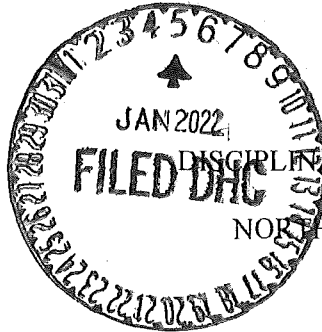


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

NICOLLE T. PHAIR, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW and
ORDER OF DISCIPLINE

This matter was heard before a hearing panel of the Disciplinary Hearing Commission composed of Maya Madura Engle, Chair, Margaret M. Hunt, and Ronald C. Brinson. Margaret T. Cloutier and Robert Weston represented the Plaintiff, the North Carolina State Bar. Defendant, Nicolle T. Phair, was represented by Alan M. Schneider.

Based upon the pleadings and the evidence presented at trial, the Hearing Panel 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, Nicolle T. Phair ("Phair" or "Defendant"), was admitted to the North Carolina State Bar in 1996, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, 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. During all or part of the relevant periods referred to herein, Phair was engaged in the practice of law in the State of North Carolina and maintained a law office in Sanford, Lee County, North Carolina.
4. Beginning in 2013, Phair was certified to serve as a superior court mediator by the North Carolina Dispute Resolution Commission ("DRC").
5. Rule 8.E of the Revised Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions ("MSC Rules") requires

certified mediators to report disciplinary complaints filed with or actions taken by a professional licensing body within thirty days of receipt.

6. To maintain certification as a mediator, mediators are required to apply annually to the DRC for renewal.

7. As part of the DRC's online renewal application, mediators must provide answers to various questions, certify the answers are correct, and attest that the mediator is the person filling out the application.

8. Each year's renewal application includes questions as to whether there are any disciplinary complaints pending against the mediator or whether the mediator has received discipline from a disciplinary authority.

9. During the times relevant herein, Phair employed an office manager over whom she had direct supervisory authority.

10. Phair allowed her office manager to fill out and submit Phair's online mediator renewal certifications from 2014 through 2018-2019.

11. Phair did not review the yearly renewal certifications prior to her office manager submitting them to the DRC.

12. On August 31, 2017, Phair was notified by the North Carolina State Bar of a grievance filed against her bearing grievance file number 17G0476.

13. On or about September 28, 2017, Phair's office manager filled out and submitted the online application for Phair's 2017-18 mediator renewal application.

14. Phair's 2017-18 mediator renewal application submitted by Phair's office manager incorrectly reported that no grievances, complaints, or disciplinary proceedings were pending against Phair, when a grievance had been filed against Phair with the North Carolina State Bar.

15. Although Phair had policies in place that should have caused her office manager to consult with Phair regarding the information provided in the annual mediation renewal certification, Phair was informed after the office manager submitted the annual certifications that the manager had submitted the certifications. Thereafter, Phair failed to take the appropriate steps to ensure that accurate information was reported in the renewal certification, did not correct the information previously reported, and did not inform her office manager that it was necessary for Phair to personally participate in the online submission of the certifications. The grievance bearing file number 17G0476 and its resulting discipline were reported to the DRC on her 2018-19 renewal certification.

Based on 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, Nicolle T. Phair, and the subject matter of this proceeding.

2. Phair'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 Phair violated the Rules of Professional Conduct in effect at the time of the conduct as follows: By allowing her office manager to certify yearly mediator renewal applications to the DRC on her behalf without personally reviewing the applications and attesting that she was the person filling out the application, Phair failed to make reasonable efforts to ensure that the office manager's conduct was compatible with Phair's professional obligations in violation of Rule 5.3(b).

3. Plaintiff failed to meet its burden of proving by clear, cogent and convincing evidence that Phair engaged in a prohibited ex parte communication in violation of Rule 3.5(a)(3), knowingly made a false statement of material fact to a third person in violation of Rule 4.1, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), or engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and those claims are dismissed accordingly.

Based on the above Findings of Fact, Conclusions of Law and evidence presented at the hearing, the Hearing Panel makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Phair was licensed in North Carolina in 1996.
2. Phair knew or should have known that the annual DRC mediation renewal required her to personally certify as to the accuracy of the information reported.
3. Despite the harried and hectic days typical of a busy attorney's practice, it is nonetheless imperative that proper care is taken to ensure that all tasks undertaken by staff are performed with the utmost care and accuracy.
4. Phair has prior professional discipline in that she received a Reprimand in 2018.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.
2. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(1) and determines that none of the factors in that subsection are applicable in this matter.
3. The Hearing Panel has considered the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and determines that none of the factors in that subsection are applicable in this matter.

4. The Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B .0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- a) prior disciplinary offenses in this state or any other jurisdiction, or the absence thereof;
- b) full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- c) absence of dishonest or selfish motive; and
- d) degree of experience in the practice of law.

5. The Hearing Panel carefully considered all of the disciplinary options available to it and carefully evaluated the factors relating to the imposition of a suspension or stayed suspension as well as reprimand and censure. In light of all the evidence, the Hearing Panel concluded the protection of the public does not require suspension, censure or reprimand in this case. The Hearing Panel concludes that admonition, written discipline imposed in cases where an attorney has committed a minor violation of the Rules of Professional Conduct, is the appropriate discipline in this matter.

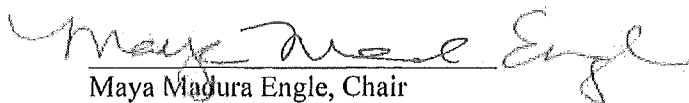
Based on the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

- 1. Defendant, Nicolle T. Phair, is hereby ADMONISHED.
- 2. Phair shall pay the administrative fees and costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon her of the statement of costs by the Secretary.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 5th day of ~~December, 2021~~ January, 2022.



Maya Madura Engle, Chair
Disciplinary Hearing Panel