

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
JULY 19, 2019**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

The ACAP staff responded to 2,083 phone calls from members of the public and contacted 516 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 1,710 emails and 682 letters from inmates. During the same quarter of 2018, staff responded to 3,602 phone calls, contacted 623 lawyers and responded to 971 emails and 637 letters from inmates.

The office received 190 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 126 requests for fee dispute resolution of which 117 files were assigned to State Bar facilitators and 9 were assigned to district bar committees. The Fee Dispute Resolution Program has seen a 65 percent increase in the number of fee disputes facilitated at the State Bar compared to the same time last year.

**GRIEVANCES**

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, 690 grievance files have been opened.

As of July 9, 967 grievances were pending. One hundred thirty-eight grievances were stayed. One hundred 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 112 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 617 files in which no recommendation has yet been made, 106 were more than six months old. Since the April 2019 meeting, 218 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

The office received two inquiries about lawyer advertising. Grievance files were opened in both instances.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

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

**Frank Cassiano – 18 DHC 19**

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. He was suspended by the DHC for five years. The suspension is deemed to have begun on April 19, 2017, the date his petition for reinstatement from administrative suspension, which was never granted, was first considered.

**Bernell Daniel-Weeks – 18 DHC 23**

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. She was suspended by the DHC for five years. After serving two years of active suspension, she may petition for a stay of the balance upon showing compliance with numerous conditions.

**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. Byrd also altered a plea agreement after the prosecutor signed it and 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 on the litigant. The DHC suspended him for four years. After serving two years of active suspension, he may petition for a stay of the balance upon showing compliance with numerous conditions.

**Keith Booker – 18 DHC 40**

Booker, of China Grove, is currently serving a five-year active suspension imposed in 16 DHC 10. While he was suspended Booker did not promptly refund an unearned fee and did not respond to the Grievance Committee. He was reprimanded by the DHC.

**Travis Simpson – 18 DHC 45**

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. The DHC suspended him for three years. After serving 18 months of active suspension, he may petition for a stay of the balance upon showing compliance with numerous conditions.

**Dennis H. Sullivan, Jr. – 18 DHC 49**

Sullivan, of Wilmington, was suspended for three years in 12 DHC 1. The suspension was stayed for five years. When the stay was lifted and the suspension was activated because Sullivan did not comply with conditions, he abandoned two clients, did not return unearned fees, did not respond to the Grievance Committee, and did not participate in mandatory fee dispute resolution. He was disbarred by the DHC.

**Jerry Braswell – 19 DHC 2**

While Braswell, of Goldsboro, was serving a five-year suspension imposed by the DHC in 16DHC27, he submitted false information to a federal court on a petition for admission *pro hac vice* and did not notify his clients that his law license is suspended. The DHC suspended him for five years. The suspension will become effective immediately upon expiration of the suspension imposed in 16DHC27.

**Charles Coppage – 19 DHC 3**

Coppage, of Kill Devil Hills, violated trust accounting rules, including by failing to reconcile his trust accounts. He was suspended by the DHC for two years. The suspension is stayed for two years upon Coppage's compliance with enumerated conditions.

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

No lawyers surrendered to the Council at the April 2019 meeting.

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

**Edward F. Dunnivant** of Wilmington surrendered his law license and was disbarred by the Wake County Superior Court. Dunnivant admitted that he misappropriated funds entrusted to him for payment of court costs and fines totaling at least \$764.00 and that he failed to promptly pay third parties or clients amounts totaling an additional \$7,113.87, a portion of which he utilized for his own benefit and the rest of which he intended to use for his own benefit.

**Sarah Jane Brinson** of Clinton has executed an affidavit of surrender and a consent order of disbarment to submit to the Wake County Superior Court. Brinson pled guilty to a violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv), a felony, for encouraging and inducing an alien to reside in the United States, with knowledge and in reckless disregard of the fact that such residence was unlawful.

### **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**

#### **J. Brandon Graham – 19 DHC 5**

Graham, of Gaston County, pled guilty to felony possession of methamphetamine in October 2018 in Union County. On April 22, the Chair of the DHC entered an order of interim suspension of his law license.

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

No uncontested petitions were completed this quarter.

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

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

In February 2018, the Chair of the Grievance Committee transferred Powell Glidewell of Newland to disability inactive status. On May 9, the Chair of the DHC reinstated his license to active status.

### **Alexander Lapinski – 19 BCR3**

In 2013, Lapinski, of Durham, surrendered his law license and was disbarred by the Wake County Superior Court after he pled guilty to one felony count of aiding and abetting the unlawful procurement of citizenship or naturalization. He withdrew his petition for reinstatement.

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

No motions to show cause were heard before the DHC this quarter.

### **TROs and Preliminary Injunctions**

The Wake County Superior Court issued preliminary injunctions prohibiting **Richard C. Poole** of Greenville, **Anita B. Hunt** of Durham, **David A. Beaver** of Albemarle, and **Timothy J. Pavone** of Charlotte 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 Grievance Committee, 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 those orders. 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, misrepresenting to lenders that 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 in 2016. Hearing has not yet been scheduled.

