

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
JANUARY 27, 2017**

**GRIEVANCES**

In 2010, 1,317 grievance files were opened. In 2011, 1,499 grievance files were opened. In 2012, 1,239 grievance files were opened. In 2013, 1,205 grievance files were opened. In 2014, 1,222 grievance files were opened. In 2015, 1,331 grievance files were opened. In 2016, 1,384 grievance files were opened. Since January 1, 38 grievance files have been opened.

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

The ACAP staff responded to 2,651 phone calls from members of the public and contacted 768 lawyers in an effort to resolve concerns expressed by clients. Staff also responded to 423 emails and 394 letters from inmates.

There were 151 requests for fee dispute resolution filed during the quarter. One hundred six files were assigned to the two State Bar facilitators. The remaining 45 files were sent to district bar committees.

**CASES COMPLETED SINCE OCTOBER 2016 MEETING**

**Completed Discipline Cases in the DHC**

**Jerry R. Tillett – 15 DHC 7**

Tillett, a sitting judge, was reprimanded by the Judicial Standards Commission. Thereafter, the State Bar filed a DHC complaint alleging that Tillett engaged in conduct prejudicial to the administration of justice. The DHC granted the State Bar's motion for summary judgment, concluding that Tillett violated Rule 8.4(d). On May 27, 2016, the Supreme Court stayed the DHC case and issued a writ of *certiorari* to review the following issue: "Do the North Carolina State Bar Council and the Disciplinary Hearing Commission have the jurisdictional authority to discipline a judge of the General Court of Justice for conduct as a judge for which the judge has already been disciplined by the Judicial Standards Commission?" On December 21, 2016, the Supreme Court issued its opinion answering that question in the negative. The Supreme Court reversed the DHC's denial of Tillett's motion to dismiss and remanded the case to the DHC with instructions to dismiss the State Bar's complaint with prejudice.

**Andrew C. Jackson, Jr. – 16 DHC 32**

Jackson, of West Jefferson, did not supervise his assistant and did not adequately monitor his trust account. His assistant misappropriated entrusted client funds. The DHC suspended Jackson for three years. The suspension is stayed for four years upon compliance with numerous conditions.

**Michael C. Stamey – 15 DHC 33**

Stamey, of Jamestown, misappropriated entrusted funds, abandoned his law practice, did not communicate with and did not act diligently and competently in representing clients, did not maintain proper trust account records, and did not respond to the Grievance Committee. He was disbarred by the DHC.

**R. Alfred Patrick – 16 DHC 16**

Patrick, of Greenville, misappropriated entrusted funds. He was disbarred by the DHC.

**Alvaro De La Calle – 16 DHC 19**

It was alleged that De La Calle failed to supervise a paralegal in his office, collected a fee for legal services that were not provided by an attorney, aided another in the unauthorized practice of law, and made false representations to the Grievance Committee. After a January 13 hearing, the DHC announced its decision to impose a five year active suspension. The order has not yet been entered.

**Clarke K. Wittstruck – 16 DHC 21**

Wittstruck, of Buncombe County, engaged in the unauthorized practice of law, neglected a client's case, did not respond to the State Bar, and did not timely file estate accountings. The DHC suspended him for two years, effective upon expiration of the five year suspension imposed by the DHC in 14 DHC 29 and 14 DHC 33.

**Peter R. Henry – 16 DHC 23**

Henry, of Arden, did not communicate with clients and made inaccurate statements to a client about work purportedly performed. He was suspended by the DHC for three years. The suspension is stayed for three years upon compliance with numerous conditions.

**Georgia S. Nixon – 16 DHC 25**

Nixon, of High Point, engaged in conduct prejudicial to the administration of justice by making frivolous claims and misleading statements in two criminal cases. The DHC suspended her for one year. The suspension is stayed for two years upon compliance with numerous conditions.

**Michael Williamson – 16 DHC 27**

Williamson, of Goldsboro, mismanaged his trust account. The DHC suspended him for three years. The suspension is stayed for three years upon compliance with numerous conditions.

**Darryl G. Smith – 16 DHC 28**

Smith, of Wilson, had repeated random audit deficiencies and mismanaged his trust account. The DHC suspended him for three years. The suspension is stayed for three years upon compliance with numerous conditions.

**Peter F. Chastain – 16 DHC 29**

Chastain, of Greensboro, embezzled entrusted funds, did not maintain proper trust account records, and did not respond to the Grievance Committee. He was disbarred by the DHC.

