

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

ATTORNEY CLIENT ASSISTANCE PROGRAM

During the second quarter of 2024, ACAP staff responded to 1,595 phone calls from members of the public and placed 144 calls to lawyers. Staff also responded to 871 emails from members of the public and attorneys and responded to 479 letters from inmates. In addition, 20 fee dispute petitions submitted in Spanish were translated. Intake logged 3,518 entries this quarter.

The State Bar received 129 petitions for fee dispute resolution during the second 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 July 11, 895 grievance files had been opened in 2024.¹

As of July 11, 2,302 grievances were pending. One hundred forty-four grievances were stayed. Twenty-eight 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 478 of the pending cases and the cases were ready for the Grievance Committee's decision. Of the remaining 1,652 files in which no recommendation has yet been made, 314 were more than six months old.² In the second quarter of 2024, 261 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 2024.

DISCIPLINE AND DISABILITY CASES

Completed Cases Before the Disciplinary Hearing Commission

The OOC completed six DHC cases this quarter.

Penny K. Bell – 21 DHC 17

Bell, of Clinton, made false representations to the Grievance Committee, gave false testimony during remand of a *Batson* claim, and made false statements in an *ex parte*

¹ This is more than double the number of files (437) that were opened in the first two quarters of 2023.

² Although the number of total pending files and files that are more than six months old are similar to those statistics from this time last year, there are currently 300 fewer files awaiting ROCs (1,652 currently vs. 1,947 a year ago).

motion. After a hearing on April 22-24, the DHC imposed a three-year suspension with the ability to apply for a stay after one year upon compliance with conditions.

Martin Musinguzi – 22 DHC 21

Musinguzi, of New York, embezzled entrusted funds and did not respond to the Grievance Committee. 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 was that the State Bar lacked disciplinary jurisdiction over him because he is not licensed in North Carolina: Instead, he is 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 the DHC could hear Musinguzi’s Motion for Relief from Judgment before the appeal proceeded. The DHC heard the Motion for Relief from Judgment on May 13 and denied it.

Neil Scarborough – 23 DHC 5

Scarborough, of Nags Head, neglected multiple clients, charged a clearly excessive fee, made statements to embarrass a third party, 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. By consent order, the DHC suspended his license for two years. The suspension is stayed for three years upon his compliance with conditions.

Randall Place – 24 DHC 2

Place, of Bonita Springs, Florida, engaged in conduct that constituted cyberstalking of his ex-wife in violation of Florida law and was enjoined from contacting his ex-wife. Place violated the injunction and the terms of his subsequent probation by continuing to contact his ex-wife. The DHC suspended Place’s license for thirty days.

Christopher Peebles – 24 DHC 3

Peebles, of Fayetteville, made multiple misrepresentations to the court in both an initial act of dishonesty and subsequent efforts to exculpate himself from the same. He also attempted to have his client “release” him from any acts of professional misconduct and repeatedly made dishonest statements to the State Bar. The DHC suspended him for two years. The suspension is stayed for three years upon compliance with numerous conditions.

Edwards, Antwoine – 24 DHC 10

Edwards, of Fayetteville, improperly disbursed funds from his trust account in amounts exceeding the funds he held for the clients, failed to timely disburse funds from the trust account, failed to timely reconcile, failed to properly disburse his fees from the trust account, and provided the State Bar with reconciliation reports that misrepresented when the reports had been completed. By consent order, the DHC

imposed a four-year suspension with the ability to apply for a stay after six months upon compliance with conditions.

Completed Grievance Noncompliance Actions before the DHC

Ryan P. Ames – 24 DHC 8N

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

Completed Grievance Review Panels

No Grievance Review Panels were conducted this quarter.

Completed Surrenders to the Council

Mimi Rankin, of Texas, submitted an affidavit of surrender of her law license and was disbarred by the Council at the April 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

B. Ervin Brown of Winston Salem and **John C. MacNeill, Jr.** of Charlotte were transferred to disability inactive status this quarter.

Interim Suspensions

Derek R. Fletcher of Charlotte was placed on interim suspension on June 24 after admitting guilt to a crime showing professional unfitness.

