

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
OCTOBER 28, 2016**

**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. Since January 1, 1,176 grievance files have been opened.

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

The ACAP staff responded to 3,559 phone calls from members of the public and contacted 861 lawyers in an effort to resolve concerns expressed by clients. Staff also responded to 515 emails and 499 letters from inmates.

There were 186 requests for fee dispute resolution filed during the quarter. One hundred thirty-four files were assigned to the two State Bar facilitators. The remaining 34 files were sent to district bar committees.

**CASES COMPLETED SINCE JULY 2016 MEETING**

**Completed Discipline Cases in the DHC**

**Edward D. Seltzer – 15 DHC 34**

Seltzer, of Charlotte, was reprimanded by the DHC for his conduct as personal representative in two estates. In one, he did not ensure that accountings were timely filed and did not comply timely with the clerk's notice and order to file accountings. In the other, he did not ensure that an inventory and accountings were timely filed.

**Clifton J. Gray III - 15 DHC 38**

Gray, of Greenville and Raleigh, was aggressive and disruptive in multiple cases, engaged in contempt of court on more than one occasion, was convicted of assault in a road-rage incident, neglected multiple clients, and chronically failed to respond to the State Bar. He was suspended by the DHC for five years. After serving four years of active suspension, Gray may apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Warren Ballentine - 15 DHC 39**

Ballentine, of Durham, was convicted in the United States District Court for the Northern District of Illinois of mail fraud affecting a financial institution, wire fraud affecting a financial institution, two counts of bank fraud, and two counts of making false statements to financial institutions. He was disbarred by the DHC.

**R. Kelly Calloway, Jr. – 16 DHC 3**

Calloway, of Hendersonville, did not file and pay state taxes in 2009 and did not file tax returns or pay federal withholding and unemployment taxes for 6 years. The DHC suspended him for four years. Calloway may petition for a stay of the balance after the first year of the suspension upon proving compliance with numerous conditions.

**Michael Kyle McEnery – 16 DHC 6**

While McEnery, of Raleigh, was in rehabilitation for heroin addiction, he broke into his friend's house and stole and pawned musical equipment to obtain money to buy drugs. He was suspended by the DHC for five years. The suspension is stayed for five years upon compliance with numerous conditions.

**Thomas Tate – 16 DHC 14**

Tate, of Apex, did not provide information about the rate or basis of his fee to a new client, was not diligent in his representation, did not communicate with the client, did not return the client's file, and made a false representation to the client about the file. He was censured by the DHC.

**Joseph M. Kosko – 16 DHC 20**

Kosko, of Topsail Island, did not act with reasonable diligence in representing clients, did not communicate with his clients, aided others in the unauthorized practice of law, made false and misleading statements, knowingly disobeyed an order of a tribunal, and engaged in conduct prejudicial to the administration of justice. The DHC disbarred him.

**Donna Karen Cody – 16 DHC 24**

Cody, of Robbinsville, surrendered her license and was disbarred by the DHC. She acknowledged that she misappropriated fiduciary funds totaling at least \$12,300 and filed a false estate accounting under oath.

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

**Robert J. Howell** of Cary surrendered his license and was disbarred by the Wake County Superior Court. Howell entered a plea of guilty in Charleston County, South Carolina, to one felony count of pointing and presenting firearms at a person, one misdemeanor count of unlawful carrying of a pistol, and one misdemeanor count of possession of cocaine.

**Ihuoma Igboanugo** of Raleigh was reprimanded by the Wake County Superior Court. Igboanugo checked out a court file and, in an effort to correct an affidavit that as filed contained a typographical error, she removed the first page of the affidavit and replaced it with a corrected first page. She did not return the page she removed from the file to the file. The court found her conduct was mitigated by her inexperience, her lack of dishonest motive, and her lack of personal gain.

**Orders of Reciprocal Discipline**

There were no orders of reciprocal discipline entered this quarter.

