IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-866

Filed: 4 June 2019

Disciplinary Hearing Commission of the North Carolina State Bar, No. 16 DHC 22

THE NORTH CAROLINA STATE BAR, Plaintiff

v.

ROBERT N. WECKWORTH, Jr., Attorney, Defendant

Appeal by Defendant from Orders entered 7 April 2017, 13 April 2017, and 6 October 2017 by the Disciplinary Hearing Commission of the North Carolina State Bar. Heard in the Court of Appeals 14 February 2019.

The North Carolina State Bar, by David R. Johnson, Deputy Counsel, for plaintiff-appellee.

Robert N. Weckworth, Jr., defendant-appellant, pro se.

HAMPSON, Judge.

Factual and Procedural Background

Robert N. Weckworth, Jr. (Defendant) appeals from an Order of Discipline entered by a Disciplinary Hearing Panel of the Disciplinary Hearing Commission (DHC) of the North Carolina State Bar (State Bar), censuring him for violations of the North Carolina Rules of Professional Conduct (RPC). Defendant also noticed

appeal from several interlocutory rulings by the DHC, which are also before us on appeal. The Record, including the evidence presented before the DHC over a two-day hearing on 7 April and 20 June 2017, reflects the following:

In December 2013, Defendant, an attorney licensed by the State Bar, was retained by the Connor[1] family to represent them in child custody litigation involving a minor child, Sally[2], who at the time was in the custody of the Guilford County Department of Social Services (DSS) pursuant to a Petition and non-secure custody order in a Guilford County juvenile proceeding (the Juvenile Case). DSS's involvement with Sally's biological parents began in September 2012, due to alleged domestic violence and substance abuse issues.

In October 2012, DSS received a report from law enforcement that Sally's biological mother, Louise[3], had been the victim of physical domestic abuse by Sally's biological father. Louise was subsequently accepted into a treatment program at Mary's House, a residential facility for single mothers recovering from substance abuse and their children. It was here Louise first met the Connors, who were volunteering at the facility. Louise became friendly with the Connors and introduced them to Sally.

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[1] Pseudonyms are used to protect the privacy of non-parties who were parties to the underlying legal proceedings and the minor child.

[2] A pseudonym.

[3] Also a pseudonym.

On 5 February 2013, DSS received another report alleging Louise had left Mary's House and moved in with Sally's biological father. As a result, DSS held a team meeting with the biological parents, who thereafter entered into service agreements that required the parents to, *inter alia*, complete a substance abuse assessment and follow any recommendations. In addition, the biological parents agreed to voluntarily place Sally with the Connors. Louise testified: "At that time I was under the impression that they merely wanted to help, and I looked at them as a backup plan if I was unable to be reunified with my daughter." Louise further testified she wanted to avoid Sally being placed in the foster-care system.

By September 2013, both biological parents were continuing to fail in their respective treatment plans, and on 26 September 2013, DSS filed its Petition in the Juvenile Case. The same day, Danielle Caldwell (Caldwell) was appointed by the court to represent Louise. Placement of Sally remained with the Connors.

However, by November 2013, concerns were raised, including by Caldwell, that the Connors were acting in a manner contrary to DSS's efforts to reunite Sally with Louise, including by calling Sally by the name "Emma" and by interfering with the parents' visitation and DSS's own efforts to provide services. On 21 November 2013, following another team meeting—which counsel for the parties in the Juvenile Case attended—where these concerns were discussed, Sally was removed from her placement in the Connors' home. The removal of Sally from the Connors' home was

done over the express wishes of Louise, who orally told Caldwell she was fired at this meeting. Nevertheless, Caldwell continued to serve as court-appointed counsel for Louise, no request was made to the trial court to discharge Caldwell, and no order allowing Caldwell to withdraw was entered at the time.

On or around 20 December 2013, the Connors posted a request for legal services to a legal-referral website, providing a synopsis of their situation and seeking someone to assist in returning Sally to them. Defendant responded to the request, and thereafter Defendant and Mr. Connor spoke on the phone about the case.

A few days later, on 23 December 2013, the Connors invited Louise to dinner. The same evening, Defendant received a voicemail from Mr. Connor asking to meet and discuss retaining Defendant's services. Defendant returned the call and agreed to drop by the Connors' residence that evening. When Defendant arrived, the Connors and Louise were all there. Louise began by telling Defendant she wanted Sally returned to the Connors and expressing her displeasure with both DSS and Caldwell. Defendant testified it was "clear that [Louise] and the [Connors] were on the same page." At the hearing before the DHC, Defendant presented evidence it was represented to him at this meeting that Louise was no longer represented by Caldwell and wanted to hire him. Defendant testified he demurred, noting the conflict of

interest in representing both parties.[4] After Louise spoke to Defendant, Defendant and Mr. Connor retreated to the nursery the Connors had set up for Sally in order to discuss the matter further. The Connors retained Defendant on 26 December 2013.

