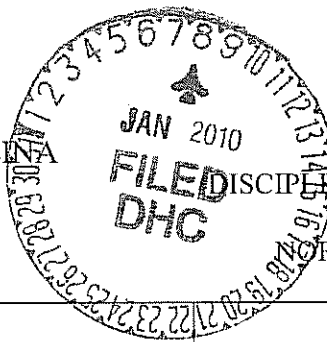


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

REGINALD D. ALSTON, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

This matter came on to be heard and was heard before a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, C. Colon Willoughby, Jr., Robert F. Siler, and Johnny A. Freeman. The plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant was represented by Ronald Barbee.

Based upon the testimony and the 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, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, Reginald D. Alston, (hereinafter "defendant"), was admitted to the North Carolina State Bar on August 23, 1997, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.
3. During all or a portion of the relevant periods referred to herein, defendant was actively engaged in the private practice of law in the city of Winston-Salem, Forsyth County, North Carolina.
4. On or about June 20, 2007 defendant went to the office of the Ashe County Clerk of Superior Court to file motions in case number 03SP116, a special proceeding before the Clerk of Superior Court.

5. On or about June 20, 2007, while at the front desk of the Clerk of Court's office, defendant began "arguing" his case to the Clerk of Superior Court, Pam W. Barlow. Defendant was argumentative, rude and otherwise discourteous to the Clerk of Court while speaking to her about stopping a scheduled partition sale in Special Proceeding 03SP116.
6. A conference call was held between the Clerk of Court and all of the attorneys of record in 03SP116, including defendant, on June 26, 2007 to discuss defendant's motions filed on June 20, 2007 and the partition sale which was set for June 29, 2007.
7. Defendant did not make himself available for the conference call at the scheduled time. After an initial delay of 15-20 minutes and a second delay of 30-40 minutes in reaching defendant by phone, the parties to the conference call were connected.
8. During the conference call on June 26, 2007, defendant was rude to the Clerk of Superior Court, spoke out of turn, refused to recognize the Clerk's authority as a judicial official, refused to talk in a conversational tone of voice, refused requests by the Clerk to be calm, and interrupted the Clerk and other attorneys.
9. As a result of the conference call the Clerk of Court, Ms. Barlow, verbally ordered the delay of the partition sale scheduled for June 29, 2007 until defendant's motions could be heard. A Notice of Hearing was issued by Ms. Barlow for defendant's motions to be heard on July 24, 2007.
10. At the July 24, 2007 hearing held before Ms. Barlow, the Clerk of Superior Court, defendant spoke out of turn, talked without making objections, raised his voice toward the Clerk, pointed his finger, interrupted the Clerk while she was conducting the hearing, rolled his eyes, shook his head, ignored requests of the Clerk, and was otherwise disruptive and discourteous to the Clerk, who was acting as a judicial official at the time.
11. At the close of the hearing, the court announced it would reserve ruling until it carefully considered the evidence and testimony.
12. Following adjournment of the July 24, 2007 hearing, defendant went to the Office of the Clerk and asked for a copy of the tape recording from the hearing. When told a copy would be mailed to him, defendant started jabbing his finger at a Deputy Clerk and stated "my life's goal is to have your boss' job".
13. By order dated August 6, 2007, the Clerk of Court ordered the parties to mediation.
14. After the mediation came to an impasse, the Clerk entered an order in 03SP116 concerning the issue of partition on October 15, 2007.
15. During a phone call on or about October 17, 2007 defendant accused Ms. Barlow of unethical behavior and incompetence.

16. On or about November 14, 2007 defendant filed a Motion for Order to Show Cause to have Ms. Barlow held in contempt as a result of her order entered in 03SP116 on October 15, 2007.

17. On August 1, 2008, Superior Court Judge W. Erwin Spainhour entered an order denying defendant's motion to have Ms. Barlow held in contempt and made Conclusions of Law in part as follows:

[5.] There is no basis in law or in fact for the Motion to Show Cause for an Order seeking to hold the Honorable Pamela W. Barlow, Clerk of Superior Court, Ashe County, North Carolina, in contempt.

[6.] The Motion for an Order to Show Cause was improperly brought, without a factual or legal basis.

