

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
JULY 27, 2018**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

The ACAP staff responded to 3,602 phone calls from members of the public and contacted 623 lawyers in an effort to resolve concerns expressed by members of the public. Staff also responded to 971 emails and 637 letters from inmates. During the same quarter of 2017, staff responded to 2,885 phone calls, contacted 783 lawyers and responded to 652 emails and 457 letters from inmates.

The office received 126 requests for fee dispute resolution during the quarter. One hundred-seventeen files were assigned to the two State Bar facilitators. The remaining nine files were assigned to district bar committees. During the same quarter in 2017, the office received 166 requests for fee dispute resolution of which 119 files were assigned to State Bar facilitators and 47 were assigned to district bar committees.

**GRIEVANCES**

In 2015, 1,331 grievance files were opened. In 2016, 1,375 grievance files were opened. In 2017, 1,305 grievance files were opened. Since January 1, 2018, 731 grievance files have been opened.

As of July 20, 933 grievances were pending. One hundred-sixteen grievances were stayed. Forty-two 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 131 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 644 files in which no recommendation has yet been made, 193 were more than six months old. Since the April 2018 meeting, 232 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

Fern did not receive any advertising inquiries last quarter.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

The OOC completed 16 discipline and disability cases involving 20 lawyers in the DHC this quarter.

**Scott Shelton – 17 DHC 1**

Shelton, of Hendersonville, violated numerous trust accounting rules. He was suspended for three years. After serving one year of active suspension, he will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Frederick J. Owens - 17 DHC 17**

Owens, of Wilmington, collected an illegal fee, violated numerous trust accounting rules, and made false statements to the Grievance Committee about his participation in the Trust Account Compliance Program. On July 17, the DHC announced its decision to suspend Owens for three years. After serving one month of active suspension, Owens will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Michael Parker – 17 DHC 20**

Parker, of Mocksville, did not truthfully account for and timely 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. The DHC suspended him for five years. After serving two and one-half years of active suspension, he will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Julie Parker – 17 DHC 21**

Parker, of Mocksville, did not truthfully account for and timely pay over taxes withheld from employee paychecks. The DHC suspended her for five years. After serving eighteen months of active suspension, she will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

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

The law firm of Clayton, Myrick, McClanahan, & Coulter, PLLC in Durham did not properly reconcile its trust account. The DHC found that Gladys Nichole Clayton violated multiple trust account rules including not conducting monthly and quarterly reconciliations, not always indentifying the client for whom cash deposits were made, and not always indentifying the client on trust account checks. Clayton did not provide the reconciliation requested by the State Bar following a random audit and did not respond to all inquiries of the Grievance Committee. In addition, Clayton used white-out tape to conceal the actual dates when trust account reconciliations and supporting documents she provided to the Grievance Committee were actually printed to mislead the Grievance Committee about when she prepared the reconciliations. Clayton made misrepresentations to the Grievance Committee about when the reconciliations were prepared and why white-out was applied to the documents. The DHC suspended Clayton for four years. After serving six months of active suspension, she will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

The DHC found that the remaining firm respondents did not ensure that the firm's trust account was timely reconciled, despite their notice that Clayton, to whom they had entrusted the responsibility, was not performing the required reconciliations. They also made inaccurate statements to the State Bar concerning the reconciliations of the trust account based upon information from Clayton without verifying the information. They were reprimanded by the DHC, which also required them to a complete continuing legal education course on reconciling trust accounts.

**Joe S. Major, III – 17 DHC 26 and 17 DHC 26D**

It was alleged that Major, of Charlotte, misappropriated fiduciary funds and obtained real property through constructive fraud. It was also alleged that, in an unrelated 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 was enjoined from handling entrusted funds. In April, the DHC entered an order finding probable cause to believe Major may be disabled and instructed the State Bar to file a complaint alleging disability. The disciplinary proceeding was stayed and Major was ordered to undergo evaluation. Major subsequently experienced health issues and ultimately passed away on June 13, 2018. The State Bar filed a notice of voluntary dismissal of the disciplinary and disability matters.

**Mark V. Gray – 17 DHC 31**

Gray, of Greensboro, did not file federal or state tax returns and did not pay federal or state income taxes from 1997 through 2005 and from 2008 through 2014. The DHC suspended him for four years. After serving eighteen months of active suspension, he will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Phillip S. Adkins – 17 DHC 32**

Adkins, of Snow Camp, violated multiple trust account rules. He is enjoined from handling entrusted funds. He was suspended for two years. The suspension is stayed for two years upon Adkins' compliance with numerous conditions.

**Heather Anne Shade – 18 RD 1**

Shade, of Fairview, was reinstated from disability inactive status by the DHC.

