

**REPORT OF THE OFFICE OF COUNSEL  
TO THE N.C. STATE BAR COUNCIL  
APRIL 19, 2024**

**ATTORNEY CLIENT ASSISTANCE PROGRAM**

During the first quarter of 2024, ACAP staff responded to 2,304 phone calls from members of the public and placed 199 calls to lawyers. Staff also responded to 1,106 emails from members of the public and attorneys and responded to 597 letters from inmates. In addition, there were 40 translations completed of fee dispute petitions submitted in Spanish. Intake logged 4,551 entries this quarter.

The State Bar opened 166 requests for fee dispute resolution during the first quarter.

**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. In 2022, 1,404 grievance files were opened. In 2023, 1,504 grievance files were opened. As of April 11, 483 grievance files had been opened in 2024.

As of April 11, 2,324 grievances were pending. One hundred sixty-five grievances were stayed. Seventeen pending files were in judicial district grievance committees or had been returned by district grievance committees within the past 30 days. The OOC had made its recommendation in 219 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 1,923 files in which no recommendation has yet been made, 335 were more than six months old. In the first quarter of 2024, 237 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 2024.

**DISCIPLINE AND DISABILITY CASES**

**Completed Cases Before the Disciplinary Hearing Commission**

The OOC completed 4 DHC cases this quarter.

**Thomas C. Goolsby – 22 DHC 14**

Goolsby, of Wilmington, engaged in conduct involving a misrepresentation when responding to an investigation of notary fraud by the NC Secretary of State Notary Enforcement Division. The DHC entered a Consent Order of Discipline and admonished Goolsby for his misconduct.

**Mark T. Cummings – 22 DHC 25**

Cummings, of Greensboro, misrepresented his residency when running for judicial office, instructed a courtroom clerk to issue a note containing false information, failed to issue required Forms 1099 and made related false statements about individuals who provided services to his law firm, and misrepresented the existence of evidence to the presiding judge during a trial. After a hearing, the DHC imposed a five-year suspension with the ability to apply for a stay after three years.

**Earl H. Strickland – 23 DHC 12**

Strickland, of Lumberton, did not conduct required trust account reviews and reconciliations, improperly disbursed entrusted funds, did not promptly disburse entrusted funds, did not escheat abandoned funds, and did not send required annual accountings to clients. By consent order, the DHC imposed a four-year suspension with the ability to apply for a stay upon compliance with conditions set out in the order.

**Meredith Ezzell - 23 DHC 14**

Ezzell, of Wilmington, neglected multiple clients, did not timely file and pay federal and state income taxes, did not timely pay employment taxes, and did not respond to the Grievance Committee. Ezzell is currently serving a suspension entered in 18DHC42. By consent order, the DHC suspended Ezzell’s law license for an additional four years.

**Completed Grievance Noncompliance Actions before the DHC**

**Duane S. Miller – 24 DHC 4N**

Miller, of Concord, failed to comply with a grievance investigation and failed to show good cause for his noncompliance. The DHC entered an order suspending Miller’s license until he demonstrates that he has complied with the investigation.

**Completed Grievance Review Panels**

A Grievance Review Panel met at the January meeting to consider one petition.

**Completed Surrenders to the Council**

**Jonathan W. Washburn**, of Wilmington, **Julia Boseman (née Olson-Boseman)**, of Wilmington, and **Nathanael Pendley** of Clemmons submitted affidavits of surrender of their law licenses and were disbarred by the Council at the January 2024 meeting.

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

No discipline or disability 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 status this quarter.

### **Interim Suspensions**

No lawyers were placed on interim suspension this quarter.

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

#### **Kenneth B. Holmes - 18 DHC 34-R**

In 2019, Holmes, of Statesville, was suspended by the DHC for five years for engaging in conduct involving misrepresentation, entering into a prohibited transaction with a client, and violating various trust accounting rules. Holmes was eligible to apply for a stay after serving two years of active suspension and complying with certain conditions. The OOC consented to a DHC order staying the remainder of Holmes' suspension.

#### **Arnold O. Jones II – 18 DHC 3-R**

In 2018, Jones, of Goldsboro, was suspended by the DHC for five years for conduct resulting in a federal felony conviction for promising and paying gratuity to a public official. In January 2024, Jones petitioned for reinstatement. Finding that he had substantially satisfied the conditions set forth in the Order of Discipline, the OOC did not object to his reinstatement.

