

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

ATTORNEY CLIENT ASSISTANCE PROGRAM

The ACAP staff responded to 3,320 phone calls from members of the public and contacted 921 lawyers in an effort to resolve concerns expressed by members of the public. Staff also responded to 790 emails and 548 letters from inmates. During the same quarter of 2016, staff responded to 3,559 phone calls, contacted 861 lawyers and responded to 515 emails and 499 letters from inmates.

The office received 148 requests for fee dispute resolution during the quarter. One hundred eighteen files were assigned to the two State Bar facilitators. The remaining 30 files were assigned to district bar committees. During the same quarter in 2016, the office received 168 requests for fee dispute resolution of which 134 files were assigned to State Bar facilitators and 34 were assigned to district bar committees.

GRIEVANCES

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, 1,375 grievance files were opened. Since January 1, 1,065 grievance files have been opened.

As of October 16, 877 grievances were pending. One hundred-eighteen grievances were stayed. Thirty-one pending files were in the judicial district grievance committees or had been returned by the district grievance committees within the past 30 days. The OOC had made its recommendation in 122 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 606 files in which no recommendation has yet been made, 151 were more than six months old. Since the July 2017 meeting, 146 files were dismissed by the Grievance chair and 128 files were dismissed by the Grievance chair and a vice chair.

Fern reviewed one anonymous advertising inquiry last quarter in which she opened a grievance file. She is reviewing another advertising question to determine the appropriate action.

DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

The OOC completed seven disciplinary cases involving seven lawyers in the DHC this quarter.

Scott S. Dorman – 16 DHC 26

Dorman, of Las Vegas, Nevada, committed a criminal act, embezzlement, that reflects adversely on his honesty, trustworthiness or fitness, engaged in conduct involving dishonesty, deceit, or misrepresentation, did not deposit entrusted funds into a trust account, engaged in conduct prejudicial to the administration of justice, neglected and did not communicate with clients, did not respond to the Grievance Committee and gave legal advice to an unrepresented opposing party. He was disbarred by the DHC.

Steven Troy Harris – 17 DHC 9

Durham lawyer Steven Troy Harris did not inform his clients that his law license was administratively suspended, did not withdraw from representation, did not refund unearned fees, provided false status updates to his clients, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in the unauthorized practice of law, and did not respond to the Grievance Committee. He was disbarred by the DHC.

Edna R. Walker – 17 DHC 10

Walker, of Rutherfordton, did not file her personal tax returns and did not pay employment taxes. She was disbarred by the DHC.

Pedro Krompecher – 17 DHC 13

Krompecher, of Raleigh, held himself out to third parties as able to provide legal services in Virginia and engaged in the unauthorized practice of law in Virginia, a misdemeanor criminal offense. The DHC imposed a one-year stayed suspension.

Clay A. Collier – 17 DHC 15

Collier, of Wilmington, pled guilty to willfully failing to file individual state income tax returns for several years. On a few occasions, more was disbursed from his firm's trust account for a client than was in the trust account for that client, errors Collier corrected when he discovered them. He was suspended by the DHC for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Andrew J. Hanley – 17 DHC 16

Hanley, of Wilmington, pled guilty to willfully failing to file individual state income tax returns for several years. On a few occasions, more was disbursed from his firm's trust account for a client than was in the trust account for that client, errors Hanley corrected when he discovered them. He was suspended by the DHC for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Robert M. Donlon – 17 DHC 22

Charlotte lawyer Robert Donlon threatened to publicize embarrassing or recriminating information about members of a law firm which represented the plaintiff in a malpractice action against Donlon. He was suspended by the DHC for one year. The suspension is stayed for two years upon his compliance with numerous conditions.

The DHC also entered orders in the following cases after announcing its decisions at the end of the previous quarter:

Robert Weckworth – 16 DHC 22

Weckworth, of Guilford County, communicated with a person known to be represented by counsel and engaged in an improper *ex parte* communication. He was censured by the DHC.

Jerry Braswell – 16 DHC 37

Braswell, of Goldsboro, engaged in sexual relations with a client, did not properly terminate his representation of a second client, and filed a motion on behalf of but failed to take further action on behalf of a third client. The DHC imposed a five year active suspension.

