APPENDIX

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Supreme Court of North Carolina

THE NORTH CAROLINA STATE BAR

v

VENUS Y. SPRINGS, Attorney

From N.C. Court of Appeals
(19-1120)
From N.C. State Bar
(18DHC25)

O R D E R

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendant on the 6th of October 2020 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Plaintiff, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

"Allowed by order of the Court in conference, this the 10th of March 2021."

Berger, J. recused

s/ Barringer, J.
For the Court

Upon consideration of the petition filed on the 6th of October 2020 by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 10th of March 2021."

Berger, J. recused

s/ Barringer, J.
For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 15th of March 2021.

Amy L. Funderburk
Clerk, Supreme Court of North Carolina

M. C. Hackney
Assistant Clerk, Supreme Court Of North Carolina

Copy to:
North Carolina Court of Appeals
Ms. Venus Y. Springs, For Springs, Venus Y. - (By Email)
Mr. David R. Johnson, Deputy Counsel, For The North Carolina State Bar - (By Email)
Ms. Katherine Jean, Attorney at Law, For The North Carolina State Bar - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

N.C. State Bar v. Springs

Court of Appeals of North Carolina

August 12, 2020, Heard in the Court of Appeals; September 1, 2020, Filed

No. COA19-1120

Reporter

2020 N.C. App. LEXIS 625 *; 273 N.C. App. 407; 846 S.E.2d 858

THE NORTH CAROLINA STATE BAR, Plaintiff, v. VENUS Y. SPRINGS, Attorney, Defendant.

PUBLISHED IN TABLE FORMAT IN THE SOUTH EASTERN REPORTER.

PUBLISHED IN TABLE FORMAT IN THE NORTH CAROLINA COURT OF APPEALS REPORTS.

Subsequent History: Review denied by, Appeal dismissed by *N.C. State Bar v. Springs, 2021 N.C. LEXIS 240 (N.C., Mar. 10, 2021)*

Prior History: **[*1]** Disciplinary Hearing Commission, No. 18 DHC 25.

Disposition: AFFIRMED.

Counsel: 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.

Judges: ARROWOOD, Judge. Judges DIETZ and BERGER concur.

Opinion by: ARROWOOD

Opinion

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

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 **[*2]** 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 **[*3]** 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 **[*4]** 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 **[*5]** 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 **[*6]** 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 **[*7]** 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 **[*8]** 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, **[*9]** 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 **[*10]** 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)*). **[*11]** 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 **[*12]** 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 **[*13]** 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 **[*14]** 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 **[*15]** 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 **[*16]** 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 **[*17]** 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 **[*18]** 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 **[*19]** 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, 95 S. Ct. 2004, 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 **[*20]** 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, 111 S. Ct. 2720, 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 **[*21]** 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 **[*22]** 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 **[*23]** 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. **[*24]** 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 **[*25]** 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 **[*26]** sanctions.

AFFIRMED.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).

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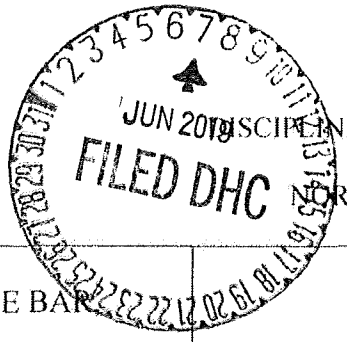

STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 18 DHC 25
THE NORTH CAROLINA STATE BAR Plaintiff v. VENUS Y. SPRINGS, Attorney, Defendant	ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of R. Lee Farmer, Chair, and members Stephanie N. Davis and Tyler B. Morris pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0108(a)(2). Plaintiff was represented by Carmen Hoyme Bannon. Defendant, Venus Y. Springs was represented by Eugene E. Lester III.

Based upon the pleadings in this matter, the parties' stipulations of fact, and the evidence presented, the Hearing Panel hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Venus Y. Springs, was admitted to the North Carolina State Bar in August, 2002 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

4. Defendant was properly served with the summons and complaint and received due notice of the hearing in this manner.

5. Defendant was the plaintiff in *Springs v. Ally Financial, Inc. et al*, a lawsuit filed in the U.S. District Court for the Western District of North Carolina in 2010. (The lawsuit is referred to hereafter as "the Ally Financial case").

6. In the course of the Ally Financial case, Defendant deposed Amy Bouque as the corporate representative of Ally Financial in a 30(b)(6) deposition. The video of the 30(b)(6) deposition was not made part of the record in the Ally Financial case prior to the disposition of the case in the trial court in January 2012.

7. In January 2012, the U.S. District Court granted summary judgment for the defendants in the Ally Financial case. Defendant's appeal of the District Court's decision was concluded in 2012.

8. In or about February 2014, Defendant posted an approximately 37-minute video to her "Pro Se Advocate" YouTube page entitled "Amy Bouque Corporate Deposition: Best Ways to Tell if A Witness is Lying."

9. The YouTube video consisted of excerpts from the Rule 30(b)(6) video deposition of Ally Financial witness Amy Bouque in the Ally Financial case with audio commentary by Defendant noting Bouque's hand gestures and opining that those gestures indicated that the witness was lying.

10. Defendant publicized the video in a post to the social media site Twitter that read "Just posted—video on how to conduct a deposition and identify deceit."

11. The defendants in the Ally Financial case asked Defendant to remove the video from YouTube, but Defendant did not do so.

12. In September 2014, the defendants in the Ally Financial case filed a motion for protective order seeking to have Defendant prohibited from disseminating and/or publishing the 30(b)(6) deposition video from the Ally Financial case. The motion was granted by a U.S. Magistrate Judge in December 2014.

13. The Magistrate Judge's December 2014 order stated, "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 also ordered Defendant to immediately remove any such audio or video recordings from YouTube and any other internet site.

14. Defendant filed a notice with the U.S. District Court indicating that she would only remove the deposition content from the internet "when ordered by an Article III judge."

15. The Magistrate Judge's order was upheld by the U.S. District Court on 6 February 2015. The Court's February 2015 order required Defendant to comply with all aspects of the Magistrate's December 2014 protective order.

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.

18. The Ally Financial defendants subsequently filed a motion for sanctions alleging that Defendant's publication of the content described in paragraph 16 above was in violation of the protective order.

19. During a 17 June 2015 hearing on that motion, 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 rulings 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."

21. On 26 July 2016, the Fourth Circuit vacated the magistrate judge's protective order and the District Court's 6 February 2015 order and remanded the matter to the District Court for a de novo review.

22. Upon a de novo review the District Court on 6 September 2016 entered an order containing the same prohibitions and directives as contained in the report and recommendation issued by the Magistrate Judge in December 2014.

23. Defendant appealed, and the 6 September 2016 order was affirmed by the Fourth Circuit on 11 April 2017. The District Court's 6 September 2016 order prohibiting Defendant from publishing or disseminating audio or video recordings obtained in discovery in the Ally Financial case was not stayed while the appeal was pending.

24. 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.

Based upon the evidence and the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Hearing Commission has jurisdiction over Defendant and the subject matter of this proceeding.

2. Plaintiff failed to prove by clear, cogent, and convincing evidence that Defendant engaged in a course of action that prejudiced the administration of justice by protracted litigation, as alleged in paragraph (b) of the complaint.

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).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel also finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1-24 above are reincorporated as if set forth herein.

2. Defendant has no prior professional discipline.

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.

5. Defendant did not acknowledge that she engaged in wrongful conduct.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel makes the following

ADDITIONAL CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it and has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f).

2. The Hearing Panel has considered all the factors enumerated in Rule .0116(f)(1) and concludes the following factors are applicable:

(a) intent of the defendant to cause the resulting harm or potential harm
(b) negative impact of the defendant's actions on the administration of justice; and
(c) effect of defendant's conduct on third parties.

3. The Hearing Panel has considered all the factors enumerated in Rule .0116(f)(2) and concludes no factors are present in this instance that would warrant disbarment.

4. The Hearing Panel has considered all the factors enumerated in Rule .0116(f)(3) and concludes the following factors are applicable:

(a) absence of prior disciplinary offenses; and
(b) refusal to acknowledge wrongful nature of conduct.

5. The Hearing Panel has considered issuing an admonition but concludes that such discipline would not be sufficient discipline because Defendant violated one or more provisions of the Rules of Professional Conduct and those violations were not minor, but the protection of the public does not require a censure.

6. The Hearing Panel further concludes that the public will be adequately protected by the issuance of a reprimand to Defendant.

7. Defendant should be taxed with the administrative fees and costs.

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

ORDER OF DISCIPLINE

1. Defendant, Venus Y. Springs, is hereby REPRIMANDED for her misconduct.

2. Defendant shall pay all administrative fees and costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on her.

Signed by the Chair with the consent of the other Hearing Panel members, this the 6th day of June, 2019.

R. Lee Farmer
Chair, Disciplinary Hearing Panel

N.C. R. Prof. Cond. Rule 3.4

Current through August 2, 2021

NC - North Carolina State & Federal Court Rules > THE REVISED RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR > ADVOCATE

Rule 3.4. Fairness to opposing party and counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, counsel or assist a witness to hide or leave the jurisdiction for the purpose of being unavailable as a witness, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey or advise a client or any other person to disobey an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to test the validity of such an obligation;

(d) in pretrial procedure,

(1) make a frivolous discovery request

(2) fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party or

(3) fail to disclose evidence or information that the lawyer knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, ask an irrelevant question that is intended to degrade a witness, or **state** a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or a managerial employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Annotations

Commentary

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

N.C. R. Prof. Cond. Rule 8.4

Current through August 2, 2021

NC - North Carolina State & Federal Court Rules > THE REVISED RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR > MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) **state** or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.

Annotations

Commentary

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client or, in the case of a government lawyer, investigatory personnel, of action the client or such investigatory personnel, is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on a lawyer's fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. A lawyers dishonesty, fraud, deceit or misrepresentation is not mitigated by virtue of the fact that the victim may be the lawyer's partners or law firm. A lawyer who steals funds, for instance, is

guilty of a serious disciplinary violation, regardless of whether the victim is the lawyer's employer, partner, law firm, client or a third party.

[3] The purpose of professional discipline for misconduct is not punishment, but to protect the public, the courts and the legal profession. Lawyer discipline affects only the lawyer's license to practice law. It does not result in incarceration. For this reason, to establish a violation of Paragraph (b), the burden of proof is the same as for any other violation of the Rules of Professional Conduct: it must be shown, by clear, cogent and convincing evidence, that the lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Conviction of a crime is conclusive evidence that the lawyer committed a criminal act, although to establish a violation of paragraph (b), it must be shown that the criminal act reflects adversely on the lawyer's honestly, trustworthiness, or fitness as a lawyer. If it is established by clear, cogent, and convincing evidence that a lawyer committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer, the lawyer may be disciplined for a violation of Paragraph (b) although the lawyer is never prosecuted or is acquitted or pardoned for the underlying criminal act.

