

NORTH CAROLINA
LINCOLN COUNTY

LINCOLN COUNTY
FILED
DEC 12 2012
AT 12:40 O'CLOCK P.M.
BY *PR*
CLERK OF SUPERIOR COURT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

IN THE MATTER OF THE DISCIPLINE)

of)

ORDER OF DISCIPLINE

HUGH WOLFE JOHNSTON, Attorney,)

THIS MATTER came on for hearing on December 10 and 11, 2012 in Lincoln County Superior Court after an Order to Show Cause was served upon Hugh Wolfe Johnston ("Johnston") notifying him of the issues to be considered and the time and place of the hearing. A. Root Edmonson, Deputy Counsel of the North Carolina State Bar, appeared to prosecute this matter as ordered by the Court. Johnston appeared *pro se*. Based upon the evidence and arguments presented, the Court finds the following to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. On April 28, 2010, Hugh W. Johnston ("Johnston") filed a Complaint in the Western District of North Carolina on behalf of Neil Allran, Terry Spoerle, Leslie J. Dale and numerous other Plaintiffs against a number of Defendants including Wells Fargo ("the federal lawsuit.")

2. On May 27, 2010, Judge Graham C. Mullen ("Judge Mullen"), Senior Judge of the Western District of North Carolina, dismissed the federal lawsuit prior to the filing of any responsive pleadings.

3. On February 16, 2011, while his appeal of Judge Mullen's order was on appeal to the 4th Circuit Court of Appeals, Johnston filed a Complaint in Lincoln County Superior Court in an action entitled *Neil Allran, Terry Spoerle, Leslie Dale, et al., v. Graham C. Mullen* ("Lincoln Lawsuit I") although Johnston knew, or should have known, that Judge Graham C. Mullen was entitled to absolute immunity for the acts he was accused of in the Complaint.

4. The Complaint Johnston filed in Lincoln Lawsuit I accused Judge Mullen of violating the oath he took when he became a lawyer by dismissing the federal lawsuit in violation of the Plaintiffs' constitutional right to a jury trial which Johnston contended constituted the felony of perjury in violation of N.C.G.S. § 14-209.

5. Also on February 16, 2011, Johnston filed a Complaint in Lincoln County Superior Court in an action entitled *Neil Allran, Terry Spoerle, Leslie Dale, et al., v. Wells Fargo, Robinson, Bradshaw & Hinson, P A, Louis Bledsoe, III, and Adam Doerr* ("Lincoln

Lawsuit II”) seeking actual and punitive damages because the Defendants had filed a motion for extension of time to file a response in the federal lawsuit.

6. The Complaint Johnston filed in Lincoln Lawsuit II accused the lawyer Defendants of violating the oaths they took when they became lawyers by using their legal expertise to deny the Plaintiffs’ constitutional right to a jury trial which Johnson contended constituted the felony of perjury in violation of N.C.G.S. § 14-209.

7. On March 28, 2011, Judge Richard D. Boner heard the Defendants’ motion to dismiss Lincoln Lawsuit II and a motion for sanctions in Lincoln County Superior Court.

8. In an order filed on April 21, 2011, Judge Richard D. Boner dismissed Lincoln Lawsuit II and, in a separate order, sanctioned Johnston and the Plaintiffs in Lincoln Lawsuit II, jointly and severally, by ordering them to pay partial attorney fees to the Defendants in the amount of \$15,000.

9. Johnston appealed Judge Boner’s April 21, 2011 orders.

10. On February 7, 2012, in an unpublished opinion, the Court of Appeals affirmed Judge Boner’s April 21, 2011 orders.

11. On March 14, 2012, Johnston filed a notice of appeal of the Court of Appeals’ opinion to the Supreme Court of North Carolina claiming an appeal of right because the matter raised a substantial question under the Constitution of North Carolina.

12. On April 12, 2012, the Supreme Court dismissed the appeal filed by Johnston for lack of a substantial constitutional question.