Completed Petitions for Reinstatement/Stay - Uncontested

Peter K. Gemborys – 07 DHC 13-RD

In 2008, the DHC transferred Gemborys, of Wilmington, to disability inactive status. In April 2024, Gemborys petitioned the DHC for reinstatement, presenting evidence he was no longer disabled. The OOC consented to a DHC order reinstating Gemborys' license and transferring him to active status.

Completed Petitions for Reinstatement/Stay - Contested

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. In February 2024, Blackmon petitioned for reinstatement. In March 2024, Blackmon filed an amended petition. On May 31, Blackmon withdrew his petition for reinstatement.

Douglas T. Simons – 24 BCR 2

Simons, of Charlotte, 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 them 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. After a hearing, the DHC denied his second petition for reinstatement.

Completed Motions to Show Cause

No motions to show cause were completed this quarter.

Preliminary Injunctions

The Wake County Superior Court entered orders of preliminary injunction prohibiting **Patrick Wood** of Weaverville and **Tyler L. Pierce** of Charlotte from handling entrusted funds.

PENDING DISCIPLINE AND DISABILITY PROCEEDINGS IN THE COURTS

In re Dant – 24SP001304 (Alamance County Superior Court) – Attorney is alleged to have exhibited professional incompetence, filed frivolous pleadings, failed to comply with the rules and orders of the tribunal, and engaged in conduct prejudicial to the administration of justice across multiple cases. The OOC was appointed to prosecute the judicially-initiated disciplinary case and hearing is set for hearing on September 3.

[Confidential caption] - 23SPC36 (Currituck County Superior Court) - With the assistance of LAP, the court placed a lawyer on temporary disability/inactive status. The lawyer has filed a petition for reinstatement from disability/inactive status. The court initially declined to calendar the lawyer's petition for reinstatement for hearing, choosing instead to issue a disciplinary show cause order based upon the manner of the lawyer's withdrawal from several cases prior to being placed on temporary disability/inactive status. The show cause order and the petition for

reinstatement are both set for hearing on July 15. The OOC has been asked to assist the court in addressing those matters.

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. In January 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 in January 2025.

PENDING DISCIPLINE AND DISABILITY CASES

Active Cases

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’s petitions for writs in the Court of Appeals were recently denied. Counsel for the parties are working on a consent scheduling order to move the case forward.

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.

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 October 14-16.

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 is scheduled for July 26.

Derek Fletcher – 23 DHC 16

It is alleged that Fletcher, of Charlotte, neglected and failed to communicate with several clients, charged a clearly excessive fee, and did not refund an unearned fee. The parties have agreed to the terms of a consent order of discipline, but the order has not yet been entered by the DHC.

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.

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. Various preliminary motions have been filed, but hearing has not been scheduled.

Laura Nidosik – 24 DHC 6

It is alleged that Nidosik, of West Jefferson, failed to verify wiring instructions for a real estate transaction resulting in entrusted funds being fraudulently wired, and/or that Nidosik failed to properly supervise her paralegal in doing so. Hearing has not been scheduled. The parties intend to submit a consent order of discipline to the DHC shortly.

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.

Jonathan Metcalf – 24 DHC 9

It is alleged that Metcalf, of Charlotte, neglected two clients, misappropriated client funds, and did not respond to the Grievance Committee. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

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.

Pending Grievance Noncompliance Actions before the DHC

The OOC initiated an action against **Erin Phillips**, of Cashiers, for noncompliance with a grievance investigation.

Pending Grievance Review Panels

No Grievance Review Panels will be held during the July 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 Fletcher L. Hartsell, Jr. – 24 BCR 3

Hartsell, of Concord, surrendered his law license and was disbarred by the Council in October 2018 pursuant to his state and federal convictions for fraud related to his solicitation, use, and tax reporting of campaign contributions. Hearing is scheduled for July 22-23.

Pending Motions to Show Cause

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

APPEALS IN DISCIPLINE & DISABILITY CASES

Completed 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. In June 2024, the Court of Appeals entered an order affirming the decision of the DHC with respect to its Phase I findings and conclusions. The Court of Appeals concluded that “the DHC failed to consider Defendant’s commission of multiple felonies and bad faith obstruction of the disciplinary proceedings in imposing the appropriate discipline,” vacated the portion of the Order of Discipline suspending Key’s law license, and remanded the case for further proceedings consistent with its opinion.

