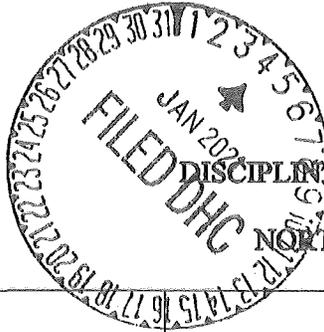


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE
 NORTH CAROLINA STATE BAR
 19 DHC 14

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

GREGORY A. NEWMAN, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter came on for hearing on November 12-13, 2020 by a hearing panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Stephanie N. Davis, and Ronald C. Brinson. Leonor Bailey Hodge and G. Patrick Murphy represented Plaintiff, the North Carolina State Bar. Defendant, Gregory A. Newman, was represented by Lane Williamson.

Based upon the pleadings and the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

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

2. Defendant, Gregory A. Newman, was admitted to the North Carolina State Bar in February 2000 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. During all of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina. During all or part of the relevant periods referred to herein, Defendant was employed as the elected District Attorney in prosecutorial district 29B (as of January 1, 2019 prosecutorial district 42), covering Henderson, Polk and Transylvania counties.

4. On or about June 12, 2014, V.O., a minor, and her mother, reported to the Henderson County Sheriff's Department that V.O. had been sexually assaulted by James Sapp ("Sapp").

5. On or about June 16, 2014, the detective assigned to the Sapp investigation interviewed V.O.

6. In that interview, V.O. described Sapp as having certain distinctive markings in the area below his belly.

7. The detective consulted the Office of the District Attorney for Prosecutorial District 29B ("D.A.'s Office") and the D.A.'s Office requested that the detective obtain a search warrant for photographs of Sapp.

8. On or about August 6, 2014, the court issued a search warrant authorizing the taking of photographs of Sapp's naked body.

9. On or about August 6, 2014, law enforcement executed the search warrant and took photographs of Sapp's naked body.

10. On September 3, 2014, Sapp was charged with Rape of a Child by an Adult (a felony) – Henderson County file no. 14 CR 053796.

11. On or about September 5, 2014, an employee of the D.A.'s Office called and spoke with V.O.'s mother to explain the court process and to provide notification of the court date, September 23, 2014.

12. During that September 5th telephone call, V.O.'s mother stated that she planned to attend the September 23rd court date and every subsequent court date.

13. Also, on September 5th, the D.A.'s Office mailed a Victim Impact Statement to V.O.

14. V.O.'s mother appeared for the September 23rd court date.

15. V.O. and her parents were interested in the prosecution of the Sapp case.

16. On or about September 23, 2014, the detective assigned to the investigation provided the D.A.'s Office with a 36-page document entitled "Initial Certification of Lead Officer" and CDs of the interview with V.O. and photographs obtained from the execution of the search warrant.

17. On May 18, 2015, the Henderson County Grand Jury indicted Sapp on the following charges:

- a. Rape of a Child by an Adult – Henderson County file no. 14 CRS 053796;
- b. Sex Offense with a Child by an Adult – Henderson County file no. 15 CRS 000441;
- c. Indecent Liberties with a Child – Henderson County file no. 15 CRS 000442;
- d. Indecent Liberties with a Child – Henderson County file no. 15 CRS 000443; and

- e. Indecent Liberties with a Child – Henderson County file no. 15 CRS 000444.
18. All of these indictments were signed by Defendant as prosecutor.
19. The alleged victim in the charges mentioned in paragraph 17 above was V.O.
20. Sometime after law enforcement provided the photographs of Sapp to the D.A.'s Office, V.O. met with Defendant at the D.A.'s Office.
21. At the meeting, Defendant showed V.O. the photographs of Sapp.
22. At the time of this meeting, Defendant indicated to V.O. that the photographs were good evidence for the case.
23. V.O. told Defendant she wanted to be present at court hearings and at sentencing.
24. Prior to October 13, 2015, the D.A.'s Office informed V.O. and her parents that the trial date for the criminal case against Sapp was November 2, 2015.
25. On or about October 13, 2015, Defendant signed a misdemeanor statement of charges charging Sapp with Assault on a Female. The victim identified in the misdemeanor statement of charges was V.O.
26. Neither Defendant nor anyone acting on his behalf informed V.O. or her parents that there would be a hearing in the Sapp case on October 13, 2015.
27. Neither Defendant nor anyone acting on his behalf informed V.O. or her parents that Defendant signed a misdemeanor statement of charges charging Sapp with Assault on a Female.
28. On or about October 13, 2015, Sapp pled guilty in Henderson County District Court to one count of misdemeanor Assault on a Female in which V.O. was the victim – Henderson County file no. 15 CR 840.
29. Neither Defendant nor anyone acting on his behalf informed V.O. or her parents that Sapp would enter a guilty plea or that the case was scheduled to be resolved on October 13, 2015.
30. V.O. had informed Defendant that she wanted to present her victim impact statement to the court prior to entry of judgment in the Sapp case.
31. Defendant represented the State of North Carolina at the plea proceeding.
32. N.C. Gen. Stat. §15A-832(c) states: "The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding."

