

STATE OF NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 34

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KIMBERLY J. JORDAN, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on March 18, 2011, before a hearing panel of the Disciplinary Hearing Commission composed of J. Michael Booe, Chair, Robert F. Siler, and David L. Williams. Barry S. McNeill represented Plaintiff, the North Carolina State Bar. Defendant did not appear for the hearing, and was not represented by legal counsel at the hearing.

Based upon the facts alleged in the Complaint that pursuant to 27 N.C.A.C. 1B § .0114(f) and Rule 8(b) of the North Carolina Rules of Civil Procedure are deemed admitted by Defendant's default and the resulting Default Judgment in this matter dated January 4, 2011, and based upon the additional evidence presented at the hearing, the Hearing Panel makes 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Kimberly J. Jordan ("Jordan"), was admitted to the North Carolina State Bar on April 5, 1996, 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. Subsequent to her actions described below, Jordan's law license was suspended on March 12, 2009 for non-payment of her State Bar membership dues.

3. During all or a portion of the relevant periods referred to herein, Jordan was engaged in the private practice of law in the city of Raleigh, Wake County, North Carolina.

4. On September 3, 2007, Michael Ray Strickland ("Strickland") received a speeding ticket (07 IF 728155) in Raleigh, North Carolina, which was scheduled in Wake County District Court for October 5, 2007.

5. Strickland failed to appear on his scheduled court date, and his case was voluntarily dismissed with leave to reinstate the charge as a result of the case being called and failed.

6. Strickland subsequently informed his co-worker, April McGee ("McGee"), about the traffic ticket matter. McGee mentioned the ticket to Jordan and Jordan indicated to Strickland she would investigate the matter.

7. Approximately two weeks after Jordan indicated she would investigate the ticket, Jordan visited Strickland's and McGee's place of business in November of 2007. Jordan told Strickland that she had taken care of the traffic ticket, and asked for \$500.00 in compensation for having done so. Strickland paid Jordan with a \$500.00 money order.

8. Based upon Jordan's representation to him, Strickland believed that Jordan had obtained a resolution of the speeding ticket in case number 07 IF 728155.

9. On January 18, 2008, Strickland's North Carolina driver's license was suspended due to his failure to appear in court on the speeding ticket in case number 07 IF 728155.

10. On May 30, 2008, Strickland was stopped and given a ticket for driving while his license was revoked and not having insurance (case number 08 CR 725190). Strickland thereafter retained attorney Mary Alexander Reed ("Reed") to represent him in connection with these new charges, as well as the unresolved speeding ticket in case number 07 IF 728155.

11. Reed's investigation showed that Jordan had not resolved the speeding ticket (case number 07 IF 728155) for which Strickland had paid to Jordan the \$500.00. The court file revealed that Jordan made scheduling requests on December 6, 2007, December 10, 2007, and January 25, 2008, but that there had been no disposition of Strickland's ticket in case number 07 IF 728155.

12. In response to Strickland's telephone message, on Monday, June 22, 2008 Jordan left Strickland a voicemail telephone message falsely reassuring Strickland that she had "taken care of" Strickland's speeding ticket matter.

13. On June 24, 2008, Reed resolved the outstanding speeding ticket (07 IF 728155) by negotiating a reduction, to which Strickland entered a guilty plea. Strickland paid court costs, fine, and fees totaling \$238.00.

14. On January 15, 2009, Reed also resolved Strickland's ticket for driving while his license was revoked and not having insurance (case number 08 CR 725190), resulting in Strickland paying court costs, fine, and fees totaling \$121.

15. Strickland paid Reed \$550.00 for representing him on the charges, including the ticket which Jordan had not resolved.

16. On October 23, 2008, Strickland wrote to Jordan indicating that he intended to file a grievance with the State Bar if Jordan did not repay him the \$500.00 and compensate him for his expenses in connection with the ticket which Jordan had failed to resolve. Jordan never responded.

17. On August 4, 2009, Strickland filed a grievance against Jordan with the State Bar (09G0923). The State Bar's counsel sent a letter of notice by certified mail to Jordan. Jordan signed for the letter of notice on August 14, 2009. The letter of notice required Jordan to respond within fifteen (15) days of its receipt.

