

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 28

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHN M. HOLMES, JR., 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 Donna R. Rascoe, Chair, Theodore C. Edwards, II and Dr. Charles Garrett, Jr. 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 Brian P.D. Oten. Defendant, John M. Holmes, Jr., was represented by Jonathan Silverman. Defendant has agreed to waive 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. Defendant stipulates that he waives any right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

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 (“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, John M. Holmes, Jr. (“Defendant” or “Holmes”), was admitted to the North Carolina State Bar on August 26, 2004, 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 a portion of the relevant periods referred to herein, Defendant was actively engaged in the private practice of law in the city of Sanford, Lee County, North Carolina.

4. In March 2008, Defendant purchased the law practice of J. Leech, PLLC, which operated under the trade name "Traffic Ticket Restitution of North Carolina" ("TTRNC"), from attorney Jennifer Leech.

5. After purchasing TTRNC, Defendant's law firm, the Holmes Law Firm, PLLC, began operating under the trade name "TTRNC."

6. There were only two members of the Holmes Law Firm at the time it operated as TTRNC, one of which was Defendant.

7. Defendant chose to assume contracts previously entered into by J. Leech, PLLC/TTRNC with various attorneys across the State (hereinafter "contract attorneys").

8. Under the terms of the contract, the contract attorneys agreed to resolve traffic citations of Defendant's clients in exchange for a specified portion of the legal fees paid by the clients to Defendant.

9. Defendant advertised the law firm's services to potential clients by mailing solicitation letters ("the solicitation letter") to members of the public who received traffic citations.

10. The solicitation letter stated, "Our firm has local member attorneys who work and live in the Counties and districts where we handle tickets."

11. The "local member attorneys" Defendant referred to in the solicitation letter were not actually members of Defendant's law firm.

12. The solicitation letter invited potential clients to visit a website located at <http://www.ttrnc.com> ("the website"). The website was operated by Defendant.

13. Through the website, potential clients could retain TTRNC, communicate specific information about their traffic ticket to Defendant, and submit payment online to Defendant for the representation as well as for court costs and/or fines.

14. Upon receiving payment from a client, Defendant instructed a contract attorney to resolve his client's traffic matter. The contract attorney assigned by Defendant to a particular client received a portion of the fee paid to Defendant by that client, while Defendant retained a larger portion of the fee.

15. Defendant did not obtain his clients' written consent or inform his clients of the fee-splitting agreement between Defendant and the individual contract attorney prior to the clients' retaining the law firm to resolve their respective traffic matters.

16. On or about June 5, 2008, Edward Hooper ("Hooper") retained Defendant to represent his grandson, David Brooks ("Brooks"), concerning a traffic citation Brooks received in Gaston County.

17. Hooper paid Defendant \$149.00 for the representation.

18. Brooks's court date for his traffic citation was set for June 27, 2008.

19. No attorney appeared on Brooks's behalf at his June 27, 2008 court date, and the court entered a Failure to Appear against Brooks.

20. Due to Defendant's failure to appear at his client's June 27, 2008 court date, the North Carolina Division of Motor Vehicles ("NCDMV") notified Brooks that his driving privilege would be suspended indefinitely.

21. On or about August 2, 2008, Hooper contacted Defendant by e-mail concerning the NCDMV notice and the impending suspension of Brooks's driving privilege.

22. Defendant did not respond to either Hooper or Brooks regarding Hooper's August 2, 2008 e-mail.

23. On or about August 5, 2008, Hooper again emailed Defendant concerning the NCDMV notice received by Brooks.

24. Defendant did not respond to either Hooper or Brooks regarding Hooper's August 5, 2008 e-mail.

25. On or about August 14, 2008, Hooper and Brooks attended court in Gaston County and had the citation dismissed without the assistance of an attorney.

26. On or about August 25, 2008, Defendant notified Hooper that he had disposed of Brooks's case because Defendant had retained counsel to rectify the failure to appear and erroneously assumed the newly retained counsel disposed of the traffic citation.

