

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE
 NORTH CAROLINA STATE BAR
 DHC 03

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DIEDRA LYNN WHITTED, 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 M.H. Hood Ellis, Chair, Steven D. Michael and Johnny A. Freeman pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff, the North Carolina State Bar, was represented by William N. Farrell. Defendant, Diedra Lynn Whitted was represented by Irving L. Joyner. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the findings of fact and conclusions of law recited in this order and to the discipline imposed. By consenting to the entry of this order, Defendant waives any right to appeal this consent order or to challenge it in any way.

Based upon 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 (hereinafter "Plaintiff" or "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, Diedra Lynn Whitted (hereinafter "Defendant"), was admitted to the North Carolina State Bar on September 11, 1987, 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 all or 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 Goldsboro, Wayne County, NC.

4. Earl Whitted, Jr. (hereinafter "Whitted") is the father of Defendant and was admitted to the North Carolina State Bar on September 26, 1955. Earl Whitted, Jr. died January 5, 2010.

5. Whitted was disbarred by the Disciplinary Hearing Commission on June 6, 1985 in case number 85 DHC 8 and was disbarred by the Wayne County Superior Court in 1989 following his conviction for embezzlement of client funds. He was later reinstated to the active bar on October 20, 1994 by order of the Council of the North Carolina State Bar in petition 94 BCR 2.

6. Following his reinstatement, Whitted was disbarred again by the Disciplinary Hearing Commission in case number 99 DHC 2, on April 22, 1999, following his conviction of eight felony counts of engaging in wire fraud in violation of 18 U.S.C. § 1343 and one felony count of conspiracy to engage in money laundering in violation of 18 U.S.C. § 1956 (h).

7. In or about November 2002 Whitted was released from imprisonment imposed pursuant to the above referenced convictions.

8. Whitted was employed by Defendant in her law office while on work release from his federal sentence and continued to be employed there after his complete release from federal custody, including the relevant periods referred to herein.

9. In or about 2006 Defendant undertook representation of Jackie Gilliam (hereinafter "Gilliam") and Nelson Riggs (hereinafter "Riggs") about a potential lawsuit against Richard C. Overman (hereinafter "Overman") and Fred West (hereinafter "West").

10. There was no fee agreement executed between Gilliam, Riggs and Defendant.

11. Gilliam paid \$1,250.00 for legal services by check dated November 7, 2007. The check was made payable to Earl Whitted, Jr.

12. Riggs paid \$1,250.00 for legal services by check dated November 8, 2007. The check was made payable to Earl Whitted, Jr.

#

13. In Defendant's absence, Earl Whitted, Jr. was authorized to accept payment on Defendant's behalf.

14. The checks received by Earl Whitted, Jr. from Gilliam and Riggs were not deposited in Defendant's law firm account nor her checking account.

15. Earl Whitted, Jr. personally endorsed the checks, cashed the checks and received the proceeds.

16. On or about May 19, 2008 Defendant filed a lawsuit on behalf of Gilliam and Riggs against Overman and West in Wayne County Superior Court under file number 08 CVS 1521.

17. The complaint filed in 08 CVS 1521 was not signed by Defendant, as required by Rule 11 of the North Carolina Rules of Civil Procedure, and was therefore subject to be stricken.

18. Defendant neglected to and did not perfect service of the summons and complaint on Overman and West. The Superior Court case file was closed on or about September 17, 2008 because of lack of service.

19. Defendant refiled the original complaint, 08 CVS 1521, under new file number 08 CVS 2856 in Wayne County Superior Court on October 9, 2008.

20. Defendant obtained service of the summons and complaint on Overman and West in 08 CVS 2856.

21. West filed a motion to dismiss the complaint, prepared by Defendant, pursuant to Rule 12(b)(6) of the Rules of Civil Procedure on December 12, 2008.

22. On October 12, 2009, the court ordered that the complaint against West be dismissed for failure to state a claim for relief under Rule 12 (b)(6) of the Rules of Civil Procedure.

23. Defendant obtained an entry of default against Overman on February 26, 2009, after obtaining service of process on October 21, 2008.

24. Defendant moved to withdraw as counsel of record for Gilliam and Riggs on August 18, 2009 without having obtained a default judgment following the entry of default against Overman.

