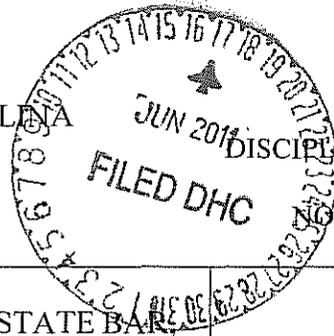


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

JOHN M. KIRBY, 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 Sharon Alexander, Chair, Harriett T. Smalls and Joe Castro 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, John M. Kirby, was represented by Douglas J. Brocker. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the hearing panel hereby 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 promulgated thereunder.

2. Defendant, John M. Kirby (“Defendant” or “Kirby”), was admitted to the North Carolina State Bar on 20 August 1993, 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 the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. Defendant was properly served with process and received due notice of the hearing in this matter.

5. JustAnswer Corp. is a Delaware corporation operating a website located at www.justanswer.com (hereinafter “the JustAnswer website”). The JustAnswer website is an online venue for third-party users to ask and receive answers to questions from “experts” in a variety of subject matter areas, including questions on various legal issues, in exchange for a fee set by the third-party user.

6. For every answer submitted by the expert and accepted by the third-party user, JustAnswer Corp. shares a portion of the fee paid by the third-party user with the expert providing the answer.

7. To qualify as an “expert” on the JustAnswer website, a person must register and provide credentials in the pertinent subject area. If approved by JustAnswer Corp., the expert is allowed to answer questions posed by third-party users on the JustAnswer website.

8. To qualify and register as an “expert” on the JustAnswer website in the subject area of law, JustAnswer Corp. requires the registering person to be a licensed attorney in good standing. The JustAnswer website does not disclose the name or contact information of the experts to the third-party users, but discloses the expert’s screen name and the biographical information provided by the expert.

9. JustAnswer Corp. is not a law firm.

10. On or about 14 March 2008, Defendant registered an account with the JustAnswer website enabling him to answer questions submitted by third-party users to the JustAnswer website as an expert in the subject matter of law. Defendant used the screen name “johnral” for the account created on 14 March 2008, and Defendant provided the JustAnswer website with his correct biographical and contact information to be associated with the “johnral” account.

11. On or about 21 March 2008, Defendant registered a second account with the JustAnswer website enabling him to answer questions submitted by third-party users to the JustAnswer website as an expert in the subject matter of law. Defendant used the screen name “ncatty” for the account created on 21 March 2008, and provided the JustAnswer website with his correct biographical and contact information to be associated with the “ncatty” account with the exception that Defendant listed his middle name, McKinley, as his last name.

12. Between March 2008 and February 2009, Defendant used the “johnral” account to provide legal advice to numerous third-party users of the JustAnswer website, to wit: Defendant communicated with third-party users of the JustAnswer website, answered numerous questions as an expert in the subject matter of law, and collected fees from JustAnswer Corp. for the answers he provided through the “johnral” account.

13. On or about 28 March 2008, Defendant registered a third account with the JustAnswer website enabling him to answer questions submitted by third-party users to the JustAnswer website as an expert in the subject matter of law. Defendant used the screen name “ADillon” for the account created on 28 March 2008.

14. Defendant did not register the “ADillon” account with the JustAnswer website using his correct biographical and contact information. Instead, Defendant registered the “ADillon” account using the biographical and contact information of a North Carolina attorney named Anthony Dillon.

15. Defendant did not have Mr. Dillon’s permission to use his name, contact information, and/or biographical information in any manner.

16. Between March 2008 and February 2009, Defendant used the “ADillon” account to provide legal advice to numerous third-party users of the JustAnswer website, to wit: Defendant communicated with third-party users of the JustAnswer website, answered numerous questions as an expert in the subject matter of law, and collected fees from JustAnswer Corp. for the answers he provided through the “ADillon” account. The amounts received by Defendant were typically in the range of \$10.00 to \$15.00 per question accepted by the third-party user of the website. Defendant collected a total of at least \$4,821.75 from his participation on the JustAnswer website.

17. Using the “johnral” and “ADillon” accounts, Defendant advised numerous third-party users of the JustAnswer website on matters concerning various other states’ laws, including but not limited to the laws of Minnesota, Washington, Alabama, Massachusetts, Pennsylvania, Idaho, and Arizona.

18. Defendant is only licensed to practice law in the State of North Carolina.

19. Defendant was not permitted to practice law in the states listed in paragraph 17 above.

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, John M. Kirby, and over the subject matter of this proceeding.

