

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
JANUARY 18, 2019**

ATTORNEY CLIENT ASSISTANCE PROGRAM

The ACAP staff responded to 2,767 phone calls from members of the public and contacted 586 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 796 emails and 522 letters from inmates. During the same quarter of 2017, staff responded to 3,136 phone calls, contacted 972 lawyers and responded to 663 emails and 559 letters from inmates.

The office received 146 requests for fee dispute resolution during the quarter. One hundred twenty-eight files were assigned to the two State Bar facilitators. The remaining 18 files were assigned to district bar committees. During the same quarter in 2017, the office received 148 requests for fee dispute resolution of which 125 files were assigned to State Bar facilitators and 23 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. In 2018, 1,247 grievance files were opened. Since January 1, 2019, 54 grievance files have been opened.

As of January 2, 883 grievances were pending. 135 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 106 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 600 files in which no recommendation has yet been made, 149 were more than six months old. Since the October 2018 meeting, 192 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

The committee received one advertising complaint and opened a grievance file to conduct an investigation.

DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

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

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. He was suspended by the DHC for five years.

Jeffrey Warren Ellingworth – 18 DHC 4

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. The DHC suspended him for four years. After serving two years active suspension, Ellingworth will be eligible to apply for a stay of the remaining two years upon showing compliance with numerous conditions.

Tania L. Leon – 18 DHC 5

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. The DHC suspended her for two years. The suspension is stayed for two years upon Leon’s compliance with numerous conditions.

Hubert N. Rogers, III – 18 DHC 22

The DHC found that Rogers, of Lumberton, violated multiple trust account rules and suspended him for two years. The suspension is stayed for four years upon Rogers’ compliance with numerous conditions. He is enjoined from handling entrusted funds.

Completed Surrenders to the Council

Fletcher R. Hartsell, Jr. of Concord submitted his affidavit of surrender of law license and was disbarred by the Council on October 26. Hartsell pled guilty and was convicted of (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 and was disbarred by the Council on October 26. Huck pled guilty and was convicted of the felony offense of receipt of child pornography in violation of 18 U.S.C. § 2252A(a)(2)(A) and (b)(2).

Completed Discipline and Disability Proceedings in the Courts

Andrew Craig Jackson, Jr. of West Jefferson surrendered his law license and was disbarred by the Wake County Superior Court. Jackson installed a video camera in the bathroom of his law office for the purpose of secretly recording individuals using the bathroom without their knowledge or consent.

Orders of Reciprocal Discipline

No orders of reciprocal discipline were entered this quarter.

Transfers to Disability Inactive Status

No lawyers were transferred to disability inactive status this quarter.

Interim Suspensions

The Chair of the DHC entered an order of interim suspension against **Steven P. MacGilvray** of Raleigh. On October 26 MacGilvray pled guilty to misdemeanor larceny.

Completed Petitions for Reinstatement/Stay - Uncontested

No uncontested petitions were completed this quarter.

Completed Petitions for Reinstatement/Stay - Contested

Elisabeth Murray-Obertein of Morganton petitioned to be reinstated to active status from disability inactive status. The DHC entered an order on December 6, 2018 that will reinstate Murray-Oberte in to active status if she satisfies enumerated conditions.

Shawn David Clark of Hickory petitioned for reinstatement from disbarment. He was disbarred in 2013 for having sex with a client, making false statements to a tribunal and to the Grievance Committee, suborning a witness to give false testimony, committing criminal acts including communicating threats and obstruction of justice, engaging in conduct involving deceit and misrepresentation, and engaging in a conflict of interest. The State Bar moved to dismiss the petition because it was filed before Clark was eligible to apply for reinstatement. Clark withdrew the petition but has indicated that he intends to refile.

Completed Motions to Show Cause

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

The Wake County Superior Court held Morgan, of Charlotte, in contempt and censured him pursuant to N.C. Gen. Stat. § 5A-12 for twice violating the court’s injunction that prohibited him from handling entrusted funds and that required him to produce financial records to the State Bar.

Scott Shelton – 16CVS13732 (Wake County Superior Court)

The Wake County Superior Court entered a consent order censuring Hendersonville lawyer Scott Shelton pursuant N.C. Gen. Stat. § 5A-12 for handling entrusted funds and failing to produce records in violation of an injunction entered in 2016.

TROs and Preliminary Injunctions

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 four contested hearings on the issue of whether Gurley has fully cooperated and complied, the court concluded that Gurley is still in contempt of court but nonetheless lifted the practice injunction.

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

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. 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. Hearing has not been scheduled.

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 January 31 and February 1.

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. On November 19, 2018, the State Bar filed a second amended complaint adding a second claim for relief for additional misconduct referred to the DHC by the Grievance Committee after the initial complaint was filed. 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 March 7-8.

