

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
APRIL 22, 2022**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

During the first quarter of 2022, ACAP staff responded to 1,845 phone calls from members of the public and placed 76 calls to lawyers. Staff also responded to 812 emails from members of the public and attorneys and responded to 472 letters from inmates. In addition, Intake logged 4,418 entries this quarter.

The State Bar opened 122 requests for fee dispute resolution during the first quarter, all of which were assigned to the two State Bar facilitators.

**GRIEVANCES**

In 2018, 1,247 grievance files were opened. In 2019, 1,254 grievance files were opened. In 2020, 927 grievance files were opened. In 2021, 986 grievance files were opened. As of April 13, 378 grievance files have been opened in 2022.

As of April 13, 1,416 grievances were pending. One hundred ninety grievances were stayed. Thirty-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 206 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 982 files in which no recommendation has yet been made, 201 were more than six months old. In the first quarter of 2022, 99 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 2022.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

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

**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 in the U.S. District Court for the Western District of North Carolina. He was sentenced to 24 months in prison followed by supervised release and was ordered to pay restitution of \$545,738.90. Elkins tendered an affidavit of surrender of his law license and was disbarred by the DHC.

**Nikita V. Mackey – 19 DHC 9 and 19 DHC 23**

Mackey, of Charlotte, 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. In a separate case, Mackey neglected and did not 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. Mackey did not appear at the hearing and was disbarred by the DHC.

**Victoria Block – 21 DHC 1**

After participating in the Trust Account Compliance Program, Block, of New Bern, did not properly reconcile her trust account. Block did not file a responsive pleading and default was entered. The DHC suspended Block for two years. The suspension is stayed upon Block's compliance with enumerated conditions.

**Thomas O. Harper III – 21 DHC 11**

Harper, of Atlanta, did not file federal income tax returns from 2013 to 2017 and committed criminal acts that reflect adversely on his fitness as a lawyer. He was suspended for two years. The suspension is stayed for two years upon Harper's compliance with enumerated conditions.

**Meg Sohmer Wood – 21 DHC 18**

Wood, of Charlotte, 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. The DHC suspended her for three years. The suspension is stayed upon Wood's compliance with enumerated conditions.

**Ryan A. Spencer – 21 DHC 29**

Spencer, of Raleigh, diverted a fee received from a client to himself, rather than to his law firm employer, which was entitled to the fee. Spencer was censured by the DHC.

**James Landivar – 22 DHC 4**

Landivar, of Charlotte, 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 clients, and did not properly supervise nonlawyer assistants. Landivar was suspended for two years. The suspension was stayed upon his compliance with enumerated conditions.

**Completed Grievance Noncompliance Actions before the DHC**

No grievance noncompliance actions were completed in the DHC this quarter.

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

**Tiffany Dawn Russell** submitted an affidavit of surrender of her law license to the Council at the January 2022 meeting. Russell pled guilty to the federal felony offenses of Conspiracy to Commit Mail, Wire and Financial Institution Fraud in violation of 18 U.S.C. § 1349 and Making and Subscribing to a False Return in violation of 26 U.S.C. § 7206(1). She was disbarred by the Council.

**Joshua Michael Reed** of High Point submitted an affidavit of surrender of his law license to the Council at the January 2022 meeting. Reed pled guilty to the federal felony offense of attempted coercion or enticement of a minor in violation of 18 U.S.C. § 2422(b). He was disbarred by the Council.

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

**Brian Love** of Durham submitted an affidavit of surrender of his law license. Love used the personal information of victims to falsely register online accounts in their names, impersonated victims in sexually explicit communications with others, obtained and transmitted sexually explicit images of victims to others without their consent, and used fraudulent online accounts to repeatedly text victims, with the intent to harass them and cause them substantial emotional distress. Love pled guilty to the federal felony offenses of Aggravated Identity Theft and Stalking. He was disbarred by the Wake County Superior Court.

### **Orders of Reciprocal Discipline**

No orders of reciprocal discipline were entered this quarter.

