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STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
00 CvS 6758

MARY JORDAN, et al.,  
Plaintiffs

v.

ORDER OF DISCIPLINE  
AGAINST PAMELA A. HUNTER

THE EARTHGRAINS COMPANY,  
ANHEUSER-BUSCH, INC., AND  
CAMPBELL TAGGART COMPANY,  
Defendants.

This matter is before the Court on an Order to Show Cause issued by the Court on November 30, 2001, to Pamela A. Hunter, attorney for the plaintiffs, to appear for a hearing to determine whether she violated Rule 11, North Carolina Rules of civil Procedure; Rule 12, North Carolina Rules of Practice; the Revised Rules of Professional Conduct; and her duty to be honest with the court; and if so, what sanctions and/or discipline should be imposed. The matter came on for hearing on January 15, 2002. Pamela Hunter appeared with counsel, Julius Chambers. The State Bar appeared through counsel, Root Edmisten and Bobby White. Defendants appeared through counsel, Andy Scott. The Court reviewed and considered the affidavit of Ms. Hunter. The Court further reviewed the information provided by the State Bar under seal concerning Ms. Hunter's disciplinary record. The Court heard from counsel.

Based on the record and the hearing, the Court finds and concludes as follows:

1. In the above captioned case, the Court granted the defendants' Motion for Summary Judgment. Plaintiffs gave notice of appeal, and were required by the Rules of Appellate Procedure to serve a Proposed Record on Appeal (PROA) on the defendants no later than Friday, October 12, 2001.
2. On Friday, October 12, 2001, Plaintiffs' Counsel Pamela A. Hunter signed a Certificate of Service reflecting that the PROA was mailed to counsel for the defendants, Mr. Scott on that date.
3. Through a mistake by Ms. Hunter's staff, the PROA was not mailed to Mr. Scott but was instead mailed to the Court of Appeals.
4. Ms. Hunter became aware of this error on Monday, October 15, 2001, and immediately had the PROA mailed on that date to Mr. Scott. She did not change the Certificate of Service, which still reflected service on October 12, and she did not move any court for any extension of time.

5. Shortly after receipt of the PROA, Mr. Scott wrote Ms. Hunter about the date of service, since the postmark reflected that the PROA was mailed on October 15. Ms. Hunter did not respond to Mr. Scott and did not seek any court action at that time.

6. After their investigation of the postmark revealed that the PROA had in fact been mailed on October 15, the defendants filed a Motion to Dismiss the Appeal on November 7, 2001.

7. On November 9, 2001, the plaintiffs filed a Motion for Extension of Time to Serve the PROA with the North Carolina Court of Appeals. In that Motion, Ms. Hunter admitted that the PROA had not been served on Mr. Scott on October 12 and explained the circumstances of that mistake. This was the first time Ms. Hunter explained to defense counsel or to any court what had happened in connection with mailed the PROA.

8. By failing to correct the certificate of service on October 15, Ms. Hunter committed a technical violation of the Rules of Professional Conduct, specifically Rule 8.4(d), and a technical violation of her ethical duty to be honest with the Court. At that time, she had no intention to defraud or mislead Mr. Scott or the Court.

9. By failing to respond to Mr. Scott's inquiry about the service date of the PROA, Ms. Hunter violated Rule 8.4(d) of the Rules of Professional Conduct. By failing to correct the certificate of service after receiving Mr. Scott's inquiry, Ms. Hunter violated Rule 8.4(d) of the Rules of Professional Conduct and violated her ethical duty to be honest with the Court. As a result of these violations, the defendant incurred unnecessary legal expenses and the Court had to deal with a Motion to Dismiss the Appeal, which motion would almost certainly not have been filed had Ms. Hunter been forthcoming with Mr. Scott.

10. Ms. Hunter has a generally good reputation in the legal community and has a disciplinary record with the North Carolina State Bar that reflects only a few minor, technical violations of the Rules of Professional Conduct. Since the filing of the Motion for Extension of Time to Serve the PROA with the North Carolina Court of Appeals, Ms. Hunter has been forthright and honest with the Court concerning her errors and has taken full responsibility for her mistakes.

11. Certificates of service are an integral part of our civil justice system. Attorneys have a duty to be honest and accurate when they sign certificates of service, and if the certificate of a lawyer cannot be trusted, then the deadlines imposed by the Rules of Civil Procedure and elsewhere become meaningless.

12. The duty to be honest with the Court is singularly important and has deep historical roots.

Certainly since the time of Edward I, through all the vicissitudes of seven centuries of Anglo-American history, the legal profession has played a role all its own. The bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities. One does not have to inhale the self-adulatory

bombast of after-dinner speeches to affirm that all the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," [citation omitted] in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character."

Schwartz v. Board of Bar Examiners, 77 S.Ct. 752, 760-761 (1957)((Frankfurter, J., concurring)(emphasis added); see also G. Sharswood, Professional Ethics, 168-169 (1844)("From the very commencement of a lawyer's career, let him cultivate, above all things, truth, simplicity, and candor; they are the cardinal virtues of a lawyer."); Astles' Case, 594 A.2d 167, 170 (1991).

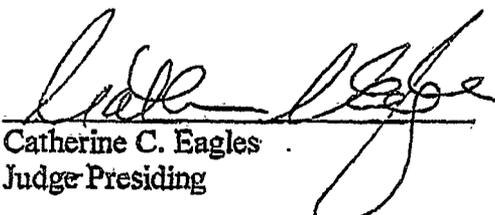
In North Carolina, this professional obligation is reflected among other places in Rule 12 of the General Rules of Practice that governs the conduct of all lawyers appearing in a courtroom: "The conduct of the lawyers before the court and with other lawyers should be characterized by candor and fairness." When a lawyer speaks, the words should be the truth. This obligation is fundamental.

All attorneys have a concurrent obligation to zealously represent a client within the bounds of the law. But this duty to the client does not require a lawyer "to use dishonorable means [or] subterfuge . . . in order to confuse and mislead the court or the jury." State v. Mathis, 293 N.C. 660 (1977). In most every situation, however, and clearly under the facts of this case, a lawyer's duty to represent a client zealously must yield to her duty of candor. A lawyer may not fail to correct an inaccurate certificate of service and may not fail to respond to inquiries about an inaccurate certificate of service in hopes that the problem will go away, even if the inaccurate certificate of service was the result of a mistake and not an intentional effort to mislead or defraud. To her credit, Ms. Hunter fully recognizes and accepts this duty.

It is therefore ORDERED that:

1. Pamela A. Hunter is hereby ADMONISHED for violating her ethical duties as set forth in this Order.
2. The Clerk shall provide a filed copy of this Order to Pamela A. Hunter, to counsel for Ms. Hunter, to counsel for the defendant in the above-captioned case, and to Root Edmisten, counsel for the North Carolina State Bar.

This 25 day of January, 2002.

  
Catherine C. Eagles  
Judge Presiding