

STATE OF NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

D. BERNARD ALSTON, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a hearing panel of the Disciplinary Hearing Commission composed of Theodore C. Edwards, III, Chair, J. Michael Booe and Johnny A. Freeman pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, D. Bernard Alston, represented himself. Defendant has agreed to waive a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the discipline imposed. Defendant stipulates that he waives any right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based upon the consent of the parties, the hearing panel hereby finds, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (“Plaintiff” or “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.

2. Defendant, D. Bernard Alston (“Defendant” or “Alston”), was admitted to the North Carolina State Bar on August 24, 1985, 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During part of the relevant periods referred to herein, Alston was engaged in the practice of law in the State of North Carolina and maintained a law office in Henderson, Vance County, North Carolina.

4. During part of the relevant periods referred to herein, Alston was suspended from the active practice of law in the State of North Carolina pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 07 DHC 21 dated April 17, 2008 (hereinafter "2008 Order of Discipline").

5. Thomas Williams ("Williams") retained Alston in or around March 2007 to represent him in a civil action.

6. In or around late March or early April 2007, Alston and Williams met to review a draft of the complaint.

7. Alston did not file the complaint on Williams' behalf until May 27, 2008.

8. Alston failed to communicate with Williams about the manner in which Williams' objectives would be pursued, to wit: Alston did not notify Williams that he was going to file a complaint or that a complaint had been filed on his behalf.

9. At the time Alston filed the complaint, the Disciplinary Hearing Commission of the State Bar had entered the 2008 Order of Discipline suspending Alston from the active practice of law. On or about April 24, 2008, Alston was served with the 2008 Order of Discipline, which allowed Alston sixty days from the date of service to wind-down his practice before the active suspension went into effect.

10. On or about June 23, 2008, Alston's law license was suspended pursuant to the Order of Discipline.

11. On or about June 23, 2008, Alston withdrew as the attorney of record from Williams' matter.

12. Williams was not aware that Alston's law license was going to be suspended and that Alston intended to withdraw from representation.

13. Alston did not obtain permission from Williams to withdraw from representation or notify Williams when he actually withdrew from the representation.

14. The complaint filed by Alston on behalf of Williams was subsequently dismissed for Williams' failure to prosecute the action.

15. In or around November 2001, Genevieve Steverson ("Steverson") retained Alston for representation in a personal injury matter.

16. Alston met with Steverson several times to discuss the case, but over the course of representation Alston ceased contact with Steverson.

17. Steverson made appointments to meet with Alston about her case. Alston did not appear for the appointments.

18. Steverson called and left numerous messages with Alston's law office requesting an update on the status of her case as well as a chance to speak with Alston. Alston failed to return Steverson's telephone calls.

19. On or about November 9, 2004, Alston filed a complaint on Steverson's behalf.

20. The opposing party in the Steverson action served discovery requests that Alston failed to notify Steverson about and to which Alston failed to respond.

21. On or about February 20, 2005, the opposing party in the Steverson action filed a motion to compel based upon Alston's failure to respond to the opposing party's discovery requests. The motion to compel was granted on or about March 14, 2005, and Alston was required to respond to the discovery requests by April 1, 2005.

22. Alston did not respond to the opposing party's discovery requests as ordered by the court.

23. On or about July 25, 2005, Alston filed a voluntary dismissal of Steverson's complaint.

24. Alston did not notify Steverson that he filed a complaint on her behalf, that he failed to respond to the discovery requests, or that he voluntarily dismissed her case.

25. On or about July 24, 2006, Alston re-filed the complaint on Steverson's behalf.

26. On or about November 5, 2007, the complaint was dismissed due to Alston's failure to perfect service.

27. Alston did not notify Steverson that he re-filed the complaint or that the complaint was dismissed due to his failure to perfect service.

28. In or around June 2007, Steverson contacted the State Bar's Attorney-Client Assistance Program ("ACAP") concerning Alston.

29. A public liaison with ACAP attempted to contact Alston by phone and written correspondence on or around June 28, 2007 and July 24, 2007 concerning his representation of Steverson.

30. Alston failed to respond to phone messages and written correspondence from ACAP staff.

31. On or about May 20, 2008, Steverson filed a grievance with the State Bar against Alston, grievance file no. 08G0665 (“the Steverson grievance”).

32. On or about June 26, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G0665. Alston accepted service of the Letter of Notice on or about July 8, 2008.

33. On or about July 24, 2008, Alston responded to the Letter of Notice and admitted the allegations made by Steverson concerning Alston’s neglect of her case were true.

