

NORTH CAROLINA

WAKE COUNTY

SEP 9 1991

7016

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 7

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

DOUGLAS E. BRAFFORD, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on August 23 and 24, 1991 before a hearing committee of the Disciplinary Hearing Commission composed of W. Harold Mitchell, Chairman, Robert C. Bryan and Donald L. Osborne; with Douglas E. Brafford appearing pro se and A. Root Edmonson and R. David Henderson appearing for the North Carolina State Bar; and based upon the pleadings, the Stipulation on Prehearing Conference, the exhibits admitted into evidence and the testimony of the witnesses, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Douglas E. Brafford, was admitted to the North Carolina State Bar on September 21, 1976, and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Matthews, Mecklenburg County, North Carolina.

4. Defendant employed Janice Tilley (Tilley) as a secretary in his law office on or about April 27, 1987. At the time, Tilley was pregnant with the child of Tommy Sherrill. On August 14, 1987, Tilley stopped her employment to have her baby which was born on September 20, 1987.
5. After Tilley left the hospital and returned to her father's home in Cabarrus County, Defendant and Tilley began seeing each other on a regular basis. They engaged in this affair although Defendant was married to Carla Brafford.
6. Defendant subsequently represented Tilley in an action against Tommy Sherrill without charging a fee.
7. The relationship between Defendant and Tilley was terminated just after Mothers Day in 1988.
8. Defendant subsequently made a harassing telephone call to Tilley at her place of employment, Charlotte Transit.
9. Tilley had Defendant charged criminally with making a harassing telephone call. The magistrate issued a criminal summons in Defendant's name which was served on him on July 11, 1988.
10. After being served with the criminal summons on July 11, 1988, Defendant engaged in a number of actions to harass Tilley.
11. On July 18, 1988, Defendant filed a civil action against Tilley in Mecklenburg County District Court on behalf of his professional association for legal fees allegedly due from his representation in the action against Tommy Sherrill, although no demand had ever been made for legal fees by Defendant or his professional association.
12. Defendant consulted with and encouraged his wife, Carla Brafford, to file a lawsuit in Cabarrus County District Court on July 20, 1988 for alienation of affections, criminal conversation, intentional infliction of emotional distress, and felonious assault and battery. The suit sought not less than \$100,000 in compensatory damages and not less than \$1,000,000 in punitive damages. Not less than \$10,000 in attorney fees was sought although Carla Brafford was nominally filing the action pro se.
13. Defendant paid the filing fee for this action in Cabarrus County from his professional association account.

14. Defendant took out a criminal warrant against Tilley for first degree trespass in Mecklenburg County on July 20, 1988.
15. Defendant encouraged his wife to take out a criminal warrant against Tilley in Cabarrus County on July 22, 1988 for communicating a threat for an incident that allegedly occurred in Mecklenburg County on May 9, 1988.
16. On or before August 3, 1988, Defendant prepared or assisted in preparing a Notice of Depositions in the Cabarrus County civil case which contained scandalous information about Tilley that had no relevant purpose in any notice of deposition. Defendant served, or assisted in serving, these "notices" on a number of the people listed in the notice and upon Tilley.
17. Tilley had to employ counsel to defend herself in the several actions filed by Defendant or filed by his wife with his encouragement or assistance.
18. Sanctions were imposed against Defendant or his wife in the civil actions brought against Tilley. The criminal actions against Tilley were dismissed.
19. On July 28, 1988, Defendant called the Concord Tribune newspaper in Cabarrus County to inquire about running an ad. He made arrangements for the ad with Kay L. Brooks. The ad copy read:

\$10,000 REWARD for information resulting in the arrest and conviction of Janice Tilley and others for breaking and entering and felonious assault on Carla Brafford while nine months pregnant on June 18, 1988. All information held strictly confidential and your name will never be used. Call (704) 847-7501 or (704) 541-6985.
20. Kay Brooks asked her superior whether the ad could be run. She was instructed to find out if in fact Tilley had been indicted on the charges.
21. Brooks called one of the numbers listed in the ad and left a message for Defendant to return her call. Within thirty minutes, Defendant returned the call. Brooks advised she needed to know whether Tilley had been indicted on the charges mentioned in the ad before the ad could be run. Defendant advised Brooks that Tilley had been indicted on these charges and others. The Concord Tribune relied on Defendant's statements and ran the ad on July 31, 1988, August 1, 1988 and August

2, 1988.

22. At the time Defendant advised Kay Brooks that Tilley had been indicted, he knew that his statement was untrue.
23. Defendant represented Tommy Carey in various matters going back to 1984. While still advising Carey, he borrowed \$25,000 from Carey on September 10, 1988.
24. At the time this loan was negotiated, Defendant did not fully advise Carey of the financial condition of his law practice or of his personal financial condition.
25. Since Defendant's financial condition was such that he could not reasonably have expected to make the payments on the note he signed to Carey, the business transaction Defendant entered into with his client, Carey, was not fair to Carey.
26. On May 4, 1989, Defendant negotiated another loan from Carey in the amount of \$7,500. Carey was still Defendant's client. Again Defendant failed to give Carey full disclosure of his financial condition when entering into this transaction.
27. Defendant subsequently gave Carey a post dated check in the sum of \$8,250 made payable on the due date of the note, November 4, 1989.
28. Before the November due date, Defendant closed the account on which the check had been drawn payable to Carey.
29. Because the Defendant could not have reasonably expected to make the payments on the second note to his client, Carey, the transaction was unfair to Carey.
30. After Defendant defaulted on loan payments to Carey due on both of the notes, Carey employed counsel to collect the notes. Suit was brought against Defendant in April, 1990.
31. Defendant wrote a June 25, 1990 letter to Carey's counsel about the course of action they were taking against him that questioned the counsel's relaying of accurate information to Carey. Defendant advised in his letter that if the counsel for Carey did not notify Defendant within a week that a copy of his letter had been sent to Carey, then Defendant would send a copy to Carey.
32. In early July, 1990, Defendant sent a copy of his

June 25, 1990 letter to Carey's counsel directly to Carey without Carey's counsel's consent.

33. The North Carolina State Bar did not prove facts by clear, cogent and convincing evidence to support the violations alleged in paragraph (a) of the First Claim for Relief or the entire Third Claim for Relief in its complaint.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of Defendant, as set forth above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:


- a) By filing, or causing to be filed, each of the unmeritorious civil and criminal actions against Tilley for the purpose of retaliating against and harassing Tilley after Tilley had Defendant served with a criminal warrant, Defendant, engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D); filed a suit, asserted a position, controverted an issue, or took other action on behalf of his client when he knew, or when it was obvious that such action would be frivolous or would serve merely to harass or maliciously injure another in violation of Rule 7.2(A)(1); and knowingly advanced a claim that is unwarranted under existing law in violation of Rule 7.2(A)(2).
- b) By preparing or assisting in preparing the Notice of Depositions on behalf of his wife in the Cabarrus County civil case that contained scandalous information with no relevant purpose, Defendant, engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D); filed a suit, asserted a position, controverted an issue, or took other action on behalf of his client when he knew, or when it was obvious that such action would be frivolous or would serve merely to harass or maliciously injure another in violation of Rule 7.2(A)(1);
- c) By telling Kay Brooks of the Concord Tribune that Tilley had been indicted on the charges mentioned in the ad he was placing when he knew that she had not, a majority of the hearing committee concluded that Defendant

engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4).

- d) By placing the ad in the Concord Tribune with the intent to harass Tilley, Defendant filed a suit, asserted a position, controverted an issue, or took other action on behalf of his client when he knew, or when it was obvious that such action would be frivolous or would serve merely to harass or maliciously injure another in violation of Rule 7.2(A)(1);
- e) By entering into the September 10, 1988 loan transaction with Carey without full disclosure of his financial condition or the financial condition of his law practice, Defendant entered into a business transaction with a client in which he and the client had differing interests while the client expected him to exercise his professional judgment therein for the client's protection without full disclosure in violation of Rule 5.4(A).
- f) By entering into the September 10, 1988 loan transaction with Carey that was unfair to Carey, Defendant entered into a business transaction with a client under circumstances that were unfair to the client in violation of Rule 5.4(A).
- g) By entering into the May 4, 1989 loan transaction with Carey without full disclosure of his financial condition or the financial condition of his law practice, Defendant entered into a business transaction with a client in which he and the client had differing interests while the client expected him to exercise his professional judgment therein for the client's protection without full disclosure in violation of Rule 5.4(A).
- h) By entering into the May 4, 1989 loan transaction with Carey and by giving him a post dated check as payment of the loan and closing the account upon which the check was drawn before the payment date, Defendant entered into a business transaction with a client under circumstances that were unfair to the client in violation of Rule 5.4(A).
- i) By sending a copy of the June 25, 1990 letter to Carey's counsel directly to Carey without Carey's counsel's consent, a majority of the

hearing committee concluded that Defendant communicated about the subject of the representation with a party the lawyer knew to be represented by another lawyer in the matter without the consent of the other lawyer in violation of Rule 7.4(A).

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the
12th day of September, 1991.


