

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

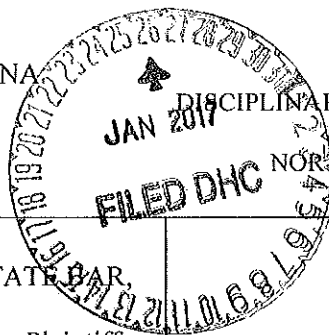
Plaintiff

v.

NICHOLAS S. ACKERMAN, Attorney,

Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16 DHC 33



CONSENT
ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, and members N. Hunter Wyche, Jr., and Randy Moreau, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff, the North Carolina State Bar, was represented by Maria J. Brown. Defendant, Nicholas S. Ackerman, appeared *pro se*. Defendant waives a formal hearing in this matter, and both parties stipulate and consent to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order or to challenge in any way the sufficiency of the findings.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby 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, Defendant, Nicholas S. Ackerman ("Defendant" or "Ackerman"), was admitted to the North Carolina State Bar in August 1998 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. Defendant was properly served with process, and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Ackerman was engaged in the practice of law in Greensboro, Guilford County, North Carolina.

5. On 25 September 2014, A.J. retained Defendant to assist her with getting a contempt order and custody modification.

6. The billing sheet Defendant gave A.J. on 25 September 2014 reflected that Defendant was charging A.J. a \$900 flat fee and that A.J. had paid Defendant \$100 in cash.

7. Defendant filed a Motion to Show Cause for Contempt that was to be heard on 30 September 2014.

8. Defendant failed to serve the opposing party with the Motion prior to 30 September 2014.

9. Defendant did not inform A.J. that he was unable to get service on the opposing party and that there would not be a hearing on 30 September 2014.

10. A.J. traveled from another county to appear in court on 30 September 2014.

11. A.J. asked Defendant several times to give her either the name of the sheriff attempting to serve the opposing party or other proof that he was trying to get service, but Defendant would not.

12. Defendant did not effectuate service on the opposing party until 15 July 2015.

13. Defendant did not return A.J.'s telephone calls or otherwise maintain adequate communication with A.J. about the status of her case or the efforts he was undertaking on her behalf.

14. On 5 January 2015, A.J. filed with the State Bar a Petition for Resolution of Disputed Fee concerning Defendant's representation of her, fee dispute file no. 15FD0002.

15. A.J.'s fee dispute petition was referred to the 18th Judicial District Fee Dispute Resolution Committee.

16. On 8 January 2015, William Daisy, Chair of the 18th Judicial District Fee Dispute Resolution Committee, sent notice of the fee dispute to Defendant by certified mail.

17. Defendant did not pick up the certified letter from the post office.

18. Mr. Daisy called Defendant, and Defendant indicated that his response to the fee dispute would be forthcoming.

19. Defendant did not provide a response to the fee dispute.

20. On 12 February 2015, Mr. Daisy sent a second letter to Defendant. The letter required Defendant to provide a response by 20 February 2015.

21. Defendant did not respond by 20 February 2015.

22. On 9 March 2015, as a result of Defendant's failure to participate in the fee dispute resolution process, the State Bar opened a grievance against Defendant, grievance file no. 15G0195.

23. Defendant continued to represent A.J. during the pendency of the fee dispute resolution process and appear in court on her behalf.

Based on the foregoing Findings of Fact and with the consent of the parties, 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 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 failing to notify A.J. that the hearing had been continued from the 30 September 2014 calendar and by otherwise failing to maintain communication with A.J., Defendant failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3);
- (b) By failing to respond to A.J.'s inquiries about the status of the matter, Defendant failed to comply promptly with a reasonable request for information in violation of Rule 1.4(a)(4); and
- (c) By failing to provide a response to the fee dispute, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).

Based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 23 above are reincorporated as if set forth herein.

2. Defendant's continued representation of A.J. was not a sufficient substitute for good faith participation in the fee dispute resolution process.

3. Defendant has prior professional discipline, to wit: a 2009 Admonition for neglecting a client matter and failing to communicate with a client; a 2010 Reprimand for neglecting a client matter, failing to communicate with a client, and failing to respond timely to the Bar; and a 2014 Censure for neglecting a client matter and failing to communicate with a client.

4. Defendant has failed to maintain adequate and appropriate communication with a client in spite of being disciplined for similar failures on three prior occasions. Lawyers who demonstrate continued disregard for their professional obligations pose a risk of significant harm to the public and the legal profession.

Based on the Findings of Fact and Conclusions of Law above, the additional Findings of Fact Regarding Discipline, and 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. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of suspension of Defendant's license:

- (B) Intent of the defendant to commit acts where the harm or potential harm is foreseeable; and
- (E) Negative impact of defendant's actions on client's or public's perception of the profession.

2. The Hearing Panel concludes that none of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar are present in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable in this matter:

- (A) Defendant's prior disciplinary offenses;
- (C) Absence of dishonest or selfish motive;
- (O) Refusal to acknowledge wrongful nature of conduct; and
- (S) Defendant's degree of experience in the practice of law.

4. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand, or admonition would be insufficient discipline because of the significant potential harm to the public and legal profession posed by Defendant's conduct.

5. Although Defendant's conduct is serious enough to warrant more than a censure, it does not warrant an active suspension of his license.

6. A stayed suspension of Defendant's law license is warranted because entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE.

1. The law license of Defendant, Nicholas S. Ackerman, is hereby suspended for one (1) year, effective from the date this Order of Discipline is served upon him. The period of suspension is stayed for two (2) years as long as Defendant complies and continues to comply with the following conditions:

- (a) Defendant shall arrange for an active member of the North Carolina State Bar to serve as his law practice monitor. Defendant's practice monitor shall be an attorney in good standing who practices law in the judicial district in which Defendant practices law and who has been approved by the Office of Counsel. The monitor shall agree to supervise all client matters and make reasonable efforts

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to ensure that Defendant handles all client matters in a timely fashion, including promptly responding to his clients and diligently pursuing his clients' matters. Defendant shall agree to meet once every month with his monitoring attorney, report the status of all current client matters to the monitoring attorney, cooperate with the monitoring attorney, and provide any information the monitoring attorney deems reasonably necessary to ensure that Defendant is properly and timely handling all client matters. The monitoring attorney shall submit written quarterly reports of this supervision to the Office of Counsel, such reports coming due on the following dates as they occur during any stay of this suspension: January 15, April 15, July 15, and October 15. Defendant bears the responsibility of ensuring the monitoring attorney sends a written report each quarter to the Office of Counsel as described above. This monitoring shall occur for the duration of any stay of this suspension. Defendant shall pay the cost, if any, charged by the monitoring attorney for this supervision. Defendant must make the arrangements for this monitoring attorney and supply the Office of Counsel with a letter from the monitoring attorney confirming his or her agreement to perform all of the duties listed above;

- (b) Defendant shall cooperate with the Office of Counsel and make appropriate arrangements for an alternate monitoring attorney if needed during any stay of this suspension;
- (c) Defendant shall keep the North Carolina State Bar Membership Department advised of his current contact information, including his current business and home addresses (not a P.O. Box) as well as his current telephone number(s), and shall notify the Bar of any change in address or telephone number within 10 days of such change;
- (d) Defendant shall promptly accept service of all certified mail from the State Bar and shall respond to all letters of notice and requests for information from the State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner;
- (e) Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements, and Defendant shall pay all fees and costs assessed by the State Bar by the applicable deadline;
- (f) Defendant shall participate fully and timely in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- (g) Defendant shall timely pay the costs and administrative fees of this action as described below; and
- (h) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension.

2. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 1(a) – (h) above, the stay of the suspension may be lifted as provided in 27 N.C. Admin. Code 1B § .0114(x).

3. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the following conditions:

- (a) Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;
- (b) Defendant complied with all provisions of 27 N.C. Admin. Code 1B § .0124 of the State Bar Discipline and Disability Rules following the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant kept the North Carolina State Bar Membership Department advised of his current business and home addresses, as well as his current telephone number, and notified the Bar of any change in address or telephone number within 10 days of such change;
- (d) Defendant responded to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within 15 days of receipt or by the deadline stated in the communication, whichever is sooner, and participated in good faith in the State Bar's fee dispute resolution process for any petition of which he received notice after the effective date of this Order;
- (e) Defendant promptly accepted all certified mail sent to him by the State Bar;
- (f) That at the time of his petition for reinstatement, Defendant is current in payment of all Membership dues, fees and costs, including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees and assessments;
- (g) That at the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory Continuing Legal Education (CLE) hours, in reporting of such hours, or in payment of any fees associated with attendance at CLE programs;
- (h) Defendant has not violated the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;
- (i) Defendant has paid the administrative fees and costs of this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar; and
- (j) Defendant has complied with any other conditions deemed necessary for reinstatement imposed by the Hearing Panel pursuant to the order lifting the stay of the suspension of Defendant's law license.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary which Defendant shall pay within thirty (30) days of service of the notice of costs upon Defendant.

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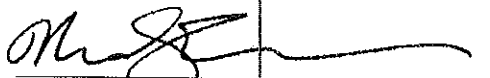
5. Nothing in this Order shall prohibit the State Bar from investigating and, if necessary, pursuing disciplinary action against Defendant for additional misconduct discovered or reported which occurred during the same time period as the conduct addressed in this Order.

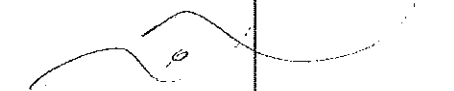
6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing panel members, this the 25th day of January, 2017.


Beverly T. Beal, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Maria J. Brown
Attorney for Plaintiff


Nicholas S. Ackerman
Defendant