

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 44

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT E. GRIFFIN, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE

This matter was heard on February 5, 2016 before a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members Donald C. Prentiss and Michael S. Edwards. Peter G. Bolac and Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Robert E. Griffin ("Griffin"), appeared *pro se*.

Based upon the pleadings, the stipulated facts, and the evidence admitted at the hearing, the Hearing Panel hereby finds by clear, cogent, and convincing evidence the following:

Findings of Fact

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Robert E. Griffin ("Griffin"), was admitted to the North Carolina State Bar in 1977, and is, and was at all times referred to herein, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. Defendant was properly served with process and the matter came before the Hearing Panel with due notice to all parties.

4. On August 22, 2014, the Disciplinary Hearing Commission (DHC) entered a consent Order of Discipline ("Order of Discipline") in the case of The North Carolina State Bar v. Robert E. Griffin, 13 DHC 20, suspending Griffin from the practice of law for three years.

5. Griffin had signed the Order of Discipline on August 13, 2014.
6. Griffin was served with the Order of Discipline via counsel on August 26, 2014.
7. Pursuant to 27 N.C. Admin. Code 1B § .0124(c), Griffin had 30 days from the entry date of the order to wind down his law practice. During this time he was prohibited from accepting new clients or retainers for new cases.
8. On August 29, 2014, three days after Griffin was served with the Order of Discipline, N.T. retained Griffin to represent him in a divorce proceeding.
9. On August 29, 2014, N.T. paid Griffin a \$1,500.00 fee by personal check.
10. On August 29, 2014, Griffin deposited the \$1,500.00 check he received from N.T.
11. Griffin did not disclose his upcoming suspension to N.T. on August 29, 2014.
12. On September 18, 2014, Griffin sent a letter to N.T., notifying him that his office would be closed beginning September 25, 2014 due to his suspension.
13. The September 18 letter from Griffin to N.T. states: "Your file has been referred to Stephanie J. Brown" and states that "Her office will contact you or you may contact her office regarding your case/file."
14. Griffin had no discussion with N.T. about having Ms. Brown take over his representation prior to the September 18 letter.
15. Griffin did not obtain consent from N.T. before transferring N.T.'s confidential client file to Ms. Brown.
16. Griffin did not transfer any portion of the \$1,500.00 N.T. had paid for representation in his divorce proceeding to Ms. Brown.
17. N.T. had to pay another \$1,500.00 for representation in his divorce proceeding to Ms. Brown for her fee.
18. By letter dated October 3, 2014, N.T. requested a full refund of his \$1,500.00 retainer from Griffin.
19. Griffin did not respond to N.T.'s request for refund.
20. By letter dated October 10, 2014, N.T. again requested a full refund of his \$1,500.00 retainer from Griffin.
21. Griffin did not respond to N.T.'s second request for refund.

22. On October 20, 2014, N.T. filed a Petition for Resolution of Disputed Fee ("Petition") with the North Carolina State Bar's Attorney Client Assistance Program for resolution of his fee dispute with Griffin.

23. On November 4, 2014, Griffin was served with Notification of Mandatory Fee Dispute Resolution pursuant to the Petition filed by N.T. (file # 14FD0516).

24. Pursuant to 27 N.C. Admin. Code 1D § .0708(c), Griffin was required to respond to the Petition in writing within fifteen days of his receipt of the petition, which was by November 19, 2014.

25. Griffin did not provide a written response to the Petition by November 19, 2014.

26. On or about November 22, 2014, Griffin refunded N.T.'s \$1,500.00 via mailed check.

27. On or about December 11, 2014, the State Bar closed fee dispute file # 14FD0516 due to Griffin's failure to participate.

28. On December 11, 2014, The State Bar opened a grievance file on Griffin concerning his conduct with N.T. and concerning Griffin's failure to participate in good faith in the fee dispute resolution process (grievance file #14G1145).

29. On March 27, 2015, Griffin was served with the Letter of Notice in grievance file 14G1145 ("Letter of Notice").

30. On April 2, 2015, Griffin responded to the Letter of Notice.

31. Griffin's response to the Letter of Notice states: "When Respondent [Griffin] was retained to represent the Complainant [N.T.], the Respondent had no knowledge that he would be suspended."

