

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
JULY 16, 2021**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

During the first quarter of 2021, ACAP staff responded to 1,149 phone calls from members of the public and placed 246 calls to lawyers in an effort to resolve their concerns. Staff also responded to 1,387 emails from members of the public and from attorneys and responded to 495 letters from inmates.

The State Bar opened 81 requests for fee dispute resolution during the first 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. In 2020, 927 grievance files were opened. As of July 8, 2021, 547 grievance files had been opened.

As of July 8, 1,341 grievances were pending. One hundred sixty-five grievances were stayed. Twenty-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 342 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 806 files in which no recommendation has yet been made, 142 were more than six months old. In the second quarter of 2021, 57 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 second quarter of 2021.

**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.

**Patrick Megaro – 18 DHC 41**

Megaro, of Orlando, Florida, represented two brothers 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. The hearing panel found that Megaro entered into a contract with the clients when he knew they did not have the capacity to understand it, charged an "irrevocable" fee, charged an excessive fee, made misrepresentations to his clients and to tribunals, and made arguments against his clients' interests in an effort to protect his own fee. The DHC suspended Megaro's license for five years. He will be eligible to petition for a stay after

serving three years' active suspension upon satisfaction of all enumerated conditions, including the requirement that he reimburse \$250,000.00 to the clients.

**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 State Bar sought imposition of discipline based upon the criminal convictions and the underlying misconduct. Sherman was disbarred.

**Cabell J. Regan – 19 DHC 25**

While serving as attorney-in-fact for a client, Regan, of Pittsboro, breached his fiduciary duty, engaged in dishonest conduct, collected an excessive fee, entered into a business transaction with the client, misappropriated the client's entrusted funds, did not properly maintain and disburse entrusted funds, and did not maintain required trust account records. He is enjoined from handling entrusted funds and from serving in any fiduciary capacity. On June 9, the hearing panel announced its decision to disbar Regan but the order has not yet been entered.

**Kenneth Ording – 20 DHC 6**

Ording, of Hampstead, failed to adequately supervise assistant(s) to whom he delegated trust account duties, failed to conduct the required monthly and quarterly trust account reviews and reconciliations, disbursed funds from his trust account for clients in excess of any funds for the client in the trust account, had bank charges paid with entrusted funds, failed to promptly disburse entrusted funds, failed to always create and maintain client ledgers, failed to ensure client ledgers he maintained were accurate, submitted inaccurate client ledgers to the State Bar altered to make it appear that clients for whom he had over-disbursed funds had zero balances with no excessive disbursements, and engaged in several other violations of the trust account record-keeping rules. Ording took corrective action with respect to certain of the trust account issue but not with respect to others. Pursuant to a consent order of discipline, Ording was suspended for four years with the suspension stayed for four years conditioned upon compliance with requirements listed in the order of discipline.

**Martin M. Brennan – 20 DHC 7**

Brennan, of Huntersville, used for his own purposes funds withheld from his employees' paychecks for health insurance premiums and state and federal taxes. Brennan also did not file and pay his state and federal income taxes for five tax years. He surrendered his license to the DHC and was disbarred.

**Janet Reed – 20 DHC 16**

Reed, of Jacksonville, embezzled money from a relative while serving as his attorney-in-fact. Her answer was stricken because she did not respond to discovery requests. Reed was disbarred.

**Wesley S. White – 20 DHC 20**

White, of Charlotte, did not communicate with his client, did not adequately respond to discovery, and did not appear at multiple scheduled hearings, which resulted in his client’s arrest for contempt. He was suspended for two years. After serving three months of the suspension, White will be eligible to petition for a stay of the balance upon demonstrating compliance with enumerated conditions.

**Melvin L. Wall, Jr. – 20 DHC 22**

It was alleged that Melvin Wall, of Charlotte, did not communicate with his client, did not perfect an appeal, and did not timely respond to the Grievance Committee. The DHC entered a default order establishing the allegations of misconduct and the rule violations. Wall died on May 8, before an order of discipline was entered. The State Bar filed a notice of voluntary dismissal.

**Karen C. Wright – 21 DHC 2**

Wright, of Shelby, was disbarred for conduct including embezzling entrusted funds, committing perjury, and making false statements.