Completed Surrenders to the Council

Michael Eldredge of Kingsport, Tennessee, surrendered his law license and was disbarred by the council at the July meeting. He acknowledged that he misappropriated entrusted funds totaling at least \$80,000.00.

Christopher Marc O'Neal of Wilmore, Kentucky, surrendered his law license and was disbarred by the council at the July meeting. He acknowledged that he misappropriated entrusted funds totaling in excess of \$114,000.00.

Completed Discipline and Disability Proceedings in the Courts

Eric Winston Stiles of Murphy surrendered his law license and was disbarred by the Cherokee County Superior Court. Stiles pled guilty to one felony count of knowingly possessing one or more firearms while being an unlawful user of a controlled substance. He also neglected and failed to communicate with numerous clients.

Christian Scott Mathis of Wilmington surrendered his law license and was disbarred by the Brunswick County Superior Court. Mathis pled guilty to one count each of forgery, uttering and attempted notary fraud.

Michael A. Johnson of Thomasville surrendered his law license and was disbarred by the Wake County Superior Court. Johnson entered into a plea agreement acknowledging that he made false statements on a loan application and committed bank fraud in violation of 18 U.S.C. § 1344.

Orders of Reciprocal Discipline

The Chair of the Grievance Committee issued an order of reciprocal discipline disbaring **Gregory Robert Noonan** of Norristown, Pennsylvania. Noonan was disbarred in October 2016 by the Supreme Court of New Jersey based on his guilty pleas to two counts of possession of a controlled substance with the intent to distribute within 8,000 feet of a school zone and one count each of criminal use of a communications facility, dealing in unlawful proceeds, forgery and theft by deception.

The Chair of the Grievance Committee issued an order of reciprocal discipline suspending **John R. Hibner** of Hempsted, New York, for four years. Hibner was suspended for four years in March 2010 by the Supreme Court of New York after resolving nine charges of professional misconduct against him.

Transfers to Disability Inactive Status

No lawyers were transferred to disability inactive status this quarter.

Interim Suspensions

The Chair of the DHC entered an interim suspension of the law license of **Craig M. Blitzer** of Reidsville. Blitzer pled guilty to the misdemeanor of willful failure to discharge duties in violation of N.C. Gen. Stat. § 14-230.

The Chair of the DHC entered an interim suspension of the law license of **Phillip H. Hayes, Jr.** of Point Harbor. Hayes pled guilty to the felony of possession of a schedule II controlled substance in violation of N.C. Gen Stat. § 90-95(A)(3).

Completed Petitions for Reinstatement/Stay - Uncontested

Jonathan Silverman – 15 DHC 48 & 17 BSR 7

In January 2016, the DHC suspended Silverman, of Sanford, for three years. Silverman engaged in sexual intercourse with his current client and engaged in a conflict of interest by resuming the representation after initially withdrawing due to the sexual relationship. After he served 18 months of the suspension, Silverman was eligible to petition for a stay of the balance upon showing compliance with enumerated conditions. On August 10, the DHC granted his petition for a stay of the remaining suspension. Silverman must continue complying with conditions during the stay.

Completed Petitions for Reinstatement/Stay - Contested

Jonathan A. McCollum - 10BCS2 & 16BCR3

McCollum, of Cary, surrendered his license in October 2010 and was disbarred. McCollum acknowledged that he forged two documents purporting to be judicial orders, made misrepresentations to his clients about those documents, and initially made false statements to the State Bar. In May, 2017, the DHC recommended that the council deny McCollum's petition for reinstatement. At the July meeting, the council voted to reinstate McCollum conditionally. The order of conditional reinstatement has been entered.

Steven B. DeCillis – 12 DHC 25 & 17 BSR 2

In July 2013, the DHC concluded that DeCillis, formerly of Oxford and now of Charlotte, did all of the following simultaneously: sued L.H. in a personal injury case, represented L.H. in three matters that were unrelated to the personal injury case, and engaged in a sexual relationship with L.H. He was suspended for five years. After he served three years of the suspension, DeCillis was eligible to apply for a stay. On October 18, the DHC announced that it will stay the balance of the suspension so long as DeCillis complies with enumerated conditions.

