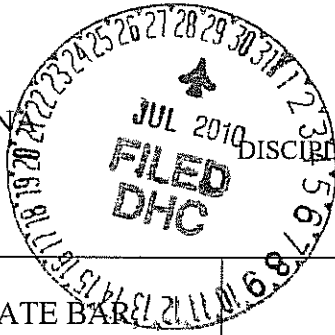


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 9

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

ELIZABETH J. WOLFENDEN, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, &
ORDER OF DISCIPLINE

This matter was heard on April 22-23 and July 8, 2010, before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Donna R. Rascoe, and Joe Castro. Carmen Hoyme Bannon and David R. Johnson represented Plaintiff, the North Carolina State Bar. Defendant, Elizabeth J. Wolfenden, represented herself. Based upon the pleadings, all other filings in the record, and the evidence presented at the hearing, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").

2. Defendant, Elizabeth J. Wolfenden ("Wolfenden" or "Defendant"), was admitted to the North Carolina State Bar in 2000, 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 the relevant periods referred to herein, Wolfenden was engaged in the practice of law in the State of North Carolina and maintained a law office in Chapel Hill, Orange County, North Carolina.

4. Wolfenden was properly served with process and received due notice of the hearing in this matter.

5. In 2005, Wolfenden began representing Kathryn Klein ("Klein") in a domestic case in Orange County.

6. In exchange for Wolfenden's legal services, Klein executed a promissory note in the amount of \$50,000.00, which was secured by a deed of trust on property owned by Klein and her ex-husband, William Klein.

7. Prior to executing the deed of trust, Klein did not give informed consent, in a writing signed by Klein, to the essential terms of the transaction by which Wolfenden would acquire a security interest in Klein's property and to Wolfenden's role in that transaction.

8. Prior to accepting the deed of trust from Klein, Wolfenden did not advise Klein in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction by which Wolfenden would acquire a security interest in Klein's property.

9. On 19 September 2007, Wolfenden initiated foreclosure proceedings under the deed of trust from Klein.

10. When Wolfenden initiated foreclosure proceedings, the subject property was still part of the marital estate subject to equitable distribution by the court in the pending domestic case.

11. Wolfenden continued to represent Klein at the time she initiated foreclosure and thereafter.

12. In an 18 April 2008 letter to the Chief District Court Judge regarding his handling of *Klein v. Klein*, 05 CVD 1311, Wolfenden accused the judge of engaging in *ex parte* communications with opposing counsel.

13. Wolfenden's 18 April 2008 letter was copied to at least seven other individuals.

14. Wolfenden repeated the allegation of improper *ex parte* communications by the Chief District Court Judge in several different public formats.

15. Wolfenden had no factual basis for alleging that the Chief District Court Judge engaged in improper *ex parte* communications regarding *Klein v. Klein*. Wolfenden testified that she believed *ex parte* communications had occurred because after a hearing in the case, opposing counsel looked unhappy and went upstairs in the courthouse. Wolfenden further testified that she assumed that when opposing counsel went upstairs, he sought out the judge and spoke to him *ex parte* about the case. Wolfenden offered no evidence to support the allegation other than this opinion grounded in speculation.

16. At the 7 April 2008 Orange County District Court calendar call, Wolfenden stated that the Administrative Office of the Courts ("AOC") Director had expressed an opinion that the case of *Klein v. Klein* should be heard within the month and should be presided over by a visiting judge.

17. The AOC Director had expressed no such opinion concerning when the Klein case should be heard or who should preside over the hearing.

18. Wolfenden also stated that the AOC Director had faxed a letter to Wolfenden and opposing counsel regarding the Klein case.

19. The AOC Director had not faxed or otherwise delivered a letter to Wolfenden and/or opposing counsel regarding the case. The only letter that had recently been sent to counsel in the Klein case regarding scheduling was from the office of the District Court judges. No reasonable person could have mistaken the letter from the District Court judges as a letter from the Director of the AOC.

20. At the time Wolfenden made these statements about the AOC Director, she knew the statements were false.

21. The following day, Wolfenden wrote opposing counsel an email in which she threatened to make a "second complaint" to the AOC and its Director, and stated that the AOC Director "assumed this matter would be taken care of yesterday."

22. The AOC Director had not expressed any opinion on when scheduling of the Klein case should be "taken care of."

23. At the time Wolfenden wrote the email containing the statement about the AOC Director's expectations regarding the Klein case, she knew the statement was false.

24. In April 2006, Joanna Crews Edwards ("Crews") hired Wolfenden to represent her in a domestic case.

25. Crews expressed to Wolfenden that, if possible, she wished to maintain possession of the marital residence in the equitable distribution action. Crews' primary goal, however, was to obtain a simple divorce with minimal conflict and expense.