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 sought 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 Court of Appeals denied Charleston’s petition and alternative petition on May 23.

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 subsequent Rule 59 and 60 motions. Bartko appealed. The Court of Appeals ruled in favor of the State Bar. Bartko filed a petition for discretionary review with the North Carolina Supreme Court. The Supreme Court denied Bartko’s petition for discretionary review on June 28.

Pending Appeals

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. The matter has been fully briefed and the parties await a decision.

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. The DHC held a hearing on the Motion for Relief from Judgment and denied it. Musinguzi then filed petitions in the Court of Appeals and Supreme Court seeking to stay the order of disbarment during his appeal. Thus far, the Supreme Court has only granted him a temporary stay while it considers his petition. The record on appeal has not yet been submitted.

Mark T. Cummings – 22 DHC 25

Cummings, of Greensboro, was suspended for five years by the DHC in April 2024 for failure to comply with employee tax withholding laws, several acts of dishonesty, deceit, fraud, or misrepresentation reflecting adversely on his fitness as a lawyer, and conduct prejudicial to the administration of justice. Cummings filed a Rule 59 Motion, a Rule 60 Motion, and a Notice of Appeal. The Court of Appeals ordered a limited remand to allow the DHC to hear the post-trial motions. In June 2024, the DHC entered orders indicating it would deny both post-trial motions, and those orders were certified to the Court of Appeals. Cummings filed a notice of appeal with respect to both orders. When the Court of Appeals dissolved its temporary stay of the Order of Discipline, Cummings filed a petition for writ of supersedeas and a motion for temporary stay with the Supreme Court . The Supreme Court granted the temporary stay on June 11, and the State Bar filed its response to the petition for writ of supersedeas on June 18. As of July 9, no ruling had been received from the Supreme Court. The State Bar awaits service of the proposed record on appeal.

TRUST ACCOUNT COMPLIANCE PROGRAM

One hundred forty-eight lawyers have completed the TAC Program since its inception. Four lawyers accepted offers to participate in the TAC Program after the April 2024 quarterly meeting. Katherine Jean is serving as acting TAC Counsel following Leonor’s departure. She currently supervises 30 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 ten new files this quarter. There are eleven files on the committee’s July agenda.

Authorized Practice Litigation

North Carolina State Bar v. Tigress Sydney Acute McDaniel- On May 22, 2024, the State Bar filed a Complaint for Permanent Injunction with Motion for Preliminary Injunction in Wake County Superior Court alleging that McDaniel engaged in activities constituting the unauthorized practice of law. On June 6, McDaniel filed a notice of removal to federal court in the Eastern District of North Carolina. On June 21, McDaniel filed an answer and counterclaims in federal court. On July 2, the State Bar filed a motion to remand the action back to Wake County Superior Court.

Prepaid Legal Services Plan Registration

The State Bar received no proposed amendments to existing prepaid legal services plans during the second quarter of 2024. The State Bar received and accepted two initial registration statements during the second quarter of 2024, for the following plans: National Plan 25 (24PP09) and National Plan Enhanced 25 (24PP10).

OTHER LITIGATION IN THE STATE AND FEDERAL COURTS

Pending Litigation

In January 2024, **Morag Black Polaski, Shawana Almendarez, and the North Carolina Justice for All Project** filed a lawsuit in the United States District Court for the Eastern District of North Carolina against Attorney General Josh Stein. 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 Mr. Stein's motion to dismiss, Plaintiffs' counsel filed an amended complaint on March 18, 2024, removing Mr. 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 have filed a motion to dismiss. The plaintiffs filed a brief in response, and counsel for President Brown are filing a reply brief. 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. Their motions to dismiss were referred to the U.S. Magistrate Judge, who recently entered a lengthy memorandum recommending that the District Court dismiss all claims with prejudice.

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 to the Court of Appeals. The State Bar is waiting for Waters to file the record on appeal. The Attorney General represents 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 and the parties are awaiting the Full Commission’s decision. 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 Leonor Hodge (who prosecuted Livingston) as defendants, alleging that they selectively prosecuted him. In February 2019, the federal court granted the State Bar defendants’ motion to dismiss for lack of subject matter jurisdiction. In March 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.

