

16CV000141

NORTH CAROLINA  
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
15 CVS \_\_\_\_\_

2016 JAN -5 P 4:58

GORDON E. BOYCE, N.C.S.B. #0435,  
Plaintiff,

vs.

THE NORTH CAROLINA STATE BAR, )  
An Agency of the State of North Carolina, )  
and Others in Interest, if any, )  
Defendants. )

COMPLAINT  
(DECLARATORY JUDGMENT)

**NOW COMES THE PLAINTIFF**, Gordon Eugene Boyce, N.C. State Bar #0435, as provided for in N.C.G.S. §1- 253, *et. seq*, and alleges the following facts and conclusions of law in support of this Action for Declaratory Judgment:

1. Plaintiff is a citizen and resident of Wake County, North Carolina, and an Attorney-at-Law duly licensed by the State of North Carolina now and since September 16, 1956. Plaintiff is and has been since a member and subject to the Code of Professional Responsibility and Rules and Regulations of the N.C. State Bar for approximately sixty (60) years. Plaintiff also served as a 10th District Councilor to The State Bar for nine (9) years and has personal knowledge of its functions, jurisdiction and potential conflicts of interest.

2. Defendant, The North Carolina State Bar (hereafter "The State Bar") is an agency of the State of North Carolina by reason of, and subject to provisions of law found in, N.C.G.S. §84-15. The laws create and empowers the North Carolina State Bar to act as an agency of the State. By law, the Attorney General is lead attorney for the Agency.

3. Roy A. Cooper, III, (hereafter "Cooper") herein referred to, is a citizen and resident of Wake County, North Carolina. Pursuant to N.C.G.S. Ch. § 1-260, Cooper is the Attorney empowered by law to represent and act in his professional capacity as attorney for Defendant herein, the State Bar. Cooper for the past 14 years has appeared and currently appears in numerous legal controversies as attorney of record for the State Bar including matters of attorney ethics and discipline.

4. The facts and actions of the parties in this matter gave rise to four potential judicial actions: First, a criminal prosecution (misdemeanor) pursuant to the North Carolina Corrupt Practices Act, G.S. 163-274 (Exhibit D). Second, a Board of Elections proceeding

pursuant to N.C. Gen. Statute, Chapter 163-22. Third, a common law Civil Action for libel *per se* and a Statutory Unfair and Deceptive Trade Practices, G.S. 1-75 (see Exhibit \_\_\_\_). Fourth, conduct by licensed attorneys in violation of their Code of Professional Responsibility were presented for proceedings before the N.C. State Bar, an Agency of the State.

5. The facts were reported to the District Attorney of Wake County who declined to follow up with either investigation or indictment.

6. The facts were reported to the Board of Elections where the Chairman (who was at the time a financial contributor and fundraiser of then State Senator Cooper) denied Plaintiff and other complaining parties objections and entered a dismissal of Plaintiffs' report of the election and criminal law violations.

7. Demands were made to stop the false publication. Judge Manning issued a statement giving Cooper the true facts of the case. Upon Cooper's refusal to correct his false statements, the facts were presented in a Civil Action which was pursued for 14 years in Wake County Superior Court, N.C. Court of Appeals, N.C. Supreme Court and U.S. Supreme Court. The Civil Jurisdiction part of the controversy ended in 2014 by Cooper's admission of wrong political advertisement and payment of damages and costs.

8. This action relates to the failure or refusal of the Defendant The State Bar, in light of its Conflict of Interest since January 2000 as shown herein and in violation of its ethical and lawful duties, to refer this matter to an appropriate authority having no Conflicts of Interest as The State Bar had and now has. This is the last and final phase of the controversy.

9. By reason of the Conflict of Interest hereafter alleged, Cooper is a party who has or may claim an interest that will or might be affected by the Declaration and Judgment to be entered in this action. Some examples of the relationship and conflict giving rise to and showing the "Conflict of Interest" in question are attached. (**"Exhibit A."**)

10. Plaintiff on multiple occasions has pursued his professional obligations to The State Bar, and again by this action satisfies his duty to and compliance with the mandatory requirements of § 8.3 of the Code of Professional Responsibility (**"Exhibit D"**). Plaintiff has evoked jurisdiction and filed Notices and Complaints showing multiple acts and conduct in violation of R.P.C., Rules § 8.4, § 4.1, (**"Exhibit E"**) and others laws alleging that

appear to be violations by Roy A. Cooper, III, a licensed attorney, as well as other attorneys acting in Cooper's personal behalf. All are licensed, bound by, and subject to the jurisdiction of the Defendant North Carolina State Bar.

11. Defendant The State Bar, through its duly appointed and acting agents, have purported to deny and ignore its statutory duties to exercise jurisdiction as to Plaintiff's efforts to clear his ethical record and to respond appropriately as required. Defendant State Bar neglects, refuses and otherwise chooses to take no affirmative action to recognize and resolve Plaintiff's actions relating to Plaintiff's duty to report unethical conduct of fellow licensed attorneys. The conduct includes intentional and repeated publications of False Statements of Fact relating to Plaintiffs' alleged "fees of \$28,000 an hour charged to clients" in one of several Class Action cases. **Exhibit L**" shows no fees in any amount were paid by the clients including Cooper and his fellow Plaintiffs and which prove the lie published by Cooper about his fellow attorneys. A Conflict of Interest exists relating to how The State Bar must act judicially and honestly in regard to decisions upon the probable cause showing about ethical issues relating to Cooper's publications of false statements published about his own representative Attorneys.

12. False and ethically degrading statements by attorney Cooper have been repeated multiple times by his political consultant attorneys and his financial political contributor attorneys. Accusations, if shown to be false, demeaning Plaintiff's professional conduct have been ruled to be accusations of violations of the Code of Professional Conduct by a final decision of the N.C. Court of Appeals (See, *Boyce & Isley, et al. vs. Cooper, et al.*, 243 N.C. App. 125, September 12, 2002), a copy of which is attached. (**"Exhibit B"**). The Court of Appeals determined Cooper's accusations against the Plaintiff herein are statements of professional misconduct of a North Carolina licensed attorney. Both the State Supreme Court the United States Supreme Court declined review.

13. The Supreme Court of North Carolina and the Supreme Court of the United State, by their six (6) refusals to deny review or grant certiorari, have concluded there is no judicial disagreement with the Court of Appeals 2002 decision. These conclusions of all questions of Civil Law liability are final. The only remaining issue, yet unresolved, relate to and is the basis of and need for judicial consideration and finality of these pending matters regarding serious violations of the N.C. Code of Profession Conduct.

**REFERRAL IS NECESSARY BY REASON OF CONFLICT OF INTEREST.**

14. Defendant The State Bar, has been repeatedly advised that any action exclusively on its part regarding probable cause and other issues relating to Plaintiff's report of attorneys' misconduct is improper by reason of the existence and continuing existence of a material "conflict of interest" that has prevented and will continue to prevent a hearing and appropriate expeditious resolution of Plaintiff's past and continuing efforts to clear his professional standing as Licensed Attorney #0435 and his reputation as a practicing attorney in good standing as a member of the Bar of North Carolina.

**JUDICIAL PRECEDENCE EXISTS AS TO STATE BAR CONFLICT OF INTEREST.**

15. Defendant The State Bar, within recent months in an identical R.P.C. case acknowledges and followed proper and ethical procedures by its' referral of a disciplinary matter that involves the very same facts that was a Conflict of Interest with another of its' own Co-Counsel attorneys of the Justice Department of North Carolina and Office of Attorney General. The Wake County Superior Court concurred in the conflicts referral.

16. In the case of *The State Bar of North Carolina vs. I. Faison Hicks*, the Respondent Hicks is a North Carolina Assistant Attorney General and employee of the Office of Attorney General. Like the Respondent here, Roy A. Cooper, III, also an employee of the Office of Attorney General of the Department of Justice, The State Bar co-counsel Hicks now and heretofore has appeared in numerous litigation matters, contested lawsuits and appeals in many State and Federal Courts, along with Attorney Cooper, as Counsel of Record on behalf of the Defendant The State Bar. A public record of Wake County Superior Court showing proper referral for resolution of the misconduct of The State Bar Attorney Hicks is attached hereto. (**Exhibit "C."**) No reason to defer from this direct precedent exists here.

17. Defendant The State Bar is and has been aware of many Court Rulings and Laws, including its own Orders, that The State Bar does not have sole and exclusive jurisdiction as to matters of Attorney Misconduct. Defendant's officers and agents have been made aware on numerous occasions of these issues as related to its own Attorney



Roy A. Cooper, III, that include his misconduct and the allegations, and even his admitted violation, of the Rules of Professional Conduct.

18. Defendant The State Bar is now aware of the confession by its attorney and counsel of record, Cooper, who admits judicially that his publication of false accusations of attorneys' unethical conduct against Plaintiff are wrong as to Plaintiff, Plaintiff's fellow attorney partners and their Law Firm.

19. After 14 years of repetition of the libelous *per se* accusations of professional misconduct saying in the Public Records of four State and Federal Courts that "the political ad is true," (see "**Exhibit B**") Defendant Cooper finally admitted, that his and his paid attorneys numerous publications and repetitions in published public records defaming his fellow attorney are wrong. Publishing the TV ad saying Plaintiff had "charged" his clients unethical "illegal and excessive" attorney fees and repeatedly saying "the political ad is true" was blatantly false.

20. Plaintiff, his Law Firm and its partners did not charge clients grossly excessive legal fees to their intangibles taxpayer clients. In fact, one of Plaintiffs' intangibles tax clients is Attorney Roy A. Cooper himself. All the evidence shows it is false for Attorney Cooper to say that he himself, as a client of Plaintiff and his fellow taxpayers were "charged" gross and excessive fees of "\$28,000 an hour" in the lawsuit 95CVS6715 which Cooper refers to and cites by Case Name and CVS number multiple times to millions of people throughout North Carolina and into Virginia and South Carolina. In Attorney Cooper's first two years in office as Attorney General and while acting as Counsel to Defendant The State Bar, also participated in legal proceedings during the Administrative Phase of the litigation in which he accused fellow attorneys of professional misconduct.

21. Defendant The State Bar, neglected and continues to neglect, refuse and delay taking appropriate action. Its' conduct not to refer to one of more than several appropriate and existing North Carolina judicial authorities having "concurrent jurisdiction" the foregoing issues regarding violation of the Rules of Professional Conduct, is the primary subject of this action for Declaratory Judgment.

22. The consistent and continuing denials to act, as requested and demanded by Plaintiff, give rise to this Declaratory Judgment action for determination of appropriate jurisdiction and referral of Plaintiff's efforts to have clarified, resolved and confirmed his

good standing and licensure status as a licensed attorney of the State of North Carolina and member of The State Bar as well as a final ruling on the last remaining issue of this fifteen year old controversy.