32. Griffin had knowledge of his upcoming suspension before he was retained by N.T. on August 29, 2014.

33. Griffin made a false statement in his response to the Letter of Notice about his lack of knowledge of his pending suspension.

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 and the subject matter of this proceeding.

2. Defendant's conduct, as set forth 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 failing to disclose his upcoming suspension to N.T. on August 29, 2014, Griffin failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);
- b. By transferring N.T.'s client file to attorney Stephanie Brown without N.T.'s consent, Griffin improperly revealed information acquired during the professional relationship with a client in violation of Rule 1.6(a);
- c. By failing to timely refund to N.T. the unearned fees in N.T.'s case upon termination of the representation due to Griffin's suspension, Griffin failed to protect his client's interests upon termination of the representation in violation of Rule 1.16(d);
- d. By failing to timely respond to N.T.'s fee dispute resolution petition, Griffin failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f); and
- e. By making a false statement in his response to the Letter of Notice about his lack of knowledge of his pending suspension, Griffin knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

3. Defendant's conduct, as set out in the stipulated Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3), as follows:

- a. For knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation, or charge of misconduct.

Based on the foregoing Findings of Fact and Conclusions of Law and the evidence presented at hearing, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

Findings of Fact Regarding Discipline

1. Defendant received an admonition in 1981 for failure to attend or advise client to attend a hearing and failing to file a reply to a counterclaim.

2. Defendant received a 6 month suspension in 1989 for signing a client's name to a release and arranging for the notarization of the signature at a time when the client was deceased, and settling a matter without the consent of the estate of the deceased client.

3. Defendant received a reprimand in 2005 for failing to participate in good faith in the fee dispute process by failing to honor the decision of the arbiter despite agreeing to binding arbitration of the fee dispute, and for providing a misleading response to the State Bar when, in his response to the grievance, he claimed he had not agreed to binding arbitration when in fact he had signed a written agreement to participate in binding arbitration.

4. Defendant received a three year suspension in 2014 for client neglect, failing to communicate, conduct prejudicial to the administration of justice, failure to refund unearned fee, mishandling of entrusted funds, and trust account mismanagement.

5. The goal of the State Bar's Fee Dispute Program is to give clients a readily accessible and free process by which to attempt resolution of fee issues. Defendant's failure to respond to the State Bar's Fee Dispute Program denied his client this option and prevented the State Bar's Fee Dispute Program from serving its function. Defendant's failure to participate in the Fee Dispute Program process harmed both the client and the administration of justice.

6. Defendant's dishonest responses to the State Bar, both in the instant case and in the past, jeopardize the profession's ability to remain self-regulating and harm the administration of justice.

7. By failing to disclose his upcoming suspension to N.T. and by collecting a fee from N.T. when he knew he was not permitted to accept new clients, Defendant placed his own interests above his client's and failed to act in his client's best interests.

8. N.T. would not have retained Defendant if he had known of Defendant's upcoming suspension.

9. By collecting a fee and failing to timely refund the fee to N.T., Defendant impaired his client's ability to achieve the goals of the representation. N.T. had to pay an additional \$1,500.00 to his new attorney from his own limited resources, which was a hardship for N.T.

10. By transferring N.T.'s client file to another lawyer without N.T.'s consent, Defendant engaged in conduct that had the potential to significantly harm his client by disclosing confidential client information.

11. N.T. had a pre-existing negative perception of lawyers when he retained Defendant. His initial interaction with Defendant left him feeling positive, but then Defendant's subsequent lack of communication, Defendant's lack of work, the discovery of Defendant's suspension, and Defendant's failure to timely refund his fee reinforced N.T.'s negative perception of lawyers. Defendant could have improved client's perception of the profession. Instead, Defendant's actions increased N.T.'s negative opinion of lawyers.

12. Defendant's dishonest and selfish actions, when heard by the public, could significantly harm the public's trust and confidence in the legal profession.

13. Defendant showed no remorse during the proceedings and failed to acknowledge the importance of adhering to the Rules of Professional Conduct.

