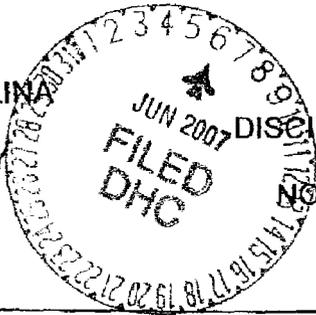


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 20

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )

v. )

E. ELIZABETH LEFLER, Attorney, )  
Defendant )

ORDER OF DISCIPLINE

This matter came on for hearing on April 13, 2007 before a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, Michael A. Grace, and Marguerite P. Watts. Margaret Cloutier represented Plaintiff. Defendant was not present and was not represented.

1. The complaint in this matter was filed on April 26, 2006 and Defendant was served with a copy of the summons and complaint by certified mail, return receipt, restricted delivery on May 2, 2006. Defendant failed to answer or otherwise plead within the time designated by 27 N.C.A.C. 1B §.0114(e) and her default was entered by the Secretary of the North Carolina State Bar on June 19, 2006. The hearing on discipline was stayed for a time pending determination of Defendant's disability. On April 13, 2007 Defendant was not found to be disabled. Defendant did not file a motion to set aside the default before or after the period of stay. Accordingly, the allegations of the Plaintiff's complaint are deemed admitted pursuant to Rule .0114(f) of the State Bar Discipline and Disability Rules.

2. On April 11, 12 and 13, 2007 Defendant filed various motions requesting a continuance of the hearing based on Defendant's inability to proceed due to a break-in of her home within the past three weeks, the failure of an on-line airline reservation made April 12, 2007, and the Defendant's inability to make alternate last-minute travel arrangements. After careful consideration of the various motions filed by Defendant, the Chair denied all of Defendant's motions to continue.

Based on the record and evidence provided, the Hearing Committee hereby finds by clear, cogent and convincing evidence the following

#### FINDINGS OF FACT

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

4. Defendant, E. Elizabeth Lefler (hereinafter "Lefler" or "Defendant"), was admitted to the North Carolina State Bar on August 21, 1983 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

5. The summons and complaint in this action were served on Defendant on May 2, 2006. Defendant has failed to file responsive pleadings in this matter and the Secretary of the North Carolina State Bar entered the Defendant's default on June 19, 2006.

6. Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Franklin, Macon County, North Carolina.

7. In August 2004 Defendant closed her practice in North Carolina and moved to Texas.

8. In November 2004 the Council of the North Carolina State Bar entered an order suspending Defendant's license to practice law for failing to complete the minimum mandatory continuing legal education requirements.

9. On or about April 23, 1998 Anna Ruth Holden was involved in an automobile accident. Shortly thereafter, Holden hired Defendant to represent her in a claim for personal injury.

10. Defendant filed a lawsuit on Holden's behalf. While the lawsuit was pending, Holden tried to contact Defendant, but Defendant was not available to Holden and did not return any of Holden's telephone calls.

11. When Defendant closed her law practice and moved to Texas, she effectively terminated her representation of Holden. Defendant did not notify Holden that Defendant was relocating. Defendant did not seek permission from the court to withdraw from representing Holden.

12. After Holden realized Defendant was no longer representing her, Holden attempted to contact Defendant to obtain her file. Defendant did not return Holden's calls or provide the file to Holden.

13. On February 16, 2005 Henry Babb, then Chair of the Grievance Committee of the North Carolina State Bar, sent a Letter of Notice to Defendant relating to Holden's case. Defendant received the February 16, 2005 Letter of Notice by certified mail on or about March 22, 2005. Defendant did not respond to the February 16, 2005 Letter of Notice.

14. On or about June 16, 2003 Johnny R. Vernon engaged Defendant to represent him to obtain a divorce. Defendant charged Vernon \$400 as a flat fee to obtain the divorce and \$95 for costs. Vernon paid Defendant \$650, which included \$150 for a consultation fee that Defendant ultimately credited to the divorce fee. Defendant kept the \$155 excess payment in trust to be applied against a retainer in the event Vernon decided to engage Defendant for custody and visitation issues.

15. Defendant prepared Vernon's divorce complaint and on March 3, 2004 sent it to Vernon to sign and return to her. Vernon signed the complaint and returned it to Defendant within a week of receiving it. However, Defendant did not file the complaint with the court and took no further steps to obtain a divorce for Vernon.

