IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1120

Filed: 1 September 2020

Disciplinary Hearing Commission, No. 18 DHC 25

THE NORTH CAROLINA STATE BAR, Plaintiff,

v.

VENUS Y. SPRINGS, Attorney, Defendant.

Appeal by defendant from order entered 7 June 2019 by the Disciplinary Hearing Commission. Heard in the Court of Appeals 12 August 2020.

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

Springs Law Firm PLLC, by Venus Springs, for defendant.

ARROWOOD, Judge.

Venus Y. Springs ("defendant") appeals from an order of discipline entered by the Disciplinary Hearing Commission (the "DHC") of the North Carolina State Bar (the "State Bar") reprimanding her for engaging in conduct prejudicial to the administration of justice and knowingly disobeying a court order in violation of Rules 8.4(d) and 3.4(c) of the Rules of Professional Conduct. After careful review, we affirm.

I. Background

This disciplinary action arose from defendant's misconduct related to her 2010 lawsuit against Ally Financial, Inc. ("Ally Financial") in the U.S. District Court of the Western District of North Carolina. Defendant was admitted to the North Carolina State Bar in 2002 and was at all relevant times engaged in the practice of law. Defendant, while representing herself *pro se* as plaintiff in the Ally Financial lawsuit, deposed Amy Bouque ("Bouque") as the corporate representative of Ally Financial in a 30(b)(6) deposition. The deposition was video recorded but never made part of the record of the case prior to its disposition. In January 2012, the District Court granted summary judgment for the Ally Financial defendants and the U.S. Court of Appeals for the Fourth Circuit affirmed. *Springs v. Ally Financial, Inc.*, 475 F. App'x 900 (4th Cir. 2012).

On 24 September 2012, defendant formed a company called the Pro Se Advocate, LLC, whose purported purpose was to help *pro se* litigants navigate the legal system, particularly through the discovery process, and better defend themselves. Defendant further created a YouTube channel for the company on which she could post video content. In or about March 2014, defendant posted an approximately 37-minute video to the YouTube channel entitled "Amy Bouque 30b(6) Deposition: Best Ways to Tell if A Witness is Lying." The YouTube video at issue consisted of excerpts from the Ally Financial deposition with audio commentary by defendant opining that certain of the hand gestures and facial expressions Bouque

was making in the video indicated that she was lying. Defendant further publicized the video on the social media site Twitter, to which she posted a tweet that read "Just posted – video on how to conduct a deposition and identify deceit."

Upon learning of defendant's use of the deposition video, Ally Financial requested that defendant remove it from YouTube. Defendant ignored their request. In September 2014, Ally Financial filed a motion for protective order seeking to have defendant prohibited from disseminating and/or publishing the deposition video. In December 2014, a U.S. Magistrate Judge granted the motion and entered the following order: "No party [to the Ally Financial case] shall publish or disseminate audio or video recordings obtained during discovery in this action without prior permission of the Court." It further ordered defendant to immediately remove any such audio or video recordings from YouTube and any other internet site. The magistrate judge's order was upheld by the District Court on 6 February 2015, and defendant was ordered to comply with all aspects of the protective order. Defendant later removed the original 37-minute deposition video from her YouTube channel. However, defendant replaced the 37-minute video with a shorter video comprised of still images from the deposition accompanied by defendant's commentary that certain of Bouque's behaviors indicated that she was lying.

Ally Financial subsequently filed a motion for sanctions alleging that defendant was not complying with the December 2014 protective order. The District

Court held a hearing on the motion on 17 June 2015. During the hearing, the District Court told defendant "I am ordering you to take down every single video or audio of this or screen shot or anything about it that identifies it as being part of a deposition of these people in any way. No part of their deposition, no part, pictures, audio, any part of these depositions is to be on your website or be put out by you. None. Zero." On 7 July 2015 the District Court entered an order containing its rulings from the 17 June hearing in which it denied the motion for sanctions but ordered that defendant had "one final time to fully comply with the protective order[.]" On 26 July 2016, the Fourth Circuit vacated the magistrate judge's protective order and the District Court's 6 February 2015 order, holding that the magistrate judge's ruling should have been treated as a recommendation only and reviewed by the District Court *de novo*. It further remanded the matter to the District Court to apply the proper standard of review.

