No. 208PA15 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff,	)	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR
v.	)	
JERRY R. TILLETT,	)	15 DHC 7
Defendant.	)	

****

RECORD ON APPEAL

****

INDEX

STATEMENT OF JURISDICTION

This action was commenced by the filing of a Complaint and the issuance of a Summons on 06 March 2015 by the North Carolina State Bar before the State Bar's Disciplinary Hearing Commission. Defendant denies that the Plaintiff has jurisdiction to file or consider the Complaint.

STATE OF NORTH CAROLINA

WAKE County

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR

File No. 15 DHC 7

Name of Plaintiff	**SUMMONS AND NOTICE**
THE NORTH CAROLINA STATE BAR	☐ **ALIAS AND PLURIES SUMMONS**
Address	
P.O. BOX 25908 RALEIGH, NC 27611-5908	
VERSUS	
Name of Defendant(s)	Date Original Summons Issued:
JERRY R. TILLETT	Date(s) Subsequent Summon(es) issued:

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1	Name And Address of Defendant 2
Jerry R. Tillett c/o Norman W. Shearin Vandeventer Black, LLP PO Box 2599 Raleigh, NC 27602	

A Disciplinary Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within twenty (20) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and

2. File the original of the written answer with the Office of the Secretary of the North Carolina State Bar, 217 E. Edenton Street, Raleigh, NC, 27601.

Name And Address of Plaintiff's Attorney	Date Issued	Time	
G. Patrick Murphy	March 6, 2015	11:26	☑ AM ☐ PM
THE NORTH CAROLINA STATE BAR P.O. BOX 25908 RALEIGH, NC 27611-5908	Signature D. Thomas Kemo Secretary		

☐ ENDORSEMENT This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	Date of Endorsement	Time	☐ AM ☐ PM
	Signature		
	Secretary		

	RETURN OF SERVICE	

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	Time Served	☐ AM ☐ PM	Name of Defendant

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address of Person With Whom Copies Were Left (If corporation, give title of person copies left with):

☐ Other manner of service (specify):

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid	Signature of Deputy Sheriff Making Return
$	
Date Received	Name of Sheriff (Type or Print)
Date of Return	County of Sheriff

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR, Plaintiff v. JERRY R. TILLETT, Attorney, Defendant	COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

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, Jerry R. Tillett ("Tillett" or "Defendant"), was admitted to the North Carolina State Bar on August 21, 1983, 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.

Upon information and belief:

3. At all times relevant to this Complaint, Defendant was a Superior Court Judge of the First Judicial District, which includes Dare County, North Carolina.

THE APRIL 15, 2010 MEETING IN CHAMBERS

4. On April 4, 2010, Defendant's son and two companions were approached and questioned by officers of the Kill Devil Hills Police Department ("KDHPD").

5. No charges were filed against Defendant's son or his companions as a result of the interaction.

6. Dan Merrell ("Merrell") is a friend and former law partner of Defendant.

7. From April 2010 through approximately January 2012, Merrell was the attorney for the Town of Kill Devil Hills ("KDH").

8. On April 4, 2010, Merrell had a phone conversation with Defendant and discussed the interaction between Defendant's son and his two companions and KDHPD officers.

9. On April 5, 2010, Defendant had another phone conversation with Merrell about the interaction between Defendant's son and KDHPD officers.

10. On April 6, 2010, Merrell met with KDH Town Manager Debora Diaz ("Diaz"), KDH Assistant Town Manager Shawn Murphy ("Murphy"), KDHPD Chief Gary Britt ("Chief Britt"), and KDHPD Assistant Chief Dana Harris ("Harris") to discuss the incident involving Defendant's son.

11. On April 15, 2010, Defendant met with Merrell, Diaz, Chief Britt, Harris and KDH Mayor Raymond Sturza in his judicial chambers. Merrell arranged the meeting at Defendant's request.

12. During the April 15, 2010 meeting, Defendant spoke about complaints related to incidents of alleged misconduct involving KDHPD officers, poor investigations by KDHPD, alleged personnel matters with KDHPD, and he expressed his anger over the incident involving his son.

13. During the April 15, 2010 meeting, KDH officials offered to allow Defendant the opportunity to view the video of the incident involving his son but Defendant refused the offer and stated that he knew law enforcement officers could manipulate the video.

14. During the April 15, 2010 meeting, Defendant questioned Chief Britt about whether Chief Britt thought KDHPD officers had complied with the law during the incident involving his son. Chief Britt responded that from his information of the facts the officers had acted within the law.

15. Defendant told those in attendance at the April 15, 2010 meeting that "the law is what the Superior Court Judge says it is in North Carolina."

16. Defendant stated during the April 15, 2010 meeting that police officers do not interpret the law, and that they have to go by what the judge says.

17. Defendant stated during the April 15, 2010 meeting that if a judge said the law is that someone had to stand on their head, then that person would have to stand on their head.

18. The April 15, 2010 meeting became confrontational.

19. Defendant was agitated, aggressive and angry during the April 15, 2010 meeting.

20. Defendant advised those attending the April 15, 2010 meeting that a superior court judge had the power to remove officials from office.

21. During the April 15, 2010 meeting, Chief Britt responded to Defendant by telling Defendant that Chief Britt was not going to be intimidated by Defendant and that KDHPD officers and Chief Britt were going to do the right thing, and that the rule of law applied to everyone.

22. Defendant warned KDH officials during the April 15, 2010 meeting that they needed to address the matters he had discussed or that he would "take care of it for them."

23. The April 15, 2010 meeting did not involve or arise from any legal matter pending before Defendant.

24. Defendant's conduct at the April 15, 2010 meeting was intended to intimidate KDH town officials.

25. A reasonable person would view Defendant's conduct at the April 15, 2010 meeting as intimidating, coercive and/or retaliatory.

DEFENDANT'S ORDER TO PRODUCE COPIES OF PERSONNEL FILES

26. After the April 15, 2010 meeting, Defendant spoke to police officers voicing grievances about Chief Britt. Defendant told police officers voicing grievances against Chief Britt about procedures for filing complaints and where the complaints would be sent.

27. As a result of Defendant's instructions to complainants, the complainants addressed their complaints against Chief Britt to Defendant.

28. After the April 15, 2010 meeting and continuing into the spring of 2011, Defendant received written complaints from police officers with grievances against Chief Britt and Assistant Town Manager Shawn Murphy ("Murphy").

29. On or about May 9, 2011, Defendant called Merrell to discuss complaints about KDHPD.

30. In or about June 2011, Defendant told District Attorney Frank Parrish ("Parrish") about written complaints against Chief Britt that Defendant had received. Defendant told Parrish he would send the complaints to Parrish for consideration in filing a petition for removal of Chief Britt.

31. Defendant provided the written complaints he had received against Chief Britt to Parrish. Parrish reviewed the complaints and assigned an investigator in his office to the matter.

32. N.C.G.S. §128-17 gives the county attorney or district attorney in the county where a law enforcement officer is an officer the authority to approve or file petitions for the removal of the law enforcement officer from office.

33. After sending complaints to Parrish, Defendant continued to initiate communication with Parrish about filing a petition to remove Chief Britt.

34. Parrish advised Defendant that the claims in the complaints did not rise to the level to support removal of Chief Britt.

35. Defendant argued to Parrish that it was Parrish's duty to file a petition for removal of Chief Britt.

36. On June 24, 2011, Defendant sent a letter to Chief Britt advising him, in part, that "complaints of professional misconduct have been received by this office against you." The letter also stated that, "to the extent, that allegations involve,[sic] conduct prejudicial to the administration of justice, conduct violative of the public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantive offense, this office will act appropriately in accord with statutory and/or inherent authority." The letter was written on Defendant's judicial letterhead and was signed by Defendant in his capacity as superior court judge.

37. At the time Defendant wrote the June 24, 2011 letter to Chief Britt, no petition to remove Chief Britt had been approved or filed by the county attorney or district attorney and no petition for removal of Chief Britt was pending before Defendant.

38. In early Fall 2011, Parrish prepared a draft petition for removal of Chief Britt.

39. On September 13, 2011, Parrish sent Defendant a letter notifying Defendant that Parrish was drafting and preparing for filing a petition for removal of Chief Britt.

40. On September 19, 2011, Defendant issued an order, *sua sponte*, that copies of certain personnel files, including those of Chief Britt and Murphy, be delivered to his office. The order stated, in part, "[t]his office has received written notification that the District Attorney has found sufficient cause and will be preparing pleadings or litigation in these matters."

41. At the time Defendant issued the September 19, 2011 order, there was no court action pending before Defendant.

42. Parrish never filed a petition for removal of Chief Britt.

43. The September 19, 2011 order directed the Town Clerk of KDH to "compile and collect the complete personnel files including all information

defined in G.S. 160A-168 including any information available from prior employment, disciplinary actions, memo, etc. for the persons hereinafter listed." The persons whose complete personnel files were ordered to be copied and delivered to Defendant's Office were: Chief Gary Britt, Shawn Murphy, Andrew R. Ennis, Joseph B. Knight, David Shane Allen, Robert Booth, Lt. G.M. Farrow, and Allan Holland.

44. The September 19, 2011 order was not filed in the clerk of court's office and does not bear any file number or file stamp.

45. Diaz, the Town Manager, was not notified of any proceedings related to the September 19, 2011 order before the order was executed by Defendant.

46. There was no complaint, petition or other legal action pending when Defendant signed the September 19, 2011 order.

47. Defendant gave no notice to and did not provide an opportunity for Chief Britt, Murphy or the other individuals whose personnel files were copied to be heard.

48. Parrish, a statutory officer charged with the duty to review petitions to remove police officials, did not file any petition or other document requesting that Defendant issue the September 19, 2011 order.

49. Defendant and Merrell selected the people whose personnel files would be delivered to Defendant.

50. Defendant appointed Merrell to supervise the collection and copying of the personnel records.

51. The Town of KDH did not request or petition Defendant to issue the September 19, 2011 order.

52. Defendant did not have jurisdiction to enter the September 19, 2011 order.

53. On September 20, 2011, after conferring with Merrell, KDH officials produced copies of personnel records in compliance with the September 19, 2011 order.

54. Merrell billed the Town of KDH $1,275 for his services provided on September 20, 2011 to comply with Defendant's order.

55. KDH town officials told Merrell that the town needed to keep a copy of the September 19, 2011 order.

56. Merrell spoke with Defendant about the request of town officials to keep a copy of the order.

57. Defendant told Merrell that Defendant would not permit town officials to keep a copy of the order and told Merrell that Defendant was upset that Merrell had shown a copy of the order to Diaz and town officials.

58. On or about September 21, 2011, KDH Town Clerk Mary Quidley ("Quidley") continued to express to Merrell her concern that the town needed a copy of the order. After Quidley's discussion with Merrell, Defendant agreed that Quidley could keep a copy of the order under seal.

59. On or about September 22, 2011, Merrell received a draft of a petition for removal of Chief Britt prepared by Parrish.

60. On or about September 23, 2011, Chief Britt was placed on paid non-disciplinary suspension.

61. After Chief Britt's suspension, Parrish discussed with Chief Britt's attorney, Patricia Holland ("Holland"), the possibility that Parrish would file a petition for removal of Chief Britt.

62. In or about October 2011, the risk management division of the North Carolina League of Municipalities, the Town of KDH's liability carrier, arranged for an administrative review of the performance and leadership of Chief Britt and its impact on the operations of KDHPD to be conducted. The liability carrier retained legal counsel to represent the Town of KDH.

63. Merrell later informed Defendant that the Town of KDH's liability insurer was conducting its own investigation.

64. After learning of the administrative review, Defendant spoke with Parrish. Defendant told Parrish that the administrative review was like a fox guarding the hen house and told Parrish that he should file the removal petition anyway. Defendant later told Parrish to tell Holland to have her client read the petition and it will cause him to resign.

DEFENDANT'S CONTINUED ACTIONS AFTER HIS STATED RECUSAL AND HIS MEETING WITH THE DISTRICT ATTORNEY AND ASSISTANT DISTRICT ATTORNEY

65. On or about November 1, 2011, Defendant sent a letter to the Honorable Milton F. Fitch, Jr., Senior Resident Superior Court Judge of Judicial District 7B/C. During the months of July through December 2011, Judge Fitch's rotation was in the First Judicial District and included Dare County.

66. In his November 1, 2011 letter, Defendant referred the complaints against Chief Gary Britt to Judge Fitch. In the letter, among other matters,

Defendant advised Judge Fitch that Defendant had considered issuance of an Order to Show Cause for contempt against Chief Britt for allegedly failing to comply with Defendant's September 19, 2011 order. Defendant also advised Judge Fitch that Parrish had not taken official action, and that Chief Britt was on paid administrative leave and "these matters need to be resolved expeditiously."

67. On December 22, 2011, Murphy sent an email to town officials and Merrell regarding the result of the administrative review. In the email, Murphy stated that Diaz and Murphy had discussed with Chief Britt the issues identified for implementation by the administrative review and stated that Chief Britt was reinstated to active duty on December 22, 2011.

68. On or about December 30, 2011, Merrell sent a copy of Murphy's December 22, 2011 email to Defendant along with a document captioned "Police Issues For Implimentation (sic) By The Police Chief As Of January 2012."

69. On or about January 5, 2012, Defendant met with Parrish and Assistant District Attorney Nancy Lamb ("Lamb") in Defendant's office. Prior to the meeting, Defendant arranged for a deputy sheriff to be stationed outside his office door during the meeting.

70. At the January 5, 2012 meeting, Defendant dominated the discussion, at times with an elevated voice.

71. At the January 5, 2012 meeting, Defendant told Parrish he had received complaints about Parrish's performance as District Attorney and that Defendant had received complaints from individuals who had lawyers and wanted to file petitions to remove Parrish from office based on Parrish's failure to file a petition to remove Chief Britt.

72. At the January 5, 2012 meeting, Defendant pressed Parrish to file a petition to remove Chief Britt.

73. At the January 5, 2012 meeting, Defendant made it clear to Parrish that there would be negative repercussions for Parrish if Parrish did not file the petition to remove Chief Britt.

74. During the January 5, 2012 meeting, Defendant told Parrish that Parrish was conflicted out of the decision whether to file a petition and directed that Lamb should take responsibility for deciding whether to file the petition.

75. During the January 5, 2012 meeting, Defendant told Parrish not to consult with Lamb while she was making her decision whether to file a removal petition against Chief Britt.

76. On or about January 5, 2012, Defendant sent a letter to Murphy advising him, among other things, that "complaints of professional misconduct have been received by this office against you." The letter also stated that, "to the

extent,[sic] that allegations involve, conduct prejudicial to the administration of justice, conduct violative of the public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantive offense, this office will act appropriately in accord with statutory and/or inherent authority." The letter was written on Defendant's judicial letterhead and was signed by Defendant in his capacity as superior court judge.

77. At the time Defendant wrote the January 5, 2012 letter to Murphy, no petition for removal of Murphy or action of any kind relating to Murphy was pending before Defendant.

78. During a January 11, 2012 meeting with Lamb and District Attorney Investigator George Ryan ("Ryan"), Defendant told Lamb and Ryan that he had a deputy outside the door during their January 5, 2012 meeting in order to arrest Parrish for contempt and willful misconduct.

79. During the January 11, 2012 meeting, Defendant told Lamb she had a duty to file the petition to remove Chief Britt and that as gatekeeper she should have the complaints aired.