Completed Motions to Show Cause

Robert M. Gallant – 15 DHC 22

In July 2015, the DHC suspended Gallant, of Charlotte, for two years because he did not timely file federal and state income tax returns from 2007 through 2013. The suspension was stayed for two years upon Gallant's compliance with various conditions. In October 2017, the DHC concluded that Gallant did not comply with all conditions and activated the suspension.

TROs and Preliminary Injunctions

The OOC obtained a preliminary injunction in Wake County Superior Court prohibiting **Christi A. Misocky** of Fort Mill, South Carolina, from handling entrusted funds.

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 fifteen-year prison sentence. The DHC stayed the proceedings until Lamb is released. His release date is currently forecasted for October 2019. The Chair of the DHC entered an order of interim suspension of his law license.

Robert Melville, Jr. – 13 DHC 9

The Chair of the DHC entered an order of 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.

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

It is alleged that Wilson lawyer Michael Anderson 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 repeatedly ordered Anderson to undergo evaluation. Anderson has defied several DHC orders requiring him to undergo evaluation. The DHC stayed the disability case until Anderson complies with its orders to undergo evaluation. Meanwhile, the Wake County Superior Court entered a preliminary injunction prohibiting Anderson from practicing law until the discipline and disability cases are concluded.

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, a determination whether Allred is disabled and, if she is determined not to be disabled, imposition of professional discipline. Hearing was continued upon Allred's motion and has not been rescheduled.

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 by, among other devices, fabricating lease agreements to cause lenders to believe his client was purchasing houses as rental property when his client was actually purchasing them as marijuana grow houses for a large-scale drug trafficking operation. 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 was continued and has not been rescheduled.

Scott Shelton – 17 DHC 1

It is alleged that Shelton, of Hendersonville, violated numerous trust accounting rules. He is enjoined from handling entrusted funds. Hearing was continued and has not been rescheduled.

Brent King – 17 DHC 8

It is alleged that King, of Huntersville, committed the crime of issuing worthless checks and violated multiple trust account rules. Hearing was continued and has not been rescheduled.

Johnny S. Gaskins – 17 DHC 14

It is alleged that Gaskins, of Raleigh, did not inform a client he had received settlement proceeds, forged the client's signature on the settlement check, did not deposit the settlement check into a trust account, and embezzled the settlement proceeds. He is enjoined from handling entrusted funds. Hearing is scheduled for November 17.

Frederick J. Owens - 17 DHC 17

It is alleged that Owens, of Wilmington, collected an illegal fee, violated numerous trust account rules, and made false statements to the Grievance Committee about his participation in the Trust Account Compliance Program. Hearing has not been scheduled.

Carlos B. Watson – 17 DHC 18

It is alleged that Watson, of Charlotte, violated multiple trust account rules and embezzled entrusted client funds. He is enjoined from handling entrusted funds. Hearing was continued and has not been rescheduled.

Joseph Forbes – 17 DHC 19

It is alleged that Forbes, of Elizabeth City, did not maintain proper trust account records after a prior random audit revealed identical deficiencies including failures to reconcile, to provide accountings at least annually, to escheat and to promptly pay over entrusted funds. Default was entered and a motion for default order is pending. Hearing is scheduled for November 3.

Michael Parker – 17 DHC 20

It is alleged that Parker, of Mocksville, did not pay over taxes withheld from employee paychecks, did not remit to a client all funds he collected for the client, and took on new legal work while he was administratively suspended. Hearing is scheduled for November 29-30.

Julie Parker – 17 DHC 21

It is alleged that Parker, of Mocksville, did not pay over taxes withheld from employee paychecks. Hearing is scheduled for November 29-30.

Craig M. Blitzer – 17 DHC 23

Blitzer, of Reidsville, is the former District Attorney of Rockingham County who allegedly allowed his staff to take online academic tests for his wife on State time. The grievance has been stayed pending the availability of the SBI investigative report. Blitzer pled guilty in Wake

County Superior Court to misdemeanor willful failure to discharge duties. The Chair of the DHC entered an order of interim suspension of his law license.

