NO. COA09-765

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v. North Carolina State Bar
No. 07 DHC 17

PAUL L. ERICKSON, Attorney,
Defendant.

Appeal by defendant from order entered 14 August 2008 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 28 January 2010.

The North Carolina State Bar, by Katherine Jean and David R. Johnson, for plaintiff-appellee.

Paul L. Erickson, pro se, defendant-appellant.

GEER, Judge.

Paul L. Erickson, an attorney, appeals an order of the Disciplinary Hearing Commission of the North Carolina State Bar ("DHC") suspending his license to practice law for five years. Because the Commission's conclusion that Erickson repeatedly violated the North Carolina Rules of Professional Conduct is supported by sufficient findings of fact, which are in turn supported by substantial evidence, we affirm.

Facts

On 11 July 2007, a complaint was filed against Erickson, alleging numerous violations of the North Carolina Rules of Professional Conduct. Erickson filed an answer on 15 November 2007, and a hearing was held on 26 and 27 June 2008. On 14 August 2008, the DHC filed a disciplinary order suspending Erickson's law license for five years. In its order, the DHC made the following findings of fact, which are largely unchallenged by Erickson on appeal.

Erickson has been practicing law in Asheville, North Carolina since he was admitted to the North Carolina State Bar on 18 March 1995. In 2004, Erickson became involved with Dale Scott Heineman and Kurt F. Johnson, the principals of the Dorean Group, a company that purported to assist consumers in eliminating their mortgage debt. The Dorean Group referred many of its customers to Erickson for legal advice and representation in litigation and foreclosure proceedings involving the customers' mortgage obligations. The Dorean Group agreed to pay Erickson's legal fees for representing those clients referred to him, and Erickson followed the Dorean Group's direction in representing those clients. Erickson also represented the Dorean Group, Heineman, and Johnson in various lawsuits arising out of their mortgage elimination business.

The Dorean Group operated websites on which it represented that, in exchange for substantial payments by a homeowner, the Dorean Group would help the homeowner eliminate his or her mortgage without the homeowner being required to pay the underlying debt. This scheme, often referred to as a "mortgage elimination" scheme,

was based on a theory known as the "vapor money" theory. Proponents of the "vapor money" theory believe that when a bank loans money to a borrower, the promissory note the borrower executes in exchange is the equivalent of "money" he or she is giving to the bank. *See Barber v. Countrywide Home Loans, Inc.*, 2010 WL 398915 (W.D.N.C. Jan. 25, 2010) (unpublished). Proponents contend the bank then deposits the "money" — the promissory note — into the borrower's account, lists it as an "asset" on its ledger entries, and loans the money back to the borrower, so there is no enforceable debt. *Id.* This theory, holding in essence that "no enforceable debt accrues to a lender that funds loans through checks or wire transfers rather than through cash, has been repeatedly rejected by courts across the country." *Jiramoree v. HomEq Servicing*, ___ F. Supp. 2d ___, 2009 WL 605817, *1, 2009 U.S. Dist. LEXIS 21908, *3 (C.D. Cal. Mar. 9, 2009) (unpublished).

In the Dorean scheme, after the homeowner paid a fee of between $1,000.00 and $3,000.00 to the Dorean Group, the homeowner would convey by quitclaim deed the title to his or her residence to a "family trust" that named Heineman and Johnson as the trustees. Heineman and Johnson, as "trustees," would then submit a "presentment package" of documents to the homeowner's mortgage lender. One document in the presentment package created a self-executing agreement whereby the lender automatically appointed the trustees attorney-in-fact for the lender and authorized the trustees to prepare and record all necessary documents for "proper reconveyance" of the residence if the lender did not rebut within

10 days claims asserted in another document, also included in the package, entitled "Affidavit of Truth."

The presentment package also contained a fictitious bond that purported to satisfy the mortgage. In order to cash the bond, the lender was required to prove that the lender's loan was valid to the satisfaction of Heineman and Johnson. The presentment package contained as well excerpts from books with illustrative cartoons, together with a "Report from Certified Public Accountant," in which a man identified as Todd Ellis Swanson purported to certify the scheme as a legitimate way to cancel one's mortgage debt. As this Court stated in a previous case dealing with the Dorean scheme, "[t]o characterize [the presentment package] as bizarre and absurd would be an understatement." *Household Realty Corp. v. Lambeth*, 188 N.C. App. 545, 552, 656 S.E.2d 336, 341 (2008). When the lender inevitably failed to respond to the presentment package, the trustees would file the fraudulent substitution of trustee, cancel the deed of trust, and record with the register of deeds "a full reconveyance" to the homeowner.

When Erickson was first introduced to the Dorean scheme at a meeting with the Dorean Group in June 2004, he expressed his personal skepticism about the plausibility of the scheme and discussed with other attorneys present at the meeting the possibility of being subjected to sanctions for filing legal documents propounding the scheme. Indeed, on 28 June 2004, Erickson learned that Todd Ellis Swanson was being investigated by the South Carolina Board of Accountancy.

Despite his admitted personal misgivings about the plausibility of the scheme and his knowledge of Swanson's investigation, Erickson began representing clients of the Dorean Group. The first "mortgage elimination" case in which Erickson was involved was that of J.E.D. Lambeth. In May 1997, Lambeth borrowed $249,237.00 from First National Bank of Reidsville ("FNB Reidsville"). The Lambeth loan was evidenced by a promissory note and secured by a deed of trust upon real property located in Reidsville, North Carolina. FNB Reidsville assigned the note and deed of trust to FNB Southeast. In March 2004, Lambeth created the Lambeth Family Trust, naming Heineman and Johnson as trustees and granting them power of attorney to prosecute and defend any and all claims against the trust. On 25 March 2004, Lambeth recorded a quitclaim deed transferring the property to Heineman and Johnson as trustees of the trust.