80. On January 18, 2012, Lamb called Defendant and told him that she was going to file a removal petition against Chief Britt. Defendant responded, "Good."

81. On January 19, 2012, after further considering the matter and the sufficiency of the evidence to support the action, Lamb decided she would not file the petition to remove Chief Britt.

82. Lamb telephoned Defendant and told him she was not going to file the removal petition.

83. After Defendant wrote the letter of November 1, 2011 to Judge Fitch, Defendant sent the complaints that he had received about Chief Britt to Judge Fitch.

84. Between November 1, 2011 and the end of his rotation through the First Judicial District in December 2011, Judge Fitch received communication from Defendant through Defendant's assistant, Dee Ivey, inquiring about the status of the complaints against Chief Britt.

85. In early January 2012, Defendant sent Judge Fitch a copy of the policies entitled "Police Issues for Implementation by the Chief As Of January 2012" ("new policies") which Merrell had sent to Defendant.

86. Shortly before January 19, 2012, Defendant drafted and sent to Judge Fitch a proposed order which would, among other things, rescind provisions of the new policies and allow any KDH employee to present

complaints or grievances involving the Police Department to Judge Fitch or any Resident Superior Court Judge at Defendant's office.

87. After Defendant sent the draft order to Judge Fitch, Judge Fitch's Trial Court Administrator, William Nichols ("Nichols"), communicated to Defendant that Judge Fitch would sign an order as long as it referred the complaints specified in the order to Defendant and not to Judge Fitch.

88. After telling Defendant Judge Fitch's concerns with the draft order Defendant had provided, Nichols revised the draft to direct that complaints and grievances by KDH employees could be made to Defendant, or as otherwise provided by law.

89. On January 19, 2012, Judge Fitch signed a revised version of the order Defendant sent him. The order was filed with the Clerk of Dare County.

90. The Town of KDH, represented by counsel engaged by the League of Municipalities, appealed the January 19, 2012 order.

91. On October 16, 2012, the North Carolina Court of Appeals vacated the January 19, 2012 order. In its opinion, the Court of Appeal noted that the trial court acted beyond its jurisdiction in issuing the September 19 and January 19 orders *sua sponte*.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a. Defendant engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d) as follows:

i. Summoning government officials to an April 15, 2010 meeting in his chambers shortly after Defendant's son was detained by KDH police officers;

ii. During the April 15, 2010 meeting, expressing his anger over the detention of his son by KDH police officers;

iii. During the April 15, 2010 meeting, advising KDH officials at the meeting that he had the power to remove officials from office;

iv. During the April 15, 2010 meeting, telling KDH officials that they needed to address the matters he discussed or he would take care of it for them;

v. Becoming embroiled in the affairs of the KDH police department;

vi. Accepting *ex parte* complaints about KDH police and town officials;

vii. Sending notice to Chief Britt *sua sponte* that Defendant "will act appropriately in accord with statutory and/or inherent authority" regarding complaints he received about Chief Britt when no action was pending before Defendant related to Chief Britt;

viii. Issuing the September 19, 2011 order *sua sponte* without a hearing and without notice to Chief Britt, Murphy or any of the other affected individuals;

ix. Issuing the September 19, 2011 order without any action or petition pending before Defendant;

x. Pressuring Parrish and his assistant to file a petition to remove Chief Britt from office;

xi. Expressing his opinion about the administrative review that was being conducted in association with the League of Municipalities;

xii. Remaining actively and aggressively engaged in the affairs of the KDH police department after purporting to recuse himself;

xiii. Sending notice to Murphy *sua sponte* that Defendant "will act appropriately in accord with statutory and/or inherent authority" regarding complaints he received about Murphy when no action was pending before Defendant related to Murphy;

xiv. Drafting and sending to Judge Fitch a proposed order, and consulting with Judge Fitch about the January 19, 2012 order after purporting to recuse himself from complaints filed against Chief Britt;

xv. During the January 5, 2012 meeting, telling Parrish that there would be repercussions if the removal petition against Chief Britt was not filed;

xvi. During the January 5, 2012 meeting, having a deputy stationed outside Defendant's office door during the meeting to have Parrish arrested; and/or

xvii. During the January 5, 2012 meeting, telling Parrish not to consult with Lamb, and telling Lamb she had a duty to file the removal petition after purporting to recuse himself from complaints filed against Chief Britt.

WHEREFORE, Plaintiff prays that:

(1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of

the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;

(2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and

(3) For such other and further relief as is appropriate.

The 6th day of March, 2015.

John Silverstein, Chair
Grievance Committee

G. Patrick Murphy
Deputy Counsel
State Bar No. 10443
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620
Attorney for Plaintiff

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

JERRY R. TILLETT, Attorney,

Defendant.

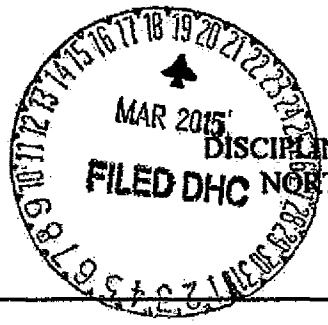
ACCEPTANCE OF SERVICE

Pursuant to Rule 4(j)(1)b of the North Carolina Rules of Civil Procedure, the undersigned counsel has been authorized by Jerry R. Tillett to accept on his behalf service of the Summons and Complaint filed by the North Carolina State Bar in the above-captioned case, and does hereby accept and acknowledge service on the date listed below of the Summons and Complaint filed by the North Carolina State Bar in this case.

This acceptance of service shall not constitute a waiver of any other rights, or defenses, and is not admissible for any purpose other than to establish service of the Summons and Complaint.

This the 10th day of March, 2015.

Norman W. Shearin
N.C. State Bar No.: 3096
VANDEVENTER BLACK LLP
Post Office Box 2599
Raleigh, North Carolina 27602-2599
Telephone: (919) 754-1171
Facsimile: (919) 754-1317
E-mail: nshearin@vanblk.com
Attorneys for Defendant Jerry R. Tillett



NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
15 DHC 7

THE NORTH CAROLINA STATE BAR, Plaintiff, v. JERRY R. TILLETT, Attorney, Defendant	ORDER ASSIGNING HEARING PANEL AND SETTING HEARING, PRE-HEARING CONFERENCE AND PRE-HEARING STIPULATION DATE

Pursuant to 27 N.C. Administrative Code Chapter 1, Subchapter B, Section .0114(d), you are hereby notified that the following persons are appointed to hear and determine the matter entitled "The North Carolina State Bar v. Jerry R. Tillett".

Joshua W. Willey, Jr., Chair
P. O. Drawer 1638
New Bern, NC 28563

Barbara B. Weyher
P. O. Box 2889
Raleigh, NC 27602-2889

Michael S. Edwards
1301 Hunting Ridge Road
Raleigh, NC 27615

IT IS FURTHER ORDERED as follows:

1. The hearing of this matter is set for 9:00 a.m., Monday, Tuesday, Wednesday, Thursday and Friday, July 27, 28, 29, 30 and 31, 2015 in the Second Floor Courtroom 203 A&B of the North Carolina State Bar Building, 217 E. Edenton Street, Raleigh, North Carolina, to continue until completed.
2. Pursuant to 27 N.C. Admin. Code, Chapter 1, Subchapter B, Section .0114, at least 25 days before the hearing date, counsel for the N. C. State

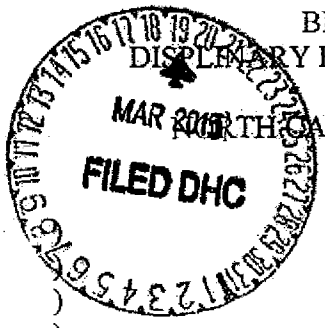
Bar shall arrange a pre-hearing conference with Defendant's attorney of record to be held not later than 21 days before the hearing date. At such conference, the parties shall prepare and sign a pre-hearing stipulation which shall be submitted to the members of the hearing panel at least 14 days before the hearing date.

3. If the parties do not voluntarily confer as provided herein, the Chair of the Hearing Panel may, upon 5 days notice, order the parties to participate in a pre-hearing conference for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings.
4. Any proposed consent order to settle the case which the parties wish to present to the Hearing Panel for its consideration, shall be provided to each member of the Hearing Panel at least two days before the hearing date; otherwise, the hearing will be held as scheduled.
5. For the convenience of the parties, the Secretary of The North Carolina State Bar is hereby designated to issue process in this proceeding. The chairman of the hearing panel may exercise such powers coextensively with the Secretary.

This the 17th day of March, 2015.

Fred M. Morelock, Vice Chair
The Disciplinary Hearing Commission

STATE OF NORTH CAROLINA	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR
WAKE COUNTY	15 DHC 7
THE NORTH CAROLINA STATE BAR, Plaintiff, v. JERRY R. TILLETT, Defendant.	**MOTION TO DISMISS IN LIEU OF ANSWER**



NOW COMES, Defendant, Jerry R. Tillett ("Tillett" or "Defendant"), by and through counsel, pursuant to 27 NCAC 01B .0114(n) and Rule 12 of the North Carolina Rules of Civil Procedure, moves the Disciplinary Hearing Commission ("DHC") for an order dismissing the Complaint. In furtherance thereof, Defendant shows unto the DHC the following:

I. The State Bar Lacks Jurisdiction.

1. The North Carolina State Bar ("State Bar") filed the Complaint against Tillett on March 5, 2015, without subject matter jurisdiction.

2. The State Bar "derive[s] its jurisdiction by legislative act[.]" 27 NCAC 01B .0102(3).

3. The statutory authority for the State Bar to discipline attorneys is set forth in N.C. Gen. Stat. § 84-23. See 27 NCAC 01b .0104 (setting forth the powers and duties of the State Bar).

4. The State Bar "is vested, as an agency of the state, with the control of the discipline, disbarment, and restoration of attorneys practicing law in this state." 27 NCAC 01B .0102(1) (emphasis supplied).

5. The Complaint fails to allege that Tillett was "practicing law." The Complaint discloses on its face that Tillett was acting solely in his capacity as a superior court judge. See, e.g., Compl. ¶¶ 3, 36, 76.

6. The statutory definition of "practicing law" does not encompass the duties of judges. In order to "practice law," one must "perform[] any legal service for any other person, firm or corporation[.] N.C. Gen. Stat. § 84-2.1.

7. There are no allegations in the Complaint that Tillett was performing legal services for "any other person, firm or corporation[.]"

8. If acting in a judicial capacity were the "practice of law," a judge would be guilty of a Class 3 misdemeanor and subject to a $200 fine every time he or she held court. N.C. Gen. Stat. § 84-2 (prohibiting a judge from engaging in the private practice of law).

9. As the State Bar's own rules recognize, judicial misconduct is to be reported to and governed by the Judicial Standards Commission, not the State Bar. See 27 NCAC 02 Rule 8.3 (when a judge violates "applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office [an attorney] shall inform the North Carolina Judicial Standards Commission[.]" (emphasis supplied).

10. Final authority to discipline judges lies solely with the Supreme Court. In re Hayes, 356 N.C. 389, 398, 584 S.E.2d 260, 266 (2002).

11. Moreover, "[w]hether or not [a] judge's comments violated the Code of Judicial Conduct is the province of the Judicial Standards Commission." Carpenter v. Carpenter, 189 N.C. App. 755, 759, 659 S.E.2d 762, 765 (2008).

12. The authority to impose discipline against a judge is set out by N.C. Gen. Stat. § 7A-374.1. The State Bar is not identified as an entity that may impose such discipline. See, e.g.,

Warren v. Bray, No. 1:13CV1144, 2014 WL 3404962, at *6 (M.D.N.C. July 10, 2014) ("This Court also does not have the power to grant Plaintiff's requested relief that Judge Bray's 'judicial license' be suspended or revoked. See N.C. Gen. Stat. § 7A–374.1 (2013).")

13. Specifically, Chapter 7A of the North Carolina General Statues sets forth the "procedure for discipline of any judge or justice of the General Court of Justice." Any such discipline "shall be in accordance with" Article 30 of Chapter 7A. N.C. Gen. Sta. § 7A-374.1 (emphasis supplied). Thus, the Chapter 7A process for disciplining judges is exclusive.

14. The State Bar's jurisdiction to discipline attorneys is set out in Chapter 84, not Chapter 7A, and Chapter 7A does not confer jurisdiction on the State Bar to discipline judges.

15. Indeed, Article IV, Section 17, of the North Carolina Constitution provides, in part, that "[t]he General Assembly shall prescribe a procedure . . . for the censure and removal of a Justice or Judge of the General Court of Justice for . . . conduct prejudicial to the administration of justice[.]"

16. The procedure prescribed by the General Assembly is the Judicial Standards Act, which is codified in Chapter 7A. In re Martin, 295 N.C. 291, 300, 254 S.E.2d 766, 771 (1978).

17. The Supreme Court has conclusively ruled that "we are of the opinion that ratification of the [Constitutional] amendment carried with it an expression of the will of the people that the Constitution be amended so as to empower the Legislature to confer upon [the Supreme] Court original jurisdiction over the censure and removal of judges." Id. at 300, 254 S.E.2d at 772.

18. The State Bar is now seeking to discipline Tillett for conduct "prejudicial to the administration of justice" even though the North Carolina Constitution and the Judicial Standards Act expressly and exclusively confers upon the Supreme Court such authority.

19. The State Bar's attempt to exercise jurisdiction is in contravention of the North Carolina Constitution, which "expresses the will of the people of this State and is, therefore, the supreme law of the land." Id. at 299, 254 S.E.2d at 771.

20. As such, the State Bar is not empowered to impose discipline against a judge for his conduct in his judicial office.

21. The State Bar itself has previously acknowledged its lack of jurisdiction to even opine as to a judge's conduct in two (2) ethics opinion. As recently as 2013, the State Bar opined that: "Opinion on the professional conduct of judicial officers is outside the purview of the Ethics Committee. Therefore no opinion will be offered in response" to whether a judge "violate[d] the Rules of Professional Conduct or the Code of Judicial Conduct[.]" 2013 Formal Ethics Opinion 6. This Opinion is attached hereto as **Exhibit A**.

22. Previously, in RPC 208 (filed July 21, 1995), the State Bar opined that: "Judges are subject to the Code of Judicial Conduct and the regulation of the Judicial Standards Commission. Therefore, no opinion is expressed as to the ethical duty of a judge in this situation." RPC 208 is attached hereto as **Exhibit B**.

23. The State Bar's own website states that: "Complaints about North Carolina judges go to the NC Judicial Standards Commission, PO Box 1122, Raleigh NC 27602[.]" See https://www.ncbar.com/public/intro.asp (lasted visited 16 March 2015). A printout of that page is attached hereto as **Exhibit C**.

24. Ultimately, the State Bar does not have jurisdiction because: (1) Tillett was not "practicing law" as defined in Chapter 84; and (2) disciplinary actions brought against a judge must be brought pursuant to Chapter 7A. The State Bar is granted no authority whatsoever under Chapter 7A. Therefore, the Complaint against Tillett should be dismissed.

II. The State Bar is Estopped from Pursuing the Complaint.

25. The State Bar has been informed by Tillett that the conduct alleged in the Complaint has already been the subject of a Judicial Standards Commission inquiry which has been fully and completely resolved.

26. The State Bar filed the present action against Tillett nearly two (2) years after the Judicial Standards Commission filed its Order on March 8, 2013.

27. This belated effort by the State Bar to again discipline Tillett is barred by collateral estoppel. See Whitacre P'ship v. Biosignia, Inc., 358 N.C. 1, 15, 591 S.E.2d 870, 880 (2004).

