



STATE OF NORTH CAROLINA

BEFORE
DISCIPLINARY HEARING COMMISSION
OF

WAKE COUNTY

THE NORTH CAROLINA STATE BAR
24 DHC 5

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

ANSWER

R. HAYES HOFER, III)
Defendant.)

DEFENDANT, R. Hayes Hofer, III, hereinafter "Defendant or a first person designation" answers the State Bar's complaint as follows:

PRELIMINARY STATEMENT

The State Bar's complaint filed on 14 February 2024, is a 24-page single-spaced document containing 198 paragraphs, with numerous subparagraphs, of combined factual and conclusory allegations. The State Bar's complaint seeks to have Defendant "[t]ransferred to disability inactive status upon a finding he is disabled within the definition of Rule .0103(19) or, in the alternative; Disciplinary action be taken against Defendant ... as the evidence on hearing may warrant." But pursuant to 27 NCAC 01B.0116 (c), the State Bar, "[h]as the burden of proving by *clear, cogent, and convincing evidence* that the defendant violated the Rules of Professional Conduct." The above-named Defendant respectfully contends that the above-named Plaintiff cannot carry this burden for the following reasons:

FIRST DEFENSE

The Defendant admits paragraphs 1-3 of the complaint. The remaining allegations of the complaint are denied,

SECOND DEFENSE

The complaint fails to state a claim which can be proven by *clear, cogent, and convincing evidence*.

THIRD DEFENSE

Certain allegations of the complaint contain unprovable, impertinent, or scandalous matter which must be stricken.

AFFIRMATIVE DEFENSE

The North Carolina State Bar, Plaintiff cannot prove the allegations contained in the complaint by *clear, cogent, and convincing evidence* that Defendant violated any of the provisions contained in N.C. Gen. Stat. §§ 84-23 and 84-28; or any of the Rules of Professional Conduct, as shown hereafter:

1. On 10 April 2023, a Consent Order was entered which purported to resolve “All Issues Between Plaintiff and Defendant” in the underlying equitable distribution case. It was entered after the parties had agreed, on or about 4 April 2023, to settle their claims and defenses in the equitable distribution case; and had further agreed that attorney Hofler would be absolved of all sanctions and charges of contempt. But, contrary to the agreed settlement, plaintiff’s attorney, Deborah Sandlin, inserted language which reserved for future determination of the sanctions and charges of contempt against attorney Hofler.

2. On 5 June 2023, another Order was signed and entered by Judge Jones. It was not a consent order but a final order that did absolve attorney Hofler from any and all sanctions, and any findings or motions filed by attorney Sandlin finding attorney Hofler in contempt. As recited in this order: (1) “Mr. Hofler does not owe any sanctions.” (2) “Plaintiff’s Motion for Additional Sanctions [against attorney Hofler] is denied.”; (3) Plaintiff’s Motion for contempt is denied.] The only condition imposed on attorney Hofler was that he, “[s]hall comply with all

recommendations made by the North Carolina State Bar.” It concluded: “This [Order] resolves ALL issues regarding this matter.” (emphasis the Court’s)

3. However, attorney Sandlin inserted into the findings of fact and conclusions of law of this final order, impertinent and scandalous allegations which were unsupported by any admissible evidence. Her insertions were inimical to Judge Jones’ and the parties’ intention to finally resolve “ALL issues regarding this matter.”

4. The 5 June 2023 order absolving attorney Hofler is conditioned only by the order’s last statement that Mr. Hofler, “[s]hall comply with all recommendations made by the North Carolina State Bar.” The State Bar Bar has never offered recommendations either at the grievance committee level or during the present DHC proceedings.

