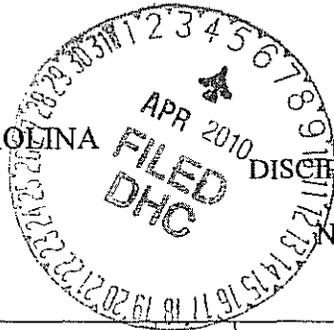


STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK H. BADGETT, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF DISCIPLINE

On 17 November 2009, the hearing panel in this matter entered an order of partial summary judgment, determining that there was no issue of material fact as to any of the factual allegations in the Amended Complaint, concluding as a matter of law that the established facts were sufficient to support the Rule violations alleged in the Amended Complaint, and reserving for hearing the issue of what discipline was appropriate. This sole remaining issue was heard on 19 February 2010 before a hearing panel of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, J. Michael Booe and Donald G. Willhoit. Carmen Hoyme Bannon and Katherine E. Jean represented Plaintiff, the North Carolina State Bar. J. Clark Fischer represented Defendant, Mark H. Badgett. Defendant was properly served with process and the hearing was held with due notice to all parties.

FACTS ESTABLISHED BY SUMMARY JUDGMENT

1. Plaintiff, the North Carolina State Bar (hereafter "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, Mark H. Badgett (hereafter "Defendant" or "Badgett"), was admitted to the North Carolina State Bar in 1984 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 the times relevant herein, Defendant was a district court judge in the 17-B Judicial District of North Carolina.

4. Prior to his election as a district court judge in District 17-B, Badgett maintained a law office on Dalton Street in King, North Carolina.

5. After his election, Badgett arranged to lease the Dalton Street building to attorney Ernest Clarke Dummit. Dummit agreed to maintain Badgett's client files in the Dalton Street building.

6. After Badgett assumed the bench, Dummit represented clients before Badgett on multiple occasions.

7. Badgett did not disclose to opposing counsel his business relationship with Dummit.

8. Employees of the District Attorney's office complained about what they perceived to be favorable treatment of Dummit by Badgett.

9. In December 2005, the North Carolina Judicial Standards Commission (hereafter "the Commission") commenced an investigation of the events set forth in paragraphs 4 through 8 above (hereafter "Judicial Standards Proceeding I").

10. In January 2006, Badgett was advised in writing by the Executive Director of the Commission that his business relationship with Dummit was potentially grounds for disqualification from matters in which Dummit was involved.

11. At Badgett's direction, Dummit thereafter prepared a document entitled "In re Remittal of Disqualification" (hereafter "the Remittal").

12. The Remittal prepared by Dummit stated: "Now come the undersigned, pursuant to an opinion rendered by the Judicial Standards Commission of the State of North Carolina in accordance with Canon Three of the Judicial Code of Ethics, finding the relationship of landlord-tenant which exists between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County, and hereby provide Public Notice that the relationship is insubstantial and immaterial pursuant to the opinion rendered by the Judicial Standards Commission, and do hereby remit any impuned [sic] disqualification pursuant to Canon Three of the Judicial Code of Ethics."

13. The representation in the Remittal that the Commission had rendered an opinion finding the relationship of landlord-tenant between Badgett and Dummit to be "both insubstantial and immaterial to the administration of justice" was false.

14. Badgett and Dummit signed the Remittal.

15. Dummit sent the Remittal to District Attorney Ricky Bowman for his signature.

16. Bowman declined to sign the Remittal.

17. Badgett contacted Bowman on more than one occasion in an effort to obtain his signature on the Remittal.

18. After District Attorney Bowman declined to sign the Remittal, Badgett stated to Bowman that the Commission's investigation into the matter had concluded.

19. Badgett also stated to Bowman that Paul Ross had indicated Bowman needed to sign the Remittal.

20. Paul Ross is the Executive Director of the Commission.

21. Badgett's statements to Bowman set forth in paragraphs 18 and 19 above were false.

22. During a subsequent hearing in Judicial Standards Proceeding I, Badgett testified under oath that he had not made the statements to Bowman set forth in paragraphs 18 and 19.

23. Badgett's testimony that he had not made the statements to Bowman set forth in paragraphs 18 and 19 was false.

24. During the hearing in Judicial Standards Proceeding I, Badgett also testified under oath that he had not directed Dummit to prepare the Remittal.

25. Badgett's testimony that he had not directed Dummit to prepare the Remittal was false.

26. On 24 February 2005, Badgett presided over a hearing in *Carreon v. Carreon*, 05 CVD 164, a case in which the plaintiff sought a domestic violence protective order against the defendant. (The events which transpired during this hearing are hereafter referred to as "the 24 February 2005 events.")

27. The plaintiff's complaint in *Carreon* did not include a request for spousal support, and no evidence was offered at the 24 February 2005 hearing on the issue of spousal support.