34. On or about July 30, 2008, the State Bar sent Alston a follow-up letter asking for additional information and asking Alston to provide copies of various documents concerning his representation of Steverson. Alston’s response to this supplemental request for information was due on or before August 15, 2008.

35. Alston failed to respond to the State Bar’s July 30, 2008 request for additional information and documentation.

36. On or about November 6, 2008, the State Bar sent Alston a letter by certified mail again asking for his response to the July 30, 2008 letter and enclosing another copy of that letter. Alston’s response was due twenty days from receipt of the letter. Alston accepted service of this letter on or about November 20, 2008.

37. Alston did not respond within twenty days of receipt of the November 6, 2008 letter as required.

38. On or about January 30, 2009, the State Bar sent Alston a third letter by certified mail again asking for his response to the July 30, 2008 letter. This letter was sent to Alston’s address of record in the membership database of the State Bar, as were the letters sent on June 26, 2008, July 30, 2008 and November 6, 2008. Alston was instructed to contact Deputy Counsel to discuss the matter within two days from receipt of the letter.

39. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

40. The January 30, 2009 letter sent by certified mail to Alston’s address of record was returned to the State Bar as “undeliverable.”

41. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

42. Alston failed to respond to the State Bar’s January 30, 2009 letter.

43. In or around May 2007, Elizabeth Billups (“Billups”) retained Alston to represent her in a criminal matter. Billups paid Alston \$500 for the representation.

44. Between May 2007 and September 2008, Billups made numerous attempts to contact Alston to learn the status of her case, including but not limited to telephone calls and messages, as well as in-person visits to Alston's office.

45. Alston did not return Billups' telephone calls and was unable to provide any information to Billups about her case when she appeared at his office.

46. On or about September 4, 2008, Billups wrote a letter to Alston requesting a copy of her client file.

47. Alston failed to respond to Billups' September 4 letter and failed to provide Billups with the requested copy of her client file.

48. On or about September 8, 2008, Billups filed a Petition for Resolution of Disputed Fee ("Billups fee dispute") with the State Bar, file no. 08FD0527.

49. On or about September 16, 2008, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Alston regarding the Billups fee dispute by certified mail. Alston received this Notification on or about September 29, 2008, and was required to provide a response to the Notification within fifteen days of receiving the letter.

50. Alston failed to timely respond to the Notification as required. Despite missing the deadline, Alston provided a response to the Notification on or about October 14, 2008.

51. Based upon the information gathered by the State Bar during the fee dispute process, on or about October 22, 2008 the State Bar requested by letter that Alston partially refund Billups' paid legal fee. Alston was required to respond to the State Bar's request on or before November 3, 2008.

52. Alston failed to respond by November 3, 2008 as instructed.

53. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1391 ("the Billups grievance"), based upon his representation of Billups and his failure to participate in good faith in the Billups fee dispute by failing to respond to the State Bar's October 22, 2008 letter.

54. On or about December 8, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G1391 ("the Billups Letter of Notice"). Alston accepted service of the Billups Letter of Notice on or about December 10, 2008, and was required to respond to the Billups Letter of Notice within fifteen days of receiving the letter.

55. Alston failed to respond to the Billups Letter of Notice within the fifteen day period as required.

56. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on December 8, 2008.

57. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

58. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

59. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

60. Alston failed to respond to the State Bar's January 30, 2009 letter.

61. On or about May 30, 2007, Monica Sadler ("Sadler") retained Alston for representation in domestic matters. Sadler paid Alston a total of \$1200 for the representation.

62. Alston did not pursue Sadler's matters for which he was retained.

63. Over the course of the representation, Sadler called Alston numerous times requesting an update on the status of her case. Alston failed to return calls made by Sadler.

64. In or around March and April 2008, Sadler sent two letters to Alston by certified mail requesting Alston contact her concerning her case. Alston accepted service of the letters on April 3 and April 8, 2008, respectively.

65. Alston did not respond to Sadler's letters as requested.

66. After June 2007, Alston did not communicate with Sadler.

67. On or about May 23, 2008, Sadler filed a grievance with the State Bar against Alston, grievance file no. 08G0685 ("the Sadler grievance").

68. On or about June 26, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance no. 08G0685. Alston accepted service of the Letter of Notice on or about July 8, 2008.

69. Alston responded to the Letter of Notice on or about July 24, 2008.

70. On or about July 30, 2008 the State Bar sent Alston a follow-up letter asking for additional information and asking Alston to provide copies of various

documents concerning his representation of Sadler. Alston's response to this supplemental request for information was due on or before August 15, 2008.