On 26 September 2016, the District Court, upon a *de novo* review, entered an order affirming the prohibitions and directives of the magistrate judge's original order. Defendant appealed, and the Fourth Circuit affirmed the order on 10 April 2017. On 11 October 2017, the State Bar sent defendant a Letter of Notice asserting that defendant still had the deposition video posted to her YouTube page in violation of the court order. A disciplinary hearing was held on 8 March 2019. An investigator for the State Bar testified that, on 15 August 2017, defendant's YouTube

channel contained an introductory video with text underneath stating, "Watch this Youtube [sic] Video for an Ally Bank Deposition and How to Find Out if a Witness is Lying." The text further directed users to visit a weblink which lead to a third party's YouTube channel containing the Ally Financial deposition video with defendant's commentary. Defendant denied that such link was present on her YouTube page at the time alleged, but further testified that "even if there was that comment, that link did not go to the video."

In order entered 7 June 2019, the DHC concluded that defendant was subject to discipline for publishing the deposition video at issue in a manner that served no substantial purpose other than to humiliate or embarrass a participant in the judicial process and for disobeying the protective order in violation of Rules 8.4(d) and 3.4(c) of the Rules of Professional Conduct, respectively. The DHC further ordered that defendant be reprimanded for her misconduct and required that she pay the costs and fees of the proceeding. Defendant appealed.

II. Discussion

On appeal, defendant raises several assignments of error, contending the DHC erred in: (1) making a number of findings of fact and conclusions of law that are either not supported by the evidence or are based upon inadmissible evidence; (2) violating defendant's First Amendment rights by punishing certain speech; (3) admitting evidence of harm that unduly prejudiced defendant; (4) reprimanding

defendant where there was no showing of prejudice to the administration of justice or of harm to Ally Financial; and (5) imposing discipline without considering the State Bar's delay in bringing the complaint. Defendant further requests that this Court grant her motion for sanctions against the State Bar and its counsel. For the following reasons, we affirm the DHC's order and deny defendant's motion.

This Court reviews a disciplinary order of the DHC "under the 'whole record test,' which requires the reviewing court to determine if the DHC's findings of fact are supported by substantial evidence in view of the whole record, and whether such findings of fact support its conclusions of law." *N.C. State Bar v. Talford*, 356 N.C. 626, 632, 576 S.E.2d 305, 309 (2003) (citing *N.C. State Bar v. DuMont*, 304 N.C. 627, 643, 286 S.E.2d 89, 98-99 (1982)). " 'The evidence is substantial if, when considered as a whole, it is such that a reasonable person might accept as adequate to support a conclusion.' " *N.C. State Bar v. Key*, 189 N.C. App. 80, 84, 658 S.E.2d 493, 497 (2008) (citing *DuMont*, 304 N.C. at 643, 286 S.E.2d at 99). "Moreover, in order to satisfy the evidentiary requirements of the whole-record test in an attorney disciplinary action, the evidence used by the DHC to support its findings and conclusions must rise to the standard of clear, cogent, and convincing." *Talford*, 356 N.C. at 632, 576 S.E.2d at 310 (citation, internal quotation marks, and brackets omitted).

A reviewing court must also consider "any contradictory evidence or evidence from which conflicting inferences may be drawn." *Id.* However, "[t]he mere presence

of contradictory evidence does not eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the [DHC]. The DHC determines the credibility of the witnesses and the weight of the evidence." *N.C. State Bar v. Adams,* 239 N.C. App. 489, 495, 769 S.E.2d 406, 411 (2015) (citing *Key*, 189 N.C. App. at 84, 658 S.E.2d at 497). Ultimately, we review the record to determine whether the DHC's decision "has a rational basis in the evidence." *Talford*, 356 N.C. at 632, 576 S.E.2d at 310 (citations and internal quotation marks omitted). In doing so, we consider three questions:

> (1) Is there adequate evidence to support the order's expressed finding(s) of fact?
>
> (2) Do the order's expressed findings(s) of fact adequately support the order's subsequent conclusion(s) of law? and
>
> (3) Do the expressed findings and/or conclusions adequately support the lower body's ultimate decision?

Id. at 634, 576 S.E.2d at 311.

Disciplinary proceedings are divided into two phases: (1) an adjudicatory phase in which the DHC determines whether the defendant committed the alleged misconduct, and (2) a dispositional phase in which the DHC determines the appropriate sanction for the misconduct committed, if any. *Adams*, 239 N.C. App. at 493, 769 S.E.2d at 410 (citing *Talford*, 356 N.C. at 634, 576 S.E.2d at 311). We address defendant's challenges to the findings and conclusions of each in turn.

