

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

ATTORNEY CLIENT ASSISTANCE PROGRAM

During the second quarter of 2022, ACAP staff responded to 1,918 phone calls from members of the public and placed 65 calls to lawyers. Staff also responded to 2,890 emails from members of the public and attorneys and responded to 569 letters from inmates. In addition, intake logged 4,325 entries this quarter.

The State Bar opened 111 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 July 13, 725 grievance files have been opened in 2022.

As of July 13, 1,544 grievances were pending. One hundred ninety-one grievances were stayed. Thirty-five 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 239 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 1,079 files in which no recommendation has yet been made, 216 were more than six months old. In the second quarter of 2022, 148 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 2022.

DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

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

Jim Melo – 21 DHC 7

For three years, Melo, of Raleigh, withheld funds from his employees' paychecks for federal taxes but instead used the funds for his own purposes. The DHC suspended Melo for five years. Melo will be eligible to seek a stay after 18 months active suspension upon demonstrating compliance with enumerated conditions.

Perry Mastromichalis – 21 DHC 26

Mastromichalis, of Raleigh, forged a signature on an application for insurance and submitted an affidavit containing false and/or misleading information to the Grievance Committee. The DHC suspended him for four years. Mastromichalis may petition for a stay after two years active suspension upon demonstrating compliance with enumerated conditions.

R. Cherry Stokes – 21 DHC 28

Stokes, of Greenville, was convicted of eight felony counts of serious injury by vehicle. He was operating his vehicle while under the influence of an impairing substance in violation of N.C. Gen. Stat. § 20-138.1. His affidavit of surrender was accepted by the DHC and he was disbarred effective October 31, 2022. Stokes had been disbarred in 1987 for sale and delivery of cocaine and was reinstated in 1993.

Completed Grievance Noncompliance Actions before the DHC

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

Completed Surrenders to the Council

No lawyers surrendered to the Council at its April meeting.

Completed Discipline and Disability Proceedings in the Courts

No proceedings 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 lawyers were transferred to disability inactive this quarter.

Interim Suspensions

No orders of interim suspension were entered this quarter.

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 his 2022 Rule 60 motion seeking to vacate the disbarment order. His appeal is pending.

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 **Paris S. Peppers** of Louisburg and **Tara Nichols** of Durham from handling entrusted funds.

The Wake County Superior Court entered a preliminary injunction prohibiting **Malea D. Drew** of Morrisville from providing legal services other than document review services for her current employer until she demonstrates that she no longer has any condition that impairs her professional performance or judgment.

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 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. The DHC stayed the proceedings so the State Bar can investigate additional allegations.

Camille Hill – 21 DHC 13

It is alleged that Hill, of Asheville, diverted to herself a fee to which her law firm employer was entitled. Hearing is scheduled for September 15-16.

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 and 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. The DHC stayed the proceedings so the State Bar can investigate additional allegations.

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, and made false statements to the Grievance Committee. A consent motion is pending to continue the hearing from August 10 due to witness unavailability.

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 improperly revealed confidential information. Hearing is scheduled for November 7-8.

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 is scheduled for November 28-December 2.

Kelly R. Routh – 21 DHC 24

It is alleged that Routh, of Charlotte, diverted to herself cash payment of a fee to which her law firm employer was entitled. Hearing is scheduled for September 7.

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 3-4.

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; did not comply with discovery requests and other orders in a civil case her cousins brought against her; and made false representations to the Grievance Committee. The DHC stayed the proceedings so the State Bar can investigate additional allegations.

Brian R. Harwell – 22 DHC 3

The chair of the DHC entered an order of interim suspension of the law license of Brian R. Harwell of Mooresville. Harwell pled guilty to felony possession of methamphetamine, misdemeanor harboring a fugitive, and misdemeanor resisting a public officer in Iredell County Superior Court.

It is alleged that also 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.

Willie R. Brooks, Jr. – 22 DHC 5

It is alleged that Brooks, of Monroe, did not conduct 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 is scheduled for November 15-16.

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. The DHC stayed the proceedings so the Grievance Committee can address an additional grievance at the July meeting. 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 is scheduled for September 29-30.

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 is scheduled for December 14-16.