[4] A showing of actual prejudice to the administration of justice is not required to establish a violation of Paragraph (d). Rather, it must only be shown that the act had a reasonable likelihood of prejudicing the administration of justice. For example, in ***State Bar v.*** *DuMont, 52 N.C. App. 1, 277 S.E.2d 827 (1981)*, *modified on other grounds*, *304 N.C. 627, 286 S.E.2d 89 (1982)*, the defendant was disciplined for advising a witness to give false testimony in a deposition even though the witness corrected his statement prior to trial. Conduct warranting the imposition of professional discipline under paragraph (d) is characterized by the element of Intent or some other aggravating circumstance. The phrase "conduct prejudicial to the administration of justice" in Paragraph (d) should be read broadly to proscribe a wide variety of conduct, including conduct that occurs outside the scope of judicial proceedings. In ***State Bar v.*** *Jerry Wilson*, 82 DHC 1, for example, a lawyer was disciplined for conduct prejudicial to the administration of justice after forging another individual's name to a guarantee agreement, inducing his wife to notarize the forged agreement, and using the agreement to obtain funds.

[5] Threats, 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. When directed to opposing counsel, such conduct tends to impeded opposing counsel's ability to represent his or her client effectively. Comments "by one lawyer tending to disparage the personality or performance of another ...tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with th truth-finding function by distracting judges and juries from the serious business at hand." ***State v.*** *Rivera, 350 N.C. 285, 291, 514 S.E.2d 720, 723 (1999)*. *See* Rule 3.5, cmt. [10] and Rule 4.4, cmt. [2].

[6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[7] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization. Statutory Authority *G.S. 84-23*; Adopted July 24, 1997; Amended February 27, 2003; Amended March 5, 2015; Amended September 28, 2017. Rule 8.4 is similar to Model Rule 8.4 and Rule 1.2 of the superseded (1985) Rules of Professional Conduct, except that Rule 8.4 defines as misconduct an activity that intentionally prejudices or damages a client during the course of a professional relationship. Neither the Model Rules nor the superseded (1985) Rules contain this provision. For note, "Not-So-Secrets? The **State** of the Attorney-Client Privilege in North Carolina in the Wake of In re Investigation of Death of Eric Miller and Crawford **v.** Washington," see *83 N.C. L. Rev. 1591 (2005)*.

Case Notes

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10-cv-311-MOC-DCK

VENUS SPRINGS, Plaintiff, v. ALLY FINANCIAL, INC. f/k/a GMAC INC., AMY BOUQUE, KATHLEEN PATTERSON, YEQUIANG HE, and CYNTHIA DAUTRICH, Defendants.	)	**NOTICE**

While I have extreme respect for the Magistrate Judge, I will remove the video and audio posted from the recording of the 30(b)(6) deposition when so ordered by an Article III judge after a de novo review as is my constitutional right in matters that are either post-trial or dispositive. *See* U.S. Const. Art. III.

It is not my intent to demonstrate disagreement. If and when the district court judge orders, I will comply despite disagreement. I only want to avoid the slightest appearance of consent or waiver of my rights. Article III of the Constitution grants me the right to be heard by an Article III judge. 28 USC § 636 and Federal Rule of Civil Procedure 72 specify a limited set of circumstances when a case may be decided by a magistrate judge. The law makes clear that a magistrate judge is without authority to issue an order in any matter that is not pretrial. In this case, neither party consented to trial by magistrate judge; therefore 28 USC § 636 (c) does not apply. 28 USC 636 (b) only permits magistrate judges to hear pretrial matters in civil cases. There can be no pretrial matter remaining in a closed, finally adjudicated case. A magistrate judge is only permitted to issue a report and recommendation in a matter that is either dispositive or not pretrial. The motion raised by the defendants is both post-trial and dispositive but it only

has to be one or the other to divest the magistrate judge of jurisdiction. *See U.S. v. Bryson*, 981 F.2d 720, 723 (4th Cir. 1992) ("This subsection contemplates that magistrate judges may hear matters in post-trial relief proceedings, but may not decide them"); *U.S. v. Johnston*, 258 F.3d 361, 366-72 (5th Cir. 2001); *New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc*., 996 F.2d 21, 25 (2nd Cir 1993) ("Without the consent, the magistrate judge's order has the effect only of a report and recommendation to the district judge"); and *Innovention Toys, LLC v. MGA Entm't, Inc*. n7 (E.D. La., 2014) (explaining pretrial vs. post-trial and attorney fee motions).

Every judge must first determine whether it has proper subject matter jurisdiction before addressing the substantive issues. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-6 (1998). The threshold jurisdictional issue for the district court judge to decide will be if the case or controversy requirement under Article III of the Constitution can be met to permit subject matter jurisdiction when this case has been closed for nearly three years. *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375 (1994). The timeliness of the motion under Federal Rule of Civil Procedure 26, which requires a motion for a protective order to be made when an action is pending, is another hurdle for the court. Perhaps this case will now become authority such that rule 26 protective orders can now be granted for video depositions recently posted of celebrities in cases closed 20 years ago. Those issues and the extremely important First Amendment issues will be addressed in the Objections to be filed by my attorneys shortly.[1]

December 16, 2014

Respectfully submitted,
/s/ Venus Springs
Venus Springs

[1]. The 30(b)(6) transcript and the actual video of the other three video depositions along with their transcripts were filed as public records. (Ex A).

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of December, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants.

This the 16th day of December, 2014.

/s/ Venus Springs
Venus Springs
7437 Willesden Lane
Charlotte, NC 28277
(704) 241-9995
springslawfirm@gmail.com

Springs v. Ally Fin. Inc.

United States Court of Appeals for the Fourth Circuit

July 7, 2016, Submitted; July 26, 2016, Decided

No. 15-1244, No. 15-1888

Reporter

657 Fed. Appx. 148 *; 2016 U.S. App. LEXIS 13584 **

VENUS YVETTE SPRINGS, Plaintiff - Appellant, v. ALLY FINANCIAL INCORPORATED, f/k/a GMAC Incorporated; AMY BOUQUE, Defendants - Appellees, and KATHLEEN PATTERSON; YEQUIANG HE, a/k/a Bill He; CYNTHIA DAUTRICH, Defendants.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [**1] Appeals from the United States District Court for the Western District of North Carolina, at Charlotte. (3:10-cv-00311-MOC-DCK). Max O. Cogburn, Jr., District Judge.

Springs v. Ally Fin., 2015 U.S. Dist. LEXIS 14550 (W.D.N.C., Feb. 6, 2015)

Disposition: No. 15-1244 REMANDED; No. 15-1888 VACATED.

Counsel: Herman Kaufman, HERMAN KAUFMAN, ESQ., Old Greenwich, Connecticut, for Appellant.

Venus Yvette Springs, SPRINGS LAW FIRM PLLC, Charlotte, North Carolina, Appellant Pro se.

Kirk Gibson Warner, Clifton L. Brinson, SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, LLP, Raleigh, North Carolina, for Appellees.

Judges: Before SHEDD, DUNCAN, and FLOYD, Circuit Judges.

Opinion

[*150] PER CURIAM:

Venus Yvette Springs appeals the district court's order affirming the magistrate judge's order modifying a prior protective order (No. 15-1244) and the court's order denying in part the motion for sanctions filed by Ally Financial, Inc., and Amy Bouque (collectively, "Defendants") and requiring Springs to comply with the protective order (No. 15-1888). The parties raise several jurisdictional challenges on appeal. We remand to the district court for further proceedings in No. 15-1244 and vacate the order in No. 15-1888.

I.

Defendants first argue that we lack jurisdiction over these appeals. We may exercise jurisdiction over [**2] only final decisions and certain interlocutory and collateral orders. *28 U.S.C. §§ 1291*, *1292 (2012)*; *Fed. R. Civ. P. 54(b)*; *Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-47, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949)*. "A final decision is typically one by which a district court disassociates itself from a case," *Mohawk Indus. v. Carpenter, 558 U.S. 100, 106, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009)* (alteration and internal quotation marks omitted), and "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment." *Dig. Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867, 114 S. Ct. 1992, 128 L. Ed. 2d 842 (1994)* (internal quotation marks omitted). We conclude that the district court's orders are final, appealable orders for purposes of *§ 1291*. *Thomas v. Blue Cross & Blue Shield Ass'n, 594 F.3d 823, 829 (11th Cir. 2010)*; *Solis v. Current Dev. Corp., 557 F.3d 772, 776 (7th Cir. 2009)*.

II.

Springs challenges the district court's subject matter jurisdiction to consider [*151] Defendants' motions for a protective order and for sanctions. We review de novo a district court's determination of its subject matter jurisdiction. *Barlow v. Colgate Palmolive Co., 772 F.3d 1001, 1007 (4th Cir. 2014)* (en banc).

Springs argues that Defendants' motion did not present an Article III case or controversy. The Supreme Court, however, has rejected the argument that the district court must have an Article III case or controversy before it in order to consider collateral issues. *Willy v. Coastal Corp., 503 U.S. 131, 135-36, 112 S. Ct. 1076, 117 L. Ed. 2d 280 (1992)*. Because an order on a collateral issue "implicates no constitutional concern[,] . . . it does not signify a district court's assessment of the legal merits of the complaint" and, "therefore[,] does not raise

the issue [**3] of a district court adjudicating the merits of a case or controversy over which it lacks jurisdiction." *Id. at 138* (internal quotation marks omitted).

Springs next contends that the motion for a protective order was not a proper collateral issue and, therefore, that the district court lacked ancillary jurisdiction. "It is well established that a federal court may consider collateral issues after an action is no longer pending." *Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990)*. Proper collateral issues "are independent proceedings supplemental to the original proceeding and not a request for a modification of the original decree." *Id. at 395* (alteration and internal quotation marks omitted).

We conclude that the district court had jurisdiction to consider Defendants' postjudgment request for a protective order. Like disputes over attorney's fees, costs, and sanctions under *Rule 11 of the Federal Rules of Civil Procedure*, see *id. at 396*, adjudicating Defendants' request for a postjudgment protective order for materials gained during discovery in the underlying litigation does not require that the district court delve into the merits of the closed litigation. Moreover, Defendants' request clearly arises from—and is related to—the underlying litigation; but for discovery on the merits of Springs' ultimately unsuccessful [**4] claims, Springs would not have deposed Bouque nor had possession of the video of Borque's deposition to later post on the internet.

