

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
OCTOBER 26, 2018**

ATTORNEY CLIENT ASSISTANCE PROGRAM

The ACAP staff responded to 2,801 phone calls from members of the public and contacted 650 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 707 emails and 533 letters from inmates. During the same quarter of 2017, staff responded to 3,320 phone calls, contacted 921 lawyers and responded to 790 emails and 584 letters from inmates.

The office received 133 requests for fee dispute resolution during the quarter. One hundred-fourteen files were assigned to the two State Bar facilitators. The remaining 19 files were assigned to district bar committees. During the same quarter in 2017, the office received 148 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 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, 1027 grievance files have been opened.

As of October 19, 955 grievances were pending. One hundred-eight grievances were stayed. Thirty-eight 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 201 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 608 files in which no recommendation has yet been made, 144 were more than six months old. Since the July 2018 meeting, 206 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

The office received no advertising inquiries this quarter.

DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

The OOC completed 10 discipline and disability cases involving 10 lawyers in the DHC this quarter.

Brent King – 17 DHC 8

King, of Huntersville, violated multiple trust account rules. The DHC suspended him for two years. The suspension is stayed for two years upon King's compliance with numerous conditions.

Joseph Forbes – 17 DHC 19

Forbes, of Elizabeth City, violated multiple trust account rules. The rule violations were established by default. The DHC suspended Forbes for three years. After serving six months active suspension, Forbes will be eligible to petition for a stay of the remaining suspension upon showing compliance with numerous conditions.

Carson W. Freeman – 17 DHC 35

Freeman, of Charlotte, misappropriated entrusted funds and committed other trust account violations. She was disbarred by the DHC.

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. He was disbarred by the DHC.

Paige C. Cabe – 18 DHC 2

Cabe, of Sanford, embezzled 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 was disbarred by the DHC.

Thomas S. Hicks – 18 DHC 9

Hicks, of Wilmington, abandoned several clients, did not refund unearned fees when he was suspended by the DHC in 15 DHC 16, and did not respond to the Grievance Committee. The DHC suspended him for three years effective immediately upon the expiration of the five-year suspension imposed in 15 DHC 16.

Joseph Eric Altman – 18 DHC 15

Altman, of Rockingham, violated multiple trust account rules. Altman also 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. He was suspended by the DHC for two years. The suspension is stayed for three years upon Altman's compliance with numerous conditions.

James N. Jorgensen – 18 DHC 27

Jorgensen, of Raleigh, neglected clients, 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. The DHC suspended him for three years. The suspension is stayed for three years upon Jorgensen's compliance with numerous conditions.

Alvaro De La Calle – 18 DHC 29

De La 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. He surrendered his license and was disbarred by the DHC.

Jonathan Hunt – 18 DHC 37

Hunt, of Durham, falsified dates on certificates of service. The DHC suspended him for one year. The suspension is stayed for three years upon Hunt’s compliance with numerous conditions.

Completed Surrenders to the Council

No lawyers surrendered to the Council at the July 2018 meeting.

Completed Discipline and Disability Proceedings in the Courts

A. Scott Hamilton of Henderson surrendered his law license and was disbarred by the Wake County Superior Court. Hamilton acknowledged that he misappropriated entrusted funds totaling at least \$3122.50.

Lawrence Wittenburg of Cary surrendered his law license and was disbarred by the Wake County Superior Court. Wittenberg acknowledged that he misappropriated at least \$170,000 to which his law firm was entitled by cashing attorney fee checks for services performed while he was a salaried employee of the firm.

The Martin County Superior Court suspended the law license of **David E. Gurganus** of Williamston. Gurganus is disabled by a condition that renders him unavailable to perform legal services for his clients.

Orders of Reciprocal Discipline

The Chair of the Grievance Committee issued an Order of Reciprocal Discipline reprimanding **George Robert Blakey** of Paradise Valley, Arizona. In 2015, the District of Columbia Office of Bar Counsel issued a public informal admonition to Blakey for knowingly assisting his client in revealing confidences and secrets or using a confidence or secret to the disadvantage of a former client/employer.

Transfers to Disability Inactive Status

Wendelyn R. Harris of Virginia, formerly of Raleigh, was transferred to disability inactive status by the DHC.

Interim Suspensions

No orders of interim suspension were issued this quarter.

Completed Petitions for Reinstatement/Stay - Uncontested

Heather Anne Shade of Fairview was reinstated to active status from disability inactive status.

Completed 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. Also 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 filed a third petition for reinstatement or stay on June 1, 2018. The DHC reinstated Cline to active status after a hearing held on August 27, 2018.