**Jeffrey Dalrymple – 18 DHC 8**

Dalrymple, of Matthews, did not reconcile his trust account, maintained inaccurate client ledgers, and commingled his personal funds with entrusted funds. He was suspended for three years. The suspension is stayed for three years upon his compliance with numerous conditions.

**Cindy Huntsberry – 18 DHC 10**

Huntsberry, of Smithfield, violated numerous trust accounting rules. She was suspended for five years. After serving one year of active suspension, she will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**William D. Webb, II – 18 DHC 17**

Webb, of Raleigh, violated numerous trust accounting rules, including not reconciling his trust account, not maintaining accurate ledgers, and not supervising his staff's efforts to monitor his trust account. He was suspended for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

**Dan Reid Fulkerson – 18 DHC 21**

Fulkerson, of Boone, did not file and/or pay state and federal income taxes for the years 2010 through 2016. He was suspended for two years. The suspension is stayed for two years upon his compliance with numerous conditions. Fulkerson is currently on voluntary inactive status with the State Bar. The suspension will begin to run if he should successfully petition for return to active status.

**Jeffrey D. Smith – 18 DHC 26**

Smith, of Charlotte, violated numerous trust account rules including not conducting required monthly and quarterly reconciliations, not promptly reimbursing a negative balance found when he did reconcile his trust account, not conducting required reviews for two quarters, not promptly depositing funds into the trust account, disbursing funds to a client for whom entrusted funds had not yet been deposited into the trust account, improperly disbursing funds to himself on two occasions, not identifying the clients for whom he held funds, and not promptly disbursing entrusted funds. The DHC suspended Smith for two years. After serving one year of active suspension, Smith will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Kenneth R. Jones – 18 DHC 30**

Jones, of Smithfield, violated numerous trust account rules, including not reconciling his trust account, not maintaining accurate ledgers, and not supervising his staff's efforts to monitor his trust account. He was suspended for two years. The suspension is stayed for three years upon his compliance with numerous conditions.

**Christopher T. Watkins – 18 DHC 32**

Watkins, of Graham, violated numerous trust account rules, including not reconciling his trust account, not maintaining accurate ledgers, and disbursing funds on behalf of a client for whom sufficient funds had not been deposited into the trust account. He was suspended for three years. After serving six months of active suspension, Watkins will be eligible to apply for a stay of the balance upon demonstrating compliance with numerous conditions.

**Completed Surrenders to the Council**

**James M. Shelton** of Burlington surrendered his law license and was disbarred by the State Bar Council at its April meeting. Shelton admitted that he misappropriated entrusted funds in an amount in excess of \$4,000 and made material misrepresentations to a client and to the State Bar.

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

**Wallace Bradsher** of Roxboro surrendered his law license and was disbarred by the Wake County Superior Court. Bradsher had been the elected district attorney for Person and Caswell counties. He was disbarred in connection with his conviction for felony obstruction of justice, misdemeanor obstruction of justice, misdemeanor willful failure to discharge duties, felony obtaining property by false pretenses, and aiding and abetting obtaining property by false pretenses.

**David H. Caffey** of Winston Salem surrendered his law license and was disbarred by the Wake County Superior Court. Caffey admitted that he misappropriated entrusted funds in an amount in excess of \$3,655.

The Pitt County Superior Court issued an order for **Phillip Entzminger**, an assistant district attorney in Pitt County, to show cause why he should not be held in criminal contempt and why he should not be disciplined for violating the Rules of Professional Conduct. The show cause order alleged that Entzminger filed a document that showed disregard for the dignity of the court, demonstrated undignified and discourteous conduct that was degrading to the court and that bred disrespect for the court and the legal profession, and made false statements to the court. The

court appointed the State Bar to prosecute. On April 30, 2018, the court acquitted Entzminger on the contempt charges but found his conduct violated the Rules of Professional Conduct. The court suspended Entzminger for two years with the possibility of a stay of the balance after serving six months active suspension, on compliance with enumerated conditions. Entzminger appealed and petitioned the Court of Appeals for a writ of *supersedeas*. On June 13, 2018, the Court of Appeals granted his petition for writ of *supersedeas*. The appeal is pending.

### **Orders of Reciprocal Discipline**

No orders of reciprocal discipline were issued this quarter.

### **Transfers to Disability Inactive Status**

**Susan R. Franklin** of Chapel Hill was transferred to disability inactive status by the Chair of the Grievance Committee. **Tony Sami Botros** of Raleigh was transferred to disability inactive status by the Wake County Superior Court.

### **Interim Suspensions**

No orders of interim suspension were issued this quarter.