**James E. Rogers – 21 DHC 3**

Rogers, of Durham, commingled personal funds with entrusted funds, disbursed funds for the benefit of clients from his trust account in excess of funds held for those clients in the account, did not timely and properly conduct quarterly reconciliations, did not deposit entrusted funds into his trust account, did not maintain accurate trust account records, did not promptly disburse entrusted funds, did not send required annual accountings to clients, did not properly supervise staff, and gave inaccurate information to a client and to the Grievance Committee. Rogers was suspended for three years. The suspension is stayed for three years upon his compliance with enumerated conditions.

**Guangya Liu – 21 DHC 12**

Liu, of Durham, habitually over-disbursed her trust account in real estate transactions, and continued to do so after representing to the State Bar that she had amended her practices, and habitually left earned fees in her trust account. The DHC suspended her license for two years. The suspension is stayed for three years upon her compliance with enumerated conditions.

**Completed Grievance Noncompliance Actions before the DHC**

**Christi Misocky – 21 DHC 10N**

The DHC suspended Misocky, of Monroe, for noncompliance with the investigation of several grievance files.

**Completed Surrenders to the Council**

No lawyers were disbarred by the State Bar Council at its April meeting.

**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**

No orders of interim suspension were entered this quarter.

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

In April 2019, James Goard of Gaston County was suspended for five years for his conviction of two counts of driving while intoxicated and for engaging in the unauthorized practice of law, failing to communicate with a client, misrepresenting information to a client, and misrepresenting facts to the Grievance Committee. After serving two years of active suspension, Goard petitioned for a stay of the balance. The State Bar did not contest the petition because Goard had satisfied all conditions for a stay. A stay was entered on June 16.

In June 2018, Julie A. Parker of Mocksville was suspended for five years for failing to truthfully account for and timely remit employment taxes to the IRS. After serving 18 months of active suspension, Parker petitioned for a stay of the balance. The State Bar did not contest the petition because Parker had satisfied all conditions for a stay. A stay was entered on July 1.

In October 2020, Charles L. Morgan, Jr. was suspended for three years for trust account mismanagement and violating the injunction prohibiting him from handling entrusted funds. After serving six months of active suspension, Morgan petitioned for a stay of the balance. The State Bar did not contest the petition because Morgan had satisfied all the conditions for a stay. A stay was entered on June 29.

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

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

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

No motions to show cause were completed this quarter.

### **TROs and Preliminary Injunctions**

The Wake County Superior Court entered preliminary injunctions prohibiting **Kenneth A. Free, Jr.** of Greensboro and **Kelly R. Routh** of Charlotte from handling entrusted funds.

## PENDING DISCIPLINE AND DISABILITY CASES

### **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.

### **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. A new DHC panel has been appointed but hearing on remand 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. The hearing has been continued and the case is stayed so that the State Bar can amend its complaint to include new allegations of misconduct that the Grievance Committee referred to the DHC at the January 2021 meeting.

#### **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. Hearing has not been scheduled.

#### **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. He 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 is scheduled for August 3-5.

#### **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.

#### **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.

#### **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 Grievance Committee 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 – 20 DHC 13**

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.

**Katherine Pekman – 20 DHC 23**

It is alleged that Pekman, of Hickory, did not diligently represent and adequately communicate with multiple clients, did not refund unearned fees, did not respond to notices of mandatory fee dispute resolution, and did not respond to the Grievance Committee. Entry of default was entered on May 24.

**Victoria Block – 21 DHC 1**

It is alleged that, after she participated in TACP, Block, of New Bern, did not properly reconcile her trust account. Block did not file a responsive pleading. The State Bar's motion for default judgment is pending. Hearing has not been scheduled.

**Lonnie P. Merritt – 21 DHC 5**

It is alleged that Merritt, of Wilmington, had a sexual relationship with a client and engaged in conduct involving dishonesty. Hearing has been scheduled for August 23.

**Frank Chut, Jr. – 21 DHC 6**

It is alleged that Chut, an Assistant United States Attorney in Greensboro, misled a witness testifying before a grand jury by informing the witness that she was not the target or subject of the investigation when Chut knew that the witness had some level of involvement in the criminal activity and later presented evidence against the witness before a grand jury resulting in a criminal indictment. Hearing has been scheduled for October 26.

