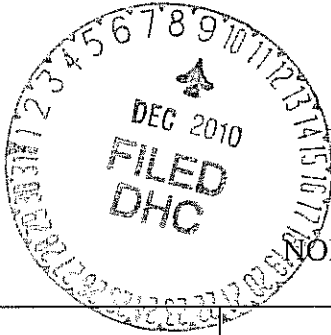


NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JACK E. McLAMB III, 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 B. Alexander, Chair, and members Fred Morelock and Joe Castro. Katherine E. Jean represented Plaintiff, the North Carolina State Bar. Alan M. Schneider represented Defendant, Jack E. McLamb III. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and 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, 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, Jack E. McLamb III ("McLamb"), was admitted to the North Carolina State Bar on August 24, 1996 and is, and was at all times referred to herein, an attorney at law subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of North Carolina.

3. During all or part of the relevant periods referred to herein, McLamb was engaged in the practice of law in Johnston County, North Carolina.

4. McLamb was properly served with process and a hearing in this matter was set with due notice to all parties.

5. Defendant represented Heather Elise Collins in Johnston County court file number 07 CR 5059 on charges of speeding.

6. Defendant represented Timothy Ray Little in Johnston County court file number 07 CR 705250 on charges of speeding and expired registration.

7. Defendant represented Anthony Blake Holmes in Johnston County court file number 07 CR 5323 on charges of driving while license revoked and a seat belt violation.

8. In August or September 2007, Defendant learned that Assistant District Attorney Cynthia Jaeger had submitted her resignation from the Johnston County District Attorney's Office and that her last day as a Johnston County assistant district attorney would be in mid-September, 2007.

9. Defendant asked Jaeger to consider dismissing the charges against Collins, Little and Holmes.

10. Jaeger told Defendant to speak with her in court or to stop by her office to discuss the proposed dismissals.

11. Defendant learned that lawyer Jonathon Hatch (who has subsequently been disbarred) was going to see Jaeger to ask her to dismiss the cases of some of his clients. Defendant accepted Hatch's offer to deliver to Jaeger, on Defendant's behalf, proposed dismissals for Collins, Little and Holmes with the instruction that if Jaeger had any questions regarding the proposed dismissals to let defendant know.

12. Defendant filled out three proposed dismissal forms, one for each of Collins, Little and Holmes, and gave them to Hatch. Defendant understood that Hatch would take the proposed dismissal forms to Jaeger.

13. The proposed dismissal forms Defendant gave to Hatch were complete, including the caption, file number and charges at issue in each case and the reason for the dismissal, but they had not been signed by a representative of the District Attorney's Office and were not dated.

14. Hatch delivered the proposed dismissal forms to Jaeger.

15. Jaeger told Hatch that she would sign the dismissal forms so long as they were not filed in the Clerk's office until after Jaeger no longer was employed by the Johnston County District Attorney's Office.

16. Jaeger signed but did not date the dismissal forms for Collins, Little and Holmes and returned them to Hatch.

17. Hatch returned the signed dismissal forms to Defendant.

18. When she signed the dismissal forms for Collins, Little and Holmes, Jaeger was a Johnston County assistant district attorney.
19. Defendant delivered the dismissal form for Collins's case to the Clerk of Court for filing on or about December 14, 2007.
20. Defendant delivered the dismissal form for Little's case to the Clerk of Court of filing on or about December 11, 2007.
21. Defendant delivered the dismissal form for Holmes's case to the Clerk of Superior Court on or about February 5, 2008.
22. When he delivered the dismissal forms to the Clerk for filing, Defendant did not remember the date on which Jaeger had signed the dismissal forms but knew she had signed them while she was still a Johnston County assistant district attorney.
23. When he delivered the dismissal forms to the Clerk for filing, Defendant filled in the portion of the forms calling for the date on which the representative of the District Attorney's Office signed with the date September 10, 2007. September 10, 2007 was his best estimate of the date upon which Jaeger had signed the dismissals.
24. Defendant did not deliver the dismissal forms to the Clerk for filing immediately upon receiving them because he wanted to wait until his clients had paid him his attorney fee for their cases.
25. When he delivered the dismissal forms to the Clerk for filing, Defendant did not know that, as a condition of signing the dismissal forms, Jaeger required that the forms not be filed in the Clerk's office until after Jaeger no longer was employed by the Johnston County District Attorney's Office.
26. Jaeger signed many dismissals for now disbarred lawyers Chadwick Lee and Jonathon Hatch. When these dismissals came to the attention of the elected District Attorney in Johnson County, the elected District Attorney asked the State Bureau of Investigation to investigate the circumstances surrounding these dismissals.
27. The SBI did investigate the circumstances surrounding these dismissals.
28. Eventually 5 lawyers were charged with criminal offenses relating to the dismissals. Three of those lawyers, Jaeger, Hatch and Lee, have pled guilty to felony offenses, have been sentenced to substantial periods of incarceration and have been disbarred.
29. On January 25, 2010, Defendant entered a plea of guilty in Johnston County Superior Court file no. 09 CR 01789, *State of North Carolina v. Jack E. McLamb*