**Transfers to Disability Inactive Status**

**Raymond M. Sykes, Jr.** of Whitakers and **Hallett Sydney Ward, III** of Washington were transferred to disability inactive status by the Chair of the Grievance Committee.

**Interim Suspensions**

The Brunswick County Superior Court entered an order of interim suspension of the law license of Calabash lawyer **Christian Scott Mathis**.

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

#### **Paul B. Brock – 15 DHC 10 & 16 BSR 4**

Brock, of Durham, engaged in a sexual relationship with a client and made false and misleading statements to the Grievance Committee in an effort to undermine the client's credibility. The DHC suspended him for two years in September 2015. After serving one year of the suspension, Brock was eligible to seek a stay of the remaining period upon showing compliance with numerous conditions. The DHC reinstated Brock on September 19, 2016.

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

#### **Porter W. Staples – 10 DHC 35 & 16 BSR 2**

Staples, of Asheville, did not reconcile his trust account quarterly and therefore did not account for \$81,570.00 that the bank mistakenly wired into his account. The DHC found that, although the money disappeared from his account, Staples did not engage in dishonest conduct. The DHC suspended Staples for three years in June 2011. Staples did not timely comply with the conditions of the Order of Discipline. The DHC reinstated Staples and imposed additional conditions.

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

There were no motions to show cause completed this quarter.

### **TROs and Preliminary Injunctions**

The office obtained preliminary injunctions in Wake County Superior Court prohibiting **Gary S. Leigh** of Asheville, **Carlos D. Watson** of Charlotte, **Johnny S. Gaskins** of Raleigh, **Charles Lloyd Bateman, Jr.** of Chapel Hill, and **Mital Patel** of Raleigh from handling entrusted funds.

### **Surrenders to the Council**

No lawyers are expected to surrender to the Council at its October 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 the fall of 2019, although if he continues to receive time off at the current rate he will probably be released in early 2018. 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.

**Jerry R. Tillett – 15 DHC 7**

It is alleged that Tillett of Manteo engaged in conduct prejudicial to the administration of justice. On December 10, 2015, the DHC granted the State Bar's motion for summary judgment, concluding as a matter of law that Tillett violated Rule 8.4(d). The phase two hearing was scheduled for June 28-30, 2016. On May 27, 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?" Oral argument was held on August 30. We await its decision.

**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 resulting from this conviction. He is currently serving two active disciplinary suspensions imposed in prior cases by the DHC. The State Bar served Brown by publication in Fayetteville but realized he was in Ohio and has now served him there. Hearing is scheduled for February 24, 2017.

**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 and stayed the discipline proceeding pending resolution of the disability issue. The Office of Counsel filed a disability complaint and the new hearing panel ordered Anderson to undergo an examination. Anderson has refused to undergo evaluation in defiance of several DHC orders. Meanwhile, the State Bar obtained a TRO and a preliminary injunction in Wake County Superior Court enjoining Anderson from practicing law until the discipline and disability cases are concluded or until further order of the Superior Court. The DHC stayed the disability case until Anderson complies with its orders to undergo an evaluation. Anderson has been indicted on federal criminal charges of communicating threats by mail to a federal judge and to State Bar investigators and is confined at FCI Butner pending a competency evaluation.

**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. Hearing was scheduled for June 24, but when Averitt raised disability in his answer, the panel stayed the disciplinary proceeding and transferred

Averitt to disability inactive status. The disability hearing was continued and has not been rescheduled.

**Lisa M. Dukelow – 16 DHC 8**

Dukelow, of Durham, allegedly neglected several clients and did not respond to the State Bar. The State Bar's motion to amend the complaint is pending. The amendment would include claims arising from grievances referred to the DHC in July. Hearing is set for November 14-15.

**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.

**R. Alfred Patrick – 16 DHC 16**

It is alleged that Patrick, of Greenville, misappropriated entrusted funds. He is enjoined from handling entrusted funds. The hearing was continued to allow time for the State Bar to serve its motion for imposition of discipline by default at an alternate address.

