

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 26

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
M. THOMAS NORWOOD, III, Attorney, )  
Defendant )

CONSENT ORDER  
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of M. H. Hood Ellis, Chair, Harriett Smalls and Joe Castro, pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, M. Thomas Norwood, III, was represented by Attorney Dudley A. Witt. Plaintiff was represented by Deputy Counsel Barry S. McNeill. Defendant waives a formal hearing in this matter. Both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the discipline imposed. Defendant stipulates that, by consenting to the entry of this order, he waives any right to appeal or challenge in any way the sufficiency of the findings of fact, conclusions of law or disposition in this consent order.

Based upon the consent of the parties, the Hearing Panel hereby finds, by clear, cogent and convincing evidence, the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, M. Thomas Norwood, III ("Norwood" or "Defendant"), was admitted to the North Carolina State Bar on August 24, 2001, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and

Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During relevant periods referred to herein, Norwood was engaged in the private practice of law at the former Lake Law Office, P.L.L.C., located in the town of Mooresville, Iredell County, North Carolina, or as in-house counsel to Robby Gordon Motorsports in Charlotte, Mecklenburg County, North Carolina, or as in-house counsel to Braun Racing, also located in Mooresville, Iredell County, North Carolina.

4. Norwood represented the plaintiffs in *Travis Collum, Guardian ad Litem for unnamed minor child, and Brantley Ostwalt, Guardian ad Litem for unnamed minor child v. Charlotte Mecklenburg Board of Education, et al*, No. 3:07cv534-RJC-DSC (W.D.N.C.) ("*Collum & Ostwalt*").

5. On December 9, 2008, the court in *Collum & Ostwalt* established deadlines for the plaintiffs' expert reports to be due by March 4, 2009 and for discovery to be completed by July 8, 2009.

6. During the pendency of *Collum & Ostwalt*, Norwood took a job as in-house counsel to Robby Gordon Motorsports, Inc., Mooresville, North Carolina, on or about February 13, 2009.

7. Approximately two weeks after Norwood announced he was leaving the Lake Law Office, Norwood and his former Lake Law Office partner, Todd Farlow, met to discuss Norwood's pending cases.

8. The March 4, 2009 deadline in *Collum & Ostwalt* passed without Norwood or any other counsel serving the plaintiffs' expert reports as required, filing a motion for extension of time to do so, or contacting the defendants' counsel to request an extension of time.

9. On March 5, 2009, the defendants served discovery requests upon Norwood, as the counsel of record for the plaintiffs, at his former Lake Law Office address.

10. Mr. Farlow discussed with Norwood the need for action on the pending discovery requests in *Collum & Ostwalt*, and for Norwood to find replacement counsel.

11. The plaintiffs' responses to the defendants' discovery requests were due no later than April 7, 2009.

12. Norwood failed to serve the plaintiffs' discovery responses by the April 7, 2009 deadline or request an extension of time for doing so.

13. On April 10, 2009, the defendants' counsel forwarded correspondence to Norwood at his former Lake Law Office address requesting the plaintiffs' discovery responses.

14. On April 23, 2009, Norwood and Mr. Farlow met with a local attorney about assuming the role of plaintiffs' counsel in *Collum & Ostwalt*, but the attorney declined.

15. As of April 28, 2009, Norwood had not notified the defendants' counsel that he had left his previous law firm to take the position as in-house counsel at Robby Gordon Motorsports.

16. On April 28, 2009, having received no response from Norwood or the plaintiffs in response to the April 10, 2009 correspondence, defendants' counsel telephoned Norwood's former Lake Law Office and learned for the first time from Mr. Farlow that Norwood no longer was associated with Mr. Farlow and the Lake Law Office.

17. During the April 28, 2009 telephone conversation, Mr. Farlow requested additional time for the plaintiffs to respond to the defendants' discovery requests, and the defendants' counsel agreed.

18. On May 12, 2009, after waiting an additional two weeks and not receiving the discovery responses, the defendants' counsel forwarded to the plaintiffs, care of Mr. Farlow at the Lake Law Office, a letter requesting the plaintiffs' discovery responses by May 19, 2009.

19. Norwood did not file with the federal court and serve on the defendants' counsel a motion to withdraw from representation of the plaintiffs or a notice of substitution of another attorney as the plaintiffs' counsel.

20. On June 17, 2009, the defendants' counsel filed and served upon Norwood, as counsel of record for the plaintiffs at his former Lake Law Office address, a motion to compel responses to the defendants' discovery requests.

21. On July 21, 2009, Norwood contacted the defendants' counsel to inform them of his job change.

22. On July 21, 2009, Norwood filed a motion to stay the court proceedings in order to locate substitute counsel for the plaintiffs.