A. Challenges to the Adjudication Phase

1. Evidentiary Support for Findings of Fact

Defendant first argues that finding of fact 24 of the DHC's Order of Discipline ("Order") is not supported by any rational basis in the evidence. Finding of fact 24 states:

> On 15 August 2017, Defendant's YouTube page contained a link after the sentence, "Watch this Youtube [sic] Video for an Ally Bank Deposition and How to Find Out if a Witness is Lying." The link took viewers to a video on a third-party's YouTube channel containing excerpts from Bouque's deposition with Defendant's commentary.

During the disciplinary hearing, the State Bar presented evidence including testimony of the Deputy Counsel it assigned to investigate the matter, Jennifer Porter ("Porter"). Porter testified that in August 2017, she visited defendant's YouTube channel and came across an introductory video under which a line of text read: "Watch This YouTube Video for an Ally Bank Deposition and How to Find Out if a Witness is Lying." The text was followed by a link to another YouTube video. The State Bar entered into evidence a computer printout of the webpage described by Porter. Porter further testified that she clicked on the link and was taken to a page on the YouTube channel of Bill Myer, which contained a video entitled "Video 1 Signs of Lying." Porter watched the 37-minute video, which consisted of excerpts of the Ally Financial deposition accompanied by defendant's commentary, and determined that it was identical to the one defendant had been banned by court order from posting.

She further testified that when she checked again in October and November 2017, the link that she saw on defendant's YouTube page was no longer there.

Defendant appears to suggest that portions of Porter's testimony and others actually support a finding that she did not post a link to the deposition video to her YouTube page in violation of the protective order. Specifically, defendant points to testimony by YouTube expert J. Duke Rogers ("Rogers") that when he later tried to go to the link at issue, he found that it was not a valid link. In addition, Clifton Brinson ("Brinson"), attorney for Ally Financial, testified that he checked defendant's YouTube page shortly after the September 2016 protective order was issued and saw the deposition video had been removed. However, he also did not check again thereafter. Defendant further appears to argue that her own testimony should have been given more weight. We are unable to agree with defendant. As this Court noted in *Adams*, in a disciplinary hearing, "[t]he DHC determines the credibility of the witnesses and the weight of the evidence." 239 N.C. App. at 495, 769 S.E.2d at 411 (citing *N.C. State Bar v. Ethridge*, 188 N.C. App. 653, 665, 657 S.E.2d 378, 386 (2008)). While a reviewing court must consider conflicting evidence or evidence from which conflicting inferences may be drawn, it nevertheless may not substitute its own judgment for that of the DHC where the DHC's findings are supported by substantial evidence. *Id.* (citations omitted).

Here, the State Bar presented evidence in the form of a computer printout of a snapshot of defendant's YouTube page on 15 August 2017 containing a link to the deposition video at issue. In addition, Porter testified that, on the alleged date, the link lead to another YouTube page on which the deposition video was posted. Neither Brinson's nor Rogers' testimony contradicted that of Porter. Though defendant testified there was no such link to the deposition video on her page, and even if there was "that link did not go to the video," the DHC was free to decide how much weight to give that testimony. Apparently, it gave very little. In viewing the whole record, we find there was substantial evidence by which the DHC could reach its findings in finding of fact 24, and thereby reject defendant's argument.

Defendant similarly challenges several of the DHC's other findings as not supported by the evidence, including findings of fact 16 and 17, which read as follows:

> 16. Defendant subsequently removed the original 37-minute video from her YouTube page, but replaced it with a video comprised of still images from the deposition accompanied by narration from Defendant asserting (based on Bouque's hand gestures) that Bouque was lying.
>
> 17. Both the original video published by Defendant and the modified video described in paragraph 16 above had no substantial purpose other than to humiliate or embarrass Bouque and/or Bouque's employer.

While defendant contends that these findings are in fact conclusions of law, the DHC correctly identified them as findings of fact. *See Barnette v. Lowe's Home Ctrs., Inc.*,

247 N.C. App. 1, 6, 785 S.E.2d 161, 165 (2016) (explaining that a finding of fact is a "determination reached through logical reasoning from the evidentiary facts"). We further dismiss defendant's argument that finding of fact 16 is unsupported by the evidence, as defendant does not provide any support for this argument in her brief but merely offers a conclusory statement.

