

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
APRIL 26, 2019**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

The ACAP staff responded to 3,118 phone calls from members of the public and contacted 787 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 1,024 emails and 797 letters from inmates. During the same quarter of 2018, staff responded to 4,478 phone calls, contacted 917 lawyers and responded to 681 emails and 644 letters from inmates.

The office received 146 requests for fee dispute resolution during the quarter. No fee disputes were assigned to local committees. During the same quarter in 2018, the office received 127 requests for fee dispute resolution of which 104 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, 397 grievance files have been opened.

As of April 15, 956 grievances were pending. One hundred thirty-one grievances were stayed. Eighty-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 155 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 588 files in which no recommendation has yet been made, 116 were more than six months old. Since the January 2019 meeting, 233 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

No advertising complaints were received this quarter.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

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

**Gavin A. Brown – 17 DHC 29**

Brown, of Waynesville, forged a notary's signature and affixed the notary's seal to a deed without authorization. He was suspended by the DHC for two years.

**Larry G. Hoyle – 18 DHC 6**

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. Hoyle also falsely represented to the court that a defendant for whom he took action in a criminal case at the behest of a bail bondsman was his client. He was censured by the DHC.

**James Goard – 18 DHC 11**

Goard, of Charlotte, was twice convicted of driving while impaired and committed a third driving while impaired offense involving a collision, advised and assisted an individual in drafting an affidavit while his law license was suspended, made misrepresentations to a client, and made misrepresentations during a disciplinary inquiry. He was suspended for five years. After serving two years active suspension, he may apply for a stay of the balance upon showing compliance with enumerated conditions.

**Venus Yvette Springs – 18 DHC 25**

The State Bar 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 maintained the publication after the court ordered her to take it down. The DHC announced that it will impose a reprimand but the order has not yet been entered.

**Christopher A. Stella – 18 DHC 28**

Stella, of Winston-Salem, committed criminal acts by patronizing a prostitute and filing a false police report about the incident. The DHC suspended him for three years. After serving 18 months of active suspension, Stella will be eligible to apply for a stay of the balance upon showing compliance with enumerated conditions.

**Mary March Exum – 18 DHC 31**

In file number 16 DHC 18, the DHC suspended Exum, of Asheville, for five years for mishandling entrusted funds and other misconduct. While she was suspended, Exum held herself out to the public and to former clients as able to practice law through Exum Consultants. Exum collected legal fees for legal services she said would be performed through attorneys hired and supervised by Exum Consultants. She was disbarred by the DHC.

**Ryan Shoaf – 18 DHC 33**

Shoaf, of Raleigh, facilitated the unauthorized practice of law by a domestic limited liability company. He was censured by the DHC.

**Richard Batts – 18 DHC 35**

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. He was reprimanded by the DHC.

**John O. Lafferty, Jr. – 18 DHC 39**

Lafferty, of Lincolnton, surrendered his law license and was disbarred by the DHC. Lafferty acknowledged that he did not file federal and state tax returns and did not pay federal and state income taxes for seventeen years.

**Meredith Ezzell – 18 DHC 42**

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. The DHC suspended her for three years. The suspension is stayed for three years upon Ezzell's compliance with enumerated conditions.

### **Carl D. Lee – 19 DHC 1**

Lee, of Glendale, Arizona, mismanaged entrusted funds, did not reconcile his trust account, and did not maintain required trust account records. He was suspended by the DHC for one year. The suspension is stayed for two years upon Lee's compliance with enumerated conditions.

### **Completed Surrenders to the Council**

**Charles K. Blackmon** of Greensboro surrendered his law license and was disbarred by the State Bar Council on January 18, 2019. Blackmon admitted that he misappropriated and converted to his own use funds totaling at least \$4,250 to which his law firm employer was entitled.

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

**Darin P. Meece** of Durham surrendered his law license and was disbarred by the Wake County Superior Court. Meece admitted that he misappropriated fiduciary funds totaling \$15,000.

**James M. Zisa** of Wilmington surrendered his law license and was disbarred by the Wake County Superior Court. Zisa admitted that he had sex with two clients, disclosed confidential client information, charged excessive fees, did not act with diligence and did not communicate with multiple clients, made a false statement to the State Bar, and did not respond to the Grievance Committee.

