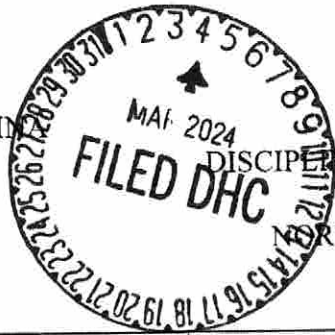


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARINGS COMMISSION

OF THE

NORTH CAROLINA STATE BAR

21 DHC 5

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

LONNIE P. MERRITT, Attorney,
Defendant

ORDER

THIS MATTER came before a Hearing Panel composed of Brian O. Beverly, Chair, Christon S. Halkiotis, and Heath R. Jenkins on Defendant's "Petition for Reinstatement and Stay of Suspension and Motion for Relief from Judgment" filed on 16 January 2024. Carmen H. Bannon and Elizabeth F. Starnes represented the North Carolina State Bar. Lucky Narain represented Defendant Lonnie P. Merritt.

Based on Defendant's 16 January 2024 filing, the State Bar's response, and the record in this case, the Hearing Panel makes the following

FINDINGS OF FACT

Procedural Background

1. Defendant Lonnie P. Merritt was disciplined for having sexual relations with a current client. After a contested hearing, the Hearing Panel concluded that Merritt's misconduct warranted a one-year active suspension of his law license.
2. In an Order of Discipline entered 21 September 2021, a hearing panel of the Disciplinary Hearing Commission suspended Merritt's law license for one year, beginning thirty days from the date of service of the order upon Merritt. Merritt was served with the Order on 31 October 2021.
3. On 19 October 2021, Merritt filed Notice of Appeal to the North Carolina Court of Appeals (No. COA22-191).
4. Pursuant to N.C. Gen. Stat. § 84-28(h), the Order of Discipline was stayed and Merritt's law license was not suspended while the matter was on appeal.
5. In a 20 September 2022 opinion, the Court of Appeals affirmed the Order of Discipline.

6. On 4 October 2022, Merritt filed a Notice of Appeal and Petition for Discretionary Review in the Supreme Court of North Carolina (No. 305P22). Merritt contended that he had an appeal of right to the Supreme Court because the decision of the Court of Appeals affected a constitutional right. Thus, the Order of Discipline remained stayed, and Merritt's law license was not suspended while the matter was pending before the Supreme Court.

7. On 13 October 2022, the State Bar filed a Motion to Dismiss Merritt's Notice of Appeal and Response to Petition for Discretionary Review.

8. By order entered 13 December 2023, the Supreme Court allowed the State Bar's Motion to Dismiss and denied Merritt's Petition for Discretionary Review.

9. When the Supreme Court denied Merritt's appeal and dismissed his petition for review, the Order of Discipline was no longer stayed. Merritt's 30-day wind-down period prior to the effective date of his suspension began on the date of the Supreme Court's order: 13 December 2023.

10. Merritt indicated that he did not learn about the Supreme Court decision until 7 January 2024, so the State Bar consented to extend Merritt's wind-down period through February 6, allowing 30 days from the time he indicated he learned of the disposition of his appeal.

11. On 16 January 2024, Merritt filed a "Petition for Reinstatement and Stay of Suspension and Motion for Relief from Judgement [sic]" in the DHC.

Petition for Reinstatement

12. Due to the State Bar's agreement to extend his wind-down period, Merritt was not yet suspended from the practice of law when he filed the 16 January 2024 petition seeking "reinstatement."

13. 27 N.C. Admin. Code 1B.0129(b) governs reinstatement after suspension. Pursuant to Rule .0129(b)(2), "No lawyer whose license has been suspended for a period of more than 120 days is eligible for reinstatement until the expiration of the period of suspension and, in no event, until 30 days have elapsed from the date of the filing of the petition for reinstatement."

14. The Order of Discipline in this case provides, in pertinent part: "[Merritt] may file [a] petition for reinstatement up to 30 days prior to the end of the suspension period but will not be reinstated until he has served at least one year of active suspension."

Petition for Stay

15. Merritt's 16 January 2024 filing references 27 N.C. Admin. Code 1B.0118, which sets forth the procedure for seeking a stay of suspension. That rule applies only in cases where the DHC's order sets forth conditions under which a lawyer's suspension may be stayed. *See, e.g.*, Rule .0118(c)(2) ("The motion [for stay] must identify each condition for stay and state how the defendant has met each condition."). No such conditions were provided in Merritt's Order of Discipline because a stay of suspension was not contemplated.

16. In his “Petition for Stay,” Merritt asks the DHC to convert the active suspension imposed into a stayed suspension conditioned upon compliance with a list of requirements of his own making. He offers no legal authority supporting this request.

