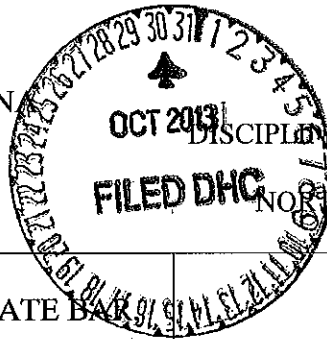


STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 42

Plaintiff

v.

DAVID SHAWN CLARK, Attorney,

Defendant

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 Percy L. Taylor. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, David Shawn Clark, was represented by David B. Freedman and Dudley A. Witt.

FINDINGS OF FACT

FACTS ESTABLISHED BY THE SUMMARY JUDGMENT ORDER

Based upon Defendant's admissions in the complaint an Order Granting Partial Summary Judgment was entered on 26 September 2013. Therefore, the following undisputed facts were established by the Order Granting Partial Summary Judgment:

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, David Shawn Clark ("Defendant" or "Clark"), was admitted to the North Carolina State Bar on 23 August 1997 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 period referred to herein, Clark actively engaged in the practice of law in the State of North Carolina and maintained a law office in Hickory, Catawba County, North Carolina.

4. In or about January 2009, Clark was appointed to represent Tiffany Turnmire ("Turnmire") in a juvenile abuse, neglect and dependency matter. Clark represented Turnmire in a domestic matter involving her estranged husband, Timothy Turnmire, in May 2009.

5. Clark had previously represented Turnmire in 2007 in a child custody matter.

6. During the times relevant herein, Turnmire was married to Timothy Turnmire.

7. From May 2009 through July 2009 and during his representation of Turnmire, Clark engaged in sexual relations with Turnmire.

8. In September 2009, Turnmire's husband learned of her sexual relationship with Clark.

9. Turnmire's husband told Clark that he planned to file a civil action for alienation of affection against Clark.

10. Clark's representation of Turnmire ended in December 2009 after Clark withdrew from the representation.

11. In early January 2010, Turnmire's husband filed a civil action against Clark for alienation of affection: Catawba County Superior Court Civil Action no. 10 CVS 08.

12. Turnmire's husband filed an affidavit signed by Turnmire and dated 29 December 2009 in support of his lawsuit.

13. In this 29 December 2009 affidavit, Turnmire states that she and Clark had a sexual relationship.

14. On or about 7 January 2010, Clark and his wife filed a verified complaint to initiate a lawsuit against Turnmire, Catawba County Superior Court Civil Action no. 10 CVS 28.

15. The following statements were included among the allegations that Clark made against Turnmire in his civil complaint against her:

- a. "In September or October 2009, upon information and belief, [Turnmire], angered by Mr. Turnmire's actions with his mistress, confronted Mr. Turnmire. During that confrontation, out of jealousy, [Turnmire] falsely stated to Mr. Turnmire that she had a sexual relationship with Plaintiff David Shawn Clark. By her own admission, this false, misleading and slanderous statement was made for the sole purpose to make Mr. Turnmire jealous and angry."

- b. "On or about December 29, 2009, [Turnmire] made and published a false, misleading and defamatory sworn written affidavit in which she sates she had a sexual relationship with the Plaintiff David Shawn Clark."
- c. "[Turnmire], upon information and belief, produced or participated in the production of fabricated e-mails between the Defendant and Plaintiff David Shawn Clark, which contained false, misleading and defamatory statements about Plaintiff David Shawn Clark."
- d. "[Turnmire], upon information and belief, has continued to make and publish false, misleading and defamatory statements that she had a sexual relationship with Plaintiff David Shawn Clark."
- e. "The Plaintiff David Shawn Clark has never had a sexual relationship with [Turnmire]."
- f. "The statements of [Turnmire] are false, misleading, defamatory and libelous."
- g. "On numerous occasions and times, [Turnmire] has repeatedly stated the false allegations previously described in the false affidavit and the fabricated emails."