13. On April 20, 2012, Johnston filed a motion in the Supreme Court of North Carolina asking the Supreme Court to initiate disciplinary measures against all Officers of the Court involved in the trial and appeal of Lincoln Lawsuit II, including opposing counsel, Judge Boner and the three judges on the North Carolina Court of Appeals who participated in the February 7, 2012 opinion.

14. The motion Johnston filed in the Supreme Court of North Carolina accused the lawyer Defendants, Judge Boner and the three judges on the North Carolina Court of Appeals who participated in the February 7, 2012 opinion of violating the oaths they took when they became lawyers by their actions that denied the Plaintiffs’ constitutional rights which Johnston contended constituted the felony of perjury in violation of N.C.G.S. § 14-209.

15. On May 15, 2012, knowing that the Court of Appeals had affirmed Judge Boner’s orders and that the Supreme Court of North Carolina had dismissed his appeal to that Court, Johnston filed a Complaint in Lincoln County Superior Court in an action entitled *Neil Allran, Terry Spoerle, Leslie Dale, et al., v. Robinson, Bradshaw & Hinson, PA, Martin Brackett, Jr., and Richard D. Boner* (“Lincoln Lawsuit III”) seeking actual and punitive damages against the Defendants based essentially upon the same contentions, that had been decided in Lincoln Lawsuit II and its appeal.

16. The Complaint Johnston filed in Lincoln Lawsuit III accused the lawyer Defendants, Judge Boner and others of violating the oaths they took when they became lawyers and judge by their actions that denied the Plaintiffs' constitutional rights which Johnston contended constituted the felonies of perjury in violation of N.C.G.S. § 14-209 and obstruction of justice in violation of N.C.G.S. § 14-221.2.

17. The Attorney General's office filed a motion to dismiss Lincoln Lawsuit III on behalf of Judge Boner based upon judicial immunity and Martin L. Brackett, Jr. ("Brackett") filed a motion to dismiss Lincoln Lawsuit III on behalf of the other Defendants and a motion for sanctions. Those three motions were noticed for hearing on September 17, 2012 in Lincoln County Superior Court.

18. On September 12, 2012, Johnston faxed a motion to amend his Complaint in Lincoln Lawsuit III and a proposed order granting the motion to the trial court administrator in Lincoln County with a cover memo asking her to file the motion and present the proposed order to the judge who was scheduled to preside at the September 17, 2012 session of civil court in Lincoln County. The motion contained a signed copy of a certificate of service showing that Johnston had served copies of the motion on the Attorney General and Brackett.

19. At the hearing on September 17, 2012, Johnston admitted that he had not sent the motion to amend or the proposed order he had attempted to have entered to the Attorney General or to Brackett as reflected in the certificate of service.

20. During the hearing on September 17, 2012, Johnston advised the presiding judge, Forest D. Bridges ("Judge Bridges"), that he had not met with or communicated with many of the persons named as Plaintiffs in the three Lincoln County lawsuits, and that most Plaintiffs had to rely on a website for information about the lawsuits.

21. There was nothing on the website that informed the Plaintiffs in Lincoln Lawsuit II that sanctions had been entered against them jointly and severally.

22. During the hearing on the motion for sanctions on September 17, 2012, Judge Bridges advised Johnston that he was, among other things, enjoined from filing any lawsuit, claim, grievance or request for disciplinary proceeding against any of the Defendants in Lincoln Lawsuits II and III in any court anywhere.

23. After Judge Bridges announced the injunction, Johnston responded to Judge Bridges that he understood that he could not file any more lawsuits against any of the Defendants in Lincoln Lawsuits II and III in any court anywhere.

24. On October 15, 2012, Brackett sent a proposed Sanctions Order Containing the injunction against Johnston filing further lawsuits against any of the Defendants in Lincoln Lawsuits II and III to Judge Bridges with a copy to Johnston.