28. The doctrine advances the twin policy goals of "protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation." Id. at 15-16, 591 S.E.2d at 880.

29. The facts alleged in the Complaint, as well as those in the Judicial Standards Commission's Order and complaint, are virtually identical, yet the State Bar is seeking to relitigate these previously decided facts, and impose discipline for the same conduct for which Tillett has already been disciplined.

30. The Complaint should therefore be dismissed, as collateral estoppel exists to "protect[] litigants from the burden of relitigating previously decided matters[.]"

31. Moreover, the State Bar has on at least two (2) occasions prior to Tillett consenting to the Judicial Standards Commission's Order, acknowledged that the State Bar is without authority to say whether a judge has violated his or her ethical obligations. See **Exhibits A** and **B**, attached hereto.

32. Tillett relied upon these statements and advice of his counsel as to the exclusive authority of the Judicial Standards Commission in agreeing to forego a challenge to the Judicial Standards Commission's findings.

33. The State Bar, in clear contravention of its own statements and prior rulings, is now seeking to do exactly what it has previously stated that it could not. The State Bar is therefore estopped from now taking a contrary position. See Whitacre, *infra*.

III. Tillett Is Being Denied Due Process.

34. Fundamental fairness and due process dictate that the Complaint be dismissed.

35. Due process is "a flexible concept, to insure fundamental fairness in judicial or administrative proceedings which may adversely affect the protected rights of an individual." In re Lamm, 116 N.C. App. 382, 385, 448 S.E.2d 125, 128 (1994) aff'd, 341 N.C. 196, 458 S.E.2d 921 (1995)

36. "Due process means simply a procedure which is fair and does not mandate a single, required set of procedures for all occasions; it is necessary to consider the specific factual context and the type of proceeding involved." Id.

37. The State Bar has been informed that the Judicial Standards Commission's Order prevents Tillett from involving himself in the transaction or series of transactions described to the Complaint.

38. The Judicial Standards Commission's Order prevents Tillett from "participat[ing] in any hearing or legal proceeding, []or communicat[ing] his opinion o[n] any pertinent facts to any judicial official unless compelled to by subpoena, concerning[:]" (1) any petition to remove the District Attorney; any petition to remove the Chief of Police of Kill Devil Hills (or other

officer or town official); or (3) personnel matters or professional grievances related to the Police Department of Kill Devil Hills.

39. The allegations in the Complaint relate to petitions to remove certain public officers as well as personnel and/or professional grievances related to the Police Department of Kill Devil Hills.

40. As such, Tillett may be prohibited from fully responding to the substantive allegations in the Complaint.

41. Due process, however, requires an unimpaired opportunity to controvert the allegations in the Complaint. Tillett will unquestionably be denied that opportunity. Id.

42. Being unable to freely respond to the factual allegations contained in the Complaint, despite the State Bar having actual knowledge that Tillett could not so respond, is a denial of due process.

43. Moreover, the incidents alleged in the Complaint are now nearly five (5) years old. With the passage of time, memories have faded and documents have been lost or not preserved. A critical witness, District Attorney Parrish, is now deceased. Many of the other witnesses are biased due to self-interest. Significantly, the evidence is in sharp conflict, belying the existence of evidence which satisfies the clear and convincing standard. See e.g., In re Inquiry Concerning a Judge, 356 N.C. at 406, 584 S.E.2d at 270-71 (where the evidence was in sharp conflict, the Judicial Standards Commission did not carry its burden to establish clear and convincing evidence)

44. The Complaint should therefore be dismissed, in that the State Bar has violated Tillett's due process rights.

IV. Conclusion.

45. In conclusion, the State Bar has no jurisdiction to discipline a judge acting in his or her judicial capacity. Significantly, the State Bar has failed to even allege that Tillett was engaged in the practice of law, and no facts exist to support such an allegation. Only the Supreme Court and the Judicial Standards Commission may discipline a judge. In re Hayes, 356 N.C. 389, 398, 584 S.E.2d 260, 266 (2002); Carpenter v. Carpenter, 189 N.C. App. 755, 759, 659 S.E.2d 762, 765 (2008). The State Bar has no authority to discipline Tillett under Chapter 7A. Therefore the Complaint must be dismissed.

46. The exact same factual allegations of judicial misconduct by Tillett have been finally resolved by the Judicial Standards Commission. The Complaint is therefore barred by estoppel.

47. Moreover, as a result of the Judicial Standards Commission's previous disciplinary action for virtually identical conduct, Tillett's ability to respond to the factual allegations contained in the Complaint is seriously impaired. Tillett has therefore been denied due process.

WHEREFORE, the Disciplinary Hearing Commission should dismiss the Complaint, as it lacks jurisdiction, the transactions have been previously litigated, and the disciplinary action is fundamentally unfair to Tillett and therefore denies him substantive due process.

This the 16th day of March, 2015.

Norman W. Shearin
N.C. State Bar No.: 3096
David P. Ferrell
N.C. State Bar No.: 23097
Kevin A. Rust
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Attorneys for Defendant Jerry R. Tillett

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing MOTOIN TO DISMISS IN LIEU OF ANSWER upon the parties by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

G. Patrick Murphy
The North Carolina State Bar
217 East Edenton Street
Raleigh, NC 27611
Attorney for Plaintiff

This the 16th day of March, 2015.

Kevin A. Rust

4829-8258-7682, v. 2

2013 Formal Ethics Opinion 6

July 19, 2013

State Prosecutor Seeking Order for Arrest for Failure to Appear When Defendant is Detained by ICE

Opinion rules that a state prosecutor does not violate the Rules of Professional Conduct by asking the court to enter an order for arrest when a defendant detained by ICE fails to appear in court on the defendant's scheduled court date.

Inquiry #1:

A defendant is an undocumented alien who is arrested for a crime. He is given a secured bond by the magistrate, placed in custody in the jail, and served with a US Immigration and Customs Enforcement (ICE) detainer. The defendant hires a bondsman to pay the secured bond and the bondsman does so. ICE comes to the jail and takes the defendant into custody, transporting him to a federal holding facility. The defendant's court-appointed lawyer brings verification of the defendant's detention by ICE to the prosecutor handling the case. Later, the defendant's lawyer appears in court on the defendant's court date and explains to the court that the defendant is in the custody of ICE. The defense lawyer asks the state to have the defendant brought to trial, enter a voluntary dismissal, or dismiss the case with leave pursuant to N.C. Gen. Stat.§15A-932.

The prosecutor asks the judge to call the defendant for failure to appear and to issue an order for his arrest pursuant to N.C. Gen. Stat.§15A-305(b)(2) which provides that "[a]n order for arrest may be issued when:...[a] defendant who has been arrested and released from custody pursuant to Article 26 of this Chapter, Bail, fails to appear as required."

The court enters a forfeiture of the bond pursuant to N.C. Gen. Stat.§15A-544.3(a), which provides that when a defendant who was released upon execution of a bail bond fails to appear before the court as required, the court shall enter a forfeiture for the amount of the bail bond in favor of the state and against the defendant and the surety on the bail bond. Nevertheless, N.C. Gen. Stat.§15A-544.3(b)(9) provides that a forfeiture of a bail bond will be set aside if, on or before the final judgment date, "satisfactory evidence is presented to the court" that one of a number of listed "events" has occurred. That list includes the following "event" at subparagraph (vii):

> the defendant was incarcerated in a local, state, or federal detention center, jail, or prison located anywhere within the borders of the United States at the time of the failure to appear, and the district attorney for the county in which the charges are pending was notified of the defendant's incarceration while the defendant was still incarcerated and the defendant remains incarcerated for a period of 10 days following the district attorney's receipt of notice, as evidenced by a copy of the written notice served on the district attorney via hand delivery or certified mail and written documentation of date upon which the defendant was released from incarceration, if the defendant was released prior to the time the motion to set aside was filed.

N.C. Gen. Stat.§15A-544.3(b)(9); *accord* N.C. Gen. Stat.§15A-544.5(b)(7).

If ICE decides to release the defendant from custody and there is an outstanding order for his arrest from a North Carolina court, ICE will detain the defendant until he can be released to the custody of the State.[1] *See* N.C. Gen. Stat.§15A-761.

Is the prosecutor's conduct a violation of Rule 3.8 or any other Rule of Professional Conduct?

Opinion #1:

No. Rule 3.8, on the special responsibilities of a prosecutor, prohibits a prosecutor from prosecuting a charge that the prosecutor knows is not supported by probable cause. The comment to the rule, moreover, emphasizes the prosecutor's duty to seek justice. However, there is no legal requirement that a defendant's failure to appear in court be willful. In the instant inquiry, the legal requirements for requesting an order of arrest were satisfied and there was a procedural reason for seeking the order of arrest. Therefore, although the prosecutor knows that the defendant's failure to appear is not willful, the prosecutor's exercise of his professional discretion within the requirements of the law does not violate the Rules of Professional Conduct.

Inquiry #2:

Did the judge violate the Rules of Professional Conduct or the Code of Judicial Conduct by issuing the order for arrest and forfeiting the bond?

Opinion #2:

Opining on the professional conduct of judicial officers is outside the purview of the Ethics Committee. Therefore, no opinion will be offered in response to this question.

Endnote
1. As a practical matter, however, a person who is detained by ICE is rarely released. Deportation or federal incarceration is more likely.

THE NORTH CAROLINA STATE BAR
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RPC 208

July 21, 1995

Avoiding Offensive Trial Tactics

Opinion rules that a lawyer should avoid offensive trial tactics and treat others with courtesy by attempting to ascertain the reason for the opposing party's failure to respond to a notice of hearing where there has been no prior lack of diligence or responsiveness on the part of opposing counsel.

Inquiry #1:

Attorney A, who represents the defendant in a civil matter, did not receive the notice of hearing from opposing counsel, Attorney X, because Attorney A's address had changed. At the civil district court calendar call for the first day of the session, when hearing dates are set, Attorney A did not appear nor did his client. Attorney X asked the court to set the matter for trial at the earliest possible date. The case was set for trial two days later. Neither the judge nor Attorney X inquired as to whether Attorney A had received the notice of hearing nor did they attempt to ascertain whether Attorney A was prevented from appearing at the calendar call by an emergency or otherwise. Attorney L, who was at the calendar call on an unrelated matter and who is not associated with either Attorney A or Attorney X, subsequently advised Attorney A of the trial date. Under these circumstances, before asking the court to set the case for trial, must Attorney X verify that the notice of hearing was actually received and that there was no emergency or other problem preventing the appearance of Attorney A or his client at the calendar call?

Opinion #1:

No, Attorney X is not required to verify that the notice of hearing was actually received by the opposing lawyer. However, Rule 7.1(a)(1) of the Rules of Professional Conduct provides that a lawyer does not violate the duty to zealously represent a client

> ...by acceding to reasonable requests by opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

Avoiding offensive tactics and treating others with courtesy includes not taking advantage of the opposing party or the opposing counsel's failure to respond to a notice of hearing when there has been no prior lack of diligence or responsiveness on the part of the opposing counsel. Under these circumstances, as a matter of professionalism, Attorney X should make a reasonable effort to ascertain Attorney A's whereabouts or the reason for his absence before asking the judge to schedule the hearing at the earliest possible date.

Inquiry #2:

Does the court have a duty to verify that Attorney A has received notice of the hearing?

Opinion #2:

Judges are subject to the Code of Judicial Conduct and the regulation of the Judicial Standards Commission. Therefore, no opinion is expressed to the ethical duty of a judge in this situation.

Inquiry #3:

Do the other lawyers at the calendar call have a responsibility to verify that Attorney A has received notice of the hearing or that there was no emergency or other problem preventing Attorney A's appearance at the hearing?

Opinion #3:

No. However, as a matter of professionalism, lawyers are encouraged to treat other practitioners with courtesy and to assist other practitioners in meeting the duty of competent representation.

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EXHIBIT C

What We Do State Bar Programs State Bar Officers Councilors State Bar Staff
Find a Lawyer Questions to Ask Before Hiring a Lawyer Legal Specialists Member Search
Client Rights and Responsibilities
Introduction to Lawyer Discipline Definitions Alternatives to Filing a Grievance Filing a Grievance/Disciplinary Process Archive of Disciplinary Actions/Orders

Introduction

Click here to view a flowchart of the State Bar's disciplinary procedure.

How Lawyers are Disciplined
This article appeared in the June 1, 2007, edition of the *News & Observer*. Written by the State Bar's Executive Director, it explains who the State Bar is, gives an overview of the disciplinary process, and what are the possible outcomes.

How the Disciplinary Hearing Commission (DHC) Works

All North Carolina lawyers must follow a code of ethics called the Rules of Professional Conduct. The North Carolina State Bar's job is to investigate and, where appropriate, prosecute lawyers for violating those Rules.

If you think a lawyer has done something dishonest or unethical, you may file a complaint about the lawyer with the State Bar. The State Bar will review your complaint and, if the misconduct is proven, the State Bar may discipline the lawyer.

Here are some examples of the kinds of conduct that the NC State Bar can investigate:

- Your lawyer reveals confidential information without your permission
- Your lawyer misses important deadlines
- Your lawyer fails to tell you what is happening in your case
- Your lawyer won't turn over money s/he is holding for you
- Your lawyer represents someone whose interests conflict with yours

Not every disagreement between a lawyer and client involves a violation of the Rules of Professional Conduct, however. There are matters outside the jurisdiction of the State Bar as well as legal disputes that must be decided by the courts. Here are some examples of the kinds of conduct that the NC State Bar typically does not investigate.

- Complaints that a lawyer provided ineffective assistance of counsel in a criminal case
- Complaints that a lawyer has breached a contract or has failed to pay a debt
- Complaints that a district attorney decided not to prosecute a particular individual
- Complaints that are more than six years old—complaints must be filed within six years after the misconduct occurred

- Complaints against lawyers from other states

- Complaints about North Carolina judges go to the NC Judicial Standards Commission, PO Box 1122, Raleigh NC 27602

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BEFORE THE

JUDICIAL STANDARDS COMMISSION

INQUIRY NO. 12-013A

PUBLIC REPRIMAND

JERRY R. TILLETT

SUPERIOR COURT JUDGE

Upon its own motion, the Judicial Standards Commission ordered a formal investigation into the conduct of Judge Jerry R. Tillett regarding his interactions with employees and officials of the Town of Kill Devil Hills, including his involvement in orders entered against the town, and regarding his interactions with the District Attorney's office of the 1st Prosecutorial District including pressuring that office to pursue certain legal actions.

The investigation was commenced by the Commission's Investigator on February 16, 2012 and was assisted by the State Bureau of Investigation. Over the next 12 months, the investigators conducted interviews with fifty individuals and collected documentary evidence related to the alleged incidents of judicial misconduct described above. The Commission has completed its review of the investigative report, including information provided by Judge Tillett, and after due deliberation has caused this Public Reprimand to be personally served upon Judge Tillett pursuant to Rule 11(b). In accordance with such Rule, the judge must, within 20 days of the date of service, either accept the Public Reprimand or reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12 of the Rules of the Judicial Standards Commission.

Findings of Fact

1. Jerry R. Tillett was at all times referred to herein and is now a judge of the General Court of Justice, Superior Court Division, Judicial District 1, and as such is subject to the Canons of the North Carolina Code of Judicial Conduct, the laws of the State of North Carolina, and the provisions of the oath of office for a superior court judge set forth in the North Carolina General Statutes, Chapter 11.

2. On April 15, 2010, eleven days after Judge Tillett's adult son was detained by Kill Devil Hills Police, a meeting was arranged between Judge Tillett and officials from the Town of Kill Devil Hills and its police department using Judge Tillett's judicial chambers. During this meeting Judge Tillett expressed complaints about his son's detention by the police as part of a series of other complaints about incidents of misconduct involving the Kill Devil Hills Police Department that did not involve his son. The meeting became confrontational and Judge Tillett warned the Town that they needed to take care of these complaints. Judge Tillett exhibited a demeanor that was described by the other participants in the meeting, as stern, aggressive, agitated, and angry, and several participants felt threatened by Judge Tillett's conduct and by discussion of a superior court judge's ability to remove officials from office. Judge Tillett's confrontation with Town officials outside of any legal proceeding, but in his chambers in his capacity as Chief Resident Superior Court Judge, created a reasonable and objective perception of conflict that tainted his subsequent use of the powers of his judicial office in matters adversarial to these officials.

3. Throughout the year 2011, Judge Tillett began to receive communications from Kill Devil Hills police officers with grievances against Chief of Police Gary Britt and Assistant Town Manager Shawn Murphy related to personnel issues. Judge Tillett, during this same period, began to receive complaints about the performance of the District Attorney of the 1st Prosecutorial District. Judge Tillett engaged in overly aggressive behavior in addressing these complaints, becoming embroiled in a public feud with these individuals, and engaged in actions that fell outside of the legitimate exercise of the powers of his office.

4. Based upon the complaints he had received regarding Chief Britt over the course of 2011, but outside of any formal hearing or any court proceeding, Judge Tillett concluded that Chief Britt was guilty of professional malfeasance and argued the Chief's guilt to the District Attorney and members of the District Attorney's staff. Judge Tillett frequently argued to the District Attorney and members of his staff that it was their duty to file a

petition for the removal of Chief Britt, and he was at times assured by the District Attorney and members of his staff that a petition would be filed, before the District Attorney and his staff ultimately concluded that there was insufficient evidence to support such a petition.

5. After complaints were received beginning in February, 2011, Judge Tillett, on June 24, 2011, sent a letter to Chief Britt printed on his judicial stationary and signed in his capacity as Senior Resident Superior Court Judge, which stated that he had received "complaints of professional misconduct" against the Chief of Police, and warned Chief Britt that "to the extent that allegations involve conduct prejudicial to the administration of justice, conduct violative of public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantial offense, this office will act appropriately in accord with statutory and/or inherent authority."

6. On or around September 19, 2011, Judge Tillett, upon his own initiative and under the belief that legal action was pending related to complaints of recording tampering in personnel matters by the Kill Devil Hills Police Department, drafted and executed an order requiring that copies of the private personnel records of certain employees of the town of Kill Devil Hills, including the Chief of Police and Assistant Town Manager, be copied and brought to him "for an in camera review, for the protection of integrity of information, to prevent alteration, spoliation, for evidentiary purposes and or for disclosure to other appropriate persons as directed by the Court." Neither the District Attorney's office, nor the town, nor any of the complaining police officers had requested the order, nor did any of the allegations of file tampering concern the Chief of Police's personal personnel file or the Assistant Town Manager's personal personnel file. On October 16, 2012, the North Carolina Court of Appeals found that Judge Tillett acted beyond his jurisdiction in issuing this order against the town.

7. On January 5, 2012, Judge Tillett met with the District Attorney and a member of the District Attorney's staff in reference to complaints lodged against the District Attorney's office and the office's failure to file a petition against Chief Britt. Judge Tillett requested that a sheriff's deputy be present at the private meeting, which, along with Judge Tillett's critical and aggressive comments, had the effect of intimidating the officials from the District Attorney's office.

8. On January 5, 2012, Judge Tillett sent a letter on his judicial stationary and signed in his capacity as Senior Resident Superior Court Judge, which stated that he had received "complaints of professional misconduct" against the Assistant Town Manager, and warned

Assistant Town Manager Murphy that "to the extent that allegations involve conduct prejudicial to the administration of justice, conduct violative of public policy, and/or violations of criminal law including obstruction of justice, oppression by official, misconduct in public office and/or substantial offense, this office will act appropriately in accord with statutory and/or inherent authority."

9. Judge Tillett's continued conduct in actions related to complaints about the District Attorney's Office and the Police Department of Kill Devil Hills, including but not limited to his communication with other judges through suggested orders, and his appellate filings in defense of such suggested orders, following his stated recusal from such matters, has created a public perception of a conflict of interest which threatens the public's faith and confidence in the integrity and impartiality of Judge Tillett's actions in these matters.

10. Judge Tillett recognizes and admits that his frustration in his dealings with the District Attorney's Office and his embroilment in the affairs of the police department of the Town of Kill Devil Hills is reasonably perceived as coercive and retaliatory, and is conduct prejudicial to the administration of justice. Judge Tillett has expressed his regret for his conduct and assured the Commission that he will exercise caution and restraint in the future.

Conclusions

The above-referenced actions by Judge Tillett constitute a significant violation of the principles of personal conduct embodied in the North Carolina Code of Judicial Conduct actions in violation of Canon 1, Canon 2A, and Canon 3A(3). Judge Tillett's overly aggressive conduct displayed toward the District Attorney's office and certain employees of the Town of Kill Devil Hills, and his misuse of the powers of his judicial office in connection thereto, resulted in the public perception of a conflict of interest between Judge Tillett and the District Attorney's office and the town of Kill Devil Hills, which brought the judiciary into disrepute and threatened public faith and confidence in the integrity and impartiality of the judiciary.

Corrective Action and Acceptance of Terms

1. Judge Tillett will not participate in any hearing or legal proceeding, nor communicate his opinion or any pertinent facts to any judicial official unless compelled to by subpoena, concerning any petition to remove the District Attorney of the First Judicial District and will recuse himself from all proceedings thereon;

2. Judge Tillett will not participate in any hearing or legal proceeding, nor communicate his opinion or any pertinent facts to any judicial official unless compelled to by subpoena, concerning any petition to remove the Chief of Police of Kill Devil Hills, any officer of the Kill Devil Hills Police Department or town official of the Town of Kill Devil Hills and will recuse himself from all proceedings thereon;

3. Judge Tillett will not participate in any hearing or legal proceeding, nor communicate his opinion or any pertinent facts to any judicial official unless compelled to by subpoena, specifically concerning personnel matters or professional grievances related to the Police Department of the Town of Kill Devil Hills and will recuse himself from all proceedings thereon;

4. Judge Tillett agrees that he will not repeat such conduct in the future, mindful of the potential threat any repetition of his conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice;

5. Judge Tillett further agrees that he will not retaliate against any person known or suspected to have cooperated with the Commission, or otherwise associated with this matter;

6. Judge Tillett acknowledges that the Commission has caused a copy of this Public Reprimand to be served upon him, and that he had 20 days within which to accept the Public Reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with Rule 12 of the Rules of the Judicial Standards Commission; and

7. Judge Tillett affirms he has consulted with, or had the opportunity to consult with, counsel prior to acceptance of this Public Reprimand.

I, Jerry R. Tillett, hereby accept the terms contained in this Public Reprimand this the 6th day of March, 2013.

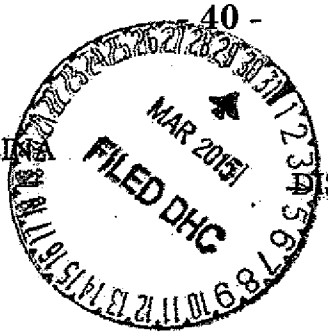
Jerry R. Tillett

ORDER OF PUBLIC REPRIMAND

Now therefore, pursuant to the Constitution of North Carolina, Article IV, Section 17, the procedures prescribed by the North Carolina General Assembly in the North Carolina General Statutes, Chapter 7A, Article 30, and Rule 11(b) of the Rules of the Judicial Standards Commission, the North Carolina Judicial Standards Commission hereby orders that Jerry R. Tillett, be and is hereby PUBLICLY REPRIMANDED for the above set forth violations of the Code of Judicial Conduct. Judge Tillett shall not engage in such conduct in the future and shall fulfill all of the terms of this Public Reprimand, including those of the Corrective Action plan, as set forth herein.

Dated this the 5th day of March, 2013.

John C. Martin, Chairman
Judicial Standards Commission



STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

JERRY R. TILLETT,

Defendant.

ANSWER

NOW COMES, Defendant, Jerry R. Tillett ("Tillett"), by and through counsel, and answering the complaint of the Plaintiff, The North Carolina State Bar ("State Bar"), alleges, avers and says:

SUMMARY OF ANSWER

Tillett has already been disciplined by the Judicial Standards Commission ("JSC") for the same acts which give rise to the Complaint made by the State Bar against Tillett as a lawyer. N.C. Gen. Stat. § 7A-374.1 provides that "the procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article."

"The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts and the legal profession." N.C.R.P.C. Rule 8.4 Comment [3]. The discipline imposed by the JSC—a public reprimand—has already served "to protect the public, the courts and the legal profession."

The conduct for which Tillett was disciplined by the JSC does not reflect adversely on Tillett's "honesty, trustworthiness, or fitness as a LAWYER." Significantly, the alleged conduct described in the Complaint was only sanctionable because Tillett is a superior court judge.

The JSC is authorized by statute to impose a "public reprimand" for MINOR misconduct only. A much more severe form of discipline would have been imposed by the Supreme Court had Tillett's conduct been found by the JSC to be other than minor.

Tillett accepted the public reprimand to end the adverse publicity. He withdrew appeals and accepted without protest the unilateral reassignments and limitation of his administrative duties.

Tillett did not request the April 15, 2010 meeting with KDH officials. The meeting was orchestrated by the KDH Town Attorney in order to address concerns about the flagrant, widespread professional misconduct of officers in the KDHPD. KDH police officers had, *inter alia*, altered court documents, testified falsely under oath, been declared by order of the Chief District Court Judge and Senior Resident Superior Court Judge to be untrustworthy witnesses and banned from their courts. KDHPD officers had also been the subject of numerous complaints from victims, attorneys and concerned citizens.

Tillett made no threats and no statement that the law was what he said it was. The discussions focused on specific instances of malfeasance of KDH police officers. Chief Britt angrily proclaimed that he was not intimidated by Tillett and refused to continue to discuss the specific conduct of his officers. Mayor Sturza concluded the meeting by requesting that he be given the opportunity to correct the problems with the KDHPD.

Tillett did not discuss the detention of his adult son. Assistant Chief Harris raised the subject and asked Tillett if he wanted to view a video of the KDH police encounter with his son. Tillett declined the offer as unnecessary in that no charges had been made against his son. Tillett

had already been assured by the KDH Town Attorney who had viewed the video that Tillett's son had not misbehaved or been discourteous to the KDH police officer who had accosted him.

More than a year after the KDH police encounter with Tillett's son, Tillett received complaints from KDH police officers against Chief Britt. Those complaints originated with the complainants. Tillett played no role whatsoever in the initiation, preparation, or filing of any complaints.

Tillett did not repeatedly pressure the DA to file a petition to remove Chief Britt from office, did not attempt to direct the DA's investigation, did not instruct the DA to show the DA's draft petition to Chief Britt's attorney, or demand that Chief Britt be told to resign. The DA procrastinated and actually failed to do anything with his draft petition except mislead KDH Town officials and Tillett.

The order entered by Tillett on September 19, 2011 required the preservation of COPIES of certain Town personnel files. **The original files were retained by the Town**. The order was entered with the consent of the Town and the DA. The KDH Town Attorney participated in drafting the order. Tillett did not direct that no one receive a copy of the order and did not require that the order be sealed.

The Town Clerk expressed concern that she did not have all the personnel files so as to comply with the order. Her concern was that Chief Britt had a personnel file or files in his exclusive possession.

The telephone conference with the DA on October 26, 2011 resulted from a request from the KDH Town Attorney to assist him in communicating with the DA. The KDH Town Attorney participated in the call with Tillett. The DA did not tell Tillett that the Attorney General's Office had said that no legal basis existed for the filing of the petition to remove Chief Britt. Tillett

suggested to the DA that he make a decision to file or not to file the petition that the DA himself had prepared.

Tillett did not say that the law was what he or Judge Fitch said that it was.

As a result of an inquiry by the DA in the October 26, 2011 telephone conference about the incident involving Tillett's son and a KDH police officer, Tillett recused himself from further involvement with the complaints against Chief Britt and the preservation of COPIES of the KDH personnel files which were the subject of Tillett's September 19, 2011 order.

The order entered by Judge Fitch on January 19, 2012 was his own order. That order was the only order appealed to the Court of Appeals. Judge Fitch's order was the only order vacated by the Court of Appeals.

The January 5, 2012 meeting with DA Parrish and ADA Lamb was requested and arranged by ADA Lamb. The purpose of the meeting was to discuss concerns and specific incidents of ineffective job performance by the DA's Office.

Tillett did not threaten the DA or ADA Lamb.

The presence of the sheriff was requested by Tillett's assistant since she was not going to be present during the meeting.

The meeting with ADA Lamb and the DA's investigator on January 11, 2012 was an accommodation to ADA Lamb. The purpose of the meeting requested by ADA Lamb was to obtain whatever information Tillett had relating to the misconduct of Chief Britt.

ADA Lamb did not tell Tillett that she had requested or received an opinion from someone at the UNC School of Government that no legal basis existed to support a petition for the removal of Chief Britt.

The only communication to Tillett from ADA Lamb informing Tillett that no petition for removal of Chief Britt would be filed was her letter dated August 15, 2012.

The letter sent to Assistant KDH Town Manager Murphy was prompted by complaints received by Tillett against Mr. Murphy.

MOTION TO DISMISS

Tillett's motion to dismiss in lieu of answer filed herein on March 17, 2015 ("the Motion"), is incorporated by reference.

AFFIRMATIVE DEFENSES

(Failure to State a Claim)

The Complaint fails to allege any misconduct by Tillett as a lawyer.

The Complaint fails to allege any conduct by Tillett as a lawyer that is sanctionable.

Engaging in private meetings in chambers with public officials, law enforcement officers and attorneys is not sanctionable conduct. Nor is writing letters about complaints received or drafting orders. The same is true for orders issued to preserve copies of documentary evidence.

(*Res Judicata*)

The Order of Public Reprimand of the JSC is *res judicata* in that it disciplined Tillett for the conduct alleged in the Complaint as being prejudicial to the administration of justice.

(Estoppel)

The JSC Order estops the State Bar from prosecuting Tillett for the same conduct for which he has already been disciplined by the JSC.

(Judicial Duties)

Tillett's duties and responsibilities as a judge include the supervision of attorneys who practice before him. His administrative responsibilities as the senior resident judge encompass the effective use of judicial and court resources.

The acts for which the State Bar proposes to discipline Tillett were committed in the discharge of his official duties as a superior court judge, not as a lawyer, and therefore Tillett is not subject to discipline by the State Bar for such acts.

The court is charged with concurrent jurisdiction with the State Bar to discipline attorneys.

The provisions of Canon 3 of the Code of Judicial Conduct specifically require that "a judge should take or initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge becomes aware. Subpart 3 also provides that a judge should require court officials subject to the direction and control of the court to observe the standards of fidelity and diligence that apply to the judge" and that a judge should facilitate the performance of the administrative responsibilities of other judges and court officials. Subpart 1 Canon 3B.

