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NORTH CAROLINA)
)
 WAKE COUNTY)

BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE NORTH CAROLINA STATE BAR

84-DHC-1

THE NORTH CAROLINA STATE BAR,)

Plaintiff,)

vs.)

CHARLEENE WILSON, ATTORNEY,)

Defendant.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was heard before the undersigned Hearing Committee on May 25 and May 29, 1984. A. Root Edmonson, Esquire appeared as counsel for the North Carolina State Bar ("NCSB"), plaintiff. Wayne Eads, Esquire appeared as counsel for Charleene Wilson ("Wilson"), defendant. At the beginning of the hearing, a Stipulation on Pre-Hearing Conference was approved and ordered filed. At the conclusion of the evidence and argument by counsel, the Committee made the following Findings of Fact:

FINDINGS OF FACT

1. The Committee finds as facts those stipulations contained in paragraph 2-A through 2-M and paragraph 2-O through 2-S of the Stipulation on Pre-Hearing Conference which are incorporated by reference.

2. From the receipt of the letters by Wilson from David Hodge, dated August 25, 1983 and August 30, 1983 until the time of the hearing in the Divorce Case, (Hodge v. Hodge 83 CVD 2505, New Hanover County) September 30, 1983, defendant made no

inquiry as to duties imposed upon her by Rule 4 of The Rules of Civil Procedure or the Code of Professional Responsibility. Additionally, during the interim between the receipt of David Hodges letters of August 25 and August 30, 1983 and September 30, 1983, defendant sought no advice or counsel from other members of the Bar with respect to any obligation that may be imposed upon her as a result of receiving and answering letters from David Hodge.

3. In the interim between September 6, 1983 and September 30, 1983, Wilson met with her client Brenda Hodge at Wilson's office on or about September 9 and discussed the content of the letters from David Hodge with her client.

4. Wilson insists that she did not understand the meaning of the term, "came on the state", in David Hodge's letter of August 25, 1983, but confined her inquiry as to the meaning thereof solely to questions addressed to her client, Brenda Hodge and to Wilson's secretary.

5. Under date of September 20, 1983, Wilson wrote her client Brenda Hodge (apparently in response to telephone calls received from Brenda Hodge between September 9 and the date of the letter), asking Brenda Hodge to let Wilson know if Brenda Hodge had determined the whereabouts of her husband in the Wilmington area and advising Brenda Hodge of the court date and the necessity for her appearance.

6. Wilson, prior to September 30, 1983 had disclosed the contents of the two letters from David Hodge to her client Brenda Hodge, noting the return address as stated thereon and to which replies had been made by defendant to David Hodge. Wilson's letters to David Hodge have not been returned by the

United States Postal Service to Wilson either before or after September 30, 1983.

7. When the Divorce Case was called for trial on September 30, 1983, Wilson knew that 5501 Wrightsville Avenue, Wilmington, North Carolina was not the last address of David Hodge known to her client Brenda Hodge at the time said Affidavit was tendered.

8. Although the Committee is aware of the fact that the transcript of the proceedings before Judge Rice on October 26, 1983 (Plaintiff's Exhibit "L" Page 20, Lines 19 and 20), in the light of other testimony, is capable of the interpretation that Wilson was aware on September 30, that David Hodge was in prison, assigned to work release in New Hanover County, and his wife Brenda Hodge had taken David Hodge to his job immediately prior to the hearing, the Committee reconciles the conflicting evidence on that issue in favor of Wilson to the extent necessary to find (and finds) such knowledge of David Hodge's actual whereabouts was not communicated to Wilson, until after the trial of the Divorce Case on September 30, 1983.

9. In making the foregoing findings with respect to actual knowledge by Wilson of the whereabouts of David Hodge, in the interim between August 13, 1983 and September 30, 1983, and the alleged knowledge by Wilson of the fact that David Hodge and Brenda Hodge lived together under the same roof within one year prior to August 10, 1983, Committee necessarily finds Brenda Hodge to be an unreliable witness in the instant proceedings for the purpose of establishing such knowledge of Wilson on or about September 30, 1983.

10. Although Wilson did not have actual knowledge of the whereabouts of the defendant David Hodge in the interim between receipt of David Hodge's letter of August 25, 1983 and September 30, 1983, Wilson was actually aware of defects in service of process upon David Hodge by publication and testified before the Committee that she had considered serving the defendant David Hodge by registered or certified mail, return receipt requested prior to the hearing date of September 30, 1983, but failed to do so.

Upon the foregoing Findings of Fact, the Committee makes the following Conclusions of Law:

1. The letters of David Hodge to Wilson dated August 25, 1983 and August 30, 1983 constituted an answer or answers to the Complaint filed by Wilson on behalf of her client Brenda Hodge within the intent of Rule 12 of The Rules of Civil Procedure and have been served upon Wilson in a manner permitted by The Rules of Civil Procedure.

2. Wilson was under the duty to disclose the service of Answers upon her by the defendant David Hodge in the Divorce Case, and to disclose the contents of said Answers to the Court.

3. Wilson was under a duty to her client Brenda Hodge to effect proper service of process upon the defendant David Hodge in the Divorce Case. By filing letters of August 25 and August 30, 1983, received from the defendant David C. Hodge in the Divorce Case with the Court, Wilson could have cured the defects in service of process by publication, which Wilson knew to exist at the time the Divorce Case was called for trial on September 30, 1983.

4. The failure of Wilson to disclose the contents of the letters of David Hodge to the Court and the service upon her of same constitutes a violation of DR1-102(A) (4), (5) and (6) and DR7-102(A) (3) in that she failed to disclose that which by law she was required to reveal and as a result thereof, deliberately misled a tribunal in a manner that is prejudicial to the administration of justice and reflects adversely upon her fitness to practice law.

5. In preparing and offering the Affidavit of her client, Brenda Hodge, in the Divorce Case, for the purpose of establishing effective service of process by publication and jurisdiction over the person of David Hodge, when Wilson knew that the requirements of Rule 4J of The Rules of Civil Procedure had not been met, and that the Affidavit contained false statements, Wilson violated DR1-102(A) (4), (5) and (6) and DR7-102(A) (4), (5) and (6), because she knowingly used perjured testimony, knowingly made a false statement of law and fact, participated in the creation of evidence when it was obvious that the evidence was false, offered false testimony knowing it to be false, and engaged in conduct prejudicial to the administration of justice adversely reflecting upon her fitness to practice law.


Dudley Humphrey, Chairman


George Ward Hendon


Mary Cecil Bridges

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E. H. JAMES, JR.
CLERK OF COURT

NORTH CAROLINA)
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WAKE COUNTY)

BEFORE THE
DISCIPLINARY HEARING COMMISSION
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84-DHC-1

THE NORTH CAROLINA STATE BAR,)
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 Plaintiff,)
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 vs.)
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CHARLEENE WILSON, ATTORNEY,)
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 Defendant.)

)

ORDER OF DISCIPLINE

In imposing this Order of Discipline, The Hearing Committee considered the following aggravating factors:

1. A Substantial portion of the defendant's practice is devoted to domestic matters. The defendant should have been aware of the requirements of the letter and spirit of the law necessary to obtain effective service of process by publication in a domestic matter. Indeed, the annotations under Rule 4J of The Rules of Civil Procedure contained in the General Statutes alone should put the defendant on notice of the relative frequency with which the Courts have dealt with defective service of process by publication in domestic disputes. Moreover, Lee, North Carolina Family Law, Section 53, Pages 269 and 270 clearly describes the consequences of defective service on the rights of the litigants:

The purpose of service of process is to give notice and an opportunity to be heard. Even though the letter of the law may be followed with respect to the affidavit for publication and the notice itself,

jurisdiction of the defendant is not acquired if this method of service is not intended to give notice, but to conceal it, in accordance with a calculated effort on the part of the plaintiff to keep actual notice from defendant. Deliberate misrepresentation by plaintiff of the circumstances justifying service of process by publication would surely amount to "[f]raud, misrepresentation, or other misconduct" which would permit a court to grant to a moving party relief from a final judgment....

Which is exactly what happened before Judge Rice in Hodge v. Hodge (83 CVD 2505, New Hanover County) on October 26, 1983.

2. The defendant failed to make a due inquiry as to the requirements imposed upon her by either The Rules of Civil Procedure or the Code of Professional Responsibility, upon receipt of the letters of August 25 and August 30, 1983 from David Hodge. The defendant also in connection therewith, failed to seek timely advice of other counsel with respect to her duties to the Court and to her client (and was not totally candid with the Committee regarding when such advice was eventually sought).

3. After it became apparent that there was no doubt that her client had perpetrated a fraud on the Court (October 14, 1983), the defendant did not comply with DR7-102(B) (1) and call upon her client to rectify same, and upon the client's failure to do so, promptly file a motion for withdrawal. Rather defendant directed her activities to obtaining an Affidavit "to protect herself", without disclosing the purpose of same to her client, and even offered to continue to represent Brenda Hodge upon payment of an additional fee.

4. Even after resolving all of the issues of credibility with respect to the testimony of Brenda Hodge in favor of the defendant, the Committee believes that the defendant failed by a substantial margin to attain the required degree of diligence with respect to service of process by publication. The defendant's explanation of her conduct, and justification therefor, illustrates a fundamental misconception of the duties imposed upon a lawyer as an officer of the court. Defendant's explanation of her conduct renders the lawyer a mere "mouth piece" with all of the sad connotations thereto attaching.

5. The defendant, even after the hearing, persisted in an unconscionably narrow and warped interpretation of the requirements of Rule 4(jl) of The Rules of Civil Procedure in insisting that 5501 Wrightsville Avenue was the "last address of the defendant known to her client."

The Committee also considered the following mitigating factors:

1. The defendant did respond to the letters written to her by David Hodge by informing him of the requirements stated in the summons, (that in addition to answering the Complaint, his answer must be filed with the clerk) and advising David Hodge of the actual trial date. At this point the Committee observes that such conduct, at least colorably, could be described as a violation of DR7-104(A)(2), which prohibits the giving of any advice to one not represented by counsel and having an adverse interest except the advice to employ counsel. Further, the Committee notes that a proper response of the defendant, upon receipt of such correspondence, would have been to mail a copy of the Summons and Complaint, registered mail or

certified mail, return receipt requested, thereby both avoiding possible violation of DR7-104(A)(2) and complying with the provisions of Rule 4.

2. The Committee does not believe that the defendant on September 30, 1983, was actually and consciously aware of the severity of her conduct with respect to offering the Affidavit containing the 5501 Wrightsville Avenue address and failing to disclose to the Court the full facts and circumstances surrounding the receipt of the Answers from David Hodge to the Complaint that she had caused to be filed against him.


3. The defendant's client, Brenda Hodge, exhibited all the characteristics of a pathological liar. Although, the Committee believes that the conduct of the defendant was clearly improper, as illustrated by the Findings of Fact and Conclusions of Law, the Committee does not believe that the defendant, at any time prior to September 30, 1983, was told by her client that David Hodge was in prison or that David Hodge had lived in her home within one year of August 13, 1983.

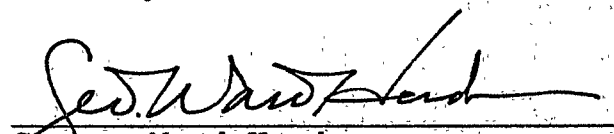
4. The defendant has had no other disciplinary action taken against her, nor are any such actions pending.

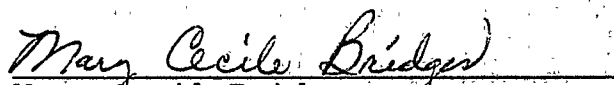
DISCIPLINE

It is ordered that the defendant be suspended from the practice of law for a period of one year. Defendant's attention is directed to the provisions of Section 24 of The North

Carolina State Bar Rules of Discipline and Disbarment of Attorneys.


Dudley Humphrey, Chairman


George Ward Hendon


Mary Cecil Bridges