27. Defendant never appeared in court on Brooks's behalf.

28. Defendant did not actually participate in resolving Brooks's citation, but Defendant did fully and timely refund Brooks's fee after learning of the dismissal.

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, John M. Holmes, Jr., and the subject matter of this proceeding.

2. Holmes'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 describing the contract attorneys as "member attorneys" when in fact they were not member attorneys, Defendant made a false and misleading communication in violation of Rule 7.1(a) and falsely stated or implied that the contract attorneys were a part of a partnership or other professional organization in violation of Rule 7.5(e);

- b. By failing to obtain his clients' consent before splitting collected fees with attorneys who were not in the same firm, Defendant improperly divided legal fees paid by his clients in violation of Rule 1.5(e);
- c. By failing to appear on behalf of Brooks, Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3; and
- d. By failing to respond to Hooper's e-mails, Defendant failed to keep his client reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(3) and (4).

Based 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's conduct resulted in significant actual harm to his client in that Brooks was unnecessarily worried, frustrated and confused after receiving a notice from the NCDMV that his license would be suspended. Defendant's conduct also prohibited Brooks from achieving the goals of the representation – to have an attorney resolve the traffic ticket with minimal participation or concern from Brooks. Instead, Brooks was forced to resolve the ticket on his own without the assistance of an attorney.

2. Defendant's operation of TTRNC resulted in significant potential harm to his clients in that the structure of TTRNC did not allow Defendant to properly supervise and maintain the necessary personal control of each representation to ensure his clients' cases were adequately resolved. Defendant's lack of supervision, actual knowledge of the case status, and personal involvement in the representation put the client at risk to have the representation detrimentally impact his or her life in an unexpected and unwanted manner. The structure of TTRNC also did not allow Defendant's clients to know exactly who was representing them and therefore who to contact if and when problems arose.

3. As a result of the State Bar's investigation in this matter, Defendant has discontinued the operation of TTRNC.

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 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. Defendant's absence of any prior disciplinary offenses;

- b. Timely good faith efforts to make restitution in the form of refunding Brooks's paid legal fee and winding down TTRNC's operation; and
- c. At the time Defendant assumed operation of TTRNC, Defendant had only been practicing for four years and thus had a relatively limited degree of experience in the practice of law.

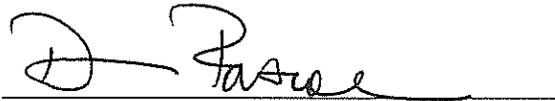
2. Based upon the totality of the evidence, in this case, a censure is appropriate and will be sufficient to protect the public. The hearing panel has considered all disciplinary options and finds that a suspension is unnecessary in this case due to the relatively limited scope of actual harm experienced by Defendant's clients. Additionally, the panel finds that a reprimand or an admonition would not be sufficient discipline to protect the public because of the threat of potential harm to the public, clients, and the profession. Furthermore, the panel finds that a reprimand or an admonition would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys regarding the conduct expected by members of the Bar in this State. In light of the significant potential harm presented by Defendant's conduct, discipline of less than a public censure would not sufficiently protect the public and would not be appropriate.

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

ORDER OF DISCIPLINE

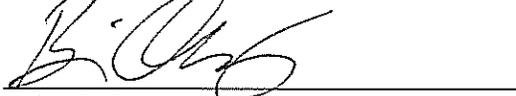
- 1. Defendant, John M. Holmes, Jr., is hereby censured.
- 2. Defendant shall pay the costs in this matter within 30 days of service upon him of a statement of the costs.

Signed by the Chair with the consent of the other hearing panel members, this the 5th day of March, 2010.



Donna R. Rascoe, Chair
Disciplinary Hearing Panel

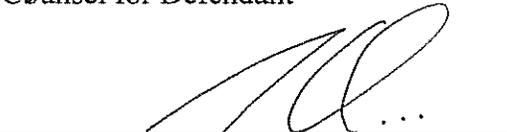
CONSENTED TO BY:



Brian P.D. Oten
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff



Jonathan Silverman
Counsel for Defendant



John M. Holmes, Jr.
Defendant