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

#### **Sean David Soboleski – 15DHC52A & 15DHC52AR**

In June 2016 the DHC suspended Soboleski, of Asheville, for three years. He did not properly reconcile his trust accounts, did not maintain accurate client ledgers, and did not properly maintain and disburse entrusted funds. As a result, he disbursed client funds for purposes other than instructed by the client and received payments for legal fees before the fees were earned. After serving six months of active suspension, he was eligible to apply for a stay of the balance upon showing compliance with numerous conditions. The DHC reinstated him on April 26.

#### **Joel M. Bresler – 14G0758 & 18BSR1**

Bresler, of Lakeland, Florida, was suspended for 91 days by order of reciprocal discipline effective January 11, 2018. The Supreme Court of Florida suspended Bresler for 91 days in January 2015. Bresler was a witness in the federal prosecution of his former employer and was granted immunity. Bresler drafted a false promissory note for the former employer, destroyed his own bank records at the direction of the former employer, and exaggerated to law enforcement the extent of his attorney/client relationship with the former employer. He was reinstated by the Secretary on April 30.

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

No contested petitions for reinstatement were completed this quarter.

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

No motions to show cause were completed this quarter.

## **TROs and Preliminary Injunctions**

The Wake County Superior Court issued a preliminary injunction prohibiting **Mary March Exum** of Asheville from expressly or implicitly holding herself out as able to practice law or able to provide legal services herself or through another attorney or a consulting service, providing or attempting to provide legal services herself or to provide the legal services of any attorney, and soliciting or accepting any legal fees that had not been earned before the suspension of her license on July 12, 2017. The Wake County Superior Court vacated the preliminary injunction that had prohibited **Sean David Soboleski** of Asheville 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 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 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.

### **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. Levinson was recently released from prison. The complaint has not been filed.

**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 is scheduled for September 17.

**Joseph Forbes – 17 DHC 19**

It is alleged that Forbes, of Elizabeth City, violated numerous trust account rules. The DHC entered an order establishing the rule violations by default. Hearing on the appropriate discipline is scheduled for August 3.

**Craig M. Blitzer – 17 DHC 23**

Blitzer, of Reidsville, was the elected district attorney of Rockingham County. It is alleged that Blitzer allowed his staff to take online academic tests for his wife on State time. 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. The grievance is stayed pending receipt of the SBI investigative report.

**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. The DHC case is stayed until conclusion of criminal charges arising out of the same conduct.

**Carson W. Freeman – 17 DHC 35**

It is alleged that Freeman, of Charlotte, misappropriated entrusted funds and committed other trust account violations. She is enjoined from handling entrusted funds. Hearing is scheduled for August 2-3.

**Matthew A. Smith – 18 DHC 1**

Smith, of Raleigh, was convicted of taking indecent liberties with a child, a felony, in violation of N.C. Gen. Stat. § 14-202.1. The Chair of the DHC entered an interim suspension of his law license. The State Bar's motion for judgment on the pleadings was granted. Hearing on the appropriate discipline is scheduled for August 17.

**Paige C. Cabe – 18 DHC 2**

It is alleged that Cabe, of Sanford, misappropriated entrusted funds and committed other trust account violations, did not respond to the State Bar, neglected and did not communicate with clients, did not refund unearned fees, engaged in conduct prejudicial to the administration of justice including failing to appear for scheduled hearings, and engaged in dishonest conduct. She is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Arnold O. Jones – 18 DHC 3**

Jones, of Goldsboro, and formerly a Superior Court judge, was convicted of the federal felony of promising and paying gratuities to a public official in violation of 18 U.S.C. 201(c)(1)(A). Jones attempted to induce a law enforcement officer to unlawfully obtain text messages of Jones's wife. Hearing has not been scheduled.

**Jeffrey Warren Ellingworth – 18 DHC 4**

It is alleged that Ellingworth, of Syracuse, New York and formerly of Charlotte, did not inform clients that his license was suspended, engaged in the unauthorized practice of law, neglected multiple clients, did not participate in mandatory fee dispute resolution, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and did not respond to the Grievance Committee. The DHC entered an order establishing the rule violations by default. Hearing on the appropriate discipline has not been scheduled.

**Tania L. Leon – 18 DHC 5**

It is alleged that Leon, of Charlotte, forged her husband's endorsement on a check to take funds to which she was not entitled from their joint investment account and filed a complaint against her husband for money owed in which she made false statements and asserted frivolous positions. Hearing is scheduled for October 29-30.

