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STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 1

MAY 16 1991

THE NORTH CAROLINA STATE)
BAR,)
)
Plaintiff,)
)
v.)
)
KENNETH E. HAIGLER, ATTORNEY,)
)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a hearing committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman, Sam L. Beam, and Stephen T. Smith on April 3, 1991. The Plaintiff was represented by A. Root Edmonson and Fern E. Gunn and the Defendant was represented by Gordon Brown, M. LeAnn Nease, and G. Eugene Boyce. The parties stipulated they were properly before the Hearing Committee and the Hearing Committee had jurisdiction over Haigler and the subject matter. Based upon the Stipulation on Prehearing Conference, the pleadings and arguments of counsel for both parties, the Committee makes the following:

FINDINGS OF FACT

1. The North Carolina State Bar is a body duly organized under the laws of the State 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. Kenneth E. Haigler was admitted to the North Carolina State Bar on August 27, 1981. At all times referred to herein he has been an attorney at law licensed to practice in North Carolina, subject

to the rules, regulations, Code of Professional Responsibility (for conduct occurring prior to October 7, 1985) and Rules of Professional Conduct of the North Carolina State Bar (for conduct occurring or continuing on or after October 7, 1985) and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Haigler actively engaged in the practice of law and maintained a law office in Greenville, North Carolina. Haigler is a partner in the law firm of Taft, Taft & Haigler.
4. On May 31, 1985, a tractor/trailer truck owned by Military Distributors of Virginia, Inc. ("MDV") collided with a Greene County school bus. Six children died. Many others were injured. The driver of the truck was also killed.
5. The autopsy report indicated that the MDV driver had evidence of marijuana and phenobarbital in his system (the latter of which led the medical examiner to believe the driver had an epileptic condition). The severity of the collision, the number of killed and injured and the autopsy report caused Highway Patrol Troop C Commander W. D. Teem to order Sergeant B. F. Smith to conduct an in-depth investigation to determine why the collision occurred. Line Sergeant Steve Taylor was assigned to investigate.
6. Taylor commenced the Highway Patrol investigation. He also assisted NTSB personnel after they arrived on the scene June 1. Taylor was also appointed as the Highway Patrol's representative to one of the National Transportation Safety Board (NTSB) groups investigating the collision. The president of MDV was appointed to the same NTSB group.
7. Television news footage was taken by a Channel 7 (WITN-TV) reporter who happened on the scene only minutes after impact. This footage, along with footage taken by other reporters, was obtained by Taylor and the NTSB as part of their investigations.
8. Taft, Taft & Haigler were retained to represent several children injured and the estates of several children killed in the collision.

9. Haigler, his partner, Tom Taft, and others at the firm began their investigation of the collision around June 7.
10. Taft, Taft & Haigler obtained from the television stations on June 11 and 12 news footage of the collision, including the Channel 7 tape.
11. Sometime between June 15-17, Haigler and Taft learned that Taylor was in charge of the Highway Patrol investigation and that Taylor had a copy of the Channel 7 videotape.
12. Haigler, Taft and one of their associates contacted Taylor at his home between June 17 and June 20. Taylor was on vacation at the time. After introductions, Haigler asked Taylor if he would review the Channel 7 footage with them and discuss what he had learned so far. Taylor indicated he would be willing to do so, but that he did not have a VCR to view it on.
13. Haigler and Taft hooked a two piece VCR borrowed from Taft's home to Taylor's television. After the tape review the VCR was then unhooked and removed from Taylor's house.
14. Before they left, Taylor asked them to pass along any information developed as part of the firm's investigation and they agreed to do so.
15. Taft, Taft & Haigler continued its investigation. On June 26, Haigler drove to Norfolk where MDV was headquartered and the deceased truck driver had made his home. Haigler checked into a motel room. Haigler obtained the names of persons who knew the truck driver.
16. On the evening of June 26, Haigler called Taylor to pass along information he had learned. Haigler told Taylor he had names of persons who had known the truck driver.
17. Taylor indicated he would like to follow up on Haigler's leads immediately but he would need Captain Teem's authorization to go to Virginia.
18. Haigler called Taft and related his discussion with Taylor. Taft located Captain Teem and informed him that Haigler was in Virginia and had names of persons who knew the truck driver. Taft gave