### **Completed 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 \$15,287.09 in 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. On February 20, 2024, Hale filed a notice of voluntary dismissal terminating proceedings on his second 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 orders of preliminary injunction prohibiting **Duane S. Miller** of Concord and **Erin Phillips** of Cashiers from handling entrusted funds.

## **PENDING DISCIPLINE AND DISABILITY PROCEEDINGS IN THE COURTS**

**In re: Inhaber - 23CR464843 (Rowan County District Court)** – Attorney with a history of failing to appear on behalf of clients failed to appear in court, was ordered by the court to appear on a different date to explain his absence, and then failed to appear as ordered. The OOC was asked to assist the court in addressing Inhaber’s conduct. On January 26, 2024, Inhaber signed a consent order that, among other things, requires him to retain the services of a State Bar-approved practice monitor and enter into and comply with a LAP contract. The court set the case for review one year after entry of the order.

## **PENDING DISCIPLINE AND DISABILITY CASES**

### **Indefinitely Stayed Cases**

#### **Robert Melville, Jr. – 13 DHC 9**

The DHC entered an order of interim suspension of the law license of Lake Waccamaw lawyer Robert Melville based on his federal convictions of conspiracy to commit bank fraud and wire fraud. Melville was already on disability inactive status at the time he was interim-suspended. The disciplinary action will be stayed until Melville is returned to active 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 nonlawyer 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 DHC initiated a disability proceeding and Griffin was transferred to disability inactive status by consent. The disciplinary action will be stayed until Griffin is returned to active status.

**Patricia W. Harvey – 21 DHC 22**

It is alleged that Harvey, of Asheville, failed to file and pay personal income taxes, employee withholding taxes, and FICA taxes for five years, resulting in a criminal conviction for embezzlement of state property. Harvey was transferred to disability inactive status by consent during the pendency of the DHC case. The disciplinary action will be stayed until Harvey is returned to active status.

**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 orders in a civil case her cousins brought against her, and made false representations to the Grievance Committee. She is enjoined from handling entrusted funds. Peppers was automatically transferred to disability inactive status upon filing a notice of disability in the DHC proceeding in March 2023. The DHC entered a consent order continuing Peppers' disability inactive status after Peppers underwent a scheduled medical evaluation. The disciplinary action will be stayed until Peppers is returned to active status.

**Richard T. Dail – 22 DHC 7**

It is alleged that Dail, of Thomasville, misappropriated, did not properly maintain, and improperly disbursed entrusted funds; made a false statement to a client regarding entrusted funds; and did not promptly complete disbursements, deposit entrusted funds into his trust account, conduct required trust account reconciliations and reviews, and maintain required trust account records. He is enjoined from handling entrusted funds. Upon Dail's assertion that he is disabled, he was immediately transferred to disability inactive status and the disciplinary action was stayed. After Dail underwent a medical evaluation, the DHC entered a consent order concluding that Dail is disabled and will remain in disability inactive status. The disciplinary action will be stayed until Dail is returned to active status.

## Active Cases

### **Penny K. Bell – 21 DHC 17**

It is alleged that Bell, of Clinton, made false representations to the Grievance Committee and gave false testimony during remand of a *Batson* claim regarding what she described as the prosecutor's history and practice in exercise of peremptory challenges. In July 2023, the State Bar filed a second amended complaint alleging that Bell failed to inform the court in an *ex parte* motion for emergency custody that her client was subject to an active arrest warrant for felony interference with child custody regarding the same child who was the subject of the motion. Hearing is scheduled for April 22-26.

### **Brian R. Harwell – 22 DHC 3**

Harwell, of Mooresville, pled guilty in Iredell County Superior Court to felony possession of methamphetamine, misdemeanor harboring a fugitive, and misdemeanor resisting a public officer. It is alleged that Harwell also made one or more false statements to police officers regarding a client's whereabouts when the officers came to Harwell's home to serve a warrant for the client's arrest. The Chair of the DHC entered an order of interim suspension of Harwell's law license. The disciplinary complaint has not yet been filed.

