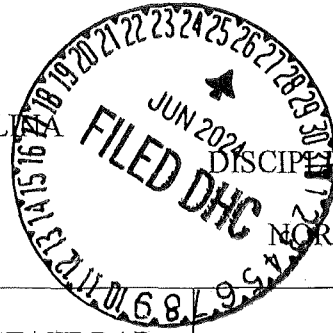


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 17

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

ORDER OF DISCIPLINE

PENNY K. BELL, Attorney,
Defendant

THIS MATTER came on for hearing on April 22-26, 2024, before a hearing panel of the Disciplinary Hearing Commission composed of Stephanie N. Davis, Chair, and members Maya E. Engle, and Kimberly W. Strach. The North Carolina State Bar was represented by Kelley A. DeAngelus, and G. Patrick Murphy. The Defendant was present and represented by Amy E. Richardson, Elisa J. Salmon, and Stephen W. Miller. Defendant was properly served with process and the matter came before the hearing panel with due notice to all parties.

Based on the record proper, the stipulations of the parties, the testimony and exhibits admitted and upon making credibility determinations of the witnesses who testified at the hearing, the Hearing Panel makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

State v. Bennett Remand Hearing

1. Plaintiff, the North Carolina State Bar (hereinafter "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 Discipline and Disability Rules of the North Carolina State Bar promulgated thereunder.

2. Defendant, Penny K. Bell ("Defendant"), was admitted to the North Carolina State Bar on December 7, 2001, 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, and the rules and regulations of The North Carolina State Bar and the Rules of Professional Conduct.

3. During the relevant times herein, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained an office in Clinton, Sampson County, North Carolina.

4. Defendant represented Corey Dion Bennett ("Bennett") in Sampson County Superior Court cases, *State v. Bennett*, 15 CRS53153-54, 15CRS53165, and 16CRS50156.

5. Assistant District Attorney Robert Thigpen (“Thigpen”) represented the State of North Carolina and prosecuted Bennett’s cases.

6. On March 16, 2017, a Sampson County Superior Court jury convicted Bennett of felony charges involving possession, manufacturing, and trafficking in methamphetamine.

7. Bennett appealed his convictions.

8. On appeal, the North Carolina Supreme Court remanded Bennett’s cases to Superior Court for a hearing on Bennett’s assignment of error that alleged the State of North Carolina violated the holding in *Batson v. Kentucky*, 476 U.S. 79 (1986), by the exercise of peremptory challenges against two prospective jurors. *State v. Bennett*, 374 N.C. 579, 843 S.E.2d 222, 2020 N.C. LEXIS 509, 2020 WL 3026213.

9. In the remand proceeding, Bennett was represented by attorneys Lisa Miles (“Miles”) and Sterling Rozear (“Rozear”). Thigpen represented the State of North Carolina.

10. In *Batson v. Kentucky*, 476 U.S. 79 (1986), the United States Supreme Court held that the use of peremptory challenges to remove a potential juror from the juror pool based on race violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

11. As counsel to Bennett in the remand proceeding, Miles believed the *Batson* analysis required the hearing court to consider historical evidence of racial discrimination by the prosecutor’s office or the individual prosecutor involved in the case.

12. To investigate the existence of any historical evidence and to prepare for the remand hearing, on October 22, 2020, Miles spoke with Defendant by telephone to inquire about any prior interactions she had with Thigpen and his office.

13. Defendant informed Miles that she had tried about twenty cases against Thigpen, and it was Thigpen’s practice to strike black jurors more frequently than non-black jurors, often using similar excuses as the reason for peremptorily challenging black jurors.

14. Miles asked Defendant to review her files for specific cases, which Defendant agreed to do.

15. Miles followed up the telephone conversation by sending Defendant a subpoena and email that covered Miles’ understanding of what Defendant had stated during the telephone conversation.

