

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
OCTOBER 23, 2020**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

During the third quarter of 2020, ACAP staff responded to 778 phone calls from members of the public and placed 186 calls to lawyers in an effort to resolve their concerns. Staff also responded to 1,251 emails from members of the public and from attorneys and responded to 613 letters from inmates.

The State Bar opened 91 requests for fee dispute resolution during the third quarter, all of which were 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, 1,254 grievance files were opened. Through October 15, 2020, 770 grievance files were opened.

As of October 14, 1052 grievances were pending. One hundred-forty-three 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 168 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 663 files in which no recommendation has yet been made, 137 were more than six months old. In the third quarter of 2020, 156 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 third quarter of 2020.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

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

**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. 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. The DHC suspended his license for four years. He will receive credit toward satisfaction of the suspension for the time his license was subject to interim suspension.

**Charles L. Morgan, Jr.—19 DHC 18**

Morgan, of Charlotte, grossly mismanaged his trust account and was held in contempt of court for violating the preliminary injunction prohibiting him from handling entrusted funds. The DHC suspended his license for three years, with the opportunity to apply for a stay after serving six months of active suspension upon compliance with enumerated conditions.

**Joseph H. Forbes – 20 DHC 3**

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. Forbes surrendered his law license and was disbarred by the DHC.

**John Way – 20 DHC 8**

Way, of Morehead City, knowingly prepared and recorded a deed containing the false representation that the grantees took title "free and clear of all encumbrances," thereby engaging in conduct involving misrepresentation and conduct prejudicial to the administration of justice. He was censured by the DHC.

**Completed Grievance Noncompliance Actions before the DHC**

No grievance noncompliance actions were completed during the third quarter.

**Completed Surrenders to the Council**

On July 24, 2020, John Vincent Ivsan, formerly of Switzerland and now incarcerated in Pennsylvania, surrendered his law license and was disbarred by the Council. Ivsan was convicted in the Eastern District of Pennsylvania of one count of tax evasion in violation of 26 U.S.C. § 7201 of tax evasion and one count of conspiracy to defraud the IRS in violation of 18 U.S.C. § 371.

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

No discipline and disability cases were completed in the courts this quarter.

**Orders of Reciprocal Discipline**

No orders of reciprocal discipline were entered this quarter.

**Transfers to Disability Inactive Status**

No orders transferring lawyers to disability inactive status were entered this quarter.

**Interim Suspensions**

The Chair of the DHC entered an order of interim suspension of the law license of **Nikita V. Mackey** of Charlotte.

### **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**

In September 2019, the DHC suspended **Brooke McKinley Webster** of Winston Salem for two years after his conviction of the crimes of secret peeping and trespassing. The suspension was stayed for two years. After a hearing, the DHC concluded that Webster did not comply with the conditions of the stay, lifted the stay, and activated the two-year suspension.

In April 2020, the DHC suspended **David C. Hefferon** of Charlotte for one year after finding that Hefferon had inappropriate contact of a sexual nature with his client, provided financial assistance to his client, and engaged in a representation that was materially limited by his own interest. The suspension was stayed for two years on enumerated conditions. The DHC entered a consent order finding that Hefferon did not comply with a condition of the stay and modified the order of discipline. Hefferon is now suspended for two years, stayed for two years.

### **TROs and Preliminary Injunctions**

The Wake County Superior Court issued preliminary injunctions prohibiting **Monica R. Savidge** of Wilmington, **Donald R. Stroud** of Greenville, and **B. Ervin Brown** of Winston Salem from handling entrusted funds.

### **PENDING DISCIPLINE AND DISABILITY CASES**

**The chair of the DHC continued all cases that were scheduled for hearing in May, June and July. Those cases are now being scheduled for hearing and hearings are being held.**

#### **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 fraud 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.

**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 was continued and has not been rescheduled.

**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 convicted 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 asserted 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 is scheduled for November 18.

**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 in his 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.

**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 is scheduled for November 12-13.

**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 was continued and has not been rescheduled.

**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 was continued and has not been rescheduled.

**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 was continued and has not been rescheduled.

**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 was continued and has not been rescheduled.

**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.

**Nicole A. Crawford – 20 DHC 9**

It is alleged that Crawford, of Durham, neglected a client's case, made multiple false statements to her client, opposing counsel and the court, and fabricated documents. Crawford has not participated in the DHC proceeding and the Office of Counsel has filed a Motion for Order of Discipline by Default. 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.

**George Rouco – 20DHC13**

Rouco, of Charlotte, pled guilty to felony possession of a controlled substance. The chair of the DHC denied the State Bar’s motion for interim suspension. The DHC complaint has not been filed.