2. Defendant’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) as follows:

- (a) By registering and using an account containing another attorney’s biographical and contact information in his interactions with JustAnswer Corp. and the third-party users of the JustAnswer website, Defendant engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 8.4(c);
- (b) By advising third-party users of the JustAnswer website about the law of states in which Defendant was not licensed to practice, Defendant practiced law in jurisdictions where doing so violates the regulation of the legal profession in that jurisdiction in violation of Rule 5.5(a);

- (c) By registering with JustAnswer Corp. and providing legal advice to third-party users of the JustAnswer website, Defendant assisted JustAnswer Corp. in the unauthorized practice of law in violation of Rule 5.5(d); and
- (d) By splitting fees paid by third-party users for legal advice received through the JustAnswer website with JustAnswer Corp., Defendant shared legal fees with a nonlawyer in violation of Rule 5.4(a).

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 acted in a dishonest and deceitful manner when he knowingly and impermissibly registered and used another attorney's biographical and contact information in the "ADillon" account with JustAnswer Corp. and conducted business as "ADillon." Such conduct shows Defendant's lack of honesty, trustworthiness, and integrity and manifests Defendant's dishonest or selfish motive in establishing and acting under the false profile for monetary gain.

2. Defendant's conduct had the potential to cause significant harm to attorney Anthony Dillon in that Defendant provided legal advice to numerous individuals using the "ADillon" account. In doing so, Defendant circumvented Mr. Dillon's ability to protect his name and reputation in the legal community and with the public in general. At the time of Defendant's conduct, such potential harm was foreseeable to Defendant.

3. Defendant's dishonest conduct caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession. 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.

4. Defendant's disregard for the licensing requirements of each state in which he engaged in the unauthorized practice of law caused potential significant harm to the standing of the legal profession in the eyes of the public and those individuals to whom he provided the unauthorized services. Each state has individual licensing requirements that typically include demonstration of sufficient familiarity with the laws of the state prior to engaging in the practice of law in that state. This system is designed to protect the public by ensuring clients receive competent representation by a qualified attorney who is properly licensed in that jurisdiction. By disregarding these requirements, Defendant showed his indifference to his obligations concerning those to whom he provided legal services as well as the sovereignty of the attorney regulatory system of each state.

5. Defendant has no prior disciplinary offenses in over 17 years of practice.

6. Defendant has fully cooperated with the State Bar's investigation of this matter and in reaching a resolution in these proceedings.

7. With the exception of the professional misconduct at issue in this case, Defendant enjoys a reputation of good character in his personal and professional life.

8. Defendant understands the wrongfulness of his misconduct and is remorseful for his actions.

9. When Defendant was contacted by JustAnswer about the discrepancy in the “ADillon” account on or about 30 January 2009, Defendant responded to JustAnswer and informed them that he responded to questions under the “ADillon” account, and Defendant then provided JustAnswer with his correct biographical and contact information. JustAnswer subsequently terminated all of Defendant’s accounts with JustAnswer Corp.

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 determines the following factors are applicable:

- a. Defendant’s lack of prior disciplinary offenses;
- b. A dishonest motive on Defendant’s part;
- c. Defendant’s cooperative attitude toward the proceedings;
- d. Remorse;
- e. Defendant’s reputation for good character; and
- f. Defendant’s substantial experience in the practice of law.

2. The hearing panel has carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that although acts of misrepresentation are present in this case, disbarment is not necessary in order to protect the public.

3. The hearing panel has carefully 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 determines the following factors warrant suspension of Defendant’s license:

- a. Defendant’s intent to commit acts where the harm or potential harm is foreseeable;
- b. Circumstances reflecting Defendant’s lack of honesty, trustworthiness, or integrity;

- c. Defendant's actions potentially had a negative impact on the public's perception of the legal profession; and
- d. Defendant's conduct had a potential adverse affect on third parties.

4. The hearing panel has considered all other forms of discipline and concludes that 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 to the public regarding the conduct expected of members of the Bar.

5. Due to the misrepresentations described in the present action as well as the significant potential harm resulting from Defendant's conduct, the hearing panel finds and concludes that active suspension of Defendant's license for a set period of time is the only discipline that will adequately protect the public from future transgressions by Defendant.