16. In part, Miles stated in her October 22, 2020 email: “As I understand from our conversation, you’ve tried at least 20 cases w/ this ADA. It has been his habit to strike Black jurors more frequently than non-black jurors, and often with similar excuses.” Defendant did not respond to Miles’ email.

17. On or about November 3, 2020, Miles had a telephone conversation with Defendant. At that time, Miles went over the questions for Defendant’s direct examination for purposes of establishing the prosecutor’s history of striking black jurors. These were the same

questions asked of Defendant in October 2020. Defendant provided the same answers as she had provided Miles in October 2020.

18. After their telephone conversation, Miles forwarded to Defendant by email a draft of her direct examination questions along with the answers Defendant provided. The email message asked Defendant to review the information to make sure Miles understood her answers correctly. At no time did Defendant indicate to Miles that the information she provided in her responses to Miles was incorrect or the result of guessing.

19. On November 4, 2020, Bennett's case came before Judge John Nobles, Jr., presiding in Sampson County Superior Court, for a hearing on the *Batson* claim remanded by the Supreme Court.

20. At the hearing, Defendant was called as a witness by Miles and affirmed to tell the truth.

21. The State Bar introduced the transcript of the *Batson* remand hearing as Plaintiff's Exhibit 17.

22. Prior to Defendant testifying, the hearing transcript establishes that Miles gave the court the following offer of proof:

"I expect Ms. Bell to testify that she's practiced here and practiced within this county at least ten years, that she has had about a hundred cases in which Mr. Thigpen was the prosecutor, that she has tried about 20 cases against Mr. Thigpen, that she has raised *Batson* objections in cases involving Mr. Thigpen, that Mr. Thigpen has a pattern and practice of striking black jurors at a higher rate than white jurors." Plaintiff's Exhibit 17, p. 37.

23. The offer of proof was information Miles had gathered from the Defendant and what Miles believed the Defendant would testify to. The Defendant was in the courtroom when Miles gave the offer of proof.

24. When called as a witness by Miles, Defendant testified, among other facts, that:

- a. Defendant had tried other cases against Thigpen, other than Bennett's case, in which she raised *Batson* objections;
- b. In those other cases, Thigpen offered excuses for the strikes that were the subject of *Batson* objections by Defendant;
- c. Thigpen's stated justifications for striking black jurors were similar in each case, which led Defendant to believe her *Batson* objections were meritorious;
- d. Defendant's *Batson* objections were not sustained;
- e. Defendant's *Batson* objections in other cases where Thigpen was the

prosecutor have not been the subject of appellate decisions because they resulted in favorable jury verdicts for her clients; and

- f. Defendant's experience with Thigpen's responses to her *Batson* objections was that Thigpen would claim that the struck juror had been involved in something else, for example, criminal conduct, that Thigpen knew about, and that Defendant used peremptory challenges against white jurors. Plaintiff's Exhibit 17, pp 40-42.

25. The facts testified to by Defendant in paragraph 24 above were material to the issues before the court in the remand hearing.

26. On cross-examination at the remand proceeding, the State of North Carolina established, among other facts, that the only cases Defendant tried against Thigpen as prosecutor involved the following defendants (with the approximate year the trial took place in brackets): T. Chevallier [2007]; M. Wright [2010]; M. Kerr [2011]; C. Hicks [2016]; Corey Dion Bennett [2017]; J. Rouse [2018]; P. Bishop [2018]; and, R. Carr [2020].

27. In the cases Defendant tried with Thigpen as prosecutor, only two involved *Batson* objections: Corey Dion Bennett (the subject of the remand hearing) and R. Carr. In R. Carr's case, Thigpen made a *Batson* objection against Defendant.

28. Based on Defendant's direct testimony, Judge Nobles stated on the record that he "got the impression, from [Defendant's] direct testimony, that [Defendant] had run into this many times before and made *Batson* challenges." Plaintiff's Exhibit 17, p. 47.

