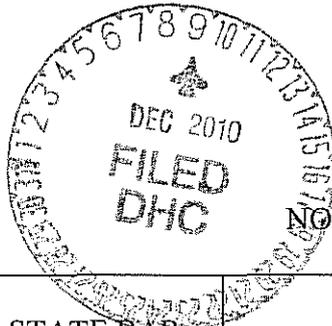


NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

S. VANN SAULS, 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. Douglas J. Brocker represented Defendant, S. Vann Sauls. 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 makes 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, S. Vann Sauls, was admitted to the North Carolina State Bar on August 23, 1997 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, Defendant was engaged in the practice of law in Johnston County, North Carolina.

4. Defendant was properly served with process.

5. Defendant represented Lucas Daniel Currin in Johnston County court file number 07 CR 054378 on a charge of driving after consuming alcohol under the age of 21.

6. Defendant represented Bryan Scott Clark in Johnston County court file number 07 CR 50005 on a charge of driving while impaired.

7. Defendant represented Frankie McLamb Lee in Johnston County court file numbers 07 CR 51510 and 07 CR 51511 on related charges of driving while license revoked and driving while impaired.

8. Defendant associated attorney Chadwick Lee to assist him in representing Clark and Frankie Lee because he did not normally handle driving while impaired cases.

9. In 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 the end of September, 2007.

10. On or about September 17, 2007, Defendant met with Jaeger and discussed with her specific factual and legal reasons she should consider dismissing the charges against Currin, Clark and Frankie Lee.

11. After this discussion, Jaeger agreed to dismiss the cases against Currin, Clark and Frankie Lee. Defendant provided Jaeger with proposed dismissal forms at that meeting.

12. The proposed dismissal forms Defendant gave to Jaeger for the Clark and Frankie Lee matters had been partially completed, including the caption, file number, charges at issue in each case, date and Jaeger's name but not the reason for the dismissal. Jaeger told Defendant to have Chadwick Lee fill in the reasons for dismissal and file the forms because Chadwick Lee was primarily handling the Clark and Frankie Lee matters.

13. When he gave to Jaeger the proposed dismissal forms for the Currin matter, the forms were totally completed except for Jaeger's signature.

14. Jaeger signed the dismissal forms for the Currin, Clark and Frankie Lee cases, which were dated September 17, 2007, and gave them to Defendant.

15. Shortly after the meeting, Defendant provided the dismissal forms for the Clark and Frankie Lee cases to Chadwick Lee.

16. Defendant retained the dismissal for the Currin case in his file. He later delivered the dismissal form to Chadwick Lee for filing.

17. When she signed the dismissal forms for the Currin, Clark and Frankie Lee cases, Jaeger was a Johnston County Assistant District Attorney.

18. Jaeger told Chadwick Lee not to file dismissal forms signed by Jaeger for DWI cases in the Clerk's office until after Jaeger no longer was employed by the Johnston County District Attorney's Office. Before Chadwick Lee filed any of the dismissal forms, he told Defendant about this conversation with Jaeger.

19. On or about January 24, 2008, Chadwick Lee or an employee in Chadwick Lee's office delivered two dismissal forms for Frankie Lee's cases to the Clerk of Court for filing. The dismissal forms filed in the Frankie Lee cases were forms that Chadwick Lee obtained directly from Jaeger and not the forms Defendant obtained from Jaeger on or about September 17, 2007.

20. On or about February 1, 2008, Chadwick Lee or an employee in Chadwick Lee's office delivered a dismissal form for Clark's case to the Clerk of Court for filing. The dismissal form filed in the Clark case was a form that Chadwick Lee obtained directly from Jaeger and not the one Defendant obtained from Jaeger on or about September 17, 2007.

21. On or about March 25, 2008, Chadwick Lee or an employee of Chadwick's Lee's office delivered to the Clerk of Court a dismissal form for Currin's case. This was the form Defendant obtained from Jaeger on or about September 17, 2007.

22. Chadwick Lee did not deliver the dismissal forms for the Frankie Lee and Currin matters to the Clerk of Court for filing immediately upon receiving them because Defendant and Chadwick Lee wanted to wait to file the dismissal forms until their clients paid the full attorney fee for their cases. Clark had paid his fee in full by the time Jaeger left her employment as a Johnston County assistant district attorney. Therefore, Chadwick Lee did not delay delivering the Clark dismissal to the Clerk of Court as a means of securing payment of legal fees.

23. Jaeger signed many dismissals for now disbarred lawyers Chadwick Lee and Jonathon Lee 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.

24. The SBI did investigate the circumstances surrounding these dismissals.

25. Eventually, 5 lawyers were charged with criminal offenses relating to the dismissals. Three of those lawyers, Jaeger, Hatch and Chadwick Lee, have pled guilty to felony offenses, have been sentenced to substantial periods of incarceration and have been disbarred.

26. On January 25, 2010, Defendant entered a plea of guilty in Johnston County Superior Court file no. 09 CR 01792, *State of North Carolina v. S. Vann Sauls*, to four counts of misdemeanor obstruction of justice relating to the filing of the dismissal forms in the cases of his clients Currin, Clark and Frankie Lee.

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, S. Vann Sauls, and over the subject matter.

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)(1) and (2) as follows:

- a. By pleading guilty to and being convicted of four counts of misdemeanor obstruction of justice, Defendant was convicted of criminal offenses showing professional unfitness, in violation of N.C.G.S. 84-28(b)(1).
- b. By providing dismissal forms to Attorney Chadwick Lee for filing in the Johnston County Clerk of Court's Office in the Currin, Clark and Frankie Lee cases and permitting dismissal forms to be filed in the Clerk's Office after Jaeger was no longer an assistant district attorney and with knowledge that Jaeger had instructed they not be filed until after her employment as an assistant district attorney ended, 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 Currin and Frankie Lee that he had obtained the signed dismissal forms and by retaining the signed dismissal forms until Currin and Frankie Lee 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;
 - d. a prohibition against representing clients in criminal cases for 3 years;
 - e. attending 10 hours of CLE in criminal law and 2 hours of CLE in ethics for each year of his probation over and above the normal CLE requirements;
 - f. 100 hours of community service;
 - g. \$2500 fine; and
 - h. \$2350 restitution.

2. Defendant fully cooperated at an early stage 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. Defendant voluntarily refunded all fees paid by the clients whose cases are in issue, thereby satisfying the restitution requirements of his criminal sentence contemporaneously with imposition of the criminal sentence.

4. Defendant has a general civil practice focusing on real estate and business law. Defendant was not experienced in DWI defense. He associated Chadwick Lee to assist him with the representation of Clark and Frankie Lee and left it to Chadwick Lee to determine proper court procedure.

5. Defendant did not realize at the time 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.

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

7. With the exception of the professional misconduct at issue in this case, Defendant has demonstrated good character in his professional and personal life and a long term commitment to the rural community in which he resides and practices law.

8. 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 serious 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 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, S. Vann Sauls, is hereby suspended for three (3) years beginning 30 days from service of this Order upon Sauls.

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 seek 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 that period.

7. If a stay is granted and Sauls is reinstated to practice during any portion of the three (3) year suspension, and if during such stay period Sauls 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 Sauls 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.

07th Signed by the Chair with the consent of the other hearing panel members, this the day of December, 2010.



Sharon B. Alexander
Chair, Disciplinary Hearing Panel

CONSENTED TO BY:



S. Vann Sauls
Defendant



Douglas J. Brocker
Attorney for Defendant



Katherine E. Jean
Attorney for Plaintiff