

## Professionalism in the Courthouse

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### Agenda

<b><u>March 22</u></b>		<b><u>April 5</u></b>
12:00 pm	Introduction	2:00 pm
12:05	Enhancing and Maintaining One's Own Professionalism	2:05
12:30	Facilitating the Professionalism of Others	2:30
12:50	Question & Answer	2:50
1:00	End	3:00

### Course Description

This course will focus on developing your own professionalism and interacting with others in the courthouse who may not be exhibiting proper conduct.



## Online Resources

- Website for the Chief Justice’s Commission on Professionalism, <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/Default.asp>
- Wright, Melvin. “I’ll See You in Court!” N.C. State Bar Journal, February 2012, <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/Documents/seeyouincourt-feb2012.pdf>
- N.C. State Bar Rules of Professional Conduct, <http://ncbar.gov/rules/rpcsearch.asp>

## Presenters

### **Amy Funderburk**

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Amy Funderburk is an assistant general counsel to the NCAOC Office of General Counsel. Since 2010, she has advised Clerks of Court and other judicial officials as to Sovereign Citizens and varied areas of civil law including estate administration, civil litigation, incompetency matters, and other special proceedings.

Before joining the Judicial Branch, Ms. Funderburk served as an Assistant Attorney General for the State of North Carolina where her primary responsibilities included representing the North Carolina Department of Health and Human Services in healthcare facility regulation, personnel matters, and workplace violence litigation. She began her legal career in the private sector and spent several years’ in general civil practice. Ms. Funderburk also holds a graduate degree in counselor education and prior to law school worked with behaviorally disordered children in the mental health system.

Ms. Funderburk serves on the Tenth District Grievance Committee of the Wake County Bar and is a certified mediator with the Office of State Personnel. She also serves on the Board of Tri It For Life, a women’s triathlon training organization, and is an adjunct professor of law at the Norman Adrian Wiggins School of Law.



## Presenters

### **Matt Osborne**

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Matt Osborne serves as an assistant general counsel with the NCAOC Office of General Counsel, where his work focuses on criminal and motor vehicle law, and legislative tracking. Matt joined the NCAOC in April 1996.

Prior to joining the NCAOC, Matt served as a law clerk for the NC Supreme Court, spent time in the private practice of law, and worked for the NC Department of Justice. He received his undergraduate and law degrees from UNC-Chapel Hill.

His interests include heavy metal, punk, jazz, New Orleans Saints football, and Kansas City Royals baseball. Originally from Cabarrus County, he now resides in Durham with his wife and two daughters.

### **Melvin Wright, Jr.**

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Melvin Wright, Jr. received his undergraduate degree from the University of North Carolina in 1967 and his law degree from Wake Forest University School of Law in 1973. Mel was a private practice attorney for twenty-six years until he became the Executive Director of the North Carolina Chief Justice's Commission on Professionalism in November 1999.

In addition to his many years in private practice, he has served as President of the Forsyth County Bar Association and the 21st Judicial District, Chairman of the Ethics and Grievances Committee of the Forsyth County Bar Association, officer of Executive Committee of the Forsyth County Bar Association and the Forsyth County Criminal Defense Lawyers Association, Chairman of the National Consortium on Professionalism Initiatives, Chairman of the American Bar Association Standing Committee on Professionalism and on the Board of Directors for the North Carolina Bar Association's BarCARES.

He currently serves as a member of the National Legal Mentoring Consortium, the North Carolina Bar Association and the Wake County Bar Association Professionalism committees, the North Carolina Bar Association Transitioning Lawyer Commission, and the Advisory Committee for the National High School Mock Trial Championship. He is a member of the Wake County, North Carolina and American Bar Associations, the American Bar Association Center for Professional Responsibility, and the North Carolina Advocates for Justice. Mel has been awarded the Bronze Star and Air Medal for his service in Vietnam; the Order of the Long Leaf Pine, the Wake County Bar Association Professionalism Award, the Chief Justice's Professionalism Award, and the Robinson O. Everett Professionalism Award from the Campbell University School of Law. He has also received the Martindale Hubbell AV Rating.

Lastly, Mel is an adjunct professor at both the University of North Carolina School of Law and the Norman Adrian Wiggins School of Law at Campbell University, teaching Professional Responsibility.



STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
94 Cvs 454

FINESSE G. COUCH, Individually  
and as Administratrix Of the  
Estate of Carnell Simmons Couch  
Plaintiff,

v.

DUKE UNIVERSITY,  
Defendant.

AMENDED ORDER DISCIPLINING  
MARIA P. SPERANDO,  
ATTORNEY FOR PLAINTIFF

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This matter is before the Court on remand from the North Carolina Supreme Court and pursuant to an Order of the Chief Justice assigning the case to the undersigned judge for purposes of assessing sanctions against Maria P. Sperando, counsel for the plaintiff. The Court entered a written Order signed January 5, 2000, setting the remanded issue for hearing on February 9, 2000, and the matter came on to be heard in the Durham County Courthouse on that date. Present were the plaintiff and other relatives of the deceased child; Keith Bishop, Maria Sperando, and Willie Gary, counsel for the plaintiff; Vance Barron, counsel for Ms. Sperando; and James B. Maxwell, counsel for the defendants.

The Court has reviewed the decisions of the North Carolina Supreme Court, 351 N.C. 92 (1999), and the Court of Appeals, 133 N.C. App. 93 (1999), which are attached hereto and incorporated herein. The Court has heard the evidence offered on behalf of Ms. Sperando and heard from counsel. The Court has reviewed the file, including the briefs, portions of the trial transcript, and affidavits tendered. Based on this record, the evidence, and the arguments of counsel, the Court entered an Order on March 31, 2000, making findings and imposing sanctions.

Thereafter, Ms. Sperando filed a Motion for Reconsideration. The Court has now considered her Motion, as well as new information submitted by counsel for the defendant in response to the Motion. This new information consisted of a copy of an Order entered by the Guilford County Superior Court, the Hon. James Vosburgh presiding, filed December 9, 1999, in Case v. Edwards, 98 Cvs 11386 ("Judge

Vosburgh's Order"). Since being advised of the terms of this Order, the Court has reviewed the Superior Court file in Case v. Edwards. Ms. Sperando was given an opportunity to respond to the information provided by the defendant. She did so by filing a Brief in Support of Motion for Reconsideration and a Reply to Duke University's Response to Plaintiff's Motion for Reconsideration, both dated May 9, 2000; the Court has considered all materials she submitted. The Court's March 31, 2000, Order contained incorrect findings of fact; the Court on its own motion reconsidered its findings and has, concomitantly with this Order, entered an order withdrawing its March 31 Order. This Amended Order will take its place.

Based on this expanded record, the evidence, and the arguments of counsel, the Court finds by clear and convincing evidence and concludes as follows:

### BACKGROUND

1. Maria P. Sperando testified that she graduated from Georgetown University School of Law in 1979. She testified that she was admitted to practice law in New York in 1980 and in Florida in 1987. She testified that she has engaged in the active practice of law during those years as a trial lawyer.
2. Upon motion, Ms. Sperando was admitted *pro hac vice* to appear on behalf of the plaintiff in this medical negligence case pursuant to N.C.G.S. §84-4.1. In her motion she agreed to submit to the jurisdiction and disciplinary authority of this Court and to comply with all applicable rules, procedures, and laws. } *What does that mean?*
3. During closing argument on behalf of the plaintiff during the trial of this case, Ms. Sperando expressed to the jury her personal opinion about the veracity of defense witnesses, saying that they were liars and otherwise repeatedly used the words "lie," "lies," or "lied" in connection with defense witnesses. These were not indirect references; in fact at one point Ms. Sperando said to the jury "So you see, when I say a lie, okay, I want the record to reflect I mean a lie." Trial transcript at page 1775. At another point she said, "[A]ll of these physicians came up here and told lies. In your face lies." Trial transcript at page 1770. She also expressed her opinion that defense counsel had knowingly offered false testimony during the trial, calling this a "heavy accusation."<sup>1</sup> As the Supreme Court said, Ms. Sperando's

<sup>1</sup> Among other things, Ms. Sperando said "[T]his is not a criminal trial where when you have a client and you need to put him up on the stand as a witness and you know he is going to perjury himself, you have to put him there. . . . This is a civil trial. You're not obligated to put on that stand anybody that you know is going to lie. And we have taken all the depositions of these people and everything that they have said on that stand and all the lies that they've told and they knew before they put their hands on the Bible that they were going to tell those lies and they put them up anyway. That's heavy." Trial transcript at page 1770.

argument "included at least nineteen explicit characterizations of the defense witnesses and opposing counsel as liars." Couch v. Duke University, 351 N.C. at 93. Defense counsel made one objection to Ms. Sperando's closing argument, which objection was overruled by the trial court.

