*. Such recent articles include but are not limited to the following: "When I Die I Want To Go

To Heaven, But I Hear They Don't Let Lawyers In!;" "The Joke's On All Of Us;" "Lawyer Lies: A New Federal Marshall in Town;" "The Election of Judges;" and "Card Sharks."

AWARDS:

The National Association of Consumer Bankruptcy Lawyers (NACBA) recognized Mr. Gardner as a Champion of Consumer Rights in 2003; named him the Outstanding Consumer Lawyer of 2004 and awarded him The Distinguished Service Award in April of 2013. Mr. Gardner was elected a Member of the North Carolina Legal Elite by Business North Carolina in 2004, 2005, 2006, and again in 2007. He was also recognized as one of the "Super Lawyers" in North Carolina by *Charlotte Magazine* and by *Law & Politics* in 2006, 2007, 2008, 2009, and again in 2010 in the field of Consumer Bankruptcy Law. Mr. Gardner was named a Top Lawyer in N.C. in 2013 by The Legal Network. Gardner has received the AV Preeminent Award from Martindale Hubbell for the past 30 years. This is the highest ethical rating for any lawyer. He also has the top rating of 10.0 from AVVO.

TELEVISION AND PRINT MEDIA:

O. Max Gardner, III is recognized as one of the leading lawyers in America in the area of Predatory Mortgage Servicing and the standing of mortgage servicers in consumer bankruptcy cases. His position as an educator and as an attorney on the front lines of the war against predatory lenders and mortgage servicers has captured the attention of ABC News' "Nightline," PBS' "Frontline," CNN, *BusinessWeek*, *The New York Times*, *The Washington Post*, *Forbes* and many other news outlets across the country.

Mr. Gardner's Consumer Bankruptcy Boot Camps have been featured on ABC News' "Nightline," the "CBS Nightly News" and CNN's "Your Money" and written about in featured articles appearing in *BusinessWeek*, *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *Chicago Tribune*, *The Huffington Post*, and every major newspaper in North Carolina.

INTERVIEWS:

Mr. Gardner was interviewed by Patrick Rochelle as part of Duke University's Stanford School of Public Policy, for the Bass Connections American Predatory Lending and the Global Financial Crisis project on October 25, 2020.

LANDMARK CASES:

Gardner has been the lead attorney of record in many landmark cases. Some of his most significant were:

- *Myrtle Marshall v Spindale Savings & Loan*. This was the first case under the Bankruptcy Act of 1978 where a debtor was able to avoid and cancel a completed pre-filing foreclosure sale of her home by arguing that the Savings & Loan did not

pay "reasonable value" for the home at the public sale. Gardner used Section 548 of the Bankruptcy Code to characterize this sale as a "fraudulent conveyance." Before this case, almost everyone thought that once a foreclosure was completed under state law a debtor could never use a bankruptcy case to avoid the completed sale. The case sent shock waves throughout the mortgage and title insurance industries. Congress later amended the law to preclude this specific remedy.

- *Gerald Stark v Crestar Mortgage*. In this case of first impression, the Bankruptcy Court held that the imposition of a monthly property inspection fee by a mortgage servicer on a Chapter 13 homeowner was a violation of the automatic stay and was nothing more than a "bankruptcy monitoring fee." The Court also held that such a practice was unlawful under the mortgage note

and deed of trust. Stark has been widely followed and cited and roiled the mortgage servicing industry.

- Shelby Yarn Company. This was the first reported case where a group of former employees (5 to be exact) filed an "involuntary" bankruptcy petition against their former employer. Gardner represented all of the former employees who filed the involuntary petition. One of his clients was the former Vice President of Shelby Yarn, Paul Petroff. After the filing, Gardner was appointed by the Court to represent the Committee of all of the former employees (over 600 including recent terminations). Gardner was also appointed as Special Counsel to the Trustee in a bankruptcy in the prosecution of a civil action against the former officers, directors and owners of Shelby Yarn. This civil action was settled for approximately \$2.2 million. The case was widely reported by the media and was featured as the cover story on the September 2000 edition of *Business North Carolina*.