71. Alston failed to respond to the State Bar's July 30, 2008 request for additional information and documents by August 15, 2008.

72. On or about November 6, 2008 the State Bar sent Alston a letter by certified mail again asking for him to respond to the July 30, 2008 letter and enclosing another copy of that letter. Alston's response was due twenty days from receipt of the letter. Alston accepted service of this letter on or about November 20, 2008.

73. Alston did not respond within twenty days of receipt of the November 6, 2008 letter as required.

74. On or about January 30, 2009, the State Bar sent Alston a third letter by certified mail again asking for his response to the July 30, 2008 letter. This letter was sent to Alston's address of record in the membership database of the State Bar, as were the letters sent on June 26, 2008, July 30, 2008 and November 6, 2008. Alston was instructed to contact Deputy Counsel to discuss the matter within two days from receipt of the letter.

75. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

76. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

77. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

78. Alston failed to respond to the State Bar's January 30, 2009 letter.

79. In or around November 2007, Julia Perry ("Perry") hired Alston for representation in a child custody matter. Perry paid Alston \$1500 for the representation.

80. Alston did not pursue Perry's matter for which he was retained.

81. Between November 2007 and May 2008, Perry made numerous attempts to contact Alston to learn the status of her case by calling and leaving messages for Alston. Alston did not return Perry's calls.

82. On or about May 15, 2008, Perry hired new counsel to represent her in the child custody matter. Perry received no assistance from Alston and resolved the matter without Alston's involvement.

83. Alston did not refund any portion of Perry's previously paid legal fee after his suspension went into effect on June 23, 2008.

84. On or about August 18, 2008, Perry filed a Petition for Resolution of Disputed Fee ("Perry fee dispute") with the State Bar, file no. 08FD0481.

85. A Notification of Mandatory Fee Dispute Resolution was sent to Alston by certified mail on or about August 19, 2008. The notice was returned to the State Bar on September 23, 2008 marked "unclaimed."

86. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1392 ("the Perry grievance"), based upon his representation of Perry.

87. On or about December 8, 2008, the State Bar sent a Letter of Notice to Alston regarding grievance file no. 08G1392 by certified mail ("the Perry Letter of Notice"). Alston accepted service of the Perry Letter of Notice on or about December 10, 2008 and was required to respond to the Perry Letter of Notice within fifteen days of receiving the letter.

88. Alston did not respond to the Perry Letter of Notice within the fifteen day period as required.

89. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on December 8, 2008.

90. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

91. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

92. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

93. Alston failed to respond to the State Bar's January 30, 2009 letter.

94. In or around December 2007, Phyllis Dunston ("Dunston") retained Alston to provide criminal representation for her son on traffic and drug-related charges.

95. Dunston paid Alston \$2500 for the legal representation.

96. Alston was successful in obtaining a dismissal for the traffic-related charges, but did not resolve the drug-related charges prior to his license being suspended on June 23, 2008.

97. On July 3, 2008, Alston notified Dunston that he could no longer represent her son against the drug charges due to his license being suspended. This notice was received approximately one week prior to Dunston's son's scheduled trial date.

98. The July 3, 2008 notice was the first received by Dunston informing her that Alston would be unable to assist her son in his remaining criminal charges.

99. Dunston subsequently requested a partial refund of her paid legal fee from Alston. Dunston also sent certified letters to Alston's home and office addresses in an attempt to contact Alston.

100. Alston did not respond to Dunston's attempts at communication.

101. On or about October 1, 2008, Dunston filed a Petition for Resolution of Disputed Fee ("Dunston fee dispute") with the State Bar, file no. 08FD0580.

102. On or about October 1, 2008, the State Bar sent a Notification of Mandatory Fee Dispute Resolution to Alston regarding the Dunston fee dispute by certified mail. The notice was returned to the State Bar marked "unclaimed".

103. The State Bar subsequently opened a grievance file against Alston, grievance file no. 08G1318 ("the Dunston grievance"), based upon his representation of Dunston.

104. On or about November 14, 2008, the State Bar sent a Letter of Notice to Alston by certified mail regarding grievance file no. 08G1318 ("the Dunston Letter of Notice"). Alston accepted service of the Dunston Letter of Notice on or about November 20, 2008, and was required to respond to the Dunston Letter of Notice within fifteen days of receiving the letter.

