

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
MAY 27, 2020**

ATTORNEY CLIENT ASSISTANCE PROGRAM

During the first quarter of 2020, ACAP staff responded to 1,887 phone calls from members of the public and placed 324 calls to lawyers in an effort to resolve their concerns. Staff also responded to 1,704 emails from members of the public and from attorneys and responded to 795 letters from inmates. During this same quarter in 2019, ACAP staff responded to 3,118 phone calls from members of the public and contacted 586 lawyers in efforts to resolve concerns expressed by members of the public. Staff also responded to 1,024 emails and 787 letters from inmates.

The State Bar opened 113 requests for fee dispute resolution during the first quarter, all of which were assigned to the two State Bar facilitators. During the same quarter of 2019, the office received 146 requests for fee dispute resolution assigned to the two State Bar facilitators.

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. In 2019, 1254 grievance files were opened. Through May 1, 2020, 344 grievance files were opened.

As of May 1, 995 grievances were pending. One hundred forty-four grievances were stayed. Seventy-eight pending files were in the judicial district grievance committees or had been returned by the district grievance committees within the past 30 days. The OOC had made its recommendation in 103 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 670 files in which no recommendation has yet been made, 154 were more than six months old. In the first quarter of 2020, 70 files were dismissed by the Grievance chair or by the Grievance chair and a vice chair.

There were no inquiries about lawyer advertising in the first quarter of 2020.

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.

Bradley R. Lamb – 07 DHC 28

Lamb, formerly of Pittsboro, was disbarred by the DHC. He was convicted in Florida of the criminal offenses of promoting the sexual performance of a child by transmitting child pornography over the internet, engaging in sexual acts over the internet with reason to believe he was being viewed by a minor, and solicitation of a person believed to be a child over the internet. An order of interim suspension of his law license was entered in November 2007 and remained in effect until the order of disbarment was entered after his release from prison.

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 January 2016, the Chair of the DHC entered an order of interim suspension of his law license. In February 2020, Levinson surrendered his license and was disbarred by the DHC.

Brandon Graham – 19 DHC 5

The DHC found that Graham, of Gaston County possessed heroin, methamphetamine, and drug paraphernalia and made a misleading statement to police during a traffic stop. The chair of the DHC entered an order suspending his license on an interim basis. The DHC ultimately suspended his license for five years. After serving one year of active suspension, Graham may apply for a stay of the balance upon showing compliance with numerous conditions. He received credit toward the period of active suspension for the time his license was subject to interim suspension.

David B. Hefferon – 19 DHC 11

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. The DHC suspended Hefferon’s license for one year, stayed upon compliance with conditions designed to protect the public and ensure adequate boundaries with female clients.

Andrew LeLiever – 19 DHC 12

The DHC found that LeLiever, of Sanford, did not adequately communicate with clients; did not act with diligence in representing clients; entered into an employment agreement with a client without documenting the terms of the agreement in writing, advising his client of the desirability of seeking the advice of independent counsel, and obtaining his client’s informed, written consent to the essential terms of the agreement; did not participate in the State Bar’s fee dispute resolution program; and did not timely respond to the Grievance Committee. The DHC suspended LeLiever’s license for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Parker Russell Himes – 19 DHC 17

Himes, of Chicago, Illinois and formerly of Charlotte, pled guilty to numerous felony offenses of obtaining or attempting to obtain controlled substances by fraud. He also provided the State Bar a letter bearing a forged signature. He surrendered his license to the DHC and was disbarred.

Louis P. Woodruff – 19 DHC 20

Woodruff, of Raleigh, did not supervise his spouse/office manager, who misappropriated funds from Woodruff’s trust account. He was suspended for two years. The suspension is stayed for two years upon Woodruff’s compliance with numerous conditions.

Emily Moore Tyler – 19 DHC 24

Tyler, of Raleigh, altered a notary acknowledgement on a filed pleading and was dishonest to judges about it. She was suspended by the DHC for five years.