23. Plaintiff on multiple occasions, has pursued the requirements of and his professional obligations to the Code of Professional Responsibility, § 8.3. (**Exhibit "D."**) Plaintiff must contend with permanency of public access to the numerous Public Court records containing the repetitious false statements of ethical conduct.

**STATE BAR FAILS & REFUSES TO RESPOND IN OBEDIENCE TO LAW.**

24. Pursuant to his ethical duty under C.P.R. § 8.3, Plaintiff has filed several Notices and Complaints and evidence of undeniable multiple acts of misconduct in violation of the C.P.R., specifically Rules § 8.4 and § 4.1. (**"Exhibit E."**)

25. Full and dutiful compliance by Plaintiff of reports of misconduct of The State Bar Agency's own attorney, fully substantiated by competent evidence and admissions of fact, have resulted in no action to date, appropriate or otherwise, by Defendant The State Bar.

26. Defendant The State Bar, by its agents including the Attorney General and several Assistant Attorneys General serving permanently and regularly as State Bar Co-Counsel, have purported to deny statutory duties imposed for exercise of jurisdiction in response to Plaintiff's duty to report fellow attorney unethical misconduct and to clear publicly the records of alleged multiple false and widespread accusations by its own Chief Counsel, Roy A. Cooper, III, falsely stating Plaintiff engaged in unethical conduct in violation of C.P.R. §1.5(a).

27. Defendant The State Bar continues to neglect, refuse and otherwise chooses to take no appropriate affirmative action to recognize and resolve Plaintiff's actions in regard to his duty to report conduct of fellow licensed attorneys that includes intentional and repeated publications of false statements of fact relating to Plaintiff's practice of his profession and dealings with his clients.

**OBVIOUS CONFLICTS OF INTEREST PERSIST.**

28. False and ethically degrading statements by Defendant The State Bar's long-time attorney and Co-Counsel Cooper in numerous cases and controversies, have been repeated multiple times by Cooper, his political consultants and his financial contributors,

some of whom are also North Carolina attorneys and some of whom have attorney/client relationships with Defendant The State Bar.

29. Defendant The State Bar by reason of its' failure to perform its own legally required and ethical responsibilities, raises the necessity for Judicial Determination of whether it erred and continues to err in performance of its proper and legally imposed duties.

30. The Defendant State Bar Agency has been repeatedly advised that any action, ruling or decision of substance on its part regarding Plaintiff's report required of him by C.P.R. §8.3 relating to the State Bar's own attorney and frequent Lead Counsel in multiple litigation matters is improper by reason of the existence and ongoing existence of obvious and material "Conflict of Interest."

31. The obvious Conflict of Interest prevents and will continue to prevent the required consideration and appropriate expeditious resolution of the mandatory duties of Defendant The State Bar that are appropriate, fair and necessary to conclude once and for all (as a Record of The State Bar) Plaintiff's past and continuing efforts to clear his professional standing as Licensed Attorney #0435 and his reputation as a practicing attorney member of the Bar of North Carolina.

#### **EVIDENCE SHOWS THE NEED FOR IMPARTIAL REVIEW & ORDER.**

32. Defendant The State Bar, does not have sole and exclusive jurisdiction on matters of attorney misconduct. Defendant, The State Bar, is aware of its choices of alternatives to refer matters in which it has Conflict of Interest to other appropriate and impartial authority having no such Conflicts of Interest as here.

33. Some of the conclusive and primary evidence that showing "Probable Cause" and supports Declaratory Judgment requiring Referral of these matters to an Appropriate Impartial Body includes the following:

**"Exhibit F."** A copy of the pertinent part of the excessively and widespread published accusations published on TV and otherwise by Cooper accusing fellow lawyers of The State Bar of professional misconduct – to-wit, having charged clients "illegal or clearly excessive fees."

**"Exhibit G."** A copy of the original TV ad script showing Cooper's own handwritten changes by which he intentionally made his accusation read that attorneys "CHARGED"

their clients clearly excessive fees. See also, the 2002 Opinion of the N. C. Court of Appeals ("Exhibit D," supra.)

**"Exhibit H."** Cooper's own admission, under oath in deposition, that the handwriting on the TV script is his and that he made the change which according to the Court of Appeals made his accusations against me of unethical conduct defamatory per se.

**"Exhibit I."** Roy Cooper, III, himself was personally one of my taxpayer clients in my lawsuit Case No. 95CVS6715 which lawsuit he cites in his defamatory per se publications.

**"Exhibit J."** Roy Cooper, III, as one of my clients, received checks for his full refunds of the illegal taxes, plus interest, and paid no attorney fees or costs of any amount whatever.

**"Exhibit K."** In Case No. 95CVS6715, Cooper cites in his TV ad, Cooper exercised his right to withdraw as a Class Member, by filing an "Opt-Out Notice" believing it would assure no attorney fee assessment. Ultimately, Judge Manning ordered no attorney fees anyway.

**"Exhibit L."** A chart that summarizes all cases, including Case 95CVS6715 used by Cooper in his false TV ad, that proves CLIENTS, INCLUDING ROY COOPER AND HIS ATTORNEYS AND POLITICAL ADVISORS, WERE "CHARGED" NO ATTORNEY FEES IN ANY AMOUNT by Plaintiff or Plaintiff's law firm in the Class Action cited in his TV ad.

34. Defendant The State Bar, neglects and continues to neglect, refuse and delay taking appropriate action by referring the foregoing issues regarding violation of the Rules of Professional Conduct, brought to its attention by the Plaintiff, to the proper independent authority that has "concurrent jurisdiction" relating to attorney misconduct, *to-wit*, the Supreme Court of North Carolina or other appropriate fact-finding body as it knows to do.

35. The consistent and continuing denials to act as requested by Plaintiff give rise to this Declaratory Judgment action for determination of the Appropriate Jurisdiction and Order of Referral of Plaintiff's efforts to have clarified, resolved, confirmed and entered of Record Plaintiff's good standing and licensure status as a licensed attorney of the State of North Carolina and member of The State Bar.

WHEREFORE, Plaintiff moves for entry of a Declaratory Judgment and for rulings of this Court -

(a) That concurrent jurisdiction of several types exists as to resolution of attorney discipline and misconduct matters, and

(b) That Defendant The State Bar, by reason of its apparent Conflict of Interest has no right, jurisdiction or authority by recognition and knowledge of its clear conflict of interest regarding the party and parties in question to ignore an appropriate Order of Referral, and

(c) That Defendant The State Bar is obliged by law, by the Rules of Professional Conduct and as a matter of conscience and good faith to refer Plaintiff's complaints and communications regarding the wrongful conduct of its own acting Counsel, Legal Representative to the Appropriate Forum and Jurisdiction for investigation, findings of fact and recommendations as to discipline, if any, as by law provided and so recognized, for cost, and

(d) For costs and such other relief as may be proper.

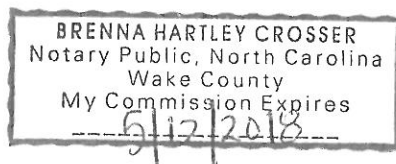
This the 31<sup>st</sup> day of December, 2015.

Gordon Eugene Boyce  
Gordon Eugene Boyce, N.C.S.B. #0435  
Attorney and Plaintiff pro se  
313 Woodcliff Rd., (919) 787-0634  
Raleigh, N.C. 27609 [gboyce07@gmail.com](mailto:gboyce07@gmail.com)

**NORTH CAROLINA  
COUNTY OF WAKE**

**BEFORE ME THIS DAY PERSONALLY APPEARED** Gordon Eugene Boyce who, being first duly sworn deposes and says that he is the Plaintiff named in the foregoing Complaint for Declaratory Judgment, that he has read this document and the matters and things therein alleged are true to his own knowledge and belief and as to those matter alleged upon information and belief he believes them to be true.

This the 31<sup>st</sup> day of December, 2015.



Brenna Hartley Crosser  
NOTARY PUBLIC  
My Commission Expires: 5/12/2018



## EXHIBITS TO THE STATE BAR COMPLAINT FOR DECLARATORY JUDGMENT

**EXHIBIT A.** Conflict of Interest Exists; By law and in fact and practice, the Attorney General is The Lead State Bar Lawyer.

**EXHIBIT B.** 2002 Appeal Decision Confirms; Cooper TV Ad Statement is libel *per se*.

**EXHIBIT C.** State Bar Says Conflict of Interest Exists Between It and Asst. AG Faison Hicks. Agency's Own Precedent Ruling Acknowledges "Conflict of Interest."

**EXHIBIT D.** It is also a Criminal Act to Publish a Lie in a Primary Election With Intent to Affect Nomination.

**EXHIBIT E.** Code of Professional Responsibility Rules Are Clear *re* "Truthfulness," "Misconduct by Dishonesty, Deceit," and "Duty to Report Lying."

**EXHIBIT F.** Copy of Nov. 2000 False TV Political Ad and Copy of June 2000, 800 False Political Telephone Calls.

**EXHIBIT G.** Vast Extent of Publication *of* Attorney Misconduct; Repetition in Trial Courts and Appellate Records of the Lie by repeating, "The political ad is true."

**EXHIBIT H.** Excerpt of Relevant Part of Cooper's False Statements in His TV Ad.

**EXHIBIT I.** Admission by Cooper Under Oath Showing his Handwriting Changes to the Script that Make it Libelous.

**EXHIBIT J.** Cooper Is a Taxpayer Client Pursuing the Tax Refund Cases He Cites in His TV Ad.

**EXHIBIT K.** Cooper is Client/Taxpayer Who "Opted Out" of the Case Cited in TV Ad Thinking He Could Avoid Paying a Fee. And There Was No Fee Paid.

**EXHIBIT L.** Cooper Received a Personal Check for Full Refund of Illegal Taxes (No Fee or Cost).

**EXHIBIT M.** Chart Proving Falsity of the TV Ad: No Lawyer Fee Was Charged to Cooper or Any Fellow Taxpayers in Case 95CVS6715.

Chapter 114. Department of Justice.

Article 1. Attorney General.

N.C. General Statutes § 114-2. Duties.

**It shall be the duty of the Attorney General:**

(1) To defend all actions in the appellate division in which the State shall be interested, or a party, and to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

(2) To represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Where the Attorney General represents a State department, agency, institution, commission, bureau, or other organized activity of the State which receives support in whole or in part from the State, the Attorney General shall act in conformance with Rule 1.2 of the Rules of Professional Conduct of the North Carolina State Bar.

EXHIBIT

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The following excerpts from the most recent Annual Report (pp. 8-10) confirm and are irrefutable admissions by The State Bar of their existing Attorney/Client relationship (emphases are added) with Attorney Cooper.