Motion for Relief from Judgment

17. Merritt further seeks Relief from Judgment pursuant to Rule 60 of the Rules of Civil Procedure. He offers the following bases for relief under Rule 60(b)(5) and (b)(6) arguing that they establish “it is no longer equitable that the judgment should have prospective application” and/or “any other reason justifying relief from the operation of the judgment”:

- a. “Defendant has substantially and materially complied with all conditions of the order of discipline[.]”
- b. Defendant “did not engage in any family law representation for over 12 months.”
- c. Defendant’s appeal to the Court of Appeals took approximately one year to complete, and his request for further review by the North Carolina Supreme Court was not ruled upon for approximately another 18 months. “Thus, it is no longer equitable that the judgment should have prospective application.”
- d. During the pendency of his appeals, Defendant was “subjected to intense social media and public scrutiny” and “was not able to meaningfully engage in the practice of law knowing that doing so would put potential clients in a precarious situation having to secure alternate counsel.” As a result, Defendant contends that he “suffered extreme financial hardship.”
- e. By continuing to practice during the pendency of his appeals without further incident, Defendant “has shown that he is not a harm to clients, the public, the administration of justice or the legal profession.”

18. Merritt offered no evidence that he complied with the conditions for reinstatement set forth in the Order of Discipline. He cannot establish compliance because, among other things, the conditions for reinstatement include properly winding-down his practice and timely submitting his license and membership card to the DHC Clerk. At the time Merritt submitted his “Petition for Reinstatement,” he had not done either.

19. Merritt has been allowed to continue practicing law uninterrupted since the Order of Discipline was entered. His choice not to take any family law cases does not create a basis for relief from judgment.

20. Merritt argues that—due to circumstances created entirely by his own decision to appeal the Order of Discipline—he should not be subject to the suspension imposed by this tribunal.

21. A party cannot assert that he is entitled to an equitable remedy due to foreseeable circumstances he himself created. Specifically, Merritt was aware that by exercising his right to

appeal, the suspension of his law license would—absent any relief from the appellate courts—be delayed to an uncertain date at least one year, but possibly more than two years, from entry of the Order of Discipline and he assumed the risk of that result.

22. The mere passage of time does not justify relief from the Order of Discipline.

23. Merritt's arguments center on the consequences he personally suffered from his decisions. They do not take into consideration the purposes of professional discipline beyond the impact on the individual lawyer-defendant, such as demonstrating the ability of the legal profession to effectively self-regulate, promoting public confidence in lawyers, and educating the bar about the consequences of violating the Rules of Professional Conduct. Based on the foregoing Findings of Fact, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. The Hearing Panel has jurisdiction over Defendant, Lonnie P. Merritt, and over the subject matter.

2. Pursuant to 27 N.C. Admin. Code 1B.0129(b)(2), Merritt's "Petition for Reinstatement" is premature, as he is not yet eligible to petition this tribunal for reinstatement.

3. Merritt's "Petition for Stay" is procedurally defective, as it was brought under an administrative rule that does not apply to this disciplinary case because the Order of Discipline does not contain any provision allowing for a stay of suspension.

4. The bases offered by Merritt in support of his motion for relief from judgment pursuant to Rule 60 of the Rules of Civil Procedure do not satisfy the requisite elements for relief under Rule 60 and, furthermore, do not warrant the relief sought.

5. The purposes of professional discipline beyond the impact on the individual lawyer-defendant—such as demonstrating the ability of the legal profession to effectively self-regulate, promoting public confidence in lawyers, and educating the bar about the consequences of violating the Rules of Professional Conduct—would be severely undermined if a lawyer could avoid professional discipline by pursuing appeals, which is the individual lawyer's right, but then citing the resulting delay as justification for setting aside the sanction that was affirmed on appeal.

6. Merritt has not provided a cognizable basis for relief from the professional discipline imposed upon him by this tribunal.

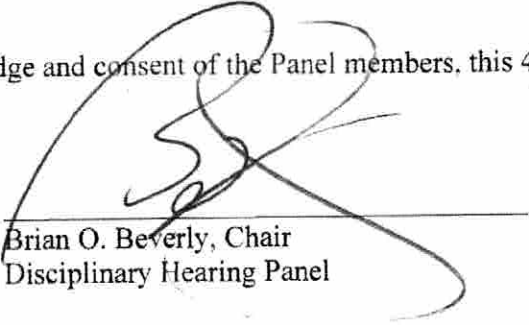
Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following

ORDER

1. Merritt's Petition for Reinstatement and Stay of Suspension is DENIED.

2. Merritt's Motion for Relief from Judgment is DENIED.

Signed by the Chair with the knowledge and consent of the Panel members, this 4th day of March, 2024.



Brian O. Beverly, Chair
Disciplinary Hearing Panel