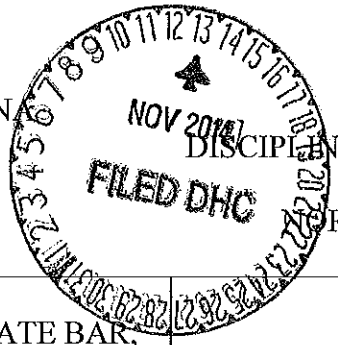

STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 13 DHC 11
THE NORTH CAROLINA STATE BAR, Plaintiff v. DAVID C. SUTTON, Attorney, Defendant	ORDER OF DISCIPLINE

THIS MATTER was heard May 5-9, June 9-11, July 18, September 16-18, and October 22-23, 2014 by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Irvin W. Hankins, III, and Karen B. Ray pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyme Bannon and Mary D. Winstead represented Plaintiff, the North Carolina State Bar. Defendant represented himself.

On 8 August 2014, after hearing all evidence and argument regarding the Rule violations alleged in the complaint, the Hearing Panel entered Corrected Findings and Conclusions regarding Defendant's violation of the Rules of Professional Conduct.

The 8 August 2014 Corrected Findings and Conclusions are restated herein as follows (through paragraph (q) below):

Based upon the pleadings and evidence presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, David C. Sutton ("Defendant"), was admitted to the North Carolina State Bar in 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, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. Defendant was properly served with process and received due notice of the hearing in this matter.

4. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Greenville, Pitt County, North Carolina.

5. Defendant represented the plaintiff, Barbara Pollard, in a civil action against Michelle Pollard, Pitt County file number 08 CVS 52.

6. Attorney Kathryn P. Fagan represented Michelle Pollard in the action.

7. On May 13, 2011, Ms. Fagan took the plaintiff's deposition.

8. An intern accompanied Defendant to the deposition in order to observe how depositions are conducted.

9. During Ms. Fagan's examination of the plaintiff, Defendant repeatedly interrupted the questioning, answered the questions Ms. Fagan posed to Mrs. Pollard, cautioned his client about how to answer the questions posed by Ms. Fagan, and asked questions of his client.

10. During the deposition, Ms. Fagan asked Mrs. Pollard whether she knew if her son and Michelle Pollard had a house together. Mrs. Pollard responded, "Yes. Well, as far as I know, both of them's name was on it." Ms. Fagan then asked, "How about cars?" Defendant interrupted the examination and questioned Mrs. Pollard in the following exchange:

> MR. SUTTON: Do you even know that? Do you know if both their names were on the deed, Mrs. Pollard?
>
> [MRS. POLLARD]: No.
>
> MR. SUTTON: Have you ever seen the deed?
>
> [MRS. POLLARD]: No.
>
> MR. SUTTON: Then you don't know that either, do you?
>
> [MRS. POLLARD]: I don't know.

11. Defendant interrupted Ms. Fagan's questioning of Mrs. Pollard as follows:

> [MS. FAGAN]: ... What - - do you recall if it was a couple of weeks after that she called you or what, just if you remember?
>
> [MRS. POLLARD]: I can't remember.
>
> [MS. FAGAN]: But it wasn't two months?
>
> MR. SUTTON: Objection. Did you ever say she called you?

[MS. FAGAN]: Was it ---

MR. SUTTON: Did you ever say she called you?

[MS. FAGAN]: David, I'm ---

MR. SUTTON: Did you ever say she called you?

[MS. FAGAN]: I'm asking the questions.

MR. SUTTON: I am asking this one. Did you ever ---

12. During the deposition, Ms. Fagan questioned Mrs. Pollard regarding the timing of a conversation between two individuals and inquired whether the conversation occurred about a month after Mrs. Pollard's son died. Mrs. Pollard responded, "I'm not sure." Ms. Fagan said, "Okay" and Defendant interjected and said: "I am and it ain't. It was over a year."

13. Defendant interrupted again when Ms. Fagan was questioning Mrs. Pollard about her response to interrogatories regarding contact with Teresa Thompson:

> MR. SUTTON: If it will speed this along, I talked to Teresa Thompson after Mrs. Pollard met with the district attorney and Dwight Ransome and determined that she had failed the polygraph because Teresa Thompson was interviewed. That's the first time I was aware that Teresa Thompson had any involvement in this case. I can see by your questions your plan is to blame it all on Teresa Thompson. I don't know how you are going to do it, but go ahead.

14. Defendant interrupted and answered the question again in this exchange:

> [MS. FAGAN]: Well, he [Sutton] had talked to Teresa Thompson, who kind of got this whole thing going?
>
> MR. SUTTON: Objection. And by the way, that ain't true, but go ahead.

15. During the deposition, Defendant interrupted Ms. Fagan's direct examination numerous times by cautioning Mrs. Pollard before she responded to questions with admonitions such as, "if you know" or "if you remember."

16. At one point during the deposition, Ms. Fagan explained to Defendant that she objected to him telling his client what Ms. Fagan was saying. Mrs. Pollard interjected, "Well I appreciate him under - - explaining to me what he wants you to hear. I mean what he wants me to answer."

17. During the deposition, Defendant interrupted Ms. Fagan's questioning with the following remarks:

> [MS. FAGAN]: And she would ask him to go get her, you know, cigarettes or get her whatever it is that she needed?

MR. SUTTON: Let's all listen carefully. This is the clue to the case. This is the most relevant question - -

[MS. FAGAN]: He's being sarcastic.

MR. SUTTON: - - that I've ever heard in my life. And this is why we're here for two hours and fifteen minutes to find out the real reason Michelle asked him to go get the cigarettes. Go ahead, Mrs. Pollard. Do the best you can with that one.

18. Defendant insulted opposing counsel during the deposition telling her that Mrs. Pollard was "not used to dealing with people like" her.

19. After the deposition concluded, Defendant, in the presence of his client, the court reporter, and a law student, made rude and inappropriate remarks to Ms. Fagan which included commenting to Ms. Fagan that she needed a sexual partner and suggesting that her client might fulfill that role.

20. Defendant admitted that it was his intent, in making the comments, to offend Ms. Fagan.

21. Although Defendant asserted that he was "justifiably angry," he admitted that he "lashed out at opposing counsel" and described his conduct towards Ms. Fagan as "rude and inappropriate" and "boorish behavior."

22. On or about August 3, 2011, Ms. Fagan filed a Motion to Change Venue in 08 CVS 52 based on pretrial publicity. In the motion, Ms. Fagan alleged that her client had "been vilified in a website known as 'justice4Stacey' which was sponsored by Plaintiff's counsel, David Sutton and his cousin, Robert Sutton."

23. On or about August 15, 2011, Defendant filed an affidavit in 08 CVS 52 (the wrongful death action referenced in paragraph 5 above) in response to the motion in which he swore: "I did not 'sponsor' any website, contrary to Ms. Fagan's motion. The website referred to by Ms. Fagan was designed and set up by a web designer chosen by a Pollard family member. Plaintiff, Barbara Pollard, was responsible for expenses related to the website."

24. Defendant was involved in discussions and meetings about setting up the website.

25. The purpose of the website was to solicit and identify witnesses and to obtain information regarding the death of Stacey Pollard, the son of Defendant's client, Barbara Pollard.

26. Defendant was the initial registrant and administrator of the website which was registered on July 11, 2007.

27. Defendant paid the domain registrar for the website to be registered.

28. Defendant was identified as the contact person on the website and his name, address, telephone number, and email address were listed. As a result, Defendant received numerous phone calls and correspondence from visitors to the website.

29. A passcode was required to post material to the website. Defendant had the passcode and posted some documents on the website.

30. Defendant was involved in the decision to take the website down.

31. Defendant never specifically billed Barbara Pollard to be reimbursed for the website expenses.

32. Although Defendant has contended that he was reimbursed by his client for the cost of registering the website, he did not produce any documents in response to a request for production of all documents reflecting payments by him in connection with the justice4stacey website and his efforts to obtain reimbursement from Ms. Pollard. At this hearing, Defendant testified that he did not produce the documents because he did not have them.

33. In May 2011, R. Brantley Peck, Jr. was representing the plaintiff, Billy Wayne Langston, Jr., in a domestic case against Rita L. Langston, Beaufort County file number 11 CVD 50.

34. Defendant represented Rita L. Langston in the action.

35. On May 11, 2011, Defendant took the deposition of Leo Donahue Lee.

36. During the deposition of Mr. Lee, Mr. Peck noted an objection and Defendant and Mr. Peck engaged in the following colloquy:

> MR. SUTTON: What's your objection?
>
> MR. PECK: I made it.
>
> MR. SUTTON: What is it?
>
> MR. PECK: I don't have to tell you.
>
> MR. SUTTON: Do you know yourself?
>
> MR. PECK: I do.
>
> MR. SUTTON: What is it?
>
> MR. PECK: I'm not going to be belittled by you. If you want to continue the deposition-

37. Defendant interrupted and made the following comment to Mr. Peck: "Sir, you couldn't get any littler if you tried."

38. During the deposition, Defendant made the following comments about Mr. Peck:

a. "He objects like a tick."

b. "... he likes to hear himself say objection."