16. Vernon made numerous attempts to contact Defendant but Defendant was not available to him and did not return his calls.

17. When Defendant closed her law practice and moved to Texas, she effectively terminated her representation of Vernon. Defendant did not notify Vernon that Defendant was relocating and did not return to Vernon the unearned fee and costs or the retained overpayment.

18. On December 6, 2004 Vernon filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. By letter that Defendant received on January 7, 2005, the North Carolina State Bar Client Assistance Program notified Defendant of Vernon's petition by sending Defendant a copy of the petition and directing Defendant to respond to the petition within 15 days of receipt of the letter. Defendant did not respond to Vernon's fee dispute petition.

19. On or about February 5, 2004, Karla L. Allison engaged Defendant to represent her in a 50B action and child custody matter. Allison paid Defendant a \$3,500 deposit against fees to be earned for time Defendant spent on the case.

20. Defendant did not appear on Allison's behalf at two scheduled court dates and Defendant did not perform any meaningful work on Allison's behalf. Allison made numerous attempts to contact Defendant but Defendant was not available to her and did not return her calls.

21. When Defendant closed her law practice and moved to Texas, she effectively terminated her representation of Allison. Defendant did not notify Allison that Defendant was relocating and did not return any unearned fees to Allison.

22. On September 16, 2004 Allison filed a petition for resolution of disputed fee with the North Carolina State Bar pursuant to 27 N.C.A.C. 1D §.0700. By letter that Defendant received on October 2, 2004, the North Carolina State Bar Client Assistance Program notified Defendant of Allison's petition by sending Defendant a copy of the petition and directing Defendant to respond to the petition within 15 days of receipt of the letter. Defendant did not respond to Allison's fee dispute petition.

23. After receiving no response from Defendant to Allison's fee petition, the disciplinary department of the State Bar opened a grievance file. Defendant received a Letter of Notice by certified mail on or about March 18, 2005 relating to Defendant's conduct in Allison's case and Defendant's failure to respond to the notice of Allison's fee dispute petition. Defendant did not respond to the State Bar's Letter of Notice.

24. In or about January 2004 Kathleen Moore engaged Defendant to prepare a property settlement agreement for Moore. Moore paid Defendant \$500 as a flat fee to prepare the agreement.

25. Defendant prepared a draft property settlement agreement and Moore reviewed it. Defendant was to make changes and provide Moore with a final agreement, however, Defendant did not provide a completed property settlement agreement to Moore. Moore made numerous attempts to contact Defendant but Defendant was not available to her and did not return her calls.

26. When Defendant closed her law practice and moved to Texas, she effectively terminated her representation of Moore. Defendant did not notify Moore that Defendant was relocating and did not return the unearned fee to Moore.

27. At the time Defendant abandoned her law practice and moved to Dallas, Texas in August 2004, Defendant held client funds in excess of \$14,000.00 in an attorney trust account at First Citizen's Bank.

28. Defendant has not disbursed those funds held in trust on behalf of her clients.

Based on the foregoing Findings of Fact, the Committee enters the following

#### CONCLUSIONS OF LAW

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

2. By virtue of Defendant's default, the allegations of the Plaintiff's complaint are deemed admitted pursuant to Rule .0114(f) of the State Bar Discipline and Disability Rules.

3. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. by failing to continue to pursue the lawsuit on Holden's behalf, failing to file the complaint and obtain a divorce for Vernon, failing to appear in court on Allison' behalf or to perform any meaningful work on Allison's case, and failing to complete a property settlement agreement for Moore, Defendant did not act with reasonable diligence and promptness in representing clients in violation of Rule 1.3;

b. by failing to notify Holden, Vernon, Allison and Moore that Defendant had moved away and would not continue to represent them and by failing to return Holden's, Vernon's, Allison's and Moore's telephone calls or otherwise communicate with them, Defendant failed to keep her clients reasonably informed about the status of the representation and failed to explain a matter to the extent reasonably necessary to permit the clients to make informed decisions regarding the representation in violation of Rule 1.4(a)(3) and (b);

c. by failing to seek permission of the court to withdraw from Holden's case and by failing to provide Holden's file to her, Defendant did not obtain the permission of a tribunal to withdraw from a case and did not take steps reasonably necessary to protect the client's interests in violation of Rule 1.16(c) and (d);