### **Allan R. Grimsley—22 DHC 6**

It is alleged that Grimsley, of Nags Head, improperly deposited entrusted funds into his operating account, misappropriated client funds, did not conduct required trust account reconciliations and reviews, and did not timely file and pay federal individual income taxes for several years and employment taxes for one quarter. He is enjoined from handling entrusted funds. The proceeding has been stayed by consent to allow for additional investigation.

### **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. The DHC case is stayed. Charleston recently filed petitions for writs in the Court of Appeals.

### **Martin Musinguzi – 22 DHC 21**

It is alleged that Musinguzi, of New York, embezzled entrusted funds and did not respond to the Grievance Committee. He is enjoined from handling entrusted funds. Musinguzi did not respond to the DHC complaint. In January 2024, the DHC entered a default Order of Discipline disbaring Musinguzi. Musinguzi filed a Motion for Relief from Judgment in the DHC, and a Notice of Appeal from the DHC's final order. Musinguzi's sole argument is that the State Bar lacked disciplinary jurisdiction over him because he was not licensed in North Carolina. Instead, he was a lawyer licensed in New York, but practicing exclusively in the federal immigration courts in Charlotte, where he maintained his practice and represented North Carolinians. The

parties agreed to hold the appeal in abeyance and remand the matter to the DHC so that the DHC could hear and enter a decision on Musinguzi's Motion for Relief from Judgment before the appeal proceeded. The motion has been fully briefed and hearing is scheduled for May 13.

**Harry C. Marsh – 23 DHC 4**

It is alleged that Marsh, of Matthews, engaged in misconduct in many real estate matters, including: Recording a document that falsely appeared to create an encumbrance on title, knowing his client would use that document to extract payment from the owner to release the purported encumbrance; misappropriating entrusted funds provided by an investor for the benefit of the buyer/borrower and without the investor's knowledge or consent; intentionally failing to record a deed of trust and then closing a subsequent sale of the same property without paying off the debt that should have been secured by the unrecorded deed of trust; preparing multiple HUD-1 Settlement Statements providing different information to different recipients to induce the Bankruptcy Court to approve a debtor's sale of property by misrepresenting the nature of the transaction; not complying with the Bankruptcy Court's directive regarding disbursement of closing funds; making misrepresentations to the Grievance Committee; not timely responding to the Grievance Committee; several trust accounting violations; and engaging in a conflict of interest. He is enjoined from handling entrusted funds. The hearing originally scheduled for May 2024 has been continued and has not yet been rescheduled.

**Neil Scarborough – 23 DHC 5**

It is alleged that Scarborough, of Nags Head, neglected multiple clients; charged a clearly excessive fee; made statements to embarrass a third party; engaged in conduct prejudicial to the administration of justice; did not protect a client upon termination of the attorney-client relationship; engaged in the practice of law while his license was administratively suspended; violated multiple trust account record-keeping rules; and did not timely respond to the Grievance Committee. Hearing is scheduled for May 30-31.

**Anita B. Hunt – 23 DHC 8**

It is alleged that Hunt, of Durham, did not properly maintain and disburse entrusted funds and misappropriated entrusted funds. She is enjoined from handling entrusted funds. Proceedings have been stayed to allow for investigation of potential misconduct recently identified by the State Bar but not included in the initial Complaint.

**Nicolle T. Phair – 23 DHC 11**

It is alleged that Phair, of Sanford, engaged in a fraud upon the court during her representation of a criminal defendant by having a stranger pretend to be her client when her client's case was called for trial. It is also alleged that Phair engaged in contempt of court, did not act with diligence, and prejudiced the administration of justice when she failed to return to an afternoon session of court as directly ordered by the court, resulting in unnecessary continuances for clients who remained in jail. Hearing is scheduled for June 24-26.

**Ronnie P. King – 23 DHC 13**

It is alleged that King, of Roxboro, did not timely file and pay his firm’s employee withholding taxes for several years. Proceedings have been stayed to allow for investigation of additional information received through the grievance process.

**Kevin L. Wingate – 23 DHC 15**

Wingate, of Raleigh, was convicted by a jury of one count of first-degree statutory sex offense, a class B1 felony, and four counts of indecent liberties with a child, a class F felony. The DHC placed Wingate on an interim suspension. Hearing has not been scheduled.

**Derek Fletcher – 23 DHC 16**

It is alleged that Fletcher, of Charlotte, neglected and failed to communicate with a client, charged a clearly excessive fee, did not refund an unearned fee, and did not respond to the Grievance Committee. Hearing has not been scheduled.

**Richard E. Batts – 24 DHC 1**

It is alleged that Batts, of Rocky Mount, failed to conduct required trust account reconciliations and reviews, failed to maintain accurate client ledgers, failed to deposit entrusted funds into his trust account, failed to promptly transfer entrusted funds in a PayPal account to the trust account, failed to make transfers from the PayPal account to the trust account in a manner that identified the clients whose funds were being deposited into the trust account and in what amounts, and improperly disbursed funds from the trust account. Hearing has not been scheduled.

**Randall Place – 24 DHC 2**

It is alleged that Place, of Bonita Springs, Florida, engaged in cyberstalking of his ex-wife in violation of Florida law and the terms of his probation. It is also alleged that Place violated an injunction by contacting his ex-wife. The parties have agreed to the terms of a consent order of discipline but the order has not yet been entered by the DHC.

**Christopher Peebles – 24 DHC 3**

It is alleged that Peebles made multiple misrepresentations to the court in both an initial act of dishonesty and subsequent efforts to exculpate himself from the same. It is further alleged that Peebles attempted to have his client “release” him from any acts of professional misconduct and repeatedly made dishonest statements to the State Bar. Hearing will be scheduled for two days in October 2024.

**Hayes Hofler – 24 DHC 5**

It is alleged that Hofler, of Hillsborough, filed frivolous motions, made inflammatory unfounded accusations, and prolonged proceedings by repeatedly filing interlocutory appeals and seeking to recuse judges. It is also alleged that he is disabled. Hearing has not been scheduled.



**Laura Niedosik – 24 DHC 6**

It is alleged that Niedosik, of West Jefferson, failed to verify wiring instructions for a real estate transaction resulting in entrusted funds being fraudulently wired, and/or that Niedosik failed to properly supervise her paralegal in doing so. Hearing has not been scheduled.

**Brian Walker – 24 DHC 7**

It is alleged that Walker, of Wilmington, neglected and failed to communicate with a client resulting in entry of default judgment against his client. In another instance, it is alleged that Walker failed to appear in court on the day his client's felony trial was set to begin, resulting in Walker's conviction for criminal contempt of court. Hearing has not been scheduled.

**Pending Grievance Noncompliance Actions before the DHC**

The OOC initiated an action against **Ryan P. Ames**, of Cornelius, for noncompliance with a grievance investigation.

**Pending Grievance Review Panels**

No Grievance Review Panels will be held during the April meeting.

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

There are no pending uncontested petitions for reinstatement/stay.

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

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

In June of 2018, the DHC suspended Smith, of Charlotte, for two years. The DHC concluded that Smith violated multiple trust accounting rules. The order of discipline provided that, after he served one year of the suspension, Smith could petition for a stay of the balance upon demonstrating compliance with enumerated conditions. 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 Douglas T. Simons – 24 BCR 2**

Simons, of Waldorf, Maryland, surrendered his law license and was disbarred by the Council in 2014. Simons admitted that he misappropriated at least \$300,000 in client funds from his trust account and used those funds for his own personal use over a period of three years. He also admitted to presenting false documentation to the State Bar during the investigation. Simons' previous petition for reinstatement was denied by the DHC in 2014. Hearing is scheduled for May 31.

**In re Charles Kevin Blackmon - 24 BCR 1**

Blackmon, of Greensboro, surrendered his law license and was disbarred by the Council in January 2019, after he misappropriated entrusted funds to which his employer was entitled. Hearing is scheduled for June 4.

**Pending Motions to Show Cause**

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

**APPEALS IN DISCIPLINE & DISABILITY CASES**

**Completed Appeals**

**Michael DeMayo – 22 DHC 1**

The DHC concluded that DeMayo, of Charlotte, engaged in dishonesty, fraud, deceit, or misrepresentation in his statements to a departing associate about the content of DeMayo’s call with a client who chose to be represented by the departing associate. The DHC suspended his law license for one year and stayed the suspension for two years upon his compliance with enumerated conditions. DeMayo appealed and the Court heard oral arguments. In February 2024, the Court of Appeals entered an order reversing the decision of the DHC.