On 23 April 2004, the Dorean Group sent a presentment package to FNB Southeast. When FNB Southeast did not respond, Heineman signed a document entitled "Specific Power of Attorney" purporting to appoint himself as attorney-in-fact for FNB Southeast. Heineman also signed a document entitled "Substitution of Trustee" in which Heineman falsely represented that he was attorney-in-fact for FNB Southeast and appointed himself substitute trustee under the deed of trust. Heineman signed a third document entitled "Full Reconveyance" that falsely represented that the holder of the underlying indebtedness had been paid in full, that the holder of the underlying debt had requested that the substitute trustee

indicate on the public record that the deed of trust had been surrendered for cancellation, and that the deed of trust was therefore cancelled.

On 12 August 2004, FNB Southeast filed a civil action in Rockingham County Superior Court against Lambeth, the Lambeth Family Trust, Heineman, and Johnson to collect on the promissory note. FNB Southeast sought judgment for the principal and interest owed on the note and an injunction restraining Lambeth, Heineman, and Johnson from taking any action to limit, impair, hinder, or eliminate FNB Southeast's rights under the note and deed of trust. Erickson represented Lambeth, the Lambeth Family Trust, Heineman, and Johnson in this proceeding.

On 12 August 2004, Judge Melzer A. Morgan, Jr. entered a temporary restraining order ("TRO"). In doing so, Judge Morgan pointed out to Erickson that his clients' position was extremely unusual and reminded Erickson that Rule 11 delineated what pleadings could be filed without incurring Rule 11 sanctions. Judge Morgan also warned Erickson that he might refer the matter to the state Attorney General's office.

In violation of the TRO, Heineman subsequently recorded the "Substitution of Trustee," the "Full Reconveyance," and the "Specific Power of Attorney" in the Rockingham County Registry. The DHC found that Heineman did so "for the purposes of misleading the public, misleading the court and misleading a person doing a title search of the property into believ[ing], in error, that there was no existing lien against the property."

On 17 August 2004, a foreclosure hearing was held to foreclose on the deed of trust securing the Lambeth note. Erickson represented Lambeth in this proceeding and falsely represented to the trial court that the deed of trust had been cancelled and that the foreclosure action could not proceed, relying on the fictitious bond and the same arguments made to and rejected by Judge Morgan five days earlier. Erickson relied on the "Substitution of Trustee," the "Full Reconveyance," and the "Specific Power of Attorney" as support for his arguments despite knowing those documents were false.

The DHC found that when Erickson made those arguments, he knew they were fraudulent and frivolous and that he relied on the false documents with "the intention of misleading the court" and "for the purpose of inducing the court to dismiss the foreclosure proceeding and for the purpose of preventing foreclosure of the deed of trust." Moreover, the DHC found that "Erickson made these legal arguments with knowledge that the arguments were not supported by law or fact or by a good faith argument for the extension or modification of existing law."

Erickson filed pleadings on behalf of Heineman and Johnson in the Lambeth lawsuit and prepared the pleadings for Lambeth, who filed them *pro se*. All of these pleadings asserted that based on the "vapor money" theory, the debt evidenced by the promissory note was invalid. The DHC found that "[a]ny attorney licensed in North Carolina would recognize that these defenses and counterclaims were entirely frivolous."

At the time Erickson filed these pleadings, he was aware that several courts in other jurisdictions had expressly ruled that the theory on which they were based was not supported by law or fact or by a good faith argument for the modification of law and that the theory was frivolous. In fact, at the time Erickson filed the pleadings in October 2004, no court in the United States had accepted the "vapor money" theory as valid. On 22 February 2005, the trial court entered judgment for FNB Southeast on the promissory note and entered an order imposing Rule 11 sanctions on Erickson for filing frivolous pleadings.

Erickson subsequently filed similar pleadings on behalf of Deborah L. Julian and William F. Julian in Greenville County, South Carolina in an attempt to prevent the foreclosure of a deed of trust. He also filed the same types of pleadings in litigation relating to the foreclosures and mortgages of Thomas E. Gust and Robert and Linda Stelley in Mecklenburg County, North Carolina.

In each of these cases, Erickson used sample pleadings provided to him by a California attorney named Thomas Speilbauer, who was also involved with the Dorean Group and representing homeowners in similar mortgage elimination cases in California. Erickson admitted that although he knew it was his responsibility to review the pleadings, he simply signed his name to the documents without doing so. In one of the California cases in which Speilbauer used those same pleadings, he was sanctioned, and the matter was referred to the U.S. Attorney's office. Even though Erickson learned about Speilbauer's being sanctioned in connection

with the pleadings, Erickson admitted that he continued to use the Speilbauer pleadings.

The DHC found that Erickson provided improper legal advice to the homeowners and asserted frivolous positions on their behalf at the instruction of the Dorean Group. It found that Erickson's conduct "resulted in unnecessary expenditure of time and resources by FNB and other lenders and resulted in unnecessary expenditure of time by the court addressing legal positions which Erickson knew or should have known were not supported by fact, were not supported by law and were not supported by a good faith argument for an extension, modification or reversal of existing law." Further, the DHC found that "Erickson engaged in the conduct described above for the purpose of assisting the Dorean Group in its mortgage elimination scheme" and that these actions delayed and harassed the lenders, who were attempting to pursue legitimate claims against the homeowners.

Around that same time, Erickson also became involved with an organization known as Debt Relief Services ("DRS"), which purported to be a company in the business of helping clients manage and resolve their credit card debt. Erickson had an arrangement pursuant to which DRS would pay any fee at the rate of $50.00 per hour for any client referred to Erickson by DRS who did not pay him. On 30 June 2004, Erickson agreed to represent the Braswell family in connection with their liability on a $15,000.00 credit card debt with BB&T. The Braswells had never disputed their liability for that debt. When BB&T sought payment on the account,

however, DRS counseled and encouraged the Braswells to challenge the debt.

DRS and the Braswells sent BB&T a settlement agreement purporting to reflect a settlement of the credit card debt despite the fact that BB&T had never agreed to the settlement set forth in the document. This document was similar to the self-executing documents used in the Dorean Group scheme. The settlement agreement did not call for BB&T's signature, but instead stated that BB&T could reject the settlement by refusing and returning a $10.00 check which would be sent to BB&T by separate letter. The Braswells sent BB&T the $10.00 check, but it did not contain a legend indicating that it was tendered in full payment of the $15,000.00 credit card debt. Erickson later asserted the frivolous position in pleadings that BB&T had accepted the $10.00 as full satisfaction of the $15,000.00 debt.