23. In support of his motion to stay the proceedings, Norwood asserted that he was no longer engaged in the private practice of law, that he was working as in-house counsel for Robby Gordon Motorsports and therefore was prohibited by N.C. Gen. Stat. § 84-5 from representing the plaintiffs, that he believed his former law partner had agreed to take over Norwood's pending cases, including

*Collum & Ostwalt*, and would file a motion to substitute himself as counsel in *Collum & Ostwalt*, that he discovered Mr. Farlow had not filed a motion to substitute as counsel for the plaintiffs and did not intend to make a general appearance, and that the plaintiffs needed time to find replacement counsel.

24. On July 23, 2009, the magistrate judge granted the defendants' motion to compel, requiring the plaintiffs to provide their discovery responses by September 24, 2009, and granted Norwood's motion, in part, staying the proceedings until August 24, 2009.

25. On September 4, 2009, the defendants' counsel filed motions to dismiss in *Collum & Ostwalt*, serving the motions to dismiss upon both Norwood and Mr. Farlow.

26. The September 4, 2009 forwarding letter from the defendants' counsel also enclosed copies of the defendants' earlier discovery requests and requested the plaintiffs' discovery responses no later than September 15, 2009.

27. Norwood acknowledged receiving the September 4, 2009 letter from the defendants' counsel and enclosures.

28. Norwood did not file a brief in opposition or otherwise respond on behalf of the plaintiffs to the defendants' motions to dismiss.

29. Norwood did not serve discovery responses on behalf of the plaintiffs by the court's September 24, 2009 deadline.

30. After his employment began with Robby Gordon Motorsports, Norwood did not provide notice to the plaintiffs of his belief that he was prohibited by N.C. Gen. Stat. § 84-5 from representing them or that the plaintiffs should seek other counsel.

31. When the court called upon him to show cause for his inactions on behalf of the plaintiffs, Norwood represented to the court that he believed Mr. Farlow had substituted himself as counsel in *Collum & Ostwalt*.

32. Norwood represented to the court that he had received ethics advice from the State Bar in July 2009 confirming that he was prohibited by N.C. Gen. Stat. § 84-5 from representing clients other than his corporate employer.

33. Norwood did not receive ethics advice from the State Bar in July 2009.

34. Norwood knew that he had not received ethics advice from the State Bar in July 2009.

35. Norwood had contacted the State Bar in March 2009 to inquire whether he, as in-house counsel, could represent his corporate employer in litigation.

36. The State Bar's ethics counsel did not advise Norwood that N.C. Gen. Stat. § 84-5 prohibited him from representing the plaintiffs in *Collum & Ostwalt*.

37. Norwood never corrected his false representation to the court that he had received ethics advice from the State Bar in July 2009 that he was prohibited by N.C. Gen. Stat. § 84-5 from representing clients other than his corporate employer.

38. The court concluded that Norwood made a frivolous argument under N.C. Gen. Stat. § 84-5 that is unwarranted by existing law.

39. The court "questioned the veracity of" Norwood's representations about receiving the July 2009 ethics advice from the State Bar, particularly in view of Norwood subsequently receiving ethics advice in October 2009 from the State Bar advising him that he was not prohibited from representing the plaintiffs while serving as in-house counsel to his corporate employer.

40. Finding that Norwood had violated Fed. R. Civ. P. 11(b), the court sanctioned Norwood for his conduct, including taxing against Norwood attorney's fees and costs totaling \$9,331.

Based upon the foregoing Findings of Fact, the Panel enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, M. Thomas Norwood, III, and over the subject matter of this proceeding.

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

- a) By failing to obtain the court's permission to withdraw from representation of the plaintiffs in *Collum & Ostwalt*, by failing to timely respond on behalf of the plaintiffs to the defendants' discovery requests and motions to dismiss, and by failing to provide notice to the plaintiffs that he could no longer represent them such that the plaintiffs should seek other counsel, Norwood failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation in violation of Rule 1.16(c), Norwood failed to act with reasonable diligence and promptness in representing the plaintiffs in violation of Rule 1.3, Norwood failed to

explain to the plaintiffs his change in employment to the extent reasonably necessary to permit the plaintiffs to make informed decisions regarding his representation of them in violation of Rule 1.4(b), Norwood failed to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party in violation of Rule 3.4(c)(2), and Norwood failed to take reasonable steps to protect his clients' interests in violation of Rule 1.16(d);

- b) By asserting an argument under N.C. Gen. Stat. § 84-5 without a basis under existing law, Norwood made a frivolous argument to the court in violation of Rule 3.1;
- c) By his inactions on the part of the plaintiffs in *Collum & Ostwalt*, Norwood prolonged the litigation to the detriment of his clients in violation of Rule 3.2 and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d); and,
- d) By knowingly making false statements of material fact or law to the court, and by failing to correct such false statements of material fact or law previously made to the court, Norwood violated Rule 3.3(a)(1).