On 27 December 2013, Defendant contacted Connie Bowman (Bowman), a foster-care social worker with DSS assigned to the Juvenile Case, to inquire about DSS's position as to Sally's placement. Bowman informed Defendant DSS was represented by the Guilford County Attorney's Office and that Robert W. Brown, III (Brown) was the attorney assigned to the Juvenile Case.

Defendant further testified he later learned from the Connors that Louise may be willing to sign a written statement in support of their efforts to regain custody over Sally. Defendant encouraged the Connors to obtain such a statement—saying, "That would be great. It shows everybody is on the same page." The Connors procured an affidavit dated 2 January 2014 from Louise, which expressed her support for the Connors' position, including: (A) stating she agreed with the Connors' position regarding visitation, which would negatively impact her visitation with Sally; (B) having no objection to the Connors calling her child "Emma"; (C) acknowledging "mistakes" and "choices" that adversely impacted her ability to care for Sally; (D)

[4] Louise testified before the DHC that at this meeting she asked Defendant if he had contacted Caldwell and Defendant responded he had left her voicemails. Defendant, however, denied leaving Caldwell voicemails prior to this meeting on the 23rd. Caldwell testified Defendant had left her a voicemail sometime between 20 December and 23 December 2013, which she did not return.

expressing it was in Sally's best interest to be in the Connors' custody; and (E) indicating her wishes for Sally to be adopted by the Connors if she was not reunified with Louise. Although Louise testified the affidavit was the Connors' idea, Ms. Connor testified it was a "mutual decision."

Defendant filed a motion to intervene in the Juvenile Case on behalf of the Connors on 3 January 2014. The same day, Defendant filed a civil complaint on behalf of the Connors against Louise, Sally's biological father, and DSS (the Civil Case), seeking custody of Sally. He attached Louise's affidavit to this complaint. Caldwell was never contacted about the affidavit, and Defendant did not obtain Caldwell's consent prior to utilizing it.

On 6 January 2014, Defendant approached Guilford County District Court Judge Michelle Fletcher (Judge Fletcher), asking for an immediate hearing on emergency child custody and placement of Sally. Judge Fletcher was the judge assigned to the Juvenile Case but on this day was sitting in traffic court. Defendant did not notify DSS's counsel before doing so, and at the time of Defendant's request, neither DSS nor Caldwell had been served with the complaint in the Civil Case.

Judge Fletcher contacted Brown, who immediately drove to Greensboro to attend a hearing that same afternoon on Defendant's request. Brown testified he received a call from Judge Fletcher, stating Defendant was in her office requesting emergency custody. Caldwell testified she received a call from Brown, stating

Defendant was trying to get *ex parte* emergency custody of Sally on behalf of the Connors; however, she did not attend this hearing.

The hearing was conducted, Defendant did not present any witnesses, and Judge Fletcher entered an order finding the Connors failed to allege or show grounds sufficient to support an award of emergency temporary custody. Judge Fletcher's order denying Defendant's motion specifically found: "At some time on January 6, 2014, [Defendant] approached the undersigned district court judge to request that she immediately consider granting the [Connors] temporary custody of [Sally]."

Based on these allegations, in its 27 June 2016 Complaint, the State Bar asserted Defendant's conduct constituted grounds for discipline under N.C. Gen. Stat. § 84-28(b)(2) through four separate violations of the RPC: (1) by discussing custody of Sally with Louise at the Connors' home and by obtaining and filing Louise's affidavit without Caldwell's consent, Defendant communicated with a represented client in violation of RPC 4.2(a); (2) by attempting to discuss custody of Sally with Bowman without Brown's consent, Defendant communicated with a represented client in violation of RPC 4.2(a); (3) by approaching Judge Fletcher *ex parte* and orally seeking a grant of temporary custody without first notifying Brown, Defendant engaged in an *ex parte* communication with a judge without adequate notice to an opposing party in violation of RPC 3.5(a)(3); and (4) by alleging the Connors were entitled to temporary

custody and failing to present any evidence in support of his request, Defendant brought and asserted a frivolous claim in violation of RPC 3.1.

