

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 25

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

NATHANAEL K. PENDLEY, Attorney,

Defendant

ORDER OF DISCIPLINE

This matter was heard on 19 November 2010, before a hearing panel of the Disciplinary Hearing Commission composed of Donna R. Rascoe, Chair, William M. Claytor, and Charles L. Garrett, Jr. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Nathanael K. Pendley, appeared *pro se*.

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 Rules of Civil Procedure are deemed admitted by Defendant's default and based upon the 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 (hereinafter "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 State Bar promulgated thereunder.

2. Defendant, Nathanael K. Pendley (hereinafter "Defendant"), was admitted to the State Bar on 11 November 1988 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 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 Clemmons, Forsyth County, North Carolina.

4. In March of 2008, Defendant was retained to represent Kelvin Jones ("Mr. Jones") in a criminal matter.

5. Defendant was paid \$2,650 to represent Mr. Jones in this matter.
6. Defendant failed to return several telephone calls from Mr. Jones and from Mr. Jones' fiancé inquiring on behalf of Mr. Jones about the status of Mr. Jones' case.
7. In October 2008, Mr. Jones' fiancé called Defendant to request that Defendant deliver to Mr. Jones records and documents from Mr. Jones' client file.
8. Defendant failed to respond to this request for documents.
9. On 10 November 2008, Mr. Jones filed a fee dispute petition with the State Bar's Attorney Client Assistance Program: petition number 08FD0683.
10. On 12 November 2008, Defendant was served with the Notification of Mandatory Fee Dispute Resolution, which notified Defendant that his participation in fee dispute resolution was mandatory and requested his response to the petition within 15 days of Defendant's receipt of the notification.
11. Defendant failed to respond to the fee dispute petition and to participate in fee dispute resolution.
12. On 10 December 2008, the State Bar sent a follow-up letter to Defendant notifying Defendant that his response to the notice of fee dispute was late.
13. Defendant failed to respond to the follow-up letter.
14. On 17 December 2008, the State Bar opened grievance file number 08G1547 against Defendant alleging rule violations in his representation of Mr. Jones.
15. On 3 February 2009, the State Bar served Defendant with a letter of notice in grievance file number 08G1547. The Letter of Notice notified Defendant that his response was mandatory and that his response was due within 15 days of his receipt of the Letter of Notice – on 18 February 2009.
16. Defendant failed to respond to the Letter of Notice.
17. On 6 March 2009, the State Bar sent a follow-up letter to Defendant, notifying Defendant that he had not responded to the Letter of Notice and that he must respond by 16 March 2009.
18. Defendant failed to respond to the follow-up letter.
19. In or about March 2009, the State Bar Councilor for District 21 attempted to contact Defendant to emphasize to Defendant that he is required by the Rules of Professional Conduct to respond to the Letter of Notice.

20. Thereafter, Defendant still did not respond to the Letter of Notice.
21. In April of 2008, Gina Bridgeford (“Ms. Bridgeford”) retained Defendant to represent Roger Walsh (“Mr. Walsh”).
22. Ms. Bridgeford paid Defendant \$8,000 to take the necessary steps to obtain a new trial for Mr. Walsh in a state criminal matter in which he was recently convicted.
23. Defendant failed to perform any substantive work on Mr. Walsh’s behalf.
24. Defendant failed to respond to telephone calls and emails from Mr. Walsh and Ms. Bridgeford.
25. Defendant did not comply with Mr. Walsh’s request for his client file.
26. On 4 November 2008, Ms. Bridgeford filed a fee dispute petition with the State Bar’s Attorney Client Assistance Program: petition number 08FD0672.
27. On 7 November 2008, Defendant was served with the Notification of Mandatory Fee Dispute Resolution which notified Defendant that his participation in fee dispute resolution was mandatory and requested his response to the petition within 15 days of Defendant’s receipt of the notification.
28. Defendant failed to respond to the Notification of Mandatory Fee Dispute Resolution, failed to participate in fee dispute resolution and failed to return any portion of the \$8,000.00 fee.
29. On 17 December 2008, the State Bar opened grievance file number 08G1547 against Defendant alleging rule violations in his representation of Mr. Walsh.
30. On 3 February 2009, the State Bar served Defendant with a letter of notice in grievance file number 08G1547. The Letter of Notice notified Defendant that his response was mandatory and that his response was due within 15 days of his receipt of the Letter of Notice – on 18 February 2009.
31. Defendant failed to respond to the Letter of Notice.
32. On 6 March 2009, the State Bar sent a follow-up letter to Defendant, notifying Defendant that he had not responded to the Letter of Notice and that he must respond by 16 March 2009.
33. Defendant failed to respond to the follow-up letter.

34. In or about March 2009, the State Bar Councilor for District 21 attempted to contact Defendant to emphasize to Defendant that he is required by the Rules of Professional Conduct to respond to the Letter of Notice.