**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 OOC 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 cocaine, a Schedule II controlled substance, in Currituck County Superior Court. Hayes 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. Hearing has not been scheduled.

**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.

**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.

**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 began on June 17 and will reconvene on July 31.

**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. The DHC case is stayed.

**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 October 16-18.

**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 "nonrefundable" 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 was continued and has not been rescheduled.

**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. The DHC entered judgment on the pleadings for the State Bar and ordered a phase II hearing, which has not yet 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 was continued and has not been rescheduled.

**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 August 8.

**Steven P. MacGilvray – 18 DHC 48**

It is alleged that MacGilvray, of Raleigh, committed felony larceny. The Chair of the DHC entered an order imposing an interim suspension of his law license. Hearing has not been scheduled.

**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 order of interim suspension of his law license. The DHC complaint has not been filed.

**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 and made false statements to police during a traffic stop. He pled guilty to possession of methamphetamine on October 1, 2018. He was placed on a conditional discharge pursuant to N.C. Gen. Stat. 90-96(a). The Chair of the DHC entered an interim order suspending his law license on April 22, 2018. Graham successfully complied with the terms of his conditional

discharge and his criminal case was been dismissed. The State Bar is pursuing disciplinary action based upon the underlying conduct. Hearing is scheduled for October 11.

**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 using the improperly-obtained property as collateral. Hearing is scheduled for March 10-13.

**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). The Chair of the DHC entered an order of interim suspension of her law license. Hearing has not been scheduled.

**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.

**Brooke M. Webster - 19 DHC 10**

Webster, of Yadkinville, was convicted of secret peeping and trespassing on the Wake Forest University Campus after he used a mirror to look at female students under desks in the WFU library. Hearing has not been scheduled.



**David B. Hefferon – 19 DHC 11**

It is alleged that Hefferon, of Charlotte, provided legal services to a client who was homeless, vulnerable, and at risk of losing custody of her child. Hefferon paid for hotel rooms before the client's court dates and, on at least one occasion, visited her in the hotel room bringing alcohol for them to share. Hefferon admitted that he kissed the client and that he touched her breast. 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****Frederick Owens – 17DHC17r**

In September 2018, the DHC suspended Owens, of Wilmington, 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 was continued and has not been rescheduled.

**Shawn David Clark – 19 BCR 1**

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. After a hearing on April 2, 2019, the DHC denied Clark's petition for reinstatement. On June 24, Clark appealed to the Council. Hearing before the Council has not been scheduled.

**James Walter Smith – 19 BCR 4**

In 1982, Smith surrendered his license and was disbarred by the Council after he was convicted of armed bank robbery. Hearing on his petition for reinstatement is scheduled for August 6.

**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**

### **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 OOC to prosecute. In June 2018, the court entered an order transferring Botros to disability inactive status. On May 21, the Court of Appeals affirmed in a published opinion.

### **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. On June 4, the Court of Appeals issued an unpublished opinion affirming the rule violations but remanding to the DHC for additional findings regarding the appropriate discipline.

## **Pending Appeals**

### **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-six 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 12 new files this quarter. The committee will address 21 files at its July meeting.

The OOC continues to work with the Consumer Protection Division of the Attorney General's Office dealing with several out-of-state lawyers and law firms that promote debt adjusting and loan modification schemes. With limited exceptions, debt adjusting is illegal in North Carolina. Numerous marketing firms and lawyers engage in this practice.

### **Pending, Recently Completed and Contemplated Authorized Practice Litigation**

**Capital Associated Industries, Inc. v. Josh Stein in his capacity as Attorney General of the State of North Carolina; Nancy Lorrin Freeman, in her official capacity as District Attorney for the 10th Prosecutorial District of the State of North Carolina; and J. Douglas Henderson, in his official capacity as District Attorney for the 18th Prosecutorial of the State of North Carolina (US District Court, MDNC).** CAI is a trade association consisting of small and medium-sized businesses. CAI assists its members with personnel management issues. CAI wants to hire lawyers to provide legal advice and legal services to its members. The State Bar's Ethics Committee issued an ethics advisory opining that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. CAI sought a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions as applied to it and sought an injunction prohibiting the original defendants from enforcing the statutes against it. CAI did not seek damages but sought 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. On April 19, the Court of Appeals issued an opinion affirming summary judgment for the State Bar. CAI did not petition for hearing *en banc*. Plaintiff has until July 18 to file a petition for writ of *certiorari* with the United States Supreme Court. Van Laningham Duncan represents the State Bar.

**North Carolina State Bar v. Michael Asen.** In July 2017, the Executive Committee authorized the OOC 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. Defendants have said they will accept the terms.

**North Carolina State Bar v. National Debt Relief.** In April 2018, the Executive Committee authorized the OOC 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. National Debt Relief has proposed a consent resolution that will be considered at the July meeting.

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

Primerica Legal Plus Plan's application for registration of a prepaid legal plan was accepted. There are no applications for registration pending.