Springs argues that her notice of appeal in No. 15-1244 divested the district court of jurisdiction to enter the sanctions order at issue in No. 15-1888. "Generally, a timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal." *Doe v. Pub. Citizen, 749 F.3d 246, 258 (4th Cir. 2014)*. "'Although a district court may not alter or enlarge the scope of its judgment pending appeal, it does retain jurisdiction to enforce the judgment.'" *City of Cookeville v. Upper Cumberland Elec. Membership Corp., 484 F.3d 380, 394 (6th Cir. 2007)* (quoting *NLRB v. Cincinnati Bronze, Inc., 829 F.2d 585, 588 (6th Cir. 1987)*). We conclude that the district court therefore had jurisdiction to order Springs to comply with the original protective order.

III.

Springs contends that a third party's public dissemination of the video rendered moot Defendants' request for a protective order. The Constitution limits the jurisdiction of federal courts to the adjudication of actual cases or controversies. *DeFunis v. Odegaard, 416 U.S. 312, 316, 94 S. Ct. 1704, 40 L. Ed. 2d 164 (1974)* (per curiam). "[A] case is moot when the issues presented are no longer 'live' or the parties [*152] lack a legally cognizable interest in the outcome." *Powell v. McCormack, 395 U.S. 486, 496, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969)*. "A case becomes moot, however, only when [**5] it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Campbell-Ewald Co. v. Gomez, 136 S. Ct. 663, 669, 193 L. Ed. 2d 571 (2016)* (citations and internal quotation marks omitted).

We conclude that the request was not moot. While the district court could not order the third party to remove the video, the court could provide some remedy to Defendants by ordering Springs to use the videos only for purposes of the litigation, thereby preventing her from using the deposition to create new videos to post on the internet.

IV.

Finally, Springs challenges the magistrate judge's authority to enter an order-rather than a recommendation-on Defendants' postjudgment motion for a protective order. The Federal Magistrates Act, *18 U.S.C. §§ 3401-3402 (2012)*, *28 U.S.C. §§ 631-639 (2012)*, "delineates and circumscribes the scope of magistrate judges' authority. In doing so, the Act explicitly grants magistrate judges a number of specific powers, . . . [including] the authority 'to hear and determine any pretrial matter pending before the court, except' for eight enumerated dispositive motions." *United States v. Benton, 523 F.3d 424, 429-30 (4th Cir. 2008)* (quoting *28 U.S.C. § 636(b)(1)(A)*). A district court reviews such determination for clear [**6] error. *28 U.S.C. § 636(b)(1)(A)*. "A magistrate judge [also] may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States." *28 U.S.C. § 636(b)(3)*. Unlike a matter referred under *§ 636(b)(1)(A)*, review by the district court of a magistrate judge's discharge of duties under *§ 636(b)(3)* is de novo. *In re Application of the U.S. of Am. for an Order Pursuant to 18 U.S.C. Section 2703(D) ("In re Application"), 707 F.3d 283, 289 (4th Cir. 2013)*. In the absence of consent by the parties, a magistrate judge lacks authority to enter a final order

disposing of the merits of a claim. *Fed. R. Civ. P. 72*; *Aluminum Co. of Am. v. U.S. Envtl. Prot. Agency, 663 F.2d 499, 501 (4th Cir. 1981)*.

Generally, a district court refers pretrial discovery to a magistrate judge under *§ 636(b)(1)(A)* and reviews discovery orders for clear error. See *28 U.S.C. § 636(b)(1)(A)*; *Ocelot Oil Corp. v. Sparrow Indus., 847 F.2d 1458, 1462 (10th Cir. 1988)* ("Discovery is clearly a pretrial matter [under *§ 636(b)(1)(A)*]."). Here, however, Defendants filed the motion for a protective order after judgment was entered-not as part of ongoing discovery in an open case. Neither the *Federal Magistrates Act* nor the Federal Rules of Civil Procedure address whether a magistrate judge has authority to adjudicate postjudgment motions.

We conclude that the magistrate judge lacked authority to enter an order on Defendants' motion for a protective order. A magistrate judge may not decide, postjudgment, a motion that would be a proper [**7] pretrial motion under *§ 636(b)(1)(A)* because "resolution of such motions is dispositive of a claim." *Massey v. City of Ferndale, 7 F.3d 506, 510 (6th Cir. 1993)*; see *Rajaratnam v. Moyer, 47 F.3d 922, 924 (7th Cir. 1995)*; *Aluminum Co. of Am., 663 F.2d at 501* (holding that motion to quash subpoena "was not a 'pretrial matter' but set forth all of the relief requested"). Therefore, the district court was required to provide de novo review; its order makes clear, however, that it reviewed only for [*153] clear error. *In re Application, 707 F.3d at 289*; *Aluminum Co. of Am., 663 F.2d at 501-02*. "Although this standard is not necessarily inconsistent with the requirements of a de novo determination, the district judge did not clearly indicate that he afforded the parties a de novo determination. In order to satisfy the [Federal Magistrates] Act, he must do so." *Aluminum Co. of Am., 663 F.2d at 502*.

V.

Accordingly, we remand the order in No. 15-1244 for a de novo review of the magistrate judge's order. Because the order in No. 15-1888 depends on the existence of the protective order, we vacate the portion of the sanctions order requiring Springs to comply with the protective order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

No. 15-1244 REMANDED; No. 15-1888 VACATED

APPENDIX F

Amy Bouque 30(b)(6) Deposition: Best Ways to Tell if a Witness is Lying

Published on Mar 19, 2014

Sign the Petition against Ally Bank formerly GMAC ast http://chn.ge/10z4qN0. Here I have attached a 30(b)(6) deposition of Ally Executive Amy Bouque to help the pro se advocates and self represented parties who have to go through discovery the first time and conduct and appear at depositions. I comment on the signs of deceit as explained by psychology websites in a slightly humorous and exaggerated way. It is not an exact science. This is one of the first depositions I ever conducted and it was a telephone deposition. I was no expert but I want others to learn and become even better just as I did. Here Ally says it doesn't think written policies are a good idea and HR prefers to use the subjective instead of objective

measures. Courts have repeatedly said the lack of fixed standards defined in written policies and procedures give the inference of employment discrimination. 457 F.2d 1377 (4th Cir., 1972), 704 F.2d 613 (11th Cir), 457 F.2d 346, 359 (5th Cir. 1972), 720 F.2d 326, 336-7 (4th Cir. 1963).
(*Viewer comments omitted*).

TRANSCRIPT OF COMMENTARY ON YOUTUBE™ VIDEO

Hello, this is Venus Springs and I want all of my pro se advocates out there to learn how to conduct a deposition. Now this is a telephone deposition and telephone depositions are not ideal, especially if you have a hearing deficiency but welcome to the pro-corporation fourth circuit federal court system. But I digress. This deposition was videotaped and I have included some clips for you to observe the signs so that you can tell if your witness is being insincere. So let's start with the facial and hand gestures in this first clip. This is called the mouth cover, it's in all the psychology books, it's a sign of insincerity.

This one is called the monkey speaks no evil, the deponent's subconscious mind somehow believes that if she covers her mouth when she lies, she will not be held responsible for those statements.

This here is the ear touch or the monkey hears no evil, she doesn't even want to hear her own lies. This is the sudden touch of dandruff head scratch. Here is another telltale sign, it's the nose touch.

Here we have the mouth breather or the omg whistle

This is the stare into space.

This is a repeat of the nose touch.

This is the furrowed brough combined with sudden whiplash, gotta hold my neck.

Ugh, this is one of the worst signs, the Pinocchio, the deponent's subconscious mind thinks her nose is growing while she, while she is lying and that everyone can see it so she tries to cover her nose so that we cannot see in growing. It's an extreme case.

This gesture is just called the liar, liar and it's sad really because this deponent may actually have a conscious and she is using her two hands up against, pressed up against her mouth to try to present, to try to prevent herself from being insincere.

So now let's observe this portion of the deposition and see what we can learn.

At 11:44 Springs' Commentary:

> Note how this deponent answers a question that wasn't even asked, liars will prepare canned responses without their even being a question.

12:02:49/7:38– Springs' Commentary:

> Note how she touches her ear, it is one of the easiest ways to tell if someone is lying or insincere.

12:05:16/10:13 Springs' Commentary:

> Research shows that when people lie, they tend to touch the base the base of their nose, that's a dead giveaway.

12:14:11 Springs' Commentary:

> Note how she will touch her nose in her answer, her entire testimony is contradictory and incredible.

Video can be found posted on Bill Myer's site and not posted by Springs at https://www.youtube.com/watch?v=wlYWKmB-Syc

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

VENUS SPRINGS, Plaintiff, vs. ALLY FINANCIAL INC. fka, GMAC INC., AMY BOUQUE, KATHLEEN PATTERSON, YEQUIANG (BILL) HE, and CYNTHIA DAUTRICH, Defendants.	)	Case No. 3:10-CV-311

VIDEOTAPED/TELEPHONIC DEPOSITION OF AMY BOUQUE

DEPONENT: Amy Bouque, Present

DATE: Friday, October 14, 2011

TIME: 10:53 a.m.

LOCATION: Esquire Deposition Solutions
2301 West Big Beaver Road, Suite 925
Troy, Michigan 48084

REPORTER: Kelli A. Murphy, CSR-7768, B.S.

* * *

APPEARANCES:

VIA TELEPHONE:

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Appearing on behalf of Defendants.

ALSO PRESENT: Patrick Murphy, Legal Videographer.

* * *

T A B L E O F C O N T E N T S

* * *

E X H I B I T S
(Marked prior to deposition)

Deposition Exhibit	Description	Page first referenced
Exhibit No. 1	Plaintiff's Third Amended Notice of Rule 30(b)(6) Video Deposition	12
Exhibit No. 2	7/17/09 E-Mail	28
Exhibit No. 3	1/25/10 Letter	40

* * *

Troy, Michigan
Friday, October 14, 2011
About 10:53 a.m.

* * * *

(Exhibits Number 1 through 3
marked prior to deposition.)

THE VIDEOGRAPHER: We are on the record. This is Disc 1 of the video deposition of 30(b)(6) witness, Amy Bouque, being taken at Esquire Deposition Solutions, 2301 West Big Beaver Road in Troy, Michigan. Today is Friday, October 14, 2011, and the time is approximately 10:53 a.m.

This is in the matter of Venus Springs versus Ally Financial, Inc., et al, Case No. 3:10-CV-311, pending in the US District Court for the Western District of North Carolina, Charlotte Division.

My name is Patrick Murphy, legal videographer. Our court reporter today is Kelli Murphy, and we both represent Esquire Deposition Solutions. The attorneys will now introduce themselves for the record.