### **Transfers to Disability Inactive Status**

**Patricia W. Harvey** of Asheville was transferred to disability inactive status by order of the DHC in 21 DHC 22.

### **Interim Suspensions**

The chair of the DHC entered an order suspending the law license of **Brian R. Harwell** of Mooresville on an interim basis pending conclusion of disciplinary charges. Harwell pled guilty to felony possession of methamphetamine, misdemeanor harboring a fugitive, and misdemeanor resisting a public officer in Iredell County Superior Court. Harwell made one or more false statements to police officers regarding a client's whereabouts when the officers arrived at Harwell's home seeking to serve a warrant for the client's arrest.

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

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

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

### **North Carolina State Bar v. Kenneth F. Irek – 92 DHC 17**

Irek, of North Hills, California, was disbarred by the DHC in 1993 for misappropriating entrusted funds. The DHC denied Irek's 2022 Rule 60 motion seeking to vacate the disbarment order on grounds that the State Bar allegedly did not exercise due diligence before serving him by publication and allegedly did not maintain complete records of the proceeding.

### **In re Reinstatement Petition of Ertle K. Chavis – 22 BCR 1**

Chavis, of Lumberton, was disbarred in 2015 for misappropriating entrusted funds. The DHC granted the State Bar's motion to dismiss his petition for reinstatement.

## **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 **Harry C. Marsh** of Matthews, **Stanford K. Clontz** of Asheville, and **Julia Olson-Boseman** of Wilmington 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.

### **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 accounting rules, had an improper sexual relationship with a client, and perjured himself while being deposed by the State Bar. Hearing was continued and has not been rescheduled.

**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.

**Frank Chut, Jr. – 21 DHC 6**

It is alleged that Chut, of Greensboro and an Assistant United States Attorney, 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 to a grand jury resulting in a criminal indictment of the witness. In December 2021, the DHC entered an order staying the proceedings so the State Bar can investigate additional allegations.

**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 scheduled for May 31-June 1.

**Camille Hill – 21 DHC 13**

It is alleged that Hill, of Asheville, diverted to herself a fee that belonged to her law firm employer. Hearing was continued and has not been rescheduled.

**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 for 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. Bullard has been a district court judge since January 2021. Hearing was continued and has not been rescheduled.

**Penny K. Bell – 21 DHC 17**

It is alleged that Bell, of Clinton, gave false testimony during remand of a *Batson* claim regarding what she described as the assistant district attorney's history and practice in exercise of peremptory challenges. 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. The DHC transferred Huntsberry to disability inactive status. The disciplinary action is stayed until Huntsberry is returned to active status.

**Lloyd T. Kelso – 21 DHC 21**

It is alleged that Kelso, of Gastonia, attempted to have sexual relations with a client, provided financial assistance to a client, and revealed confidential information. Hearing has not been scheduled.

**Patricia W. Harvey – 21 DHC 22**

It is alleged that for multiple years, Harvey, of Asheville, engaged in dishonest and criminal conduct by failing to remit to state and federal taxing authorities income taxes withheld from her employees' paychecks and instead used those funds for her own benefit; failing to remit to federal taxing authorities funds withheld from her employees' paychecks for Social Security and FICA taxes; failing to file federal and state income tax returns; and failing to pay federal and state income tax. Harvey pled guilty to the felony offense of embezzlement of state property. Hearing has not been scheduled.

**Mark A. Key – 21 DHC 23**

It is alleged that Mark Key, of Lillington, engaged in courtroom misconduct that resulted in a mistrial, had a sexual relationship with a client, withheld taxes from employee paychecks and did not remit those funds to taxing authorities, mishandled entrusted funds, engaged in mortgage fraud, and was delinquent in paying substantial federal and state taxes in his personal and professional capacities. Hearing has not been scheduled.

**Kelly R. Routh – 21 DHC 24**

It is alleged that Routh, of Charlotte, diverted cash payment of a fee received from a client to herself rather than to her law firm employer, which was entitled to the fee. Hearing is scheduled for June 21.

