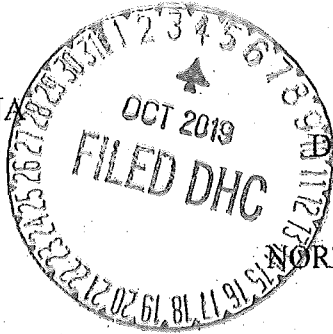


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 6

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

MICHAEL A. DeMAYO, Attorney,
Defendant

CONSENT ORDER
OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Stephanie N. Davis, and Brandon Gosey pursuant to 27 N.C. Admin. Code 1B § .0115(i). Plaintiff, the North Carolina State Bar, was represented by A. Root Edmonson. Defendant, Michael A. DeMayo, was represented by Douglas J. Bocker and F. Lane Williamson. Defendant waives a formal hearing in this matter and both parties stipulate and consent to the entry of this order and to the discipline imposed. Defendant waives any right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based upon the consent of the parties, the Hearing Panel 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 A. DeMayo ("DeMayo"), was admitted to the North Carolina State Bar on March 22, 1991, 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. DeMayo was actively engaged in the practice of law in Mecklenburg County, North Carolina during the relevant period referred to herein.
4. DeMayo maintained a business account at SunTrust Bank, account number ending in 2375, that was entitled Law Offices of Michael A. DeMayo, LLP Client Clearing Account

("CCA"). The CCA was not a trust account. The CCA account contained funds belonging to DeMayo's law firm.

5. DeMayo was the principal in the Law Offices of Michael A. DeMayo, LLP ("the law firm") and, as such, was primarily responsible for establishing the law firm's policies and procedures.

6. L.H. retained the law firm to represent her in a worker's compensation claim.

7. The law firm received four settlement checks totaling \$39,934.00 from AIG Insurance Company ("AIG") in settlement of L.H.'s claim, including three checks payable to the law firm and to L.H., and a fourth check payable only to L.H. in the amount of \$4,934.00 as her Medicare set-aside seed money.

8. On May 11, 2017, L.H. endorsed the three settlement checks payable to L.H. and the law firm for deposit into the law firm's trust account and signed a Settlement Memorandum ("SM") presented to her by the law firm showing how the settlement funds would be disbursed.

9. The SM indicated that, after the deduction of the law firm's fee and expenses, L.H. should have received \$26,094.24 of the settlement plus the Medicare set-aside check.

10. On the day before L.H. signed the SM, DeMayo signed a check payable to L.H. from the CCA erroneously prepared by an employee of the law firm in the amount of \$31,028.24, L.H.'s total share of the settlement,

11. On May 11, 2017, after she signed the SM, an employee of the law firm gave L.H. both the CCA check and the Medicare set-aside check, resulting in an overpayment to L.H. of \$4,934.00.

12. On May 15, 2017, an employee of the law firm notified L.H. by telephone that the law firm had over-disbursed funds to L.H.

13. After she asked how the law firm could make such a huge error, L.H. told the employee of the law firm that she had deposited the law firm's check and that the funds would not be available to her until May 22, 2017.

14. On May 16, 2017, the lawyer employee of the law firm who had settled L.H.'s claim wrote L.H. a letter explaining the error. A copy of the SM was enclosed with that letter. The letter asked L.H. to write a check to the law firm for \$4,934.00 at her earliest convenience. The letter and its enclosure were also sent to L.H. by email on that date.

15. On May 17, 2017, L.H. responded by email to the May 16, 2017 letter, stating that she would pay the law firm but could only pay \$1,000.00 on May 22, 2017 and the remainder as she received residuals from her company.

16. On May 19, 2017, DeMayo sent L.H. a letter with the subject line of "Overpayment and Fraud" in which he wrote, in part, "[t]his clerical error has resulted in an overpayment to you

in the amount of \$4,934.00. This amount is due and payable to our firm immediately in its entirety. As such I expect the full amount of \$4,934.00 to be remitted to our office no later than Tuesday May 23, at 5:00 pm. Failure to comply with this request will result in our being forced to swear out a warrant for theft and conversion. This is very serious and it is a crime."

17. The overpayment to L.H. was the fault of the law firm.

18. L.H. did not commit any criminal act.

19. The statement in DeMayo's letter that he would be "forced to swear out a warrant for theft and conversion" was untruthful.