MR. JENKINS: Maurice Jenkins, appearing on behalf of the defendants.

MS. SPRINGS: Venus Springs, appearing pro se.

* * * *

A M Y B O U Q U E,

a Defendant herein, having been first duly sworn or affirmed by the Notary Public, was examined and testified as follows:

EXAMINATION

BY MS. SPRINGS:

Q Ms. Bouque, this is a deposition -- again, a Rule 30(b)(6) deposition -- to be used for all purposes permitted by the federal rules of civil procedure. Please, state your full name for the record.

A Amy Justice Bouque.

Q Please, spell your last name.

A B-O-U-Q-U-E.

Q And I have a hearing impairment, so I ask that you speak clearly and face the phone. Or at some point, if during this deposition, the batteries in my hearing device go out, I'm going to have to stop it abruptly.

Did you read any witness statements or dep -- depositions -- excuse me -- before this deposition, Ms. Bouque?

A Can you explain your question? I'm sorry.

Q Did you read any witness statements, or any other depositions, before this deposition today?

don't know where he works.
Q Is Accenture a major third-party service provider for Ally?
A Yes, it is.
Q Is it one of the largest?
A I've not seen -- I've not seen the spend breakdown, but I know it is a large provider.
Q Does Accenture handle human resource matters for all employees?
A It handles administrative components, yes.
Q Do any Accenture employees actually work on site at Ally Financial?
A I don't -- I don't know for certain. I've seen -- I've seen some on site, but I don't think they're housed -- you know, housed there. I believe all the Accenture operations are held, you know, external to our offices.
Q But you have seen Accenture employees on site?
A Yes. For meetings or, you know, for -- for project work.
Q So you're aware you're answering for the corporation today; correct?
A Yes, I am.
Q If one of Ally's employees had previously worked at Accenture, and then sued Accenture, would you consider that a potential conflict of interest?

witness to a specific portion of this e-mail to question her on, and those don't pertain to Ally, at all, or your termination.

MS. SPRINGS: It does -- it does -- are you saying this e-mail does not pertain to my termination?

MR. JENKINS: No. Only the portion that you had the witness read into the record is not something that's within the corporate knowledge of Ally. You have specifically referred to various other claimants or a lawsuit that you were going to file, but didn't file, against Mayer Brown.

And I think the witness -- she can answer for herself -- but she's here and prepared to testify with respect to the general corporate knowledge of Ally with respect to your particular termination.

MS. SPRINGS: I am asking about my termination, because I say I have a claim under Title VII. That is discrimination that relates to my termination from Ally Financial. I'm clearly within the topics, because it's relating to my -- my termination from Ally Financial.

THE WITNESS: And, Venus, I -- you know, I can state, very plainly and clearly for the record, you were not terminated for any discriminatory reasons. There were --

BY MS. SPRINGS:

Q Ms. Bouque, if -- if here standing -- here sitting before this deposition, working for Ally Financial, can you honestly tell me if I was terminated for that reason, that you would state that for the record? Would you say that?

A It -- it's not so.

Q What -- no, that's not my question. Would you say it, if it was?

A I would not lie on record.

Q Would you say it?

MR. JENKINS: She just testified --

MS. SPRINGS: No. She said she would not lie. That means you might not answer the question.

BY MS. SPRINGS:

Q Would you state that -- for the record, would you say I was -- I was terminated for retaliation for exercising my rights, my civil rights? Would you -- would you state that on the record as an employee of --

A Yeah.

Q -- not even as an employee, as the corporation -- 'cause you're answering for the corporation --

A Right.

Q -- if it was true, would you state it?

A I would not lie on the record for anyone or anything. So if you're asking me as a human being, and as Amy Bouque, would I -- would I lie; the answer is, no, I would --

Q I'm not asking --

A -- not lie.

Q -- you would you lie. Answer my question.

Would you state on the record, if it was true, would you say, "Ally Financial discriminated against you"? Would you state that?

A If I believed that you were discriminated against, yes, I would state it.

Q You would. And you're representing Ally Financial and you would state it?

MR. JENKINS: Asked and answered, Counsel. You're being argumentative.

MS. SPRINGS: Answer the question.

MR. JENKINS: It's been asked and answered. What's the question?

BY MS. SPRINGS:

Q The question is -- she's answering as a corporate deponent for Ally Financial -- you are saying that you would state it, as the corporate deponent for Ally Financial, you would state that I was discriminated --

MR. JENKINS: Well --

MS. SPRINGS: -- against?

MR. JENKINS: -- I object to the form of the question. That's not a proper question for a 30(b)(6) witness, because she can't testify as to what's in the head of the -- of one or more of the 15,000 employees that currently work for Ally.

MS. SPRINGS: I'm asking about this employee that was terminated. It is an appropriate question for a 30(b)(6). It is not -- you can put that objection on the record, but she still needs to answer it.

THE WITNESS: And I'll ask you, Venus, to, please, restate the question.

BY MS. SPRINGS:

Q I want you to answer for Ally Financial.

If you had discriminated against me, would you state it on the record for Ally Financial?

A I would not lie if asked a question on the record. Whatever the question is asked, I would tell the truth.

Q Answer my question. I --

MR. JENKINS: It's been --

MS. SPRINGS: -- don't have --

MR. JENKINS: -- asked and answered. It's been --

MS. SPRINGS: It is not --

MR. JENKINS: -- asked --

MS. SPRINGS: -- asked and answered. I asked would she lie? I said would she affirmatively state it, if it was true? That's two different questions --

MR. JENKINS: Well --

MS. SPRINGS: -- and --

MR. JENKINS: Well, Counsel, it -- it's been affirmatively stated in the answer to the complaint and to the EEOC, so --

MS. SPRINGS: You have --

MR. JENKINS: -- what --

MS. SPRINGS: -- affirmatively stated that you discriminated against me, Ally has?

MR. JENKINS: No, we -- it's been --

MS. SPRINGS: Is that what you're saying?

MR. JENKINS: It's been --

MS. SPRINGS: 'Cause --

MR. JENKINS: -- affirmed --

MS. SPRINGS: -- that's the question.

MR. JENKINS: It's been affirmed, exactly to the contrary, as true that you have not been victimized by unlawful discrimination. So why would the company say anything different, if that wasn't true? We're on record as --

MS. SPRINGS: Well --

MR. JENKINS: -- the company.

MS. SPRINGS: -- the company -- I -- I'm not deposing you, sir, so I don't need you --

MR. JENKINS: No. The --

MS. SPRINGS: -- to answer --

MR. JENKINS: -- company is on the record with respect to the answer to that question.

MS. SPRINGS: I asked her a question -- a totally different question -- and she chose, on behalf of Ally, to come out and say something totally different than I asked her. She -- she came out and said that Ally Financial did not discriminate against me.

My question is:

Would Ally Financial state, for the record, that it -- if it had discriminated against me, would it disclose it? Because, otherwise, her statements are irrelevant. So if -- if they -- I want to know, does that statement have any meaning?

Here Ally Financial is subject to litigation, they're being sued, and she's stating Ally Financial -- for Ally Financial that they did not discriminate against me. I want to know, would Ally Financial admit it, on the record, if they had?

THE WITNESS: I --

MR. JENKINS: Same --

MS. SPRINGS: That was --

MR. JENKINS: Same --
MS. SPRINGS: -- the question.
MR. JENKINS: -- objection and --
MS. SPRINGS: Answer the question.
THE WITNESS: I -- I don't know how to answer --
MS. SPRINGS: Yes --
THE WITNESS: -- the --
MS. SPRINGS: -- or no?
THE WITNESS: You --
MR. JENKINS: She can't answer the question, 'cause it's not a proper question. She's -- she's here to testify on behalf of the company and personally, and she has reaffirmed that she will not lie under oath, either for the company or as a 30(b)(6) witness. So your question is improper. It's argumentative and I suggest we move on.

BY MS. SPRINGS:

Q Are you refusing to answer the question?

A Venus, I feel like I've answered the question and -- and I -- I don't know how else to answer the question, than already has been done.

Q It's a "yes" or "no" answer. You -- you can't tell me you don't know how to say "yes" or "no." I asked you would you affirmatively state, for the record, "yes" or

"no"? If Ally had discriminated against me, would you say, "Yes, Ally had discriminated against you" -- yes or no -- if it was true?

MR. JENKINS: Continuing objection, Counsel. We'll make a record of it.

MS. SPRINGS: Your -- your objection is noted. Answer the question.

THE WITNESS: I -- Venus, I already have. I'm not going to answer it any further.

MS. SPRINGS: You're refusing to answer the question?

MR. JENKINS: Yes. She can't and she's not answering it any further. It's been asked and answered.

MS. SPRINGS: It has not been answered.

MR. JENKINS: Okay. Well, then, it's argumentative --

MS. SPRINGS: But let's -- let's -- let's note it, for the record, that Ally Financial cannot answer the question. Let's move on.

BY MS. SPRINGS:

Q Now, as I said, was there action taken in response to my claims that there were -- that I had claims under Title VII of the Civil Rights Act? Did Ally take any action?

A I'm not sure, Venus.

Q So you know of no action that Ally took?

A I do not recall any specific action that was taken.
Q Okay. Let's take a look at -- let's go back to this e-mail. You said that there were conversations or -- was there anything else done in response to this e-mail, besides those conversations and sending the e-mail to Jeff Carney's group?
A Venus, I -- I think that was the same question you just asked me, which is:

Do I recall what's happened -- what happened with this e-mail after we received it?

You know, beyond some conversation about it, I don't know of any investigation or any -- any other information.
Q Was it turned over to an attorney?
A I don't recall.
Q Is there anything that would help you to recall?
A No.
Q You have no record -- or Ally Financial -- no one at Ally Financial has any records regarding that?
A There may be within the investigative team or within the legal department, but not to my knowledge.
Q Let's look at Exhibit 3.
A Okay.
Q Please, tell me when you're ready.
A Thank you. I am ready.

Q Okay. Let's look on page 2, please. Let's read the second paragraph that starts on page 2, starting with -- look at the paragraph where it says "GMAC." And can you read that second sentence in that paragraph?

A A week after her discharge, complainant wrote a threatening e-mail to Kathleen Patterson and me, demanding a monetary payout from the company in exchange for her cooperation in not revealing all sorts of alleged unfair business practices of which she claimed GMAC had engaged.

Q Which e-mail are you referring to?

A I haven't gone through the records of this, but one -- one would assume it's in referring to Exhibit 2.

Q Can you tell me, in Exhibit 2, where I threatened to reveal all sorts of unfair business practices?

A Interestingly, the suspicious behavior behind my termination has prompted my investigation into GMAC's activity with its legal suppliers.