39. On May 10 and May 11, 2011, Mr. Peck took the deposition of Defendant's client, Rita L. Langston, in 11 CVD 50.

40. During the deposition, Defendant directed the following remarks to opposing counsel, Mr. Peck:

a. "Motion to strike in a deposition? Do you have an ego problem?"

b. "What he's done is criminal and if you're approving of it, you're complicit in it."

c. "If there's any advice given to him, it's complicity to theft."

41. At one point during the deposition, counsel engaged in a discussion about how long the deposition had lasted. Mr. Peck stated that he had deposed Ms. Langston for two hours and Defendant responded, "That's a damn lie."

42. During the deposition of Ms. Langston, Defendant told his client how to answer certain questions and responded to questions posed to Ms. Langston.

43. In the following excerpt from Mr. Peck's examination of Ms. Langston, Defendant responded to a question Mr. Peck posed to the deponent as follows:

[MR. PECK]: Was that back in October of 2010?

MR. SUTTON: Uh-uh.

[MS. LANGSTON]: Not to my knowledge.

44. In the following excerpt from Mr. Peck's examination of Ms. Langston, Defendant interrupted the questioning and made a statement:

[MR. PECK]: You told me you hadn't filed. I'm saying did you provide those records to your accountant?

[MS. LANGSTON]: No, sir.

[MR. PECK]: Okay.

MR. SUTTON: And those would have been all 2010 records, which wouldn't explain why Wayne quit going to the accountant and never did anything for the 2009 records before they separated.

45. Defendant interrupted Mr. Peck's examination with his own statements and questioning in the following exchange:

[MR. PECK]: Did you get a copy of that foreclosure proceeding?

[MS. LANGSTON]: Umm - - when did - - I got one, you remember 'cause I got served and I was like, "What is this?"

MR. SUTTON: Right after the domestic violence protective order. You got it out of the mail; you didn't know anything about it. And I promptly turned it around and sent it to - -

[MS. LANGSTON]: Him.

MR. SUTTON: - - Mr. Peck.

[MR. PECK]: Okay.

[MS. LANGSTON]: That's when I got it.

MR. SUTTON: With a letter saying we don't know anything about this; would you have your client get back and explain. And then, rather than do that, he attempted to negotiate a side deal with my client –

MR. PECK: Objection.

MR. SUTTON: -- to somehow settle the stuff. And I think – I guess, the property's gone. I don't know what happened to it.

MR. PECK: Objection as to his characterization.

MR. SUTTON: Do you know what happened to it?

[MS. LANGSTON]: No, I'm not sure.

46. In the following excerpt from Mr. Peck's examination of Ms. Langston, Defendant interrupted Mr. Peck's questioning and questioned his client:

[MR. PECK]: Okay. Now, Ms. Langston, on - - approximately how many rental properties does R & L have?

[MS. LANGSTON]: Hand me your list and I'll - -

MR. SUTTON: Do you know?

[MS. LANGSTON]: I don't know right - -

MR. SUTTON: Then you don't know.

[MS. LANGSTON]: I don't know.

47. In the following excerpt from Mr. Peck's examination of Ms. Langston, Defendant interrupted Mr. Peck's questioning and questioned his client:

[MR. PECK]: Okay. When did you first become aware that some of the rental properties did not have any insurance on them?

[MS. LANGSTON]: I found out when Buddy Harris called me.

[MR. PECK]: When was that?

[MS. LANGSTON]: It was - -

MR. SUTTON: After the fire?

[MS. LANGSTON]: Yeah, 'cause I mentioned it to you and I called you afterwards. It was after that fire....

48. During Mr. Peck's questioning of Ms. Langston, Defendant supplied Ms. Langston with answers and then interrupted the questioning prior to Ms. Langston answering Mr. Peck's question during the following exchange:

[MR. PECK]: Is this the only evidence that you say you have about the wasting of assets is the $2000 spent on the trip to Alabama?

[MS. LANGSTON]: I mean, I'm sure he has spent several - -

[MR. PECK]: That - - your attorney's writing certain things down and handing those to you, is he not?

[MS. LANGSTON]: Uh-huh.

MR. SUTTON: You want me to state them out loud. I can tell you everything she and I have talked about in regard to the evidence.

[MR. PECK]: Okay.

[MS. LANGSTON]: When he - - when - -

[MR. PECK]: Ms. Langston, just let me say, do you have any other evidence of him wasting assets - - allegedly wasting assets ...?

MR. SUTTON: She has lots more. We're going to take a break and come back and fully answer that question for you. You're not going to get in the deposition that she doesn't have any more, because she doesn't remember it right now. If you want her to answer it, we'll take a break and come back and answer it.

[MR. PECK]: I would like for her to answer what she recalls now, before - -

MR. SUTTON: Would you like to talk with me before answering that?

[MS. LANGSTON]: Yes.

MR. SUTTON: Okay. Let's take a break, okay. We'll make sure we have a thorough answer when we come back.

49. During the deposition, Defendant interrupted the questioning with the following remarks:

[MR. PECK]: So, investments carry risk; don't they?

[MS. LANGSTON]: Yes, sir.

MR. SUTTON: No. We have investments that don't. We've discovered them. We're going to be rich.

50. Defendant abruptly left the deposition with his client on May 11, 2011 before Mr. Peck had completed his examination of Ms. Langston.

51. Although Defendant later asserted that his reason for leaving the deposition was connected with his wife's illness, he did not make Mr. Peck aware of any such reason at the time he and his client abruptly left.

52. Defendant did not file a motion to terminate or limit the deposition.

53. In May and June 2012, Jeffrey L. Miller was representing Billy Wayne Langston, Jr. in 11 CVD 50.

54. Defendant continued to represent Rita L. Langston in 11 CVD 50.

55. On May 2, 2012, in a hearing on the plaintiff's motion to prevent waste of marital and separate property pending equitable distribution, Defendant represented to the presiding judge that R & L Investment Homes, LLC had been dissolved by the North Carolina Secretary of State because Mr. Langston had forged documents, stating, "Yes, your Honor, and the Secretary of State just annulled the entity because he forged three of 'em that say something different."

56. At the time Defendant made this statement to the court, Defendant knew the North Carolina Secretary of State had issued a Certificate of Administrative Dissolution of R & L Investment Homes, LLC for failure to file an annual report.

57. Defendant's representation to the court that R & L Investment Homes, LLC had been dissolved by the North Carolina Secretary of State because Mr. Langston had forged some documents was false.

58. Defendant testified in this DHC hearing that he did not believe Mr. Langston had forged the corporate documents, and that he (Defendant) shouldn't have told the trial court that Mr. Langston did so.

59. On June 6, 2012, the parties in 11 CVD 50 entered into a mediated settlement agreement.

60. The following day, on June 7, 2012, Defendant appeared before Beaufort County District Court Judge Michael Paul and accused Mr. Miller of slipping a handwritten provision into the mediated settlement agreement after Defendant had signed it and without Defendant's knowledge or approval.

61. Prior to Defendant signing the mediated settlement agreement, the mediator had pointed out the handwritten provision to Defendant and Defendant agreed to the provision.

62. Defendant's statement accusing Mr. Miller of slipping the handwritten provision into the mediated settlement agreement after Defendant had signed it and without Defendant's knowledge or approval was false and Defendant knew at the time he made the statement that it was false.

63. In July and August 2012, Defendant represented a client during a murder trial presided over by the Honorable Phyllis Gorham in Greene County Superior Court, *State of North Carolina v. Aaron Brown, Jr.*, file number 09 CRS 50159.

64. During the course of the trial Defendant spoke disrespectfully to the judge at a bench conference and Judge Gorham admonished Defendant about engaging in disrespectful behavior toward the court.

65. Subsequently, at another bench conference on August 1, 2012, while the jury was present in the courtroom, Defendant grimaced at Judge Gorham and in an angry tone of voice accused Judge Gorham of allowing the prosecutor to get inadmissible evidence to the jury.

66. Defendant's conduct prompted Judge Gorham to declare a recess in the trial and give the jury a break so that she could address Defendant's conduct.

67. During the in-chambers discussion about Defendant's conduct, Defendant stated: a) "And I do think if I was angry, I am sorry that I was angry and I expressed it. I'm not going to deny that I was." and b) "you said that I appeared disrespectful and I had a grimace and I am trying to explain that I was upset and the reasons that have gone into my upset."

68. Rule 12 of the North Carolina General Rules of Practice for the Superior and District Courts provides: "Counsel are at all times to conduct themselves with dignity and propriety ... Counsel should yield gracefully to rulings of the court and avoid detrimental remarks both in court and out. He should at all times promote respect for the court."

69. Defendant represented Jonathan Davenport in connection with several matters related to disputes arising out of a previous business relationship between Davenport and Billy Roughton.

70. Roughton purchased J&B Management Services, Inc. t/a Alliance Nissan (hereafter "J&B") from Davenport in 2008, and subsequently alleged that during the period from 2001 through 2008 when Davenport was a director and president of J&B, Davenport had misappropriated and embezzled numerous assets of J&B.

71. Roughton was represented by attorney Norman W. Shearin in his disputes with Davenport.

72. Shearin, on behalf of Roughton and J&B, wrote a memorandum to the Pasquotank County District Attorney dated August 8, 2011 which outlined Roughton's allegations of criminal wrongdoing against Davenport. The Pasquotank County District Attorney's Office charged Davenport with crimes related to these allegations.