29. Contrary to Defendant's testimony on direct examination, the State's cross-examination established that Defendant and Thigpen only tried eight jury trials together, and only two *Batson* objections were made in those eight cases, one by Defendant (in Bennett's case) and one by Thigpen objecting to Defendant's use of peremptory challenge(s).

30. Judge Nobles noted that Defendant's testimony during cross-examination contradicted her testimony offered on direct, stating:

"...the main statements that were made in this matter were not true. There was no basis. ...[b]ut you've got a problem when you lead the court to believe something and it's just not the case. That wasn't even close. One trial, this one." Plaintiff's Exhibit 17, p. 78.

31. Following the court's statement in paragraph 30, Miles agreed with the court about the impression presented by Defendant's direct testimony stating: "That was the impression I was under as well, Your Honor."

32. Judge Nobels' order overruling Bennett's objections to the State's peremptory challenges in his case was introduced by the State Bar as Plaintiff's Exhibit 20.

33. In the Court's order denying Bennett's *Batson* claim, Judge Nobles found, among other facts, that Defendant's direct testimony that she had made *Batson* objections in other cases

with Thigpen, that Thigpen had a history of having multiple *Batson* objections made in his trials, and that in each case he gave similar, vague explanations when required to explain his peremptory challenges, was not true. Plaintiff's Exhibit 20, ¶ 50.

34. During the State Bar's investigation of Defendant's conduct, it asked Defendant to identify any other cases she tried with Thigpen, other than Bennett's case, where she raised a *Batson* objection. Plaintiff's Exhibit 7, p 2.

35. In response to the State Bar's request, Defendant stated, "In the review of my records, I have not been able to locate any other cases that I raised the *Batson* motion with Mr. Thigpen."

36. The facts testified to by Defendant in paragraph 24 were false.

37. Defendant's testimony took place in a remand hearing ordered by the North Carolina Supreme Court concerning an alleged violation of the holding in *Batson*. The significance of the proceeding and importance of giving accurate and truthful testimony at the hearing was clear to Defendant. When called to testify, Defendant affirmed to give truthful testimony.

38. Conduct on the part of a lawyer involving dishonesty, breach of trust and serious interference with the administration of justice reflects adversely on the lawyer's fitness as a lawyer.

39. Defendant's false testimony in a *Batson* remand hearing, after affirming to give truthful testimony, was dishonest conduct that also interfered with the administration of justice and reflects adversely on Defendant's fitness as a lawyer.

Ex Parte Child Custody Motion in 11CVD892 (Sampson County)

40. On or about November 1, 2019, Y.G. contacted Defendant's law firm seeking assistance to obtain legal custody of her minor child, S.N.S.

41. At the time Y.G. contacted Defendant's law firm, Y.G.'s mother had legal custody of S.N.S. since at least October 10, 2012, pursuant to a custody order of the Sampson County District Court.

42. When Y.G. contacted Defendant's law firm on November 1, 2019, she spoke with Defendant's legal assistant Charlotte Gerald ("Gerald") who took notes of that conversation.

43. On or about November 14, 2019, Defendant met with Y.G. in person at Defendant's office.

44. At that meeting Y.G. filled out sections of Defendant's client intake form. Defendant also took notes of her meeting with Y.G.

45. Gerald's notes from her November 1, 2019, conversation with Y.G., Defendant's notes of her conversation with Y.G., and Y.G.'s client intake form were all maintained in Y.G.'s client file. Plaintiff's Exhibit 35, Defendant's client file for Y.G.

46. During Y.G.'s phone call with Gerald on November 1, 2019, Gerald wrote, "Monday my mom took my daughter out of the state on 10/31/19." Plaintiff's Ex. 35, p. 80.

47. On the client intake form, Y.G. wrote, "DSS was present and made [S.N.S.] go [with the legal guardian] after [S.N.S.] screaming and yelling not to go." Plaintiff's Ex. 35, pp. 78-79.

