

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 9

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MICHAEL PAUL CROWE, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was heard on 16 June 2016 by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, R. Lee Farmer and Christopher R. Bruffey pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Michael Paul Crowe, was represented by Kenneth B. Darty.

Based upon the pleadings, stipulations, and evidence presented at the hearing, the Hearing Panel hereby finds 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, Michael Paul Crowe, was admitted to the North Carolina State Bar in March 2011, and is an Attorney at Law 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 the relevant period referred to herein, Crowe was actively engaged in the practice of law in Winston Salem, Forsyth County, North Carolina.
4. Crowe was properly served with the summons and complaint in this matter.
5. Crowe represented Charles Fackrell on multiple charges of obtaining property by false pretenses in Yadkin County Superior Court. In early 2015, Fackrell was incarcerated at the Yadkin County Detention Facility (YCDF) awaiting trial.

6. On 21 January 2015, Crowe visited Fackrell at YCDF. During the visit, Crowe presented Fackrell with a Durable Fiduciary Power of Attorney (hereafter "Power of Attorney") appointing Crowe as Fackrell's attorney in fact. Fackrell signed the Power of Attorney.

7. The Power of Attorney, which Crowe prepared, provided Crowe with authority "to do and perform for [Fackrell] anything of any character which [Fackrell] might do or perform for [him]self personally," including controlling real and personal property and bank accounts, and borrowing money in Fackrell's name.

8. Crowe did not obtain Fackrell's informed consent, confirmed in writing, to the potential conflict of interest created by Crowe's personal interest in being granted the authority described in the Power of Attorney.

9. After his 21 January 2015 visit with Fackrell, Crowe took the Power of Attorney to a notary public and asked her to notarize Fackrell's signature on the Power of Attorney. The notary had not been present when Fackrell signed the document, and Fackrell did not appear before the notary to acknowledge his signature on the document.

10. At Crowe's request and direction, the notary falsely certified that Fackrell had personally appeared before her and had acknowledged executing the Power of Attorney.

11. It is a criminal offense for a notary to take an acknowledgment without the signer appearing in person before the notary.

12. Crowe is a licensed notary in the State of North Carolina. In order to become a North Carolina notary, he was required to swear or affirm under penalty of perjury that he understood the duties and responsibilities of a notary public, as described in the General Statutes. *See* N.C. Gen. Stat. § 10B-12. Accordingly, Crowe could not have in good faith believed that the course of conduct described in paragraphs 9 through 11 was permissible under law.

13. Crowe filed the Power of Attorney bearing the false notarization with the Yadkin County Register of Deeds.

14. Just after 5:00 pm on 17 February 2015, Crowe went to YCDF with Fackrell's wife. When they arrived, Crowe spoke with a Detention Officer via intercom, stating that he and his "assistant" were there to visit Fackrell.

15. This representation was false, as Mrs. Fackrell was not—and has never been—either an employee or an independent contractor of Crowe or his law practice.

16. Crowe was attempting to mislead the Detention Officer regarding Mrs. Fackrell's role so that she could participate in an after-hours meeting with Fackrell in the attorney visitation area. Visitation with inmates in this area and after-hours was limited by YCDF policy to lawyers and their staff.

17. The Detention Officer posed several additional questions in an effort to get the name of the person Crowe had identified as his "assistant." When Crowe eventually provided

Mrs. Fackrell's full name, the Assistant Administrator of YCDF informed them that Mrs. Fackrell was not permitted to visit her husband outside of regular visiting hours or in the attorney visitation area.

18. Under North Carolina law and rules of procedure, the only mechanism for a defendant in a criminal case to conduct a deposition is set forth in N.C. Gen. Stat. § 8-74 ("Depositions for defendant in criminal actions"). That statute permits a defendant, under limited circumstances, to request that the Clerk of Court appoint "some responsible person" to conduct the deposition of a witness whose attendance at the trial cannot be procured. If a defendant avails himself of this process, the District Attorney must have ten days notice of the deposition and an opportunity to cross-examine the witness's deposition testimony.

