

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 11

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
CHRISTOPHER LIVINGSTON, Attorney, )  
Defendant )

ORDER OF DISCIPLINE

This matter was considered on December 17, 2007 by a Hearing Committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, and members C. Colon Willoughby, Jr. and Pamela U. Weis. Margaret Cloutier represented Plaintiff, the North Carolina State Bar. Defendant Christopher Livingston appeared pro se. An Order for Summary Judgment having been entered by a previously constituted hearing committee, this Hearing Committee addressed the discipline to be imposed.

The previously constituted hearing committee determined that there was no genuine issue as to the material facts recited below and that it was appropriate to grant summary judgment in favor of both parties as indicated below, reserving as the sole issue for hearing before this Disciplinary Hearing Committee the discipline to be imposed on Defendant.

#### RECITATION OF MATERIAL FACTS

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Christopher Livingston, (hereafter, Livingston), was admitted to the North Carolina State Bar on March 18, 2000, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods relevant hereto, Livingston was engaged in the practice of law in Wake and/or Bladen County North Carolina.

4. The Complaint in this action was filed on March 22, 2006 and Defendant was served personally with the Summons and Complaint on April 4, 2006. Thereafter, Plaintiff was allowed to amend its Complaint and did so on or about May 30, 2006.

5. Defendant filed an Answer to Plaintiff's Amended Complaint on June 6, 2006.

6. Defendant filed a Motion for Judgment on the Pleadings or For Summary Judgment on May 19, 2006, prior to the amendment of the complaint. Plaintiff filed State Bar's Reply in Opposition to Defendant's Motions on May 25, 2006 and Defendant subsequently filed Defendant's Reply to Response to Motions along with an Affidavit supporting his motion.

7. Prior to April 19, 2004, Livingston filed a civil action in Wake County District Court on behalf of Gail Kuehn ("Kuehn") and Michelle Holley ("Holley") against Riddle & Associates, PC, Jesse L. Riddle ("Riddle"), David G. Wood, Capital Acquisitions, Reese Waugh and Jerome Kuebler, (collectively, "the Riddle defendants").

8. On or about April 19, 2004, the Riddle defendants removed the Wake County District Court action filed by Kuehn and Holley to the United States District Court for the Eastern District of North Carolina ("North Carolina federal case").

9. On or about May 12, 2004 Livingston filed an application with the Clerk of the U.S. District Court for the Eastern District of North Carolina for the purpose of admission to the practice of law before the U.S. District Court for the Eastern District of North Carolina and paid the appropriate fee.

10. At the time he submitted the application to the Clerk, Livingston had not taken the oath before a U.S. district judge, bankruptcy judge, or magistrate judge as required by the Federal Rules of Court for the Eastern District of North Carolina.

11. The filing of the application with the Clerk allowed Livingston to file with the Clerk pleadings signed by him, but did not allow him to appear in person or by telephone on behalf of a client before a magistrate or district judge until Livingston had taken the oath of office as required by the Federal Rules of Court.

12. On May 12, 2004 and June 7, 2004, Livingston filed motions on behalf of Kuehn and Holley in the North Carolina federal case.

13. On September 8, 2004, Livingston appeared on behalf of Kuehn and Holley in a hearing before The Honorable Terrence W. Boyle ("Judge Boyle") in the U.S. District Court for the Eastern District of North Carolina, despite the fact that Livingston had not taken the oath of office and, therefore, had not been admitted to practice before that Court.

14. On or about September 17, 2004, Livingston filed a motion to disqualify Judge Boyle in the North Carolina federal case alleging the Judge had exhibited bias against Livingston's clients at the September 8, 2004 hearing.

15. In the motion to disqualify, Livingston used language and tone exhibiting a lack of respect for the judicial office which was the subject of the motion. In the motion Livingston also claimed that Livingston had filed a disciplinary complaint against Judge Boyle with the Fourth Circuit Court of Appeals, thereby revealing in a public document a proceeding that would otherwise be a confidential process.

16. On May 4, 2004, Riddle filed suit against Livingston, Holley and Kuehn in the U.S. District Court for the District of Utah ("Utah federal action").