26. In exchange for Wolfenden's legal services, Crews executed a promissory note in the amount of \$20,000.00, which was secured by a deed of trust on Crews' marital residence.

27. Wolfenden represented to Crews that this arrangement would allow Crews to pay the cost of the representation at the conclusion of the case. Wolfenden also assured Crews that her legal fees would be less than the \$20,000.00 secured by the deed of trust.

28. Prior to executing the deed of trust, Crews did not give informed consent, in a writing signed by Crews, to the essential terms of the transaction by which Wolfenden would acquire a security interest in Crews' marital residence and to Wolfenden's role in that transaction.

29. Prior to accepting the deed of trust from Crews, Wolfenden did not advise Crews in writing of the desirability of seeking the advice of independent legal counsel regarding the transaction by which Wolfenden would acquire a security interest in Crews' marital residence.

30. Based on her communication with Wolfenden about the transaction whereby Wolfenden acquired a security interest in Crews' marital residence, it was Crews' understanding

that the cost of Wolfenden's services would be less than \$20,000.00, and that Wolfenden's legal fees would be paid out of assets awarded to Crews in the equitable distribution action.

31. In the four months after Crews hired Wolfenden, Wolfenden did not provide Crews with any statement of account or invoice showing the accumulated charges for Wolfenden's fees.

32. Wolfenden did not notify Crews when her legal fees exceeded \$20,000.00.

33. In August 2006, Wolfenden informed Crews by email that her legal fees exceeded \$24,000.00. Wolfenden stated that if Crews wanted Wolfenden to represent her any further, Crews would have to pay an "additional retainer" of \$2,000.00 and begin paying attorney's fees monthly. This demand was contrary to the fee arrangement as Wolfenden explained it to Crews before Crews executed the note and deed of trust.

34. Crews was unable to pay the additional retainer and directed Wolfenden not to take any further action on her behalf. Wolfenden withdrew from the representation on 11 September 2006.

35. After Wolfenden withdrew from the representation, she sent Crews an invoice indicating that Crews owed her a total of \$29,126.86.

36. The final invoice included charges of \$525.00 in legal fees for Wolfenden's appearance at the hearing at which Wolfenden obtained leave of the court to withdraw as counsel for Crews.

37. Appearing before the court and obtaining permission to withdraw as counsel of record for Crews was Wolfenden's professional duty, not a legal service for Crews' benefit.

38. In 2008, Wolfenden sought election to the District Court bench in Judicial District 15-B.

39. On 13 May 2008, Wolfenden sent an email to numerous persons soliciting support for her judicial campaign. The email was addressed to "Friends, Colleagues, and Voters," and asked the recipients to "forward this email to your friends and colleagues."

40. In the email, Wolfenden discussed a grievance recently filed against her with the State Bar.

41. Wolfenden attached to the email several PDF documents concerning the grievance, including a letter from the State Bar to Wolfenden and Wolfenden's responsive communication to the State Bar, both of which referred to two of Wolfenden's clients (Klein and Crews) by name.

42. Wolfenden's written response to the State Bar contained disparaging statements about Crews' financial situation and emotional health.

43. The documents attached to Wolfenden's 13 May 2008 email contained information about Klein and Crews acquired by Wolfenden during her professional relationship with those clients ("confidential client information").

44. Neither Klein nor Crews had given informed consent for Wolfenden to disclose confidential client information in the 13 May 2008 email.

45. Wolfenden's disclosure of confidential client information was not impliedly authorized in order to carry out the terms of Wolfenden's representation of Crews or Klein.

46. No evidence was offered to show that Wolfenden was permitted, pursuant to any of the exceptions set forth in Rule 1.6(b), to reveal confidential client information related to her representation of Klein or Crews.

47. Wolfenden represented Emily McManaway ("McManaway") in legal proceedings related to McManaway's son.

48. In an 8 October 2008 letter to opposing counsel, Wolfenden proposed two options for settlement of claims concerning McManaway's son.

49. The first settlement option proposed that McManaway would consent to the opposing parties having permanent sole legal custody and primary physical custody of her son, in exchange for a \$55,000.00 payment.

50. The second settlement option proposed that McManaway would consent to the opposing parties' adoption of her son, in exchange for a \$75,000.00 payment.

51. Both of the settlement options proposed by Wolfenden provided that the parties would pay their own legal fees.

52. The only substantive difference between the two settlement options proposed by Wolfenden was that one provided for legal and physical custody, while the other provided for adoption.

53. By proposing these two options for settlement of claims concerning McManaway's son, Wolfenden requested an additional \$20,000.00 in exchange for McManaway's consent to adoption.

54. N.C. General Statutes § 48-10-102 provides that, except for certain actual expenses, "a person or entity may not pay or give, offer to pay or give, or request, receive or accept any money or anything of value, directly or indirectly, for: (1) the placement of a minor for adoption; [or] (2) The consent of a parent...to the adoption of a minor."