**Pending Appeals**

**Mark A. Key – 21 DHC 23**

The DHC concluded that Key, of Lillington, chronically failed to comply with the law regarding personal and business taxes, engaged in felony mortgage fraud, disclosed client confidences, mismanaged his trust account, was disruptive during a Superior Court trial, made misrepresentations to an employee and knowingly underreported her wages to the IRS, and made misrepresentations to the Grievance Committee. The DHC suspended Key, who has a 20-year history of professional discipline, for five years with a possible stay after three years upon compliance with various conditions. Both Key and the State Bar appealed. The matter has been fully briefed and the Court of Appeals has indicated it will be decided without oral argument.

**Gregory Bartko – 23 BCR 1**

The DHC dismissed Bartko’s petition for reinstatement from disbarment for failure to comply with 27 N.C. Admin. Code 1B .0129(a). The hearing panel denied his Rule 59 and 60 motions. Bartko appealed. The matter has been fully briefed and the Court of Appeals has indicated it will be decided without oral argument.

**David Shawn Clark – 22 BCR 12**

Clark, of Hickory, petitioned for reinstatement from disbarment. The DHC recommended denial of the petition, finding that Clark refused to fully acknowledge his wrongdoing, which included having sex with a client, attempting to suborn perjury, threatening witnesses, intentionally disclosing confidential information, and

filing a meritless lawsuit against the client. Clark appealed to the State Bar Council, which denied Clark's petition for reinstatement. Clark appealed the Council's denial to the Court of Appeals. Clark's brief has been filed and the State Bar's responsive brief is not yet due.

### **Martin Musinguzi – 22 DHC 21**

Musinguzi, of New York, was disbarred by the DHC in a January 2024 default Order of Discipline. Musinguzi filed a Motion for Relief from Judgment in the DHC, as well as a Notice of Appeal from the DHC's order. Several days later, Musinguzi also filed a Petition for Writ of Supersedeas in the Court of Appeals, asking the Court to stay the order of disbarment until the Court of Appeals ruled on his appeal. The parties agreed to hold the appeal in abeyance and remand the matter to the DHC so that the DHC could hear and enter a decision on Musinguzi's Motion for Relief from Judgment before the appeal proceeded. The parties further agreed that Musinguzi would withdraw his Petition for Writ and instead the parties would enter a consent order in the DHC staying the Order of Discipline until the DHC ruled on the Motion for Relief from Judgment. The State Bar consented to the stay based on the novel legal question raised in Musinguzi's motion, which is an issue of first impression in North Carolina.

### **Jonathan Charleston – 22 DHC 16**

Charleston, of Fayetteville, is a defendant in a pending DHC case. In March 2024, Charleston filed a Petition for Writ of Prohibition and Alternative Petition for Writ of Certiorari in the Court of Appeals. Charleston's petition seeks an order from the Court prohibiting the State Bar from pursuing the DHC case unless and until the State Bar complies with the statutory requirement for a grievance review panel that "operate[s] pursuant to rules and procedures adopted by the [State Bar] Council and approved by the Supreme Court." The State Bar filed a response and is awaiting a decision.

## **TRUST ACCOUNT COMPLIANCE PROGRAM**

One hundred forty-two lawyers have completed the TAC Program since its inception. Five lawyers accepted offers to participate in the TAC Program after the January 2024 quarterly meeting. Katherine Jean graciously agreed to serve as TAC Counsel temporarily following Leonor's departure. She currently supervises twenty-six participants. Katherine 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 21 new files this quarter. There are eight files on the committee's April agenda.

**Pending, Recently Completed, and Contemplated  
Authorized Practice Litigation**

**Valerie Arroyo v. North Carolina State Bar (Cabarrus County Superior Court).** On September 28, Arroyo again sued the State Bar, this time alleging that the State Bar denied her due process by obtaining an injunction preventing her engaging in the unauthorized practice of law and by failing to discipline lawyers against whom she filed grievances. She seeks unspecified damages. The Attorney General represents the State Bar and filed a motion to dismiss, which was heard on February 7, 2024, and allowed on February 23, 2024. Arroyo has not filed a notice of appeal.