73. In connection with the criminal cases against Davenport, the Pasquotank County Sheriff's Department took possession from Davenport of several items of personal property, including a boat and a trailer. This property was ultimately stored at a location occupied by a business called Clown 'N Around.

74. Some of the property that was stored at Clown 'N Around was also the subject of civil litigation: Gateway Bank filed an action against Davenport and other defendants alleging that they had defaulted on a promissory note. In connection with that litigation, Gateway Bank asserted that they had a lien on the boat and trailer.

75. In late October 2012, the State dismissed some—but not all—of the criminal charges against Davenport. Defendant then sought to have the property released to Davenport.

76. On November 7, 2012, Defendant accompanied Davenport to Clown 'N Around in an effort to retrieve the property.

77. Defendant video-recorded the events that occurred when he and Davenport went to Clown 'N Around, including a conversation with Pasquotank County Sheriff's Department Investigator Sam Keith about the release of certain property to Davenport. During that recorded conversation, Investigator Keith stated that he was not authorized to release the property, and Defendant responded by referencing the North Carolina statute on embezzlement by a public officer and saying the law "makes this a Class C felony by the sheriff."

78. Investigator Keith, to whom Defendant's accusation of felonious conduct was directed, was the investigating officer and was named as the witness on several indictments against Davenport that were still pending at the time of the video-recorded conversation.

79. Investigator Keith testified that he perceived Defendant was trying to intimidate him during their encounter at Clown 'N Around.

80. Defendant, or someone acting at Defendant's direction, posted the video referenced in paragraph 77 on YouTube, an internet platform on which videos are publically disseminated.

81. Defendant, on behalf of Davenport, sent a demand letter dated November 8, 2012 to Roughton and the Pasquotank County Sheriff.

82. In the demand letter Defendant accused Roughton and the Sheriff of conspiring to violate Davenport's rights and engaging in malicious prosecution, and demanded $3 million to settle what Defendant opined was a claim of over $10 million.

83. Defendant did not send a copy of the letter to Shearin nor did he obtain Shearin's consent to communicate directly with Roughton.

84. At the time Defendant sent the demand letter, he was aware that Shearin represented Roughton in the dispute with Davenport regarding J&B. Specifically, at the time he sent the demand letter:

a. Defendant had reviewed discovery materials provided by the State in Davenport's criminal cases. Those discovery materials contained email correspondence reflecting that Shearin represented Roughton in connection with matters related to Davenport and their prior business association;

b. Defendant's co-counsel had received the memorandum prepared by Shearin referenced in paragraph 72, above, and had discussed it with Shearin;

c. Defendant was aware that Roughton was the complaining witness in Davenport's criminal cases and that Shearin had filed motions to quash on behalf of Roughton in connection with those criminal cases;

d. Defendant had been informed by his co-counsel in Davenport's criminal cases that if they asked Roughton for anything, they were likely to get an objection from Norm Shearin;

e. Less than a month prior to sending the demand letter, Defendant had contacted Shearin's office to inquire whether Roughton was being deposed in the Gateway Bank case, and during that call had noted his expectation that Shearin would resist any effort to depose Roughton in that litigation.

85. Defendant did not send a copy of the letter to the Pasquotank County Attorney.

86. At the time he sent the demand letter, Defendant was in communication with the Pasquotank County Attorney on behalf of Davenport.

87. At the time Defendant sent the demand letter, he knew that the Pasquotank County Attorney was conferring with the Sheriff about Davenport's demands.

88. Roughton's allegations of wrongdoing by Davenport while he served as director and president of J&B, the criminal charges against Davenport, the dispute over the property stored at Clown n' Around, and (tangentially) the Gateway Bank case were interrelated.

89. Defendant represented Norman Shackley on a misdemeanor charge of impersonating a law enforcement officer (*State v. Shackley*, Pitt County file number 13 CR 50988). Shackley was convicted after a March 7, 2013 trial and gave notice of appeal to superior court.

90. Jimmy Hughes was a witness for the State at Shackley's March 7, 2013 trial.

91. On March 12, 2013, Defendant issued a subpoena to Hughes. The subpoena directed Hughes to appear in Pitt County District Court on March 14, 2013 at 9:00 a.m. and to produce "cell phone records (including incoming and outgoing calls and text messages) for [Hughes's phone number] from December 22, 2012—March 10, 2013."

92. In response to the subpoena, Hughes appeared in court with the subpoenaed records and waited all day. At approximately 4:45 p.m., Defendant approached Hughes and retrieved the cell phone records. Hughes was not called to testify nor did he observe any court proceeding related to Shackley taking place on March 14, 2013.

93. Within a week after he obtained Hughes's phone records, Defendant called a number shown on Hughes's phone bill at approximately 10:00 p.m. A female acquaintance of Hughes—who Defendant did not know—answered the phone.

94. Defendant did not ask the recipient of his phone call for her name. He asked whether she knew anything about "Ample Storage," the location at which Shackley had impersonated a law enforcement officer, and she indicated she did not.

95. Thereafter during the phone conversation, Defendant made a number of assertions about Hughes, including that Hughes had "hit on" Shackley's wife, who "had big boobs" and ran a prostitution website.

96. At the end of the phone conversation, the recipient of the call told Defendant to "be more particular when you call someone at 10:00 at night" because she usually would be asleep at that hour.

97. Immediately after the phone conversation, Hughes's acquaintance called Hughes and reported—among other things—that Defendant had referenced Hughes' preference for big-breasted women, and his interest in a "prostitute."

98. In July 2013, Defendant was representing a client charged with misdemeanor child abuse. The case was scheduled to be heard on July 10, 2013.

99. On July 2-3, 2013, Defendant communicated with the District Attorney's office in an effort to get the child abuse charge dismissed, but was informed that the DA's office would not dismiss the charges.

100. On July 3, 2013, after the communication with the District Attorney's office described above, Defendant left a voicemail message for the investigating officer in the child abuse case, Pitt County Sheriff's Department Detective Nikki Dolenti.

101. In his message to Detective Dolenti, Defendant said: "I understand that you know more than the kid's, uh, doctor and a DSS worker who said it wasn't abuse. So I ain't gonna beat around the bush. I don't know what you're doing. You obviously don't know what the hell you're doing. So I'm just gonna whip your ass real bad next week unless you get your ass down there and you get this case dismissed. And do your job and have some sense."

102. Detective Dolenti did not have authority to dismiss the charge against Defendant's client. Only the District Attorney's office could dismiss the charge.

103. The tone and content of Defendant's voicemail for Detective Dolenti was threatening, insulting, and intimidating.

104. Defendant filed a petition for adoption on behalf of Laura Deans and her husband, Eric Deans. The adoption matter was scheduled to be finalized on or about July 24, 2013.

105. Defendant knew that the adoption was important to Mr. and Mrs. Deans.

106. Mr. and Mrs. Deans agreed to pay Defendant $1,000.00 for representation in the adoption, but they did not enter into a written fee agreement, nor was there a specific agreement regarding whether they would pay the fee while the case was pending or at the time the adoption was complete.

107. On July 4, 2013, Defendant left Mrs. Deans a voicemail message in which he informed her that her father (the Sheriff of Pitt County) had Defendant arrested the previous night and that as a consequence, Defendant was going to "have to treat this like a regular case now."

108. Defendant stated that he needed to be paid and that if Mrs. Deans could not do that, she needed to find other counsel.

109. In the voicemail, Defendant also made gratuitous and disparaging comments of a sexual nature about Mrs. Deans' father, her stepmother, and the Pitt County District Attorney.

110. Defendant's comments to Mrs. Deans about her father and stepmother and the Pitt County District Attorney were malicious and vindictive.

111. In a telephone conversation with Mrs. Deans later that day, Defendant recounted the circumstances surrounding his arrest. Defendant repeatedly stated that he was "mad as hell."

112. Mrs. Deans asked Defendant what she should do regarding the adoption case. Defendant did not explain to Deans the current status and next steps in her case, instead making clear that his immediate concern was being paid.

113. Defendant was equivocal about whether he intended to continue representing Deans, telling her, "I need to get paid and if you can't do that your dad can intimidate some other lawyer."

114. After the phone conversation on July 4, 2013, Defendant did not take any further action on Deans' behalf in the adoption matter nor did he have any further communication with Laura or Eric Deans about finalizing the adoption.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, David C. Sutton, and the subject matter of this proceeding.