14. 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 on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

Conclusions With Respect To 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)(1), (2), and (3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable:

27 N.C.A.C. 1B §.0114(w)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting the Defendant's lack of honesty, trustworthiness, or integrity;
- c. Factor (D), Elevation of the defendant's own interest above that of the client;
- d. Factor (E), Negative impact of the Defendant's actions on the client's or public's perception of the profession;
- e. Factor (F), Negative impact of the defendant's actions on the administration of justice;
- f. Factor (G), Impairment of the client's ability to achieve the goals of the representation;
- g. Factor (I), Acts of dishonesty and misrepresentation; and
- h. Factor (J), Multiple instances of failure to participate in the legal profession's self-regulation process.

27 N.C.A.C. 1B §.0114(w)(2)

- a. Factor (A), Acts of dishonesty, misrepresentation, or deceit.

27 N.C.A.C. 1B §.0114(w)(3)

- a. Factor (A), Prior disciplinary offenses;
- b. Factor (C), Dishonest or selfish motive;
- c. Factor (D), Lack of timely good faith efforts to make restitution or to rectify consequences of misconduct;
- d. Factor (E), Indifference to making restitution;
- e. Factor (F), A pattern of misconduct;
- f. Factor (G), Multiple offenses;
- g. Factor (N), Submission of false evidence or statements during the disciplinary process;
- h. Factor (O), Refusal to admit wrongful nature of conduct;
- i. Factor (P), Lack of remorse;
- j. Factor (S), Degree of experience in the practice of law; and
- k. Factor (V), Other factors, to wit: Defendant's misconduct occurred during a period of suspension.

2. The Hearing Panel has considered all of the disciplinary options available to it and determined that disbarment is appropriate.

3. Defendant's conduct resulted in significant harm and potential significant harm to his client. By failing to disclose his upcoming suspension to his client, Defendant failed to act in his client's best interests, acted with a dishonest and selfish motive, and deprived his client of information the client needed to make an informed decision about whether to retain Defendant. By collecting a fee and failing to timely refund the fee to his client, Defendant forced his client to have to pay another attorney's fee from his limited resources and impaired his client's ability to achieve the goals of representation. By transferring his client's file to another lawyer without his client's consent, Defendant engaged in conduct that had the potential to significantly harm his client by disclosing confidential client information.

4. Defendant's conduct resulted in significant harm and potential significant harm to his clients, the public, the administration of justice, and the profession. The legal profession is entrusted with the privilege of self-regulation. The State Bar can only regulate the profession if its members respond to inquiries of the State Bar and do so honestly.

5. The Hearing Panel has considered lesser sanctions and concludes that any discipline short of disbarment would not adequately protect the public for the following reasons:

- a. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses, would not adequately protect the clients, the public, and the administration of justice, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State;
- b. Defendant has failed to reform his conduct in response to lesser discipline, including multiple suspensions;
- c. For the public to have confidence in the State Bar's regulation of the profession, lawyers who continuously engage in improper conduct must be removed from the profession; and
- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, the courts, and the legal profession; and that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarred lawyers are required to make such a showing before they may resume practicing law, whereas no such showing of reformation is required of attorneys whose licenses are suspended.

6. Due to the nature and extent of Defendant's conduct, the significant harm or potential harm of his conduct caused by his conduct to clients and the general public and the profession, and Defendant's prior discipline, the Hearing Panel concludes that disbarment is the only discipline that will adequately protect clients, the public, the administration of justice, and the profession from future transgressions by this Defendant.

Based upon the foregoing Findings of Fact and Conclusions of Law and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel enters the following:

Order of Discipline

1. Defendant, Robert E. Griffin, is hereby DISBARRED.

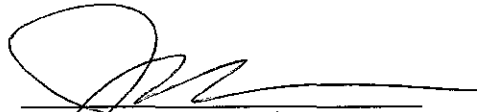
2. Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall pay the administrative fees and costs of this proceeding, including the costs of all depositions, as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.

4. Within 15 days of the effective date of this Order Griffin shall provide the State Bar with a physical address and telephone number at which Griffin is present and receives mail. Griffin must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.

5. Griffin shall comply with all provisions of 27 N.C.A.C. 1B § .0124 as set out therein.

7 Signed by the Chair with the consent of the other hearing panel members, this the
day of March 2016.


Joshua W. Willey, Jr., Chair
Disciplinary Hearing Panel