On 30 March 2017, Defendant filed a Motion to Compel, seeking to compel the State Bar to respond to certain Interrogatories and Requests for Production of Documents, and a Request for Prehearing Conference. On 7 April 2017, the DHC entered an Order Denying Defendant's Motion to Compel and Request for Prehearing Conference. The DHC found the State Bar contacted Defendant on multiple occasions prior to the filing of Defendant's Motion to discuss Discovery and schedule a Prehearing Conference. Specifically, the DHC found the parties ultimately met for a Prehearing Conference on 30 March 2017, at which time Defendant hand-delivered his Motion to Compel. The DHC concluded Defendant had "failed to confer in good faith" to secure Discovery and had "failed to timely pursue" the subject of his Motion to Compel. The DHC therefore denied Defendant's Motion to Compel and Request for Prehearing Conference.

On 4 April 2017, Defendant issued a subpoena to the Clerk of Superior Court for Guilford County, commanding the Clerk to appear before the DHC on 7 April 2017 and produce audio recordings of the Juvenile Case proceedings before Judge Fletcher. In response, the Clerk filed a Motion to Quash Subpoena. The same day, Defendant also issued a subpoena to Judge Fletcher, commanding the Judge to appear and testify before the DHC on 7 April 2017 concerning the proceedings before her, and in

response, Judge Fletcher filed a Motion to Quash Subpoena. On 7 April 2017, the DHC entered two Orders on these Motions, quashing both subpoenas on the grounds that the two-day time window failed to allow reasonable time for compliance and constituted an undue burden. Additionally, the DHC noted Judge Fletcher enjoyed judicial immunity, including a testimonial privilege.

On 6 October 2017, the DHC entered its Order of Discipline. In its Order, the DHC concluded Defendant had violated the RPC in two ways: (1) by failing to obtain Caldwell's consent prior to the use and filing of Louise's affidavit, in violation of RPC 4.2(a); and (2) by failing to notify opposing counsel prior to his *ex parte* communications with Judge Fletcher, in violation of RPC 3.5(a)(3). The DHC determined the evidence was insufficient to show Defendant's contact with Bowman violated RPC 4.2(a) or that Defendant's claim before Judge Fletcher violated RPC 3.1.

The DHC entered additional findings regarding discipline, noting Defendant's prior disciplinary offenses in North Carolina, Defendant's substantial experience in the practice of law, Defendant's refusal to acknowledge wrongdoing, and Louise's vulnerability resulting from her history of substance abuse and ongoing recovery treatment. Based on these findings, the DHC concluded Defendant's conduct, while not serious enough to warrant a suspension of his license, warranted Censure "because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the conduct and would send the wrong message to attorneys and

the public about the conduct expected of members of the Bar of this State." The DHC censured Defendant and taxed him with fees and costs. Defendant timely filed Notice of Appeal.

Issues

On appeal, Defendant raises essentially three arguments: (I) Whether the DHC correctly determined Defendant violated RPC 4.2(a) by communicating with a represented party and RPC 3.5(a)(3) by attempting to engage in impermissible *ex parte* communication with Judge Fletcher; (II) Whether the DHC's findings of fact were sufficient to support the discipline imposed; and (III) Whether the DHC violated Defendant's constitutional due process rights in denying his Motion to Compel and in quashing the two subpoenas.

Standard of Review

Appeals from a decision of the DHC are reviewed pursuant to the "whole record test." *N.C. State Bar v. Talford*, 356 N.C. 626, 632, 576 S.E.2d 305, 309 (2003) (citation and quotation marks omitted). The whole-record test

> 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[.] Such supporting evidence is substantial if a reasonable person might accept it as adequate backing for a conclusion. The whole-record test also mandates that the reviewing court must take into account any contradictory evidence or evidence from which conflicting inferences may be drawn. 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. Ultimately, the reviewing court must apply all the aforementioned factors in order to determine whether the decision of the lower body, e.g., the DHC, has a rational basis in the evidence.

Id. at 632, 576 S.E.2d at 309-10 (alteration in original) (footnotes, citations, and quotation marks omitted).

"However, the mere presence of contradictory evidence does not eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the committee." *N.C. State Bar v. Key*, 189 N.C. App. 80, 84, 658 S.E.2d 493, 497 (2008) (citations omitted). Thus, "[t]he 'whole record' test does not allow the reviewing court to replace the [Committee's] judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de novo*." *North Carolina State Bar v. Nelson*, 107 N.C. App. 543, 550, 421 S.E.2d 163, 166 (1992) (alteration in original) (citations and quotation marks omitted), *aff'd per curiam,* 333 N.C. 786, 429 S.E.2d 716 (1993).