25. On October 19, 2012, Judge Bridges signed the Sanctions Order prepared by Brackett, with one minor change, and it was filed in Lincoln County on October 25, 2012.

26. A copy of the filed Sanctions Order was mailed to Johnston on October 25, 2012.

27. On October 26, 2012, Johnston filed a motion in Gaston County Superior Court seeking 20 days from the issuance of Summons [sic] to file a Complaint in an action entitled *Neil Allran, Leslie Dale and #1 IN FREEDOM, LLC v. Roy Cooper, Walter Dalton, et al* that named 44 Defendants, including Judge Richard D. Boner, Robinson, Bradshaw & Hinson, and Brackett. Johnston issued summonses to each of the 44 Defendants and attempted to serve each of them with a copy of his motion and an order signed by an assistant Clerk of Superior Court extending the time to file a Complaint to November 15, 2012.

28. On November 15, 2012, Johnston filed a Complaint in Gaston County Superior Court naming Judge Richard D. Boner, Robinson, Bradshaw & Hinson, and Brackett, among others, as defendants.

29. The filing of the motion and summonses and the Complaint in Gaston County against Judge Richard D. Boner, Robinson, Bradshaw & Hinson, and Brackett was in direct violation of Judge Bridges' injunction announced in open court and as set out in the Sanctions Order.

BASED UPON the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Order to Show Cause was served upon Johnston and this Court has personal and subject matter jurisdiction.

2. Johnston'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 Johnston violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

(a) By filing Complaints, appeals and motions in Lincoln Lawsuits I, II and III that had no basis in law or fact, Johnston filed frivolous claims in violation of Rule 3.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(b) By falsely accusing others of felonious conduct based upon an alleged violation of an oath, Johnston engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); filed frivolous claims in violation of Rule 3.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(c) By signing a certificate of service that falsely claimed that he had served the Attorney General and Brackett with his motion to amend the Complaint in Lincoln Lawsuit III when he had not done so, Johnston engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);

(d) By sending a proposed order allowing his motion to amend his Complaint in Lincoln Lawsuit III to the trial court administrator and asking her to present it to the judge who was scheduled to preside at the September 17, 2012 session of civil court in Lincoln County when he had not given the opposing counsel any notice of his motion or proposed order, Johnston attempted to communicate *ex parte* with a judge when a copy of the written communication had not been furnished simultaneously to the other party in violation of Rule 3.5(a)(3)(B);

(e) By failing to meet with and get the consent of persons on whose behalf he filed Complaints in Lincoln Lawsuits I, II and III, Johnston failed to consult with and abide by the clients' decisions concerning the objectives of representation in violation of Rule 1.2(a); failed to reasonably consult with the clients about the means by which the clients' objectives were to be accomplished in violation of Rule 1.4(a)(2) and failed to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);

(f) By failing to notify his clients of his intent to appeal in Lincoln Lawsuits I and II and failing to notify his clients before filing the motion in the Supreme Court of North Carolina asking the Supreme Court to initiate disciplinary measures, Johnston failed to reasonably consult with his clients about the means by which the clients' objectives were to be accomplished in violation of Rule 1.4(a)(2) and failed to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);

(g) By failing to inform his clients of the \$15,000 in sanctions ordered against them jointly and severally with Johnston, Johnston failed to keep his clients reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);

(h) By filing the motion and summonses and Complaint in Gaston County Superior Court naming Judge Richard D. Boner, Robinson, Bradshaw & Hinson, and Brackett as defendants in direct violation of the Judge Bridges' injunction announced in open court and as set out in the Sanctions Order, Johnston knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c) 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 additional evidence and arguments presented at the hearing, the undersigned enters the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Although no prior disciplinary action has been taken against Johnston, the pattern of misconduct exemplified by the specific instances exemplified by this order shows a complete disregard for the integrity of the judicial system and the consequences of his actions to others.