**Jim Melo – 21 DHC 7**

It is alleged that for three years, Melo, of Raleigh, withheld funds from his employees' paychecks for federal taxes but instead used the funds for his own purposes. Hearing is expected to be scheduled between November 6 and December 3.

**Nicolle T. Phair – 21 DHC 8**

It is alleged that Phair, of Sanford, certified false information on renewals of her mediator certification to the Dispute Resolution Commission, directed improper *ex parte* communication to a court, filed a frivolous motion to recuse a judge, and made misleading representations to a judge. Hearing is scheduled for August 27.

**H. Bright Lindler – 21 DHC 9**

It is alleged that Lindler, of Rockingham, did not file and pay personal income taxes and withheld funds from employees' paychecks but did not remit them to taxing authorities. It is also alleged that Lindler settled a workers compensation case without his client's permission and retained the settlement funds for payment of expenses when the client declined to communicate with him. Hearing is scheduled for September 30.

**Camille Hill – 21 DHC 13**

Hill, of Asheville, diverted a fee collected from a client's personal injury settlement to herself rather than to her law firm employer, which was entitled to the fee. Hearing is scheduled for the week of November 1.

**Thomas O. Harper, III – 21 DHC 11**

It is alleged that Harper, of Atlanta, engaged in the unauthorized practice of law, committed criminal acts that reflect adversely on his fitness as a lawyer, and did not file federal income tax returns from 2013 to 2017. Hearing is set for the week of March 21, 2022.

**Gregory A. Bullard – 21 DHC 14**

It is alleged that Bullard, of Pembroke, withheld taxes from employee paychecks but did not remit the funds to the IRS from 2007 and 2009 through 2014. It is also alleged that Bullard did not timely file and pay his federal and state personal income taxes for 2010 through 2016 and 2018. Hearing has not been scheduled.

**Christopher D. Lane - 21 DHC 15**

It is alleged that Lane, of Clemmons, assisted out-of-state entities in the unauthorized practice of law, shared fees with nonlawyers, made false or misleading statements about his services, engaged in conduct involving dishonesty or misrepresentation, neglected and did not communicate with a client, and did not properly supervise nonlawyer assistants. Hearing has not been scheduled.

**Mark D. Lackey – 21 DHC 16**

It is alleged that Lackey, of Shelby, did not reconcile his trust account and committed multiple other trust accounting violations. Hearing has not been scheduled.

**Penny K. Bell – 21 DHC 17**

It is alleged that Bell, of Clinton, gave false testimony in a remand proceeding of a *Batson* claim regarding her knowledge of the ADA's history and practice in exercise of peremptory challenges. Hearing has not been scheduled.

**Meg Wood – 21 DHC 18**

It is alleged that Wood, of Charlotte, assisted out-of-state assisted out-of-state entities in the unauthorized practice of law, shared fees with nonlawyers, made false or misleading statements about her services, engaged in conduct involving dishonesty or misrepresentation, neglected and did not communicate with clients, and did not properly supervise nonlawyer assistants. Hearing has not been scheduled.

**Angela Beeker – 21 DHC 19**

It is alleged that Beeker, of Hendersonville, did not promptly disburse entrusted funds, did not diligently complete disbursements and the related representations, did not send annual accountings to clients, did not ensure funds were properly maintained in a trust account, and did not conduct required monthly and quarterly reconciliations of three trust accounts. Hearing has not been scheduled.

**Cindy C. Huntsberry – 21 DHC 20**

It is alleged that Huntsberry, of Smithfield, neglected client matters, did not keep clients informed about their cases, made misrepresentations to clients regarding the status of their cases, did not promptly return client files, and did not respond to the Grievance Committee in three grievances. 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 he was appointed to represent without telling them that he was obligated to represent their son at state expense, and collected and converted to his own use the \$15,287.09 proceeds of an annuity contract. In February 2019, the DHC recommended denial of Hale’s first petition for reinstatement and Hale did not seek Council review. Hearing on his second 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 demonstrating compliance with enumerated conditions. Smith did not petition for a stay. He petitioned for reinstatement from suspension. Hearing was continued and has not been rescheduled.

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

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

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

No lawyers have submitted affidavits of surrender for the Council’s consideration at the July meeting.

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

### **Completed Appeals**

There were no completed appeals during the quarter.

