

**REPORT OF THE OFFICE OF COUNSEL
TO THE N.C. STATE BAR COUNCIL
APRIL 17, 2015**

GRIEVANCES

In 2010, 1317 grievance files were opened. In 2011, 1499 grievance files were opened. In 2012, 1239 grievance files were opened. In 2013, 1205 grievance files were opened. In 2014, 1222 grievance files were opened. Since January 1, 334 grievance files have been opened.

ATTORNEY CLIENT ASSISTANCE PROGRAM

The ACAP staff responded to 2,946 phone calls from members of the public and contacted 820 lawyers in an effort to resolve concerns expressed by clients. Staff also responded to 204 email messages from the general public and 507 letters from inmates.

There were 126 requests for fee dispute resolution filed during the quarter. The two State Bar facilitators were assigned to 93 files. The remaining 33 files were sent to district bar committees.

CASES COMPLETED SINCE JANUARY 2015 MEETING

Completed Discipline Cases in the DHC

Keith Henry – 14 DHC 9

Henry, of Asheville, was affiliated with a business that purported to offer estate and tax planning services and was closed when its principal was indicted for operating a Ponzi scheme. Henry shared fees with a non-lawyer, had a conflict of interest, and facilitated the unauthorized practice of law. The DHC suspended him for two years.

David Lloyd – 14 DHC 15

Lloyd, of Spindale, used entrusted funds for his own benefit and for the benefit of third parties without authorization to do so, did not report to the State Bar misappropriation of entrusted funds by his law partner (who has since been disbarred), commingled personal and entrusted funds, and did not safeguard entrusted funds. The DHC suspended him for three years. The suspension is stayed for three years upon Lloyd's compliance with numerous conditions.

Paul Jackson – 14 DHC 20

Jackson, an assistant district attorney in Johnston County, falsely represented to the court that he had contacted the SBI Lab to obtain results of DNA testing. As a result, a criminal defendant did not receive timely disclosure of exculpatory evidence and spent over 500 days in custody before charges against him were dismissed. The DHC suspended Jackson for one year. The suspension is stayed for two years upon his compliance with enumerated conditions.

Clark Wittstruck – 14 DHC 29 & 14 DHC 33

Wittstruck, of Asheville, neglected and/or did not communicate with clients in 13 cases, did not timely respond to the State Bar, did not deposit entrusted funds in a trust account, and did not participate in the State Bar’s mandatory fee dispute resolution process. The DHC announced its decision to suspend Wittstruck for five years. After serving three years of the suspension, the order will permit Wittstruck to move for a stay of the balance upon showing compliance with numerous conditions. The DHC’s Order has not yet been entered.

David Kirkbride – 14 DHC 30

Kirkbride, of Raleigh, pledged the funds in his trust account to a casino to secure his gambling debts. He surrendered his license and was disbarred by the DHC.

James Thompson – 14 DHC 31

Thompson, of Morehead City, committed several violations of the trust account rules and did not properly supervise non-attorney assistants in connection with real estate closings. The DHC suspended him for three years. The suspension is stayed for three years upon Thompson’s compliance with numerous conditions.

Reid C. James – 14 DHC 34

James, of Gastonia, neglected his clients, did not properly wind down his practice after being suspended by the DHC, and did not respond to the State Bar. He was disbarred.

James Garfield Williams – 15 DHC 3

Williams, of Archdale, self-reported employee theft from his trust account. He had not properly supervised his employee, reconciled the trust account, ensured that reconciliations were performed, or kept appropriate client ledgers. The DHC suspended him for two years. The suspension is stayed for two years upon Williams’ compliance with numerous conditions.

Robert Gray Austin III – 15 DHC 5

Austin, of Indian Trail, violated numerous trust accounting rules, including failing to properly reconcile his trust account, keep client ledgers, and promptly remove earned fees from the account. The DHC suspended his license for two years. The suspension is stayed for two years upon Austin’s compliance with numerous conditions.

Completed Discipline and Disability Cases in the Courts

Edward L. McVey, III of Greensboro surrendered his license and was disbarred by the Wake County Superior Court. Between 2010 and 2014, McVey intentionally falsified documents purporting to show that he maintained malpractice insurance through Lawyers Mutual. McVey had actually not maintained malpractice insurance for at least 15 years. He provided the false information to at least one mortgage lender to satisfy the lender’s requirements that approved closing lawyers must maintain malpractice insurance.

Matthew J. Ragaller of Greensboro, formerly of Nags Head, surrendered his license and was disbarred by the Wake County Superior Court. Between November 2009 and September 2011, Ragaller misappropriated approximately \$21,500 of funds entrusted to him on behalf of an estate. Ragaller also filed two false accountings.

The Jones County Superior Court held a hearing on April 9 upon its order that **Franklin McDevin Huggins** show cause why he should not be transferred to disability inactive status after he was involuntarily committed. Huggins stipulated, and the court concluded, that Huggins was disabled at the time of the involuntary commitment but, after receiving medical treatment, is not currently disabled. The court imposed extensive observation and reporting requirements to ensure that the court will be notified if Huggins should again become disabled.