**Larry G. Hoyle – 18 DHC 6**

It is alleged that Hoyle, of Gastonia, made false statements to the court and engaged in conduct that was dishonest and prejudicial to the administration of justice by submitting an improper designation of secured leave. It is also alleged that Hoyle falsely represented to the court that he represented a defendant for whom he took action in a criminal case at the behest of a bail bondsman. Hearing is scheduled for October 8-9.

**Robert R. Schoch – 18 DHC 7**

It is alleged that Schoch, of High Point, made misrepresentations to the court, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct intended to disrupt a tribunal, used means that had no substantial purpose other than to embarrass and burden third persons, and engaged in conduct prejudicial to the administration of justice. Hearing is scheduled for October 29-30.

**Thomas S. Hicks – 18 DHC 9**

It is alleged that Hicks, of Wilmington, abandoned several clients and did not return unearned fees when he was suspended by the DHC and that he did not respond to the Grievance Committee. Hearing is scheduled for August 29-30.

**James Goard – 18 DHC 11**

It is alleged that Goard, of Charlotte, was convicted of driving while intoxicated, advised and assisted an individual in drafting an affidavit while his law license was suspended, made misrepresentations to a client, and did not respond to the Grievance Committee. Hearing is scheduled for November 15-16.

**Wendelyn R. Harris – 18 DHC 14**

It is alleged that Harris, of Virginia and formerly of Raleigh, submitted a purported order to the Department of Motor Vehicles on which she forged a judge's signature and blamed her non-lawyer assistant for these actions. Harris' assistant was criminally prosecuted and convicted of forgery at a trial in which it is alleged that Harris testified falsely. Harris raised the issue of disability in her responsive pleading. The hearing on disability is scheduled for August 24.



**Joseph Eric Altman – 18 DHC 15**

It is alleged that Altman, of Rockingham, violated multiple trust account rules. It is also alleged that Altman disclosed confidential client information to a jury without his client's permission, resulting in a mistrial, and spoke to a prospective client he knew was represented by counsel without consent of the prospective client's counsel. Hearing is scheduled for September 11.

**George L. Collins – 18 DHC 16**

It is alleged that Collins, of Jacksonville, wrote a will for a client that made him the executor of her estate and charged the estate \$750.00 per hour, collecting over \$250,000.00 from the estate. It is also alleged that, in the course of serving as the estate's executor, Collins misrepresented the services he would provide, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, knowingly made a false statement to the Grievance Committee, committed perjury, made a false statement of material fact to a tribunal, did not properly maintain and disburse fiduciary funds, committed embezzlement, and engaged in conduct prejudicial to the administration of justice. Hearing is scheduled for November 5.

**Frank Cassiano – 18 DHC 19**

It is alleged that Cassiano, of Greenville, took advantage of a client in a prohibited business transaction, made false statements to his client, and made false statements to the court in the lawsuit his client filed against him. Hearing is scheduled for December 3-4.

**Michael H. Griffin – 18 DHC 20**

It is alleged that Griffin, formerly of Shelby and now of Florida, misappropriated entrusted funds. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Hubert N. Rogers, III – 18 DHC 22**

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

**Bernell Daniel-Weeks – 18 DHC 23**

It is alleged that Daniel-Weeks, of Durham, advised a client to violate a court order, did not communicate with, neglected and abandoned multiple clients, did not refund unearned fees, and did not respond to the Grievance Committee. Hearing is scheduled for December 12-13.

**Giles Cameron Byrd – 18 DHC 24**

Byrd, of Lake Waccamaw, was convicted of misdemeanor obstruction of justice for providing false information on a client's application for limited driving privilege. In addition, it is alleged that Byrd altered a plea agreement after the prosecutor signed it and that he attempted to have a civil litigant held in contempt of court for failing to comply with an order that was no longer valid and had not be served. Hearing has not been scheduled.

**Venus Yvette Springs – 18DHC 25**

Springs, formerly of Charlotte and currently of New York, is alleged to have published material obtained in discovery on YouTube for no substantial purpose other than to embarrass a third party and to have maintained the publication after she was ordered by the court to take it down. Hearing has not been scheduled.

**James N. Jorgensen – 18 DHC 27**

It is alleged that Jorgensen, of Raleigh, neglected clients' cases, did not promptly disburse entrusted funds, made a false statement to clients, did not reconcile his trust accounts, and did not timely respond to the Grievance Committee. Hearing has not been scheduled.

**Christopher A. Stella – 18 DHC 28**

It is alleged that Stella, of Winston-Salem, committed criminal acts by patronizing a prostitute and filing a false police report about the incident. Hearing has not been scheduled.

