

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 41 SC

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KATHERINE HEATH PEKMAN,
Attorney,

Defendant

ORDER

Defendant, Katherine Heath Pekman, was ordered to appear and show cause why the stay of the suspension imposed by the Order of Discipline entered in this case on 10 February 2016 should not be lifted and the suspension activated. This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, David W. Long, and Ronald C. Brinson pursuant to 27 N.C. Admin. Code 1B.0118 (formerly codified at .0114(x)). Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown. Defendant appeared *pro se*.

Based upon the pleadings and the evidence presented at hearing, the Hearing Panel hereby finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. On 10 February 2016, the DHC entered a consent order of discipline finding that Defendant violated the Rules of Professional Conduct by failing to exercise reasonable diligence on behalf of a client, failing to maintain reasonable communication with a client, failing to promptly refund an unearned fee, failing to provide a required accounting of entrusted funds, and failing to respond to demands for information from the State Bar.
2. The 10 February 2016 Consent Order of Discipline suspended Defendant's license to practice law for one year and stayed the suspension for three years on condition that Defendant comply with the requirements specified in the order.
3. By its terms, the Consent Order of Discipline was effective as of the date it was served on Defendant. Defendant was served with the order on 11 February 2016.

4. The Consent Order of Discipline provided that, in order to remain eligible for a stay of the suspension, Defendant was required, among other things, to:

- (a) Meet once every two weeks with the active member of the North Carolina State Bar who had agreed to serve as her law practice monitor;
- (b) Promptly accept service of all certified mail from the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication; and
- (c) Participate fully and timely in the State Bar's fee dispute resolution process for any petition she received after 11 February 2016.

5. On 8 February 2018, the State Bar sent Defendant a Letter of Notice ("LON") in fee dispute file 18 FD 65.

6. The State Bar sent the LON via certified mail to the address on file with the State Bar's Membership department.

7. After Defendant failed to accept service of it, the LON was returned to the State Bar.

8. On 13 March 2018, a copy of the LON was sent to Defendant at the email address on file with the State Bar's Membership department.

9. Defendant failed to respond to the LON.

10. On 20 November 2018, the State Bar sent Defendant a LON in fee dispute file 18 FD 458.

11. On 19 December 2018, the State Bar sent Defendant a LON in fee dispute file 18 FD 513.

12. On 27 December 2018, the State Bar sent Defendant a LON in fee dispute file 18 FD 518.

13. The State Bar sent these LONs via certified mail to the address on file with the State Bar's Membership department.

14. Defendant has failed to accept service of each of these LONs.

15. Defendant has not attended a conference with her law practice monitor since September 2018.

16. Defendant's failure to comply with the conditions of the stay of her suspension as required by the Order of Discipline requires activation of the suspension of her law license.

Based upon the foregoing Findings of Fact, the Hearing Panel enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel, and the Panel has jurisdiction over Defendant, Katherine Heath Pekman, and over the subject matter of this proceeding.

2. Defendant failed to comply with the conditions of the stay of her suspension as follows:

- a. By failing to meet every two weeks with the active member of the North Carolina State Bar who had agreed to serve as her practice monitor;
- b. By failing to promptly accept service of all certified mail from the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication; and
- c. By failing to participate fully and timely in the State Bar's fee dispute resolution process for any petition she received after 11 February 2016.

3. These violations warrant lifting the stay and activating Defendant's suspension.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following

ORDER

1. The stay of Defendant's suspension is lifted and the suspension previously imposed is activated. This order and the suspension imposed herein are effective 30 days after service of this Order upon Defendant.

2. All costs and administrative fees of this show cause action are taxed to Defendant. Defendant must pay the costs of this show cause action within 30 days of service upon her of the statement of costs by the Secretary.

3. Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the date that this Order is served upon her. Defendant shall comply with the wind down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules.

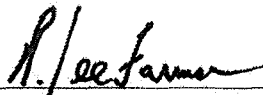
4. After no less than six months of active suspension, Defendant may apply to have the remainder of the one-year suspension stayed. The period of the stay will be two years. Defendant may apply for the stay by demonstrating in her petition for reinstatement her compliance with the requirements of Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules and the requirements for reinstatement contained in paragraph 3 (and its subparagraphs) on page 7-8 of the Order of Discipline, with the following modification:

- a. In lieu of paragraph 3(j) of the Order of Discipline, Defendant must (1) undergo evaluation by a mental health professional approved by the Lawyer's Assistance Program and (2) provide to the Office of Counsel a letter from the evaluating professional, dated no earlier than one month prior to the date of Defendant's petition for reinstatement, indicating that Defendant is not then suffering from any mental or physical condition that significantly impairs her professional judgment, performance, or competence as an attorney and sufficient releases to permit the Office of Counsel to make direct, meaningful inquiry of the evaluating professional.

5. If any portion of the one-year suspension is stayed, Defendant's active status for the two-year stay period shall be subject to, and contingent upon compliance with, the terms of the stayed suspension set forth in paragraph 1 and its subparagraphs on pages 5-6 of the Order of Discipline.

6. If Defendant is not reinstated to active status prior to the expiration of the one-year suspension period, then, before Defendant may be reinstated to active status, she must satisfy the requirements of Rule .0129(b) of the North Carolina State Bar Discipline and Disability Rules and all requirements for reinstatement contained in paragraph 3 and its subparagraphs on page 7-8 of the Order of Discipline.

Signed by the Chair with the consent of the other Hearing Panel members, this the 11th day of February, 2019.



R. Lee Farmer, Chair
Disciplinary Hearing Panel