



STATE OF NORTH CAROLINA
WAKE COUNTY

FILED DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 29

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

MICHAEL D. LEA, 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 C. Colon Willoughby, Jr., Chair, Ronald R. Davis, and Joe Castro pursuant to 27 N.C. Admin. Code 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, Michael D. Lea, was represented by Douglas J. Brocker and Carolin Bakewell. 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, Michael D. Lea (“Defendant” or “Lea”), was admitted to the North Carolina State Bar on 15 August 1969 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, Lea actively engaged in the practice of law in the State of North Carolina and maintained a law office in Thomasville, Davidson County, North Carolina.

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

5. In or around January 2008, Ronnell L. Penny ("Penny") retained Lea for representation in an adoption proceeding. Lea resumed his previous representation of Penny and her husband from a prior adoption proceeding concerning the same child in 2001, which was previously dismissed with the Pennys' consent.

6. In or around June 2008, Lea filed with the Davidson County District Court a motion to serve notice by publication on the biological parents involved in the adoption.

7. In support of the June 2008 motion for service by publication, Lea attached to the motion an affidavit purportedly signed by Penny ("the affidavit") containing Penny's experience and expected testimony as to her lack of communication with and difficulty locating the biological parents.

8. Penny did not sign the affidavit.

9. Lea signed Penny's name to the affidavit.

10. Lea is a licensed notary in the State of North Carolina.

11. Lea notarized his signature of Penny's name on the affidavit.

12. Between July 2008 and March 2009, Penny made inquiries of Lea requesting a status update on Lea's progress regarding her adoption proceeding.

13. Lea did not promptly respond to some of Penny's inquiries.

14. In or around March 2009, Lea informed Penny of a hearing scheduled in her adoption proceeding on 26 March 2009. As a result of this hearing, on 24 April 2009 the court entered an order drafted by Lea terminating the parental rights of the purported biological parents.

15. Despite Penny's inquiries requesting a status update after the March 2009 hearing, Lea did not respond to some of Penny's inquiries or otherwise communicate with Penny regarding the status of the adoption proceeding.

16. Between March 2009 and July 2010, Lea made no significant progress in Penny's adoption proceeding.

17. In or around June 2010, Penny received notice from the Davidson County Clerk of Court that her adoption was set for dismissal and a hearing on the matter was scheduled for July 2010.

18. Penny contacted Lea regarding the July 2010 hearing, and Lea informed Penny that he would resolve the confusion.

19. Lea failed to appear at the July 2010 hearing.

20. Penny appeared at the July 2010 hearing and obtained from the Court, without Lea's or any other attorney's assistance, an extension of time to continue the adoption proceeding.

21. After the July 2010 hearing, Penny terminated Lea's representation of her interests in the adoption proceeding.

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, Michael D. Lea, 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 failing to meaningfully pursue and progress in his client's adoption proceeding, Lea failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (b) By failing to respond to some of his client's inquiries and by failing to maintain adequate communication with his client, Lea failed to keep his client reasonably informed in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4); and
- (c) By signing his client's signature to the affidavit, by notarizing his signature of his client's name on the affidavit, and by filing the affidavit with the Davidson County District Court, Lea engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

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 signed his client's signature to her purported affidavit, notarized his signature of his client's name, and filed the affidavit with the court in his client's case. Despite Defendant's good reputation as described below, Defendant's conduct demonstrated a lack of honesty, trustworthiness, and integrity in representing his client.

2. Defendant's conduct caused potential significant harm to his client's adoption case in that Defendant's improperly signed and notarized affidavit was a necessary

component of the process by which the court terminated the biological parents' rights to his client's adopted child. At the time of his conduct, Defendant knew or should have known that his actions could cause potential harm to his client's case.