**“2013 ANNUAL REPORT OFFICE OF COUNSEL  
THE NORTH CAROLINA STATE BAR”**

. . .

“The State Bar was a party to the following cases in state trial courts during 2013:

“**LegalZoom.com, Inc. v. North Carolina State Bar (NC Business Court).** LegalZoom, a national online legal document preparation service, commenced this action against the State Bar on September 30, 2011. . . . **The Attorney General represents the State Bar.**

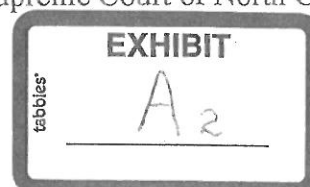
“**North Carolina State Bar v. Lienguard, Inc. (NC Business Court).** The State Bar filed this action after Lienguard refused to stop offering its services in North Carolina. . . . **The Attorney General represents the State Bar.**

“**World Law South, Inc. v. North Carolina State Bar (NC Business Court).** . . . On May 22, 2013 the State Bar and the Attorney General filed the WLG case against parties other than WLS . . . **The Attorney General represents the State Bar.**

“**Loushanda Myers v. “North Carolina Bar” et al (NC Industrial Commission).** Myers asserts this action under the North Carolina Tort Claims Act seeking damages she allegedly suffered because “the North Carolina Bar” dismissed a grievance against her former lawyer. Myers appealed to the North Carolina Court of Appeals. . . . **The Attorney General represents the State Bar.**

“**Neil Allran, Leslie Dale, and #1 in Freedom, LLC v. Roy Cooper, Walter Dalton, Anthony DiSanti, Keith Kapp, Ronald Baker, Ronald Gibson and Brian Oten, et al (Gaston County Superior Court).** These plaintiffs were represented by Hugh Johnston of Gastonia. The State Bar filed a DHC complaint seeking professional discipline against Johnston for filing outrageous and vexatious lawsuits on behalf of purported clients who did not authorize Johnston to represent them. . . . **The Attorney General represented all defendants.”**

The Attorney/Client personal and business relationship between the Attorney General and The State Bar Agency exists since 2001. It is revealed by numerous other lawsuits reported by and concluded in the N.C. Court of Appeals and the Supreme Court of North Carolina.



Emphasis Added.

# THE NORTH CAROLINA STATE BAR JOURNAL

Spring 2015  
Volume 20, Number 1

## Lest We Be Misunderstood

BY L. THOMAS LUNSFORD II

The North Carolina State Bar has been around since 1933. That makes us about 82 years old. One would think that such a venerable agency would by this time in its history be fairly well understood. But one would be wrong so to think.

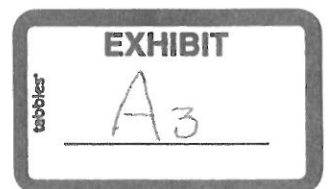
. . .

I would like to make the point that self-regulation is good regulation. Self-regulation fosters professional pride and pervasive volunteerism.

. . .

(L)awyers have imposed upon themselves the ethical obligation to report to the State Bar professional misconduct of which they become aware. This extraordinary undertaking, which is also embodied in the Rules of Professional Conduct, is fundamental to self-regulation. The legal profession is deserving of the public's trust and the privilege of self-regulation in large part because it will not tolerate unethical behavior. . . .

Sincerely, L. Thomas Lunsford II Executive Director



**BOYCE & ISLEY, PLLC, Eugene Boyce, et  
al., Plaintiffs,  
vs.  
Roy A. COOPER, III, The Cooper Committee,  
et al., Defendants.No. COA01-880.  
Court of Appeals of North Carolina. 153 NC  
App. 25, September 17, 2002.**

Boyce & Isley, PLLC, by G. Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, pro se, Raleigh, plaintiff-appellants.

Brooks, Pierce, McLendon, Humphrey, & Leonard, L.L.P., by Jim W. Phillips, Jr., Raleigh, and David Kushner, and Smith Helms Mulliss & Moore, L.L.P., by Alan W. Duncan, Greensboro, for defendant-appellees.

TIMMONS-GOODSON, Judge. Judges GREENE and McGEE, concur.

The law firm of Boyce & Isley, PLLC, and its member attorneys G. Eugene Boyce, R. Daniel Boyce, Philip R. Isley and Laura B. Isley (collectively, "plaintiffs") appeal from an order of the trial court dismissing plaintiffs' complaint pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. For the reasons set forth herein, we reverse in part the order of the trial court.

The facts relevant to this appeal are as follows: On 2 November 2000, plaintiffs filed a complaint with the State Board of Elections. The complaint alleged that a political advertisement sponsored by the campaign of Roy Cooper, the Democratic nominee for the Office of Attorney General of North Carolina, violated section 163-274(8) of the North Carolina General Statutes, which prohibits "any person to publish ... derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity[.]" N.C. Gen.Stat. § 163-274(8) (2001).

During the pendency of the action before the State Board of Elections, plaintiffs filed a similar complaint in Wake County Superior Court

alleging that Roy Cooper, along with the Cooper Committee (collectively, "defendants") published a false and fraudulent political television advertisement during the North Carolina election campaign for the Office of Attorney General. Plaintiffs alleged that the advertisement defamed R. Daniel Boyce ("Dan Boyce"), the Republican nominee for the Office of Attorney General, as well as the member attorneys of the Boyce & Isley law firm. The complaint recited verbatim the content of the advertisement at issue, the audio portion of which is reproduced here as follows:

**I'm Roy Cooper, candidate for Attorney  
General, and I sponsored this ad.  
Dan Boyce - his law firm sued the state,  
charging  
\$28,000 an hour in lawyer fees to the  
taxpayers.  
The Judge said it shocks the conscience.**

. . .

Plaintiffs alleged that defendants' publication of the above-stated advertisement was defamatory per se and constituted unfair and deceptive trade practices. Further, plaintiffs accused defendants of conspiring to violate statutory section 163-274(8), referenced supra, and requested a declaratory judgment regarding defendants' alleged violation of such statute. . . .

#### **I. Plaintiffs' Appeal**

In their first assignment of error, plaintiffs contend that the trial court erred by dismissing their claim for defamation. Plaintiffs argue that their complaint states a valid claim for defamation against defendants upon which relief may be granted. We agree. . . .

There is no dispute in the instant case that the statements made by defendants were intentionally published to the public at large. Therefore, we address the first three elements of plaintiffs' defamation claim, namely that the statements were (1) false, (2) defamatory, and (3)

EXHIBIT

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of or concerning plaintiffs. We therefore turn to the facts as alleged in plaintiffs' complaint.

In support of the first element for defamation, that of falsity, plaintiffs argue that their complaint sets forth specific facts that, if true, demonstrate that defendants' advertisement misstated several fundamental facts. Specifically, the complaint alleged that, contrary to the stated facts of the advertisement, "Dan Boyce's law firm" did not exist in November of 1997, the time period during which, according to the advertisement, the law firm sued the state. Further, the complaint denied that "Dan Boyce's law firm" had ever "charg[ed] \$28,000 an hour in lawyer fees[.]" as stated in the advertisement.

We conclude that plaintiffs set forth sufficient specific facts to support their claim that the statements made by defendants were false. If proven, the above-stated facts would show that defendants' advertisement contained several central errors of fact, publication of which tended to falsely imply that plaintiffs had sued the state and demanded excessive fees for their work at the expense of taxpayers. We next determine whether plaintiffs have set forth sufficient facts alleging defamation.

In North Carolina, the term defamation applies to the two distinct torts of libel and slander. Libel *per se* is "a publication which, when considered alone without explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." . . .

"[F]alse words imputing to a merchant or business man conduct derogatory to his character and standing as a business man and tending to prejudice him in his business are actionable, and words so uttered may be actionable *per se*."

. . .

In an action for libel or slander *per se*, malice and damages are deemed presumed by proof of

publication, with no further evidence required as to any resulting injury.

Plaintiffs alleged in their complaint that, the statements by defendants that "Dan Boyce's law firm" had "sued the state" and "charg[ed]" the taxpayers an hourly rate greater "than a police officer's salary" plainly and falsely accused plaintiffs of unethical billing practices in their profession. The complaint alleged that defendants' advertisement was defamatory *per se* in that it tended to "disparage Boyce & Isley, PLLC and its member attorneys' professional reputation and honesty in billing clients, and states that they engage in unethical conduct[.]" thereby depriving plaintiffs of the "respect, confidence and esteem essential to Plaintiffs' professional status in commerce and the business community." Further, plaintiffs alleged that such remarks were published in reckless disregard of their truth or falsity. Thus, argue plaintiffs, the complaint properly stated sufficient facts to support the claim that defendants' advertisement was defamatory. . . .

Whether a publication is libelous *per se* is a question of law for the court. . . .

When examining an allegedly defamatory statement, the court must view the words within their full context and interpret them "as ordinary people would understand" them. . . .

Although we agree with defendants that "it is not libelous *per se* as a matter of law to state that an attorney sought a very large fee—not in the context of a \$150 million class action lawsuit [.]" such is not the case here. Defendants' advertisement did not state that plaintiffs sought a very large fee — it stated that plaintiffs charged a very large fee. There is an important distinction between these two words, of which defendants, in crafting the text of their advertisement, were undoubtedly aware. The word "sought" or "seeking" indicates that plaintiffs submitted their request for compensation to the court. The fact that plaintiffs sought extraordinary compensation,

moreover, does not imply that plaintiffs actually received such compensation.

In contrast, the term "charged" or "charging" suggests that, not only did plaintiffs actually receive such compensation at the taxpayers' expense, they did so without deference to the court. Contrary to defendants' argument, we do not believe the average layperson to be so familiar with the intricacies of class-action lawsuits as to know that the courts must approve of attorney compensation in such suits.

Further, defendants' advertisement did not indicate that the case for which plaintiffs purportedly "charged" the taxpayers exorbitant fees was a large class-action lawsuit. Nor did it mention the term "contingency fees." Without this vital information to lend context to the facts as portrayed in the advertisement, the average viewer could not properly evaluate the claims being made by defendants against plaintiffs. Instead, the average viewer was left solely with the following information about plaintiffs: that they (1) sued the State; (2) charged (and therefore received) \$28,000 per hour to taxpayers to do so; (3) that this sum represented more than a policeman's annual salary; and (4) that a judge had pronounced that plaintiffs' behavior "shocked the conscience." One does not have to "read between the lines" to discover the advertisement's defamatory content.

We hold that the allegedly false statements, when viewed through the eyes of an average person and in the context of the advertisement as a whole, are defamatory per se. Defendants' statements directly maligned plaintiffs in their profession by accusing them of unscrupulous and avaricious billing practices. Contrary to defendants' contentions, no innuendo or reference to ethical rules governing attorney conduct is necessary to conclude that the advertisement charged plaintiffs with committing contemptible business practices. . . .