28. After the plaintiff and the defendant testified, Badgett indicated that he would grant the order of protection sought by the plaintiff. Thereafter, the plaintiff stated that she had no money or mode of transportation.

29. Badgett ordered the defendant, who was *pro se*, to pay \$150.00 per week to the plaintiff in spousal support and to deliver the keys to his truck to the sheriff's department that afternoon.

30. When the defendant attempted to object to the award of spousal support, Badgett replied that the defendant could find a way to get the money, saying "you people always find a way," or words to that effect.

31. Badgett also remarked to the defendant "I don't know how you treat women in Mexico, but here you don't treat them that way."

32. Badgett's statements to the defendant set forth in paragraphs 30 and 31 were directed toward the defendant's Hispanic ethnicity.

33. Badgett's statements to the defendant set forth in paragraphs 30 and 31 were indicative of a bias against the defendant.

34. Badgett then directed a courtroom deputy to search the defendant's wallet and turn over the cash therein to the plaintiff.

35. By awarding spousal support when none had been requested and no evidence had been taken on the issue, and by ordering the courtroom deputy to search the defendant's wallet and turn over his money to the plaintiff, Badgett deprived the defendant of his rights without due process.

36. On 8 March 2005, the defendant in *Carreon* filed a Motion for Relief from Judgment seeking to set aside the order entered by Badgett on 24 February 2005.

37. The Motion for Relief from Judgment alleged, among other things: "When the Defendant appeared in open court on February 24, 2005, he advised the court that he needed addition [sic] time to retain an attorney and gain legal assistance in this matter. He was allowed less than one hour to locate and retain an attorney, but could not. Upon his return to the courtroom Defendant requested that the matter be continued for that purpose. The Defendant's motion for a continuance was denied."

38. On 23 March 2005, Badgett heard the defendant's Motion for Relief from Judgment and granted the motion.

39. Badgett instructed counsel for the defendant to include in the order granting the motion a statement that, due to a language barrier, Badgett had not understood during the 24 February 2005 hearing that the defendant wanted an attorney.

40. At Badgett's instruction, counsel for the defendant in *Carreon* included the following statement in the Order Granting Rule 60 Motion: "The Defendant's language barrier caused him not to understand what the court said on February 24, 2005 and he was unable to communicate that he wanted a lawyer."

41. The statement set forth in paragraph 40 was false, as Badgett was aware on 24 February 2005 that the defendant wished to obtain an attorney.

42. Badgett signed the Order Granting Rule 60 Motion in *Carreon*, which was filed in the court record.

43. In November 2006, the Commission commenced an investigation of the 24 February 2005 events (hereafter "Judicial Standards Proceeding II").

44. After he received notice of the Commission's investigation, Badgett attempted to discuss the 24 February 2005 events with the Deputy Clerk of Court who was present during the 24 February 2005 events and with the attorney who had represented the plaintiff in *Carreon*.

45. The Deputy Clerk and the plaintiff's attorney were potential witnesses in Judicial Standards Proceeding II.

46. Badgett attempted to influence the recollection of these potential witnesses about the 24 February 2005 events.

47. When Badgett was interviewed by the State Bureau of Investigation (SBI) in connection with Judicial Standards Proceeding II, he made false statements to the Special Agent conducting the interview, including:

- (a) Denying that he had instructed the courtroom deputy to search the defendant's wallet or take his money;
- (b) Denying that the courtroom deputy was ever in possession of the defendant's wallet;
- (c) Stating that the defendant involved in the 24 February 2005 events was known to carry a gun; and
- (d) Stating that the courtroom deputy had approached the defendant because the deputy was suspicious of the defendant and was concerned for the security of others in the courtroom.

48. Badgett made the statements to the SBI agent set forth in paragraph 47 for the purpose of deceiving the SBI agent and the Commission in their investigation of the 24 February 2005 events.

As set forth in the 17 November 2009 order of partial summary judgment, based upon the established facts, the hearing panel makes the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Mark H. Badgett, and over the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

- (a) By directing Dummit to prepare the Remittal containing false statements, Badgett knowingly assisted or induced Dummit to violate the Rules of Professional Conduct and engaged in misconduct through the acts of another in violation of Rule 8.4(a) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

- (b) By knowingly making false statements to the District Attorney about the Commission's investigation and statements by Paul Ross, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
- (c) By falsely testifying under oath at the hearing in Judicial Standards Proceeding I, Badgett made false statements of material fact to a tribunal in violation of Rule 3.3(a)(1), committed a criminal act—to wit: perjury, in violation of N.C. Gen. Stat. § 14-209—that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(c), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By making comments from the bench indicative of bias and directed toward the defendant's Hispanic ethnicity and by depriving the defendant of his rights without due process, Badgett engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (e) By directing defense counsel in *Carreon* to prepare an order containing false statements and by signing that order on behalf of the court, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (f) By attempting to influence the recollection of potential witnesses about the 24 February 2005 events, Badgett engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (g) By knowingly making false statements to the SBI agent investigating Judicial Standards Proceeding II, Badgett knowingly made false statements of material fact to a third person in violation of Rule 4.1 and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the stipulation of the parties and the additional evidence regarding discipline presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings in paragraphs 1 through 48 above are reincorporated as if fully set forth herein.