55. Violation of § 48-10-102 is a Class 1 misdemeanor.

56. At the time Wolfenden made this request on behalf of McManaway, Wolfenden knew that requesting payment for a parent's consent to adoption of a minor was prohibited by law.

57. At an 11 March 2009 hearing in *Bohannon v. McManaway*, 06 CVD 1810, Wolfenden stated in open court that the presiding judge was “not fit to be on the bench.”

58. Wolfenden also suggested that the presiding judge used illicit drugs and engaged in an adulterous relationship.

59. Wolfenden had no factual basis for making these allegations about the presiding judge.

60. The statements described in paragraphs 57 and 58 above were degrading to the tribunal and were made in open court.

61. In November 2008, Wolfenden filed a complaint in *McManaway v. LDS Family Services, Inc. et al.*, Orange County file # 08 CVS 1771. On 3 December 2008, Wolfenden filed an Amended Complaint in *McManaway v. LDS Family Services* (“the Amended Complaint”).

62. Attorney Donna Davis, who was opposing counsel to Wolfenden in the child custody case of *Bohannon v. McManaway*, was among the defendants named in the Amended Complaint.

63. In the Amended Complaint, Wolfenden accused Davis of, *inter alia*, abuse of process and obstruction of justice in the underlying child custody case.

64. The Amended Complaint contained allegations of professional misconduct by Davis that had been previously reviewed by the State Bar and found to be without merit.

65. Wolfenden knew at the time she filed the Amended Complaint that her allegations of misconduct by Davis had been found to be without merit.

66. In the Amended Complaint, Wolfenden asked the court to discipline Davis for “numerous ethics violations as well as report [her] conduct to the North Carolina State Bar.”

67. The allegations of professional misconduct by Davis in the Amended Complaint had no substantial purpose other than to embarrass and/or burden Davis.

68. On 16 March 2009, there was a hearing in *McManaway v. LDS Family Services* on, among other things, the defendants’ motions to dismiss. Davis was present at the 16 March 2009 hearing.

69. An attorney hired by Davis’ malpractice insurance carrier, Lawyers Mutual, represented Davis in defending *McManaway v. LDS Family Services* and was Davis’ attorney of record on 16 March 2009. In addition, Davis engaged attorney Lunsford Long to represent her in defending *McManaway v. LDS Family Services*. Long was present at the 16 March 2009 hearing and joined Davis’s attorney of record at counsel’s table. Long did not address the court during the hearing.

70. After the hearing, Superior Court Judge Kenneth C. Titus granted Davis's Motion to Dismiss on grounds that the complaint failed to state a claim upon which relief could be granted.

71. On 28 April 2009, after *McManaway v. LDS Family Services* was dismissed for failure to state a claim, Wolfenden filed another complaint in Orange County Superior Court (*McManaway v. Long and Davis*, Orange County file # 09 CVS 686).

72. The complaint filed by Wolfenden on 28 April 2009 again alleged abuse of process and obstruction of justice, and named Davis and Long (along with their respective law firms) as defendants.

73. In support of these claims, Wolfenden alleged that Davis and Long had conspired to improperly influence the outcome of the 16 March 2009 hearing in *McManaway v. LDS Family Services*.

74. The complaint filed by Wolfenden in *McManaway v. Long and Davis* alleged that Long's silent presence at counsel's table during the 16 March 2009 hearing constituted "an attempt to improperly influence the Court through his relationship with Judge Titus."

75. The complaint filed by Wolfenden in *McManaway v. Long and Davis* alleged that Davis had instructed Long "to sit at the Defendant's table on March 16, 2009 because Davis believed that due to Long's relationship with Judge Titus, his appearance at the Defendant's table would affect the outcome of the hearing in her favor."

76. The complaint filed by Wolfenden in *McManaway v. Long and Davis* contained no specific allegations to support Wolfenden's contention that Long had any relationship with Judge Titus.

77. The complaint filed by Wolfenden in *McManaway v. Long and Davis* contained no specific allegations to support Wolfenden's contention that Long and Davis attempted to improperly influence the court.

78. Wolfenden had no factual basis for making the allegations set forth in paragraphs 73 through 75 above. Wolfenden had no factual basis for alleging that Long had any relationship with Judge Titus. In response to deposition questions about her factual basis for these allegations, Wolfenden was unable to provide any specific facts and admitted that at least some of these allegations were based only on her assumptions. At the hearing in this case, Wolfenden declined to respond to questions from this panel about the factual basis for these allegations.

79. Long testified that he had no prior relationship of any nature with Judge Titus. Both Long and Davis testified that Long was present at the hearing in his capacity as Davis' privately retained counsel and for no other reason. The panel finds the testimony of Long and Davis credible.