(Insufficiency of Evidence)

The allegations in the Complaint are not supported by clear, cogent, and convincing evidence. The absence of such evidence to support the allegations of misconduct in the Complaint is known to the State Bar.

Tillett did not procure the unfavorable media scrutiny which his non-public conduct received. What the media reports assert and characterize as misconduct does not prove such conduct and such reports are not clear and convincing evidence thereof.

(Denial of Due Process)

The passage of time, loss of evidence, death of an essential witness, Tillett's acceptance of a Public Reprimand from the JSC, and unreasonable delay by the State Bar have, *inter alia*, denied to Tillett fundamental fairness and due process.

The purported exercise of jurisdiction by the State Bar exceeds the authority delegated to it by the General Assembly, contravenes the North Carolina and United States Constitutions, and thereby denies to Tillett due process of law.

Prior to receipt of the Notice of Grievance from the State Bar on March 24, 2014, Tillett acted on the assumption that all the issues involving the Town of Kill Devil Hills ("Town" or "KDH") and the District Attorney's Office ("DA's Office") had been completely resolved with the Judicial Standards Commission.

Following the Public Reprimand by the JSC, many documents related to the allegations in the Complaint have been discarded. All the related files in Tillett's office were destroyed. Tillett agreed to a Public Reprimand in order to completely resolve all outstanding issues and concerns. Tillett's objective in doing so was to avoid further distraction from performance of Tillett's judicial duties, end the interruption of Tillett's life, and limit further public focus on our court system.

The allegations in the Complaint involve the same conduct previously addressed by the JSC. Tillett has already been disciplined by the JSC for the very same conduct alleged in the Complaint.

"The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts and the legal profession." N.C.R.P.C. Rule 8.4, Comment [3]. Tillett has already been disciplined by the JSC for the same acts by him as a judge which gives rise to the allegations made by the State Bar against Tillett as a lawyer. N.C. Gen. Stat. § 7A-374.1, states

that "the procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article." The discipline imposed by the JSC—a public reprimand—has already served "to protect the public, the courts and the legal profession."

The conduct for which Tillett was disciplined by the JSC does not reflect adversely on Tillett's "honesty, trustworthiness, or fitness as a LAWYER." Assuming *arguendo* that the conduct which is the basis for the Complaint against Tillett "is prejudicial to the administration of justice", he has already been publicly reprimanded for such conduct.

If Tillett had engaged in the alleged conduct as an attorney, such conduct would not be sanctionable.

The JSC is the body created by law to discipline judges. The JSC imposed a "public reprimand" for MINOR misconduct. A much more severe form of discipline would have been imposed had Tillett's conduct been found by the JSC to be other than minor.

(Denial of Equal Protection)

Tillett is informed and believes that he is the only sitting judge which the State Bar has sought to discipline for judicial misconduct. Any such discipline imposed by the State Bar contravenes Article IV, Section 17 and Article I, Section 19 of the North Carolina Constitution, and denies to Tillett equal protection of the law, and the protection of the law of the land, under the said constitutional provisions.

(Separation of Powers)

The process employed by the State Bar to discipline a duly elected superior court judge for alleged misconduct as a judge violates Article I Section 6 of the North Carolina Constitution in that the officials of the State Bar, the members of the Bar Grievance Committee, the members of the Disciplinary Hearing Commission, and the members of the hearing panel are purporting to

exercise jurisdiction reserved exclusively to the judicial branch of government. The State Bar is a creature of the legislative branch of government, and purports to lawfully perform administrative duties.

(No Independent Tribunal)

The DHC is not an independent, unbiased tribunal. The process by which the hearing panel was selected failed to assure that the allegations against Tillett will be fairly and objectively considered in that an interested or interested parties were involved in the selection of its members. The Chairman of the DHC is the attorney for an interested party. Tillett is informed and believes that members of the DHC and the panel were appointed by the current Chairman of the DHC.

ANSWER

Responding to the specific allegations of the Complaint:

1. The Motion to Dismiss is incorporated by reference in response to the allegations of Paragraph 1 of the Complaint.

2. The Motion to Dismiss is incorporated by reference in response to the allegations of Paragraph 2 of the Complaint.

3. The allegations of Paragraph 3 of the Complaint are admitted.

4. The allegations of Paragraph 4 of the Complaint are admitted.

5. The allegations of Paragraph 5 of the Complaint are admitted.

6. The allegations of Paragraph 6 of the Complaint are admitted.

7. The allegations of Paragraph 7 of the Complaint are admitted.

8. The allegations of Paragraph 8 of the Complaint are admitted.

9. It is admitted that a phone conversation occurred. The allegations contained in Paragraph 9 of the Complaint as to the topic discussed during the phone conversation are denied. Except as expressly herein admitted, the allegations contained in Paragraph 9 of the Complaint are denied.

10. Tillett is informed and believes that a meeting occurred but has no knowledge as to what was said at the meeting. Except as expressly herein admitted, the allegations contained in Paragraph 10 of the Complaint are denied.

11. It is admitted that a meeting occurred. It is denied that Tillett requested the meeting. See FURTHER ANSWER AND DEFENSES—April 15, 2010 Meeting with KDH Officials which is incorporated by reference. Except as expressly herein admitted, the allegations contained in Paragraph 11 of the Complaint are denied

12. It is admitted that the topics recited in the allegations of Paragraph 12 of the Complaint, and others, were discussed. It is denied that Tillett expressed anger over the incident involving his adult son. See FURTHER ANSWER AND DEFENSES - April 15 Meeting with KDH officials which is incorporated by reference. Except as expressly herein admitted, the allegations contained in Paragraph 12 of the Complaint are denied.

13. It is admitted that Tillett was offered an opportunity to view a video. Except as expressly herein admitted, the allegations contained in Paragraph 13 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES - April 15 Meeting with KDH officials which is incorporated by reference.

14. The allegations of Paragraph 14 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES - April 15 Meeting with KDH officials which is incorporated by reference.

15. Answering Paragraph 15 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

16. Answering Paragraph 16 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

17. Answering Paragraph 17 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

18. Answering Paragraph 18 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

19. Answering Paragraph 19 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

20. Answering Paragraph 20 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

21. Answering Paragraph 21 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

22. Answering Paragraph 22 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

23. Answering Paragraph 23 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

24. Answering Paragraph 24 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

25. Answering Paragraph 25 of the Complaint, the response to Paragraph 14 of the Complaint is incorporated by reference.

26. The allegations of Paragraph 26 of the Complaint are denied.

27. The allegations of Paragraph 27 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

28. The allegations of Paragraph 28 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

29. The allegations of Paragraph 29 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

30. The allegations of Paragraph 30 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

31. The allegations of Paragraph 31 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

32. N.C. Gen. Stat. §128-17 speaks for itself and is the best evidence of its provisions. However, to the extent a response may be required, the allegations of Paragraph 32 of the Complaint are denied.

33. The allegations of Paragraph 33 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

34. The allegations of Paragraph 34 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

35. The allegations of Paragraph 35 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

36. The allegations of Paragraph 36 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

37. The allegations of Paragraph 37 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

38. The allegations of Paragraph 38 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

39. The allegations of Paragraph 39 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – Complaints/Petition for Removal of Chief Britt which is incorporated by reference.

40. The allegations of Paragraph 40 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

41. The allegations of Paragraph 41 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

42. The allegations of Paragraph 42 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES –Petition for Removal of Chief Britt/September 19, 2011 which is incorporated by reference.

43. The order speaks for itself and is the best evidence thereof. However, to the extent a response may be required, the allegations of Paragraph 43 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

44. The response to Paragraph 43 of the Complaint is incorporated by reference.

45. Tillett is without sufficient information necessary to admit the allegations contained in Paragraph 45 of the Complaint, and therefore denies these allegations.

46. The allegations of Paragraph 46 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

47. The allegations of Paragraph 47 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

48. The allegations of Paragraph 48 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

49. The allegations of Paragraph 49 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

50. The allegations of Paragraph 50 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

51. The allegations of Paragraph 51 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

52. The allegations of Paragraph 52 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

53. The allegations of Paragraph 53 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

54. Tillett is without sufficient information necessary to admit the allegations contained in Paragraph 54 of the Complaint, and therefore denies these allegations.

55. The allegations of Paragraph 55 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

56. The allegations of Paragraph 56 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

57. The allegations of Paragraph 57 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

58. The allegations of Paragraph 58 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – September 19, 2011 Order which is incorporated by reference.

59. Tillett is without sufficient information necessary to admit the allegations contained in Paragraph 59 of the Complaint, and therefore denies these allegations.

60. The response to Paragraph 59 of the Complaint is incorporated by reference.

61. The response to Paragraph 60 of the Complaint is incorporated by reference.

62. The response to Paragraph 61 of the Complaint is incorporated by reference.

63. The allegations of Paragraph 63 of the Complaint are admitted.

64. The allegations of Paragraph 64 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

65. The letter to Judge Fitch speaks for itself and is the best evidence of its contents. However, to the extent a response may be required, the allegations of Paragraph 65 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

66. The response to Paragraph 65 of the Complaint is incorporated by reference.

67. The response to Paragraph 61 of the Complaint is incorporated by reference.

68. The allegations of Paragraph 68 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

69. Admitted that Tillett met with Parrish and ADA Lamb on or about January 5, 2012. Denied that Tillett arranged for a deputy to be stationed outside his office door. Except as admitted, the allegations contained in Paragraph 69 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

70. The allegations of Paragraph 70 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

71. The allegations of Paragraph 71 of the Complaint are denied. See Further Answer and Defenses below for a substantive response to the allegations of paragraph 71.

72. The allegations of Paragraph 72 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

73. The allegations of Paragraph 73 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

74. The allegations of Paragraph 74 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

75. The allegations of Paragraph 75 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

76. The letter to Murphy speaks for itself and is the best evidence of its contents. However, to the extent a response may be required, the allegations of Paragraph 76 of the Complaint are denied.

77. The allegations of Paragraph 77 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

78. The allegations of Paragraph 78 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

79. The allegations of Paragraph 79 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

80. The allegations of Paragraph 80 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

81. The response to Paragraph 61 of the Complaint is incorporated by reference.

82. The allegations of Paragraph 82 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

83. The allegations of Paragraph 83 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

84. The allegations of Paragraph 84 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

85. The allegations of Paragraph 85 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

86. The allegations of Paragraph 86 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

87. The allegations of Paragraph 87 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

88. The response to Paragraph 61 of the Complaint is incorporated by reference.

89. The allegations of Paragraph 89 of the Complaint are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

90. The allegations of Paragraph 90 of the Complaint are admitted. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

91. The Court of Appeals opinion speaks for itself. It is expressly denied that the Court of Appeals reversed the October 16, 2012 order. Except as expressly admitted herein. The allegations of Paragraph 91 are denied. See FURTHER ANSWER AND DEFENSES – which is incorporated by reference.

FOR A FURTHER ANSWER AND DEFENSES, Tillett says:

Tillett's Adult Son

There was no connection between complaints made against KDH police officers and an incident which occurred on April 4, 2010 involving Tillett's adult son. The multiple complaints against Chief Britt were made by KDH police officers **more than a year later**.

April 15, 2010 Meeting with KDH Officials

The KDH Town Attorney requested and arranged a meeting to address a broad range of concerns involving the KDHPD. Tillett did not state to the KDH Town Attorney that this was to be a "venting session."

During the meeting many complaints against the KDHPD were discussed. Tillett did not raise the issue of his son's actions or treatment. The police officers did. Judge Tillett commented on other incidents where citizens were complaining about the misconduct of KDHPD officers.

Specifically identified by Tillett were two police officers who had been found by other judges to have altered evidence. Chief Britt then refused to discuss specific personnel issues.

A dialogue then took place about the KDH drug dog being prone to false positives and not being certified by an independent agency, cases involving a stabbing at a restaurant, a witness who had lied, and a Jamaican rapper charged with rape whose case had to be continued because of the failure of the KDHPD to respond to discovery.

Discussions followed about methods of search and seizure employed by the KDHPD. Chief Britt interjected that he determined the law that was to be applied by his officers. He asserted that he followed the decisions of the United States Supreme Court. Tillett suggested to Chief Britt that a police officer was required to follow the decisions of all courts.

Chief Britt responded angrily that he would not be intimidated by Tillett.

Mayor Sturza requested that he be given 90 days to determine what corrective action was to be taken. All agreed.

The issue of removal of officers arose for the first time in the meeting in reference to the KDHPD officer who was determined by other judges to have lied under oath and altered documents. The Chief District Court Judge had a standing order precluding the KDHPD officer from testifying in his court. Officer Dana Harris suggested that they had done all they could to terminate the officer. Tillett responded that the court could assist in the removal of officers who lied under oath or altered documents. The other reference to removal was made after Chief Britt's angry and defiant remarks to Tillett. The KDH Town Attorney, not Tillett, made the statement that superior court judges had removed officers.

Complaints

The protocol observed by Tillett regarding complaints against magistrates, clerks, police officers, and the DA's office, was that no such complaints could be anonymous. His office did not become involved with personnel issues that were unrelated to malfeasance or professional misconduct.

Tillett did not instruct any complainants on the "correct" way to make complaints.

A letter was sent to Murphy notifying him that a complaint alleging misconduct by him had been received by Tillett's office. This was consistent with the protocol observed by Tillett's office when such complaints were received. The letter to Mr. Murphy had nothing to do with a memo provided by the KDH Town Attorney.

The letter dated June 24, 2011 to Chief Britt was similar to other letters sent by Tillett to officials who were the subject of complaints received by him.

Petition for Removal of Chief Britt

Tillett did not repeatedly pressure the DA to file a petition for removal of Chief Britt. Tillett contacted the DA only on those occasions when someone else contacted him requesting information about the complaints received by Tillett's office.

Tillett did not tell DA Parrish that "the Chief will resign or else".

Tillett's only conversation with reference to the DA's drafting of a petition occurred in a telephone conference on October 26, 2011 with the DA and the KDH Town Attorney. The KDH Town attorney had contacted Mr. Parrish to determine if a copy of the petition that Parrish had drafted and shared with the KDH Town Attorney should be provided to the attorney representing the KDH Police Chief.

The allegations in the draft petition were made by DA Parrish himself. Parrish was not required to prepare a petition. All he had to do was concur with the filing of the petition by five

electors. In the October 26, 2011 phone conversation with the KDH Town Attorney and Tillett, Mr. Parrish stated that he was drafting his own petition. Tillett expressed surprise that the DA was drafting his own petition.

ADA Lamb contacted Tillett on January 11, 2012 while he was holding court in Halifax County. She requested that Tillett meet with her to discuss the petition for removal of Chief Britt. Tillett drove from Halifax County to Dare County to meet with her. The DA's investigator Ryan was also present. ADA Lamb asked Tillett to provide information she did not have. He shared with her all the information that he had.

Tillett did not say that he had the inherent power to do anything.

ADA Lamb said that she intended to file a petition for the removal of Chief Britt. She acknowledged that she now understood the issues. She stated that her only reservation was that there were threats of retaliatory action against Tillett. She said she had received telephone calls from the attorneys for Chief Britt and the Town's liability insurer making threats of complaints to the JSC and to the State Bar.

ADA Lamb stated that she would be filing the petition the following week.

Tillett did not hear anything from Lamb the following week about filing the petition. Nor did he attempt to call or make any inquiry of ADA Lamb.