Completed Litigation

No litigation was completed this quarter.

Client Security Fund Claims/Subrogation Cases

The Client Security Fund Board held its quarterly meeting on April 16, 2024. The Board paid 13 claims and denied 7 claims. The Board will consider 20 claims at its July 16 meeting. There are currently no lawsuits pending in superior court seeking reimbursement for payments made by the CSF.

Disbursement Cases

The State Bar obtained an order from the Wake County Superior Court directing the escheatment of all funds remaining in a trust account belonging to **Ertle Chavis** of Lumberton, who was enjoined from handling entrusted funds in 2012 and disbarred in 2015.

Trusteeships

Trustees were appointed to wind down the practices of deceased lawyers **David M. Dansby** of Greensboro, **Baccuhus Holland Carver** of Lillington, **Howard Stanley Kohn** of Raleigh, **Clyde Franklin Stanley, Jr.** of Supply, and **Katherine Suzanne Parker-Lowe** of Ocracoke.

PERSONNEL

The Office of Counsel is pleased to welcome Kerry Sullivan (rising 3L at Campbell University) and Ashe Cooper (rising 3L at Elon University) as its summer interns. Ashe and Kerry are partway through their internships and will be at the quarterly meeting.

On May 1, Alec Glenn joined the staff as a Deputy Counsel. Alec previously served as an ADA in Wake County and as Deputy Legal Counsel at the North Carolina Real Estate Commission. Alec received his undergraduate degree from East Carolina University and his law degree from North Carolina Central School of Law.

On June 13, Danielle Marquis Elder joined the staff as a Deputy Counsel. Danielle recently retired from the North Carolina Department of Justice where she was a Senior Deputy Attorney General and served as the head of the Criminal Division. She received her BA from the University of Tennessee and attended Cumberland School of Law.

As part of ongoing reforms within the Office of Counsel, several staff members were promoted to positions of leadership this quarter:

- Jennifer Porter, Pat Murphy, and Alex Nicely are now supervising attorneys. Jennifer's responsibilities include training and oversight for financial cases and assisting the Counsel with office-wide projects; Pat is providing direct supervision and accountability for Deputy Counsels' DHC cases and litigation; and Alex is running grievance intake, overseeing assignment of grievances, and monitoring Deputy Counsels' grievance caseloads and backlog.
- Becky Carroll, Jennifer Slattery, and Brittany Wilson are now supervising paralegals. Jennifer and Brittany are responsible for various process improvement projects, development of operating procedures and training materials, and drafting standard document templates for OOC-wide use. Becky assumed the role of Chief of Staff, providing direct support to the Counsel and supervision of non-lawyer staff.

MISCELLANEOUS

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. As part of that role, she occasionally presents to members of the bar around the state about the work of the Authorized Practice Committee. The most recent presentation was in June at Wake Forest University. Tessa, along with the Chair and Vice-Chair of the Authorized Practice Committee, has been working to revise intake procedures for authorized practice cases. Some changes being discussed and implemented include providing more widely-available substantive guidance on authorized practice matters, improving the intake form, developing a method of triaging complaints, and various ways of making the complaint process more accessible to victims of notario fraud. Tessa has met with advocates outside of the State Bar who have worked on notario fraud to discuss this accessibility issue. Tessa was also recently awarded a scholarship to attend a trial skills training with the International Association of Defense Counsel in August.

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 paralegal Brittany Wilson, tracks trust account-related cases and updates the disposition charts annually. 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. Since becoming the Counsel she has minimized her extracurricular professional activities, but she was a presenter at the Superior Court Judges Conference in June and spoke to summer interns at an Equal Justice Alliance event.

Alex currently oversees the new grievance intake process, designed to improve efficiency and workflow within the OOC. He spearheaded many of the resulting process improvement 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. He currently serves on the Artificial Intelligence Committee, the Accessibility and Inclusion Committee, and the Innovation Committee.

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 pinch hits for Barry with the appointment and supervision of trustees, 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 for the OOC.

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 is presenting at the 2024 County Attorney Conference in July.

Ryan continues to work on process improvement initiatives focused on streamlining the grievance intake process and updating the language on the State Bar's website.