4. After a verdict in plaintiff's favor, the defendants appealed. The North Carolina Court of Appeals reversed as to one defendant ("PDC") on an unrelated issue and affirmed the verdict as to defendant Duke University ("Duke"). However, all three of the judges on the panel expressed concern over Ms. Sperando's closing argument. Neither of the two judges voting to affirm concluded that the arguments were proper or appropriate, and one judge dissented, calling Ms. Sperando's argument "grossly improper."

5. Duke appealed to the North Carolina Supreme Court, where the only issue related to Ms. Sperando's closing argument. All six justices participating found that Ms. Sperando's argument was grossly improper and all six justices agreed that the trial court erred by not sustaining the defendant's objection and by not intervening ex mero motu. Three justices concluded the error was prejudicial and voted to remand the case for a new trial; three justices concluded the error was not prejudicial and voted to affirm. The decision of the Court of Appeals was therefore left undisturbed but without precedential value. The Supreme Court further unanimously remanded the cause to the trial court for the determination of an appropriate sanction for Ms. Sperando's violation of Rule 12 of the General Rules of Practice and the Rules of Professional Conduct. *what does rule 12 say?*

6. Upon remand, the case was assigned to the undersigned judge by the Chief Justice. The Court thereafter issued a written Order giving Ms. Sperando and all other interested parties notice of the date and place of the hearing it would conduct before imposing sanctions. At the hearing, Ms. Sperando was given a full opportunity to present such evidence as she wished and she and her attorney and her partner were given an opportunity to be heard, as were other attorneys for the plaintiff and the defendant. The Court has since given Ms. Sperando an additional opportunity to submit such materials as she would like the Court to consider.

#### APPROACH TO THE ISSUES

7. In evaluating the evidence and imposing the requirements made herein, the Court is acting pursuant to the Supreme Court's remand and its inherent authority and duty to discipline attorneys, to protect itself from impropriety, to protect the public, and to safeguard the administration of justice. See, e.g., In Re Hunoval, 294

N.C. 740, 744 (1977); State v. Spivey, 213 N.C. 45 (1938); In re Paul, 84 N.C.App. 491, 499-500, cert. denied, 319 NC 673 (1987), cert. denied, 484 US 1004 (1988).

The Court's inherent power is not limited or bound by the technical precepts contained in the Rules of Professional Conduct. Swenson v. Thibaut, 39 N.C.App. 77, 109 (1978), cert. denied and appeal dismissed, 296 N.C. 740 (1979). The Court considers the question of sanctions to be in large part discretionary and has weighed and balanced the facts in its discretion. Finally, the Court notes that out of state attorneys do not have a right to practice in this state's courts without meeting the state's bar admission requirements; rather it is a privilege and is subject to the sound discretion of the Court. In re Smith, 301 N.C. 621, 629 (1981); N.C.G.S. §84-4.2.

8. The Court has not made any decision to treat Ms. Sperando the same as or differently from an attorney licensed in North Carolina. The Court has not tried to decide what sanctions it might impose on a lawyer licensed in North Carolina who acted exactly the way Ms. Sperando did, since that is not the case before it. Rather the Court has made a decision about appropriate sanctions in this case based on the all of the evidence in this matter. This evidence includes the undisputed fact that Ms. Sperando is not licensed to practice law in North Carolina; her background, experience, and credentials or lack thereof are obviously relevant in a disciplinary proceeding and should be considered along with all the other evidence.
  
9. The Court has considered the character and clarity of the rules Ms. Sperando violated; the repeated number of the violations as found by the Supreme Court; whether the violations were intentional, knowing, reckless, negligent, or inadvertent; the fact that defendant's one objection was overruled by the trial court; Ms. Sperando's duty to be familiar with applicable laws and procedures; other aspects of Ms. Sperando's conduct at the trial of this matter; the nature, extent and credibility of Ms. Sperando's remorse for her conduct as expressed by her testimony before the Court on February 9, 2000, and the Court's observations of her during that testimony; the actual and potential harm to the parties resulting from Ms. Sperando's conduct; the actual and potential harm to the justice system from Ms. Sperando's conduct; the risk of harm to and need to protect the public, the court system, witnesses, and litigants from future violations by Ms. Sperando; the damage to Ms. Sperando's reputation already experienced as a result of the publication of her misconduct by the appellate decisions in this case; and all other facts found from the evidence as reflected in this Order.<sup>2</sup> The Court has further considered the facts insofar as they can be gleaned from other reported cases concerning attorney

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<sup>2</sup> It may or may not be appropriate to consider the prophylactic effect sanctioning Ms. Sperando might have on inappropriate conduct by other lawyers. To the extent that is appropriate, it is a goal that has already been fully met by the Supreme Court's decision. This Court therefore has not considered this in any way.

discipline, but the Court is unaware of any other situation in the history of this state in which an attorney in a closing argument to a jury "included at least nineteen explicit characterizations of the defense witnesses and opposing counsel as liars." Couch v. Duke University, 351 N.C. at 93. While other decisions offer some guidance as to appropriate discipline, they are not determinative since the facts here are substantially different.

10. Normally, a court would consider an attorney's prior disciplinary record and any previous ethical or professionalism lapses or lack thereof as part of its decision in imposing sanctions and discipline. In this case, however, that is no easy task. At the February 9, 2000, hearing, Ms. Sperando testified under oath in response to a question from her attorney as follows:

Question by Mr. Barron: During that time [referring to her entire legal career], have you ever been disciplined by a court or a state bar of any state for improper behavior?

Answer by Ms. Sperando: I was late once and that was the only time.

Ms. Sperando did not tell the Court about Judge Vosburgh's Order finding that she had violated the Rules of Professional Conduct or that Judge Vosburgh had in that same Order revoked her *pro hac vice* privilege based in part on that finding. Neither was it mentioned by Ms. Sperando's attorney, Vance Barron, Jr., who also represents Ms. Sperando in Case, when he made his remarks to the Court; by Willie Gary, Ms. Sperando's partner who has also had some involvement in Case, when he made his remarks to the Court; or by Mr. Bishop, who also represents the plaintiff in Case, when he was given the opportunity to address the Court. That Order is now, according Plaintiff's Reply to Duke University's Response to Plaintiff's Motion for Reconsideration ("Reply"), signed and served May 9 by Mr. Barron, on appeal.<sup>3</sup>

Also at the February 9 hearing, Mr. Barron argued to the Court as follows:

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<sup>3</sup> While this document is titled "Plaintiff's Reply," the first sentence of the brief makes it clear that the brief is submitted on behalf of Ms. Sperando as well. The Court's review of the file in Case shows that Mr. Bishop filed a Voluntary Dismissal of that lawsuit on May 1, 2000. The Court has not made any effort to investigate the status of any alleged appeal with the Court of Appeals and has not reviewed any Court file there might be at the Court of Appeals. For purposes of this Order the Court accepts the representation of Mr. Barron and Ms. Sperando that Judge Vosburgh's Order is on appeal. If it is not or if this Order reflects any misapprehension of the facts concerning the status of Case, Ms. Sperando, Mr. Barron, Mr. Bishop, and Mr. Gary are each ORDERED to immediately so advise the Court in writing.



Mr. Barron: Because I believe Ms. Sperando's history as a lawyer, her competence as lawyer, she had been admitted to practice in two different states with no ethical violations, has had no ethical violations in the state of North Carolina. And this one incident which is already a black mark on her record, is the only black mark that we have.

Transcript at page 33. Neither Ms. Sperando, Mr. Gary, or Mr. Bishop made any correction to Mr. Barron's argument. At the time, the Court had no other evidence or information before it about Ms. Sperando's history of disciplinary, ethical, or professionalism problems. As a result of Ms. Sperando's testimony and Mr. Barron's argument, the Court's March 31 Order contained a finding of fact that since her admission to the bar Ms. Sperando had "essentially practiced law without serious ethical or professionalism questions arising." March 31 Order, ¶1 at page 2. This finding was wrong and as a result the Court has entered a separate Order withdrawing the March 31 Order.

