

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
OCTOBER 25, 2019**

ATTORNEY CLIENT ASSISTANCE PROGRAM

The ACAP staff responded to 2,491 phone calls from members of the public and contacted 384 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 2,119 emails and 707 letters from inmates. During the same quarter of 2018, staff responded to 2,801 phone calls, contacted 650 lawyers, and responded to 971 emails and 637 letters from inmates.

The office received 108 requests for fee dispute resolution during the quarter. No fee disputes were assigned to district bar committees. During the same quarter in 2018, the office received 133 requests for fee dispute resolution, of which 114 files were assigned to the two State Bar facilitators and 19 files were assigned to district bar committees.

GRIEVANCES

In the ransomware attack, the Office of Counsel lost all data that was entered into its case management system, Practice Master, after May 3. As a result, OOC cannot currently provide the grievance statistics ordinarily included in this report but expects to be able to do so in the January 2020 quarterly report.

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.

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. He was suspended by the DHC for five years. After serving four years of active suspension, Hayes may apply for a stay of the balance upon showing compliance with numerous conditions.

Robert R. Schoch – 18 DHC 7

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. He was suspended by the DHC for four years. After serving two years of active suspension, Schoch may apply for a stay of the balance upon showing compliance with numerous conditions.

Kenneth B. Holmes – 18 DHC 34

Holmes, of Statesville, mismanaged and unknowingly misappropriated entrusted funds. Holmes also borrowed money from a client. He was suspended by the DHC for five years. After serving two years of active suspension, Holmes may apply for a stay of the balance upon showing compliance with numerous conditions.

Gary Leigh – 18 DHC 38

Leigh, of Shelby, misappropriated entrusted funds, structured banking transactions to avoid IRS reporting, and neglected two clients’ personal injury cases. He was disbarred by the DHC.

Clinton Moore – 18 DHC 43

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. He was disbarred by the DHC.

John Hanzel – 18 DHC 44

Hanzel, of Cornelius, misappropriated entrusted funds. He was disbarred by the DHC.

Erica Erickson – 18 DHC 46

Erickson, of Pisgah Forest, committed notary fraud on multiple occasions, made misrepresentations to a court, and misled unrepresented parties. She was disbarred by the DHC.

Susan M. Lynch - 18 DHC 47

Lynch, of Raeford, represented both the buyer and the seller in multiple real estate transactions. 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. The DHC suspended her for five years. After serving 18 months of active suspension, Lynch may apply for a stay of the balance upon showing compliance with numerous conditions.

Steven P. MacGilvray – 18 DHC 48

MacGilvray, of Raleigh, pled guilty to misdemeanor larceny. He acknowledged that he committed felony larceny. He surrendered his license and was disbarred by the DHC.

Michael DeMayo – 19 DHC 6

DeMayo, of Charlotte, made an overpayment to a client, then 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. DeMayo was censured by the DHC.

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. He was suspended by the DHC for two years. The suspension is stayed for two years upon Webster’s compliance with numerous conditions.

Completed Surrenders to the Council

No lawyer surrendered to the Council at the July 2019 meeting.

Completed Discipline and Disability Proceedings in the Courts

Alan G. Phillips of Candler was the respondent in a grievance alleging that Phillips was 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 the State Bar was prohibited by an alleged conflict of interest from investigating a grievance against him because, while the grievance against him was pending, he filed grievances against State Bar officers, councilors and employees. The trial court entered an order overruling Phillips' objection and ordering Phillips to provide respond to the discovery requests. Phillips gave notice of appeal but did not obtain a stay of the order and did not comply with the order. The trial court repeatedly ordered Phillips to provide discovery responses and he repeatedly refused to do so. Phillips was held in contempt and imprisoned on April 29 for two days, May 9 for two days, May 21 for thirty days, and June 25 for 45 days. The court also disbarred Phillips on June 25, 2019, effective July 1, 2019. The Office of Counsel represented the State Bar.