Analysis

I. Violations of the Rules of Professional Conduct

In his first argument, Defendant contends the DHC's decision "was unsupported and contrary to the evidence, contrary to existing law, did not have a

rational basis in the evidence, and was completely arbitrary and unsupported by reason." We disagree.

A. Rule 4.2

The DHC, in its Order of Discipline, found Louise was represented by Caldwell in the Juvenile Case, Defendant knew Caldwell represented Louise, and Defendant nonetheless discussed Sally's custody with Louise without obtaining Caldwell's consent. The DHC also found the Connors, at Defendant's direction, secured Louise's affidavit, again without Caldwell's consent. The DHC concluded, "[b]y failing to obtain Caldwell's consent prior to the use and filing of [Louise's] affidavit with the [Connors'] complaint in [the Civil Case], Defendant violated Rule 4.2(a)[.]"

Rule 4.2 of the RPC states:

> During the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. It is not a violation of this rule for a lawyer to encourage his or her client to discuss the subject of the representation with the opposing party in a good-faith attempt to resolve the controversy.

N.C. St. B. Rev. R. Prof'l Conduct r. 4.2(a).

Defendant contends "[t]he overwhelming, uncontroverted evidence in this matter is that Caldwell did not at any time ever represent [Louise] in the civil case[.]" Defendant concedes Caldwell represented Louise in the Juvenile Case but contends

because her representation was limited to the Juvenile Case, he had no obligation to seek Caldwell's consent to use Louise's affidavit in the Civil Case. Defendant also asserts there could be no violation of RPC 4.2 because he did not directly procure the affidavit.

However, Defendant ignores the DHC's finding that he did communicate directly with Louise regarding custody of Sally. This communication began the series of events culminating in Defendant encouraging the Connors to obtain a statement helpful to their case from Louise and, further, his use of Louise's affidavit in the Civil Case without Caldwell's consent in an effort to obtain custody of Sally for his clients.

Moreover, Defendant's interpretation of RPC 4.2 is too narrow. Comment 8 to the Rule makes clear the Rule "applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates." N.C. St. B. Rev. R. Prof'l Conduct r. 4.2 cmt. 8.

Here, the matter under discussion was custody of Sally. Louise was represented by Caldwell in the Juvenile Case, which concerned custody of Sally. Defendant filed the Civil Case on behalf of the Connors, seeking custody of Sally and naming Louise and DSS as adverse parties, as an alternative to the Juvenile Case. Defendant was clearly aware the Juvenile Case and Civil Case overlapped on the issue of custody of Sally. Indeed, Defendant specifically approached Judge Fletcher

on his emergency custody motion precisely because Judge Fletcher was presiding over the Juvenile Case. Applying the whole-record test, the DHC's findings were supported by substantial evidence rising to the level of clear, cogent, and convincing, and its findings support the conclusion Defendant violated RPC 4.2 by communicating with Louise regarding custody of Sally while knowing Louise was represented by Caldwell.

B. Rule 3.5

The DHC, in its Order of Discipline, also found three days after filing the complaint in the Civil Case, Defendant approached Judge Fletcher and communicated with her *ex parte*, requesting she immediately consider granting his motion for temporary custody; Defendant did not notify Brown, Caldwell, or Edward Branscomb (Branscomb), counsel for Sally's birth father, before communicating *ex parte* with Judge Fletcher; and at the time of the communication, DSS had not been served with the complaint in the Civil Case. The DHC concluded, "[b]y failing to notify opposing counsel Brown, Caldwell and Branscomb before his *ex parte* communications with Judge Fletcher on January 6, 2014, Defendant engaged in an *ex parte* communications [sic] with a judge without adequate notice to an opposing party in violation of Rule 3.5(a)(3)."

RPC 3.5 states a lawyer shall not, "unless authorized to do so by law or court order, communicate *ex parte* with the judge or other official regarding a matter

pending before the judge or official[.]" N.C. St. B. Rev. R. Prof'l Conduct r. 3.5(a)(3). The Rules further define *ex parte* communication as "a communication on behalf of a party to a matter pending before a tribunal that occurs in the absence of an opposing party, without notice to that party, and outside the record." N.C. St. B. Rev. R. Prof'l Conduct r. 3.5(d)(1).