17. On October 26, 2004, Livingston drafted motions to dismiss or, alternatively, for entry of summary judgment on behalf of Holley and Kuehn in the Utah federal action. The motions to dismiss were accompanied by memoranda of law.

18. On or about November 22, 2004, on Holley's behalf, Livingston drafted a response to Riddle's motion to strike Holley's motion to dismiss in the Utah federal action.

19. Livingston included in the documents prepared on behalf of Holley and Kuehn a notation that the documents were "prepared with the assistance of Christopher W. Livingston, NC Bar Number 27282" and included Livingston's address and telephone and fax numbers.

20. Livingston drafted the above-noted documents on behalf of Holley and Kuehn for the purpose of filing in the Utah federal action and instructed Holley and Kuehn how to file the documents he had prepared.

21. Livingston was not admitted to practice in the Utah federal court at any time in 2004.

#### CONCLUSIONS OF LAW

Based on the foregoing material facts, the previous hearing committee concluded as a matter of law as follows:

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's actions regarding practicing law in the jurisdictions in which he was not properly admitted to practice constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. By appearing on behalf Holley and Kuehn in the U.S. District Court for the Eastern District of North Carolina when he had not been sworn in and therefore not admitted to appear before a federal judge in court, Livingston engaged in the unauthorized practice of law in violation of Rule 5.5(a) of the Revised Rules of Professional Conduct; and

b. By drafting motions on behalf of Holley and Kuehn for filing in the U.S. District Court for the District of Utah at a time when he had not been properly admitted to practice before the federal court in Utah, Livingston engaged in the unauthorized practice of law in violation of Rule 5.5(a) of the Revised Rules of Professional Conduct.

3. Plaintiff, North Carolina State Bar, is therefore entitled to judgment as a matter of law regarding its allegations of Defendant's violations of Rule 5.5(a) as delineated above.

4. Defendant's actions in filing a motion to disqualify Judge Boyle in the North Carolina federal case alleging the Judge had exhibited bias against Livingston's clients at the September 8, 2004 hearing is not a violation of Rule 8.4(d) as alleged in Plaintiff's Amended Complaint, and Defendant, Christopher Livingston, is therefore entitled to judgment as a matter of law regarding this conduct.

5. Nonetheless, in the motion to disqualify, the language and tone used by Livingston exhibited a lack of respect for the judicial office which was the subject of the motion and his claim that Livingston had filed a disciplinary complaint against Judge Boyle with the Fourth Circuit Court of Appeals revealed in a public document a proceeding that would otherwise be a confidential process. This conduct, while not the basis for discipline, was unprofessional and not in accord with accepted professional practice.

This Disciplinary Hearing Committee, based upon the Order for Summary Judgment entered November 2, 2007 (containing the Recitation of Material Facts and Conclusions of Law as repeated above) and upon the evidence presented at the hearing on discipline and the arguments of counsel, finds by clear, cogent and convincing evidence and enters the following

FINDINGS REGARDING DISCIPLINE

1. There are no aggravating factors.
2. Livingston's misconduct is mitigated by the following factors:
  - a. absence of a prior disciplinary record;
  - b. absence of a dishonest or selfish motive;
  - c. full and free disclosure to the hearing committee and cooperative attitude toward these proceedings;
  - d. delay in disciplinary proceedings through no fault of the defendant attorney; and
  - e. remorse.

3. The Committee finds that Livingston's failure to finalize the admission process by being sworn in to the U.S. District Court for the Eastern District of North Carolina, and his preparation of documents for his clients to file in the U.S. District Court in Utah were minor violations of the Rules of Professional Conduct.

Based on the foregoing material facts, Conclusions of Law, and Findings Regarding Discipline, the Hearing Committee hereby enters the following:

ORDER

1. Defendant, Christopher Livingston, is hereby ADMONISHED for his violations of Rule 5.5(a) of the Rules of Professional Conduct.
2. No costs are taxed against the Defendant.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 31st day of December 2007.

  
T. RICHARD KANE, CHAIR  
HEARING COMMITTEE