**North Carolina State Bar v. Tigress Sydney Acute McDaniel-** At the January 2024 meeting, the Executive Committee voted to authorize counsel to seek an injunction against Tigress McDaniel. McDaniel, who is not licensed to practice law in North Carolina, prepared legal documents on behalf of Complainant Shemeka Smith. McDaniel has a business, which she has named “The Ethical Gatekeeper,” through which she offers legal advice and legal document preparation. McDaniel also holds herself out to be a lawyer in various internet forums and alleges that she is authorized to do so because she holds a Juris Doctorate from an online law school which is unaccredited by the ABA. The complaint has not yet been filed.

**Prepaid Legal Services Plan Registration**

During the first quarter, the State Bar received no initial registration statements for proposed prepaid legal services plans and received no amendments to existing plans. During the January meeting, the Authorized Practice Committee instructed the Secretary to issue a notice to show cause to a registered plan not in compliance with the annual registration renewal requirements. However, soon after the January meeting it came to light that the plan’s noncompliance with the annual registration renewal requirements was attributable to U.S. Postal Service delay. Accordingly, a notice to show cause was not issued.

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

**Pending Litigation**

On January 4, 2024, **Morag Black Polaski, Shawana Almendarez, and North Carolina Justice for All Project** filed a lawsuit in the United States District Court for the Eastern District of North Carolina against Josh Stein, Attorney General of North Carolina. Plaintiffs alleged that they would like to provide legal services to North Carolinians both without charge and for compensation but are prohibited from doing so by North Carolina’s statutes and regulations prohibiting the unauthorized practice of law. They sought a declaratory judgment that enforcement of North Carolina’s statutes and regulations prohibiting UPL violates

the First Amendment as applied to them; a permanent injunction enjoining future enforcement of those statutes and regulations; attorney fees; and costs. In response to Stein’s motion to dismiss, Plaintiffs’ counsel filed an amended complaint on March 18, 2024, removing Stein as the defendant and replacing him with five elected district attorneys and State Bar President A. Todd Brown in his official capacity. The amended complaint seeks the same relief from these proposed new defendants. The State Bar retained outside counsel to represent President Brown and they will file a motion to dismiss. Controlling precedent, *Capital Associated Industries, Inc. v. Stein*, 922 F.3d 198 (4th Cir. 2019), suggests the plaintiffs are not likely to prevail on these claims.

**Richard Polidi v. A. Todd Brown and Margaret Cloutier (EDNC).** Polidi did not sue the State Bar or any of its representatives in his first complaint in this action. On November 2, 2023, he filed an amended complaint asserting claims against State Bar President A. Todd Brown and former (now retired) State Bar deputy counsel Margaret Cloutier, in both their individual and official capacities. In the amended complaint, Polidi alleges that Brown, Cloutier, and others engaged in a conflict of interest when the State Bar investigated and dismissed a grievance he filed against State Bar employee Carmen Bannon. The Attorney General represents Cloutier and Brown and has filed motions to dismiss.

**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 (now former) 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 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 (now State Bar 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.

**Teresa Waters v. “State of North Carolina Bar Association” (NC Industrial Commission).** Waters filed this purported tort claim, alleging that the “State of North Carolina Bar Association” failed to investigate grievances she filed. She also filed a purported tort claim against the Judicial Standards Commission. All of those claims were consolidated by the deputy commissioner. Waters seeks unquantified

recovery for alleged financial harm and emotional distress, costs, and attorney fees. The deputy commissioner dismissed the claims with prejudice on June 13, 2023. Waters appealed. The Full Commission affirmed. Waters filed notice of appeal. She has served a proposed record on appeal. The Attorney General represents the State Bar.

**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. He has never successfully petitioned for reinstatement to active status. 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 (previous State Bar councilor who chaired the Grievance Committee that found probable cause) and former State Bar Deputy Counsel 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 2019, Livingston filed this action, a nearly identical complaint, in Wake County Superior Court. Livingston never served any defendant. In June 2019, he obtained alias and pluries summonses but never served them. The State Bar first learned of the Wake County lawsuit in September 2019, when the trial court administrator directed the parties to prepare a case management order. The State Bar notified the trial court administrator that, because no defendant has been served, the case should be discontinued. The State Bar has heard nothing further from the trial court administrator and the case has not been scheduled for hearing. If the State Bar defendants are ever served, the Office of Counsel will represent them.