35. Thereafter, Defendant still did not respond to the Letter of Notice.

36. Defendant was served with the Summons and Complaint in this disciplinary matter on 16 July 2010. Defendant's answer to the Complaint was due no later than 5 August 2010.

37. Defendant failed to file an answer or other responsive pleading to the Complaint.

38. On 7 September 2010, the Secretary of the State Bar entered Defendant's default.

39. Defendant did not participate in the conduct of this proceeding until he appeared at the hearing.

Based on the record and the foregoing Findings of Fact, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are before this hearing panel of the Disciplinary Hearing Commission and the Hearing Panel has jurisdiction over Defendant and over the subject matter.

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

3. Pursuant to 27 N.C.A.C. 1B § .0114(f) and North Carolina Rule of Civil Procedure 8(d) the allegations in the State Bar's Complaint are deemed admitted and the violations of the Rules of Professional Conduct set out in the Complaint are deemed admitted as a matter of law.

4. Defendant's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3) for his failure to answer a formal inquiry or complaint issued by and in the name of the State Bar and § 84-28(b)(2) as follows:

- a. By failing to return calls from Mr. Jones and his fiancé inquiring about the status of the case and by failing to respond to telephone calls and emails from Mr. Walsh and Ms. Bridgeford, Defendant failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a);

- b. By failing to respond to Mr. Jones' request for documentation from his file and by failing to provide Mr. Walsh with a copy of his client file, Defendant failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a) and failed to surrender papers and property to which the client is entitled in violation of Rule 1.16(d);
- c. By failing to respond to the fee dispute petitions filed by Mr. Jones and Ms. Bridgeford, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f);
- d. By failing to respond to the State Bar's Letter of Notice, its 6 March 2009 follow-up letter and the State Bar Councilor's communication, Defendant failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b);
- e. By failing to perform any substantive work on behalf of Mr. Walsh, Defendant failed to pursue the matter for which he was retained with reasonable diligence and promptness in violation of Rule 1.3; and
- f. By charging an \$8,000 fee and then failing to perform any substantive work on behalf of Mr. Walsh or to refund the fee, Defendant collected an excessive fee in violation of Rule 1.5(a) and failed to refund an unearned fee in violation of Rule 1.16(d).

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. Defendant has failed to communicate with his clients.
2. Defendant has failed to properly handle client matters.
3. Mr. Walsh was incarcerated and had limited means with which to communicate with Defendant and both clients depended upon Defendant to ensure that their legal matters were being handled in a timely manner.
4. Defendant has been disciplined in the past for similar conduct:
 - Defendant was reprimanded in 1994 for conduct prejudicial to the administration of justice and failure to respond to a letter of notice;
 - Defendant was reprimanded in 1997 for neglect and conduct prejudicial to the administration of justice;
 - Defendant was reprimanded in 2001 for failure to respond to a letter of notice and failure to claim a certified mailing of a subpoena;

- Defendant received an admonition in 2003 for failure to respond to the local grievance committee; and
- In 2006, Defendant received a two (2) year stayed suspension for failure to participate in fee dispute resolution, failure to respond to letters of notice and failure to return the client file.

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

6. Although Defendant failed to answer the Complaint and failed to participate in this matter before the hearing, Defendant appeared at the hearing and attempted to offer evidence in opposition to the facts that had already been deemed admitted by his default.

7. Defendant has not demonstrated a significant change in his conduct since the Disciplinary Hearing Commission imposed the stayed suspension in 2006.

8. Defendant's neglect of his clients and failure to comply with the administrative rules applicable to members of the legal profession demonstrates an inability to conform his conduct to the requirements of the Rules of Professional Conduct.

9. Defendant's failure to respond to the disciplinary process on a timely basis interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

10. Although Defendant testified at the hearing that he acknowledges that his conduct was improper, Defendant contends that he has done nothing wrong. Instead, Defendant contends that his problem is a problem with his ability to fulfill his professional obligations to respond to the State Bar that he believes may be caused by some unknown mental defect.

11. Defendant made the same argument – that he has a problem with dealing with the State Bar that he believes may be caused by an unknown mental defect – when he appeared for hearing before a panel of the Disciplinary Hearing Commission in 2006.

12. Defendant testified that though he has previously consulted with a mental health provider, his problem continues to exist and remains undiagnosed.

13. The Disciplinary Hearing Commission's prior order dated 9 January 2006 requiring Defendant to obtain a physical and mental examination by a psychiatrist and to obtain treatment consistent with the recommendations of the psychiatrist continues to be appropriate for the Defendant.

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 Defendant'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 and the public's perception of the profession;
- e. the negative impact of the defendant's actions on the administration of justice;
- f. the impairment of the client's ability to achieve the goals of the representation; 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 no factors are present in this instance that would warrant disbarment.