19. Crowe represented William Flowers in Forsyth County Superior Court on charges of sexual abuse of a minor. S.C. was the alleged victim in the case, and A.F. was an eyewitness.

20. On 24 August 2014, while the charges against Flowers were pending, Crowe issued a subpoena to S.C. The subpoena bore the case caption and file numbers of the charges against Flowers, and it commanded S.C. to appear and be deposed at Crowe's office on 12 September 2014.

21. Crowe did not comply with the requirements of N.C. Gen. Stat. § 8-74, provide the Forsyth County District Attorney's Office with a copy of the subpoena prior to 12 September 2014, or otherwise notify the State that he was attempting to depose S.C.

22. Crowe had S.C. served with the subpoena by the Stokes County Sheriff's Department.

23. On 12 September 2014, S.C. appeared at Crowe's office and answered questions under oath before a court reporter without representation and without representatives of the Forsyth County District Attorney's Office in attendance.

24. On 25 September 2014, while the charges against Flowers were still pending, Crowe issued a subpoena to A.F. The subpoena bore the case caption and file numbers of the charges against Flowers, and it commanded A.F. to appear and be deposed at Crowe's office on 8 October 2014.

25. Crowe did not comply with the requirements of N.C. Gen. Stat. § 8-74, provide the Forsyth County District Attorney's Office with a copy of the subpoena prior to 8 October 2014, or otherwise notify the State that he was attempting to depose A.F.

26. Crowe had A.F. served with the subpoena by the Stokes County Sheriff's Department.

27. On 8 October 2014, A.F. appeared at Crowe's office and answered questions under oath before a court reporter without representation and without representatives of the Forsyth County District Attorney's Office in attendance.

28. Crowe represented Darrell Lee Powell in Yadkin County Superior Court on charges of felonious assault by strangulation, misdemeanor assault on a female, felonious assault with a deadly weapon on a government official, misdemeanor assault with a dangerous weapon while a minor was present, and felonious kidnapping.

29. S.N. was the prosecuting witness in the charges against Powell.

30. On 31 December 2014, while the charges against Powell were pending, Crowe issued a subpoena to S.N. The subpoena bore the case caption and file numbers of the charges against Powell, and it commanded S.N. to appear and be deposed at Crowe's office on 19 January 2015.

31. Crowe did not comply with the requirements of N.C. Gen. Stat. § 8-74, provide the Yadkin County District Attorney's Office with a copy of the subpoena prior to 19 January 2015, or otherwise notify the State that he was attempting to depose S.N.

32. Crowe had S.N. served with the subpoena by the Yadkin County Sheriff's Office.

33. S.N. notified Crowe that she would not comply with his subpoena, and did not appear at his office at the date and time indicated in the subpoena.

34. On 23 January 2015, Crowe filed a motion in *State v. Powell* captioned "Motion for Contempt; Motion to Compel; and Motion for Sanctions and/or Attorney's Fees," which requested that S.N. be compelled to appear and be deposed and/or held in contempt for noncompliance with his deposition subpoena. Crowe served the motion on S.N., but did not serve it on the State. Crowe did not calendar the motion for hearing.

35. Thereafter, Crowe issued another subpoena commanding S.N. to appear and be deposed on 23 February 2015. Again, the subpoena bore the case caption and file numbers of the charges against Powell.

36. Crowe did not comply with the requirements of N.C. Gen. Stat. § 8-74, provide the Yadkin County District Attorney's Office with a copy of the second subpoena to S.N. or otherwise notify the State that he was attempting to depose S.N. prior to 23 February 2015.

37. S.N. did not comply with the second subpoena. Crowe did not seek to compel S.N. to appear and be deposed or seek to have her held in contempt for noncompliance with the second subpoena.

38. In connection with his efforts to depose witnesses in criminal cases as described above, Crowe did not inform the witnesses that they were not legally obligated to submit to deposition, nor did he explain that the subpoenas he had caused to be served upon them were unenforceable.

39. S.C., A.F., and/or their parents believed that they were legally obligated to submit to deposition because they had been served with what appeared to be valid subpoenas issued by Crowe.