The Court has no independent evidence before it about the overall status of Ms. Sperando's disciplinary record and any ethical violations during those years, not even a certificate in good standing from the Florida Bar. Ms. Sperando and Mr. Barron have represented in recent filings with the Court that the Case matter is currently on appeal. Because of this factor and because the Court does not want there to be any confusion over why Ms. Sperando is being sanctioned in this Order,<sup>4</sup> and despite its obvious relevance, the Court has not considered Judge Vosburgh's finding that Ms. Sperando violated ethical and professionalism obligations in Case in making its decision here.

For purposes of this Order, therefore, the Court makes the following finding about Ms. Sperando's previous disciplinary and ethical record: Ms. Sperando has been disciplined before for being late to court. The Court has further considered the following facts, which will not be changed by any appellate decision in Case: Ms. Sperando did not advise this Court that her *pro hac vice* privileges in Case v. Edwards had been revoked for, *inter alia*, ethical and professionalism violations, she did not comment on her attorney's argument to the Court on February 9 that she had

<sup>4</sup> Ms. Sperando in her Reply states that "Ms. Sperando objects to any substantive use of Judge Vosburgh's Order by this Court in the present proceeding." To be clear, the Court perceives it is doing what Ms. Sperando wishes and the Court has not considered Judge Vosburgh's Order substantively.

no ethical violations in North Carolina and no previous "black marks," and she did not mention the terms of Judge Vosburgh's Order in her Motion to Reconsider or otherwise advise the Court of its misapprehension of the facts about the absence of serious ethical or professionalism questions concerning Ms. Sperando. These facts taken together with other evidence about Ms. Sperando's candor to the Court, lead the Court to conclude that it should examine of all of Ms. Sperando's testimony and representations to the Court with great care. \*

11. In January 1997 when this case was tried, attorneys in North Carolina were bound by the Rules of Professional Conduct (hereinafter "RPC"). Those Rules were substantially reorganized in July 1997 with the adoption of the Revised Rules of Professional Conduct (hereinafter "RRPC"), but the substance of the Rules related to this matter remained, for the most part, the same. It has already been established by the Supreme Court that Ms. Sperando violated these rules, as well as Rule 12; the Court has gone into the specifics of which RRPCs were violated for the purpose of imposing a sanction appropriate to the misconduct.
12. The Court has read the appellate briefs written by Ms. Sperando on behalf of the plaintiffs.<sup>5</sup> The Court has considered those briefs as reflected in this Order. Because the Court perceives the remand from the Supreme Court to direct that the Court sanction Ms. Sperando for her conduct before the Superior Court during trial, the Court has not specifically considered whether in the appellate briefs Ms. Sperando committed additional violations of the Revised Rules of Professional Conduct or otherwise behaved unprofessionally. As to this question, the Court makes no findings one way or the other.
13. The Court does not discipline or sanction attorneys lightly and has made every effort to evaluate appropriate sanctions fairly. Counsel for the defense made clear at the February 9 hearing that the defendant never filed a motion for sanctions and never sought sanctions. The Court has undertaken a substantial amount of its own research and has prepared its own Order. There is no advocate against Ms. Sperando's position and no one has prosecuted this matter; the Court has been in a position of relying upon Ms. Sperando and her counsel in large part for relevant and complete information.

#### FINDINGS REGARDING MISCONDUCT

Liars \*

14. Calling witnesses liars in closing argument has long been prohibited by the North Carolina courts. E.g., State v. Locklear, 294 N.C. 210, 217 (1978). Counsel

<sup>5</sup> Ms. Sperando stated at the February 7 hearing that she was responsible for the appellate briefs in this case.

may not employ closing argument as a device to place before the jury incompetent and prejudicial matters by expressing his or her own knowledge, beliefs and opinions. State v. Allen, 323 N.C. 208 (1988), *vacated on other grounds*, 494 U.S. 1021 (1990). This conduct was grossly improper, Couch v. Private Diagnostic Clinic, 351 N.C. 92 (1999), and violated, *inter alia*, Rule 12 of the Rules of Practice and RPC 7.6(c) and RPC 1.2(d).

15. Counsel may not attack the integrity of defense counsel in closing argument. State v. Vines, 105 N.C. App. 147 (1992). "A trial attorney may not make uncomplimentary comments about opposing counsel, and should 'refrain from abusive, vituperative, and opprobrious language, or from indulging in invectives.'" State v. Sanderson, 336 N.C. 1, 10 (1994). Indeed, the Supreme Court has held that an attorney who merely implies in closing argument that opposing counsel knowingly put forth false testimony should be sanctioned. State v. Rivera, 350 N.C. 285, 290-291 (1999) ("This Court shall not tolerate, and our trial courts must not tolerate, comments in court by one lawyer tending to disparage the personality or performance of another. Such comments tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth-finding function by distracting judges and juries from the serious business at hand. We admonish our trial courts to take seriously their duty to insure that the mandates of Rule 12 are strictly complied with in all cases and to impose appropriate sanctions if they are not.") Ms. Sperando's conduct in expressing during closing argument her opinion that defense counsel had knowingly offered false testimony during the trial was grossly improper, Couch v. Private Diagnostic Clinic, 351 N.C. 92 (1999), and violated, *inter alia*, Rule 12 of the Rules of Practice, RPC 7.2(a)(1), RPC 7.6(c), and RPC 1.2(d).

16. By making these closing arguments, Ms. Sperando further violated RPC 6(a) [RRPC 1.1]. The Court recognizes that a lawyer who makes a good-faith effort to be prepared and to be thorough will not generally be subject to professional discipline for a simple mistake, and that a single error made in good faith is not usually indicative of a violation of the duty to represent a client competently. Comment 7 to RRPC 1.1; *see* Comment 5 to RRPC 1.3 ("Conduct sufficient to warrant the imposition of professional discipline is typically characterized by the element of intent or scienter manifested when a lawyer knowingly or recklessly disregards his or her obligations."). The trial judge testified that Ms. Sperando's conduct at trial was generally acceptable and unremarkable, and the Court's review of the record before it reflects that plaintiff's counsel presented a case well-prepared on the merits. It is clear that in many ways Ms. Sperando is a talented advocate.

17. Nonetheless, there are several facts that reflect a serious lack of thoroughness and preparation. First, when Ms. Sperando accepted representation in this case, she had a duty to provide competent representation and to adequately prepare. RPC 6(a); see, e.g., Rorrer v. Cooke, 313 N.C. 338, 341 (1985). "Competent representation means the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation," RPC 6(a)(1), and assumes a basic level of familiarity with applicable rules, statutes, and case law. Any attorney admitted to practice *pro hac vice* in the trial of a case should make at least some basic inquiry into the state's rules and practices. All of the evidence suggests that Ms. Sperando made no inquiry at all into the propriety of her closing argument before she undertook it and the Court so finds.<sup>6</sup>

18. Second, even without making any inquiry, a competent attorney reasonably should have known that the argument Ms. Sperando made about opposing counsel was almost certainly improper. As to those comments, the Court does not accept Ms. Sperando's testimony that she acted "in good faith." No lawyer should ever make such personal and totally irrelevant accusations about opposing counsel in closing argument. This is the case whether the accusation is true or false, whether it is supported by the evidence or not, whether opposing counsel objects or not, whether the trial court intervenes or not, and whether the lawyer truly believes it or is just grandstanding. There is nothing credible before the Court that would justify a belief that such remarks about opposing counsel were appropriate. While it is not as "bad" to unknowingly break a rule as it is to knowingly break a rule and the Court has given that some weight, ignorance of the law is no real excuse. A competent and ethical attorney who gave the matter even passing attention would have suspected that such an argument was almost certainly improper even without researching the issue. Ms. Sperando said what she meant to say, knowing it was a "heavy accusation," to use her own words. This misconduct was reckless.