Regarding finding of fact 17, defendant is incorrect that it is unsupported by the evidence. Defendant argues that her sole intent was to show *pro se* litigants how to identify signs a deponent may be lying. In support of her argument, defendant points to her own testimony that her commentary in the deposition videos asserting that Bouque was lying was based on an idea she got from tv shows and various articles about signs of lying that she read online. However, she does not refute that she is not an expert on how to tell if someone is lying and admitted that it "is not an exact science[.]" Furthermore, the online articles defendant relied on to support her assertions Bouque's gestures indicated she was lying were not peer-reviewed, did not come from any scientific journal, and did not cite to any scientific research. Thus, defendant, who is not an expert, had no legitimate evidence, and who was aware that identifying whether someone is lying "is not an exact science," nevertheless created and posted a video accusing an opposing party from a prior case (that did not end in defendant's favor) of perjury.

Though defendant claims to have posted the video as a way to help other *pro se* litigants through the discovery process, there are many other ways defendant could have done this without publicly humiliating and accusing a former legal adversary of a crime. Instead, defendant decided to create a YouTube page whose public videos were comprised exclusively of content from the Ally Financial deposition accompanied by defendant's commentary asserting Bouque was lying under oath. Even after she was ordered to remove those videos from her YouTube page, defendant attempted to find ways around obeying the court order. We therefore reject defendant's argument and find there was substantial evidence to support the DHC's finding of fact 16 and 17.

Defendant further contends that findings of fact 19 and 20 were based on inadmissible hearsay evidence. During the disciplinary proceeding, the State bar offered into evidence exhibits including the transcript from the 17 June 2015 District Court hearing on a motion for sanctions against defendant for violating the protective order issued by the magistrate judge and the 7 July 2015 written order memorializing its ruling in the 17 June 2015 hearing. Based on this evidence, the DHC found that:

> 19. During a 17 June 2015 hearing on that motion [for sanctions], the District Court stated "I am ordering you to take down every single video or audio of this or screen shot or anything about it that identifies it as being part of a deposition of these people in any way. No part of their deposition, no part, pictures, audio, any part of these depositions is to be on your website or be put out by you. None. Zero."

> 20. On 7 July 2015, the Court entered an order containing its ruling from the 17 June 2015 hearing, including ordering Defendant "one final time to fully comply with the protective order issued in this matter" and noting that Defendant had not "acted in entirely good faith."

We first dispense with defendant's challenge to finding of fact 20, which is based on an exhibit that was admitted into evidence with no objection from defendant, and was therefore not preserved for review by this Court on appeal. Regarding finding of fact 19, the transcript from the June 2015 District Court hearing was admitted over defendant's hearsay objection, and is thus properly before this Court.

In disciplinary proceedings, the North Carolina rules of evidence govern the admissibility of evidence. *N.C. State Bar v. Mulligan*, 101 N.C. App. 524, 527, 400 S.E.2d 123, 125 (1991). Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2019). During the proceeding, the DHC admitted the transcript of the 17 June 2015 hearing for the limited purpose of impeachment and showing defendant's state of mind. As it was not being offered for the truth of the matter asserted, the DHC did not err in admitting the transcript for the expressed limited purposes. Finding of fact 19, which is based on the transcript, is also not error. The transcript excerpt upon which the finding is based does not speak to the truth of the matter—that is, whether defendant

did in fact publish the deposition video to humiliate a participant in the judicial process and disobeyed the court's protective order—but rather shows that defendant was made aware in no unnecessary terms that she was not to disseminate any material whatsoever from the deposition video. It thus was properly considered in the DHC's analysis as to whether defendant knowingly engaged in the alleged misconduct.

2. Conclusion of Law 3

Defendant further challenges the DHC's conclusion of law 3 as not supported by the evidence and findings of fact. The DHC concluded as follows in its Order:

> 3. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28[ ](b)(2) in that she violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:
>
> (a) By publishing material obtained in discovery in a manner that served no substantial purpose other than to humiliate or embarrass a participant in the judicial process, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
>
> (b) By having a link on her YouTube Page that led to a third-party's posting of a video containing material from Bouque's video deposition on August 15, 2017, at least eleven months after the U.S. District Court's final protective order, Defendant knowingly disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c).