III, to 3 counts of misdemeanor obstruction of justice relating to his filing the dismissal forms in the cases of his clients Collins, Little and Holmes.

Based upon the foregoing findings of fact, the hearing panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Jack E. McLamb III, and over the subject matter.

2. McLamb's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(1) and (2) as follows:

- a. By pleading guilty to and being convicted of 3 counts of misdemeanor obstruction of justice, McLamb was convicted of criminal offenses showing professional unfitness, in violation of N.C.G.S. 84-28(b)(1).
- b. By filing in the Johnston County Clerk of Court's Office dismissal forms dismissing his clients' cases when he knew that the assistant district attorney who had signed those forms was, at the time they were filed, no longer employed in the Johnston County District Attorney's Office, Defendant committed criminal acts which reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Rules of Professional Conduct.
- c. By failing to notify Collins, Little and Holmes that he had obtained the signed dismissal forms and by retaining the signed dismissal forms until Collins, Little and Holmes paid his legal fees, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Rules of Professional Conduct.

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

FINDINGS OF FACT REGARDING DISCIPLINE

The hearing panel finds the following additional facts relevant to the appropriate discipline:

1. In Defendant's criminal case, the court imposed the following sentence:
 - a. 90 days incarceration, suspended;
 - b. supervised probation for 3 years;
 - c. 3 weekends in jail;

- d. a prohibition against representing clients in criminal cases for 3 years;
- e. attending 6 hours of CLE in criminal law and 2 hours of CLE in ethics;
- f. 50 hours of community service;
- g. a \$1000 fine.

2. Defendant fully cooperated with the SBI investigation and freely admitted his conduct to the SBI, to the lawyers who prosecuted the criminal case, to the court in the criminal case, to the Grievance Committee and to the Disciplinary Hearing Commission.

3. None of the court cases out of which Defendant's misdemeanor convictions arose involved DWI charges.

4. Defendant voluntarily refunded all fees paid by the clients whose cases are in issue, thereby satisfying the restitution requirements of his criminal sentence before the criminal sentence was imposed.

5. Defendant has a general civil practice and has little experience in traffic or criminal cases.

6. When he filed the dismissal forms, Defendant did not realize that his conduct was wrongful. However, when it was explained to him that his conduct was wrongful, Defendant accepted that fact and has expressed remorse and contrition.

7. Defendant's remorse and contrition appear to be sincere.

8. In Defendant's criminal case, Senior Deputy Attorney General James Coman and SBI Special Agent in Charge R. Myers both described Defendant's cooperative attitude and the minor role Defendant played in the larger factual circumstances that led to the disbarments of Lee, Hatch and Jaeger. Mr. Coman stated that Defendant is "probably the least culpable of any of the attorneys, and I guess if we made a decision not to charge, it would have been pretty difficult to criticize us for that. But we felt like that because he at least had gotten involved that he had to pay some penalty for that. And that's why he's here today, and I think he's paid a pretty dear penalty for some bad judgment."

9. With the exception of the professional misconduct at issue in this case, Defendant has demonstrated good character in his professional and personal life.