Defendant contends he approached Judge Fletcher while she was conducting Criminal District Traffic Court and merely stated he wished to know when Judge Fletcher would be available to hear his emergency custody matter. He argues this communication was "of an entirely administrative nature, concerning only the timing and scheduling for a hearing on Defendant's request for emergency custody." It is true, Defendant presented his own testimony that he approached Judge Fletcher, while she was sitting in Traffic Court, for the purpose of ascertaining her availability to hear his motion.[5] "However, the mere presence of contradictory evidence does not eviscerate challenged findings, and the reviewing court may not substitute its judgment for that of the committee." *Key*, 189 N.C. App. at 84, 658 S.E.2d at 497 (citations omitted).

[5] It is not clear, even had the DHC determined this communication was merely for scheduling purposes, this would have exonerated Defendant in the absence of exigent circumstances or necessity for the administration of justice, where Defendant made no efforts to contact opposing counsel prior to approaching Judge Fletcher. *See* N.C. St. B., Formal Ethics Op. 3 (1997); N.C. St. B., Formal Ethics Op. 12 (1998).

Other evidence shows despite being informed Brown represented DSS on 27 December 2013 and filing the Civil Case on 3 January 2014, Defendant made no efforts to contact Brown about the Civil Case or serve him (or other opposing counsel) prior to approaching Judge Fletcher on 6 January 2014. Defendant approached Judge Fletcher while she was on the bench in Traffic Court. Defendant testified: "I was asking for an immediate hearing on emergency [child] custody and placement of this child." Brown testified he received a call from Judge Fletcher, stating Defendant was in her office requesting emergency custody. Judge Fletcher's order denying Defendant's Motion specifically found: "At some time on January 6, 2014, [Defendant] approached the undersigned district court judge to request that she immediately consider granting the [Connors] temporary custody of [Sally]."

While the evidence before the DHC of Defendant's *ex parte* interaction with Judge Fletcher is conflicting and capable of interpretation, the whole-record test "does not allow the reviewing court to replace the [Committee's] judgment as between two reasonably conflicting views[.]" *Nelson*, 107 N.C. App. at 550, 421 S.E.2d at 166 (alteration in original) (citations and quotation marks omitted). The DHC's determination—Defendant was seeking to conduct an immediate hearing in the absence of opposing counsel—is supported by substantial evidence in the record.

Defendant further contends he would, nevertheless, have been fully justified in immediately seeking an *ex parte* emergency temporary custody order under N.C.

Gen. Stat. § 50-13.5. However, N.C. Gen. Stat. § 50-13.5(d)(3) limits the instances in which an *ex parte* emergency temporary custody order changing custody of the child may be entered:

> A temporary order for custody which changes the living arrangements of a child or changes custody shall not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts.

N.C. Gen. Stat. § 50-13.5(d)(3) (2017).

Defendant, however, makes no argument on appeal that his Motion qualified for an *ex parte* order.[6] Thus, where the DHC's findings are supported by substantial evidence rising to the level of clear, cogent, and convincing, and its findings support the conclusion Defendant violated RPC 3.5 by engaging in improper *ex parte* communication in an effort to seek an immediate temporary custody order, we conclude the DHC did not err.

II. Censure

After concluding Defendant violated Rules 4.2 and 3.5 of the RPC, the DHC entered additional findings regarding discipline. The DHC found Defendant had prior disciplinary offenses; Defendant had substantial experience in the practice of

[6] Our review of the Record indicates Defendant's contention in the Civil Case was that an immediate emergency change of custody was required because Sally had lost approximately one pound in weight after being removed from the Connors and that in a foster-care placement, Sally might be sent to a daycare.

law; Defendant refused to acknowledge the wrongful nature of his conduct; and at the time the events at issue unfolded, Louise had a history of substance abuse and was in a recovery program—the inference being Louise was particularly vulnerable. The DHC further found Defendant's actions in utilizing Louise's affidavit were damaging to Louise's interests in reunification with Sally. The DHC also found: "The orderly and efficient resolution of legal issues and the concept of judicial impartiality are compromised when a lawyer fails to provide adequate notice to all parties and lawyers interested in a legal proceeding before communicating *ex parte* with the tribunal."

The DHC then concluded, based on these findings, a number of aggravating factors existed. The DHC next concluded: "Defendant's conduct resulting in the rule violations found by the Hearing Panel caused potential significant harm to the administration of justice and the legal profession." The DHC then considered lesser sanctions and determined they would be insufficient "because of the significant potential harm to the administration of justice and the legal profession caused by Defendant's conduct." The DHC determined Censure was the appropriate discipline.