- Captain Teem the telephone number of Haigler's motel room.
19. Captain Teem then contacted Taylor and instructed him to travel to Virginia, to call Haigler for information about potential witnesses and to continue Taylor's investigation.
 20. As directed by his superior, and in his official capacity as a Highway Patrolman, Taylor travelled to Virginia on June 27, 1985.
 21. Taylor met Haigler at the motel room. Haigler gave Taylor the leads he had developed.
 22. Taylor followed up on those leads by telephoning and interviewing these persons from Haigler's motel room. Haigler was present in the room during most of the telephone interviews conducted by Taylor. Taylor recorded his interviews on a recorder brought by Haigler. Taylor had brought his own recorder but borrowed the one Haigler brought because it had a telephone plug and Taylor's did not.
 23. Haigler and Taylor interviewed the truck driver's housemate on June 27. They went to her residence in separate vehicles. The housemate disclosed information probative of whether the truck driver had epilepsy.
 24. Taylor bunked in the spare bed in Haigler's motel room during the evening of June 27, 1985.
 25. At checkout, Taft, Taft & Haigler paid the entire expense of the motel room. The North Carolina Highway Patrol did not reimburse Taft, Taft & Haigler for any portion of the expense of the motel room. Taft, Taft & Haigler did not seek reimbursement from the North Carolina Highway Patrol for any portion of the expense of the motel room.
 26. Certain telephone charges were billed to the motel room account and paid for by Taft, Taft & Haigler. The North Carolina Highway Patrol did not reimburse Taft, Taft & Haigler for that portion of the telephone charges which were incurred for telephone interviews conducted by Taylor from the motel room. Taft, Taft & Haigler did not seek reimbursement of those charges from the North Carolina Highway Patrol.

27. On June 28, Taylor flew from Norfolk to Washington, D.C. to inform the NTSB of what had been discovered from the truck driver's housemate and others. Taylor went in his capacity as the Highway Patrolman assigned to investigate the cause of the collision. Haigler accompanied Taylor to the NTSB offices on this trip. Haigler and Taylor returned from Washington to Norfolk that same day.
28. Taft, Taft & Haigler paid for the round trip airfare for Taylor between Norfolk and Washington, D.C. Taft, Taft & Haigler did not seek reimbursement from the North Carolina Highway Patrol for the cost of the ticket used by Taylor.
29. After their return, Haigler drove back to North Carolina. Taylor went alone to MDV to conduct interviews of its employees in the presence of its counsel before driving home that evening.
30. Taylor did not personally benefit in any way from Taft, Taft & Haigler's payment of the motel, telephone and airfare expenses identified above.
31. Had Taylor advanced from his own pocket the motel, telephone and airfare expenses identified above, he could have obtained reimbursement of same from the North Carolina Highway Patrol.
32. The next week, Haigler and Taylor conducted interviews along the truck driver's pre-collision route of travel in the Fort Bragg and Faison areas. Haigler and Taylor conducted a number of interviews together. They also conducted separate interviews. They travelled in separate vehicles.
33. The official report ordered by Captain Teem was filed by Sergeant B. F. Smith on July 12, 1985. The report contained a six page memorandum prepared by Taylor which summarized his investigation. Taylor selected for attachment to the memorandum nine interviews conducted by himself or himself and Haigler. Two of the interviews selected referred to "KH" or "KEH" as one of the interviewers. Taylor's copy of the videotape was filed with Captain Teem as part of the report.
34. Typists employed by Taft, Taft & Haigler had transcribed Taylor's interview tapes. The typed transcripts were given to Taylor along with the tapes. Taft, Taft & Haigler kept a copy of each interview transcript typed by its personnel from

- tapes delivered by Taylor with Taylor's knowledge and consent.
35. There is no evidence that the form or contents of Taylor's six page memorandum or the attachments to it were influenced by Haigler.
 36. Taylor gave Taft, Taft & Haigler a copy of his six page memorandum on or about July 12, 1985.
 37. At the time Taft, Taft & Haigler retained copies of the interview transcripts and obtained a copy of Taylor's six page memorandum, the Highway Patrol had imposed no specific restrictions on the release of any of the contents of the report. Sometime after July 12, 1985, the Highway Patrol, through Taylor's superior, Captain Teem, established that the report was to be released only upon receipt by Captain Teem of a request in writing. These restrictions were imposed because one of the children killed in the collision was the son of a Highway Patrolman. Haigler had no involvement with the imposition of these restrictions by the Highway Patrol.
 38. Taft, Taft & Haigler initiated civil actions on behalf of its clients against MDV and others on July 22, 1985.
 39. Haigler and Taft took a VCR owned by the firm to Taylor's home in late July or early August of 1985 to review the videotape. Haigler and Taft left the VCR in Taylor's home to serve the convenience of the firm in reviewing the videotapes on later occasions. The VCR remained in Taylor's home for the next twenty-seven months. During this period, Haigler reviewed the videotape with Taylor no less than twenty times. There is no evidence that Haigler, Taft or Taft or Taft, Taft & Haigler ever intended the VCR as a gift. However, the presence of the VCR in Taylor's home over this period of time gave rise to questions by MDV and others as to whether it was a gift.
 40. In the early fall, 1985, Haigler, Taylor and their spouses developed a social friendship. Taft, Taft & Haigler had a practice of giving gifts to people at Christmas, and that practice was followed in 1985 and 1986. As a Christmas present in 1985, Taft, Taft & Haigler gave Taylor a T.V./clock/radio. For Christmas of 1986, Taft, Taft & Haigler gave Taylor a cordless telephone. Delivery of this gift was

delayed to March of 1987 due to an illness in Haigler's family. The Taylors also gave Christmas presents to Haigler and Taft in 1985 and 1986.