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; and made misrepresentations to opposing counsel, to her client, and to the Grievance Committee. Hearing is scheduled for December 12-13.

J. Brent Garner – 22 DHC 10

It is alleged that Garner, of Rockingham, misappropriated, improperly disbursed, and 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; mishandled entrusted funds; 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; 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; did not file personal and business income tax returns; and did not pay taxes he owed for several years. Hearing is scheduled for December 8-9.

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 Grievance Committee during its investigation of the incident. Hearing is scheduled for November 18.

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 is scheduled for January 6, 2023.

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 is scheduled for October 27.

Monica Savidge – 22 DHC 17

It is alleged that Savidge, of Southport, misappropriated entrusted funds, made misrepresentations to the Grievance Committee, and engaged in other mishandling of entrusted funds. She is enjoined from handling entrusted funds. Hearing has not been scheduled.

Jonathan Charleston – 22 DHC 16

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 is scheduled for the week of November 7.

Valerie Queen – 22 DHC 18

It is alleged that Queen, of Raleigh, did not act with diligence or communicate with two clients; did not respond when both clients filed fee disputes with the State Bar; and did not respond to the two grievances that resulted from her failure to respond to the fee disputes. Hearing has not been scheduled because the State Bar is still attempting to serve her.

Ayeshinaye Smith – 22 DHC 19

It is alleged that Smith, of Raleigh, lacked competence to represent an elderly, incompetent client; was used to facilitate elder fraud; did not maintain an arms-length relationship with the third party who paid her legal fee; did not receive informed consent from her client; allowed the third party to interfere with her independent professional judgment; and failed in her duty to a client with diminished capacity. Hearing has not been scheduled.

Suzanne Nelson – 22 DHC 20

It is alleged that Nelson, of Raleigh, neglected numerous clients, did not respond to notices of mandatory fee dispute resolution, and did not respond to the Grievance Committee. Hearing has not been scheduled.

Martin Musinguzi – 22 DHC

It is alleged that Musinguzi, of New York, embezzled entrusted funds in connection with an immigration matter and did not respond to the State Bar. He is enjoined from handling entrusted funds. 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. His petition for reinstatement from suspension is pending. Hearing was continued and has not been rescheduled.

In re David Shawn Clark - 22 BCR 2

Clark, of Hickory, was disbarred by the DHC in 2013 for having a sexual relationship with a client; filing a frivolous lawsuit to deter the client from revealing the relationship; coercing the client to

sign a false affidavit denying the relationship; and engaging in three counts of obstruction of justice by, among other things, threatening his employee not to tell the truth about the relationship. Clark unsuccessfully petitioned for reinstatement in 2019. The chair of the hearing panel has indicated that she will continue the July 25 hearing.

Daniel S. Rufty – 20 DHC 17R

In April 2021, the DHC suspended Rufty, of Charlotte, for five years. The DHC found that Rufty aided in the criminal practice of debt adjusting, did not supervise his nonlawyer assistants, and made false statements to his clients. The order of discipline provided that, after he served six months of the suspension, Rufty could petition for a stay of the balance upon demonstrating compliance with enumerated conditions. Hearing on Rufty’s petition for reinstatement is scheduled for September 1.

Pending Motions to Show Cause

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

Pending Surrenders to the Council

The affidavit of surrender of law license of Charlotte lawyer **Peter Anderson** will be considered by the Council at the July meeting. Anderson’s affidavit acknowledges that he misappropriated \$54,024.67 of a fee to which his law firm was entitled.

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed Appeals

No appeals were completed this quarter.

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 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. The Court of Appeals affirmed in an unpublished opinion. Entzminger’s petition to the Supreme Court for discretionary review is pending.

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 will be eligible to petition for a stay of the balance of the suspension after serving three years active suspension upon demonstrating compliance with enumerated conditions, including the requirement that he reimburse \$250,000.00 to the clients. Megaro appealed. All briefs have been filed. The Court of Appeals has not yet calendared the appeal.

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

The DHC concluded that Merritt, of Wilmington, had a sexual relationship with a domestic law client and suspended his license for one year. He appealed. All briefs have been filed. The Court of Appeals has not yet calendared the appeal.