**Nicholas Ackerman – 16 DHC 33**

Ackerman, of Greensboro, did not communicate with a client and did not participate in the fee dispute resolution program. The DHC suspended him for one year. The suspension is stayed for two years upon compliance with numerous conditions.

**Shaun L. Hayes – 16 DHC 38**

Hayes, of Asheboro, submitted to the Grievance Committee a document bearing a false signature. Hayes intended to falsely represent the signature as true. The DHC suspended him for two years. After serving one year of active suspension, Hayes will be eligible to petition for a stay of the balance upon demonstrating compliance with numerous conditions.

**Michael C. Casey – 16 DHC 39**

Casey, of Nags Head, did not perform quarterly reconciliations of his trust account, did not escheat funds from an unknown source that were mistakenly wired to his trust account, did not promptly disburse entrusted funds he held in *de minimis* amounts, disbursed to his firm entrusted funds he held in *de minimis* amounts, and disbursed funds for clients in excess of the amounts those clients had on deposit in the trust account. He was suspended by the DHC for two years. The suspension is stayed for two years upon compliance with numerous conditions.

**Completed Discipline and Disability Proceedings in the Courts**

**Christopher Greene** of Charlotte surrendered his license and was disbarred by the Wake County Court. Greene engaged in sexual relationships and had sexually inappropriate communications with multiple immigration clients.

**Orders of Reciprocal Discipline**

The Chair of the Grievance Committee entered an order of reciprocal discipline suspending **Joel F. Geer** of Greenville, South Carolina until he is reinstated from an interim suspension imposed by the South Carolina Supreme Court.

**Transfers to Disability Inactive Status**

No lawyers were transferred to disability inactive status by the Chair of the Grievance Committee this quarter.

**Interim Suspensions**

No orders of interim suspension were entered this quarter.

**Completed Petitions for Reinstatement/Stay - Uncontested**

**Jeffrey R. Baker**, of Wilmington, signed clients' names to a verification without both clients' permission to do so, notarized his own signatures of the clients' names, and filed the verification with the court. He also returned a client file by taping it to his exterior office door, did not communicate with clients, and was not diligent. In November 2015, the DHC suspended him for one year. He was reinstated by the Secretary on December 1, 2016.

**Completed Petitions for Reinstatement/Stay - Contested****Richard S. Poe – 10CVS11027 & 16 BCR 1**

Charlotte lawyer Richard Poe was disbarred by the Wake County Superior Court in 2010. Poe admitted that he improperly endorsed the firm's name on checks payable to his law firm employer and misappropriated the fees. The DHC recommended that the Council reinstate Poe. The Council granted Poe's petition and reinstated him at its October 28 meeting.

### **Completed Motions to Show Cause**

In April 2016, the DHC suspended the law license of **John Monte Holmes** of Raleigh for three years but stayed the suspension upon compliance with extensive conditions, including participation in real-time alcohol monitoring requiring him to submit to multiple daily breathalyzer tests. The State Bar initiated a show cause proceeding because, during the first three and a half months following entry of the DHC order, Holmes missed at least 45 days worth of testing. The DHC activated Holmes's suspension, but he will be eligible to petition for another stay after three months if he demonstrates compliance with numerous conditions.

In April 2012, the DHC suspended the law license of **Dennis H. Sullivan, Jr.** of Wilmington for three years. The DHC stayed the suspension for five years upon compliance with conditions, including compliance with all tax laws and providing the State Bar with all correspondence between Sullivan and tax authorities. The State Bar initiated a show cause proceeding because Sullivan did not pay employee withholding taxes and did not notify the State Bar of his correspondence with the IRS and of additional tax liens that were filed against him. The DHC activated Sullivan's suspension, but he will be eligible to petition for another stay after one year if he demonstrates compliance with numerous conditions.

### **TROs and Preliminary Injunctions**

The office obtained preliminary injunctions in Wake County Superior Court prohibiting **Adam Baker** of Raleigh, **Christopher O'Neal** of Wilmore, KY, **Scott Shelton** of Hendersonville, **Michael Eldredge** of Lexington, **Philip Adkins** of Snow Camp, and **Jonathan Leonard** of Winston-Salem from handling entrusted funds.

**Christopher Greene** of Charlotte was enjoined by the Wake County Superior Court from practicing law and was enjoined from meeting alone with female clients, potential clients and witnesses during the wind-down period. He has since been disbarred by the court.