**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 his client’s approval. Hearing has not been scheduled.

**Janet Reed – 20 DHC 16**

It is alleged that Reed, of Jacksonville, embezzled money from a relative while serving as his attorney-in-fact. Hearing has not been scheduled.

**Daniel Rufty – 20 DHC 17**

It is alleged that Rufty, of Charlotte, aided in the criminal practice of debt adjusting, did not supervise his nonlawyer assistants, and made false statements to his clients. Hearing is scheduled for the week of January 25, 2021.

**Scott Shelton – 20 DHC 18**

It is alleged that Shelton, of Hendersonville, neglected numerous client matters. Hearing has not been scheduled.

**Gina E. Essey - 20 DHC 19**

It is alleged that Essey, of Oak Island, did not conduct required quarterly and monthly trust account reconciliations, did not maintain accurate client ledgers, did not promptly disburse earned fees, did not perform quarterly reviews, and failed to maintain proper trust account records. Hearing has not been scheduled.

**Wesley S. White – 20 DHC 20**

It is alleged that White, of Charlotte, did not communicate with his client, did not adequately respond to discovery, and did not appear at multiple scheduled hearings, which ultimately resulted in his client’s arrest for contempt. Hearing has not been scheduled.

**Judith L. Birchfield – 20 DHC 21**

It is alleged that Birchfield, of Chapel Hill, did not ensure that a client’s estate planning documents were properly executed and amended to effectuate the client’s desires, notarized a false acknowledgement, knowingly assisted in probating an invalid will, and made false statements to third parties and the State Bar. Hearing has not been scheduled.

**Pending Grievance Noncompliance Actions before the DHC**

There are no pending grievance noncompliance actions.

**Pending Petitions for Reinstatement/Stay - Uncontested**

There are no pending uncontested petitions for reinstatement or stay.

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

#### **In re Theodore G. Hale – 20BCR1**

Hale, of Wilmington, was disbarred by the DHC in 2004. The DHC found that he misappropriated money from his former law partner, charged and collected money from the parents of a criminal defendant whom he was appointed to represent without telling them that he was obligated to represent their son at state expense, and, in a divorce and equitable distribution case, collected and converted to his own use the proceeds of an annuity contract in the amount of \$15,287.09. In February 2019, the DHC recommended denial of Hale's first petition for reinstatement and Hale did not seek Council review. Hearing on his pending petition was continued and has not been rescheduled.

#### **Jeffrey Smith – 15 DHC 27R2, 18 DHC 26R2**

In June 2018, the DHC suspended Smith, of Charlotte, for two years. The DHC concluded that Smith violated multiple trust accounting rules. The Order of Discipline provided that, after he served one year of the suspension, Smith could petition for a stay of the balance upon enumerated conditions. Smith did not petition for a stay. His petition for reinstatement from suspension is pending. Hearing has not been scheduled.

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

#### **Sean Thomas Dillenbeck – 20 CVS 4911 (Wake County Superior Court)**

On April 13, 2020, the Wake County Superior Court enjoined Dillenbeck, of Gastonia, from handling entrusted funds and ordered him to provide trust account and client records to the State Bar. The court granted the State Bar's motion for an order requiring Dillenbeck to show cause why he should not be held in contempt for failing to produce the required documents. Hearing is scheduled for October 12.

#### **Meredith P. Ezzell – 18 DHC 42SC**

In February 2019, the DHC suspended Ezzell, of Wilmington, for three years. The DHC concluded that Ezzell neglected and did not adequately communicate with her client, collected illegal or excessive fees, did not refund unearned fees, did not protect her client's interests upon termination of the representation, misrepresented the services she would provide to her clients, did not appear for scheduled court appearances, did not take reasonable measures to ensure that her nonlawyer assistant acted in accordance with Ezzell's professional obligations, aided her nonlawyer assistant in the unauthorized practice of law, and violated multiple trust accounting rules. The suspension was stayed upon enumerated conditions. The State Bar alleges that Ezzell did not comply with the conditions of the stay and seeks an order lifting the stay and activating the suspension. Hearing is scheduled for October 29.

### **Pending Surrenders to the Council**

No lawyers are expected to surrender to the Council at the October meeting.



## **APPEALS IN DISCIPLINE & DISABILITY CASES**

### **Completed 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. The Supreme Court denied Entzminger's petition for discretionary review on August 12, 2020.

#### **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. On July 21, 2020, the Court of Appeals affirmed the Council order denying reinstatement.

#### **NC State Bar v. Clinton Moore - 18 DHC 43**

Moore, of Charlotte, obtained property by false pretense, misappropriated entrusted funds totaling \$14,000.00, and neglected clients. In September 2019, he was disbarred by the DHC. He appealed. His proposed record on appeal was due January 27, 2020. He sent an email requesting an extension of time to serve a proposed record and was instructed to file a motion but did not do so. The DHC dismissed the appeal.