80. By alleging that her client had been harmed as a result of Davis and Long's alleged conspiracy to improperly influence the court, Wolfenden necessarily was alleging that the judge had, in fact, been improperly influenced. Thus, the complaint filed by Wolfenden in

McManaway v. Long and Davis insinuated that Judge Titus's rulings in *McManaway v. LDS Family Services* were based, not upon the law and the facts of the case, but upon personal bias.

81. The complaint filed by Wolfenden in *McManaway v. Long and Davis* contained no specific factual allegations to support Wolfenden's insinuation that Judge Titus was improperly influenced or biased.

82. The complaint filed by Wolfenden in *McManaway v. Long and Davis* had no substantial purpose other than to embarrass and/or burden Davis, Long, and Judge Titus.

83. Wolfenden represented the defendant in *Lyons v. Lyons*, 07 CVD 1260, a domestic case.

84. At a 12 February 2009 hearing in *Lyons*, Wolfenden requested a continuance, seeking to have at least one matter heard at a later date.

85. *Lyons* was then scheduled for district court calendar call on 2 March 2009, but due to inclement weather, calendar call was rescheduled for 4 March 2009.

86. Wolfenden did not appear at the 4 March 2009 calendar call, at which the *Lyons* case was scheduled for hearing on 23 March 2009.

87. At the 23 March 2009 hearing in *Lyons*, Wolfenden was present but asked the court to continue the hearing, claiming that she had not received proper notice.

88. At the 23 March 2009 hearing, Wolfenden stated that the Chief District Court Judge had contacted opposing counsel to inform opposing counsel of the rescheduled date of the March calendar call, but had not informed Wolfenden of the same.

89. Wolfenden's statement set forth in paragraph 88 was false.

90. Also at the 23 March 2009 hearing, Wolfenden falsely represented to the court that she had not requested a continuance at the 12 February 2009 hearing in *Lyons*.

91. During the course of the 23 March 2009 hearing, Wolfenden made the following statements about opposing counsel in open court:

- (a) "[Y]ou have lost your moral compass, and you have stopped following the law, and that's becoming a huge problem."
- (b) Wolfenden stated that opposing counsel's "silence" in response to Wolfenden's arguments regarding notice of the hearing was "unethical."
- (c) "[O]pposing counsel is engaging in legal games."

92. In response to the statement set forth in paragraph 91(a) above, the court admonished Wolfenden as follows: "[A]s lawyers we are supposed to be the professionals, and as lawyers the last thing we should be doing is having conversations of this sort with clients,

members of the general public here. . . . We should not be in here disparaging anyone for any purpose. Anything personal needs to be said behind closed doors.”

93. Wolfenden’s statements set forth in paragraph 91 above had no substantial purpose other than to embarrass or burden opposing counsel.

94. When Wolfenden later learned that the presiding judge had requested a transcript of the 23 March 2009 *Lyons* hearing, Wolfenden wrote a letter to the judge dated 8 April 2009.

95. Wolfenden’s letter to the judge stated that Wolfenden’s clients could not “receive fair hearings before an impartial judge” unless the judge recused herself from all of Wolfenden’s cases.

96. Wolfenden filed her letter to the judge in the court file, thereby making it a public record.

97. Wolfenden’s letter to the judge was not a motion, pleading, or any other type of legal document that could properly be filed with the court pursuant to Rule 5(d) of the Rules of Civil Procedure.

98. Wolfenden’s publication of her opinion about the presiding judge’s lack of fairness and impartiality had no substantial purpose other than to embarrass or burden the judge.

99. Wolfenden represented the defendant in *Harrington v. Wall*, Orange County file # 09 CVD 27, a child custody case.

100. A hearing in *Harrington v. Wall* was scheduled for 17 June 2009. Wolfenden prepared the order setting the case for hearing on 17 June 2009. She did not file a motion to continue the hearing.

101. Wolfenden did not appear for the 17 June 2009 hearing and instructed her client not to attend the hearing. Instead, Wolfenden went to the Court of Appeals to file petitions for extraordinary writs seeking to compel the judge to enter certain orders and a motion for temporary stay of further proceedings in the trial court pending an interlocutory appeal. The trial court proceeded with the hearing as scheduled. The Court of Appeals declined to enter a stay or issue any extraordinary writs.

102. On 25 June 2009, Wolfenden filed a Verified Motion to Recuse District Court Judge Beverly Scarlett, the presiding judge in *Harrington v. Wall* (“the Motion to Recuse”).

103. Wolfenden signed the verification on the Motion to Recuse, which accused Judge Scarlett of being biased and prejudiced against Wolfenden.

104. The Motion to Recuse contained generalized assertions that the judge was biased, including:

- (a) “Judge Scarlett appears to have developed a personal animosity towards me. This animosity has been displayed repeatedly in the courtroom by her entering court orders which have substantially violated my clients’ due process rights.”
- (b) “Judge Scarlett has entered numerous tendentious and contradictory court orders, knowing that some of the orders have included false findings of fact and erroneous conclusions of law.”