2. Johnston intentionally engaged in conduct that foreseeably undermined the public's faith in the judicial system. His unwarranted attacks on the basic integrity of any judge who ruled against him undermines the public's confidence in the judicial process.

3. Johnston's baseless attacks on the integrity of judges caused embarrassment and potential harm to the judges' reputations.

4. Johnston 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 the public's perception of the legal system when an officer of the court argues with the Court and demeans its participants.

5. Johnston 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 by failing to yield gracefully to rulings of the Court.

6. By repeatedly filing lawsuits seeking the same relief that the appellate courts had found to be without merit, Johnston wasted the Courts' time and interfered with the Courts' ability to carry out their duties to the people of this State.

7. Johnston testified that he was committed to pursuing his unfounded cause, showing that the judicial system and the public need to be protected from him having the ability to bring more unfounded lawsuits and from doing further harm to the judicial system in North Carolina.

8. Johnston harmed his own clients by subjecting them to sanctions that he never informed them about.

BASED UPON the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, the Court hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. By making false allegations of felonious conduct on the part of judges and fellow lawyers who opposed his unfounded allegation brought in federal court, Lincoln and Gaston County Superior Courts and the North Carolina appellate courts, and by sending an *ex parte* communication to Judge Bridges with a false certificate of service, Johnston has shown himself to be a person who lacks the character necessary to be a lawyer.

2. Johnston's misconduct caused significant potential harm to the reputations of lawyers and judges, and to the public's perception of the legal profession and the justice system.

3. Johnston's misconduct caused significant potential harm to his clients by subjecting them to significant monetary and other sanctions.

4. This Court has considered lesser alternatives and finds that suspension of Johnston's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the seriousness of Johnston's misconduct and the gravity of the actual harm his 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 Johnston were permitted to continue to practicing law.

5. This Court 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) Johnston committed misdeeds including material misrepresentations and deceit. Misconduct involving misrepresentations and deceit are among the most serious offenses 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 Johnston committed and would send the wrong message to lawyers 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 his conduct nor expressed remorse for the significant harm he has caused. His conduct in connection with this disciplinary proceeding suggests that he does not believe he has done anything wrong and that he has no reason to feel remorseful. Accordingly, there is an overwhelming likelihood that, if he were licensed to practice law, Johnston would continue to engage in the pattern of misconduct that led to this disciplinary action. So long as Johnston has a license to practice law, there is no way to protect future potential clients from harm or to protect the judicial system and the profession from deception and unwarranted attacks.

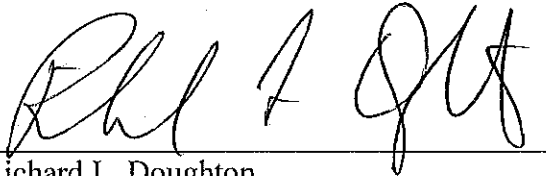
(d) The protection of the public, the legal profession and the administration of justice requires that Johnston not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, the legal profession and the administration of justice; and that permitting him 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, this Court hereby enters the following:

ORDER OF DISCIPLINE

1. Hugh Wolfe Johnston is hereby DISBARRED from the practice of law.
2. Johnston shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.
3. Johnston shall not practice law in North Carolina until his license is restored by the North Carolina State Bar pursuant to its provisions regarding reinstatement of disbarred lawyers.
4. Johnston shall comply with the wind down provisions of 27 N.C.A.C. 1B, Sec. .0124.
5. Before filing any action in any federal or state court on his own behalf, other than an appeal of this Order of Discipline or any order that may be entered in the companion contempt case before this Court, Johnston must accompany that filing with a sworn certificate from a lawyer licensed in North Carolina averring that the lawyer has reviewed the pleading, that the lawyer believes, after reasonable inquiry, that the allegations in the pleading are well grounded in fact and are warranted by existing law.

This the 12 day of December 2012.



Richard L. Doughton
Superior Court Judge Presiding