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

(a) By engaging in the following conduct during the deposition while Ms. Fagan was conducting her examination of the plaintiff: interrupting Ms. Fagan's questioning, testifying, cautioning his client prior to her answering Ms. Fagan's questions, asking questions of his client, and sarcastically commenting on Ms. Fagan's questions, Defendant engaged in conduct intended to disrupt a tribunal in violation of Rule 3.5(a)(4), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(b) By making rude and inappropriate comments about Ms. Fagan after the deposition had concluded in the presence of the court reporter, his client, and a law student, Defendant, in representing a client, used means that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a);

(c) By swearing in an affidavit submitted to the court that he did not sponsor the website and that another person was responsible for the expenses of the website when in fact he was the initial registrant and administrator of the website and paid for the registration, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation 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 making rude and disparaging comments to and about Mr. Peck during the depositions, Defendant engaged in conduct intended to disrupt a tribunal in violation of Rule 3.5(a)(4), in representing a client, used means that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4(a), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(e) By engaging in the following conduct during Ms. Langston's deposition while Mr. Peck was conducting his examination of Ms. Langston: interrupting Mr. Peck's questioning, testifying, asking questions of his client, and sarcastically commenting on Mr. Peck's questions, Defendant engaged in conduct intended to disrupt a tribunal in violation of Rule 3.5(a)(4), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(f) By abruptly leaving Ms. Langston's deposition with the deponent prior to the completion of opposing counsel's questioning without filing a motion to terminate the deposition, Defendant knowingly disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c), engaged in conduct intended to disrupt a tribunal in violation of Rule 3.5(a)(4), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(g) By falsely representing to the court that the Secretary of State had dissolved the LLC because of forgery, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(h) By falsely stating to the court that opposing counsel had inserted a handwritten provision in a settlement agreement after Defendant had signed it and without his knowledge or approval, Defendant knowingly made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(i) By being disrespectful to the judge during a jury trial after having been warned by the Court about his conduct, Defendant knowingly disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c), engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d), and engaged in conduct intended to disrupt a tribunal by engaging in undignified or discourteous conduct that is degrading to a tribunal in violation of Rule 3.5(a)(4)(B);

(j) By impugning the integrity of the investigating officer in Davenport's pending criminal cases and accusing the Sheriff's Department of a criminal act in a video posted online, Defendant used means in representing a client that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a);

(k) By sending the demand letter to Roughton when he knew that Roughton was represented by Shearin in the ongoing dispute between Davenport and Roughton, Defendant communicated about the subject of the representation with a person he knew to be represented by another lawyer in the matter in violation of Rule 4.2(a);

(l) By sending the demand letter to the Sheriff without promptly delivering a copy of the letter to the County Attorney when he knew that the Sheriff's Department was represented in the matter, Defendant communicated about the subject of the representation with a person he knew to be represented by another lawyer in the matter in violation of Rule 4.2(a) and (b);

(m) By contacting an acquaintance of a witness late at night and talking to her about the witness's intimate life, including asserting the witness had "hit on" a woman with "big boobs" who was involved in prostitution, Defendant used means in

representing a client that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a);

(n) By leaving a profane, abusive, and threatening message for the investigating officer in a client's criminal case in which he stated that that he would "whip [her] ass real bad" unless she had the case against his client dismissed, Defendant used means in representing a client that had no substantial purpose other than to embarrass or burden a third person in violation of Rule 4.4(a), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(o) By threatening to discontinue representation just before the adoption was to be finalized and by unilaterally imposing a condition of immediate payment when the existing agreement with Mr. and Mrs. Deans did not specify the timing of payment of attorney's fees, Defendant attempted to intentionally prejudice his client during the course of the professional relationship in violation of Rule 8.4(a);

(p) By not explaining to Mrs. Deans the current status of the matter and what steps she would need to take to finalize the adoption without his assistance, Defendant failed to take steps to the extent reasonably practicable to protect a client's interests upon termination of the representation in violation of Rule 1.16(d), failed to comply with a reasonable request for information in violation of Rule 1.4(a), and failed to explain a matter to the extent reasonably necessary to permit a client to make informed decisions about the representation in violation of Rule 1.4(b); and

(q) By making gratuitous and malicious statements to Mrs. Deans about members of her family and the District Attorney, Defendant used means that had no substantial purpose other than to embarrass or burden third persons in violation of Rule 4.4(a).

Following the 8 August 2014 entry of the findings and conclusions set forth above, the Hearing Panel heard evidence on September 16-18, and October 22-23, 2014 regarding what discipline should be imposed. Following the presentation of all evidence and argument regarding discipline, and prior to adjourning the proceeding on 23 October 2014, the Hearing Panel made the following:

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Hearing Panel specifically rules that the DHC has subject matter jurisdiction over this action and all claims asserted herein.

2. The exercise of authority by the North Carolina State Bar in bringing this action pursuant to Chapter 84 of the North Carolina General Statutes, the administrative rules of the State Bar, and the Rules of Professional Conduct does not violate Defendant's rights under the constitution and laws of the United States or the constitution and laws of the State of North Carolina.

3. The entry of this Order and imposition of discipline by the Disciplinary Hearing Commission pursuant to Chapter 84 of the North Carolina General Statutes, the administrative rules of the State Bar, and the Rules of Professional Conduct do not violate Defendant's rights under the constitution and laws of the United States or the constitution and laws of the State of North Carolina.

4. Defendant's previously denied motions to dismiss this action, which Defendant renewed at the conclusion of all evidence, should be, and are, denied.

Based upon the pleadings, all other filings in the record, the foregoing findings and conclusions, and all evidence presented in this matter, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 114 above are incorporated as if fully set forth herein.

2. Defendant became a member of the Florida Bar in 1990, and has been licensed to practice law in North Carolina since 2001.

3. Defendant received a Letter of Warning from the North Carolina State Bar's Grievance Committee in 2011, but he has no prior professional discipline.

4. Although no prior disciplinary action has been taken against Defendant, the pattern of misconduct exemplified by the specific instances set forth in this order began no later than 2008 and continued through 2014. During that period, Defendant not only engaged in a pattern of repeated similar acts of misconduct, but also engaged in a wide variety of misconduct.

5. Defendant has argued that the allegations of misconduct against him were the result of animosity by certain Pitt County lawyers and judges arising out of Defendant's participation in a politically unpopular case in 2008. This contention is belied by the fact that Defendant's established pattern of misconduct was not confined to Pitt County. It occurred in multiple counties, before multiple judges, and with opposing counsel from various parts of North Carolina:

a. Kathryn Fagan, the lawyer whose mistreatment by Defendant is described in findings of fact 5 through 21 above, is from Dare County.

b. Brantley Peck, the lawyer whose mistreatment by Defendant is described in findings of fact 33 through 52 above, is from Beaufort County.

c. Defendant was abusive in his communications with Mike Cox, the Pasquotank County Attorney involved in the Davenport matter referenced in findings of fact 69 through 88, above. Defendant was belligerent and condescending to Cox, calling him an "idiot" on more than one occasion **[Plaintiff's Exhibit #75(C)]** and referring to an assertion he made as "asinine" **[Plaintiff's Exhibit #75(B)].** In

other correspondence, Defendant told Cox he "should be ashamed of [himself]" and threatened to report him to the State Bar. **[Plaintiff's Exhibit #75(F) & (H)]**

d. Defendant was also abusive in his communications with Norm Shearin, the lawyer who represented Billy Roughton in the Davenport matter referenced in findings of fact 69 through 88, above. When Shearin expressed his disapproval of Defendant's decision to send the demand letter directly to his client, Defendant referred to Shearin's communication as "Gestapo tactics" and accused Shearin of being unethical. **[Plaintiff's Exhibit #76(B)]** In correspondence to Kevin Rust, another lawyer working with Shearin, Defendant accused Rust of being "purposefully misleading" and suggested he might report him to the State Bar. **[Plaintiff's Exhibit #76(C)]** Shearin and Rust practice law in Wake County.

e. The case of *State v. Brown*, referenced in findings of fact 63 through 68 above, was prosecuted by Greene County ADA Mike Muskus and presided over by Superior Court Judge Phyllis Gorham of New Hanover County. In addition to Defendant's disrespectful courtroom behavior described above, Defendant accused Judge Gorham of bias and accused Muskus of misconduct and of intentionally misleading the jury. **[Plaintiff's Exhibit #60, pp. 635, ln. 1-3 & ln. 20-23, p. 1079, ln 15-16, & p. 1340, ln 4; Muskus trial testimony]**

f. Defendant was defense counsel in the 2008 Hertford County murder trial of *State v. Oakes*. During the course of the proceedings in *Oakes*, Defendant was repeatedly admonished by Superior Court Judge William C. Griffin, Jr. about his disruptive and disrespectful conduct in the courtroom.[1] **[Plaintiff's Exhibits #203 (Oakes motion hearing transcript), p. 26, ln 7-9: "I will not tolerate your talking back to the Court and arguing to the Court"; #261 (testimony of Judge Griffin in Highsmith recusal hearing), p. 35, ln 17-18: "I asked them repeatedly not to violate the rules," p. 29, ln 9-10: "it became obvious he had no respect for me at all"].** In the *Oakes* case, Defendant accused Hertford County District Attorney Valerie Asbell of misconduct, sought to disqualify her entire office from prosecuting the case, and—in the presence of the jury—accused Asbell of lying. **[Plaintiff's Exhibits #201 (Motion to Remove Prosecutor) and #206 (*Oakes* transcript), p. 1963, ln 9-10: "we don't think she's telling the truth"]**

g. In 2008, Defendant was belligerent and threatening to Wayne County Assistant District Attorney Mike Ricks during an exchange about a criminal case in which Defendant represented the accused. During that confrontation, Defendant was visibly angry and profane, accused Ricks of being "mentally ill," and called Ricks a "fucking Nazi." Also during that confrontation, Defendant said to Ricks "I am telling you this son, and I can call you son because that's what you deserve to be

[1] Several years later, Judge Griffin was called as a witness in an unrelated proceeding and gave sworn testimony about Defendant's courtroom conduct, including his behavior in the *Oakes* case. Defendant cross-examined Judge Griffin in that proceeding. Because Judge Griffin was deceased at the time of the hearing in this case, his prior sworn testimony was admitted into evidence.