33. At the plea proceeding, the presiding judge inquired of the State whether the victim had been advised of the plea and wished to be heard.

34. Defendant informed the court that the victim had been advised of the plea and did not want to be heard.

35. As a result of Defendant's representation to the court, the judge wrote on the judgment: "State said victim had been advised of plea and did not want to be heard."

36. Defendant did not inform V.O. or her parents that Sapp would enter a guilty plea or that the case was scheduled to be resolved on October 13, 2015.

37. Defendant's statement that the victim had been advised of the plea and did not want to be heard was false.

38. Defendant knew his statement to the court was false.

39. At the time Defendant stated to the court that the victim had been advised of the plea and did not want to be heard, Defendant knew that the statement was false.

40. The court would not have accepted Sapp's plea if the judge had been aware that the victim had not been notified of the hearing and wished to be heard by the court.

41. Defendant dismissed the felony charges described in paragraph 17 above.

42. Defendant did not subsequently advise the court that he had falsely told the court on October 13, 2015 that V.O. had been advised of the plea and did not wish to be heard during the plea proceeding.

43. On or about April 3, 2017, the State Bar opened a grievance file in this matter, grievance file number 17G0363.

44. On or about May 19, 2017, Defendant was served with a Letter of Notice in connection with grievance file number 17G0363.

45. In Defendant's May 30, 2017 response to the Letter of Notice, he stated the following regarding the plea proceeding:

a. "I had my victim/witness staff person prepare a bill of information and contact the mother of the victim."

b. "I handled the plea in District Court instead of Superior Court, where a jury trial was underway."

c. "I explained this situation to [V.O.'s father] on the day the plea occurred."

d. "Our file shows that the mother never returned the call."

46. Defendant's statements set out in paragraph 45 were false.

47. At the time he made the statements set out in paragraph 45, Defendant knew or should have known that the statements were false.

48. Defendant's statements set out in paragraph 45 were material to the State Bar's investigation of grievance file number 17G0363.

49. A victim/witness staff person did not contact the mother of the victim prior to the October 13, 2015 court date.

50. There was not a jury trial underway in Superior Court on October 13, 2015.

51. Defendant did not communicate with V.O.'s father the day the plea was entered.

52. Neither Defendant nor anyone acting on his behalf had placed a call to V.O.'s mother relating to the October 13, 2015 court date and therefore there was no call for V.O.'s mother to return.

53. On October 13, 2015, V.O. and her parents still believed the trial in Sapp's criminal matter was scheduled for November 2015.

54. In connection with the grievance investigation, Defendant provided the State Bar with a copy of the D.A.'s Office file in the Sapp case.

55. The D.A.'s Office file does not reflect that Defendant or anyone acting on Defendant's behalf placed a telephone call to V.O.'s mother about the October 13, 2015 court date.

56. The D.A.'s Office file does not reflect that V.O.'s mother failed to return a call from the D.A.'s Office about the October 13, 2015 court date.

57. Defendant did not explain the plea agreement to V.O.'s father on the day the plea occurred.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Gregory A. Newman, and over the subject matter.

2. Newman's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a. By falsely informing the court that the victim had been notified of the plea and did not wish to be heard, Defendant knowingly made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on

the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

b. By failing to inform V.O. of the scheduled guilty plea before resolving the case despite her request to be heard, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

c. By failing to inform the court that his statement that the victim had been notified of the plea and did not wish to be heard was false, Defendant knowingly failed to correct a false statement of material fact previously made to the tribunal in violation of Rule 3.3(a)(1) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

d. By making false statements about the Sapp case to the State Bar during the grievance investigation, Defendant knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Newman received an admonition in 2006 for engaging in conduct prejudicial to the administration of justice and failing to adequately communicate with a client.

2. Newman received a reprimand in 2019 for engaging in a conflict of interest while serving as District Attorney and knowingly making a material misrepresentation of fact in his response to the letter of notice from the State Bar.

3. V.O.'s father was present in court for several settings of the Sapp case and was interested in the outcome of the case.

4. Newman has good character as demonstrated by the testimony of the sheriff of Henderson County, North Carolina; attorney, Sean Devereux; retired Superior Court Judge Mark Powell; and a member of the clergy from Henderson County, North Carolina.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment are present:

- a. Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c. Negative impact of defendant's actions on client's or public's perception of the profession;
- d. Negative impact of the defendant's actions on the administration of justice;
- e. Impairment of the client's ability to achieve the goals of the representation;
- f. Effect of defendant's conduct on third parties; and
- g. Acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all factors contained in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that, though the following are applicable in this matter, disbarment is not the appropriate discipline in this case:

- a. Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b. Impulsive acts of dishonesty, misrepresentation, deceit, or fabrication without timely remedial efforts.