That -- that statement -- that whole paragraph there.

Q No. Can you tell me where I threatened to reveal information about the -- about the legal supplier.

A Moreover, I believe GMAC's actions warrant further investigation by various claimants, investors, and servicing clients as to its patterns and practices

regarding its vendors. I am only willing to voluntarily resign under the terms of the attached agreement, which provides for two years -- full years -- of service [sic] and receipt of paid health care.

Q I -- I don't see anything, in those two paragraphs you read, where I threatened to reveal information.

A That might be your interpretation of it, but as I -- as I read it, now, and as I remember reading it then, I -- I recalled it to be threatening.

Q Where do I threaten -- I didn't say whether you felt it was threatening. Perhaps it was threatening, because it says I am going to pursue legal action. But where do I threaten to reveal information in -- in exchange for money? Where do I demand a monetary payout --

A You demand a monetary payout right here:

I -- I will only voluntarily resign if provided two years.

And that --

Q Would --

A -- that --

Q Wait --

A -- statement --

Q Excuse me. Let me finish my question before you answer, please.

MR. JENKINS: I thought she was answering your

question, Counsel.

MS. SPRINGS: I didn't finish the question.

THE WITNESS: I'm sorry. I thought -- I thought you were done. I apologize.

BY MS. SPRINGS:

Q Where do I demand a monetary payout in exchange for not revealing information about these alleged unfair business practices?

A I believe the statement:

Moreover, I believe GMAC's actions warrant further investigation by various claimants, investors, and servicing clients, as to its patterns and practices regarding its vendors.

Q So you believe that when I say that "GMAC's actions warrant investigation," that it was a correct characterization for you to tell the EEOC that I threatened to reveal information in -- and demanded money in exchange for not revealing information? You believe that's an accurate characterization to the EEOC?

A Yes, I do.

Q Did I ever use the words that, "I threaten to reveal information"? Do I ever use those words?

A I don't -- I'm -- as I skim this document, again, I don't see the word "threaten," no.

Q Do I ever say I'm going to reveal the -- that

information?

A You say:

I am only willing to resign if I'm paid these two years.

After going through, you know, a litany of purported illegal or suspicious circumstances, Venus, it's -- it's the -- it's the conclusion that was drawn upon --

Q Excuse me.

A -- receiving this.

Q Do I ever say I'm going to reveal information? Just "yes" or "no."

A I'll have to reread it. Please, provide me a moment to do so.

Q Sure.

A You've got words in here like it was "an action to protect existing conflicts of interest."

Q Can you -- can you --

A "Since I am" --

Q -- answer the question?

A -- "confident I have a much better record than you anticipated."

I mean, the whole -- the whole e-mail is threatening, Venus.

Q The -- the question is not, "Is it threatening?" Answer

my question. My question is: Do I ever threaten to reveal information about alleged unfair business practices, "yes" or "no"?

A I don't see -- I don't see those words, directly, the way you're asking them today, no.

Q Now, did GMAC ask me to voluntarily resign in exchange for four months salary?

A You were asked to enter into a mutual separation release. And, you know, one of the components of that would have been the -- the four months or, you know, 40,000 or so dollars payment.

Q And was it going to be considered a voluntary resignation? Is that -- was that not in there?

A The terms and conditions of the MSR were to be kept confidential between the parties. And, you know, there's various treatments for the mutual separation release, depending on the elements that -- and I'm not an expert in all of the pieces.

So to characterize it as "voluntary," you know, I would always characterize it as a mutual separation release. I would never characterize it as voluntary.

Q Do you know if it was characterized as voluntary to me?

A I -- I -- I didn't -- I was not in the room when you -- your -- that conversation was had between you and

Ms. Patterson. I don't know.

Q So when I say:

You have until 5:00 p.m. on July 29th [sic], 2009 to consider my counteroffer; what do you understand that to be -- mean? Like, what do you understand my counteroffer to be?

A You wrote -- you -- you know, if I -- if I have the timeline correct, Venus, you know, at this moment you -- July 10th, you were told that we were, you know, separating you. We gave you a copy of the mutual separation release and offered the opportunity to enter into that agreement.

You would have had, I believe, 21 days to make that determination. And I understand this e-mail to have been you saying, you know, the $40,000 isn't sufficient and that, you know, based on all this other information, I believe that two -- two years and your -- and your COBRA benefits is the appropriate settlement.

Q Now, you mention 21 days. Where do you get that 21 days from?

A That's off the top of my head, but I believe when you have a mutual separation release, you have a period of time under which to consider. And, I believe, it's 21 days. It may be -- you know, it may be seven. I don't -- I don't recall your specific mutual separation

release, but there's usually a window of time for which the -- the party has the opportunity to consider it.

Q And what is that window of time based on?

A I don't understand the question.

Q How do you determine the window of time, 21 days? How do you determine how much time they have to review?

A I'd have to consult with our employment attorney. I -- there is a -- there is a legal reason for which the time frame is given. I can't cite the law, but I know that there's a very, you know, very specific, you know, time frame that's given to allow a person, you know, the appropriate consideration.

Q All right. Let's look back at Exhibit 3.

A Okay.

Q In that same letter, in that same paragraph, you say:

GMAC -- do you see where I am -- has an open door policy.

A Yes.

Q It says:

GMAC has an open door policy available to all employees who believe they have been the subject of an unfair employment decision.

Is that correct?

A That's what it states.

Q Okay. Is that policy written?

A Not beyond the Code of Conduct.
Q Does the code -- the Code of Conduct address employees who -- who believe they've been subject to an unfair employment decision?
A I don't believe it specifically states that.
Q What policy are you referring to then?
A We make it very clear in the Code of Conduct that if there's any concerns around integrity or compliance, that there is a course of action or direction available to an employee; your immediate supervisor, your next level of leadership, your human resources contact, the legal staff, the compliance officer, the general auditor, the chair, and the GMAC audit committee.

So there are paths available to individuals to whom they have any concerns around integrity or ethics or any, you know, any legal or otherwise concerns in the workplace.
Q What about other concerns? You're say -- you're saying open to all employees. The Code of Conduct is not -- does the Code of Conduct address termination?
A I'd have to reread the entire one to know for sure.
Q Well, tell me what you think.
A I don't know.
Q Do you have a policy at GMAC that addresses termination of employees?

A No, we do not.
Q GMAC has no rules or guidelines that are written that tells the supervisor how to go about terminating an employee and what steps to take?
A Let -- so let me -- let me see if I can answer the question. There are transactional steps that include processing the termination. And there are -- you know, there's documents to that. It's a termination checklist and that walks through how to -- how to, you know, go through the termination.

But if you're asking about -- well, let me -- there's a termination checklist.
Q Well, do -- so do supervisors have any guidelines given to them, by GMAC, on what to do if they have a problem with an employee; how to go about terminating them; how to go about disciplining them? Is there any policy or does -- is every person, for themselves, to guess whatever they want to do?
A They certainly do not guess. They work with their human resource representative and they work through the process in -- in consultation with legal, as appropriate.
Q So there are no written -- there are no written guidelines?
A That's correct.

Q So each HR person can pick and choose whatever they want to do with each employee?
A I would never characterize it as "picking and choosing," Venus.
Q Can each HR employee choose to do whatever they want to do with each -- with each employee?
A Absolutely not.
Q What stops them?
A We're governed by our -- our profession and we're governed by, you know, past practices. We're governed by legal and, you know, pure -- pure group and leader -- leadership analysis. We're governed by, you know, reviews of -- you know, the circumstances and all of the factors that go into it.
Q You're governed by past practices. What if your past practices were discriminatory?
A We would not --
Q Wait, you're saying each employee is governed by their own past practices?
A No. Let me -- let me try it, again, Venus. I don't know if I was able to explain it in a way that was clear.

If a leader reaches out to a manager -- or to an HR manager and says, "I'm having a concern with an employee. I'm concerned that their performance, you

know, may warrant disciplinary action, up to and including termination," the HR manager would conduct a meeting with the -- with the leader to understand all the circumstances.

And then, you know, if there was a -- if there was consideration for termination, then the HR -- the HR leader would work through the appropriate approvals through their -- their leadership team, and then the manager would -- we would need to work through the appropriate management team for their approval.

But it's -- it's not done at an individual sort of supervisor and HR person approval. There's approvals through the chain to ensure that all the right components are reviewed and if -- you know, and including looking at a legal view from an attorney to ensure that we do not have any discriminatory practices.

Q So if every time there's a termination, it goes through legal?

A So my understanding is that -- that's the way I've handled every termination, is that I review it with -- with an attorney. But in speaking with my attorney, in preparation, I don't know that -- oh --

MR. JENKINS: No --

THE WITNESS: -- sorry.

MR. JENKINS: -- don't disclose any

discussions --

THE WITNESS: Okay.

MR. JENKINS: -- you had --

THE WITNESS: Sorry.

MR. JENKINS: -- with counsel.

THE WITNESS: Sorry. I've -- I've always worked through the attorney group whenever I've had any potential termination. I've always reviewed any decision with -- with my legal counsel.

BY MS. SPRINGS:

Q Okay. That's you, personally. What does GMAC -- I need you to answer for GMAC. Does -- is every termination supposed to go through the legal department?

A So it's a two-part response. The first part would be not always. When we were a decentralized human resources function, and becoming a centralized function, there were different windows of time in which past, you know, groups would behave, you know, different than others.

And so not every group reviewed with legal. You know, it was a central legal function. But, now, there is an employee relations and a legal group that does review.

Q And when was this changed?

A In the last 12 months.

Q Did you receive written notice of this change?
A We -- we reviewed materials through a training -- you know, through training materials and through conference calls and updates that we had.
Q Who's "we"?
A The HR team. The HR --
Q Your training -- who provides those training materials?
A So, as I said, there's updated training through conference calls and -- and meetings. So the HR leadership team. So it would have been, you know, like a Jim Duffy, a Kathy Patterson, perhaps our attorney, Drema Kalajian, Frank Kuplicki.

I don't recall the specifics, but I do recall being advised that there was an update in the process for all.
Q So you're being told there's an update in the process, but nobody provided you anything in writing?
A No. I -- I just -- I -- I explained that there was a presentation and that we were -- we were walked through a process.
Q So there was a written presentation?
A To my recollection, yes.
Q Well, how does each HR officer know what to do in a -- in a termination? What can you refer to?
A So there is not -- there is not a -- a -- a checklist or

a policy, if that's what you're asking. We refer to our experience. We refer to all the facts and circumstances. And we refer -- we review it through a -- through a group of leaders, you know, HR leaders for assurance that it's the right -- you know, it's the right next step.