105. Wolfenden had no factual basis for making the allegations set forth in paragraph 104 above.

106. In seeking to recuse a judge in this State, “the burden is upon the party moving for disqualification to demonstrate objectively that grounds for disqualification actually exist. Such a showing must consist of substantial evidence that there exists such a personal bias, prejudice, or interest on the part of the judge that [s]he would be unable to rule impartially.” *Lange v. Lange*, 357 N.C. 645, 649, 588 S.E.2d 877, 880 (2003) (citations omitted).

107. The Motion to Recuse contained no specific facts or law to support Wolfenden’s contention that orders entered by Judge Scarlett “substantially violated” Wolfenden’s clients’ “due process rights.”

108. The Motion to Recuse alleged no specific facts to support Wolfenden’s contention that Judge Scarlett knowingly entered orders containing “false findings of fact and erroneous conclusions of law.”

109. Wolfenden did not subsequently identify any specific examples or instances in support of her allegations set forth in paragraph 104 above.

110. On 6 July 2009, Wolfenden filed a motion for relief from judgment in *Harrington v. Wall*, seeking to set aside all of the orders Judge Scarlett had entered in the case.

111. On 27 July 2009, Wolfenden issued a subpoena to Judge Scarlett to appear and be deposed.

112. On 4 August 2009, Judge Scarlett, through counsel, served written objections to the subpoena. On 25 August 2009, Wolfenden filed a motion to compel Judge Scarlett’s deposition.

113. After a 4 September 2009 hearing, the court quashed the subpoena and denied Wolfenden’s motion to compel Judge Scarlett’s deposition, concluding that if Judge Scarlett were compelled to testify, her “judicial immunity, which carries with it a testimonial privilege, would be breached and that such a breach would interfere with the administration of justice.”

114. In September 2008, Wolfenden had issued subpoenas to two other District Court judges, who objected on the basis of their judicial immunity. Accordingly, Wolfenden knew or should have known, at the time she issued the subpoena to Judge Scarlett and at the time she filed the motion to compel Judge Scarlett’s deposition, that judicial immunity protected the judge from being compelled to testify about her judicial acts.

Based on the record and the foregoing Findings of Fact, the hearing panel makes the following:

CONCLUSIONS OF LAW

1. This tribunal has personal jurisdiction over Defendant, Elizabeth J. Wolfenden, and jurisdiction over the subject matter. All the parties are properly before the hearing panel

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) in that Wolfenden violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By obtaining a security interest in property owned by Klein without obtaining Klein's prior informed consent in a signed writing and without first advising Klein of the desirability of seeking independent legal counsel, Wolfenden acquired a pecuniary interest directly adverse to a client in violation of Rule 1.8(a);
- (b) By initiating foreclosure against property owned by Klein while continuing to represent Klein, Wolfenden engaged in a conflict of interest in violation of Rule 1.7(a)(2) and intentionally prejudiced her client during the course of the professional relationship in violation of Rule 8.4(g);
- (c) By accusing the Chief District Court Judge of *ex parte* communications in her 18 April 2008 letter and in other public forums without a factual basis for making the accusation, Wolfenden made a statement concerning the qualifications or integrity of a judge which she knew was false or with reckless disregard as to its truth or falsity in violation of Rule 8.2(a);
- (d) By making false statements to the court and opposing counsel concerning the Administrative Office of the Courts and its Director, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c), knowingly made false statements of material fact to a third person in violation of Rule 4.1, and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);
- (e) By obtaining a security interest in property owned by Crews without obtaining Crews' prior informed consent in a signed writing and without first advising Crews of the desirability of seeking independent legal counsel, Wolfenden acquired a pecuniary interest directly adverse to a client in violation of Rule 1.8(a);
- (f) By failing to explain that her legal fees could exceed the amount secured by the promissory note and by failing to notify Crews when the cost of the representation exceeded the secured amount, Wolfenden failed to explain a matter to the extent reasonably necessary to permit her client to make informed decisions regarding the representation in violation of Rule 1.4(b) and failed to communicate to her client the basis or rate of the fee in violation of Rule 1.5(b);