Yuanyue Mu – 20 DHC 4

Mu, of Cary, did not promptly deposit entrusted funds, did not adequately supervise an assistant, disbursed funds from his trust account for clients in excess of any funds held for the clients, did not promptly reimburse the resulting deficiencies to the trust account, and did not conduct monthly and quarterly trust account reviews and reconciliations. The DHC suspended him for two years. The suspension is stayed for two years upon his compliance with numerous conditions.

Ada L. Mason – 20 DHC 10

Mason, of Newton Grove, committed drug offenses. Her law license was suspended by the Wayne County Superior Court in 2013. She successfully completed probation and the charges were dismissed. In March 2020, the court rescinded the order suspending her license subject to resolution of a disciplinary action in the DHC. The DHC suspended her license for three years. The suspension is stayed for five years upon her compliance with numerous conditions.

James Pressly Mattox – 20 DHC 11

Mattox, of Statesville, did not conduct required monthly and quarterly reconciliations and reviews of his trust accounts, on occasion disbursed more from his trust account for a client than he had in a trust account for the benefit of that client, did not always promptly disburse entrusted funds, did not supervise an assistant to whom he delegated trust accounting tasks, and back-dated some reports in preparation for a random audit by the State Bar. The DHC suspended his license for two years. The suspension is stayed for two years upon Mattox’s compliance with numerous conditions.

Completed Grievance Noncompliance Actions before the DHC

Harold R. Crews – 20 DHC 2N

The chair of the DHC ordered Crews, of Walkertown, 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 and trust account records to the Grievance Committee. Crews did not respond to the show cause order. He was suspended by the DHC and will not be eligible for reinstatement until he provides the requested information and records.

Completed Surrenders to the Council

Lisa Blalock of Laurinburg surrendered her license and was disbarred by the State Bar Council on January 24. She admitted that she misappropriated entrusted funds totaling at least \$11,892.90.

Completed Discipline and Disability Proceedings in the Courts

Mark L. Bibbs of Raleigh surrendered his license and was disbarred by the Wake County Superior Court. Bibbs pled guilty to four counts of lobbying without registration, one count of obstruction of justice, and one count of criminal contempt, all misdemeanors.

Orders of Reciprocal Discipline

No orders of reciprocal discipline were entered this quarter.

Transfers to Disability Inactive Status

Michael H. Griffin, formerly of Shelby and now of Florida, was transferred to disability inactive status by the DHC.

Bradley S. Moree of New Hanover County was transferred to disability inactive status by the chair of the Grievance Committee.

Interim Suspensions

The chair of the DHC entered an order of interim suspension of the law license of **John V. Ivsan**. Ivsan pled guilty to one count of conspiracy to defraud the Internal Revenue Service, in violation of 18 U.S.C. § 371, and one count of tax evasion, in violation of 26 U.S.C. § 7201. He is currently incarcerated.

Completed Petitions for Reinstatement/Stay - Uncontested

No uncontested petitions for reinstatement or stay were resolved this quarter.

Completed Petitions for Reinstatement/Stay - Contested

No contested petitions for reinstatement or stay were resolved this quarter.

Completed Motions to Show Cause

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

Welch represented the defendant in a homicide prosecution. The court ordered Welch to show cause why he should not be disciplined for redacting a portion of an expert's notes and providing the redacted notes to the district attorney without advising the district attorney of the redaction. An order of discipline has been entered but is under seal until conclusion of the underlying criminal case.

Douglas P. Connor – 19 CVS 10893 (Wake County Superior Court)

The Wake County Superior Court entered an order enjoining Connor, of Mount Olive, from handling entrusted funds and from serving in any fiduciary capacity. Connor was then serving as trustee of a testamentary trust and did not resign when the injunction was entered. The court ordered Connor to show cause why he should not be held in civil contempt for violating the injunction. After hearing, the court found that Connor's lack of compliance was not willful and directed him to resign from the trusteeship within ten days. Connor did not resign. He finally resigned after the court entered another order to show cause why he should not be held in contempt.

TROs and Preliminary Injunctions

The Wake County Superior Court issued a preliminary injunction prohibiting **Sean Thomas Dillenbeck** of Gastonia from handling entrusted funds. The Wake County Superior Court also issued a temporary restraining order prohibiting **B. Ervin Brown, II**, of Winston Salem from handling entrusted funds.