### **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 interim order suspending the law license of Hendersonville lawyer **H. Trade Elkins**. Elkins pled guilty to one count of wire fraud in violation of 18 U.S.C. § 1343, a class C felony. Elkins was sentenced to 24 months in prison followed by supervised release and was ordered to make restitution in the amount of \$545,738.90.

The Chair of the DHC entered an interim order suspending the law license of Mayodan lawyer **Hayley C. Sherman**. Sherman pled guilty to the state felony offenses of possession of marijuana with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a) (three counts); sale or delivery of marijuana in violation of N.C. Gen. Stat. § 90-95(a) (two counts); conspiracy to sell or deliver marijuana in violation of N.C. Gen. Stat. § 90-98 (two counts); maintaining a store, dwelling, vehicle, boat or other place for use, storage, or sale of controlled substances in violation of N.C. Gen. Stat. § 90-108(a)(7) (three counts); and one count of possession of a Schedule IV substance with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a); and to the state misdemeanor offense of possession of marijuana paraphernalia in violation of N.C. Gen. Stat. § 90-113.22(a) (two counts).

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

No uncontested petitions were completed this quarter.

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

**Shawn David Clark** of Hickory was disbarred in 2013 for having sex with a client, making false statements to a tribunal and to the Grievance Committee, attempting to suborn perjury, several criminal convictions including communicating threats and obstruction of justice, intentionally disclosing client confidences, and engaging in a conflict of interest. After a hearing on April 2, the DHC announced that it will deny his petition for reinstatement. The order has not yet been entered.

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

Hale, of Wilmington, was disbarred in 2004 for misappropriating entrusted funds. After a hearing on February 7, the DHC denied his petition for reinstatement.

In June of 2017, the Chair of the Grievance Committee entered a consent order transferring **Elisabeth Murray-Obertein** of Morganton to disability inactive status. In December 2018, the DHC entered an order that would reinstate her to active status if she satisfied enumerated conditions. She was reinstated to active status on March 11, 2019.

**Geoffrey H. Simmons** of Durham was disbarred in 2013 for embezzling entrusted funds. Hearing was scheduled for May 17 on his petition for reinstatement. On April 8, Simmons withdrew the petition.

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

#### **Katherine H. Pekman – 15 DHC 41**

In February 2016, the DHC suspended Pekman, of Hickory, for neglecting and failing to communicate with a client, failing to promptly refund an unearned fee, failing to account for entrusted funds, and failing to respond to the Grievance Committee. The suspension was stayed for three years. The DHC concluded that Pekman did not comply with the conditions of the stay and therefore granted the State Bar's motion to lift the stay and activate the suspension. The order provides that, after serving six months of active suspension, Pekman may apply for a stay of the balance upon demonstrating compliance with enumerated conditions.

#### **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 filed a petition alleging that Smith did not comply with the conditions of the stay and sought to lift the stay and activate the suspension. On January 11, the DHC entered a consent order continuing the stayed suspension under a plan of compliance that is acceptable to the State Bar.

### **TROs and Preliminary Injunctions**

The Wake County Superior Court issued preliminary injunctions prohibiting **Colin P. McWhirter** of Shelby, **Darin P. Meece** of Durham, **Edward A. Dunnivant** of Wilmington, **Sarah Jane Brinson** of Clinton, **Jonathan Brent Garner** of Rockingham, and **Robert C. Soles, Jr.** of Tabor City 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 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 DHC 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 interim order suspending his law license. The DHC 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 Blitzer's 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 interim order suspending his law license. The Office of Counsel will file the DHC complaint when it finishes reviewing the lengthy investigative report.

### **Phillip H. Hayes, Jr. – 17 DHC 27**

Hayes, of Point Harbor, was convicted of the felony of possession of Schedule II controlled substance (cocaine) in Currituck County Superior Court. Hayes purchased the cocaine and agreed to apply the purchase price to reduce the balance owed by a client for legal fees. The Chair of the DHC entered an interim order suspending his law license. The DHC complaint has not been filed.

**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 August 1-2.

**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**

Collins, of Jacksonville, wrote a will making himself executor of his client's estate. It is alleged that Collins charged the estate \$750 per hour, collecting over \$250,000, charged an illegal or clearly excessive fee, misrepresented the services he would provide, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, did not properly maintain and disburse fiduciary funds, embezzled, engaged in conduct prejudicial to the administration of justice, committed perjury, made a false statement of material fact to a tribunal, and made a false representation to the Grievance Committee. Hearing was continued and has not been rescheduled.