Based upon the consent of the parties, the Hearing Panel also finds by clear, cogent and convincing evidence the following:

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Norwood acknowledges that he should have taken steps to advise the plaintiffs in *Collum & Ostwalt* of his departure from the Lake Law Office and private practice.
2. Norwood acknowledges that he failed to take necessary steps to withdraw from the representation of the plaintiffs in *Collum & Ostwalt*.
3. Norwood acknowledges that he failed to promptly apprise the court and opposing counsel in *Collum & Ostwalt* of his departure from the Lake Law Office and private practice.
4. Norwood acknowledges that he violated Fed. R. Civ. P. 11(b) in making a frivolous argument to the court related to N.C. Gen. Stat. § 84-5.
5. Norwood was monetarily sanctioned by the court in *Collum & Ostwalt* and has paid the requisite sanctions.
6. Norwood acknowledges that he misled the court about his conversation with the State Bar's ethics counsel concerning N.C. Gen. Stat. § 84-5 in July 2009.

7. Norwood acknowledges that the proceedings in *Collum & Ostwalt* were delayed and additional hearings were held as a result of his inactions.

8. Norwood acknowledges that his interpretation of N.C. Gen. Stat. § 84-5 was incorrect.

9. In response to the court's show cause order in October 2009, Norwood filed a document apologizing to the court and opposing counsel and leaving to the court's discretion whether his actions violated Fed. R. Civ. P. 11(b).

10. Following the show cause hearing, Norwood continued his representation of the plaintiffs in *Collum & Ostwalt* after consulting with and obtaining the consent of the plaintiffs.

11. Norwood ultimately prepared and served the plaintiffs' discovery responses and filed objections to the United States Magistrate Judge's Recommendation.

12. The court ultimately dismissed the plaintiffs' civil action but the dismissal was based upon existing law, not upon Norwood's failings in *Collum & Ostwalt*.

13. Norwood has never been disciplined by the State Bar.

14. Norwood has expressed remorse for his conduct.

15. During the time relevant to the actions described in the Findings of Fact, Norwood was experiencing the stress of personal financial difficulties which caused him to file for bankruptcy protection.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel also enters the following:

#### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant suspension of Norwood's license:

- (C) the circumstances of Defendant's actions reflect his lack of honesty, trustworthiness, or integrity;

- (E) Defendant's actions potentially had a negative impact on the public's perception of the legal profession;
- (F) The negative impact of Defendant's actions on the administration of justice; and,
- (I) Defendant's acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

3. The Hearing Panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) Defendant's lack of prior disciplinary offenses;
- (H) effect of any personal or emotional problems on the conduct in question;
- (K) Defendant's full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (P) Defendant's remorse;
- (S) Defendant's lack of experience in handling federal lawsuits; and
- (U) imposition of other penalties or sanctions.

4. Any sanction less than an active suspension of Defendant's license would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

5. Due to the seriousness of Defendant's misconduct in abandoning his clients, failing to follow applicable procedure to withdraw from the representation of his clients, making a frivolous argument to the court, and knowingly making false statements to the court, the Hearing Panel concludes that the public and the profession will only be adequately protected by imposing a period of active suspension of Defendant's law license.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and Conclusions Regarding Discipline, and upon consent of the parties, the Hearing Panel enters the following:

#### ORDER OF DISCIPLINE

1. Defendant, M. Thomas Norwood, III, is hereby suspended from the practice of law in North Carolina for one (1) year, beginning 30 days from the date of service of this order upon him.

2. Defendant shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.

3. If applicable to any of his work as in-house counsel, Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B §.0124(b) of the Rules and Regulations of the North Carolina State Bar, and he shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order certifying he has complied with the wind down rule.

4. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of his suspension.

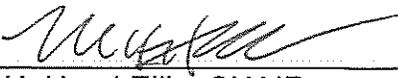
5. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Rules of Professional Conduct.

6. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements.

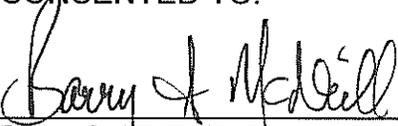
7. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

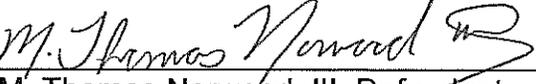
8. All costs and administrative fees of this action, including the State Bar's deposition costs for the deposition of Todd Farlow, are taxed to Defendant. Defendant must pay the costs and administrative fees of this action within 30 days of service of the statement of costs upon Defendant by the Secretary of the North Carolina State Bar.

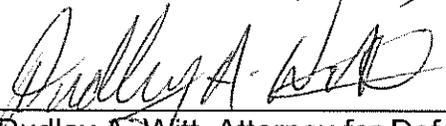
Signed by the Chair with the full knowledge and consent of the other members of the Hearing Panel, this 10<sup>th</sup> day of April, 2012.

  
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M. H. Hood Ellis, CHAIR  
DISCIPLINARY HEARING PANEL

CONSENTED TO:

  
\_\_\_\_\_  
Barry S. McNeill, Deputy Counsel  
Attorney for Plaintiff

  
\_\_\_\_\_  
M. Thomas Norwood, III, Defendant

  
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Dudley A. Witt, Attorney for Defendant