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STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff
v.
AARON EDWARD CARLOS, Attorney,
Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, and members John M. May, and Donald G. Willhoit, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). The Plaintiff was represented by Jennifer A. Porter. The Defendant, Aaron Edward Carlos ("Carlos"), represented himself. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Carlos has freely and voluntarily stipulated to the foregoing findings of fact and consents to the conclusions of law and entry of the order of discipline. Carlos freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the hearing committee hereby enters the following:

Findings of Fact

1. The 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. Carlos was admitted to the North Carolina State Bar in 2001, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Carlos was engaged in the practice of law in the State of North Carolina as an Assistant Appellate Defender with the Office of the Appellate Defender in Durham, North Carolina until April 2003. Carlos subsequently has engaged in the practice of law as a sole practitioner and has maintained a law office in Graham, Alamance County, North Carolina.

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4. While employed as an Assistant Appellate Defender, Carlos was assigned to draft and file appellate briefs for four clients of the Office of the Appellate Defender, Jeffrey Leonard Shuford, Charles Michael Cassell, III, William Justin Martin, and Dontrail Gilmore. Each brief was due in February or March 2003. Carlos failed to file these briefs.

5. The Appellate Defender, Staple Hughes ("Hughes") had established a supervisory system for the cases assigned to the Office of the Appellate Defender, which was maintained by his administrative assistant.

6. In each case described above, Carlos willfully misrepresented to the Appellate Defender's administrative assistant that he had filed the required appellate brief when in fact he had not.

7. On or about April 4 and April 7, 2003, Hughes became aware that Carlos had not filed the appellate briefs in the above four cases by the applicable deadlines.

8. Carlos did not come into the office on April 7 or April 8, 2003.

9. On April 9, 2003, Carlos came into the Office of the Appellate Defender and resigned, effective that date.

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the hearing committee enters the following:

Conclusions Of Law

1. All parties are properly before the hearing committee and the committee has jurisdiction over Carlos and the subject matter of this proceeding.

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

(a) By failing to file timely appellate briefs, Carlos neglected four client matters in violation of Rule 1.3; and

(b) By telling his supervisor's assistant that he had filed the briefs by the appropriate deadlines when he had not done so, Carlos engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Upon the consent of the parties, the hearing committee also enters the following:

Findings Of Fact Regarding Discipline

1. Carlos has been diagnosed with Attention Deficit Disorder. Carlos has had a long history of procrastination, poor organizational skills, and distractibility. These traits contributed to his failure to file appellate briefs for the four clients referenced above.

2. Carlos willfully misled Hughes' administrative assistant regarding whether he had filed appellate briefs for the four clients referenced above.

3. Carlos attempted to ameliorate the effects of his failure to file the briefs by working to complete the briefs on April 7-9, 2003 prior to resigning.

4. Hughes filed motions requesting leave to file appellate briefs and an extension of time to do so for each of the four clients described above. These motions were granted and the Office of the Appellate Defender was allowed to file appellate briefs for these clients.

5. Subsequent to his resignation from the Office of the Appellate Defender, Carlos began practicing law as a solo practitioner. Carlos' procrastination and poor organizational skills have affected his private practice.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the hearing committee makes the following:

Conclusions With Respect To Discipline

1. Carlos' misconduct is aggravated by the following factors:
 - a. Dishonesty in his misrepresentations to Hughes' administrative assistant; and
 - b. Multiple offenses.
2. Carlos' misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Personal or emotional problems;
 - c. Timely good faith efforts to rectify the consequences of his misconduct;
 - d. Full and fair disclosure to the hearing committee; and
 - e. Remorse.
3. The mitigating factors outweigh the aggravating factors.
4. Carlos' conduct, if continued or tolerated by the Bar, poses significant potential harm to future clients.
5. Carlos' procrastination and poor organizational skills, which contributed to his neglect of the four clients described above while with the Office of the Appellate Defender, are now manifesting themselves in conduct that threatens neglect of client matters in his private practice. This conduct poses a threat of significant potential harm to his clients and the public, his potential future clients.
6. Carlos' dishonesty and provision of false information to Hughes' administrative assistant, which misled Hughes and thwarted the protections Hughes had

established for the clients of the Office of the Appellate Defender, also posed a threat of significant harm to those four clients.

7. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline and that a stayed suspension is necessary to ensure Carlos complies with necessary conditions to avoid significant harm or the potential for significant harm to clients.

8. For these reasons, this DHC Committee finds that an Order imposing discipline short of a stayed suspension of Carlos' law license would not be appropriate.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the hearing committee enters the following:

Order Of Discipline

1. The Defendant, Aaron Edward Carlos, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Carlos.

2. The two-year suspension is stayed for a period of three years as long as Carlos complies, and continues to comply during the period of the stay, with the following conditions:

- a. Complete a law office management course approved by the Office of Counsel of the North Carolina State Bar at his own expense no later than ninety (90) days after this Order is served upon Carlos;
- b. Arrange for a member of the North Carolina State Bar who is in good standing who practices law in Alamance County and who has been approved by the North Carolina State Bar to serve as his monitor. The selected monitor must agree to so serve and agree to meet with Carlos monthly to review Carlos' cases. The monitor will supervise all client matters and will ensure Carlos handles all client matters in a timely fashion and that Carlos responds promptly to his clients. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar, such reports due on the following dates as they occur during the stay of this suspension: January 15, April 15, July 15, and September 15. This monitoring will occur for the duration of any stay of this suspension. Carlos will pay the cost, if any, charged by the monitor for this supervision. Carlos must have made the arrangements for this monitoring attorney and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming his agreement to perform the duties listed above no later than ninety (90) days from service of this Order;
- c. Meet once a month with his monitoring attorney, to whom he will report the status of all current client matters, cooperate with the

monitor attorney and provide any information the monitor attorney deems reasonably necessary to ensure that Carlos is handling all client matters in a timely fashion and is responding promptly to his clients;

- d. Ensure the monitoring attorney sends a written report each quarter to the Office of Counsel of the State Bar as described above;
- e. Cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- f. Receive treatment for attention deficit disorder, attention deficit hyperactivity disorder, depression and/or any other mental health or behavioral condition that affects his ability to practice law diagnosed by a mental health professional of his choice and approved by the Office of Counsel of the State Bar during the period of any stay of this suspension. Such assessment and treatment will be at the expense of Carlos. Carlos will sign an authorization form consenting to the release of medical records and information from the mental health professional or other medical professional to the Office of Counsel to the State Bar and will not revoke that release. Carlos will arrange for treatment and send the authorization form to the Office of Counsel within sixty (60) days of service of this Order;
- g. During the period of the stay, Carlos will pay all Membership dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis;
- h. During the period of the stay, Carlos will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- i. Not violate any of the Revised Rules of Professional Conduct in effect during the period of the stay;
- j. Not violate any laws of the State of North Carolina or of the United States during the period of the stay; and
- k. Pay all costs of this proceeding as assessed by the Secretary within thirty (30) days after service of the notice of costs on him.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Carlos must demonstrate that he complied with each of the following conditions before seeking reinstatement.

- a. Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;

- b. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis;
- c. Complied with all Continuing Legal Education requirements as if still in practice during the suspension on a timely basis;
- d. Not have violated any of the Revised Rules of Professional Conduct;
- e. Not have violated any laws of the State of North Carolina or of the United States;
- f. Paid all costs of this proceeding as assessed by the Secretary within thirty (30) days of service of the notice of costs upon him;
- g. Show by clear, cogent, and convincing evidence that he is not then suffering from any disability that would impair his ability to practice law; and
- h. Completed a law office management course approved by the Office of Counsel at his own expense within a year prior to seeking reinstatement.

4. 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 the period of the stayed suspension.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 1st day of August 2005.