5. On 15 March 2023, Carmen Bannon, staff counsel for the State Bar Grievance Committee, conducted an interview of attorney Hofler. There, after a break for lunch, she explained that, “I will tell you I have never had a situation like this where a judge has said, ‘I am going to . . . defer any proceedings in this case pending some discussion with the State Bar,’” She continued, “This is not something that I have a protocol for or I have any expectations about how it goes . . . [B]ut I certainly did tell the judge we will . . . look into it and I will get back to you, . . . [a]nd so I anticipate that I will get back to Judge Jones and . . . tell him my thoughts about some of this. And I don’t have any sense of what he will do after that.” See, **Exhibit A**, a true copy of counsel Bannon’s interview on 15 March 2023 attached hereto and incorporated herein by reference.)¹

6. Counsel Bannon further explained, “I think that it is better for the litigants for this case to be decided and concluded and not suspended indefinitely while we’re dealing with . . . I would prefer to let this play out in the courts before we investigate or get involved in this matter.” She explained that her file, “[w]as

¹ This portion of the interview was transcribed by a certified court reporter from the State Bar’s recording of it. Attorney Hofler did not order the morning portion of the recorded interview.


actually opened in 2022.” (**Exhibit A**, pp 4-5.) Upon information and belief, it was likely based on a report furnished by attorney Sandlin.

7. Prior to the above orders being entered, attorney Sandlin had appeared *ex parte* in a court proceeding before Judge Jones with a proposed final equitable distribution order she wanted him to enter. Attorney Hofler had not been notified about this court proceeding. At the time that the courtroom recording device was turned on, attorney Sandlin was explaining to Judge Jones that her draft order was based only on her notes and certain exhibits, but not a transcript. She asked Judge Jones if he would enter it now, “or whenever you can.” Judge Jones asked her whether he had signed the proposed order, and she replied that he had not. Judge Jones asked the clerk to schedule a hearing where he would have the proposed order before him and could ask attorney Hofler whether he objected. He said, “That’s all I intend to do because -- because I’m not going to relitigate this case order here – yeah, that’s all I’m going to do.” (See, **Exhibit B**, a true copy of the two page transcript of the 5 August 2022 proceeding attached hereto, and incorporated herein by reference.)

SUMMARY

The Plaintiff cannot prove the allegations contained in the complaint that Defendant violated any of the provisions contained in N.C. Gen. Stat. §§ 84-23 **and** 84-28; or any of the Rules of Professional Conduct, by *clear, cogent, and convincing evidence*. See, e.g., 27 NCAC 01B .0116(c); *NCSB v. Talford*, 147 N.C. App. 481 , 632 (2003); and *In re Palmer*, 296 N.C. 683 (1979)

This the 3rd day of May 2024.



 R. Hayes Hofler, III
 NC State Bar No. 6211
 The Law Office of Hayes Hofler,
 P.A. 1007 Vickers Avenue
 Durham, NC 27707
hayeshofler@hoflerlaw.com

CERTIFICATE OF SERVICE

The undersigned attorney for defendants hereby certifies that on this day the foregoing Answer was served upon the following by email:

Kathryn H. Shields Deputy
Counsel Post Office Box 25908
Raleigh, NC 27611
kshields@ncbar.gov

G. Patrick Murphy
Deputy Counsel
Post Office Box 25908
Raleigh, NC 27611
pmurphy@ncbar.gov

This the 3rd day of May, 2024.

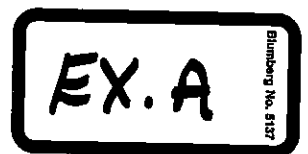


R. Hayes Hofter, III

Interview of R. Hayes Hofler III

by Carmen Bannon

Wednesday, March 15, 2023



Kay McGovern & Associates
4215 Juniper Street • Raleigh, NC 27612-3662
(919) 696-7099 Office/Mobile • kay.mcgovern@kaymcgovern.com

1 (Recording begins at 0:00:00 with interview in
2 progress.)

3 Mr. Hofler: --- for this person to pick me
4 up.

5 Ms. Bannon: Well, you can see out the front
6 window, so we -- are we recording again? Okay. All right.
7 So I think -- I think just given the time, I think we
8 should -- we should have the conversation that you started
9 just right -- right after we ---

10 Mr. Hofler: (interposing) Okay.

11 Ms. Bannon: --- went off -- went off ---

12 Mr. Hofler: (interposing) Yeah.

13 Ms. Bannon: --- the record, as it was, and
14 then I think -- I want to hear from you what -- what you
15 wanted to -- to tell me today. And then if I have specific
16 follow-up questions, I will send those to you in writing.
17 So ---