**Jeffrey B. McRorie v. Richard A. Culler, et al. (Samson County Superior Court).** McRorie filed a grievance against Culler which was dismissed in 2022. Thereafter, McRorie sued Culler complaining about his representation of McRorie. On March 8, 2024, McRorie filed a "motion to compel discovery" from the State Bar, seeking information about whether Culler consulted the State Bar ethics department before withdrawing from the representation. The State Bar is not a party to the action and has not been properly served with any document. McRorie has not obtained a subpoena for production of the information he seeks. Because McRorie is incarcerated, it is unlikely that a hearing on his filing will be conducted. If McRorie ever serves the State Bar with anything requiring a response, the Office of Counsel will represent the State Bar.

**Shahsultan Jaffer v. Archie Smith et al (NC Industrial Commission).** Jaffer filed this purported tort claim against the State Bar and other government agencies and officials. It contains no allegations of acts or omissions by the State Bar or by any of its employees or agents. The deputy commissioner dismissed the claim on December 14, 2023. Jaffer appealed to the Full Commission. The Attorney General represents the State Bar.

## **Completed Litigation**

**Eddie Meeks v. Robert Weston and Robert Powell (U.S. District Court WDNC).** Meeks, respondent in a pending grievance, filed this lawsuit on February 6, 2023, against Deputy Counsel Weston and State Bar Investigator Powell. Meeks alleged that Weston and Powell violated 42 U.S.C. § 1983 and committed abuse of process in their investigation of allegations of Meeks' professional misconduct by serving subpoenas upon him and his wife and by investigating additional allegations that came to light during the investigation. The magistrate judge recommended that the court grant the defendants' motion to dismiss. Meeks did not object to that recommendation. The district court adopted the magistrate judge's recommendation and dismissed the complaint on February 2, 2024. The Attorney General represented Weston and Powell.

**Ertle Chavis v. N.C. State Bar (Brunswick County Superior Court).** Chavis, formerly a North Carolina lawyer, was disbarred by the DHC in 2015. Before his disbarment, the Wake County Superior Court enjoined him from handling entrusted funds. Since his disbarment, Chavis has periodically asked the Office of Counsel to give him the remaining money in his trust account, contending that it belongs to him. He has ignored the Office of Counsel's repeated requests that he offer proof of his contention. On January 4, 2024, Chavis filed a "petition" in Brunswick County Superior Court, asking that court to order the State Bar to "release the block on the account." Staff counsel explained to Chavis that this was not the appropriate mechanism or forum to seek this relief. Chavis agreed to dismiss the action in exchange for the Office of Counsel's agreement to file a motion in Wake County Superior Court for permission to escheat the remaining funds. On February 7, 2024, Chavis dismissed the petition with prejudice. The Office of Counsel represented the State Bar and will file a motion to escheat the remaining entrusted funds. Chavis indicated that he will object to that motion.

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

The Client Security Fund Board held its quarterly meeting on January 16, 2024. The Board paid 14 claims and denied 14 claims. The Board will consider 19 claims at its April 16 meeting. There are currently no lawsuits pending in superior court seeking reimbursement for payments made by the CSF.

## **Disbursement Cases**

This quarter, the Office of Counsel did not file any motions for disbursement or escheatment of client funds on behalf of the Disbursements Committee.

## Trusteeships

Trustees were appointed to wind down the practices of deceased lawyers **David T. Robinson** of Durham, **Stanley Lee Allen** of Wentworth, **Corey D. Buggs** of Lexington, and **Michael A. Schlosser** of Greensboro.

## PERSONNEL

Alexis (Lexi) Bilski will join the Office of Counsel as a legal administrative assistant on May 1. Lexi is a recent University of South Carolina graduate with a major in Psychology and a minor in Criminal Justice.

Alec Glenn will join the Office of Counsel as a Deputy Counsel on May 1. Alec is a graduate of NC Central School of Law. He was previously an ADA in Wake County and most recently served as Associate Legal Counsel at the N.C. Real Estate Commission.