**Michael J. Anderson** was enjoined by the Wake County Superior Court from practicing law until the completion of his DHC case.

### **Surrenders to the Council**

No lawyers are expected to surrender their licenses to the Council at the January meeting.

### **PENDING DISCIPLINE AND DISABILITY CASES**

#### **Bradley R. Lamb – 07 DHC 28**

Lamb, formerly of Pittsboro, was convicted in Florida of promoting the sexual performance of a child, lewd or lascivious exhibition, and solicitation of a child over the Internet, and is currently serving a 15 year prison sentence. The DHC stayed the proceedings until Lamb is released. His release date is currently forecasted for October 2019. He is on interim suspension.

**Robert Melville, Jr. – 13 DHC 9**

The Chair of the DHC entered an interim suspension of the law license of Lake Waccamaw lawyer Robert Melville. Melville pled guilty in federal court to the felonies of conspiracy to commit bank and wire fraud. The complaint has not been filed because Melville was transferred to disability inactive status.

**William E. Brown – 15 DHC 28**

Brown, of Fayetteville, was convicted of failing to file a federal income tax return. He was recently released from incarceration for that conviction. He is currently serving two active disciplinary suspensions imposed in prior cases by the DHC. Because Brown did not file a responsive pleading, the hearing panel found the alleged rule violations by default. Hearing is scheduled for February 24, 2017 to determine appropriate discipline.

**Michael J. Anderson – 15 DHC 47 & 15 DHC 47D**

It is alleged that Anderson, of Wilson, provided fabricated and misleading documents to the State Bar and/or did not correct a misapprehension he caused by such documents, did not keep proper trust account reconciliation records, did not respond to the State Bar, made statements with no substantial purpose other than to embarrass a third person, engaged in undignified or discourteous conduct degrading to a tribunal, and engaged in conduct prejudicial to the administration of justice. The hearing panel found probable cause to believe Anderson is disabled, stayed the discipline proceeding pending resolution of the disability issue, and ordered Anderson to undergo an examination. Anderson has defied several DHC orders requiring him to undergo evaluation. Meanwhile, the Wake County Superior entered a TRO and a preliminary injunction prohibiting Anderson from practicing law until the discipline and disability cases are concluded. The DHC stayed the disability case until Anderson complies with its orders to undergo evaluation. Anderson was recently evaluated at FCI Butner in connection with federal criminal charges of communicating threats by mail to a federal judge and to State Bar investigators and was found competent and sane. In December 2016, those charges were deferred for eighteen months pursuant to a pretrial diversion agreement. The disability case will resume after Anderson is evaluated. Until he does so, he is enjoined from practicing law.

**Amy E. Allred – 16 DHC 2**

It is alleged that Allred, of Sherrill's Ford and formerly of Forsyth County, did not comply with a court order requiring her to submit to a psychological evaluation and a substance abuse assessment, filed frivolous lawsuits against numerous judges who played roles in her personal domestic cases, neglected and failed to communicate with clients, and charged clearly excessive fees. The complaint seeks to have Allred evaluated, seeks a determination whether Allred is disabled and, if she is determined not to be disabled, seeks imposition of professional discipline. Hearing was continued upon Allred's motion.

**John I. Averitt – 16 DHC 4 & 16 DHC 4D**

It is alleged that Averitt, of Cary, forged a letter purporting to be from the Augusta National Golf Club, falsely represented that his employer had eight tickets to the Masters Golf tournament, and sold the fictitious tickets on Craig's List. Because Averitt raised disability in his answer, the disciplinary proceeding was stayed and Averitt was transferred to disability inactive status. The disability hearing is scheduled for February 16, 2017.

**Lisa M. Dukelow – 16 DHC 8**

Dukelow, of Durham, allegedly misappropriated client funds, neglected several clients, and did not respond to the Grievance Committee. Dukelow's answer to the amended complaint is due February 1. Hearing has not been scheduled.

**Joseph Lee Levinson - 16 DHC 11**

Levinson, of Benson, pled guilty to the felony offense of conspiracy to obtain money in the custody of a bank by false pretenses. The Chair of the DHC entered an order of interim suspension of his law license. Hearing has not been scheduled because he is in prison.

**Jesse W. Jones – 16 DHC 17**

It is alleged that Jones yelled and cursed at opposing counsel and opposing parties and was otherwise disruptive on multiple occasions. Hearing is scheduled for February 16.