Richard B. Schultz – 17 DHC 24

It is alleged that Schultz, of Gastonia, did not respond to questions from Trust Account Compliance Counsel after a random audit, did not respond to the Grievance Committee, did not properly reconcile his trust account, and did not promptly remove his earned fees from the trust account. Hearing has not been scheduled.

Jerry B. Clayton, Robert W. Myrick, Robert D. McClanahan, Ronald G. Coulter, and Gladys Nicole Clayton – 17 DHC 25

It is alleged that these attorneys with the law firm of Clayton, Myrick, McClanahan, & Coulter, PLLC in Durham did not properly reconcile their trust account. It is alleged that Ms. Clayton did not respond to questions from Trust Account Compliance Counsel after a random audit. It is alleged that Ms. Clayton, Mr. Clayton, and Mr. McClanahan did not respond to the Grievance Committee. It is alleged that Ms. Clayton modified reconciliation records provided to the State Bar to hide dates so it would appear the reconciliations were timely performed when they were actually created on the date of production to the State Bar. It is alleged that Ms. Clayton made misrepresentations to the State Bar and that the other defendants either knowingly made the same misrepresentations or made those misrepresentations with reckless disregard as to their truth or falsity. Hearing has not been scheduled.

Joe S. Major, III – 17 DHC 26

It is alleged that Major, of Charlotte, misappropriated fiduciary funds and obtained real property through constructive fraud. It is alleged that, in a separate matter, Major did not keep proper records, did not properly account for estate assets, and disbursed funds pursuant to a power of attorney that had been revoked by the principal's death. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

Bryon M. Smith – 17 DHC 28

It is alleged that Smith, of Jacksonville, violated multiple trust account rules. Hearing has not been scheduled.

Gavin A. Brown – 17 DHC 29

It is alleged that Brown, of Waynesville, forged a notary's signature and affixed the notary's seal to a deed without authorization. Hearing has not been scheduled.

Darnell Parker – 17 DHC 30

It is alleged that Parker, of Greenville, violated multiple trust account rules. Hearing has not been scheduled.

Mark V. Gray – 17 DHC 31

It is alleged that Gray, of Greensboro, did not file or pay federal or state income taxes from 1997 through 2005 and from 2008 through 2014. Hearing has not been scheduled.

Phillip S. Adkins – 17 DHC 32

It is alleged that Adkins, of Snow Camp, violated multiple trust account rules. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

Kevin Kennedy – 17 DHC 33

Kennedy, of Chapel Hill, mismanaged his trust account by over-disbursing client funds, failing to reconcile, maintaining inaccurate ledgers and commingling. Hearing has not been scheduled.

Cowles Liipfert – 17 DHC 34

It is alleged that Liipfert, of Winston Salem, willfully failed to file required state income taxes and to timely pay his state tax obligations for tax years 2012, 2013, and 2014. Hearing has not been scheduled.

Pending Petitions for Reinstatement/Stay - Uncontested

No uncontested petitions for reinstatement are pending.

Pending Petitions for Reinstatement/Stay - Contested**Theophilus O. Stokes, III – 10 DHC 37 & 17 BCR 1**

In February 2012, Stokes was disbarred by the DHC upon his affidavit of surrender. Stokes participated in a fraudulent check scheme leading to his conviction of two counts of misdemeanor receiving stolen goods. Hearing is scheduled for November 28.

Joan Elizabeth Spradlin – 17 RD 1

In March 2008, Spradlin was transferred to disability inactive status by the Chair of the Grievance Committee. Spradlin's petition for transfer back to active status is scheduled for hearing December 6.

Tracey Cline – 12 DHC 22 & 17 BSR 8

Cline was the elected District Attorney of Durham County until she was removed from office under N.C. Gen. Stat. §7A-66. In June 2015, Cline was suspended by the DHC for five years for filing pleadings containing false and outrageous statements about a judge and making false representations in court filings in an attempt to obtain confidential prison visitation records. After she served two years of the suspension, Cline was eligible to petition for a stay of the remaining three years upon demonstrating compliance with enumerated conditions. Hearing is scheduled for December 13.