Sarah Jane Brinson of Clinton has executed an affidavit of surrender of her law license and a consent order of disbarment to submit to Wake County Superior Court. Brinson pled guilty to a violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv), a federal felony that reflects adversely on her honesty, trustworthiness, and fitness as an attorney, for encouraging and inducing an alien to reside in the United States, knowing and in reckless disregard of the fact that such residency was illegal.

The Pitt County Superior Court ordered Greenville lawyer **Jarrette Pittman** to show cause why the court should not discipline him for knowingly failing to correct a false statement to a tribunal. The court appointed the Office of Counsel to prosecute. After a three-day trial, the court admonished Pittman.

Holly M. Owen of Florida surrendered her law license and was disbarred by the Wake County Superior Court. Owen admitted that she misappropriated entrusted funds totaling at least \$3,248.50.

Orders of Reciprocal Discipline

No orders of reciprocal discipline were entered this quarter.

Transfers to Disability Inactive Status

Robert C. Soles, Jr. of Tabor City was transferred to disability inactive status by the Chair of the Grievance Committee.

Interim Suspensions

No orders of interim suspension were entered this quarter.

Completed Petitions for Reinstatement/Stay - Uncontested

No uncontested petitions for reinstatement/stay were completed this quarter.

Completed Petitions for Reinstatement/Stay - Contested

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. He withdrew his petition for reinstatement after the State Bar took his deposition.

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 **Lisa D. Blalock** of Laurinburg, **Cabell Regan** of Pittsboro, **Douglas P. Connor** of Mount Olive, **Harold R. Crews** of Walkertown, and **Richard T. Dail** of Thomasville 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 was forecasted for October 12, 2019. The deadline for Lamb to file an answer to the DHC complaint is 45 days after his release from prison.

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. In 2016, the Chair of the DHC entered an interim order suspending his law license. Hearing is scheduled for March 26-27, 2020.

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.

Wendelyn R. Harris – 18 DHC 14 & 18 DHC 14D

It is alleged that Harris, of Virginia and formerly of Raleigh, submitted a purported order to the Department of Motor Vehicles on which she forged a judge's signature and that she blamed her non-lawyer assistant for these actions. Harris' assistant was 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, 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 is scheduled for October 29-30.

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.

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 proceeding is stayed while pending grievances are considered by the Grievance Committee.

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 embezzled his clients'

money, 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, and failed to act with diligence. Hearing was continued and has not been rescheduled.

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 sought an order of interim suspension based upon the conviction. Flint filed a lawsuit against the State Bar and the DHC in Mecklenburg County Superior Court seeking to enjoin the DHC from entering an interim suspension before he was sentenced. The court dismissed his lawsuit. Flint has now been sentenced to fourteen months in prison. The DHC entered an interim suspension on October 11. 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. Graham successfully complied with the terms of his conditional discharge and his criminal case was dismissed. The State Bar is pursuing disciplinary action based upon the underlying conduct. Hearing was continued and has not been rescheduled.

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, 2020.

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 Mackey, of Kings Mountain, collected legal fees and engaged in the unauthorized practice of law while his law license was administratively suspended. 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.

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 touched her breast. Hearing has not been scheduled.

Andrew LeLiever – 19 DHC 12

LeLiever of Sanford did not respond to clients' requests for information, did not keep clients informed, did not act with diligence, did not explain his fee, did not inform his client that sanctions had been imposed against her, did not participate in the State Bar's fee dispute resolution program, and did not timely respond to the Grievance Committee. Hearing has not been scheduled.

John C. Snyder – 19 DHC 13

It is alleged that John Snyder, of Matthews, neglected and did not communicate with his client, made false statements to his client and to opposing counsel, did not return his client's file, knowingly made a misrepresentation or omission to the Grievance Committee, filed frivolous motions and pleadings in a civil case, made a false representation to a tribunal, and did not respond to the Grievance Committee. Hearing has not been scheduled.