Having previously found that findings 16 and 17 are supported by the evidence, we further hold that they in turn support corresponding conclusion of law 3(a). Comment 5 to Rule 8.4 of the North Carolina Rules of Professional Conduct explains that "[t]hreats, bullying, harassment, and other conduct serving no substantial purpose other than to intimidate, humiliate, or embarrass anyone associated with the judicial process including judges, opposing counsel, litigants, witnesses, or court personnel violate the prohibition on conduct prejudicial to the administration of justice." N.C. Rev. R. Prof. Conduct 8.4, cmt. 5 (2020). The DHC's findings that defendant's conduct had no substantial purpose other than to humiliate or embarrass her opposing party's deposition witness thus supports its conclusion of law 3(a).

We find similar support in the DHC's Order for its conclusion of law 3(b). Defendant argues that conclusion of law 3(b) is not supported by any findings, however, findings of fact 19, 20, and 24, discussed above, directly correspond to conclusion of law 3(b) and contradict defendant's assertions. Accordingly, we reject defendant's argument. Moreover, though defendant further contends conclusion of law 3(b) violates her Due Process rights because she did not receive adequate notice of the allegations against her, this argument also has no merit. Defendant, in an apparent mischaracterization of the DHC's conclusion, asserts that it violates her rights because there was no allegation in the State Bar's complaint that defendant "maintained a link that resulted in a third-party's posting of any portion of Bouque's

video deposition on August 15, 2017." However, it is clear from the DHC's language that it concluded that, on 15 August 2017, defendant had a link on her YouTube page which, when clicked upon, lead to a third-party's website containing a post of the deposition video that defendant was prohibited by court order from posting. Much the same facts were alleged in the Complaint. We therefore find no violation of defendant's due process right to notice.

Defendant additionally challenges conclusion of law 3 as a violation of her First Amendment rights to free speech. Specifically, she argues that the application of Rule 8.4(d) to her truthful speech outside of pending litigation constitutes a violation of her constitutional rights. However, this Court has previously recognized that "[a]s a general proposition, the First Amendment does not immunize an attorney from being disciplined for violating the Rules of Professional [C]onduct simply because the attorney employs 'speech' in committing the violation." *N.C. State Bar v. Sutton*, 250 N.C. App. 85, 96, 791 S.E.2d 881, 892, (2016). Freedom of speech is not an unlimited right, and states have a compelling interest in regulating lawyers " 'since lawyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts.' " *Id.* at 97, 791 S.E.2d at 892 (internal quotation marks omitted) (quoting *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792, 44 L. Ed. 2d 572, 588 (1975)). Thus, in evaluating an attorney's First Amendment claim, we employ a balancing test, " 'weighing the State's interest in the regulation of a

specialized profession against a lawyer's First Amendment interest in the kind of speech that was at issue.' " *Id.* (quoting *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1073, 115 L. Ed. 2d 888, 922 (1991)).

Here, defendant does not reasonably argue that she had a First Amendment interest in the kind of speech at issue, and nor can she. Though defendant asserts that "truthful speech" and criticism of the courts or public officials is generally protected, she engaged in neither of those. In the deposition video at issue, defendant did not offer criticism of the discovery or litigation process, or of the court system itself, or of any public official of the courts. Rather, throughout the video defendant asserts that the deposition witness was lying under oath based on certain of her gestures and facial cues. Defendant also did not offer any legitimate or reliable evidence to show the truth of her accusations. Thus, there was no "truthful criticism" involved here which would constitute protected speech. In contrast, the State Bar has a legitimate interest in protecting the integrity of the judicial system and ensuring the fair administration of justice through its regulation of the legal profession, an interest which is recognized in Rule 8.4(d). We therefore reject defendant's argument.

B. Challenges to the Dispositional Phase

Defendant next challenges the dispositional portion of the DHC's Order, in which the DHC must make findings to support the particular sanction imposed, if

any. *Adams*, 239 N.C. App. at 493, 769 S.E.2d at 410 (citing *Talford*, 356 N.C. at 634, 576 S.E.2d at 311). Defendant contends the DHC erred in admitting evidence of harm on a claim that was dismissed during the adjudicatory phase, which resulted in undue prejudice.