ADA Lamb called Tillett and said that she planned to file the petition the next day. She said that DA Parrish had attempted to dissuade her from filing the petition. Lamb stated that she would, nevertheless, be filing the petition.

The following morning Ms. Lamb called Tillett. She sounded very distraught and was crying. She expressed concern about her career. She said that she was not making a decision not

to file. Weeks later Ms. Lamb confirmed to attorney John G. Trimpi that she still had not made a decision but would await the outcome of the petitions to remove DA Parrish.

At no time prior to the letter dated August 15 did Ms. Lamb inform Tillett that she would not be filing a petition for removal of the KDH Chief of Police.

September 19, 2011 Order

The District Attorney notified Tillett by fax and letter of the DA's decision to prepare and file the petition for removal. The DA also so informed the KDH Town Attorney and sent copies to him.

The Town Board members and Mayor expressed concern that the Town personnel files would be at risk of loss once efforts by the DA to remove Chief Britt became known. (One of the allegations made against Chief Britt was the improper use of secret copies of personnel files kept in the Chief's desk).

Tillett inquired of the KDH Town Attorney whether he desired a hearing on the preservation of copies of Town personnel files. The Town Attorney said he would confer with the Mayor and the Town Board. He subsequently confirmed that the Town did not desire a hearing. The copies of the personnel records of KDH employees were also the subject of a telephone conference between the KDH Town Attorney, Mr. Parrish and Tillett.

Both the DA and the KDH Town Attorney approved the procedure employed to copy the personnel files. The KDH Town Attorney participated in the drafting of the order which was entered by consent.

The KDH Town Attorney pointed Tillett to the applicable statutory provisions which gave the Town the statutory authority to grant access and disclosure of information in its personnel files.

Tillett did not direct that no one receive a copy of the order. When the order was served by the KDH Town Attorney he told those persons involved about the order, and instructed them to provide all such records they may have in their possession.

Tillett was contacted by his office and told that the Town Clerk was at his office asking to speak to him. The Town Clerk appeared upset and reported that she had discovered additional files in the Chief's desk that had not been surrendered pursuant to the order. The files pertained to A. Ennis, one of the complainants.

Subsequently Tillett was contacted by the KDH Town Attorney who told him that the Town Clerk was requesting a copy of the order. She suggested the procedure she would observe to comply with the order. Tillett readily agreed. Tillett informed the KDH Town Attorney that he did not intend to prevent the persons involved from knowing about the contents of the order.

Neither Tillett nor any of the police officers were allowed to be heard or respond to the challenge to Judge Fitch's order in the Court of Appeals. Significantly, the Town argued in the Court of Appeals that Tillett had no standing because his order was not affected by the ruling of the Court of Appeals. In response to Tillett's efforts to be heard by the Court of Appeals the Town asserted that there was only a one line sentence referring to Tillett's order and that it was clear from the opinion of the Court of Appeals that his order was not affected.

DA's Office

The complaints involving the ineffective performance by the DA's office were also completely unrelated to the April 4, 2010 incident involving Tillett's son. Long before the controversy arose regarding the KDH police chief, there had been a nearly two decades long history of significant problems with the District Attorney's office-- specifically with the ineffective job performance by Mr. Parrish and Ms. Lamb.

The former Senior Resident Judge made numerous attempts to resolve the problems related to the ineffectiveness of the DA's Office. The problems with the DA's office grew progressively worse.

The private, non-public communications that Tillett had with persons in the DA's Office were intended by him to avoid future difficulties.

Tillett was at a Judge's Conference in late October when the KDH Town Attorney contacted him. The KDH Town Attorney said that without his knowledge the Town's liability insurer had employed a group to investigate the allegations against the KDHPD. The KDH Town Attorney was concerned that this would lead to further litigation and more negative publicity for the Town.

KDH Town Attorney informed Tillett that he had made several attempts to contact the DA but was unable to reach him. He asked Tillett to call the DA. In a very brief conversation, DA Parrish related to Tillett that he was aware that there was going to be an inquiry by the Town's insurer and preferred to await that information.

Tillett did repeat a statement made to him by the KDH Town Attorney that this might be like "the fox guarding the hen house." Tillett also said to the DA that it was important that he make a decision one way or the other.

The DA did not tell Tillett that he had already conferred with the Attorney General's office and determined there was no basis for a petition for removal.

Tillett did not say "I say what the law is and Judge Fitch says what it is".

Following the October 26, 2011 telephone conference with the DA, Tillett told Judge Fitch that Tillett would be referring the petition for removal of Chief Britt to Judge Fitch. Tillett sent a letter to Judge Fitch referring the petition to him.

Tillett asked that his assistant provide to Judge Fitch the information that Tillett had. Some of the information had to be procured from other sources including the DA's office.

Tillett did not have any further contact with the DA until the end of December when the KDH Town Attorney informed Tillett that Chief Britt was being reinstated. Tillett again suggested that the KDH Town Attorney contact the DA. The KDH Town Attorney said he had attempted to do so, but that the DA had not returned his calls.

Tillett contacted the DA who said that he did not know anything about Chief Britt being reinstated. The DA stated that he was still considering filing the petition.

The KDH Town Attorney had also been concerned about the inclusion of new policies for the Town of Kill Devil Hills of which he was not aware. The policies stated that the Chief would be allowed to have duplicate copies of personnel files in his possession. The policies also provided that an aggrieved person could not communicate with anyone outside the Town.

Tillett forwarded this information along with the KDH Town Attorney's notes and letter to Judge Fitch. Judge Fitch telephoned Tillett late in the afternoon of January 3rd. Judge Fitch had received the materials and wanted to know what the Town was doing. He expressed concern about what he characterized as the Town "shutting them down" in reference to KDH police officers not being able to make complaints to anybody outside of the Town. Judge Fitch observed that the Town cannot do that.

Judge Fitch asked Tillett what he thought should be done. Tillett responded that it was Judge Fitch's decision. He said "I know that but what do you think." Tillett told Judge Fitch that he thought this was unfair. Tillett suggested that a hearing be held in order to deal appropriately with the Town's efforts to silence its employees. Judge Fitch agreed.

Judge Fitch asked Tillett to prepare a draft order for Judge Fitch to consider. Subsequently Tillett's assistant called him and informed him that Judge Fitch's administrative assistant had contacted her and said that there were going to be some changes to the order drafted by Tillett. Tillett did speak with Judge Fitch's administrative assistant who said that Judge Fitch was going to revise the draft order.

Following the reinstatement of Chief Britt, three of the complaining police officers were terminated. One of the officers, Mr. Ennis, was demoted to dog catcher. Complaints were filed against Mr. Ennis alleging that he had talked disparagingly about the Chief. (He subsequently resigned).

Several sheriffs and clerks approached Tillett to express specific concerns and complaints about the DA Office. The complaints continued. These sheriffs and clerks concurred that the problems with the DA's office needed to be addressed. Tillett reached out to two other sheriffs in his district to determine if they had similar concerns. They did.

Pasquotank County Sheriff Cartwright also expressed concerns. Tillett agreed to host a meeting of all the sheriffs and clerks in his district in Elizabeth City.

A meeting was held in the same building as the DA's office. Every clerk and sheriff and many other law enforcement officers attended. Tillett sat at the back of the room and listened. Every sheriff and clerk made complaints about the DA's Office.

One sheriff said we don't need to mince words here we all know that Mr. Parrish is a "liar", he lies all the time, he will promise you and tell you he's going to do something and keep telling you he is going to do it. He will thereafter not do it, you will contact him several times and he'll keep promising and then after that he will just quit returning your calls and then he won't meet

with you. The only thing you'll be able to do will be to find where you think he might be outside smoking, go there and attempt to ask him about something, and then he'll still lie to you.

A clerk said that this is the same way he's been for some period of time, and referenced prior attempts, including a similar meeting held some years ago by former Senior Resident Superior Court Judge J. Richard Parker to deal with these same concerns.

Tillett informed the group that he could not deal with general allegations and criticisms. He said that if specific cases and incidents were sent to him in writing, he would attempt to resolve them. Thereafter written complaints dramatically increased.

Sheriffs contacted Tillett with lists and computerized print outs of cases that had been pending for years. Some of these cases involved serious crimes and violent conduct.

January 5, 2012 Meeting with DA and ADA Lamb

Tillett informed ADA Lamb that the concerns raised by the clerks of court and sheriffs about the ineffectiveness of the DA's Office must be directly communicated to DA Parrish. ADA Lamb acknowledged that a face-to-face meeting with the DA was appropriate. She specifically requested that she be allowed to participate in the meeting with DA Parrish. ADA Lamb insisted that she be included because otherwise Mr. Parrish "would lie, he lies about everything."

Tillett contacted DA Parrish and asked him if he would meet with Tillett in an **INFORMAL** setting in Currituck, Elizabeth City or Dare County. They agreed to meet in Dare after the holidays. The meeting was scheduled for the late afternoon of January 5, 2012.

At the January 5, 2012 meeting Tillett reviewed with DA Parrish and ADA Lamb the specific complaints that had been lodged against the DA's office by the clerks of court and sheriffs in the district. Tillett related to DA Parrish the substance of their complaints against him.

Tillett told DA Parrish that most of the concerns fell into three general categories: (1) DA Parrish would promise to do something and never do it; (2) he would not return calls or otherwise respond to inquiries; and (3) he would procrastinate about the prosecution of cases, not make a decision as to an appropriate disposition, and the cases would languish on the docket for extended periods of time.

Tillett also discussed a number of specific concerns with DA Parrish and ADA Lamb including the following:

Tillett made reference to the prior problems that Judge Parker, his predecessor, had experienced with DA Parrish and ADA Lamb. Tillett told Mr. Parrish that there may be difference of opinions about handling cases but that responding to those persons involved was essential. Tillett also said that timely making a decision was critical.

Tillett read to DA Parrish letters of complaint from a sheriff about his failure to investigate or take action against two police officers in Perquimans County after he had promised to do so and his failure to return the phone calls of the sheriff about the misconduct of the police officers. Tillett and the DA discussed a sheriff's complaint regarding two police officers who were charged with assaults whose cases the DA's office failed to prosecute. Mr. Parrish incorrectly stated he had requested a special prosecutor.

Chowan County Sheriff Godwin's complaint about the failure of the DA's Office to prosecute W.J. Moore who was charged with murder was related to DA Parrish. Moore has been in the Chowan County jail for years at the County's expense

Tillett also reminded DA Parrish that an unacceptable number of court sessions had ended with no trials conducted or were not fully utilized.

Tillett shared with DA Parrish several file numbers and names provided by the sheriffs and clerks of serious felony charges against defendants that had been incarcerated for long periods of time.

Tillett read to him a letter from a clerk of one county who had collaborated with another clerk in writing the letter. The letter described Mr. Parrish's prior inefficiencies and failure to communicate with the clerks. The letter also outlined the DA Office's short comings and the problems created for the clerks. The letter went on to say that "until he has accountability and consequences for unsatisfactory job performance, and he addresses issues such as laziness, untruthfulness and lack of concern or ability we will not see any discernable change."

The letter reminded the DA that these issues and concerns were brought to his attention "in a language a child could understand in a meeting with the Honorable J. Richard Parker and all seven clerks and all seven sheriffs."

The letter further stated that as acknowledged in the meeting with Judge Parker by a consensus of those in attendance there was no recognizable improvement after six months there was no reason to meet for assessment as previously planned. The letter goes on to say specifically that if anything "conditions and accountability GOT WORSE".

Tillett did not call DA Parrish "lazy or untruthful, ineffective or of having lack of concern or ability." The clerks of court said those things.

Tillett and the DA discussed a case in which a former police chief made a complaint against a police officer who arrested her former chief in retaliation for disciplinary action that her former chief had imposed upon her. The police officer had arrested her former chief at a high school football game for impersonating an officer. Mr. Parrish agreed that the arrest was improper. He

assured Tillett that he had responded to the complaint of the former police chief. Subsequently Tillett learned that DA Parrish had not responded.

Tillett also addressed an issue brought to his attention by other police officers regarding two deputies in Pasquotank County who had been charged with multiple felonies. The deputies were alleged to have embezzled a sizable amount of money from the Sheriff's office, and used the Sheriff's credit card for personal purchases. The DA assured Tillett that the DA's Office had not made promises of dismissals or reduction of charges to misdemeanors. The DA acknowledged that the handling of the charges was difficult. The officers were prominent in the community, a parent of one of the officers worked in the Clerk's office, and another parent was employed in a supervisory position with the Elizabeth City Police Department. Parrish acknowledged that he was handling these cases himself.

These cases languished and were repeatedly continued because Mr. Parrish was the only one who could deal with them and he had "not yet made a decision". Tillett ordered the cases to be calendared for trial. The DA's office prints the calendars and the cases were not added to the printed calendar in accordance with the court's order.

After Tillett's consent to the Public Reprimand by the Judicial Standards Commission, the charges were reduced to misdemeanors contrary to what Mr. Parrish had said at the January 5, 2012 meeting.

Tillett informed the DA that there were allegations that he had elevated animal rights cases over those involving human victims because of his wife's position with an animal rights advocacy group. The DA acknowledged that his wife was so employed. The DA responded that because of his wife's position he did not have any involvement with animal rights cases. He asserted that everyone in the DA's Office knew that. The assurances given by the DA notwithstanding a Gates

County animal cruelty case was continued several times. The reason given for the continuances was that only Mr. Parrish could handle the case and he was unavailable. The case was dismissed because of the death of one of the witnesses.

Tillett also read to the District Attorney some complaints which had been received from victims alleging that Mr. Parrish had failed to move their cases and that when they attempted to contact him he would not return their calls.

One of these involved a police officer from Kill Devil Hills. DA Parrish once again said that he had not made a decision as to the filing of a petition to remove the Chief.

Tillett read to DA Parrish the complaints from a KDH police officer alleging that the DA had failed to communicate with him, would not return his calls, and had not done what he had said he was going to do. Tillett asked DA Parrish whether this complaint created a conflict for him. DA Parrish acknowledged that it did create a conflict for him. Tillett inquired as to whether ADA Lamb would be able to handle the petition for removal of Chief Britt. Ms. Lamb readily agreed she could make an independent determination.

Also discussed were allegations that the DA's Office had not proceeded to prosecute cases in accordance with statutory deadlines under the Interstate Act on Detainers ("IAD"). There were several cases involving failure to bring charges within the period of time specified by the IAD. Tillett explained to Mr. Parrish that these kind of actions put presiding judges in very difficult positions as these people are charged with serious violent crimes and the IAD provides for a specific mandate of dismissal.

Tillett gave the DA the names of some of the defendants charged with serious, violent criminal conduct who had petitioned for dismissal under the IAD as follows:

State v. Felton. A Motion for Dismissal of Charges pursuant to the IAD was filed in December of 2010 but not dealt with until after March 6, 2011. On March 9, 2010, the petitioner also filed a written request that the DA proceed with prosecution in accordance with provisions of the IAD. Notwithstanding receipt of numerous letters, the DA ignored the statutorily mandated deadline.

State v. Elliott. The defendant had been transferred on June 7, 2010 from the Virginia Department of Corrections to North Carolina to stand trial for the crime of robbery with a dangerous weapon. The DA failed to bring the defendant to trial within the period of time specified by the IAD 180 days. The defendant moved for dismissal.