We doubt that defendants intended their advertisement as a compliment to plaintiffs' skills

and abilities as "top-notch" attorneys, and we do not conclude that the average person would otherwise interpret the advertisement in a non-derogatory fashion. . . .

The context of a political campaign does not alter the fact that "false speech, even political speech, does not merit constitutional protection if the speaker knows of the falsehood or recklessly disregards the truth." "The use of a known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected. Hence the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection." . . .

In their second assignment of error, plaintiffs contend that the trial court erred by dismissing their claim for unfair and deceptive trade practices. Plaintiffs argue that their defamation claim, if proven, properly supports a claim for unfair and deceptive trade practices by defendants. We agree. . . .

A claim under section 75-1.1 of the North Carolina General Statutes requires proof of three elements: (1) an unfair or deceptive act or practice, (2) in or affecting commerce, which (3) proximately caused actual injury to the claimant. . . .

"[A] libel per se of a type impeaching a party in its business activities is an unfair or deceptive act in or affecting commerce in violation of N.C.G.S. § 75-1.1, which will justify an award of damages... for injuries proximately caused." . . . Similarly, slander per se may constitute a violation of section 75-1.1. . . .

We observe that, under section 75-1.1(b), the term "commerce" "includes all business activities, however denominated, but does not include professional services rendered by a member of a learned profession." N.C. Gen.Stat. § 75-1.1(b) (2001). Thus, professional services rendered by an attorney in the course of his

business are exempt under the statute and may not form the basis of an unfair or deceptive trade practices claim. ... We do not read section 75-1.1(b), however, to preclude an attorney from pursuing an unfair and deceptive trade practices claim. Thus, the mere fact that plaintiffs are learned professionals whose business activities defendants maligned does not remove plaintiffs' claim for defamation outside of the scope of section 75-1.1.

As we have determined, plaintiffs in the instant case properly pled all of the elements for a libel per se claim. Moreover, the alleged libel impugned plaintiffs in their profession by accusing them of unethical business practices. Plaintiffs' complaint alleged that such behavior by defendants constituted unfair and deceptive trade practices and caused actual injury to plaintiffs. Thus, plaintiffs' complaint stated a claim for unfair and deceptive trade practices upon which relief may be granted. . . .

Defendants argue that, as the objectionable statements were published during a political campaign, section 75-1.1 cannot apply. Defendants assert that such statements can have no effect on the consuming public, or the plaintiffs' business activities, and that the statements therefore are not within the purview of section 75-1.1. We do not agree.

We perceive no compelling grounds, nor do defendants advance such, to distinguish defamatory remarks concerning one's trade or profession made during the course of a political campaign from those made in some other forum. As noted supra, it is well established that a defamatory statement impeaching a business man in his trade or profession may constitute an unfair or deceptive act affecting commerce. . . .

We disagree with defendants' argument that the context of a political campaign substantially alters the impact of such statements upon commerce. . . . In contrast, plaintiffs alleged in the instant case that defendants' statements were published to "well over 1 million

people[.]" If defamatory remarks concerning one's trade or profession affect commerce, as has been held, we fail to see how the context of a political campaign, with its wide-spread broadcast of such statements by multiple media, can lessen rather than heighten the impact upon commerce. . . .

In conclusion, plaintiffs' complaint presented a sufficient claim upon which relief could be granted for defamation and unfair and deceptive trade practices at the Rule 12(b)(6) stage. We therefore hold that the trial court erred in dismissing plaintiffs' complaint . . . .

**Direct History, *Boyce & Isley vs. Roy A. Cooper, III***

**[As of April 15, 2012]**

The lies and unethical conduct by a lawyer (also a client taxpayer of the defamed lawyer) against another lawyer (who got the lying lawyer refunds of his illegal taxes free and clear of all costs and fees) are part of these numerous and Permanent Court Records:

APPELLATE PROCEEDINGS THAT ALSO INCLUDE RESEARCH ON RELEVANT U.S. AND NORTH CAROLINA CONSTITUTIONAL ISSUES INCLUDE THESE:

 1

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2001 WL 35940942 (Trial Order) (N.C.Super. Apr 04, 2001) (NO. 00CVS12776)

*Order Affirmed in Part, Reversed in Part by*

2

Boyce & Isley, PLLC v. Cooper, 153 N.C.App. 25, 568 S.E.2d 893 (N.C.App. Sep 17, 2002) (NO. COA01-880)

*Temporary Stay Allowed by*

3

Boyce & Isley, PLLC v. Cooper, 356 N.C. 610, 574 S.E.2d 466 (N.C. Nov 27, 2002) (NO. 598P02)

*AND Temporary Stay Dissolved by*

4

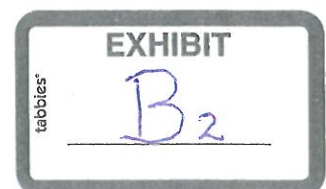
**Boyce & Isley, PLLC v. Cooper, 357 N.C. 163, 580 S.E.2d 361 (N.C. May 01, 2003) (NO. 598P02)**

***AND Writ Denied, Review Denied, Appeal Dismissed by***

5

**Boyce & Isley, PLLC v. Cooper, 357 N.C. 163, 580 S.E.2d 361 (N.C. May 01, 2003) (NO. 598P02)**

***AND Certiorari Denied by***





6

Cooper v. Boyce, 540 U.S. 965, 124 S.Ct. 431, 157 L.Ed.2d 310, 72 BNA USLW 3121, 72 BNA USLW 3276, 72 BNA USLW 3280 (U.S.N.C. Oct 20, 2003) (NO. 03-176)  
*AND On Subsequent Appeal*

7

KeyCited Citation:

Boyce & Isley, PLLC v. Cooper, 169 N.C.App. 572, 611 S.E.2d 175, 33 Media L. Rep. 1596 (N.C.App. Apr 05, 2005) (NO. COA03-1542)  
*Review Denied by*

8

Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 403 (N.C. Nov 09, 2011) (NO. 598P02-4)

9

Boyce & Isley, PLLC v. Cooper, 195 N.C.App. 625, 673 S.E.2d 694 (N.C.App. Mar 17, 2009) (NO. COA08-313)  
*Review Dismissed by*

10

Boyce & Isley, PLLC v. Cooper, 363 N.C. 651, 686 S.E.2d 511 (N.C. Nov 05, 2009) (NO. 598P02-3)  
*AND Review Denied by*

11

Boyce & Isley, PLLC v. Cooper, 363 N.C. 651, 686 S.E.2d 512 (N.C. Nov 05, 2009) (NO. 598P02-3)  
*AND On Subsequent Appeal*

12

Boyce & Isley, PLLC v. Cooper, 710 S.E.2d 309 (N.C.App. May 03, 2011) (NO. COA10-243)

*Petition for Certiorari Filed (Feb 07, 2012)(NO. 11-979)*

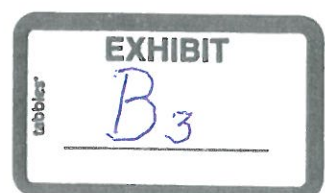
13

Boyce & Isley, PLLC v. Cooper, 195 N.C.App. 625, 673 S.E.2d 694 (N.C.App. Mar 17, 2009) (NO. COA08-313)

*Review Denied by*

14

Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 403 (N.C. Nov 09, 2011) (NO. 598P02-4)





## **Related References That Perpetuate The Unethical Conduct In Public Records.**

15

Boyce & Isley, PLLC v. Cooper, 357 N.C. 655, 588 S.E.2d 887 (N.C. Oct 28, 2003) (NO. 598P02)

16

Boyce & Isley, PLLC v. Cooper, 358 N.C. 233, 593 S.E.2d 777 (N.C. Mar 04, 2004) (NO. 598P02-2)

17

Boyce & Isley, PLLC v. Cooper, 358 N.C. 233, 593 S.E.2d 778 (N.C. Mar 04, 2004) (NO. 598P02-2)

18

Boyce & Isley, PLLC v. Cooper, 358 N.C. 233, 593 S.E.2d 778 (N.C. Mar 04, 2004) (NO. 598P02-2)

19

Boyce & Isley, PLLC v. Cooper, 358 N.C. 233, 593 S.E.2d 778 (N.C. Mar 04, 2004) (NO. 598P02-2)

20

Boyce & Isley, PLLC v. Cooper, 358 N.C. 233, 593 S.E.2d 779 (N.C. Mar 04, 2004) (NO. 598P02-2)

21

Boyce & Isley, PLLC v. Cooper, 594 S.E.2d 35 (N.C. Mar 05, 2004) (NO. 598P02-2)

22

Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 404 (N.C. Nov 09, 2011) (NO. 598P02-4)

23

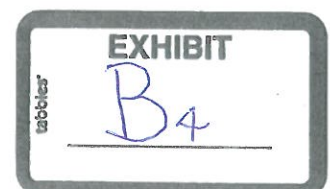
Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 406 (N.C. Nov 09, 2011) (NO. 598P02-4)

24

Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 630 (N.C. Nov 09, 2011) (NO. 598P02-4)

25

Boyce & Isley, PLLC v. Cooper, 718 S.E.2d 633 (N.C. Nov 09, 2011) (NO. 598P02-4)



## Appellate Court Documents (U.S.A.)

### U.S. Appellate Petitions, Motions And Filings

26

Roy A. COOPER, III, et al., Petitioners, v. R. Daniel BOYCE, et al., Respondents., 2003 WL 22428694 (Appellate Petition, Motion and Filing) (U.S. Jul. 30, 2003) Petition for a Writ of Certiorari (NO. 03-176)

27

Roy A. COOPER, III, et al., Petitioners, v. R. Daniel BOYCE, et al., Respondents., 2003 WL 22428695 (Appellate Petition, Motion and Filing) (U.S. Sep. 15, 2003) Response to Petition for Writ of Certiorari (NO. 03-176)

### N.C. App. Appellate Briefs About Cooper's Continued Defamation.

28

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2001 WL 34398513 (Appellate Brief) (N.C.App. Sep. 28, 2001) **Plaintiff-Appellants' Brief** (NO. COA01-880)

29

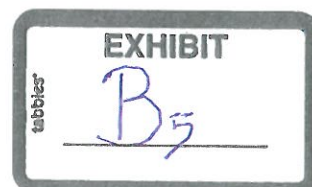
BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs-Appellants, v. Roy A. COOPER, III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants-Appellees., 2001 WL 34400357 (Appellate Brief) (N.C.App. Oct. 31, 2001) **Defendants-Appellees' Brief** (NO. COA01-880)