PENDING DISCIPLINE AND DISABILITY CASES

The chair of the DHC has ordered that all pending cases that were scheduled for hearing in May are continued. Those cases have not been rescheduled.

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 disciplinary proceeding pending resolution of the disability issue, and repeatedly ordered Anderson to undergo evaluation. Anderson defied several DHC orders requiring him to undergo evaluation. The DHC stayed the disability case until Anderson complies with those orders. In May 2016, the Wake County Superior Court entered a preliminary injunction prohibiting Anderson from practicing law until the discipline and disability cases are concluded.

Craig M. Blitzer – 17 DHC 23

Blitzer, of Reidsville, was the elected district attorney of Rockingham County. Blitzer pled guilty in Wake County Superior Court to misdemeanor willful failure to discharge duties. In August 2017, the Chair of the DHC entered an order of interim suspension of his law license. It is alleged that while serving as the District Attorney, Blitzer benefitted from his wife's State employment knowing that she did not perform any meaningful work for the benefit of the State; personally took, and asked staff to take, online academic classes for his wife on State time; and failed to provide discovery in criminal cases. Hearing has not been scheduled.

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's 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.

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). Griffin was transferred to disability inactive status by consent. The disciplinary action will be stayed until Griffin is returned to active status.

Robert Lewis – 18 DHC 36

Lewis, of Raleigh, was sanctioned by the bankruptcy court because he did not file required pleadings, filed pleadings containing false and misleading representations, charged an impermissible fee, did not maintain a client ledger of entrusted funds, affixed his clients' electronic signatures to pleadings and other documents without their consent, did not adequately communicate with his clients, disobeyed the rules of a tribunal, and did not report his misconduct to the State Bar as the bankruptcy court ordered him to do. It is also alleged that Lewis violated multiple trust account rules. Hearing has not been scheduled.

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 did not 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 in prison followed by supervised release and was ordered to pay restitution of \$545,738.90. In February 2019, 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. Flint was sentenced to fourteen months in prison. In October 2019, the chair of the DHC entered an order of interim suspension of his law license. It is alleged that Flint was convicted of a felony reflecting adversely on his fitness as a lawyer, presented false diplomatic credentials to TSA agents to avoid having his bag searched before boarding an airplane, and falsely asserting that he was a diplomat for the International Human Rights Commission. 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 was continued and has not been rescheduled.

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). In February 2019, the chair of the DHC entered an order of interim suspension of her law license. The State Bar has alleged the criminal convictions and the underlying misconduct. Hearing was continued and has not been rescheduled.

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, 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.

John C. Snyder – 19 DHC 13

It is alleged that 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 was continued and has not been rescheduled.

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 agreement and made false representations to the State Bar about the underlying criminal case. 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 was tentatively scheduled for mid-May but has been continued and has not been rescheduled.

Matthew Coxe – 19 DHC 22

It is alleged that Coxe, of Jacksonville, misappropriated entrusted funds, did not reconcile his trust accounts, served as attorney-in-fact for an elderly client while he was enjoined by the court from acting as a trustee or attorney-in-fact, used the client's funds to pay his personal expenses, and otherwise mismanaged the client's funds. He is enjoined from handling entrusted funds. Hearing is scheduled for June 11-12.

Nikita Mackey – 19 DHC 23

It is alleged that Mackey, of Kings Mountain, neglected and failed to communicate with a client, vandalized cars owned by his former spouse and her father by discharging a firearm into them, negotiated a check upon which he forged his former spouse's endorsement, and slept during a substantial portion of a client's federal criminal trial. Hearing has not been scheduled.

Cabell J. Regan – 19 DHC 25

It is alleged that while serving as attorney-in-fact for a client, Regan, of Pittsboro, breached his fiduciary duty, engaged in dishonest conduct, embezzled fiduciary funds, collected an excessive fee, and entered into a business transaction with the client. It is also alleged that Regan misappropriated client funds, did not properly maintain and disburse client funds, and did not maintain required trust account records. He is enjoined from handling entrusted funds and from serving in any fiduciary capacity. Hearing is scheduled for October 5-7.