19. As to Ms. Sperando's comments about witnesses, the Court finds that Ms. Sperando similarly recklessly violated her professional and ethical responsibilities by turning a blind eye to her duty to educate herself about North Carolina ethical rules. The Court recognizes and has considered -- both as evidence against a violation of this Rule and in mitigation -- that a lawyer is allowed to argue the facts about a witness's credibility to the jury and that there was evidence in this case

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<sup>6</sup> If she had made such an inquiry, she would have known the arguments were improper, and then the sanction would be for knowing or intentional misconduct. Of course, the only witness on this point has been Ms. Sperando, whose credibility with the Court is limited. In the absence of affirmative evidence that she did make some inquiry, however, the Court cannot find by clear and convincing evidence that the misconduct was deliberate.

which would support an argument that the jury should not believe the testimony of certain witnesses. Ms. Sperando went well beyond this, of course, as the Supreme Court has found. Moreover, the rules she broke in this case are well-established and well-publicized in North Carolina, and in her home state of Florida, cases have been reversed when prosecutors went too far in calling witnesses liars during closing argument.<sup>7</sup> The Florida Rules of Professional Conduct are quite similar in relevant part to the North Carolina Rules. For example, Florida Rule 4-3.4(e) states that a lawyer shall not state a personal opinion as to the justness of a cause or the credibility of a witness. Thus, a competent Florida lawyer would seem to be on notice that there are rules governing calling witnesses liars in closing argument and therefore would know to make some inquiry about the standard in North Carolina before making such an argument here. While this failure to prepare is not as egregious as the violation concerning her opinions of defense counsel, she nonetheless should have made some inquiry into North Carolina practice before undertaking her argument and she should have known that her closing argument was improper. Her failure to do so was reckless.

20. Third, it appears that the issue decided by the Court of Appeals against the plaintiff (the "PDC issue" as reflected at 133 N.C.App. at 102-104) also arose as a result of Ms. Sperando's lack of familiarity with North Carolina law. The Court of Appeals found that she "misunderstood the legal consequences" of taking a dismissal against PDC and that she "should have been on notice of the pitfalls." While this has little weight on its own, it is worth considering with the other evidence on lack of adequate preparation.
21. Finally, in her closing argument Ms. Sperando referred to medical doctors who testified as expert witnesses as "my girl" and "girlfriend," language that would offend many people and is generally improper. See Rule 12, General Rules of Practice; see State v. Sanderson, 336 N.C. at 12 (improper during cross-examination to refer to a female expert witness as a "gal").
22. While Ms. Sperando's comments about defense witnesses might not, and her problems with the dismissal of PDC and her demeaning language concerning expert witnesses would not, alone be sufficient to support a finding of lack of adequate preparation, when considered together with each other and with the egregious

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<sup>7</sup> The Court has not attempted an exhaustive review of relevant Florida authorities. A survey does reveal that while Florida takes a slightly different approach to this issue than North Carolina, there are limits and constraints on calling a witness a liar in closing argument. See, e.g., Ruiz v. State, 743 So.2d 1, 5-6 (Fla.S.Ct. 1999); Craig v. State, 510 So.2d 857, 865 (Fla.S.Ct. 1987); Mills v. State, 507 So.2d 602 (Fla.S.Ct. 1987); Pacifico v. State, 642 So.2d 1178, 1183-84 (Fla.App. 1994); Bass v. State, 547 So.2d 680 (Fla.App. 1989).

violation related to her remarks about defense counsel, the Court is convinced there has been a violation of RPC 6(a)(2).

23. Ms. Sperando did not report defense counsel to the State Bar for allegedly knowingly offering false testimony. To knowingly offer false testimony violates the Rules of Professional Conduct, see RPC 7.2(a)(5) [RRPC 3.3(a)(4)], and is among the most serious of violations, subjecting an attorney to disbarment or suspension of his license. See State Bar v. DuMont, 304 N.C. 627, 629 (1982); State Bar v. Talman, 62 N.C.App. 355, 366 (1983). A lawyer who has knowledge of such serious misconduct and fails to report it does herself violate RPC 1.3(a) [RRPC 8.3].

24. Ms. Sperando did not violate RPC 1.3(a) by her failure to report defense counsel. The record before the Court indicates that defense counsel did not offer false testimony. The Court has reviewed plaintiff's appellate briefs. In these briefs Ms. Sperando explained in detail the evidence she claimed supported her opinions in closing argument. The Court has reviewed those briefs and all attached pages of the trial transcript and is satisfied that the evidence presented at trial does not justify Ms. Sperando's vituperative claim that defense counsel knowingly offered false testimony. The record reflects that defense counsel called expert witnesses to the stand who had different opinions from experts presented by the plaintiff; defense counsel called fact witnesses to the stand who recalled things differently from fact witnesses called by the plaintiff; and defense counsel called witnesses to the stand who were impeached about various parts of their testimony. The same can be said of plaintiff's counsel and indeed is true in most trials that take place – conflicting evidence and credibility issues are the reasons for trials. Without more, this is not even “offering false testimony,” much less “knowingly offering false testimony.” Based on this record Ms. Sperando did not have knowledge that false testimony had been offered. She may have believed it, but she did not “have knowledge” of it, as required by RPC 1.3(a) before reporting is necessary.<sup>8</sup>

25. The Court finds no violation of RPC 1.3(a) and thus will not sanction Ms. Sperando for violating that RPC. That said, Ms. Sperando's comments concerning opposing counsel were obviously reprehensible and raise several concerns.

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<sup>8</sup> The fact that the trial judge did not, to the Court's knowledge, report defense counsel to the State Bar or himself take any disciplinary action is further support, if any is needed, for the conclusion that the accusation was unfounded. Neither did the appellate courts take any action against defense counsel, though Ms. Sperando repeatedly argued to them that defense counsel had called witnesses to testify whom he knew would not tell the truth. E.g., Plaintiff Appellee's Brief to the Supreme Court at p. 14-15.

26. While the Court does not doubt that Ms. Sperando actually holds the opinion she expressed, the Court is disturbed by her willingness to attribute malignant and corrupt motives to defense counsel based on the record in this case. It shows an unfortunate readiness to demonize opposing counsel rather than to treat opposing counsel with respect and courtesy.

27. It is also disturbing that she was willing to make such a "heavy accusation" in closing argument, where defense counsel could not ethically respond, and has not been willing to make the accusation in a forum where defense counsel could respond. For example, she could have objected outside the presence of the jury to the admissibility of the supposedly perjured testimony. She could have but did not report defense counsel to the State Bar. Under either scenario, defense counsel could respond to the accusation and the merits of the accusation could be decided.<sup>9</sup>

28. Finally, Ms. Sperando gave as her reason for not reporting defense counsel to the State Bar that she "just wouldn't do that" and that she did not wish to get another lawyer "in trouble." This testimony is troubling in a number of ways. First, it reflects a fundamental failure to recognize her obligations as a member of a self-governing profession. See RPC 0.1, ¶¶14-16 and RRPC 0.1, ¶¶13-15; Lunsford, "Rookie of the Years," North Carolina State Bar Journal, Vol. 5, Issue 1, at page 33 ("Self-regulation is a cornerstone of our profession. It is the key to our independence as a practicing bar.") Second, it demonstrates an unwillingness to comply with the Rules of Professional Conduct. Finally, her testimony on this issue was not credible on its face and Ms. Sperando was not credible when she offered this testimony. A lawyer who publicly accuses defense counsel in open court in front of a jury and judge of knowingly offering false testimony almost by definition is willing to get that lawyer in trouble. The Court thinks it much more likely that Ms. Sperando did not report defense counsel because it did not occur to her or because she knew the accusation was not supported by the evidence. Either way, the Court is concerned by Ms. Sperando's lack of candor with the Court on this topic. As a result of all of these concerns, the Court does not have confidence in Ms. Sperando's ability to "exercise sensitive professional and moral judgment guided by the basic principles underlying the Rules [of Professional Conduct]." } \*  
RPC 0.1 ¶13.

<sup>9</sup> The Rules of Professional Conduct do allow an attorney with knowledge of another lawyer's violation to report the conduct to "other appropriate authority." RPC 1.3(a); cf., RRPC 8.3 (attorney may report a violation to "the court"). Arguably Ms. Sperando did this by making her accusation in the judge's presence. The Court would have difficulty finding that making this kind of accusation in closing argument to the jury constitutes informing the Court, especially when Ms. Sperando did not offer this as the reason she did not report defense counsel to the State Bar. In any event, the Court is not finding a violation of this Rule.