**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, 2017.

**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 February 9-10, 2017.

**Alvaro De La Calle – 16 DHC 19**

It is 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 during the grievance process. Hearing is scheduled for January 13, 2017.

**Clarke K. Wittstruck – 16 DHC 21**

It is alleged that 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. Hearing is scheduled for November 16.

**Robert Weckworth – 16 DHC 22**

Weckworth, of Guilford County, allegedly communicated with a person known to be represented by counsel, engaged in an *ex parte* communication, and filed a non-meritorious claim. Hearing is scheduled for November 18.

**Peter R. Henry – 16 DHC 23**

It is alleged that Henry, of Arden, did not communicate with clients and made inaccurate statements to a client about work purportedly performed. Hearing is scheduled for November 18.

**Georgia S. Nixon – 16 DHC 25**

It is alleged that Nixon, of High Point, engaged in conduct prejudicial to the administration of justice by making frivolous claims and misleading statements in two criminal cases. Hearing is scheduled for November 17.

**Scott S. Dorman – 16 DHC 26**

It is alleged that Dorman, of Las Vegas, Nevada, neglected two client matters. Hearing has not been scheduled.

**Michael Williamson – 16 DHC 27**

It is alleged that Williamson, of Goldsboro, mismanaged his trust account. Hearing is scheduled for December 9.

**Darryl G. Smith – 16 DHC 28**

It is alleged that Smith, of Wilson, had repeated random audit deficiencies and mismanaged his trust account. Hearing is scheduled for November 3.

**Peter F. Chastain – 16 DHC 29**

It is alleged that Chastain, of Greensboro, embezzled entrusted funds, did not maintain proper trust account records, and did not respond to the Bar. He is enjoined from handling entrusted funds. Hearing is scheduled for December 5.

**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. Hearing is scheduled for December 8-9.

**Derek R. Fletcher – 16 DHC 31**

It is alleged that Fletcher, of Cornelius, took fees for work he did not perform. One of those fees was paid after Fletcher was administratively suspended. Fletcher did not respond to a fee dispute and did not respond to the Grievance Committee. The State Bar is pursuing entry of a default judgment. Hearing is scheduled for November 21.

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

It is alleged that Jackson, of West Jefferson, did not supervise his assistant and did not adequately monitor his trust account, resulting in his assistant misappropriating entrusted client funds. Hearing is scheduled for January 20, 2017.

**Nicholas Ackerman – 16 DHC 33**

Ackerman, of Greensboro, allegedly did not communicate with a client and did not participate in the fee dispute resolution program. Hearing has not been scheduled.

**Lennard D. Tucker – 16 DHC 34**

Tucker, of Winston Salem, is alleged to have misappropriated entrusted funds. He is enjoined from handling entrusted funds. Hearing has not been scheduled.



**Paul Blake – 16 DHC 35**

It is alleged that Blake, of Wilson, misappropriated funds of an estate. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Pending 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 the DHC's order, Holmes missed at least 45 days worth of testing. Hearing is scheduled for January 20, 2017.

In April 2012, the DHC suspended the law license of **Dennis H. Sullivan, Jr.** of Wilmington for three years, but stayed the suspension for five years upon compliance with conditions, including complying with all tax laws and providing all correspondence with tax authorities to the State Bar. The State Bar initiated a show cause proceeding because Sullivan failed to pay employee withholding taxes and failed to notify the State Bar of correspondence with the IRS and of additional tax liens that were filed against him. Hearing is scheduled for January 13, 2017.

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

There are no pending uncontested petitions for reinstatement.

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

Poe, from Charlotte, was disbarred by the Wake County Superior Court on June 30, 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 petition is on the Council's agenda at its October meeting.

**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 will be on the Council's agenda when the court reporter delivers the transcript.

**Other Motions****Sybil H. Barrett – 13 DHC 28**

Barrett, of Charlotte, filed a motion to set aside the entry of default and the default judgment that were entered in her DHC case in October 2014. The Chair of the DHC denied the motion because it was not filed within a reasonable time after entry of judgment.