30

Boyce & ISLEY, Plc, Eugene Boyce, R. Daniel Boyce, Philip R. Isley and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2001 WL 34404023 (Appellate Brief) (N.C.App. Nov. 14, 2001) **Plaintiff-Appellants' Reply Brief** (NO. COA01-880)

31

Boyce & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs-Appellees, v. Roy A. COOPER, III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants-Appellants., 2004 WL 867075 (Appellate Brief) (N.C.App. Mar. 29, 2004) **Defendants-Appellants' Reply Brief** (NO. COA03-1542)



[32](#)

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs, v. Roy A COOPER III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2008 WL 2199914 (Appellate Brief) (N.C.App. May 14, 2008) **Defendants-Appellants' Brief** (NO. COA08-313)

[33](#)

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiff-Appellees, v. Roy A. COOPER, III, the Cooper Committee, and Julia White, Defendant-Appellants., 2010 WL 2390689 (Appellate Brief) (N.C.App. Jun. 4, 2010) **Brief of Appellees Boyce & Isley, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley** (NO. COA10-243)

### **Trial Court Documents Repeating the Lies.**

#### **Wake County Superior Ct. Trial Pleadings (My Home County).**

[34](#)

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2003 WL 25855710 (Trial Pleading) (N.C.Super. **May 22, 2003**) **Answer and Affirmative Defenses (Answ)** (NO. 00CVS12776)

#### **N.C. Superior Ct. Trial Depositions and Discovery**

[35](#)

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2000 WL 35888559 (Trial Deposition and Discovery) (N.C.Super. Nov. 22, 2000) **Plaintiffs' First Set of Interrogatories** (NO. 00CVS12776)

#### **N.C. Superior. Trial Motions, Memoranda And Affidavits**

[36](#)

BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2001 WL 36209773 (Trial Motion, Memorandum and Affidavit) (N.C.Super. Jan. 22, 2001) **Motion to Stay Discovery Pending the Court's Determination of Defendants' Motion to Dismiss, Alternatively Motion for Protective Order or to Extend Time to Respond to Discovery Requests** (NO. 00CVS12776)





37

BOYCE & ISLEY, PLLC. Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, Plaintiffs., v. Roy A. COOPER III, the Cooper Committee Julia White. Stephen Bryant, and Kristi Hyman, Defendants., 2001 WL 36209774 (Trial Motion, Memorandum and Affidavit) (N.C.Super. Feb. 15, 2001) **Defendants' Response to Plaintiffs' Objections to Defendants' Motion to Dismiss** (NO. 00CVS12776)

38

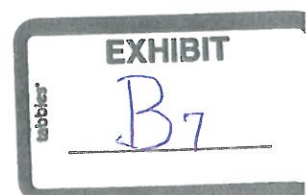
BOYCE & ISLEY, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley and Laura B. Isley, Plaintiffs, v. Roy A. COOPER, III, the Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, Defendants., 2003 WL 25855711 (Trial Motion, Memorandum and Affidavit) (N.C.Super. May 15, 2003) **Motion for Rule 2.1 Exceptional Judge, Objection to Motions and Response to Various Motions Filed By Defendants** (NO. 00CVS12776)

**U.S. Supreme Court – Permanent Records  
That Repeat the Lie By Saying Over and Over:  
My “political ad is true.” Clients were cheated.**

**39**

**ROY A. COOPER, III, ET AL. v. R. DANIEL BOYCE, ET AL., NO. 03-176 (Docket) (U.S. Aug. 04, 2003); Defendants' Review Denied.**

**40 ROY A. COOPER, III, ET AL. v. R. DANIEL BOYCE, ET AL., NO. 11-979 Docket) (U.S. May 15, 2013); Defendants' Review Denied**



No. 03-176

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IN THE  
Supreme Court of the United States

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ROY A. COOPER, III, *et al.*,

*Petitioners,*

v.

R. DANIEL BOYCE, *et al.*,

*Respondents.*

---

On Petition for a Writ of Certiorari to the  
Supreme Court of North Carolina

---

PETITION FOR A WRIT OF CERTIORARI

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(202) 383-5300

*Counsel for Petitioners*

*(Additional Counsel Listed on Inside Cover)*

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EXHIBIT

tabbies

B<sub>8</sub>



No. 11-\_\_\_\_

IN THE  
**Supreme Court of the United States**

ROY A. COOPER III, THE COOPER COMMITTEE,  
AND JULIA WHITE,  
*Petitioners,*

v.

BOYCE & ISLEY, PLLC, EUGENE BOYCE, R. DANIEL  
BOYCE, PHILIP R. ISLEY, AND LAURA B. ISLEY,  
*Respondents.*

**On Petition for a Writ of Certiorari to the  
Court of Appeals of North Carolina**

**PETITION FOR A WRIT OF CERTIORARI**

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jphillips@brookspierce.com

February 7, 2012

EXHIBIT

B<sub>9</sub>

No. 11-979

---

IN THE  
**Supreme Court of the United States**

---

ROY A. COOPER III, THE COOPER COMMITTEE,  
AND JULIA WHITE,  
*Petitioners,*

v.

BOYCE & ISLEY, PLLC, EUGENE BOYCE, R. DANIEL  
BOYCE, PHILIP R. ISLEY, AND LAURA B. ISLEY,  
*Respondents.*

---

**On Petition for a Writ of Certiorari to the  
Court of Appeals of North Carolina**

---

**REPLY BRIEF FOR PETITIONERS**

---

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April 23, 2012

EXHIBIT

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B10

NORTH CAROLINA

WAKE COUNTY

FILED

2003 SEP 17 PM 4:01

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

00 CVS 12776

WAKE COUNTY, U.S.G.

BOYCE & ISLEY, PLLC, EUGENE  
BOYCE, R. DANIEL BOYCE, PHILIP R.  
ISLEY, and LAURA B. ISLEY,

Plaintiffs,

v.

ROY A. COOPER, III, THE COOPER  
COMMITTEE, JULIA WHITE,  
STEPHEN BRYANT, and KRISTI  
HYMAN,

Defendants.

AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES  
(ANSW)

Now come Defendants Roy A. Cooper, III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, responding to the complaint filed by Boyce & Isley, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, and allege and say as follows:

FIRST AFFIRMATIVE DEFENSE

The political advertisement is true. (As used herein "political advertisement" refers to the advertisement about which plaintiffs complain in their complaint.) During the 1990s the individual plaintiffs worked on, participated in, and were involved with a series of lawsuits brought by classes of plaintiffs challenging various tax laws and policies of the State of North Carolina. Those lawsuits included, but were not limited to, Smith v. State of North Carolina, 95 CvS 6715 (Wake County) (sought refund of intangibles taxes), Shaver et al. v. State of North Carolina, 98 CvS 00625 (Wake County) (sought refund of intangibles taxes), and several cases seeking refunds of state taxes levied on the retirement benefits of state and local government employees (collectively, these cases are hereinafter referred to as the "Tax Cases"). The

EXHIBIT

B.11



STATE OF NORTH CAROLINA  
2014 SEP 12 PM 2:45  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

14 M 4670

IN RE:

ATTORNEY ISHAM FAISON HICKS  
(NC STATE BAR NUMBER 10672)

)  
)  
)  
)  
)  
)  
)  
**ORDER OF ATTORNEY  
DISCIPLINE  
(PUBLIC REPRIMAND)**

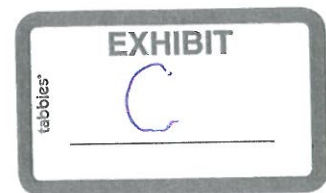
This matter is before the Court upon a referral from the North Carolina State Bar requesting that this court exercise its inherent authority and concurrent jurisdiction over a grievance lodged against Attorney Isham Faison Hicks alleging attorney misconduct.

Since Attorney Hicks has previously served as Counsel for the North Carolina State Bar in cases pending in the Superior Court, this matter was referred for an independent review by the Ethics Counsel for the State Bar of Georgia for a probable cause determination. Such review having concluded in a finding of probable cause that Attorney Hicks violated Bar Rule 8.4, the North Carolina State Bar referred the matter to this court for further attorney disciplinary proceedings. The Court has accepted this referral under its inherent authority.

Wake County Assistant District Attorney David Saacks has been appointed by the Court as Prosecuting Counsel. Isham Faison Hicks is represented by Attorney Duncan McMillan. Attorney Hicks consents to the attorney disciplinary jurisdiction of this court.

The parties have stipulated and the Court finds that Attorney Hicks, on two occasions, intentionally signed a verification of attendance at separate CLE programs claiming full credit for

In Re: Attorney Isham Faison Hicks (NC State Bar No. 10672)



such attendance, when in fact he had not attended all of such course hours to be entitled to the full credit hours he claimed.

Specifically, in September of 2013, Mr. Hicks attended the first hour and last hour of a 12-hour CLE course and claimed 12 hours of CLE credit.

In September of 2011, Mr. Hicks engaged in similar conduct for a CLE program in which he claimed hours of CLE credit to which he was not entitled.

Rule 8.4 of the North Carolina State Bar provides, in part: It is professional misconduct for a lawyer to: "(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

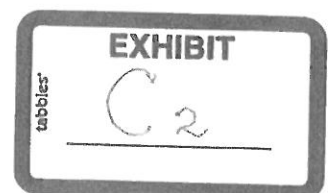
Attorney Hicks has no history of previous attorney misconduct resulting in disciplinary action and has admitted and expressed remorse for this misconduct.

The Court finds and concludes that Attorney Hicks intentionally engaged in professional misconduct and that such was willful and did not result from mistake, inadvertence or neglect.

The Court has considered all available sanctions and finds that a Public Reprimand should be issued in this matter.

A Public Reprimand is a serious form of attorney discipline and is warranted for professional misconduct of this nature.


WHEREFORE, Attorney Isham Faison Hicks is hereby publically reprimanded by this court for professional misconduct. This sanction shall serve as a strong reminder of the high ethical standards of the legal profession.

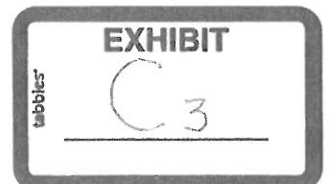




This Public Reprimand shall be forwarded to the North Carolina State Bar and maintained as a permanent record in the judgment book of the North Carolina State Bar and the Bar shall forward a copy of this order to the complainant who originated the inquiry. The complainant, an Attorney, is commended for bringing this matter to the attention of the Bar.

So ordered this, the <sup>12</sup>~~10~~ day of September, 2014.

  
DONALD W. STEPHENS  
SENIOR RESIDENT SUPERIOR COURT JUDGE



**N.C.G.S. § 163 - 274.**  
**Certain acts declared misdemeanors.**

- (a) Class 2 Misdemeanors. - Any person who shall, **in connection with any primary or election** in this State, do any of the acts and things declared in this subsection to be unlawful, shall be **guilty of a Class 2 misdemeanor**. It shall be unlawful:

. . .