called, if I didn't have a bar license, you would be a greasy spot on that table." **[Plaintiff's Exhibit #290; trial testimony of Mike Ricks]**

6. Defendant's threat to "whip" Detective Dolenti's "ass" if she did not comply with his demands (described in findings of fact 98 through 103 above) exemplifies a recurrent pattern in Defendant's practice of law. When Defendant believes someone with whom he interacts professionally is wrong about the facts, the law, procedure, or a matter of judgment, he demands instant redress. If the person with whom he disagrees does not immediately capitulate, Defendant threatens to harm that individual in some way. This tactic has been directed towards law enforcement, court personnel, witnesses, clients, judges, and other attorneys. The credible evidence supporting this finding includes:

a. District Attorney Kimberly Robb stated to Defendant during her testimony: "[Y]ou got very angry with me because I didn't do what you wanted me to do in the case, which is typically what happens. I tell you no, you get loud and angry, and then you start threatening me with lawsuits or motions or all kinds of sanctions." **[Defendant's Exhibit #132 (excerpt of DHC trial transcript—Robb testimony), p. 94]**

b. In response to a professional email from Assistant Pitt County Attorney Lisa Overton in which she stated she had filed an objection to a subpoena issued by Defendant's co-counsel, Defendant said: "If you know any law and have any sense of fairness and decency, you will concede the point as I have established here beyond any shadow of a doubt . . . I hope this email and the motion for Rule 11 Sanctions and the motion to compel which follow will make you a better lawyer." **[Plaintiff's Exhibit #272]**

c. When Defendant took umbrage at Judge Griffin's effort to confirm that Defendant's absence from court was due to a *bona fide* medical problem, he sent a letter to Judge Griffin, copied to the Judicial Standards Commission, in which he stated "I am currently considering what legal action to take" and requested that Judge Griffin "step aside from all judicial matters involving me—without the need to litigate this in open court." **[Plaintiff's Exhibit #204 (letter to Judge Griffin)]**

d. As indicated in findings of fact 104 through 114 above, Defendant refused to provide his client, Laura Deans, with any information about the status of her case unless she complied with his demand for immediate payment. **[Plaintiff's Exhibit #100(B) (recorded conversation with Deans); Deans trial testimony]**

e. Kay Brown, the Pitt County family court coordinator, described Defendant's behavior towards her as "aggressive" and "intimidating." When Defendant became upset about Brown's scheduling of one of his cases, he accused her of dishonesty. **[DHC trial transcript excerpt-testimony of Kay Brown p. 18, ln 2-4, p. 12, ln 5-8]**

f. When Defendant learned that the opposing party in a domestic case had improperly spent marital assets, he blamed opposing counsel, attorney Bill Hill, claiming that Hill had "promised" his client would not spend the money. In reaction to what he claimed was a breach of that "promise," Defendant went to Hill's law office uninvited, shouted profanities at Hill, called him a liar, slammed his fist on Hill's conference room table, and said to Hill, "I'm going to have to leave now because I'm so mad I might just hit you." **[Plaintiff's Exhibit #314 (Hill deposition transcript), pp. 20-22; Hill trial testimony]** Defendant thereafter sent several profane and abusive faxes to Hill's office, one of which posed the question "What the fuck have you done to fix it so it doesn't go out that your word ain't worth shit?" **[Plaintiff's Exhibit #291]**

7. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. Defendant regularly uses threats of litigation as a mechanism of intimidation to attempt to force others to comply with his demands. For example:

a. When attorneys Shearin and Cox did not comply with Defendant's demands on behalf of Davenport, Defendant indicated his intent to sue them, and asked each of them "who will your lawyer be?" **[Plaintiff's Exhibits #76(D) (email to Shearin), & #75(H) (email to Cox)]**

b. When the Greenville Police Department would not immediately release to Defendant guns and ammunition collected by law enforcement from Defendant's client, Defendant called the ADA handling the case and threatened to sue the Greenville Police Chief, saying "As soon as I finish this beer, I'm going to slap a lawsuit on him." In a subsequent email to the ADA, Defendant stated "I sued [M]ohammed . . . I told [S]aheeb I would do it by 5 but I was 40 minutes late . . . I AM HAVING FUN NOW! Is [A]hmed having fun now?" The names "Mohammed," "Saheeb," and "Ahmed" used in the email were ethnic references to the Chief of Police, whose name is Hassan Aden. **[Saunders trial testimony; Plaintiff's Exhibit #294 (email to Saunders)]**

c. When Defendant disagreed with the Pitt County Sheriff's Office about whether he was required to go through the security checkpoint to gain access to the Pitt County courthouse, he wrote a note to a sheriff's sergeant which said "YOUR OFFICE WILL BE SUED IF the Bullshit doesn't stop." **[Plaintiff's Exhibit #284 (handwritten note)]**

d. Prior to the 2008 trial in *State v. Lopez*, wherein Defendant represented the accused, Defendant threatened to sue the ADA who was prosecuting the case if the charges against Lopez were not dismissed. **[Defendant's Exhibit #132 (excerpt of DHC trial transcript—Robb testimony), p. 8, ln 7-8: "If he didn't get the case dismissed that he was going to sue me."]**

e. When Defendant believed that he had been wronged in various ways by attorney Matt Jackson, he wrote an email to Jackson's employer stating "If Matt will comply with my desires . . . I will not take legal action against him or report him

to the bar." Several days later, Defendant wrote another email to Jackson's employer stating "I WILL FILE SUIT AGAINST YOU AND YOUR FIRM THIS MONDAY IF YOU DON'T TAKE ACTION TO STOP MATT." **[Plaintiff's Exhibit #297 (emails to Darren Day)]**

8. During the pendency of this State Bar proceeding the Defendant filed suit in the United States District Court, Eastern District of North Carolina (5:14-CV-243-BR) against the North Carolina State Bar, the Bar prosecutors, the hearing panel, an investigator, counsel for the Bar and the Disciplinary Hearing Commission. This lawsuit sought money damages, declaratory and injunctive relief based upon Defendant's allegations that his civil rights had been violated. On September 12, 2014 this lawsuit was dismissed with prejudice by the Honorable W. Earl Britt, Senior U.S. District Judge, pursuant to Rule 12(b)(6) of the Rules of Civil Procedure.

9. During the pendency of this proceeding the Defendant filed suit in Wake County Superior Court (14 CVS 11854) against the North Carolina State Bar, the President of the North Carolina State Bar, the Disciplinary Hearing Commission, and the Chair of the Disciplinary Hearing Commission, again seeking declaratory judgment, monetary damages and injunctive relief. This action was dismissed by the Honorable Robert H. Hobgood, and the Defendant's motion for a preliminary injunction was denied.

10. Additionally, during the pendency of this proceeding and on September 9, 2014 the Defendant filed a Petition for Writ of Prohibition in the North Carolina Court of Appeals seeking to bar the Disciplinary Hearing Commission from conducting the hearing against the Defendant. This writ was denied on September 24, 2014 by the Clerk of the North Carolina Court of Appeals.

11. Societal order depends in large measure on respect for the rule of law and deference to the decisions of our courts. To maintain this respect and deference, litigants, witnesses, jurors, and the general public must have faith in the integrity and impartiality of our system of justice.

12. Defendant intentionally engaged in conduct that foreseeably undermines public faith in the legal system, including making allegations of judicial bias as a regular practice: The evidence presented in this case included seven motions to recuse or disqualify judges filed by Defendant over a period of approximately five years. **[Plaintiff's Exhibits #205 (Motion to Recuse, *State v. Oakes*), #230 (Motion to Recuse, *State v. Lopez*), #252 (Motion to Recuse, *State v. Taft*), #253 (Motion to Recuse, *State v. Brantley*), #260 (Motion to Recuse, *State v. Highsmith*), #274 (Motion to Disqualify, *State v. Sutton*), #298 (Motion to Disqualify, *Yongue v. Yongue*)]**. No evidence was presented tending to show that the judges who were the subjects of those motions had a disqualifying bias. At least four of those motions were determined to be without merit. **[Plaintiff's Exhibits #207 (COA opinion re: *Oakes*); #251 (transcript of hearing on motion to recuse in *State v. Langley*), p. 106, ln. 14: "I find as fact that Judge Duke has indicated or presented no bias against the Defendant [and] that there has been no violation of any . . . Canons of the Code of Judicial Conduct by Judge Duke"; #264 (Order on Motion to Recuse in *Highsmith*), ¶7: "Sutton has failed to demonstrate objectively that the grounds for disqualification actual (sic) exist."; #298(A) (order in *Yongue*)]**

13. Defendant's unwarranted attacks on judges' impartiality and the basic integrity of the court system appear calculated to destroy confidence in the judicial process. In ruling on a motion to disqualify filed by Defendant, District Court Judge Gwynett Hilburn stated, "The tone of the motion convinces the undersigned that counsel almost certainly has convinced his client that the Court will not be fair." In her order, Judge Hilburn noted, "It is disheartening to appear to reward counsel for making the motion he has made. It is more important, however, that all parties feel confident that they have been treated fairly." **[Plaintiff's Exhibit #298(A) (order in *Yongue*)]**

14. Defendant publically displayed abject disrespect for the judiciary, including in open court with members of the public present. Defendant's misconduct in *State v. Brown*, described in findings of fact 63 through 68 above, is just one instance among many. Perhaps the most egregious examples of disrespectful conduct occurred in the 2008 Pitt County trial of *State v. Lopez*, during which Defendant told Superior Court Judge Rusty Duke in open court in the presence of the public to "wipe the smirk off [his] face." **[Plaintiff's Exhibits #232 (transcript), p. 475, ln. 19; & #232(F) (audio recording)]**. In the presence of the *Lopez* jury, Defendant said to Judge Duke, "You're trying to skew things like you have the whole trial Judge." **[Plaintiff's Exhibit #231 (transcript of closing arguments), p. 1333, ln. 14]** Also in the presence of the jury, Defendant impugned opposing counsel, saying "I move for a mistrial due to the heinous mischaracterization of evidence and to, quite frankly, the smart aleck remarks and smirks of Kimberly Robb, the prosecutor." **[Plaintiff's Exhibit #231 (transcript of closing arguments), p. 1331, ln. 5]** It is especially damaging to public perception of the legal system when an officer of the court publically denigrates the integrity of the system and demeans its participants.