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 blamed her non-lawyer assistant for these actions. Harris' assistant was 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. After a hearing on August 24, Harris was continued on disability inactive status. The disciplinary action will be stayed until Harris is returned to active status.

George L. Collins – 18 DHC 16

It is alleged that Collins, of Jacksonville, wrote a will making him the executor of his client's estate and charged the estate \$750.00 per hour, collecting over \$250,000.00 from the estate. It is alleged that, in the course of serving as the estate's executor, Collins charged an illegal or clearly excessive fee, 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 was continued and has not been rescheduled.

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.

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 is scheduled for April 4.

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 is scheduled for March 8.

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 in July 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.

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 is scheduled for April 11-12.

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 is scheduled for April 3-5.

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 discovery orders. Hearing is scheduled for February 22.

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 is scheduled for June 28.

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 Lincolnnton, 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 is scheduled for April 16-17.

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 a child. It is alleged that Megaro, *inter alia*, charged a "non-refundable" fee, charged an excessive 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 is scheduled for August 7-9.

Meredith Ezzell – 18 DHC 42

It is alleged that Ezzell, of Wilmington, abandoned her law practice for several months, 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 is scheduled for April 8-12.

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 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 47

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.

Steven P. MacGilvray – 18 DHC 48

MacGilvray of Raleigh pled guilty to misdemeanor larceny. The Chair of the DHC entered an order of interim suspension of his law license. The complaint has not been filed.

Dennis H. Sullivan, Jr. – 18 DHC 49

Sullivan, of Wilmington, was suspended by the DHC for three years in 12 DHC 1. The suspension was stayed for five years. Sullivan entered into a consent order lifting the stay and activating the suspension because he did not comply with conditions of the stay. It is alleged that, when the stay was lifted, Sullivan abandoned two clients, did not return unearned fees, did not respond to the Grievance Committee, and did not participate in good faith in the State Bar's fee dispute resolution process. Hearing has not been scheduled.

Carl D. Lee – 19 DHC 1

It is alleged that Lee, of Glendale, Arizona, mismanaged entrusted funds, did not reconcile his trust account, and did not maintain required trust account records. Hearing has not been scheduled.

Jerry Braswell – 19 DHC 2

It is alleged that Braswell, of Goldsboro, engaged in dishonest conduct by submitting false information to a federal court on a petition for admission *pro hac vice*. It is also alleged that Braswell did not notify his clients that his license to practice law is suspended. 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

Theodore G. Hale – 04 DHC 26 & 18 BCR 1

Hale, of Wilmington, petitioned for reinstatement from disbarment. He was disbarred in 2004 for misappropriating entrusted funds. Hearing is scheduled for February 9.

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

Katherine H. Pekman – 15 DHC 41

In February 2016, the DHC suspended Pekman for neglecting and failing to communicate adequately with a client, failing to promptly refund an unearned fee, failing to account for entrusted funds, and failing to respond to the State Bar. The suspension was stayed for three years. The State Bar alleges that Pekman did not comply with the conditions of the stay and seeks to lift the stay and activate the suspension. Hearing has not yet been scheduled.

Pending Surrenders to the Council

No lawyers have tendered affidavits of the surrender to the Council this quarter.

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed Appeals

No appeals were completed this quarter.

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. All briefs have been filed. 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, 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 of contempt but concluded that he violated the Rules of Professional Conduct. The court suspended Entzminger for two years with the possibility of a stay after he serves six months active suspension. Entzminger appealed. The Court of Appeals granted his petition for writ of *supersedeas*. The State Bar's brief is due February 4. The OOC represents the State Bar.

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. On June 8, 2018, the court entered an order transferring Botros to disability inactive status. Botros appealed. All briefs have been filed.

TRUST ACCOUNT COMPLIANCE PROGRAM

Forty-six lawyers have successfully completed the TAC Program since its inception. Leonor currently supervises twenty participants. Leonor also monitors twenty-four 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 17 new files this quarter. The committee will address 24 files at its January 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 was held on December 13, 2018. 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 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 agreed to stop engaging in the activities that constituted UPL and the Executive Committee withdrew its authorization to file suit at the October 2018 meeting.

North Carolina State Bar v. National Debt Relief. At the April 2018 meeting, the Executive Committee authorized the Office of Counsel to file a lawsuit against National Debt Relief, a New York entity that offers debt adjusting to consumers. The State Bar is negotiating a consent order.

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 OOC did file the complaint and Quach defaulted. The OOC is pursuing a default judgment.

Prepaid Legal Services Plan Registration

One proposed prepaid legal services plan applied for registration last quarter: 18PP05, Debt Cleanse Plan. The plan was not registered 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.