**Alvaro De La Calle – 18 DHC 29**

It is alleged that Calle, of Greensboro, abandoned clients, collected fees without doing the work for which he was paid, misrepresented the services he would provide to clients, engaged in conduct involving dishonesty, revealed confidential information about his clients to others, split fees without his clients' knowledge or permission, and engaged in conduct prejudicial to the administration of justice. Hearing has not been scheduled.

**Mary March Exum – 18 DHC 31**

Exum, of Asheville, was suspended for five years by the Disciplinary Hearing Commission effective July 12, 2017 for mishandling entrusted funds and other misconduct. It is alleged that after the 2017 suspension, Exum continued to hold herself out to the public and to former clients as able to practice law through a business called Exum Consultants. It is alleged that Exum collected legal fees for work she claimed would be performed through attorneys hired and supervised by Exum Consultants. Hearing has not been scheduled.

**Ryan Shoaf – 18 DHC 33**

It is alleged that Shoaf, of Raleigh, facilitated the unauthorized practice of law by a domestic limited liability company. Hearing has not been scheduled.

**Kenneth B. Holmes – 18 DHC 34**

It is alleged that Holmes, of Statesville, misappropriated and mismanaged entrusted funds. It is also alleged that Holmes did not communicate with, neglected, and borrowed money from a client and engaged in criminal conduct by becoming a surety. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Richard Batts – 18 DHC 35**

It is alleged that Batts, of Edgecomb and Nash counties, did not communicate with his client, did not notify his client of her duly-noticed deposition, did not cooperate in scheduling mandatory mediation, did not appear at a scheduled court hearing, did not respond timely to discovery requests and did not comply with court orders regarding discovery. Hearing has not been scheduled.

**Robert Lewis – 18 DHC 36**

Lewis, of Raleigh, was sanctioned by the bankruptcy court because he did not file required pleadings, filed pleadings containing false and misleading representations, charged an impermissible fee, did not maintain a client ledger of entrusted funds, affixed his clients' electronic signatures to pleadings and other documents without their consent, did not adequately communicate with his clients and disobeyed the rules of a tribunal. It is alleged that Lewis also violated multiple trust account rules and did not report his misconduct to the State Bar as he was ordered by the bankruptcy court to do. Hearing has not been scheduled.

**Jonathan Hunt – 18 DHC 37**

It is alleged that Hunt, of Durham, falsified dates on certificates of service. Hearing has not been scheduled.

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

There are no pending uncontested petitions for reinstatement or stay.

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

**Tracey Cline – 12 DHC 22 & 17 BSR 8**

Cline was the elected district attorney of Durham County until she was removed from office pursuant to 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 balance upon demonstrating compliance with enumerated conditions. Cline filed a petition for a stay but did not appear at the hearing on that petition. The DHC denied the petition on December 20, 2017. On December 20, 2017, Cline filed a second petition for a stay of the suspension. The DHC denied the second petition after a hearing on April 6, 2018. Cline next filed a petition for reinstatement or stay on June 1. Hearing on the third petition has not been scheduled.

**Pending Motions to Show Cause**

**Darryl G. Smith – 16DHC 28**

In November 2016, the DHC suspended Smith for three years for trust account mismanagement. The suspension was stayed for three years upon Smith’s compliance with numerous conditions. In January, the State Bar sought an order to show cause, alleging that Smith did not comply with the conditions. Hearing was continued and has not been rescheduled.

**Pending Surrenders to the Council**

No lawyers are expected to surrender to the Council at the July meeting.

**APPEALS IN DISCIPLINE CASES**

**Completed Appeals**

**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 on October 16, 2017. The transcript was delivered but Dorman did not serve a proposed record on appeal. The State Bar moved to dismiss. The DHC dismissed the appeal on June 13, 2018. The OOC represented the State Bar.

## Pending Appeals

### **NCSB v. Christopher Livingston - 15 DHC 15**

In July 2016, the DHC suspended Livingston, of Bladen County, for five years. After he serves two years of the suspension, he 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. On December 19, 2017, the Court of Appeals affirmed in a published opinion. Livingston appealed to the Supreme Court and petitioned for discretionary review. The State Bar moved to dismiss the appeal and to deny discretionary review. On May 21, 2018, the Supreme Court dismissed the appeal and denied discretionary review. Livingston's deadline to petition the United States Supreme Court for writ of *certiorari* is August 20, 2018. The OOC represents the State Bar.

### **Robert N. Weckworth, Jr. – 16 DHC 22**

In October 2017, the DHC censured Greensboro attorney Robert Weckworth. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. Weckworth gave notice of appeal on November 17, 2017 and served his proposed record on appeal on May 14, 2018. The State Bar served its objections on June 11, 2018. Weckworth must file his record on appeal with the Court of Appeals by August 10, 2018. The OOC represents the State Bar.