48. In October 2019, Sampson County DSS did a safety assessment related to S.N.S. residing with Y.G. in Sampson County. Plaintiff's Exhibit 49, March 22, 2024 Yanet Gardella Deposition Transcript, p. 19.

49. Yanet Gardella performed the safety assessment for Sampson County DSS. Plaintiff's Exhibit 49, p. 19.

50. DSS records of Gardella's investigation documented that on October 31, 2019, S.N.S.'s legal guardian, Y.G.'s mother, regained custody of S.N.S. and took her to Jacksonville, Florida. Sampson County DSS did not make any assessment or finding that S.N.S.'s legal guardian should only have supervised contact with S.N.S. Plaintiff's Exhibit 49, p. 25

51. On December 4, 2019, at approximately 4:00 p.m., Y.G. took S.N.S. from where S.N.S. was enrolled in school in Duval County, Florida, and brought S.N.S. to reside with Y.G. in Sampson County, North Carolina, without legal justification or notice to S.N.S.'s legal guardian.

52. On December 5, 2019, an arrest warrant was issued for Y.G. by Florida authorities based on Y.G.'s interference with a custody order on December 4, 2019.

53. On December 6, 2019, Defendant appeared *ex parte* before District Court Judge William B. Sutton seeking an Emergency Custody Order on behalf of Y.G.

54. Defendant presented an *ex parte* Emergency Custody Motion and a corresponding proposed order to Judge William B. Sutton.

55. Defendant made the following statements in the *ex parte* Emergency Custody Motion that she drafted:

- a. "That since June 2019, the minor child has resided with her mother, the Defendant [Y.G.];" and,
- b. "That the Sampson County Department of Social Services has recommended that the Plaintiff [Y.G.'s mother] only have supervised contact with the minor child."

56. Defendant signed the *ex parte* Emergency Custody Motion certifying that she had read the motion and that to the best of her knowledge, information, and belief formed after reasonable inquiry the motion was well grounded in fact.

57. Defendant attached as Exhibit 1 to Defendant's *ex parte* Emergency Custody Motion pages one through five of a North Carolina Safety Assessment form DSS-5231 (Rev.

01/2017).

58. In paragraph 4(g) of the proposed custody order that she drafted and presented to Judge Sutton, Defendant cited to Exhibit 1 of her *ex parte* Emergency Custody Motion as the source for her statement “[t]hat the Sampson County Department of Social Services has recommended that the Plaintiff [Y.G.'s mother] only have supervised contact with the minor child.”

59. There is no evidence in Exhibit 1 of Defendant’s *ex parte* Emergency Custody Motion that supports Defendant’s assertion “[t]hat the Sampson County Department of Social Services has recommended that the Plaintiff [Y.G.'s mother] only have supervised contact with the minor child.”

60. Y.G. verified Defendant’s *ex parte* Emergency Custody Motion after being duly sworn.

61. The statements that Defendant presented to the Court as detailed above in paragraphs 55(a) and 55(b) were false.

62. Defendant knew at the time she signed the motion that the statements presented to the Court as detailed in paragraphs 55(a) and 55(b) were false.

63. The statements presented to the Court in above paragraphs 55(a) and 55(b) were material to the *ex parte* Emergency Custody Motion being considered by Judge Sutton.

64. Based in part upon Defendant’s false statements in the *ex parte* Emergency Custody Motion, Judge Sutton granted Defendant’s motion, signed Defendant’s proposed order as written, and awarded emergency temporary custody of S.N.S. to Y.G. on December 6, 2019.

65. Defendant filed the *ex parte* Emergency Custody Motion and the granted Temporary Custody Order on December 6, 2019 in Sampson County File 11CVD892.

66. On or about December 12, 2019, Judge Sutton was contacted by a United States Marshal and learned that an arrest warrant had been issued for Y.G. in Duval County, Florida, for felony interference with child custody.

67. On December 13, 2019, Judge Sutton rescinded his December 6, 2019 order in 11CVD892 *sua sponte*. In the rescission order, Judge Sutton made the following finding of fact:

- a. “That the Court was intentionally misled into believing that the child had been in North Carolina for the last 6 months as stated in the Emergency *Ex parte* [sic] Order.”

68. Defendant’s dishonest conduct of knowingly presenting false statements of material fact to the court in an *ex parte* motion as described in paragraphs 55(a) and 55(b), reflects adversely on Defendant’s fitness as a lawyer.

69. Defendant was informed by Duval County law enforcement that Y.G. had an arrest

warrant out of Duval County, Florida, for felony interference with child custody.

70. At the time Defendant presented the emergency custody motion to the court, she knew that the statements in above paragraphs 55(a) and 55(b) were false statements of material fact.

71. On February 6, 2023, Defendant accepted service of a Letter of Notice for grievance file 23G0142 that alleged misconduct by Defendant in drafting and presenting the *ex parte* motion for emergency custody to Judge Sutton. The Letter of Notice notified Defendant that pursuant to 27 N.C. Admin. Code § 1B.0112(c) she was required to provide a full and fair disclosure of all the facts and circumstances that pertained to the alleged misconduct.

72. In Defendant's February 27, 2023, response to grievance 23G0142, Defendant stated that she met with Y.G. and S.N.S. in person at her law office on November 14, 2019, and spoke with them separately. Plaintiff's Exhibit 34, Defendant's February 27, 2023 Response to Letter of Notice and Substance of Grievance (23G0142) with attachments.

73. There is no credible evidence that Defendant met with S.N.S. prior to November 1, 2019.

74. There is no credible evidence that S.N.S. was in Y.G.'s care and/or custody from October 31, 2019, through December 4, 2019.

75. Contrary to Defendant's assertion, S.N.S. had been removed from North Carolina by her legal guardian on October 31, 2019, and remained outside of North Carolina until December 4, 2019. Plaintiff's Exhibit 49, March 22, 2024 Yanet Gardella Deposition Transcript, pp. 84 and 85.

76. Defendant's statement to the State Bar that she had met with S.N.S. in person in her office on November 14, 2019, was material to the State Bar's investigation and was false and misleading. Plaintiff's Exhibit 34.

77. Defendant knew at the time that she made the statement that she met with S.N.S. in person in her office on November 14, 2019, that her statement was false and misleading.

78. Making a false and misleading material statement of fact to the State Bar during the grievance investigation that she met with S.N.S. in person in her office on November 14, 2019, reflects adversely on her fitness as a lawyer.

79. Defendant also stated in her February 27, 2023 response that although she recalled speaking with a law enforcement officer at some point, law enforcement officers never informed her that Y.G. had an arrest warrant with nationwide extradition status out of Duval County, Florida for felony interference with child custody.

80. Thomas Christopher Volz, former detective with the Duval County School Police, informed Defendant that Y.G. had a warrant for arrest for felony interference with child custody out of Duval County, Florida.

81. On December 10, 2019, Defendant received an email from Matthew S. Riegel (“Riegel”), of the Duval County School Police, regarding Y.G. in which he provided his email address per her request. Defendant’s Exhibit 26, December 10, 2019 email from Matthew S. Riegel to Amber@duvalschools.com.

82. On December 12, 2019, Assistant District Attorney Jennifer L. Barnes received an email from Riegel that Defendant “was informed of the warrant during a telephone conversation at approx. [sic] 4:00 p.m. on 12/05/2019.” Plaintiff’s Exhibit 44, December 12, 2019 Email at 4:03 p.m. from Duval School Police to Jennifer Barnes.

83. Defendant’s knowledge of the arrest warrant issued on December 5, 2019, was material and important to the State Bar’s grievance investigation of statements Defendant made in the *ex parte* motion.