18 Mr. Hofler: (interposing) Well, I
19 (unintelligible) ---

20 Ms. Bannon: --- you had asked -- you had
21 asked me before ---

22 Mr. Hofler: (interposing) I've got folders
23 of stuff here to tell you today.

24 Ms. Bannon: Okay. But you had asked me
25 right -- right as we were breaking ---

1 Mr. Hofler: (interposing) Yeah.

2 Ms. Bannon: --- a minute ago sort of what --
3 what is -- what happens from here, what is the process, and
4 you know, what are you referring back to the judge. And I
5 will tell you I have never had a situation like this where a
6 judge has said "I am going to," you know, "defer any
7 proceedings in the case pending some discussion with the
8 State Bar," so ---

9 Mr. Hofler: (interposing) Right.

10 Ms. Bannon: --- this is not something that I
11 have a protocol for or I have any expectations about how it
12 goes.

13 Mr. Hofler: Okay.

14 Ms. Bannon: But I -- you know, I -- certainly
15 I did tell the judge we will -- "We will look into it and I
16 will get back to you," and so I anticipate that I will get
17 back to Judge Jones and, you know, tell him my thoughts
18 about some of this. And I don't have any sense of what he
19 will do after that.

20 I will also tell you that I am of the opinion
21 that it would be better for this case to go forward and be
22 decided before we address any potential issues related to
23 the Rules of Professional Conduct.

24 I think that it is better for the litigants for
25 the case to be decided and concluded and not suspended

1 indefinitely while we're dealing with -- I mean sort of like
2 what you said earlier about addressing sanctions after it's
3 over. It's just -- it's a better time address those issues,
4 and so ---

5 Mr. Hofler: (interposing) Okay.

6 Ms. Bannon: --- I don't -- you know, I don't
7 know what the judge's inclination would be, but that -- that
8 will probably be my recommendation, is that let the case
9 play out; let it be resolved.

10 And as I told you before, this file was actually
11 opened in 2022, but I -- based on the -- I think the recusal
12 request regarding Judge Hall and whether that was
13 meritorious or not -- and I looked at the case and I looked
14 at what was happening, and I said, you know, I -- I -- would
15 prefer to let this play out in the courts before we
16 investigate or get -- you know, get involved in ---

17 Mr. Hofler: (interposing) You -- you ---

18 Ms. Bannon: --- this matter.

19 Mr. Hofler: You told him that?

20 Ms. Bannon: I -- well, I told you that when
21 we first talked.

22 Mr. Hofler: Oh, right, right.

23 Ms. Bannon: And I -- that's the same
24 philosophy I think that I'm describing here, which is that
25 we don't want -- we don't want to be addressing whether

1 something is meritorious as a matter of professional
2 responsibility when it is still yet to be determined in the
3 courts.

4 Mr. Hofler: Right.

5 Ms. Bannon: So ---

6 Mr. Hofler: I -- I -- I mean yeah, I
7 appreciate your saying that.

8 Ms. Bannon: So that -- but that's -- I don't
9 have a real answer ---

10 Mr. Hofler: (interposing) I know.

11 Ms. Bannon: --- for your question ---

12 Mr. Hofler: (interposing) I know.

13 Ms. Bannon: --- because I've never done this.

14 Mr. Hofler: Okay. Well, let me -- let me
15 revise it, or let me ask it this way, that I was subpoenaed
16 by the chair of the Grievance Committee to appear at this
17 interview.

18 Ms. Bannon: Uh-huh.

19 Mr. Hofler: All right. So to me that
20 indicates that a decision is going to be made by the
21 Grievance Committee of where I -- whether I violated the
22 Rules of Professional Conduct. And so given that this is to
23 be determined by -- by the Grievance Committee ---

24 Ms. Bannon: (interposing) Well, let me. I'm
25 sorry to interrupt you, but that is -- that is one

1 possibility. It is also possible that the Court will decide
2 to make that determination.

3 Mr. Hofler: Decide to make what
4 determination?

5 Ms. Bannon: As to whether you violated the
6 Rules of Professional Conduct.

7 Mr. Hofler: So -- so the Grievance Committee
8 is going to determine whether I violated the Rules of
9 Professional Conduct and then report that back to the judge?

10 Ms. Bannon: The -- the Court has concurrent
11 jurisdiction at all times ----

12 Mr. Hofler: (interposing) Right.

13 Ms. Bannon: --- over that decision, so Judge
14 Hall -- I mean, sorry -- Judge Jones could decide that he
15 wishes to address that in the court regardless of the fact
16 that there's a pending grievance investigation. So it could
17 be addressed by either body. It could be addressed by the
18 Court or it could be addressed by the Grievance Committee.