State v. Tatum. While Tatum was incarcerated, charges were pending against him. The State had failed to serve him. Tatum had already been convicted of violent crimes including home invasion, robbery and felony assault. He was serving a prison term for these charges. Tatum had also been convicted of murder in federal court and he was waiting to serve that sentence. He was reportedly involved with gangs within the prison system. While a prisoner he had been charged with a brutal attack upon a young female prison guard. Tatum viciously attacked her, stabbed her multiple times, and inflicted permanent injuries. She never returned to work. The charges against Tatum were attempted murder and assault with a deadly weapon inflicting serious bodily injury. The DA's office failed to timely calendar these charges for trial.

Tillett also referred to numerous letters from Judge Parker, the former Senior Resident Superior Court Judge that had dealt with Mr. Parrish's failure to try cases for persons that were incarcerated or timely bring pending felony charges to trial.

Also discussed was a case involving a young female elementary school teacher and single parent. A domestic abuser had victimized her a number of times and continued to do so.

The defendant threatened to kill both the DA and the victim. Mr. Parrish instructed the Assistant District Attorney to dismiss these charges.

Tillett also voiced concern about the failure of DA Parrish to timely assign ADAs to handle cases involving habitual felons. As a result, the ADAs did not have sufficient time to obtain criminal records to prove prior convictions.

Tillett expressed uncertainty as to what needed to be done to address the problems discussed. He inquired of Mr. Parrish as to whether the court had to take some formal action under its contempt powers, or discipline the attorneys involved, or would Parrish address these problems himself. Mr. Parrish said that he would formulate a plan to take care of these problems himself. Parrish pledged that he would attempt to be more responsive, to require ADA Lamb to attend court sessions, to make decisions, and to return calls within 24 hours. Tillett assured Parrish that any improvement would be appreciated.

Tillett and the DA parted on cordial terms. Mr. Parrish thanked Tillett for his candor.

When Tillett walked out of his office he was surprised to see that the Sheriff was there and he so remarked to the Sheriff. Neither DA Parrish nor ADA Lamb was aware of the Sheriff's presence prior to that time.

Tillett chose not to hear any of the petitions for removal of DA Parrish.

WHEREFORE, Tillett requests that the Complaint against him be dismissed.

Respectfully submitted, this the 30th day of March, 2015.

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CERTIFICATE OF SERVICE

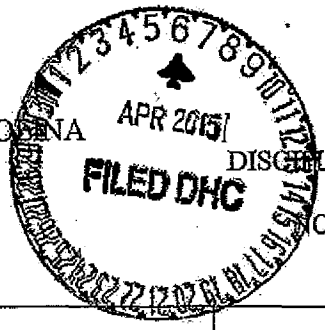
This is to certify that the undersigned has this date served a copy of the foregoing ANSWER upon the parties by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

G. Patrick Murphy
The North Carolina State Bar
217 East Edenton Street
Raleigh, NC 27611
Attorney for Plaintiff

This the 30th day of March, 2015.

Kevin A. Rust

4821-4439-6322, v. 2



STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 15 DHC 7
THE NORTH CAROLINA STATE BAR, Plaintiff v. JERRY R. TILLETT, Attorney, Defendant	RESPONSE TO MOTION TO DISMISS

NOW COMES, the North Carolina State Bar ("State Bar"), by and through Deputy Counsel G. Patrick Murphy, responding to Defendant's Motion to Dismiss filed in this case. On March 5, 2015, the State Bar filed a Complaint in this disciplinary proceeding. On March 19, 2015, Defendant filed a Motion to Dismiss In Lieu of Answer raising three grounds in support of Defendant's motion. The State Bar contends Defendant's motion is without merit, and in support of the State Bar's position respectfully submits the following:

I. THE STATE BAR HAS SUBJECT MATTER JURISDICTION TO EXERT DISCIPLINARY AUTHORITY IN THIS PROCEEDING.

Defendant argues that the State Bar does not have subject matter jurisdiction to pursue disciplinary action against Defendant because: 1) Defendant was not practicing law at the time of the alleged conduct; and 2) final authority to discipline judges lies solely in the Supreme Court and disciplinary actions brought against a judge must be brought pursuant to Chapter 7A. The State Bar's authority or the Disciplinary Hearing Commission's ("DHC") jurisdiction is not limited in the manner proposed by Defendant.

a) Practicing law is not a prerequisite to the State Bar's authority.

Defendant argues that the State Bar only has authority to discipline attorneys who are "practicing law in this state." Since Defendant was a superior court judge at the time of the conduct described in the Complaint, and not practicing law, he contends the State Bar does not have jurisdiction to bring a disciplinary case against him. However, Chapter 84 of the General Statutes grants the State Bar "the authority to regulate the professional conduct of licensed lawyers," and states that "*any attorney admitted to practice law* in this State is subject to the disciplinary jurisdiction of the [State Bar] Council." N.C. Gen. Stat. §§ 84-23 and 84-28 (emphasis added). Moreover, other Chapter 84 provisions

likewise grant the State Bar broad authority to regulate lawyers. See, N.C. Gen. Stat. § 84-28(b) ("[t]he following acts or omissions *by a member of the North Carolina State Bar . . . shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney client relationship or otherwise.*") (emphasis added). Among the misconduct listed as grounds for discipline in N.C. Gen. Stat. § 84-28(b) is "the violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act[.]"

Despite this broad statutory grant of disciplinary authority, Defendant relies on isolated language in 27 NCAC 1B § .0102(c)(1) to argue that the State Bar can only discipline attorneys who are "practicing law in this State." Defendant's argument ignores the broader grant of statutory authority to the State Bar noted above and ignores the context of the language in 27 NCAC 1B § .0102(c)(1). In context, 27 NCAC 1B § .0102(c)(1) addresses the concurrent jurisdiction of the State Bar and the Courts. Courts are not likely to institute disciplinary proceedings against other judges so the language used in the section is not a limitation; rather, it addresses the practical realities of the matter being addressed. Courts have jurisdiction to discipline attorneys practicing in the court and so does the State Bar. Support for the position that the language in question was not intended to be a limitation is found by examining other sections of the same administrative rule. 27 NCAC 1B § .0102(a), in the same section as 27 NCAC 1B § .0102(c)(1), provides that "[t]he procedure to discipline *members of the bar* of this state will be in accordance with the provisions hereinafter set forth." (emphasis added) The term "members of the bar" is not limited to members who are practicing law. Statutes relating to the same subject should be construed *in para materia,* in such a way as to give effect, if possible, to all provisions without destroying the meaning of the statutes involved. *See State ex rel. Utilities Comm. v. Thornburg,* 84 N.C.App. 482, 353 S.E.2d 413, *disc. review denied,* 320 N.C. 517, 358 S.E.2d 533 (1987). Additionally, 27 NCAC 1B .0102(c)(3) recognizes that the State Bar derives its jurisdiction to discipline lawyers from legislation; that legislation is N.C. Gen. Stat. §§ 84-23 and 84-28 Thus, read in context with other administrative provisions and statutes covering the same subject matter, Defendant's argument fails. Moreover, Defendant's limiting construction would lead to absurd results.

The Grievance Committee of the State Bar and the DHC routinely impose professional discipline for conduct which did not occur "within the practice of law." For example, the DHC has imposed discipline in cases where a lawyer failed to file personal income tax returns. *See, e.g., State Bar v. Griffith,* 05 DHC 33, *State Bar v. Bruce,* 05 DHC 18, *State Bar v. Elder,* 99 DHC 28. The DHC has also imposed discipline for dishonest conduct while a lawyer was a litigant, and was not acting as an attorney. *See, State Bar v. Palmer,* 93 DHC 24. Lawyers have been censured for making false statements in connection with loan applications, *In re: Mason,* 04G0152; and suspended for purchasing prescription medication, *State Bar v. Roebuck,* 14 DHC 1. Prior decisions such as these demonstrate that the jurisdiction of the State Bar or the DHC is not limited in the manner proposed by Defendant, and Defendant's motion based on this argument should be denied.

b) Chapter 7A is not the Exclusive Means of bringing a Disciplinary Proceedings Against a Judge.

Defendant also argues "disciplinary actions brought against a judge must be brought pursuant to Chapter 7A." To support his argument, Defendant relies on language from cases and statutes that he takes out of context. For example, based on *In re Hayes*, 356 N.C. 389, 398, 584 S.E. 2d 260, 266 (2002), Defendant argues that final authority to discipline judges lies solely with the Supreme Court. Defendant also asserts that Chapter 7A is the exclusive method to discipline a judge because N.C. Gen. Stat. 7A-374.1 says that the procedure for discipline of any judge or justice of the General Court of Justice "shall be in accordance with" Article 30 of Chapter 7A. However, the authority for Article 30 of Chapter 7A is N.C. Const. Art. IV, Sec. 17(2). *In re Nowell*, 293 N.C. 235, 242, 237 S.E.2d 246, 251 (1977). That Constitutional provision, in part, authorized the legislature to prescribe a procedure "for the censure and removal of a Justice or a Judge of the General Court of Justice for willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." However, the Constitution also authorizes the removal of a Justice or Judge of the General Court of Justice by impeachment. *See* N.C. Const. Art. IV, Sec. 17(1). Thus, N.C. Gen. Stat. 7A-374.1 is not the exclusive vehicle to discipline a judge. The language in N.C. Gen. Stat. 7A-374.1 that provides that "[t]he procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article" only speaks to the procedure for discipline or removal from office as authorized by N.C. Const. Art. IV, Sec. 17(2). If Defendant's argument was correct, a judge could not be removed by impeachment, which the Constitution clearly authorizes.

The language of *In re Hayes* that Defendant relies upon refers to discipline under the Code of Judicial Conduct. As the Court noted in *In re Hayes*, the statutory authority of the Judicial Standards Commission at that time allowed the commission to recommend to the Supreme Court what disciplinary action, if any, should be taken. The language of *In re Hayes* that Defendant relies upon - that the Supreme Court has final authority to discipline judges - applies when the disciplinary action is brought by the Judicial Standards Commission.

All judges in this state have to be a "member of the North Carolina State Bar," "admitted to practice in North Carolina." *See* N.C. Const. Art. IV, Sec. 22. ("Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court."). Because only licensed attorneys can be judges, actions taken in one's capacity as a judge are necessarily "professional conduct" as a lawyer which N.C. Gen. Stat. § 84-23 gives the State Bar the power to regulate. As members of the State Bar, North Carolina judges are at all times subject to the Rules of Professional Conduct. During their tenure in judicial office, judges are *also* subject to the additional requirements of the Code of Judicial Conduct. A

judge's obligations under the Code are in addition to—not in lieu of—his obligations under the Rules.

Because a judge must conform his behavior to both the Code and the Rules, misconduct by a judge may constitute separate violations of the Code and the Rules. The Judicial Standards Commission has jurisdiction over cases involving alleged violations of the Code, and has limited available remedies, the most serious of which is removal from judicial office. The Disciplinary Hearing Commission, on the other hand, has jurisdiction over cases involving alleged violations of the Rules. The most serious discipline that can be imposed by the DHC is removal from the practice of law. While both tribunals are charged with protecting the public, the legal profession, and the administration of justice, one controls only the judiciary, while the other regulates the entire legal profession.

If a judge disciplined by the Commission was thereby immunized against professional discipline for the underlying conduct, the State Bar could not fulfill its obligation to protect the public. Certain types of misconduct evidence a character flaw which, for the protection of the public, require removal not only from judicial office but also from the practice of law. There are circumstances under which the protection of the public requires disciplinary consequences beyond that of imposed by the Judicial Standards Commission. If Defendant's jurisdictional argument were accepted, the DHC would be barred from imposing discipline for conduct by a sitting judge, no matter how egregious the misconduct.

Finally, the DHC has previously disciplined lawyers for conduct which occurred while they were a judge. See, *State Bar v. Badgett*, 09 DHC 6, disbarred based on various instances of misconduct during Defendant's tenure as a district court judge in violation of the Rules of Professional Conduct; *State Bar v. Belk,* 13 DHC 6, suspension by the DHC for conduct while a district court judge. In these cases, the DHC concluded it had jurisdiction over the Defendant and over the subject matter. This Hearing Panel should reach the same conclusion in the instant case.

II. THE STATE BAR IS NOT ESTOPPED.

Defendant next argues the State Bar is prohibited from pursuing discipline against Defendant based on collateral estoppel. To support his argument, Defendant cites one case, *Whieacre P'ship v Biosignia, Inc.,* 358 N.C 1, 15, 591 S.E.2d 870, 880 (2004), and relies on two ethics opinions which he alleges "acknowledged that the State Bar is without authority to *say* whether a judge has violated his or her ethical obligations." (emphasis added). Defendant's collateral estoppel argument is without merit.

In Defendant's motion he states that the "facts alleged in the [State Bar] Complaint, as well as those in the Judicial Standards Commission's ["JSC"] Order and complaint, are virtually identical[.]" Based on the 'virtually identical' nature of the facts in the two proceedings, Defendant argues that since collateral estoppel exists to protect litigants from the burden of relitigating previously decided matters, the State Bar's Complaint should be dismissed. The State Bar's Complaint alleges that Defendant's

conduct was prejudicial to the administration of justice pursuant to Rule 8.4(d) of the Rules of Professional Conduct. In the JSC's Order, the Commission did find that Defendant's conduct was prejudicial to the administration of justice. Since filing his Motion to Dismiss, Defendant filed his Answer in this disciplinary proceeding. In his Answer, Defendant admits that the JSC disciplined him for 'the conduct alleged in the Complaint as being prejudicial to the administration of justice." Defendant's Answer at 5. However, the fact Defendant consented to the entry of an order by the JSC that found he engaged in conduct prejudicial to the administration of justice in a proceeding brought pursuant to the Code of Judicial Conduct does not entitle him to use that finding against the State Bar as defensive protection from discipline under the Rules of Professional Conduct.

"Broadly speaking, 'estoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth.'" *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 13 (2004) (quoting 28 Am. Jur. 2d Estoppel and Waiver § 1 (2000)). Estoppel doctrines "reflect a shared and longstanding judicial reluctance to permit the assertion of inconsistent positions before a judicial or administrative tribunal." *Id.* at 14. They "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

In his Answer, Defendant raised both collateral estoppel and *res judicata* as affirmative defenses though he only raised collateral estoppel in this motion. As the Court of Appeals noted in *Williams v. City of Jacksonville Police Dept.*, 165 N.C.App. 587, 591 599 S.E.2d 422, 427 (2004):

> Our Supreme Court has distinguished between these two doctrines:
>
> Under the doctrine of res judicata or "claim preclusion," a final judgment on the merits in one action precludes a second suit based on the same cause of action *between the same parties or their privies*. The doctrine prevents the relitigation of all matters ... that were or should have been adjudicated in the prior action. Under the companion doctrine of collateral estoppel, also known as "estoppel by judgment" or "issue preclusion," *the determination of an issue in a prior judicial or administrative proceeding precludes the relitigation of that issue in a later action, provided the party against whom the estoppel is asserted enjoyed a full and fair opportunity to litigate that issue in the earlier proceeding.*
>
> *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 15, 591 S.E.2d 870, 880 (2004) (internal citations and quotations omitted). (emphasis added)

Under the analysis of *Whitacre*, the State Bar, the party against whom estoppel is asserted, did not have an opportunity to litigate the issue of Defendant's violation of the Rules of Professional Conduct in the JSC proceeding. This is not a situation like *Williams v. City of Jacksonville Police Dept.* where the same parties in a State court civil

action were previously parties in a federal court civil action based on the same factual issues. Since the State Bar did not have the opportunity to participate in the JSC proceedings, estoppel does not bar the State Bar from pursuing this disciplinary action.