Joseph H. Forbes – 20 DHC 3

It is alleged that Forbes, of Elizabeth City, willfully failed to account for and pay over to the IRS payroll taxes required to be withheld from the paychecks of his law firm's employees. The allegations of misconduct have been established by default order. A hearing on the appropriate discipline has not been scheduled.

William Morgan – 20 DHC 5

It is alleged that Morgan, of Elizabeth City, did not conduct required quarterly trust account reviews and reconciliations, did not maintain records sufficient to identify the owners of funds in his trust account, did not adequately supervise assistants to whom he delegated trust account duties, did not ensure entrusted funds were deposited into his trust account, did not promptly correct the resulting deficiencies in his trust account, and did not promptly disburse entrusted funds. Hearing is scheduled for June 25.

Kenneth Ording – 20 DHC 6

It is alleged that Ording, of Hampstead, did not promptly deposit entrusted funds, did not adequately supervise one or more assistants to whom he delegated trust account duties, did not conduct required monthly and quarterly trust account reviews and reconciliations, disbursed funds from his trust account for clients in excess of any funds held for those clients in the trust account, did not promptly reimburse the resulting deficiencies to the trust account, had bank charges paid with entrusted funds, did not promptly disburse entrusted funds, commingled his own funds with entrusted funds, did not always create and maintain client ledgers, and did not ensure client ledgers were accurate. Hearing has not been scheduled.

Martin M. Brennan – 20 DHC 7

It is alleged that Brennan, of Huntersville, withheld funds from his employees' paychecks to pay health insurance premiums and state and federal taxes, but instead used the funds for his own purposes. Hearing has not been scheduled.

John Way – 20 DHC 8

It is alleged that Way, of Morehead City, assisted a client in perpetrating a fraudulent real estate transaction to avoid creditors. Hearing has not been scheduled

Nicole A. Crawford – 20 DHC 9

It is alleged that Crawford, of Durham, neglected a client's case, made a multitude of false statements to her client, opposing counsel and the court, and fabricated documents. Hearing has not been scheduled.

Christie Bynum Smith – 20 DHC 12

It is alleged that Bynum Smith, of Greensboro, falsely represented to her cyber insurance carrier, to the FBI, and to the State Bar that she telephoned the seller in a real estate transaction to verify wiring instructions before she made a wire disbursement of the seller's proceeds. Hearing has not been scheduled.

Steven J. Allen – 20 DHC 14

It is alleged that Allen, of Hendersonville, had a sexual relationship with and cohabitated with a client while her child custody case was ongoing, thereby making himself a necessary witness in the case and causing prejudice to the administration of justice. Hearing has not been scheduled.

Kenneth Davies – 20 DHC 15

It is alleged that Davies, of Charlotte, entered into a business transaction with a client and disbursed settlement funds to himself without client approval.

Pending Grievance Noncompliance Actions before the DHC

There are no pending grievance noncompliance actions before the DHC.

Pending Petitions for Reinstatement/Stay - Uncontested

There are no pending uncontested petitions for reinstatement or stay.

Pending Petitions for Reinstatement/Stay - Contested

There are no pending contested petitions for reinstatement or stay.

Pending Motions to Show Cause

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

Pending Surrenders to the Council

No lawyers surrendered their law license to the Council at the January 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. 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. 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 serves the first six months of the suspension. Entzminger appealed. The Court of Appeals affirmed in part, reversed in part, and remanded for a new hearing on the appropriate discipline. Entzminger's petition for discretionary review by the North Carolina Supreme Court is pending.

NC State Bar v. Venus Springs - 18 DHC 25

Springs, of Mecklenburg County, posted on her YouTube channel 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 her YouTube channel for eleven months after a federal court ordered her to remove it. The DHC reprimanded her. She appealed. The State Bar filed its brief on March 27. Springs is permitted to file a reply brief under the extended deadlines for appellate filings. The Order of Discipline is stayed pending appeal.