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 alleges 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. In April 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 5 years. The amended complaint includes new defendants Lee Bettis, a witness in the DHC case, Leanor Hodge, prosecutor in the DHC case, and former State Bar President John Silverstein. The caption of the amended complaint does not include the district bar as a defendant. Livingston’s motion to amend the complaint a second time and defendants’ motions to dismiss all claims are pending. The OOC represents the defendants.

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. In April, 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 of Appeals 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. On remand, the trial court held that only the first claim for relief, seeking a declaratory judgment "[t]hat concurrent jurisdiction of several types exists as to resolution of attorney discipline and misconduct issues," had been remanded. The trial court entered a declaratory judgment that the Wake County Superior Court and the North Carolina State Bar have concurrent jurisdiction over professional misconduct and discipline of attorneys. The trial court held that no issues of fact or law remain with regard to the second and third claims for relief. The trial court held that Boyce's only remaining claim is for an award of costs and, if Boyce files a motion for award of costs, the court will rule on it. The State Bar was represented by Parker Poe Adams and Bernstein in the original trial court proceedings, was represented by the OOC on appeal, and is 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, against Colon Willoughby in his official and individual capacities, and against many others. It is unclear whether Polidi sued Colon Willoughby in his official capacity as the former elected district attorney of Wake County or in his official capacity as a 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 Deputy Counsel Carmen Bannon, in her official and individual capacities. 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 alleged 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 alleged that it foreclosed, was the high bidder at the foreclosure sale, and became the record owner of the property. Bayview sought a declaratory judgment that a defect in the notice of foreclosure does not affect its ownership interest in the property and that all other liens against the Bumgardners do not apply to the property. Bayview sued the State Bar because the Client Security Fund obtained two judgments against Bumgardner totaling approximately \$123,000 for funds paid to Bumgardner's victims after the foreclosure. Bayview did not seek affirmative recovery from the State Bar. The court entered judgment for Bayview on October 8, 2018. The OOC represented 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 but allowed the State Bar's motion to dismiss the tort claim. The Attorney General represented 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 filed a brief. The Full Commission held oral argument on October 18. The Attorney General represents the State Bar.

Valerie Arroyo v. Daniel Zamora, Chad Diamond, North Carolina State Bar Association et al (U.S. District Court, WDNC). Arroyo filed a grievance that was dismissed. Her petition for contested case hearing at the Office of Administrative Hearings was dismissed. She filed this action against two lawyers, "the North Carolina State Bar Association," the Mecklenburg County Clerk of Court, the Judicial Standards Commission, the Ethics Commission and NCDOJ. The complaint was dismissed as frivolous before the State Bar learned it had been filed. Arroyo's motions for reconsideration and to vacate, alter and amend the judgment were denied. The court entered a gatekeeper order against Arroyo. In September 2018, Arroyo gave notice of direct appeal to the United States Supreme Court. Her appeal does not appear on the Supreme Court's docket.

Client Security Fund Claims/Subrogation Cases

There are 31 new claims on the agenda for the Board's January 16 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 obtained an order in Superior Court directing the disbursement of \$43,508.51 from the frozen trust account of a suspended lawyer.

Trusteeships

Trustees were appointed to wind down the practices of deceased attorneys **Christopher Allen White** of Charlotte, **Thomas H. Stark** of Chapel Hill, and **Rhonda Register Moorefield** of Asheville.

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 for a "long session" in January.

PERSONNEL

Vee Martin joined the OOC as an investigative clerk. She has a bachelor's degree in mathematics, theater and statistics from UNC Wilmington. She has banking and teaching experience. Vee will support investigators in a variety of ways, including by entering financial data into spreadsheets in preparation for forensic audits.

Mary Lee joined the OOC as Trust Account Compliance paralegal. Mary has a bachelor's degree in psychology from NC State and over 10 years of paralegal experience in North Carolina and Georgia. Mary will work most closely with Leonor.

Regina Wheeler resigned as deputy counsel in October.

Cameron Lee will join the OOC on February 11 as deputy counsel. He is a graduate of NC State and Campbell Law and comes to the State Bar after working with McMillan and Smith in Raleigh where he has an active criminal law practice.

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 vice chair.

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. In the last quarter, she performed in the WCBA's annual Bar Awards show to benefit Legal Aid and planned and presented an ethics CLE for the WCBA's Professionalism Committee. In December, Carmen was elected as President-Elect of the Wake County Bar Association.

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.

Barry and Investigator Doug Miller have been working with Investor's Title to host wire fraud summits to prevent wire fraud affecting trust accounts and to educate lawyers and their staffs about scam prevention. The first summit was held on November 15, 2018 at the State Bar, and another summit is planned for April 11.