R. Kelly Calloway, Jr. – 16 DHC 3 & 16 DHC3R2

In October 2016, Calloway, of Hendersonville, was suspended for four years for failing to file and pay state taxes in 2009 and failing to file or pay withholding and unemployment taxes for six years. He was eligible to petition for a stay of the balance after serving a year of active suspension. Following a hearing on March 2, 2018, the DHC denied Calloway's petition for a stay because he did not show by clear, cogent and convincing evidence that he met all requirements. The DHC modified the original order of discipline to allow Calloway to petition for a stay after six months upon showing compliance with modified conditions. The DHC granted his second petition for stay effective September 13, 2018.

Completed Motions to Show Cause

Robert M. Donlon – 17 DHC 22SC

In August 2017, the DHC suspended Donlon's license for one year and stayed the suspension for two years on numerous conditions. The DHC concluded that Donlon threatened to expose embarrassing or incriminating information about attorneys in a firm that had brought a lawsuit against him in order to intimidate them into paying legal fees he incurred defending the lawsuit. The DHC concluded that Donlon did not comply with the conditions of the stay. On October 18, 2018, it lifted the stay and activated the suspension. After serving six months active suspension, Donlon will be eligible to apply for a stay of the balance.

TROs and Preliminary Injunctions

The Wake County Superior Court issued preliminary injunctions prohibiting **David H. Caffey** of Raleigh and **David E. Gurganus** of Williamston from handling entrusted funds.

In May 2017, the Wake County Superior Court issued a preliminary injunction prohibiting **Charles R. Gurley** of Goldsboro from handling entrusted funds. In November 2017, Gurley was held in contempt of court for failing to turn over records as required by the injunction. Thereafter, the Wake County Superior Court issued a preliminary injunction prohibiting Gurley from practicing law until he had fully cooperated with the State Bar's investigation and complied with the State Bar's demands for information. After three contested hearings on the issue of whether Gurley has fully cooperated and complied, Gurley remains enjoined from practice. The next hearing is scheduled for October 29, 2018.

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.

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.

Arnold O. Jones – 18 DHC 3

Jones, of Goldsboro, 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 is scheduled for November 2.

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 rule violations were established 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 was scheduled for October 8-9 but has been continued to allow Hoyle time to obtain new counsel.

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 was continued and has not been rescheduled.

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 & 18 DHC 14D

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 that she 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 was automatically transferred to disability inactive status when she raised the issue of disability in her responsive pleading. After hearing on August 24, Harris was continued on disability inactive status. The disciplinary action will remain stayed until Harris is returned to active status.

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 was continued and has not been rescheduled.

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. The discipline case is stayed because the panel ordered a disability proceeding pursuant to 27 N.C. Admin. Code 1B §.0122(c)(2). Hearing on disability 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 was continued. Daniel-Weeks presented information raising the issue of disability. The State Bar's motion for disability determination is pending.

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. It is also 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 been served. Hearing was continued and has not been rescheduled.

Venus Yvette Springs – 18DHC 25

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

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 was continued to allow for a forensic psychological evaluation.

Mary March Exum – 18 DHC 31

Exum, of Asheville, was suspended for five years by the DHC effective July 12, 2017 for mishandling entrusted funds and other misconduct. It is alleged that while she was suspended, 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 is scheduled for February 28 and March 1, 2019.

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 Edgecombe 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 is scheduled for February 22, 2019.

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, disobeyed the rules of a tribunal and did not report his misconduct to the State Bar as the bankruptcy court ordered him to do. It is also alleged that Lewis violated multiple trust account rules. Hearing has not been scheduled.

Gary Leigh – 18 DHC 38

It is alleged that Leigh, of Shelby, misappropriated entrusted funds, structured banking transactions to avoid IRS reporting, and neglected two clients' personal injury cases. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

John Lafferty – 18 DHC 39

It is alleged that Lafferty, of Lincolnton, did not file tax returns from 2002 to present and did not timely respond to multiple letters of notice and follow up inquiries from the Grievance Committee. Hearing has not been scheduled.

Keith Booker – 18 DHC 40

Booker, of China Grove, is currently serving an active suspension imposed in 16 DHC 10. It is alleged that, while he was suspended, Booker did not refund an unearned fee, accepted fees from two new clients, and did not provide any services to those clients. Hearing has not been scheduled.

Patrick Megaro – 18 DHC 41

Megaro, of Orlando, Florida, represented two clients with IQs in the 50s who had spent three decades on death row after being wrongfully convicted of the rape and murder of an 11-year old girl. It is alleged that Megaro, *inter alia*, charged a “non-refundable” fee, made misrepresentations to his clients, made misrepresentations to various tribunals, aided others in the unauthorized practice of law, failed to act with diligence, and embezzled his clients’ money. Hearing has not been scheduled.