NC State Bar v. Alan Phillips - 18CVS5645 (Wake County)

Phillips was a licensee and was the respondent in a grievance alleging that he 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. 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 him 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. He was imprisoned four times for a total of 79 days. The court also disbarred Phillips, effective July 1, 2019. Phillips filed notice of appeal. Briefs have been filed and we are awaiting the Court of Appeals' calendar order.

NC State Bar v. Clinton Moore - 18 DHC 43

Moore, of Charlotte, obtained property by false pretense and misappropriated entrusted funds totaling \$14,000. Moore also neglected clients, including an inmate who paid him \$5,000 to handle a motion for appropriate relief. He was disbarred by the DHC. He appealed. His proposed record on appeal was due January 27. He sent an email requesting an extension of time and was instructed to file a motion but did not do so. The State Bar will move to dismiss the appeal.

North Carolina State Bar v. Erica Erickson - 18 DHC 46

The DHC concluded that Erickson, of Brevard and Hendersonville, knowingly notarized false or fraudulent acknowledgements and pled guilty to related criminal offenses, filed fraudulent documents with the court and fraudulently obtained signatures on powers of attorney. She was disbarred by the DHC. She appealed. She has filed the record on appeal. Her appellant brief is due May 12, subject to the extended deadlines for appellate filings.

David Shawn Clark - 19BCR1

Clark, of Hickory, was disbarred in 2013. He had sex with a client, made false statements to a tribunal and to the Grievance Committee, attempted to suborn perjury, was convicted of several criminal charges including communicating threats and obstruction of justice, intentionally disclosed client confidences, and engaged in a conflict of interest. He petitioned for reinstatement from disbarment. The DHC recommended denial of the petition. Clark appeal to the Council. At its October 25, 2019 meeting, the Council denied the petition for reinstatement. Clark's appeal to the Court of Appeals is scheduled for decision without oral argument.

TRUST ACCOUNT COMPLIANCE PROGRAM

Fifty-two lawyers have completed the TAC Program since its inception. Four lawyers accepted offers to participate in the TAC Program after the January 2020 Quarterly Meeting. Leanon currently supervises twenty-eight participants. Leanon also monitors eleven DHC defendants whose stayed suspensions include trust account compliance conditions and oversees compliance with random audit corrections.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 14 new files this quarter. The committee did not meet in April. Completed investigations that were ready for consideration in April will be considered at the 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

NC State Bar v. Michael Asen. In July 2017, the Executive Committee authorized the OOC to file a lawsuit against Michael Asen, a New York lawyer who offered to provide legal services in North Carolina to retail stores that have been victimized by shoplifters. A consent permanent injunction has been entered.

NC 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 offered debt adjusting to North Carolina consumers. NDR has been offering to defend consumers in lawsuits brought by creditors. At the October 2019, meeting the Executive Committee authorized counsel to accept NDR's proposed consent agreement. The parties have entered into a consent agreement.

Prepaid Legal Services Plan Registration

The State Bar received one initial registration form this quarter for **Solutions Plan**. It has been reviewed and accepted for registration. The State Bar also received registration forms and materials for **MetLaw4.0** and **City of Charlotte**. These plans are submitting their registration forms and materials for a second time. Staff is reviewing the materials for these plans.

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 State Bar claim 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, which dismissed those appeals. The State Bar's motion to dismiss is pending before the Full Commission. The Attorney General represents the State Bar.

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.

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 State Bar President 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.

Daniel Chappell Flint v. NC State Bar, DHC and Margaret Cloutier (Mecklenburg County Superior Court). Flint filed this lawsuit in March 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.

Valerie Arroyo v. Daniel Zamora et al (NC Industrial Commission). This is a purported tort claim alleging that the State Bar failed to “stop, act or prosecute” a grievance respondent. The Attorney General represents the State Bar.

Valerie Arroyo v. NC State Bar (NC Industrial Commission). This is another purported tort claim by Arroyo alleging that lawyers Daniel Zamora and John Silverstein, as agents of the State Bar, violated her constitutional rights. The Attorney General represents the State Bar.

Valerie Arroyo v. NC State Bar (NC Industrial Commission). This is another purported tort claim by Arroyo alleging that lawyers Chad Diamond and John Silverstein, as agents of the State Bar, failed to “stop prejudice, perjury, and abuse of court.” The Attorney General represents the State Bar.