Based upon the foregoing Findings of Fact, the panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the hearing panel and the panel has jurisdiction over Defendant, Diedra Lynn Whitted, and the subject matter of this proceeding.
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)(2) and 84-28(b)(3) as follows:
 - a. By negligently allowing Earl Whitted, Jr., a disbarred attorney, to accept checks made payable to him for legal services to be provided by Defendant, and by negligently failing to supervise the activities of Earl Whitted, Jr. in connection with the representation of Gilliam and West, Defendant failed to make reasonable efforts to ensure that Earl Whitted, Jr.'s conduct was compatible with the professional obligations of Defendant and allowed Earl Whitted, Jr. to engage in the unauthorized practice of law on one occasion in violation of Rule 5.3 of the Rules of Professional Conduct; and
 - b. By filing the complaint in 08 CVS 1521 without signing the complaint as required by Rule 11 of the Rules of Civil Procedure and by failing to allege with particularity the circumstances constituting the fraud in the complaint in 08 CVS 1521 and 08 CVS 2856, as required by Rule 9 of the NC Rules of Civil Procedure, Defendant failed to act with reasonable diligence and competence in violation of Rules 1.1 and 1.3 of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties, the hearing panel also finds by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant has substantial experience in the practice of law.

2. Defendant's neglect as to the Gilliam and Riggs matter, as well as sharing of a fee with a disbarred attorney, has the potential to cause significant harm to the public's perception of the legal profession.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has carefully 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. Prior disciplinary offenses;
- b. Absence of a dishonest or selfish motive; and
- c. Extensive experience in the practice of law.

2. The hearing panel has considered written discipline but finds that an admonition, reprimand, or censure would not be sufficient discipline because of the potential harm to the clients and the public in the present case. Furthermore, the panel finds that 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 in this State.

3. The hearing panel has also carefully 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. Negative impact of Defendant's actions on client's and/or public's perception of the profession;
- b. Negative impact of Defendant's actions on the administration of justice; and

c. Impairment of the client's ability to achieve the goals of representation.

4. An active suspension of Defendant's license to practice law is not required to protect the interest of the public at this time. The Hearing Panel finds and concludes that the public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant designed to ensure protection of the public and continued compliance with the Rules of Professional Conduct.

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 years.

2. The period of suspension is stayed for three years upon Defendant's compliance with the following conditions:

- (a) Defendant shall complete six (6) hours of continuing legal education within the first year of the stayed period of suspension. These six hours are in addition to the continuing legal education requirements contained in 27 N.C.A.C. 1D § .1518;
- (b) Defendant shall arrange for a member of the North Carolina State Bar to serve as her law practice monitor. The selected monitor must be an active member of the North Carolina State Bar in good standing who practices law in the judicial district in which Defendant maintains her primary office of her practice and who has been approved by the Office of Counsel of the North Carolina State Bar. The selected monitor cannot be her legal counsel in this proceeding. The selected monitor must agree to so serve and agree to meet with Defendant at least monthly to review Defendant's cases. The monitor will supervise all client matters and will ensure Defendant is, among other duties, handling all client matters in a timely fashion, responding promptly to her clients, and maintaining her trust account records as required by the Rules of Professional Conduct. The monitor will submit written quarterly reports of this supervision to the Office of Counsel of the State Bar; such reports shall be due on the following dates as they occur during the stayed suspension: January 15, April 15, July 15, and October 15. This monitoring will occur for the duration of any stay of this suspension. Defendant will pay the cost, if any, charged by the monitor for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming their agreement to perform the duties listed above within ninety (90) days from service of this Order on Defendant;

- . &
: *
+
.
- (c) Defendant shall meet at least once a month with her monitoring attorney, to whom she will report the status of all current client matters, cooperate with the monitoring attorney and provide any information the monitoring attorney deems reasonably necessary to ensure Defendant is, among other duties, handling all client matters in a timely fashion, responding promptly to her clients, and maintaining her trust account records as required by the Rules of Professional Conduct;
 - (d) Defendant shall ensure the monitoring attorney sends a written report each quarter to the Office of Counsel of the State Bar as described above;
 - (e) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during the stay of this suspension;
 - (f) Defendant shall pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis;
 - (g) Defendant shall keep her address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
 - (h) Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension; and
 - (i) Defendant shall pay all costs of this proceeding as assessed by the Secretary within 30 days after service of the statement of costs on her.

3. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 2 above, then the stay of the suspension of her law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that she has complied or has arranged to comply with each of the conditions referenced in Paragraph 2.

4. All costs of this action are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon her of the statement of costs by the Secretary.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 21st

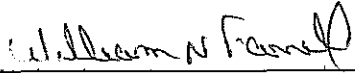
9#

day of June, 2010.



M.H. Hood Ellis, Chair
Disciplinary Hearing Panel

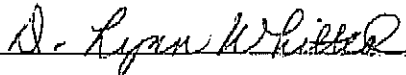
CONSENTED TO BY:



William N. Farrell
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



Irving L. Joyner
Counsel for Defendant



Diedra Lynn Whitted
Defendant