Gregory A. Newman – 19 DHC 14

It is alleged that Newman, District Attorney for Prosecutorial District 42, falsely represented to the court that the victim of an alleged sexual assault had been notified of a plea and made false representations to the State Bar about the underlying criminal case. Hearing has not been scheduled.

Karen C. Wright – 19 DHC 15

It is alleged that Wright, of Charlotte, neglected many estate matters for many years, paid legal fees to her firm without obtaining required court approval, did not accurately report fees she paid to her firm, did not file statutorily-required accounts, did not timely close estates, and violated multiple trust account rules. Hearing has not been scheduled.

Richard C. Poole – 19 DHC 16N (see section below)

Parker Russell Himes – 19 DHC 17

It is alleged that Himes, of Charlotte, committed and was convicted of numerous drug offenses. Hearing has not been scheduled.

Charles L. Morgan, Jr.—19 DHC 18

It is alleged that Morgan, of Charlotte, grossly mismanaged his trust account and violated an injunction prohibiting him from handling entrusted funds. Hearing has not been scheduled.

Mark L. Bibbs – 19 DHC 19

It is alleged that Bibbs, of Raleigh, did not prepare accurate and proper quarterly trust account reconciliations and did not maintain proper client ledgers for at least four years. Hearing has not been scheduled.

Matthew Coxe – 19 DHC

It is alleged that Coxe, of Jacksonville, misappropriated entrusted funds, did not reconcile his trust accounts, served as attorney-in-fact for an elderly gentleman while he was enjoined by the court from acting as a trustee or attorney-in-fact, used the gentleman's funds to pay his personal expenses, and otherwise mismanaged the gentleman's funds. Hearing has not been scheduled.

Pending Grievance Noncompliance Actions before the DHC

Richard C. Poole – 19 DHC 16N

Upon the State Bar's motion, the Chair of the DHC ordered Poole, of Greenville, to show cause why his law license should not be suspended pursuant to 27 N.C. Admin. Code 1B § .0135 for failure to provide information to the Grievance Committee. Poole did not respond to the show cause order. The State Bar will seek an order suspending his license.

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' petition 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. The DHC recommended denial of Clark's petition for reinstatement. Clark appealed to the Council. The Council will address Clark's appeal at the October meeting.

Michael P. Crowe – 16 DHC 9r

In June 2016 the DHC suspended Crowe, of Winston-Salem, for numerous rule violations, including engaging in a conflict of interest, directing an assistant to execute a false notary, engaging in dishonest conduct, and engaging in conduct prejudicial to the administration of justice. The DHC suspended Crowe for three years. After he served the three-year suspension, Crowe applied for reinstatement. The State Bar objected because Crowe had not completed the CLE hours that were a condition of eligibility for reinstatement. The State Bar withdrew its objection when Crowe completed the necessary CLE.

Pending Motions to Show Cause

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

Paul B. Welch - 19 R 310 (Henderson County Superior Court)

Welch represented the defendant in a homicide prosecution. Welch redacted a portion of an expert's notes and provided the redacted notes to the district attorney without advising the district attorney of the redaction. The court ordered Welch to show cause why he should not be disciplined for violating Rules 3.3(a)(3), 3.4, 8.4(a), (c) & (d). The court announced its decision to impose a one-year stayed suspension but has not yet entered the order.

Pending Surrenders to the Council

The affidavit of surrender of the law license of Marshall lawyer **David R. Payne** will be presented to the Council at the October meeting.

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed Appeals

Robert N. Weckworth, Jr. – 16 DHC 22

In October 2017, the DHC censured Robert Weckworth of Greensboro. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. 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. Hearing on remand has not been scheduled.

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 Office of Counsel to prosecute. 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 affirmed in part, reversed in part, and remanded for a new hearing on the appropriate discipline. Entzminger has filed a petition for discretionary review with the North Carolina Supreme Court.