18. Jordan did not respond to the State Bar's letter of notice.

19. Jordan was served with the Summons and Complaint in this disciplinary matter on October 20, 2010. Jordan's answer to the Complaint was due no later than November 9, 2010.

20. Jordan failed to file an answer or any responsive pleading by the deadline established by Rule 4 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B § .0114(e).

21. On November 29, 2010, the Secretary of the State Bar entered Jordan's default.

22. On January 4, 2011, a Default Judgment was filed against Jordan by the Hearing Panel and was served upon Jordan by certified mail on January 21, 2011.

CONCLUSIONS OF LAW

1. The Hearing Panel has jurisdiction over Defendant Jordan and over the subject matter.

2. Default was properly entered against Jordan for her failure to timely file an answer or other responsive pleading to the Complaint.

3. Pursuant to 27 N.C. Admin. Code 1B § .0114(f) and Rule 8(d) of the North Carolina Rules of Civil Procedure, the allegations in the State Bar's Complaint are deemed admitted by Jordan and the violations of the Rules of Professional Conduct set out in the Complaint are deemed admitted by Jordan as a matter of law. Plaintiff also presented evidence at the hearing proving the allegations of the State Bar's Complaint.

4. Jordan's conduct, as set forth above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (b)(3) in that Jordan violated the Rules of Professional Conduct as follows:

- a) By failing to pursue Strickland's legal matter, Jordan failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- b) By failing to timely respond to Strickland's telephone calls or letter, Jordan failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- c) By soliciting payment from Strickland for legal services which she falsely represented she had performed but had not in fact performed, Jordan charged and collected an illegal or clearly excessive fee in violation of Rule 1.5(a);
- d) By failing to respond to the State Bar's Letter of Notice regarding grievance file number 09G0923, Jordan failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3); and
- e) By falsely representing to Strickland that she had resolved his speeding charge and by soliciting payment of a legal fee for services which she had not performed, Jordan engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Jordan falsely told Strickland that she had taken care of the speeding ticket matter when, in fact, she had not done so.
2. In November of 2007, Jordan charged Strickland a fee of \$500 for having taken care of the speeding ticket matter when, in fact, she had not yet done so.
3. When Strickland contacted Jordan about the unresolved speeding ticket matter, Jordan left Strickland a voicemail message in June of 2008 again falsely insisting that the matter had been resolved.
4. Jordan failed to respond to Strickland's October 23, 2008 letter.
5. Strickland depended upon Jordan to ensure that his legal matter was being handled in a timely and proper manner.
6. As a result of Jordan's conduct, Strickland's traffic ticket was not resolved and Strickland incurred additional charges and costs as a result.
7. Because of Jordan's conduct, Strickland now has a negative perception of lawyers and the legal profession.

8. Jordan has been disciplined in the past for similar conduct. In 2009, Jordan was reprimanded for neglecting a client's domestic case, for failing to communicate with her client, and for her failure to respond to the State Bar's follow up questions relating to the client's grievance, as well as her failure to comply with the State Bar's subpoena.

9. Jordan has repeatedly failed to communicate with the State Bar and to participate in the self-regulatory process.

10. Jordan failed to answer the State Bar's Complaint and failed to participate in this matter before the Hearing Panel.

11. Due to Jordan's failure to comply with the State Bar's membership and Interest on Lawyers' Trust Accounts ("IOLTA") requirements, including non-payment of her 2008 and 2009 State Bar membership fees, effective March 12, 2009 the State Bar Council administratively suspended Jordan's license to practice law.

12. Jordan also has deficits in her CLE compliance for the years 2006, 2007, and 2008.

13. Jordan's failure to comply with the administrative rules applicable to members of the legal profession demonstrate an inability to conform her conduct to the requirements of the State Bar and the Rules of Professional Conduct.