84. Defendant’s statement that law enforcement never informed her about Y.G.’s arrest warrant issued from Duval County, Florida, was material to the State Bar’s investigation and was false.

85. Defendant knew at the time she stated that although she recalled speaking with a law enforcement officer at some point, law enforcement officers never informed her that Y.G. had an arrest warrant out of Duval County, Florida, for felony interference with child custody that her statement was false.

86. Making a false and misleading material statement of fact to the State Bar, as stated in paragraph 85, reflects adversely on her fitness as a lawyer.

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Penny K. Bell, and the subject matter.

2. Defendant’s conduct as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that Defendant had other cases against Thigpen, other than Bennett’s case, in which she raised *Batson* objections, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- b. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that in other cases she tried against Thigpen, Thigpen offered

excuses for the strikes that were the subject of her *Batson* objections, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- c. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that there were similarities in Thigpen's stated justifications for striking black jurors that led Defendant to believe her *Batson* objections were meritorious, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- d. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that her *Batson* objections made in trials against Thigpen were not sustained, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- e. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that Defendant's *Batson* objections in other trials against Thigpen have not been the subject of appellate decisions because they resulted in favorable jury verdicts for her clients, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- f. By testifying at the *State v. Bennett* November 4, 2020 *Batson* remand hearing that Defendant's experience with Thigpen's responses to her *Batson* objections was that Thigpen would claim that the struck juror had been involved in something else, for example, criminal conduct, that Thigpen knew about, and that Defendant used peremptory challenges against white jurors, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- g. By falsely stating in the verified December 6, 2019 *ex parte* Motion for

Emergency Custody in Sampson County File 11CVD892 “[t]hat since June, 2019, the minor child has resided with her mother, the Defendant [Y.G.]”, and that “the Sampson County Department of Social Services has recommended that the Plaintiff [Y.G.'s mother] only have supervised contact with the minor child,” Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c);

- h. By falsely stating to the North Carolina State Bar that she met with S.N.S. in person in her office, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c); and,
- i. By falsely stating to the North Carolina State Bar that law enforcement never informed her that Y.G. had an arrest warrant with nationwide extradition status out of Duval County, Florida, for felony interference with child custody, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on her fitness as a lawyer in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the stipulated facts, and the evidence presented at the hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence additional facts as follows:

FINDINGS OF FACT REGARDING DISCIPLINE

- 1. The findings of fact in paragraphs 1-86 above are reincorporated as if set forth herein.
- 2. Defendant is an experienced attorney, having been licensed to practice law in North Carolina since 2001.
- 3. Defendant has a good reputation in her legal community.
- 4. Defendant has the following prior discipline:
 - a) On May 18, 2011, in grievance file 10G1265, Defendant was issued an Admonition for violating Rule 1.3 by failing to appear in court on behalf of a client and violating Rule 1.4(a)(3)(4) for failing to communicate with her client about the status of his case; and
 - b) On December 17, 2012, in grievance file 11G0757, Defendant was issued an Admonition for violating Rule 1.5(f) by failing to participate and respond to the State Bar’s Fee Dispute Resolution Program.

5. On November 9, 2021, Defendant was issued a Letter of Warning in grievance file 21G0340 for failing to appear at her client's hearing and failing to communicate with that client.

6. On December 11, 2002, Defendant pleaded guilty to a class 1 misdemeanor, criminal contempt, in case number 02CRS005363 which was converted to a prayer for judgment continued upon her payment of costs in the action.

7. Throughout the grievance process and these proceedings before the Disciplinary Hearing Commission, Defendant has refused to acknowledge the wrongful nature of her conduct.

8. Defendant has engaged in a pattern of dishonesty, misrepresentation, deceit, or fabrication in two separate legal matters, on behalf of two separate clients, before the judicial system.