North Carolina State Bar v. Venus Springs 18 DHC 25.

Springs, of Mecklenburg County, posted on her business website a link to the video deposition of an opposing party's representative. The DHC concluded that posting the video served no substantial purpose other than to humiliate or embarrass the witness. Springs maintained the link on the website for eleven months after a federal court ordered her to remove it. The DHC reprimanded her. She appealed. We await the proposed record on appeal.

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

Phillips was the respondent in a grievance alleging that Phillips 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 was prohibited by an alleged conflict of interest from investigating a grievance against him because, while the grievance against him was pending, he filed grievances against State Bar officers, councilors and employees. The trial court overruled Phillips' objection and ordered Phillips to provide complete discovery responses. Phillips gave notice of appeal but did not obtain a stay of the order and did not comply with the order. In a series of hearings, Phillips was repeatedly held in contempt and 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 Phillips, effective July 1. Phillips filed notice of appeal.

TRUST ACCOUNT COMPLIANCE PROGRAM

Fifty lawyers have completed the TAC Program since its inception. Four lawyers have completed the TAC Program since July. Eleven lawyers have accepted offers to participate in the TAC Program since 1 January 2019. Leonor currently supervises twenty-three participants. Leonor also monitors twenty-four DHC defendants whose stayed suspensions include trust account compliance conditions and oversees compliance with random audit corrections.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 18 new files this quarter. The committee will address 15 files at its October meeting.

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

Pending, Recently Completed and Contemplated Authorized Practice Litigation

Capital Associated Industries, Inc. v. Josh Stein in his capacity as Attorney General of the State of North Carolina; Nancy Lorrin Freeman, in her official capacity as District Attorney for the 10th Prosecutorial District of the State of North Carolina; and J. Douglas Henderson, in his official capacity as District Attorney for the 18th Prosecutorial of the State of North Carolina (US District Court, MDNC). CAI is a trade association consisting of small and medium-sized businesses. CAI assists its members with personnel management issues. CAI wants to hire lawyers to provide legal advice and legal services to its members. The State Bar's Ethics Committee issued an ethics advisory opining that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. CAI sought a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions as applied to it and sought an injunction prohibiting the original defendants from enforcing the statutes against it. CAI did not seek damages but sought attorney fees, "disbursements" and costs. The court allowed the State Bar to intervene. On September 19, 2017, the court granted the State Bar's motion for summary judgment on all claims.

CAI appealed to the Fourth Circuit Court of Appeals. The Court of Appeals affirmed. On August 30, CAI filed a petition for writ of *certiorari* with the United States Supreme Court. The State Bar's response to the petition is due November 12. 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 parties have agreed upon terms of a consent resolution.

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. NDR has been offering to defend consumers in lawsuits brought by creditors. The committee will consider NDR's proposed consent resolution at the October meeting.

Prepaid Legal Services Plan Registration

The State Bar received one initial registration form this quarter, for Debt Cleanse Legal Plan. Staff is reviewing the materials.

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 alleged that 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 alleged that another defendant is licensed to practice law in North Carolina and allegedly, therefore, is an agent of the State Bar but alleged no facts that could sustain that contention. Ballentine alleged no acts or omissions by the State Bar. The Full Commission dismissed the 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 was the defendant in a federal criminal prosecution and is the defendant in a pending DHC case. When this lawsuit was filed, Flint had been found guilty by a jury but had not yet been sentenced. Flint contended 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 sought to enjoin the State Bar from seeking, and the DHC from entering, an interim suspension “prior to entry of a certified conviction.” He also sought 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 and granted defendants’ motions to dismiss. The DHC entered an order of interim suspension on October 11. The OOC represented the State Bar and deputy counsel. The Attorney General represented the DHC.

Richard Polidi v. Colon Willoughby et al (Wake County Superior Court). Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. He filed this action in July 2017 against 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.