At its April 2019 meeting, the AP Committee authorized the OOC to begin formal revocation proceedings against three prepaid legal services plans for failing to submit the required annual renewal form and pay the required annual registration fee by January 31, 2019. On May 17, the Secretary issued notices to show cause why plan registration should not be revoked. Family Legal Access Plan and Family Legal Protection Plan submitted timely responses to the notices. The AP Committee will determine at its July 2019 meeting whether to continue registration of those plans. Family Legal Services Plan did not file a timely response. The Secretary issued an Order of Revocation of Registration to this plan on July 2.

## **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 Full Commission dismissed this claim with prejudice on April 23. HGGLBT did not appeal. The Attorney General represented 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 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 has been sentenced. 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. The court denied Flint's motion for TRO. The court has not ruled on defendants' motion to dismiss, which was argued June 12. 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).** Phillips is a licensee and 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 and ordering Phillips to provide complete discovery responses. Phillips did not do so by the deadline in the court's order. Phillips filed a notice of appeal but did not obtain a stay of that order. The State Bar's motion to hold Phillips in contempt was heard on April 29. Phillips was repeatedly held in contempt and was imprisoned April 29 for two days, May 9 for two days, May 21 for thirty days, and June 25 for 45 days. On June 25, the court also disbarred, effective July 1. The OOC represented the State Bar.

**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 Katherine Jean 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 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 Jean. 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 did not refile the complaint by June 11, 2019. The OOC represented the State Bar and the Attorney General represented the DHC.

**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. On January 22, the Fourth Circuit Court of Appeals dismissed her appeal *per curiam* for failure to timely file. On April 22, Arroyo filed a petition for *certiorari* with the Supreme Court. Under Supreme Court rules, an opposing party may, but is not required to, file a response to a petition for *certiorari* within 30 days. No party filed a response. On June 13, the Supreme Court gave notice

that it would consider the petition during its October 1 conference. On June 22, Arroyo served a motion for default judgment she filed at the Supreme Court. There is no basis for such a motion and it did not appear on the Court's docket as of June 28.

**In the Matter of Jarrette Pittman and Johnnie Finch, 18CR57503 (Pitt County Superior Court).** It is alleged that Pittman and Finch knowingly made false statements to a tribunal. The court issued an order to show cause why the court should not discipline them and appointed the OOC to serve as prosecutor. Trial is scheduled for August 5-6 in Pitt County.

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

There are 24 new claims on the agenda for the Board's July 18 meeting. One lawsuit is pending in superior court seeking reimbursement from a disbarred lawyer for payments made by the CSF. Two other lawsuits were reduced to judgment this quarter.

### **Disbursement Cases**

Pursuant to two orders of the Wake County Superior Court, the OOC disbursed \$10,209.67 from the frozen trust accounts of disbarred or suspended lawyers. Another motion, to disburse \$30,613.70 from the frozen trust account of a disbarred lawyer, is pending.

### **Trusteeships**

Trustees were appointed to wind down the practices of **Sarah J. Brinson** of Clinton who is currently unavailable to clients, disbarred attorneys **John O. Lafferty, Jr.** of Lincolnton and **Paige C. Cabe** of Sanford, and deceased attorneys **Thomas F. Loflin, III** of Durham, **Sherwood J. Carter** of Hickory, **Konrad O. Schoen** of Durham, and **Kenneth N. Glover** of Swansboro.

A trustee is also being appointed to wind down the practice of **Renita Thompkins Linville** of Winston-Salem, who was named Forsyth County Clerk of Superior Court.

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 other completed appeals in the state and federal courts this quarter.

### **Pending Appeals**

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

## **PERSONNEL**

Aaron Ellis and Jake Terrell joined the OOC as summer interns. They are both rising 3Ls at Campbell University School of Law.

## **MISCELLANEOUS**

Maria regularly presents at NCBA Professionalism for New Attorneys programs.

Josh teaches legal research and writing at Campbell Law. He regularly presents at NCBA Professionalism for New Attorneys programs and other CLEs. Josh also recently joined the Board of Governors of a local secondary school.

Alex presented at the 2019 Middle District Bankruptcy Seminar and the 2019 Practical Skills for New Prosecutors program.

Leonor continues to serve on the NCBA Professionalism Committee, where she is a member of its 2019 CLE planning subcommittee, and on the 10<sup>th</sup> JD/WCBA Professionalism Committee, where she is vice chair. She also guest lectured at Carmen's professional responsibility class.

Mary serves on the 10<sup>th</sup> Judicial District Bar Memorial Committee.

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, the second in Charlotte on April 23, and the third in Greensboro on June 6. Future CLEs are scheduled in Asheville on August 20 and Wilmington on August 22.

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, is an Associate Adjunct Professor of professional responsibility at UNC Law, and is President-Elect of the Wake County Bar Association. In June, Carmen gave a presentation to the District Court Judges Conference and addressed the NCAJ convention as the State Bar's delegate.

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

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