14. Jordan's failure to respond to the disciplinary process interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

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

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension of Jordan's law license are present:

- a. intent of the defendant to commit acts where the harm or potential harm was foreseeable;
- b. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c. elevation of the defendant's own interest above that of the client;
- d. the negative impact of the defendant's actions on the client's perception of the profession;

- e. the negative impact of the defendant's actions on the administration of justice;
- f. acts of dishonesty, misrepresentation, deceit, or fabrication; and,
- g. multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar, and concludes that although acts of misrepresentation are present in this case, the factors present in this instance do not warrant disbarment in order to protect the public.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(3), the Rules and Regulations of the State Bar, and concludes that the following factors are applicable in this matter:

- a. Jordan's prior disciplinary offense;
- b. lack of timely good faith efforts to make restitution or to rectify the consequences of her conduct;
- c. dishonest or selfish motive;
- d. lack of cooperative attitude toward the disciplinary proceedings;
- e. bad faith obstruction of the disciplinary proceedings by failing to comply with rules or orders of the disciplinary agency;
- f. refusal to acknowledge wrongful nature of her conduct;
- g. the vulnerability of the victim; and,
- h. Jordan's significant experience in the practice of law.

4. Jordan's failure to respond to the State Bar and failure to participate in the disciplinary process caused harm to the legal profession by interfering with the State Bar's ability to regulate attorneys and by undermining the privilege of lawyers in this State to remain self-regulating.

5. Jordan's conduct caused significant harm or potential significant harm to her client, the administration of justice and the legal profession in that her actions bring the legal profession into disrepute.

6. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the harm caused to her client by Jordan's misconduct, the negative effect of Jordan's misconduct on the administration of justice, and the harm to the legal profession caused by Jordan's misconduct.

7. The Hearing Panel finds that discipline short of suspension would not adequately protect the public because of the gravity of the harms Jordan's misconduct caused to her client and to the administration of justice. Additionally, Jordan has shown that lesser discipline, including reprimand, has been inadequate to protect the public from her neglect and failure to communicate with her client.

8. The Hearing Panel finds and concludes that the public will be adequately protected by suspension of Jordan's law license.

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 hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Kimberly J. Jordan, is hereby suspended for three (3) years effective thirty (30) days from the date this Order of Discipline is served upon her.

2. Jordan shall submit her law license and membership card to the Secretary of the State Bar no later than thirty (30) days following the date that this Order is served upon Jordan.

3. Jordan 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.

4. Jordan shall file an affidavit with the Secretary of the State Bar within ten (10) days of the effective date of this Order of Discipline certifying that she has complied with the wind down rule.

5. Within fifteen (15) days of the effective date of this Order, Jordan will provide the State Bar with a street address (not P.O. box or drawer address) and mailing address at which clients seeking return of their files and records in Jordan's possession or control may obtain such files and records and at which time the State Bar may serve any notices or other documents upon her.

6. All costs and administrative fees of this action are taxed to Jordan. Jordan shall pay the costs and administrative fees of this proceeding within thirty (30) days of service of the statement of costs and administrative fees upon her by the Secretary of the State Bar.

7. At the conclusion of the three (3) year active suspension, Jordan must comply with the reinstatement provisions of 27 N.C.A.C. 1B § .0125, the North Carolina State Bar Discipline and Disability Rules. In addition, Jordan must prove the following by clear, cogent and convincing evidence before she can be reinstated to the practice of law:

- a. that she 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;

- b. that she paid the costs and administrative fees as reflected on the statement of costs served upon her by the Secretary of the State Bar;
- c. that she did not violate the Rules of Professional Conduct, the laws of the United States, or the laws of any state or local government during her suspension;
- d. that there is no deficit in her completion of mandatory Continuing Legal Education (CLE) hours, in her reporting of such CLE hours, or in her payment of any fees associated with attendance at CLE programs;
- e. that she is current in payment of all Membership dues, fees and costs including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from her, and including all judicial district dues, fees, and assessments;
- f. that she has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) 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 of which she receives notice after the effective date of this Order;
- g. that she is not suffering from any disability that would impair her ability to practice law;
- h. that she has been evaluated by a psychiatrist approved by the Office of Counsel and has followed all treatment recommendations made by this psychiatrist; Jordan shall authorize and instruct her approved psychiatrist to provide quarterly written reports to the State Bar's Office of Counsel detailing the psychiatrist's diagnoses, prognoses, and treatment recommendations for Jordan, and confirming Jordan's continued compliance with all such treatment recommendations; the first such report shall be submitted to the State Bar's Office of Counsel not later than thirty (30) days from the psychiatrist's initial evaluation referenced above; subsequent reports shall be due and submitted to the State Bar's Office of Counsel every quarter (once every three months) thereafter; Jordan shall be solely responsible for all costs associated with this psychiatric evaluation, treatment, and reporting;
- i. that she has provided the Office of Counsel with releases authorizing and instructing her psychiatric, psychological and mental health care providers to provide the Office of Counsel with all medical records relating to her evaluations, prognosis, care and treatment, including psychiatric, psychological, substance abuse, and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel. Jordan shall be solely responsible for all costs

associated with this production of records and with the State Bar's interview of their providers;

- j. that she has abstained from all illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by her treating physician for the entire period of suspension;
- k. That she has submitted to random drug testing and urinalysis on each occasion when she has been requested by the Office of Counsel of the North Carolina State Bar to do so, within twelve hours after a telephone request by the Office of Counsel. The test shall be performed at a testing facility approved by the Office of Counsel. A Notice of Request for a drug test shall be filed with the Disciplinary Hearing Commission in this matter giving the date and time of the request and the location where the test is to be performed. When filed, a copy of the Notice of Request shall be sent to Jordan by certified mail. Jordan shall file with the Disciplinary Hearing Commission a Notice of Compliance, along with a certified copy of the drug test results, within ten (10) days of service upon Jordan of the Notice of Request. Jordan shall bear the cost of compliance with this provision. The Office of Counsel will only make its own requests that Jordan submit to random drug testing and urinalysis if the Office of Counsel has not received, within any 4 week period, any written reports reflecting that Jordan is undergoing random drug testing and urinalysis through another program satisfactory to the Office of Counsel;
- l. that she has filed a Notice of Compliance with the Disciplinary Hearing Commission for each drug test that she undergoes at the request or order of any probation officer or of any court pursuant to the terms of any criminal judgment which is entered against him at any time during the period of her suspension. The Notice of Compliance shall state the date that the drug test was requested, the party requesting the drug test, the date and location where the drug test was performed, and shall attach a certified copy of the drug test results;
- m. that she has submitted to the State Bar Office of Counsel an addiction and mental health evaluation, performed by a physician approved by the Office of Counsel and performed not more than thirty days prior to filing an application for reinstatement, that addresses whether Jordan suffers from an active addiction to any legal or illegal substance or suffers from any mental health problem, disorder or disease which impairs her judgment or her ability to practice law. The State Bar Office of Counsel shall keep such report confidential, except that the report shall be provided by the Office of Counsel to the Disciplinary Hearing Commission and may be provided by the Office of Counsel to officers, councilors, and employees of the State Bar; and,

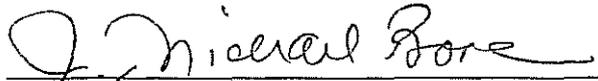
- n. that she has kept the North Carolina State Bar Membership Department advised of her current business and home street addresses (not P.O. box or drawer addresses) and notified the Bar of any Change in address within ten (10) days of such change.

8. After Jordan completes eighteen (18) months of active suspension of her law license, she may apply for a stay of the remainder of the suspension upon filing a motion in the cause at least thirty (30) days before any proposed effective date of the stay and demonstrating by clear, cogent and convincing evidence those factors delineated in paragraphs 7(a)-(n) above.

9. If Jordan successfully seeks a stay of the suspension of her law license, such stay will continue in force only as long as Jordan complies with those factors delineated in paragraphs 7(a)-(n) above.

10. If Jordan fails to comply with any of the conditions of paragraphs 7(a)-(n) incorporated by reference into paragraph 9 above, the stay of her remaining active term of suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

Signed by the Chair with the full knowledge and consent of the other hearing panel members, this the 23rd day of March, 2011.



J. Michael Booe, II, Chair
Disciplinary Hearing Panel