6. 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 and designed to ensure 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, John M. Kirby, is hereby suspended for two years.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty (30) days following the date that this Order is served upon him. Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C.A.C. 1B § .0124.
3. Six (6) months after the effective date of this Order, Defendant may seek a stay of the remaining period of suspension imposed by this Order by filing a petition with the Secretary of the North Carolina State Bar. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate 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, he has complied with the following conditions:
  - a. Paid the costs of and administrative fees associated with this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days after the statement of costs and fees is mailed to him at his address of record;

b. Provided and maintained with the North Carolina State Bar current physical and mailing addresses which shall not be a post office box address. Defendant shall keep the State Bar informed of his current physical and mailing addresses and shall advise the State Bar in writing of any change to his physical or mailing addresses within 10 days of the change, shall accept all certified mail from the North Carolina State Bar, and shall 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 he is notified by the State Bar of any petitions for resolution of disputed fees;

d. Provided to Anthony Dillon a written apology signed by Defendant in which he apologizes for his use of Mr. Dillon's biographical and contact information in the manner described in the findings of fact above;

e. Provided a written commitment and assurance to the Office of Counsel that he has refrained from providing legal advice to individuals concerning the laws of states where he is not licensed to practice law, from assisting others in the unlicensed practice of law or from splitting fees with non-lawyers, including as described in the findings of fact above, and will continue to refrain from doing so in the future; and

f. Arranged for an active member of the North Carolina State Bar in good standing who practices law in Wake 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 Defendant at least monthly to review Defendant's cases. The monitor must supervise all client matters and ensure Defendant handles all client matters in an appropriate fashion, including ensuring that Defendant refrains from providing legal advice to individuals concerning the laws of states where he is not licensed to practice law, from assisting others in the unlicensed practice of law, or from splitting fees with non-lawyers, including as described in the findings of fact above. The monitor must submit written quarterly reports of this supervision to the Office of Counsel of the State Bar. Such reports must be received by the Office of Counsel 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 any portion of this suspension. Defendant will pay the fees or cost, if any, charged by the monitor for this supervision. At the time Defendant files any petition for a stay of any portion of the suspension imposed by this Order, Defendant must have made the arrangements for this monitoring attorney and must have supplied the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform the duties listed above.

4. Defendant may file a petition seeking a stay of the remaining period of suspension and setting forth the above requirements up to 30 days prior to the end of the 6 month period but shall not be reinstated prior to the end of that 6 month period.

5. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

a. Provides and maintains with the North Carolina State Bar current physical and mailing addresses which shall not be a post office box address. Defendant shall keep the State Bar informed of his current physical and mailing addresses and shall advise the State Bar in writing of any change to his physical or mailing addresses within 10 days of the change;

b. Accepts all certified mail from the North Carolina State Bar and responds to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;

c. Participates fully and timely in the fee dispute program whenever notified by the State Bar that a petition for resolution of disputed fee has been received by the State Bar;

d. Timely complies with his State Bar continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;

e. Meets at least once a month with his monitoring attorney, report the status of all current client matters to the monitor, cooperates with the monitoring attorney and provides any information the monitoring attorney deems reasonably necessary to ensure that Defendant is handling all client matters in an appropriate fashion and is refraining from providing legal advice to individuals concerning the laws of states where he is not licensed to practice law, from assisting others in the unlicensed practice of law, or from splitting fees with non-lawyers, including as described in the findings of fact above. Defendant shall report to his practice monitor all internet activity related to any and all legal topics upon which Defendant comments or with which Defendant interacts in any internet medium;

f. Ensures 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). Failure of the monitor to provide such a report will be grounds to revoke any stay of the suspension;

g. Cooperates with the Office of Counsel and makes appropriate arrangements for an alternate monitoring attorney, approved by the Office of Counsel, if needed during any stay of this suspension;

h. Does not violate the laws of any state or of the United States;

- i. Does not engage in the unauthorized practice of law in any jurisdiction;  
and
- j. Does not violate any provision of the Rules of Professional Conduct.

6. If an order staying any period of this suspension is entered and Defendant 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.

7. If Defendant does not seek a stay of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant 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; and
- b. Compliance with the conditions set out in paragraph 3 (a) – (e) above.

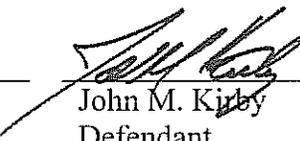
8. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of any stayed suspension.

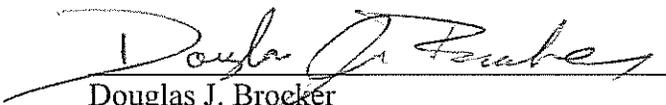
09 Signed by the Chair with the consent of the other hearing panel members, this the day of June, 2011.

  
\_\_\_\_\_  
Sharon Alexander, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

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

  
\_\_\_\_\_  
John M. Kirby  
Defendant

  
\_\_\_\_\_  
Douglas J. Brockner  
Counsel for Defendant