15. On at least one occasion, Defendant's undignified, disrespectful, and abusive behavior in the courtroom during trial had a direct impact on the jury. Following a mistrial in the Pitt County homicide case of *State v. Adams*, wherein Defendant represented the accused, jurors spontaneously expressed concerns about Defendant's unprofessional conduct to the presiding judge. **[Judge Duke's trial testimony]**

16. Defendant 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 governing "Courtroom Decorum."

17. Defendant's disruptive and provocative conduct in the courtroom directly interferes with the ability of a court to perform its function. As former Superior Court Judge William Griffin said about Defendant's behavior, "every motion—every commotion, I might add—was directed at causing the judge to do something to commit error. And the judge had to sit and bite his tongue to get the work of—the business of the Court done." **[Plaintiff's Exhibit #261 (Judge Griffin's testimony at *Highsmith* recusal hearing), p. 29, ln. 13]** In his testimony before this tribunal, Judge Duke described similar difficulties in conducting the business of the court due to Defendant's disruptive courtroom behavior.

18. Defendant's habitual lack of courtroom decorum also jeopardized the public's faith in the judicial process. As Judge Griffin explained, "The Rules serve a purpose: To maintain decorum and order and to give the public the appearance that we are conducting

business in a rational manner. And the conduct that I saw from Mr. Sutton from time to time, I don't see how the public could get that impression at all." **[Plaintiff's Exhibit #261 (Judge Griffin's testimony at *Highsmith* recusal hearing), p. 24, ln. 15]**

19. Defendant's noncompliance with Rule 12 persisted up through and including the hearing in this disciplinary case, wherein Defendant shouted at witnesses, repeatedly accused opposing counsel of misconduct, and laughed audibly and rolled his eyes in response to adverse rulings by the Hearing Panel.

20. In this case, Defendant did not respond fully and completely to the State Bar's discovery requests and did not comply with this tribunal's order compelling him to produce certain documents requested by the State Bar. Defendant also did not provide a witness list to opposing counsel prior to the disciplinary phase of the hearing, as ordered by the DHC. Nothing in the record tends to show that Defendant's non-compliance with rules and orders of this tribunal was a good faith mistake or the result of excusable neglect. It undermines the administration of justice when attorneys do not comply with the rules and orders of a tribunal.

21. The gratuitous and disparaging comments of a sexual nature referenced in the preceding findings of fact 19, 95, 97, and 109 above, are part of a larger pattern of conduct by Defendant whereby he uses graphic sexual commentary to embarrass and/or demean others in professional contexts. In a 2008 deposition of an opposing party, Defendant referred to the deponent's breast augmentation surgery on at least six occasions, calling it a "boob job" and at times accompanying the verbal reference with hand gestures. In that same deposition, Defendant repeatedly referred to the witness's sexual relationship with a third party as "screwing." **[Plaintiff's Exhibit #223, p. 58, ln 6; p. 59, ln 2; p. 59, ln 9; p. 86, ln 8-10; p. 265, ln. 13-17; p. 215, ln. 12; pp. 204-205]**. Similarly, in a 2013 email to a Pitt County ADA, Defendant included an irrelevant aside in which he referred to a potential witness "wearing a strap on green dildo." **[Plaintiff's Exhibit #294; testimony of Jay Saunders]**

22. An attorney's duty to persuasively advocate for his client is qualified by his duty of candor towards the tribunal. Accordingly, lawyers must always be honest and forthright with the tribunal. It is unacceptable for a lawyer to be anything less than completely candid with the court. As indicated in conclusions of law 2(c), 2(g), and 2(h) above, on multiple occasions, Defendant made false statements to the tribunal in violation of his fundamental obligation as an officer of the court.

23. Attorneys as officers of the court have a duty to avoid conduct that undermines the integrity of the adjudicative process. When an attorney makes false statements to the court, it causes significant harm to the profession and the administration of justice. Although much of the resulting harm is due to the intangible erosion of judges' and lawyers' ability to rely on another attorney's word, sometimes the impact on the administration of justice is more concrete: For example, due to the controversy surrounding Defendant's false accusation against Miller (set forth in findings of fact 59 through 62 above), the Beaufort County District Court now records all administrative proceedings. **[Plaintiff's Exhibit #2(deposition of Judge Paul), p. 10, ln 15-25: "up until that case . . . and the conflict in that case . . . [w]e had never recorded administrative sessions in this district . . . we now record all of them"]**

24. In representing clients, Defendant often elevates form and procedure over substance or prioritizes gamesmanship over resolution of disputes. This approach tends to prolong litigation, thereby creating a significant risk of increased costs for the parties, and the risk that justice for litigants may be delayed or denied. This phenomenon was reflected by the credible testimony of multiple witnesses in this matter, including:

a. Attorney Bill Hill, who noted "it seemed to take significantly longer to try anything with him than other lawyers with that kind of case." **[Plaintiff's Exhibit #314 (deposition of Bill Hill), p. 32]**

b. District Attorney Kimberly Robb, who stated that Defendant's involvement in the *Lopez* case "made the trial last two times longer than it needed to," and observed that whenever Defendant is involved in a matter "it is unduly burdensome; it's aggravating; you know you're going to have to put ten times the amount of work in . . . just for motions and other things that he has – or emails that you will receive from him." **[Defendant's Exhibit #132 (excerpt of DHC trial transcript—Robb testimony), p. 8, ln 19-20, p. 19, ln 18-23]**

c. Attorney Jeff Miller, who explained that Defendant causes proceedings to be protracted and creates "side-issues." **[Miller trial testimony]**

d. Former District Court Judge Joe Blick, who recalled that a particular hearing over which he presided and in which Defendant represented one of the parties was supposed to take an afternoon, but it took sixty hours of court time. **[trial testimony of Judge Blick]**

e. Pasquotank County Attorney Mike Cox, who—in response to Defendant's demands—filed a motion seeking to resolve the dispute related to the release of the property referenced in finding of fact 73 above. Due to Defendant's insistence that the matter be addressed urgently, Cox proposed calendaring the motion in a neighboring county. Defendant did not respond to Cox's proposal regarding calendaring, but appeared in court on the day of the hearing and challenged venue. Under cross-examination, Cox addressed Defendant about his decision to wait until the day of the hearing to challenge venue by saying "you pulled the rug out from underneath me." **[DHC trial transcript excerpt—testimony of Mike Cox p. 9, ln 25 to p. 11, ln 1; p. 35, ln 10-19 ("you pulled the rug out from underneath me"); p. 35, ln 23 to p. 36, ln 4 ("If you were going to play games there was nothing I could do about it")]**

25. The disparagement and accusations by Defendant set forth in conclusions of law 2(d), 2(h), and 2(j) above are part of a pattern of conduct in Defendant's professional life. Judge Gorham stated to Defendant during the course of the *State v. Brown* proceedings, "You are just one of the most accusatory people I think I have ever heard come before a court." **[Plaintiff's Exhibit #60 (*Brown* trial transcript), p. 1081, ln 24 to p. 1082, ln. 1; p. 1337, ln 17-22]** Defendant persistently accuses lawyers, judges, and others who disagree with him of unethical behavior and dishonesty based on unreasonable and unsupported beliefs, speculation, supposition, and assumption. Judge Gorham also said to Defendant: "[Y]ou make a lot of

assumptions and I'll put that on the record that you've made a great deal of assumptions . . . in all your recitations." **[Plaintiff's Exhibit #60, p. 1081, p. 1340, ln 19-22]** Defendant's regular practice of making such unfounded accusations and *ad hominem* attacks causes significant harm to the legal profession and denigrates the profession in the eyes of the public.

