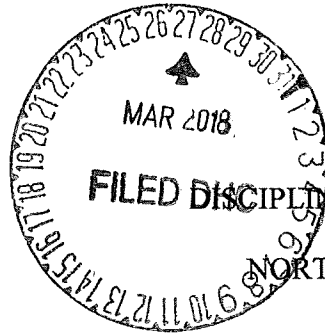


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
18 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

LARRY G. HOYLE, Attorney

Defendant.

**ANSWER AND
AFFIRMATIVE DEFENSES**

NOW COMES Defendant Larry G. Hoyle (“Hoyle”) and responds to the allegations of Plaintiff The North Carolina State Bar (“Plaintiff”) as follows.

1. Admitted.
2. Admitted.
3. Admitted.

FIRST CLAIM FOR RELIEF

4. The responses to the foregoing allegations are incorporated herein by reference.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted. Mr. Hoyle avers further that, every year since 1982, he and a group of friends have taken a Thursday-Sunday golf trip to Myrtle Beach on, usually, the second or third weekend in October – the precise date is generally determined by the group in September. Mr. Hoyle avers further that the existence and timing of this annual trip are well known to attorneys in the District Attorney’s Office, even to the extent that individual Assistant DA’s have on occasion reminded him of it when they calendar cases with him.

9. The allegation of this numbered paragraph paraphrases the content of a Rule of General Practice, the precise words of which speak for themselves. To the extent that the allegation of this paragraph differs from the meaning of the Rule, it is denied.

10. It is admitted that Mr. Hoyle’s Designation of Secure Leave was out of compliance with the written requirements of Rule 26. However, Mr. Hoyle avers further that as

a practical matter attorneys in the District Courts of Gaston County sometimes secure future leave based on their reasonable expectation that their schedules will be altered to accommodate the secure leave.

11. Admitted.

12. It is admitted that the statement referred to in this numbered paragraph was false when made, but it was made true and accurate upon Mr. Hoyle's obtaining a routine continuance in the Robinson case, as in fact happened. Mr. Hoyle avers further that he made the statement inadvertently and with no intent to deceive whatsoever; nor was anyone in fact deceived by the misstatement.

13. It is admitted that at the time he filed the Designation of Secure Leave, Mr. Hoyle knew the statement referred to in this numbered allegation was false, but it was made in full confidence that it would become true and accurate upon Mr. Hoyle's obtaining a routine continuance in the Robinson case, as in fact happened. Mr. Hoyle avers further that he made the statement with no intent to deceive whatever; nor was anyone in fact deceived by the statement.

14. Admitted.

15. It is admitted that the reason cited in the continuance motion was that Mr. Hoyle would be on secure leave on October 11, 2013. However, although he takes full responsibility for the motion, it is denied that Mr. Hoyle was the author of the document; nor did he sign it. Continuances in cases like Mr. Robinson's are so commonplace that the motion for such a continuance is routinely created by Mr. Hoyle's secretary, who signs it with a rubber stamp. That is what occurred in this instance. Mr. Hoyle avers further that if he had prepared the continuance motion himself he would have stated the reason for the continuance as "annual golf trip".

SECOND CLAIM FOR RELIEF

16. The responses to the foregoing allegations are incorporated herein by reference.

17. Admitted.

18. It is admitted on information and belief that Assistant Public Defender Holden Clark was administratively assigned to represent Gomez. However, Mr. Hoyle avers further that it is not unusual for many Gaston County defendants who are have been assigned counsel in the Public Defender's Office to retain private counsel to strike a failure to appear and for general defense representation. In such instances, the assigned Public Defender routinely withdraws from the representation. Moreover, Mr. Hoyle expressly denies that Public Defender Holden Clark represented Gomez in 14 CR060879 and 80 or even met him until many months after January 2016.

19. Admitted on information and belief.

20. Admitted on information and belief.

21. Admitted on information and belief.

22. Admitted on information and belief.

23. Admitted on information and belief.

24. Admitted on information and belief.

25. It is admitted that Mr. Dow contacted Mr. Hoyle regarding the representation of Mr. Gomez, whom he said was requesting the representation through his spouse, Karen Gomez. It is admitted on information and belief that this contact occurred after Mr. Dow's receipt of the Bond Forfeiture Notice. Except as expressly admitted herein, denied.