3. Defendant's 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 notary requirements of this State caused potential significant harm to the administration of justice in the eyes of the public and in the eyes of employees of the judicial system in that such conduct by attorneys damages and undermines the integrity of a notarized signature. By disregarding these requirements, Defendant showed his indifference to his obligations as both a licensed attorney and as a licensed notary.

5. There is an absence of any evidence that Defendant intended to harm his clients or that he exhibited a dishonest or selfish motive.

6. With the exception of one or two technical and immaterial changes, the substance of the affidavit was generally accurate and the client would have agreed with and signed the affidavit.

7. Defendant has no prior discipline in his forty-three years of practice.

8. With the exception of the conduct at issue in this case, Defendant enjoys a reputation of honesty, integrity, and good character in his professional and personal life. At least eighteen lawyers and/or judges from Defendant's community submitted testimony via affidavit or written letter confirming Defendant's excellent reputation in the community.

9. Defendant has fully cooperated with the State Bar's investigation of his conduct and in reaching a resolution in these proceedings.

10. Defendant has acknowledged his conduct violated the Rules of Professional Conduct from the outset of the State Bar's investigation in this matter and is remorseful for his actions. Throughout the investigation of the grievance and in these proceedings before the DHC, Lea has been extraordinarily candid and forthright in his responses and in his admission of wrongdoing and violations of the Rules of Professional Conduct.

11. Defendant promptly provided Penny with her client file upon request. In recognition of his conduct, Defendant reimbursed Penny \$1,000.00 to cover her paid legal fee of \$150.00 and at least a portion of her expenses in completing the adoption proceeding to rectify a consequence of his misconduct.

12. Based upon Defendant's lack of discipline in forty-three years of practice, his good professional reputation, his candid admissions throughout these proceedings, his remorse and efforts to rectify the effect on his client, and his substantial experience in the practice of law, there is little likelihood of repetition of misconduct.

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. Admin. Code 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. Absence of a dishonest or selfish motive;
- c. Defendant's good faith efforts to make restitution or rectify consequences of his misconduct;
- d. Defendant's full and free disclosure and cooperative attitude toward the proceedings;
- e. Remorse;
- f. Defendant's reputation for good character; and
- g. 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. Admin. Code 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. Admin. Code 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;
- d. Defendant's actions potentially had a negative impact on the administration of justice;
- e. Defendant's conduct had a potential adverse affect on third parties; and

- f. Defendant's conduct included acts of dishonesty, misrepresentation, deceit, or fabrication.

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 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, that acknowledges the seriousness of the offenses Defendant committed, and that sends a proper message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

6. Under other circumstances, the misconduct in this case would warrant more serious discipline. The misconduct caused substantial potential harm to the public's confidence in the integrity of the legal profession and the judicial system. However, the hearing panel finds and concludes that the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: there is no evidence Defendant intentionally harmed his client or her case; Defendant has no professional discipline in 43 years of practice; a large number of lawyers and judges offered testimony about Defendant's excellent professional and personal reputation in the community; Defendant has candidly accepted personal responsibility for his actions from the outset of the State Bar's investigation; Defendant acknowledges the wrongfulness and seriousness of his misconduct; and Defendant is genuinely remorseful.

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, Michael D. Lea, is hereby suspended for six months, effective 60 days from the date of this Order.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 60 days following the date of this Order. 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. Admin. Code 1B § .0124.
3. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary, including the costs of his deposition and transcription of that deposition, within 90 days of service of this Order upon him.
4. In petitioning for reinstatement after the active period of suspension, Defendant must comply with 27 N.C. Admin. Code. 1B § .0125.

5. Defendant may file a petition seeking reinstatement pursuant to 27 N.C. Admin. Code 1B § .0125 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.

Signed by the Chair with the consent of the other hearing panel members, this the 2 day of May, 2012.



C. Colon Willoughby, Jr., Chair
Disciplinary Hearing Panel

CONSENTED TO BY:



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



Michael D. Lea
Defendant



Douglas J. Brocker
Counsel for Defendant