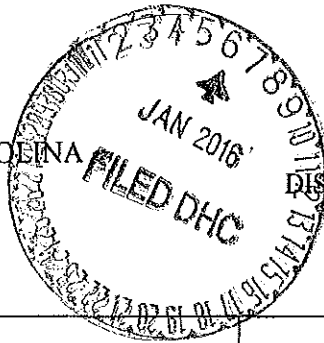


STATE OF NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
15 DHC 48

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

JONATHAN SILVERMAN, 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 Steven D. Michael, Chair, Irvin W. Hankins, III, and Patti Head. Plaintiff, the North Carolina State Bar, was represented by Brian P.D. Oten. Defendant, Jonathan Silverman, was represented by Alan M. Schneider. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this order, and consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings and conclusions herein.

Based on the foregoing and with the consent of the parties, the Hearing Panel hereby makes 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, Jonathan Silverman ("Defendant" or "Silverman"), was admitted to the North Carolina State Bar on 24 August 1985 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 the relevant periods referred to herein, Silverman was actively engaged in the private practice of law in the city of Sanford, Lee County, North Carolina.

4. Silverman was properly served with the summons and complaint in this matter.

5. In or around August 2009, S.G. retained Jonathan Silverman for representation concerning a separation agreement and property settlement dispute.

6. In or around October 2013, while Silverman's representation of S.G. was ongoing, Silverman began a personal and physically intimate relationship with S.G.

7. Silverman had sexual intercourse with S.G. while S.G. was his client.

8. In or around May 2014, Silverman withdrew from his representation of S.G.

9. In November 2014, S.G. sought Silverman's assistance in retaining new counsel for her ongoing case.

10. Silverman agreed to have his law firm represent S.G., and one of Silverman's law partners began representing her.

11. Although Silverman was no longer the attorney of record in S.G.'s case, Silverman continued to participate in the representation of S.G.

12. Silverman engaged in sexual intercourse with S.G. during his firm's second representation of S.G.

Based on the foregoing Findings of Fact and with 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 DHC has jurisdiction over Defendant, Jonathan Silverman, 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 as follows:

- (a) By having sexual intercourse with S.G. while representing S.G. in her case, Silverman had sexual relations with a current client in violation of Rule 1.19(a) and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (b) By continuing to participate in the representation of S.G. after previously withdrawing from the representation due to the sexual relationship that developed during the representation, Silverman engaged in a concurrent conflict of interest in violation of Rule 1.7(a)(2) and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

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 violated the trust inherent in the attorney-client relationship by elevating his own interests above the best interests of his client.
2. Defendant's continued sexual relationship with S.G. and subsequent representation of S.G. after previously withdrawing from the representation due to the conflict created by his sexual relationship with S.G. demonstrates a lack of judgment, a pattern of misconduct, and demonstrates Defendant's intent to commit acts where the potential harm is foreseeable.
3. Defendant has substantial experience in the practice of law.
4. Defendant's conduct has the potential to cause significant harm to the standing of the profession in the eyes of his clients and in the eyes of the public because it shows his disregard for his duties as an attorney.
5. Defendant has previously been disciplined twice by the State Bar:
  - a. 92 DHC 18 – Defendant was admonished by the Disciplinary Hearing Commission for engaging in conduct that was prejudicial to the administration of justice by failing to reveal information to the Court that was necessary for the court's full consideration of a plea agreement.
  - b. 03G1150 – Defendant was admonished by the Grievance Committee for engaging in a conflict of interest.
6. Aside from the conduct described above, Defendant has established a reputation for good character in his community.
7. Defendant has indicated remorse for his actions.
8. Defendant has cooperated with the State Bar in its investigation of Defendant's conduct.
9. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

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

### CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it.

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

3. 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 commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of integrity in connection with the events described in this order;
- (c) Elevation of Defendant's own interests above that of the client; and
- (d) Defendant's actions had a potential negative impact on his client's and the public's perception of the legal profession.

4. The Hearing Panel has considered all of the factors enumerated in § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes no factors are present in this instance that would warrant disbarment.

5. 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) Defendant's prior disciplinary offenses;
- (b) Defendant's selfish motive;
- (c) Defendant's cooperative attitude toward the proceedings;
- (d) Defendant's remorse;
- (e) Defendant's good character and reputation;
- (f) Defendant's pattern of misconduct; and
- (g) Defendant's substantial experience in the practice of law.

6. Defendant's conduct caused significant potential harm to his client by undermining the trust inherent in the attorney-client relationship.

7. 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 potential harm to the client and the significant threat of potential harm to the public.

8. 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.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings and Conclusions Regarding Discipline, and with the consent of the parties, the Hearing Panel enters the following

#### ORDER OF DISCIPLINE

1. The license of Defendant, Jonathan Silverman, is hereby suspended for three years, effective 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 the effective date of this Order.

3. Defendant shall comply with the wind down provisions contained in Rule .0124 of the North Carolina State Bar Discipline and Disability Rules, 27 N.C. Admin. Code 1B § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 30 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and the costs of this action as assessed by the Secretary. Defendant shall pay the costs and administrative fees of this action as assessed by the Secretary within 30 days of service of the statement of costs upon him.

5. Within 30 days of the effective date of this Order, Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files, and Defendant shall promptly return all files to his clients upon request.

6. After serving no less than eighteen months of the suspension, Defendant may petition 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. Defendant may file a petition for a stay up to 30 days prior to the end of the eighteen-month period but no stay of the suspension shall be entered prior to the expiration of at least eighteen months of this suspension. In order to be eligible for a stay of the remaining period of suspension, Defendant must demonstrate by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, he has complied with the following conditions:

- (a) Defendant shall timely comply with paragraphs 2-5 of this section of the Order of Discipline;
- (b) Defendant shall keep the North Carolina State Bar membership department advised of his current physical home and business addresses and telephone numbers;

- (c) 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 or within fifteen days of receipt of such communication, whichever is earlier;
- (d) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and shall pay all fees and costs assessed by the State Bar and the Client Security Fund by the applicable deadline;
- (e) 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
- (f) Defendant shall not violate the Rules of Professional Conduct or any state or federal laws other than minor traffic violations during the period of suspension.

7. If Defendant is granted 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 and telephone numbers;
- (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 or within fifteen days of receipt of such communication, whichever is earlier;
- (c) Defendant shall timely comply with his State Bar membership and continuing legal education requirements, and shall 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 suspension.

8. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 7 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) of the North Carolina State Bar Discipline and Disability Rules.


9. If Defendant does not seek a stay of any active period of 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 of the North Carolina State Bar Discipline & Disability Rules; and
- (b) Compliance with the conditions set out in Paragraphs 6(a) – (f) above.

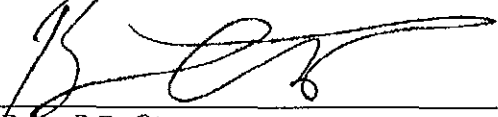
10. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.


11. 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 until all of the conditions referenced in paragraph 6 above are satisfied.

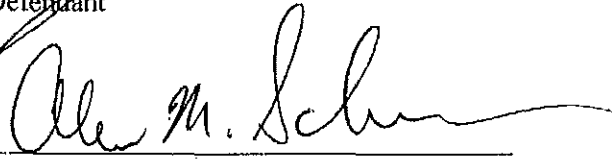
Signed by the Chair with the consent of the other hearing panel members, this the 5th day of January, 2016.

  
Steven D. Michael, Chair  
Disciplinary Hearing Panel

CONSENTED TO BY:

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

  
Jonathan Silverman  
Defendant

  
Alan M. Schneider  
Counsel for Defendant