d. by receiving \$400 from Vernon and not performing the work agreed upon, receiving \$3,500 from Allison and not appearing in court or performing any meaningful work on Allison's behalf, and receiving \$500 from Moore and not performing the work agreed upon, Defendant charged and collected clearly excessive fees in violation of Rule 1.5(a);

e. by failing to return the unearned fees to Vernon, Allison and Moore, Defendant did not take steps reasonably necessary to protect her client's interests in violation of Rule 1.16(d);

f. by failing to return the unearned fees in the Vernon and Allison matter and the unspent costs and the retained overpayment in the Vernon matter, Defendant did not promptly pay or deliver to the clients entrusted property belonging to the clients and to which the clients were currently entitled in violation of Rule 1.15-2(a) and (m);

g. by failing to respond to the notifications of mandatory fee dispute resolution received by Defendant in the Vernon and Allison matters, Defendant did not participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2);

h. by failing to respond to the State Bar's Letters of Notice received by Defendant in the Holden and Allison matters, Defendant knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b); and

i. by failing to disburse client funds remaining in her attorney trust account upon closing her law practice, Defendant did not take steps reasonably necessary to protect the client's interests in violation of Rule 1.16(d) and did not promptly pay or deliver to the client entrusted property belonging to the client and to which the client was currently entitled in violation of Rule 1.15-2(a) and (m).

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

#### FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

(a) a pattern of misconduct;

(b) multiple offenses involving multiple clients;

(c) vulnerability of the victims who were uninformed of the legal process and relied on Defendant to protect their interests;

(d) substantial experience in the practice of law; and

(e) indifference to making restitution to those clients for whom she kept unearned fees or other funds to which they are entitled.

2. Defendant's conduct is mitigated by the following factor:

(a) unspecified personal or emotional problems, found based on Defendant's manner in dealing with the hearing in this matter. The panel takes into consideration the short statement provided by Defendant from a pastoral counselor but notes it has no way to identify the source of the problems cited therein.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant's conduct has caused, and had the potential to cause, significant harm to her clients identified in this order. Her clients Vernon, Allison and Moore had to spend additional money for the services of other attorneys to perform the work for which they employed Defendant. The legal matters of all four of these clients were delayed while each client tried to get Defendant to return their calls, all the while wondering what was happening, what they should do, and to whom they should turn for assistance.

5. Defendant's misconduct has harmed the standing of the legal profession by undermining the public's and these clients' trust and confidence in lawyers and the legal system.

6. Defendant's failure to participate in the mandatory fee dispute resolution process and her failure to respond to the letters of notice from the Chair of the Grievance Committee substantially interfered with the Bar's ability to regulate attorneys and undermined the privilege of attorneys in this state to remain self-regulating.

7. The Hearing Committee has carefully considered all of the different forms of discipline available to it and finds and concludes that under the circumstances of this case discipline short of suspension would not be appropriate because of the gravity of the harm to the public and to the administration of justice caused by Defendant's conduct. The entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses that Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, all found by clear, cogent and convincing evidence, the Hearing Committee enters the following

## ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five years effective thirty days after service of this Order of Discipline on Defendant.

2. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order on Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying she has complied with the wind down rule.

4. Within 15 days of the effective date of this Order, Defendant will provide the State Bar with a street address and mailing address at which clients seeking return of their files and records in Defendant's possession or control may obtain such files and records and at which the State Bar may serve any notices or other matters upon her.

5. After the completion of one year of active suspension of her license, Defendant may apply for a stay of the balance of the suspension upon filing a petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay and demonstrating the following by clear, cogent and convincing evidence:

a. That Defendant has kept the North Carolina State Bar Membership Department advised of her current business and home addresses and notified the Bar of any change in address within ten days of such change;

b. That Defendant has responded to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order.

c. That Defendant has not violated the Revised Rules of Professional Conduct or the laws of the United States or any state or local government during her suspension;

d. That Defendant has properly wound down her law practice and complied with the requirements of 27 N.C.A.C. 1B, §.0124, the North Carolina State Bar Discipline and Disability Rules;

e. That Defendant has complied with the requirements of 27 N.C.A.C. 1B, §.0125(b), the North Carolina State Bar Discipline and Disability Rules;

f. That Defendant has complied with the State Bar continuing legal education requirements for active members of the Bar, has ensured all hours taken were reported to the Continuing Legal Education Department of the North Carolina State Bar, and paid all fees and costs assessed by the applicable deadline;