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. In June 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. He filed the record on appeal on July 7.

NC State Bar v. Kenneth Irek – 92 DHC 17

Irek, of North Hills, California, was disbarred by the DHC in 1993 for misappropriating entrusted funds. In January, Irek filed a Rule 60 motion seeking to vacate the disbarment order on grounds that the State Bar allegedly did not exercise due diligence thirty years ago before serving him by publication and allegedly did not maintain complete records of the proceeding. The DHC denied his motion. Irek filed a Rule 59 motion seeking relief from the order denying his petition. After briefing from the State Bar, he withdrew the Rule 59 motion. He gave notice of appeal. He has not yet served a proposed record on appeal.

TRUST ACCOUNT COMPLIANCE PROGRAM

Eighty-six lawyers have completed the TAC Program since its inception. Three lawyers accepted offers to participate in the TAC Program after the April 2022 Quarterly Meeting. Leanor currently supervises forty-six participants. Leanor 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 11 new files this quarter. There are 17 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. 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 multiple 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. On June 6, the court denied Arroyo's motions for reconsideration and other relief. Arroyo gave notice of appeal of the interlocutory orders. That appeal was dismissed on July 1. The Office of Counsel represents the State Bar.

Prepaid Legal Services Plan Registration

The State Bar did not receive a proposed plan during the second quarter of 2022.

OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

In re Brooke McIntosh Crump (Montgomery County Superior Court). This judicial disciplinary proceeding was initiated with an order to show cause on June 7. The OOC was appointed to present evidence of the alleged misconduct at the show cause hearing. The hearing was scheduled before a visiting judge on July 5, but Crump filed a notice of removal to federal court. The OOC's motion to remand is pending.

North Carolina State Bar v. Julia Olson-Boseman (Wake County Superior Court). The State Bar obtained an order on June 29 directing attorney Julia Olson-Boseman, of Wilmington, to appear on July 18 and show cause why she should not be held in civil contempt for failing to comply with the provisions of a preliminary injunction requiring her to produce information to the State Bar.

Valerie Arroyo v. Daniel Zamora et al (NC Industrial Commission). This and the following two entries are purported tort claims filed by Arroyo against the State Bar and other entities and officials. These three files, and six additional claims Arroyo filed against other individuals and agencies, were all dismissed and were 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 granted the State Bar's motion to dismiss. Arroyo filed notice of appeal but did not perfect the appeal. 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 granted the State Bar’s motion to dismiss. Arroyo filed notice of appeal but did not perfect the appeal. 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 granted the State Bar’s motion to dismiss. Arroyo filed notice of appeal but did not perfect the appeal. 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. On June 15, the court dismissed Exum’s appeal for failure to prosecute. His deadline to appeal is July 15. 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 filed notice of appeal to the North Carolina Court of Appeals. Kirk’s deadline to perfect the appeal 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 July 2017 against Colon Willoughby in his official and individual capacities, against Katherine Jean in her official and individual capacities, and against many others. It is unclear whether Polidi sued Colon Willoughby in his official capacity as the former elected district attorney of Wake County or in his official capacity as a State Bar councilor. Willoughby is now a State Bar officer but was not an officer when this lawsuit was filed. Polidi makes vague, generalized allegations of wrongful conduct in connection with his decision to surrender his law license and consent to be

disbarred. He has never served Willoughby or Jean. If he does, the Office of Counsel will represent them.

Richard Polidi v. Carmen Bannon (Wake County Superior Court). Polidi surrendered his law license and was disbarred by the Wake County Superior Court in 2014. In July 2017, he filed this action against Carmen Bannon, State Bar deputy counsel, in her official and individual capacities. Polidi makes vague, generalized allegations relating to his decision to surrender his law license and consent to be disbarred. He has never served Bannon. If he does, the Office of Counsel will represent her.

Christopher Livingston v. N.C. State Bar, et al (Wake County Superior Court). Livingston is a licensee. In July 2016, the DHC suspended him for five years. The DHC order was affirmed on appeal. In January 2018, Livingston sued the State Bar and the district bar in federal court alleging that the district bar improperly used mandatory district bar dues. Livingston added John Silverstein (Chair of the Grievance Committee that found probable cause) and Leanor Hodge (who prosecuted Livingston) as defendants, alleging that they selectively prosecuted him. In February 2019, the federal court granted the State Bar defendants' motion to dismiss for lack of subject matter jurisdiction. In March, Livingston filed this action, a nearly identical complaint, in Wake County Superior Court. Livingston never served any defendant. On June 3, he obtained alias and pluries summonses but never served them. The State Bar first learned of the Wake County lawsuit on September 9, 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. If the State Bar defendants are ever served, the Office of Counsel will represent them.

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 former 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 awaits a ruling on its motion to dismiss the amended complaint. The Office of Counsel represents the defendants.

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. 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 has been pending but was entirely dormant since 2016 when the court ordered a status conference. On April 25, the court denied WRAL's motion for preliminary injunction and granted the State Bar's motion to dismiss. WRAL's deadline to give notice of appeal was July 8. The Attorney General represents the State Bar.

HGGLBT International Express Trust v. Clark of Superior Court, "NC State Bar and members" (NC Industrial Commission). This is a purported tort claim. HGGLBT 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 alleges no acts or omissions by the State Bar and identifies no viable theories of recovery. The deputy commissioner dismissed the claim on February 11. Claimant's appeal to the Full Commission is scheduled for hearing July 19. The Attorney General represents the State Bar.

Amy Allen v. North Carolina State Bar (NC Office of Administrative Hearings). Allen filed a grievance arising from her domestic case. Before the grievance was resolved, Allen filed a petition for contested case hearing with OAH alleging that the State Bar substantially prejudiced her rights, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule. The deputy commissioner dismissed the claim, concluding that Allen lacks standing and that OAH lacks subject matter jurisdiction. On June 28, Allen filed a petition for judicial review in the Forsyth County Superior Court. After OAH files the certified record with the Forsyth County Superior Court, Allen will have thirty days to file her brief. The Attorney General represents the State Bar.

In re Jaffer (NC Court of Appeals). Jaffer asserted claims that an estate was stolen from her. Those claims were dismissed. She filed multiple grievances against lawyers involved in the estate proceedings. All of the grievances were dismissed. She filed suit in Orange County Superior Court against the Clerk of Court, the Durham Police Department, and the Durham Civilian Review Board. She alleged that many legal professionals and entities—including deputy counsel Liza Foley and the State Bar—conspired to have her case thrown out and committed hate crimes and acts of treason and terrorism. The lawsuit was dismissed. On 26 May 2021, Jaffer petitioned the NC Court of Appeals for a writ of mandamus compelling the superior court to rule on pleadings she filed before the case was dismissed. She listed Foley as an unaffiliated attorney of record.

Jennifer Ghera, et al v. the State of North Carolina, et al. (Wake County Superior Court). A homeowner and her fiancé filed this lawsuit in December 2021 against the State of North Carolina, Union County, and numerous state and county representatives, including the State Bar and a State Bar deputy counsel. Plaintiffs alleged that the North Carolina Uniform Power of Attorney Act allows a non-lawyer attorney-in-fact to act as an advocate representing the principal in a court proceeding and alleged that the Union County Superior Court's refusal to permit him to do so violates plaintiffs' constitutional rights to free speech, due process, property interest, and to enjoy the fruits of their labor. Plaintiffs sought declaratory and injunctive relief. They did not seek monetary relief but did seek an award of attorney fees. Plaintiffs took a voluntary dismissal of their claims against Union County. On April 25, the court granted the remaining defendants' motion to dismiss. Plaintiffs did not appeal. The Attorney General represented all defendants.

Valerie Arroyo and Derek Olivaria v. Southwood Realty et al (US District Court EDNC). Arroyo alleged that she and her co-plaintiff were wrongfully evicted and that the government defendants, including the State Bar, Josh Stein, the N.C. Department of Justice, judges, and courts,

failed to assure that the lawyers and judges involved in the eviction action followed the law and the rules of ethics. The court dismissed the complaint on its own motion following frivolity review. Arroyo appealed to the Fourth Circuit. On May 4, the Fourth Circuit dismissed her appeal. The Office of Counsel represented the State Bar.

Ernest Yarborough v. Satana Deberry and the North Carolina State Bar (Durham County Superior Court). Yarborough filed this lawsuit in December 2021 against the Durham County District Attorney and the State Bar. The State Bar was never served but learned of the lawsuit on March 22 when the court ordered a status conference. Yarborough was licensed to practice law in South Carolina but was disbarred. He was never licensed to practice law in North Carolina. Yarborough sought 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 alleged that the Durham County Superior Court entered two orders concluding that doing so constitutes the unauthorized practice of law. On April 26, the court dismissed the complaint with prejudice. Yarborough did not appeal.

Client Security Fund Claims/Subrogation Cases

The quarterly meeting of the CSF Board is scheduled to occur on August 12. There are currently no lawsuits pending in superior court seeking reimbursement for payments made by the CSF.

Disbursement Cases

The OOC did not complete any disbursements or escheatments this quarter.

Trusteeships

Trustees were appointed to wind down the practice of deceased lawyers **Ms. Patrice Walker** of Chapel Hill, **Haman Wells Holland** of Wilmington, and **Victor M. Lefkowitz** of Winston Salem.

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

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. She gave notice

of appeal of the interlocutory orders and filed a record on appeal but did not file or serve a brief. On July 1, the Court of Appeals dismissed her appeal.

Pending Appeals

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

PERSONNEL

I am very sad to report that **Sonja Puryear** has announced her retirement effective August 30. Sonja has worked at the State Bar for 26 years. She is an investigative clerk in the Investigations Department, doing critical work on cause audits. Sonja is a ray of sunshine and is beloved by her colleagues. We thank her for her exemplary service and wish her the very best in a well-deserved retirement.

The OOC is very pleased to have **Jason White** as our summer intern. Jason is from Concord and is a rising 2L at Campbell University School of Law. He is capable beyond his years. He is doing excellent work and will make a fine lawyer.

Ryan Cooke is working in the OOC this summer as law clerk. Ryan is a 2022 graduate of Campbell University School of Law. She was our 2021 summer intern. Ryan has accepted the State Bar's offer of employment as deputy counsel. The offer is contingent upon her passing the July Bar exam, which we are confident will happen. She is doing a wonderful job and will be a terrific addition to our team.

On July 26, **Jessica Arnold** will join the OOC as deputy counsel. Jessica is a 2013 graduate of Campbell University School of Law. She has extensive courtroom experience as a criminal lawyer. She also has experience in domestic law, personal injury, and estate planning. She will join us from her employment with Tarlton Polk, PLLC, in Raleigh.

In August, **Terrie Nelson** will join the OOC as deputy counsel. Terrie is a 2018 graduate of Campbell University School of Law. She will join us from her current employment as an assistant district attorney in Wilmington. Previously, she was an associate at Cranfill Sumner & Hartzog, LLP, where she worked closely with former State Bar councilor Donna Rascoe practicing education law.

MISCELLANEOUS

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 chair. Leonor staffs the PMBR 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 has been rescheduled for November 8, 2022. 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 participated as 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. Cameron and his wife are expecting their second child on Christmas Eve.

Carmen is an Associate Adjunct Professor of professional responsibility at UNC Law and a Past President of the Wake County Bar Association, where she serves on many committees. This quarter she also presented an ethics CLE for the NC Sustainable Energy Association. Carmen continues to serve as the OOC's liaison to the judiciary, speaking regularly with judges and Judicial Standards Commission staff. Carmen also staffs the subcommittee studying amendments to Rule of Professional Conduct 1.19 and the subcommittee studying potential inclusion of anti-discrimination language in the Rules of Professional Conduct.

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, 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 staffs the State Bar's LAMP Committee.

Alex regularly teaches CLEs on ethics and technology. As the most technologically adept lawyer 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 routinely staffs and assists subcommittees of the Issues Committee.

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 and staffs a subcommittee studying issues relating to those plans.

Liza oversees the State Bar's rule amendment process, including formatting and updating the 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. Along with Brian and Carmen, she staffs Ethics subcommittees studying the potential inclusion of anti-discrimination language in the Rules of Professional Conduct.

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