2. The Judicial Standards Commission, after hearing, did not find that the allegations of favoritism towards Dummit had been established.

3. In the Carreon matter, the plaintiff's counsel did not raise a significant objection to entry of the Rule 60 order.

4. The defendant in the Carreon case was vulnerable because he was not a native speaker of English, had little knowledge of the court system, and was unrepresented by counsel.

5. Defendant presented evidence that, during the times in question, he experienced a physical affliction, a MRSA infection, and that he experienced significant emotional or mental problems, including clinical depression. The panel finds that the misconduct at issue was not caused by the physical afflictions. The record contains uncontradicted testimony from Defendant's expert witness, Dr. Andrew, that dishonesty is not a symptom of depression. The panel therefore finds that the physical and emotional or mental problems do not mitigate Defendant's misconduct.

6. The North Carolina Supreme Court characterizes Defendant's behavior as being "entirely unacceptable for a lawyer or a judge" and as "willful conduct amounting to a serious betrayal of the trust that the public invests in the judiciary." The Supreme Court further characterizes Defendant's tenure as a district court judge as having been "fraught with disrespect for the parties appearing before him, persistent failure to be truthful and a disregard for the laws and ethical rules that govern the judiciary."

7. Defendant has a persistent tendency to blame others for his predicament and not to acknowledge that he himself engaged in deceitful conduct.

8. The Supreme Court found it essential to the protection of the people of this State to remove Defendant from office and disqualify him from holding any further judicial office in North Carolina.

9. The hearing panel has carefully considered all of the different forms of discipline available to it in determining the appropriate discipline.

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- (a) The absence of prior disciplinary offenses;
- (b) Evidence relating to Defendant's character and reputation was in conflict. The panel does not conclude that Defendant has good character or that Defendant has a good reputation for truthfulness;

- (c) Acts of dishonesty, misrepresentation, deceit or fabrication;
- (d) Vulnerability of the victim in the case of Mr. Carreon;
- (e) Dishonest or selfish motive;
- (f) A pattern of misconduct;
- (g) Multiple offenses;
- (h) Refusal to acknowledge wrongful nature of conduct;
- (i) Defendant has more than twenty years' experience in the practice of law;
and
- (j) The imposition of other penalties or sanctions, i.e., the removal of Defendant from the district court.

2. Some of Defendant's misconduct occurred in open court. All of Defendant's misconduct became publicly known. As a result of Defendant's misconduct, the Judicial Standards Commission held two hearings which received media coverage. Defendant's misconduct received public attention, bringing the legal profession into disrepute and significantly undermining the public's confidence in the integrity of the justice system.

3. By committing acts of dishonesty, including giving untruthful testimony under oath to the Judicial Standards Commission, Defendant has shown himself to be a person who lacks the character necessary to be a lawyer.

4. By committing acts of dishonesty, including giving untruthful testimony under oath to the Judicial Standards Commission, Defendant has shown himself to be a person who cannot be trusted to serve as an officer of the court.

5. By continuing to deny that he engaged in acts of dishonesty and by failing to acknowledge the wrongfulness of his conduct, Defendant has indicated that he has not been rehabilitated.

6. Defendant has not expressed remorse for his misconduct. Defendant testified that he was sorry that his conduct had caused a stain on the honor of his family.

7. The hearing panel has considered lesser alternatives and finds that suspension of Defendant's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual harm Defendant's conduct caused to the public, the administration of justice, and the legal profession and because of the gravity of the significant potential harm to potential clients, the public, the administration of justice, and the legal profession if Defendant were permitted to continue practicing law.

8. The hearing panel has considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public, the profession and the administration of justice for the following reasons:

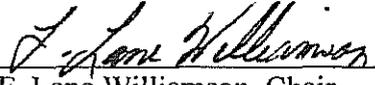
- (a) Defendant committed misdeeds involving violations of the public trust, including material misrepresentations and deceit. Misconduct involving misrepresentations and deceit are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. The public should be able to assume that all lawyers are trustworthy.
- (b) Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this State.
- (c) The protection of the public, the legal profession and the administration of justice requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, the legal profession and the administration of justice; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

Based upon the foregoing findings and conclusions, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, Mark H. Badgett, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.
3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar, including DHC costs and including costs of the transcription and depositions taken in this case as follows: court reporter costs; videographer and videotaping costs; transcription costs; shipping, handling, and transmittal costs; and witness costs. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.
4. Defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the Chair with the consent of the other hearing panel members,
this the 2nd day of April, 2010.



F. Lane Williamson, Chair
Disciplinary Hearing Panel