- (8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, **knowing such report to be false or in reckless disregard of its truth or falsity**, when such report is calculated or intended to affect the chances of such candidate for nomination or election;



[EMPHASIS ADDED]

# **RULES AND REGULATIONS OF THE NORTH CAROLINA STATE BAR**

## TRANSACTIONS WITH PERSONS OTHER THAN CLIENT

### **Rule 4.1. Truthfulness in Statement to Others.**

In the course of representing a client a lawyer shall not knowingly make a false statement of material fact to a third person.

## MAINTAINING THE INTEGRITY OF THE PROFESSION

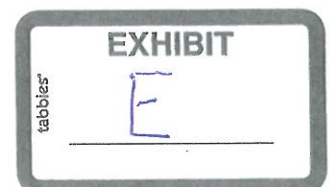
### **Rule 8.4 Misconduct.**

It is professional misconduct for a lawyer to:

- (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

### **Rule 8.3. Reporting Professional Misconduct.**

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the North Carolina State Bar . . . .





**North-Carolina Attorney General Statewide  
Master Questionnaire**

June 11-19, 2000

N=800

20AR271

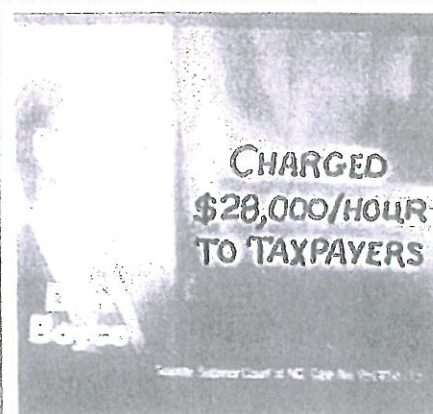
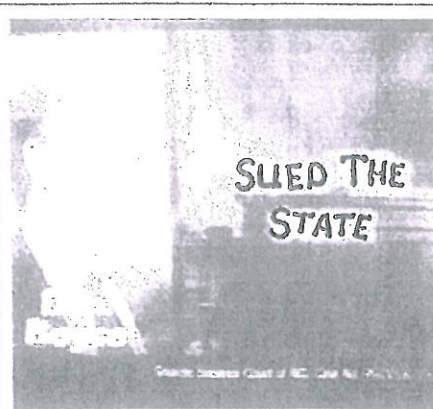
- b. Dan Boyce and his law firm sued the state on behalf of taxpayers and charged over \$28,000 an hour for their legal work. The judge hearing the case wrote that the Boyce law firm's request "shocked the conscience of the court" and that the lawyers wanted more money per hour than the average schoolteacher makes in a whole year.

Much Less Likely	445	56%
Somewhat Less Likely	192	24%
Makes No Difference	147	18%
Don't Know	16	2%

\*\*\* VOICE OVER \*\*\*

\*\*\* TV SCREEN \*\*\*

"Dan Boyce -- his law firm sued the state, charging \$28,000 an hour in lawyer fees to the taxpayers."



**SUED THE  
STATE**

**Dan  
Boyce**

SOURCE: SUPERIOR COURT OF N.C. CASE NO. 95CVS6715

**CHARGED  
\$28,000/HOUR  
TO TAXPAYERS**

**Dan  
Boyce**

SOURCE: SUPERIOR COURT OF N.C. CASE NO. 95CVS6715

**EXHIBIT**

tabbies

**F**

**TV VIEWER STATISTICS, 2000 ELECTION  
OCTOBER 31, 2000 TO NOVEMBER 6, 2000**

Total population of North Carolina, 2000	Number 8,049,313	Percent 100.0
---	---------------------	------------------

**SEX AND AGE**

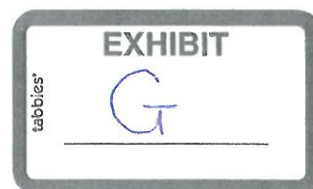
Male	3,942,695	49.0
Female	4,106,618	51.0
Voters 18 years and over of whom are	6,085,266	75.6
Males	2,936,570	36.5
Females	3,148,696	39.1

**RACE**

White	5,804,656	72.1%
Black or African American	1,737,545	21.6%
Other		06.3%

**NORTH CAROLINA HOUSEHOLDS WITH TVs**

Total NC population in 2000	8,049,313	100.0%
People in households	7,795,432	96.8%
Number of households	3,132,013	
98.% of Households have at least one TV set.	3,060,553	





When a TV Ad runs 3 times a day, times 7 days, times 2 people watching TV per household, times number of households that have TVs =

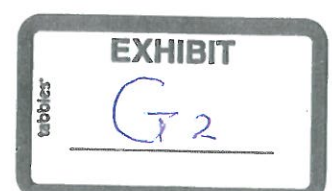
3 (Ads per day) x 7 (days of publication on 27 TV stations) = 21 is the frequency of publication by TV stations.

21 (times Ad published x 2 (people watching per household) = 42 is how many people at home saw and heard Cooper's TV ad during the 7 days and nights of publication."

42 (people seeing and hearing TV ad during the seven days and nights of publication) x 3,060,553 (the number of households that had two people that watch TV =

**128,543,226**

This is the maximum possible number of times Cooper's libel *per se* statements were transmitted by TV to people who are at least voting age from October 31st thru November 6, 2000.



# MURPHY PUTNAM MEDIA, INC.

## POLITICAL MEDIA CONSULTING

"Qualified" – Roy Cooper for Attorney General – 30 second TV

### Video

### Audio

This script is a very tight 30 seconds. Please accompany any requested additions with suggested deletions.

[video disclaimer at head of commercial:

"I'm Roy Cooper, candidate for Attorney General, and I sponsored this ad because I want you to know the truth"]

Roy working at desk;  
prisoners on cell block;  
Roy with students;

Roy Cooper. Endorsed by every major police  
organization ... for passing tougher sentences ... and  
writing the new school violence law.

white flash to Boyce picture  
over empty courtroom scene  
Sued the State

Demanding \$1,200/Hour  
from North Carolina  
Taxpayers

Payday for his Law Firm

cut to black; fade up:

We Can't Afford  
Dan Boyce.

Dan Boyce and his law firm sued the state ~~and are~~ <sup>and charged</sup>  
~~\$28,000 per hour, which the judge~~  
~~demanding twelve hundred dollars an hour in legal~~  
~~fees from North Carolina taxpayers.~~ <sup>said "shocked his conscience" Money that</sup>  
<sup>could have</sup>  
<sup>gone to law enforcement.</sup>  
<sup>fight crime</sup>  
If Dan Boyce is Attorney General, it's payday for his  
law firm.

We can't afford Dan Boyce.

TV Script - Qualified 06.doc

901 NORTH WASHINGTON STREET ■ SUITE 500 ■ ALEXANDRIA, VIRGINIA 22314  
(703) 549-2900 FAX: (703) 549-2976



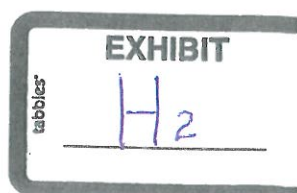
Title 27 of the North Carolina Administrative Code.

The North Carolina State Bar  
Chapter 2, Rules of Professional Conduct.

**Client-Lawyer Relationship**

**Rule 1.5 Fees.**

(a) A lawyer shall not . . . charge . . . or  
collect an illegal or clearly excessive  
fee . . . .





NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

2003 SEP 17 PM 4:01

00 CVS 12776

WAKE COUNTY, N.C.

BOYCE & ISLEY, PLLC, EUGENE  
BOYCE, R. DANIEL BOYCE, PHILIP R.  
ISLEY, and LAURA B. ISLEY,

Plaintiffs,

v.

ROY A. COOPER, III, THE COOPER  
COMMITTEE, JULIA WHITE,  
STEPHEN BRYANT, and KRISTI  
HYMAN,

Defendants.

AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES  
(ANSW)

Now come Defendants Roy A. Cooper, III, The Cooper Committee, Julia White, Stephen Bryant, and Kristi Hyman, responding to the complaint filed by Boyce & Isley, PLLC, Eugene Boyce, R. Daniel Boyce, Philip R. Isley, and Laura B. Isley, and allege and say as follows:

FIRST AFFIRMATIVE DEFENSE

The political advertisement is true. (As used herein "political advertisement" refers to the advertisement about which plaintiffs complain in their complaint.) During the 1990s the individual plaintiffs worked on, participated in, and were involved with a series of lawsuits brought by classes of plaintiffs challenging various tax laws and policies of the State of North Carolina. Those lawsuits included, but were not limited to, Smith v. State of North Carolina, 95 CvS 6715 (Wake County) (sought refund of intangibles taxes), Shaver et al. v. State of North Carolina, 98 CvS 00625 (Wake County) (sought refund of intangibles taxes), and several cases seeking refunds of state taxes levied on the retirement benefits of state and local government employees (collectively, these cases are hereinafter referred to as the "Tax Cases"). The

EXHIBIT

H3

FILED AS PERMANENT RECORDS IN THE WAKE COUNTY SUPERIOR COURT; N.C. COURT OF APPEALS; SUPREME COURT OF NORTH CAROLINA; SUPREME COURT OF THE UNITED STATES

1 Q. Okay. And is that your handwriting on it?

2 A. It is my handwriting.

3 Q. Okay. And can you sort of read into the record  
4 what your handwritten changes were?

5 MR. PHILLIPS: Do you want him to read what  
6 he wrote, or --

7 MR. SHANAHAN: Yes.

8 MR. PHILLIPS: -- you said write his changes.

9 MR. SHANAHAN: His handwritten changes that  
10 he wrote on.

11 A. The ad said "Dan Boyce and his law firm sued the  
12 State," and this one says "and are demanding  
13 \$1,200 an hour in legal fees from North Carolina  
14 taxpayers," and I changed it to, "and charged  
15 \$28,000 per hour, which the judge said 'shocks the  
16 conscience,' money that could have gone to  
17 fighting crime."

18 Q. All right. So this -- first of all, there is --  
19 whoever did the underlying draft used the term  
20 \$1,200 an hour. Is that what you just struck out  
21 there?

22 A. Yes.



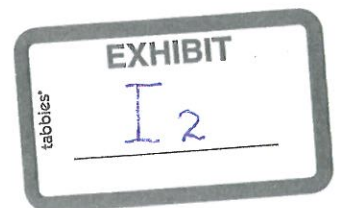
**TESTIMONY UNDER OATH,  
SWORN TO BY ROY COOPER  
NOVEMBER 1, 2007, PAGE 498.**

PLAINTIFFS' EXHIBIT NO. 25, PAGE 496  
MURPHY PUTNAM MEDIA, INC. VIDIO / AUDIO  
SCRIPT WITH HANDWRITTEN NOTES.