## Pending Appeals

### **NC State Bar v. Richard Polidi – 14 CVS 0122**

In July 2014, Polidi surrendered his license to the Wake County Superior Court and was disbarred. In October 2020, the court entered an order disbursing the funds in Polidi's trust account. Polidi gave notice of appeal. Polidi has received two extensions of time to serve a proposed record on appeal. The court ordered him to serve his proposed record on or before April 9, 2021. He did not serve a proposed record. The State Bar has filed a motion to dismiss the appeal.

### **NC State Bar v. 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. The Hearing Panel found that Megaro entered into a contract with the clients when he knew they did not have the capacity to understand it, charged an "irrevocable" fee, charged an excessive fee, made misrepresentations to his clients and to tribunals, and made arguments against his clients' interests in an effort to protect his own fee. The DHC suspended Megaro's license for five years. Megaro may petition for a stay after serving three years active suspension upon satisfaction of all enumerated conditions, including the requirement that he reimburse \$250,000.00 to the clients. Megaro filed notice of appeal on May 24.

## TRUST ACCOUNT COMPLIANCE PROGRAM

Seventy-two lawyers have completed the TAC Program since its inception. Seven lawyers accepted offers to participate in the TAC Program after the April 2021 Quarterly Meeting. Leonor currently supervises forty-five 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 11 new files this quarter. There are 18 files on the Committee's July 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

**N.C. State Bar v. Tammy Alexander (Wake County Superior Court).** At the October 2020 meeting, the Executive Committee authorized counsel to pursue injunctive relief against Tammy Alexander, a paralegal who has been submitting legal arguments to courts on behalf of incarcerated defendants. The complaint has been filed and served. Alexander has not filed an answer or responded to discovery requests. The State Bar has moved for a default judgment.

**N.C. State Bar v. Valerie Arroyo (Wake County Superior Court).** At the April 2021 meeting, the Executive Committee authorized counsel to pursue injunctive relief against Valerie Arroyo, who has filed a number of tort claim actions and lawsuits on behalf of other parties. The complaint has been filed.

**N.C. State Bar v. Brett Allen Fox (Wake County Superior Court).** At the April 2021 meeting, the Executive Committee authorized counsel to pursue injunctive relief against Brett Allen Fox. Fox is a law school graduate who did not pass the bar exam but has held himself out to employers and prospective employers as a licensed attorney. The complaint has been filed.

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

The State Bar reviewed one proposed plan submitted during the first quarter and determined that it could be registered. The State Bar also received nine proposed plans this quarter. Three of the proposed plans were registered and the remaining six are under review.

The State Bar reviewed the resubmitted initial registration statement form for **Debt Cleanse (21PP05)** received during the second quarter and has registered the plan.

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

**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 to the Full Commission. In this claim, Arroyo alleges that the State Bar failed to “stop, act or prosecute” Daniel Zamora. The Full Commission heard the State Bar’s motion to dismiss in November 2020 but has not yet ruled. 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 Full Commission heard the State Bar’s motion to dismiss in November 2020 but has not yet ruled. 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 Full Commission heard the State Bar’s motion to dismiss in November 2020 but has not yet ruled. The Attorney General represents the State Bar.

**Valerie Arroyo and Derek Olivaria v. Southwood Realty et al (US District Court EDNC).** The plaintiffs mailed to the State Bar a “Notice of a Lawsuit and Request to Waive Service of a Summons.” Although the document indicates that a copy of a civil complaint was attached, it was not. Therefore, it is unknown on what theories or alleged facts this lawsuit might be founded. If the plaintiffs properly commence a lawsuit against the State Bar, the OOC will represent 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 OOC complied with that demand, sending Exum a written response. Exum alleges that the written response was unsolicited, that it contained 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 petitioned the Wake County Superior Court for judicial review. The Attorney General represents the State Bar.

**Kareem Abdullah Kirk v. North Carolina State Bar Grievance Committee (NC Office of Administrative Hearings).** This is the second claim Kirk, aka Kareem Abdullah Kirk-Bey, has filed against the State Bar at OAH. In this claim, Kirk again alleges that the Grievance Committee did not properly address a grievance. OAH dismissed the claim, concluding that it does not have subject matter jurisdiction. The Wake County Superior Court denied Kirk's petition for judicial review. Kirk gave notice of appeal to the North Carolina Court of Appeals. The Attorney General represents the State Bar.