16. The statements referenced in paragraphs 15a. – g. above were false. Clark knew that these statements were false at the time that he made them.

17. The complaint filed by Clark revealed information concerning Turnmire acquired by Clark during the attorney-client relationship, to include the following statements:

- a. "From April 15, 2008 until September 4, 2008, upon information and belief, [Turnmire] was involuntarily committed due to Major Depressive Disorder stemming from the constant physical abuse she received from Mr. Turnmire."
- b. "In late 2008, upon information and belief, [Turnmire] tested positive for cocaine."

18. Ultimately, Clark dismissed the lawsuit he filed against Turnmire.

19. On or about 3 March 2010, the State Bar Grievance Committee sent a letter of notice to Clark requesting information concerning allegations of attorney misconduct.

20. In his 12 April 2010 response to the letter of notice, Clark adamantly denied any sexual relationship with Turnmire.

21. Clark knew that his denial of any sexual relationship with Turnmire was false.

22. In November 2011, Clark was indicted on criminal charges for his threats to Turnmire and Edwards, and for his attempt to obtain Turnmire's signature on an affidavit that contained false information.

23. On 14 September 2012, Clark entered a guilty plea on two misdemeanor counts of communicating threats and one misdemeanor count of obstruction of justice.

FINDINGS OF FACT MADE AT HEARING

Based upon the stipulations of the parties and the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following findings of fact:

24. In or about November 2009, Clark prepared an affidavit for Turnmire's signature.

25. Clark met with Turnmire to obtain her signature on the affidavit.

26. The affidavit Clark prepared for Turnmire included the following false statements:

a. "In fact, I never had a sexual relationship with Shawn Clark. Shawn Clark and I had an attorney-client relationship and a friend relationship, but we never engaged in sexual relations."

b. "I decided to not go to Florida and asked Shawn Clark to borrow money to go to Las Vegas, Nevada. He stated he could not loan me money. When he was in Nevada, I asked him again, and he agreed to loan me money for a plane ticket and a hotel room. I agreed to pay him back but I had little money at that time. He loaned me money for this trip as a friend and nothing more. My intentions were to find some peace and read some books."

c. "I arrived in Las Vegas, Nevada and met with him and his friends. There was no inappropriate activity between me and Shawn Clark or his friends whatsoever. I had my own hotel room on a separate wing and floor and I was treated in a respectful manner by everyone. I certainly did not engage in sexual activity with anyone as I was menstruating at that time."

d. "I also believe Mr. Turnmire has fabricated e-mail messages to fabricate a sexual relationship between me and Shawn Clark."

27. Clark threatened Turnmire, when she indicated that she did not want to lie, that if she did not do as he was telling her to do he would see to it that she would lose custody of her children.

28. Clark further threatened Turnmire that if she did not do as he was telling her to do, that he would provide information that he received as a result of the attorney-client privilege to see that her children would be taken and kept from her by the Department of Social Services.

29. Clark told Turnmire that she "should watch [her] back because things would get ugly."

30. T. J. Edwards (hereafter "Edwards") was Clark's legal assistant during Clark's representation of Turnmire.

31. Edwards knew about Clark's relationship with Turnmire.

32. Clark sought a promise from Edwards that she would never reveal what she knew about the true nature of the relationship between Clark and his client, Turnmire.

33. Edwards told Clark that "she would not put her hand on the Bible and lie for anyone."

34. Upon hearing this statement, Clark became quite agitated towards Edwards and advised her that she was his only "loose end."

35. Clark advised Edwards that he would not lose his family or law license over the issues he was facing.

36. Clark threatened Edwards that if she did not do what he requested "then you know I'm going to have to kill you?"

37. By attempting to get Edwards to deny her knowledge of Clark's sexual relationship with Turnmire and threatening Edwards when she would not agree to falsely deny her knowledge of this relationship, Clark attempted to suborn perjury in violation of North Carolina criminal law.

38. By attempting to have Turnmire sign an affidavit that contained false statements and threatening Turnmire when she indicated she did not want to lie about the nature of Clark's relationship with her, Clark attempted to suborn perjury in violation of North Carolina criminal law.

39. In a 3 June 2011 response to a supplemental inquiry from the State Bar Grievance Committee, Clark stated that he had at all times given truthful information to the State Bar, and stated that he had never asked Turnmire or Edwards to lie for him.

40. Clark's statements referenced in paragraph 39 above were false.

CONCLUSIONS OF LAW

CONCLUSIONS OF LAW ESTABLISHED BY SUMMARY JUDGMENT ORDER

1. All parties are before this hearing panel of the Disciplinary Hearing Commission and the Hearing Panel has jurisdiction over Defendant and over the subject matter.
2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(1) in that he pled guilty to two counts of misdemeanor communicating threats and one count of misdemeanor obstruction of justice, criminal offenses showing professional unfitness.
3. Defendant's conduct as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - a. By having sexual relations with Turnmire during his representation of her, Defendant engaged in a sexual relationship with a current client in violation of Rule 1.19(a), and engaged in a conflict of interest by representing a client when said representation was materially limited by a personal interest of the lawyer in violation of Rule 1.7(a)(2);
 - b. By making false statements in the verified complaint he filed in support of his civil lawsuit against Turnmire, Defendant made a false statement of material fact to the tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
 - c. By filing a lawsuit against Turnmire that was based on false statements and not based in truth, Defendant brought a frivolous proceeding that was not based in fact in violation of Rule 3.1;
 - d. By revealing confidential information he obtained from Turnmire during his representation of Turnmire in the verified complaint he filed in support of his lawsuit against her, Defendant revealed information acquired during the professional relationship with the client, without the client's informed consent in violation of Rule 1.6(a);
 - e. By making false statements to the State Bar Grievance Committee in response to the letter of notice, Defendant knowingly made a false statement of material fact to a disciplinary authority in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

- f. By communicating threats to his former client and employee and obstructing justice by preparing a false affidavit, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

CONCLUSIONS OF LAW MADE AT HEARING

Based upon the record, the foregoing Findings of Fact (Facts Established by Summary Judgment and Findings of Fact Made at Hearing), the Hearing Panel makes the following conclusions of law:

4. Defendant's conduct as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - a. By preparing a false affidavit for his client to sign and threatening her if she would not sign it, and threatening to kill a witness if she failed to provide false statements in support of his legal defense, Defendant counseled witnesses to give false testimony in violation of Rule 3.4(b), committed criminal acts that reflect adversely on his trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d); and
 - b. By making false statements to the State Bar Grievance Committee in response to a supplemental inquiry from the State Bar, Defendant knowingly made a false statement of material fact to a disciplinary authority in violation of Rule 8.1(a), and 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 evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The frivolous lawsuit Defendant filed against Turnmire was pending for approximately one year before Defendant voluntarily dismissed the lawsuit despite the fact that Defendant knew at its inception that the lawsuit was not based in fact.
2. Defendant settled the frivolous lawsuit he filed against Turnmire by paying Turnmire a sum of money.

3. Lawyers from neighboring counties were appointed to represent Turnmire and her ex-husband in the abuse and neglect case because no lawyer from Catawba County would represent Turnmire after Defendant withdrew from his representation of her.

4. A special judge had to be brought in from out of county to preside over Turnmire's abuse and neglect case because the judges from Defendant's judicial district cited a conflict in presiding because of Defendant's prior involvement in the case, his candidacy for district attorney and the allegations that Defendant had sexual relations with Turnmire during his representation of her.

5. The goal of Defendant's representation of Turnmire in the abuse and neglect case was for her to maintain custody of her children.

6. Turnmire had custody of her children when Defendant withdrew from his representation of her in December 2009. However, after Defendant's withdrawal and before the appointment of replacement counsel, Turnmire's children were removed from her custody.

7. Turnmire has never regained custody of her children. Turnmire's children now reside with Turnmire's ex-husband.

8. Turnmire was unable to obtain legal representation from any Catawba County lawyer in defense of Defendant's frivolous lawsuit against her.

9. Turnmire was a victim of domestic violence when Defendant represented her and when he engaged in sexual relations with her. As such, she was more vulnerable than the average client.

10. Although Defendant could have withdrawn his candidacy for district attorney to reduce the public attention his relationship with Turnmire received, Defendant instead made false denials of his affair with Turnmire to his campaign advisors and continued to participate in the district attorney primary race.

11. Edwards suffered stress as a result of Defendant's requests that she keep Defendant's sexual relationship with Turnmire a secret and as a result of his threat of harm if she would not keep his secret.

12. The allegations of Defendant's misconduct were well known in Catawba County and in the counties which surround Catawba County.

13. Reports of Defendant's misconduct and criminal guilty plea were also reported in the news, to include: 6 January 2010 Hickory Daily Record Article: *Lawsuit Filed Against District Attorney Candidate*; 7 November 2011 Hickory Daily Record Article: *Former District Attorney Candidate Indicted on Felonies*; 8 November 2011 Observer-News-Enterprise Article: *Catawba Attorney Indicted*; 11 November 2011

News-Topic Article: *Former DA Candidate Indicted on Extortion, Obstruction Charges*;
14 September 2012 Hickory Daily Record Article: *Hickory Attorney Pleads Guilty in Superior Court*.

14. Defendant was concerned that if he admitted to his wife that he had a sexual relationship with Turnmire he would lose custody of his children.

15. Defendant was sentenced to 90 days imprisonment and 50 hours of community service for his conviction of misdemeanor communicating threats and misdemeanor obstruction of justice. The execution of Defendant's imprisonment sentence was suspended and Defendant was placed on 12 months supervised probation until such time as Defendant completes the required community service and pays all costs and fines. Defendant's supervised probation automatically converts to unsupervised probation upon his completion of the required community service and payment of all costs and fines.

16. Defendant has established a reputation with the Superior Court Judges in his judicial district for good character, veracity and professional fitness.

17. Defendant has established a reputation among lawyers and judges in his community for good character and veracity.

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

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension or disbarment are present:

- a. intent of the defendant to cause the resulting harm or potential harm;
- b. intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- c. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- d. elevation of the defendant's own interest above that of the client;
- e. negative impact of defendant's actions on client's or public's perception of the profession;
- f. negative impact of the defendant's actions on the administration of justice;

- g. impairment of the client's ability to achieve the goals of the representation;
- h. effect of defendant's conduct on third parties; and
- i. acts of dishonesty, misrepresentation, deceit or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant disbarment are present:

- a. acts of dishonesty, misrepresentation, deceit or fabrication;
- b. impulsive acts of dishonesty, misrepresentation, deceit or fabrication without timely remedial efforts; and
- c. commission of a felony in that the defendant attempted to suborn perjury of Ms. Turnmire with the false affidavit.

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

- a. lack of prior disciplinary history;
- b. dishonest or selfish motive;
- c. pattern of misconduct;
- d. multiple offenses;
- e. effect of personal problems, specifically, Defendant's concern for his family;
- f. submission of false evidence, false statements or other deceptive practices during the disciplinary process;
- g. refusal to acknowledge the wrongful nature of conduct prior to the day of the hearing;
- h. remorse, expressed during Defendant's testimony before the Hearing Panel;
- i. good character and reputation in the legal community;

- j. vulnerability of the victims;
- k. more than 15 years experience in the practice of law; and
- l. imposition of other sanctions, namely those imposed for the misdemeanors to which Defendant pled guilty.

4. Defendant's conduct caused significant harm to the profession by reinforcing the negative stereotype that lawyers are selfish and out for personal gain.

5. Attorneys have a duty to communicate honestly with the court, each other and the State Bar. When attorneys fail to do so, they engender distrust among fellow lawyers and from the public, thereby harming the profession as a whole.

6. Defendant caused significant harm to his client, Turnmire, in that she could not find legal representation to defend herself against the frivolous lawsuit that Defendant brought against her.