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. Arroyo gave notice of direct appeal to the United States Supreme Court. There is no indication that the Court ever addressed that purported appeal. Arroyo also filed notice of appeal to the Fourth Circuit Court of Appeals. On January 22, 2019, the Fourth Circuit dismissed that appeal *per curiam*. Arroyo filed a petition for writ of *certiorari* to the United States Supreme Court, which the Court denied on October 7.

In the Matter of Jarrette Pittman and Johnnie Finch, 18CR57503 (Pitt County Superior Court). It was 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. Finch agreed to a disposition that was filed under seal. After a three-day trial, the court admonished Pittman.

Christopher Livingston v. N.C. State Bar, et al (Wake County Superior Court 19 CVS 03639). In July 2016, the DHC suspended Livingston for five years. The DHC order was affirmed on appeal. In January 2018, Livingston sued the State Bar and the 15th Judicial District Bar in federal court, claiming that the district bar was improperly using mandatory district bar dues. He later amended his complaint to add John Silverstein and Leonor Hodge and claim that they engaged in selective prosecution of him. (Silverstein was the Chair of the Grievance Committee when probable cause

was found and Hodge prosecuted the DHC case.) In February 2019, the federal court dismissed the lawsuit for lack of subject matter jurisdiction. In March 2019, Livingston filed the nearly identical complaint in Wake County Superior Court. He had summonses and alias and pluries summonses issued but never served any of them. The State Bar learned of the state court lawsuit in September 2019, when the trial court administrator instructed the parties to prepare a case management order. By rule, the case is discontinued for failure to serve the last summons before it expired, although Livingston could revive it. The State Bar informed the TCA that no defendant has been served or knew about the complaint and asked that the case be discontinued.

Client Security Fund Claims/Subrogation Cases

There are 25 new claims on the agenda for the Board's October 24 meeting. One lawsuit is pending in superior court seeking reimbursement from a disbarred lawyer for payments made by the CSF.

Disbursement Cases

This quarter, the OOC obtained one order from Wake County Superior Court, directing the disbursement of \$30,613.70 from the frozen trust account of a disbarred lawyer. Another motion, to disburse \$1,622.37 from the frozen trust account of a disbarred lawyer, is pending. The OOC also filed a motion to escheat funds from the frozen trust account of a disbarred lawyer because the owner(s) of the funds cannot be located.

Trusteeships

Trustees were appointed to wind down the practices of **David V. Hartley** of Cary, who is unavailable to clients due to a medical condition, and deceased lawyers **Bruce T. Cunningham, Jr.** of Southern Pines, **Jonathan L. Hips** of Charlotte, **H. Mac Tyson** of Shallotte, and **Joseph Anthony** of Durham.

The OOC is preparing documents for appointment of a trustee to wind down the practice of Linville lawyer **Tricia Wilson**, who died on October 2.

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

The Office of Counsel had no personnel changes this quarter.

MISCELLANEOUS

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

Maria regularly presents at NCBA Professionalism for New Attorneys programs.

Josh continues to teach 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 and is coaching his daughter's soccer team, the Knightdale Mustangs, to a winless record.

Alex regularly teaches CLEs on ethics and technology. Future CLEs are scheduled for November 2019.

Leonor continues to serve on the NCBA Professionalism Committee, where she is a member of its 2019 CLE planning subcommittee, and on the 10th JD/WCBA Professionalism Committee, where she is vice chair.

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

Carmen continues to serve as the OOC's liaison to the judiciary. In that capacity, she gave a presentation on judicial disciplinary proceedings at the fall Superior Court Judges Conference. She also is an Associate Adjunct Professor of professional responsibility at UNC Law, and President-Elect of the Wake County Bar Association. In the last quarter, Carmen gave a presentation at the Child Support Enforcement Attorneys' Annual Conference and volunteered at Capital City Lawyers Association's Youth Law Day.

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.

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