BB&T filed suit in Rutherford County District Court against the Braswells on 14 May 2004 to recover the outstanding balance on the credit card account, but the case was later transferred to Cleveland County. On 14 August 2004, Erickson prepared various documents for the Braswells to file. Although Erickson's verified answer to the State Bar's complaint specifically denies that he did so, Erickson's client records show he did in fact prepare those documents and had the Braswells file them *pro se*.

In their responses to interrogatories, the Braswells stated they could not respond to the lawsuit until BB&T provided voluminous documentation relating to the history of the account.

Prior to retaining DRS' and Erickson's services, the Braswells had never challenged the accuracy of the charges or payment credits on the account. In fact, the Braswells' response to BB&T's request for admissions, prepared by Erickson, admitted all charges on the account. The Braswells, however, in their responses to the request for admissions, denied the legitimacy of the debt on the grounds that the finance charges were fraudulently calculated. Prior to retaining the services of DRS and Erickson, the Braswells had never challenged the accuracy of the finance charges on any monthly statement.

On 19 August 2004, Erickson made a formal appearance in the lawsuit on behalf of the Braswells. Erickson contended that BB&T lacked standing to maintain the action because BB&T had assigned the indebtedness to a third party. Neither Erickson nor the Braswells presented any evidence that BB&T had assigned the debt. The Braswells were unsuccessful in defending the lawsuit. The DHC found that Erickson's conduct in the Braswell litigation "resulted in unnecessary expenditure of time and resources of BB&T and resulted in unnecessary expenditure of time by the court addressing legal positions which Erickson knew were not supported by fact, were not supported by law and were not supported by a good faith argument for an extension, modification or reversal of existing law." Further, the DHC found that Erickson "engaged in the conduct in the Braswell lawsuit for the purpose of assisting DRS and the Braswells in their credit card elimination scheme and to delay BB&T in pursuing its legitimate claim against the Braswells." Finally,

the DHC found "Erickson provided improper legal advice to the Braswells and asserted frivolous positions on the Braswells' behalf at the direction and instruction of DRS, which had referred the Braswells to Erickson."

Erickson also filed similar pleadings and made similar arguments in connection with his unsuccessful representation of Kevin Swanson, James L. Wilson, and Julie Tipton Brown in litigation over their credit card debt. In addition, Erickson prepared identical pleadings for Karen Cansler to file *pro se*. In each of these cases, the DHC found that Erickson had no factual or legal basis for the defenses and/or counterclaims asserted in the pleadings he filed and that he asserted them for the improper purpose of delaying entry of judgment in the lender's favor. The DHC found that these frivolous assertions "resulted in delay and waste of the court's time and prejudice to the administration of justice." Further, the DHC found that Erickson's conduct — providing improper legal advice and asserting frivolous positions at the instruction of DRS — "resulted in unnecessary expenditure of time and resources of [the lenders] and resulted in unnecessary expenditure of time by the court addressing legal positions which Erickson knew or should have known were not supported by fact, were not supported by law and were not supported by a good faith argument for an extension, modification or reversal of existing law."

Based on these findings of fact, the DHC concluded Erickson's conduct constituted grounds for discipline. After making

additional findings related to the nature of the sanction, the DHC ordered Erickson's license to practice law suspended for five years. Erickson filed notice of appeal to this Court on 12 November 2008.

Discussion

We first note that addressing Erickson's arguments on appeal has been difficult. Although he recites the standard of review applicable to appeals from the DHC, he does not apply it. His brief is not organized in a manner that correlates with the standard of review, such as arguing that specific findings of fact are not supported by substantial evidence or that the findings of fact failed to support a particular conclusion of law.

Rather than addressing the specifics of the DHC's order, Erickson's brief represents more of a broadside attack on the proceedings. On the one hand, Erickson contends that he was merely zealously defending his clients in accord with the "code of ethics," comparing himself to civil rights litigators who were not disciplined when "pushing the envelope": "It would not have benefitted society if the civil rights attorneys had been disbarred for pursuing equal rights for African Americans before they prevailed. . . . One has to wonder why Clarence Darrow was not suspended or disbarred for losing on the merits all the way through the Tennessee Supreme Court, his fight to have evolution taught in school science classes. . . . Why was no one disbarred or suspended when the Supreme Court upheld the separate but equal doctrine in

Plessy v. Ferguson, 163 U.S. 537 (1896) or when it was overturned in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)?"

Suffice it to say that Erickson's rhetoric on appeal is troubling. The civil rights attorneys he invokes were "the best" of our profession — in contrast to lawyers promoting "patently absurd" and fraudulent theories in a scheme purporting to eliminate valid debts for gullible (or vulnerable) homeowners. We agree with Erickson that "[n]o attorney should be stifled by the fear of losing his/her licenses and professions" when pursuing well-supported, well-researched, and non-frivolous — although novel — theories on behalf of the under-represented. We do not agree that the same should be true for attorneys promoting frivolous and dishonest theories or engaging in fraudulent conduct.

It is striking that Erickson — after attempting to group himself with cutting-edge civil rights lawyers — also urges on appeal that he could not have defrauded anyone because no one could have reasonably relied upon "patently absurd" documents. Although Erickson admits that filing such documents might amount to filing frivolous documents, he also contends that he nonetheless "had an ethical duty to present and argue his clients' evidence." His arguments on appeal suggest that Erickson still does not fully grasp his ethical duty not to present arguments unless they are well-grounded in law and fact regardless of the wishes of his clients who are not bound by the Rules of Professional Conduct.

We have attempted to group Erickson's arguments in a manner that corresponds with our standard of review. We begin with his

challenges to the process and then turn to his contentions regarding the merits of the DHC's decision.