**Perry Mastromicalis – 21 DHC 26**

It is alleged that Mastromicalis, of Raleigh, forged a signature on an application for insurance and submitted an affidavit containing false and/or misleading information to the Grievance Committee. Hearing has not been scheduled.

**R. Cherry Stokes – 21 DHC 28**

Stokes, of Greenville, was convicted of 8 felony counts of serious injury by vehicle. Hearing is scheduled for June 28.

**Michael DeMayo – 22 DHC 1**

It is alleged that DeMayo, of Charlotte, engaged in an 80-minute telephone call in an effort to coerce, mislead, and frighten a client not to transfer her case to a departing associate; engaged in dishonesty, fraud, deceit, or misrepresentation in his statements to the departing associate about the content of that call; and engaged in conduct prejudicial to the administration of justice by threatening State Bar disciplinary action as part of an offer to settle a dispute over attorney fees. Hearing is scheduled for August 3-5.

**Paris Peppers – 22 DHC 2**

It is alleged that Peppers, of Henderson, while representing two of her cousins, made false promises to defraud them out of property inherited from their grandmother. It is also alleged that Peppers did not comply with discovery requests and other orders in a civil case her cousins brought against her and that Peppers made false statements to the Grievance Committee. The DHC entered an order staying the proceedings so the State Bar can investigate additional allegations.

**Willie R. Brooks, Jr. – 22 DHC 5**

It is alleged that Brooks, of Monroe, did not conduct the required monthly and quarterly reconciliations and reviews of his trust account, disbursed more funds from his trust account for clients than he had in the trust account for the clients, did not maintain accurate identification of all funds in his trust account, improperly disbursed funds to himself and to others, did not deposit entrusted funds in a trust account, and improperly provided financial assistance to clients. Hearing has not been scheduled.

**Allan R. Grimsley—22 DHC 6**

It is alleged that Grimsley, of Nags Head, grossly mismanaged his trust account and misappropriated client funds. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Richard T. Dail – 22 DHC 7**

It is alleged that Dail, of Thomasville, misappropriated entrusted funds, did not properly maintain entrusted funds, improperly disbursed entrusted funds, made a false statement to a client regarding funds held in trust for the client, did not promptly complete disbursements for clients, did not deposit entrusted funds into his trust account, did not conduct required reconciliations and reviews of his trust account and did not maintain required trust account records. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Kenneth A. Free, Jr. – 22 DHC 8**

It is alleged that Free, of Greensboro, embezzled entrusted funds he received as escrow agent. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Keisha M. Lovelace – 22 DHC 9**

It is alleged that, while representing a client in a worker’s compensation case, Lovelace, of Raleigh, did not act with diligence; did not communicate with or respond to communications from the tribunal, opposing counsel, and her client; made misrepresentations to opposing counsel and to her client; and made misrepresentations to the Grievance Committee. Hearing has not been scheduled.

**J. Brent Garner – 22 DHC 10**

It is alleged that Garner, of Rockingham, misappropriated entrusted funds, improperly disbursed entrusted funds, did not properly maintain entrusted funds, did not conduct required reconciliations and reviews of his trust accounts, did not maintain required trust account records, did not respond to the State Bar’s initial inquiries regarding a trust account NSF report, and made misrepresentations to the Grievance Committee. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

**Timothy Gunther – 22 DHC 11**

It is alleged that Gunther, of Raleigh, falsely held himself out as eligible to be elected as district court judge in a district in which he did not reside, falsely stated his residential address on a Voter Registration Application that he signed under penalty of perjury, falsely stated his residential address on a Notice of Candidacy form that he swore/affirmed to be true, used his newly-but-falsely-established voter registration address to prove residency in District 10F to Wake County Board of Elections personnel and to induce the Director of the Wake County Board of Elections to certify that he was a resident of District 10F, and changed his addresses in other records to further the appearance that he resided at an address at which he did not reside. Hearing has not been scheduled.