10. The misconduct at issue appears to be uncharacteristic of Defendant.

Based upon the foregoing findings of fact regarding discipline, and the consent of the parties, the hearing panel makes the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

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

- A. intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- B. elevation of the defendant's own interest above that of the client;
- C. negative impact of the defendant's actions on client's or public's perception of the profession;
- D. negative impact of the defendant's actions on the administration of justice;
- E. impairment of the client's ability to achieve the goals of the representation;
- F. effect of the defendant's conduct on third parties;
- G. absence of prior disciplinary offenses in this state or any other jurisdiction;
- H. timely good faith efforts to make restitution or to rectify consequences of misconduct;
- I. a pattern of misconduct;
- J. multiple offenses;
- K. interim rehabilitation;
- L. full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- M. remorse;
- N. other than the conduct at issue in this proceeding, Defendant has demonstrated good character and judgment;
- O. degree of experience in the practice of law; and
- P. imposition of other penalties or sanctions.

2. Defendant's actions significantly harmed the public's perception of the legal profession and the public's perception of the administration of justice.

3. The hearing panel has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by Defendant's conduct.

4. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the misconduct committed by Defendant and would send the wrong message to lawyers and to the public regarding the conduct expected of members of the Bar in this State.

5. For these reasons, the hearing panel believes and so finds that an Order calling for discipline short of a suspension of Defendant's law license would not be appropriate.

6. Under other circumstances, the misconduct in this case would warrant more severe discipline. The misconduct caused substantial harm to the public's confidence in the integrity of the criminal justice system. It is important that the public and that other lawyers in North Carolina understand that such conduct will not be tolerated. However, the hearing panel finds and concludes that the unique circumstances of this case justify a downward departure from what would otherwise be much more severe discipline. The factors that particularly warrant a downward departure are: that Defendant did not realize the wrongfulness of his conduct when he committed the conduct; that Defendant fully accepts responsibility for his actions; that Defendant acknowledges the wrongfulness and the seriousness of his misconduct and is genuinely remorseful; that with the exception of the misconduct at issue here, Defendant has displayed good character in his personal and professional life; and that the misconduct at issue appears to be an aberration.

Based upon the foregoing findings of fact and conclusions of law and additional findings and conclusions regarding discipline, and with the consent of the parties, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

1. The license of Defendant, Jack E. McLamb III is hereby suspended for three (3) years beginning 30 days from service of this Order upon McLamb.

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 service of this order upon him.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying that he has complied with the wind down rule.

4. Within 15 days of the effective date of this order, Defendant shall provide the State Bar with an address at which clients seeking return of their files can obtain such files and shall promptly return all files to his clients upon request. The address shall be a physical address, not a post office box or drawer address.

5. After serving six (6) months of the active suspension of his law license, Defendant may apply for a stay of the balance of the suspension by filing a petition with the Secretary of the North Carolina State Bar and demonstrating the following by clear, cogent, and convincing evidence:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules.
- b. That he paid the administrative fees and the costs of this proceeding within 30 days of service of the statement of costs upon him.
- c. That he kept his physical address of record with the North Carolina State Bar current, promptly accepted all certified mail from the North Carolina State Bar, and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communications. The address provided by Defendant shall be a physical address, not a post office box or drawer address.
- d. That he has not violated the Rules of Professional Conduct or the laws of the United States or of any state.
- e. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis.
- f. That he has participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order.
- g. That during the period of active suspension he completed 6 hours of continuing legal education on the topics of ethics and/or professionalism. These 6 hours shall be in addition to the hours required by 27 NCAC 1D .1518 and shall be in addition to the 2 hours of CLE required by the judgment in Defendant's criminal case.

6. Defendant may file a petition seeking a stay of the remaining 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 until the end of the 6 month period.

7. If a stay is granted and McLamb is reinstated to practice during any portion of the three (3) year suspension, and if during such stay period McLamb fails to comply with any one or more of the conditions 5(c) through 5(f) above, 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.

8. If McLamb successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he continues to comply with all of conditions 5(c) through 5(f) above.

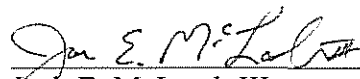
9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout all periods of stayed and active suspension.

7th Signed by the Chair with the consent of the other hearing panel members, this the day of December, 2010.




Chair, Disciplinary Hearing Panel


CONSENTED TO BY:



Jack E. McLamb III
Defendant



Alan M. Schneider
Attorney for Defendant



Katherine E. Jean
Attorney for Plaintiff