## **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 29 new files this quarter. The committee will address 25 files at its October meeting.

Prepaid legal services plan annual registration forms were sent out this quarter to every registered plan pursuant to 27 N.C.A.C. §1E .0307.

One proposed prepaid legal services plan was submitted for registration this quarter. Counsel concluded pursuant to 27 N.C.A.C. 1E, § .0305 that the plan in application 16PP03 did not include all necessary documentation. Counsel requested the necessary documentation and will review the completed application when he receives it. The amended application of another plan, 16PP01, which was denied registration last quarter, cured the deficiencies and was registered.

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 has issued an ethics advisory to the effect 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 recently exchanged initial disclosures and responded to discovery requests. Van Laningham Duncan represents the State Bar.



**State of North Carolina *ex rel* Roy Cooper and North Carolina State Bar v. 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 (NC Business Court).** In May 2013, the State Bar filed this action in Wake County Superior Court as co-plaintiff with the Consumer Protection Division of the North Carolina Department of Justice. The plaintiffs allege that all of the defendants other than Global Client Solutions operate collectively and interchangeably under various names that include the words “World Law.” The plaintiffs allege that the defendants draft and provide pleadings for debtors to file “*pro se*” and provide 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 the World Law 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. Thereafter, the lawyer who represented all of the World Law defendants at the TRO hearing formed a new North Carolina business corporation, World Law South. WLS sued the State Bar alleging that it somehow harmed WLS by bringing the lawsuit against WLG. In that lawsuit, WLS alleged that it employs the identical business model that the TRO and the preliminary injunction forbid the World Law defendants and their affiliates to employ in North Carolina. The Business Court dismissed the WLS case. The instant lawsuit is still pending in Wake County Superior Court, has been denominated an exceptional case, and is assigned under Rule 2.1 to the Honorable James Gale. The plaintiffs amended the complaint to add Brad Haskins and WLS as defendants. Haskins and Swift Rock are in default. The court denied WLS’ Motion to Dismiss. WLS filed articles of dissolution. Counsel for Scott and WLS have been allowed to withdraw. The Court entered default against WLS. The plaintiffs took a voluntary dismissal without prejudice of their claims against Global Client Solutions after it was enjoined by the FTC from providing banking services to the other defendants. On the eve of depositions, Orion filed for Chapter 11 bankruptcy protection in Texas. The Business Court rejected Orion’s contention that the automatic stay prevents the plaintiffs proceeding against any of the defendants. The Orion bankruptcy has been converted to Chapter 7 and the business is in liquidation. The Consumer Financial Protection Bureau (CFPB) filed a federal action against all of the defendants in Florida, raided Orion’s premises, obtained a preliminary injunction and froze the corporate and individual defendants’ assets. None of the defendants is currently doing business in North Carolina. Plaintiffs filed a motion for summary judgment against Orion on September 16, 2016. Plaintiffs believe the bankruptcy trustee will not respond. Plaintiffs are working toward entry of default judgments and consent judgments for the remaining defendants. The Office of Counsel represents the State Bar.

**NC State Bar v. Diane Carter (Wake County Superior Court).** The State Bar obtained an injunction against Carter for attempting to represent others in lawsuits against a homeowners association. The Office of Counsel filed a motion to hold Carter in contempt of the injunction. Carter filed a responsive pleading demanding payment by State Bar employee David Johnson of “\$795,000,000,000.00 in silver coins.” On May 23, the trial court held Carter in contempt. She did not give notice of appeal. On June 7, the North Carolina Supreme Court dismissed Carter’s petition for extraordinary relief, which she entitled “Writ of Prohibition.” On June 20, Carter filed in the North Carolina Supreme Court a document entitled “Responsive Pleading Regarding

Dismissal of 7 June 2016 and Notice of Appointment of Trustee,” which the Court dismissed. The Office of Counsel represented 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. The Office of Counsel represents the State Bar.