### **Pending Appeals**

#### **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 appealed. The case was on the Court's May 26 docket for decision without oral argument.

#### **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. The briefs are filed. The case is on the Court's October 21 docket for decision without oral argument.

#### **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 Court of Appeals affirmed. On October 6, Springs filed a notice of appeal and petition for discretionary review with the North Carolina Supreme Court. The State Bar will respond on or before October 19.

### **TRUST ACCOUNT COMPLIANCE PROGRAM**

Fifty-seven lawyers have completed the TAC Program since its inception. Five lawyers accepted offers to participate in the TAC Program after the July 2020 Quarterly Meeting. Leonor currently supervises thirty-seven participants. Leonor also monitors six DHC defendants whose stayed suspensions include trust account compliance conditions and oversees compliance with random audit corrections.

### **AUTHORIZED PRACTICE**

The Authorized Practice Committee opened 17 new files this quarter. There are 18 new files on the Committee's October agenda for consideration.

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**

There is no pending, recently completed or contemplated Authorized Practice litigation.

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

The State Bar did not receive initial registration forms for any proposed plans this quarter.

The State Bar reviewed the initial registration forms and materials for **Debt Cleanse (20PP03)** this quarter. Debt Cleanse was not registered.

## OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

**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 Office of Counsel 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.

**Christopher Livingston v. N.C. State Bar, et al (Wake County Superior Court).** Livingston is a licensee. In July 2016, the DHC suspended him for five years. The DHC order was affirmed on appeal. In January 2018, Livingston sued the State Bar and the district bar in federal court alleging that the district bar improperly used mandatory district bar dues. Livingston added John Silverstein (Chair of the Grievance Committee that found probable cause) and Leonor Hodge (who prosecuted Livingston) as defendants, alleging that they selectively prosecuted him. In February 2019, the federal court granted the State Bar defendants' motion to dismiss for lack of subject matter jurisdiction. In March, Livingston filed this action, a nearly identical complaint, in Wake County Superior Court. Livingston never served any defendant. On June 3, he obtained alias and pluries summonses but never served them. The State Bar first learned of the Wake County lawsuit on September 9, 2019, when the trial court administrator directed the parties to prepare a case management order. The State Bar notified the trial court administrator that, because no defendant has been served, the case should be discontinued. The State Bar has heard nothing further from the trial court administrator and the case has not been scheduled for hearing.

**North Carolina State Bar v. Alan Phillips (Wake County Superior Court).** Phillips was a licensee and a grievance respondent. The grievance alleged 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 alleged misconduct. The President of the State Bar denied Phillips' motion and ordered him to produce the subpoenaed documents. He did not do so. The State Bar filed this action seeking a mandatory injunction enforcing the subpoena. Phillips objected to the State Bar's 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 was pending, he filed his own grievances against State Bar officers, councilors and employees. The trial court overruled Phillips' objection and ordered him 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 the order. Phillips was repeatedly held in contempt and was imprisoned four times for a total of 79 days. The court also disbarred Phillips effective July 1, 2019. Phillips' appeal to the North Carolina Court of Appeals was on the Court's May 26 docket for decision without oral argument. The Office of Counsel represents the State Bar.

**Derek Olivaria v. North Carolina 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 deputy commissioner dismissed the claims on June 29, 2020. Olivaria did not appeal by the July 14 deadline. The Attorney General represents the State Bar.

**Valerie Arroyo v. Daniel Zamora et al (NC Industrial Commission).** This and the following two entries are purported tort claims filed by Arroyo against the State Bar and other entities and officials. These three files, and six additional claims Arroyo filed against other individuals and agencies, have all been dismissed and have been consolidated into a single appeal. In this claim, Arroyo alleges that the State Bar failed to “stop, act or prosecute” Daniel Zamora. The Attorney General represents the State Bar.

**Valerie Arroyo v. North Carolina State Bar (NC Industrial Commission).** In this claim, Arroyo alleges that the State Bar violated her rights by refusing to discipline licensee Zamora. The Attorney General represents the State Bar.

**Valerie Arroyo v. North Carolina State Bar (NC Industrial Commission).** In this claim, Arroyo alleges that the State Bar violated her rights by refusing to discipline licensee Diamond. The Attorney General represents the State Bar.

**Valerie Arroyo v. Josh Stein, et al (Mecklenburg County Superior Court).** Arroyo has previously filed claims in state and federal courts against the State Bar which have been dismissed. In August 2020, Arroyo filed this action in Mecklenburg County against the Attorney General of North Carolina, the State of North Carolina, and a host of other state agencies and officials, including the State Bar, two State Bar councilors, and three members of the OOC. Arroyo makes vague allegations about a grievance. A motion to dismiss is pending. The Attorney General represents the State Bar.