## MISCELLANEOUS

The OOC continued its work with Legal Lean Sigma, a company that provides process improvement training and facilitation, to improve our efficiency in handling grievances. During three full-day workshops with the Legal Lean facilitators this quarter, OOC staff developed, piloted, and reviewed process improvement initiatives designed to enhance the intake/screening of new grievances and eliminate the backlog of aging grievances. The initiatives include (a) office-wide “Dismissal Days” in which everyone focuses exclusively on completing reports on grievances where dismissal is recommended (100+ files were completed on the most recent Dismissal Day); (b) creating a short form for simple dismissal recommendations that do not require narrative analysis; (c) revision of all website content and form letters to ensure accurate consistent messaging to complainants; (d) creation of a web-based grievance submission form that will ensure sufficient information is included in the submission and help manage complainant expectations.

Kelley staffs the subcommittee on grievance deferral programs and has begun serving as the OOC’s liaison to the judiciary. She participated in the process improvement workshops and designed the popular new short-form dismissal ROC. Kelley has been teaching CLEs and looks forward to more teaching opportunities in the future. When not fielding calls from judges or working on her cases, you can find her playing French Horn for a local town band.

Tessa staffs the Authorized Practice Committee.

Jennifer volunteers as a judge with the Capital Area Teen Court program in Raleigh and Holly Springs, 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 providing teens interested in the law with the



opportunity to serve as youth attorneys in Teen Court hearings. Jennifer also serves as a judge for collegiate mock trial competitions. Jennifer, assisted greatly by her extraordinary paralegal Brittany, tracks trust account-related cases and updates the disposition charts annually. Jennifer staffs the State Bar's LAMP Committee. Jennifer also serves on the History Committee of the Wake County Bar Association.

Carmen is an Associate Adjunct Professor of professional responsibility at UNC Law, teaching ethics to nearly half of their graduates. This quarter she was named as one of Lawyers' Weekly's 2024 Leaders in the Law. Since becoming the Counsel she has minimized her extracurricular professional activities, but nonetheless agreed to present at several CLEs at the beach this summer.

Alex currently oversees the new grievance intake process, designed to improve efficiency and workflow within the OOC. He participated in the process improvement workshops and spearheaded many of the resulting initiatives related to grievance intake. Alex teaches CLEs on ethics and technology. As the most technologically-adept lawyer in the OOC, he regularly helps his colleagues navigate technological challenges. Alex serves on the committee that works with the software developers for our new database and helps oversee administration of our legal research and investigative software. Alex also routinely staffs and assists subcommittees of the Issues Committee.

Savannah oversees the registration of prepaid legal services plans and staffs the subcommittee studying legal deserts. Savannah and her husband welcomed a baby boy, Harrison Gray McLamb, in February.

Barry handles the appointment and supervision of trustees to wind down law practices of deceased, disbarred, suspended and missing lawyers. He also staffs the Client Security Fund. Barry and investigator Doug Miller work with Investor's Title and the North Carolina Real Estate Commission (NCREC) to offer wire fraud prevention CLEs for lawyers, paralegals and brokers. Barry continues to mentor a third-year law student in the Campbell Law Connections Mentorship Program.

Cameron helps Barry with the appointment and supervision of trustees to wind down law practices of deceased, disbarred, suspended and missing lawyers, staffs the Access to Justice Committee's Subcommittee on Legal Deserts, and recently began teaching CLE. He is a member of the Wake County Bar Association's History Committee.

Liza handles advertising grievances and public records requests for the OOC. She participated in the process improvement workshops and is helping row the boat on Prepaid Legal Services Plans while Savannah is on maternity leave.

Rob handles disbursements from the trust accounts of disbarred and suspended lawyers. He recruits and supervises our summer interns. He also shares responsibility for the State Bar's outside litigation and appeals with Kathryn Shields.

Kathryn shares responsibility with Rob for the State Bar's outside litigation and appeals.

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

Jessica presented at two CLEs in the first quarter of 2024 and looks forward to future CLE presentations.

Ryan participated in the process improvement workshops and was a primary contributor to initiatives focused on streamlining the grievance intake process and updating the language on the State Bar's website. In February, she presented her first CLE with Jessica.