Orders of Reciprocal Discipline

No orders of reciprocal discipline were entered this quarter.

Transfers to Disability Inactive Status

Reid G. Hinson of Charlotte and **Robert Bell** of Fayetteville were transferred to disability inactive status by the Chair of the Grievance Committee.

In 2011, the DHC suspended **Laura G. Johnson** of Fayetteville for two years for mishandling client funds and for trust account mismanagement. The suspension was stayed for three years upon Johnson's compliance with numerous conditions. The State Bar filed a motion for Johnson to show cause why the stay should not be lifted and the suspension activated for her violation of those conditions. Upon investigation, it was established that Johnson is disabled. The DHC transferred her to disability inactive status.

Interim Suspensions

No orders of interim suspension were entered this quarter.

Completed Petitions for Reinstatement/Stay - Uncontested

Allan De Laine – 13DHC27 & 15BSR2

In February 2014, the DHC suspended De Laine, of Clayton, for two years. De Laine forged a client's name on a civil complaint, dismissed the action without the client's knowledge or authorization, and neglected the cases of two clients, causing their civil claims to be time-barred. After serving one year active, he was eligible to petition for a stay of the balance upon showing compliance with numerous conditions. He was reinstated by the Secretary on April 6.

Completed Petitions for Reinstatement/Stay - Contested

Douglas T. Simons – 05 BCS 3 and 13 BCR 2

Simons, of Durham, surrendered his law license and was disbarred by the State Bar Council in April 2005. Simons admitted that he misappropriated at least \$300,000 and that he falsified bank records to conceal the misappropriation. In March 2014, the DHC recommended that Simons' petition for reinstatement be denied. Simons appealed to the Council. At the January 23, 2015 Council meeting, the Council conducted a *de novo* review of the record and voted to adopt the DHC's recommendation that Simons' petition for reinstatement be denied. Simons filed a notice of appeal but decided not to pursue the appeal.

Gary Kivett – 11 DHC 15 & 14 BSR 2

In 2012, the DHC suspended Kivett, of Spruce Pine, for four years after concluding that he had and attempted to have sex with several clients. The order of discipline permits Kivett to apply for a stay after serving one year active. In June 2013, Kivett's first petition for a stay was denied. On March 13, the DHC reinstated Kivett after a hearing on his second petition.

Robert Brown, Jr. – 08 DHC 8 & 14 BSR 4

In 2009, the DHC suspended Brown, of Durham, for five years for sexually harassing his former employees at the Durham County Public Defender's Office. On February 5, 2015, the DHC reinstated him.

Completed Motions to Show Cause

Laura G. Johnson – 11 DHC 18

In December 2011, the DHC suspended Johnson, of Fayetteville, for two years for mishandling client funds and for trust account mismanagement. The suspension was stayed for three years upon Johnson's compliance with numerous conditions. The State Bar alleged that Johnson violated the conditions of the stay by failing to complete the necessary steps to allow disbursement of client funds from her trust account and failing to complete the necessary steps to have the preliminary injunction against her lifted. Before the hearing scheduled for February 20, the DHC transferred Johnson to disability inactive status.

TROs and Preliminary Injunctions

The office obtained preliminary injunctions in Wake County Superior Court prohibiting **Bridgette D. Johnson** of Greensboro, **Jack B. Styles** of Raleigh, **Peter C. Capece** of Lincolnton, **Davia S. Bulluck** of Jefferson, **Franklin McDevin Huggins** of Trenton, **Joseph H. Forbes, Jr.** of Elizabeth City, and **Devin F. Thomas** of Greensboro from handling entrusted funds.

Surrenders to the Council

Two lawyers are expected to surrender their law licenses to the Council at its April meeting:

In March 2013, the DHC imposed a stayed suspension of the law license of High Point lawyer **Wilbur Linton**. The DHC concluded that Linton did not properly monitor his trust account. His suspension was activated in October 2013 after he failed to comply with the conditions of the stay. During his stayed suspension, Linton neglected and ultimately abandoned his clients and did not respond to State Bar. He has submitted an affidavit of surrender to the Council.

Thomas F. Foster of High Point acknowledges that he misappropriated entrusted funds and did not pay income taxes. He has submitted an affidavit of surrender to the Council.

PENDING DISCIPLINE AND DISABILITY CASES

Bradley R. Lamb – 07 DHC 28

Lamb, formerly of Pittsboro, was convicted in Florida of promoting the sexual performance of a child, lewd or lascivious exhibition, and solicitation of a child over the Internet, and is currently serving a 15 year prison sentence. The DHC stayed the proceedings until Lamb is released. His release date is currently forecasted to be December 24, 2019, although if he continues to receive time off at the current rate he will probably be released in early 2018. He is on interim suspension.