**David R. Payne – 18 DHC 18**

It is alleged that Payne, of Asheville, was convicted of a criminal offense showing professional unfitness by making a false statement to a bank. It is also alleged that Payne engaged in conflicts of interest through business transactions with a client and by serving as closing attorney for a loan to an entity in which he had an ownership interest, had contact with the former client when that client was represented by subsequent counsel, engaged in dishonest conduct, did not report and pay excise tax, made false statements to financial institutions, made false representations to the Grievance Committee, and did not respond to all inquiries of the Grievance Committee. The Chair of the Grievance Committee entered an interim order suspending Payne's law license. Hearing has not been scheduled.

**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 has not been scheduled.

**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.

**Kenneth B. Holmes – 18 DHC 34**

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

**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 is scheduled for May 15-17.

**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 is scheduled for June 12.

**Patrick Megaro – 18 DHC 41**

Megaro, of Orlando, Florida, represented two clients with IQs in the 50s, both of whom were sentenced to death and imprisoned for decades after being wrongfully convicted of the rape and murder of a child. They have now been exonerated. It is alleged that Megaro charged a "non-refundable" fee, charged an excessive fee, made misrepresentations to his clients, made misrepresentations to 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.

**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 is scheduled for August 12-13.

**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 claim that he committed malpractice without advising the former client to obtain independent legal advice. After a hearing on April 4, the DHC announced that it will suspend Simpson for three years. The order has not yet been entered.

**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 is scheduled for August 22-23.

**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, engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and engaged in conduct prejudicial to the administration of justice. Hearing is scheduled for May 23.

**Steven P. MacGilvray – 18 DHC 48**

MacGilvray of Raleigh pled guilty to misdemeanor larceny. The Chair of the DHC entered an interim order suspending his law license. The DHC 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. The DHC entered an order establishing the rule violations by default. Hearing on the appropriate discipline is scheduled for May 1.

**H. Trade Elkins – 18 DHC 50**

Elkins, of Hendersonville, pled guilty to one felony count of wire fraud in violation of 18 U.S.C. § 1343. Elkins was sentenced to 24 months of imprisonment followed by supervised release and ordered to pay restitution of \$545,738.90. The Chair of the DHC entered an interim order suspending his law license. The DHC complaint has not been filed.

**Jerry Braswell – 19 DHC 2**

It is alleged that Braswell, of Goldsboro, submitted 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 is scheduled for June 20.

**Charles Coppage – 19 DHC 3**

It is alleged that Coppage, of Kill Devil Hills, violated trust accounting rules, including by failing to reconcile his trust accounts. Hearing has not been scheduled.



**Daniel Flint – 19 DHC 4**

Flint, of Charlotte, was found guilty by a jury in federal court in California of entering an airport area in violation of security requirements, a felony. The State Bar moved the DHC for an order of interim suspension based on the conviction. Flint filed a lawsuit against the State Bar and the DHC in Mecklenburg County Superior Court seeking injunctive relief prohibiting the DHC from entering an interim suspension. The court denied Flint's request for a temporary restraining order. The DHC has not yet ruled on the State Bar's motion for interim suspension. The DHC complaint has not been filed.

**Brandon Graham – 19 DHC 5**

It is alleged that Graham, of Gaston County, possessed heroin, methamphetamine, and drug paraphernalia, made false statements to police during a traffic stop, and pled guilty to possession of methamphetamine. Hearing has not been scheduled.

**Michael DeMayo – 19 DHC 6**

It is alleged that DeMayo, of Charlotte, entered into improper business relationships with clients by using a "Client Clearing Account" to disburse settlement proceeds to the clients before their settlement checks cleared, did not notify a client when his office received her Med-pay payment, and did not promptly deposit entrusted funds in a trust account. It is also alleged that, after DeMayo made an overpayment to a client, he sent a letter to her entitled "Overpayment and Fraud" stating that he would be forced to swear out a warrant for theft and conversion if she did not return the funds by a stated date. Hearing has not been scheduled.