**Charles R. Gurley – 22 DHC 12**

It is alleged that Gurley, of Goldsboro, grossly abdicated to staff his trust accounting obligations and mishandled entrusted funds. It is also alleged that he did not represent dozens of clients diligently, did not return unearned fees, delegated much of his law practice to staff without supervision, made misrepresentations to the Grievance Committee, and did not provide information demanded by the Grievance Committee to such a degree that he was held in contempt of court and enjoined from practicing law. It is further alleged that Gurley did not file personal and business income tax returns and did not pay taxes he owed for a number of years. Hearing has not been scheduled.

**Michelle Congleton Smith – 22 DHC 13**

It is alleged that Smith, of Raleigh, did not verify wiring instructions before wiring payoff funds in a refinance transaction. As a result, she wired the payoff to a fraudster. It is also alleged that she made multiple false statements to the State Bar during its investigation of the incident. Hearing has not been scheduled.

**Thomas C. Goolsby—22 DHC 14**

It is alleged that Goolsby, of Wilmington, made false and misleading statements during an investigation by the Notary Enforcement Division of the Secretary of State’s Office. Hearing has not been scheduled.



**Thomas C. Flippin – 22 DHC 15**

It is alleged that Flippin, of Elkin, improperly disbursed funds from his trust account, did not conduct required trust account reconciliations, did not always identify the client on trust account checks and deposit slips, did not maintain sufficient records to identify the owners of entrusted funds in his trust account, and did not timely disburse funds from his trust account. Hearing has not been scheduled.

**Jonathan Charleston – 22 DHC**

It is alleged that Charleston, of Fayetteville, engaged in improper *ex parte* communications with a superior court judge and did not disclose material information to the court during those communications. 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**

The DHC suspended Smith, of Charlotte, for two years in June 2018. 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. He did not petition for a stay. Smith 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**

There are no pending affidavits of surrender for the Council's consideration at the April Meeting.

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

### **Completed Appeals**

#### **NC State Bar v. Cabell Regan – 19 DHC 25**

Regan, of Pittsboro, was disbarred by the DHC in July 2021. The DHC concluded that, while serving as attorney-in-fact for a client, Regan 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 remains enjoined from handling entrusted funds and from serving in any fiduciary capacity. Regan gave notice of appeal but did not serve a proposed record on appeal. The DHC dismissed his appeal on March 23.

### **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. The Supreme Court denied Entzminger's petition for discretionary review on August 12, 2020. On remand, the court again suspended Entzminger for two years but allowed him to be immediately eligible for a stay upon compliance with enumerated conditions, including payment of costs. Entzminger appealed. Briefs have been filed. The case will be decided without oral argument.

#### **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 appealed. His brief is due April 18.

### **NC State Bar v. Lonnie P. Merritt – 21 DHC 5**

Merritt, of Wilmington, had a sexual relationship with a domestic law client. The DHC suspended his license for one year. He appealed. His brief is due April 6.

### **NC State Bar v. Robert N. Weckworth, Jr. – 16 DHC 22**

In October 2017, the DHC censured Weckworth, of Greensboro. The DHC concluded that Weckworth communicated with a represented adverse party and had improper *ex parte* communications with a judge. Weckworth appealed. On June 4, 2019, the Court of Appeals issued an unpublished opinion affirming the order of discipline with respect to the rule violations but remanding to the DHC for additional findings with respect to the level of discipline and reconsideration of the discipline, if necessary, based on the additional findings. On remand, the DHC issued a reprimand. Weckworth appealed again. Weckworth served the proposed record on appeal on April 1.

## **TRUST ACCOUNT COMPLIANCE PROGRAM**

Seventy-eight lawyers have completed the TAC Program since its inception. Three lawyers accepted offers to participate in the TAC Program after the January 2022 Quarterly Meeting. Leonor currently supervises fifty-six participants. Leonor also monitors three 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. There are 17 files on the Committee's January 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. 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 court denied Arroyo's motion to dismiss in October 2021 and granted the State Bar's motion to dismiss Arroyo's counterclaim on January 12. The court also granted a preliminary injunction prohibiting Arroyo from filing legal proceedings or preparing documents on behalf of others.

**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. On February 28, the court entered a default judgment enjoining Fox.

## Prepaid Legal Services Plan Registration

The State Bar received two proposed plans during the first quarter of 2022. The proposed plans are under review.

### OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

**Jennifer Ghera and Michael Pickman v. The State of North Carolina, Phillip Berger, Timothy Moore, The North Carolina State Bar, David Johnson, Union County, Jeffrey Rowell (Wake County Superior Court).** Pickman filed this lawsuit on December 21, 2021, alleging that, as attorney-in-fact for Ghera, the Uniform Power of Attorney Act entitles him to advocate for Ghera's interests in a state court lawsuit to which he is not a party in any capacity. He seeks referral to a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1(a1) and N.C. Gen. Stat. § 1-1A, Rule 42(b)(4); a declaratory judgment; and a determination that the Union County Superior Court judge who denied him this purported right and referred him to the district attorney for prosecution violated his rights under Article I, Sections 1, 7, 14 and 19 of the North Carolina Constitution. He also seeks costs, including attorney fees. The Attorney General represents all defendants.

**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.

**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. Kirk has not perfected his appeal and the deadline to do so has passed. 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. In June 2021, 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.

**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 former State Bar Councilor and President 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. 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 Leonor 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 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 for the Eastern District of North Carolina 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 State Bar’s motion to dismiss is pending. The OOC represents the defendants.

**Ernest Yarborough v. Satana Deberry and the North Carolina State Bar (Durham County Superior Court).** Yarborough filed this lawsuit in December 2021. The State Bar learned of the lawsuit on March 22 because the court ordered a status conference. The State Bar has not been served. Yarborough was licensed to practice law in South Carolina but has been disbarred. He was never licensed to practice law in North Carolina. Yarborough seeks a declaratory judgment that, as a representative of Caring Hands and Supplementary Enrichment Education Enrichment [sic], LLC, which he describes as a “Joint Commission accredited behavioral healthcare human services agency or health care provider,” he is permitted by N.C. Gen. Stat. § 35A-1105 to file incompetency petitions to adjudicate the competence of people served by Caring Hands. Yarborough alleges that the Durham County Superior Court entered two orders concluding that doing so constitutes the unauthorized practice of law. Yarborough does not seek monetary relief, costs or attorney fees. The State Bar’s motion to dismiss is scheduled for hearing on April 26. The Attorney General represents the State Bar.

**Capitol Broadcasting Company, Inc. v. Disciplinary Hearing Commission (Wake County Superior Court).** WRAL-TV filed this lawsuit against the Disciplinary Hearing Commission on January 12, 2015, seeking a preliminary injunction compelling the DHC to allow WRAL to live-stream the trial of North Carolina State Bar v. Mumma, 15 DHC 20 and 15 DHC 24, and seeking an award of its expenses in bringing the action. The Mumma trial occurred in January 2016 and was live-streamed by WRAL-TV. The court stayed this action to allow the State Bar Council to adopt an administrative rule addressing media access to DHC hearings. The Council adopted such a rule, which was approved by the Supreme Court and went into effect in 2016. WRAL did not challenge the constitutionality of the rule. This case was entirely dormant from 2016 until February 28, 2022, when the court held a status conference. At a hearing on March 31, the court announced its decision to deny WRAL’s motion for preliminary injunction and to grant the State Bar’s motion to dismiss. The Attorney General represents the DHC.

**HGGLBT International Express Trust v. Clerk of Superior Court, “NC State Bar and members” (NC Industrial Commission).** This is a purported tort claim. writes at length about common law and alleges generally that members of the State Bar took actions to which HGGLBT objects in connection with a foreclosure. HGGLBT alleged no acts or omissions by the State Bar and identified no viable theories of recovery. The deputy commissioner dismissed the claim on

February 11, 2022. HGGLBT gave notice of appeal. The Attorney General represents the State Bar.

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

The quarterly meeting of the CSF Board is scheduled to occur May 13. There are currently no lawsuits pending in superior court seeking reimbursement for payments made by the CSF.

### **Disbursement Cases**

This quarter, the OOC disbursed \$45.35 to the Client Security Fund. The OOC also reviewed and closed seven files.