Tracey Cline – 12 DHC 22

Cline was the elected District Attorney of Durham County until she was removed from office under N.C. Gen. Stat. §7A-66. It is alleged that she filed pleadings containing false and outrageous statements about a judge and made false representations in court filings in an attempt to obtain confidential prison visitation records. The DHC stayed the disciplinary proceeding during Cline's appeal of the removal order. The Court of Appeals affirmed the removal order and the Supreme Court denied Cline's petition for discretionary review. The DHC allowed the State Bar's motion for partial summary judgment. Hearing is scheduled for June 4-6.

Robert Melville, Jr. – 13 DHC 9

The Chair of the DHC entered an interim suspension order in the case of Lake Waccamaw lawyer Robert Melville. Melville pled guilty in federal court to the felonies of conspiracy to commit bank and wire fraud. The complaint has not been filed because Melville was transferred to disability inactive status.

Jennifer Foster – 14 DHC 7

It is alleged that Foster, of Asheville, used expletives before a magistrate judge. The Court of Appeals reversed her contempt conviction. Hearing in February was postponed because of weather and is rescheduled for June 12.

Wallace Respass – 14 DHC 8

It is alleged that Respass, of Lenoir, had sex with a client, loaned money to the client, and testified falsely in a deposition. Hearing is scheduled for May 28-29.

Clinton Light – 14 DHC 16

Light, of Eden, allegedly neglected an estate, concealed his legal fee in estate filings, and collected an excessive fee. Light also allegedly did not properly maintain a bankruptcy petition filing fee in trust, disbursed the filing fee on behalf of one other than its owner,

did not return an unearned legal fee, did not participate in good faith in the State Bar's mandatory fee dispute resolution process, and neglected two clients. He is enjoined from handling entrusted funds. Hearing was scheduled for March 12-13, but was postponed due to Light's reported poor health. It has not been rescheduled.

Andrew Patterson – 14 DHC 18

It is alleged that Patterson, previously of Sylva and currently of Jacksonville, engaged in a pattern of abusive and disruptive conduct toward courts, opposing counsel and clients, neglected multiple clients, forged a falsely notarized verification, and did not timely respond to the State Bar. In January, Patterson appealed the DHC's order of sanctions. Patterson did not perfect the appeal and the appeal was dismissed. Hearing has been rescheduled for June 11-12.

Meleisa Rush Lane – 15 DHC 1

Lane, of Fayetteville, allegedly misappropriated entrusted funds and did not file and pay federal and state income, corporate, and payroll taxes. She is enjoined from handling entrusted funds. Hearing has not been scheduled.

Mary Alexander Reed – 15 DHC 2

It is alleged that Reed, of Raleigh, misappropriated \$275.00 of entrusted client funds to pay her rent. She is enjoined from handling entrusted funds. Hearing is scheduled for May 8.

Sir-Christopher J. Anderson – 15 DHC 4

It is alleged that Anderson, of Wake Forest, misappropriated entrusted client funds, engaged in the unauthorized practice of law during an administrative suspension, and made false representations to the State Bar about his conduct. He is enjoined from handling entrusted funds. Hearing is scheduled for June 19.

H. Russell Vick & Jimmy Pettus – 15 DHC 6

It is alleged that Vick and Pettus, partners in a Greensboro law firm, misappropriated employees' Simple IRA contributions and federal and state tax withholdings, while the partners were receiving large salaries and distributions from the firm. Hearing is scheduled for June 25-26.

Jerry Tillett – 15 DHC 7

Judge Tillett, of Manteo, was reprimanded by the Judicial Standards Commission in March 2013 for violating Canons 1, 2A and 3A(3) of the Code of Judicial Conduct. It is alleged that he engaged in conduct prejudicial to the administration of justice. Hearing is scheduled for July 27-31.

Cassandra Stubbs – 15 DHC 8

It is alleged that Stubbs, of Durham, submitted to the court affidavits containing inaccurate information. Hearing is scheduled for July 10.

Gretchen Engel – 15 DHC 9

It is alleged that Engel, of Durham, prepared, or reviewed and approved, affidavits containing inaccurate information that were submitted to the court. Hearing is scheduled for August 14.

Paul Brock – 15 DHC 10

Brock, of Durham, allegedly engaged in a sexual relationship with a client and made false and misleading statements to the Grievance Committee in an effort to undermine the client's credibility. Hearing has not been scheduled.

Garey M. Ballance – 15 DHC 11

It is alleged that Ballance, of Henderson, misappropriated entrusted funds by writing trust account checks to or for clients when no deposits had been made into the trust account for those clients and by failing to deposit funds received from clients for costs, fines and other obligations into his trust account. He is enjoined from handling entrusted funds. Hearing has not been scheduled.

Dan Merrell – 15 DHC 12

It is alleged that in 2012, Merrell, of Kitty Hawk, submitted affidavits for use in an appeal and in a civil case that revealed confidential information acquired through his previous attorney-client relationship with the Town of Kill Devil Hills and used confidential information to the disadvantage of his former client. Hearing has not been scheduled.

Thomasine E. Moore – 15 DHC 13

Moore, of Jacksonville, allegedly mishandled entrusted funds and did not perform quarterly reconciliations of her trust account. She is enjoined from handling entrusted funds. Hearing has not been scheduled.