**In Re Phillip Entzminger (Pitt County Superior Court).** The Pitt County Superior Court issued an order for Entzminger, an assistant district attorney in Pitt County, to show cause why he should not be held in criminal contempt and why he should not be disciplined for violating the Rules of Professional Conduct. The show cause order alleged that Entzminger filed a document that showed disregard for the dignity of the court, demonstrated undignified and discourteous conduct that was degrading to the court and that bred disrespect for the court and the legal profession, and made false statements to the court. The court appointed the State Bar to prosecute. On April 30, 2018, the court acquitted Entzminger on the contempt charges but found his conduct violated the Rules of Professional Conduct. The court suspended Entzminger for two years with the possibility of a stay after serving six months active suspension, on compliance with enumerated conditions. Entzminger appealed and petitioned the Court of Appeals for a writ of *supersedeas*. On June 13, 2018, the Court of Appeals granted his petition for writ of *supersedeas*. Entzminger ordered the transcript and must serve a proposed record 35 days after the transcript is delivered.

## TRUST ACCOUNT COMPLIANCE PROGRAM

Forty-six lawyers have successfully completed the TAC Program since its inception. Peter currently supervises thirteen participants and will continue to supervise those participants until he moves to the fourth floor in October. Leonor has graciously agreed to become the new Trust Account Compliance Counsel. She has begun reviewing reports from last quarter's random audits to evaluate potential candidates for the TAC program.

## **AUTHORIZED PRACTICE**

The Authorized Practice Committee opened 10 new files this quarter. The committee will address 21 files at its July meeting.

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 of the State of North Carolina (US District Court, MDNC).** CAI is a trade association consisting of 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 opining that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. 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 damages but did seek attorney fees, "disbursements" and costs. The court allowed the State Bar to intervene. On September 19, 2017, the court granted summary judgment in favor of the State Bar on all claims. CAI appealed to the Fourth Circuit Court of Appeals. Oral argument will not occur before September 2018. Van Laningham Duncan represents the State Bar.

**North Carolina State Bar v. Michael Asen.** The Executive Committee authorized the Office of Counsel to file a lawsuit against Michael Asen, a New York attorney who offers to provide legal services in North Carolina to retail stores that have been victimized by shoplifters. The State Bar is currently negotiating a consent order.

**North Carolina State Bar v. Freedom Debt Relief.** The Executive Committee authorized the Office of Counsel to file a lawsuit against Freedom Debt Relief, a California business that offers debt adjusting to consumers. Freedom Debt relief has been sued in federal court in California by the Consumer Finance Protection Bureau (CFPB). The State Bar is monitoring that suit before pursuing the authorized claims.

**North Carolina State Bar v. National Debt Relief.** At the April 2018 meeting, the Executive Committee authorized the OOC to file a lawsuit against National Debt Relief, a New York entity that offers debt adjusting to consumers. On May 24, 2018, National Debt Relief lawyers met with the OOC to begin negotiating a resolution.

## Prepaid Legal Services Plan Registration

Five proposed prepaid legal services plans submitted applications for registration this quarter:

1. 17PP06 | National Access Plan - This plan was originally denied registration because the application did not list a North Carolina address; the proposed plan utilized a “forum selection clause” in its contracts that is not permitted in North Carolina; the proposed plan did not satisfy the requirement that the plan be purchased “in advance of any immediate need for the specified legal service.” 27 N.C.A.C. 1E, § .0303; and plan language suggested that attorneys participating in the proposed plan would be required to share confidential and privileged information with plan administrators. After taking the steps needed to cure these deficiencies, the plan was resubmitted for registration and has been registered.

2. 18PP02 | Legal Plus Plan – It was not clear from the initial registration that all legal services would be provided by licensed North Carolina attorneys. The applicant provided clarification and the plan has now been registered.

3. 18PP03 | Gun Owners’ Supplement Plan - It was not clear from the initial registration that all legal services would be provided by licensed North Carolina attorneys. The applicant provided clarification and the plan has now been registered.

4. 18PP05 | Debt Cleanse Plan - This proposed plan is still under review.

5. 18PP06 | Spanish Legal Plus Plan - This proposed plan is still under review.

## OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

**Christopher Livingston v. North Carolina State Bar et al (US District Court for the Eastern District of NC).** Livingston filed this action on January 9, 2018 alleging that he was required to pay mandatory dues to the 13<sup>th</sup> Judicial District Bar, that such dues were unnecessary, and that the dues were used for purposes with which he disagreed. He purports to assert claims under 42 U.S.C. §§ 1983 and 1988 for injunctive relief and claims for actual and punitive damages for alleged violations of the Fifth and Fourteenth Amendments to the United States Constitution and the Law-of-the-Land and Equal Protection clauses of the North Carolina constitution. The State Bar was served with the complaint on April 5, 2018. On April 12, 2018, Livingston served an amended complaint alleging that, in 15 DHC 15, he was selectively prosecuted resulting in the suspension of his law license for five years. The amended complaint includes new defendants Lee Bettis, who was a witness in the DHC case, Leonor Hodge, who prosecuted the DHC case for the State Bar, and President John Silverstein. The caption of the amended complaint does not include the District Bar as a defendant. Hodge and Bettis were served on July 9, 2018. The State Bar’s motion to dismiss pursuant to N.C. Gen. Stat. 1A-1, Rules 12(b)(1) and 12(b)(6) is pending. The OOC represents the State Bar.

**Eugene Boyce v. North Carolina State Bar (Wake County Superior Court).** Boyce alleged that on an unnamed date, he filed a grievance with the State Bar against now Governor of North Carolina Roy Cooper for conduct that allegedly occurred in 2000 when Cooper was a political candidate running against Boyce’s son to become Attorney General of North Carolina. Boyce sought 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. He

also sought an award of costs. On May 6, 2016, the trial court granted the State Bar's motion to dismiss. Boyce appealed to the North Carolina Court of Appeals. On April 3, 2018, the Court of Appeals affirmed the trial court's conclusion that Boyce does not have standing to bring his claim against the State Bar. The Court also held that Boyce does have standing to seek a declaratory judgment that the Superior Court has concurrent jurisdiction over attorney discipline, and remanded to the trial court for further proceedings. The State Bar requested a status conference with the trial court and Boyce concurred. No conference date has been set. The State Bar was represented by Parker Poe Adams and Bernstein in the trial court before the appeal, was represented by the OOC on appeal, and will be represented by the OOC on remand.

**Lena Watts-Robinson v. North Carolina State Bar and Disciplinary Hearing Commission (Wake County Superior Court).** Watts-Robinson was disbarred by the DHC on December 4, 2014. On December 1, 2017, she filed a lawsuit against the State Bar and the DHC alleging negligent misrepresentation and negligent infliction of emotional distress, asserting that the State Bar was negligent in its argument before the DHC and that the DHC was negligent in its order of discipline. On June 14, 2018, Watts-Robinson filed a notice of voluntary dismissal without prejudice. The Office of Counsel represented the State Bar and the Attorney General represented the DHC.

**Richard Polidi v. Colon Willoughby et al (Wake County Superior Court).** Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. He filed this action in July 2017 against Katherine Jean in her official and individual capacities, against Colon Willoughby in his official and individual capacities, and against many others. It is unclear whether Polidi sued Willoughby in his official capacity as the former elected district attorney of Wake County or in his official capacity as a former State Bar councilor and current State Bar officer. Polidi makes vague, generalized allegations of wrongful conduct in connection with his decision to surrender his law license and consent to be disbarred. He has never served Willoughby or Jean.

**Richard Polidi v. Carmen Bannon (Wake County Superior Court).** Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. In July 2017, he filed this action against Deputy Counsel Carmen Bannon, in her official and individual capacities. Bannon represented the State Bar in the disciplinary proceedings against Polidi. Polidi makes vague, generalized allegations of wrongful conduct in connection with his decision to surrender his law license and consent to be disbarred. He has never served Bannon.

**Bayview Loan Servicing, LLC v. Donald H. Bumgardner, et al (Gaston County Superior Court).** Bayview alleges that it is the assignee and the holder of a note and a deed of trust on real property previously owned by Bumgardner. Bumgardner was disbarred in 2015 for stealing entrusted funds. Bayview alleges that it foreclosed and was the high bidder at the foreclosure sale. Bayview seeks a judgment that a defect in the notice of foreclosure does not affect its first lien position and seeks a declaration that its lien against the property remains prior to the liens of all named defendants. Bayview sued the State Bar because the State Bar obtained two judgments against Bumgardner totaling approximately \$123,000 for funds paid by the Client Security Fund to Bumgardner's victims. Bayview does not seek affirmative recovery from any defendant. The OOC represents the State Bar.

**James Ronald Peggs v. North Carolina State Bar (NC Industrial Commission).** This is a purported tort claim against numerous defendants. Peggs identifies himself as trustee of a purported trust formed in an effort to defeat a foreclosure. Peggs alleges 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. He alleges that the clerk of court and lawyers for the trustee were agents of the State Bar but alleges no facts that could sustain that theory. Peggs alleges no acts or omissions by the State Bar. The deputy commissioner dismissed the complaint on January 12, 2017. The Full Commission affirmed on September 21, 2017. Peggs appealed but did not perfect the appeal. The Full Commission denied the State Bar's motion to dismiss the appeal. The Attorney General represents the State Bar.