**Mary M. Exum – 16 DHC 18**

It is alleged that Exum, of Asheville, misappropriated entrusted funds, improperly solicited professional employment from a potential client, made misleading statements about her legal services, withheld a client's requested file materials to coerce the client to reimburse her for expenses, and disbursed entrusted funds contrary to a perfected lien. She is enjoined from handling entrusted funds. Hearing is scheduled for March 29-31.

**Robert Weckworth – 16 DHC 22**

Weckworth, of Guilford County, allegedly communicated with a person known to be represented by counsel, engaged in an improper *ex parte* communication, and filed a non-meritorious claim. Hearing was continued and has not been rescheduled.

**Scott S. Dorman – 16 DHC 26**

It is alleged that Dorman, of Las Vegas, Nevada, neglected two client matters. Hearing was continued and has not been rescheduled.

**Marquis D. Street & David H. Harris, Jr. – 16 DHC 30**

It is alleged that Street, of Guilford County, and Harris, of Durham County, engaged in a conflict of interest, failed to explain a matter to the extent reasonably necessary to allow their client to make an informed decision, pursued a claim that lacked merit, and charged an excessive amount for fees and expenses. Mr. Street died on November 26, 2016 and a motion to dismiss as to him will be filed. Hearing was continued and has not been rescheduled.

**Derek R. Fletcher – 16 DHC 31**

It is alleged that Fletcher, of Cornelius, took fees for work he did not perform, that Fletcher received one of the fees after he was administratively suspended, and that Fletcher did not respond to participate in mandatory fee dispute resolution and did not respond to the Grievance Committee. The State Bar is pursuing entry of a default judgment. Hearing was continued and has not been rescheduled.

**Lennard D. Tucker – 16 DHC 34**

It is alleged that Tucker, of Winston Salem, misappropriated entrusted funds. He is enjoined from handling entrusted funds. Hearing is scheduled for April 27-28.

**Paul Blake – 16 DHC 35**

It is alleged that Blake, of Wilson, misappropriated funds of an estate. He is enjoined from handling entrusted funds. The State Bar's motion for entry of default is pending. Hearing is scheduled for March 16-17.

**Gregory Perry – 16 DHC 36**

Perry, of Roanoke Rapids, allegedly tried to acquire drugs from a client he was representing on drug-related charges, falsely represented to jail authorities that he represented his girlfriend in order to gain access to her in jail, and was convicted of two counts of contempt of court for failing to appear on behalf of clients. Hearing is scheduled for March 9-10.

**Jerry Braswell – 16 DHC 39**

It is alleged that Braswell, of Goldsboro, engaged in sexual relations with a client, failed to properly terminate his representation of another client, and filed a motion on behalf of a third client and then failed to take further action for the client. Hearing is scheduled for March 3.

**Craig Asbill – 16 DHC 40**

It is alleged that Asbill, of Charlotte, neglected a client's legal matter, did not properly communicate with the client, did not respond to the Grievance Committee, and made false statements to the Grievance Committee. Hearing has not been scheduled.

**Scott Shelton – 17 DHC 1**

It is alleged that Shelton, of Hendersonville, violated numerous trust accounting rules. Hearing has not been scheduled.

**Lawrence D'Amelio – 17 DHC 2**

It is alleged that D'Amelio, of Greensboro, aided multiple out-of-state businesses in debt adjusting and in the unauthorized practice of law. Hearing has not been scheduled.

**Stephanie L. Villaver – 17 DHC 3**

It is alleged that Villaver, of Jacksonville, did not supervise assistants, one to whom she delegated trust account management and reconciliation duties and one to whom she delegated client communication and case negotiation duties, enabling an assistant to misappropriate entrusted funds over several years, enabling an assistant to settle cases without client consent, and enabling an assistant to engage in the unauthorized practice of law. She is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Pending Motions to Show Cause**

There are no pending motions to show cause.

**Pending Petitions for Reinstatement/Stay - Uncontested**

There are no pending uncontested petitions for reinstatement or stay.

### **Pending Petitions for Reinstatement/Stay - Contested**

#### **Michael L. Yopp – 02 BCS 4 & 16 BCR 2**

Yopp surrendered his license to the Council and was disbarred on July 19, 2002. Yopp admitted that he misappropriated the entrusted funds of multiple clients. After a hearing on September 7, 2016, the DHC recommended that the Council reinstate Yopp. The petition is on the Council's agenda at the January meeting.