Q So every employee that's fired, no matter what level, it goes through what HR leaders? What -- what level of leaders did -- did each termination go through?

A My understanding is it goes through a director level -- or above -- approval, depending on who -- who the initiating HR person is. So an HR -- and an HR person never makes the decision alone. They always review with at least that next level up.

Q How do you ensure there's no disparate treatment when each H -- when each HR officer does -- has their own guidelines they do themselves with no company guidelines? How do you know that you were treating someone the same as a person of another race who's getting fired for a similar or same thing by another H -- handled by another HR officer?

MR. JENKINS: Object to the form of the question. It assumes elements that aren't on the record. If you can answer.

THE WITNESS: Venus, can I trouble you to,

please, restate the question for me, please?

BY MS. SPRINGS:

Q Yes. I want to know that if each HR -- if Ally Financial has nothing, in writing, to guide employees on how to handle terminations in various situations, how do you ensure that there is no disparate treatment among employees terminated for the same or similar reasons?

A Within our profession, we are -- we are called and required to act in a -- in a nondiscriminatory way. We review any proceeding, or any decision, with the leadership team to ensure that we haven't missed an element, or an element hasn't been missed or overlooked, and that -- that -- you know, those leadership levels tend to have, you know, a more broad view and more experiences in which to ensure that -- that doesn't occur.

Q Okay. "Within our profession, we are called," do human resources professionals sign some code or -- or take some oath?

A No. But you can't -- you can't be in HR if you can't be nondiscriminatory and nonprejudiced and nonbiased. You have to be able to objectively review and understand complex situations and understand that in -- with consideration of all the laws that govern -- that govern our work.

Q Are you saying that it's impossible, you cannot be in HR and be discriminatory? Is that what you're saying? You're saying -- I want to know if you're saying it's not possible or are you saying it shouldn't be that way?
A The checks and balances that exist ensure that we don't have any potential or perceived concerns. By ensuring that we get the right checks and balances on any decision so that we, you know, we do everything we can to avoid the appearance of or ensure that we don't.
Q You're saying "checks and balances." Wouldn't a written policy be one of the best checks?
A Well, a policy that isn't followed is -- is worth -- isn't worth anything.
Q That wasn't my question. I said a "written policy" --
A I --
Q -- do you -- a written policy that's followed is even better, but don't you need to start with a policy?
A I -- if that -- I guess that's your opinion. I don't -- I don't think it's necessary, no.
Q So you think a written policy on termination is not necessary? Is that what you're saying?
A Venus, I've worked at a number of large employers --
Q Answer the question, "yes" or "no."
A I --
Q Is that what you're saying, a --

A It's --
Q -- written --
A It's not --
Q -- policy --
A It's not a "yes" or "no" response. I've worked at a number of large employers, to whom we did not have a termination policy or a termination how-to policy.
Q It is a "yes" or "no" question. I didn't ask about what you did in the past. I asked you:

Are you saying a written policy is not necessary?

A That is what I'm saying, it is not necessary.
Q Do you think it's a good idea?

MR. JENKINS: What's a good idea?
MS. SPRINGS: To have a --
MR. JENKINS: Object to the --
MS. SPRINGS: -- written policy.
MR. JENKINS: -- form of the question.

BY MS. SPRINGS:
Q Do you think it's a good idea to have a written policy on termination?
A I don't think it's required.
Q Do you think it's a good idea?
A I don't think it's necessary.
Q Do you think it's a good idea, "yes" or "no"?

A I feel like I've answered the question, Venus. I don't know --

Q You --

A -- what --

Q -- have not answered the question. "Yes" or "no"? You know what "good" means. You know what an "idea" is. Do you think it's a good idea?

MR. JENKINS: Can you answer it, whether it's good or bad or whatever? I -- I don't know. Do the best you can.

THE WITNESS: Terminations are very -- you know, employment decisions are very complex decisions and I don't think you could prescriptively write a policy that would include all of the appropriate elements to which consideration should be given.

So my answer is, no, it's not -- it's -- it -- a policy wouldn't be necessary, isn't needed, no.

BY MS. SPRINGS:

Q So you're saying a very -- okay. A complex -- a complex transaction, written policy, not a good idea, okay. In your HR best practices, have you ever reviewed human resources best practices before?

A Yes.

Q And best practices, do they recommend a written discipline policy?

A I'm sorry. Are you talking about specific documents or are you talking --

Q No.

A -- about --

Q I'm talking -- you -- I'm talking about best practices for an HR professional. Because in your answers you're basing a lot on what you do based on the past practices, or HR training, nothing -- that has nothing to do with Ally Financial. So I want to know what the best practices for the HR professional are. Have you read -- have you seen that before?

MR. JENKINS: What's the question?

BY MS. SPRINGS:

Q Have you seen the best -- well, she already answered. The question was:

Has she seen best practices for HR professionals and she said yes.

So my question was:

In the best -- best practices, do they recommend a written discipline policy?

A I don't remember.

Q Is it possible for one HR professional in one group to recommend termination for the same act that another HR professional does not recommend termination?

A Yes. And that's why we have reviews by attorneys and

our second-level or third-level leaders.
Q Did you not say that reviews by attorneys are not required --
A I said --
Q -- and don't always take place?
A I said it used to not be required, but I always reviewed every decision, every employment termination, with an attorney.
Q You do. I -- I asked you about the company.
A All the individuals I -- all the individuals I worked with, you know, reviewed with an attorney. But we're a global company. There are -- there are employees that are sitting in multiple -- like 30 countries throughout the world. You're asking me to speak on each one of the practices of all those different countries.

And, Venus, I don't -- I don't have them, you know, in a -- in a way that I can speak of what we do in Germany or the UK and --
Q What about the United States?
A The -- all the HR professionals that I worked with reviewed their matters with an attorney, prior to termination.
Q So every termination in the United States is -- goes through legal, so --
A You --

Q -- which -- which person in legal deals with every termination in the United States?
A We have an employee relations department, now, that we used to not have. And there -- and there are attorneys that are in the HR profession that review them. And their -- their responsibility is to review all matters prior to -- to a decision being had. And that's present day.
Q What was the policy in 2009 or the practice, since you have no policy?
A The practice, as I -- I think I've tried to explain, is to review, through the legal department, employee -- employment law attorneys.
Q This was in 2009?
A Correct.
Q But you said it not -- did not always happen. It was not required. Is that correct?
A That's my understanding.
Q So are you saying it's not possible for two employees to be terminated for similar things and have similar -- I mean, two employees to commit similar acts and have different results throughout the company?
A If you're asking -- I mean, no two circumstances are the same. There are always, you know, a number of variables and factors that go into the -- the circumstances. So

there's -- there's the -- the incident, like an absence. I mean, there can be two employees with 10 absences, and one employee can have, you know, a whole different set of circumstances than the other.

And so, yes, it is possible that, you know, given all the speculation we're doing, you could have two individuals have the same 10 absences with two different outcomes.

Q Can you have -- I'm asking for employees with similar situations and similar -- so you have a -- a secretary in Minnesota and you have a secretary in New York. They both have 10 absences for similar reasons, unexplained. And so do -- does each manager have to go through the same process for two employees in different sides of the country?

A Yes. Now, they do. They have to have it reviewed through -- through employee relations, and through their leader, and through their second-level manager on the business side. Yes, we do.

Q They do. So what if one employee doesn't go -- does a -- does a manager have to go to HR? Is it possible that one manager decides not to take any action, at all, and -- and one manager decides to terminate?

MR. JENKINS: I'll just object to the form of the question. You're -- you're engaging in an infinite

number of possibilities. And I don't think --

MS. SPRINGS: Well, I'm allowed --

MR. JENKINS: -- that's an --

MS. SPRINGS: -- to do that --

MR. JENKINS: -- an appropriate --

MS. SPRINGS: -- so let's note the objection and let's keep going.

MR. JENKINS: Object to the form of the question.

MS. SPRINGS: Okay. Noted.

BY MS. SPRINGS:

Q Can you answer the question, please?

A Can you, please, restate the question?

Q Isn't it -- is it possible if you have one employee -- two employees, in different sides of the United States, with similar conduct -- meaning you have two administrative assistants who report to the same level manager, same level of responsibility -- and one gets referred to discipline for actions, and the other employee -- who does the same thing -- never gets referred to discipline?

A We're speculating. Yes, I -- I suppose that's possible.

Q It's very possible when you don't have a guideline; correct? There's no guideline that says "Employees must report to work, and if they don't report to work three

days in a row, then they're going to be disciplined"? There are no guidelines like that for managers; is that correct?

A Well, we do have a, you know -- you're talking about "Three day no call/no show"; right? You mean abandon -- job abandonment? There are just --

Q I don't -- I'm sorry -- I didn't know anything about that. What was that you just said, "Three day no call/no show"?

A You're talking about job abandonment?

Q No. I was just giving an example. I don't know anything about that policy. But, now, I want to know about it. What did you say, "Three day no call/no show"? Is that what you said?

A That's what I said.

Q What is that?

A Just a general -- just a general industry, you know, understanding that if you abandon your job -- if you don't show up after three days, you abandon your job.

Q Is that a policy followed here at -- I mean at Ally Financial?

A I don't recall seeing an enterprise policy that included that. There might be local policies for -- for servicing, you know, that has nonexempt employees than others.

Q So you have seen policies that -- that address that, but they're not global or enterprise-wide. Is that what you're saying?

A Yeah. I looked at the enterprise-wide policies in preparation. There might be local policies in different countries and different -- different areas.

Q I'm asking you -- I didn't ask what you looked at in preparation. I'm -- it sounds like you're trying to make sure you limit what I see. I'm asking you a question about this policy that you brought up, "Three day no call/no show." You said it was locally used. What local -- what do you mean by that?

A In Ally Servicing, which is the -- the servicing arm of the corporation, if a person doesn't show up after three days, no call/no show, it's assumed to be job abandonment. It's new -- I'm new into that space and I am aware of that.

Q And that is the first time you became aware of that kind of policy; is that correct?

A That's correct.

Q So going back to this page 2 of this form, where it says:

GMAC has an open door policy available to all employees.

When you say "open door policy," do you mean

all employees are aware of this policy?

A All employees are aware of our Code of Conduct.

Q No. I'm asking about this "open door policy available to all employees who believe they have been the subject of an unfair employment decision."

A Yeah.

Q Are all employees aware of this open door policy that's available to them if they have been subject to an unfair employment decision?

MR. JENKINS: Objection to the form of the question. Again, I don't know how she could possibly know what every -- more than 15,000 people might be aware of. Now, it's a different question of whether they're made or published, or something like that.

But to speak to their subjective state of mind, Counsel, I think the form of the question is improper and should be rephrased.

