

NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 7

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
DOUGLAS HARGRAVE, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on August 21, 1992 and September 3, 1992 before a hearing committee composed of Samuel J. Crow, Chairman, Robert C. Bryan, and William H. White. Fern E. Gunn represented the North Carolina State Bar and James B. Maxwell represented the Defendant, Douglas Hargrave. Based upon the admissions of the Defendant in his answer to the complaint in this matter, the stipulations of the parties, and the evidence admitted at the hearing, the hearing committee finds the following facts by clear, cogent, and convincing evidence:

FINDINGS OF FACT

1. The 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. The Defendant, Douglas Hargrave, was admitted to the North Carolina State Bar on August 30, 1976, 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 referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Hillsborough in Orange County, North Carolina.
4. The Defendant represented the adoptive parents in their efforts to adopt a child.
5. The Defendant learned that Pamela Rogers (Rogers) wanted to place her unborn child for adoption.
6. The Defendant read North Carolina's adoption laws in Chapter 48 of the North Carolina General Statutes prior to meeting Rogers on June 4, 1988.

7. On June 4, 1988, the Defendant met Rogers in Michigan to discuss the adoption of her child by the adoptive parents.

8. In the course of his discussions with Rogers, the Defendant generally advised Rogers of her rights with respect to the adoption of her child. Also, Defendant generally informed Rogers of the procedures involved in a private adoption placement. Rogers did not have an attorney regarding the private placement for adoption of her child.

9. At the meeting in Michigan, the Defendant also told Rogers she had to be in North Carolina in order for the adoptive parents to adopt the child. N.C. Gen. Stat. Section 48-3 does not require the natural mother to live or give birth to her child in the state in which the adoptive parents reside.

10. The Defendant knew or should have known of N.C. Gen. Stat. Section 48-3, prior to advising Rogers who was unrepresented by counsel.

11. At the June 4, 1988 meeting in Michigan, the Defendant did not advise Rogers that her interests could be in conflict with the adoptive parents' interests and she should consult an attorney of her choice.

12. The Defendant arranged and paid for airfare for Rogers and her two children to North Carolina on or about June 12, 1988 by advancing this cost on his law firm's credit card. This advance was later reimbursed by the adoptive parents.

13. Rogers and her children lived with the Defendant for two days upon their arrival in North Carolina.

14. Defendant arranged for Rogers and her children to live with Laura Smith (Smith).

15. Defendant paid \$300.00 to \$350.00 per month to Smith to pay for food and other expenses incurred by Rogers and her children while they lived with Smith. The adoptive parents also contributed funds to Smith on behalf of Rogers and her children.

16. Defendant used either his personal funds or funds given to him by the adoptive parents to pay Rogers's expenses as listed below:

a. airfare to North Carolina for Rogers and her children on June 12, 1988;

b. \$300.00 to \$350.00 per month to Smith to pay for food and other expenses incurred by Rogers and her children while living with Smith;

c. transportation for Rogers while she lived in North Carolina by providing her with his truck and supplying her with money for gasoline;

d. retainer of \$500.00 for a Michigan lawyer to assist Rogers in pending child custody lawsuits instituted by William Rowe (Rowe);

e. \$300.00 airplane ticket for Rogers's daughter to return to Michigan;

f. medical expenses of Rogers;

g. \$3,266 for a 6-month lease for an apartment in Michigan for Rogers upon her return from North Carolina;

h. \$279.00 for airplane ticket for Rogers's return to Michigan after the birth of her child in North Carolina; and

i. \$1500 for Rogers's use when she returned to Michigan.

17. The Defendant and the adoptive parents contrary to the provisions of N. C. Gen. Stat. Section 48-38 provided Rogers with approximately \$7,000.00 of financial support prior to and immediately after the birth of her child.

18. On or about September 27, 1988, Defendant wrote Rowe's attorney, Richard Spruit (Spruit), in Michigan. In that letter, Defendant stated that he knew Rowe claimed to be the father of Rogers's child and Defendant asked if Spruit would accept service on Rowe's behalf of the notice of filing of a petition for adoption.

19. On or about October 4, 1988, Spruit sent a letter to Defendant indicating that "as of the present time, he [Rowe] is certain that he is the father of this child, and will not voluntarily consent to the adoption". Spruit did not accept service of the notice of petition for adoption on behalf of Rowe.

20. Although the Defendant knew that Rowe lived in Michigan, Defendant published notice of the adoption proceeding by publication of a legal notice in an Orange County, North Carolina newspaper. The Defendant did not have Rowe personally served or served by registered or certified mail as required by N.C. Gen. Stat. Section 48-6 and N.C. Gen. Stat. Section 1A-1, Rule 4(j1).

21. The Defendant signed and filed an affidavit of service of process by publication in Orange County Superior Court regarding the adoption of Rogers's child. The affidavit stated that "the name of the natural father of the child was unknown and the address, whereabouts, dwelling house or usual place of abode of the child's natural father was unknown and could not with due diligence be ascertained".

22. The Defendant may have signed the affidavit in good faith upon his belief that Rowe was not the father of the child, but based upon the information the Defendant possessed it was his obligation to personally serve Rowe with notice of the adoption proceeding in order that Rowe's claim could be adjudicated as a part of the adoption proceeding. The Defendant's action in not serving Rowe and otherwise disclosing Rowe's claim to the Clerk of Superior Court was prejudicial to the administration of justice.

Based upon the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2) as follows:

a) By advising Rogers of her rights with respect to the adoption of her child and by not advising Rogers that she should consult legal counsel about her rights, the Defendant has given advice to a person who is not represented by a lawyer when the interests of such person are, or have a reasonable possibility of being, in conflict with the interests of his client, in violation of Rule 7.4(B).

b) By telling Rogers that she had to give birth to her child in North Carolina where the adoptive parents lived, Defendant has given advice to a person who is not represented by a lawyer, when the interests of such person are, or have the possibility of being, in conflict with the interests of his client, in violation of Rule 7.4(B).

c) By paying the expenses of Rogers during and after her pregnancy, the Defendant has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).

d) By allowing his clients, the adoptive parents, to pay some part of Rogers's expenses during and after her pregnancy, the Defendant has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).

e) By not properly serving Rowe with legal notice of the pending adoption proceeding when he knew that Rowe resided in Michigan, and therefore publication of notice in a North Carolina newspaper was inadequate notice under North Carolina law, the Defendant has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).

f) By misrepresenting the facts in the affidavit of service of process by publication that was filed in the adoption case, the Defendant has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D) and concealed or knowingly failed to disclose that which he is required by law to reveal in violation of Rule 7.2(A)(3).

Signed by the undersigned chairman with the full knowledge
and consent of the other members of the hearing committee.

This the 9th day of October, 1992.

Samuel J. Crow
Samuel J. Crow, Chairman
Hearing Committee of the
Disciplinary Hearing Commission

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Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee.

This the 9th day of October, 1992.

Samuel J. Crow
Samuel J. Crow, Chairman
Hearing Committee of the
Disciplinary Hearing Commission

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