26. Consistent with this pattern, Defendant has made incendiary and unsupported allegations against opposing counsel, adverse witnesses, and members of the Hearing Panel in multiple filings in this disciplinary case. Specifically,

a. Defendant accused Plaintiff's counsel of vindictive prosecution **[Motion to Disqualify State Bar, 5/21/13]**, misconduct **[Motion for New Trial, 7/29/14]**, and suborning perjury. **[Defendant's "Motion to Dismiss or in the Alternative to Strike the Testimony of Witnesses Kimberly Robb, Jeffrey Miller, Kay Brown, Sheriff Neil Elks, Judge Russell Duke, and William Hill," 10/2/14]**

b. Defendant filed multiple motions alleging bias and seeking to disqualify the DHC Hearing Panel, all of which were without merit. **[Motion to Disqualify DHC Chairman, 4/24/14; Petition to Disqualify DHC Panel, 6/9/14; Motion to DHC Chair (Michael) to Replace DHC Panel and Consider Defendant's Motion for New Trial, 8/1/14]**

c. Defendant accused at least four of the witnesses against him in this disciplinary proceeding of giving intentionally false testimony. **[Motion to Dismiss, 10/2/14]**

27. Defendant's allegation of felonious conduct by the Pasquotank County Sheriff's Department described in findings of fact 77 through 79 above was not an isolated instance. With some frequency, Defendant's unfounded allegations against his adversaries take the form of accusations of criminal conduct. Defendant:

a. Accused the Senior Resident Superior Court Judge in Pitt County of felony false imprisonment. **[Plaintiff's Exhibit #251 (transcript of recusal motion hearing in Langley), p. 36, ln 13-17; Defendant's testimony in DHC hearing]**

b. Accused one or more members of the Greene County Clerk of Court's staff of felonious alteration of court documents. **[Plaintiff's Exhibit #64].** The court found that the Clerk's staff engaged only in unintentional procedural errors. **[Defendant's Exhibit #71 (order setting aside Greene County contempt)]**.

c. Accused a Greenville Police Officer of multiple instances of perjury (a felony) in connection with one of Defendant's client's cases. **[Plaintiff's Exhibit #296 (email to ADA Jay Saunders)]**

d. As indicated above, accused four of the State Bar's witnesses of perjury, and Bar counsel of suborning perjury, both felonious acts. **[Defendant's "Motion to Dismiss or in the Alternative to Strike the Testimony of Witnesses Kimberly Robb, Jeffrey Miller, Kay Brown, Sheriff Neil Elks, Judge Russell Duke, and William Hill," 10/2/14]**

28. Defendant's tendency to prolong and complicate adversarial proceedings, coupled with his proclivity for baselessly accusing his adversaries of wrongdoing, interferes with opposing counsel's ability to effectively and efficiently represent their clients' interests. The credible evidence supporting this finding includes: Several lawyers who testified in this case noted that they were unable to communicate with Defendant about legal matters in which he was involved because Defendant was so demeaning and/or acrimonious. **[excerpt of DHC transcript—testimony of Norm Shearin, p. 25, ln 7-12; testimony of Kathryn Fagan ("I could not communicate with you without you bullying and demeaning me")]** One lawyer observed that Defendant "pick[s] the hardest way possible of doing things" **[Saunders trial testimony]** and another said that Defendant's involvement in a case made representing his client "much more difficult than it should be." **[excerpt of DHC transcript—testimony of Mike Cox, p. 21, ln 9]**

29. Over approximately the last six years, multiple judges—including Judge Griffin, Judge Duke, and Judge Gorham, referenced above—have admonished Defendant about his improper, unprofessional, and unethical behavior. In 2012, Superior Court Judge Wayland J. Sermons, Jr., found that Defendant had "largely brought the controversy between him and Judge Duke upon himself by his repeated failure to abide by Rule 12 of the General Rules of Practice." **[Plaintiff's Exhibit #264, Conclusions of Law ¶9]** Judge Sermons directed Defendant to undergo a period of mentoring with the Director of the Chief Justice's Commission on Professionalism in an effort to conform his behavior to professional standards. While that experience should have assisted Defendant in complying with the Rules of Professional Conduct, Defendant did not reform in response to mentoring. Instead, his pattern of disrespect and intimidation towards participants in the justice system continued unabated, as evidenced by the misconduct described in conclusions of law 2(i) through 2(q) above.

30. Defendant left the profane and abusive voicemail for Detective Dolenti and engaged in misconduct related to his client, Laura Deans, in 2013 after the initial disciplinary complaint in this case was filed against him.

31. By unilaterally imposing a condition of immediate payment from Deans as a prerequisite to continued representation, Defendant acted out of self-interest and to the detriment of his client.

32. By refusing to provide information as requested by Deans about the status of her adoption, Defendant intentionally created a foreseeable risk of harm to Deans. Defendant knew that Deans was emotionally invested in the outcome of the adoption but was unfamiliar with the legal process, and therefore was vulnerable. As a result of Defendant's actions, Laura Deans experienced anxiety and emotional distress due to uncertainty about the status of her adoption case. **[Deans trial testimony]**

33. In November 2013, while this disciplinary case was pending, Defendant was arrested after refusing to pass through the metal detector or submit to law enforcement search at the Pitt County Courthouse security checkpoint. During this incident, Defendant circumvented courthouse security measures and disregarded directives from law enforcement in the presence of members of the public. This conduct—which was planned by Defendant—needlessly diverted

law enforcement resources away from protecting and serving the people of Pitt County. **[Plaintiff's Exhibit #285 (incident report); trial testimony of Captain Marsal]**

34. There has been substantial media coverage of Defendant's conduct, including public broadcast of his abusive voicemail to Detective Dolenti and news stories about the courthouse security incident described above. Publicity surrounding a lawyer's abusive and profane degradation of law enforcement and disregard for courthouse security debases the legal profession and demeans the justice system in the eyes of the public.

35. Defendant's conduct caused significant harm to public perception of the profession by reinforcing the negative stereotype that lawyers are antagonistic and combative, and by diminishing the public's expectation that attorneys will conduct themselves with dignity and adhere to the Rules of Professional Conduct. **[Plaintiff's Exhibits #270(C) (Daily Reflector article), #286(A), (B), (D), (E), & (F) (media reports re: courthouse security incident); Testimony of Jeff Miller & Kimberly Robb]**

36. Defendant's responses to State Bar grievance inquiries, filings in the DHC, testimony and argument during the disciplinary hearing, and federal and state collateral actions filed by the defendant, reflect a pervasive tendency to blame others for his misconduct rather than acknowledging wrongdoing.

a. In a letter to the State Bar regarding the deposition misconduct described in findings of fact 33 through 52 above, Defendant explained that he had been angry because Peck "lied" to him and changed the location of the depositions without telling him. **[Plaintiff's Exhibit #42, pp. 12-13]** Defendant also insinuated that Peck had encouraged a witness to disregard a subpoena. **[Plaintiff's Exhibit #42, p. 14 ¶7]**

b. In letters to the State Bar regarding the deposition misconduct described in findings of fact 5 through 21 above, Defendant accused Fagan of "blatant harassment" of his client and stated that he was "justifiably angry." **[Plaintiff's Exhibits #11 & #12]**

c. Defendant attempted to deflect attention away from his false statement about Miller set forth in conclusion of law 2(h) above by arguing that Miller, in adding the handwritten provision to the settlement, had improperly attempted to circumvent a court order. **[Plaintiff's Exhibit #53, p. 1; DHC trial transcript excerpt—cross-examination of Miller, pp. 47-50]**

d. In a letter to the State Bar regarding the allegations against him in the Davenport matter, Defendant said "Roughton and [attorney Kevin] Rust should be the ones being investigated." **[Plaintiff's Exhibit #78(C)]**

e. Defendant explained the abusive voicemail he left for Detective Dolenti by saying that a "dumbass deput[y] . . . made a bogus child abuse charge against a really nice woman." **[Plaintiff's Exhibit # 100(B) (audio recording of phone call with Deans)]**

f. Defendant believed his treatment of Laura Deans was justified because, in his opinion, her father—the Sheriff—had somehow acted improperly in connection with Defendant's arrest. **[Plaintiff's Exhibit #100(B) (audio recording of phone call with Deans): "he asked me to help you out then he does this shit to me"; "what is wrong with your dad...?"; "I saw your dad last night. He lied . . ."; "I'd like to get paid, if you want me to finish it, provided your dad doesn't have me arrested any more"]**

g. Rather than addressing his own profane, belligerent, and threatening outburst in attorney Bill Hill's office, Defendant repeatedly insinuated that Hill engaged in misconduct. **[Plaintiff's Exhibit #314 (Hill deposition transcript); cross-examination of Hill; Defendant's trial testimony]**

37. Defendant has demonstrated utter disdain for self-regulation of the legal profession, referring to these disciplinary proceedings as "nothing more than a Nazi show trial" **[Defendant's Response to Motion for Adherence, 10/20/14]** and a "travesty of justice". **[Defendant's Motion to DHC Chair (Michael) to Replace DHC Panel and Consider Defendant's Motion for New Trial, 8/1/14]** Defendant taunted other lawyers about reporting his conduct in the Davenport matter to the State Bar, sending an email which said "hows reporting me to the state bar working out for you and shearin? NOT TOO GOOD!" **[Plaintiff's Exhibit #75(E)]** Defendant has not, however, hesitated to use the State Bar's disciplinary authority as a tool to threaten other attorneys when he deems it strategically advantageous. For example:

a. In a 2008 letter to an ADA assigned to prosecute Defendant for contempt of court, Defendant demanded dismissal of the case and stated "The only reason I have not already filed a grievance is that you have not proceeded in court yet." **[Plaintiff's Exhibit #240 (letter to Bowman)].**

b. In an email to Pasquotank County Attorney Mike Cox regarding the Davenport matter, Defendant wrote: "If you don't dismiss that baseless motion to 'return property' by noon tomorrow, I will file a motion for Rule 11 sanctions and report you to the bar." **[Plaintiff's Exhibit #75(H)]**

c. In a letter to Cox and a Pasquotank County ADA, Defendant wrote: "If I were half as big a jerk as Shearin, I'd file bar grievances against both of you for taking legal positions that are the polar opposite of your verbal and written positions." **[Plaintiff's Exhibit #75(F)]**

d. In an email to attorney Kevin Rust related to the Davenport matter, Defendant wrote: "I'll have to look at the ethics rules again, but I may now actually be under an obligation to report you to the State Bar." **[Plaintiff's Exhibit #76(C)]**

38. There is no indication that Defendant has taken ownership of his misconduct or its consequences. He has not acknowledged violating the Rules of Professional Conduct, expressed remorse, or shown any insight regarding his lack of professionalism. In his testimony during the discipline phase of this case, Defendant maintained that he didn't do anything wrong, has

nothing to apologize for, and will continue to conduct himself in the same manner if permitted to continue practicing law.