#### **Jonathan A. McCollum – 10 BCS 2 & 16 BCR 3**

McCollum surrendered his license to the Council and was disbarred on October 22, 2010. McCollum admitted that he forged two documents purporting to be judicial orders, made misrepresentations to his clients about the orders and made false statements to the Grievance Committee about the documents. McCollum pled guilty to misdemeanor forgery in Wake County. Hearing is scheduled for March 10.

#### **Robert J. Burford -- 16 BSR 6 & 11 DHC 3**

Burford, of Raleigh, falsely inflated his litigation expenses for multiple clients in Vioxx class action litigation. The DHC imposed a two year stayed suspension in January 2012. The stay was subsequently lifted, and the suspension activated, effective 23 November 2012. In December 2016, Burford filed a petition for reinstatement. Hearing has not been scheduled.

### **Pending Disciplinary Actions in the State Courts**

**In Re: Colleen Janssen (Wake County Superior Court).** The Wake County Superior Court appointed the Office of Counsel to investigate and report upon alleged professional misconduct of former Wake County assistant district attorney Colleen Janssen in the prosecution of a robbery case. The OOC submitted its report under seal on December 9, 2016. The court has issued an order for Janssen to show cause why the court should not impose professional discipline. Hearing has not been scheduled.

### **TRUST ACCOUNTING COMPLIANCE PROGRAM**

Thirty-three lawyers have successfully completed the TACP program since its inception. Peter currently supervises 15 participants. He continues to review random audits to evaluate potential candidates for the program.

### **AUTHORIZED PRACTICE**

The Authorized Practice Committee opened 15 new files this quarter. The committee will address 18 files at its January meeting.

Annual registration forms were sent out to every registered prepaid legal services plan during the previous quarter pursuant to 27 N.C.A.C. 1E, § .0307. Counsel is receiving and reviewing them.

Four proposed prepaid legal services plans submitted applications for registration this quarter. Counsel has completed review of two and is still reviewing the other two applications. Plan 16PP03 has been accepted for registration. Another plan, 16PP04, was denied registration pursuant to 27 N.C.A.C. 1E, § .0300 because it did not qualify for registration.



Ten plans submitted amendments this quarter along with their annual renewals. Counsel determined that one amendment complies with the rules and is still reviewing the other nine.

The OOC continues to work with the Consumer Protection Division of the Attorney General's Office dealing with several out-of-state lawyers and law firms that promote debt adjusting and loan modification schemes. With limited exceptions, debt adjusting is illegal in North Carolina. Numerous marketing firms and lawyers engage in this practice.

Following is a list of pending, recently completed, and contemplated AP litigation:

**Capital Associated Industries, Inc. v. Roy Cooper in his capacity as Attorney General of the State of North Carolina; Nancy Lorrin Freeman, in her official capacity as District Attorney for the 10th Prosecutorial District of the State of North Carolina; and J. Douglas Henderson, in his official capacity as District Attorney for the 18th Prosecutorial District of the State of North Carolina (US District Court, MDNC).** CAI is a trade association. Its members are small and medium-sized businesses. CAI assists its members with personnel management issues. CAI wants to hire lawyers to provide legal advice and legal services to its members. The State Bar's Ethics Committee issued an ethics advisory that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. CAI brought this lawsuit seeking a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions and seeking an injunction prohibiting the original defendants from enforcing the statutes against it. CAI does not seek an award of damages but does seek an award of attorney fees, "disbursements," and costs. The court allowed the State Bar to intervene in the lawsuit. The court denied the original defendants' motions to dismiss and denied CAI's motion for preliminary injunction. The parties are engaged in discovery. Van Laningham Duncan represents the State Bar.

