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20050162

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

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IN THE MATTER OF THE APPLICATION)
FOR REINSTATEMENT TO THE BAR)
OF THE STATE OF NORTH DAKOTA BY)
RANDALL L. HOFFMAN)

Supreme Court No.
20050162

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT
JUN 29 2005
STATE OF NORTH DAKOTA

Petitioner's Brief

**APPEAL FROM THE REPORT OF THE HEARING PANEL
DATED MAY, 2005**

Randall L. Hoffman
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SUPREME COURT OF THE STATE OF NORTH DAKOTA

IN THE MATTER OF THE APPLICATION FOR)
REINSTATEMENT TO THE BAR OF THE STATE) File no. 4120-W-0410
OF NORTH DAKOTA BY RANDALL L. HOFFMAN)

PETITIONER'S OBJECTIONS TO REPORT OF HEARING PANEL

Petitioner, Randall L. Hoffman, hereby makes the following objections to the

Report of the Hearing Panel filed May 10th, 2005:

- Objection 1: The Hearing Panel acted unreasonably and arbitrarily in its finding that Hoffman's involvement in a visitation dispute was a "large part" in the reasoning of the one year license suspension, since the evidence, facts and argument indicate that Hoffman was originally offered a \$500 cost assessment and 90 day suspension, if he admitted to all alleged facts and conclusions, but Hoffman could not do so with honesty and integrity. The Hearing Panel should have found that Hoffman's now 19 month suspension was a result of his failure to recognize what would become the ultimate facts and conclusions for discipline.
- Objection 2: The Hearing Panel acted unreasonably and arbitrarily in its finding that during the time of suspension Hoffman communicated with the father of his stepchild.
- Objection 3: The Hearing Panel acted unreasonably and arbitrarily in its finding that Hoffman's recognition of wrongfulness and seriousness was limited to an appearance of recitation of Supreme Court conclusions and did not reflect contrition or sincerity.
- Objection 4: The Hearing Panel acted unreasonably, arbitrarily and erroneously in failing to address Hoffman's state and federal constitutional claims to freedom of speech. Therefore, the Hearing Panel arbitrarily and unreasonably acted as such speech was relevant to reinstatement, but they made absolutely no conclusion regarding a connection between Hoffman's speech on an internet profile speech and any factor in NDRLD Rule 4.5. The Hearing Panel gave no reason for even mentioning Hoffman's speech. The Hearing Panel violated Hoffman's state and federal constitutional rights of freedom of speech.
- Objection 5: The Hearing Panel erroneously admitted hearsay statements and documents

found in Exhibits 1 and 2 in violations of NDREv 807 and any other rule of evidence that requires reasonable notice and the Due Process clauses of the state and federal constitution. Hoffman was given no notice whatsoever of the offer into evidence of Exhibit 2, a hearsay document. Hoffman was given three day notice of the contents of hearsay statements and documents found in Exhibit 1. Since these statements and documents were critical to the panel's findings and conclusion, Hoffman did not receive a fair hearing and was not given a proper opportunity to be heard.

- Objection 6: The Hearing Panel erroneously concluded that Hoffman engaged in an unauthorized practice of law during his suspension by virtue of assisting his wife with grammar, spelling and syntax, despite the dictates of NDRProfConduct Rule 5.5.
- Objection 7: The Hearing Panel erroneously concluded that Hoffman's grammar, spelling and syntax assistance to his wife, a pro se litigant, was evidence that he does not recognize the wrongfulness and seriousness of his misconduct.
- Objection 8: The Hearing Panel was erroneous in requiring a demeanor that was completely devoid of "resentment and fight" and that was completely conciliatory. The Hearing Panel's position misunderstands legal standards and burdens of proof required in the original discipline which allows some measure of disagreement, especially when integrity and honesty are necessary requisites for the practice of law. Using the Hearing Panel's reasoning, Hoffman making objections to the Hearing Panel's Report is would prohibit him from ever getting a license to practice law, despite having the competency, honesty and integrity to practice law and despite Hoffman's right to object to the report.
- Objection 9: The Hearing Panel arbitrarily and unreasonably failed to mention any facts regarding the numerous letters of support for reinstatement by numerous Grant County officials. The Hearing Panel failed to address Hoffman's request to limit the practice to law to exclude family law or include only the work of a Grant County States Attorney. The Hearing Panel's inaction on this matter was done in spite of its finding and conclusion that, notwithstanding Hoffman's misconduct, he has the honesty and integrity and competency to practice law.