**Ballentine International Express Trust/Trustee Board by Trustee v. State of North Carolina et al (NC Industrial Commission).** This is a purported tort claim against numerous defendants. Ballentine is a purported trust formed in an effort to defeat a foreclosure. Ballentine alleges 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. Ballentine alleges that two defendants are agents of the State Bar because they are licensed to practice law in North Carolina but alleges no facts that could sustain that theory. Ballentine alleges no acts or omissions by the State Bar. The deputy commissioner dismissed all claims against all defendants on his own motion. The Full Commission held that the deputy commissioner lacked authority to dismiss the claim against the State Bar on his own motion and remanded to the deputy commissioner. Meanwhile, the petitioner appealed dismissal of the claims against the other defendants to the North Carolina Court of Appeals. The Court of Appeals dismissed the appeal. The State Bar's motion to dismiss is pending in the Industrial Commission. The Attorney General represents the State Bar.

**HGGLBT International Trust v. State of North Carolina et al (NC Industrial Commission).** This is a purported tort claim against numerous defendants. HGGLBT is a purported trust formed in an effort to defeat a foreclosure. HGGLBT alleges 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. HGGLBT alleges that another defendant is licensed to practice law in North Carolina and is therefore an agent of the State Bar but alleges no facts that could sustain that theory. HGGLBT alleges no acts or omissions by the State Bar. The deputy commissioner dismissed the claim against the State Bar. HGGLBT appealed to the Full Commission but did not file a brief. The State Bar will file its brief shortly. The Attorney General represents the State Bar.

**State v. Wallace Bradsher, 17 CRS 1878 (Wake County).** Defendant Bradsher issued a subpoena for State Bar Counsel Katherine Jean to testify in this criminal trial. The OOC filed a motion to quash based on grounds of confidentiality and privilege. The Superior Court granted the motion to quash on June 7.

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

There are 27 new claims on the agenda for the Board's July 26 meeting. Two lawsuits are pending in district and superior courts seeking reimbursement from disbarred lawyers for payments made by the CSF.



## **Disbursement Cases**

The OOC obtained court orders granting permission to disburse a total of \$122,330.55 from the frozen trust accounts of two disbarred, deceased or missing lawyers. The OOC filed two motions seeking approval of other recommended disbursements.

## **Trusteeships**

Trustees were appointed to wind down the practice of deceased lawyer **Raymond Mason Taylor** of Raleigh and the practices of **Susan R. Franklin** of Chapel Hill and **Calvin Columbus Craig, III** of Raleigh who are currently 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**

There were no completed appeals in the state and federal courts this quarter.

### **Pending Appeals**

There are no pending appeals in the state and federal Courts this quarter.

## **LEGISLATIVE LIAISON**

The State Bar continues to monitor and engage with the North Carolina General Assembly through its legislative liaison. The legislature concluded its "short session" in June, which included minor revisions to judicial districts and several proposed constitutional amendments to be voted on in the November election.

## **PERSONNEL**

Brian Oten became the new Director for Ethics and Special Programs on July 1, 2018. Peter will become the new Assistant Director and Director for Management, Finance, and Communications on October 1, 2018. Brian and Peter have been cherished members of the OOC and will be sorely missed. Fortunately, Leonor Hodge has graciously agreed to take over for Peter as Trust Account Compliance Counsel. In this role, Leonor will supervise all participants in the TAC program as well as all DHC defendants serving stayed suspensions for trust account violations. Moniqua Baker joined the OOC as TAC Specialist. She will work with Leonor and Jeff Lundgren administering the expanded TAC program. Moniqua is a certified paralegal who comes to the State Bar from a Raleigh law firm. Alex Nicely joined the OOC as a deputy counsel on June 18. Alex came to the State Bar after serving as an assistant district attorney in the 5<sup>th</sup> Prosecutorial District. He also worked as an ADA in the 13<sup>th</sup> Prosecutorial District, was briefly in private practice, and served as an assistant public defender. The OOC looks forward to welcoming Savannah Perry as our newest deputy counsel after she passes the July Bar exam. Savannah is a 2018 graduate of Campbell University School of Law. The OOC is seeking to hire a litigation paralegal.

## **MISCELLANEOUS**

Maria regularly presents at the NC Bar Association's Professionalism for New Attorneys programs.

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

Leonor continues to serve on the NCBA Professionalism Committee and on the 10<sup>th</sup> 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. She also serves as a mentor 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.

Katherine continues to serve on the NCBA Professionalism Committee.