19 Mr. Hofler: Okay, but the Grievance Committee
20 is going to -- is going to tell him whether I've violated
21 the Rules of Professional Conduct.

22 Ms. Bannon: No, that's not what I'm saying.
23 I'm saying the Grievance -- the Grievance Committee is the
24 body that, you know, empowers me to conduct investigations,
25 and so that's why the chair of the Grievance Committee, you

1 know, issued that subpoena, so I could conduct this
2 investigation.

3 Mr. Hofler: All right. So -- so are you --
4 are you saying, then, that it's up to you to -- to make
5 recommendations when I've been subpoenaed by the Grievance
6 Committee to do an interview? I don't understand it. I
7 mean if the Grievance Committee is going to make
8 determinations, I want an opportunity obviously to appear
9 before the Grievance Committee and ---

10 Ms. Bannon: (interposing) So the Grievance
11 Committee does not take live testimony. They -- they review
12 written materials, so when we get to that point we will
13 have -- well, if we get to the point where the Grievance
14 Committee is making that determination, they would have
15 mostly likely a transcript of this communication and then
16 whatever written back and forth we have.

17 And I think, you know, part of what I wanted to
18 do here was try to narrow some of these issues. So I mean
19 you will have an opportunity if this goes before the
20 Grievance Committee to address in writing any -- any of the
21 issues that are at least potentially rule violations.

22 Mr. Hofler: All right.

23 Ms. Bannon: We will do that. This is so
24 sprawling and complex that I was hoping that we could narrow
25 things down a little bit by talking about it at the outset.

1 So that -- that is -- that is one route that it could go.
2 You will have an opportunity to say whatever you want to say
3 in writing that will be presented to the Grievance
4 Committee.

5 However, it is -- it is not unprecedented for the
6 State Bar to be conducting a grievance investigation into
7 something and have a court decide that the Court is going to
8 address those same issues. And in that case the Grievance
9 Committee is going to defer to the Court. They're not going
10 to make some independent determination.

11 They will -- they will -- you know, we will say
12 we've done our investigation, but these matters are being
13 addressed by the Court, so we will just dismiss the
14 grievance. So there are -- you know, I can't tell you at
15 this stage of ---

16 Mr. Hofler: (interposing) Okay, but -- but
17 in the process -- I mean you're telling me, I think, that
18 you'll need to report to Judge Jones your feelings on
19 whether I violated the Rules of Professional Conduct; right?

20 Ms. Bannon: If he asks -- I mean I will -- if
21 he asks what my opinion is, I will tell him. I -- I
22 don't -- I don't know how else to -- to answer that. I mean
23 he hasn't -- he hasn't made any specific requests except "I
24 would like the State Bar to look into this."

25 But I believe, yes, that I need to report back to

1 him sooner than how long it may take for the Grievance
2 Committee to dispose of this.

3 Mr. Hofler: Well, you know, I haven't
4 completely been heard on all the issues in this very complex
5 case, and ---

6 Ms. Bannon: (interposing) Right, but ---

7 Mr. Hofler: --- and -- and -- so I -- so I
8 wouldn't want you reporting back based on an incomplete ---

9 Ms. Bannon: (interposing) Well ---

10 Mr. Hofler: --- you know, based on an
11 incomplete investigation ---

12 Ms. Bannon: (interposing) Let me be clear.

13 Mr. Hofler: --- that -- that "Okay, look,
14 Judge, we feel like there's something here, but we're going
15 to let you make a decision."

16 Ms. Bannon: Well, let me be clear. If a
17 court decides to make a determination regarding attorney
18 conduct, that -- that has its own entire process, which
19 includes notice and an opportunity to be ---

20 Mr. Hofler: (interposing) Yeah, but ---

21 Ms. Bannon: --- heard.

22 Mr. Hofler: But they want feedback from --
23 from you. The judge wants feedback from you and ---

24 Ms. Bannon: (interposing) I understand, but
25 if -- if based on whatever feedback I give the judge he

1 decides that this is something that will be addressed in the
2 court, the next step in the process would be that there
3 would be a show cause proceeding initiated in the court that
4 would set forth with specificity the allegations of alleged
5 rule violations, and you would have an opportunity in that
6 proceeding to respond.