Even though Defendant does not have legal grounds to have this case dismissed on the basis of collateral estoppel, he attempts to support his estoppel claim with additional arguments. His arguments assert that prior to consenting to the JSC's Order 1) the State Bar had allegedly acknowledged in at least two prior ethics opinions that it "is without authority to say whether a judge has violated his or her ethical obligations;" and 2) that Defendant was advised by counsel "as to the exclusive authority of the Judicial Standards Commission." Looking at the ethics opinions in question, the first, 2013 FEO 6, merely states that "opining on the professional conduct of judicial officers is outside the purview of the Ethics Committee." The second opinion, RPC 208, states that "judges are subject to the Code of Judicial Conduct and the regulations of the Judicial Standards Commission. Therefore, no opinion is expressed to the ethical duty of a judge in this situation." These two ethics opinion do not state that he State Bar is without authority to discipline a judge for violating of the Rules of Professional Conduct. As the ethics opinion state, a judge is subject to the Code of Judicial Conduct and opining on whether a judge violated the *Code of Judicial Conduct* is outside the purview of the ethics committee. A fair reading of these opinions does not constitute a position by the State Bar that it does not have jurisdiction to discipline a judge for violations of the Rules of Professional Conduct.

As noted above, a judge is subject to both the Code of Judicial Conduct and the Rules of Professional Responsibility regardless of what he was advised. For all the reasons noted above, Defendant's collateral estoppel argument is without merit and this motion to dismiss based thereon should be denied.

III. DISCIPLINARY ACTION BY BOTH THE JUDICIAL STANDARDS COMMISSION AND THE DISCIPLINARY HEARING COMMISSION FOR THE SAME UNDERLYING CONDUCT DOES NOT VIOLATE DEFENDANT'S DUE PROCESS RIGHTS.

Defendant next argues that fundamental fairness and due process dictate that the State Bar's Complaint should be dismissed. Defendant first asserts that the JSC's Order prevents Defendant from involving himself in the "transactions or series of transactions described [in] the Complaint" and as a result he "may be prohibited from fully responding to the substantive allegations of the Complaint." Additionally, since some incidents in the Complaint took place nearly 5 years ago, Defendant speculates memories may have faded with the passage of time. He also contends that the evidence is in sharp conflict, belying the existence of evidence which satisfies the clear and convincing standard. Defendant has failed to cite any case factually similar in support of his arguments. The State Bar contends Defendant's due process claim is without merit.

The JSC Order is not an impediment to Defendant responding to the conduct alleged in the Complaint. Pursuant to the JSC Order, Defendant is not to participate in

any hearing or legal proceeding, nor communicate his opinion or any pertinent facts to any judicial official concerning any petition to remove the District Attorney, or the Chief of Police of Kill Devil Hills, or personnel matters related to the Kill Devil Hills Police Department. The JSC Order is not an absolute ban on all of the conduct stated therein because it authorizes Defendant to participate if compelled by subpoena. Likewise, it is reasonable that Defendant can respond to the Complaint in this disciplinary proceeding. In fact, he has already filed his Answer in response to the Complaint. The subpoena exception stated in the JSC Order reasonably recognized that future legal proceeding could result from the facts and circumstances leading to the JSC Order and Defendant's participation may be necessary in those proceedings. What is prohibited by the JSC Order is Defendant's unilateral involvement or intervention into hearings and legal proceeding covered by the JSC Order. In the case at bar, Defendant has been served with a Complaint and summons in a disciplinary proceeding alleging Defendant's conduct violates the Rules of Professional Conduct. A reasonable interpretation of the JSC Order does not prohibit Defendant from participating in this disciplinary proceeding.

Next, although Defendant states the evidence is in sharp conflict, he did not appear to believe that to be the case in the JSC proceeding. In an earlier section of this Motion to Dismiss, Defendant concedes that the facts alleged in the Complaint, as well as those in the JSC's Order and complaint, are virtually identical. Defendant accepted the findings in the JSC proceeding agreeing his conduct was prejudicial to the administration of justice. Based on his acceptance of the findings of the JSC, the facts are not in as sharp a conflict as Defendant now argues. "Due process means simply a procedure which is fair and does not mandate a single, required set of procedures for all occasions; it is necessary to consider the specific factual context and the type of proceeding involved." *In re Lamm,* 116 N.C. App. 382, 386, 448 S.E.2d 125, 128 (1994). Based on the above, Defendant's due process argument is without merit and his Motion to Dismiss should be denied.

WHEREFORE, Plaintiff requests that the Disciplinary Hearing Committee deny Defendant's Motions to Dismiss, and proceed with the resolution of this case.

Respectfully submitted, this the 6th day of April 2015.

G. Patrick Murphy
Deputy Counsel
State Bar No. 10443
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620
Attorney for Plaintiff

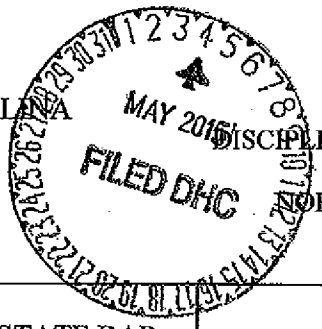
CERTIFICATE OF SERVICE

This is to certify that the foregoing Response to Defendant's Motion To Dismiss In Lieu of Answer was served on counsel for Defendant by depositing it in the United States Mail, postage prepaid to the following address:

Mr. Norman W. Shearin
Mr. David P. Ferrell
Mr. Kevin A. Rust
VANDEVENTER BLACK LLP
Post Office Box 2599
Raleigh, NC 27602-2599

This the 6th day of April 2015.

G. Patrick Murphy
Deputy Counsel
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611



STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 15 DHC 7
THE NORTH CAROLINA STATE BAR, Plaintiff v. JERRY R. TILLETT, Attorney, Defendant	ORDER DENYING DEFENDANT'S MOTION TO DISMISS

This matter is before the Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, Barbara B. Weyher, and Michael S. Edwards on Defendant's Motion To Dismiss In Lieu Of Answer pursuant to 27 NCAC 1B § .0114(n) and Rule 12 of the N.C. Rules of Civil Procedure based on lack of subject matter jurisdiction, estoppel and due process. Having fully considered the motion, the response of the State Bar and the pleadings of record, the Panel is of the opinion that the motion should be denied.

Therefore, it is ORDERED that Defendant's motion is DENIED.

Signed by the Chair with the consent of the other Hearing Panel members, this 30th day of April, 2015.

Joshua W. Willey, Jr., Chair
Disciplinary Hearing Panel

NO. 208PA15 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

THE NORTH CAROLINA STATE BAR, Plaintiff vs. JERRY R. TILLETT, Attorney, Defendant	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 15 DHC 7 COA15-610

****

PLAINTIFF'S OBJECTIONS TO DEFENDANT'S PROPOSED RECORD ON APPEAL

****

The Plaintiff, by and through undersigned counsel, pursuant to Rules 11(c) and/or Rule18(d) of the North Carolina Rules of Appellate Procedure, submits the following Objections to Defendant's proposed record on appeal served on 3 June 2016. Specifically, Plaintiff objects to the following matters, for the following reasons:

1. Plaintiff objects to inclusion of all of the litigation, including motions, responses, orders, and transcripts, subsequent to the materials that are included in the record filed in COA15-610. The Court's 27 May 2016 Order in this case stated it was issuing a writ of certiorari to consider the question presented in Defendant's

Petition for Discretionary Review, which was filed in relation to the appeal pending in COA15-610. The record filed in COA15-610 directly relates to the issue for which the Court granted review, since COA15-610 was Defendant's appeal from the DHC's denial of his motion to dismiss based upon several grounds, including lack of jurisdiction. The subsequent litigation is not "necessary for an understanding" of the issue specified by the Court for review, in accordance with Rule 9 and Rule 18 of the North Carolina Rules of Appellate Procedure.

2. Plaintiff objects to inclusion of the motion to dismiss filed with the DHC by Defendant on 24 May 2016, for the reason stated above as well as for the following reasons. The record on this motion is not complete since the State Bar had not responded before the case was stayed by this Court's 27 May 2016 order and the DHC has not ruled on the motion. Additionally, this motion is not based on the jurisdictional issue for which the Court has granted review.

3. The proposed record from Defendant did not include any statement of Defendant's proposed issues on appeal, although Plaintiff understands Defendant intends to include one in the record submitted to the Court. The State Bar believes the only issue before the Court is the one specified in its 27 May 2016 order.

The parties have discussed the proposed record and Plaintiff's objection to all matters subsequent to the record filed in COA15-610 but have not been able to

reach an agreement to settle the record. Accordingly, Plaintiff submits this formal objection to be included in the record.

Respectfully submitted, this the 10th day of June, 2016.

G. Patrick Murphy, Deputy Counsel
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Jennifer A. Porter, Deputy Counsel
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P.O. Box 25908
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Plaintiff's Objections to Defendant's Proposed Record on Appeal were served upon the Defendant by depositing a copy of the same in the U.S. Mail in a postage prepaid envelope addressed to counsel for the Defendant as follows:

Norman W. Shearin
David Ferrell
Kevin Rust
Vandeventer Black LLP
P.O. Box 2599
Raleigh, NC 27602-2599

The undersigned certifies the foregoing was also e-mailed to counsel for the Defendant as follows: nshearin@vanblacklaw.com; dferrell@vanblacklaw.com; krust@vanblacklaw.com.

This the 10th day of June, 2016.

Jennifer A. Porter
Attorney for the Plaintiff
The North Carolina State Bar

STATEMENT REGARDING SETTLEMENT OF RECORD ON APPEAL

Counsel for the Defendant states as follows:

1. An *ex mero motu* Order was issued by the Supreme Court of North Carolina on 27 May 2016 which included a requirement to file the Record on or before 10 June 2016.

2. Defendant served its Proposed Record on Appeal on Plaintiff on 3 June 2016, which included pleadings and orders that are necessary for an understanding of the issues before the Court for review. The parties exchanged correspondence about the Record on Appeal between 6 June 2016 and 10 June 2016. Plaintiff served its objections to Defendant's proposed record on appeal on 10 June 2016. (R p 84). In light of Plaintiff's Objections, Defendant has modified its Proposed Record on Appeal in an attempt to be consistent with Plaintiff's objections.

3. Based on the parties correspondence and Plaintiff's objections to the Proposed Record on Appeal, the following documents constitute the Record on Appeal and the Rule 11(c) Supplement to the Printed Record on Appeal to be filed with the Clerk of the Supreme Court:

    a. This printed Record on Appeal consisting of pages -1- to - 95 -.

    b. The 10 December 2015 motions hearing transcript described in the "Statement of Transcript Option" (R p 90) (which shall be submitted by the court reporter) is submitted as a part of the Rule 11(c) Supplement to the Printed Record on Appeal.

    c. The Rule 11(c) Supplement to the Printed Record on Appeal described in "Statement of Rule 11(c) Supplement to the Printed Record on Appeal" (R p 91)

(seven copies of which are filed along with this printed record on appeal).

4. The parties do not waive their right to supplement the Record on Appeal as permitted by Rule 9(b)(5).

This the 10th day of June, 2016.

David P. Ferrell
Counsel for Defendant

STATEMENT OF TRANSCRIPT OPTION

Per Appellate Rules 7(b) and 9(c) of the North Carolina Rules of Appellate Procedure, the verbatim transcript of the 10 December 2015 hearing on Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment, taken by Amy L. Poythress, Court Reporter, delivered on 4 February 2016 consisting of 174 pages, numbered 1-174, bound in one volume, will be electronically filed as a part of the Rule 11(c) Supplement to the Printed Record on Appeal by Amy L. Poythress.

STATEMENT OF RULE 11(c) SUPPLEMENT TO PRINTED RECORD ON APPEAL

In accordance with North Carolina Rules of Appellate Procedure 9(a) and 11(c), seven copies of a "Rule 11(c) Supplement to the Printed Record on Appeal," consisting of 154 pages, numbered 96 to 249 are filed contemporaneously herewith and include the following documents:

a) Motion for Judgment on the Pleadings (Filed 07/09/2015)

b) Response to Motion for Judgment on the Pleadings (Filed 07/27/2015)

c) Order Denying Defendant's Motion for Judgment on the Pleadings (Filed 08/21/2015)

d) Plaintiff's Motion for Summary Judgment (Filed 09/09/2015)

e) [Defendant's] Motion and Memorandum in Support of Summary Judgment (Filed 11/25/2015)

f) Plaintiff's Response to Defendant's Motion for Summary Judgment and Memorandum of Law (Filed 12/07/2015)

g) Order [on Motions for Summary Judgment] (Filed 12/18/2015)

h) Motion and Memorandum in Support of Summary Judgment on Discipline and Request for Hearing and Oral Argument (Filed 02/12/2016)

i) Motion and Request for a Conference to Narrow the Issues to be Presented and Hearing on Motion for Summary Judgment (Filed 02/12/2016)

j) Plaintiff's Response to Defendant's Motion and Request for a Conference to Narrow the Issues to be Presented and Hearing on Motion for Summary Judgment (Filed 02/18//2016)

k) Plaintiff's Response to Defendant's Motion for Summary Judgment on Discipline (Filed 02/18/2016)

l) Order Denying Defendant's Second Motion for Summary Judgment [on Discipline] (Filed 03/11/2016)

m) Order Denying Defendant's Request for Hearing and Oral Argument on Second Motion for Summary Judgment (Filed 03/11/2016)

n) Order on Motion for Conference to Narrow Issues (Filed 03/11/2016)

o) Motion to Dismiss and for Appropriate Relief and Request for Hearing and Oral Argument (Filed 05/24/2016)

The Rule 11(c) Supplement to the Printed Record on Appeal will be referenced as "(R S p _____)".

PROPOSED ISSUES ON APPEAL

Pursuant to Appellate Rule 10(b), Defendant states that the proposed issue to be presented on appeal is as follows:

1. Whether the North Carolina State Bar Council and the Disciplinary Hearing Commission have the jurisdictional authority to discipline a judge of the General Court of Justice for conduct as a judge for which the judge has already been disciplined by the Judicial Standards Commission.

    a. Whether the State Bar and the DHC have jurisdiction to discipline a judge of the General Court of Justice for conduct of a judge.

    b. Given that Tillett has already been disciplined by the JSC, whether the State Bar's action against Tillett is barred by the doctrine of res judicata, collateral estoppel, and/or judicial estoppel.

    c. Whether the State Bar and/or the DHC in their prosecution of Tillett under the circumstances of this case violated Tillett's substantive and/or procedural due process rights.

Pursuant to Appellate Rule 10(b), Plaintiff states that the proposed issue to be presented on appeal is as follows:

1. Whether the North Carolina State Bar Council and the Disciplinary Hearing Commission have the jurisdictional authority to discipline a judge of the General Court of Justice for conduct as a judge for which the judge has already been disciplined by the Judicial Standards Commission.

IDENTIFICATION OF COUNSEL FOR THE APPEAL

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JPorter@ncgar.gov
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing **RECORD ON APPEAL** upon the parties, by depositing the same in the United States mail, addressed as follows:

G. Patrick Murphy
Jennifer A. Porter
The North Carolina State Bar
PO Box 25908
Raleigh, NC 27611
Attorneys for Plaintiff

This the 10th day of June, 2016.

David P. Ferrell
Counsel for Defendant

4829-6876-3186, v. 1