The Executive Committee authorized the Office of Counsel to file a lawsuit seeking injunctive relief against **Mortgage Information Services**, an Ohio business which allegedly attempts to close residential loans.

At its July 2016 meeting, the Executive Committee rescinded its previous authorization for the Office of Counsel to file a lawsuit seeking injunctive relief against **South Mountain Group**, a real estate company run by a Maryland lawyer alleged to be engaged in the corporate practice of law by hiring lawyers to prepare deeds and handle other aspects of residential real estate closings.

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.

### **OTHER OUTSIDE LITIGATION**

**Michael J. Anderson v. Governor Patrick McCrory, the North Carolina Department of Justice, Hooper & Thurston Chiropractic, the North Carolina State Bar and the Industrial Commission (Wake County Superior Court).** Anderson is the defendant in pending DHC discipline and disability case. Anderson alleged that the State Bar is using the discipline process to silence him about the fact that some or all of the other defendants have made his client a slave. The court allowed the State Bar’s motion to dismiss. The Office of Counsel represented the State Bar.

**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 court has not addressed the plaintiff’s prayer for an award of attorney fees. The Attorney General represents the DHC.

**Christopher Harper v. North Carolina State Bar (Industrial Commission State Tort Claim Action).** Harper was disbarred by the DHC in November 2014. He gave notice of appeal but the DHC dismissed the appeal because Harper did not timely file a record. In November 2015, Harper filed a purported state tort claim action against the State Bar. Harper contends the State Bar’s counsel and investigator negligently disbarred him by presenting witnesses, including a State Bar employee, he contends testified falsely. Harper seeks \$1,000,000 for alleged “emotional distress, loss of enjoyment of life, loss of sleep, psychic numbing, loss of interest in vocation, loss of interest in the external world, personal inconvenience, loss of licenses in NC,

SC, and membership in several federal courts.” The deputy commissioner dismissed the claim. Harper appealed to the Full Commission but did not file a brief. The Full Commission dispensed with oral argument and dismissed the claim. The time to appeal has expired. The Attorney General represented the State Bar.

**Christopher Harper v. North Carolina State Bar (Durham County Superior Court).** This is the second lawsuit Harper filed against the State Bar in Durham County. Harper was disbarred by the DHC. He alleges that the witnesses including one State Bar employee committed perjury, that two State Bar employees assisted them in this alleged perjury, and that three State Bar employees manufactured evidence. He alleges that a fourth State Bar employee solicited a fraudulent Client Security Fund claim and advised the CSF to pay the claim. He mentions but makes no factual allegations about a fifth employee. He purports to assert claims under N.C.G.S. § 14-221.1 *et. seq* (altering, destroying, or stealing evidence of criminal conduct); 42 U.S.C. § 1983; 18 U.S.C. §§ 1505 (obstruction of proceedings under the Antitrust Civil Process Act), 1512 (witness tampering), 1621 (perjury), 1961 (federal RICO) and 401 (power of federal court to punish); N.C.G.S. §75D (state RICO statute); for an order for five State Bar employees to show cause why we shouldn’t be disciplined; for an order declaring his disbarment void *ab initio*; for an injunction preventing the State Bar from denying his privilege to practice law; for an injunction preventing the State Bar obtaining subrogation for CSF payments; for an Attorney General review of all of his allegations; and for Rule 11 sanctions totaling \$6,000,000 to compensate him for damages to his reputation. The court dismissed the complaint. Harper has not calendared his motion for reconsideration. The Office of Counsel represents the State Bar.

**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 seeks 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 seeks to enjoin the DHC action and seeks costs and attorney fees. The case has been 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 will retain jurisdiction of the lawsuit until the pending disciplinary action is resolved. The Supreme Court granted discretionary review of a jurisdictional issue in the disciplinary case and stayed this lawsuit pending its decision. 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 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 alleges that the Clerk of Court and three lawyers for the trustee were agents of the State Bar but alleges no facts that could sustain that claim. The Attorney General represents the State Bar.