**Swift Rock Financial, Inc., d/b/a World Law Debt, a/k/a World Law Group; Orion Processing, LLC, d/b/a World Law Processing; Derin Scott; Bradley Haskins; World Law South, Inc; Global Client Solutions.** In May 2013, the office filed an action in Wake County Superior Court as a co-plaintiff with the Consumer Protection Division of the North Carolina Department of Justice against The plaintiffs alleged that all of those defendants operate collectively and interchangeably under various names that include the words "World Law." The plaintiffs allege that they drafted and provided pleadings for debtors to file "*pro se*" and provided those debtors with scripts to use in court. The plaintiffs obtained a temporary restraining order in May 2013 and a preliminary injunction in June 2013 prohibiting all of those defendants "together with their officers, agents, employees, attorneys, and all persons acting in concert with them," from engaging in the practice of law in North Carolina, as defined in N.C. Gen. Stat. §§ 84-2.1, 84-4, and 84-5, from collecting fees from North Carolina consumers for any debt adjusting or legal services, and from transferring, concealing, spending or disposing of any funds received, directly or indirectly, from any North Carolina consumer in connection with any such activities. In February 2015, WLS dissolved and Orion filed for bankruptcy under Chapter 11. In August 2015, the Bankruptcy Court converted the Orion bankruptcy to Chapter 7 and began liquidation proceedings. Also in August 2015, the federal Consumer Finance Protection Bureau filed a nationwide injunction action against the defendants in federal court in Florida. That Court entered an injunction against all defendants and a receiver for the assets of the defendants. On December 12, 2016, the Court granted the State Bar and the State of North Carolina's motion for summary judgment against Orion. Plaintiffs' motion for default judgments against Swift Rock, Haskins, and WLS is pending. The Office of Counsel represents the State Bar.

**NC State Bar v. Terry F. Sharpe, Sr. (Wake County Superior Court).** The State Bar filed this action seeking to enjoin the unauthorized practice of law by Terry F. Sharpe. Sharpe, who is not licensed to practice law in North Carolina, undertook to represent a woman in a worker's compensation claim. The State Bar has served written discovery requests. In December, the court entered a consent order of permanent injunction.

At its October 2016 meeting, the Executive Committee rescinded its previous authorization to file a lawsuit seeking injunctive relief against **Mortgage Information Services**.

The Executive Committee authorized the Office of Counsel to file a lawsuit seeking injunctive relief against **Thomas D'Arco** d/b/a Infinity Legal Group. D'Arco is a California attorney alleged to provide loan modification services to North Carolina residents. The complaint is ready for filing.

### **OTHER OUTSIDE LITIGATION**

**Capitol Broadcasting Company, Inc. v. Disciplinary Hearing Commission (Wake County Superior Court).** WRAL-TV filed this lawsuit against the DHC on January 12, 2015 challenging the DHC's decision not to allow live streaming of the trial in *North Carolina State Bar v. Mumma* and seeking an award of its expenses in bringing the action. Prior to a hearing on WRAL's motion for temporary restraining order, the parties reached a resolution of the dispute but the case is still pending. The Attorney General represents the DHC.

**Jerry R. Tillett v. NCSB and the North Carolina Judicial Standards Commission (Dare County Superior Court).** Jerry Tillett is the defendant in a pending DHC case. He sought a declaratory judgment that "the statutory framework pursuant to which the State Bar is prosecuting Judge Tillett is constitutionally infirm, that he is being denied due process, equal protection of the law [sic], that the Order of Public Reprimand of the JSC is *res judicata* and/or collateral estoppel, the State Bar lacks jurisdiction, and the State Bar's prosecution violates the Sherman Act." He sought to enjoin the DHC action and sought costs and attorney fees. The case was designated exceptional under General Rule of Practice 2.1 and assigned to Wake County Senior Resident Superior Court Judge Donald W. Stephens. The trial court denied Tillett's motion for a preliminary injunction and indicated that it would retain jurisdiction of the lawsuit until the DHC action is resolved. The Supreme Court granted discretionary review of a jurisdictional issue in the disciplinary case and stayed this lawsuit pending its decision. On December 21, 2016, the Supreme Court issued its decision that the DHC does not have jurisdiction to discipline a sitting judge for conduct engaged in while a judge when the judge has been disciplined by the Judicial Standards Commission and ordered the DHC to dismiss the disciplinary case with prejudice. On December 29, 2016, Judge Tillett filed a motion to lift the stay in this case so he can file a voluntary dismissal without prejudice, stating that this action is now moot. The State Bar notified the court that the State Bar does not oppose Judge Tillett's motion to lift the stay. Van Laningham Duncan represents the State Bar.

**James Ronald Peggs v. North Carolina State Bar (Industrial Commission, State Tort Claim Action).** The plaintiff identifies himself as "Trustee and Trustee Board of Grave Stone International Express Trust," a purported trust formed in an effort to defeat a foreclosure. He alleges that the foreclosure was wrongful because the grantor of the deed of trust conveyed the property to the trust and the trustee cancelled the deed of trust. The plaintiff alleged that the clerk of court and three lawyers for the trustee were agents of the State Bar but alleged no facts that

could sustain that claim. The deputy commissioner dismissed the complaint with prejudice on January 12. The Attorney General represented the State Bar.