29. Ironically enough, rejecting Ms. Sperando's opinion on this point works in Ms. Sperando's favor, in the Court's view. Had the Court agreed with Ms. Sperando's opinion and otherwise found that Ms. Sperando did violate RPC 1.3(a) by failing to report defense counsel when she should have, more serious sanctions would be required, possibly including a long term or even permanent prohibition against representing clients in North Carolina *pro hac vice*. "A code of silence may be appropriate for organized criminals and malpracticing professionals in other disciplines, but [lawyers] cannot survive it." Lunsford, "Rookie of the Years," North Carolina State Bar Journal, Vol. 5, Issue 1, at page 33.

30. The Court has considered the fact that defense counsel objected only once during Ms. Sperando's closing argument and that the trial court overruled the objection. These facts have some mitigating value and the Court has considered them in Ms. Sperando's favor. On the other hand, they have little to do with whether Ms. Sperando violated her ethical and professional responsibilities. This is not a case where an attorney was goaded into an ethical violation by an adversary's unethical conduct or by a judge's bias. Lawyers are obligated to follow the rules governing professional conduct at all times, and the fact that a lawyer is not "caught" or stopped the first time she violates those rules does not excuse a second violation. Perhaps in the world of sports it is acceptable for an athlete to commit a foul in "reliance" on a referee's tendency not to call fouls, all toward the ultimate goal of winning the game, but that is not acceptable for lawyers. A lawyer has a duty to do more than "win the game." Lawyers hold a special public trust and have a duty to uphold the administration of justice. They are required to "play fair." This duty cannot be avoided by failing to be familiar with the rules or by blaming the referee or the other side for not stopping the violation. See RPC 0.1, ¶16 ("Every lawyer is responsible for observance of the Rules of Professional Conduct."); RPC 0.2, ¶2 ("Compliance with the rules. . . depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, and finally, when necessary, upon enforcement through disciplinary proceedings."); E.g., Dondi Properties Corp. v. Commerce Savings and Loan Association, 121 F.R.D. 284, 287 (N.D.Tex. 1988). It is Ms. Sperando's duty and responsibility to be sure she follows North Carolina ethical and professional requirements while she is in a North Carolina courtroom. This is not a duty that she can delegate, nor can she rely on someone else to stop her when she goes too far.

#### HARM RESULTING FROM MS. SPERANDO'S CONDUCT

Closing arguments like the one made by Ms. Sperando in this case have serious negative consequences. They reduce public confidence in the legal system



by encouraging public perceptions that lawyers are nothing more than name-callers and playground bullies and by encouraging public perceptions that lawyers are corrupt. They encourage disrespectful behavior in the courtroom. They undermine public confidence in jury verdicts. They victimize witnesses who are unable to respond and are unable to hold the speaker accountable for the accusations. They distract juries from the seriousness of their duties. They place opposing counsel in a position of choosing between violating ethical and professional rules himself by responding to irrelevant personal accusations or seeming to accept slanderous accusations detrimental to his client by failing to respond. They are unfair to the opposing party.

32. As noted by the Supreme Court of Hawaii in Office of Disciplinary Counsel v. Breiner, 969 P.2d 1285 (Haw. 1999), “[c]ourts are places for the dispassionate examination of evidence and the neutral consideration of arguments regarding the requirements of the law. They are our society’s alternative to the brute force of the police state, the street brawl, and the violence of a domestic dispute. When we speak of maintaining the integrity of the legal profession and the dignity of the courts, we do not intend that attorneys be reduced to obsequious sycophants in order to avoid offending the fragile sensibilities of judges. To the contrary, we merely require that the members of a learned profession, who are privileged to serve as officers of the court, act in accordance with the time-honored traditions that experience has taught us are necessary to protect the office of the court and the process of justice from devolving into the barroom brawl.” Ms. Sperando’s conduct undermined the dignity of the courts and the integrity of the legal profession.

33. In this case, Ms. Sperando’s conduct has affected her own client. Her client testified at trial that the case was not about money; it was about holding the defendant accountable. Yet because of the conduct of Ms. Sperando, four appellate court judges have stated in published decisions that the defendant did not get a fair trial, thus at least partially depriving plaintiff of the vindication she sought from the jury’s verdict. Moreover, the appeal to the Supreme Court was based exclusively on Ms. Sperando’s misconduct, resulting in a delay in final resolution of this case which can be laid solely at Ms. Sperando’s feet. The potential harm to her client was even greater; the case came perilously close to having to be retried, solely because of Ms. Sperando’s misconduct.

34. Ms. Sperando’s misconduct also caused harm to the defendant and defense counsel. It caused the defendant to incur significant expense to pursue an appellate remedy. As to defense counsel, it was slanderous and he has no remedy. The

potential harm was even greater. It may well have prevented the defendant from raising other issues on appeal. Counsel could not ethically and professionally respond in kind to Ms. Sperando's accusations, but by complying with his own ethical duties as he did he risked leaving an implication that defense counsel agreed with or accepted the accusations,<sup>10</sup> to his client's possible detriment and in damage to his own reputation. This Court obviously accepts the Court of Appeals' decision that the verdict should not be overturned and that there was no actual prejudice to the defendants, but all of the circumstances nonetheless cast a pall over the fairness of the verdict.

### REMORSE AND GOOD FAITH

35. In open court and under oath at the February 9 hearing, Ms. Sperando acknowledged her errors in general terms and apologized to the Court, to the citizens of North Carolina, and to Judge Tillery, the trial judge. Upon inquiry from the Court she apologized to her clients. Upon further inquiry from the Court and with hesitation using careful language, she apologized to defense counsel "for the way in which I said what I said." The Court has considered this evidence.
36. While Ms. Sperando appeared at the hearing to be sincerely remorseful for her grossly improper conduct in repeatedly expressing during closing argument her opinion that defense witnesses lied, there is substantial other evidence which indicates the Court should examine her testimony carefully.<sup>11</sup> After having done so, the Court does not find her expressions of remorse to be believable. \*
37. The Court is even less satisfied that Ms. Sperando is sincerely remorseful for her grossly improper conduct in accusing defense counsel of knowingly offering false testimony during closing argument.
38. When it exists, remorse is obviously a factor entitled to some weight. It is important primarily, however, because a person who is remorseful understands her mistakes and is unlikely to commit future violations. In this case, as in many situations, statements of remorse unaccompanied by action are not particularly meaningful. To put it in the vernacular, it is not enough to talk the talk; one must walk the walk. In this case, Ms. Sperando has done little to nothing to walk the walk. The Court knows of no actions Ms. Sperando has taken to reduce the

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<sup>10</sup> Ms. Sperando so contended to the Court of Appeals. See Plaintiff-Appellee's Brief at page 94.

<sup>11</sup> These factors would include, *inter alia*, the fact that Ms. Sperando is an interested witness, the way Ms. Sperando answered the question about prior discipline, the way Ms. Sperando answered questions about reporting defense counsel to the State Bar, and her demeanor during her testimony.

possibility of future violations; there is no evidence, for example, that she has on her own initiative attended continuing legal education courses or otherwise attempted to educate herself about North Carolina law and practice. Moreover, the briefs filed with the appellate courts written by Ms. Sperando reflected no recognition of any problems at all with Ms. Sperando's conduct and are almost militantly defiant. For example, in her brief to the Supreme Court, Ms. Sperando stated: "[I]t was COUCH's duty to apprise the jury that DUKE was deliberately trying to mislead them." Plaintiff-Appellee's Brief filed September 8, 1999, at p. 30 (emphasis in original). There are numerous other similar kinds of statements in which Ms. Sperando defended her closing argument. Ms. Sperando did not even apologize to defense counsel until the day of the hearing on sanctions, and then only halfheartedly. Ms. Sperando's "remorse" appeared when the case was remanded for a hearing on sanctions by the Supreme Court – that is, when she had no real choice. The appellate briefs alone would support a finding that Ms. Sperando is not remorseful one bit. Even without consideration of the appellate briefs the Court is satisfied by clear and convincing evidence that Ms. Sperando's expression of remorse is not sincere. Actions speak louder than words, and Ms. Sperando's action and inaction tell the Court more about remorse and risk of future harm than any eleventh hour apologies.

Ms. Sperando asks the court not to punish her for not making a "dishonest disavowal" of an honestly held opinion concerning the conduct of defense counsel in this case. Ms. Sperando is entitled to her opinion, whatever its basis or lack of basis, and the Court is not punishing her for her opinions. In this case, as found by the Supreme Court, her actions violated the Rules of General Practice and the Rules of Professional Conduct, and it is for that that she is being sanctioned. Cf., State v. Miller, 271 N.C. 646 (1967) ("Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other.")