40. Crowe offered no legal authority or other credible explanation that would tend to support his contention that he believed his efforts to depose these witnesses was legally permissible. The Panel concludes that he did not in good faith believe that his actions in this regard were in compliance with the law.

41. Crowe's testimony in this hearing raised questions about his credibility. To the extent his testimony conflicted with that of other witnesses and documents introduced into evidence, the Hearing Panel finds his testimony on those points was not credible.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and this tribunal has jurisdiction over Defendant, Michael Paul Crowe, 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) in that Crowe violated the Rules of Professional Conduct in effect at the time of his conduct as follows:

- (a) By representing Fackrell in connection with the execution of the Power of Attorney that gave Crowe virtually unlimited control over Fackrell's finances and other affairs, Defendant engaged in a representation that could be materially limited by his personal interests in violation of Rule 1.7(a);
- (b) By requesting that the notary falsely notarize the Power of Attorney, Defendant failed to make reasonable efforts to ensure that the conduct of a non-lawyer assistant was compatible with his professional obligations in violation of Rule 5.3(b), ordered and/or ratified conduct by a non-lawyer assistant that would be a violation of the Rules of Professional Conduct in violation of Rule 5.3(c), and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (c) By knowingly filing a document in the Register of Deeds that bore a false notary, Defendant engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c), and conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By falsely stating to YCDF personnel that Mrs. Fackrell was his assistant, Defendant engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c);
- (e) By seeking to depose State's witnesses in criminal cases using a procedure not authorized by law or rule and without providing the State with notice or an opportunity to cross-examine, Defendant made an assertion in a legal proceeding for which there was no basis in law in violation of Rule 3.1, knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c), intentionally violated establish rules of procedure in violation of Rule 3.5(a)(4)(C), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and

- (f) By issuing what appeared to be valid and enforceable subpoenas and causing them to be served on State's witnesses by the sheriff, thereby creating the false impression that the witnesses were legally obligated to appear at his office and be deposed, Defendant used methods of obtaining evidence that violated the rights of third persons in violation of Rule 4.4(a), engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the additional evidence regarding discipline presented at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 through 41 above are reincorporated as if fully set forth herein.
2. Crowe has no prior disciplinary offenses in this state or any other jurisdiction.
3. At the time Crowe conducted the depositions described in paragraphs 19 through 27 above, both S.C. and A.F. were minors, and S.C. was the victim of a sexual offense. These factors made them particularly vulnerable.
4. Crowe took advantage of the fact that S.C., A.F., and their families lacked knowledge about criminal procedure. Their ignorance of the law made them vulnerable to being misled regarding the depositions.
5. Due to the experience she had with Crowe, S.C.'s mother is less likely to trust lawyers in the future.
6. Crowe intentionally caused a notary public to engage in a criminal act, and intentionally filed in the public record a document that bore a false jurat, thereby undermining the integrity of official judicial records. He also intentionally caused harm and/or potential harm to the individuals who he sought to depose by leading them to believe they were legally required to submit to deposition.
7. Up through and during this disciplinary proceeding, Defendant expressed his continuing belief that the actions described above were proper, defensible, and in compliance with the law. This reflects that—if permitted to continue practicing—Defendant poses a risk of significant harm to the public, the profession, and the administration of justice.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the Hearing Panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Discipline and Disciplinary Rules of the North Carolina State Bar.

2. The Hearing Panel concludes that the following factors from § .0114(w)(1), which are to be considered in imposing suspension or disbarment, are present in this case:

- (a) intent of the defendant to cause the resulting harm or potential harm;
- (b) circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- (c) negative impact of defendant's actions on client's or public's perception of the profession;
- (d) effect of defendant's conduct on third parties; and
- (e) acts of dishonesty, misrepresentation, deceit or fabrication.

3. The Hearing Panel has carefully considered all of the factors enumerated in Rule .0114(w)(2) and concludes that although Defendant engaged in acts of dishonesty, misrepresentation, and deceit, disbarment is not necessary in this case.

