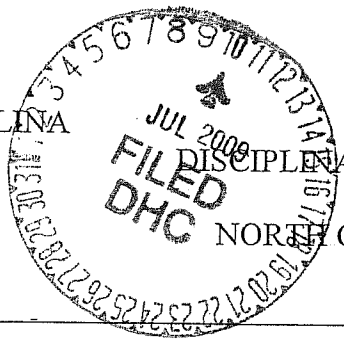
STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 6

NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

MARK H. BADGETT, Attorney,
Defendant

ANSWER TO AMENDED COMPLAINT

NOW COMES Defendant, through undersigned counsel, and answers the Complaint filed herein as follows:

FIRST DEFENSE(Lack of Jurisdiction)

The acts and conduct complained of by Plaintiff exclusively involve acts which were taken by Defendant solely in his capacity as a duly-elected District Court Judge and which have previously been the subject of actions by the Judicial Standards Commission and the North Carolina Supreme Court pursuant to N.C.G.S. Since all issues raised by Plaintiff's Complaint deal with actions taken by Defendant in his official capacity as a District Court judge rather than in Defendant's capacity as a private attorney, Plaintiff is without jurisdiction to pursue the present disciplinary action.

SECOND DEFENSE(Administrative Double Jeopardy)

The acts and conduct which form the basis of the present disciplinary Complaint are identical to those which have previously been considered and ruled upon by the Judicial Standards Commission and the North Carolina Supreme Court. Defendant contends that the sanctions that have previously been imposed against him in these prior proceedings constitute a bar to the present State Bar action, and that double discipline for the identical conduct would violate basic principles of due process and double jeopardy, even in this administrative context.

As a further Answer and Defense, Defendant responds to the numbered paragraphs of the Complaint as follows:

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are admitted.

4. The allegations of paragraph 4 require no response.

5. The allegations of paragraph 5 are admitted.

6. With regard to the allegations of paragraph 6, it is admitted that Defendant leased his office space in King to attorney Clark Dummit.

7. The allegations of paragraph 7 are admitted.

8. With regard to the allegations of paragraph 8, it is admitted that Defendant made no formal disclosure of this lease arrangement to opposing counsel. However, given the small-town nature of Stokes and Surry county bars, Defendant believed that the fact that Dummit was occupying his former law office was a matter of public knowledge which he

certainly never made any attempt to hide. Indeed, as was revealed in the first Judicial Standards Commission hearing, two separate assistant district attorneys had met with Dummit to possibly work at Defendant's former office once Defendant took the bench and Dummit began operations from that location, so the State thus had actual knowledge of the lease arrangement at all times. Defendant further believed that his lease arrangement with Dummit was legally the same as his prior lease of space from Judge Clarence Carter after Judge Carter assumed the bench in the mid-80s, an arrangement which had been specifically approved by the Judicial Standards Commission.

9. The allegations of paragraph 9 are admitted insofar as the paragraph references the perceptions of the District Attorney's office, though it is expressly denied that Defendant ever gave any favorable treatment to Dummit.

10. The allegations of paragraph 10 are admitted.

11. The allegations of paragraph 11 are admitted.

12. With regard to the allegations of paragraph 12, it is denied that Dummit prepared a remittal of disqualification "[a]t Badgett's direction,", though Defendant recalls seeing the document which to his best recollection was prepared by Dummit due to Dummit's concern that inability to appear before Defendant was resulting in undue delay of Dummit's cases, a concern which was shared by Defendant. As testified to before the Judicial Standards Commission, the remittal was prepared by Dummit following a conference call between himself, Assistant District Attorney Angela Puckett and Defendant regarding the State's objection to Dummit appearing before then Judge Badgett.

13. The allegations of paragraph 13 are admitted, Defendant did not prepare the document and had no role in its precise wording. However, Defendant believes that a letter sent by Judge Arnold, former head of the Judicial Standards Commission approving Defendant's appearing before Judge Carter, with whom he had a similar landlord-tenant relationship, was discussed between himself and Dummit, and may well be the letter to which the remittal language refers.

14. With regard to the allegations of paragraph 14 are admitted.

15. The allegations of paragraph 15 are admitted.

16. The allegations of paragraph 16 are admitted.

17. The allegations of paragraph 17 are admitted.

18. With regard to the allegations of paragraph 18, it is admitted that Defendant and Bowman had several contacts at which the subject of the remittal was discussed, along with other matters.

19. The allegations of paragraph 19 are admitted, as Defendant did not believe there was any further open issue before the Judicial Standards Commission regarding the remittal.

20. Defendant denies that he ever told Bowman that "Paul Ross had indicated Bowman needed to sign the remittal."

21. The allegations of paragraph 21 are admitted.

22. Defendant denies making any intentionally false statement to Bowman regarding the matters alleged.

23. Defendant admits the statements made before the Judicial Standards Commission, which represented his best recollection of the matters at issue.

24. With regards to the allegations of paragraph 24, it is denied that Defendant ever made any statement that was intentionally false..

25. The allegations of paragraph 25 are admitted.

26. The allegations of paragraph 26 are denied, as Defendant's discussions regarding the remittal did not constitute any "directive" that Dummit prepare the document..

27. The allegations of paragraph 27 require no response.

28. The allegations of paragraph 28 are admitted.

29. The allegations of paragraph 29 are admitted.

30. The allegations of paragraph 30 are admitted.

31. The allegations of paragraph 31 are admitted.

32. With regard to the allegations of paragraph 32, it is not Defendant's recollection that he used the phrase "you people" to refer to Mr. Carreon, and it is unfortunate that the tape of the hearing has mysteriously been lost. Defendant specifically denies making any comment to Mr. Carreon on account of his race or ethnicity.

33. The allegations of paragraph 33 are denied.

34. The allegations of paragraph 34 are denied,

35. The allegations of paragraph 35 are denied.

36. With regard to the allegations of paragraph 36, while it is not Defendant's recollection that he directed Deputy Jones to search respondent's wallet, Defendant has the utmost trust in Deputy Jones and does not dispute this assertion.

37. The allegations of paragraph 37 are denied.

38. The allegations of paragraph 38 are admitted.

39. The allegations of paragraph 39 are admitted.

40. The allegations of paragraph 40 are admitted,

41. With regard to the allegations of paragraph 41, the precise language of the Rule 60 Order was the product of discussion between Defendant and counsel for both sides..

42. The allegations of paragraph 42 are admitted, insofar as they generally describe the conversations between Defendant and counsel for both sides as to the language that would be included in the Rule 60 order.

43. With regard to the allegations of paragraph 43, it was Defendant's intention, based on the arguments of the attorney for Mr. Carreon and with the consent of the attorney for Ms. Carreon, that his order be set aside and Mr. Carreon be allowed another day in court. It is Defendant's best recollection that there was some discussion in chambers about Mr. Carreon not fully understanding what had happened in Court and what the Court was saying to him. It is denied that the language of the Order represents an intentional falsehood.

44. The allegations of paragraph 44 are admitted..

45. The allegations of paragraph 45 are admitted.

46. The allegations of paragraph 46 are admitted.

47. The allegations of paragraph 47 are admitted.

48. The allegations of paragraph 48 are denied, as Defendant's only purpose in speaking to any potential witness in the Carreon matter was to refresh his recollection of the events at issue which were approximately three years old at that time.

49. With regard to the allegations of paragraph 49, it is denied that Defendant made any statements that were intentionally false, as Defendant's interview testimony represented his best recollection at the time. Defendant agrees that after hearing the testimony on this

subject that his recollection was inaccurate on several points, but expressly denies that any inaccuracies in his account of events that were approximately three years old at the time of interview were the product of any intent to misrepresent or deceive.

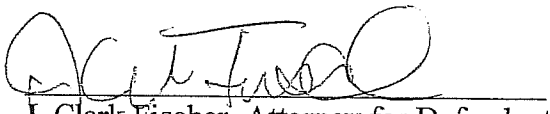
50. The allegations of paragraph 50 are denied.

WHEREFORE, Defendant respectfully prays as follows:

1)That the disciplinary charges against him be dismissed,

2)For such other and further relief as may be just and proper.

This the 5 day of July, 2009.



J. Clark Fischer, Attorney for Defendant
Randolph and Fischer
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Winston-Salem, NC 27101
336-724-3513
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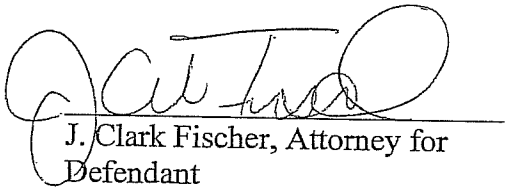
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ANSWER TO AMENDED COMPLAINT** was served on the party named below through first class United States mail, postage prepaid, or through hand delivery:

Carmen K. Hoyme
Deputy Counsel
North Carolina State Bar
PO Box 25908
Raleigh, NC 27611-5908

This the 5 day of July, 2009.



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