Based upon the foregoing Findings of Fact, and the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Disciplinary Hearing Commission has jurisdiction over Defendant, Michael A. DeMayo, and over 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 Defendant violated the Rules of Professional Conduct in effect at the time of his actions as follows:

(a) by writing the May 19, 2017 letter to L.H., DeMayo engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, and the consent of the parties, the Hearing Panel finds by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. DeMayo caused potential significant harm to L.H. by his threat to bring criminal charges against her:

2. Had DeMayo carried through on his threat to bring a criminal charge against L.H. when the circumstances did not warrant a criminal charge, DeMayo would have caused potential significant harm to the administration of justice by bringing a criminal charge that was not supported by law or fact.

3. Any time an attorney engages in dishonest conduct, it causes significant potential harm to the legal profession.

4. DeMayo has accepted responsibility for the above-described behavior and has agreed that it was inappropriate.

5. There are no requirements that this panel could impose as conditions for entering a stay of a disciplinary suspension that are as likely to lead to a change in DeMayo's behavior as will his acceptance of responsibility for his misconduct.

6. DeMayo has previously been disciplined as follows:

- (a) On August 30, 1999, DeMayo was Reprimanded for redacting pre-accident medical treatment information from his clients' medical records when sending settlement packages to insurance companies without disclosing the redactions, in violation of Rule 1.2(c);
- (b) On November 12, 2005, DeMayo was Censured for making a misleading statement to a client of his law firm who had elected to continue to use the services of a lawyer who was departing DeMayo's firm, in violation of Rules 7.1(a), 4.2(a) and 7.3(b)(2);
- (c) On February 22, 2007, DeMayo was Admonished for sending a targeted direct mail solicitation without making a required disclosure in print as large as his name on the letterhead, in violation of Rules 7.1(a)(2) and (3), and listing on his letterhead that he was a sustaining member of the "Million Dollar Advocates Forum" without a required disclaimer, in violation of Rules 7.2(a)(2) and (3);
- (d) On February 27, 2008, DeMayo was Admonished for sending a targeted direct mail letter with the required disclosure on the outside of the envelope in print smaller than the name of his firm was on the outside of the envelope, in violation of Rule 7.3 (c)(1), and for including "Your FREE Accident Report is enclosed!" in violation of Rule 7.3(c)(1); and
- (e) On February 13, 2009, DeMayo was Reprimanded for sending a targeted direct mail letter to a client with the required disclosure in print smaller than the name of his firm was on the letterhead, in violation of Rule 7.3 (c)(1).

9. DeMayo has not been the subject of discipline in over ten years.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following:

ADDITIONAL 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 Rule .0116(f) of the Discipline and Disability Rules of the State Bar.

2. The Hearing Panel carefully considered all of the factors enumerated in Rule .0116(f)(2) and concluded that DeMayo's untruthful statement in his letter to L.H. did not warrant consideration of disbarment.

3. The Hearing Panel carefully considered all of the factors enumerated in Rule .0116(f)(3) and concluded that the following factors are applicable:

- (a) DeMayo has prior disciplinary offenses in this state;
- (b) The remoteness of those prior disciplinary offenses;
- (c) DeMayo was motivated by a selfish motive;
- (d) DeMayo elevated his own interest above that of the client;
- (e) DeMayo has experience in the practice of law.

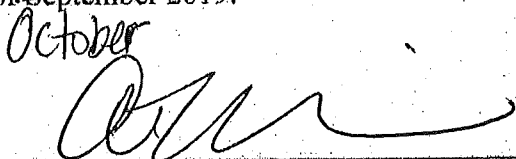
4. The Hearing Panel carefully considered all of the factors enumerated in Rule .0116(f)(1). Because DeMayo's actions resulted in potential significant harm to L.H., the legal profession and the administration of justice, suspension of DeMayo's license was a discipline the Hearing Panel considered. However, the Hearing Panel concluded that, since DeMayo accepted responsibility for his actions, suspension of DeMayo's license was not necessary to protect the public.

Based upon the foregoing, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

- 1. The Defendant, Michael A. DeMayo, is hereby CENSURED.
- 2. DeMayo is taxed with the costs and administrative fees of this action as assessed by the Secretary which shall be paid within thirty (30) days of service of the notice of costs upon him.

Signed by the undersigned Chair of the Hearing Panel with the full knowledge and consent of the other panel members, this the 4th day of ~~September~~ ^{October} 2019.


Allison C. Tomberlin, Chair
Disciplinary Hearing Panel

CONSENTED TO:

A. Root Edmonson
A. Root Edmonson by Katherine
Deputy Counsel E. Lane
(w/permission)
B

Michael A. DeMayo
Michael A. DeMayo
Defendant

Douglas J. Brocker by F. Lane Williamson
Douglas J. Brocker
Counsel for Defendant (with permission)

F. Lane Williamson
F. Lane Williamson
Counsel for Defendant