Pending Motions to Show Cause**Nicholas S. Ackerman – 16 DHC 33**

In January 2016, the DHC suspended Ackerman, of Greensboro, for failing to keep his client reasonably informed about the status of a matter, failing to respond promptly to the Grievance Committee, and failing to participate in good faith in the mandatory fee dispute resolution process. The suspension was stayed for two years. It is alleged that Ackerman has not complied with all conditions of the stay.

David A. Lloyd – 14 DHC 15

In March 2015, the DHC suspended Lloyd, of Spindale, for three years for violating trust account rules and for failing to report misappropriation of entrusted funds by his law practice associate. The suspension was stayed for three years. It is alleged that Lloyd has not complied with all conditions of the stay. Hearing is scheduled for November 9.

Jeffrey D. Smith – 15 DHC 27

In September 2015, the DHC suspended Smith, of Charlotte, for two years for violating trust account rules. The suspension was stayed for three years. It is alleged that Smith has not complied with all conditions of the stay. Hearing is scheduled for November 16.

Michael S. Williamson – 16 DHC 28

In December 2016, the DHC suspended Williamson, of Goldsboro, for three years for violating trust account rules. The suspension was stayed for three years. It is alleged that Williamson has not complied with all conditions of the stay. Hearing is scheduled for December 11.

Pending Surrenders to the Council

No lawyers are expected to surrender their law licenses at the October meeting.

APPEALS IN DISCIPLINE CASES**Completed Appeals**

NCSB v. Clifton Gray (15 DHC 38). In September of 2016, the DHC suspended Raleigh lawyer Clifton J. Gray, III for five years. He will be eligible to petition for a stay of the fifth year upon demonstrating compliance with numerous conditions. The DHC concluded 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. He gave notice of appeal in October and again in December but did not perfect either appeal. On August 10, 2017, the DHC granted the State Bar's motion to dismiss the appeal. The OOC represented the State Bar.

NCSB v. Jerry Braswell (16 DHC 37). In August 2017, the DHC suspended Goldsboro lawyer Jerry Braswell for five years. The DHC concluded that Braswell engaged in sex with a client during the representation and terminated representation of another criminal client without permission of the court after making an appearance. Braswell gave notice of appeal. The Court of Appeals denied Braswell's petition for writ of supersedeas. On September 13, 2017, Braswell withdrew his appeal.

Pending Appeals**NCSB v. Jennifer Foster - 14 DHC 7**

In September 2016, the DHC suspended Foster, of Asheville, for two years. The suspension was stayed upon her compliance with numerous conditions. The DHC concluded that Foster engaged in conduct degrading to a tribunal and prejudicial to the administration of justice by using profanity when addressing a magistrate. Briefing is complete. The Court of Appeals will consider the appeal without oral argument. The OOC represents the State Bar.

NCSB v. Christopher Livingston - 15 DHC 15

In July 2016, the DHC suspended Bladen County lawyer Christopher Livingston for five years. After he serves two years, Livingston will be eligible to petition for a stay of the balance upon demonstrating compliance with numerous conditions. 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. Briefing is complete. The Court will consider the appeal without oral argument. The OOC represents the State Bar.

NCSB v. Dawn Ely - 16 DHC 1

In August 2016, the DHC suspended Dawn Ely for five years because she offered to provide legal services in North Carolina while her North Carolina license was administratively suspended. After she serves two years of the suspension, she will be eligible to petition for a stay of the balance upon demonstrating compliance with numerous conditions. Oral argument was held at the UNC School of Law on October 17. The OOC represents the State Bar.

Scott S. Dorman – 16 DHC 26

In September 2017, the DHC disbarred Dorman, of Las Vegas, Nevada. The DHC concluded that Dorman committed a criminal act, embezzlement, that reflects adversely on his honesty, trustworthiness or fitness, engaged in conduct involving dishonesty, deceit, or misrepresentation, did not deposit entrusted funds into a trust account, engaged in conduct prejudicial to the administration of justice, neglected and did not communicate with clients, did not respond to the Grievance Committee and gave legal advice to an unrepresented opposing party. He gave notice of appeal.

Trust Accounting Compliance Program

Thirty-three lawyers have successfully completed the TAC Program since its inception. Peter currently supervises 21 participants. He continues to review random audits to evaluate potential candidates for the program.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 27 new files this quarter. The committee will address 25 files at its October meeting.