**Robin Dale Fussell – 19 DHC 7**

It is alleged that Fussell, of Charlotte, engaged in misconduct in connection with real estate closings, including making a false statement to a financial institution, closing transactions knowing information provided to the lenders was not accurate or was no longer accurate, recording a deed without receiving required consideration, preparing and securing execution of a false HUD-1 Settlement statement, and assisting the recipient of the property in utilizing the improperly-obtained property as collateral. Hearing has not been scheduled.

**Hayley C. Sherman – 19 DHC 8**

Sherman, of Mayodan, pled guilty to the state felony offenses of possession of marijuana with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a) (three counts); sale or delivery of marijuana in violation of N.C. Gen. Stat. § 90-95(a) (two counts); conspiracy to sell or deliver marijuana in violation of N.C. Gen. Stat. § 90-98 (two counts); maintaining a store, dwelling, vehicle, boat or other place for use, storage, or sale of controlled substances in violation of N.C. Gen. Stat. § 90-108(a)(7) (three counts); and one count of possession of a Schedule IV substance with intent to manufacture, sell, or deliver in violation of N.C. Gen. Stat. § 90-95(a) and to two counts of the state misdemeanor offense of possession of marijuana paraphernalia in violation of N.C. Gen. Stat. § 90-113.22(a) as charged in Stokes County Superior Court matters 18 CRS 50541, 42, 45, 46, 49, 50 and 53. The Chair of the DHC entered an interim order suspending her law license. The DHC complaint has not been filed.

**Nikita V. Mackey – 19 DHC 9**

It is alleged that, while his law license was administratively suspended, Mackey, of Kings Mountain, collected legal fees and engaged in the unauthorized practice of law. It is also alleged that Mackey neglected and did not communicate with two clients, did not refund unearned fees, made a false representation on his notarized petition for reinstatement, did not participate in good faith in the mandatory fee dispute resolution process, and did not respond to the Grievance Committee. 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**

#### **Alexander Lapinski – 19 BCR3**

Lapinski, of Durham, surrendered his law license and was disbarred by the Wake County Superior Court in 2013 after he pled guilty to one felony count of aiding and abetting the unlawful procurement of citizenship or naturalization. Hearing on his petition for reinstatement is scheduled for June 11.

#### **Frederick Owens – 17DHC17r**

The DHC suspended Owens, of Wilmington, in September 2018 because he charged and/or collected an illegal or clearly excessive fee, violated multiple trust account rules, did not properly supervise his nonlawyer assistant, and did not respond to the Grievance Committee. The order of discipline allowed Owens to seek a stay of the balance after serving thirty days active suspension upon demonstrating compliance with enumerated conditions. Hearing on Owens' motion for a stay is scheduled for May 9.

#### **Powell W. Glidewell, IV – 19 RD 1**

The Chair of the Grievance Committee transferred Powell Glidewell of Newland to disability inactive status by consent in February 2018. Hearing on Glidewell's petition for reinstatement to active status is scheduled for May 10.

### **Pending Motions to Show Cause**

There are no motions to show cause pending before the DHC.

### **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**

#### **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. The court appointed the Office of Counsel to prosecute. In June 2018, the court entered an order transferring Botros to disability inactive status. Botros appealed. The Court of Appeals declined to hold oral argument. We await a decision.

### **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. The Court of Appeals declined to hold oral argument. We await a decision. The OOC represents the State Bar.

### **In re Phillip Entzminger 17 CRS 1930 (Pitt County)**

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 OOC to prosecute. In April 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 is suspended for six months. Entzminger appealed. The Court of Appeals granted his petition for writ of supersedeas. All briefs have been filed. We await a decision.

## **TRUST ACCOUNT COMPLIANCE PROGRAM**

Forty-six lawyers have successfully completed the TAC Program since its inception. Leonor currently supervises twenty-five 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 16 new files this quarter. The committee will address 32 files at its April 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 seeks 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 seeks an injunction prohibiting the original defendants from enforcing the statutes against it. CAI does not seek damages but seeks 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. The court held oral argument in December 2018. Van Laningham Duncan represents the State Bar.

**North Carolina State Bar v. Michael Asen.** In July 2017, 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. The Executive Committee withdrew its authorization to file suit at the October 2018 meeting after FDR agreed to stop engaging in the activities that constituted UPL.