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. Defendant's prior disciplinary offenses;
- b. lack of timely good faith efforts to make restitution or to rectify the consequences of his conduct;
- c. a pattern of misconduct;
- d. multiple offenses;
- e. lack of cooperative attitude toward the proceedings;

- f. Defendant's bad faith obstruction of the disciplinary proceedings by failing to comply with rules or orders of the disciplinary agency and by attempting to offer evidence in opposition to facts that were deemed admitted because of Defendant's default;
- g. Defendant's refusal to acknowledge the wrongful nature of his conduct;
- h. the vulnerability of the victims;
- i. Defendant's significant experience in the practice of law; and
- j. imposition of prior penalties against Defendant.

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

5. Defendant's conduct caused significant harm or potential significant harm to his clients, the public, the administration of justice and the legal profession in that his 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 negative effect of Defendant's misconduct on the administration of justice and the harm to the legal profession caused by Defendant's conduct.

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

8. The Hearing Panel finds and concludes that the public will be adequately protected by suspension of Defendant'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, Nathanael K. Pendley, is hereby suspended for five (5) years effective thirty (30) days from the date this Order of Discipline is served upon him.

2. Defendant shall submit his 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 Defendant.

3. Defendant 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. Defendant 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 he has complied with the wind down rule.

5. Within fifteen (15) days of the effective date of this Order, Defendant 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 Defendant's possession or control may obtain such files and records and at which time the State Bar may serve any notices or other matters upon him.

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

7. Defendant must show the following by clear, cogent and convincing evidence in order to be reinstated to the practice of law at the conclusion of his active suspension:

- a. Defendant has properly wound down his 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. Defendant has paid the costs and administrative fees as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- c. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- d. There is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours

or in payment of any fees associated with attendance at CLE programs;

- e. That at the time of his petition for stay, Defendant 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 him, and including all judicial district dues, fees and assessments;
- f. Defendant 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 he receives notice after the effective date of this Order;
- g. Defendant is not suffering from any disability that would impair his ability to practice law;
- h. Defendant has within three (3) months of the date this order was served upon him obtained a physical and mental examination by a psychiatrist approved by the Office of Counsel and has followed all treatment recommendations this psychiatrist makes. Defendant shall be solely responsible for all costs associated with this examination and treatment;
- i. Defendant has provided the Office of Counsel with releases authorizing and instructing his psychiatric, psychological and mental health care providers to provide the Office of Counsel with all medical records relating to his evaluation, prognosis, care and treatment, including psychiatric, psychological and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel. Defendant shall be solely responsible for all costs associated with this production of records; and
- j. Defendant has kept the North Carolina State Bar Membership Department advised of his 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 Defendant completes thirty (30) months of active suspension of his law license, Defendant 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) – (j) above.

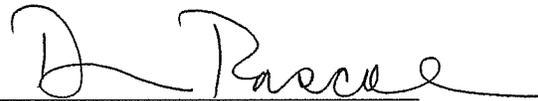
9. If Defendant successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as Defendant complies with the following conditions:

- a. Defendant shall follow all treatment recommendations of the medical provider who performed the physical and mental evaluation of Defendant as required by paragraph 7(h) above and all recommendations of any subsequent treating medical providers; Defendant will authorize and instruct his medical providers to provide quarterly written reports to the State Bar confirming Defendant's continued compliance with treatment recommendations; the first such report shall be submitted to the State Bar thirty (30) days from the initial date of stay of Defendant's suspension; subsequent reports shall be submitted on the first day of the first month of each quarter thereafter; Defendant shall be solely responsible for all costs associated with preparing these reports;
- b. Defendant shall provide the Office of Counsel with releases authorizing and instructing all psychiatric, psychological and mental health care providers to provide the Office of Counsel with all medical records relating to his evaluation, prognosis, care and treatment, including psychiatric, psychological and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel; Defendant shall be solely responsible for all costs associated with the production of these records;
- c. Defendant shall promptly and timely respond to all client inquiries and requests, including returning telephone calls from all clients regardless of whether these clients have paid Defendant;
- d. Defendant shall keep the State Bar Membership Department advised of his current business and home street addresses (not P.O. box or drawer addresses) and notify the State Bar of any change in address within ten (10) days of such change;
- e. Defendant shall respond 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 shall participate 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;
- f. Defendant remains current in payment of all Membership dues, fees and costs including all Client Security Fund assessments and other charges or surcharges that the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;

- g. That there is no deficit in Defendant's completion of mandatory CLE hours, in reporting of such hours or in payment of any fees associated with attendance at CLE programs; and
- h. Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.

10. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraphs 9(a) – (h) above, the stay of the 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 22nd day of December, 2010.



Donna R. Rascoe, Chair
Disciplinary Hearing Panel