9. As Judge Nobles discussed in his testimony, the courts rely on the truthfulness and honesty of members of the Bar who appear before the court. Lawyers are officers of the court: "Officer of the court is status. It's somebody that [the] Court can count on to present the truth. It's someone that the court doesn't really have any business questioning when they make a direct statement to the Court."

10. When Defendant testified on direct examination, as an officer of the court, Judge Nobles believed everything Defendant said.

11. When cross-examination demonstrated that Defendant's direct testimony about her prior experience with Thigpen and *Batson* objections was not true, Judge Nobles stopped the proceeding to address Defendant's misleading and untruthful testimony. Judge Nobles was "actually appalled, and of course the credibility went to zero."

12. As Judge Nobles concisely observed in his testimony, without Thigpen's "cross examination, justice would not have prevailed in this case. You know what would have happened; I would have sent this thing back to the people who tried it."

13. An attorney's honesty with the court is a bedrock of the system of justice. The orderly and efficient administration of justice is undermined when attorneys are not forthright and truthful with the court. When attorneys are dishonest with the court, like Defendant was in this case, there is significant harm and potential significant harm to the legal profession, the public's perception of the profession, the administration of justice, as well as the potential for significant harm to clients.

14. By fabricating personal observations about *Batson* objections she raised in trial against Mr. Thigpen that never happened, and testifying about those fabrications in the *State v. Bennett* remand hearing, Defendant significantly undermined the foundation of honesty and trustworthiness of our judicial system and the legal profession and created the potential for significant harm to the legal profession, the public's perception of the profession, the administration of justice, and clients.

15. Without Thigpen's cross examination, Defendant's fabricated testimony would have been evidentiary support for Judge Nobles and the North Carolina Supreme Court to grant

Bennett a new trial, a result that would cause significant harm and potential significant harm to the administration of justice, the legal profession, and the public's perception of the legal profession because there was no *Batson* violation in Bennett's trial, and he would likely have received a new trial. Likewise, the public record would falsely show that a State prosecutor had intentionally used peremptory challenges to remove potential jurors on the basis of the juror's race, conduct that would cause significant harm to the legal profession and the public's perception of the profession.

16. Defendant had discussed with Miles the importance of developing available historical evidence of racial discrimination by the prosecutor's office or the individual prosecutor involved in the case. Miles reviewed with Defendant the information Defendant provided to establish historical discrimination to ensure Miles was clear about the information Defendant was providing about Thigpen. Defendant understood the significance of the information she provided to Miles and it was foreseeable to Defendant that her false testimony in *State v. Bennett* could cause potential significant harm to the legal profession, the public's perception of the profession, the administration of justice, and to clients.

17. By submitting false statements to the court, *ex parte*, in Y.G.'s Child Custody Motion in 11CVD892 (Sampson County) that her client's child had been residing with the client since June 2019, and that Sampson County Department of Social Services recommended that the child's legal guardian only have supervised contact with the child, Defendant significantly undermined the foundation of honesty and trustworthiness of our judicial system and the legal profession and caused significant harm and potential significant harm to the legal profession, the public's perception of the profession, and the administration of justice, as well as the potential for significant harm to clients.

18. Readily available information in Y.G.'s client file demonstrated that statements made in the *ex parte* Custody Motion were not true. Upon being contacted by a United States Marshal, Judge Sutton immediately rescinded the Order granting Y.G. temporary custody. It was foreseeable that Defendant's false statements in her *ex parte* Child Custody Motion in 11CVD892 (Sampson County) could cause significant harm to the legal profession, the public's perception of the profession, the administration of justice, and to Defendant's client.

19. The State Bar is entrusted with the privilege of the regulation of the profession and relies upon the members of the Bar to participate in the profession's self-regulation honestly and with integrity.

20. Defendant's false statements to the State Bar during the grievance investigation caused significant harm to the administration of justice by presenting additional issues for the State Bar to investigate and ascertain the accurate facts, and caused potential significant harm to the profession and administration of justice by creating the risk that the State Bar would be misled in its investigation.