**Henry Byrd v. NC State Bar and State of North Carolina (NC Industrial Commission).** In March 2021, Henry Byrd mailed to the State Bar a form claim for damages under the Tort Claims Act. He did not properly file and serve the document and therefore did not actually commence a tort claim. He alleged that the defendants were under "an affirmative legal nondelegable duty to provide the plaintiff with an affirmative standard of care circumscribed by North Carolina Rules of Professional Conduct..." and recited that his allegations were continued on attached pages, but they were not. He indicated that he was proceeding under the doctrines of equitable estoppel and promissory estoppel. The Attorney General undertook to represent the State Bar if Byrd successfully commenced a tort claim action. On June 21, Byrd mailed to the State Bar a notice that he is withdrawing the purported tort claim and will instead file a §1983 action against the State Bar in the US District Court EDNC on a theory of "supervisory liability." If he does file a federal lawsuit, the OOC will represent the State Bar.

**Timothy Hankins v. The United States of America (US District Court EDNC).** Hankins seeks recovery from the United States for alleged violations of his rights under the United States Constitution by lawyers and judges in litigation relating to the dissolution of his marriage and a subsequent bankruptcy proceeding. Hankins filed an amended complaint adding as defendant #2 "The North Carolina State Bar Association" and mailed it to the President of the NCBA. Summonses have not issued. If a summons issues and is served on the State Bar, the OOC will represent the State Bar.

**Richard Polidi v. Colon Willoughby et al (Wake County Superior Court).** Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. He filed this action in 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 Past President of the State Bar 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 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 2018, Livingston filed a lawsuit against 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 Leanor Hodge (deputy counsel who prosecuted Livingston) as defendants, alleging that they selectively prosecuted him. In 2019, the federal court granted the State Bar defendants' motion to dismiss for lack of subject matter jurisdiction. In March 2019, Livingston filed this nearly identical action 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 in September 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. The OOC represents the State Bar defendants.

**Christopher Livingston v. NC State Bar, Susannah Cox and Katherine Jean (U.S. District Court EDNC).** On June 21, 2021, Christopher Livingston filed this lawsuit in the US District Court EDNC against the State Bar, counsel Katherine Jean and deputy counsel Susannah Cox. He purports to assert claims under 42 U.S.C. §§ 1983 and 1989 for alleged violations of his speech, petition, due process and equal protection rights under the United States Constitution; his freedom of speech, open courts, law of the land and equal protection rights under the North Carolina Constitution; and alleged "malicious administrative prosecution." He alleges that the State Bar did not discipline lawyers who he alleged committed violations of the RPCs against him, has a practice and official policy of arbitrarily disciplining some lawyers and not disciplining other lawyers, selectively prosecutes solo practitioners, is overfunded and its staff is underworked; that Jean and Cox violated the RPCs by requiring him to respond to letters of notice; and that Cox should have dismissed a grievance filed against him. The OOC will represent the defendants.

**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. On June 1, the deputy commissioner dismissed the claim with prejudice. The Attorney General represented the State Bar.

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

There are 9 claims on the agenda for the Board's July 15 meeting. There are three lawsuits pending in superior court, each seeking reimbursement from a disbarred lawyer for payments made by the CSF.

### **Disbursement Cases**

This quarter, the OOC drafted two motions to disburse or escheat \$4,224.18 and filed two motions to disburse \$23,858.55 from the accounts of suspended or disbarred lawyers. The OOC attended one hearing.

### **Trusteeships**

Trustees were appointed to wind down the practices of deceased attorneys **Phillip K. Anderson, II** of Raleigh, **Lloyd C. Brisson, Jr.** of Fayetteville, **Beth B. Carter** of Denver, **William D. Delahoyde** of Raleigh, **James C. Hord** of Charlotte, and **M. Marion Watts** of Windsor. A trustee was also appointed to wind down the practice of unavailable attorney **David G. Belser** of Saluda.

The OOC helps all current trustees fulfill their duties and helps members of the public in locating files of deceased, disbarred, disabled, and missing lawyers.

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

### **Completed Appeals**

There were no completed appeals in other litigation in the state and federal courts.