39. Defendant has a reputation as a tenacious and often effective advocate for his clients. Many of Defendant's former clients and family members believe that Defendant is a person of honesty, integrity, and good character. The majority of the members of the legal community who participated in this proceeding described Defendant as a bully. **[e.g., DHC trial transcript excerpt - Muskus cross-examination, p. 6, ln 22-23 (describing Defendant's manner and tone as "loud and bullying"); Plaintiff's Exhibit #314 (Hill deposition transcript), p. 34, ln 7-16 ("reputation of being incredibly difficult to deal with . . . attacking other lawyer personally . . . if they're doing something he doesn't like"); Fagan testimony ("I could not communicate with you without you bullying me"); Miller testimony (describing Defendant as "bullying"); Saunders trial testimony (Defendant's way of doing things "makes everyone around [him] tense . . . sometimes fearful"); testimony of Sheriff Elks –"I felt like you were bullying me around"); trial testimony of Brown, Robb]**

40. Defendant has demonstrated that, in retaliation for perceived wrongs, he is willing to breach his duty of loyalty to clients and former clients by disclosing confidential information and/or attempting to prejudice their interests. This willingness to breach his duty of loyalty creates a significant risk of harm to clients. Defendant's treatment of Laura Deans, described in findings of fact 104 through 114 above, evidences this willingness, as do the following:

a. During his cross-examination of Kathryn Fagan in this hearing, Defendant questioned Fagan about an instance in which she had previously sought legal advice from him. The subject matter of the prior consultation between Fagan and Defendant was not relevant to these proceedings. Through his questioning, Defendant disclosed the nature of the matter about which Fagan had consulted with him in an apparent effort to embarrass her.

b. When a former client received a mass email from Defendant's office notifying everyone in their address book of a change in contact information, she responded to all recipients expressing dissatisfaction about Defendant's representation. In response, Defendant replied to all, disclosing confidential information about the client, accusing the former client of "fraud," saying she was "obviously a disturbed person" and otherwise publicly maligning her character. **[Plaintiff's Exhibit #34, p. 4 (5/30/11 email)]**

c. After Laura Deans reported to the State Bar the misconduct set forth in findings of fact 104 through 114 above, Defendant notified Deans and her husband of his contention that they owed him attorneys fees by faxing correspondence to Deans's father, Sheriff Neil Elks, via a fax machine that was used by employees of the Sheriff's Office. The faxed documents revealed the fees purportedly owed by Deans and her husband, and the nature of the legal matters in which Defendant had provided services. **[Defendant's Exhibit #19 (faxes to Deans c/o Elks)]**

41. Defendant's approach to the practice of law is totally at odds with the professional standards of North Carolina lawyers. The majority of the attorneys who testified in this matter

expressed that Defendant's unprofessional and unethical behavior was unprecedented in their experience. **[E.g., trial testimony of Fagan, Peck, Cox, Ricks, Duke, Brown, Elks, Robb, & Miller]**

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

(a) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;

(b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

(c) Elevation of Defendant's own interests above that of the client;

(d) Negative impact of Defendant's actions on client's or public's perception of the profession;

(e) Negative impact of Defendant's actions on the administration of justice;

(h) Effect of Defendant's conduct on third parties; and

(i) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel concludes that the following factor from § .0114(w)(2), which requires consideration of disbarment, is present in this case: Acts of dishonesty, misrepresentation, deceit, or fabrication.

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

(a) The absence of prior disciplinary offenses;

(b) Selfish motive;

(c) A pattern of misconduct;

(d) Multiple offenses;

(e) Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) Refusal to acknowledge the wrongful nature of conduct;

(g) Character or reputation;

(h) Vulnerability of victim;

(i) Degree of experience in the practice of law; and

(j) Issuance of a letter of warning to Defendant within the three years immediately preceding the filing of the complaint.

5. The factors identified above which are aggravating in nature outweigh the factors which might tend to mitigate Defendant's misconduct.

6. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment.

7. Defendant's persistent pattern of misconduct up through and including his actions in this disciplinary proceeding indicate that Defendant is either unwilling or unable to conform his behavior to the requirements of the Rules of Professional Conduct. Defendant refuses to acknowledge the wrongfulness of his conduct and stated that he does not intend to modify his behavior. Accordingly, if Defendant were permitted to continue practicing law, he would pose a significant risk of continued harm to clients, the profession, the public, and the administration of justice.

8. The Hearing Panel finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to the administration of justice and to the legal profession in the present case. Furthermore, the Panel finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

9. Notwithstanding repeated prior warnings about the impropriety of his conduct and an attempt to reform his behavior through mentoring, Defendant exhibits escalating misconduct and a wholly unrepentant attitude. Accordingly, the protection of the public requires that Defendant be required to demonstrate rehabilitation and reformation before he may be permitted to resume practicing law.

10. The Hearing Panel finds and concludes that the public can only be adequately protected by an active suspension of Defendant's law license, with reinstatement to the practice

of law conditioned upon a showing of reformation and other reasonable conditions precedent to reinstatement.

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

ORDER

1. Defendant's motions to dismiss this action, which were previously denied and which Defendant renewed, are again denied.

2. Defendant's license to practice law in the State of North Carolina is suspended for five years, beginning 30 days from the date of service of this order upon Defendant.

3. Defendant shall submit 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 Defendant.

4. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

5. The administrative fees and costs of this action, including deposition costs and digital forensic expert costs, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary of the North Carolina State Bar.

6. After three years of active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filing a verified petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline and Disability Rules, Defendant has complied with the following conditions:

(a) That Defendant has reformed and presently possesses the moral qualifications for admission to practice law, and that permitting the Defendant to resume the practice of law will not be detrimental to the integrity and standing of the legal profession, the administration of justice, or the public interest;

(b) That during the period of active suspension, Defendant has: (1) participated in and successfully completed a structured program of anger management treatment (which may include inpatient services) approved by the Office of Counsel in consultation with the director of the North Carolina State Bar's Lawyers Assistance Program; (2) submitted to any clinical evaluation associated with that program; and (3) complied with all recommendations of the treatment provider(s)

for that program, including participation in and successful completion of any other clinically-indicated treatment, such as ongoing aftercare or ongoing therapeutic recommendations. In addition, Defendant must demonstrate that during the period of active suspension he has:

i. Submitted to the North Carolina State Bar's Office of Counsel quarterly written reports from the anger management treatment provider regarding Defendant's participation in, and compliance with, the program. The reports shall be due each January 1, April 1, July 1, and October 1 throughout the period of suspension.

ii. That within 30 days of the effective date of this order, Defendant executed a written waiver and/or release authorizing the North Carolina State Bar Office of Counsel to confer with his anger management treatment provider for the purpose of determining if Defendant has cooperated and complied with the treatment program, and that Defendant did not revoke such release/authorization during the period of suspension.

All expenses of such treatment and reports shall be borne by Defendant.

(c) That Defendant understands the then current Rules of Professional Conduct;

(d) That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

(e) That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the North Carolina State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

(f) That Defendant has not engaged in the unauthorized practice of law during the period of suspension;

(g) That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension other than minor traffic violations;

(h) That Defendant paid the costs of this action within 30 days after service of the statement of costs;

(i) That Defendant properly wound down his law practice and complied with the requirements of §.0124 of the North Carolina State Bar Discipline and Disability Rules; and

(j) That Defendant otherwise complied with the requirements of 27 N.C.A.C. 1B §.0125(b).

7. If Defendant successfully petitions for a stay, the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

(a) That Defendant keeps the North Carolina State Bar Membership Department advised of his current business and home addresses and notifies the North Carolina State Bar of any change in address within ten days of such change;

(b) That Defendant responds to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participates in good faith in the North Carolina State Bar's fee dispute resolution process for any petition received during the period of the stay; and

(c) That Defendant does not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during the period of the stay, other than minor traffic violations.

8. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 7(a) – (c) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

9. If Defendant does not seek a stay of the suspension of his 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 paragraphs 6(a) – (j) above and the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 before seeking reinstatement of his license to practice law, and must provide in his petition for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the suspension, any stay thereof, and until all conditions set forth in paragraph 6 above are satisfied.

Signed by the Chair with the consent of the other hearing panel members, this the 13th day of November, 2014.

Fred M. Morelock, Chair
Disciplinary Hearing Panel