BY MS. SPRINGS:

Q Okay. Can you -- do you -- what -- this open door policy is available to all employees. That's what it says, it's available. So what policy is -- you say an open door policy is available to all employees. What policy, and how is it made available, that deals with them being the subject of an unfair employment decision?

A The Code of Conduct says very plainly that if you're

raising an integrity or compliance concern, and you seek guidance, here's -- here's all the places you can go to -- to seek guidance.

Q Ms. -- Ms. Bouque, let's be frank here. I didn't ask -- I asked you about an unfair employment decision. You have not read anything to me, in the Code of Conduct, that says anything about an unfair employment decision. I'm asking you about this open door policy that's available to all employees who believe they have been the subject of an unfair employment decision. Where is that policy?

MR. JENKINS: I think she was just reading, Counsel. You can't see her, but she -- you were referring to a document; right?

THE WITNESS: I'm referring to the Code of Conduct.

BY MS. SPRINGS:

Q And the Code of Conduct does not -- she -- what she just read says nothing about -- she said it was very clear -- it said nothing about an unfair employment decision. It had nothing -- it said nothing about termination. It says nothing about discipline. It says if you seek guidance on the Code of Conduct. I am not talking about the Code of Conduct.

A Okay.

Q I am talking about this sentence right here.
A Okay. And -- and I -- Venus, the connection I'm trying to make -- and I'm sorry if I'm not making it well -- is I'm trying to suggest that when we talk in the -- in the -- in the response to EEOC about the open door policy for -- the subject for any employment -- unfair employment decision, the whole concept of the Code of Conduct is to let employees know that for whatever reason, whether or not it's an employment action or, you know, whatever in the workplace, they have a chain, they have options available to them to let it be known through internal -- internal methods.
Q Can you tell me that that's clear, what you just said, in the Code of Conduct?
A I believe it is. And I believe we -- you know, we -- we ask employees to affirm it every year and we talk about integrity and ethics, and if there are any concerns, here's the chain in which you -- you -- you -- here are your options in which you can seek additional support or, you know, review.
Q Are there -- are there unfair employment decisions that have nothing to do with integrity and the Code of Conduct? Do people get terminated for something that has nothing to do with the Code of Conduct?
A I don't know.

Q So you know of no one who has been terminated, the reason that you have not referred to the Code of Conduct for it? There's no -- you don't know that?

A The Code of Conduct is the broad umbrella under which we operate every day. I mean, everything can tie back to the Code of Conduct, under my opinion. You know, our --

Q Your opinion. Do you refer to -- have you referred to this Code of Conduct every single time you have terminated an employee?

A No, Venus, I have not.

Q Thank you.

MR. JENKINS: Counsel, can we take a break? Maybe -- how long do you need?

THE WITNESS: I just -- maybe 20 minutes.

MS. SPRINGS: I can't take -- I don't have 20 minutes. I can't take a 20-minute break.

THE WITNESS: Well, it's important for me. It's twelve-thirty. I need to have a -- something to eat and -- and go to the restroom. I -- I -- I -- I think --

MS. SPRINGS: You can go to the restroom, but I -- and you can take a -- a ten-minute break, but I -- I -- as I told you, I --

MR. JENKINS: I understand the imposition. It's the -- it's the witness that's initiating this and

I think, under the circumstances, that's not too much time to ask.

MS. SPRINGS: Are you -- are you familiar with my circumstances?

MR. JENKINS: Yeah. But I'm indicating -- the witness has just indicated, on the record, her need to have something to eat and go to the restroom. I don't --

MS. SPRINGS: I'm not --

MR. JENKINS: Now, you --

MS. SPRINGS: I'm not --

MR. JENKINS: -- have -- you've --

MS. SPRINGS: -- going to --

MR. JENKINS: -- mentioned --

MS. SPRINGS: -- have several breaks.

MR. JENKINS: You've mentioned from the outset, you know, certain accommodations that might be needed, based on your hearing aid device, and we have no problems with that. We understand that. And we expect --

MS. SPRINGS: You have no --

MR. JENKINS: -- the same --

MS. SPRINGS: -- problems with that?

MR. JENKINS: -- courtesy -- we expect the same courtesy with respect to this witness.

MS. SPRINGS: I'm not asking -- I am not asking you for courtesy for my hearing aid. I'm not asking -- you're not giving me any courtesy. In fact, you have done the opposite with respect to my hearing aid device. So I'm not asking for courtesy. I haven't gotten any.

In fact, you've made it as hard as possible -- for me with my hearing problem -- as possible, in this litigation. So I'm not asking -- so it's not about accommodation and I'm not trying to return the favor for what you have done to me.

My issue is I need to finish a certain part, you take a bathroom break, then we will agree on what time you can break for lunch. Let me finish this section that I'm on.

MR. JENKINS: How long do you anticipate this section will last before the witness can take a restroom break?

MS. SPRINGS: No, she -- the witness can take a -- a restroom --

MR. JENKINS: Oh.

MS. SPRINGS: -- break now. I'm not -- I'm talking about the -- the -- the 20-minute break.

MR. JENKINS: Oh, okay.

THE WITNESS: All right. May -- may I have 10

minutes, please?

MS. SPRINGS: Sure.

THE WITNESS: Thank you very much.

THE VIDEOGRAPHER: Okay. We'll go off the record at 12:27 p.m. This completes Disc 1.

(Whereupon a break was taken from 12:27 p.m. to 12:43 p.m.)

THE VIDEOGRAPHER: We are back on the record at 12:43 p.m. This is Disc 2 of the deposition of Amy Bouque. Please, proceed.

BY MS. SPRINGS.

Q Okay. We're back on the record. You're aware that you're still under oath; right, Ms. Booth?

A Yes, I --

Q Bouque, I'm sorry.

A That's all right. Yes, I am.

Q Okay. If we could just get through this document in Exhibit 3 and then maybe we can speak about -- someone needed to eat. In -- on page 2, in the paragraph that is third from the end, it starts with, "As stated above."

Do you see that paragraph?

A I do.

Q Would you, please, read it?

A Certainly. It states: As stated above, complainant did

not make any allegations of discrimination to anyone in human resources or higher management during her employment with GMAC. GMAC learned of her discrimination claims against it after her discharge. Thus, GMAC did not take any personnel actions toward complainant after it learned of her allegations of discrimination against it.

Q Okay. On the sentence that says, "Thus, GMAC did not take any personnel actions toward complainant after it learned of her allegations of discrimination," why did you make that statement?

A I don't have the original charge, Venus. My recollection is that there's a charge of retaliation and my assumption is that that -- this is in response to that -- that -- that request for additional information.

Q Okay. So this is -- is your guess or your -- sorry. Did you say it was a guess or it is your belief that this is in response to a retaliation claim --

A Yes.

Q -- allegation? Okay. Did you know that it was considered retaliation by law to fire someone because they exercise their civil rights, under Title VII, against a company other than GMAC?

A Am I aware of -- of -- of that --

Q Did you know that then?

A Yeah. But we didn't -- we didn't terminate you because of the lawsuit you took against --

Q Um --

A -- Mayer Brown.

Q Stick with the questions. Sorry. We don't have time for additional commentary.

A Excuse me.

Q The -- the claim -- the allegation of retaliation was in retaliation for -- for me exercising my rights against another company. So I was wondering why your response dealt with retaliation for a discrimination complaint within GMAC?

A I -- looking at the documents we have in front of us today, Venus, Exhibit 2 talks through your -- your charges or your -- your claims that have been filed. And we didn't take any personnel action in -- I'm reading, I'm sorry. Just a moment, please.

Q Um-hmm.

A I'm sorry. I had to review your Exhibit 2. I -- and I apologize. Can you, please, restate the question?

Q My question -- I'm not sure that I'm restating it exactly how it was stated -- my question is that I made a claim that GMAC was retaliating against me for filing a lawsuit -- an EEOC charge -- against Mayer Brown.

And I'm wondering why -- I want to know why

Ally is addressing -- in this paragraph -- is addressing retaliation as if I claimed that GMAC terminated me because I complained of discrimination before I was terminated?

A Okay. I think I understand, now, better. Thank you for giving me the chance to review the document. I believe what -- what -- what I was trying to state, in that sentence, is that you were claiming discrimination and it wasn't until after you had left the employment setting, did we know that you were -- you were -- you were charged that you were making the complaint of discrimination.

And so we clearly didn't take any, you know, any action against you as a result of -- of -- of that claim of discrimination.

Q Okay. Did someone tell you I made a claim that you retaliated me -- against me for making the claim of discrimination against GMAC?

A I'm reviewing the 2009 -- my 2009 response to Barry Folk for Complaint Number 430-2009-03425. And the introductory statement says:

This letter and attached document service GMAC's position statement in response to the allegation of discrimination based on race, sex, and retaliation made by complainant, Venus Springs.

Q What -- what is that in answer to? Is that answering my question?
A I -- it's an attempt, yes, please.
Q I'm not trying to insult you. I just wanted to know. I just wasn't sure. Okay. I -- I don't think you understand my question. Okay.

Did -- did you answer the question when I asked did you realize that it's a considered retaliation if -- if another company fired an employee because they took -- they filed an EEOC charge against an entirely different company?
A Yes. I am aware of that.
Q Okay. And were you aware of that when you responded to this letter in January 2010?
A Am I aware of the -- the --
Q Were you aware of it then? You say you are aware of it. Were you aware of it when you responded to this letter in 2010?
A Yes. "It" being the -- "it" being the law that you may not discriminate against an -- an -- an individual for filing a -- a -- a -- a complaint? Absolutely, I was aware of it then and now.
Q Well, filing a complaint not just against GMAC, but another company?
A Yes. Yes, I --

Q Okay.
A -- understand.
Q Did you understand that that was my claim, that was my allegation? Because it's not addressed in this response. So were you -- were you aware that my claim, at that time, was that GMAC retaliated against me for filing a charge against Mayer Brown?
A Yes. I believe I did know that.
Q Okay. Does Ally or GMAC have -- have a policy and procedures regarding compliance with the Equal Employment Opportunity Act?
A Yes. There is a policy for the EEO. And it also --
Q Okay.
A In part, it's also covered in the Code of Conduct. But, yes, there's a -- it's a stand-alone policy.
Q So there's a stand-alone EE -- what's the -- what's the name of the policy?
A The Global Equal Opportunity Employment Policy.
Q And what is equal -- what does "equal opportunity" mean, according to that policy?
A The policy statement states:

It is the policy of Ally to comply with all applicable laws and regulations related to fair employment. Ally hires, promotes, trains, and pays based on merit, experience, or other work-related

criteria. Ally values the wide range of backgrounds of its employees and strives to create work environments that reasonably accept and tolerate differences, while promoting productivity and teamwork.