Jeffrey Baker – 15 DHC 14

Baker, of Wilmington, allegedly signed a false jurat, returned a client file by taping it to his exterior office door, did not communicate with clients, and was not diligent. Hearing has not been scheduled.

Christopher W. Livingston – 15 DHC 15

Livingston, of White Oak, allegedly assisted a debt elimination organization in the unauthorized practice of law, attempted to share a legal fee with a non-lawyer, filed frivolous pleadings, knowingly made a false statement of material fact to a third person, engaged in conduct prejudicial to the administration of justice and used means that had no substantial purpose other than to burden or embarrass a third person. Hearing has not been scheduled.

Thomas Hicks – 15 DHC 16

Hicks, of Wilmington, allegedly mismanaged his trust account, neglected a client matter, and misappropriated interest earned on fiduciary funds. Hearing has not been scheduled.

Steve Combs – 15 DHC 17

Combs, of Cary, allegedly did not maintain proper trust account records and did not timely pay title insurance premiums. Hearing has not been scheduled.

Pending Motions to Show Cause

There are no pending motions to show cause.

Pending Petitions for Reinstatement/Stay - Uncontested

There are no uncontested petitions for reinstatement or stay pending.

Pending Petitions for Reinstatement/Stay - Contested

Ralph Bryant – 07 DHC 26 and 14 BCR 1

In November 2007, Bryant, of Newport, surrendered his law license and was disbarred by the DHC for misappropriating entrusted funds totaling \$64,847. In August 2014, the DHC recommended that his petition for reinstatement be denied. The DHC found that Bryant had reformed but that his reinstatement would be detrimental to the integrity and standing of the bar, the administration of justice, or to the public's interest. Bryant appealed to the Council. At the January 23, 2015 Council meeting, the Council voted to adopt the recommendation of the panel, but based upon the argument before the Council, it was apparent that the transcript of the hearing was not uploaded to EDDS. The transcript has now been uploaded on EDDS and the appeal will be reheard by the Council at its April meeting.

Hilton Mitchell - 09 DHC 20/15 BSC 1

On December 18, 2009, the DHC disbarred Mitchell, who practiced law in Wilmington. Mitchell admitted that he misappropriated legal fees he should have delivered to his law firm employer. On March 27, 2015, Mitchell filed his petition for reinstatement. It is scheduled for hearing on May 18.

Tripp McKeny - 13 DHC 4/15 BSR 1

On November 21, 2013, the DHC suspended Tripp McKeny of Salisbury for three years for gross trust account violations. The DHC order provides that, after serving one year active suspension, McKeny may petition for a stay of the balance upon compliance with numerous conditions. McKeny filed his petition for a stay on February 12, 2015. Hearing is scheduled for May 1.

Robert Griffin - 13 DHC 20/15 BSR 3

On August 22, 2014, the DHC suspended Robert Griffin of Fuquay-Varina for three years after finding that he engaged in a variety of trust account violations, did not properly supervise a non-lawyer assistant, did not act with reasonable diligence and promptness in representing clients, and did not communicate adequately with his clients. The DHC order provides that, after serving six months active suspension, Griffin may petition for a stay of the balance upon compliance with numerous conditions. Griffin filed his petition for a stay on April 8, 2015. Hearing has not been scheduled.

TRUST ACCOUNT SUPERVISORY PROGRAM

Twenty lawyers have successfully completed the TASP program since its inception. Peter currently supervises 15 participants in the program. He continues to review random audits to evaluate potential candidates for the program.

AUTHORIZED PRACTICE

The Authorized Practice Committee opened 35 new files this quarter. The Committee will address 27 files at its April meeting.

One prepaid legal services plan had its registration revoked this quarter. Three plan applications that were previously denied registration because of a number of deficiencies in their materials and procedures resubmitted applications this quarter and, because they cured all of the deficiencies in the plans, were granted registration. One plan submitted an initial application for registration this quarter and was accepted for registration. One plan sponsor, which had submitted registration applications for two plans in a previous quarter and was denied registration for both plans, has requested a hearing at the April meeting of the Authorized Practice Committee to challenge the determination of staff counsel that the plans are not eligible for registration.

The office 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 unlawful practice.

Following is a list of pending, recently completed, and contemplated AP litigation:

Capital Associated Industries, Inc. v. Roy Cooper in his capacity as Attorney General of the State of North Carolina, Nancy Lorrin Freeman, in her official capacity as District Attorney for the 10th Prosecutorial District of the State of North Carolina; and J. Douglas Henderson, in his official capacity as District Attorney for the 18th Prosecutorial of the State of North Carolina (US District Court for the Middle District of North Carolina). CAI is a trade association. Its members are small and medium-sized businesses. CAI assists its members with personnel management issues. CAI wants to provide legal services to its members. The State Bar's Ethics Committee has issued an ethics advisory to the effect that doing so would violate North Carolina's statutory prohibitions against the unauthorized practice of law. CAI brought this lawsuit seeking a declaration that N.C. Gen. Stat. §§ 84-4 and 84-5 violate the United States and North Carolina constitutions and seeking an injunction prohibiting the defendants from enforcing the statutes against it. The plaintiff does not seek an award of damages but does seek an award of attorney fees, "disbursements," and costs. The court allowed the State Bar to intervene in the lawsuit. The court has scheduled a hearing on all pending motions for April 30. The State Bar is represented by Van Laningham Duncan.

State of North Carolina *ex rel* Roy Cooper and North Carolina State Bar v. Swift Rock Financial, Inc., d/b/a World Law Debt, a/k/a World Law Group; Orion Processing, LLC, d/b/a World Law Processing; Derin Scott; Bradley Haskins; World Law South, Inc; Global Client Solutions (Wake County Superior Court). In May 2013, the office filed this action in Wake County Superior Court as a co-plaintiff with the Consumer Protection Division of the North Carolina Department of Justice. The plaintiffs allege that all of the defendants other than Global Client Solutions operate collectively and interchangeably under various names that include the words "World

Law.” The plaintiffs allege that they draft and provide pleadings for debtors to file “*pro se*” and provide those debtors with scripts to use in court. All of the defendants other than Global Client Solutions operate collectively and interchangeably under various names that include the words “World Law.” They draft and provide pleadings for debtors to file “*pro se*” and provide debtors with scripts of what they should say in court. The case is referred to as “the Swift Rock case.” The plaintiffs obtained a temporary restraining order in May 2013 and a preliminary injunction in June 2013 prohibiting all of those defendants “together with their officers, agents, employees, attorneys, and all persons acting in concert with them,” from engaging in the practice of law in North Carolina, as defined in N.C. Gen. Stat. §§ 84-2.1, 84-4, and 84-5, from collecting fees from North Carolina consumers for any debt adjusting or legal services, and from transferring, concealing, spending or disposing of any funds received, directly or indirectly, from any North Carolina consumer in connection with any such activities. Thereafter, the lawyer who represented those defendants at the TRO hearing formed a new North Carolina business corporation, World Law South. WLS sued the State Bar alleging that it somehow harmed WLS by bringing the lawsuit against WLG. In that lawsuit, WLS alleged that it has the identical business model that the Wake County Superior Court enjoined WLG from pursuing. The Business Court dismissed the WLS case. The Swift Rock case is still pending in Wake County Superior Court, has been denominated an exceptional case, and is assigned under Rule 2.1 to the Honorable James Gale. The court appointed James Pendergrass trustee of approximately 1100 checks and money orders that the defendants solicited in and after August 2014 from North Carolina and other consumers. The State Bar’s motion to hold all defendants other than Global Client Solutions, their legal counsel, and various other agents of the defendants in contempt of the preliminary injunction was scheduled for hearing on March 31. On the eve of taking depositions, one of the defendants, Orion Processing, filed for Chapter 11 bankruptcy protection in Texas. Other defendants asserted that the automatic stay applied to the entire case as to all defendants. Then, counsel for WLS filed articles of dissolution and a notice to the court that he had been discharged by his client. Counsel for Scott and WLS have been allowed to withdraw. The Business Court has stayed the contempt proceedings until the bankruptcy court addresses the applicability of the automatic stay to various actions pending around the country against Orion and the other defendants. The bankruptcy court is expected to issue an order after the April 7 creditor’s meeting. The Office of Counsel represents the State Bar.

LegalZoom.com, Inc. v. NC State Bar (NC Business Court). LegalZoom, a national online legal document preparation service, commenced this action against the State Bar in September 2011. In 2008, the Authorized Practice Committee sent LegalZoom a cease and desist letter advising that it might commence a lawsuit if LegalZoom did not cease engaging in the unauthorized practice of law in North Carolina. In 2010, LegalZoom filed an application to register a purported prepaid legal service plan. The AP Committee did not register the purported plan because it failed to meet the definition of a prepaid legal service plan. The committee sent LegalZoom written notice of its reasons and asked LegalZoom to address the issues that were of concern to the committee. LegalZoom declined to do so. As a result, the committee had not yet made a final decision about registering the purported plan. LegalZoom did not submit a revised plan and did not request a hearing. In this lawsuit, LegalZoom alleges that the State Bar is violating the anti-monopoly and equal protection clauses of the North Carolina Constitution and seeks declaratory and injunctive relief. The State Bar filed a

counterclaim to enjoin LegalZoom's activities. The case was designated a Mandatory Complex Business Case under N.C. Gen. Stat. §7A-45.4 and moved to the NC Business Court. The court denied LegalZoom's motion for partial judgment on the pleadings and allowed in part and denied in part the State Bar's motion for judgment on the pleadings pursuant to N.C. Gen. Stat. §1A-1, Rule 12(c). The parties have submitted a proposed case management order, a proposed protective order, and a proposed order appointing a discovery master. The Attorney General represents the State Bar.