3. The Hearing Panel has considered all factors contained in 27 N.C. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:

- a. Prior disciplinary offenses in North Carolina;
- b. Dishonest or selfish motive;
- c. Failure to timely make good faith efforts to rectify the consequences of misconduct;
- d. Multiple offenses;
- e. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- f. Refusal to acknowledge wrongful nature of conduct;

- g. Absence of remorse;
- h. Character or reputation;
- i. Vulnerability of victim;
- j. 31 years of experience.

4. Defendant's conduct caused significant harm to his client, the State of North Carolina, and to the administration of justice.

5. Defendant caused significant harm to the public because misconduct of this type decreases the public's confidence in the justice system.

6. Defendant's conduct caused significant harm to V.O. and her family by failing to allow V.O. an opportunity to be heard in court as required by the North Carolina Crime Victims' Rights Act.

7. The Hearing Panel has considered all lesser sanctions including: censure, reprimand, and admonition, and finds that discipline less than suspension would not adequately protect the public because of the gravity of potential significant harm to the administration of justice and the legal profession as demonstrated, in part, by Defendant's failure to honor his duty of candor to the court and Defendant's pattern of making misrepresentations to the State Bar during the grievance process.

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

ORDER OF DISCIPLINE

1. Defendant, Gregory A. Newman, is hereby suspended from the practice of law for three years effective 30 days from service of this order upon Newman. This suspension is stayed immediately as set forth herein and subject to the terms of paragraph 3 below.

2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.

3. The three-year suspension is stayed for a period of three years as long as Defendant complies with all the following conditions:

- a. Defendant shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him;

- b. Defendant shall keep the State Bar Membership Department advised of his current business address, office telephone number, and office e-mail address. Defendant shall notify the State Bar of any change of office telephone number, email address, or business address within 10 days of such change. His current business address must be a street address, not a post office box or drawer;
- c. Defendant shall accept all certified mail from the State Bar sent to the address on record with the Membership Department of the State Bar;
- d. Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of Defendant's receipt of such communication or by the deadline stated in the communication, whichever is sooner;
- e. Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition that is pending at the time of entry of this order or of which he receives notice after the effective date of this order;
- f. Defendant shall timely comply with all State Bar continuing legal education requirements and will pay all fees and costs assessed therefor by the applicable deadline;
- g. Defendant shall pay all State Bar and judicial district membership dues, Client Security Fund assessments, and any other related dues, fees, assessments and/or costs by the applicable deadline; and
- h. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government, including the North Carolina Crime Victims' Rights Act.

4. Unless Defendant's obligations under this Order are modified by further order of the Disciplinary Hearing Commission, Defendant's obligations under this Order end 3 years from the effective date of the Order provided there are no pending motions or show cause proceedings alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B.0118, the Disciplinary Hearing Commission retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains the jurisdiction and ability to lift the stay of the suspension and activate the 3 year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B.0118.

6. If the stay of the suspension is lifted and the suspension is activated for any reason, the Disciplinary Hearing Commission may enter an order imposing such conditions as it deems proper for the reinstatement of Defendant's license at the end of the suspension. Additionally, Defendant must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- a. Defendant submitted his law license and membership card to the Secretary of the State Bar within 30 days of the date of the order lifting the stay and/or activating the suspension of his law license;
- b. Defendant complied with the provisions of 27 N.C. Admin. Code 1B.0128 following entry of the order lifting the stay and/or activating the suspension of his law license;
- c. Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- d. That within 15 days of the effective date of the order activating the suspension Defendant provided the State Bar with an address and telephone number at which clients seeking return of files could communicate with Defendant and obtain such files;
- e. That Defendant provided within 10 days client files to all clients who made a request for return of their files;
- f. Defendant kept the State Bar Membership Department advised of his current address, telephone number, and email address and notified the State Bar of any change in this contact information within 10 days of such change;
- g. Defendant responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within 30 days of receipt of the communication by Defendant or by the deadline stated in the communication, whichever is sooner;
- h. At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other assessments, charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;

- i. At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory continuing legal education hours in reporting of such hours or in payment of any fees associated with attendance at continuing legal education programs;
- j. Defendant did not violate the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension; and
- k. Defendant participated in good faith in the State Bar's fee dispute resolution process for any petition that was pending at the time of entry of this order or of which he received notice after the effective date of this order.

7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B.0118 until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this
the 4 day of January, 2020. D.C.P.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel