



NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 24

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
WALTER E. RICKS, III,)
Defendant.)

**FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER
OF DISCIPLINE BY CONSENT**

This matter was considered by a hearing panel of the Disciplinary Hearing Commission duly appointed and composed of the Chair, M.H. Hood Ellis, and panel members Theodore C. Edwards, II and Dr. Charles L. Garrett, Jr. William N. Farrell represented Plaintiff. Defendant was represented by Florence A. Bowens. 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 knowingly, freely and voluntarily consents to the order of discipline, waives a formal hearing in this case, waives his right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions of law or the discipline imposed. Based upon the stipulations of fact and the consent of the parties, the hearing panel enters 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 North Carolina State Bar promulgated thereunder.
2. Defendant, Walter E. Ricks, III (hereinafter "Defendant" or "Ricks"), was admitted to the North Carolina State Bar on August 14, 1970 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 part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and maintained a law office in Durham, Durham County, North Carolina.
4. As of January 2009, Defendant has been suspended from the active practice of law in the State of North Carolina due to non-compliance with Continuing Legal Education requirements.

5. In or about July 2005, Defendant was retained by Howard Hill to represent him in an EEOC matter.
6. Defendant was paid \$3,250 by Mr. Hill as a retainer fee for his services.
7. On June 27, 2005, Defendant filed a complaint on Mr. Hill's behalf in the United States District Court, Middle District of North Carolina, Greensboro Division titled *Howard Hill v. Mike Leavitt, in his official capacity as the Secretary of the United States Department of Health and Human Services, 1:05-CV-00582*.
8. On December 11, 2006, a Motion for Summary Judgment and Memorandum in Support of Defendant's Motion for Summary Judgment was filed by defense counsel in *1:05-CV-00582*.
9. On January 17, 2007, Defendant received a letter from the United States District Court informing him that no response had been filed in response to the December 11, 2006 Motion for Summary Judgment.
10. On February 1, 2007, Defendant Ricks filed a Motion to Allow Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment to be filed out of time on Mr. Hill's behalf. The Motion was granted.
11. On February 22, 2007, Defendant Ricks filed Plaintiff's Memorandum of Law and Affidavit in Opposition to Defendant's Motion for Summary Judgment on Mr. Hill's behalf. The affidavit was signed by Mr. Hill.
12. On August 24, 2007, a Recommendation of United States Magistrate Judge was filed recommending that the court grant defense counsel's motion for summary judgment.
13. On September 24, 2007, an order adopting Magistrate Judge's Recommendation that Defendant's Motion for Summary Judgment in *1:05-CV-00582* was granted and the case dismissed.
14. After the September 24, 2007 order was adopted, Defendant performed no additional work or contacted Mr. Hill regarding *1:05-CV-00582*.
15. Defendant failed to notify Mr. Hill of the granting of the summary judgment in *1:05-CV-00582*.
16. Defendant failed to return Mr. Hill's client file to him after being demanded to do so.
17. On or about February 23, 2009, Mr. Hill filed a grievance with the State Bar against Defendant, grievance file no. 09G0208.
18. On or about April 13, 2009, the State Bar sent a Letter of Notice to Defendant by certified mail regarding grievance file no. 09G0208.
19. Defendant received this Notification on April 14, 2009 and was required to respond within fifteen days but failed to respond.

20. On April 30, 2009, Defendant was granted an extension until May 13, 2009 to formally respond to the Letter of Notice but failed to respond.

21. On May 22, 2009, due to Defendant's failure to respond to the February 23, 2009 Letter of Notice, a model policy letter was sent to District 14 Councilor, Margaret McCreary in an attempt to contact Defendant and have him comply with responding to the February 23, 2009 Letter of Notice. Defendant again failed to respond to the February 23, 2009 Letter of Notice.

22. On August 18, 2009, the State Bar served Defendant with a subpoena to appear at the State Bar and produce Mr. Hill's client file on September 16, 2009.

23. On September 16, 2009, Defendant appeared at the State Bar offices pursuant to the August 18, 2009 subpoena.

Based upon the foregoing Findings of Fact, the hearing panel hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant and the subject matter of this proceeding. By agreeing and consenting to this order of discipline, Defendant has waived any and all defects in the service of the Summons and Complaint and in the Notice of Hearing.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. General Statute §84-28(b)(2) in that the conduct violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

a) By failing to communicate with Mr. Hill after filing the brief in opposition to defendant's motion for summary judgment Defendant was in violation of Rules 1.4(a)(3) and 1.4(a)(4);

b) By failing to perform any work on behalf of Mr. Hill after filing the brief in opposition to defendant's motion for summary judgment, Defendant was in violation of Rule 1.3;

c) By failing to consult with Mr. Hill after the magistrate recommended that the motion for summary judgment be granted, Defendant was in violation of Rule 1.4(b);

d) By failing to provide Mr. Hill with a copy of his client file upon request, Defendant failed to surrender property to which his client was entitled in violation of Rule 1.16(d); and

e) By failing to respond to the State Bar's February 23, 2009 Letter of Notice regarding 09G0208 until being subpoenaed to appear at the State Bar amounted to a failure to respond to a lawful demand for information from a disciplinary authority and was in violation of Rule 8.1(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel enters the following:

FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it.
2. 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 finds the following factors are applicable in this matter:
 - (a) The presence of prior disciplinary offenses by Defendant;
 - (b) Multiple violations of the Rules of Professional Conduct; and
 - (c) Defendant's substantial experience in the practice of law.
3. The hearing panel has also 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 finds the following factors warrant suspension of Defendant's license:
 - (a) The negative impact of Defendant's actions on his clients' perceptions and the public's perception of the legal profession;
 - (b) The negative impact of Defendant's actions on the administration of justice;
 - (c) Impairment of his clients' ability to achieve the goals of the representation; and
 - (d) Multiple instances of failure to participate in the legal profession's self-regulation process.
4. 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 the public regarding the conduct expected of members of the Bar.
5. The hearing panel considered the factors delineated in 27 N.C.A.C. 1B §.0114(w)(2)(A) of the Rules and Regulations of the North Carolina State Bar and finds the circumstances of this case do not require disbarment in order to protect the public.
6. The hearing panel has carefully considered all disciplinary options and finds reprimand, admonition or censure would not be sufficient discipline to protect the public, clients or potential clients, the profession and the administration of justice. The hearing panel finds that any discipline less than suspension would not be appropriate in this case.

7. The hearing panel finds and concludes that the public will be adequately protected by suspension of Defendant's license, for a period of time.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following:

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for three (3) years.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following service of this Order on 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. Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within ten days of the effective date of this Order of Discipline certifying he has complied with the wind down rule.

4. Within fifteen days of the effective date of this Order, defendant will provide the State Bar with a street 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 the State Bar may serve any notices or other matters upon him.

5. After the completion of 18 months of active suspension of his license, defendant may apply for a stay of the balance of the suspension upon filing a petition with the Secretary of the North Carolina State Bar at least thirty days before any proposed effective date of the stay and demonstrating the following by clear, cogent, and convincing evidence:

a. That defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the Bar of any change in address within ten days of such change;

b. That defendant has responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty 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 received after the effective date of this Order;

c. That defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension;

d. That 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; and

e. Defendant has paid 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 has complied with all Continuing Legal Education (CLE) requirements on a timely basis during any period during which the suspension of his law license is stayed.

6. If defendant successfully seeks a stay of the suspension of his law license after 18 months, such stay will continue in force only as long as he complies with the following conditions:

a. Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses;

b. Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and participate in good faith in the State Bar's fee dispute resolution process for any petition received during the stay;

c. Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension; and

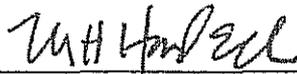
d. Defendant shall timely comply with all State Bar membership and continuing legal education requirements and shall pay all fees and costs assessed by the applicable deadline.

7. If defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6 above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If defendant does not seek a stay of the active portion of the suspension or if some part of the suspension is stayed and thereafter the stay is revoked, defendant must comply with the condition set out in paragraphs 5(a) through (e) above before seeking reinstatement of his license to practice law.

9. Defendant is taxed with the costs of this action as assessed by the Secretary.

Signed by the Chair of the Hearing Panel with the consent of the other Hearing Panel members, this the 7th day of October, 2010.

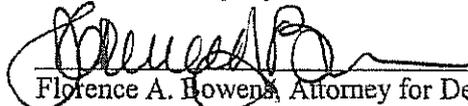


Chair, Disciplinary Hearing Panel

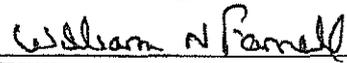
CONSENTED TO:



Walter E. Ricks, III, Defendant



Florence A. Bowen, Attorney for Defendant



William N. Farrell, Deputy Counsel
Attorney for Plaintiff