105. Alston failed to respond to the Letter of Notice within the fifteen day period as required.

106. On or about January 30, 2009, the State Bar sent Alston a follow-up letter by certified mail instructing Alston to contact the State Bar within two days from receipt of the letter to discuss the pending grievance. This letter was sent to Alston's address of record in the membership database of the State Bar, as was the Letter of Notice sent on November 14, 2008.

107. Additionally, the January 30, 2009 letter was sent to an address on West Belle Street in Henderson, North Carolina, which had recently been used by the Client Security Fund of the State Bar to successfully correspond with Alston.

108. The January 30, 2009 letter sent by certified mail to Alston's address of record was returned to the State Bar as "undeliverable."

109. The January 30, 2009 letter sent to the West Belle Street address was not returned to the State Bar.

110. Alston failed to respond to the State Bar's January 30, 2009 letter.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, D. Bernard Alston, and the subject matter of this proceeding.

2. Alston's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and 84-28(b)(3) as follows:

- a. By failing to file the complaint for approximately fourteen months after initially reviewing a draft with Williams, Alston failed to pursue the matter for which he was retained with reasonable diligence and promptness in violation of Rule 1.3;
- b. By failing to keep Williams informed about the status of his case and failing to inform Williams that the complaint had been filed, Alston failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- c. By failing to notify Williams of his intent to withdraw as well as his actual withdrawal from representation, Alston failed to take steps to the extent reasonably practicable to protect his client's interests in violation of Rule 1.16(d) and failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- d. By failing to consult with Steverson before voluntarily dismissing her claim in 2005, Alston failed to consult with his client as to the means by which the client's objective was to be accomplished in violation of Rules 1.2(a) and 1.4(a)(2);
- e. By failing to respond to discovery requests and timely serve the complaint on Steverson's behalf, Alston failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- f. By failing to inform Steverson that complaints were filed on her behalf and subsequently dismissed, by failing to respond to Steverson's telephone calls and keep appointments made by Steverson, and by failing to communicate with Steverson in any meaningful way regarding the status of her case, Alston failed to keep his client reasonably informed about the status of the matter

in violation of Rule 1.4(a)(3) and promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);

- g. By failing to respond to the State Bar's letters dated July 30, 2008, November 6, 2008 regarding the Steverson grievance, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- h. By failing to respond to Billups' attempts at communication, by failing to provide Billups with a status update concerning her case, and by failing to notify Billups of his impending suspension from the practice of law, Alston failed to keep his client reasonably informed about the status of a matter and failed to comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- i. By failing to provide Billups with a copy of her client file upon request, Alston failed to surrender property to which his client was entitled in violation of Rule 1.16(d);
- j. By failing to respond to the State Bar's October 22, 2008 supplemental request for a response in the Billups fee dispute, Alston failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);
- k. By failing to respond to the Billups Letter of Notice dated December 8, 2008, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- l. By accepting the \$1200 fee and failing to pursue Sadler's domestic matters for which he was retained, Alston failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);
- m. By failing to respond to Sadler's telephone calls and letters, Alston failed to keep his client reasonably informed about the status of the matter and failed to comply with reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- n. By failing to respond to the State Bar's letters dated July 30, 2008 and November 6, 2008 regarding the Sadler grievance, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- o. By failing to pursue Perry's matter in any way after receiving payment for representation and failing to refund Perry's fee when

his law license was suspended and he was no longer able to provide Perry the legal services for which she had paid, Alston failed to act with reasonable diligence and promptness in representing clients in violation of Rule 1.3 and collected a clearly excessive fee in violation of Rule 1.5(a);

- p. By failing to respond to Perry's telephone calls and by failing to provide Perry with a status update concerning her case, Alston failed to keep his client reasonably informed and failed to respond to reasonable requests for information in violation of Rules 1.4(a)(3) and 1.4(a)(4);
- q. By failing to respond to the Perry Letter of Notice dated December 8, 2008, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- r. By failing to provide reasonable notice to Dunston that he would no longer be able to represent Dunston's son and thereby not allowing sufficient time for Dunston to retain new counsel before her son's next court date, and by failing to refund an advance payment of fee that had not been earned, Alston failed to take steps to the extent reasonably practicable to protect a client's interests in violation of Rule 1.16(d);
- s. By failing to respond to the Dunston Letter of Notice dated December 8, 2008, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b); and
- t. By failing to respond to the State Bar's follow-up letter regarding the Steverson, Billups, Sadler, Perry, and Dunston grievances, Alston failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b).

Based upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant's conduct caused significant harm to his clients; specifically, Defendant's conduct has in some instances significantly impaired his clients' abilities to pursue their respective legal claims, as well as caused the loss of paid legal fees without any progress being made by Defendant on behalf of the client. Defendant's conduct does not, however, demonstrate a dishonest or selfish motive on his part.

2. Defendant's habitual neglect of his clients' matters has the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows his disregard for his duties as an attorney. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

3. Defendant's failure to respond to inquiries from the State Bar demonstrates a refusal to participate in the self-regulation process. Such conduct interferes with the State Bar's ability to regulate its members and undermines the profession's privilege to remain self-regulating.

4. Defendant was previously suspended pursuant to the Order of Discipline issued by the Disciplinary Hearing Commission in case number 07 DHC 21 dated April 17, 2008. The basis for discipline in the 2008 Order of Discipline consisted of extensive client neglect and failure to respond to the State Bar, which is similar to the conduct at issue in the present action. The 2008 Order of Discipline suspended Defendant for five (5) years, with Defendant being allowed to apply for a stay of the remaining portion of the suspension after eighteen (18) months.

5. As noted in the 2008 Order of Discipline, Defendant was diagnosed with depression in or about May 2007. Defendant's depression contributed in part to the client neglect and the failure to respond to inquiries from the State Bar in both the present action and the conduct at issue in the 2008 Order of Discipline. Defendant is currently undergoing treatment for his depression, and has entered into a contract with the Lawyer's Assistance Program.

6. While part of the client neglect in the present action occurred during the same time period as the neglect for which Defendant was suspended by the 2008 Order of Discipline, Defendant continued to neglect client matters during the wind-down period prior to his previous suspension going into effect.

7. Furthermore, after the 2008 Order of Discipline went into effect, Defendant continually failed to respond to multiple inquiries from the State Bar. As described above, Defendant failed to respond to Letters of Notice and follow-up communications from the State Bar during both the fee dispute and the grievance processes. Additionally, Defendant failed to respond to the State Bar's Letter of Notice in grievance file no. 09G0230, which Defendant received on June 25, 2009. Defendant's consistent refusal to participate in the self-regulation process demonstrates a pattern of misconduct that warrants further discipline.

8. Despite the 2008 Order of Discipline and Defendant's ongoing treatment for depression, Defendant remains a danger to the public due to his continued neglect of client matters and refusal to participate in the self-regulation process. Defendant's inability to comply with the Rules of Professional Conduct as well as the conditions imposed upon him by the Disciplinary Hearing Commission require this panel to impose

additional discipline upon Defendant as the only means to adequately acknowledge the wrongfulness of his conduct and protect the public.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. Defendant's prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive on Defendant's part;
- c. Defendant's pattern of misconduct;
- d. Defendant engaged in multiple offenses;
- e. The effect of Defendant's mental condition on the conduct in question;
and
- f. Defendant's substantial experience in the practice of law.

2. The hearing panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors warrant suspension of Defendant's license:

- a. Defendant's actions had a negative impact on his clients' and potentially the public's perception of the legal profession;
- b. Defendant's conduct impaired each client's ability to achieve the goals of the representation; and
- c. Defendant's multiple instances of failure to participate in the legal profession's self-regulation process.

3. Any sanction less than suspension would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar.

4. Due to the extensive client neglect described in the present action and due to Defendant's continued refusal to participate in the self-regulating process of the North

Carolina State Bar, the hearing panel finds and concludes that the public will only be adequately protected by imposing an additional active suspension of Defendant's law license for a set period of time.

5. Defendant should be allowed the opportunity to apply for a stay of a portion of the suspension imposed by this Order upon compliance with certain conditions designed to ensure protection of the public as well as Defendant's continued compliance with the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, D. Bernard Alston, is hereby suspended for five years. This suspension is effective as of the date of this Order and shall run concurrently with the suspension Defendant is presently serving pursuant to the Order of Discipline in case number 07 DHC 21.

2. Alston has previously submitted his license and membership card to the Secretary of the North Carolina State Bar pursuant to the Order of Discipline in case number 07 DHC 21. Alston has also complied with the wind down provisions contained in 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline and Disability Rules.

3. Eighteen (18) months from the date of this Order, Defendant may apply for a stay of the remaining period of suspension imposed by this Order upon filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, Alston has complied with the following conditions:

a. Paid the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being mailed to him at his address of record;

b. Provided the North Carolina State Bar with a physical and/or mailing address which shall not be a post office box address. Defendant shall keep this address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

c. Participated fully and timely in the fee dispute program when notified of any petitions for resolution of disputed fees;

d. Completed a course in law office management approved in advance by the Office of Counsel of the North Carolina State Bar;

e. Established a plan for ensuring that appointments with clients will be made for dates and times when Alston is certain he will be physically present at his office and available to meet with the clients and provided that plan in writing with his application for reinstatement;

f. Entered into a contract with the Lawyer's Assistance Program to participate for the full period of time for which his suspension is stayed. Alston shall provide a copy of the contract and a written release authorizing the Office of Counsel of the North Carolina State Bar to speak with Lawyer's Assistance Program personnel and obtain information regarding Alston's compliance with the Program and any treatment recommendations. Alston shall not revoke this release;

g. Established ongoing treatment for his depression by a mental health provider and/or physician approved in advance by the Office of Counsel of the North Carolina State Bar. Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing the counsel to speak with these providers and obtain copies of records relating to his compliance with the treatment recommendations. Defendant shall not revoke these releases; and

h. Arranged for an active member of the North Carolina State Bar in good standing who practices law in Vance County and who has been approved by the Office of Counsel of the North Carolina State Bar to serve as his law practice monitor. The selected monitor must agree to so serve and agree to meet with Alston monthly to review Alston's cases. The monitor will supervise all client matters and will ensure Alston handles all client matters in a timely fashion, that Alston responds promptly to his clients, and that Alston meets with clients as scheduled when clients make appointments. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and October 15. This monitoring will occur for the duration of any stay of this suspension. Alston will pay the cost, if any, charged by the monitor for this supervision. Alston must have made the arrangements for this monitoring attorney and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming his agreement to perform the duties listed above.

4. If Alston successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay shall also constitute a stay of the suspension imposed by the Order of Discipline in case number 07 DHC 21. Further, any stay will continue in force only as long as Alston complies with the following conditions:

- a. Respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication;
- b. Advise the State Bar in writing of all physical and/or mailing address changes within 10 days of the change, with post office box addresses being unacceptable;
- c. Participate fully and timely in the fee dispute program when notified that a petition for resolution of disputed fee has been received by the State Bar;
- d. Timely comply with his State Bar continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;
- e. Attended a law office management course approved in advance by the Office of Counsel of the State Bar every year during the stayed suspension period; Alston will attend this course no later than December of each calendar year during the stayed suspension. Alston will provide written proof of successful completion of the course to the Office of Counsel within 10 days of completing the course;
- f. Meet once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperate with the monitoring attorney and provide any information the monitoring attorney deems reasonably necessary to ensure that Alston is handling all client matters in a timely fashion, is responding promptly to his clients, and is meeting with clients as scheduled when clients make appointments. Alston shall report all missed client appointments to the practice monitor, shall modify his plan for client appointments as needed, shall provide any such modified plan to the Office of Counsel within 10 days of modification, and shall comply with suggestions of the practice monitor regarding client appointments;
- g. Ensure the monitoring attorney sends a written report each quarter to the Office of Counsel of the State Bar as described above in paragraph 3(h);
- h. Cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- i. Comply with all treatment recommendations from the Lawyer's Assistance Program, his mental health provider, and/or his physician. Such treatments shall be solely at Alston's expense. Alston shall ensure that the Office of Counsel receives written reports from his mental health provider and/or physician confirming that he is complying with all treatment recommendations. The reports shall be received each January 15, April 15, July 15 and October 15 throughout the period of stayed suspension;

- j. Not violate the laws of any state or of the United States; and
- k. Not violate any provision of the Rules of Professional Conduct.

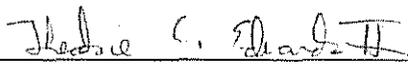
5. If an order staying any period of this suspension is entered and Alston fails to comply with any one or more of the conditions referenced in Paragraph 4, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

6. If Alston does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Alston must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- a. Compliance with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules;
- b. Compliance with the conditions set out in paragraph 3 (a) – (e) above; and
- c. That he is not then suffering from any disability that would impair his ability to practice law before seeking reinstatement of his license to practice law.

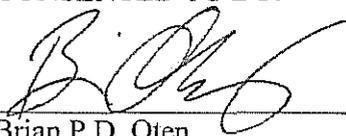
7. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of any stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 12th day of January, 2010.



Theodore C. Edwards, II, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:



Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



D. Bernard Alston
Defendant