Dated this ___ day of _____, 2005

Randall L. Hoffman
PO Box 95
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STATEMENT OF THE CASE

The matter came on for hearing on March 11th, 2005 in Bismarck, ND before a hearing panel of the Disciplinary Board of the ND Supreme Court. Randall Hoffman was personally present. Disciplinary Counselor Paul Jacobson was personally present. The matter was taken under advisement by the hearing panel. The parties were allowed to submit briefs and reply briefs. Randall Hoffman submitted a brief and reply brief. Paul Jacobson submitted a brief, but no reply brief.

The hearing panel made its report on or about May 9th, 2005. It recommended that Randall Hoffman not be reinstated.

STATEMENT OF FACTS

The hearing panel found that Hoffman communicated with the father and father's wife through Hoffman's public internet profile. These communications were disparaging and demeaning. Hoffman argued in brief that the communications were Constitutionally protected free speech. The hearing panel did not address this issue.

The hearing panel found that Hoffman assisted his wife in legal matters and that he assisted by limited matters of grammar, spelling and syntax.

The hearing panel found that Hoffman testified that he recognized the wrongfulness and seriousness of the misconduct. The hearing panel found that such testimony appeared to be a recitation of the conclusions of the Supreme Court and did not reflect contrition or sincerity. Hoffman testimony consisted of many statements, not the least of which were the following: "In the Tolzman circumstance, I regret that I was unable to find the opinion of the general counsel for the State of Alabama which clearly defined that which constitutes personal and substantial involvements. Had I known of this opinion, I would have accepted the private reprimand originally issued for this misconduct... In the Remmick case, I was unable to obtain the revelation of the true facts until sometime after the Supreme Court opinion. Had I been able to obtain a truthful revelation of the facts, I would have accepted the discipline of \$500 costs and a much shorter time of suspension that was offered to me by Disciplinary Counsel. This present proceeding would not have been necessary as the suspension time period would have been six months or less... Under

some very trying circumstances over the past few years, I still believe in the basic goodness of human nature. I still believe in finding the truth. As a human being, I still believe in the importance of speaking the truth. As a lawyer, I still believe that justice prevails.... As a lawyer, I admit that the facts and conclusions of the Supreme Court in their opinion in this matter are true and correct. As a lawyer, I regret not having this revelation prior to the disciplinary hearing and the decision of the Supreme Court.” T.R. 14-16.

The hearing panel stated that Hoffman says the right words when he is asked to, but he has some resentment and fight in him more than a conciliatory nature. T.R. 62. Hoffman responded by saying that he resented own inability to see what was justice in his disciplinary proceeding. T.R. 63. The hearing panel stated that Hoffman was unable to bring the relationship between himself and his stepchild’s father and stepmother. T.R. 66-67. Hoffman asked to be limited to not being his wife’s attorney. T.R. 67. The hearing panel stated that the context of the rule about unauthorized practice doesn’t matter. T.R. 67.

Hoffman asked for a limited reinstatement allowing him to work as Grant County’s States Attorney. T.R. 62. The hearing Panel did not address this request.

Factually, there were numerous letters supporting reinstatement from various Grant County and City of Elgin officials. See Exhibits. The hearing panel appears to find this letter so unimportant as to not mention them.

Also, the hearing panel glossed over the facts that Hoffman is factually fit and competent to practice law; and has the honesty and integrity to practice law; and has not violated any other ethics rules. See end of paragraph 1 of hearing panel’s report.

LAW AND ARGUMENT

Hoffman's speech is constitutionally protected as free speech.

Hoffman's demeanor was less than an erroneously requirement of 100% conciliatory responses. Hoffman's demeanor is appropriate and grounded on the proposition that nothing in law is 100% certain. Decisions, facts and conclusions are made by standards of judgment and burdens of proof. The Supreme Court's disciplinary opinion was based upon a standard of clear and convincing evidence. This standard allows for something more than a reasonable doubt regarding the opinion. Reasonable doubt is much less than 100% certainty!

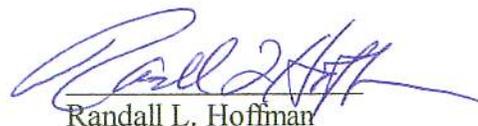
There was no unauthorized practice of law. Spelling, grammar and syntax consists of knowledge that the Supreme Court should hope exists in everyone.....even non-lawyers!

CONCLUSION

Reinstatement should be made effective immediately either on a whole or limited bases.



I, Randall L. Hoffman, do hereby certify that on the 30 day of June, 2005, I mailed a true and correct copy of this document to Paul Jacobson, PO Box 2297, Bismarck, ND 58502-2297.



Randall L. Hoffman