Three proposed prepaid legal services plans submitted applications for registration this quarter. The application of Firearm Legal Protection was originally denied registration because it did not qualify; when it cured the deficiencies and resubmitted its application, the plan was accepted for registration. The application of Complete Legal Plan was denied due to a number of deficiencies in the application and proposed plan. The application of “Legal888.com” is currently under review. One amendment was submitted by Veritas Legal Plan this quarter; upon review, that amendment was accepted. A letter reminding plan administrators of the annual renewal requirement and deadline was sent to each registered prepaid plan this quarter; those annual renewal forms are due by December 1, 2017.

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.

Pending, Recently Completed and Contemplated Authorized Practice Litigation

Capital Associated Industries, Inc. v. Josh Stein 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 wishes to hire lawyers to provide legal advice and legal services to its members. CAI sought a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions as applied to it and sought an injunction prohibiting the original defendants from enforcing the statutes against it. CAI did not seek an award of damages but did seek an award of attorney fees, “disbursements,” and costs. The court allowed the State Bar to intervene. The court denied the original defendants’ motions to dismiss and denied CAI’s motion for preliminary injunction. The case was scheduled for trial on October 2, 2017. On September 19, the court granted the State Bar’s motion for summary judgment on all claims and dismissed the action. The court concluded that CAI has no constitutional or other right to engage in the practice of law or provide legal services to its members and that the North Carolina statutes prohibiting the unauthorized practice of law are constitutional, both facially and as applied. The court also concluded that the statutes do not violate the anti-monopoly clause of the North Carolina Constitution. CAI has indicated it will appeal to the Fourth Circuit, but has not yet done so. Van Laningham Duncan represented the State Bar.

The Executive Committee authorized the OOC to file a lawsuit seeking injunctive relief against Michael Asen and the Zimmerman Group. Asen is a New York attorney who attempts to collect civil penalties from persons accused of shoplifting in North Carolina. The Zimmerman Group offers Asen’s services to retailers. The OOC is preparing the complaint.

OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

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 State Bar.

Valerie Arroyo v. North Carolina State Bar (Office of Administrative Hearings). Arroyo was the complainant in a grievance. She filed a petition for contested case hearing alleging that the State Bar deprived her of due process by failing to render a decision favorable to her position. The Attorney General represents the State Bar.

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 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. The Full Commission affirmed. Harper did not timely appeal. The Attorney General represented the State Bar.

Client Security Fund Claims/Subrogation Cases

There are 24 claims on the agenda for the Board’s October 26 meeting.

No lawsuits are pending in superior court seeking reimbursement from disbarred lawyers for payments made by the CSF.

Disbursement Cases

The OOC filed four motions in Superior Court seeking permission to disburse funds in disbarred or suspended lawyers’ trust accounts. The OOC attended three hearings on motions to disburse, obtained orders directing the disbursement of entrusted funds totaling \$91,632.68, and investigated and closed eight files that did not require further court motions or orders.

Trusteeships

Trustees were appointed to wind down the practices of deceased lawyers **T. Craig Wright** of Whiteville, **Donna E. Bennick** of Chapel Hill, **Alfred P. Carlton, Jr.**, of Raleigh, and **John M. Bahner, Jr.** of Albermarle and the practices of **Martin J. Horn** of Carolina Beach and **Tracy Brooks Silver** of Lincolnton, who are both suffering from medical issues that render them unavailable to clients.

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

Appeals in Other Litigation in the State and Federal Courts

Completed Appeals

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). Krista Bennett and Fern Gunn Simeon are State Bar employees. During some or all of the events alleged in the complaint, John Silverstein served as Chair of the Grievance Committee and is presently President-Elect of the State Bar. Myers asserts that the State Bar defendants, the North Carolina court system, and numerous Johnston County government officials violated her rights. She does not describe the alleged violation with particularity but it appears to arise out of Myers’ arrest by Johnston County law enforcement officials. The court allowed the State Bar defendants’ motions to strike and to dismiss. The Fourth Circuit dismissed Myers’ appeal as interlocutory. After the trial court dismissed Myers’ claims against the remaining defendants, she appealed again to the Fourth Circuit. The Fourth Circuit dismissed that appeal and denied her petition for *en banc* hearing. On October 2, 2017, the Supreme Court denied Myers’ petition for writ of *certiorari*. The Office of Counsel represented the State Bar defendants.