- Marjorie White v Duke University Medical Center. The debtor in this case had to file for Chapter 13 relief because Duke Medical Center had secured a judgment against her for less than \$2,000 for unpaid medical bills. Duke Medical Center was threatening to foreclose her home to collect the judgment. After the filing, the debtor filed an adversary proceeding against Duke Medical Center and her psychiatrist, Dr. Bernard Bressler for medical negligence arising out of alleged sexual acts between Bressler and the debtor that were all instigated by Bressler. The case was settled for more than \$1,200,000.00 and was widely reported nationally at the time. Myra McPherson, a Pulitzer Award Winning Reporter, wrote a lengthy series of articles in *The Washington Post* on the case entitled "O. Max Gardner III vs The City of Medicine" ("The City of Medicine" being the moniker for Durham, NC, home of Duke University Medical Center).

- Smith vs The Money Store. In this case of first impression, Gardner filed a Class Action against The Money Store for adding the sum of \$125.00 to every proof of claim filed in a consumer bankruptcy case. The fee allegedly related to "lawyer services" in preparing the claims. Gardner established by uncontradicted evidence that an attorney played little to no role in the claims preparation process. Based on this evidence, the Court disallowed these fees as improper and held that a creditor violated the automatic stay by seeking to include attorney fees in a proof of claim. The court held that if a creditor wanted an award of any attorney fee, the creditor would have to file a fee application and notice it for hearing, thereby giving the debtor the right to object and be heard. The court also held that for purposes of the vast majority of mortgages in consumer cases a fee for preparation of the proof of claim would never be appropriate. This case has been widely reported and certainly raised the level of awareness of this unlawful practice.

- Gardner represented the class plaintiffs in two class actions in the United States Bankruptcy Court for the Western District of North Carolina, before Judge Marvin R. Wooten—the first against Conesco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corp., and Farley & Kump, LLP, and the second against Chrysler Financial Co., LLC, et al. These cases alleged that the proofs of claim filed by defendants in the plaintiffs' bankruptcy proceedings and in the bankruptcy proceedings of other debtors violated the Bankruptcy Code in that they contained a claim for unapproved attorneys' fees incurred by these parties in connection with filing the proofs of claim. Gardner successfully settled these district-wide class action cases.

- Gardner represented a number of consumer debtors in an administrative consolidation of multiple objections to defective proofs of claim filed by national debt-buyers (the "Max Flow" and "Max Flow Trust" entities) owned by Bear Stearns Company. Judge Marvin R. Wooten consolidated all of these cases, along with all Chapter 13 cases in the Western District involving such claims, and this action was referred to as the Max Flow Trust Litigation. In these consolidated cases, Gardner objected to the Max Flow entities' proofs of claim filed in debtors' Chapter 13 bankruptcy cases because the Max Flow entities were not licensed to collect debt in the State of North Carolina and the claims lacked sufficient proof of ownership of the alleged debts. Gardner successfully settled all of these cases.

- Gardner represented 67 of the employees of debtor Yorkshire Americas, Inc. in a chapter 7 bankruptcy case filed in the Western District of North Carolina. Gardner was able to successfully recover wages on behalf of all 67 employees under the North Carolina Wage and Hour Act, N.C.

Gen. Stat. § 95-25.1, et seq. and under the Worker Adjustment and Retraining Notification Act (WARN) in 2007 and additional wages when he reopened the Chapter 7 case in 2015 upon the recovery of additional assets by the Trustee.

- Gardner served as General Counsel for the Cleveland County Fair, Inc., from approximately 2008 through 2016. During this time, Gardner was primarily responsible for dealing with all contractual and litigation matters involving the Fair. The most significant litigation incident involved over 102 e-Coli cases related to the operation of a petting zoo vendor at the Fair. One of the alleged victims died as a result of the alleged contamination and several other alleged victims claimed to have suffered permanent injuries. Gardner was able to consolidate and convert all of these cases to a "Complex Litigation Matter" under applicable North Carolina law, and following such consolidation was able to settle and resolve all of the pending claims in a quasi-class action with a Special Claims Master and a single designated Superior Court Judge.

- Gardner served as counsel for the Class Plaintiffs in Adversary Proceeding No. 17-03056, styled *Cotton v. Wells Fargo Bank, N.A.*, a National class action filed in the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division, which after extensive litigation, reached a final settlement to the class claimants, plus attorneys' fees in May, 2019. The success of the case for consumers was demonstrated by the fact that no one objected to the terms and conditions of the Consumer Class Action Settlement Agreement.