Meredith Ezzell – 18 DHC 42

It is alleged that Ezzell, of Wilmington, abandoned her law practice for several months due to addiction issues, did not provide legal services for which she was retained, did not communicate with her clients, collected excessive fees, did not protect her client's interests, misrepresented the services she would provide, engaged in conduct prejudicial to the administration of justice, aided a paralegal in the unauthorized practice of the law, and committed trust account violations. Hearing has not been scheduled.

Clinton Moore – 18 DHC 43

It is alleged that Moore, of Charlotte, neglected and did not communicate with clients, collected excessive fees, engaged in conduct involving deceit and misrepresentation, and obtained property by false pretenses. Hearing has not been scheduled.

John Hanzel – 18 DHC 44

It is alleged that Hanzel, of Cornelius, misappropriated entrusted funds. He is enjoined from handling entrusted funds. Hearing has not yet been scheduled.

Travis Simpson – 18 DHC 45

It is alleged that Simpson, of Winston-Salem, did not communicate adequately with and neglected multiple clients, dismissed a case without the client’s consent, did not respond to the Grievance Committee, and attempted to settle a potential malpractice claim without advising the former client to obtain independent legal advice. Hearing has not been scheduled.

Erica Erickson – 18 DHC 46

It is alleged that Erickson, of Pisgah Forest, committed notary fraud and destroyed documents with potential evidentiary value, both on multiple occasions, made misrepresentations to a court and misled unrepresented parties. Hearing has not been scheduled.

Susan M. Lynch - 18 DHC __

Lynch, of Raeford, represented both the buyer and the seller in multiple real estate transactions. It is alleged that Lynch did not communicate with her clients, did not disclose a conflict of interest, did not obtain written informed consent to the conflict, did not exercise independent judgment and render candid advice to her clients, made false statements of material fact or law, engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and engaged in conduct prejudicial to the administration of justice. 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

Elisabeth Murray-Obertein of Morganton petitioned to be reinstated to active status from disability inactive status. The DHC held a hearing on September 26, 2018 and intends to reconvene.

Theodore G. Hale – 04 DHC26 & 18 BCR 1

Hale, of Wilmington, petitioned for reinstatement from disbarment. He was disbarred in 2004 for misappropriating entrusted funds. Hearing is scheduled for December 7.

Pending Motions to Show Cause

Robert M. Donlon – 17DHC22

In August 2017, the DHC suspended Donlon for one year for threatening and harassing a law firm to recoup legal fees he incurred in defending a malpractice action the firm brought against him. The suspension was stayed for two years upon Donlon's compliance with numerous conditions. The State Bar alleges that Donlon did not comply with the conditions and seeks to lift the stay and activate the suspension. Hearing is scheduled for October 17.

Charles L. Morgan, Jr. – 18CVS02796 (Wake County Superior Court)

On October 17, 2018 the State Bar filed a motion for order to show cause in Wake County Superior Court. It is alleged that Morgan handled entrusted funds in violation of an injunction entered on March 6, 2018. The State Bar seeks an order requiring Morgan to appear and show cause why he should not be held in criminal contempt.

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. The State Bar alleges that Smith did not comply with the conditions and seeks to lift the stay and activate the suspension. Hearing was continued and has not been rescheduled.

Pending Surrenders to the Council

Fletcher R. Hartsell, Jr. of Concord submitted his affidavit of surrender of law license for consideration by the Council. Hartsell pled guilty and was convicted in federal and state court to (1) mail fraud in violation of 18 U.S.C. §§ 1341 and 1342; (2) filing false tax returns for the year 2010 in violation of 26 U.S.C. § 7206(1); and (3) certifying and filing false campaign reports with the North Carolina State Board of Elections in violation of N.C. Gen. Stat. § 163-278.32.

Trevor Huck of Albemarle submitted his affidavit of surrender of law license for consideration by the Council. Huck pled guilty on September 5, 2018 to the felony offense of receipt of child pornography in federal court.

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed 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. The Court of Appeals affirmed in a published opinion. The North Carolina Supreme Court granted the State Bar's motion to dismiss Livingston's appeal and denied discretionary review. Livingston did not petition the United States Supreme Court for writ of *certiorari* by the August 20, 2018 deadline. The OOC represented the State Bar.

Pending Appeals

Robert N. Weckworth, Jr. – 16 DHC 22

In October 2017, the DHC censured Robert Weckworth of Greensboro. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. Weckworth appealed. His brief is due October 28, 2018. The OOC represents the State Bar.