During the adjudicatory phase of the disciplinary hearing, over defendant's objection the DHC allowed Brinson to testify to the legal fees incurred by Ally Financial in its legal battle with defendant over the protective order. The DHC stated that such testimony was admissible as it spoke to the harm caused by defendant. Defendant is correct that such evidence should not have been considered at that stage of the proceeding. Because evidence of harm is relevant to determining the appropriate level of discipline to be imposed, it is more properly considered during the dispositional phase of the hearing. *See Talford*, 356 N.C. at 639, 576 S.E.2d at 314. However, the record reveals that such evidence was not referenced by the State Bar until the dispositional phase, where it argued defendant's violations caused harm and thereby warranted some level of discipline. Moreover, there is no indication the DHC considered this evidence of harm in the adjudicatory portion of its Order, and defendant fails to show how she was prejudiced. We thus hold that any error in admission of the evidence during the adjudicatory phase was harmless.

Defendant further contends that the DHC erred in reprimanding her where there was no showing of prejudice to the administration of justice and her actions did

not cause harm or potential harm to Bouque or Ally Financial, and findings of discipline 3 and 4 are not supported by the evidence. In its additional findings regarding discipline, the DHC found that:

> 3. It was foreseeable that accusing Bouque of lying under oath in a public forum would cause harm or potential harm to Bouque.
>
> 4. It is prejudicial to the administration of justice when lawyers unnecessarily harass and burden parties to litigation.

We first note that finding of discipline 4 is supported by the evidence, as the record is replete with evidence of defendant ignoring and trying to find ways around the magistrate judge's protective order before it was vacated, despite the fact that there was no stay of the order pending appeal. As a result, Ally Financial was forced into prolonged litigation of the matter, which lead to substantial legal costs and fees. Moreover, finding of discipline 3 is also supported by the evidence, as defendant's assertions that Bouque was lying in the deposition video amount to an accusation of perjury. It is certainly foreseeable, especially to an attorney well-versed in the law such as defendant, that such a serious accusation can cause harm.

In addition, a reprimand is "issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the

administration of justice, the profession, or members of the public[.]" N.C. Gen. Stat. § 84-28(c)(4) (2019). Here, the DHC concluded that defendant engaged in conduct prejudicial to the administration of justice by posting the deposition video which had no purpose other than to humiliate or embarrass Bouque and Ally Financial and, in doing so, disobeying a court order. Moreover, during the proceeding, defense counsel conceded that "there may have been some harm" caused by defendant's noncompliance with the court order. Accordingly, there is substantial evidence in the record to support the DHC's imposition of a reprimand.

Defendant lastly contends the DHC erred in not considering the State Bar's delay in bringing the complaint as a factor in imposing discipline. However, the DHC's conclusion regarding discipline 4 expressly states that "[t]he Hearing Panel has considered all the factors enumerated in Rule .0116(f)(3)" and concluded that only two were applicable: (1) the absence of prior disciplinary offenses; and (2) refusal to acknowledge wrongful nature of conduct. In addition, while defendant argues the State Bar initially started the grievance in April 2015, the April 2018 complaint concerned only alleged misconduct by defendant which occurred in August 2017. Thus, contrary to defendant's assertions, there was no delay in proceedings which could have prejudiced defendant's ability to defend herself in the present action, and the DHC properly disregarded that factor.

C. Motion for Sanctions

We now address defendant's motion for sanctions. Defendant requests that this Court exercise its discretion under Rule of Appellate Procedure 34(a)(3) to impose a sanction against the State Bar and its counsel where it finds such party's appeal was frivolous because "a petition, motion, brief, record, or other paper filed in the appeal was grossly lacking in the requirements of propriety, grossly violated appellate court rules, or grossly disregarded the requirements of a fair presentation of the issues to the appellate court." N.C.R. App. P. 34(a)(3) (2020). Defendant contends that the State Bar's appellate brief contained a false and misleading representation implying that defendant must have removed the link to the deposition video from her YouTube page in response to its Letter of Notice. The contested statement specifically states that, "Ms. Porter testified that the link on Appellant's website was **no longer present** when she checked it again in October and November 2017, after Appellant received notice of the grievance investigation." Regardless of whether such statement is susceptible to the interpretation proffered by defendant, we do not believe that it constitutes a gross disregard for the requirement of a fair presentation of the issues necessitating the imposition of sanctions. Accordingly, we deny defendant's motion.

III. Conclusion

For the foregoing reasons, we affirm the disciplinary order of the DHC and deny defendant's motion for sanctions.

AFFIRMED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).