NC State Bar v. Tonya Ford (Wake County Superior Court). In April 2013, the Executive Committee authorized the Office of Counsel to seek injunctive relief against disbarred attorney Tonya Ford. After she was disbarred, Ford allegedly collected a fee to prepare wills and other documents. Ford refunded the fee she collected. The parties have negotiated a consent permanent injunction but the order has not yet been entered.

NC State Bar v. Diane Carter (Wake County Superior Court). The State Bar obtained an injunction against Carter for attempting to represent others in lawsuits against a homeowners association. The Office of Counsel filed a motion to hold Carter in contempt of the injunction. On December 31, 2014, the office received from Carter a notice that she was removing the contempt motion to federal court under the Americans with Disabilities Act, which does not apply to the contempt action. To date Carter has not filed the notice of removal.

NC State Bar v. Mary Ella Hutchison (Franklin County Superior Court). In July 2014, the Executive Committee authorized the Office of Counsel to seek injunctive relief against Mary Ella Hutchison of Louisburg. Hutchison is the leader of a group opposed to foreclosure. The State Bar alleges that Hutchinson approaches unrepresented borrowers at foreclosure hearings to give them advice on defending against foreclosure. She also speaks at hearings and files documents with the Clerk of Court in opposition. On December 8, the court allowed Hutchinson's motion to change venue to Franklin County. The State Bar has served written discovery requests. Hutchinson has retained counsel. Depositions will occur in April and May.

NC State Bar v. Mortgage Information Services (Wake County Superior Court). In October 2012, the Executive Committee authorized the Office of Counsel to seek injunctive relief against this Ohio business which allegedly attempts to close residential loans. The complaint is ready for the Chair's review.

N.C. State Bar v. Kenneth Moore (Wake County Superior Court). In October 2014, the Executive Committee authorized the Office of Counsel to seek an injunction against Kenneth Moore. Moore operates "Way More Post-Conviction Services" which offers post-conviction services to criminal defendants. The complaint is ready for the Chair's review.

N.C. State Bar v. Robert Jones (Wake County Superior Court). In October 2014, the Executive Committee authorized the Office of Counsel to seek an injunction against Robert Jones. Jones operates a Wyoming business called "A Cheap and Fast Divorce" that offers to provide divorce pleadings. The complaint is ready for the Chair's review.

N.C. State Bar v. Hassie Nowlin (Wake County Superior Court). In October 2014, the Executive Committee authorized the Office of Counsel to seek an injunction against Hassie Nowlin. Nowlin has filed pleadings on behalf of others in numerous cases in the United States District Court for the Middle District of North Carolina. The complaint is ready for the Chair's review.

N.C. State Bar v. Constanza Sierra (Wake County Superior Court). In January 2015, the Executive Committee authorized the Office of Counsel to seek an injunction against Constanza Sierra. Sierra prepares immigration petitions and applications for others. She is also being sued by the North Carolina Justice Center. Deputy counsel is preparing the complaint.

OTHER OUTSIDE LITIGATION

North Carolina State Board of Dental Examiners v. Federal Trade Commission (United States Supreme Court). On May 31, 2013, the Fourth Circuit issued an opinion holding that the North Carolina Dental Board and its individual members are not entitled to state action immunity in actions under the Sherman Antitrust Act because their actions are not supervised by other state officials. The State Bar filed a brief as *amicus curiae* urging the court to grant the Dental Board's request for rehearing or for rehearing *en banc*. The Fourth Circuit denied that petition. The State Bar filed an *amicus* brief in support of the Dental Board's petition to the United States Supreme Court for writ of *certiorari*. The Attorney General of North Carolina filed an *amicus* brief in support of that petition. On March 3, the Supreme Court granted the petition for *certiorari*. In May, the State Bar filed its *amicus* brief, along with the Board of Law Examiners and three other state bars. The attorneys general of twenty-three states, including North Carolina, also filed an *amicus* brief. The Supreme Court held oral argument on October 14. On February 25, 2015, the Supreme Court issued its decision affirming the Fourth Circuit. The State Bar was represented by Robinson, Bradshaw and Hinson.

Christopher Harper v. Edward White et al (Durham County Superior Court). Harper was the defendant in a DHC case. The DHC hearing began on May 22 and 23, was recessed, and was scheduled to conclude on September 25-26, 2014. On September 19, Harper had a civil summons issued along with an order extending time to file complaint against State Bar investigator Edward White and five other witnesses identified in the DHC case. Harper alleged that the witnesses were going to lie at the DHC hearing. He obtained from Judge Orlando Hudson a temporary restraining order prohibiting the witnesses from testifying in the DHC case. The State Bar, on behalf of White, filed an interlocutory appeal and sought a stay of the TRO. The State Bar also filed a motion to be allowed to intervene on the petition for a stay with the Court of Appeals. The Court of Appeals allowed the motion to intervene and stayed the TRO until it determined the appeal on the merits. Thereafter, the witnesses testified in the DHC case, rendering the appeal of the TRO moot. The DHC announced its decision to disbar Harper on September 26 and entered the disbarment order on November 19. Harper's appeal of that order is pending. On October 9, Harper filed a complaint in this Durham County action seeking actual and punitive damages and attorney fees for alleged false testimony by the witnesses and alleged tortious interference with his law practice. He has not served the complaint on White. The State Bar's motion to dismiss is pending. The Office of Counsel represents White.