Kelvin Exum v. NC State Bar (NC Office of Administrative Hearings). Exum filed a grievance, which was dismissed. Exum demanded an explanation for the dismissal. The State Bar sent Exum a letter in response. Exum filed this purported tort claim alleging that the letter was unsolicited, that it contains false and unfounded information about him, and that it served no purpose other than to embarrass and harass him. The ALJ dismissed the claim. Exum has appealed to Wake County Superior Court. The Attorney General represents the State Bar.

Derek Olivaria v. NC State Bar (NC Industrial Commission). Olivaria filed this purported tort claim alleging that three lawyers engaged in misconduct in an eviction action. Petitioner does not allege any act or omission by the State Bar. The State Bar’s motion to dismiss is pending. The Attorney General represents the State Bar.

Christopher Livingston v. NC State Bar, et al (Wake County Superior Court). In July 2016, the DHC suspended Livingston for five years. 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 chaired the Grievance Committee that referred the case to the DHC for trial and Hodge prosecuted the DHC case.) In February 2019, the federal court dismissed the lawsuit for lack of subject matter jurisdiction. One month later, 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. The State Bar informed the TCA that no defendant has been served or knew about the complaint and asked that the case be discontinued. The State Bar has heard nothing more from the TCA or Livingston.

Derrick Allen v. NC State Bar, et al (US District Court, MDNC). Allen was convicted of murder in Durham, but his conviction was vacated in one of the cases that led to removal of Tracey Cline as Durham County District Attorney. He has filed a series of *pro se* complaints in the federal court against numerous parties directly and indirectly associated with his case. This lawsuit alleges that the State Bar and several of its employees violated his civil rights because his grievances were not properly considered. The court dismissed the complaint on its own motion following a frivolity review. The defendants have not been served. Allen gave notice of appeal to the Fourth Circuit.

Client Security Fund Claims/Subrogation Cases

There were 40 claims on the agenda for the Board’s April meeting. No lawsuits are pending in superior court seeking reimbursement from a disbarred lawyer for payments made by the CSF.

Disbursement Cases

The OOC obtained one order from Wake County Superior Court directing the disbursement or escheatment of \$1,622.37 from the frozen trust account of a disbarred lawyer. Another motion, to disburse \$5,450.47 from the frozen trust account of a disbarred lawyer, is pending review by the Disbursement Committee.

Trusteeships

Trustees were appointed to wind down the practices of **Greg Buscemi** of Wrightsville Beach and **Alan T. Briones, Jr.** of Raleigh, who are unavailable to clients, and the practices of deceased lawyers **Jonathan Moody** of Shallotte and **Jonathan Bridgers** of Greenville.

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

Derrick Allen v. NC State Bar, et al (US Court of Appeals for the Fourth Circuit). Allen filed a series of cases in federal court against numerous parties including the State Bar. He alleged that the State Bar and several of its employees did not properly consider grievances he filed. He appealed the trial court's order dismissing his claims following a frivolity review. Allen gave notice of appeal to the Fourth Circuit.

PERSONNEL

The Office of Counsel had no personnel changes this quarter.

MISCELLANEOUS

Josh continues to teach legal research and writing at Campbell Law, likely because they can't find anyone else willing to do it. 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. While working from home, Josh is using his extra time to garden and raise goats. He also built a treehouse for his kids that will undoubtedly be the location of their first cigarettes.

Alex regularly teaches CLEs on ethics and technology. He recently volunteered as a judge for the Tobacco Road Invitational Tournament, a collegiate mock trial competition.

Leonor chairs the 10th JD/WCBA Professionalism Committee and continues to serve on the NCBA Professionalism Committee.

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

Carmen is an Associate Adjunct Professor of professional responsibility at UNC Law and President of the Wake County Bar Association. She continues to serve as the OOC's liaison to the judiciary. She also teaches CLEs across the state.

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 latest summit was held November 14. 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. Barry continues to mentor a third-year law student in the Campbell Law Connections Mentorship Program.

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