**North Carolina State Bar v. National Debt Relief.** In April 2018, the Executive Committee authorized the Office of Counsel to file a lawsuit against National Debt Relief, a New York business that offers debt adjusting to consumers. As part of its activities, National Debt Relief has been offering legal services to consumers to defend lawsuits brought by creditors. The State Bar is negotiating a consent order.

**North Carolina State Bar v. Linh Quach (Wake County Superior Court).** In July 2018, the Executive Committee authorized the Office of Counsel to file a lawsuit against Linh Quach for injunctive relief. Quach is a Vietnamese woman who was receiving fees in exchange for helping immigrants file immigration petitions. Quach defaulted. The trial court entered a permanent injunction against her on February 27, 2019.

#### **Prepaid Legal Services Plan Registration**

Two proposed prepaid legal services plans re-submitted applications for registration last quarter. BMC, file number 18PP16, was accepted for registration. Debt Cleanse, file number 18PP05, was not accepted for registration because the plan was specifically designed to meet the pre-existing needs of its members and did not have at least one licensed North Carolina attorney who had agreed to provide the legal services offered under the plan. There are no proposed prepaid legal services plans pending review.

Three plans failed to submit the required annual renewal form and pay the annual registration fee by January 31, 2019. 27 N.C.A.C. 1E, § .0304. At its April meeting, staff counsel will request the Authorized Practice Committee to authorize the OOC to begin revocation proceedings.

#### **OTHER LITIGATION IN THE STATE AND FEDERAL COURTS**

**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 contends that the clerk of court and a lawyer for the trustee were agents of the State Bar because they are licensed to practice law in North Carolina but alleges no facts that could sustain that contention. 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 those appeals. The State Bar's motion to dismiss is pending before the Full 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 allegedly, therefore, is an agent of the State Bar but alleges no facts that could sustain that contention. Ballentine alleges no acts or omissions by the State Bar. The State Bar's motion to dismiss is pending before the deputy commissioner. Oral arguments were held in October 2018. The Attorney General represents the State Bar.

**Daniel Chappell Flint v. North Carolina State Bar, Disciplinary Hearing Commission and Margaret Cloutier (Mecklenburg County Superior Court).**

Flint filed this lawsuit on March 27, 2019 against the State Bar, a State Bar deputy counsel, and the DHC. Flint is the defendant in a federal criminal prosecution and is the defendant in a pending DHC case. Flint has been found guilty by a jury in the federal case but has not yet been sentenced. Flint contends that deputy counsel fraudulently or negligently misrepresented that the State Bar would not seek an interim suspension of his law license until he had been sentenced. He claims to have relied upon that alleged misrepresentation to his detriment. He seeks a temporary restraining order and permanent injunction prohibiting the State Bar from seeking, and the DHC from entering, an interim suspension "prior to entry of a certified conviction." He also seeks actual and punitive damages for alleged negligent infliction of severe emotional distress as well as costs and attorney fees. On April 8, the court denied Flint's motion for temporary restraining order. The OOC represents the State Bar and deputy counsel. The Attorney General represents the DHC.

**North Carolina State Bar v. Alan Phillips (Wake County Superior Court).**

Alan Phillips is a licensee and is the respondent in a pending grievance file. It is alleged that Phillips is engaged in the unauthorized practice of law in other jurisdictions. Phillips filed an objection and motion to quash a subpoena issued by the Grievance Committee for production of information relating to his provision of legal services outside of North Carolina. The President of the State Bar issued an order requiring Phillips to produce the subpoenaed documents. He did not do so. The State Bar filed this action seeking a mandatory injunction enforcing the subpoena. The State Bar served Phillips with discovery requests in this action. Phillips objected to the discovery requests, contending that the State Bar is prohibited by an alleged conflict of interest from investigating a grievance against him because Phillips filed grievances against State Bar officers, councilors and employees. The trial court entered an order overruling Phillips' objection, ordering Phillips to provide full and complete responses to the discovery requests. Phillips did not do so by the deadline in the court's order. Phillips filed a notice of appeal from the order compelling him to make discovery but did not obtain a stay of that order. The State Bar's motion to hold Phillips in contempt is scheduled for hearing during the week of April 22, 2019. The Office of Counsel represents the State Bar.