### **Pending Appeals**

#### **NC State Bar v. Richard Polidi – 14 CVS 0122**

In January 2014, Polidi, of Wake County, entered into a consent injunction freezing his trust account. In July 2014, Polidi surrendered his license to the Wake County Superior Court and entered into a consent order of disbarment. In October 2020, the court entered an order disbursing the funds in Polidi's trust account. Polidi gave notice of appeal. Polidi has received two extensions of time to serve a proposed record on appeal. The court ordered him to serve his proposed record

on or before April 9, 2021. He did not serve a proposed record. The State Bar's motion to dismiss the appeal is pending.

### **PERSONNEL**

Josh Walthall's last day in the Office of Counsel will be July 30. He will join Nelson Mullins, where he plans to represent licensees in professional regulation and whatever else they want him to do. His "fourth and final" child, Montgomery, was born in June. He is leaving to make more money to feed all those kids. Josh is a great lawyer and a great friend, and we'll miss him a lot.

Mike Shirley resigned as a paralegal in the OOC to go to law school. He will attend NC Central beginning in August. We wish him the very best and look forward to welcoming him as a member of the Bar in three years.

Kelley DeAngelus will join the OOC as a deputy counsel in August. Kelley has been an assistant public defender in Wake County for ten years. Before that, she worked for 6 years at the Center for Death Penalty Litigation, where she represented indigent clients in capital sentencing and state and federal post-conviction litigation.

Phillip McWilliams will join the OOC as our newest paralegal in August. Phillip has been working with the CLE department since 2016. Before he came to the State Bar, Phillip was a student services assistant at Austin Community College in Austin Texas.

### **MISCELLANEOUS**

Jennifer volunteers as a judge with Raleigh's Capital Area Teen Court program, which serves the dual purposes of providing the opportunity for teens charged with minor offenses to have the charges dismissed upon successful completion of the program and of providing teens interested in the law with the opportunity to serve as youth attorneys in Teen Court hearings. Jennifer serves on the Wake County Bar Association's History Committee. She also staffs the LAMP Committee.

Josh and his wife, Kristen, just had their "fourth and final" child, Montgomery, in June. Josh will be joining Nelson Mullins on August 2 as an Of Counsel attorney representing professionals before their respective boards, including lawyers before the State Bar. He will miss some of his coworkers.

Liza oversees the rule amendment process, including formatting and updating the State Bar's administrative rules, coordinating the publication of rule amendments to the Council and the profession, and facilitating the submission of rule amendments to the Supreme Court and the Office of Administrative Hearings. She also assists Brian and Carmen in staffing the Ethics subcommittee studying the potential inclusion of anti-discrimination language in the Preamble and the Rules of Professional Conduct.

Savannah and Cameron staff the Issues Committee subcommittee studying secured leave.

Savannah staffs the Authorized Practice Committee, handling all issues involving prepaid legal services plans. She also handles the appointment and supervision of trustees to wind down the law practices of deceased, disbarred, suspended and missing lawyers.

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 previously scheduled for spring 2020 will be rescheduled due to COVID. 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.

Maria staffs the Client Security fund.

Carmen is an Associate Adjunct Professor of professional responsibility at UNC Law, which for the last sixteen months meant lecturing into a laptop camera in an empty room. Carmen is Immediate Past President of the Wake County Bar Association and serves on many WCBA committees. She continues to serve as the OOC's liaison to the judiciary, speaking regularly with judges and Judicial Standards Commission staff. She frequently presents at CLEs and is working with bar prosecutors from other states on a presentation for the upcoming National Organization of Bar Counsel meeting. She is staffing two Ethics subcommittees: the subcommittee on the proposed opinion re: communications with judges and the subcommittee studying the potential inclusion of antidiscrimination language in the Preamble and the Rules of Professional Conduct. Carmen is also assisting with the Diversity and Inclusion Subcommittee of the Issues Committee.

David staffs the Authorized Practice Committee.

Leonor chairs the 10<sup>th</sup> JD/WCBA Professionalism Committee and continues to serve on the NCBA Professionalism Committee. She will serve as vice chair of the committee for the 2021-2022 program year. She also staffs the PMBR Committee and the Diversity and Inclusion Subcommittee of the Issues Committee. Leonor often presents at CLE programs on the topic of trust account management.

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.

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