Shan Edward Carter v. John W. Sherrill, et al (US District Court, EDNC). Carter is incarcerated at Central Prison. He filed this action in October 2016 against the prosecutor in his criminal case, numerous other participants in the criminal justice system, the State Bar and Deputy Counsel Margaret Cloutier. He alleged that all of the defendants engaged in a conspiracy to kidnap, imprison and murder him by lethal injection. He alleged that the State Bar defendants refused to investigate his allegations against the other defendants. He did not serve either State Bar defendant. On its own motion, the district court dismissed the complaint for failure to state a claim upon which relief can be granted. The Fourth Circuit affirmed on October 3, 2017 in an unpublished opinion. The State Bar first learned of the lawsuit after the Fourth Circuit decision.

Pending Appeals

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 to refer the grievance to the courts for investigation and disciplinary action and an award of costs. The court dismissed the complaint. Boyce appealed to the North Carolina Court of Appeals. Oral argument was held February 7. We await a decision. The State Bar was represented by Parker Poe Adams and Bernstein in the trial court but is represented by the OOC on appeal.

Legislative Liaison

The State Bar continues to monitor and engage with the North Carolina General Assembly through its legislative liaison. The 2017 "long" session adjourned in July, but the legislature has since met numerous times to address veto overrides and judicial redistricting. The State Bar monitored many bills during the long session, and formally opposed legislation that would have reduced State Bar dues to \$50 and legislation that would have restructured how interest from IOLTA accounts is distributed. Ultimately, neither bill survived the legislative crossover deadline. The State Bar supported the passage of a bill to increase penalties on debt adjusters that unanimously passed the House and is still pending in the Senate. In September, the State Bar's Legislative Liaison addressed the House Select Committee on Judicial Redistricting, advocating for a more deliberate redistricting process that is focused on the effective administration of justice. In addition to monitoring legislation, the Bar continues to increase its visibility at the legislature through attendance at committee meetings and the Bar's annual legislative reception.

Personnel

Lee Blood-Ramos, who has been with the Office of Counsel since July of 2016 as a litigation paralegal, recently became Director of the Attorney Client Assistance Program, where she also manages the fee dispute program. Lee will continue to have litigation paralegal responsibilities.

Rick Grayson joined the Office of Counsel as an investigator on August 1. Since he retired as Deputy Chief of the Raleigh Police Department, Rick has worked in consulting and private security.

Paul Sugrue joined the office, also as an investigator, on October 9. He recently retired after twenty-seven years with the United States Marshall Service.

Miscellaneous

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.

Maria presented at the NCBA's Professionalism for New Attorneys CLE program in October.

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.

Leonor continues to serve on the NCBA Professionalism Committee and on the 10th JD/WCBA Professionalism Committee, where she is co-chair of the Publications Subcommittee.

Carmen continues to serve as the OOC's liaison to the judiciary. As Programs Chair of the WCBA Professionalism Committee, Carmen presented the Committee's annual Roundtable Program in October. She also presented an ethics CLE for the Child Support Enforcement Lawyers' annual meeting in August. Carmen serves as a mentor to a 3L student through Campbell Law's Connections Mentoring Program and is Associate Adjunct Professor of professional responsibility at UNC School of Law.

Jennifer volunteers as a judge for the Capital Area Teen Court diversion program. Jennifer also began a series of monthly litigation clinics for volunteer teen attorneys who serve as prosecutors and defense attorneys in the program, with the support of several State Bar volunteers. Jennifer continues to judge mock trial competitions; the next is a session of the 12th Annual Tobacco Road Invitational Mock Trial tournament hosted by Duke Mock Trial on October 29.

Mary volunteered at the 10th Judicial District Expunction Clinic.

Brian continues to serve on the Board of Advisors for the First Amendment Law Review at UNC School of Law and as co-chair of the 10th JD/WCBA Memorial Committee. He teaches legal research and writing at Campbell Law and is a frequent guest lecturer at other law schools.

Katherine continues to serve on the NCBA Professionalism Committee.