40. Throughout these proceedings, Ms. Sperando has relied upon her claim that she made her argument in good faith without knowledge her argument was improper. The Court has not found that she did act in good faith. Other than Ms. Sperando's testimony that she acted in good faith, there is no evidence before the Court that she did so.<sup>12</sup> "Good faith" requires a reasonable basis for one's conduct. There is nothing before the Court at all to indicate the basis for Ms. Sperando's belief that her closing argument was appropriate except her statement of her belief

<sup>12</sup> The Court does not consider what Mr. Gary or Mr. Barron said to the Court at the February 9 hearing to be evidence. It was not offered under oath; indeed, plaintiff's counsel Mr. Gary was offered the opportunity to testify and he declined.

that the evidence supported her argument. The Court has already found that her self-serving statements are entitled to little weight. Moreover, it cannot be said that a person who acts recklessly, as Ms. Sperando did, acted in "good faith."

41. Ms. Sperando has further asked the Court to consider that she is "a respectful person who is receptive to the admonishments of the court and who would have ceased this line of argument had she been instructed to do so." First, the Court has not made any findings that Ms. Sperando is "a respectful person who is receptive to the admonishments of the court." Moreover, the court has no evidence other than Ms. Sperando's own self-serving and highly suspect testimony as to how she would have reacted to a ruling sustaining the objection. In any event, the overruling of the one objection made did not give Ms. Sperando *carte blanche* to say whatever she wished in closing argument, and nothing the trial court did bespoke any approval of her argument concerning defense counsel. The Court is far more concerned about Ms. Sperando's failure to consider the propriety of her argument before making it than it is about whether she would have stopped when ordered to do so. Ms. Sperando did not meet her obligations in the first place to be educated about North Carolina courtroom rules and practices and about her ethical obligations; she has said nothing in her testimony or anything filed with the Court which offers any credible reassurance to the Court that she recognizes this problem and has corrected it.

#### ANALYSIS OF POSSIBLE SANCTIONS

42. "[A] Superior Court, as part of its inherent power to manage its affairs, to see that justice is done, and to see that the administration of justice is accomplished as expeditiously as possible, has the authority to impose reasonable and appropriate sanctions upon errant lawyers practicing before it. Sanctions available include citations for contempt, censure, informing the North Carolina State Bar of the misconduct, imposition of costs, suspension for a limited time of the right to practice before the court, suspension for a limited time of the right to practice law in the State, and disbarment." In re Robinson, 37 N.C. App. 671, 676 (1978). An out-of-state attorney's *pro hac vice* admission is subject to the discretionary authority of the trial court at all times. N.C.G.S. 84-4.2.
43. N.C.G.S. §84-28 provides that an attorney admitted to practice pursuant to N.C.G.S. § 84-4.1 is subject to discipline by the State Bar if she violates the Rules of Professional Conduct in force at the time of the act. The legislature thus expects an attorney admitted *pro hac vice* who has violated the Rules to be disciplined. The statute further discusses five forms of discipline and the standards

for imposition of each kind of discipline. These requirements are binding on the State Bar when it imposes discipline. While the Court's inherent authority is not limited by the standards of this statute, see Beard v. North Carolina State Bar, 320 N.C. 126, 129-130 (1987), the statute does provide some guidance.

44. An admonition, which Ms. Sperando contends is appropriate, is imposed "in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct." NCGS §84-28(c)(5). A reprimand is issued in "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." NCGS §84-28(c)(4). A censure is issued when an attorney has violated one or more Rules and "has caused significant harm or potential 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." NCGS §84-28(c)(3). Suspension and disbarment, by implication, are reserved for those cases where protection of the public is needed. The statute further authorizes the State Bar to stay a suspension upon reasonable conditions and to impose reasonable conditions precedent to reinstatement.
45. The Court has considered many possible sanctions in this case, some mentioned in this Order and others not. It is not a mechanical process. The Court has weighed those sanctions in light of all of the evidence and the Court's duty to protect the public and the administration of justice. The Court has considered whether lesser sanctions and shorter time frames would be sufficient and has determined that they would not. The Court has further considered additional sanctions and longer time frames but in view of the fact that Ms. Sperando did apologize in open court, the serious effect her well-publicized misconduct has no doubt already had on her reputation, the other mitigating factors reflected in this Order, and the other requirements of this Order, the Court finds that further sanctions would be unduly harsh for these violations<sup>13</sup> and would serve no reasonable purpose. The Court has further considered a different mix of sanctions and time frames and finds that the sanctions imposed, taken together, are appropriate under all the circumstances.
46. The Court has considered whether an admonition is a sufficient sanction and finds that it is not, under all the facts and circumstances.

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<sup>13</sup> To repeat, the Court is not sanctioning Ms. Sperando for any violations she may have committed in her appellate briefs or by her conduct before this Court. Nor has this Court considered Judge Vosburgh's decision as an aggravating factor. Consideration of any of these matters would likely have resulted in a different sanction.

47. The defendants have suggested that Ms. Sperando be required to pay their attorneys' fees on appeal. The Court has reviewed the affidavit submitted by the defendant concerning its fees. There is no evidence before the Court that these fees were not incurred or that they were unreasonable. The Court finds that the attorneys' fees incurred by the defendant on appeal of this case were reasonable given the amount of the verdict and the seriousness of the issue; those fees total almost \$190,000. A substantial issue before the Court of Appeals and the only issue before the Supreme Court was whether Ms. Sperando had broken the rules in her closing argument, which Ms. Sperando did not concede and indeed strenuously contested, and, if she did, whether the defendant should receive a new trial. Thus, most of defendant's attorneys' fees on appeal were incurred as a direct result of Ms. Sperando's unethical and unprofessional behavior. As a result of the defendant's work on appeal, serious violations of North Carolina's ethical and professional requirements were brought to the Court's attention, which is in the public interest.

48. The Court finds it appropriate to require Ms. Sperando to reimburse the defendant for its attorneys' fees for the appeal to the Supreme Court and, in small part, on remand. The Court will require Ms. Sperando to pay to the defendant the sum of \$53,274.50, which the Court finds to be the minimum amount spent by the defendant on attorneys' fees related to proceedings before the Supreme Court and this Court in connection with Ms. Sperando's misconduct.<sup>14</sup> While it might well be appropriate to order Ms. Sperando to pay some of the defendant's attorneys' fees related to post trial motions and the subsequent appeal to the Court of Appeals, the Court in its discretion will not do so, in light of other sanctions and requirements imposed by this Order and in view of the substantial sum the Court is ordering her to pay. The Court has also considered further reducing the amount it requires Ms. Sperando to pay because the defendant only objected once at trial and did not ultimately prevail on its argument for a new trial. Under all the circumstances, however, the Court finds Ms. Sperando should pay the amount set forth above.

*Only objected  
once.*

<sup>14</sup> The Court has reviewed the affidavit of Niccolo Ciompi and attached bills. As to the bill of Maxwell, Freeman & Bowman, the Court has included those fees incurred after May 4, 1999 which are clearly associated with the appeal and has excluded all fees incurred before that date and those fees after that date which are not clearly associated with the issues raised by Ms. Sperando's conduct. As to the bill of Robinson, Bradshaw, & Hinson, the Court has only included the fees from May, June, and July 1999 associated with preparing the appellate briefs at the Supreme Court level. For other months, the bills do not allow the Court to easily determine the fees associated with Ms. Sperando's misconduct as opposed to fees incurred related to other issues. Therefore the Court has not included any of those fees. In other words, the Court has not included any fees related to issues such as post-judgment interest, execution on the judgment, and other matters that would have occurred even absent Ms. Sperando's misconduct and has not included any fees which the Court could not easily and clearly determine were related to Ms. Sperando's misconduct.

49. Ms. Sperando was aware before the February 9 hearing that defendant was asking for its attorneys' fees and did not offer any evidence of her personal financial situation. The Court therefore was not able to take that into account in requiring Ms. Sperando to pay some of defendant's attorneys' fees. In its March 31 Order, the Court gave Ms. Sperando an opportunity to present evidence about her personal financial situation and to request that the amount be reduced on that basis and she has not done so. While the amount is substantial, the Court has no evidence before it that Ms. Sperando cannot pay it or that she cannot pay it without substantial hardship or even that it would cause any hardship or difficulty at all. It is certainly an amount significantly less than the defendant incurred as a result of her misconduct.

50. Ms. Sperando contends in her latest filing that the Court does not have the authority to require her to pay attorneys' fees. While it is generally true that a court may not award attorneys' fees as damages or as costs to a party without statutory authority, as Ms. Sperando points out, the Court has inherent authority to sanction attorneys. That is authority that the legislature cannot limit, Beard v. N.C. State Bar, 320 N.C. at 129, and has not attempted to limit. See N.C.G.S. §84-36. The North Carolina Court of Appeals has specifically held that a court can require an attorney to pay costs when he or she has behaved unethically. In re Robinson, 37 N.C. App. 671, 676 (1978); cf. Daniels v. Montgomery Mut. Ins. Co., 320 N.C. 669, 674 (1987). Her violations interfered with the prompt and efficient administration of justice and had a direct financial impact on opposing interests; requiring her to bear these costs is appropriate.

51. It also seems appropriate to the Court that Ms. Sperando should be responsible to her client for all costs associated with the appeal to the Supreme Court. The plaintiff in this case has not asked for anything and has suggested that the sanction imposed in the Court's March 31 Order is too severe. Nonetheless, it is obvious that the plaintiff is one of the victims of Ms. Sperando's conduct and the Court has considered possible sanctions in this light. Other than requiring Ms. Sperando to personally pay the plaintiff's costs related to the appeal to the Supreme Court, under all the circumstances no other sanction related to the plaintiff will be imposed.

52. Because the Court is requiring Ms. Sperando to reimburse the defendant for some of its costs and to reimburse the plaintiff for some of her costs and because

those costs are substantial, the Court will not impose a fine or any other financial sanction.

53. This Order constitutes an Order of Discipline and Ms. Sperando shall report it as such when asked or required by rule or law.
54. The Court has the authority to advise other courts of disciplinary action taken against an attorney. See State v. Spivey, 213 N.C. 45, 48 (1938). It is appropriate to notify the State Bar of Florida and the State Bar of New York of the Supreme Court's decision and of this Order.
55. The Court has no particular reason to think that Ms. Sperando will again call witnesses liars or accuse defense counsel of knowingly offering false testimony during her closing argument, but neither does the Court have any confidence in Ms. Sperando's assertions that she will never again commit this kind of violation in the future. The Court has serious concerns about Ms. Sperando's continued representation of clients in North Carolina. As noted above, she repeatedly<sup>15</sup> and recklessly violated clear North Carolina rules without any inquiry into whether her conduct was appropriate. She has not passed the bar exam in North Carolina or made any other sort of showing that she has a basic familiarity with North Carolina law. She has shown by her conduct that she does not adequately educate herself about North Carolina law before representing clients in a North Carolina courtroom. Presence of North Carolina co-counsel did not prevent the violations. There is nothing before the Court to show that she has taken any steps on her own initiative to prevent future violations, inadvertent or otherwise. The appellate briefs reflect that even after Ms. Sperando was aware of North Carolina law governing expressions of opinion in closing argument, she did not acknowledge even a potential problem with her conduct, giving rise to a concern that she in the future will disregard North Carolina rules when she does not agree with them or when it does not suit her purposes to follow them. She is hesitant to comply with RPC 1.3(a), now RRPC 8.3, and does not appreciate her obligations as part of a self-governing profession. Her testimony and her conduct further demonstrate that she does not fully understand or appreciate the problems caused by improperly accusing another lawyer of corrupt behavior and that she does not treat opposing counsel with respect. She is not candid in her dealings with the Court.

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<sup>15</sup> In her Motion to Reconsider, Ms. Sperando urged the Court not to consider the number of violations against her. The Supreme Court in its decision found the number of violations to be important enough to specifically mention in what is a very short decision. While the Court agrees that the overruling of the objection is a mitigating factor and the Court has considered it as such, it is not a factor that totally excuses the repeated violations. As to the violation concerning defense counsel it is hardly even mitigating.



5. This Court has the inherent power and duty to discipline lawyers for unprofessional conduct. In Re Hunoval, 294 N.C. 740, 744 (1977). This power is "based upon the relationship of the attorney to the court and the authority which the court has over its own officers to prevent them from, or punish them for, committing acts of . . . impropriety calculated to bring contempt upon the administration of justice." In re Burton, 257 N.C. 534, 542-43 (1962); N.C.G.S. §84-4.2.
57. The statutory requirements an out of state attorney must meet for admission *pro hac vice* are minimal. She must file a motion containing or accompanied by her name, address, bar membership number and "status as a practicing attorney in another state" which grants reciprocal privileges to North Carolina attorneys, a statement by the client, a statement that the attorney will represent the client until the matter is concluded, will be "subject to the orders and amenable to the disciplinary action" of the General Court of Justice and the North Carolina State Bar, and has associated with a North Carolina attorney who will also appear in the case. N.C.G.S. §84-4.1. The out-of-state attorney does not have to pass the bar exam or indeed make any showing of competence in or knowledge of North Carolina law. Essentially, North Carolina is willing to accept an out-of-state attorney on trust and willing to presume the attorney will meet her professional and ethical obligations. By her conduct, Ms. Sperando has violated that trust and rebutted that presumption.
58. In this case, the Court finds that a short-term but complete suspension of Ms. Sperando's ability to practice law in North Carolina is appropriate as a sanction and that it is also necessary to prevent future acts of impropriety, to protect the public and to safeguard the administration of justice. In view of all the facts and circumstances and after weighing lesser sanctions and alternatives, the Court believes Ms. Sperando should not be representing clients in North Carolina courts at this time and for a period of one year.
59. The permission previously granted to Ms. Sperando to represent the plaintiff in this case should be revoked. N.C.G.S. §84-4.2. This will not prejudice the plaintiff as there are virtually no disputed issues left in the case and she has other counsel of record available to protect her interests. Ms. Sperando is hereafter prohibited from appearing on behalf of the plaintiff in this matter.
60. Ms. Sperando has filed an affidavit reflecting that she presently represents parties *pro hac vice* in three cases pending in North Carolina state court. It is appropriate to require her to provide a copy of this Order and attachments to her

clients in those pending cases. It is further appropriate to require Ms. Sperando to move to withdraw from representation in those cases and to prohibit her from offering anything in opposition to her motion.

61. Normally a party has a right to have competent counsel of his or her own choosing, and under certain circumstances when an attorney is admitted *pro hac vice*, the client has a substantial right affected when the attorney is thereafter disqualified. Goldston v. AMC, 326 N.C. 723, 726-727 (1990). There is no such right, however, when counsel is not competent or has otherwise acted in a manner inconsistent with his or her ethical and professional duties. In this case the highest judicial authority in the state, the North Carolina Supreme Court, has unanimously declared that Ms. Sperando violated the Rules of Professional Conduct and made a grossly improper closing argument. Moreover, the Goldston standard is to be applied by an appellate court in deciding if an interlocutory appeal is appropriate and is not particularly apt when an attorney is before the Court for discipline or when the Court is acting pursuant to N.C.G.S. §84-4.2. Cf., State Industries, Inc. v. Jernigan, No. 5D99-3352 (Fla.App. January 28, 2000).<sup>16</sup> Finally, the Court doubts that any judge who had been aware of Ms. Sperando's misconduct in this case would have granted a discretionary motion to appear *pro hac vice* in the first place.<sup>17</sup>

62. In any event, assuming that the clients do have a substantial right at issue here, it is not an unqualified right that must be observed to the exclusion of all other concerns and issues of importance and it is not a right that handcuffs the Courts from removing attorneys who have violated ethical and professional rules or who present a risk of future violations. The State Bar, for example, routinely disbars and suspends attorneys for violation of ethical rules without regard to the potential negative effect on clients. See Rules and Regulations of the North Carolina State Bar, Section .0124. Indeed, one of the reasons for suspension or disbarment is the

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<sup>16</sup> In State Industries, Inc. v. Jernigan, the Florida Court of Appeal for the Fifth District affirmed the trial court's revocation of the authority of an Illinois attorney to appear on behalf of a defendant in a product liability case. During a deposition, the Illinois attorney repeatedly called plaintiffs' counsel a liar. The appellate court stated that "The decision as to whether to grant *pro hac vice* status to an out-of-state attorney is within the sound discretion of the trial court. . . . Likewise in our view is the decision to revoke the privilege once given." The Court further held that "It is not necessary that in order to revoke *pro hac vice* credentials that a trial judge find that the conduct in question amounted to an ethical violation under the Florida Rules of Professional Conduct. Nor must the court await conduct that would require a mistrial or justify a reversal on appeal in order to act. A trial court may revoke the status of *pro hac vice* whenever it appears that counsel's conduct during any stage of the proceeding . . . adversely impacts the administration of justice." The Court concluded that calling opposing counsel a liar on the record does adversely affect the administration of justice.