g. That Defendant has permitted the State Bar to conduct random audits of all accounts over which she has signatory authority and into which client or fiduciary funds have been deposited. Defendant has provided the State Bar with all documents requested by the State Bar within five business days and was solely responsible for the expense of complying with the random audit request;

h. That within one year of the date of this Order Defendant made restitution to Johnny R. Vernon in the amount of \$650.00, to Karla L. Allison in the amount of \$3,500.00, and to Kathleen Moore in the amount of \$500.00;

i. That Defendant demonstrated, in writing and to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant identified, by name and amount, all clients with funds remaining in her attorney trust account at First Citizens Bank bearing account number ending in the digits 5534, or any other account into which client funds have been deposited. After those clients were identified to the satisfaction of the Office of Counsel, Defendant properly disbursed the identified funds within ninety days of this Order or initiated escheat procedures as appropriate after one year from the date of this Order. In the event records in the possession of Defendant were insufficient to properly identify the owners of the funds in the account(s), Defendant fully cooperated in any manner necessary with the State Bar to identify the entrusted funds.

j. That, in addition to the CLE requirements provided in paragraph 5(f) above, Defendant has completed three hours of continuing legal education on the topic of trust account management within one year of the date of this Order and provided proof of completion to the Office of Counsel within ten days;

k. That within sixty days of the date this Order was served on Defendant, Defendant has obtained an evaluation by a psychiatrist or psychologist approved by the Office of Counsel for the purpose of determining if Defendant has any mental, psychological or physical impairment, addiction, personality disorder or other condition or illness; Defendant has ensured the North Carolina State Bar received a copy of a written report of the psychiatrist/psychologist within ten days of the completion of the evaluation; Defendant has complied with all treatment, if any, recommended by the evaluating psychiatrist/psychologist; Defendant has ensured that the psychiatrist/psychologist provided written reports to the State

Bar Office of Counsel concerning Defendant's compliance with the treatment plan, if any, each quarter; the reports were provided each January 1, April 1, July 1 and October 1 of the suspension; and all expenses of evaluation, treatment and reports were borne by Defendant.

l. That Defendant has executed written waivers and releases authorizing the Office of Counsel to confer with Defendant's psychiatrist/psychologist for the purpose of determining if Defendant has cooperated and complied with all requirements of paragraph 5(k) above and did not revoke such releases during the period of suspension.

m. That Defendant has paid the costs of this proceeding in accordance with the statement of costs served upon her by the Secretary of the North Carolina State Bar.

6. If Defendant successfully seeks a stay of the suspension of her law license, such stay will continue in force only as long as she complies with the following conditions:

a. Defendant shall keep the North Carolina State Bar Membership Department advised of her current business and home addresses;

b. Defendant shall respond to all communications from the North Carolina State Bar within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay.

c. Defendant shall not violate the Revised Rules of Professional Conduct or the laws of the United States or any state or local government during her suspension.

d. Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline.

e. Defendant shall permit the State Bar to conduct random audits of all accounts over which she has signatory authority and into which client or fiduciary funds have been deposited. Defendant will provide the State Bar with all documents requested by the State Bar within five business days and will be solely responsible for the expense of complying with the random audit request;

f. Defendant shall comply with all treatment, if any, prescribed by her psychiatrist and/or psychologist. If any such treatment is recommended, Defendant shall ensure that the mental health professional provides written reports to the State Bar Office of Counsel concerning Defendant's compliance

with the treatment plan each quarter during the stayed suspension. The reports shall be due each January 1, April 1, July 1 and October 1 throughout the stayed suspension. All expenses of such treatment and reports shall be borne by Defendant.

g. Defendant shall execute written waivers and releases authorizing the Office of Counsel to confer with Defendant's psychiatrist/psychologist for the purpose of determining if Defendant has cooperated and complied with all requirements of paragraph 6(f) above and shall not revoke such releases during the period of stayed suspension.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If Defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5(a) through (m) above before seeking reinstatement of her license to practice law. For the purposes of this paragraph only, Defendant shall comply with the conditions set out in paragraphs 5(f), (j), (k) and (l) at least one year next preceding Defendant's application for reinstatement.

9. Defendant is taxed with the costs of this action as assessed by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 6th day of June, 2007.

  
\_\_\_\_\_  
F. LANE WILLIAMSON, CHAIR  
DISCIPLINARY HEARING COMMITTEE