- (g) By charging Crews legal fees for performing the professional duty of withdrawing as counsel, Wolfenden charged a clearly excessive fee in violation of Rule 1.5(a);
- (h) By publically disseminating documents which contained information acquired during her professional relationships with Klein and Crews, Wolfenden disclosed confidential client information without her clients' express or implied consent in violation of Rule 1.6(a);
- (i) By requesting additional monetary payment in exchange for McManaway's consent to the adoption of her son, Wolfenden counseled a client to engage in or assisted a client in conduct Wolfenden knew was criminal or fraudulent in violation of Rule 1.2(d);
- (j) By accusing the presiding judge at the 11 March 2009 hearing in *Bohannon v. McManaway* of misconduct and unfitness without a factual basis for making the accusations, Wolfenden made statements concerning the qualifications or integrity of a judge which she knew were false or with reckless disregard as to their truth or falsity in violation of Rule 8.2(a), and engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4);
- (k) By filing a lawsuit against Davis containing allegations of professional misconduct that had previously been found to be without merit, by asking the court to discipline Davis for that alleged misconduct, and by asking the court to report the alleged misconduct to the State Bar, Wolfenden asserted an issue for which there was no basis in law or in fact in violation of Rule 3.1 and used means that had no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a);
- (l) By filing a lawsuit that alleged—without factual basis—that Long and Davis had attempted to improperly influence the court and insinuated that the court's rulings were based on personal bias, Wolfenden brought a proceeding for which there was no basis in law or fact in violation of Rule 3.1, used means that had no substantial purpose other than to embarrass, delay, or burden third persons in violation of Rule 4.4, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (m) By falsely stating to the court that the Chief District Court Judge had contacted opposing counsel regarding the rescheduled March 2009 calendar call, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c) and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);
- (n) By falsely stating to the court that she had not requested a continuance at the February 2009 hearing in *Lyons*, Wolfenden engaged in conduct involving deceit and misrepresentation in violation of Rule 8.4(c) and knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);

- (o) By engaging in personal attacks on opposing counsel in open court during the March 2009 hearing in *Lyons*, Wolfenden engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4) and made statements that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a);
- (p) By filing in the public record her 8 April 2009 letter stating the presiding judge could not be fair and impartial to Wolfenden's clients, Wolfenden engaged in undignified or discourteous conduct that was degrading to the tribunal in violation of Rule 3.5(a)(4) and made statements that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a);
- (q) By alleging that Judge Scarlett displayed personal animosity to the detriment of litigants' rights and knowingly entered orders containing "false findings of fact and erroneous conclusions of law," Wolfenden made statements concerning the integrity and/or qualifications of the presiding judge with reckless disregard as to their truth or falsity in violation of Rule 8.2(a); and
- (r) By issuing a subpoena to the presiding judge and pursuing a motion to compel the judge's deposition when she knew or should have known that the doctrine of judicial immunity precluded this course of action, Wolfenden asserted an issue for which there was no basis in law or in fact in violation of Rule 3.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, 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 of fact in paragraphs 1 through 114 above are reincorporated as if fully set forth herein.
2. Although no prior disciplinary action has been taken against Wolfenden, the pattern of misconduct exemplified by the specific instances set forth in this order began no later than 2005 and continued through at least 2009. During that period, Wolfenden not only engaged in a pattern of repeated similar acts of misconduct, but also engaged in a wide variety of misconduct.
3. Wolfenden's trial practice has primarily involved domestic cases and juvenile abuse, neglect, and dependency cases.
4. Litigants in domestic cases are experiencing significant family turmoil. They often have concerns about their financial futures, living arrangements, and childcare. As a result, they are distressed, anxious, and not necessarily capable of making dispassionate and well-

informed decisions. This makes litigants in domestic cases a particularly vulnerable segment of the population.

5. Juvenile abuse, neglect, and dependency cases by definition involve families in crisis, and parents in these cases are vulnerable for the same reasons domestic litigants are vulnerable.

6. Wolfenden engaged in a pattern of manipulating her vulnerable clients by using their cases as a platform for her groundless personal attacks on the professional integrity of opposing counsel, the judiciary, and the court system as a whole. In so doing, she elevated her own interests above her clients' interests.

7. Wolfenden manipulated her client, Joanna Crews, by insisting on engaging in adversarial and costly activities in Crews' case when those activities were unnecessary to achieve Crews' stated goal of obtaining a non-contentious, expeditious divorce at minimal expense.

8. Wolfenden's personal pecuniary interests motivated her improper acquisition of security interests adverse to Klein and Crews. Wolfenden was similarly acting for her own financial benefit when she improperly billed Crews for time spent withdrawing from the representation.

9. Wolfenden sent the email disseminating confidential client information for the purpose of promoting her judicial campaign. Wolfenden did not expect or intend to benefit either Klein or Crews by disseminating their confidential client information to the public.

10. Crews' confidence in the legal profession was undermined by Wolfenden's misconduct.

11. Wolfenden's representation of clients is characterized by an elevation of form and procedure over substance, which has resulted in delay and/or denial of justice for litigants, including her own clients.

12. Wolfenden pursued frivolous claims and arguments in her clients' cases, including but not limited to arguing untimely motions to continue when substantive issues were scheduled to be heard and filing interlocutory appeals on non-dispositive rulings of the trial court.