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all the different forms of discipline available to it and has considered all the factors enumerated in 27 N.C. Admin. Code § 1B.0116(f).

2. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code § 1B.0116(f)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- a) Factor (B) intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b) Factor (C) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c) Factor (F) negative impact of the defendant's actions on the administration of justice; and,
- d) Factor (I) acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code § 1B.0116(f)(2), which require consideration of disbarment, are present in this case:

- a) Factor (A) acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The Hearing Panel concludes that the following factors from 27 N.C. Admin. Code § 1B.0116(f)(3), which are to be considered in all cases, are present in this case:

- a) Factor (A) prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
- b) Factor (F) a pattern of misconduct;
- c) Factor (G) multiple offenses;
- d) Factor (N) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- e) Factor (O) refusal to acknowledge wrongful nature of conduct;
- f) Factor (Q) defendant's character or reputation;
- g) Factor (S) degree of experience in the law; and,
- h) Factor (T) issuance of a letter of warning to the defendant within the three years immediately preceding the filing of the complaint.

5. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm and potential harm to the public, clients, the administration of justice, and the profession in the present case.

6. In light of Defendant's repeated acts of dishonesty and the significant harm to the legal profession and the administration of justice resulting from Defendant's conduct, the Hearing Panel concludes that no discipline short of suspension of Defendant's law license will adequately

acknowledge the seriousness of the offense Defendant committed and send the proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings and Conclusions Regarding Discipline, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Penny K. Bell, is hereby suspended from the practice of law for three years, effective 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than sixty (60) days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code §1B.0128 (“Obligations of Disbarred or Suspended Attorneys”). As provided in § 1B.0128(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days after the effective date of this order, certifying she complied with the wind down rule.

4. The administrative fees and costs of this action, including those associated with all depositions in this matter, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon her of the statement of costs by the Secretary.

5. Within 30 days of service of this order, Defendant shall provide the State Bar’s Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant.

6. Defendant shall promptly return client files in her possession, custody, or control to clients within five days after receiving a client’s request for the file. Defendant will be deemed to have received a client’s request for his or her file three days after the date the request is sent if the request is sent to the address Defendant provides to the State Bar pursuant to paragraph 5 above.

7. Defendant shall respond to all communications from the State Bar within 30 days of receipt or by the deadline stated in the communication, whichever is sooner.

8. Defendant shall keep the State Bar Membership Department advised of Defendant’s current physical address, telephone number, and email address and shall notify the State Bar within 10 days of any change during the period of suspension.

9. Defendant shall not violate the Rules of Professional Conduct, the law of the United States, or the laws of any other state or local government during the period of suspension.

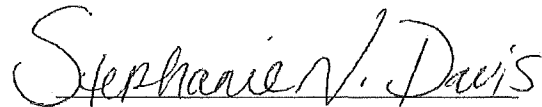
10. After serving one year of active suspension, Defendant’s remaining two years of suspension may be stayed by filing a petition with the Secretary of the North Carolina State Bar pursuant to 27 N.C. Admin. Code §1B.0118(c) demonstrating by clear, cogent, and convincing evidence that Defendant has complied with the conditions in above paragraphs 2 through 9 of this

Order of Discipline and the provisions for reinstatement listed in 27 N.C. Admin. Code §1B.0129(b) of the North Carolina State Bar Discipline & Disability Rules.

11. If Defendant does not seek a stay of the suspension of her law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0129(b) before seeking reinstatement of her license to practice law, and must provide in her petition for reinstatement clear, cogent, and convincing evidence showing her compliance therewith.

12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to §§ 1B.0118 and 1B.0129(b) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the suspension, any stay thereof, and until all conditions in above paragraphs 2 through 9 set forth above are satisfied.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this the 25th day of JUNE, 2024.



Stephanie N. Davis
Hearing Panel, Chair