**David S. Harless v. Root Edmonson et al (US District Court for the Southern District of West Virginia).** In 2005, David S. Harless was transferred to disability inactive status. Harless' petitions for reinstatement to active status were denied in 2010 and 2012 because he did not demonstrate that he was no longer disabled. The Office of Counsel learned that the United States District Court for the Southern District of West Virginia dismissed a lawsuit Harless filed against State Bar employees Root Edmonson and Jennifer Porter, among others. The court characterized the complaint as "incoherent, fanciful ramblings which lack any arguable basis in law or fact." The complaint had not been served on Edmonson or Porter.

### **Client Security Fund Claims/Subrogation Cases**

There are 28 claims on the agenda for the Board's January 26 meeting.

There are four actions pending in superior court seeking reimbursement from disbarred lawyers for payments made by the CSF.

### **Disbursement Cases**

This quarter, the Office filed three motions to disburse in Superior Court, attended five hearings on motions to disburse, disbursed \$62,575.29 of entrusted funds, and investigated and closed twenty files that did not require further court motions or orders. Several disbursement motions are ready for hearing.

### **Trusteeships**

Trustees were appointed to wind down the practices of deceased lawyers **Wayne E. Crumwell** of Reidsville, **John W. Gambill** of Wilkesboro, **Marquis D. Street** of Greensboro, and **Joseph Williams Hart** of Winston Salem; the practice of **Lisa M. Dukelow** of Durham who abandoned her practice; the practice of **Clifton J. Gray, III** of Lucama whose license was suspended by the DHC; and the practices of **Larry E. Harris** of Concord and **Kimberly M. Ferrier** of Emerald Isle who are both suffering from conditions that render them unavailable to clients.

The office helps all current trustees fulfill their duties and helps members of the public in locating files of deceased, disbarred, disabled, and missing lawyers.

## **APPEALS**

### **Completed Appeals**

**NCSB v. David Sutton (13 DHC 11).** In November 2014, the DHC suspended Greenville lawyer David Sutton for five years. The DHC found, among other things, that Sutton routinely engaged in disruptive and abusive conduct toward the court, opposing counsel, and clients. The Court of Appeals affirmed on October 18, 2016. Sutton filed a notice of appeal to the North Carolina Supreme Court, contending that the case involves substantial constitutional questions. The State Bar's motion to dismiss the appeal is pending. The Office of Counsel represents the State Bar.

**NCSB v. Jerry R. Tillett (15 DHC 7).** On May 27, 2016, the Supreme Court stayed the DHC case pending against Judge Jerry Tillett and issued a writ of *certiorari* to review the following issue: “Do the North Carolina State Bar Council and the Disciplinary Hearing Commission have the jurisdictional authority to discipline a judge of the General Court of Justice for conduct as a judge for which the judge has already been disciplined by the Judicial Standards Commission?” On December 21, 2016, the Supreme Court issued its opinion answering that question in the negative. The Supreme Court reversed the DHC’s denial of Tillett’s motion to dismiss and remanded the case to the DHC with instructions to dismiss the State Bar’s complaint with prejudice. The Office of Counsel represented the State Bar.

**Loushanda Myers v. Krista Bennett, Fern Gunn Simeon, John Silverstein and unnamed “unknown agents of the North Carolina State Bar,” et al (US District Court, EDNC).** Myers alleged that the State Bar defendants, the North Carolina court system, and Johnston County government officials violated her rights in connection with her arrest in Johnston County. The court allowed the State Bar defendants’ motion to dismiss. Myers appealed to the Fourth Circuit Court of Appeals, which dismissed that appeal as interlocutory. The court dismissed Myers’ claims against the remaining defendants. In December 2016, the Fourth Circuit dismissed her appeal. The Office of Counsel represented the State Bar defendants.

### **Pending Appeals**

**NCSB v. Christopher Livingston (15 DHC 15).** On July 14, 2016, the DHC entered an order suspending Livingston for five years. Livingston will be eligible to petition for a stay of the balance after serving two years active. Among other violations, the DHC found that Livingston engaged in conduct prejudicial to the administration of justice by filing frivolous lawsuits against opposing counsel. The Court of Appeals denied Livingston’s petition to stay the DHC order pending appeal. Livingston has served his proposed record on appeal. The Office of Counsel represents the State Bar.