13. By pursuing frivolous claims and arguments in her clients' cases, Wolfenden consumed court time and resources that could have been devoted to addressing legitimate issues. Her misconduct thereby interfered with the orderly and efficient administration of justice.

14. By pursuing frivolous claims and arguments in her clients' cases, Wolfenden vastly increased their legal fees and delayed the resolution of their cases. By way of example, Wolfenden argued an untimely-filed motion to continue for the better part of a day in the *Lyons* matter. In later court filings, Wolfenden asserted that Mr. Lyons had incurred \$1,700.00 in fees for the many hours she spent arguing for a continuance; an activity that did not accomplish anything of substance in her client's case.

15. In cases where Wolfenden pursued frivolous claims and arguments on behalf of her clients, opposing counsel spent considerable time and effort responding to these baseless claims and attending hearings at which Wolfenden made lengthy spurious arguments. As a result, attorney's fees for opposing parties were unnecessarily inflated. In some instances, opposing counsel forgave some or all of their fees so Wolfenden's conduct would not be financially detrimental to their clients.

16. In defending a frivolous lawsuit filed against her by Wolfenden, at least one Orange County lawyer personally paid legal fees over and above the legal fees paid by her malpractice insurance company.

17. Wolfenden's specious lawsuits and personal attacks against fellow lawyers have caused those lawyers embarrassment and emotional distress. In some cases, her conduct also caused emotional distress for opposing parties.

18. Because Wolfenden habitually mischaracterized and distorted others' statements and actions, many fellow lawyers and judges would only communicate with Wolfenden in writing or in the course of recorded proceedings. As a result, normal communication essential to the efficient operation of the legal system was impossible in many of Wolfenden's cases.

19. Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants, witnesses, jurors, and the general public must have faith in the integrity and impartiality of our courts.

20. Wolfenden intentionally engaged in conduct that foreseeably undermined public faith in the legal system. Her unwarranted attacks on the basic integrity of the court system appear calculated to destroy confidence in the judicial process. She had some measure of success, in that people in the community asked other members of the bench and bar whether Wolfenden's allegations of corruption and malfeasance in the courthouse were true.

21. Wolfenden displayed abject disrespect for the judiciary and the judicial system in public forums, including open court with members of the public present. It is especially damaging to public perception of the legal system when an officer of the court publicly attacks the integrity of the system and demeans its participants.

22. Wolfenden's conduct habitually violated both the letter and the spirit of Rule 12 of the General Rules of Practice for the Superior and District Courts in North Carolina.

23. Wolfenden's baseless attacks on the integrity of judges caused embarrassment and potential harm to the judges' reputations. By consuming court time, her misconduct also interfered with judges' ability to carry out their duties to the people of this State.

24. Judges in District 15-B had to expend additional time and energy investigating the veracity of statements made by Wolfenden, writing letters in an effort to combat Wolfenden's mischaracterizations, and preparing extremely detailed orders in an effort to preempt Wolfenden's inevitable attacks on the integrity and validity of court proceedings.

25. Officers of the court must always be honest and forthright with the tribunal. It is entirely unacceptable for a lawyer to be anything less than completely candid with the court.

26. On multiple occasions, Wolfenden made false statements to the tribunal in violation of her fundamental obligation as an officer of the court.

27. Wolfenden gave deposition testimony in this case. During that deposition, she made false statements under oath. Specifically:

- a. Wolfenden falsely testified that Superior Court Judge Carl Fox: (i) instructed her to file motions to recuse all of the District Court judges from all of her cases, and (ii) stated he “didn’t doubt” that the Chief District Court Judge was seeking to have Wolfenden jailed. Judge Fox’s testimony on these matters, which this panel finds to be wholly credible, flatly contradicted Wolfenden’s statements under oath.
- b. Wolfenden falsely testified that after Wolfenden accused fellow lawyer Carol Holcomb of defaming her, Holcomb apologized and said she regretted making the statements. The testimony of attorney Bob Epting, which this panel found to be wholly credible, along with the letter he had written to Wolfenden on behalf of Holcomb, demonstrated that Wolfenden’s sworn statements about this incident were false.
- c. Wolfenden falsely testified that fellow lawyer Allison Grine was Wolfenden’s source of information that provided a factual basis for alleging that Chief District Court Judge Joseph M. Buckner used illegal drugs. In this disciplinary proceeding, Grine testified: “I have never had a conversation with you about Judge Buckner using drugs. I have never stated that Judge Buckner uses drugs or has used drugs. I have never stated that another person told me that Judge Buckner uses drugs, or has used drugs.” Grine’s testimony, which this panel found to be wholly credible, flatly contradicted Wolfenden’s statement under oath.