In re Phillip Entzminger (Pitt County Superior Court). The Pitt County Superior Court ordered 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 showing 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 concluded that he violated the Rules of Professional Conduct. The court suspended Entzminger for two years with the possibility of a stay of the balance after he serves six months active suspension. Entzminger appealed. The Court of Appeals granted his petition for writ of *supersedeas*. Entzminger timely submitted his proposed record on appeal.

In re Tony Sami Botros, 18 R 439 (Wake County). The Wake County Superior Court ordered Botros to show cause why he should not be disciplined or transferred to disability inactive status due to his inability to effectively represent clients in court. After hearings on June 1 and June 6, the court entered an order transferring Botros to disability inactive status. Botros gave notice of appeal. Botros timely served his proposed record on appeal.

TRUST ACCOUNT COMPLIANCE PROGRAM

Forty-six lawyers have successfully completed the TAC Program since its inception. Leonor currently supervises seventeen participants. Leonor also monitors twenty-four case files in which the DHC imposed stayed suspensions with trust account compliance conditions and oversees compliance with random audit corrections.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 13 new files this quarter. The committee will address 20 files at its October 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 is tentatively scheduled for the December 10-13 session of court. Van Laningham Duncan represents the State Bar.

North Carolina State Bar v. Michael Asen. At the July 2017 meeting, 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. At the October 2017 meeting, 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. The OOC is negotiating a consent resolution.

North Carolina State Bar v. Linh Quach. At the July 2018 meeting, the Executive Committee authorized the OOC to file a lawsuit against Linh Quach, a woman in Charlotte who has been providing legal services related to immigration matters, mostly to Vietnamese immigrants. The complaint was filed on September 17, 2018. Quach's answer is due October 19, 2018.

Prepaid Legal Services Plan Registration

One proposed prepaid legal services plan applied for registration last quarter: 18PP05, Debt Cleanse Plan. The application was denied because the materials 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. The Debt Cleanse Legal Plan materials all indicate that the plan’s services may be used for debts that are already in existence.

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 13th 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, and President John Silverstein. Motions to dismiss are pending. The OOC represents the State Bar, Hodge and Silverstein.

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 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 impair its first lien position and seeks a declaration that its lien 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 court granted Bayview’s motion for judgment on the pleadings. The OOC represented 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 Office of Counsel on appeal, and will be represented by the OOC on remand.

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, Colon Willoughby in his official and individual capacities, and 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.

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. HGGBLT 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. HGGBLT 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.

Client Security Fund Claims/Subrogation Cases

There are 18 new claims on the agenda for the Board's October 25 meeting. Three lawsuits are pending in district and superior courts seeking reimbursement from disbarred lawyers for payments made by the CSF.

Disbursement Cases

This quarter, the OOC disbursed to clients a total of \$40,027.30 from the frozen trust accounts of eight disbarred, deceased or missing lawyers. The OOC also escheated \$30,026.56 from the frozen trust accounts of ten disbarred, deceased or missing lawyers for clients that could not be located.

Trusteeships

Trustees were appointed to wind down the practices of deceased attorneys **Chester E. Whittle** of Boone, **Paul Vancil** of Chapel Hill, **Donald Ray House** of Winston Salem, and to wind down the practice of **David E. Gurganus** of Williamston, who has been transferred to disability inactive status.

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 engage with and follow the activities of the North Carolina General Assembly through its legislative liaison. The legislature will reconvene briefly after the November election and again for the "long session" session in January.

PERSONNEL

Michael Shirley joined the office as a paralegal. He is a 2015 graduate of Appalachian State University and completed the paralegal certificate program at Duke in 2018. Prior to joining the State Bar, he worked as a legal assistant at a law firm in Raleigh.

Savannah Perry joined the office as a deputy counsel. She is a 2018 graduate of Campbell Law and was Professor Walthall's teaching assistant.

MISCELLANEOUS

Maria regularly presents at NCBA 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 Professionalism for New Attorneys programs and other CLEs. Josh also recently joined the Board of Governors of a local secondary school.

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. Leonor guest lectured on trust account management to Carmen's UNC Law professional responsibility class. She also presented at the WCBA and MCBA Professionalism for New Attorneys programs.

Mary serves on the 10th Judicial District Bar Memorial Committee.

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 Law. She is active on the WCBA/10th Professionalism and Bar Awards Committees and is one of the candidates for President-Elect in the upcoming WCBA and 10th District Bar elections.

Jennifer volunteers as a judge for the Capital Area Teen Court diversion program and as a judge for collegiate mock trial competitions.

Katherine continues to serve on the NCBA Professionalism Committee.