Loushanda Myers v. Krista Bennett, Fern Gunn Simeon, John Silverstein and unnamed “unknown agents of the North Carolina State Bar” et al (US District Court, EDNC). Krista Bennett and Fern Gunn Simeon are State Bar employees. John Silverstein is a State Bar councilor and, since the events alleged in the complaint, has been appointed Chair of the State Bar Grievance Committee. Myers asserts that the State Bar defendants, the North Carolina court system, and numerous Johnston County government officials violated her rights. She does not describe this alleged violation with particularity but it appears to arise out of Myers’ arrest by Johnston County law enforcement officials. The court allowed the State Bar defendants’ motions to strike and to dismiss. Myers appealed to the Fourth Circuit. The Fourth Circuit dismissed that appeal as interlocutory. Myers can pursue appeal again after the court enters final judgments on all claims against all parties. The Office of Counsel represents the State Bar defendants.

David C. Sutton v. NC State Bar, Ronald G. Baker, Sr., the Disciplinary Hearing Commission and Steven D. Michael (Wake County Superior Court). Sutton was the defendant in a DHC case. He filed this lawsuit shortly before his DHC case was scheduled to conclude, seeking to enjoin the DHC proceeding, seeking a declaratory judgment that the State Bar is unconstitutional, and seeking alleged damages. He sought relief for purported violations of the North Carolina Constitution. The court denied Sutton’s motion for temporary restraining order. The DHC hearing concluded on October 22 and 23, 2014. The court allowed the State Bar’s motion to dismiss on October 29. Sutton filed notice of appeal. Sutton has failed to serve a proposed record on Appeal. On April 1, 2015, the defendants filed a motion to dismiss the appeal. The Office of Counsel represents the State Bar defendants. The Attorney General represents the DHC defendants.

LegalZoom, Inc. v. NC State Bar (Wake County Superior Court). On October 11, 2013, LegalZoom filed this lawsuit alleging that the State Bar did not comply with N.C. Gen. Stat. Chapter 132 in responding to LegalZoom’s fifth public records request. LegalZoom alleged that the State Bar produced too few and too many documents in response to its second, third and fourth public records requests. It sought an order compelling the State Bar to respond differently and an award of attorney fees. Mediation commenced on February 10, 2014 but was recessed. The Attorney General represents the State Bar.

World Law South, Inc. v. NC State Bar (Wake County Superior Court). On October 14, 2013, WLS filed a complaint alleging that the State Bar did not comply with N.C. Gen. Stat. Chapter 132 because it allegedly did not respond “as promptly as possible” to a public records request served on the State Bar on September 18, 2013 by the lawyer who represents LegalZoom and represented some of the defendants in the World Law Group case. WLS has not served a public records request on the State Bar. WLS scheduled an “emergency” hearing October 16 at which it did not present any evidence to support its claims and at which it conceded that this lawsuit was filed “preemptively.” The court ordered the parties to mediation. The mediation occurred in March. WLS withdrew the purported pending public records request and stated that it absolved the State Bar of the obligation to respond to it. Its counsel has since submitted a new public records request to which the State Bar has again responded. The Attorney General represents the State Bar.

Jill Burton v. Martin Horn (Orange County District Court). Burton subpoenaed records allegedly possessed by LAP. The State Bar objected. Burton did not schedule a hearing on that objection. Burton obtained a second subpoena, signed by a judge, requiring production of the identical documents. When it received the State Bar's second objection, the court rescinded its subpoena. The State Bar will attend a status conference on April 22.

Client Security Fund Claims/Subrogation Cases

There are 21 claims on the agenda for the Board's April 16 meeting.

At the beginning of the quarter, there were six cases pending in district and superior courts seeking reimbursement from disbarred lawyers for payments made by the CSF. The Board decided not to pursue the final claim for subrogation in one case in which the defendant consented to entry of judgment on all other claims. During the quarter, the court entered judgment for the State Bar in four of the pending cases and denied the State Bar's claim in one case. The Office of Counsel is attempting to obtain confessions of judgment in additional cases and will file subrogation actions if those efforts are not successful.

Disbursement Cases

Two disbursement cases were completed during the quarter.

Trusteeships

Trustees were appointed for deceased lawyers **David Lee Credle** of Elizabeth City and **Robert J. Hensley, Jr.** of Raleigh, disabled lawyer **Michael H. Griffin** of Shelby, and **Robert E. Patterson** of Jacksonville and **Franklin McDevlin Huggins** of Trenton, both suffering from disabling conditions that made them unavailable to clients.

The office continues to spend a great deal of time on existing trusteeships and answering inquiries from the public about how to locate files of deceased, disbarred, disabled, and missing lawyers.