18. Judge Spainhour awarded the NC Department of Justice \$3,298.33 for costs and fees incurred by the Department in defending Ms. Barlow in connection with the contempt proceeding initiated by defendant.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Reginald D. Alston and the subject matter of the 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 the conduct violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a. By repeatedly engaging in rude, belligerent, and otherwise discourteous behavior to the court, defendant engaged in undignified or discourteous conduct that is degrading to a tribunal in violation of Rule 3.5(a)(4)(B) of the Rules of Professional Conduct.
- b. By filing an improper Motion for an Order to Show Cause against the Ashe County Clerk of Superior Court without a basis in law and fact, defendant filed a frivolous claim and contention in violation of Rule 3.1 of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and the additional evidence and arguments presented concerning the appropriate discipline, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS REGARDING DISCIPLINE

1. Defendant refused to acknowledge the wrongful nature of his conduct directed toward the Clerk of Superior Court.

2. Defendant has substantial experience in the practice of law.
3. Defendant has not been previously disciplined by the North Carolina State Bar.
4. Defendant had no dishonest or selfish nature in his actions.
5. Some of defendant's misconduct toward the Clerk of Superior Court occurred in open court where it could be heard and seen by court personnel and the public.
6. Such misconduct directly demeans the respect to which the Court is entitled.
7. Such misconduct, once known to the public, harms the legal profession as a whole.
8. Defendant refused to acknowledge the wrongful nature of his conduct in filing a frivolous motion to have the Clerk of Superior Court held in contempt for making a judicial decision.
9. Defendant's frivolous motion required the North Carolina Department of Justice to defend and represent the Clerk and make an appearance at a special session of Superior Court required to hear the matter.
10. Defendant's clients, the respondents in 03SP116, were ordered to pay the sum of \$3,298.33 to the North Carolina Department of Justice for costs and fees incurred by the Department in defending the Clerk of Court.

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

CONCLUSIONS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
 - (a) The refusal to acknowledge the wrongful nature of his misconduct; and
 - (b) His substantial experience in the practice of law.
2. Defendant's conduct is mitigated by the following factors:
 - (a) The absence of a prior disciplinary record; and
 - (b) The absence of a dishonest or selfish motive.
3. The mitigating factors outweigh the aggravating factors.
4. Defendant's misconduct directed toward the Clerk of Superior Court during a hearing demeaned the authority and the respect to which the Court was entitled.
5. Defendant's disregard of his professional obligations to the Court under the Rules of Professional Conduct, as well as his obligations as an officer of the Court, created the risk of significant potential harm to the dignity of the Court and the legal profession.

6. Once known to the public, defendant's misconduct harmed the profession as a whole.
7. Defendant harmed his clients by filing a frivolous motion to have the Clerk of Court held in contempt, which in turn caused the Superior Court to assess fees and cost incurred in defending said motion against his clients.
8. The court system was harmed by the defendant's action, in filing a frivolous motion against the Clerk, by having to commit court time and judicial resources to deal with a frivolous matter.
9. The Hearing Panel has considered all disciplinary options and finds that reprimand or admonition would not be sufficient discipline to protect the public, because of the substantial harm caused by defendant's conduct, and the threat of potential significant harm to the legal profession, the administration of justice, and potential clients.
10. The Hearing Panel considered all lesser options and finds that discipline short of Censure would not sufficiently protect the public for the following reasons:
 - a. Defendant's refusal to appreciate the significance of the wrongful nature of his misconduct requires a censure to impress upon him the significance of his misconduct and to deter defendant from future misconduct of this kind.
 - b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses that defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
11. The Hearing Panel therefore concludes that the only sanction in this case that can adequately protect the public is a Censure of defendant to protect clients, the legal profession, the public, and the administration of justice from the risk of significant harm shown by the defendant's conduct in this instance.

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

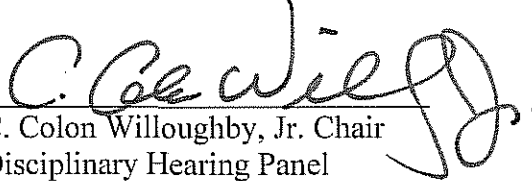
ORDER OF DISCIPLINE

1. Defendant, Reginald D. Alston, is hereby Censured for violations of the Rules of Professional Conduct. The Hearing Panel trusts that you will ponder this Censure, recognize the errors that you have made, and that you will not again allow yourself to depart from adherence to the high ethical standards of the legal profession. This Censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibilities to the public, your clients, your fellow attorneys and the courts, to the end that you conduct yourself as a respected member of the legal profession whose conduct may be relied upon without question.

2. Pursuant to N.C.G.S. 84-28 and the imposition of Censure by this Hearing Panel, defendant is hereby ordered to complete an additional six (6) hours of professionalism classes within two years of the effective date of this Censure and to advise the State Bar at the completion of those hours.

3. The costs of this action are taxed to defendant, including costs of the depositions taken in this case allowed by statute. The deposition costs were necessarily incurred for the prosecution of this proceeding. Defendant will receive a statement of costs from the State Bar and will pay these costs within 90 days of the effective date of this order.

8 Signed by the Chair with the consent of the other Hearing Panel members, this the
day of January, 2010.


C. Colon Willoughby, Jr. Chair
Disciplinary Hearing Panel