7. Defendant caused significant harm to Turnmire in that no lawyer in Catawba County would represent her in the abuse and neglect case.

8. Defendant caused significant harm to Turnmire in that during the period of time when she did not have legal representation in the abuse and neglect case she lost custody of her children.

9. Defendant caused potential significant harm to the administration of justice in that Defendant has shown that he is willing to suborn perjury for his own personal gain and professional advancement.

10. Defendant caused potential significant harm to the administration of justice in that he has shown that he is willing to submit a false affidavit for his own personal gain and professional advancement.

11. Defendant caused significant harm to the administration of justice in that anytime a lawyer files a lawsuit based upon intentionally false statements (as Defendant did against Turnmire) it creates the potential for judicial decision based upon fiction, which would cause significant harm to the administration of justice.

12. Defendant caused significant harm to the administration of justice in that extra court resources had to be devoted to find and pay lawyers outside of Catawba County to represent Turnmire and her ex-husband in the abuse and neglect case.

13. Defendant caused significant harm to the administration of justice in that witnesses who could bring the true facts to light, particularly Edwards, failed to promptly do so out of fear caused by the threat Defendant made to her.

14. Defendant caused potential significant harm to the profession in the eyes of the public in that Defendant engaged in conduct that diminishes the public's expectation that attorneys conduct themselves professionally, adhere to the Rules of Professional Conduct, and respect the laws they've sworn to uphold.

15. Defendant's false statements to the State Bar's Grievance Committee interfered with the State Bar's ability to regulate attorneys and thus undermined the privilege of lawyers in this state to remain self-regulating.

16. Defendant caused significant harm to Edwards by involving her in his web of deceit and making threats of physical harm if she did not extend her cooperation with his efforts by lying under oath in support of his frivolous lawsuit.

17. Defendant caused potential significant harm to the public by his threats to Turnmire and Edwards in that his conduct diminishes the ability of members of the public to trust attorneys.

18. The Hearing Panel has considered all lesser sanctions including: suspension, censure, reprimand and admonition and finds that discipline less than disbarment would fail to adequately protect the public from Defendant's future misconduct for the following reasons:

- a. Defendant's demonstrated failure to respect court process and the law poses a threat of significant potential harm to the public;
- b. Defendant's dishonesty and demonstrated willingness to engage in a course of criminal conduct and deceit to cover up his professional misconduct;
- c. Defendant's demonstrated willingness to put his personal and political interests above the interests of his client;
- d. entry of an order imposing discipline less than disbarment would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys regarding the conduct expected of members of the Bar of this state; and
- e. the protection of the public and the legal profession requires that Defendant not be permitted to return to the practice of law until he demonstrates the following by clear, cogent and convincing evidence: (i) that he has reformed, (ii) that he possesses the moral qualifications for admission to practice law in North Carolina taking into account the misconduct that is the subject of this order, (iii) that he understands the current Rules of Professional Conduct, and (iv) that reinstatement will not be detrimental to the public or the integrity and standing of the legal profession. Disbarment is the only discipline that will require

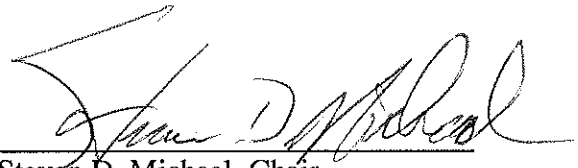
Defendant to make such a showing before returning to the practice of law.

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

ORDER OF DISCIPLINE

1. Defendant, David Shawn Clark, is hereby DISBARRED from the practice of law.
2. Defendant shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days following the date this order is served upon Defendant.
3. Defendant shall pay within thirty days of service of the statement of costs upon him by the Secretary of the State Bar the administrative fees and costs of this proceeding.
4. Defendant shall comply with all provisions of 27 N.C.A.C. 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

28th Signed by the Chair with the consent of the other Hearing Panel members, this the day of October, 2013.


Steven D. Michael, Chair
Disciplinary Hearing Panel