### **Trusteeships**

Trustees were appointed to wind down the practices of deceased lawyers **William R. Titchener** of Raleigh, **Angela R. Narron** of Smithfield, **Susanne M. Robicsek** of Charlotte, **Gerry Crouch Coggin** of Charlotte, **Susan L. Evans** of Asheville, and **M. Patrice Walker** of Chapel Hill. A trustee was also appointed to wind down the practice of **Edward V. Williams** of Raleigh, who abandoned his practice. A trustee was appointed when **Mark C. Upright** of Asheville was hospitalized. He has since returned to practice and the trustee has been discharged.

The OOC petitions the Superior Court in the districts where deceased, disbarred, disabled or missing lawyers practiced to appoint trustees to wind down the lawyers' practices. 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**

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

## **PERSONNEL**

**Susan Ranes** joined the OOC in the ACAP Department on February 1 as an administrative assistant. Susan has a BA degree in English from East Carolina University, a Masters degree in English from East Carolina University, and a JD degree from the UNC law school. For 15 years, Susan taught English at Louisburg College, Cape Fear Community College, and Vance-Granville Community College.

**Elizabeth Myers** joined the OOC in March as a paralegal. She will primarily assist with the TACP program and with grievance and DHC cases assigned to Leanor. Elizabeth previously worked for

NC Prisoner Legal Services in the civil division and had a successful private photography company.

### MISCELLANEOUS

Marty Coolidge is the organizer for the 2022 annual conference of the Organization of Bar Investigators, which will occur April 19-22 in Raleigh. Marty has recruited top speakers for this event.

David staffs the Authorized Practice Committee.

Leonor is the Trust Account Compliance Counsel. She serves on the Board of Directors for the 10th JD/Wake County Bar Association, is a member of the WCBA Professionalism Committee, and is a member of the NCBA Professionalism Committee for which she is also vice chair. Leonor staffs the PMBR Committee and the Diversity and Inclusion Subcommittee of the Issues Committee. She is also a member of the NCBA Task Force on Integration, Equity, and Equal Justice. She often presents at CLE programs on the topic of trust account management.

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 will be a guest speaker at the 2022 Annual Conference of the Organization of Bar Investigators on April 19-22 at the Raleigh Marriott City Center. Barry continues to mentor a third-year law student in the Campbell Law Connections Mentorship Program.

Cameron and Barry handle the appointment and supervision of trustees to wind down law practices of deceased, disbarred, suspended and missing lawyers

Carmen is Associate Adjunct Professor of professional responsibility at UNC Law and Immediate Past President of the Wake County Bar Association, where she serves on many committees. This quarter she coordinated and presented two sessions for the Organization of Bar Investigators' annual conference. Carmen continues to serve as the OOC's liaison to the judiciary, speaking regularly with judges and Judicial Standards Commission staff. She is staffing two Ethics subcommittees: the subcommittee studying potential amendment to Rule 1.19, and the subcommittee studying the potential inclusion of antidiscrimination language in the Rules of Professional Conduct. Carmen also assists with the Diversity and Inclusion Subcommittee of the Issues Committee.

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 volunteered as a presiding judge for a regional round of the NCAJ High School Mock Trial Competition in February 2022. Jennifer, assisted greatly by her paralegal Brittany, tracks trust account-related cases and updates the charts annually. Jennifer is a member of the Wake County Bar Association History Committee. Jennifer also staffs the State Bar's LAMP Committee.



Alex regularly teaches CLEs on ethics and technology. As the most technologically adept person in the OOC, he worked tirelessly to help his colleagues navigate the technological challenges presented by the ransomware attack and by COVID. Alex helps oversee administration of our legal research and investigative software and serves on the committee coordinating our new regulatory software implementation. Alex also staffs the Issues subcommittees on Compensation of Court-Appointed Counsel and Courthouse Access.

Savannah is Adjunct Professor of Legal Research and Writing at Campbell University School of Law. She also oversees the registration of Prepaid Legal Services Plans for the OOC.

Susannah spends an enormous amount of time reviewing and preparing documents to respond to public records requests for the OOC.

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