I

As an initial matter, we must address several procedural improprieties that Erickson alleges were committed during his disciplinary hearing. Erickson argues his due process rights were violated because the chair of the DHC panel had previously worked with the State Bar prosecutor at the Attorney General's office. He also points out that the panel chair waited until the end of the hearing to inquire about any possible conflicts of interest.[1] Finally, he contends he was prejudiced because another member of the panel was a lawyer who is often hired to defend school boards in education-related litigation, while Erickson often represents parents suing school boards.

Since Erickson did not raise these issues before the DHC either in advance, during, or after the hearing, he cannot argue them for the first time on appeal. *See* N.C.R. App. P. 10(b)(1) ("In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion . . . . It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion.").[2] We, therefore, do not address these assignments of error.

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[1]None were raised when the inquiry was made.

[2]Although the Appellate Rules have been amended, because Erickson filed his notice of appeal prior to 1 October 2009, we apply the former version of the rule.

Erickson also argues that it was improper for the DHC to sign and enter an order drafted by the prosecutor without making any changes. In support of this contention, Erickson relies exclusively on the Florida Supreme Court's opinion in *Perlow v. Berg-Perlow*, 875 So. 2d 383, 385 (Fla. 2004). In that case, the court held that a trial court improperly delegated its decision-making authority by entering the prevailing party's proposed judgment without any changes only two hours after closing arguments. *Id.* at 389. The court explained that because the final judgment was adopted verbatim and the trial court made no findings or conclusions on the record, "there was an appearance that the trial judge did not independently make factual findings and legal conclusions, i.e., an appearance of impropriety." *Id.*

In North Carolina, it is often the practice for the judge to direct the prevailing party to prepare a draft order for the trial court's review. *See Johnson v. Johnson*, 67 N.C. App. 250, 257, 313 S.E.2d 162, 166 (1984) ("The trial judge properly directed the attorney for the defendant to prepare proposed findings and conclusions and draft the judgment, and adopted the judgment as his own when tendered and signed. The entire judgment was not made until all of this was accomplished."). Our courts have not adopted the approach taken by the Florida Supreme Court. *See, e.g., Farris v. Burke County Bd. of Educ.*, 355 N.C. 225, 242, 559 S.E.2d 774, 784 (2002) (holding that board of education could properly ask counsel for school superintendent to prepare findings of fact, noting that "[s]imilar procedures are routine in civil cases, where

a judge is permitted to ask the prevailing party to draft a judgment"); *In re J.B.*, 172 N.C. App. 1, 25-26, 616 S.E.2d 264, 279 (2005) ("Nothing in the statute or common practice precludes the trial court from directing the prevailing party to draft an order on its behalf."). Erickson's assertion that North Carolina courts have not addressed this issue is incorrect.

In any event, in contrast to *Perlow*, the DHC orally announced its overall findings of fact and conclusions of law on the record. The hearing was concluded on 27 June 2008, and the State Bar provided Erickson with a copy of its proposed order on 31 July 2008. Erickson's counsel acknowledged receipt of the proposed order and promised to review it. When, however, he failed to respond by 8 August 2008, the State Bar filed the proposed order. The proposed order drafted by the prosecutor was consistent with the oral findings and conclusions stated by the DHC on the record. Although the order was not signed until 14 August 2008, the record contains no indication that Erickson tried to raise any objection to the proposed order or request any changes. Therefore, Erickson has failed to establish any procedural basis for reversing the DHC's order.[3]

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[3]Erickson appears to be arguing that the oral statement of findings and conclusions was inadequate. We, however, review the written order. That order included 165 findings of fact and 22 conclusions of law regarding whether Erickson had engaged in conduct warranting discipline and eight additional findings of fact regarding the appropriate sanction. In addition, we find no support for Erickson's contention that the DHC panel did not actually review the evidence. That argument appears to be based primarily on the fact that the DHC was not persuaded by Erickson's evidence or arguments.

II

Turning to the substantive basis for the DHC's decision, N.C. Gen. Stat. § 84-28(a) (2009) provides that "[a]ny attorney admitted to practice law in this State is subject to the disciplinary jurisdiction" of the North Carolina State Bar. Subsection (b) sets out three types of acts or omissions that constitute misconduct: (1) conviction or a guilty plea to a criminal offense showing professional unfitness, (2) a violation of the Rules of Professional Conduct, and/or (3) knowing misrepresentation of any facts or circumstances surrounding a complaint or allegation of misconduct. In the adjudicatory phase of a disciplinary hearing, the DHC must determine whether an attorney has engaged in one of these three types of misconduct.

On appeal, this Court reviews the DHC order "under the whole record test." *N.C. State Bar v. Talford*, 147 N.C. App. 581, 588, 556 S.E.2d 344, 350 (2001), *aff'd as modified*, 356 N.C. 626, 576 S.E.2d 305 (2003). "This Court does not sit as a fact-finder, and does not take new evidence or make new findings of fact." *Id.* at 587, 556 S.E.2d at 349. We "must determine whether the DHC's findings were supported by substantial evidence in view of the whole record; whether its findings support its conclusions of law; and whether the DHC abused its discretion in ordering [the sanction]." *Id.* at 589, 556 S.E.2d at 350. Substantial evidence is evidence "'that a reasonable person might accept as adequate to support a conclusion.'" *Id.* at 588, 556 S.E.2d at 350 (quoting

N.C. State Bar v. Speckman, 87 N.C. App. 116, 120, 360 S.E.2d 129, 132 (1987)).

With the exception of a few challenges to particular findings of fact, Erickson fails, in his brief, to specifically discuss the findings he contends are unsupported by the evidence. Instead, he has simply repeated his arguments below without recognizing that this Court does not substitute its judgment for that of the DHC, but rather reviews the order under the above standard of review. Although Erickson assigned error to a number of findings of fact, Rule 28(b)(6) of the Rules of Appellate Procedure provides that "[a]ssignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." The findings of fact not specifically challenged by Erickson in his brief are, by virtue of this rule, deemed to be supported by the evidence. *See N.C. State Bar v. Key*, 189 N.C. App. 80, 87, 658 S.E.2d 493, 498 (2008) ("These unchallenged findings of facts are binding on appeal.").

A. Duty to Render Independent, Professional Advice

The first of the DHC's conclusions challenged by Erickson is that he violated Rules 1.8(f), 2.1, and 5.4(c) of the Revised Rules of Professional Conduct by following the instructions of the Dorean Group and DRS rather than providing his clients with independent legal advice. Rule 1.8(f) provides that a lawyer shall not accept compensation for representing a client from someone other than the client unless (1) the client gives informed consent, (2) there is no interference with the lawyer's independence of professional

judgment or with the client-lawyer relationship, and (3) information relating to representation of the client is protected. Rule 2.1 requires a lawyer to "exercise independent professional judgment and render candid advice." Rule 5.4(c) provides that "[a] lawyer shall not permit a person who recommends, engages, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."

The DHC found that the Dorean Group referred customers to Erickson for legal advice and representation, that the Dorean Group paid Erickson's legal fees for that representation, and that Erickson followed the Dorean Group's instructions in making frivolous arguments on behalf of those clients. The DHC also found that DRS referred clients to Erickson, that DRS paid the legal fees for any client referred to Erickson by DRS who did not pay Erickson for his services, and that Erickson provided improper legal advice and asserted frivolous legal positions at DRS' instruction.

Erickson's sole argument on this issue appears to be that his clients were not the homeowners or the credit card debtors. This assertion is contrary to findings of fact not challenged on appeal and to substantial evidence in the record. Consequently, we hold that the DHC's findings are supported by substantial evidence and those findings in turn support the DHC's conclusion that Erickson violated Rules 1.8(f), 2.1, and 5.4(c).

B. "Vapor Theory" Litigation

The DHC concluded Erickson violated Rules 3.1 and 8.4(c) and (d) of the Revised Rules of Professional Conduct by, among other actions, defending litigation and foreclosure proceedings in three cases in which he asserted that Dorean Group clients had validly cancelled their mortgages using the Dorean scheme. Rule 3.1 provides:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Rule 8.4(c) provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]" Rule 8.4(d) provides that it is also professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice[.]"

In support of its conclusions that Erickson violated these Rules, the DHC found that the pleadings in the foreclosure cases filed by Erickson asserted the "vapor money" theory, which was "an entirely frivolous theory" that any attorney licensed in this state would recognize as frivolous. The DHC found that when Erickson filed those pleadings, Erickson "was in possession of no credible facts and no law to support the validity of the theory" and "believed that the defenses would not be accepted by any court." The DHC found that "Erickson was aware that several courts in other jurisdictions had expressly ruled that the 'vapor money' theory was

not supported by law or fact or by a good faith argument for the modification of law and had ruled that the 'vapor money' theory was frivolous." The DHC found that Erickson's conduct resulted in unnecessary expenditures of time by the lenders and the courts and that Erickson engaged in this conduct "for the purpose of assisting the Dorean Group in its mortgage elimination scheme."

In challenging these findings of fact, Erickson argues that the panel improperly considered information outside the record, as evidenced by the panel chair's statement that "[w]e believe that there are considerable documents in the courts that the registers of deeds have had to clean up as a result of this misconduct." Although this fact may well be one of which the DHC could take judicial notice, the record nonetheless contains substantial evidence that the Dorean Group's filing of fraudulent titles in the register of deeds offices would create considerable confusion and lead to muddied titles.

Erickson next challenges one of the factual bases for the DHC's determination that he knew he was filing frivolous pleadings — finding of fact 52:

> 52. At the time Erickson filed the pleadings on behalf of Heineman and Johnson in the Lambeth litigation asserting the "vapor money" theory, Erickson was aware that several courts in other jurisdictions had expressly ruled that the "vapor money" theory was not supported by law or fact or by a good faith argument for the modification of law and had ruled that the "vapor money" theory was frivolous. In addition to the facts known to Erickson set out in paragraph 20 above, Erickson was served with a Motion to Strike Defenses and Dismiss Counterclaims with an accompanying memorandum of law, on October 7,

> 2004, in the Julian case (see Paragraph 19 above). Erickson later stated this document caused him to reevaluate his positions and beliefs concerning the Dorean mortgage elimination scheme. Erickson filed the pleadings in Lambeth on October 25, 2004.

Erickson points to a motion for extension of time filed in the Julian case that indicates he did not receive the motion to strike in the Julian case until 28 October 2004.[4] According to Erickson, had this fact been brought to the DHC's attention, "they would not have decided Defendant committed the violations of the Code of Ethics and imposed the harsh punishment as they did by signing the Bar's trial attorney's order."

At the hearing before the DHC, however, when Erickson was asked about the Julian plaintiffs' motion to strike, he agreed that he received it on 7 October 2004. Erickson waited until a month and a half after his appeal was heard in this Court to suggest that his testimony under oath was mistaken and the assertions in the motion for an extension of time were correct. While we could hold that the Commission's finding was supported by Erickson's testimony, we need not do so.

In finding of fact 52, although the DHC did rely on the motion to strike as support for its finding regarding Erickson's knowledge of the frivolous nature of the "vapor money" theory, it

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[4]Erickson raised this issue in a document filed with this Court entitled "Motion in the Cause." Since this purported "Motion" does not seek any relief apart from that sought by virtue of his appeal and simply asserts another basis for reversing the DHC's order, the document does not actually amount to a motion. In our discretion and in the interests of justice, we treat this document as a reply brief even though we acknowledge that, as such, it was untimely filed.

specifically stated that this fact was "[i]n addition to the facts known to Erickson set out in paragraph 20 above." Finding of fact 20 stated:

> 20. Erickson was first introduced to the Dorean Group's mortgage elimination scheme on or about June 2, 2004 in a meeting with Heineman, Johnson, and other attorneys from other states. Erickson expressed his personal skepticism about the scheme and discussed the real possibility of sanctions with other attorneys who were present at that meeting. Around June 28, 2004, Erickson learned that the South Carolina Board of Accountancy was investigating Todd Ellis; Swanson [sic]. Swanson was the author of the "Report from Certified Public Accountant," included in all the presentment packets. Erickson was on notice that Swanson was involved in an attempt to defraud lenders by asserting the patently absurd notion that when a lender loans money to its borrower that it is the borrower who has actually loaned money to the lender. The Swanson report was an integral part of the Dorean mortgage elimination scheme. Erickson was further on notice of the fraudulent nature of the scheme when on August 2, 2004, Judge Charles B. Simmons, Jr., Master in Equity, advised Erickson, after receiving the Subrogation and Security Bond from Erickson in a foreclosure proceeding involving Mike Campbell, that he was considering turning the matter over to state law enforcement because he believed there may have been an attempt to perpetrate a fraud upon the Court. Judge Simmons also advised Erickson that he questioned the validity of the bond and the Dorean Group.