**Kelvin Exum v. North Carolina 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 alleges 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 OAH dismissed Exum’s claim. He appealed to Wake County Superior Court. Hearing has not been scheduled. The Attorney General represents the State Bar.

**Ballentine International Express Trust/Trustee Board by Trustee v. State of North Carolina et al (NC Industrial Commission).** This is a purported tort claim against numerous defendants. Ballentine is a purported trust formed in an effort to defeat a foreclosure. Ballentine alleges the foreclosure was wrongful because the grantor of the deed of trust conveyed the property to the trust and the trustee cancelled the deed of trust. Ballentine 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 has not been scheduled for hearing. The Attorney General represents the State Bar.

**Kareem Abdullah Kirk v. The North Carolina State Bar Grievance Committee (NC Office of Administrative Hearings 20 BAR 3637).** Kirk, an inmate, filed a petition for a contested case hearing before the Office of Administrative Hearings based on the outcome of a grievance he submitted. This is the second time Kirk has filed a petition with OAH. In 2017, OAH determined that it did not have subject matter jurisdiction over his claims. The Attorney General represents the State Bar.

**Isabella Amor v. Macon County DSS, Macon County Sheriff's Department, NC State Bar et al (NC Industrial Commission).** Amor filed this purported tort claim against two Macon County agencies and the State Bar. She alleges that she filed a grievance against a lawyer involved in a DSS proceeding involving her children and that the State Bar did not demand that the lawyer be removed from the proceeding. The Attorney General represents the State Bar.

### Client Security Fund Claims/Subrogation Cases

There are 25 claims on the agenda for the Board's October 22 meeting. There are two lawsuits pending in superior court seeking reimbursement from a disbarred lawyer for payments made by the CSF.

### Disbursement Cases

This quarter, the OOC filed four motions to disburse or escheat \$17,251.34 from the frozen trust accounts of suspended or disbarred lawyers. All are calendared for the last week in October. In September, the Wake County Superior Court entered three orders to disburse or escheat \$64,130.67 from the trust accounts of other suspended or disbarred lawyers.

### Trusteeships

A trustee was appointed to wind down the practice of deceased attorney **John M. Skinner** of Williamston.

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

**Derrick Allen v. NC State Bar, et al (US District Court, MDNC).** Allen was convicted of murder in Durham. His conviction was vacated in one of the cases that led to removal of Tracey Cline as Durham County District Attorney. Allen has filed multiple pro se complaints in 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 trial court dismissed the complaint on its own motion following a frivolity review. Allen gave notice of appeal. On April 17, 2020, the Fourth Circuit affirmed the trial court per curiam. On October 5, 2020, the United States Supreme Court denied Allen's petition for writ of certiorari.

## **Pending Appeals**

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

## **PERSONNEL**

Sadly for OOC, Mary Winstead retired on September 30. We will miss her superb legal work and her delightful, generous character. Robert Weston will join OOC as its newest deputy counsel on November 9. Robert is a graduate of Campbell Law School and began practicing law in Raleigh in 2014.

## **MISCELLANEOUS**

Josh continues to teach legal research and writing at Campbell Law. He regularly presents at various CLEs. He also killed three snakes on his farm this year, 1 for stealing eggs, 1 for killing a full-grown laying hen, and 1 for the sins of his fellow snakes.

Fern staffed the Ethics subcommittee studying the ABA advertising rules.

Alex regularly teaches CLEs on ethics and technology. As the most technologically adept person in OOC, he has worked tirelessly to help his colleagues navigate the technological challenges presented by the ransomware attack and by COVID. He serves on the committee coordinating our new software implementation. Alex also staffs the Subcommittee on Compensation of Court-Appointed Counsel and the Courthouse Access Committee.

Leonor chairs the 10<sup>th</sup> JD/WCBA Professionalism Committee and continues to serve on the NCBA Professionalism Committee. She also staffs the PMBR Committee and three Ethics subcommittees studying the following: Proposed FEO 2 - Advancing Client Portion of Settlement; Inquiry of Grievance Committee – Avoiding Counterfeit Checks; and Wire Fraud.

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 frequently presents at CLEs and as a guest lecturer for law school classes. She is also staffing three committees, the Ethics subcommittee on the proposed opinion re: communications with judges, the Ethics subcommittee studying ABA Model Rule 8.4(g), and the Issues subcommittee studying proportional discovery.

David staffs the Authorized Practice 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. A summit was scheduled for spring 2020 but must be rescheduled due to COVID. The last 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.

Jennifer volunteers as a judge with Raleigh's Capital Area Teen Court program. She also staffs the LAMP Committee.

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