QUESTION: . . . And is that your  
handwriting on it?

. . .

ANSWER: . . . I changed it to, "and  
charged \$28,000 per hour," . . .



9/16/97

PGM: H0207-2

INTANGIBLES TAX RETURN PROTESTERS W/O BANK FIDUCIARIES FOR TAX YEAR =

1993 THRU 1993

P

SS# SP SS# AMQU

NAME

COOPER	MARY	3623 E CLUB COLONY DR	GASTONIA	NC	28056
COOPER	MILDRED	6100 W FRIENDLY AVE	GREENSBORO	NC	27410
COOPER	MISHEW	615 LAKESTONE DR	RALEIGH	NC	27609
COOPER	NANCY	5133 GABLE RIDGE LN	HOLLY SPRINGS	NC	27540
COOPER	NELVIN	109 DUBLIN WOODS DR	CARY	NC	27513
COOPER	ORA	1414 ABBEY PL	CHARLOTTE	NC	28209
COOPER	PATRICK	1902 STANTON RD	KINSTON	NC	28504
COOPER	PERCY	2115 BUCKNELL AVE	CHARLOTTE	NC	28207
COOPER	PHILIP	10 DOGWOOD TRL	TRYON	NC	28782
COOPER	PHILIP	5500 NC HIGHWAY 24 27	CAMERON	NC	28326
COOPER	RADA	RR 2	NASHVILLE	NC	27856
COOPER	RALPH	168 LITTLE ELLIJAY CIR	FRANKLIN	NC	28734
COOPER	REBEKAH	PO BOX 6	HENDERSON	NC	27536
COOPER	RICHARD	8204 WHITEWATER DR	CLEMMONS	NC	27012
COOPER	RICHARD	1302 CORBETT ST	WINTERVILLE	NC	28590
COOPER	RICHARD	1302 CORBETT ST	WINTERVILLE	NC	28590
COOPER	RITA	4317 PICKETT RD	FAIRFAX	VA	22032
COOPER	ROBERT	8437 LIVE OAK RD	HARRISBURG	NC	28075
COOPER	ROBERT	1812 WAIT AVE	WAKE FOREST	NC	27587
COOPER	ROY	308 GRAVELY DR	ROCKY MOUNT	NC	27804
COOPER	ROY	PO BOX 757	NASHVILLE	NC	27856
COOPER	RUTH	68 GREEN FOREST RD	SWANNANOVA	NC	28778
COOPER	SAMUEL	6 BAHAMA DR	WRITTSVILLE BCH	NC	28480
COOPER	SCOTT	2621 COMMONWEALTH AVE	CHARLOTTE	NC	28205
COOPER	SCOTT	1112 SILVER OAKS CT	RALEIGH	NC	27614
COOPER	SHANE	555 N CENTER ST	HICKORY	NC	28601
COOPER	THOMAS	5915 HILLSBORO RD	RALEIGH	NC	27606
COOPER	TIM	725 CHARTER PL	CHARLOTTE	NC	28211
COOPER	VERNON	6818 LINKSIDE CT	CHARLOTTE	NC	28277
COOPER	W	347 MERRIMONT DR	WINSTON SALEM	NC	27106
COOPER	W	PO BOX 1317	SANFORD	NC	27331
COOPER	WADE	925 E HARDEN ST	GRAHAM	NC	27253
COOPER	WALTER	208 SAINT ANDREWS LN	CARY	NC	27511
COOPER	WALTER	6429 TALL OAKS TRL	CHARLOTTE	NC	28210
COOPER	WALTER	209 BD BLAKE BLVD	PINEHURST	NC	28374
COOPER	WALTER	204 LA FORET DR	MORGANTON	NC	28655
COOPER	WAYNE	2907 HYBART ST	FAYETTEVILLE	NC	28303
COOPER	WILLIAM	8932 DIXIE RIVER RD	CHARLOTTE	NC	28208
COOPER	WILLIAM	2315 KNIGHTSBRIDGE RD	WILMINGTON	NC	28403
COOPER	WILLIAM	3002 STRATFORD DR	GREENSBORO	NC	27408
COOPER	WILLIAM	4510 LAKE JEANETTE RD	GREENSBORO	NC	27455
COOPER	WILLIAM	PO BOX 1203	MATTHEWS	NC	28104
COOPER	WILLIAM	209 BROOKBERRY RD	MOUNT AIRY	NC	27030
COOPER	WILLIAM	19025 DOUBLE EAGLE DR	HUNTERSVILLE	NC	28078
COOPER	WILLIAM	1500 MEDICAL CENTER DR	WILMINGTON	NC	28401
COOPER	WILLIAM	PO BOX 220037	CHARLOTTE	NC	28222
COOPER	WILLIAM	1601 CAPTAINS RD	TARBORO	NC	27884
COOPER	WILLIE	PO BOX 209	LOUISBURG	NC	27544
COOPER	WOODROW	1122 ANDOVER RD	CHARLOTTE	NC	28211
COOPER	KENNETH	1708 E LAUREL ST	GOLDSBORO	NC	27530
COOPER	ELVA	1315 E WOODLAWN RD	CHARLOTTE	NC	28201
COOPER	ADRIENNE	3104 HODGES RD	KINSTON	NC	28501

tabbles

EXHIBIT

J



1994 THRU 1994

## INTANGIBLES TAX RETURN PROTESTERS W/O BANK FIDUCIARIES FOR TAX YEAR =

9/16/97  
PGH: H0207-2

AMOUNT OF TAX

SP SS#

SS#

ZIP  
ST CODE

NAME

ADDRESS LINE

CITY

NAME	ADDRESS LINE	CITY	ZIP ST CODE	AMOUNT OF TAX
COOPER	1902 STANTON RD	KINSTON	NC 28504	
EDWIN	3008 6TH ST S	ARLINGTON	VA 22204	
ELIZABETH	500 N FULTON ST APT 25	SALISBURY	NC 28144	
ELIZABETH	2707 VAN DYKE AVE	RALEIGH	NC 27607	
EMMA	1316 SOUTHWEST DR	ASHEBORO	NC 27203	
ESSIE	183 RHODODENDRON LN	BOONE	NC 28607	
GARRY	620 CARDINAL DR	LEXINGTON	NC 27292	
GARY	716 S MERRITT MILL RD	CHAPEL HILL	NC 27516	
HAL	1615 GREENVILLE HWY	HENDERSONVILLE	NC 28792	
HELEN	1409 MARYLAND AVE	CHARLOTTE	NC 28209	
HENRY	2824 SUNSET DR	LUMBERTON	NC 28209	
HENRY	PO BOX 784	LUMBERTON	NC 28359	
HOWARD	250 BILLY SMITH RD	LEXINGTON	NC 27292	
HOWARD	1902 STANTON RD	LEXINGTON	NC 28504	
JACKIE	1908 N PINE ST	LUMBERTON	NC 28358	
JAMES	1901 PARKER LN	HENDERSON	NC 27536	
JAMES	7813 CLYARD FARMS RD	HIGH POINT	NC 27265	
JOHN	502 GREYFRIARS LN	CARY	NC 27511	
JOSEPH	5500 ROCK QUARRY RD	RALEIGH	NC 27610	
JOYCE	15 N 15TH ST	WILMINGTON	NC 28401	
JOYCE	PO BOX 5	WILMINGTON	NC 27228	
KENNETH	PO BOX 488	GASTONIA	NC 28053	
LANGDON	3839 SWEETBRIAR RD	WILMINGTON	NC 28403	
LENOX	507 COMMONWEALTH DR	WINSTON SALEM	NC 27104	
LENNARD	PO BOX 757	NASHVILLE	NC 27856	
LOIS	2945 REYNOLDA RD APT 246	WINSTON SALEM	NC 27106	
LOUISE	1605 VILLAGE GLEN DR	RALEIGH	NC 27612	
LOUISE	2413 PRINCE ST	DURHAM	NC 27701	
LOUISE	12466 MUSCOVY DR	JACKSONVILLE	FL 32221	
LYMAN	913 KNOLLWOOD ST	WINSTON SALEM	NC 27103	
MARGO	1901 PARKER LN	HENDERSON	NC 27536	
MARSHALL	615 LAKESTONE DR	RALEIGH	NC 27609	
MARSHALL	1820 S LAKESHORE DR	CHAPEL HILL	NC 27514	
MARY	601 S CHURCH ST	WINSTON SALEM	NC 27101	
MARY	6100 W FRIENDLY AVE	GREENSBORO	NC 27411	
MILDRED	615 LAKESTONE DR	RALEIGH	NC 27601	
MISHEW	1707 E CONE BLVD	GREENSBORO	NC 27401	
MYRTLE	5133 GABLE RIDGE LN	HOLLY SPRINGS	NC 2754	
NANCY	1902 STANTON RD	KINSTON	NC 2850	
PATRICK	925 E HARDEN ST	GRAHAM	NC 2725	
PAULINE	5500 NC HIGHWAY 24 27	CAMERON	NC 2832	
PHILIP	RR 2	NASHVILLE	NC 2885	
RADA	1605 STATESVILLE BLVD	SALISBURY	NC 2814	
RAY	PO BOX 6	HENDERSON	NC 2753	
REBEKAH	102 W 3RD ST	WINSTON SALEM	NC 2710	
RITA	8437 LIVE OAK RD	HARRISBURG	NC 2807	
ROBERT	308 GRAVELY DR	ROCKY MOUNT	NC 2780	
ROY	PO BOX 757	NASHVILLE	NC 2785	
ROY	1112 SILVER OAKS CT	RALEIGH	NC 2761	
SCOTT	800 E BIRCH BARK LN	GREENSBORO	NC 2745	
THOMAS	347 MERRIMONT DR	WINSTON SALEM	NC 2710	
VERNON	208 SAINT ANDREWS LN	CARY	NC 2751	
WADE				

EXHIBIT

J2

tabbles

C O N F I D E N T I A L

Roy A. Cooper, III

1 A. I don't know.

2 Q. You may have been a client of mine, and you don't  
3 know?

4 A. I may have been a member of one of these classes,  
5 but I do not remember.

6 Q. If you were a member of one of these classes, you  
7 were a client of mine and Womble Carlyle, were you  
8 not?

9 A. I don't know. I don't know. You describe --  
10 maybe that is the legal relationship.

11 MR. PHILLIPS: Objection. Calls for a legal  
12 conclusion.

13 THE WITNESS: Yeah.

14 A. I don't know if that's the legal relationship.

15 Q. You -- you're a lawyer and you don't know whether  
16 you were a member of a class that I represented  
17 along with Womble Carlyle?