It goes on to say each -- under employment standards, it says:

Each individual has the right to work in an atmosphere that promotes equal opportunity and prohibits unlawful discriminatory practices, including harassment and discrimination, based on age, race, color, sex, religion, national origin, disability, sexual orientation, pregnancy status, marital status, veteran status, genetic disposition or any other status protected by law.

This policy applies to all employees, customers, vendors, and guests, at all locations where Ally conducts business.

It goes on to say in Section 7 -- 7.0, the Accountability:

It is the responsibility of every individual to report any alleged discrimination or harassment witnessed or experienced. Allegations of harassment and discrimination will be promptly investigated. Retaliation against anyone who reports a suspected violation to this policy or who cooperates in the

investigation of any violation -- alleged violation -- will not be tolerated.

Management will take disciplinary action -- action, up to and including, termination of the employment or business relationship in response to a violation of this policy.

Q Does the policy contain an internal company procedure for resolving discrimination issues in the workplace?

A This -- there is -- I don't understand. Can you, please, give me more information of what you're asking?

Q If on that policy that you just referred to, is there a procedure that talks about how to resolve a -- if there are issues of discrimination --

A Yeah.

Q -- in -- in employment?

A Yes.

Q If somebody has an issue, is there --

A Thank you. I'm sorry. I just needed to understand it. Section 9.0 is the policy, Monitoring and Maintenance, and it states:

Any individual who believes that there's been a violation of this policy must immediately report the violation to management, the ethics hotline, or the human resources business partner. Human resources will work with Ally legal to determine the next step.

Q Is -- is that -- so that's a policy for a manager that believes it or an employee who's having difficulty?

A This is for -- this is for everyone. This is -- this is a witness, an employee, a manager, a vendor. You know, it's -- it's intended to be at any -- at any of our work sites, with any individuals in the work site, where we could -- you know, where there is a potential concern that becomes addressed. It's the expectation to report it through that chain.

Q So how is that policy distributed?

A It's -- it's available out on our portal.

Q And how are employees made aware of it?

A Employees, through the orientation and the ongoing policy affirmations, are encouraged to go out and review all the policies.

Q "Encouraged," is that what you said?

A Yeah. Yes. I mean, I -- I don't know, concretely, if the equal opportunity employment policy is one of the annual affirmation policies, but it is clearly stated and we have a -- we have a policy site. You're asked, through the training, to go out and look at the -- the policies and familiarize yourself with them. And it's -- it's, you know, clearly out there.

Q Is there a specific training on this policy, on this EEOA policy?

A I don't -- I don't believe there is a specific training for this individual policy.
Q Does the policy include anti-retaliation language?
A Yes. I'm sorry. I -- I thought I had read that. Section --
Q Perhaps you did, but I didn't heard it.
A Yeah, I'm sorry. Section 7.0, under Accountability, it states:

It is the responsibility of every individual to report any alleged discrimination or harassment witnessed or experienced. Allegations of harassment and discrimination will be promptly investigated -- investigated. Excuse me. Retaliation against anyone who reports a suspected violation to this policy or who cooperates in the investigation of an allegation -- of an alleged violation will not be tolerated.

Management will take disciplinary action, up to and including, termination of the employment or business relationship in response to a violation of this policy.

Q So the retaliation language only deals with this as an internal -- retaliation from an internal complaint?
A Yeah. I've read to you, you know, my understanding of any -- you know, any place in which retaliation is -- is -- is read --

Q So --
A -- is covered.
Q So that's -- that's the only part of the policy that deals with retaliation?
A Yes, to my knowledge.
Q Did you have training on the -- this policy?
A I've looked at the policy numerous times. I cannot recall a specific training. I'm certain we reviewed policies through, you know, our annual HR meetings, but I don't recall the specifics. I would state that this policy is not unlike any of the policies of any of the employment settings I've had.
Q What does that mean, exactly, what you just said; "It's not unlike any of the other policies."

Can you -- are you saying that it's -- it's a standard policy that you've seen at other employers? Is that what you're trying to say?
A Yes. That, you know, that -- that we -- that there's nondiscrimination, nontolerance of, you know, any of the concerns around unlawful discriminatory practices -- harassment, discrimination -- based on any of the protected classes.
Q So there's nothing special about this policy, it's just standard. Is that what you're saying?
A I believe it is, yes.

Q Okay. What is the Equal Employment Opportunity Commission, to your knowledge?

A It's a federal body that -- that -- that governs the -- all of the protections of the different -- the different laws and statutes.

Q And what is your understanding of the EEOC investigative process?

A So, generally, an individual who has a -- a -- a complaint, whether or not they're an active employee or former employee, have the opportunity to bring that forward through either a -- a state level or, you know, the -- a federal level. And they can make their complaint, you know, known to an officer.

I -- I -- I've not sat on the other side, but, you know, my understanding is that that officer then reviews the -- the complainant's charges or allegations and creates -- you know, starts an investigation, asking the employer for information on the charge.

And then, you know, in response then considers and makes determinations as to whether or not the -- the -- the officer or their -- their management team feels that there's -- there's been a -- you know, issues and a right to sue or -- or closes it out.

Q Are you familiar with the Civil Rights Act of 1964?

A Yes, I am.

Q How did you come to learn about the act?
A Both my undergrad and graduate training back in the early '80s and early '90s. I've always known about it and I --
Q Okay. What is your understanding of the law?
A It -- it gives protection for individuals in protected classes.
Q Are you familiar with those protected classes?
A Yes. And -- and the fact that they've, you know, they've been, you know, revised and amended over time and -- and I reviewed them here in the -- in the policy statement.
Q Okay. What are those protected classes?
A As I mentioned, you know, depending on the moment in time over history, they've -- they've adjusted, but age, race, color, sex, religion, national origin, disability, sexual orientation, pregnancy status, marital status, veteran status -- well, a different -- different -- obviously a different piece -- any other, you know -- any other protection by law.
Q Do you know if -- if it -- if it's the Civil Rights Act of 1964 that prohibits retaliation against an -- an employee who brings a claim of race discrimination?
MR. JENKINS: Objection. Counsel, or Ms. Springs, I don't think this witness is here to offer

a legal opinion. You're asking --

MS. SPRINGS: Um --

MR. JENKINS: -- her what her understanding is, but as to the contents of a particular statute versus the policy, that I think you've exhausted her knowledge on, is it necessary to go through the -- the details or the regulations under the statutes?

MS. SPRINGS: Is that an objection?

MR. JENKINS: Yes, it is.

MS. SPRINGS: Okay.

MR. JENKINS: With respect --

MS. SPRINGS: I --

MR. JENKINS: -- to this line of questioning, we're going to go along with it for a while, but as you get deeper into these regulations, beyond this witness' understanding, there will be a natural ending point from our standpoint.

MS. SPRINGS: You're -- you're wasting time.

BY MS. SPRINGS:

Q This is my last question and can you, please, answer the question?

A If this is your last question, may I trouble you --

Q On the Civil Rights Act of 1964.

A Yes. I -- it also includes retaliation, to the best of my knowledge.

Q How does this policy -- the EEOA policy of Ally -- come into play when an employee is terminated? Does anybody bring it to a supervisor's attention? What happens?

A So you're asking me in, you know, sort of in the daily -- in the daily walk of an HR person dealing with a manager, do we expressly list out the equal opportunity employment policy and -- and --

Q I said in connection with an employee's termination.

A The requirements of -- of an HR person and in consultation with an attorney and the management, we assure that any action that's being contemplated is nondiscriminatory, nonretaliatory.

Q Since employees -- supervisors are not trained on this policy, do you -- when they're about to terminate, do you bring -- give them a copy of the policy and tell them to read it?

A No. But I do want to draw your attention, Venus, that -- that the nondiscrimination, nonretaliation type language exists in the Code of Conduct.

And so while I -- while I couldn't affirm to you, concretely, that there's been specific training on the equal opportunity employment, I do want to draw your attention that in the Code of Conduct and ethics policy, there's specific language around, you know, the -- the stance of the employer on, you know -- you know,

promoting a workplace that's free of harassment and discrimination within -- within the Code of Conduct to which I can positively affirm training has existed.

Q So do you bring that part of the Code of Conduct to an -- to a supervisor's attention -- do you -- when they are about to terminate an employee?

A We certainly go through all of the required lines of questioning, review of the specs and circumstances, and go through the appropriate approvals to ensure that we don't have a case that might be considered.

Q Well, what are the required lines of questioning?

A You know, it's different for each matter, Venus. We look at all of the circumstances, all of the factors. You know, we talk -- you know, we talk to the individual to whom we're considering the employment action and give them the opportunity to explain, from their perspective, what's going on and any concerns they might have.

We then review, like I mentioned, similarly situated cases to see that we, you know, to the best of our knowledge, we're doing -- the action we're contemplating is consistent. And then we review it through the second-level HR leadership and the legal department, who also has the same checks and balances.

Q So you're telling me before you terminate an employee, you review similarly situated cases? How do you get

those cases? Where do you get those cases from?

A Well, there's not a repository available to us or hadn't been, prior to this employee relations department. So we rely on the levels of leadership and the legal department to help us to gain that knowledge.

Q So that's a specific question you ask them, for similar situated cases and how they would handle it?

A Absolutely. We go through and make sure that we're -- what we're doing is consistent with other -- with other -- with other matters.

Q And how do you know that's done? Is there a policy that requires you to do it?

A There is not a policy.

MS. SPRINGS: Okay. It's 1:05. I -- I think I might have another hour and a -- or an hour and a half of questioning. So --

MR. JENKINS: So let's continue.

MS. SPRINGS: -- do you need to get something to eat --

MR. JENKINS: Oh, do you want --

THE WITNESS: No.

MS. SPRINGS: -- or do you want to keep going?

THE WITNESS: You know, with the break that you were gracious enough to provide me, I was able to -- to get enough fuel to -- to make it through this. So I

STATE OF MICHIGAN)
) SS
COUNTY OF MACOMB)

CERTIFICATE OF NOTARY PUBLIC

I, Kelli A. Murphy, a Notary Public in and for the above county and state, do hereby certify that this transcript is a complete, true, and correct record of the testimony of the witness held in this case.

I also certify that prior to taking this deposition, the witness was duly sworn or affirmed to tell the truth.

I further certify that I am not a relative or an employee of or an attorney for a party; and that I am not financially interested, directly or indirectly, in the matter.

In witness whereof, I hereby set my hand this day, Wednesday, October 26, 2011.

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Kelli A. Murphy, CSR-7768
Certified Shorthand Reporter
Notary Public, Macomb County, Michigan
My Commission expires: January 7, 2012