41. All the school bus cases brought by Taft, Taft & Haigler on behalf of its clients were settled prior to trial. No substantive deposition of Taylor was ever taken by any party to any case arising from the collision. Taylor did testify in a federal trial in the Eastern District of North Carolina in August of 1988. The trial involved children injured or killed in the school bus collision and MDV was a party. Taylor testified concerning the scene of the collision and concerning the physical condition of one of the plaintiffs. Neither Haigler nor any other attorney of Taft, Taft & Haigler were counsel for any of the plaintiffs in that trial.
42. There is no evidence that, as a witness, Taylor modified or was prepared to modify in any respect his observations and conclusions about the cause of the collision as expressed in his memorandum of July 12, 1985.
43. Over the period 1985 to 1987, MDV became aware that Haigler and Taylor had a relationship. As it gained information about the relationship in piecemeal fashion, it developed concerns.
44. The evidence, when considered as a whole, does not support the inference that Haigler attempted to conceal his relationship with Taylor. Under the circumstances, however, it was not unreasonable for MDV to have a suspicion that the relationship between Taft, Taft & Haigler and Taylor had been concealed.
45. MDV served a motion to disqualify Taft, Taft & Haigler in its two then unsettled cases on May 22, 1989. In support of its motion, MDV recited that Taft, Taft & Haigler's relationship with Taylor was conduct that was prejudicial to MDV. MDV's motion received media attention in eastern North Carolina.
46. Taft, Taft & Haigler reported to the State Bar the service of MDV's motion by letter dated June 5, 1989. Taft, Taft & Haigler requested the State Bar to investigate the truth of the allegations set forth in the motion and supporting documentation, although by this time the State Bar already had knowledge of the matter from other sources.

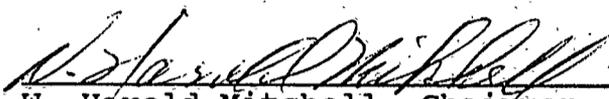
47. MDV's motion to disqualify was heard by the Hon. L. Bradford Tillery on July 5, 1989. After considering the evidence presented by MDV and Taft, Taft & Haigler, Judge Tillery denied MDV's motion on the ground that there was not a sufficient showing of prejudice to MDV to warrant denying Taft, Taft & Haigler's clients their choice of counsel.
48. Neither Taft, Taft & Haigler nor its clients gained any unfair advantage over MDV or the other defendants in the school bus collision cases or the other defendants as a result of the relationship between Haigler and Taylor. However, Haigler unintentionally subjected himself to allegations of impropriety and these allegations called his conduct into question in a public forum. There is no evidence that any single act of conduct by Haigler was taken with a specific intent to prejudice the administration of justice.
49. The State Bar dismissed with prejudice all claims based upon allegations that (a) Haigler engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR1-102(A)(4) or Rule 1.2(C); (b) Haigler engaged in professional conduct that adversely reflected on his fitness to practice law in violation of DR1-102(A)(6); (c) Haigler concealed or knowingly failed to disclose that which he was required by law to reveal in violation of Rule 7.2(A)(3); (d) Haigler knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4); (e) Haigler unlawfully obstructed another party's access to evidence or unlawfully conceal a document or other material having potential evidentiary value in violation of Rule 7.2(A)(7); (f) Haigler engaged in conduct prejudicial to the administration of justice in violation of DR1-102(A)(5) or Rule 1.2(D) as alleged in subparagraph (d) or (e) of the First Claim for Relief and subparagraph (b) of the Second Claim for Relief.
50. The parties agreed that the following were the issues to be determined by the Hearing Committee:
- (a) Do the stipulated facts indicate that Haigler's conduct had the effect of prejudicing the administration of justice, and, if so,

(b) What sanction, if any, is appropriate based on these facts?

BASED UPON the foregoing Findings of Fact, the Hearing Committee makes the following conclusion of law:

1. The Defendant, Kenneth E. Haigler, did not engage in conduct which had the effect of prejudicing the administration of justice in violation of Rule 1.2(D) of the Rules of Professional Conduct.
2. The Complaint in this matter is dismissed and the costs taxed against the plaintiff, the North Carolina State Bar.

This 8th day of May, 1991.


W. Harold Mitchell, Chairman
For the Committee

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