In addition, the DHC separately found that "[a]ny attorney licensed in North Carolina would recognize that these defenses and counterclaims [based on the 'vapor money' theory] were entirely frivolous."

Moreover, even after Erickson received the Julian plaintiffs' motion to strike on 28 October 2004, he continued to argue in support of the Dorean scheme. The DHC found:

> In both the Gust and Stelley foreclosure proceedings, Erickson filed the usual Dorean "presentment packet" as evidence to support his argument that the respective notes and deeds of trust had been satisfied. Erickson argued the same frivolous theories in the Stelley case as late as November 18, 2004, even though he learned on November 9, 2004 that the Court had dismissed the Kenny case and ordered Speilbauer to show cause why he should not be sanctioned; and even though Erickson admitted on November 16, 2008 that "no court" in which he had appeared considered the satisfaction of mortgage on behalf of the bank by Dorean as anything other than a fraudulent document. . . . On November 18, 2004, the same day he was arguing the validity of the frivolous Dorean theories to the Clerk of Court in the Stelley case, Erickson filed motions to withdraw in the Julian and Sisk cases, stating that the pleadings he filed in those cases were not supported by law or fact.

All of these findings support the DHC's conclusion that Erickson filed pleadings he knew or should have known had no basis in law, in fact, or under a good faith argument for the extension, modification, or reversal of existing law. Erickson makes no credible argument that any of these findings lacked evidentiary support. Indeed, his own testimony supports most of the findings.

Erickson, however, contends that even so, he had a duty to "mak[e] a record (for a successor attorney to take over) for a client's hearing . . . even when the attorney no longer believes in the client's theories." Comment 2 to Rule 3.1 expressly rejects this argument, providing:

> [2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. *The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.*

(Emphasis added.) Erickson seems to suggest that he has a duty to file pleadings regardless whether they are supported by law or fact because a client has "the right to test their theories in court." That belief is simply not consistent with the Rules of Professional Conduct.

While Erickson also points to Judge Morgan's finding that he "was taken in" by his clients Heineman and Johnson and their attorney Speilbauer, Judge Morgan simply determined, based on that finding, that Erickson did not have an improper purpose in filing the pleadings. That finding is not, however, inconsistent with the DHC's determination that he knew or should have known that the pleadings were not well grounded in law or fact. *See* N.C.R. Civ. P. 11 (providing for sanctions if pleading (1) was not well grounded in law, (2) was not well grounded in fact, or (3) was filed for improper purpose).

With respect to whether he engaged in fraudulent conduct, Erickson argues that if the theory "was 'patently absurd,' no one could reasonably rely on the assertion to their detriment and be defrauded! The idea that a judge would rely on the 'patently absurd' documents presents and [sic] irreconcilable contraposition. While filing 'patently absurd' documents might support a contention of filing frivolous documents, it does not support a claim of fraud." Although we do not believe that the fact that a judge can determine that a theory set out in pleadings is absurd precludes a determination that an attorney has acted in a fraudulent or dishonest manner, especially with unsophisticated consumers, Erickson has not challenged the following findings of fact:

> 40. In the foreclosure proceeding, Erickson falsely represented to the court that the deed of trust had been canceled and therefore the foreclosure action could not proceed, relying on the bond and the same arguments made to and rejected by Judge Morgan just five days earlier.
>
> 41. As support for these arguments, Erickson relied upon the "Substitution of Trustee," the "Full Reconveyance" and the "Specific Power of Attorney."
>
> 42. Erickson knew when he relied upon these false documents that Heineman had no authority to execute the "Substitution of Trustee," the "Full Reconveyance" and the "Specific Power of Attorney."
>
> 43. Erickson knew when he relied upon these documents that the "Substitution of Trustee," the "Full Reconveyance" and the "Specific Power of Attorney" were fraudulent documents and that the theories he argued were fraudulent and frivolous.
>
> 44. Erickson knew when he made the representations to the Clerk set forth above

> that the "Substitution of Trustee," the "Full Reconveyance" and the "Specific Power of Attorney" did not have the effect of legally canceling the deed of trust. Lambeth's note and deed of trust did not allow him to substitute any bond for his required payments to FNB.
>
> 45. Erickson knew when he made the representations set forth above that the representations were false.
>
> 46. Erickson made the false representations set forth above with the intention of misleading the court.

These findings and others — amply supported by evidence — justify the conclusion that Erickson violated Rule 8.4(c) and Rule 8.4(d) prohibiting fraudulent and dishonest conduct and behavior that prejudices the administration of justice.

C. Credit Card Litigation

The DHC also concluded Erickson violated Rules 3.1, 3.3, 8.4(c), and 8.4(d) of the Revised Rules of Professional Conduct by filing frivolous pleadings in the Braswell, Swanson, Wilson, and Tipton litigation, assisting Cansler in filing frivolous pleadings in the Cansler litigation, and by advising, counseling, and assisting the Braswells and Wilson in serving frivolous demands on their credit card companies.

Rule 3.3(a) provides that a lawyer shall not knowingly:

> (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Rule 3.3(b) provides that "[a] lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."