7 Mr. Hofler: Before the Grievance Committee.

8 Ms. Bannon: No. I'm talking about if the
9 Court decides to address it.

10 Mr. Hofler: Okay, but ---

11 Ms. Bannon: So it's not that ---

12 Mr. Hofler: (interposing) All right, but ---

13 Ms. Bannon: --- the judge is going to make
14 any conclusion and determination based on anything I say.
15 That's not how this works. You would have due process if it
16 were addressed by the Court.

17 Mr. Hofler: Well, just from this interview,
18 I -- I get the impression that you think I did a number of
19 things wrong and that you may be prepared to tell him how
20 you feel about those things. And I haven't had a chance to
21 completely inform you of why I don't think those things were
22 wrong.

23 So I mean if you're not -- if the Grievance
24 Committee is not going to make a decision, I think you ought
25 to -- I mean I -- I think -- I mean he's -- he's addressing

1 these things to the Grievance Committee in -- in his very,
2 very specific order here.

3 Ms. Bannon: I don't believe he actually
4 references the Grievance Committee in that order. I think
5 he just said the State Bar, but okay.

6 Mr. Hofler: Well, it says the State Bar would
7 mean -- I mean what -- how else is the State Bar -- why
8 didn't he go to any -- why didn't he just (unintelligible)
9 and let the Court of Appeals decide or enter an decision on
10 the motion for new trial? I mean ---

11 Ms. Bannon: (interposing) I can't speak to
12 the judge's reasoning at all. I'm just telling you what
13 my -- you know, what my role is and what my experience is in
14 other cases where there is -- the judiciary has concerns
15 about misconduct.

16 Mr. Hofler: Yeah, but I thought you said
17 earlier you don't -- you don't really know what your role is
18 here.

19 Ms. Bannon: Well, my role is ---

20 Mr. Hofler: (interposing) You ---

21 Ms. Bannon: --- always the same. My role is
22 to take what is presented to me and to investigate to
23 determine whether there -- a lawyer has potentially violated
24 the Rules of Professional Conduct.

25 So what happens with that information may depend

1 on the posture of the case, like -- all I can do is do my
2 investigation and state either to the Grievance Committee or
3 sometimes to a judge "This is my analysis," "This is" -- you
4 know, "This is my recommendation," "This is my" -- you know,
5 and then somebody else makes that decision about what --
6 what happens next.

7 Mr. Hofler: But you're not on the Grievance
8 Committee.

9 Ms. Bannon: No.

10 Mr. Hofler: Correct? I mean ---

11 Ms. Bannon: (interposing) No, I'm ---

12 Mr. Hofler: --- I think when the judge said
13 he wanted to consult with the ---

14 Ms. Bannon: (interposing) Okay, well, I ---

15 Mr. Hofler: --- State Bar, he -- he -- I
16 think he's ---

17 Ms. Bannon: (interposing) I'm not going
18 to ---

19 Mr. Hofler: --- talking about grievances. I
20 think he is intending that somebody on the Grievance
21 Committee pass judgment on this.

22 Ms. Bannon: Okay. Well, I'm not -- there is
23 no point in us sitting here and arguing about what Judge
24 Jones is thinking because neither one of us knows. So I
25 mean I can answer your ---

1 Mr. Hofler: (interposing) I think it's
2 pretty obvious from that last order he entered.

3 Ms. Bannon: Okay. Well, I mean that's fine.
4 I'm just -- I'm trying to answer your questions about how
5 this works, how this procedurally works and what my role is.

6 Mr. Hofler: Okay. And so what I'm saying is
7 I want a full opportunity to present to you my position on
8 all these issues that he raises in his order.

9 Ms. Bannon: Okay. Well, start now.

10 (Brief pause.)

11 Mr. Hofler: Well, we're not going to be able
12 to finish them today. It could go all day, and what I'd
13 prefer to do is just give you all this in writing.

14 (Brief pause.)

15 Ms. Bannon: Okay. That's fine.

16 Mr. Hofler: Give me a real chance to -- I've
17 got it outlined, and I'd like before we proceed any further
18 to be given the opportunity to -- to bring my own defense as
19 it were together and -- and give you a complete statement.