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

There are 20 claims on the agenda for the Board's October 27 meeting.

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

## **Disbursement Cases**

The Office filed three disbursement motions in Superior Court this quarter. Several disbursement motions are ready for hearing.

## **Trusteeships**

Trustees were appointed to wind down the practices of deceased lawyers **Kenneth R. Berglund** of Cashiers, **Billy R. Craig** of Winston Salem, **Sergei (Serge) Semyrog** of Matthews, **Douglas Milton Holmes** of Durham, **Gustavas (Gus) L. Donnelly** of Mount Airy, **Robert (Tripp) H. Owen, III** of Asheville, **David R. Crawford** of Winston Salem, **Reginald Lee Yates** of Charlotte, and **James A. Vinson, III** of Goldsboro.

The office helps all current trustees 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.

### **Pending Appeals**

**NCSB v. Jerry R. Tillett (15 DHC 7).** The Supreme Court granted *certiorari* to consider whether the State Bar Council and the DHC have jurisdiction to discipline a judge for conduct committed while a judge for which Judicial Standards has already imposed discipline. Oral argument was held on August 30. We await a decision.

**NCSB v. Christopher Livingston (15 DHC 15).** On February 11, 2016, Whiteville lawyer Christopher Livingston filed notice of appeal from decisions announced by the DHC but not yet reduced to writing granting a protective order, denying a motion to compel discovery, and quashing a subpoena. On April 21, the Court of Appeals denied Livingston's petition for writ of *supersedeas* to stay the DHC proceeding during this interlocutory appeal. Livingston's DHC trial was held as scheduled on May 17 and 18. Livingston appears to have abandoned this interlocutory appeal.

**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. Livingston gave notice of appeal. The Court of Appeals denied Livingston's petition to stay the DHC order pending appeal. We await delivery of the transcript.

**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 filed a lawsuit claiming that the State Bar defendants, the North Carolina court system, and numerous Johnston County government officials violated her rights in connection with an arrest of her by Johnston County law enforcement officials. The court allowed the State Bar defendants' motions to strike and to dismiss. Myers appealed to the Fourth Circuit Court of Appeals. The Fourth Circuit dismissed that appeal as interlocutory. On January 19, 2016, the Court dismissed Myers' claims against the remaining defendants. Myers' second appeal to the Fourth Circuit is pending. The Office of Counsel represents the State Bar defendants.

**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. The State Bar's brief is due November 8. 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.

**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. Foster's motion for new trial is pending. Foster gave notice of appeal on October 6.

### **Miscellaneous**

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. She attends the NCCALJ's Public Trust and Confidence Committee meetings.

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. He worked with the NCBA to create an interactive, online trust account education program for lawyers to use free of charge. 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.

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 September, Brian presented at the NCBA's "Mapping Your Retirement" program. In October, Brian presented at the NCBA's and the 28<sup>th</sup> Judicial District's Professionalism for New Admittees Programs. Also in October, Brian presented a CLE for the Wake County Academy of Trial Lawyers.

Carmen continues to serve as the Office of Counsel's liaison to the judiciary. In that capacity, she made presentations to both the District Court and Superior Court Judges Conferences during the last quarter. Carmen is Vice-Chair of the WCBA Professionalism Committee and coordinates the Committee's presentation of educational programs, including the annual Professionalism Roundtable Program, which took place in October this year. In the last quarter, Carmen was a guest lecturer at Carolina Law and gave CLE presentations at the Susie Sharp Inn of Court and the NCBA's Annual Review. Carmen serves as a mentor to a 3L student through Campbell Law's Connections Mentoring Program.

Barry taught an ethics CLE to attorneys of the North Carolina Department of Justice.

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.

David attends the NCCALJ's Technology Committee meetings.

Pat attends the NCCALJ's Criminal Investigation and Adjudication Committee meetings.

Katherine continues to serve on the NCBA Professionalism Committee. She attends the NCCALJ's Legal Professionalism Committee meetings.