In *Talford*, our Supreme Court outlined "a five-tiered descending scale of punishments" available to the DHC in sanctioning an attorney. 356 N.C. at 636, 576 S.E.2d at 312. With regard to censure, the Court noted the sanction was "issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm

to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license." *Id.* at 637, 576 S.E.2d at 312 (citation and quotation marks omitted). The Court further observed censure "is distinguished from a reprimand by virtue of a required showing that the misconduct either caused or threatened *significant* harm to the specified entities." *Id.* "[I]n order to justify the imposition of a more severe sanction, such as censure, suspension, or disbarment, the attorney's misconduct must show either significant harm or the *potential* for *significant* harm." *Id.* at 640, 576 S.E.2d at 314. The DHC's order should explain "how the attorney's actions resulted in significant harm or potential significant harm to the entities listed in the statute[.]" *See id.* at 638, 576 S.E.2d at 313.

Defendant does not challenge the aggravating factors present in the DHC's analysis: (1) Defendant's prior disciplinary offenses; (2) the fact there were multiple violations in the instant case; (3) Defendant's refusal to acknowledge the wrongfulness of his conduct; (4) the vulnerability of the victim; and (5) Defendant's experience in the practice of law. Rather, he contends the DHC did not adequately find his misconduct "either caused or threatened significant harm." Defendant argues in order to impose Censure, the DHC had to show how Defendant's actions resulted in significant harm and why Censure was the only sufficient sanction. We agree with Defendant in limited part.

Notably, on appeal, both parties focus on the potential harm to Louise; however, the DHC's Order makes clear it is imposing Censure on the basis of the potential significant harm to the administration of justice and the legal profession. The DHC references these concepts and generally found the negative impact of impermissible *ex parte* communications on the efficient resolution of legal issues and judicial impartiality. However, the DHC made no ultimate finding or conclusion explaining how Defendant's misconduct in this case specifically resulted in potential significant harm to the administration of justice and the legal profession. Consequently, we remand this matter to the DHC for the limited purposes of "allowing the DHC to make proper findings of fact and conclusions of law[,] and reconsideration of [D]efendant's sanction pursuant to N.C. Gen. Stat. § 84-28(c)." *N.C. State Bar v. Sossomon*, 197 N.C. App. 261, 279, 676 S.E.2d 910, 922 (2009).

III. Denial of Defendant's Motion to Compel and Granting of the Motions to Quash Defendant's Subpoenas

In his third argument, Defendant contends the DHC erred by denying his Motion to Compel and by granting the Motions to Quash Subpoenas issued to Judge Fletcher and the Guilford County Clerk of Court. We note at the outset Defendant claims the DHC's ruling on these Motions resulted in a violation of Defendant's due process rights under both the State and Federal Constitutions. As Defendant did not raise any constitutional claim below, we will not address those claims for the first time on appeal. *See State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982)

("[A] constitutional question which is not raised and passed upon in the trial court will not ordinarily be considered on appeal." (citations omitted)).

Moreover, a trial tribunal's rulings on both motions to compel and motions to quash subpoenas are generally reviewed only for an abuse of discretion. *See Belcher v. Averette*, 152 N.C. App. 452, 455, 568 S.E.2d 630, 633 (2002) (denial of motion to compel reviewed for abuse of discretion); *In re A.H.*, 250 N.C. App. 546, 553, 794 S.E.2d 866, 872 (2016) (order quashing subpoenas reviewed for abuse of discretion).

Here, the DHC denied Defendant's Motion to Compel on the basis he failed to confer with the State Bar in good faith and failed to timely pursue his Motion. Similarly, the DHC quashed Defendant's subpoenas on the basis they were untimely and created an undue burden on the witnesses. After review of the DHC's findings and the Record, we conclude the DHC did not abuse its discretion in its rulings on Defendant's Motions.

Conclusion

Thus, for the foregoing reasons, we hold the DHC did not err in determining Defendant violated the Rules of Professional Conduct, denying Defendant's Motion to Compel, and quashing Defendant's subpoenas. However, we remand this matter to the DHC for further findings of fact and conclusions of law, and to reconsider Defendant's sanction as it considers warranted. *See Sossomon*, 197 N.C. App. at 279, 676 S.E.2d at 922.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Chief Judge McGEE and Judge ZACHARY concur.

Report per Rule 30(e).