4. The Hearing Panel concludes that the following factors from § .0114(w)(3), which are to be considered in all cases, are present in this case:

- (a) absence of prior disciplinary offenses;
- (b) a pattern of misconduct;
- (c) multiple offenses;
- (d) vulnerability of victim; and
- (e) inexperience in the practice of law.

5. The Hearing Panel has considered admonition, reprimand, and censure as potential discipline but finds that admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm to the administration of justice and the potential harm to the public and the profession in the present case.

6. Suspension of Defendant's law license is warranted due to Defendant's pattern of dishonesty and failure to recognize—even in hindsight—the impropriety of his conduct. 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.

7. The Panel considered disbarment but determined, in light of all relevant facts and circumstances, that disbarment is not necessary to protect the public. The Hearing Panel finds and concludes that the public will be adequately protected by a three-year suspension of

Defendant's license to practice law, with an opportunity to have a portion of the suspension stayed upon compliance with conditions.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Conclusions 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, beginning 30 days from the date of service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 ("Obligations of Disbarred or Suspended Attorneys"). As provided in § .0124(d), 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 he has complied with the wind down rule.

4. The administrative fees and costs of this action, including deposition costs, are taxed to Defendant. Defendant must pay the costs of this action within 30 days of service upon him of the statement of costs by the Secretary.

5. Within 30 days after service of this Order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking their files can communicate with Defendant. Defendant shall promptly return all files to his clients upon request.

6. After serving no less than eighteen months of the suspension, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a verified petition with the Secretary of the North Carolina State Bar. In addition to complying with the general provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 ("Reinstatement"), to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate compliance with the following conditions by clear, cogent, and convincing evidence:

- (a) Defendant shall timely comply with paragraphs 2-5 of this section of the Order of Discipline;
- (b) During the period of active suspension, Defendant shall attend twelve hours of accredited Continuing Legal Education (CLE) courses annually, as if he were a member in good standing.¹ No more than six of the twelve annual CLE hours may be completed via online courses. Two of the twelve annual CLE hours must be in the

¹ The CLE Department does not send notices to lawyers who are actively suspended, so it is incumbent upon Defendant to attend the required courses and maintain records of his compliance with the CLE requirements set forth in this Order.

areas of ethics and professionalism. These requirements shall apply to each calendar year during which Defendant is actively suspended as of December 31. For example, if Defendant applies for a stay 18 months after the effective date of this order, he must demonstrate that he completed the annual CLE requirements for 2016 and 2017;

- (c) In addition to satisfying the annual CLE requirements described above, prior to petitioning for reinstatement or a stay, Defendant shall complete six additional hours of CLE courses in the areas of ethics and professionalism which have been approved in advance by the Office of Counsel. No more than two of these six hours may be completed via online courses;
- (d) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses, telephone numbers, and email address, and shall notify the membership department within 10 days of any change to his contact information;
- (e) Defendant shall 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;
- (f) Defendant shall timely comply with State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (g) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (h) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of active suspension.

7. Defendant may file a petition seeking a stay of the remainder of the suspension up to 30 days prior to completing 18 months of active suspension, but shall not be reinstated prior to the end of at least an 18 month suspension period.

8. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, the stay will continue in force only as long as Defendant complies with the following conditions:

- (a) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses, telephone numbers, and email address, and shall notify the membership department within 10 days of any change to his contact information;
- (b) Defendant shall 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;

- (c) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (d) Defendant shall participate fully and timely in the State Bar's fee dispute resolution program when notified of any petitions for resolution of disputed fees; and
- (e) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of stayed suspension.

9. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 8 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x) ("Stayed Suspensions").

10. If Defendant does not seek a stay of the suspension, or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of the following:

- (a) Compliance with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 ("Reinstatement"); and
- (b) Compliance with the conditions set out in paragraph 6, above.

11. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

12. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the suspension, and any stay thereof, and until all of the conditions in paragraph 6 above are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members, this the 28th day of June, 2016.


Steven D. Michael, Chair
Disciplinary Hearing Panel