18 A. I don't remember whether I was a member of the  
19 class.

20 Q. Did you get any money out of this case?

21 A. I don't remember.

22 Q. You don't remember whether you got money out of  
23 your own case?

24 A. I will --

EXHIBIT

tabbles

J3

C O N F I D E N T I A L

Roy A. Cooper, III

1 MR. PHILLIPS: Object to the form.

2 THE WITNESS: Yeah.

3 A. It wasn't my case. I -- I will tell you what I do  
4 remember. I do remember getting something in the  
5 mail about this. I remember that it was not very  
6 much.

7 Q. How much?

8 A. I don't remember. It was a small amount, well  
9 under \$100. And I don't remember whether I ever  
10 sent it off, and that's the honest truth. I do  
11 not remember.

12 Q. You got a check in September of 1997, didn't you?

13 A. I may have, Mr. Boyce, but I do not remember.

14 Q. You got a second check in December of 1997, didn't  
15 you?

16 A. I -- I may have. I don't remember. I appreciate  
17 it, if I did. I don't remember.

18 Q. Anybody -- did you have any clients who were  
19 clients of mine and Womble Carlyle in the Smith A  
20 case that you cite in the ad?

21 A. I don't recall whether I did or not.

22 Q. You don't recall if you didn't have client  
23 inquiries about whether or not they should respond  
24 or opt out of the case?



C O N F I D E N T I A L

Roy A. Cooper, III

1 A. I don't know.

2 Q. You may have been a client of mine, and you don't  
3 know?

4 A. I may have been a member of one of these classes,  
5 but I do not remember.

6 Q. If you were a member of one of these classes, you  
7 were a client of mine and Womble Carlyle, were you  
8 not?

9 A. I don't know. I don't know. You describe --  
10 maybe that is the legal relationship.

11 MR. PHILLIPS: Objection. Calls for a legal  
12 conclusion.

13 THE WITNESS: Yeah.

14 A. I don't know if that's the legal relationship.

15 Q. You -- you're a lawyer and you don't know whether  
16 you were a member of a class that I represented  
17 along with Womble Carlyle?

18 A. I don't remember whether I was a member of the  
19 class.

20 Q. Did you get any money out of this case?

21 A. I don't remember.

22 Q. You don't remember whether you got money out of  
23 your own case?

24 A. I will --

EXHIBIT

K

tabbles

C O N F I D E N T I A L

Roy A. Cooper, III

1 MR. PHILLIPS: Object to the form.

2 THE WITNESS: Yeah.

3 A. It wasn't my case. I -- I will tell you what I do  
4 remember. I do remember getting something in the  
5 mail about this. I remember that it was not very  
6 much.

7 Q. How much?

8 A. I don't remember. It was a small amount, well  
9 under \$100. And I don't remember whether I ever  
10 sent it off, and that's the honest truth. I do  
11 not remember.

12 Q. You got a check in September of 1997, didn't you?

13 A. I may have, Mr. Boyce, but I do not remember.

14 Q. You got a second check in December of 1997, didn't  
15 you?

16 A. I -- I may have. I don't remember. I appreciate  
17 it, if I did. I don't remember.

18 Q. Anybody -- did you have any clients who were  
19 clients of mine and Womble Carlyle in the Smith A  
20 case that you cite in the ad?

21 A. I don't recall whether I did or not.

22 Q. You don't recall if you didn't have client  
23 inquiries about whether or not they should respond  
24 or opt out of the case?

EXHIBIT

tabbles

K2

C O N F I D E N T I A L

Roy A. Cooper, III

1 A. Oh, there was a lot of talk about whether you  
2 should opt out of the case or not, yes.

3 Q. Did you opt out?

4 A. I don't remember. I don't think I did. I think  
5 that would have required me to do something, so I  
6 don't think I did.

7 Q. You don't think you sent in -- did you get an opt-  
8 out notice in the mail?

9 A. I may have, but I do not recall.

10 Q. Uh-huh. Well, you were not -- you're not denying  
11 that you were a client of Womble Carlyle and me  
12 and Rob Fields and Bill Raper in the case that you  
13 cite in your ad, do you?

14 A. I'm not denying that I was a member of the class.  
15 And you say I got a check, then I don't deny that,  
16 either. I just don't remember.

17 Q. Anybody else you know of, personally, that was a  
18 client of Womble and me in the Smith A case that  
19 you cite in your ad?

20 A. Not to my knowledge. My mother and father may  
21 have been, but I don't know the answer to that  
22 question.

23 Q. May have been or were?

24 A. I don't know, Mr. Boyce. I don't remember.

EXHIBIT

K 3



C O N F I D E N T I A L

Roy A. Cooper, III

1 Q. But you're saying you don't remember talking with  
2 your father and your mother about whether they  
3 ought to opt out, whether or not they were getting  
4 a recovery as a result of Womble's lawsuit?

5 A. This was 10 years ago, and I -- I don't remember  
6 for sure.

7 Q. How about your wife?

8 A. I don't -- I don't remember.

9 Q. How about your brothers?

10 A. I don't remember.

11 Q. How about your lawyers here? Was Mr. Phillips one  
12 of my clients and Womble's clients in the Smith A  
13 case?

14 A. I don't know. You did a great job in those cases.

15 Q. Thank you.

16 A. You got a lot of money for a lot of people.

17 Commend you for it.

18 Q. Yeah.

19 A. Did a great job.

20 MR. BOYCE: Want to go to lunch? We'll take  
21 a break.

22 VIDEOGRAPHER: Going off the record. The  
23 time is 12:57.

24 (THEREUPON, A RECESS WAS TAKEN FROM 12:57 P.M.)

EXHIBIT

tabbles

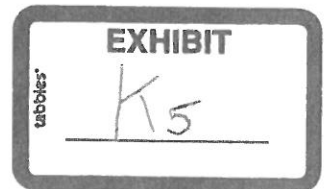
K4



# Opt-Out Registrants

## Confidential Information / Not for Distribution

Name	ITX #	Address	City, State, Zip	SS# or FID#
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
COOPER, ROY A. JR	17685	PO BOX 757	NASHVILLE, NC 27856	[REDACTED]
COOPER, ROY A. III	27157	308 GRAVELLY DR	ROCKY MT, NC 27804	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



**Opt-Out Registrants**

Confidential Information / Not for Distribution

Name	ITX #	Address	City, State, Zip	SS# or FID#
------	-------	---------	------------------	-------------

ROY A. COOPER, III, was a taxpayer and a client in Case No. 95CVS6715.

ROY A. COOPER, III, registered as an "Opt-Out" to the Clerk of Wake County Superior Court to avoid any possibility of cost or fees.

ROY A. COOPER, III, received a full, 100% refund of the illegal tax in September, 1997, and received interest on his refund in December, 1997..

ROY A. COOPER, III, paid NO ATTORNEY FEES whatever contrary to what he published in November, 2000, and for fourteen years thereafter.

COOPER, ROY A. JR	17685	PO BOX 737	NASHVILLE, NC 27856
<u>COOPER, ROY A. III</u>	27157	309 GRAVELY DR	ROCKY MT, NC 27804

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PLAINTIFF'S  
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INTANGIBLES TAX RETURN PROTESTERS W/O BANK FIDUCIARIES FOR TAX YEAR = 1993 THRU 1993

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H0207-2

ROY  
ROY  
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A

308 GRAVELLY DR  
PO BOX 757

ROCKY MOUNT  
NASHVILLE

NC 27804  
NC 27856

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# 14 YEARS OF TRIALS AND APPEALS HELPING 820,600 RETIREES AND TAXPAYERS

NAME OF CLASS ACTION CASE	RESULTS OBTAINED FOR MY CLIENTS
<b>462,324</b> <b>BAILEY CASE CLIENTS</b> <b>ARE RETIRED EMPLOYEES OF THE</b> <b>STATE, CITY, COUNTY, MILITARY AND</b> <b>FEDERAL AND FEDERAL</b> <b>GOVERNMENT.</b>	<b>JUDGMENT</b> <b>\$1,058,000,000.00</b>
	<b>SETTLEMENT</b> <b>\$799,000,000.00</b>
	<b>FUTURE BENEFIT</b> <b>\$5,200,000,000.00</b> [present value \$3.7 Billion]
<b>358,275</b> <b>REFUND CHECKS WERE</b> <b>SENT TO ILLEGALLY TAXED CLIENTS</b> <b>- SMITH CASE PROTESTORS AND</b> <b>SHAVER NON-PROTESTOR CASES.</b>	<b>JUDGMENT FOR MY 128,000</b> <b>SMITH PROTESTOR CLIENTS</b> <b>IS \$199,118,000.00.</b>
	<b>BY APPEAL, FOR MY 232,000 SHAVER CASE</b> <b>CLIENTS WHO HAD NOT KNOWN TO WRITE</b> <b>"PROTEST,"</b> <b>I GOT THEM \$440,000,000.00.</b>
<b>6000 FAULKENBURY CASE CLIENTS</b> <b>ARE STATE, COUNTY &amp; CITY</b> <b>RETIRED DISABLED EMPLOYEES.</b> <b>DISABILITY BENEFITS WERE TAKEN</b> <b>FROM THEM ILLEGALLY.</b>	<b>WITH ATTORNEY MARVIN SCHILLER WE</b> <b>GOT OUR DISABLED RETIREE CLIENTS</b> <b>REFUNDS OF EVERY DOLLAR OF BENEFITS</b> <b>TAKEN ILLEGALLY FROM THEM OVER 8</b> <b>YEARS, PLUS INTEREST.</b>

FEES & COSTS PAID BY MY BAILEY CASE CLIENTS . . . . .	\$ 0.00000
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FEES & COSTS PAID BY MY SMITH CASE CLIENTS . . . . .	\$ 0.00000
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FEES & COSTS PAID BY MY SHAVER CASE CLIENTS . . . . .	\$ 0.00000
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## YOU ASK, "HOW DID MY CLIENTS PAY NO FEES FOR 14 YEARS OF WORK ?"

State Treasurer Harlan Boyles supported my lawsuits from the beginning. He said, "The State is wrong Gene, don't quit." It took me 2 1/2 years and a staff of 95 paid workers (mostly retirees) to find and send over 820,600 refund checks to my clients. During that 2 1/2 years Harlan allowed me to have accounts in the State Treasury in my name and for me to invest the settlement money of One Billion, Two Hundred Thirty-Nine Million Dollars (\$1,239,000,000.00). The investments produced dividend and interest profits of more than One Hundred Twenty-Six Million Dollars (\$126,000,000.00). The earnings I got my clients resulted in 100% refunds plus about 8% interest, plus. I paid IN FULL ALL attorney fees. all court costs and all administration salaries.

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