**Christopher Livingston v. North Carolina State Bar and 13th Judicial District Bar (US District Court for the Eastern District of NC).** Livingston alleged 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 purported 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 amended his complaint to add Deputy Counsel Leonor Hodge and former Chair of the Grievance Committee John Silverstein as defendants and alleged that they engaged in selective prosecution. On February 5, 2019, the court granted motions to dismiss and entered judgment in favor of all defendants. Livingston did not appeal. The OOC represented all defendants.

**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 Colon Willoughby in his official and individual capacities, against the undersigned in her 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 former State Bar councilor. Willoughby is now a State Bar officer but was not an officer when this lawsuit was filed. 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 the undersigned. If he does, the OOC will represent them.

**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 Carmen Bannon, State Bar deputy counsel, in her official and individual capacities. Polidi makes vague, generalized allegations relating to his decision to surrender his law license and consent to be disbarred. He has never served Bannon. If he does, the OOC will represent her.

**Lena Watts-Robinson v. North Carolina State Bar and the Disciplinary Hearing Commission (Wake County Superior Court).** 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. Robinson sought damages in excess of \$25,000. On June 11, 2018, Watts-Robinson filed a voluntary dismissal of all claims against all parties. She has until June 11, 2019, to refile her complaint. The Office of Counsel represented the State Bar and the Attorney General represented the DHC.

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

There are 33 new claims and two claims for reconsideration on the agenda for the Board's April 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 obtained two orders in Superior Court directing the disbursement of \$10,209.67 from the frozen trust accounts of disbarred or suspended lawyers. It also obtained an order directing the disbursement of \$43,481.71 from the frozen trust account of a lawyer under a stayed suspension; the lawyer will disburse the funds as ordered by the Court under the supervision of the State Bar and the Court.

### **Trusteeships**

Trustees were appointed to wind down the practice of **Richard M. Wiggins** of Fayetteville, who is suffering from declining health and an extreme physical disability, and the practices of deceased lawyers **Norman V. Schaich** of Black Mountain and **Johns S. Freeman** of Charlotte.

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.

### **PERSONNEL**

Kelly Ferrer, who worked in the CLE department before her family moved to Italy, has rejoined the State Bar in the OOC as an investigative clerk contributing to trust account analysis. We are so happy to have her back.

Mary Lee, who has been working with the OOC as Trust Account Compliance paralegal, joined the OOC as a permanent employee. She will continue to work closely with Leonor administering the Trust Account Compliance Program. Mary has a bachelor's degree in psychology from NC State and over 10 years of legal experience.

Kim Waddell joined the OOC working as a public liaison in the ACAP department. Kim joins us as a temporary to permanent employee. She is a graduate of Campbell University with a BA in Political Science. Her work history includes an internship with the NC General Assembly, legal assistant with the Wake County DA's office, 4 years as a paralegal and most recently as an administrative assistant with Wayne County Central Services.

Liz Foley, who was a summer intern her in 2018, is working a few hours a week assisting in DHC trial preparation. Liz is a third-year law student at Campbell.

### **MISCELLANEOUS**

Maria regularly presents at NCBA Professionalism for New Attorneys programs.

Josh 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. Josh's third child (and first boy) is due May 2.

Leonor continues to serve on the NCBA Professionalism Committee and on the 10<sup>th</sup> JD/WCBA Professionalism Committee, where she is vice chair. She also presented an ethics CLE for the 26<sup>th</sup> Judicial District Bar and guest lectured at Carmen's professional responsibility class.

Mary serves on the 10<sup>th</sup> 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 March, Carmen attended the ABA's Bar Leadership Institute as President-Elect of the Wake County Bar Association.

Barry and Investigator Doug Miller have been working with Investor's Title to host wire fraud summits. The summits are designed to prevent wire fraud affecting trust accounts and to educate lawyers and their staffs about scam prevention. The second summit was held April 11. Barry is also working with Investor's Title and the North Carolina Association of Realtors to offer wire fraud prevention CLEs for lawyers, paralegals and brokers. The first CLE was held in Raleigh on March 18, 2019. Future CLEs are scheduled in Charlotte on April 23, 2019, Greensboro on June 6, 2019, Asheville on August 20, 2019, and Wilmington on August 22, 2019.

Katherine serves on the NCBA Professionalism and Women in the Profession committees.