The DHC found that in the Braswell, Swanson, Wilson, Tipton, and Cansler cases, Erickson advised, counseled, and assisted his clients in serving frivolous demands and a purported fictitious settlement agreement upon the creditors and Erickson prepared and advised his clients regarding frivolous pleadings and discovery responses. The DHC also found that Erickson's conduct in these actions resulted in unnecessary expenditures of time by the credit card companies in defending the claims, as well as the courts in resolving the claims.

Erickson, however, contends the DHC's findings of fact are not supported by the evidence because the DHC failed to consider substantial conflicting evidence. Erickson points to the fact that, despite his evidence to the contrary, the DHC believed the testimony of Tonya Urps, opposing counsel in one of his debt collection cases, that Erickson never argued any of his

counterclaims and had no law to support his arguments. Although this testimony relates only to one aspect of the court's findings, Erickson's argument, in any event, goes to the weight and credibility of the evidence.

In *N.C. State Bar v. Ethridge*, 188 N.C. App. 653, 665, 657 S.E.2d 378, 386 (2008) (quoting *Woodlief v. N.C. State Bd. of Dental Exam'rs,* 104 N.C. App. 52, 57-58, 407 S.E.2d 596, 599-600 (1991)), this Court stressed that

> "it is the prerogative and duty of that administrative body, once all the evidence has been presented and considered, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence. The credibility of witnesses and the probative value of particular testimony are for the administrative body to determine, and it may accept or reject in whole or part the testimony of any witness."

The Court explained that it is the responsibility of the DHC, not the appellate courts, "to observe defendant and judge his credibility and 'the probative value' of his testimony." *Id.* (quoting *Woodlief*, 104 N.C. App. at 57-58, 407 S.E.2d at 599-600). *See also N.C. State Bar v. Leonard*, 178 N.C. App. 432, 439, 632 S.E.2d 183, 187 (2006) (holding that although whole record test requires reviewing court to take into account conflicting evidence, that standard does not mean that mere existence of evidence contradicting lower body's decision renders that decision reversible), *disc. review denied*, 361 N.C. 220 (2007).[5]

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[5]Thus, we are not persuaded by Erickson's general argument that the DHC erred in overlooking conflicting evidence. The DHC

D. Duty to Refrain from Assisting in Fraudulent Activities

Finally, the DHC concluded that Erickson violated Rules 1.2(d), 8.4(d), and 8.4(g) of the Revised Rules of Professional Conduct by assisting the Dorean Group, DRS, and DRS clients in fraudulent activities. Rule 1.2(d) provides: "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law." Rule 8.4(g) provides that it is professional misconduct for an attorney to "intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3."

The DHC found that Erickson filed frivolous pleadings "for the purpose of assisting the Dorean Group in its mortgage elimination scheme," which the DHC found was fraudulent.[6] The DHC also found

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was entitled to decide which evidence was credible and should be given weight and which evidence was not. Although Erickson complains that the order does not address much of the evidence he presented in his defense, he cites no authority requiring that the DHC make specific findings as to each piece of evidence, even if it determines the evidence is not credible or that it should not be given much weight.

[6]Especially in light of the fact that the principals of the Dorean Group, who were also Erickson's clients, are now in prison, we find rather disingenuous Erickson's complaint that "[n]o one has provided an explanation as to why Dorean would litigate these matters in court if they were attempting to surreptitiously perpetrate a fraud. Yet Defendant was disciplined for failing to understand that somehow Dorean was using the judicial process as part of its plan to defraud people rather than to pursue legitimate

that in an effort to assist DRS and its clients in fraudulently eliminating their credit card debt, Erickson filed frivolous pleadings in the Braswell, Swanson, Wilson, and Tipton litigation, and assisted with the *pro se* filing of frivolous pleadings in the Cansler litigation. These findings support the conclusion that Erickson violated Rules 1.2(d), 8.4(d) and (g).

III

Erickson also challenges the DHC's choice of sanction. If the DHC concludes that a lawyer has engaged in misconduct, it moves to the disposition phase. In disposition, the DHC considers "any evidence relevant to the discipline to be imposed," including an extensive list of aggravating and mitigating factors. 27 N.C.A.C. 1B.0114(w) (2010).

Among the aggravating factors the DHC may consider are the existence of any prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct, multiple offenses, bad faith obstruction of the proceedings, submission of false evidence, refusal to acknowledge wrongful nature of conduct, the vulnerability of the victim, substantial experience in the practice of law, indifference to making restitution, and the issuance of a warning letter within the three years immediately before the filing of the complaint. *Id.*

The list of mitigating factors the DHC may consider includes the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, personal problems, timely good faith

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claims."

efforts to make restitution or rectify the consequences of the misconduct, full and free disclosure to the hearing committee or cooperative attitude during the proceedings, inexperience in the practice of law, character or reputation, physical or mental disability, delay in the proceedings through no fault of the attorney, interim rehabilitation, the imposition of other penalties or sanctions, the remorse of the attorney, and the remoteness of any prior offenses. *Id.*

In this case, the DHC found that Erickson's misconduct was aggravated by the following factors: (1) dishonest or selfish motive, (2) a pattern of misconduct, (3) multiple offenses, (4) refusal to acknowledge wrongful nature of his conduct, (5) vulnerability of the victim, and (6) substantial experience in the practice of law. It found his misconduct was mitigated by the absence of a prior disciplinary record, but that the aggravating factors outweighed the mitigating factor.

With respect to the aggravating factors, Erickson argues that the DHC erred in considering the homeowners as his clients, and thus victims, when his clients were the Dorean Group principals. This argument — which ignores the individuals he represented in the credit card litigation — underscores Erickson's refusal to admit the nature of the Dorean Group's scheme. The DHC properly determined, based on the evidence, that the victims of that fraud included the Dorean Group customers. As found by the DHC, these customers paid an application fee of between $1,000.00 and $3,000.00 to obtain the benefit of the Dorean Group's mortgage

elimination plan. Further, in a finding of fact not challenged in Erickson's brief, the DHC found that "[t]he Dorean Group referred many of its customers to Erickson for advice and representation in litigation and foreclosure proceedings involving the customers' mortgage obligations. The Dorean Group paid or agreed to pay Erickson's legal fees for representing its customers that were referred to Erickson by the Dorean Group." Thus, the Dorean Group customers were also his clients.