20 Ms. Bannon: So in your mind, what are the
21 issues that you think you need to defend? I'm -- I'm trying
22 to understand what you think the issues are.

23 Mr. Hofler: Okay.

24 Ms. Bannon: Not -- not to give me your
25 details ---

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

SUSAN LYNN MOSCHOS,)
)
 Plaintiff,)
)
 v.) Durham County
) 19 CvD 1085
 STERGIOS MOSCHOS,)
)
 Defendant.)

* * * * *

TRANSCRIPT, VOLUME 1 OF 1

Pages 1 - 5

Friday, August 5, 2022

* * * * *

The Honorable Clayton J. Jones, Jr.

District Court Judge Presiding

Transcriptionist:

Kay K. McGovern, CVR-CM-HM
Kay McGovern & Associates
4215 Juniper Street
Raleigh, North Carolina 27612-3662
(919) 696-7099
kay.mcgovern@kaymcgovern.com

EX. B
Bundling No. 8137

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

Deborah Sandlin, Esquire
Sandlin Law Firm, P.A.
5617 Departure Drive, Suite 109
Raleigh, North Carolina 27616
(919) 850-9199
dsandlin@sandlinfamilylaw.com

P R O C E E D I N G S

9:47 a.m.

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(Recording starts at 9:47:54 a.m. with
proceedings in progress.)

MS. SANDLIN: But he asked me that day, and I said,
"No, I didn't order a transcript. I went by my notes, by the
exhibits, by what the judge said." "But obviously there were
things in the order the judge didn't say because you haven't
had anything to support your findings and conclusions."

So I let him know I didn't order a transcript the
day that -- within a couple of days of the last court date,
and he didn't order the transcript until probably the next
week, so ---

THE COURT: So what ---

MS. SANDLIN: --- if I could get the order entered
if -- you know, whenever you can, so ---

THE COURT: All right. Well, normally -- and have
I signed this order already?

MS. SANDLIN: No, huh-uh.

THE COURT: Put it back on the session. I mean if
they disagree I can just rule on whatever the issue, so I can
sign an order.

THE CLERK: Okay, so why don't we put it on -- your
next session is ---

THE COURT: (interposing) Yeah.

THE CLERK: --- August the 19th, so you're going to

1 be available on that date. And I can let Mr. Hayes know --
2 not Mr. Hayes -- Mr. Hofler know. And he's been informed
3 and (unintelligible) ---

4 THE COURT: (interposing) Oh, this is the one
5 with -- oh, I remember what this is now.

6 FEMALE VOICE: Yeah.

7 THE COURT: Yeah, this is not supposed to take a
8 lot of time. Yeah. Draft your order as ---

9 MS. SANDLIN: (interposing) I did. I've sent it
10 to Tuwana and ---

11 THE COURT: (interposing) Okay. And then I'll
12 have that order and then I'll just simply ask him what
13 objections does he have. And other than that, that's all ---

14 MS. SANDLIN: (interposing) On the 19th?

15 THE COURT: Yes. That's all I intend to do
16 because -- because I'm not going to relitigate this case
17 order here -- yeah, that's all I'm going to do. So yeah,
18 that will be fine.

19 MS. SANDLIN: All right.

20 THE COURT: All right? Thank you.

21 MS. SANDLIN: Thank you, Your Honor.

22 THE CLERK: I'll send Mr. Hofler an e-mail saying
23 that, Your Honor.

24 (Recording stops at 9:49:42 a.m.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Kay K. McGovern, do hereby certify that the foregoing pages 3 and 4 represent a true and accurate transcript of a digital recording provided by the attorney for the defendant of the proceedings held in Durham, North Carolina on Friday, August 5, 2022.

This, the 12th day of August, 2022.

Digitally signed by Kay K. McGovern, CVR-CM-HM
DN: cn=Kay K. McGovern, CVR-CM-HM, o, ou,
email=kay.mcgovern@kaymcgovern.com, c=US
Date: 2022.08.12 14:38:17 -0400'

Kay K. McGovern, CVR-CM
Transcriptionist



STATE OF NORTH CAROLINA

BEFORE
DISCIPLINARY HEARING COMMISSION
OF

WAKE COUNTY

THE NORTH CAROLINA STATE BAR
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