APPEALS

Completed Appeals

In January 2014, the DHC suspended Hickory lawyer **Robert W. Adams** for four years for gross trust account mismanagement. The order provides that, after serving two years active, Adams may apply for a stay of the balance. Adams appealed. The Court of Appeals denied his petition for a writ of *supersedeas*. On March 3, the Court of Appeals issued a published opinion affirming the Order of Discipline.

Pending Appeals

In December 2013, the DHC suspended Kitty Hawk lawyer **Dan Merrell** for two years but stayed the suspension for two years upon his compliance with enumerated conditions. Merrell represented a land developer who was involved in self-dealing to the detriment of investors. The DHC found that Merrell mishandled the investors' funds and had a conflict of interest. Merrell appealed. The case is scheduled for decision without oral argument.

In April 2010, the DHC suspended **Willie Gilbert** of Wilson for five years and stayed the suspension for five years. In March 2014, the DHC lifted the stay and activated the suspension, concluding that Gilbert violated the conditions of the stay by failing to pay his membership dues, failing to submit semi-annual trust account reports from a CPA, making false representations to the Johnston County Superior Court, and being held in contempt by that court. Gilbert appealed. The Court of Appeals denied his petition for writ of *supersedeas*. The case is scheduled for decision without oral argument.

In April 2014, the DHC censured Greensboro lawyer **Robert Lee Scott**. The DHC found that Scott did not timely obtain a title insurance policy, pay a title insurance premium, pay property taxes, and communicate with his client. Scott appealed. The case is scheduled for decision without oral argument.

In May 2014, the DHC disbarred **Kia Narissa Scott** of Concord. The DHC found that Scott committed a criminal act, embezzlement. Scott appealed. She has not made arrangements to obtain a transcript and has not served a proposed record on appeal. The State Bar's motion to dismiss the appeal is pending.

In June 2014, the DHC suspended Wilmington lawyer **William Batchelor** for three years for mismanaging his trust account. The order of discipline provides that, after serving one year active, he may petition for a stay of the balance. Batchelor appealed. The Court of Appeals denied his petition for writ of *supersedeas*. The Court held oral argument at UNC Law School on March 2.

In April 2014, the DHC disbarred **William Britt** of Lumberton. The DHC found that Britt misappropriated client funds. Britt appealed. The Court of Appeals denied his petition for writ of *supersedeas*. The case is scheduled for decision without oral argument.

In November 2014, the DHC suspended Greenville lawyer **David C. Sutton**. The DHC found, among other things, that Sutton routinely engaged in disruptive and abusive conduct toward the court, opposing counsel, and clients. Sutton appealed. The Court of Appeals denied his petition for writ of *supersedeas*. Sutton has been granted an extension of the time within which the transcript must be produced.

In November 2014, the DHC disbarred Durham lawyer **Christopher G. Harper**. The DHC found that Harper misappropriated entrusted funds. Harper appealed. The time within which Harper must serve a proposed record on appeal has been extended until April 16.

PERSONNEL

Lauren Suber, 3L at Campbell Law, completed her 12-week externship with the Office of Counsel. Lauren did an excellent job working on a range of tasks, including various research projects, drafting pleadings, and assisting with the prosecution of a disciplinary trial. The Office of Counsel wishes Lauren the best as she prepares to graduate, takes the Bar exam, and begins a 2-year clerkship at the Supreme Court of North Carolina.

MISCELLANEOUS

Leonor continues to serve on the NCBA Law Related Education and Minorities in the Profession committees and on the 10th Judicial District/WCBA Professionalism Committee where she serves as co-chair of the Publications Subcommittee.

Root continues to serve on the NCBA Transitioning Lawyer's Commission. He is scheduled to speak at the New Prosecutor's School on trust accounting on April 13.

Josh continues to teach Humanities at Wake Tech Community College.

Brian continues to serve as vice-chair of the 10th Judicial District/WCBA Memorial Committee. He teaches legal research and writing at Campbell Law and is a frequent guest lecturer at other law schools. Brian is assisting the NCBA in composing a day-long seminar in September on retiring/winding down a law practice. Brian revised the State Bar's Trustee Handbook, which will be considered for formal adoption by the Council at the April meeting.

Peter continues to give numerous trust account presentations across the state to lawyers and administrative professionals. He is a frequent guest lecturer in our law schools. He is working with the NCBA to create an interactive, online trust account education program for lawyers to use free of charge.

Carmen continues to serve as the Office of Counsel's liaison to the judiciary. During the last quarter, she gave presentations on ethics to a group of family lawyers, a group of paralegals, and LANC volunteer attorneys. Carmen also planned and presented "Ethics Committee Year in Review," a WCBA-sponsored CLE course. She is a frequent guest lecturer at our law schools. She is acting as a mentor to a third-year law student through Campbell Law School's Connections Mentoring Program. She is Vice-Chair of the WCBA's Professionalism Committee and serves on the Board of Directors for the 10th Judicial District Bar and the WCBA.

Katherine serves on the NCBA Professionalism Committee and on the committee to rewrite the North Carolina Business Court's rules.