We are not persuaded by — and feel no need to discuss further — Erickson's assertion that he was not responsible for the homeowners' plight since they "contacted Mr. Erickson after they had already made the mistake of taking part in the Dorean process and were in default on their mortgages." We also find his argument that he was not actually representing homeowners ironic given Erickson's plea that suspending his license will discourage attorneys from representing "the needy or undesirable cases."

Erickson contends the DHC also erred in finding the only mitigating factor to be the absence of a disciplinary record. He argues that other mitigating factors existed and should have been found by the DHC: (1) that he had practiced law for almost four years after the grievance was filed and 20 years prior to the grievance without harming the public; (2) that he "saved [two prospective clients] from the Dorean process"; (3) that his clients prevailed using the credit card defense pleadings in three cases; and (4) that none of his clients complained of his actions.

In *Ethridge*, 188 N.C. App. at 667, 657 S.E.2d at 387, however, this Court rejected a disbarred attorney's argument that the DHC is required to consider and make findings on all mitigating factors for which evidence was presented. The Court explained that "[i]n reviewing the DHC's consideration of mitigating and aggravating factors prior to imposing discipline, our standard of review is abuse of discretion." *Id.*, 657 S.E.2d at 386. Because it is in the DHC's discretion whether to consider mitigating factors in imposing discipline, the DHC is not required to do so. *Id.* Especially given the "mitigating" factors argued by Erickson, we cannot say that the DHC's decision not to find or discuss evidence of additional mitigating factors was "'manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision.'" *Id.*, 657 S.E.2d at 387 (quoting *Mark Group Int'l, Inc. v. Still*, 151 N.C. App. 565, 566, 566 S.E.2d 160, 161 (2002)).

Erickson also argues that the DHC erred in ignoring the punishment given to other attorneys involved in the Dorean scam. He points, in particular, to the punishment given by the California State Bar to Thomas Speilbauer, the California attorney who provided the pleadings Erickson used in the North Carolina litigation. Speilbauer was investigated by the California State Bar, and, although the results of that investigation are confidential, Speilbauer is still practicing law in California, and there is no public record of any discipline imposed on him. What the disciplinary arm of another State Bar chooses to do with

respect to one of its members cannot dictate how North Carolina's DHC chooses to exercise its discretion to protect North Carolina citizens and the North Carolina judicial system.

Erickson also argues the DHC erred by failing to adequately explain why it chose to suspend his license. Under N.C. Gen. Stat. § 84-28(c), suspension is imposed "for misconduct that either results in or threatens *significant* harm to a 'client, the administration of justice, the profession or members of the public.'" *Talford*, 356 N.C. at 637, 576 S.E.2d at 312 (quoting N.C. Gen. Stat. § 84-28(c)(3) (2001)). Our Supreme Court has held that when the sanction of suspension is imposed, "findings must be made explaining how the misconduct caused significant harm or threatened significant harm, and why the suspension of the offending attorney's license is necessary in order to protect the public." *Id.*, 576 S.E.2d at 313. The Supreme Court explained further in *Talford*:

> [I]n order to merit the imposition of "suspension" or "disbarment," there must be a clear showing of how the attorney's actions resulted in significant harm or potential significant harm to the entities listed in the statute, *and* there must be a clear showing of why "suspension" and "disbarment" are the only sanction options that can adequately serve to protect the public from future transgressions by the attorney in question.

Id. at 638, 576 S.E.2d at 313.

In this case, the DHC found that "Erickson has significantly harmed his clients by leaving them in a worse position by assisting them in the Dorean mortgage elimination scheme and the credit card debt elimination scheme." It further found more generally that his

conduct "caused significant harm and significant potential harm to clients, to the legal profession, to the administration of justice, and to the public."

Specifically, the DHC found the lenders expended unnecessary time and resources defending against the frivolous arguments. Michael Stein and Tonya Urps, who represented the opposing parties in two of the credit card cases in which Erickson filed the frivolous pleadings, testified they spent additional time in responding to the defenses. The court system had to waste time and resources to provide a forum for Erickson. Stein also testified that the public records were "messed up" as a result of Erickson's arguments.

The DHC stressed that it had considered lesser alternatives, but found that "a Censure or Reprimand would not sufficiently protect the public because of the gravity of the harm caused by the conduct of Erickson." The DHC explained that "[n]o discipline short of an active suspension can maintain the reputation of the legal profession and instill the public's trust in the legal profession and in the administration of justice." It concluded:

> Entering an order imposing lesser discipline than an active suspension would fail to acknowledge the seriousness of the misconduct engaged in by Erickson and would send the wrong message to the attorneys and the public regarding the conduct expected of members of the Bar of their State.

The DHC's findings as to the adjudication and disposition, supported by substantial evidence, support the DHC's decision to impose a suspension. The DHC's findings established that an

experienced lawyer had, in numerous cases, advised and assisted clients in two different schemes to avoid payment of legitimate debts. These schemes were orchestrated by third parties who recruited and agreed to pay Erickson for his participation. As part of these schemes, Erickson filed or prepared for filing documents that were without factual or legal basis and, in some instances, fraudulent. Erickson knew that Rule 11 sanctions were likely and proceeded anyway.

Under these circumstances, we cannot conclude that the DHC abused its discretion in choosing to suspend Erickson's license for five years. *See Talford*, 147 N.C. App. at 593, 556 S.E.2d at 353 (noting that Bar has previously disbarred attorneys "who demonstrated an intention to perpetrate a fraud upon the court, subvert the trial process, or disrupt the court's functioning"); *N.C. State Bar v. Maggiolo*, 124 N.C. App. 22, 32, 475 S.E.2d 727, 732 (1996) (affirming disbarment of attorney who counseled client to commit fraud and engaged in conduct involving dishonesty, fraud, and deceit). We, therefore, affirm the DHC's order suspending Erickson's license for a five-year period.

Affirmed.

Judges CALABRIA and STEPHENS concur.

Report per Rule 30(e).