26. It is admitted that Dow advised Mr. Hoyle on behalf of Mr. Gomez that Mr. Gomez wished to retain him in 14 CR060879 and 80. It is further admitted that a natural and immediate task in the course of any such representation would be to obtain an Order striking the Order of Arrest and Order of Forfeiture, and that Mr. Hoyle was under a duty to Mr. Gomez to do so. Except as admitted herein, the allegations of this numbered paragraph are denied.

27. The allegation of this numbered paragraph quotes a portion of a North Carolina General Statute, which statute speaks for itself. To the extent that the meaning of the quoted language is modified by its context, the allegation is denied.

28. Admitted.

29. Admitted.

30. Admitted, except that it is expressly denied that Mr. Hoyle "had the form signed by an Assistant District Attorney"; rather, Mr. Hoyle presented the motion and proposed Order to the Assistant District Attorney for his or her independent concurrence, which was given.

31. Admitted. Mr. Hoyle avers further that the Order also released his client Mr. Gomez from the impending bond forfeiture, as well as the imminent possibility of his arrest and incarceration.

32. It is admitted that when Mr. Hoyle undertook the actions described in paragraphs 28-30 of this Answer, he had not spoken to Mr. Gomez. However, Mr. Hoyle avers that at such time he did speak with Karen Gomez, whom he reasonably believed was authorized to speak for Mr. Gomez. Ms. Gomez told Mr. Hoyle that Mr. Gomez wanted to retain Mr. Hoyle. In that conversation, Mr. Hoyle told Karen Gomez that he would have the orders of arrest and forfeiture of the bond stricken, and that Mr. Gomez should come to his office prepared to pay a retainer. Mr. Gomez never did so.

33. Denied.

34. Admitted.

35. Denied. Mr. Hoyle recalls leaving a phone message conveying the new court date to Mr. Gomez through either Karen Gomez or Mr. Dow.

36. Admitted.

AFFIRMATIVE DEFENSES

FIRST DEFENSE **(Failure to State a Claim)**

Plaintiffs' Complaint fails, in whole or in part, to state a claim upon which relief may be granted, and it must therefore be dismissed pursuant to Rule 12(b)(6), and the Defendant so moves.

SECOND DEFENSE **(Absence of Mens Rea)**

Mr. Hoyle's assertion in his 19 September 2013 Designation of Secure Leave that no action or proceeding in which he had entered an appearance had been scheduled for hearing, trial, or other proceeding during the period 10-11 October 2013 was made inadvertently and not knowingly. It was made with absolutely no intent to deceive or to mislead any tribunal, and no tribunal was deceived or misled by it. Under the circumstances, Mr. Hoyle's misstatement in securing leave should not be made the basis for discipline.

THIRD DEFENSE **(Truth of the Matter Asserted)**

Mr. Hoyle did, in fact, represent Mr. Gomez when he secured the striking of that client's orders for arrest and forfeiture in January 2016.

FOURTH DEFENSE
(Absence of Prejudice to the Administration of Justice)

Mr. Hoyle's actions as alleged in the Complaint had no adverse impact on the administration of justice, other than a routine delay in the resolution of the charges against Mr. Robinson and Mr. Gomez, all of which were ultimately adjudicated.

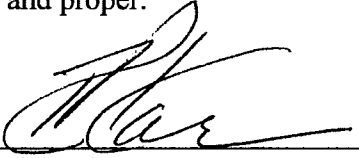
FIFTH DEFENSE
(Absence of Precedent)

Mr. Hoyle denies that he knowingly accepts clients referred to him by bail bondsmen, and expressly denies that he did so in the Gomez case. However, it bears on the issue of professional discipline that the records of the North Carolina State Bar disclose no instance of an attorney's public discipline for accepting such clients. Further, on information and belief, no North Carolina bail bondsman has ever been disciplined solely for a violation of N.C. Gen. Stat. § 58-71-95.

WHEREFORE, Defendant Hoyle prays the Court:

1. That the Complaint be dismissed with prejudice;
2. That Plaintiff be taxed with the costs of this action; and
3. For such other relief as the Commission deems just and proper.

This the 21st day of March, 2018.



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ATTORNEYS FOR DEFENDANT
LARRY G. HOYLE

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Answer electronically and by US Mail addressed to the following person(s) at the following address, which is the last address known to me:

Maria J. Brown, Deputy Counsel
Jennifer A. Porter, Deputy Counsel
North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611-5908

ATTORNEY FOR PLAINTIFF

This the 27 day of March, 2018.

A handwritten signature in black ink, appearing to read 'T. Richard Kane', is written over a horizontal line.

T. Richard Kane