<sup>17</sup> Ironically, upon its recent review of the court file in Case, the Court learned that it did in fact grant Ms. Sperando's *pro hac vice* motion on February 1, 1999, and that her misconduct in this litigation was not mentioned in that written motion, filed before the Supreme Court's decision in this case.

protection of clients, potential clients, and the public. A Court in a judicial disbarment can order an attorney disbarred immediately and is not even required to give the attorney time to wind down her practice. In Re Delk, 336 N.C. 543, 549 (1994). Even assuming that the clients in these three cases would want Ms. Sperando to continue to represent them once they are aware of Ms. Sperando's misconduct and the findings and terms of this Order, the right of a party to counsel of choice does not outweigh the interests of the court system in protecting itself from impropriety, in the fair and efficient administration of justice, in the protection of the public, and in the enforcement of its own rules and laws. No party has a right to have counsel who will not follow the rules and who cannot be relied upon to comply with our state's ethical requirements. By her own conduct, Ms. Sperando has shown that she has forsaken the trust without which an unlicensed out-of-state attorney cannot appear in our courts.

Despite the Court's view that it does not have to make an individual determination in each case as to the need for withdrawal, the Court has considered the information available. As to one of these cases, Ms. Sperando has clearly been only tangentially involved<sup>18</sup> and there are several other attorneys involved in the case so that her client is unlikely to be prejudiced by her withdrawal. In the other two cases, Ms. Sperando's clients do have other counsel of record. The Court also notes that the North Carolina attorney involved in each of those two cases pursuant to N.C.G.S. §84-4.1(5) is the same attorney as in this case and that the involvement of this attorney did not prevent the violations at issue here; it therefore cannot be presumed that his involvement would prevent violations in other cases. The courts before which those cases are pending can continue the case if necessary or otherwise deal with any issues arising from Ms. Sperando's withdrawal.<sup>19</sup>

64. Balancing the myriad of factors supporting temporary suspension against the right of individual litigants to counsel of choice and assuming such a right exists in this case, the Court is convinced that a temporary suspension is appropriate and necessary.

65. From today's date until one year after the date the last motion to withdraw is allowed or Ms. Sperando's representation of clients in North Carolina courts otherwise ceases, Ms. Sperando shall not appear in a North Carolina state court on

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<sup>18</sup> She has been involved so little she initially forgot to inform the Court about this case.

<sup>19</sup> The exact status of the Case litigation is not clear to the Court at this time, but it appears that this Court's Order will have little practical effect on that litigation since the lawsuit has been dismissed or, if the case is still pending, since Ms. Sperando has already been removed by Judge Vosburgh.

behalf of a client except to the extent necessary to withdraw. For the same period of time she shall not move to appear *pro hac vice* in a North Carolina case or otherwise practice law in North Carolina by, *inter alia*, advising or counseling clients.

67. After this suspension is over, she shall, for the next five years, attach to any Motion to be admitted *pro hac vice* filed in North Carolina state court a copy of this Order and its attachments and an affidavit showing compliance with this Order. She shall further not attempt to have any such Motion heard in chambers and shall arrange for the Motion to be heard in open court with notice to other parties.
68. Before filing any motion in North Carolina state court to be admitted *pro hac vice*, Ms. Sperando shall complete at least twenty-four hours of continuing legal education specifically related to trials and litigation in North Carolina and at least twelve hours of continuing legal education specifically related to ethics and/or professionalism in a litigation practice in North Carolina.
69. The Court has arranged for Mr. Barron to be notified that a signed but unfiled copy of this Order is available to him from the Court's judicial assistant on the date of signature.

In the Court's discretion, it is therefore ORDERED that:

1. Maria P. Sperando is hereby censured for grossly improper conduct during a trial that violated the General Rules of Practice and the North Carolina Rules of Professional Conduct.
2. This Order is an Order of Discipline against Maria P. Sperando and she shall report it as such when asked or when required by law or applicable rule.
3. The permission previously granted to Maria P. Sperando to represent the plaintiff in this case is hereby revoked.
4. Maria P. Sperando shall pay to the defendant Duke University the sum of \$53,274.50 within fifteen days of the date this Order was signed as a sanction and to partially reimburse Duke for the fees it incurred as a result of her unprofessional and unethical conduct.
5. Maria P. Sperando shall pay to the plaintiff, Finesse Couch, Administratrix, the costs incurred by the plaintiff in defending the appeal of this case in the North Carolina Supreme Court within fifteen days of the date this Order was signed.

6. Within fifteen days of the date this Order was signed, Maria P. Sperando shall move to withdraw from any cases pending in North Carolina state court in which she represents clients or is attempting to continue to represent clients. She shall attach to each Motion a copy of this Order and its attachments and provide a copy to her clients. She shall not speak to the Court in opposition to the Motion.

7. Maria P. Sperando is prohibited from representing clients in North Carolina courts from today's date until one year after the date the last motion to withdraw is allowed or her representation of clients in North Carolina state court otherwise ceases. During this time she shall not move to appear *pro hac vice* in a North Carolina case and she shall not otherwise practice law in this State by counseling or advising clients.

8. At the end of this period of suspension, Maria P. Sperando may move to represent clients in North Carolina courts *pro hac vice*, subject to the requirements of NCGS §84-4.1 and upon compliance with the following additional terms: She shall attach to any such Motion filed for the following five years a copy of this Order and its attachments and an affidavit showing compliance with all aspects of this Order, and she shall before filing such a motion complete twenty-four hours of continuing legal education specifically related to trials and litigation in North Carolina and twelve hours of continuing legal education specifically related to ethics or professionalism in a litigation practice in North Carolina. She shall further not attempt to have any such Motion heard in chambers and shall arrange for the Motion to be heard in open court with notice to other parties.

9. The Clerk of Court of Durham County shall provide a certified copy of this Order and its attachments to the State Bar of North Carolina, the State Bar of Florida and the State Bar of New York.

10. Maria P. Sperando shall file an affidavit with supporting documentation showing compliance with every term of this Order by July 14, 2000. Such supporting documentation shall be detailed and specific and shall include copies of checks, letters, certified mail receipts, filed Motions and Orders, etc. The original affidavit and supporting documents shall be filed with the Clerk and Ms. Sperando shall provide a copy to the Court. For those actions required by this Order that cannot be completed by July 14, 2000, Ms. Sperando shall set forth the status of her efforts to comply in her affidavit and she shall file supplemental affidavits every thirty days until compliance is total.

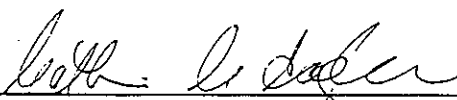
11. The Court retains jurisdiction of this matter to enter such Orders as may be necessary to ensure compliance and enforcement. Failure to comply with the terms of this Order could result in further sanctions and in civil and/or criminal contempt proceedings.

12. Should Maria P. Sperando or any other party file Notice of Appeal from this Order or any other Order related to the issue remanded by the Supreme Court, the appealing person shall provide a copy of the Notice of Appeal to the Court in chambers. The Court will then consider appointment of counsel to defend its Order.

13. If the decisions of Judge James Vosburgh entered in Case v. Edwards are final or no longer on appeal or if this Order otherwise reflects any misapprehension of the facts concerning the status of Case, Maria P. Sperando, Vance Barron, Jr., Keith Bishop, and Willie Gary, shall each immediately so advise the Court.

14. The Trial Court Administrator in Durham County is directed to provide a filed copy of this Order to Maria Sperando, to other counsel of record for the plaintiff, to counsel of record for Ms. Sperando, and to counsel of record for the defendant.

This 30<sup>th</sup> day of May, 2000.

  
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Catherine C. Eagles  
Superior Court Judge Presiding