28. Wolfenden persistently accused those around her of unethical behavior and misconduct based on unreasonable and unsupported beliefs, speculation, supposition, and assumption. Wolfenden seems to believe that no other person involved in the courts of Orange County is honest, ethical, or trustworthy. Acting on this irrational belief, Wolfenden makes spurious accusations of misconduct and dishonesty against judges and opposing counsel as a regular practice. None of her allegations has been substantiated.

29. There is no indication that Wolfenden has ever taken ownership of her misconduct or its consequences. Up to and including the hearing in this case, she has not acknowledged violating the Rules of Professional Conduct, expressed remorse, or even recognized that any of her conduct was improper.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin.

Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel 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 present in this case:

- (a) intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (b) circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) elevation of Defendant's own interests above that of her clients;
- (d) negative impact of Defendant's actions on her client's and the public's perception of the profession;
- (e) negative impact of Defendant's actions on the administration of justice;
- (f) impairment of clients' ability to achieve the goals of the representation;
- (g) effect of Defendant's conduct on third parties;
- (h) acts of dishonesty, misrepresentation, deceit, or fabrication;
- (i) a dishonest or selfish motive in some of the instances of misconduct;
- (j) absence of prior disciplinary offenses;
- (k) a pattern of misconduct;
- (l) multiple offenses;
- (m) submission of false evidence, false statements, or other deceptive practices during the disciplinary process, including false statements made under oath during Defendant's deposition;
- (n) refusal to acknowledge the wrongful nature of her conduct;
- (o) vulnerability of Crews and Klein, who were among the victims of Defendant's misconduct;
- (p) As an additional factor pertinent to the consideration of the discipline to be imposed, the Panel found that the aggregate impact of Defendant's misconduct has been the demoralization of many participants in the judicial system in Orange County, including clients, court officials, members of the judiciary, and members of the bar.

2. By committing acts of dishonesty, Defendant has shown herself to be a person who lacks the character necessary to be a lawyer.

3. By committing acts of dishonesty, including making multiple false statements to the court, Defendant has shown herself to be a person who cannot be trusted to serve as an officer of the court.

4. By continuing to deny that she engaged in acts of dishonesty and by failing to acknowledge the wrongfulness of her conduct, Defendant has demonstrated that she has not been rehabilitated.

5. Some of Defendant's misconduct occurred in open court and Defendant intentionally publicized many of her baseless allegations against lawyers and judges. Defendant's misconduct thereby brought the legal profession into disrepute and undermined the public's confidence in the integrity of the justice system.

6. Wolfenden's misconduct caused significant potential harm to the reputations of lawyers and judges in Judicial District 15-B, and to public perception of the legal profession and the justice system.

7. Wolfenden's misconduct caused significant actual harm to her clients in the form of increased legal fees and delay in the resolution of their cases.

8. Wolfenden's misconduct caused significant harm to third parties, in that:

- (a) Opposing parties in her cases incurred additional unnecessary attorney's fees in responding to her frivolous allegations and claims;
- (b) Opposing counsel in her cases sometimes forgave the unnecessary attorney's fees accrued in responding to her frivolous allegations and claims, resulting in a financial loss to those lawyers;
- (c) Lawyers against whom Wolfenden filed frivolous claims (and/or those lawyers' insurance companies) have had to pay attorneys' fees and costs to defend against those claims and have had to devote their time to defending against the frivolous claims; and
- (d) Opposing counsel and opposing parties have experienced emotional distress as a result of Wolfenden's personal attacks and dilatory tactics.

9. 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 seriousness of Defendant's misconduct and 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.

10. 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 reasons set forth above and for the following reasons:

- (a) Defendant committed misdeeds 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) Defendant has neither acknowledged the wrongful nature of her conduct nor expressed remorse for the significant harm she has caused. Her conduct in connection with this disciplinary proceeding suggests that she does not believe she has any reason to feel remorseful. Accordingly, there is an overwhelming likelihood that, if she were licensed to practice law, Defendant would continue to engage in the pattern of misconduct that led to this disciplinary action. So long as Defendant has a license to practice law, there is no way to protect future potential clients from being manipulated or to protect the judicial system and the profession from deception and unwarranted attacks.
- (d) 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 she demonstrates the following: that she has reformed; that she understands her obligations to her clients, the public, the legal profession and the administration of justice; and that permitting her 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 of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the hearing panel hereby enters the following

ORDER OF DISCIPLINE


1. Defendant, Elizabeth J. Wolfenden, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender her 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 and fees of this proceeding as assessed by the Secretary of the North Carolina State Bar, including administrative fees, DHC costs, and costs of the transcription and depositions taken in this case as follows: court reporter costs; transcription costs; shipping, handling, and transmittal costs; and witness costs. Defendant must pay the costs and fees within 90 days of service upon her 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 29

day of July, 2010.



Sharon B. Alexander, Chair
Disciplinary Hearing Panel