W. Harold Mitchell, Chairman
Hearing Committee

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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 7

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

DOUGLAS E. BRAFFORD, ATTORNEY
Defendant

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith, the evidence presented at the hearing on August 23 and 24, 1991 relating to Defendant's conduct, and the arguments presented in the sanctions phase of the hearing, the members of the hearing committee, composed of W. Harold Mitchell, Chairman, Robert C. Bryan and Donald L. Osborne, enter the following:

ORDER OF DISCIPLINE

1. The Defendant, Douglas E. Brafford, is suspended from the practice of law in North Carolina for a period of three years from the effective date of this order.
2. The suspension imposed in the paragraph above is stayed upon Defendant's strict compliance with the following conditions:
 - a) The Defendant must be fully examined and evaluated by a Board Certified Psychiatrist who is neither an acquaintance nor client of the Defendant on or before September 23, 1991. The psychiatrist must agree to report the results of his or her analysis of the Defendant to the Counsel to the North Carolina State Bar on or before October 23, 1991, such analysis including the psychiatrist's certified opinion as to whether the Defendant is mentally and emotionally stable so as to be fit to practice law. The Defendant must waive the patient-physician privilege to the extent necessary to enable the psychiatrist to report to the counsel of the North Carolina State Bar whether the Defendant is mentally and

emotionally stable so as to be fit to practice law and, thereafter, to report any changes in the psychiatrist's opinion of Defendant's fitness to practice law or Defendant's failure to follow the treatment regimen recommended by the psychiatrist.

- b) The Defendant must continue any psychiatric treatment recommended by his psychiatrist. The psychiatrist must agree to report to the Counsel to the North Carolina State Bar by January 24 and August 24 of each year the suspension is stayed that the Defendant has complied with the psychiatrist's treatment recommendations. The psychiatrist must also agree to report to the Counsel to the North Carolina State Bar immediately any change in his or her opinion of Defendant's fitness to practice law due to Defendant's mental or emotional status or any failure of Defendant to follow the recommended treatment regimen.
- c) In the event that Defendant's psychiatrist is of the opinion that Defendant's mental or emotional status causes him to be unfit to practice law or raises a substantial question as to whether he is unfit to practice law, or if it is reported to the Counsel of the North Carolina State Bar that Defendant is not complying with the psychiatrist's treatment recommendations, Counsel to the North Carolina State Bar shall immediately notify the Chairman of this hearing committee by sending the psychiatrist's opinion or report to the Chairman. At his discretion, the Chairman of the hearing committee may schedule a further hearing in this matter for the sole purpose of determining what, if any, modifications need to be made to this order as a result of the psychiatrist's opinion or report, including dissolving all or any portion of the stay of Defendant's three-year suspension. The current members of this hearing committee shall retain jurisdiction of this matter for the purpose of holding such hearing, although any hearing committee member no longer on the Disciplinary Hearing Commission may be substituted for by the Chairman of the Disciplinary Hearing Commission. Notice mailed to the Defendant at his last known address with the North Carolina State Bar will constitute notice to him of the hearing. Defendant shall be given at least 30 days notice of any such hearing.

- d) Defendant must repay the entire \$34,839.79 judgment debt owed to Tommy Carey with interest at the rate of 8% per annum. The hearing committee recognizes that 8% is less than the interest ordered to be paid in the judgment and that this order has no effect on the legality of said judgment. Compliance with this order satisfies only this order and not the judgment. Payments must be made on the following schedule:
1. Twenty percent (20%) of the judgment amount plus accrued interest must be paid to Carey by August 24, 1992.
 2. Forty percent (40%) of the judgment amount plus accrued interest must be paid to Carey by August 24, 1993.
 3. The remaining forty percent (40%) of the judgment amount plus interest must be paid to Carey by May 24, 1994.
 4. Defendant must certify his payments to Counsel for the North Carolina State Bar when each payment is made.
 5. Failure to make payments on time will be grounds for dissolving the stay of Defendant's suspension pursuant to Section 14(19.1) of Article IX of the Rules and Regulations of the North Carolina State Bar (or its successor rule.)
- e) Counsel to the North Carolina State Bar is to send copies of all opinions and reports of Defendant's psychiatrist and copies of certification of all payments made to Carey to the members of this hearing committee when received.
- f) Defendant is to refrain from any acts of harassment of any of the complainants, witnesses, or their counsel. Any harassment during the period of the stay, will be grounds to dissolve the stay of Defendant's suspension pursuant to Section 14(19.1) of Article IX of the Rules and Regulations of the North Carolina State Bar (or its successor rule).
3. Defendant is taxed with the costs of this action as assessed by the Secretary.

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members.


W. Harold Mitchell
Chairman, Hearing Committee

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