**Eugene Boyce v. NC State Bar (Wake County Superior Court).** Boyce alleges that he filed a grievance against Roy Cooper for conduct that allegedly occurred in 2000 when Cooper was a candidate running against Boyce’s son to become Attorney General of North Carolina. He seeks declaratory judgments that (1) the State Bar has a conflict in handling the grievance because the Attorney General represents the State Bar in various lawsuits and (2) the State Bar is obliged by law to refer the grievance to the courts for investigation and disciplinary action and an award of costs. The court dismissed the complaint. Boyce gave notice of appeal. Oral argument is scheduled for February 7. The Office of Counsel represents the State Bar.

**NCSB v. Clifton Gray (15 DHC 38).** In September, the DHC suspended Raleigh lawyer Clifton J. Gray, III for five years. He will be eligible to petition for a stay of the last year upon demonstrating compliance with numerous conditions. The DHC found that Gray disrupted court proceedings, was held in contempt of court, and was convicted of brandishing a gun at members of the public on a roadway. Gray gave notice of appeal on October 17 and again on December 15. The Court denied Gray’s motion to require the State Bar to bear the expense of providing him a trial transcript. The Office of Counsel represents the State Bar.

**NCSB v. Jennifer Foster (14 DHC 7).** In September, the DHC suspended Asheville lawyer Jennifer Nicole Foster for two years. The suspension is stayed upon her compliance with numerous conditions. The DHC found that Foster engaged in conduct degrading to a tribunal and prejudicial to the administration of justice by using profanity when addressing a magistrate. She gave notice of appeal. The parties await delivery of the transcript. The Office of Counsel represents the State Bar.

**NCSB v. Dawn Ely (16 DHC 1).** In August, 2016, the DHC suspended Dawn Ely for five years. After serving two years active, she will be eligible to petition for a stay of the balance on demonstrating compliance with numerous conditions. Ely, licensed in North Carolina and in Georgia, runs a business that offers to provide legal services to other businesses provided by Ely and other attorneys. Ely offered these services even though she had been transferred to inactive status. Ely appealed. The State Bar awaits delivery of the transcript. The Office of Counsel represents the State Bar.

### **Miscellaneous**

Jennifer volunteers as a judge for the Capital Area Teen Court diversion program. Jennifer also continues to judge moot court trial competitions, including judging a round at the Kilpatrick Townsend 1L Mock Trial Tournament on January 21, 2017.

Josh continues to teach humanities at Wake Tech Community College. He also teaches legal research and writing at Campbell Law and regularly presents at the NCBA's Professionalism for New Attorneys programs and other CLEs.

Mary volunteered at the 10<sup>th</sup> Judicial District Expunction Clinic.

Peter continues to give trust account presentations across the state to lawyers and administrative professionals. He is a frequent guest lecturer in our law schools and conducts webinars on trust accounting. Peter writes a quarterly trust accounting article in the *Journal* and uses the State Bar Twitter account to notify members of trust account scams that come to the State Bar's attention. Peter is the State Bar's legislative liaison and is preparing for the next legislative session, which begins in January.

Carmen continues to serve as the Office of Counsel's liaison to the judiciary. Carmen is Vice-Chair of the WCBA Professionalism Committee and coordinates the Committee's presentation of educational programs, including the annual Ethics Committee Year in Review program, which took place on January 18, 2017. In the last quarter, Carmen reluctantly performed in the WCBA's Bar Awards, a musical/comedy stage production benefitting Legal Aid. Carmen serves as a mentor to a 3L student through Campbell Law's Connections Mentoring Program and recently became an Associate Adjunct Professor of professional responsibility at UNC School of Law.

Leonor continues to serve on the NCBA Minorities in the Profession and Professionalism committees and on the 10<sup>th</sup> JD/WCBA Professionalism Committee, where she is co-chair of the Publications Subcommittee.

Brian continues to serve as vice-chair of the 10<sup>th</sup> JD/WCBA Memorial Committee. He teaches legal research and writing at Campbell Law and is a frequent guest lecturer at other law schools. In November, Brian gave a presentation on expert testimony for a Forensic Entomology class at NC State. Also in November, Brian presented at the Advocates for Justice's Professionalism for New Admittees Program. In January, Brian was a guest lecturer for Mel Wright's Professional Responsibility course at Campbell Law.

Katherine continues to serve on the NCBA Professionalism Committee.