M. Ann Reed, Chair
Disciplinary Hearing Committee

Agreed to and consented by:


Aaron E. Carlos
Defendant


Jennifer A. Porter
Attorney for Plaintiff

STATE OF NORTH CAROLINA

Forsyth County

In Re:
ERIC SAUNDERS

FILED

2005 JUL 12 PM 12:36
FORSYTH COUNTY, C.S.C.

FILE NO. 04 CR 34106

In the General Court of Justice
Before District Court Division

BY [Signature]

AMENDED
CONTEMPT
ORDER

A TRUE COP
CLERK OF SUPERIOR COURT
FORSYTH COUNTY
BY [Signature]
Assistant Deputy Clerk Superior Court

On November 2, 2004 at First Appearances in Courtroom 3B, the undersigned judge was assigned to advise defendants of their rights and conduct bond hearings. Eric Saunders, Assistant District Attorney appeared for the State and Cara Smith appeared as assistant public defender prior to the recess, and Jason Crump appeared as assistant public defender after the recess.

The court makes the following:

Findings of Fact

1. After several bond hearings whereby the court called on the state first to be heard on bond and then the public defender, Mr. Saunders asked to approach the bench.
2. At the bench and outside of Ms. Smith's presence he suggested that the court call on the public defender first to save time and implied the court favored the public defender's position on bonds.
3. Because Ms. Smith had not heard Mr. Saunders' ex parte comment, the court advised Ms. Smith that Mr. Saunders had suggested the public defender be heard on bonds first; Ms. Smith objected on the grounds Mr. Saunders had more information.
4. In open court in front of officers of the court, sheriff's deputies, court personnel and the general public, Mr. Saunders then indicated that he felt the court would rule in the public defender's favor anyway.
5. Ms. Smith responded to Mr. Saunders that the court had just denied the public defender's request for a \$1000 secured bond in the case of Samuel Miller.
6. The court called a recess. After a break, the court told Mr. Saunders his comment was unprofessional and highly improper. The court told Mr. Saunders to consider her comments a clear warning of his conduct. The court asked Mr. Saunders if he had anything he wished to say to the court. Mr. Saunders answered no.
7. The court then asked him if he wished to retract his statement about the court favoring the public defender; Mr. Saunders answered no.
8. The court then asked him if he believed the court could be fair to both the prosecution and the defendant in bond hearings; he answered, "No, I do not."
9. The court found Mr. Saunders in direct contempt of court, excused Mr. Saunders from the courtroom and requested another ADA to proceed with First Appearances.

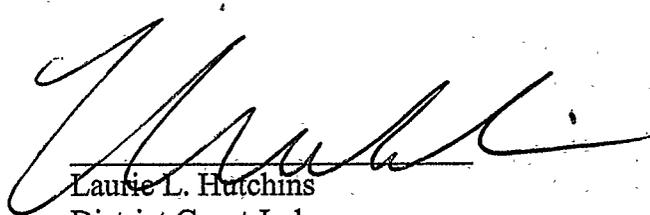
Conclusions of Law

1. The court finds beyond a reasonable doubt that during First Appearances Mr. Saunders willfully behaved in a contemptuous manner by his tone of voice, words and conduct described above while at the bench, in open court and such actions were in the court's immediate view and presence and directly tended to impair the respect due the court's authority.
2. The undersigned gave Mr. Saunders a clear warning that his conduct was improper and gave him a meaningful opportunity to be heard. His initial statements, his failure to retract the statements, his failure to apologize and his answers to the questions impaired the respect due the court's authority. Such action was necessary to restore and maintain the dignity of the court, and the authority of the court.
3. Therefore it is adjudged pursuant to Chapter 5A of NC General Statutes that Eric Saunders is guilty of contempt of court beyond reasonable doubt.
4. After remand of Mr. Saunders' appeal, and pursuant to N.C.G.S. 5A-12(c), this court concludes that the ends of justice would best be met by termination of the 24-hour suspended sentence and remittance of the fine imposed in this court's November 2, 2004 order.
5. This Court further concludes that Mr. Saunders' conduct violated Rule 3.5(4)(B) of the Revised Rules of Professional Conduct and caused potential harm to the administration of justice and to the profession.

IT IS THEREFORE ORDERED that

1. Defendant Eric Saunders is hereby held in criminal contempt of this court; and
2. Defendant is hereby REPRIMANDED for his professional misconduct.

This the 17 day of July, 2005.


Laurie L. Hutchins
District Court Judge